

Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)
)
 Applications filed by Qwest Communications) WC Docket No. 10-110
 International Inc. and CenturyTel, Inc. d/b/a)
 CenturyLink for Consent to Transfer Control)

MEMORANDUM OPINION AND ORDER

Adopted: March 18, 2011

Released: March 18, 2011

By the Commission: Chairman Genachowski and Commissioner Clyburn issuing separate statements;
 Commissioners Copps, McDowell, and Baker concurring and issuing separate
 statements.

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I. INTRODUCTION

1. Qwest Communications International Inc. (Qwest) and CenturyLink, Inc. (CenturyLink)¹ (together, Applicants) seek Commission approval to transfer control of licenses and authorizations held by Qwest and its subsidiaries from Qwest to CenturyLink.² In accordance with the terms of sections 214(a) and 310(d), we must determine whether the Applicants have demonstrated that the proposed transaction would serve the public interest, convenience, and necessity.³

2. We have carefully reviewed the record and requested additional data from the Applicants. We find that this transaction holds promise for increased broadband deployment and adoption and increased competition for multichannel video services. The increased scale and scope of the combined company, with its larger national footprint and strengthened financial position, should enhance its ability to compete, support the deployment of broadband to unserved areas, and accelerate the availability of advanced services throughout the merged entity's expanded territory. We conclude that, with certain conditions set forth below, the likely public interest benefits of the transaction outweigh the potential public interest harms, and the transaction therefore will serve the public interest.⁴ Accordingly, we grant

¹ On May 20, 2010, the transferee's company name changed from CenturyTel, Inc. to CenturyLink, Inc. See Qwest Communications International Inc., Transferor, and CenturyTel, Inc. d/b/a CenturyLink, Transferee, Application for Transfer of Control Under Section 214 of the Communications Act, as Amended, at 38 n.63 (filed May 10, 2010) (Application).

² Applicants filed a series of applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214, 310(d), and section 2 of the Cable Landing License Act, 47 U.S.C. § 35. See Application. A complete list of the licenses and authorizations at issue is attached to this Order as Appendix B. The Applicants also have other applications and petitions pending before the Commission, which may be granted prior to consummation of the proposed transaction. Applicants request that any grant include authority for CenturyLink to acquire control with respect to all licenses and authorizations issued or assigned to Qwest or its subsidiaries during the pendency of the Application and prior to the consummation of the proposed transaction, and of all applications or petitions pending at the time of consummation of the proposed transaction. *Id.* at 40–41.

³ *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18292, para. 2 (2005) (*SBC-AT&T Order*); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18435, para. 2 (2005) (*Verizon-MCI Order*); *Nextel Communications, Inc. and Sprint Corporation Applications for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, File Nos. 0002031766, *et al.*, Memorandum Opinion and Order, 20 FCC Rcd 13967, 13976, para. 20 (2005).

⁴ We also note that 20 states and the District of Columbia have approved this transaction. See *Qwest Communications Company, LLC Advice Letter 172, Indirect Transfer of Control*, Advice Letter Status Certificate (Cal. Pub. Utils. Comm'n June 14, 2010); *Joint Application of Qwest Communications Company, LLC and CenturyLink, Inc. For Approval of Indirect Transfer of Control of Qwest Communications Company, LLC*, Docket No. 2010-0110, Decision and Order (Haw. Pub. Utils. Comm'n June 15, 2010); *Application of Qwest Communications International, Inc. and CenturyLink, Inc. for Approval of Indirect Transfer of Control of Qwest Communications Company, LLC*, Case No. 10-0717-TP-ACO, Case Action Form (Pub. Utils. Comm'n of Ohio June 29, 2010); *Joint Petition of Qwest Communications International, Inc. and CenturyLink, Inc. for Expedited Approval of Indirect Transfer of Control of Qwest Communications Company, LLC*, ML# 123575, S-1094, Letter (Md. Pub. Serv. Comm'n July 7, 2010); *Application for Approval of Qwest Communications Company, LLC for [] Indirect Transfer of Control*, Docket Nos. 6543, 10664, 5043, 6094, Letter (Ga. Pub. Serv. Comm'n July 28, 2010); *Joint Petition for Expedited Consent and Approval of Indirect Transfer of Control of Qwest Communications Company, LLC*, Case No. 10-0825-T-PC, Commission Order (W.Va. Pub. Serv. Comm'n Aug. 3, 2010); *Joint Petition of Qwest Communications Company International, Inc. and CenturyLink, Inc., et al. for Approval of the Transfer of Control of Qwest Communications Company, LLC*, Case 10-C-0345, Memo Approved & Ordered (N.Y. State Pub. Serv. Comm'n Aug. 24, 2010); *Joint Petition for Expedited Approval of Indirect Transfer of Control Filed By Qwest* (continued....)

our consent to the transfer conditioned on compliance with the voluntary commitments listed in Appendix C, which constitute binding and enforceable conditions of our approval.

II. BACKGROUND

A. Description of the Applicants

1. CenturyLink, Inc.

3. CenturyLink, a publicly traded Louisiana corporation headquartered in Monroe, Louisiana, is a holding company that conducts its business operations principally through wholly owned subsidiaries that offer communications services, including local and long distance voice; wholesale local network access; broadband Internet access; and information, entertainment, and fiber transport services

(Continued from previous page) _____

Communications International, Inc. and CenturyLink, Formal Case No. 892, Letter (D.C. Pub. Serv. Comm'n Aug. 30, 2010); *Joint Petition for Approval of Agreement and Plan of Merger Dated April 21, 2010 By and Between CenturyLink, Inc. and Qwest Communications International, Inc.*, Docket No. 2010-UA-218, Order (Miss. Pub. Serv. Comm'n Sept. 14, 2010); *CenturyLink, Inc. and Qwest Communications International, Request for Letter of Non-Opposition to the Indirect Transfer of Control*, Docket No. U-31379, Order (La. Pub. Serv. Comm'n Sept. 17, 2010); *Joint Petition for Approval of the Indirect Transfer of Control of Qwest Communications Corporation of Virginia, Inc.; Central Telephone Company of Virginia d/b/a CenturyLink; United Telephone Southeast LLC d/b/a CenturyLink; and CenturyTel Long Distance, LLC d/b/a CenturyLink*, Case No. PUC-2010-00023, Order Granting Approval (Va. State Corp. Comm'n Sept. 24, 2010); *Joint Application for Approval of the Change of Control of Qwest Communications Company, LLC*, Docket No. A-2010-2176733, Order (Pa. Pub. Util. Comm'n Oct. 14, 2010); *Qwest Communications International, Inc., and CenturyTel, Inc.*, Docket No. SPU-2010-0006, Order Approving Settlement Agreements, Granting Motions to Withdraw, and Allowing Proposed Reorganization (Iowa Utils. Bd. Nov. 19, 2010) (*Iowa Utils. Bd. Order*); *Joint Application of Qwest Communications International, Inc. and CenturyLink, Inc., for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp.*, Docket No. D2010.5.55, Final Order Approving Application, Order No. 7096e (Mont. Pub. Serv. Comm'n Dec. 14, 2010); *Joint Application of Qwest Communications International, Inc., and CenturyLink, Inc., for Approval of Indirect Transfer of Control of Qwest Corporation, El Paso County Telephone Company, Qwest Communications Company, LLC and Qwest LD Corp.*, Docket No. 10A-350T, Initial Commission Decision Granting Approval, Decision No. C11-001 (Colo. Pub. Utils. Comm'n Dec. 15, 2010); *Qwest Communications Company, LLC and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Communications Company, LLC*, Docket No. TM1 0050343, Order of Approval (N.J. Bd. of Pub. Utils. Dec. 16, 2010); *Joint Application of Qwest Communications International, Inc., and CenturyLink, Inc., for Approval of Indirect Transfer of Control of Qwest Corporation and Qwest Communications Company, LLC and Qwest LD Corp.*, Application No. C-4280, Order (Neb. Pub. Serv. Comm'n Jan. 4, 2011); *Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC and Qwest LD Corporation*, Docket No. 10-049-16, Report and Order (Pub. Serv. Comm'n of Utah Jan. 4, 2011); Press Release, Minnesota Public Utilities Commission, The Minnesota Public Utilities Commission Approves Acquisition of Qwest by CenturyLink (Mar. 3, 2011), <http://www.puc.state.mn.us/PUC/telecom/013202>; *Joint Application of Qwest Corporation, Qwest Communications Company, LLC, Qwest LD Corp. dba Qwest Long Distance, Embarq Communications, Inc., Embarq Payphone Services, Inc. and CenturyTel Solutions, LLC for Approval of the Proposed Merger of Their Parent Corporations Qwest Communications International Inc. and CenturyTel, Inc.*, Docket Nos. T-01051B-10-0194, T-02811B-10-0194, T-04190A-10-0194, T-20443A-10-0194, T-03555A-10-0194, T-03902A-10-0194, Opinion and Order (Ariz. Corp. Comm'n Mar. 9, 2011) (*Arizona Corp. Comm'n Order*); *Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC and Qwest LD Corporation*, Docket No. 10-049-16, Final Order Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction (Wash. Utils. & Transp. Comm'n Mar. 14, 2011) (*Washington UTC Order*). The Oregon Public Utility Commission has not yet approved the transaction.

through copper and fiber networks to consumers and businesses in 33 states.⁵ According to the Application, as an incumbent local exchange carrier (LEC), CenturyLink provides local exchange services to approximately 7 million telephone access lines, and provides broadband Internet access services to more than 2.2 million customers.⁶ CenturyLink also provides telecommunications services as a competitive LEC in certain local and regional markets.⁷ Capital Research and Management Company (CRMC) directly controls an approximate 12 percent interest in CenturyLink.⁸ No other individual or entity currently owns or controls 10 percent or more of CenturyLink's stock.⁹

2. Qwest Communications International Inc.

4. Qwest, a publicly traded Delaware corporation headquartered in Denver, Colorado, provides an array of telecommunications and broadband Internet access services, including fiber-optic Internet service, digital switched telephone service, and voice over Internet Protocol (VoIP) services, through its wholly owned operating companies.¹⁰ According to the Application, Qwest has approximately 10.3 million access lines in the 14-state region in which it operates as an incumbent LEC, and has approximately 3 million broadband customers.¹¹ Through its subsidiaries, Qwest sells wireless services and multichannel video services, and also operates an extensive wholesale business.¹² CRMC directly controls an approximate 12 percent interest in Qwest.¹³ No other individual or entity currently owns or controls 10 percent or more of Qwest's stock.¹⁴

B. Description of the Transaction

5. Under the terms of an Agreement and Plan of Merger between the Applicants (Merger Agreement), Qwest and SB44 Acquisition Company (Merger Sub)—a wholly owned subsidiary of CenturyLink created to effectuate this transaction—will merge in a stock-for-stock exchange.¹⁵ As a result of the merger, the separate corporate existence of Merger Sub will cease, and Qwest will continue

⁵ Application at 3. The states are Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming. *Id.* at 3 n.2.

⁶ *Id.* at 3. These figures are as of December 31, 2009. *Id.*

⁷ *Id.*

⁸ CRMC, a Los Angeles-based U.S. entity, is, in turn, wholly owned by The Capital Group Companies, Inc., also a Los Angeles-based U.S. entity. *Id.* at 39.

⁹ *Id.*

¹⁰ *Id.* at 4. The Qwest subsidiaries providing domestic interstate telecommunications services pursuant to Section 214 authority are El Paso County Telephone Company; Qwest Communications Company, LLC (QCC); Qwest Corporation (QC); Qwest Communications Corporation of Virginia; and Qwest LD Corp. *Id.* at Exh. 1.

¹¹ *Id.* at 4. Qwest is an incumbent LEC in Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. *Id.* at 4 n.5.

¹² *Id.* QC provides wireless and multichannel video services through sales relationships with Verizon Wireless and DirecTV. *Id.* Qwest subsidiary QCC operates a national fiber-optic network and competes nationally for enterprise and government customers. *Id.*

¹³ *Id.* at 39.

¹⁴ *Id.*

¹⁵ *Id.* at 5.

to operate as a wholly owned subsidiary of CenturyLink.¹⁶ CenturyLink will acquire all outstanding shares of Qwest, with Qwest shareholders receiving 0.1664 CenturyLink shares for each share of Qwest common stock that they own at closing.¹⁷ CenturyLink shareholders are expected to own approximately 50.5% of the combined company, and Qwest shareholders are expected to own approximately 49.5% of the combined company.¹⁸ Following the transaction, four directors of the Qwest Board of Directors will be added to the CenturyLink Board of Directors, but a majority of the Board of post-merger CenturyLink will be directors elected by pre-merger CenturyLink's shareholders.¹⁹ CRMC will hold an interest of approximately 12% in post-merger CenturyLink.²⁰ No other individual or entity will own or control 10% or more of CenturyLink's stock post-consummation.²¹

6. The Applicants contend that the transaction will serve the public interest. They claim that, by creating a stronger company with a national platform, the transaction will help to accelerate deployment of broadband services in unserved and underserved areas for both residential and business customers, and will position post-merger CenturyLink to offer more vigorous competition to larger industry participants in multichannel video and bundled services.²² For example, in Qwest's local service territory, post-merger CenturyLink will be able to leverage CenturyLink's investments and experience in Internet protocol television (IPTV) deployment to compete against cable companies for the provision of multichannel video services, and the triple play of voice, video, and broadband.²³ The Applicants also assert that the stronger financial position of post-merger CenturyLink and its robust national fiber network will allow it to expand Qwest's enterprise and government business to compete more effectively against market leaders AT&T and Verizon.²⁴

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

7. Pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended (Communications Act or Act), and sections 34 through 39 of the Cable Landing License Act,²⁵ the Commission must determine whether the proposed transfer of control of certain licenses and

¹⁶ Applicants assert that the transaction contemplates only a parent-level transfer of control of Qwest and will not effectuate any change in control of CenturyLink, nor will it alter either company's existing operational structure. *Id.* at 5–6.

¹⁷ *Id.* at 5.

¹⁸ *Id.*

¹⁹ *Id.* at 6.

²⁰ *Id.* at 39.

²¹ *Id.* at 5, 39.

²² *Id.* at 10–21.

²³ *Id.* at 11, 15–18.

²⁴ *Id.* at 11, 18–19.

²⁵ 47 U.S.C. §§ 34–39. The Cable Landing License Act provides that approval of a license application may be granted “upon such terms as shall be necessary to assure just and reasonable rates and service.” 47 U.S.C. § 35. The Commission does not conduct a separate public interest analysis under this statute. *See, e.g., SBC-AT&T Order*, 20 FCC Rcd at 18300 n.59; *Verizon-MCI Order*, 20 FCC Rcd at 18442 n.58; *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025 (1998) (*WorldCom-MCI Order*).

authorizations held and controlled by Qwest will serve the public interest, convenience, and necessity.²⁶ In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules.²⁷ If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.²⁸ The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against the proposed public interest benefits.²⁹ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.³⁰ If we are unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, we must designate the applications for hearing.³¹

8. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"³² which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private-sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing spectrum in the public interest.³³ Our public interest analysis may also entail assessing whether the transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.³⁴ In conducting this analysis, the Commission may consider technological and market changes, as well as trends within the communications industry, including the nature and rate of change.³⁵

9. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.³⁶ The Department of Justice (DOJ)

²⁶ 47 U.S.C. §§ 214(a), 310(d). Section 310(d) of the Act, 47 U.S.C. § 310(d), requires that we consider applications for transfer of Title III licenses under the same standard as if the proposed transferee were applying for licenses directly under section 308 of the Act, 47 U.S.C. § 308. *See, e.g., AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5672, para. 19 (2007) (*AT&T-BellSouth Order*).

²⁷ *See Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238, Memorandum Opinion and Order, 24 FCC Rcd 8741, 8745-46, para. 9 (2009) (*CenturyTel-Embarq Order*).

²⁸ *Id.*

²⁹ *See, e.g., AT&T-BellSouth Order*, 22 FCC Rcd at 5672, para. 19.

³⁰ *See, e.g., id.*

³¹ *See, e.g., Application of Echostar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and Echostar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002) (*EchoStar-DirectTV Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, et al.*, WT Docket Nos. 04-70, 04-254, and 04-323, Memorandum Opinion & Order, 19 FCC Rcd 21522, 21542-44, para. 40 (2004).

³² *AT&T-BellSouth Order*, 22 FCC Rcd at 5673, para. 20.

³³ *See* 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (1996 Act), Preamble; *SBC-AT&T Order*, 20 FCC Rcd at 18301, para. 17; *Verizon-MCI Order*, 20 FCC Rcd at 18443-44, para. 17; *see also WorldCom-MCI Order*, 13 FCC Rcd at 18030-31, para. 9; *cf.* 47 U.S.C. §§ 301, 303, 309(j), 310(d), 521(4), 532(a).

³⁴ *See AT&T-BellSouth Order*, 22 FCC Rcd at 5673, para. 20.

³⁵ *See id.*

³⁶ *See, e.g., id.* at 5673, para. 21.

reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.³⁷ Under the Commission's review, the applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing.³⁸ DOJ's review is also limited solely to an examination of the competitive effects of the acquisition, without reference to other public interest considerations.³⁹ The Commission's competitive analysis under the public interest standard is somewhat broader—for example, it considers whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.⁴⁰

10. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.⁴¹ Our public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions to ensure that the public interest is served.⁴² Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.⁴³ Similarly, section 214(c) of the Act authorizes the Commission to impose “such terms and conditions as in its judgment the public convenience and necessity may require.”⁴⁴ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield net public interest benefits.⁴⁵ In using this broad authority, the Commission has generally imposed conditions to remedy

³⁷ 15 U.S.C. § 18. As of July 15, 2010, both the Federal Trade Commission and the Department of Justice Antitrust Division had completed their review of this transaction and determined not to take any enforcement action during the Hart-Scott-Rodino waiting period. *See* FTC, Transaction Granted: Early Termination (July 15, 2010), available at <http://www.ftc.gov/bc/earlyterm/2010/07/et100715.pdf>.

³⁸ *See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17462, para. 28 (2008) (*Verizon Wireless-Alltel Order*).

³⁹ *See id.*

⁴⁰ *See, e.g., Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17462, para. 28; *Applications for Consent to Transfer Control of Licenses, XM Satellite Radio Holdings, Inc. to Sirius Satellite Radio Inc.*, MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12365–66, para. 32 (2008) (*XM-Sirius Order*).

⁴¹ *See, e.g., AT&T-BellSouth Order*, 22 FCC Rcd at 5674, para. 21.

⁴² *See, e.g., Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17462, para. 29; *XM-Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

⁴³ 47 U.S.C. § 303(r); *see also Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17463, para. 29; *XM-Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

⁴⁴ 47 U.S.C. § 214(c); *see also Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17463, para. 29; *XM-Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

⁴⁵ *See, e.g., Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17463, para. 29; *XM-Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674, para. 22; *see also Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing the Commission's authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

specific harms or confirm specific benefits likely to arise from transactions and that are related to the Commission's responsibilities under the Act and related statutes.⁴⁶

IV. APPLICANTS' QUALIFICATIONS TO HOLD LICENSES

11. As a threshold matter, we must determine whether the Applicants meet the requisite qualifications to hold and assign and transfer licenses under section 310(d) of the Act and the Commission's rules. In general, when evaluating assignments under section 310(d), we do not re-evaluate the qualifications of the transferor.⁴⁷ The exception to this rule occurs where issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.⁴⁸ This is not the case here. Thus, we need not re-evaluate either Qwest's basic qualifications or those of the current Qwest shareholders.

12. Section 310(d) also requires that the Commission consider the qualifications of the proposed transferee as if the transferee were applying for the license directly under section 308 of the Act. Among the factors that the Commission considers in its public interest inquiry is whether the applicant for a license or license transfer has the requisite "citizenship, character, financial, technical, and other qualifications."⁴⁹ No challenges have been raised with respect to the basic qualifications of CenturyLink, which has previously been found qualified to control entities holding Commission licenses and authorizations.

V. POTENTIAL PUBLIC INTEREST HARMS

A. Horizontal Competitive Effects

13. In this section, we consider the potential harms to competition arising from the merger. As a general matter, the potential competitive harms arising from this transaction are limited; in a transaction spanning 37 states, CenturyLink and Qwest compete against each other in only four markets. Because CenturyLink and Qwest do currently compete with respect to some services and classes of customers, we must consider the potential horizontal effects of this merger.⁵⁰

⁴⁶ See, e.g., *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17463, para. 29; *XM-Sirius Order*, 23 FCC Rcd at 12366, para. 33; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674, para. 22.

⁴⁷ See, e.g., *Applications of Sprint Nextel Corporation and Clearwire Corporation For Consent to Transfer Control of Licenses, Leases and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570, 17582-83, para. 23 (2008) (*Sprint Nextel-Clearwire Order*); *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17464, para. 31.

⁴⁸ See, e.g., *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17582-83, para. 23; *Verizon Wireless-Alltel Order*, 23 FCC Rcd at 17464, para. 31.

⁴⁹ See *AT&T-BellSouth Order*, 22 FCC Rcd at 5756, para. 191; *Applications of SBC Communications Inc. and BellSouth Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations*, WT Docket No. 00-81, Memorandum Opinion and Order, 15 FCC Rcd 25459, 25465, para. 14 (2000) (*SBC-BellSouth Order*); see also 47 U.S.C. §§ 308, 310(d); 47 C.F.R. Parts 5, 25, 63.

⁵⁰ A merger is said to be horizontal when the merging firms sell products that are in the same relevant markets and are therefore viewed as reasonable substitutes by purchasers of the products. *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, Application for Authority to Transfer Control*, MB Docket No. 03-124, Memorandum Opinion and Order, 19 FCC Rcd 473, 507, para. 69 (2004) (*News Corp.-Hughes Order*).

1. Actual Competition

14. The record indicates that there are four significant geographic areas in which CenturyLink and Qwest provide competing services. In parts of the Orlando, Florida metropolitan area and parts of the Huntsville, Alabama area, both CenturyLink and Qwest operate as competitive LECs.⁵¹ In addition, CenturyLink provides facilities-based special access services in two areas where Qwest is the incumbent LEC: in the Minneapolis, Minnesota metropolitan area and in the Olympia/Puget Sound/Gray's Harbor area in Washington.⁵²

15. We find that the transaction poses no significant risk of harm to competition in Huntsville or Orlando, the two areas in which both CenturyLink and Qwest operate as competitive LECs. Both Applicants' facilities in these two markets are limited, and other competitive providers operate in both markets.⁵³ Rather than harming competition, we believe that the combination of the Applicants' facilities in these markets could result in a stronger competitive LEC and enhance the merged company's ability to compete against the incumbent LEC.⁵⁴

16. Our consideration of potential public interest harms therefore focuses on the two areas (Minneapolis and Puget Sound/Gray's Harbor), where Qwest is the incumbent LEC, CenturyLink is a competitive LEC, and CenturyLink has significant Type I last-mile special access facilities.⁵⁵ Consistent with Commission precedent, we conclude that the relevant geographic market for wholesale special access services is a particular customer's location, because it would be prohibitively expensive for an enterprise customer to move its office location in order to avoid a "small but significant and nontransitory increase in the price" of special access service.⁵⁶ In addition, as the Commission has

⁵¹ Application at 23, 26–28.

⁵² *Id.* at 26–28. With respect to the territory where CenturyLink is the incumbent LEC, the Applicants state that "it is possible that . . . Qwest has built facilities to serve individual customers within CenturyLink territory," and that "[a]ny such situations would be limited to sales to customers with multiple sites, within and outside of Qwest territory." *Id.* at 23 n.36. There is no evidence in the record to indicate that Qwest's very limited, widely scattered deployment in CenturyLink's territory is likely to be competitively significant for these customers, or that it will impact their provider selection process.

⁵³ *Id.* at 26–28; *see also* Letter from Karen Brinkmann, Counsel for CenturyLink, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-110, Attach. (Declaration of Michael R. Hunsucker) (filed Mar. 16, 2011).

⁵⁴ *Id.* at 23, 27–28; *see also* ADTRAN Comments at 2.

⁵⁵ Application at 23–25. Type I special access services are offered wholly over a carrier's own facilities, whereas Type II special access services are provided using a combination of the carrier's own facilities for two of the segments and the special access services of another carrier for the third segment. *See SBC-AT&T Order*, 20 FCC Rcd at 18305, para. 26; *Verizon-MCI Order*, 20 FCC Rcd at 18448, para. 26. The Commission has previously found that many purchasers of wholesale special access services view Type I services as substantially superior to Type II services because of differences in performance, reliability, security, and price. *See SBC-AT&T Order*, 20 FCC Rcd at 18305, para. 26; *Verizon-MCI Order*, 20 FCC Rcd at 18448, para. 26. The Commission has also previously found that these differences are sufficiently large that Type I special access services fall into a separate relevant product market than special access services that are not provisioned wholly over a carrier's own facilities. *See SBC-AT&T Order*, 20 FCC Rcd at 18306, para. 26 n.89; *Verizon-MCI Order*, 20 FCC Rcd at 18448, para. 26 n.88.

⁵⁶ This is also referred to as the "SSNIP Test" and is used to define relevant product and geographic antitrust markets. *See, e.g., SBC-AT&T Order*, 20 FCC Rcd at 18307, para. 28; *Verizon-MCI Order*, 20 FCC Rcd at 18449–50, para. 28.

previously found, there are significant entry barriers to putting competitive last-mile facilities into place.⁵⁷

17. In previous transactions in which an incumbent LEC has acquired a competitive LEC, the Commission has identified competitive harm where both carriers provide service to a building over their own facilities and there is no evidence that another competitive LEC is likely to connect the building to its network.⁵⁸ To eliminate the possibility of such harm in Minneapolis and Olympia, CenturyLink has committed not to increase rates for any service provided by CenturyLink or Qwest in the buildings identified in Appendix C for seven years following the merger closing date.⁵⁹ This commitment extends to both new and existing customers in those buildings, and it will cease to apply in a particular building if the merged company divests either CenturyLink's or Qwest's legacy fiber facilities in that building, if the number of competitive carriers with fiber facilities in the building returns to the level that existed prior to the merger closing date, or if the Commission adopts comprehensive changes to its special access rules requiring industry-wide changes to rates or rate structure for the services covered by this commitment.⁶⁰ We conclude that this commitment is sufficient to mitigate potential competitive harms resulting from this transaction. We therefore accept this commitment and make it a binding and enforceable condition of our approval.

18. Finally, certain commenters claim that this merger could result in increased wholesale special access prices, not as a result of a decrease in competition in any particular market area, but due to the Applicants' different pricing policies and structures.⁶¹ We decline to impose conditions related to special access pricing in response to these particular claims, which are better addressed in the special access rulemaking currently under consideration by the Commission.⁶² Furthermore, even assuming that

⁵⁷ See *SBC-AT&T Order*, 20 FCC Rcd at 18308–11, paras. 32, 39–40; *Verizon-MCI Order*, 20 FCC Rcd at 18451–53, paras. 32, 39–40.

⁵⁸ See, e.g., *Application for Transfer of Control of OnFiber Communications, Inc. to Qwest Communications Corporation*, 21 FCC Rcd 9933, 9933 n.5 (2006); *AT&T-BellSouth Order*, 22 FCC Rcd at 5676–77, para. 27; see also *AT&T-BellSouth Order*, 22 FCC Rcd at 5682–83, para. 42.

⁵⁹ Appendix C, Commitment III.

⁶⁰ *Id.* The Commission's special access proceeding is in WC Docket 05-25. See *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (*Special Access NPRM*).

⁶¹ See *Cox/Charter Comments* at 26; *Cbeyond et al. Comments* at 43; *Leap Comments* at 2–4; *Sprint Comments* at 4.

⁶² See *Special Access NPRM*, 20 FCC Rcd at 2004–34. Some commenters raise issues that are likewise better addressed in a rulemaking of general applicability or are otherwise not specific to this transaction. See, e.g., *Access Point et al. Comments* at 74–77 (access charge litigation); *Cedar Falls Comments* at 3–4 (local pole attachment disputes); *Pac-West Comments* at 3–10 (ongoing intercarrier compensation litigation). The Shoshone-Bannock Tribes have raised a number of issues relating to the quality of service provided by Qwest, the lack of affordable high speed Internet, and inadequate documentation of Qwest's rights-of-way over the Fort Hall Reservation. Letters from Nathan Small, Chairman, Shoshone-Bannock Tribes, to Julius Genachowski, Chairman, FCC, WC Docket No. 10-110 (filed Jan. 26 and Mar. 2, 2011). The Tribes' complaint concerning the inadequate documentation of Qwest's purported rights-of-way is supported by the Superintendent of the Fort Hall Agency of the Bureau of Indian Affairs who notes that “[a]mong the concerns are the lack of documentation, including land owner consents, [and] proper recording.” Letter from Dean Fox, Superintendent, Fort Hall Agency, Bureau of Indian Affairs, to Nathan Small, Chairman, Shoshone-Bannock Tribes, WC Docket No. 10-110 (filed Mar. 2, 2011). CenturyLink has committed to continuing to work with the Tribes to address their concerns and resolve outstanding issues once the transaction has closed, and we expect them to do so. Letter from Karen Brinkmann and Alexander Maltas, Counsel for CenturyLink, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-110 (filed Feb. 4, 2011).

there is sufficient evidence to support a unilateral effect of increased wholesale special access pricing resulting from the transaction, we believe that the voluntary commitments undertaken by CenturyLink that relate to wholesale service, discussed below in Parts V.B and V.C, mitigate these concerns.

2. Potential Competition

19. Because certain CenturyLink wire centers abut Qwest wire centers in the transaction market area, it is possible that the transaction may adversely affect potential competition for services offered by the Applicants, including wholesale access, local exchange, interconnection, and broadband. However, these adjacent service territories affect only about 13 percent of the exchanges involved in the transaction and only approximately 1.7 million residential lines out of more than 17 million residential and small business access lines that will be served by CenturyLink in the transaction market area after closing.⁶³ Most of the adjacent exchanges, particularly CenturyLink's, are small and rural.⁶⁴ We recognize that carriers are generally less likely to compete in rural territories because of the high costs of reaching consumers and the relatively low potential revenues from less dense areas.⁶⁵ Furthermore, the Applicants state that neither CenturyLink nor Qwest had plans to expand into the other company's adjacent territories before the Merger Agreement was signed.⁶⁶ Nothing in the record contradicts this assertion. Accordingly, given the limited number of adjacent wire centers and the rural nature of many of these wire centers, we find it unlikely that the transaction will have an adverse effect on potential competition.

B. Operations Support Systems and Wholesale Customer Service

20. Ensuring robust competition not only for American households but also for American businesses requires particular attention to the role of wholesale communications markets, through which providers of broadband and other services secure critical inputs from one another.⁶⁷ Well-functioning wholesale markets can help foster retail competition, as it is not economically or practically feasible for competitors to build facilities in all geographic areas. The Applicants have committed that the transaction "will not cause any reduction, impairment, or discontinuance of service to any customer," including its wholesale customers, and in fact will result in a company that is better able to service its wholesale customers.⁶⁸ We believe that the voluntary commitments discussed in this section will ensure that wholesale competitors are not harmed by this transaction, and that the transaction serves the public interest. We therefore accept these commitments and make them binding and enforceable conditions of our approval.

⁶³ See Letter from Karen Brinkmann and Alexander Maltas, Counsel for CenturyLink, Inc., to Marlene F. Dortch, Secretary, FCC, WC Docket No. 10-110 at 1 (filed Mar. 1, 2011) (CenturyLink Mar. 1, 2011 *Ex Parte* Letter).

⁶⁴ See Application, Exh. 5.

⁶⁵ See *Applications of GTE Corp. and Bell Atlantic Corp.*, CC Docket No. 98-184, Memorandum Opinion and Order, 15 FCC Rcd 14032, 14095, para. 117 (2000) (*Bell Atlantic-GTE Order*). Thus, here, each carrier's incentive to encroach on the other's territories appears to be relatively small.

⁶⁶ See Application at 28; *id.* Exh. 6, Declaration of Karen A. Puckett, para. 3; *id.* Exh. 7, Declaration of Teresa A. Taylor, para. 2.

⁶⁷ See FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN, at 42 (2010) (NATIONAL BROADBAND PLAN).

⁶⁸ Application at 37-38.

21. *Operations Support Systems (OSS)*. After closing, CenturyLink will operate its existing OSS in its legacy territory.⁶⁹ The Applicants stated that in the Qwest territories, Applicants would maintain Qwest's OSS for at least one year after closing, during which time they would evaluate the best approach for integrating the two companies' separate systems.⁷⁰ In response, commenters argue that CenturyLink is obfuscating its plans for OSS integration, and worry that the wholesale OSS in the Qwest territory will deteriorate under CenturyLink management.⁷¹ Others claim that financial pressures and efforts to meet stated synergy goals could encourage CenturyLink to sacrifice wholesale OSS integration and performance in favor of other priorities.⁷² Commenters also express concern that CenturyLink is overextending itself in acquiring Qwest so soon after acquiring Embarq.⁷³

22. In response to these concerns, CenturyLink has proposed a series of voluntary commitments. Among other things, CenturyLink has committed to keep Qwest's OSS in place for 30 months after closing, and to provide the Commission and the relevant state commissions with a transition plan at least 180 days before transitioning from Qwest's OSS to CenturyLink's OSS or any other new systems.⁷⁴ CenturyLink also agrees to report to the Commission, on a quarterly basis, a series of OSS performance metrics designed to ensure an adequate level of OSS performance in the legacy Qwest territory after closing.⁷⁵ These commitments will allow the Commission to monitor CenturyLink's OSS performance and ensure that service quality in the legacy Qwest territory does not deteriorate as a result of this transaction, and to take appropriate enforcement action if it does.⁷⁶ Accordingly, we find that CenturyLink's commitments are sufficient to mitigate potential harms relating to OSS; we therefore accept the commitments in Appendix C and make them binding and enforceable conditions of our approval.⁷⁷

⁶⁹ CenturyLink is currently transitioning to the EASE OSS as a result of its merger with Embarq. See *CenturyTel-Embarq Order*, 24 FCC Rcd at 8768, App. C.

⁷⁰ Applicants' Reply at 20–21. Subsequently, in settlements filed in at least 8 states, Applicants agreed to maintain Qwest's OSS in the Qwest territories for at least 24 months. See, e.g., Letter from Karen Brinkmann and Alexander Maltas, Counsel for CenturyLink, Inc., to Marlene F. Dortch, Secretary, FCC, WC Docket No. 10-110, Exh. B–Integra Settlement Agreement, para. 12 (filed Nov. 8, 2010) (*Integra Settlement*); *Iowa Utils. Bd. Order* at 20.

⁷¹ Access Point *et al.* Comments at 7–11; Cbeyond *et al.* Comments at 7–8; NJDRC Reply at ii (arguing that CenturyLink has insufficient expertise and experience to operate Qwest's OSS, which could lead to significant harms to competitive LECs before CenturyLink learns to operate the OSS adequately).

⁷² See Cbeyond *et al.* Comments at 44, 47.

⁷³ See Access Point *et al.* Comments at 67; NASUCA Comments at 2–3; NJDRC Comments at 16; NASUCA Reply at 2; NJDRC Reply at ii, 11–12; Letter from Thomas Jones, Counsel for Cbeyond, Inc., Integra Telecom, Inc., Socket Telecom, LLC, and tw telecom inc, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-110, Attach. at 7–9 (filed Sept. 24, 2010) (Cbeyond *et al.* Sept. 24, 2010 *Ex Parte* Letter).

⁷⁴ See Appendix C, Commitments IV.A.1, IV.A.2, IV.A.3.

⁷⁵ See Appendix C, Commitment IV.B.

⁷⁶ We note that the OSS in legacy Qwest territory will continue to be subject to the terms of Qwest's section 271 approvals. See *infra* paras. 26–27.

⁷⁷ We note that CenturyLink has made similar commitments in settlements with competitive LECs and in some of the state proceedings. See, e.g., *Integra Settlement*, *supra* note 70, at 9 (stating that the merged company commits to use the legacy Qwest OSS for at least two years, or until July 1, 2013, whichever is later, and that it will prepare an OSS transition plan at least 270 days before replacing or integrating Qwest's OSS).

23. *Interconnection Agreements.* Some commenters express concern that, post-closing, CenturyLink will “discontinue Qwest [interconnection agreements] wherever possible,”⁷⁸ and that CenturyLink has not committed to retain these interconnection agreements for any time period.⁷⁹ They also contend that renegotiating these interconnection agreements will “deprive competitors of the benefit of their enormous investment in time and resources to develop and maintain interconnection agreements and associated processes in the legacy Qwest region,”⁸⁰ especially given that CenturyLink has suggested that existing interconnection agreements will not be used as a starting point for negotiating replacement interconnection agreements.⁸¹

24. CenturyLink has offered a number of commitments designed to mitigate concerns raised in the record about interconnection agreements. Pursuant to the Merger Agreement, CenturyLink will assume all of Qwest’s existing contractual commitments, including its interconnection agreements.⁸² In addition, CenturyLink has committed to allow any competitive LEC to use its current interconnection agreement as the starting point for renewal contract negotiations,⁸³ and to extend its current agreement for up to 36 months.⁸⁴ CenturyLink has also committed to permit competitive LECs to negotiate multiple interconnection agreements within a state in a single negotiation.⁸⁵ Finally, CenturyLink has committed not to oppose the enforcement and arbitration by a state commission of interconnection agreements that are subject to the terms of this order.⁸⁶ We accept the commitments in Appendix C and make them binding and enforceable conditions of our approval.⁸⁷

25. *Other Wholesale Service Issues.* Some commenters argue that the merged company will have incentives to reduce wholesale service quality in order to achieve synergies.⁸⁸ To address this concern, and consistent with its assertion that the transaction will benefit Qwest and CenturyLink wholesale customers,⁸⁹ CenturyLink has committed not to discontinue any Qwest interstate wholesale services for

⁷⁸ Cbeyond *et al.* Sept. 24, 2010 *Ex Parte* Letter, Attach. at 4; *see also* Access Point *et al.* Comments at 72–73; Pac-West Comments at 10–14.

⁷⁹ *See* Cbeyond *et al.* Sept. 24, 2010 *Ex Parte* Letter, Attach. at 3–4. Cbeyond *et al.* are also concerned about the prospect of CenturyLink renegotiating interconnection agreements that are nearing expiration. *Id.*

⁸⁰ *Id.* at 4 (quoting Applicants’ Reply at 33); *see also* Infotelecom Comments at 2–6.

⁸¹ Cbeyond *et al.* Sept. 24, 2010 *Ex Parte* Letter, Attach. at 4 (citing Applicants’ Reply at 33).

⁸² Application at 37.

⁸³ *See* Appendix C, Commitment IV.H.

⁸⁴ *See id.*, Commitment IV.G. Interconnection agreements that were extended by operation of the *CenturyTel-Embarq Order* are exempt from this commitment. *Id.*; *see also CenturyTel-Embarq Order*, 24 FCC Rcd at 8770, App. C.

⁸⁵ *See* Appendix C, Commitment IV.I.

⁸⁶ *See* Appendix C, Commitment IV.J.

⁸⁷ We note that CenturyLink has made similar commitments in settlements with competitive LECs and in some of the state proceedings. *See, e.g., Integra Settlement, supra* note 70, at 5 (stating that the merged company will allow a competitive LEC to use its existing interconnection agreement as the basis for negotiating an initial successor replacement agreement); *Washington UTC Order* at 132 (requiring the merged company to extend existing interconnection agreements for three years).

⁸⁸ *See, e.g.,* Joint Commenter Comments at 44–48.

⁸⁹ *See* Application at 37–38.

one year after the transaction closing date.⁹⁰ CenturyLink has also committed not to seek to recover costs associated with this transaction through increases in wholesale service rates.⁹¹ Finally, CenturyLink has committed that both in the legacy Qwest territory and the legacy CenturyLink territory, it will not assert that it is exempt from section 251(c) obligations pursuant to section 251(f)(1).⁹² We believe these commitments are sufficient to mitigate the potential wholesale service harms raised in the record, and will help ensure that the combined entity provides an appropriate level of service to its wholesale customers. We therefore accept the commitments in Appendix C and make them binding and enforceable conditions of our approval.⁹³

C. Other Issues

26. *Regulatory Status of CenturyLink.* Some commenters question whether post-merger CenturyLink will be able to meet a variety of obligations under Sections 251 and 271, arguing that CenturyLink does not have experience complying with Performance Assurance Plans (PAPs); has never been required to establish a Change Management Process (CMP); and has no experience complying with wholesale service performance measurement reporting or otherwise holding itself accountable in the ways Qwest—which is a Bell Operating Company (BOC)—is required to.⁹⁴ Commenters further assert that the Commission and competitive LECs will be unable to detect whether post-merger CenturyLink is failing to meet its section 271 obligations.⁹⁵ CenturyLink responds that, though it has not previously operated subject to the requirements of Section 271, “it is fully aware of (and has acknowledged) its duty to do so within Qwest’s in-region service areas, and the company will ensure that the resources and expertise required to meet those obligations are in place.”⁹⁶ It further asserts that “all rights that competitive LECs enjoy under Sections 251 or 271 will be unaffected by the merger,” and that it intends to meet all of its legal obligations.⁹⁷

27. We conclude that CenturyLink’s commitment to meet its new BOC obligations in the legacy Qwest region, taken in combination with the authority vested in this Commission and the states, adequately addresses commenters’ concerns. CenturyLink will be a BOC in the legacy Qwest territory following this transaction. Section 3(4) of the Act defines a BOC as either one of a group of specifically

⁹⁰ See Appendix C, Commitment IV.E; see also, e.g., Cbeyond *et al.* Comments at 42 & Attach. C at 4.

⁹¹ See Appendix C, Commitment IV.L; see also, e.g., Cbeyond *et al.* Comments at 71–72 & Attach. C at 4.

⁹² See Appendix C, Commitment IV.K. Commenters argue that section 251(f)(1) is not intended to shield the third-largest incumbent LEC in the United States from meeting its obligations under section 251(c). See, e.g., Cox/Charter Comments at 16–22; Letter from Howard J. Symons, Counsel for Cablevision Systems, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-110, Attach. at 4 (filed Mar. 2, 2011); see also Cbeyond *et al.* Comments at 35 n.112.

⁹³ We note that CenturyLink has made similar commitments in settlements with competitive LECs and in some of the state proceedings. See, e.g., *Integra Settlement*, *supra* note 70, at 2 (stating that the merged company will not seek to recover transaction-related costs through wholesale service rates or other fees paid by competitive LECs); *Arizona Corp. Comm’n Order* at 50 (noting CenturyLink’s commitment that it will not seek to avoid any of its obligations based on the rural exemption provisions of the Act).

⁹⁴ Access Point *et al.* Comments at 9–11, 67; Cox/Charter Comments at 19–22 (seeking to condition the merger on assurances that CenturyLink will maintain adequate staff at its wholesale order support centers); Cbeyond *et al.* Comments at 7–26, 44–48; Cbeyond *et al.* Sept. 24, 2010 *Ex Parte* Letter, Attach. at 1–3, 4–5, 7–9.

⁹⁵ COMPTTEL Comments at 10–13; Cbeyond *et al.* Comments at 33–34.

⁹⁶ Applicants’ Reply at 14.

⁹⁷ *Id.* at 22.

listed companies—including U S West Communications Company—or as “any successor or assign of any such company that provides wireline telephone exchange service.”⁹⁸ Consistent with this definition and with Commission precedent, we determine that CenturyLink is a successor to the former U S West Communications Company and is therefore responsible for all obligations that apply to BOCs under the Act in the former U S West Communications Company territories.⁹⁹ In the legacy Qwest territory, post-merger CenturyLink will be subject to all state and federal obligations—and all applicable remedies for violation of those obligations—that Qwest was subject to due to its BOC status.

28. *Big Footprint*. Consistent with the “Big Footprint” theory that the Commission addressed in prior BOC mergers,¹⁰⁰ we find that the significant increase in the size of CenturyLink’s study area resulting from the transaction could, in theory, increase its incentive to engage in anticompetitive activity,¹⁰¹ although we think it is likely to have a somewhat lesser effect in the instant case than in the prior BOC mergers due to the size of the applicants.¹⁰² Additionally, to the extent that CenturyLink has been less willing to cooperate with competitors than Qwest,¹⁰³ CenturyLink may extend this behavior to the acquired territories following the transaction.¹⁰⁴ In order to address these potential harms, the Applicants have proposed a series of voluntary commitments, including in particular commitments relating to their wholesale operations that will, for example, ensure that quality OSS is maintained; ensure that competitive LECs maintain access to existing services after the merger; and facilitate the negotiation of interconnection agreements, including by ensuring that CenturyLink does not rely on the exemption from interconnection obligations in section 251(f)(1).¹⁰⁵ We find that these commitments,

⁹⁸ 47 U.S.C. § 153(4). U S West Communications Company is now part of Qwest, and the exchanges at issue in this proceeding were part of the U S West Communications Company. See *Qwest Communications International Inc. and U S West, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 99-272, Memorandum Opinion and Order, 15 FCC Rcd 11909 (2000).

⁹⁹ See *Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, WC Docket No. 07-22, Memorandum Opinion and Order, 23 FCC Rcd 514, 533–37, paras. 33–37 (2008) (assigning BOC status to FairPoint with respect to exchanges it acquired from Verizon).

¹⁰⁰ See *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee*, 14 FCC Rcd 14712, 14797–98, paras. 192–93 (1999) (*SBC-Ameritech Order*); see also *AT&T-BellSouth Order*, 22 FCC Rcd at 5751–53, paras. 183–85; *Bell Atlantic-GTE Order*, 15 FCC Rcd at 14115–16, paras. 176–78.

¹⁰¹ See COMPTTEL Comments at 3–5; Cbeyond *et al.* Comments at 49–54; Sprint Reply at 3–5.

¹⁰² As the Commission explained in the *SBC-Ameritech Order*, a merger between two incumbent LECs may increase the merged entity’s incentive to engage in anticompetitive behavior by allowing the resulting entity to capture or internalize a higher proportion of the benefits of such anticompetitive strategies against regional or national competitors. See *SBC-Ameritech Order*, 14 FCC Rcd at 14798, para. 193. The larger the resulting incumbent LEC, the greater its ability to internalize these spillover effects. Access Point *et al.* argue that the diminished potential competition posed by this merger is more severe than that posed by the SBC-Ameritech and Bell Atlantic-GTE mergers. See Access Point *et al.* Comments at 16; see also COMPTTEL Comments at 4; Sprint Reply at 2–3. *But see* Mabuhay Comments at 1 (noting that even post-merger, the applicants’ resulting company will comprise less than 20 percent of the overall landline market). We find that CenturyLink’s voluntary commitments alleviate any concerns regarding CenturyLink’s ability to act anticompetitively due to its increased footprint.

¹⁰³ See, e.g., Cedar Falls Comments at 1–3; Cbeyond *et al.* Comments at 43, 47–54; New Edge Reply at 10; Sprint Reply at 4; Cbeyond *et al.* Sept. 24, 2010 *Ex Parte* Letter, Attach. at 1.

¹⁰⁴ See *SBC-Ameritech Order*, 14 FCC Rcd at 14950, para. 571.

¹⁰⁵ See *supra* paras. 22–25.

summarized above and included in Appendix C, adequately address both of these concerns. We therefore accept these voluntary commitments and make them binding and enforceable conditions of our approval.

29. *Benchmarking.* Some commenters argue that the merged company will have a greater ability to discriminate against its competitors because the merger will reduce the number of similarly situated companies against which it will be possible to compare, or “benchmark,” practices.¹⁰⁶ However, the Commission has previously explained that benchmarking in this particular context has, at best, limited value.¹⁰⁷ Accordingly, we do not find that the elimination of a company for benchmarking purposes presents a significant harm.

VI. POTENTIAL PUBLIC INTEREST BENEFITS

30. We next consider whether the transaction is likely to generate verifiable, transaction-specific public interest benefits.¹⁰⁸ In doing so, we ask whether post-transaction CenturyLink will be able and is likely to pursue business strategies resulting in demonstrable and verifiable benefits that would not be pursued but for the transaction.¹⁰⁹ As discussed below, we find that the proposed transaction is likely to generate significant transaction-specific public interest benefits.

A. Analytical Framework

31. In determining whether approval of a transaction is in the public interest, the Commission evaluates whether the transaction is likely to produce public interest benefits. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction specific. That is, the claimed benefit must be likely to occur as a result of the transaction but unlikely to be realized by other practical means having fewer anticompetitive effects. Second, the claimed benefit must be verifiable.¹¹⁰ The Applicants, who possess much of the information relating to the potential benefit of a transaction, are required to provide sufficient supporting evidence to permit us to verify the likelihood and magnitude of each claimed benefit.¹¹¹ Benefits expected to occur only in the distant future are inherently more speculative than more immediate benefits. Third, the Commission calculates the magnitude of benefits net of the cost of achieving them.¹¹²

¹⁰⁶ See *Access Point et al.* Comments at 23–28; *Cbeyond et al.* Comments at 61–66; *NJDRC* Comments at 7–8.

¹⁰⁷ *AT&T-BellSouth Order*, 22 FCC Rcd at 5755, para. 189 (“[B]enchmarking does not represent as useful or important a regulatory tool as the Commission previously believed. . . . [Given the comprehensive performance plans and numerous specific metrics applied to BOCs under the 1996 Act, t]he performance of other companies is not germane to the question of whether the performance of the company under scrutiny is improving, deteriorating, or staying the same.”).

¹⁰⁸ See, e.g., *AT&T-BellSouth Order*, 22 FCC Rcd at 5760, para. 200; *WorldCom-MCI Order*, 13 FCC Rcd at 18134–35, para. 194.

¹⁰⁹ See, e.g., *Verizon Communications, Inc. and América Móvil, S.A. de C.V., Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc.*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, 6210, para. 34 (2007); *SBC-Ameritech Order*, 14 FCC Rcd at 14825, para. 255.

¹¹⁰ *News Corp.-Hughes Order*, 19 FCC Rcd at 610, para. 317; *EchoStar-DirectTV Order*, 17 FCC Rcd at 20630, paras. 189–90.

¹¹¹ *News Corp.-Hughes Order*, 19 FCC Rcd at 610, para. 317; *EchoStar-DirectTV Order*, 17 FCC Rcd at 20630, para. 190.

¹¹² *Id.*

Fourth, the benefits must flow through to consumers, and not inure solely to the benefit of the company.¹¹³

32. The Commission applies a “sliding scale approach” to its ultimate evaluation of benefit claims. Where potential harms appear both substantial and likely, the Applicants’ demonstration of claimed benefits must reveal a higher degree of magnitude and likelihood than the Commission would otherwise demand.¹¹⁴ On the other hand, where potential harms appear less likely and less substantial, we will accept a lesser showing.¹¹⁵

B. Analysis

33. The Applicants claim that the transaction will likely result in benefits in four principal areas: increased availability of broadband and IPTV; increased competition for enterprise and government customers; an increased focus on local communities and rural customers; and synergies of more than \$575 million annually. While we do not accept all of the Applicants’ claims or their exact quantification of benefits, we do agree that the transaction is likely to result in significant benefits to consumers. The voluntary commitments described below, which we accept and make binding and enforceable conditions of our approval, will help ensure that this transaction serves the public interest.

34. *Broadband Deployment and Adoption.* The Applicants claim that this transaction will lead to improved and expanded access to broadband in the transaction market area.¹¹⁶ The Application states that Qwest, which serves approximately 3 million broadband customers,¹¹⁷ has deployed broadband capability to approximately 86 percent of the living units passed in the transaction market areas, with more than 14 million living units qualified at 1.5 Mbps or greater, and more than 8 million living units qualified at 5 Mbps or greater.¹¹⁸ The Application states that CenturyLink has enabled nearly 6 million access lines for broadband—89 percent of its total access lines¹¹⁹—with more than 4.3 million of these lines enabled at speeds of 3 Mbps or greater, approximately 3.9 million lines at speeds of 6 Mbps or greater, and more than 2.7 million lines at speeds of 10 Mbps or greater.¹²⁰

¹¹³ *Application of Western Wireless Corp. and ALLTEL Corp. for Consent to Transfer Control of Licenses and Authorizations*, 20 FCC Rcd 13053, 13100, para. 132 (2005).

¹¹⁴ *News Corp.-Hughes Order*, 19 FCC Rcd at 611, para. 318; *SBC-Ameritech Order*, 14 FCC Rcd at 14825, para. 256.

¹¹⁵ *AT&T-BellSouth Order*, 22 FCC Rcd at 5762, para. 203.

¹¹⁶ Application at 13–15.

¹¹⁷ *Id.* at 4.

¹¹⁸ *Id.* at 13. Qwest defines living units to include any distinct address in its Loop Facilities Assignment and Control System inventory where Qwest has provided or plans to provide service, including homes, apartments, and businesses. *Id.* at 13 n.20.

¹¹⁹ *Id.* at 13.

¹²⁰ *Id.* CenturyLink further states that it is on target to meet or exceed each of the broadband commitments that it undertook as part of its acquisition of Embarq. Letter from Karen Brinkmann, Counsel for CenturyLink, Inc., to Marlene F. Dortch, Secretary, FCC, WC Docket No. 10-110 at 1 (filed Oct. 4, 2010) (CenturyLink Oct. 4 *Ex Parte* Letter); Application at 9–10. Those commitments encompassed offering broadband service to 100% of the merged company’s retail single-line residential and single-line business access lines within three years of closing, with the following interim benchmarks for download speeds: 1.5 Mbps to 87% of the eligible lines within two years; 3 Mbps to 75% of lines within one year; 3 Mbps to 78% of lines within two years; and 3 Mbps to 80% of the eligible lines within three years. See *CenturyTel-Embarq Order*, 24 FCC Rcd at 8771, App. C.

35. In this proceeding, the Applicants have made commitments to expand broadband deployment to unserved areas, including rural communities, and to facilitate increased broadband adoption by low-income households. With respect to deployment, within seven years of the transaction closing date, CenturyLink will make available broadband service at an actual download speed of at least 4 Mbps to at least 4 million Qwest customers that do not currently have access to such service from Qwest.¹²¹ In addition, at least 75 percent of those 4 million customers will also have access to an actual upload speed of at least 1 Mbps.¹²² By the end of the seven-year buildout period, broadband service at speeds of at least 12 Mbps or higher downstream will be made available to more than twice as many Qwest customers as have access to such speeds today.¹²³ CenturyLink commits to meet interim deployment benchmarks, and to provide the Commission with regular reports on its progress in meeting its deployment commitments.¹²⁴ These commitments are consistent with the Applicants' asserted benefit of expanding broadband to more customers; accordingly, we accept the broadband deployment commitments in Appendix C and make them binding and enforceable conditions of our approval.¹²⁵

36. To encourage broadband adoption throughout the merged company's territory, CenturyLink has committed to make discounted broadband Internet access service available to households that qualify for Lifeline service and meet certain other eligibility criteria, offering a service with 1.5 Mbps downstream capability to eligible customers at an initial rate of \$9.95 per month, with comparable discounts for higher-speed services.¹²⁶ CenturyLink will offer discounted computer equipment to customers who subscribe to one of these discounted broadband services.¹²⁷ In conjunction with this broadband adoption program, CenturyLink has committed to institute a broadband promotion, education, and training program, and to make data about the adoption program and its results public to facilitate analysis of the effectiveness of these programs.¹²⁸ These commitments are consistent with the Applicants' asserted benefit of expanding broadband to more customers; accordingly, we accept the commitments in Appendix C and make them binding and enforceable conditions of our approval.

37. CenturyLink's broadband deployment and adoption commitments constitute public interest benefits. We emphasize that these voluntary commitments rely on private investment, and do not rely on public funding sources such as universal service support. This type of private-sector investment in broadband, and the competition it will promote among providers, is critical to ensuring a healthy and innovative broadband ecosystem and to encouraging new products and services that benefit American consumers and businesses of every size. These commitments are consistent with the Applicants' asserted benefit of focusing on local communities and rural customers; accordingly, we accept these commitments and make them binding and enforceable conditions of our approval.

¹²¹ See Appendix C, Commitment I & n.3.

¹²² See *id.*, Commitment I.

¹²³ See *id.*

¹²⁴ See *id.*

¹²⁵ We note that some of the state commissions that have approved this transaction imposed broadband deployment conditions as well. See, e.g., *Washington UTC Order* at 122–23 (requiring an investment of \$80 million in broadband infrastructure in Washington over five years); *Iowa Utils. Bd. Order* at 13–14 (requiring an investment of at least \$25 million in broadband infrastructure in Iowa over five years).

¹²⁶ See *id.*, Commitment II.A. Where 1.5 Mbps service is unavailable, CenturyLink will offer 768 kbps downstream capability instead. *Id.* & n.7.

¹²⁷ See *id.*, Commitment II.B.

¹²⁸ See *id.*, Commitments II.C, II.D, II.E, II.F, II.G.

38. *Increased Competition for Multichannel Video Services.* Applicants assert that the transaction will result in more rapid deployment of IPTV services and will position post-merger CenturyLink to be a stronger competitor to cable companies for the provision of multichannel video services and the triple play of voice, video, and Internet services.¹²⁹ Applicants further assert that the provision of bundled services will provide an important source of broadband revenue and will help reduce customer churn, which should allow post-merger CenturyLink to increase broadband investment and deployment.¹³⁰ Commenters are skeptical of CenturyLink's commitment to IPTV, noting that similar promises were made in the CenturyTel/Embarq merger, yet CenturyLink's IPTV service remains limited to three markets, none of which are in the former Embarq territories.¹³¹ In response, Applicants assert that CenturyLink has already made significant progress in deploying IPTV on a commercial basis in several additional markets and will continue to do so.¹³²

39. We conclude that CenturyLink is more likely to expand IPTV service in the legacy Qwest territory than Qwest would have been absent the transaction. To date, Qwest has relied on its marketing relationship with DirecTV to offer satellite video service to its customers, and has had no plans to provide IPTV services or otherwise expand its facilities-based video offerings.¹³³ In addition, we agree that an increased ability to provide voice, data, and video packages is likely to make the merged company a stronger company overall, and a stronger competitor in the multichannel video service market. We therefore find that the potential for increased IPTV competition in the former Qwest territory is a legitimate public interest benefit of this transaction. In order to keep the Commission apprised of its progress in deploying IPTV, CenturyLink has committed to file FCC Form 325 for all of its IPTV deployments for the three reporting cycles following consummation of the proposed transaction.¹³⁴ We accept this commitment and make it a binding and enforceable condition of our approval.

40. *Increased Competition for Enterprise and Government Customers.* With respect to enterprise and government broadband markets, Applicants assert that the transaction will give post-merger CenturyLink an enhanced position in these markets, enabling it to compete on a national scale against large providers serving such customers.¹³⁵ Commenters argue that Applicants fail to include concrete or verifiable commitments, and fail to identify specific merger-related benefits.¹³⁶ While post-merger CenturyLink may improve its competitive potential in the enterprise and government broadband markets, we are not fully convinced that this will amount to a significant public interest benefit. We find, however, that the other public interest benefits discussed herein, taken in combination with the Applicants' voluntary commitments, are sufficient to justify approval of the transaction.

41. *Focus on Local Communities and Rural Customers.* The Applicants assert that post-merger CenturyLink will continue to focus on local communities and rural customers, and that the merger will facilitate the combined company's efforts to do so while rolling out innovative products and services to

¹²⁹ Application at 2, 11, 15–18.

¹³⁰ *Id.* at 11, 16–17, n.27.

¹³¹ *See, e.g.,* Access Point *et al.* Comments at 36–37; Cbeyond *et al.* Comments at 67–68.

¹³² *See, e.g.,* Application at 15–16; *id.* Exh. 6, Declaration of Karen A. Puckett, para. 4; Applicants' Reply at 4–5.

¹³³ Application Exh. 7, Declaration of Teresa A. Taylor, para. 3.

¹³⁴ *See* Appendix C, Commitment VI.

¹³⁵ Application at 11, 18–19.

¹³⁶ *See, e.g.,* Access Point *et al.* Comments at 32–42; NJDRC Reply at 3–6.

all customers.¹³⁷ Commenters argue that Applicants offer no evidence in support of this claimed public interest benefit, and that it is not a merger-specific benefit in any event.¹³⁸ In response, the Applicants note that combining the companies' fiber backbone networks will place more rural communities within economically feasible reach of that network, enabling the combined entity to more rapidly deploy advanced broadband capabilities to rural customers in both CenturyLink and Qwest communities.¹³⁹ As discussed above, the Applicants' promise to continue and expand their focus on local communities and rural customers, along with their voluntary commitments to expand broadband deployment and increase broadband adoption, will help ensure that this transaction benefits rural consumers, and provide significant public interest benefits.

42. *Synergies.* The Applicants claim that this transaction will create significant annual operating synergies of approximately \$575 million, which are expected to be fully realized three to five years following the close of this transaction.¹⁴⁰ CenturyLink also estimates that it will save an additional \$50 million in annual capital expenditures within two years of closing.¹⁴¹ Some of these synergies will be realized by paying for fewer off-network terminations and handoffs, due to post-merger CenturyLink's larger footprint.¹⁴² Some commenters fear that these synergies may come by cutting critical staff support and/or wholesale service quality.¹⁴³ Based on the record evidence, we do not fully accept the Applicants' claims of operating and capital expenditure savings. We conclude, however, that even if the claimed synergies are not fully realized, the other public interest benefits discussed herein, taken in combination with the Applicants' voluntary commitments, are substantial enough to justify approval of this transaction. Furthermore, the voluntary commitments that CenturyLink has undertaken will help ensure that the financial benefits of this transaction flow through to CenturyLink's wholesale and retail customers.¹⁴⁴

43. *Universal Service.* In order to ensure that this transaction is in the public interest, CenturyLink has made commitments to help ensure that the federal universal service support the merged company receives is consistent with the size of the merged company. First, CenturyLink has committed

¹³⁷ Application at 19–21; Applicants' Reply at 8–9.

¹³⁸ See, e.g., Access Point *et al.* Comments at 3, 39–40 (“By definition, if the result of the merger is that Applicants will ‘continue’ what they are doing prior to the merger, such ‘continuation’ cannot be deemed a merger-specific benefit. Applicants do not allege that absent the merger they would abandon their current focus on local consumers and rural communities.”).

¹³⁹ Application at 20–21; Applicants' Reply at 8–9.

¹⁴⁰ Application at 21.

¹⁴¹ *Id.*

¹⁴² *Id.* CenturyLink claims that other synergies will come from “reduced corporate overhead, elimination of duplicate functions, enhanced revenue opportunities, and increased operational efficiencies through the adoption of each company's most effective practices,” as well as by leveraging “product development, system investment, and advertising costs over a broader customer and revenue base.” *Id.* at 21–22.

¹⁴³ See, e.g., Cbeyond *et al.* Comments at 44, 47, 69–70; NJDRC Reply at ii. Access Point *et al.* dispute that synergies are a public benefit and notes that the Commission has recognized that synergies can create harms. Access Point *et al.* Comments at 6, 40. Access Point *et al.* further state that the Applicants have provided no meaningful support or documentation for their claims that the merged entity will achieve the purported \$575 million in merger-related synergies, nor do the Applicants offer any commitment to share any such cost savings with retail or wholesale customers. *Id.* at 40–41.

¹⁴⁴ See *supra* paras. 22–25.

to phase out local switching support (LSS) over two years, beginning January 1, 2012.¹⁴⁵ LSS was originally created to help small telephone companies that lack economies of scale afford large mechanical switches.¹⁴⁶ Second, CenturyLink has committed to forgo federal safety net additive support for calendar year 2012 and all subsequent years.¹⁴⁷ Safety net additive is intended to encourage investment, generally by smaller carriers.¹⁴⁸ Finally, CenturyLink has committed to freeze interstate common line support (ICLS) on a per-line basis for its three remaining average schedule companies, effective January 1, 2012, and to work with the National Exchange Carrier Association (NECA) and the Commission to determine whether conversion to price caps is more appropriate.¹⁴⁹ ICLS typically supports smaller “rate-of-return” carriers and is uncapped.¹⁵⁰ Given that CenturyLink will be the third-largest incumbent LEC in the United States upon consummation of the proposed transaction, we believe that CenturyLink’s voluntary commitments are in the public interest and are consistent with the Commission’s comprehensive universal service reform efforts. We therefore accept the commitments in Appendix C and make them binding and enforceable conditions of our approval.

VII. ORDERING CLAUSES

44. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), that the applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for the transfer of control of the domestic section 214 authorizations set forth in Appendix B and for the assignment and transfer of control of licenses and international section 214 authorizations set forth in Appendix B ARE GRANTED.

45. IT IS FURTHER ORDERED that, as a condition of this grant and pursuant to section 214(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(c), CenturyTel, Inc. d/b/a CenturyLink shall comply with the conditions set forth in Appendix C of this Order.

46. IT IS FURTHER ORDERED that the above grant shall include authority for Qwest Communications International Inc. and CenturyTel, Inc. to acquire control of: (a) any license or authorization issued to Qwest Communications International Inc. and CenturyTel, Inc. and their subsidiaries during the Commission’s consideration of the transfer of control applications or the period required for consummation of the transaction following approval; (b) construction permits held by such

¹⁴⁵ See Appendix C, Commitment V.A. This commitment will remain in force until the Commission adopts new rules governing LSS, at which time CenturyLink will be subject to those rules and will no longer be bound by the terms of this commitment.

¹⁴⁶ See *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, paras. 21, 168, 187 (rel. Feb. 9, 2011) (*USF-ICC Transformation NPRM*).

¹⁴⁷ See Appendix C, Commitment V.B.

¹⁴⁸ *USF-ICC Transformation NPRM*, para. 183. We also note that CenturyLink has qualified for safety net additive support on the basis of line loss, rather than significant increased investment, which was not the intent of that rule. *Id.* at para. 184.

¹⁴⁹ See Appendix C, Commitment V.C.

¹⁵⁰ *USF-ICC Transformation NPRM*, para. 169.

licensees that mature into licenses after closing; and (c) applications filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.

47. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, this Memorandum Opinion and Order IS EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

Comments

<u>Comments</u>	<u>Abbreviation</u>
Access Point, Covad, Deltacom, Granite, HickoryTech, MetTel, OrbitCom, PAETEC, TelePacific Communications	Access Point <i>et al.</i>
ADTRAN, Inc.	ADTRAN
Aventure Communications Technology, LLC and Northern Valley Communications, LLC	Aventure
Broadvox-CLEC, LLC (filed as Anita Taff-Rice)	Broadvox
Cbeyond, Integra Telecom, Socket Telecom, tw telecom	Cbeyond <i>et al.</i>
Cedar Falls Utilities	Cedar Falls
Communications Workers of America	CWA
COMPTEL	COMPTEL
Cox Communications & Charter Communications	Cox/Charter
Infotelecom, LLC (filed as Anita Taff-Rice)	Infotelecom
Leap Wireless International, Inc.	Leap
Mabuhay Alliance (filed as Aaron Lewis)	Mabuhay
National Association of State Utility Consumer Advocates	NASUCA
New Jersey Division of Rate Counsel	NJDRC
Pac-West Telecomm, Inc.	Pac-West
Sprint Nextel Corporation	Sprint

Reply Comments

<u>Reply Comments</u>	<u>Abbreviation</u>
CenturyLink, Inc. and Qwest Communications International Inc.	Applicants' Reply
Independent Telephone & Telecommunications Alliance	ITTA Reply
Level 3 Communications LLC	Level 3 Reply
National Association of State Utility Consumer Advocates	NASUCA Reply
New Edge Network, Inc.	New Edge Reply
New Jersey Division of Rate Counsel	NJDRC Reply
Sprint Nextel Corporation	Sprint Reply

APPENDIX B

List of Licenses and Authorizations
Subject to Transfer of Control*Domestic Section 214 Authorizations*

<u>File No.</u>	<u>Authorization Holder</u>
See WC Docket No. 10-110	El Paso County Telephone Company Qwest Communications Company, LLC Qwest Corporation Qwest Communications Corporation of Virginia Qwest LD Corp.

International Section 214 Authorizations

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20100510-00183	Qwest Communications Company, LLC	ITC-214-19930315-00261 ITC-214-19960215-00016 ITC-214-19940829-00393 ITC-214-19960916-00448 ITC-214-20030117-00022
ITC-T/C-20100511-00188	Qwest LD Corp.	ITC-214-20021009-00495
ITC-T/C-20100511-00190	Qwest Services Corporation	ITC-214-19971031-00673

Cable Landing License Authorization

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
SCL-T/C-20100510-00012	Qwest Communications Company, LLC	SCL-LIC-19981117-00025

Section 310(d) Authorizations

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0004229927	Qwest Corporation	KAC80
0004231340	Qwest Communications International Inc.	WQKZ336
0004231345	Qwest Communications Company, LLC	WLS557
0004231348	El Paso County Telephone Company	KNGF367
0004232216	Qwest Learning and Conference Center	WQGX649
0004236172	Qwest Government Services	WQIG458

APPENDIX C**CenturyLink Commitments**

The Applicants have offered certain voluntary commitments, enumerated below. Because we find these commitments will serve the public interest, we accept them as conditions of our approval. Unless otherwise specified herein, these commitments are effective as of the Transaction Closing Date, which is defined for these purposes as the date on which the Applicants consummate the proposed transaction approved herein. The commitments described herein shall be null and void if CenturyLink and Qwest do not consummate the proposed transaction and there is no Transaction Closing Date. Unless otherwise specified herein, these commitments will expire three years from the Transaction Closing Date.

It is not the intent of these commitments to restrict, supersede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these commitments, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not inconsistent with these commitments.

I. INCREASING AVAILABILITY OF BROADBAND SERVICE

The Applicants commit to implement a significant deployment plan that will upgrade facilities and expand broadband availability in legacy Qwest territory. The plan will entail substantial investments during the seven years following the close of the transaction to achieve the following minimum levels of broadband availability:

FCC BROADBAND BUILD-OUT METRICS	Current % LUs	% LUs 3 Years from Merger Closing Date	% LUs 5 Years from Merger Closing Date	% LUs 7 Years From Merger Closing Date
Living Units ¹ with Access to at Least 1.5 Mbps Downstream from the Applicants ²	87.0%	88.5%	90.0%	92.7%
Living Units with Access to at Least 5 Mbps Downstream from the Applicants ³	53.0%	62.0%	68.0%	78.8%
Living Units with Access to at Least 12 Mbps Downstream from the Applicants	28.8%	35.0%	42.0%	60.0%
Living Units with Access to at Least 40 Mbps Downstream from the Applicants	8.3%	15.0%	20.0%	30.0%

Among other benefits of this investment, 4 million living units, including at least 20,000 community anchor institutions,⁴ in Qwest territory will gain access to broadband service at speeds of 5 Mbps or higher downstream. Today, these 4 million living units either have no Qwest broadband service, or can qualify only for maximum downstream speeds lower than 5 Mbps. Of the living units upgraded to

¹ A “Living Unit” is defined as a distinct address in Qwest’s network inventory where Qwest currently has, had in the past, or had planned to provide service to a customer. This includes, but is not limited to, single family homes, multi-dwelling units (*e.g.*, apartment buildings and condominiums), and business locations. These figures are percentages of the total Living Units in Qwest territory, which was 16,463,946 as of October 1, 2010.

² Unless otherwise specified, speeds shown are speeds based on train rate. The train rate, or sync rate, is the line or link data rate established between the DSLAM and the modem to provide stable customer service. Actual throughput speed will be less than train rate, based on a variety of factors such as distance between computer and speed test server (*i.e.*, DNVR to DNVR versus DNVR to MPLS), individual computer performance, wireless vs. hardwire connection to modem, operating system, TCP window size (amount of data a computer can receive), software applications running in background, spyware / anti-virus software, etc.

³ Notwithstanding the speed definition in footnote 2, the Applicants commit that, at the level identified as at least 5 Mbps downstream, actual throughput speeds will be at least 4 Mbps downstream. In addition, of the living units upgraded to at least 5 Mbps, at least 75% will have actual upstream throughput of at least 1 Mbps. Actual throughput will be measured between the network interface unit (NIU) located at the end-user’s premises and the service provider Internet gateway that is the shortest administrative distance from the NIU. *See* Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 156 n.2 (2010).

⁴ The Applicants use the definition of community anchor institutions previously employed by the Commission. *See Connect America Fund, et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-13 at ¶ 149 n.248 (rel. Feb. 9, 2011).

at least 5 Mbps, at least 75% also will have at least 1 Mbps upstream (actual throughput) at the end of the build-out period. In addition, as a result of this investment, broadband service at speeds of 12 Mbps or more downstream – the speeds most often requested by small business customers – will be made available to more than twice as many Qwest customers as have access to such speeds today.

This investment plan focuses on legacy Qwest territory. It will have no effect on existing investment efforts and commitments to expand and upgrade facilities in legacy CenturyLink territory.⁵ This investment plan reaffirms CenturyLink's intention to be a leading provider of broadband services in the United States.

Beginning on March 1, 2012, for data as of December 31, 2011, and every six months thereafter (*i.e.*, September 1 for data as of the end of June, and March 1 for data as of the end of December), CenturyLink will report to the Wireline Competition Bureau the percentage of living units within the Qwest territory to which CenturyLink offers broadband services capable of delivering at least 1.5 Mbps, 5 Mbps, 12 Mbps and 40 Mbps downstream, and the breakdown at each level between rural and non-rural areas.⁶ This reporting obligation will not expire three years following the Merger Closing Date, but will continue until the earlier of: seven years following the Merger Closing Date or the achievement of all of the minimum broadband availability metrics set forth above.

II. ENCOURAGING ADOPTION OF BROADBAND SERVICE IN THE COMBINED TERRITORY

In order to promote adoption and use of broadband service, particularly within underserved communities, the Applicants commit to implement a broadband adoption program within the combined territory. The program has three goals: (a) reducing cost barriers for qualifying customers; (b) addressing the lack of computer equipment among qualifying customers; and (c) improving education, promotion and training as to the availability and uses of broadband.

As used herein, a “qualifying customer” is defined as a customer who: (i) is eligible for Lifeline telephone service in CenturyLink or Qwest ILEC service territory; (ii) is not a CenturyLink or Qwest broadband subscriber at the time of enrollment; and (iii) is not the subject of CenturyLink or Qwest collections activity. The Applicants believe that approximately 2.3 million households currently are eligible for Lifeline service throughout the combined CenturyLink and Qwest service territory.

CenturyLink's Adoption Program is comprised of the three components described below: the Service Discount described in Subsection A, the Equipment Discount described in Subsection B, and the Promotional Program described in Subsection C. Together with the reporting commitment described in Subsection E, and the retention of an independent researcher identified in Subsection F, the Applicants believe that this Adoption Program will produce substantial and measurable consumer benefits.

- A. **Service Discount:** CenturyLink will offer discounted broadband Internet service for no more than \$9.95 a month during the first 12 months of service, and \$14.95 a month for

⁵ *CenturyTel-Embarq Order*, FCC 09-54, at 30, App. C.

⁶ As used herein, a “rural” area is an area that is not located within a city, town, or incorporated area that has a population of greater than 20,000 inhabitants, consistent with the definition employed by the Rural Utilities Service of the U.S. Department of Agriculture in its implementation of the American Recovery and Reinvestment Act. *See, e.g.*, Department of Agriculture, Rural Utilities Service, Broadband Initiatives Program, RIN 0572-ZA01, 75 Fed. Reg. 25185, 25187 (May 7, 2010). All other areas are non-rural.

the remainder of the service term, to all qualifying customers in the combined CenturyLink and Qwest territory. As a rule, the qualifying customer will gain access to 1.5 Mbps downstream capability, except in markets where 1.5 Mbps is unavailable, in which case the customer will gain access to 768 kbps broadband capability. Higher bandwidth services, where available, will be offered at a comparable discount:

	1.5 Mbps ⁷	5 Mbps	12 Mbps
Ongoing Discounted Monthly Rate	\$14.95	\$19.95	\$24.95

This discount plan will become available in all markets within six months following the Merger Closing Date and will remain open for five years following the availability of the adoption program in that market. At any time during that five-year period, a qualifying customer may enroll in this service plan once, and he or she may choose a term of as little as one year, which may be extended at the customer's option on a month-to-month basis for as long as five years.⁸ An "enrolled customer" is a qualifying customer who enrolls in a contract to purchase broadband service from CenturyLink for a term of at least one year and who remains a qualifying customer for the full term of his or her contract, including any extension on a month-to-month basis.

- B. **Equipment Discount:** CenturyLink will offer enrolled customers the ability to obtain one piece of computer equipment (such as a netbook) per household, pre-configured with operating software and Internet-ready, and with customary warranty from the manufacturer when available, for no more than \$150, provided that the customer agrees to a two-year broadband services contract at the discounted rate described above. A customer who obtains such equipment will have access to CenturyLink's 24/7 toll-free help line.
- C. **Promotional Program:** CenturyLink will implement a comprehensive customer education, broadband promotion, and customer training program targeting qualifying customers throughout the combined CenturyLink and Qwest territory.
1. The company will coordinate with at least 200 local community groups, such as Boys & Girls Clubs and senior centers, as well as schools, libraries, and other state and local institutions, especially those that support qualifying customers, tribal partners, and non-profit institutions, to develop and distribute educational materials that describe the uses and benefits of broadband capability.
 2. CenturyLink will develop a meaningful promotional plan targeted to publicize the availability of discounted broadband services and equipment, as described in

⁷ As stated above, 1.5 Mbps will be provided, except where it is unavailable, in which case 768 kbps will be provided.

⁸ CenturyLink's Lifeline customers will continue to have access to the same CenturyLink services and products as other customers, on the same rates, terms, and conditions as other customers. CenturyLink will be attentive in matching services and products to their individual needs.

Subsections A and B above, to qualifying customers. CenturyLink will use at least 500 different media outlets (which may include radio and television stations, newspapers and magazines, on-line bulletin boards and web sites, libraries and social service agencies). CenturyLink will spend at least \$1 million per year promoting the Adoption Program throughout the combined territory in each of the first five years following the Merger Closing Date.

3. CenturyLink will make available in-person training demonstrations at local anchor institutions, and develop and distribute materials such as DVDs with each computer, to assist consumers in basic computer skills, Internet browsing, and acquiring and using broadband services. CenturyLink will spend \$1 million on training over the first two years following the Merger Closing Date, and will conduct 100 in-person training sessions and be responsive to requests for training at locations across the combined territory in the first two-year period.
- D. CenturyLink will begin rolling out this Adoption Program within six months following the Merger Closing Date.
- E. CenturyLink will report to the Wireline Competition Bureau on the Adoption Program's progress every six months after the start of the Adoption Program, for the next five years (*i.e.*, a total of ten reports). The Commission will reassess the need for additional reporting at the end of the five year period. The reports, as depicted in Attachment 1, will describe in detail:
1. the personnel head count with responsibility for the program in each market;
 2. the types of advertisements, demonstrations, training DVDs, and other tactics utilized as part of the education, promotion and training aspects of the program;
 3. the number of enrolled customers in the combined territory who purchased broadband under the discount plan in the preceding six months and cumulatively since the Merger Closing Date;
 4. the number of enrolled customers who discontinued broadband service during the preceding six months and cumulatively since the Merger Closing Date;
 5. the number of enrolled customers who purchased discounted computers in the preceding six months and cumulatively since the Merger Closing Date;
 6. the cumulative broadband adoption numbers in the combined territory at the time of each report, and compared to the adoption rate as of the Merger Closing Date;
 7. the respective cost to CenturyLink of the Equipment Discount and Promotional Program in the preceding six months and cumulatively since the Merger Closing Date.
 8. The number of attendees that participated in training at the 100 training locations referenced above.
- F. CenturyLink will evaluate the effectiveness of its Promotional Program, in consultation with the independent researcher discussed in paragraph II.G below, on an annual basis

beginning one year after implementing the Program. CenturyLink will modify the Promotional Program as it deems appropriate to improve effectiveness, and will report to the Commission any modifications that it makes. At least once a year, the reports filed by CenturyLink pursuant to Section II.E will include a narrative description of the company's assessment of the overall success of the Adoption Program, including specific examples of aspects of the Program that have been most effective or least effective, or that might be modified in the future to be more effective, to stimulate broadband adoption in accordance with the goals of this Adoption Program and the Commission's National Broadband Plan. To the extent that such reports contain competitively sensitive information, such information may be submitted on a confidential basis.

- G. CenturyLink will engage with an independent researcher to help monitor and assess the impact of this Adoption Program. The results of the independent researcher's work will be made available to the FCC. To the extent that such work contains competitively sensitive information, such information may be submitted on a confidential basis.

III. PRESERVING COMPETITIVE RATES FOR CUSTOMERS IN OVERLAP BUILDINGS IN MINNESOTA AND WASHINGTON

The buildings listed in Attachment 2 are locations where both of the Applicants have local facilities, but for which the Applicants are unable to confirm from publicly available data whether or not there are at least two other, unaffiliated fiber-based carriers in the building. In order to ensure that existing customers in the buildings listed in Attachment 2 continue to obtain competitive rates for their services following the Merger Closing Date, CenturyLink commits to the following condition:

The rates as of the Merger Closing Date for any service provided by CenturyLink or Qwest will not be increased for either existing or new customers at any building listed in Attachment 2 for seven years following the Merger Closing Date, except that the foregoing condition shall become inoperative as to a particular building if: (i) one of the legacy CenturyLink or Qwest fiber facilities in that building is divested prior to the expiration of such seven year period; or (ii) the number of competing carriers with fiber facilities in the building returns to the level that existed prior to the Merger Closing Date; or (iii) the FCC engages in comprehensive changes to its special access rules requiring industry-wide changes to rates or rate structure for the services covered by this condition. For avoidance of doubt, nothing herein shall restrict CenturyLink from lowering rates to any customer at any time.

IV. COMMITMENTS REGARDING WHOLESALE OPERATIONS

- A. Operations Support Systems ("OSS") Replacement:
1. In Qwest ILEC territory, following the Merger Closing Date, CenturyLink will not replace Qwest OSS or integrate it with any other OSS for at least 30 months following the Merger Closing Date, and thereafter will provide a level of wholesale service quality that is not less than that provided by Qwest prior to the Merger Closing Date, with functionally equivalent support, data, functionality, performance, electronic flow through, and electronic bonding.
 2. If CenturyLink plans to replace Qwest OSS or integrate it with any other OSS, then at least 180 days before replacement or integration of any of the Qwest OSS, CenturyLink will notify the FCC, affected states, and affected wholesale customers, file its proposed transition plan with the Commission and the affected states, and seek input from affected wholesale customers on such transition plan.

CenturyLink will prepare a detailed OSS transition plan describing the OSS to be replaced or integrated, the surviving OSS, and why the change is being made. The plan also will identify planned contingency actions in the event that CenturyLink encounters any significant problems with the planned transition. The plan submitted by CenturyLink will be prepared by information technology professionals with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. CLECs will have the opportunity to comment on the Merged Company's plan in a forum in which it is filed, if the regulatory body allows comments, as well as in the Qwest Change Management Process.

3. The commitments made in this Section IV.A will not expire three years following the Merger Closing Date.

B. In the Qwest ILEC territory, CenturyLink will maintain wholesale functionality, performance and e-bonding at a level that is at least comparable to what Qwest is providing prior to the transaction Merger Closing Date, subject to reasonable and normal allowances for the integration of CenturyLink and Qwest systems. For the metrics described below, CenturyLink will maintain a comparison of actual quarterly results to a benchmark value to be set at one standard deviation below the twelve-month average results achieved for the twelve full months prior to January 2011 (*i.e.*, from January through December 2010), assessed on a quarterly basis, separately for each state. CenturyLink will maintain service at a level that is no worse than the benchmark value, 90 percent of the time over four consecutive quarters beginning on the Merger Closing Date, excluding instances in which the base universe number of events being evaluated (*i.e.*, the denominator) is 20 or less.

- Pre-Ordering - Average response time to pre-order queries calculated in seconds, which measures the number of seconds from CenturyLink's receipt of a query from a CLEC to the time CenturyLink returns the requested data to the CLEC; this would be reported for all areas transferred from Qwest in aggregate.
- Ordering - The percentage of electronically submitted resale and UNE orders confirmed within the following timeframes:

	POTS/Pre-Qualified Complex	Special Services
Orders with < 10 Lines	24 hours	24 hours
Orders with > 10 Lines	48 hours	48 hours

- Provisioning - Missed appointment rates/appointments met, and the average of by how many days the appointment was missed, average delay days, broken out by Resale and UNE Loop POTS.
- Provisioning - Percentage of installation troubles reported within 30 days for UNE Specials, which measures the percent of lines/circuits/trunks installed where a trouble was reported and found in the network within 30 days of order completion.

- Provisioning – Percentage of installation troubles reported within 30 days for Resale POTS and UNE Loop POTS, which measures the percent of lines/circuits/trunks installed where a trouble was reported and found in the network within 30 days of order completion.
 - Repair/Maintenance - Network Trouble Report Rate, which measures the total number of network customer trouble reports received within a calendar month per 100 units/UNEs, separately for Resale and UNE Loop POTS.
 - Repair/Maintenance - Mean Time to Repair, which measures the average duration from the receipt of the customer trouble report to the time the trouble is cleared, separately for Resale and UNE Loop POTS.
 - Repair/Maintenance - Percentage of Repeat Reports within 30 Days for Resale POTS, UNE-Loop POTS and UNE Specials, which measures the percent of customer network trouble reports received within 30 calendar days of a previous customer network trouble report.
 - Carrier Service Center - Average Speed of Answer, the average time it takes CenturyLink’s local customer service center(s) to answer a repair or ordering call. This would be reported for all areas transferred from Qwest in aggregate.
- C. Following the Merger Closing Date, in the Qwest ILEC territory, the company will:
1. Continue to provide the monthly reports of wholesale performance metrics that Qwest currently provides to CLECs and provide access to these metrics to state Commission or FCC staff;
 2. Comply with all wholesale performance reporting requirements and associated penalty regimes currently applicable to Qwest, including but not limited to those applicable under Performance Assurance Plans (“PAPs”); and
 3. Provide the performance reports that Qwest currently provides to existing wholesale customers to any new entrants in the Qwest ILEC territories.
- D. Orders will be processed in compliance with federal and state law, as well as the terms of applicable interconnection agreements.
- E. For 12 months following the Merger Closing Date, CenturyLink will not discontinue any Qwest interstate wholesale service offered to competitive carriers in the Qwest territory as of the Merger Closing Date, except as approved or ordered by the Commission.
- F. In legacy Qwest ILEC territory, interstate term and volume discount plans offered for tariffed services by Qwest as of the Merger Closing Date will be extended by 12 months beyond the expiration of the then-existing term, or until May 1, 2013, whichever is later, unless the wholesale customer opts out of this extension. Term and volume discount plans that would otherwise expire between the date the FCC order is adopted and the Merger Closing Date will be extended through the Merger Closing Date at the wholesale

customer's option, such that the additional 12 months provided under this provision will run from the Merger Closing Date.

- G. CenturyLink will honor all obligations under existing Qwest and CenturyLink interconnection agreements in effect as of the Merger Closing Date, and will extend any such interconnection agreements, unless the wholesale customer opts out of this extension, for 36 months following the Merger Closing Date, except that any interconnection agreement the term of which already was extended by operation of the *CenturyTel-Embarq Order* is exempt from this 36-month extension.
- H. CenturyLink will allow any wholesale customer with a pre-existing interconnection agreement to use that agreement as the basis for negotiating an initial successor interconnection agreement. Where parties agree it is reasonable to do so, the parties may incorporate the amendments to the existing agreement into the body of the agreement used as the basis for such negotiations of the initial successor interconnection agreement.
- I. CenturyLink will permit any requesting carrier under Section 251(b) desiring interconnection agreements with more than one CenturyLink ILEC operating within the same state to simultaneously negotiate interconnection agreements with all such CenturyLink ILECs operating in the same state. These unified negotiations will include negotiation of common terms, but CenturyLink reserves the right to negotiate individual terms unique to each operating company in the state.
- J. CenturyLink will not assert that any state lacks Section 252 jurisdiction over a Section 251(b) interconnection agreement or dispute on the grounds that such agreement or dispute also arises under these commitments and conditions.
- K. Following the Merger Closing Date, CenturyLink will not assert that any of its rural telephone companies are exempt from Section 251(c) obligations pursuant to Section 251(f)(1) of the Communications Act, as amended. This commitment will not expire three years following the Merger Closing Date.
- L. CenturyLink will not seek to recover through wholesale service rates one-time transfer, branding or other merger-specific costs.

V. COMMITMENTS TO ADVANCE FEDERAL UNIVERSAL SERVICE REFORM

The conditions in this section will not expire three years after the Merger Closing Date.

- A. CenturyLink Will Phase-Out Federal Local Switching Support ("LSS")
 - 1. LSS funding will be phased down in three equal steps over two years, beginning January 1, 2012. The baseline for reduction will be CenturyLink's actual 2010 calendar year support for LSS, based on the final calculations for 2010 that CenturyLink will file in December 2011. The support for the 2012 calendar year will be two-thirds of the baseline amount, and the support for the 2013 calendar year will be one-third of the baseline amount. Beginning calendar year 2014, CenturyLink will receive no federal LSS funding for 2014 or any subsequent calendar year, unless and until the FCC adopts a new final order governing LSS, upon which CenturyLink will be eligible to receive LSS funding on the same terms as the rest of the industry.

- B. CenturyLink Will Forgo Future Federal Safety Net Additive Payments
 - 1. The company will forgo safety net additive payments for calendar year 2012 and subsequent calendar years.

- C. CenturyLink Will Submit a Plan for Its Three Remaining Average Schedule Companies to Freeze Interstate Common Line Support (“ICLS”) On a Per-Line Basis
 - 1. CenturyLink commits to freeze ICLS on a per-line basis, effective January 1, 2012. CenturyLink will work with NECA and the Commission to determine if the operating companies at issue should remain average schedule companies. Upon such consultation, the Commission will determine within six months of the Merger Closing Date whether conversion to price caps is more appropriate, and if the Commission so determines, then CenturyLink commits to convert the average schedule companies to price caps by July 1, 2012 and then freeze ICLS consistent with Commission precedent.

VI. VIDEO COMPETITION REPORT

- A. CenturyLink will file FCC Form 325 for the three reporting cycles following the Merger Closing Date for any market in which it has IPTV subscribers, provided that CenturyLink’s agreement to this reporting obligation does not constitute an admission by the company that it is providing cable service or that it is a cable system operator. CenturyLink may submit competitively sensitive information on a confidential basis.

ATTACHMENT 1 – BROADBAND ADOPTION METRICS

Plan to be finalized by the company within 6 months following Merger Closing Date:	Data Set	
Personnel designated on adoption program	As of Merger Closing Date (updated as changes apply)	
Tactics and institutional partners identified	As of Merger Closing Date (updated as appropriate)	
Qualifying Lifeline customers identified	As of Merger Closing Date	
Total broadband adoption in the combined territory	As of Merger Closing Date	
Metrics to be reported semi-annually to the FCC:	Preceding 6-month Period	Cumulative
Qualifying customers who purchased broadband under discount program, by speed tier		
Qualifying customers who purchased computers under discount program		
Number of training programs and demonstrations held		
Number of people attending training programs and demonstrations		
Number of training DVDs and CDs shipped		
Number of enrolled customers who continue to subscribe to CenturyLink broadband service following expiration of their participation in the Adoption Program		
Total broadband adoption in the combined territory		
Total cost to the company of the Adoption Program		
Number of qualifying customers who discontinued CTL or Q broadband service		

**ATTACHMENT 2 – BUILDINGS FOR WHICH THE APPLICANTS COMMIT NOT TO
RAISE RATES FOR SEVEN YEARS FOLLOWING MERGER CLOSING DATE**

1 Capital Drive	Eden Prairie	MN	55344
10 11 th Avenue N	Eden Prairie	MN	55344
10001 W 78 th Street	Eden Prairie	MN	55344
11010 Prairie Lakes Drive	Eden Prairie	MN	55344
113 S 6 th Street	Minneapolis	MN	55402
1820 Xenium Lane N	Plymouth	MN	55441
18790 W 78 th Street	Chanhassen	MN	55317
200 S 5 th Street	Minneapolis	MN	55402
2440 Galpin Court	Chanhassen	MN	55317
314 W 90 th Street	Bloomington	MN	55420
3601 Minnesota Drive	Bloomington	MN	55435
400 W 98 th Street	Bloomington	MN	55420
4141 Douglas Drive N	Crystal	MN	55422
4700 Welcome Avenue N	Crystal	MN	55429
5051 Highway 7	Minneapolis	MN	55416
605 Highway 169 N	Plymouth	MN	55441
6160 Golden Hills Drive	Golden Valley	MN	55416
6500 France Avenue S	Minneapolis	MN	55435
690 Coulter Drive	Chanhassen	MN	55317
70 W 4 th Street	St. Paul	MN	55102
710 Mendelssohn Avenue N	Golden Valley	MN	55427
7505 Metro Boulevard	Edina	MN	55439
7599 Corporate Way	Eden Prairie	MN	55344
7625 Smetana Lane	Eden Prairie	MN	55344
7711 Kerber Boulevard	Chanhassen	MN	55317
7800 Equitable Drive	Eden Prairie	MN	55343
8000 Audubon Road	Chanhassen	MN	55317
8080 Mitchell Road	Eden Prairie	MN	55344
8120 Penn Avenue S	Bloomington	MN	55431
90 Church Street SE	Minneapolis	MN	55455
9531 W 78 th Street	Eden Prairie	MN	55344
9625 W 76 th Street	Eden Prairie	MN	55344
9923 Valley View Road	Eden Prairie	MN	55344
100 E Lindstrom Street	Aberdeen	WA	98520
1700 Cherry Street	Aberdeen	WA	98520
2020 80 th Avenue	Tumwater	WA	98512
2109 Sumner Avenue	Aberdeen	WA	98520
301 S Faragut Street	Aberdeen	WA	98520
601 School Road	Aberdeen	WA	98520
900 Cleveland Street	Aberdeen	WA	98520

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent To Transfer Control*, WC Docket No. 10-110

Today, after a thorough, data-driven review of the record, the Commission approves a transaction that holds the promise of significantly improving broadband adoption and increasing high-speed broadband deployment and competition for tens of thousands of anchor institutions, hundreds of thousands of small businesses, and tens of millions of consumers.

Congress has directed us to approve transactions if the public interest benefits outweigh the harms. Here, that test is clearly met: The conditions we've imposed should effectively protect against the identified transaction-specific harms, and the company's commitments to help connect so many more Americans to broadband is an important and substantial public-interest benefit.

These commitments include a major broadband adoption program focused on the millions of low-income consumers in the combined company's 37-state territory. By offering broadband starting at less than \$10 per month; providing computers for less than \$150; keeping the window open for five years for qualifying consumers to sign up; and committing real resources to marketing, outreach, and digital literacy training, this program holistically tackles the principal barriers to broadband adoption.

I'm particularly pleased that the program will include detailed reporting on outcomes and an independent analysis of the program's effectiveness, so that the Commission and others can understand what works and what doesn't in efforts to close the adoption gap.

This program promises to move the needle on broadband adoption. And it should be viewed together with the broadband adoption pilot programs the Commission proposed in last month's Lifeline/LinkUp proceeding, and the broadband adoption program Comcast is undertaking in the wake of its recent transaction. As a result of these developments, we will soon have a set of diverse and promising responses to one of our great national challenges—connecting the more than 100 million Americans who don't currently have broadband.

CenturyLink has also committed to significant investments in improving and expanding its broadband network for consumers, businesses, and anchor institutions, and to advancing Universal Service Fund reform by phasing down support it currently receives from the Fund. I also note the important commitments made to ensure a smooth transition for wholesale customers, and to protect against the potential increase in the combined entity's incentive and ability to inhibit effective competition as a result of its significantly bigger footprint. Well-functioning wholesale markets are crucial for effective competition in the broadband ecosystem, particularly for enterprise and small business customers, and I look forward to seeing competition flourish in the territories involved in this transaction.

Some have argued that the Commission should forswear public interest commitments in the context of transaction reviews. But doing so would not only deny the public the kinds of meaningful transaction-specific benefits involved here; it would also disregard Congress's directive that the FCC affirmatively determine that a proposed transaction will serve "the public interest, convenience, and necessity."

While this transaction will help address broadband challenges in the combined territory, it is only one piece in a larger puzzle. To more fully address the broadband deployment and adoption gaps, the FCC must complete its efforts to reform the Universal Service Fund, including by supporting broadband

in rural areas and by reforming and modernizing Lifeline/LinkUp. I look forward to pressing ahead with my colleagues on these ongoing initiatives.

I thank the Bureaus and Offices, particularly the Wireline Competition Bureau, for their work on this transaction.

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent To Transfer Control, WC Docket No. 10-110*

Today the Commission approves the merger of two companies with a history of providing communications services in rural America. As with every transaction before the Commission, it is our statutory duty to weigh the potential benefits and potential harms of the proposed merger and determine whether it serves the public interest. As we mark the one-year anniversary of the National Broadband Plan, the salient question for me is whether approval of this transaction promotes or hinders the goal of affordable access to high speed, value-laden advanced telecommunications (broadband) service for all our citizens.

We are told that this combination will help expand the benefits of broadband to consumers and communities across the country—that the new CenturyLink will be a stronger company with greater resources to invest in its now significantly expanded service territory. On this score, I believe the applicants' commitments on broadband deployment are a step in the right direction. But the public interest here calls for bold strides, not timid steps. I would have welcomed greater and more explicit commitments to provide broadband access to rural and genuinely unserved areas. It is my hope that the applicants will go above and beyond the pledges made here. I am pleased that the commitments have been expanded to include the provision of broadband service to at least 20,000 community anchor institutions. Unfortunately, in the absence of even rudimentary reporting requirements on deployment to these anchor institutions, we will have to take the company at its word that it is meeting this goal. Measurable results, not "take our word for it" assurances, are what the Commission needs to focus on. They are the coin of the realm.

The merged company is making a significant commitment to promote broadband *adoption* among low-income consumers. Its program rightly targets key obstacles to broadband adoption by providing discounted service, training, and low-cost computer equipment to Lifeline-eligible households. This is a welcome new initiative that holds great promise. The Commission needs to monitor and learn from this effort—which is why it is so important that the applicants will be reporting to the Commission about the progress and success of this program.

Given the scale of this transaction and the size of the combined company, I would have much preferred that our action today included an enforceable commitment to protect consumers' open Internet rights. Absent this, we must be hopeful that truly effective implementation and enforcement of the rules we adopted in December will safeguard consumers online. However, I believe it would have been entirely appropriate to impose a transaction specific condition here and it would make for a more acceptable outcome.

For the reasons outlined above, I limit my support of this transaction to concurrence only.

**CONCURRING STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL**

Re: *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent To Transfer Control*, WC Docket No. 10-110

Approval of this transaction is in the public interest. Together, the combined companies will be better able to provide advanced services to consumers who live in some of the most remote parts of our country than if they were to remain separate. I am concerned, however, that the Commission is continuing to create a prescriptive merger review process that unnecessarily raises the costs of such beneficial transactions. Regulatory costs are not free and are ultimately paid for by American consumers. If this trend continues, fewer companies may elect to engage in transactions that could accelerate investment and innovation, help grow the economy and create jobs. Accordingly, I respectfully concur.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent To Transfer Control*, WC Docket No. 10-110

This Commission has a duty to ensure that the public interest is served as a result of any proposed transfers of control. Today, we find that the merger of CenturyLink and Qwest is in the public interest. Through their commitments, the companies have addressed some of the possible harms that could occur as a result of the transaction, and have pledged to improve broadband deployment in the Qwest territory and broadband adoption by low-income consumers in both Qwest's and CenturyLink's territories. These commitments also include regular reporting so that we can assess the merged company's progress in meeting its deployment and adoption obligations.

There were several issues, however, that I believe should have been more specifically addressed in our review. The companies asserted that post-merger CenturyLink will continue to focus on rural customers, yet the company did not provide sufficient information in the proceeding so that we could ensure that result. While the companies pledge to inform us in their regular reporting the broadband deployment that occurs in rural versus non-rural areas, I would have preferred a specific, verifiable commitment to deploy broadband in unserved, rural areas. I also remain concerned that the merger will change the post-merger company's incentives with respect to its service offerings. In prior mergers, applicants have addressed such incentives through commitments that ensure consumers continue to enjoy nondiscriminatory access to Internet services and applications. Unfortunately, we do not have that backstop here.

The companies' commitment to address the affordability of broadband for consumers throughout its post-merger service territory is a significant step. I commend the companies for developing a plan based on the CenturyLink business model to introduce and manage its adoption program at the local level in order to meet the communities' low-income needs. As a nation, we must address the broadband affordability issue in order to ensure that every American has the opportunity to connect at home. We know that addressing the barriers to adoption may vary based on whether citizens live in urban or rural areas. I appreciate the company's commitment to share its experiences and findings with us so that we can learn more about what works and doesn't work in addressing the adoption issues in its local areas, as well as its commitment to inform us of its program's effectiveness and the improvements it makes to ensure its success. As a result of its dedication to improve services to low-income Americans, the company's experience will inform our decision-making with respect to reforming the Lifeline program and our ongoing consideration of extending that program to include broadband pilot projects for Lifeline-eligible consumers.

**CONCURRING STATEMENT OF
COMMISSIONER MEREDITH ATTWELL BAKER**

Re: *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent To Transfer Control*, WC Docket No. 10-110

I support this transaction, and believe that a combined CenturyLink/Qwest will create a stronger company with a clear rural focus to the benefit of consumers across their 37 state footprint. I have serious reservations, however, with the length of this review and some of the conditions imposed on this transaction.

I recently expressed my concerns with our merger review process,¹ and, unfortunately, I believe this transaction is further evidence we need to take a hard look at how we review transactions. Our current process does not serve the public interest, and it should be overhauled before we conduct another major merger review.

I acknowledge that the conditions and timing of this merger are consistent with our practice over the past decade, and likely met the expectations of the Applicants. That does not mean we are doing the job the public interest or our economy demands. We need to do better. This Commission is quick to point out that regulatory “red tape” can act as a “significant obstacle” to “businesses ability to invest in new technologies and hire new workers.” Yet the Commission has done nothing to address how its merger review process is one of the clearest examples of the “red tape” problem that is within our discretion to fix.

The Review Took Longer Than Necessary.

Our review took over 300 days. The Department of Justice cleared this transaction over 240 days ago. While a number of state commissions just recently completed their reviews, I believe our lack of urgency may have contributed to a longer process at the state level. Regardless, we could—and should—have conducted our statutory review of this transaction in a thorough manner in the allotted 180 days. There are 49,000 employees of the combined company that have experienced a year of professional uncertainty, and two companies have been unable to move forward to better serve rural communities. Given the very limited set of public interest harms identified in the Order, we should have been able to conclude this review in a much more timely manner.

The Conditions Addressing Alleged Public Interest Harms Are Not Sufficiently Supported.

The Commission has become too comfortable with imposing conditions on merging parties. Prior to imposing any condition, we should establish a clear evidentiary record demonstrating the existence of a merger-specific harm. We should then make an explicit finding that the harm necessitates a condition, and provide a clear description of that condition and how it mitigates against the harm in a directly proportional manner. With some limited exceptions, the Order fails to provide the detail necessary to properly evaluate the conditions imposed on the merging parties.

¹ Remarks of Commissioner Meredith Attwell Baker, *Towards a More Targeted and Predictable Merger Review Process*, IPI Third Annual Communications Summit (Mar. 2, 2011).

Specifically, conditions are imposed to address four sets of asserted merger harms. One set of conditions addresses Qwest's Operations Support Systems (OSS). These conditions relate to concerns about CenturyLink's operation of—and potential modification to—the Qwest ordering system. These conditions are certainly merger-specific, but based on the limited record outlined in the Order, I do not think we have demonstrated a documented public interest harm to cure. Simply stating that commenters expressed OSS concerns is not a basis to impose a condition. The Commission needs to make a clear finding of its own and document the harm with far greater specificity. We also need to consider more comprehensively other existing remedies available to those parties concerned with OSS issues. To that end, there is an inadequate explanation as to why existing statutory protections under section 271, and the corresponding state processes and procedures, are not sufficient to check against any these potential harms. Nor is there an analysis of state-imposed conditions or commercial settlement agreements that may also address these concerns sufficiently. We acknowledge these additional protections without detailing why we find them lacking. I do not rule out the need for OSS-specific conditions, but it is far from clear on the record before us that there is a merger-specific harm that is inadequately addressed by protections already in place. It is similarly not possible on this record to evaluate whether the imposed conditions are narrowly tailored or proportional to the harm.

The next two set of conditions address interconnection agreements and wholesale competition issues. These conditions suffer the same basic infirmity. The cursory discussion of these alleged harms, relevant existing protections, and the related conditions similarly forecloses a proper evaluation. One condition in particular bears highlighting: CenturyLink is prohibited from asserting some of its rights under section 251. A regulatory agency requiring companies to waive their statutory rights in order to gain regulatory approval raises red flags in and of itself. Further, the Order fails to develop any merger-specific, let alone merger-harm-specific, basis to impose the condition. CenturyLink's ability to claim the rural exemption existed prior to this transaction, and has nothing to do with Qwest or CenturyLink's acquisition of Qwest. There is also no evidence in the Order that CenturyLink asserts these rights today in an anti-competitive manner.²

In contrast, I believe that Commission has crafted a narrowly tailored condition to address the risk of lost competition in 40 specific buildings in the special access market. I support our refusal to address broader special access pricing issues that the Order properly notes are “better addressed in the special access rulemaking.” With respect to the condition itself, I would have preferred some analysis as to why “at least two other, unaffiliated fiber-based carriers” is the criteria used to determine the applicable buildings, and why a single unaffiliated provider would not be sufficient to check against any potential harm. An explanation is also warranted as to why this condition needs to be in place for seven years. I

² This condition is also clearly distinguishable from one imposed in the Verizon/Frontier deal. In that instance, the condition was limited to the properties Frontier was acquiring from Verizon. The Commission did not want a relatively large company using an acquisition as a basis to establish new statutory rights intended for small carriers. *Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum Opinion and Order, FCC 10-87, ¶ 40 (2010) (explaining that “Frontier has committed not to assert that is exempt from section 251(c) obligations pursuant to section 251(f)(1) in the areas transferred from Verizon that are rural telephone companies outside of West Virginia, or ‘to move or reclassify any exchanges or wire centers currently located in Verizon West Virginia’s legacy service areas so as to ... take advantage of the rural exemption under Section 251(f)(1).’”). There is no analogous concern here, and this condition is far broader. The Commission must be careful to avoid reflexively applying merger conditions from prior transactions on future deals; each transaction must be evaluated based on the evidentiary record of the immediate proceeding.

believe there needs to be a documented basis for any condition imposed on parties that lasts longer than the default three years, yet no explanation is given here.

The Need for Additional Commitments is Unproven.

Two companies with complementary businesses and footprints with a record of serving rural America assert that together they will be able to provide a better platform to serve consumers, compete with cable and wireless competition, and expand new offerings. We have adopted a series of conditions to address the limited harms identified by commenters. It is unclear on this record why additional conditions are warranted.

Even if additional conditions were appropriate, a number of these conditions bear no relation to any harm associated with the underlying transaction. I fully support the efforts of the Applicants to invest in more broadband infrastructure and to expand efforts to increase broadband adoption. This is great corporate citizenship, but I do not think they should be extracted as merger conditions. In particular, I have concerns with government mandating broadband investments for seven years. Seven years is an eternity in this dynamic space, and the market conditions and consumer demands of 2018 are not known today by the companies or the Commission. With respect to broadband deployment, we should have explained why the significant conditions at the state level on the same issue are insufficient: Arizona required \$70 million in broadband investment, Colorado \$70 million, Utah \$25 million, Minnesota \$50 million and so on.

One last condition to highlight is the commitment of the companies to surrender some universal service support. This type of condition is representative of how our process is broken. There is no nexus between the relinquishment of universal service funding and this transaction, and none is claimed in the Order. We require CenturyLink to forego universal service funding it is entitled to prior to—and after this—transaction. Whether a company the size of CenturyLink and Qwest, separate or apart, should be entitled to universal service support intended for small carriers is an important policy question, and a question directly under review in a rulemaking proceeding.³ I do not believe the Commission should use merging parties as a test case for a new policy or a mechanism to signal future policy to industry at large.

* * *

I ultimately support this transaction. The Applicants determined that as conditioned, this transaction still makes economic and competitive sense. I have no basis to second guess their decision, but concur in the result because of the infirmities in the process used by the Commission to approve transactions.

³ *Connect America Fund*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, ¶¶ 182-193 (2011).