

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

DIRECT TESTIMONY
OF
BRADY ADAMS
ON BEHALF OF
360NETWORKS (USA) INC.

Exhibit 360networks 1

August 30, 2010

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, EMPLOYER AND BUSINESS**
3 **ADDRESS?**

4 **A.** My name is Brady Adams. I am employed by 360networks (USA) inc.
5 (360networks). My business address is 2101 Fourth Ave, Suite 2000, Seattle,
6 Washington 98121.

7 **Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AT 360NETWORKS.**

8 **A.** I am Chief Technology Officer at 360networks. As Chief Technology Officer, I
9 am responsible for 360networks' operations, including network planning and
10 engineering, information services and network cost management.

11 **Q. BRIEFLY DESCRIBE YOUR EDUCATION AND EXPERIENCE IN THE**
12 **TELECOMMUNICATIONS INDUSTRY.**

13 **A.** I have studied Electrical Engineering, Telecommunications and Management
14 Principles at various universities and private institutions. I have held Engineering
15 roles at Nortel Networks (6 years), Antec Digital Systems (2 years) as well as the
16 position of Vice President of Engineering at Grande Communications, Inc. (10
17 years). Grande Communications is a competitive local exchange carrier (CLEC)
18 and Competitive Cable provider in central Texas.

19 **Q. DOES 360NETWORKS OPERATE IN THE QWEST TERRITORIES IN**
20 **UTAH THAT ARE THE SUBJECT OF THIS PROCEEDING?**

21 **A.** Yes, it does. 360networks holds a Certificate of Public Convenience and
22 Necessity to provide local and interexchange services and other public

1 telecommunications services in Utah. We provide wholesale local services in all
2 of Qwest Corporation's (QC) exchanges here.¹

3 **Q. WHAT SERVICES DOES 360NETWORKS PROVIDE?**

4 **A.** We provide intrastate and interstate private line services and either directly or
5 through an affiliate, we provide interconnection, transit, Voice over Internet
6 Protocol (VoIP), and the ancillary services that accompany VoIP, including
7 directory listings, caller ID, 911 and operator services. We provide these services
8 both using our own facilities and reselling those of Qwest. 360networks also
9 owns and operates more than 10,000 fiber miles of fiber backbone in Utah.

10 **Q. YOU ARE A WHOLESALE RATHER THAN A RETAIL PROVIDER.**
11 **WHAT TYPES OF CUSTOMERS DO YOU SUPPORT AND WHAT**
12 **TYPES OF SERVICES DO THEY PROVIDE IN UTAH?**

13 **A.** Our customers include CLECs, wireless providers, interexchange providers,
14 information services providers and VoIP providers. Our services assist in their
15 provision of local, long distance and VoIP services, information services and
16 broadband internet access services to consumers in Utah. Our nearly 50 VoIP
17 wholesale customers have more than 20,000 active telephone numbers with end
18 users throughout QC's footprint, helping to provide consumers with choices for
19 voice services in those exchanges. Our fiber backbone similarly enables our
20 customers' provision of broadband internet access services along its route.

¹ Throughout my testimony, I will use "Qwest" to refer to the parent and its subsidiaries collectively, "QC" to refer to the local exchange provider and "QCC" to refer to the interexchange provider.

1 **Q. DOES 360NETWORKS PURCHASE SERVICES FROM QWEST THAT**
2 **SERVE AS AN INPUT TO THESE SERVICES?**

3 **A.** Yes. The interconnection agreement between 360networks and Qwest
4 Corporation (QC) (ICA) was approved in Utah in April 2006. This is when we
5 initially entered the voice business. Through our ICA, we exchange local, long
6 distance and VoIP traffic with QC and third party providers, purchase local
7 interconnection services (LIS) trunks, tandem transit, unbundled network
8 elements (UNEs), including loops and transport, collocation, directory listings
9 and operator services. 360networks also purchases special access services from
10 QC out of its tariffed offerings and from Qwest Communications Corporation
11 (QCC) through our Wholesale Services Agreement (private line agreement). Our
12 most recent private line agreement with QCC has been in effect since April 2004.
13 In one way or another, all of these services serve as inputs to those that we
14 provide to our customers in Utah. Thus, 360networks, its customers and its
15 customers' customers are potentially affected by this transaction.

16 **Q. DOES 360NETWORKS OPPOSE THIS TRANSACTION?**

17 **A.** Yes. As the Application stands now, without specific commitments by
18 CenturyLink and Qwest (the Merged Company) as to wholesale issues,
19 360networks believes the Application should be denied. The transaction
20 introduces unreasonable uncertainty into 360networks' business as to costs,
21 product design, operational support systems (OSS), service quality and network
22 architecture.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 **A.** The purpose of my testimony is to bring to the attention of the Commission, as
3 well as CenturyLink and Qwest, the issues that concern 360networks about this
4 transaction and to suggest appropriate safeguards to address these concerns.

5

6 **II. SUMMARY OF PROPOSED CONDITIONS**

7 **Q. PLEASE SUMMARIZE YOUR CONCERNS.**

8 **A.** 360networks' concerns are focused in three areas. The first deals with
9 maintaining the current status of existing wholesale service arrangements with
10 Qwest, including the rates, terms and conditions applicable to those wholesale
11 services. The second deals with the OSS that will be used by the Merged
12 Company after the merger. The third deals with the need to maintain existing
13 enforceable wholesale service quality performance standards and remedies.

14 **Q. WHAT SAFEGUARDS DOES 360NETWORKS PROPOSE TO ADDRESS**
15 **THESE CONCERNS?**

16 **A.** My testimony will focus on our concern to maintain the existing wholesale
17 service arrangements with Qwest. I understand that other intervening CLECs
18 address in detail issues relating to OSS and wholesale service quality.
19 360networks supports the testimony of the other CLEC witnesses on these topics.

20

21 With respect to wholesale services, 360networks is concerned with its existing
22 ICA with QC and private line agreement with QCC and the continued availability

1 of all the services currently available under those agreements, at the same rates
2 and on the same terms and conditions. 360networks is also interested in
3 maintaining the status quo with respect to the availability, pricing, terms and
4 conditions of the services 360networks purchases out of QC's tariffs.

5
6 My recommendations for commitments that the Commission should obtain from
7 the Applicants before approving the merger include:

8 1) Any wholesale service offered to competitive carriers at any time
9 between the Merger Filing Date² up to and including the Closing Date³
10 will be made available and will not be discontinued for at least the
11 Defined Time Period⁴, except as approved by the Federal
12 Communications Commission (FCC) or the appropriate state public
13 service commission;

14 2) As of the Closing Date, the Merged Company will assume or take
15 assignment of all obligations under QC's ICAs, interstate and intrastate
16 tariffs, and commercial agreements with wholesale customers and not
17 require wholesale customers to execute any documents to effectuate the
18 Merged Company's assumption or taking assignment of these obligations;

19 3) Rates charged by legacy Qwest for tandem transit service, any interstate
20 special access tariffed or non tariffed and commercial offerings, any

² May 10, 2010, which is when Qwest and CenturyLink made their merger filing with the FCC.

³ Closing date of the transaction for which the Applicants have sought approval from the FCC and state commissions.

⁴ A time period of at least 5-7 years after the Closing Date or, alternatively, a time period that is a minimum of 42 months and continues thereafter until the Applicants are granted forbearance from the condition.

1 intrastate wholesale tariffed offering, and any service for which prices are
2 set pursuant to Section 252(c)(2) and Section 252(d) of the Act shall not
3 be increased for at least the Defined Time Period. The Merged Company
4 will not create any new rate elements or charges for distinct facilities or
5 functionalities that are already provided under rates as of the Closing
6 Date;

7 4) The Merged Company will allow requesting carriers to extend existing
8 interconnection agreements, whether or not the initial or current term has
9 expired or is in “evergreen” status, for at least the Defined Time Period or
10 the date of expiration of the agreement, whichever is later;

11 5) The Merged Company shall allow a requesting competitive carrier to
12 use its preexisting interconnection agreement with QC as the basis for
13 negotiating a new replacement interconnection agreement. If QC and a
14 requesting competitive carrier are in negotiations for a replacement
15 interconnection agreement before the Closing Date, the Merged Company
16 will allow the requesting carriers to continue to use the negotiations draft
17 upon which negotiations prior to the Closing Date have been conducted as
18 the basis for negotiation a replacement interconnection agreement.

19 **Q. HASN'T THE MERGED COMPANY'S WITNESS TESTIFIED THAT**
20 **“ALL PRICES, TERMS AND CONDITIONS OF THE [WHOLESALE**

1 **AGREEMENTS] WILL REMAIN IN EFFECT UNTIL SUCH TIME AS**
2 **THEY ARE RENEGOTIATED OR EXPIRE BY THEIR OWN TERMS?”⁵**

3 **A.** Yes, but the Merged Company’s commitment does not alleviate our concern.
4 Qwest witness, Jerry Fenn states, “Currently, QC has Commission-approved
5 interconnection agreements with many CLECs, and these agreements will not be
6 impacted by the Transaction. All prices, terms and conditions of these
7 agreements will remain in effect until such time as they are renegotiated or expire
8 by their own terms.”⁶ Mr. Fenn also states that Qwest’s Utah QC Access Services
9 Catalog and the Utah QC Access Service Tariff and Price List will remain in
10 effect after the merger is consummated. CenturyLink made similar statements in
11 response to Integra data requests. Generally, the Merged Company only states
12 that it does not plan for any *immediate* changes to legacy Qwest’s wholesale
13 service agreements or tariffs “upon merger,” but to the extent changes are made
14 thereafter, the company will “comply with all applicable state and federal laws
15 and rules, as well as the provisions of any applicable interconnection agreements
16 or tariffs, in the same manner as they would apply notwithstanding the merger.”
17 See attached Exhibit BA-1.

18 The Merged Company’s commitment is not much assurance, particularly with
19 regard to our agreements. Both the private line agreement and the ICA are in
20 “evergreen” status, which means they simply continue in operation on a month-to-

⁵ Jerry Fenn/Qwest Direct Testimony at p. 9.

⁶ *Id.*

1 month basis until a party requests termination. With regard to the ICA, at that
2 point, the statutory time frames⁷ associated with negotiating a new
3 interconnection agreement would begin. We have even less certainty with regard
4 to the private line agreement since it is subject to commercial negotiation upon
5 termination.

6 Similarly, honoring the tariff until the merger closes does not mean that the
7 Merged Company will not soon thereafter seek to increase or change rates, terms
8 or conditions for private line services upon which providers such as 360networks
9 rely; it simply means that the Merged Company plans to follow the existing
10 processes to change rates. 360networks' fear is that adding uncertainty to a time
11 of instability will significantly impact 360networks' ability to serve its customers
12 in Utah.

13 From 360networks' perspective, the Merged Company is only promising to
14 assume or honor contracts until it decides to terminate them. This is not much
15 assurance.

⁷ 47 C.F.R. § 252(b) allows for a total of 9 months when a new agreement is requested. Parties may voluntarily extend this time frame.

1 **Q. HOW LONG HAS THE INTERCONNECTION AGREEMENT BEEN IN**
2 **“EVERGREEN STATUS?”**

3 A. The ICA has been operating on a month-to-month basis since March 2009. The
4 initial term of private line agreement expired in April 2005 so it has been
5 operating on a month-to-month basis for more than five years.

6 **Q. DOESN'T THIS IMPLY THAT THE AGREEMENTS ARE OLD AND IN**
7 **NEED OF REPLACEMENT?**

8 A. No. The fact that these agreements are in “evergreen status” does not mean that
9 they are stale or out-of-date. With regard to the QCC private line agreement, we
10 continually amend the agreement to update rates and address specific service
11 orders. It is a living document that has formed and defined our business
12 relationship with QCC over the last six years and continues to serve both parties’
13 needs. The ICA with QC is a general acceptance by 360networks of QC’s 2005
14 “template” interconnection agreement, which QC developed after the FCC issued
15 its Triennial Review and Triennial Review Remand Orders. Our agreement is
16 only four years old and I am told that QC’s template has not changed in any
17 material way since our adoption. As I understand it, no major change in the
18 industry or the law has occurred during that time that would necessitate that it be
19 replaced. Moreover, like our private line agreement, to the extent we want to
20 make changes, we have been able to negotiate amendments.

1 **Q. WHY AMEND AN AGREEMENT WHEN AN ENTIRE NEW**
2 **AGREEMENT COULD BE NEGOTIATED?**

3 **A.** Both Qwest and 360networks are familiar with our agreements and have
4 developed and become accustomed to a course of dealing and conduct with each
5 other that in large measure satisfies the business needs of the parties, consistent
6 with the terms of these agreements. In addition, as I mentioned previously, when
7 needed, these agreements have been amended to reflect the evolving nature of the
8 relationship between the parties.

9 Negotiation of new agreements can be a painful, resource intensive and
10 potentially long project. With regard to the ICA, though parties can enforce the
11 time frames of the Act, the time required for intensive, serious, good-faith
12 negotiations would undoubtedly take longer than the nine months contemplated
13 by the Act. The same would be true for negotiation of a new private line
14 agreement. Prior to the announcement of this transaction, we had no reason to
15 expect that either of these agreements would have needed to be replaced in the
16 foreseeable future.

17 **Q. IF NEGOTIATION AND ARBITRATION IS SO MUCH WORK, WHY IS**
18 **360NETWORKS CONCERNED THAT THE MERGED COMPANY MAY**
19 **DECIDE TO TERMINATE THE AGREEMENTS?**

20 **A.** Unlike Qwest and 360networks, the Merged Company has no history with these
21 agreements and may prefer to change things in ways that 360networks cannot

1 anticipate. In addition, we have existing interconnection agreements with legacy
2 CenturyTel and have been negotiating interconnection agreements with legacy
3 Embarq. CenturyLink's regulatory positions appear to differ from QC's on key
4 interconnection agreement terms and conditions. For instance, Embarq and
5 CenturyTel require that the parties treat Voice over Internet Protocol (VoIP)
6 traffic the same as they treat PSTN traffic for intercarrier compensation purposes.
7 QC, on the other hand, offers to exchange VoIP traffic as local traffic, recognizing
8 the information services exemption from switched access charges. In addition,
9 CenturyTel imposes non recurring charges on CLECs that port away numbers
10 from CenturyTel, which QC does not impose. Furthermore, for direct connection,
11 CenturyTel requires CLECs to designate at least one interconnection point within
12 each local calling area for the exchange of local traffic, while QC requires
13 establishment of one interconnection point per LATA.

14 Thus, the transfer of these agreements to the Merged Company creates a concern
15 that post-transaction the entity may wish to terminate the interconnection
16 agreements it has assumed that are in evergreen status and in short order, impose
17 replacement interconnection agreements based on either CenturyTel's or
18 Embarq's regulatory positions, which are substantially different from those
19 contained in our QC ICA. Both individually and as a whole, the potential
20 changes would significantly increase 360networks' costs to operate as a CLEC in
21 Qwest's exchanges in Utah. Our VoIP customers may even be forced to exit the

1 market if they are forced to exchange VoIP traffic at rates that include the cost of
2 switched access charges.

3 The substantially rural history of CenturyLink's companies and lack of experience
4 in a competitive environment cause the same uncertainty with regard to the
5 service offerings and rates that are currently available through QC's Utah tariffs
6 and our private line agreement with QCC.

7 Termination of our agreements could also create the need for costly and time-
8 consuming negotiation and potential arbitrations, at a time when the Merged
9 Company should be focused on integration activities and 360networks would
10 prefer to be focused on continuing to serve its customers in Utah.

11 **Q. WHAT DOES 360NETWORKS PROPOSE TO ALLEVIATE THESE**
12 **CONCERNS?**

13 A. 360networks requests that, before it acts to approve the transaction, the
14 Commission require the Merged Company to commit to the conditions listed
15 above. The effect of these commitments will ensure that the wholesale supplier-
16 wholesale customer relationship that exists between Qwest and competitive
17 providers in Utah will remain largely undisturbed as a result of the transaction,
18 which will in turn provide a smooth transition and protect competitors and their
19 customers in Utah from increased costs that would harm, and may even eliminate
20 some competition for communications services in the State.

1 **Q. WHAT IS THE SIGNIFICANCE OF THE “DEFINED TIME PERIOD” IN**
2 **YOUR PROPOSED CONDITIONS?**

3 A. The “Defined Time Period” is at least five to seven years after the Closing Date
4 or, alternatively, a minimum of 42 months (3.5 years) after the Closing Date and
5 continues until the FCC expressly releases the Merged Company from the
6 condition. This time period is justified since we need at least 42 months to adjust
7 to any material changes to the Merged Company’s OSS platform, prices, network
8 architecture requirements and any other factor that serves as an input to our
9 business models and practices.

10 **Q. PLEASE EXPLAIN.**

11 A. With regard to OSS changes, we have a 24-month software development life
12 cycle for major enhancements or changes within our OSS platform, which is
13 pretty typical among telecommunications providers. In addition, we would need
14 time to assess the changes and work with the operator to ensure that our
15 assumptions are accurate prior to beginning our development cycle and we would
16 need to run tests at the end of the process to make sure the system works how it
17 was intended.

18
19 With regard to other potential changes, it is a very common business practice in
20 our industry to enter into contracts with customers with terms longer than one
21 year. Three- and five-year contracts are often used to lower the monthly pricing
22 and spread up-front capital costs over a longer period of time. Services that we

1 purchase from QC and QCC serve as inputs to our customer contracts. Therefore,
2 we need QC and QCC's prices and service availability to remain stable over that
3 time period. The extension of our existing agreements with QC and QCC and the
4 terms and conditions of existing QC tariffs, will minimize the threat that the
5 transaction poses to the viability of our existing service contracts with our
6 customers.

7
8 Our voice service contracts are particularly dependent on the terms of our existing
9 ICA with QC. The QC ICA has served as an integral input to 360networks'
10 development of its voice service platform over the last four years. Not only have
11 we developed prices for our products and services using the costs contained in our
12 ICA but we have also designed our voice network using the LIS trunking,
13 collocation and UNE loop and transport provisions of our QC ICAs. More than
14 80 percent of our voice service revenues depend on the terms and conditions of
15 our existing ICAs with QC. Thus any material change to the ICA would
16 dramatically impact our ability to continue to serve our voice customers. If,
17 however, we are given at least 3.5 years to prepare for and potentially mitigate
18 those impacts, it would improve our ability to make any necessary transition
19 while avoiding any undue disruption, either to 360networks' business or for our
20 customers. Any time period less than 3.5 years would make it nearly impossible
21 for us to accommodate the changes.
22

1 I also understand that precedent exists for an extension to be given to
2 interconnection agreements and other wholesale service contracts when one
3 telecommunications company purchases another telecommunications company.
4 Last year Frontier and Verizon agreed to a 30-month extension after closing to the
5 term of our interconnection agreements affected by the Verizon sale of exchanges
6 to Frontier in several western states. In addition, I understand that AT&T
7 voluntarily committed to extend existing agreements for 42 months beyond the
8 closing of its purchase of BellSouth. Based on my review of the testimony of the
9 other intervening CLECs in this matter, however, I agree that 42 months would be
10 insufficient. Learning from the experience of the AT&T BellSouth merger and
11 taking into account the specific facts of this merger, five- to seven-years is more
12 appropriate.

13
14 **IV. CONCLUSION**

15 **Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION?**

16 **A.** I ask that the Commission reject the Application unless as part of any order
17 approving the transaction, CenturyLink and Qwest make the commitments listed
18 in my testimony and the testimony of the other CLEC witnesses.

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 **A.** Yes it does.