

**BEFORE THE PUBLIC SERVICE COMMISSION
OF UTAH**

IN THE MATTER OF:

The Joint Application of Qwest
Communications International, Inc. and
CenturyTel, Inc. for Approval of Indirect **Docket Number 10-049-16**
Transfer of Control of Qwest
Corporation, Qwest Communications
Company, LLC, and Qwest LD
Corporation

**DIRECT TESTIMONY
OF
ERIC ORTON**

**ON BEHALF OF THE
UTAH OFFICE OF CONSUMER SERVICES**

August 30, 2010

1 Q: **PLEASE STATE YOUR NAME AND TITLE.**

2 A: My name is Eric Orton. I am a utility analyst with the Office of Consumer
3 Services (Office).

4

5 Q: **WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

6 A: To present the recommendations of the Office to the Commission
7 regarding the merger of Qwest and CenturyLink.

8

9 Q. **PLEASE DESCRIBE THE ANALYSIS UNDERTAKEN BY THE OFFICE.**

10 A. The Office reviewed all of the supporting evidence from the perspective of
11 Qwest's residential and small commercial customers and in the context of
12 the requirements for telecommunications providers as established by Utah
13 law and Commission rule. As part of the Office's analysis, we submitted
14 formal and informal discovery requests, met with Qwest and CenturyLink
15 representatives, reviewed the discovery responses to questions submitted
16 by other parties, and conferred with consumer advocates in other states in
17 which Qwest and CenturyLink provides service.

18

19 Q: **PLEASE SUMMARIZE THE OFFICE'S RECOMMENDATIONS.**

20 A: The Office recommends that the Commission impose certain
21 requirements on the applicants as a condition of merger to better ensure
22 that Utah customers benefit and are not harmed by the proposed merger.

23 Q: **WHAT ARE THE MERGER BENEFITS CLAIMED BY THE**
24 **APPLICANTS?**

25 A: Qwest and CenturyLink asserted the following benefits¹ in its presentation
26 to the Commission and other parties at the technical conference on June,
27 9, 2010.

28 1) Customer Focus. The applicants assert that the new corporate
29 structure will provide better customer focus.

30 2) Expanded and Enhanced Consumer Offerings. Based on
31 discussions, these offerings appear to be primarily focused on more
32 advanced services like Fiber to the Node and Fiber to the Cell
33 Tower which will allow increased broadband speeds and allow
34 further development of new video choices.

35 3) Increased capabilities. The Company would be able to respond
36 more quickly to customer preferences and focus on offering
37 “products and services at rates, terms and service quality levels
38 that provide differentiation in the market”²

39 4) Financial Strength and Flexibility. The applicants assert that the
40 merged Company would be in a better financial position to provide
41 ongoing investment into the system.

42 Also, on their web site (www.centurylinkqwestmerger.com) the applicants
43 further explained the benefits by stating that:

¹ This information was taken both from the technical conference and from Applicant’s testimony.

² Fenn Direct Testimony page 11 lines 11-13.

44 "Due to increased scale, financial strength, diversity of revenue and
45 stronger national network, the combined company will be better
46 positioned to compete against cable companies and technology
47 substitution within our local regions and against other national
48 telecom carriers for Business customers (including government)
49 and Wholesale customers.

50

51 Q. **PLEASE DESCRIBE THE OFFICE'S ASSESSMENT OF THE**
52 **ASSERTION THAT THE MERGER WILL PROVIDE A BETTER**
53 **CUSTOMER FOCUS.**

54 A. The Office agrees that the corporate structure as described to us in
55 meetings appears to provide good presence within Utah. However,
56 "customer focus" is an ambiguous term that is difficult to quantify or
57 characterize as an overall benefit to customers. Consequently, the Office
58 reviewed this merger within the context of the responsibilities and
59 requirements imposed by Utah statute and Commission rule. Qwest is
60 currently the carrier of last resort for a large percentage of Utah
61 customers. As such, it is important to review the associated
62 responsibilities and ensure that the merged company will continue to
63 perform these functions and properly serve Utah customers.

64

65 Q. **WHAT SPECIFIC REQUIREMENTS DO YOU REFERENCE?**

66 A. In particular, the Office is concerned about maintaining service quality and
67 an affordable basic service offering.

68

69 Q. **HOW DOES THE OFFICE PROPOSE ADDRESSING SERVICE**
70 **QUALITY STANDARDS?**

71 A: The performance standards required by Rule 746-340 should be applied
72 to the merged company. The Office recommends that the same reporting
73 requirements remain in place such that the Commission and all parties
74 can review the metrics³ and ensure that quality is maintained or improved.

75

76 Q: **WHAT DOES THE OFFICE RECOMMEND REGARDING THE BASIC**
77 **SERVICE OFFERING?**

78 A: The Office is concerned about a change in ownership for this Company
79 so soon after legislation allowing pricing flexibility for basic service. The
80 law allowing basic residential service pricing flexibility became effective in
81 May of 2009. Soon after that time Qwest raised the basic rate by \$0.97
82 per month. The Company is in the process of sending out notices to its
83 customers that it will raise rates by approximately another \$1.00. This
84 results in an overall increase of about 16% in a little under two years.
85 While this rate remains affordable, we are concerned about continued
86 escalation of the costs. This level of cost increase was anticipated based
87 on discussions with Qwest, prior to the implementation of the legislation.

³ The Office notes that this is currently being filed as confidential. It may be necessary to re-address the issue of whether the metrics should be confidential or whether certain information should be aggregated or otherwise restructured to allow access by all interested parties.

88 Now, however, we would be working with a Company that has not been
89 party to those discussions or made any formal or informal assurances
90 regarding the basic service offering. To ensure that basic service remains
91 affordable for Utah customers, we recommend that the merged company
92 be required to keep the basic service rate unchanged for twelve months
93 following the date that the merger is finalized. Further, the Office
94 recommends that the merged company be required to provide advance
95 notice to the Commission and parties to this proceeding of the first
96 proposed increase to the basic service rate following those twelve months.
97 Such notice would allow parties to exercise their rights under 54-8b-2.3(8)
98 and would facilitate proper ongoing review.

99

100 **Q. PLEASE DESCRIBE THE OFFICE'S ASSESSMENT OF THE**
101 **ASSERTIONS THAT THE MERGER WILL RESULT IN EXPANDED**
102 **CONSUMER OFFERINGS AND INCREASED CAPABILITIES.**

103 **A.** First, the Office notes that these purported benefits are focused on
104 services that go beyond the standard telephone service regulated by the
105 Commission. The Office also specifically notes the additional explanation
106 of benefits provided on the applicants' website that post-merger the
107 Company will be better able to compete for business customers and
108 wholesale customers. The Office assumes that the applicants intend to
109 target both small and large businesses. To the extent that the merger
110 actually results in expanded and enhanced offerings, it would be a

111 realization of some of the theoretical benefits of competition. Small
112 businesses have not always had a large offering of telecommunication
113 choices. An improvement in available offerings for those customers would
114 be a benefit.

115

116 Q. **DO THESE PURPORTED BENEFITS ALSO RAISE ANY CONCERNS?**

117 A. Yes. While we are hopeful from the perspective of additional offerings for
118 small business customers, the focus of the applicants on expanded
119 services underscores the need to protect the basic service offering as I've
120 already described. Also, the applicants' reference to being better
121 positioned for wholesale competition is really a shareholder and not a
122 customer benefit. It would be important for the merger not to negatively
123 impact the competitive status of the wholesale market. Any degradation of
124 competition would be contrary to the stated telecommunications policy
125 objectives of the state of Utah.

126

127 Q. **PLEASE DESCRIBE THE OFFICE'S ASSESSMENT OF THE**
128 **ASSERTION THAT THE MERGER WILL RESULT IN A FINANCIALLY**
129 **STRONGER COMPANY.**

130 A. A financially stronger company can provide significant benefits to its
131 customers, provided that the financial strength is used to invest in the
132 system, specifically within the state of Utah, and not solely used as
133 earnings for its shareholders. The Office notes that the applicants do not

134 provide any specific commitments for investment, instead focusing on
135 generalities and benefits from expanded services. The Commission may
136 wish to impose some kind of investment requirements or reporting to
137 ensure that the increased financial strength of the merged company
138 materializes as a benefit to Utah customers.

139

140 Q: **PLEASE SUMMARIZE THE OFFICE'S POSITION AND**
141 **RECOMMENDATIONS IN THIS CASE.**

142 A: In order to ensure that this merger would be in the public interest, the
143 Commission should impose certain conditions. The Commission should
144 continue to require the service quality reporting requirements currently in
145 place for Qwest and closely monitor the progress to ensure that service
146 quality is maintained or improved. The Commission should also impose
147 temporary restrictions on the pricing flexibility associated with basic
148 service. The Commission should closely monitor the results of the merger
149 to ensure that wholesale competition is not degraded. The Commission
150 may also want to impose reporting or other requirements to ensure that
151 Utah receives an appropriate share of future investment.

152

153 Q: **DOES THIS CONCLUDE YOUR TESTIMONY?**

154 A: Yes it does.