

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Joint Application of Qwest)	DOCKET NO. 10-049-16
Communications International, Inc. and)	DPU Exhibit 1.0R
CenturyTel, Inc. for Approval of Indirect)	
Transfer of Control of Qwest Corporation,)	Rebuttal Testimony of
Qwest Communications Company, LLC,)	Casey J. Coleman
and Qwest LD Corporation)	
)	

DIVISION OF PUBLIC UTILITIES
DEPARTMENT OF COMMERCE

September 30, 2010

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1 **I. IDENTIFICATION OF WITNESS**

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

4 A. My name is Casey J. Coleman. I am employed by the Division of Public
5 Utilities (“Division”) for the State of Utah. My business address is 160 East
6 300 South Salt Lake City, UT 84114.

7 **Q. ARE YOU THE SAME MR. COLEMAN WHO FILED DIRECT**
8 **TESTIMONY IN THIS DOCKET.**

9 A. Yes.

10 **Q. PLEASE SUMMARIZE AND DESCRIBE THE PURPOSE OF YOUR**
11 **REBUTAL TESTIMONY.**

12 A. In my direct testimony I suggested that the Commission establish a
13 minimum threshold of broadband availability. At the time direct testimony
14 was filed, the Division did not have data that would enable the Division to
15 recommend a specific threshold. Part of my rebuttal testimony will provide
16 the broadband thresholds that the Division believes the Commission should
17 adopt.

18 Additionally, there was extensive direct testimony filed by a variety of
19 interveners in this Docket. My testimony will discuss some conditions or
20 concerns suggested by interveners that the Division believes are not
21 applicable in this Docket. Finally, my testimony will further clarify the

22 Division's position regarding the conditions the Commission should adopt
23 when approving this transaction.

24 **II. BROADBAND CONDITIONS**

25 **Q. IN YOUR DIRECT TESTIMONY THE DIVISION SUGGESTED THE**
26 **COMMISSION ADOPT REQUIREMENTS FOR BROADBAND**
27 **DEPLOYMENT. A SPECIFIC REQUIREMENT WAS NOT SUGGESTED**
28 **IN YOUR DIRECT TESTIMONY BECAUSE ADDITIONAL**
29 **INFORMATION WAS BEING PROVIDED BY QWEST. DOES THE**
30 **DIVISION HAVE A MORE SPECIFIC BROADBAND THRESHOLD THAT**
31 **YOU BELIEVE THE COMMISSION SHOULD ADOPT?**

32 A. Yes. Since filing direct testimony, the Division has been able to do a more
33 detailed analysis of broadband deployment in the State of Utah. The
34 Division reviewed each wire center in Qwest's service territory and the
35 available download speeds. With this information the Division was able to
36 ascertain current levels of broadband deployment by Qwest.

37 Using the data provided as a reference point the Division was able to develop
38 the following broadband thresholds that you believe the Commission should
39 adopt. The broadband condition is as follows:

40 By July, 1 2014, in aggregate, no less than 60% of households served by
41 legacy Qwest wire centers will have broadband available at no less than 4.0
42 mbps download speed.

43 By July, 1 2016, in aggregate, no less than 75% of households served by
44 legacy Qwest wire centers will have broadband available at no less than 4.0
45 mbps download speed.

46 **Q. DO ALL THE REMAINING BROADBAND CONDITIONS**
47 **RECOMMENDED IN YOUR DIRECT TESTIMONY STAY THE**
48 **SAME?**

49 A. Yes.

50 **Q THE DIVISION WAS ABLE TO REVIEW THE INFORMATION ON A**
51 **WIRE CENTER LEVEL. WHY IS YOUR CONDITION**
52 **AGGREGATING THE WIRE CENTERS INSTEAD OF APPLYING TO**
53 **EACH WIRE CENTER?**

54 A. The Division believes that looking at an aggregate total is the best way to
55 be fair to Qwest as well as to its customers. Telecommunications customers
56 today recognize the value of a broadband connection. Access to a high speed
57 internet connection links customers to a wide range of services and
58 applications that are vital to our content rich lifestyle. Because of this
59 need, customers are looking at prices, download speeds, and other factors to
60 make their decision as to which company best meets their broadband
61 requirements. Making higher broadband speeds available to all consumers
62 within the state of Utah would be applauded and welcomed by most parties.

63 The reality is that a dynamic market for broadband services has
64 germinated within the state. While competition usually is healthy, it
65 requires companies to aggressively compete for broadband customers.
66 Successful companies must find the right mix of price, download speeds,

67 and services that is attractive to consumers. A company like Qwest has to
68 be wise and prudent with their capital expenditures, ensuring that each
69 dollar used is maximizing the profit potential of the company and providing
70 the funds to make further capital expenditures.

71 Although a broadband condition that is enforced or adopted at the wire
72 center level is definitely a benefit to consumers, it would require Qwest to
73 make more geographically diverse investments that would help expand the
74 availability of high speed internet to customers. The concern of the
75 Division is that making a condition that is so granular could end up being a
76 financial burden for Qwest. Because the marketplace is competitive, Qwest
77 does not have the luxury of investing in areas where the capital
78 expenditures could be misguided. Those misguided investments could
79 ultimately become a dead weight to the stability and growth of the
80 company. If Qwest or CenturyLink, by regulation, is required to invest in a
81 wire center where customers are not clamoring for higher internet speeds,
82 the number of people purchasing the service will be low. As a result, those
83 capital expenditures are not meeting the highest return on investment and
84 would decrease the profitability of Qwest.

85 Because of these two competing elements, the Division believes an
86 aggregate approach is reasonable for both. Having a standard in place
87 ensures that consumers will see increased availability of broadband, but
88 allowing Qwest to look at the state in aggregate allows them to respond to
89 competitive market pressures while giving some level of flexibility on how
90 the capital resources are expended within the state.

91 **III. CLEC CONDITIONS**

92 **Q. ARE THERE ANY CONDITIONS RECOMMENDED BY THE**
93 **INTEVENERS THAT THE DIVISION FEELS ARE NOT APPLICABLE**
94 **IN THE STATE OF UTAH?**

95 A. Yes. In the direct testimony filed by Mr. Thayer on behalf of Level 3
96 Communications on page 14 lines 18-26 he discusses concerns with
97 CenturyLink or the “Combined Entity” establishing a rural CLEC that would
98 engage in a traffic pumping scheme. The Division believes, while this concern
99 could be applied in other states, here in the State of Utah, it just does not seem
100 to be an issue. CenturyLink does not have any rural exchanges within the
101 State of Utah. The vast majority of rural exchanges within the State of Utah
102 are owned by the Utah Rural Telecom Association members. In addition, the
103 Commission in another Docket dealt with the potential for access rate
104 arbitrage and if a CPCN should be granted to a CLEC that was offering this
105 service in a rural exchange. *In that Matter of the Application of All American*
106 *Telephone Co., Inc., for a Certificate of Public Convenience and Necessity to*
107 *Provide Local Exchange Services within the State of Utah* Docket No. 06-2469-
108 01 ultimately, the Commission revoked the CPCN of the CLEC within Utah.
109 Here, because the proposed “combined entity” does not have high rate rural
110 wire centers within the State of Utah and it does not appear from past
111 proceedings the Commission would issue a CLEC certificate to a company that
112 did not offer a basic local phone service within the exchange of a rural
113 company, the Division does not see a need to impose any conditions dealing
114 with Qwest shifting traffic to a rural CLEC as a requirement of the merger.

115 Another issue raised by Mr. Thayer on page 8, lines 7-10, of his direct

116 testimony deals with intercarrier compensation for ISP-bound traffic. He
117 alleges that any agreement will be “hollow unless the question is explicitly
118 addressed”. He further states that “[w]ithout clear guidance, regulatory and
119 judicial litigation involving the interpretation of interconnection agreements
120 will drag on and agreements ported into a state will spur new conflicts.” The
121 Division agrees that clear guidelines will help minimize regulatory and judicial
122 litigation.

123 Back in 2002, in Docket No. 02-2266-02, in the Matter of Level 3
124 Communications, LLC for Arbitration Pursuant to Section 252 (b) of the
125 Telecommunications Act of 1996 with Qwest Corporation Regarding Rates,
126 Terms, and Conditions for Interconnection, the Commission provided clear
127 guidelines dealing with ISP-bound traffic. In that order the Commission
128 adopted the language of Qwest in the interconnection agreement indicating
129 that ISP-bound traffic should be included in the relative use factor of Qwest.
130 The Division believes that this issue has already been resolved by the
131 Commission and no further conditions need to be adopted as part of the merger
132 proceeding.

133 **Q. ARE THERE ANY OTHER CONDITIONS SUGGESTED BY CLECS**
134 **THAT ARE NOT APPLICABLE IN UTAH?**

135 A. Yes. Some of the testimony discussed concerns when CenturyLink was serving
136 as an ILEC in the same state where Qwest was serving that once the combined
137 entities merged companies might have to required to take CenturyLink
138 provisions instead of agreements already in place with Qwest. While this may
139 be an issue that other states are dealing with, here in Utah, CenturyLink is

140 not offering any local exchange services. Therefore the Division does not see
141 any need for the Commission to place any conditions to deal with this scenario.

142 **IV. GENERAL OBSERVATIONS**

143 **Q. WHAT IS THE DIVISION'S GENERAL OBSERVATION OF**
144 **TESTIMONY FILED BY THE INTEVENERS?**

145 A. As indicated in the Division's direct testimony filed in this Docket, the
146 telecommunications marketplace in Utah is robust and healthy. There are a
147 number of competitive choices for consumers when deciding to purchase
148 services. Our belief is that the Commission should adopt conditions with this
149 merger that will enable the same healthy market to continue. Those conditions
150 should be enacted in an effort to keep the retail and wholesale markets as close
151 as possible to a status quo.

152 When reviewing the testimony of the other parties in this docket, the Division
153 observes that the Commission must be cautious about going too far in placing
154 conditions upon the combined company that might harm the competitive
155 marketplace. A variety of measures and conditions have been proffered by
156 parties. While any one of the conditions suggested by the parties does not
157 seem to drastically impact the combined company, or the competitive
158 marketplace, when combining each condition into an overall requirement for
159 the merger, the Division is concerned that enacting every suggestion could be a
160 "death by one thousand cuts." If the Commission were to adopt every
161 suggested condition, the public benefits of the merger would be greatly
162 reduced. The merged companies would have greater regulations enforced on

186 A. The Division recommends that the Commission approve the merger of Qwest
187 and CenturyLink conditioning the merger, however, on CenturyLink following
188 the QPAP, using Qwest's Legacy OSS system or allowing regulators and
189 CLECs the ability to test any other OSS system contemplated by CenturyLink,
190 deploying Broadband to customers at 4.0 mbps download speed, and providing
191 reports to the Commission on integration of the companies and service quality.

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

193 A. Yes it does.