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4 **BEFORE THE PUBLIC UTILITY COMMISSION**  
5 **OF OREGON**  
6 **UM 1484**

7  
8 In the Matter of  
9 CENTURYLINK, INC.,  
10 Application for Approval of Merger between  
11 CenturyTel, Inc., and Qwest Communications  
International, Inc.

REPLY BRIEF OF TRACER

12  
13 **I. INTRODUCTION**

14 As discussed in TRACER's Opening Brief, the retail conditions (Sections 8, 9, and 10)  
15 in the Staff Stipulation are ambiguous and could be read in such a way as to eviscerate any  
16 protections for retail customers, particularly those for whom Qwest has substantial pricing  
17 flexibility under its Pricing Plan approved in Docket UM 1354. Accordingly, they must be  
18 clarified.<sup>1</sup>

19 Even if the retail conditions are clarified, many end-users will still be at risk of rate  
20 increases as a result of the proposed transaction. That is because, regardless how they are  
21 written, the retail conditions will still be very difficult to enforce in the context of the Qwest  
22 Pricing Plan. Because the Qwest Pricing Plan simply imposes rate caps and allows use of price  
23 lists, it will be problematic for the Staff or any customer to determine the real reason for any  
24 particular price increase.  
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<sup>1</sup> TRACER's Opening Brief, at pp. 6-9.

1 Clearly, the proposed merger will create incentives to raise retail prices that Qwest did  
2 not have before. For example, Qwest was not pursuing an effort to deploy IPTV, it had no  
3 incentive to raise money to fund infrastructure improvements in CenturyLink territory, and,  
4 obviously, it had no reason to incur costs in the wholesale replacement of systems or  
5 integrating its operations with that of CenturyLink.

6 As stated in TRACER's Opening Brief,<sup>2</sup> while clear retail conditions are important, the  
7 bottom line is that the extent to which the merged company can get additional revenue from its  
8 customers is dependent on the extent to which competition limits its ability to increase rate  
9 unilaterally. Thus, the only real protection TRACER members and other multiline business  
10 customers of Qwest have is maintaining a healthy competitive market.

11 If the public interest is to be protected, CenturyLink's proposed acquisition of Qwest  
12 (the "Proposed Merger") must not be implemented in such a way as to degrade wholesale  
13 services or disadvantage Qwest's dependent competitors. Because the merged company will be  
14 a critical wholesale provider of services and facilities to competitive retail telecommunications  
15 providers, any order approving the Proposed Merger must contain conditions sufficient to  
16 ensure that the service quality performance, the practices, and the operations of the merged  
17 company support fair and effective competition among carriers in providing services to  
18 business, educational, and governmental customers and the general public in Oregon.

19 Qwest and CenturyLink (the "Joint Applicants") and the Commission Staff argue in  
20 their opening briefs that the Staff and Integra Settlements adequately address wholesale and  
21 competition issues. TRACER disagrees.

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<sup>2</sup> *Id.*, at p. 9.

1 **II. ARGUMENT**

2 **A. The Staff And Integra Settlements Are Inadequate To Protect Against Harm**  
3 **To Wholesale Customers And Local Competition; Additional Conditions Are**  
4 **Required.**

5 As pointed out by Dr. Ankum, the merging companies have a strong incentive to  
6 undermine their wholesale CLEC customers by increasing wholesale rates, diminishing service  
7 quality, reducing resources devoted to wholesale customers, or eliminating wholesale offerings  
8 on which CLECs depend.<sup>3</sup> Because of the need to fund the costs of integrating the businesses  
9 of Qwest and CenturyLink, particularly before the forecasted synergies have been achieved,  
10 and the desire to further the merging companies' strategic investment objectives, it is clear that  
11 the proposed merger creates additional incentives on the part of the merged company and its  
12 operating subsidiaries to discriminate against and disadvantage dependent competitors.  
13 Therefore, it is essential that there be strong and meaningful wholesale conditions imposed on  
14 the merger.

15 TRACER concurs with the arguments of the Joint CLECs in their Opening and Reply  
16 Briefs that the Staff and Integra Settlements fail to adequately address the potential harm of the  
17 proposed transaction to wholesale customers and to local competition. TRACER also generally  
18 agrees with the additional conditions recommended by the Joint CLECs to address this  
19 potential harm to the public interest. Accordingly, TRACER will not repeat the Joint CLECs'  
20 arguments, although it does believe that a couple of points need reinforcing.

21 **B. The Settlement Proponents Fail To Recognize The Facts That The Merging**  
22 **Companies Will Be Operating As A Single Entity In Many Respects And**  
23 **That CenturyLink's Policies Likely Will Be Imported Into Qwest's**  
24 **Operations.**

25 Although the Staff argue that the Staff and Integra Settlements address many of the  
wholesale and competitive concerns raised by the Joint CLECs and TRACER, they fail to  
address all of the additional risks to the public interest that are raised. In large part this is

<sup>3</sup> Joint CLECs/1, Ankum/13, lns. 14-17.

1 because the Staff and the merging companies fail to acknowledge two important facts. First,  
2 they ignore the fact that the merging companies will be operating as a single entity in many  
3 important respects. Second, they ignore the fact that CenturyLink, as the acquiring entity,  
4 likely will import its own practices into the Qwest operations, many of which are far less  
5 accommodating of competition and the need to operate fairly with respect to dependent  
6 competitors.

7 While the corporate identities of Qwest and CenturyLink, and their respective operating  
8 entities, may continue, the Joint Applicants' claimed network and operational synergies can  
9 only be realized through the integration of Qwest's management and operations support  
10 systems with those of CenturyLink. That means that Qwest or CenturyLink will eventually  
11 have to cut all protocols over to a common format. The same is true for the other systems,  
12 including billing, management information, purchasing, accounting and finance, sales, payroll  
13 and benefits, fixed asset, lease administration and regulatory compliance. All must be  
14 integrated. The synergies and efficiencies the merging companies project also require a certain  
15 integration of networks, and the combining of the two companies' advertising and marketing  
16 programs. In effect, then, the merging companies essentially will be operating as a single entity.  
17 This is emphasized by the fact that one of the chief objectives of the merger is to enable the  
18 merged entity to market to enterprise customers with operations in both Qwest and  
19 CenturyLink service territories nationwide. That can be done only if they act as a single entity.

20 Moreover, CenturyLink, as the acquiring entity, can be expected to import its own  
21 policies and practices into Qwest's operations. That carries the risk that the merged entity,  
22 responding to the incentives to discriminate against dependent competitors discussed above,  
23 will dump wholesale practices and offerings that Qwest has developed over years in favor of  
24 policies, practices, and offerings of CenturyLink that may be significantly less accommodating  
25 of competition.

1 In light of these two important facts, the Staff's and the merging companies' arguments  
2 that competitors should be required to have a point of interconnection with each separate ILEC,  
3 without regard to whether and to the extent that those ILEC networks are interconnected, are  
4 misplaced. The Joint CLECs are correct that the Staff and Joint Applicants' position would  
5 improperly force competitors to undertake inefficient, costly and burdensome interconnection  
6 arrangements. To the extent the merged entities operating entities have interconnected their  
7 respective networks within a LATA, CLECs should also receive the benefit of that single  
8 interconnected network by being allowed to establish a single point of interconnection per  
9 LATA.

10 For the same reason, the CenturyLink operating entities should not be permitted to hide  
11 behind the rural exemption in avoiding the interconnection, unbundling, resale, and collocation  
12 obligations set forth in 47 U.S.C. § 251(b) and (c). Moreover, it is not true that the  
13 Commission cannot address the rural exemption issue in this proceeding.<sup>4</sup> The rural exemption  
14 can be waived, and the waiver can properly be a condition of approval of a merger where  
15 appropriate. It is appropriate here.

16 **C. The Joint CLECs' Proposed Conditions Addressing Anticompetitive**  
17 **Practices Are Properly Within The Scope Of This Proceeding**

18 The merging companies contend that certain conditions proposed by the Joint CLECs  
19 and other intervenors are not appropriately within the scope of this proceeding. TRACER  
20 disagrees for the reasons cited in the Joint CLECs' Reply Brief. In addition, the argument fails  
21 to recognize the important facts discussed above, namely that the merged company will  
22 essentially be operating as a single entity and that CenturyLink, as the acquiring entity, will  
23 likely import its practices into Qwest's territory and operations.

24 To the extent that any concerns raised by the Joint CLECs arise from individual carrier  
25 disputes, they are still properly addressed in this proceeding where they are evidence of a

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<sup>4</sup> See Joint CLEC Opening Brief, at p. 47.

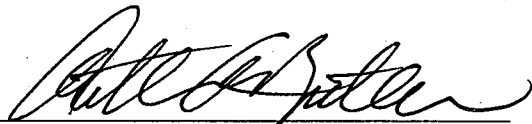
1 broader wholesale practice of CenturyLink that may undermine competitors if imported into  
2 Qwest's territories.<sup>5</sup> This transaction is in the public interest only if the public and the  
3 competitive market are no worse off with the merger than without it. If the importation of a  
4 CenturyLink wholesale practice into Qwest's territories would create a significant problem for  
5 competitors, that practice and disputes about it are properly within the scope of this proceeding.  
6 And concerns about such a practice should be addressed and satisfied in any order approving  
7 the transaction.

8 **III. CONCLUSION AND RECOMMENDATION**

9  
10 Based on the foregoing, TRACER urges the Commission to adopt the proposed  
11 clarifications to the retail conditions in the Staff Settlement discussed in TRACER's Opening  
12 Brief in addition to the conditions set forth in the testimonies and briefs of the Joint CLECs.

13 RESPECTFULLY SUBMITTED this 1st day of February, 2011.

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<sup>5</sup> This includes conditions relating to directory listing and assistance services and potential implementation of wholesale surcharges.

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2 Karen L. Clauson  
3 Integra Telecom, Inc.  
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5 Golden Valley MN 55416

6 *Confidentiality Status: Confidential*

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7 **On Behalf Of CenturyLink:**

8 Charles L. Best  
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12 *Confidentiality Status: Highly Confidential*

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13 **On Behalf Of XO Communications:**

14 Rex Knowles  
15 XO Communications Services, Inc.  
16 Suite 400  
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20 **On Behalf Of tw telecom of oregon llc:**

21 Lyndall Nipps  
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26 **On Behalf Of CenturyLink:**

27 John Felz  
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1 **On Behalf Of CUB:**

2 Gordon Feighner  
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8 **On Behalf Of CUB:**

9 Kevin Elliott Parks  
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15 **On Behalf Of CUB:**

16 G. Catriona McCracken  
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22 **On Behalf Of CUB:**

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DATED this 1st day of February 2011, at Seattle, Washington.

S. Carpenter