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August 24, 2010

VIA ELECTRONIC FILING AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Docket No. UM 1484

Enclosed for filing in the above-referenced docket are an original and five copies of 360networks' Direct Testimony of Brady Adams.

A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,

Wendy McIndoo

Wendy L. McIndoo

cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UM 1484 on the following named person(s) on the date indicated below by email and U.S. Mail addressed to said person(s) at his or her last-known address(es) indicated below.

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DATED: August 24, 2010

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1484

In the Matter of

CENTURYLINK, INC.,

Application for Approval of Merger between CenturyTel, Inc. and Qwest Communications International, Inc.

DIRECT TESTIMONY

OF

BRADY ADAMS

ON BEHALF OF

360NETWORKS (USA) INC.

August 24, 2010

I. INTRODUCTION

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

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

Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AT 360NETWORKS.

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

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

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

Q. DOES 360NETWORKS OPERATE IN THE QWEST TERRITORIES IN OREGON THAT ARE THE SUBJECT OF THIS PROCEEDING?

A. Yes, it does. 360networks holds a Certificate of Authority to Provide Telecommunications Service as a Competitive Carrier in Oregon. We provide wholesale local services in all of Qwest Corporation's (QC) exchanges here.[1] In addition, 360networks operates as an interexchange provider in Oregon.

Q. WHAT SERVICES DOES 360NETWORKS PROVIDE?

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[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.

A. We provide intrastate and interstate private line services and either directly or through an affiliate, we provide interconnection, transit, Voice over Internet Protocol (VoIP), and the ancillary services that accompany VoIP, including directory listings, caller ID, 911 and operator services. We provide these services both using our own facilities and reselling those of Qwest. 360networks also owns and operates more than 70,000 fiber miles of fiber backbone in Oregon.

Q. YOU ARE A WHOLESALE RATHER THAN A RETAIL PROVIDER. WHAT TYPES OF CUSTOMERS DO YOU SUPPORT AND WHAT TYPES OF SERVICES DO THEY PROVIDE IN OREGON?

A. Our customers include CLECs, wireless providers, interexchange providers, information services providers and VoIP providers. Our services assist in their provision of local, long distance and VoIP services, information services and broadband internet access services to consumers in Oregon. Our more than 40 VoIP wholesale customers have more than 70,000 active telephone numbers with end users throughout QC's footprint, helping to provide consumers with choices for voice services in those exchanges. Our fiber backbone similarly enables our customers' provision of broadband internet access services along its route.

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

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

Q. DOES 360NETWORKS OPPOSE THIS TRANSACTION?

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

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

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

II. SUMMARY OF PROPOSED CONDITIONS

Q. PLEASE SUMMARIZE YOUR CONCERNS.

A. 360networks' concerns are focused in three areas. The first deals with maintaining the current status of existing wholesale service arrangements with Qwest, including the rates, terms and conditions applicable to those wholesale services. The second deals with the OSS that will be used by the Merged

Company after the merger. The third deals with the need to maintain existing enforceable wholesale service quality performance standards and remedies.

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

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

With respect to wholesale services, 360networks is concerned with its existing ICA with QC and private line agreement with QCC and the continued availability of all the services currently available under those agreements, at the same rates and on the same terms and conditions. 360networks is also interested in maintaining the status quo with respect to the availability, pricing, terms and conditions of the services 360networks purchases out of QC's tariffs.

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

1) Any wholesale service offered to competitive carriers at any time between the Merger Filing Date[2] up to and including the Closing Date[3] will be made available and will not be discontinued for at least the Defined Time Period[4], except as approved by the Federal Communications Commission (FCC) or the appropriate state public service commission;

2) As of the Closing Date, the Merged Company will assume or take assignment of all obligations under QC's ICAs, interstate and intrastate tariffs,

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[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.

and commercial agreements with wholesale customers and not require wholesale customers to execute any documents to effectuate the Merged Company's assumption or taking assignment of these obligations;

3) Rates charged by legacy Qwest for tandem transit service, any interstate special access tariffed or non tariffed and commercial offerings, any intrastate wholesale tariffed offering, and any service for which prices are set pursuant to Section 252(c)(2) and Section 252(d) of the Act shall not be increased for at least the Defined Time Period. The Merged Company will not create any new rate elements or charges for distinct facilities or functionalities that are already provided under rates as of the Closing Date;

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

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

Q. HASN'T THE MERGED COMPANY'S WITNESS TESTIFIED THAT "ALL PRICES, TERMS AND CONDITIONS OF THE [WHOLESALE AGREEMENTS] WILL REMAIN IN EFFECT UNTIL SUCH TIME AS THEY ARE RENEGOTIATED OR EXPIRE BY THEIR OWN TERMS?"[5]

A. Yes, but the Merged Company's commitment does not alleviate our concern. Qwest witness, Judith A. Peppler states, "Currently, QC has Commission-approved interconnection agreements with many CLECs, and these agreements will not be impacted by the Transaction. All prices, terms and conditions of these agreements will remain in effect until such time as they are renegotiated or expire by their own terms."[6] Ms. Peppler also states that Qwest's Oregon access services tariff will remain in effect after the merger is consummated. CenturyLink made similar statements in response to Integra data requests. Generally, the Merged Company only states that it does not plan for any *immediate* changes to legacy Qwest's wholesale service agreements or tariffs "upon merger," but to the extent changes are made thereafter, the company will "comply with all applicable state and federal laws and rules, as well as the provisions of any applicable interconnection agreements or tariffs, in the same manner as they would apply notwithstanding the merger." See attached Exhibit 360networks/101.

The Merged Company's commitment is not much assurance, particularly with regard to our agreements. Both the private line agreement and the ICA are in "evergreen" status, which means they simply continue in operation on a month-to-month basis until a party requests termination. With regard to the ICA, at that point, the statutory time frames[7] associated with negotiating a new interconnection agreement would begin. We have even less certainty with

[5] Judith A. Peppler/Qwest Direct Testimony at p. 9.
[6] *Id.*
[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.

regard to the private line agreement since it is subject to commercial negotiation upon termination.

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

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

Q. HOW LONG HAS THE INTERCONNECTION AGREEMENT BEEN IN "EVERGREEN STATUS?"

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

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

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

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

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

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

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

A. Unlike Qwest and 360networks, the Merged Company has no history with these agreements and may prefer to change things in ways that 360networks cannot anticipate. In addition, we have existing interconnection agreements with legacy CenturyTel and have been negotiating interconnection agreements with legacy Embarq. CenturyLink's regulatory positions appear to differ from QC's on key interconnection agreement terms and conditions. For instance, Embarq and CenturyTel require that the parties treat Voice over Internet Protocol (VoIP) traffic the same as they treat PSTN traffic for intercarrier compensation purposes. QC, on the other hand, offers to exchange VoIP traffic as local traffic, recognizing the information services exemption from switched access charges. In addition, CenturyTel imposes non recurring charges on CLECs that port away numbers from CenturyTel, which QC does not impose. Furthermore, for direct connection, CenturyTel requires CLECs to designate at least one interconnection point within each local calling area for the exchange of local traffic, while QC requires establishment of one interconnection point per LATA.

Thus, the transfer of these agreements to the Merged Company creates a concern that post-transaction the entity may wish to terminate the interconnection agreements it has assumed that are in evergreen status and in short order, impose replacement interconnection agreements based on either CenturyTel's or Embarq's regulatory positions, which are substantially different from those contained in our QC ICA. Both individually and as a whole, the potential changes would significantly increase 360networks' costs to operate as a CLEC in Qwest's exchanges in Oregon. Our VoIP customers may even be forced to exit the market if they are forced to exchange VoIP traffic at rates that include the cost of switched access charges.

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

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

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

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

Q. WHAT IS THE SIGNIFICANCE OF THE "DEFINED TIME PERIOD" IN YOUR PROPOSED CONDITIONS?

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

Q. PLEASE EXPLAIN.

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

With regard to other potential changes, it is a very common business practice in our industry to enter into contracts with customers with terms longer than one year. Three- and five-year contracts are often used to lower the monthly pricing and spread up-front capital costs over a longer period of time. Services that we purchase from QC and QCC serve as inputs to our customer contracts. Therefore, we need QC and QCC's prices and service availability to remain stable over that time period. The extension of our existing agreements with QC and QCC and the terms and conditions of existing QC tariffs, will minimize the threat that the transaction poses to the viability of our existing service contracts with our customers.

Our voice service contracts are particularly dependent on the terms of our existing ICA with QC. The QC ICA has served as an integral input to 360networks' development of its voice service platform over the last four years. Not only have we developed prices for our products and services using the costs contained in our ICA but we have also designed our voice network using the LIS trunking, collocation and UNE loop and transport provisions of our QC ICAs.

More than 80 percent of our voice service revenues depend on the terms and conditions of our existing ICAs with QC. Thus any material change to the ICA would dramatically impact our ability to continue to serve our voice customers. If, however, we are given at least 3.5 years to prepare for and potentially mitigate those impacts, it would improve our ability to make any necessary transition while avoiding any undue disruption, either to 360networks' business or for our customers. Any time period less than 3.5 years would make it nearly impossible for us to accommodate the changes.

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

IV. <u>CONCLUSION</u>

Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION?

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

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes it does.

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON
UM 1484
CENTURYLINK RESPONSES TO
JOINT CLECS FIFTH SET OF INFORMATION REQUESTS
NOS. JC-5 THROUGH JC-160

JC-117. Will CenturyLink assume or take assignment of all obligations under Qwest's current wholesale agreements post-merger? For purposes of this question, "wholesale agreements" refers to: (i) interconnection agreements, (ii) interstate special access tariffs and intrastate tariffs, (iii) commercial agreements [including but not limited to the Qwest wholesale metro Ethernet agreement, Qwest OCN (Sonet) agreement, Qwest Local Services Platform (QLSP) agreement, and Qwest Broadband for Resale agreements], (iv) line sharing agreements, and (v) any other existing arrangements with wholesale customers.

a. If the answer to this question is anything other than an unequivocal yes, describe in detail CenturyLink's plans in this regard, including the specific wholesale agreements CenturyTel does not intend to assume.

b. Will CenturyLink require wholesale customers to execute any documents(s) to effectuate CenturyLink's assumption or taking assignment of these obligations? If so, describe in detail the Company's plans in this regard.

CenturyLink Response:

a. Qwest Corporation does not cease to exist as a result of the parent-level Transaction but remains an ILEC, subject to the same terms and obligations of its interconnection agreements, tariffs, commercial agreements, line sharing agreements, and other existing arrangements with wholesale customers immediately after the merger as immediately prior to the merger. Continuation and renewals of expiring agreements will be subject to the options currently provided by federal and state law, including renegotiation of a successor agreement subject to a bona fide request, adoption of agreements pursuant to Section 252(i) at the time of expiration (subject to reasonableness), or continuation of the existing agreement in evergreen status based on the mutual agreement of both parties.

b. Any such requirement would be guided by the specific terms and conditions of the agreement in question, and subject to applicable federal and state laws regarding assignment of such obligations.

Sponsor: Diane Roth, Director Contract Management

**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON
UM 1484
CENTURYLINK RESPONSES TO
JOINT CLECS FIFTH SET OF INFORMATION REQUESTS
NOS. JC-5 THROUGH JC-160**

JC-121. Refer to page 10 lines 4-12 of John Stanoch's Minnesota Direct Testimony in Docket No. P-421, et al./PA-10-456, dated June 14, 2010.[13]

a. Has CenturyLink examined the number of "evergreen" ICAs Qwest currently has with CLECs in Qwest's legacy service areas? If so, what is CenturyLink's plans regarding "evergreen" ICAs in Qwest's legacy service areas post-merger?
b. Will CenturyLink permit CLECs to extend their existing interconnection agreements with Qwest in Qwest's legacy service areas post-merger, whether or not the term has expired or is in "evergreen" status? If so, for how long will CenturyLink allow the ICAs to be extended?

CenturyLink Response:

CenturyLink has not evaluated or reached any conclusions concerning this issue at this time. To the extent any changes are made, CenturyLink will comply with all applicable state and federal laws and rules, as well as the provisions of any applicable interconnection agreements, in the same manner as they would apply notwithstanding the merger.

Sponsor: John Felz, Director Regulatory Operations and Policy

[13] Available at:
https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={392BC099-DC8A-4A24-B099-19CDD0CBBC65}&documentTitle=20106-51537-03