

360NETWORKS (USA) INC.

DIRECT TESTIMONY

OF

BRADY ADAMS

State of Iowa
Department of Commerce – Utilities Board
Docket No. SPU-2010-0006
August 11, 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 **TELE-COMMUNICATIONS 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 **IOWA THAT ARE THE SUBJECT OF THIS PROCEEDING?**

21 **A.** Yes, it does. 360networks holds an "Order in Lieu of Certificate" to provide
22 wholesale local exchange services, exercise its Section 251 and 252 rights under

1 the Communications Act (the Act) and obtain numbering resources as a CLEC.
2 We provide wholesale local services in more than 80% of Qwest Corporation's
3 (QC) exchanges here.¹ In addition, 360networks operates as an interexchange
4 provider in Iowa.

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

6 **A.** We provide intrastate and interstate private line services and either directly or
7 through an affiliate, we provide interconnection, transit, Voice over Internet
8 Protocol (VoIP), and the ancillary services that accompany VoIP, including
9 directory listings, caller ID, 911 and operator services. We provide these services
10 both using our own facilities and reselling those of Qwest. 360networks also
11 owns and operates more than 2,000 miles of fiber backbone that runs through
12 Iowa.

13 **Q. YOU ARE A WHOLESALE RATHER THAN A RETAIL PROVIDER.
14 WHAT TYPES OF CUSTOMERS DO YOU SUPPORT AND WHAT
15 TYPES OF SERVICES DO THEY PROVIDE IN IOWA?**

16 **A.** Our customers include CLECs, wireless providers, interexchange providers,
17 information services providers and VoIP providers. Our services assist in their
18 provision of local, long distance and VoIP services, information services and
19 broadband internet access services to consumers in Iowa. Our more than 30
20 VoIP wholesale customers have more than 20,000 active telephone numbers with
21 end users throughout QC's footprint, helping to provide consumers with choices

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 for voice services in those exchanges. Our fiber backbone similarly enables our
2 customers' provision of broadband internet access services along its route.

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

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

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

19 **A.** Yes. As the Application stands now, without specific commitments by
20 CenturyLink and Qwest (the Merged Company) as to wholesale issues,
21 360networks believes the Application should be denied. The transaction
22 introduces unreasonable uncertainty into 360networks' business as to costs,

1 product design, operational support systems (OSS), service quality and network
2 architecture.

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

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

7
8 **II. SUMMARY OF PROPOSED CONDITIONS**

9 **Q. PLEASE SUMMARIZE YOUR CONCERNS.**

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

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

18 **A.** My testimony will focus on our concerns to maintain the existing wholesale
19 service arrangements with Qwest. I understand that other intervening CLECs
20 address in detail issues relating to OSS and wholesale service quality.
21 360networks supports the testimony of the other CLEC witnesses on these topics.

22

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

7
8 My recommendations for commitments that the Board should obtain from the
9 Applicants before approving the merger include:

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

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

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

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

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

21 **Q. HASN'T THE MERGED COMPANY'S WITNESS TESTIFIED THAT**
22 **“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, Max Phillips states, “Currently, Qwest has Board-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. Phillips also states that Qwest’s Iowa access tariff will
9 remain in effect after the merger is consummated. CenturyLink made similar
10 statements in response to PAETEC data requests. Generally, the Merged
11 Company only states that it does not plan for any *immediate* changes to legacy
12 Qwest’s wholesale service agreements or tariffs “upon merger,” but to the extent
13 changes are made thereafter, the company will “comply with all applicable state
14 and federal laws and rules, as well as the provisions of any applicable
15 interconnection agreements or tariffs, in the same manner as they would apply
16 notwithstanding the merger.” See attached Exhibit BA-1.

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

⁵ Max Phillips/Qwest Direct Testimony at p. 10.

⁶ *Id.*

1 point, the statutory time frames⁷ associated with negotiating a new
2 interconnection agreement would begin. The existing agreement would then
3 remain in effect only until a new agreement was completed. We have even less
4 certainty with regard to the private line agreement since it is subject to
5 commercial negotiation upon 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 Iowa.

13 From 360networks' perspective, the Merged Company is only promising to
14 assume or honor contracts that it can terminate at any time. This is not much
15 assurance.

16

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 Iowa. 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 Although I do not have specific comparisons in mind, the substantially rural
4 history of CenturyLink's companies and lack of experience in a competitive
5 environment cause the same uncertainty with regard to the service offerings and
6 rates that are currently available through QC's Iowa tariffs and our private line
7 agreement with QCC.

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

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

14 A. 360networks requests that, before it acts to approve the transaction, the Board
15 require the Merged Company to commit to the conditions listed above. The effect
16 of these commitments will ensure that the wholesale supplier-user relationship
17 that exists between Qwest and competitive providers in Iowa will remain largely
18 undisturbed as a result of the transaction, which will in turn provide a smooth
19 transition and protect competitors and their customers in Iowa from increased
20 costs that would harm, and may even eliminate some competition for
21 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 we are compliant
15 with our assumptions 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 chances to make any necessary transition.
19 Any time period less than 3.5 years would make it nearly impossible for us to
20 accommodate the changes.

21

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
9 CLECs affected by the ATT/BellSouth merger, however, 42 months was
10 insufficient. That experience drives the request for a five- to seven-year
11 extension.

12
13 **IV. CONCLUSION**

14 **Q. WHAT IS YOUR RECOMMENDATION TO THE BOARD?**

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

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

19 **A.** Yes it does.