ORIGINAL

BEFORE THE ARIZONA CORPORATIC

COMMISSIONERS
KRISTIN K. MAYES - CHAIRMAN
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

IN THE MATTER OF THE JOINT NOTICE AND APPLICATION OF QWEST CORPORATION, QWEST COMMUNICATIONS COMPANY, LLC, QWEST LD CORP., EMBARQ COMMUNICATIONS, INC. D/B/A CENTURY LINK COMMUNICATIONS, EMBARQ PAYPHONE SERVICES, INC. D/B/A CENTURYLINK, AND CENTURYTEL SOLUTIONS, LLC FOR APPROVAL OF THE PROPOSED MERGER OF THEIR PARENT CORPORATIONS QWEST COMMUNICATIONS INTERNATIONAL INC. AND CENTURYTEL, INC.

DOCKET NOS. T-01051B-10-0194
T-02811B-10-0194
T-04190A-10-0194
T-20443A-10-0194
T-03555A-10-0194
T-03902A-10-0194

NOTICE OF FILING DIRECT TESTIMONY

Eschelon Telecom of Arizona, Inc., Electric Lightwave, LLC and Mountain Telecommunications of Arizona, Inc. dba Integra Telecom hereby gives notice that it files the attached Direct Testimony of Douglas Denney.

RESPECTFULLY SUBMITTED this 27th day of September 2010.

ROSHKA DEWULF & PATTEN, PLC

By ______________________

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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE JOINT NOTICE AND APPLICATION OF QWEST CORPORATION, QWEST COMMUNICATIONS COMPANY, LLC, QWEST LD CORP., EMBARQ COMMUNICATIONS, INC. D/B/A CENTURY LINK COMMUNICATIONS, EMBARQ PAYPHONE SERVICES, INC. D/B/A CENTURYLINK, AND CENTURYTEL SOLUTIONS, LLC, FOR APPROVAL OF THE PROPOSED MERGER OF THEIR PARENT CORPORATIONS, QWEST COMMUNICATIONS INTERNATIONAL, INC., AND CENTURYTEL, INC.	DOCKET NO. T-01051B-10-0194 T-02811B-10-0194 T-04190A-10-0194 T-20443A-10-0194 T-03555A-10-0194 T-03902A-10-0194

DIRECT TESTIMONY OF

DOUGLAS DENNEY

ON BEHALF OF

INTEGRA TELECOM

September 27, 2010

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Douglas Denney. I work at 1201 Lloyd Blvd, Suite 500 in Portland, Oregon.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by Integra Telecom, Inc., as Integra's Director of Costs and Policy. My job duties include negotiating interconnection agreements, monitoring, reviewing and analyzing the wholesale costs Integra or its subsidiaries pay to carriers such as Qwest, and representing Integra and its affiliates on regulatory issues. I am also involved in Integra's review of ILEC performance assurance plans.

Integra Telecom, Inc. has three affiliated companies in Arizona. These companies are: Electric Lightwave, LLC, Eschelon Telecom of Arizona, Inc., and Mountain Telecommunications of Arizona, Inc. For convenience, I will generally refer to Integra Telecom, Inc. and its affiliates as Integra. I will refer specifically to Eschelon when discussing events specific to Eschelon prior to Integra's purchase of Eschelon.

Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL BACKGROUND.

A. I received a B.S. degree in Business Management from Phillips University in 1988. I spent three years doing graduate work at the University of Arizona in Economics, and then I transferred to Oregon State University where I have completed all the requirements for a Ph.D. except my dissertation. My field of study was Industrial Organization, and I focused on cost models and the measurement of market power. I taught a variety of economics courses at the University of Arizona and Oregon State University. I was hired by AT&T in December 1996 and spent most of my time with AT&T analyzing cost models. In December 2004, I was hired by Eschelon Telecom, Inc. ("Eschelon). Eschelon was purchased by Integra in August 2007. I am presently employed by Integra.

I have participated in over 50 proceedings in the Integra operating territory. Much of my prior testimony involved cost models — including the HAI Model, BCPM, GTE's ICM, U S WEST's UNE cost models, and the FCC's Synthesis Model. I have also testified about issues relating to the wholesale cost of local service — including universal service funding, unbundled network element pricing, geographic de-averaging, and competitive local exchange carrier access rates. I testified on a number of issues in the Eschelon / Qwest arbitrations,[1] and have been involved in the Qwest and Verizon "non-impaired" wire center lists and related issues. I have also been involved in the performance assurance plans that impact Integra. This includes negotiations of changes to performance plans to assure they provide meaningful incentives for wholesale service quality.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN ARIZONA?

A. Yes. I have been involved in numerous dockets in Arizona over the years while working for AT&T, Eschelon, and Integra. I testified in multiple phases of the UNE cost docket

[1] The docket numbers for the Qwest-Eschelon ICA arbitrations are, for Arizona, T-03406A-06-0572; T-01051B-06-0572 ("Arizona arbitration"); for Colorado, 06B-497T ("Colorado arbitration"); for Minnesota, P-5340, 421/IC-06-768 ("Minnesota arbitration"); for Oregon, ARB 775 ("Oregon arbitration"); for Utah, 07-2263-03 ("Utah arbitration"); and for Washington, UT-063061 ("Washington arbitration").

T-00000A-00-194: I testified on geographic deaveraging in Phase I. In Phase II, I supported the HAI Model, which this Commission adopted to set many of the recurring UNE rates in place today. In Phase IIa, I testified about the switching costs included in the HAI Model. I presented oral comments in docket T-00000I-04-0749 regarding the current state of competition. I filed testimony in docket T-00000A-03-0369, the original Triennial Review Order ("TRO") docket, which was stopped after the D.C. Circuit Court remanded parts of the TRO to the FCC. I've also been involved in every phase of the subsequent Triennial Review Remand Order ("TRRO") docket T-03632A-06-0091 et al, including the current phase regarding Qwest's 2010 request for additions to the non-impaired wire center list. I testified in docket T-00000D-00-0672 on behalf of a number of CLECs regarding intrastate access rates in Arizona and I testified in docket T-03406A-06-0257 et al. regarding Qwest's violation of Eschelon's interconnection agreement. In addition, I testified on numerous issues in docket T-03406A-06-0572 et al. regarding the interconnection agreement arbitration between Eschelon and Qwest. I was also involved in all aspects of the 2007 stipulation regarding changes to Qwest's Performance Assurance Plan which is the current performance assurance plan in place in Arizona today. I was also involved in the recent discussions regarding Qwest's performance assurance plan that took place as part of docket T-01051B-03-0859.

Q. PLEASE DESCRIBE HOW YOUR TESTIMONY IS ORGANIZED.

A. The first section of this testimony introduces this testimony, describes my background and describes Integra. The second section of my testimony supports Joint CLEC recommended condition number 4 regarding wholesale service quality. This section explains how the Commission can simply put into place a self-effectuating mechanism to help assure that wholesale performance in the legacy Qwest territory does not deteriorate after the merger. The third section of my testimony supports Joint CLEC recommended condition numbers 8 and 9. This testimony describes the interconnection agreement ("ICA") negotiation process and the time that it takes to negotiate and resolve disputed issues. The fourth section of my testimony supports condition numbers 18 and 27. This section verifies the facts set out in Exhibit BJJ-1 and Exhibit BJJ-1a. In addition, I describe why these conditions are important.

Q. ARE THERE ANY EXHIBITS TO YOUR TESTIMONY?

A. Yes. As part of my testimony, I have included the following exhibits:

- Exhibit DD-1: A copy of an Additional Performance Assurance Plan, calculated using the methodology in the Current PAP, for use to assure Qwest's wholesale performance to CLECs is not impacted by the CenturyLink merger.

Q. PLEASE PROVIDE AN OVERVIEW OF INTEGRA AND ITS BUSINESS.

A. Integra is a competitive local exchange carrier ("CLEC") providing communications services across 33 metropolitan areas in 11 states of the Western United States. We own (directly or under indefeasible rights to use) and operate backbone fiber networks. These backbone networks connect to our intercity, interstate data network for a combined 4,900 fiber route-mile network in the Western U.S. We provide a comprehensive suite of high-quality data, broadband and voice services to over 100,000 small-to-medium-sized business customers and "enterprise" customers.

Our network is designed to deliver products such as Ethernet over broadband at speeds of up to 25 Mbps over a variety of delivery technologies tailored to the unique applications of our small-to-medium-sized business, enterprise and wholesale customers, including Ethernet over direct fiber access, Ethernet over copper and Ethernet over next-generation bonded digital subscriber lines, or DSL. We have 230 unique collocations, 33 in Arizona, positioned across our markets. Providing services to our customers primarily over our owned switching and transport facilities allows us to control the quality and reliability of our service offerings and efficiently innovate and provide advanced products and services. At the same time, we cannot be successful without access to the last-mile, and Qwest is the only supplier of last-mile facilities within its territory.

While we continue to make large investments in expanding and upgrading our network, we therefore, remain almost entirely dependent upon the incumbent local exchange carrier for last mile connections to our customers.

Q. HOW DOES THE SIZE OF INTEGRA COMPARE TO QWEST AND CENTURYLINK?

A. Qwest is Integra's largest competitor, but Integra is relatively small when compared to Qwest and even smaller when compared to a combined Qwest/CenturyLink. A combined Qwest/CenturyLink will operate in 37 states,[2] compared to 11 for Integra. Further, a combined Qwest/CenturyLink will have 50,000 employees,[3] compared to 2,300 for

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[2] See http://www.centurylinkqwestmerger.com/index.php?page=about-the-transaction

[3] See http://www.centurylinkqwestmerger.com/index.php?page=about-the-transaction

Integra, and the combined Qwest/CenturyLink proforma revenue will be $19.8 billion,[4] compared to Integra's 2009 revenue of $638 million.[5] To put these differences into perspective, a combined Qwest/CenturyLink will have 22 employees for each Integra employee and $31 dollars of revenue for each Integra dollar of revenue. The combined Qwest/CenturyLink will earn more revenue by the second week in January than Integra will obtain in a year.

II. WHOLESALE SERVICE QUALITY (JOINT CLEC RECOMMENDED CONDITION NUMBER 4)

Q. WHAT IS JOINT CLEC RECOMMENDED CONDITION NUMBER 4 AND WHY IS IT NECESSARY?

A. Joint CLEC recommended condition number 4 concerns wholesale service quality for the Merged Company.[6] The condition requires that the performance assurance plans that currently exist in the legacy Qwest ILEC territory will remain in place for five years, the time period over which the Joint Applicants have claimed the synergy savings from the merger will be accomplished.[7] The condition also establishes a mechanism to assure that the Merged Company performance in the legacy Qwest ILEC territory does not deteriorate compared with pre-merger performance. These conditions will help assure

[4] See http://www.centurylinkqwestmerger.com/index.php

[5] See http://www.integratelecom.com/about/news/press_release_articles/2010%20Fastest%20Growing%20Private%20Companies_FINAL.pdf

[6] The CLEC recommended conditions are attached to the testimony of Mr. Gates as Exhibit TG-8.

[7] Direct Testimony of Jeff Glover, Arizona Corporation Commission Docket No. T-01051B-10-0194, May 24, 2010, p. 13, lines 11-13.

that the Merged Company maintains wholesale service quality at current levels and creates disincentives for the Merged Company to achieve synergies at the expense of its competitors through a deterioration of its wholesale market operations. Mr. Gates's testimony discusses the importance of wholesale service quality conditions in more detail.

Joint CLEC recommended condition number 4 is repeated below in its entirety.

> In the legacy Qwest ILEC territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy Qwest as of the Merger Filing Date. The Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy Qwest made available, or was required to make available, to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to state commission staff or the FCC, when requested. The state commission and/or the FCC may determine that additional remedies are required, if the remedies described in this condition do not result in the required wholesale service quality performance or if the Merged Company violates the merger conditions.
>
> a. No Qwest Performance Indicator Definition (PID) or Performance Assurance Plan (PAP) that is offered, or provided via contract or Commission approved plan, as of the Merger Filing Date ("Current PAP") will be reduced, eliminated, or withdrawn for at least five years after the Closing Date and will be available to all requesting CLECs until the Merged Company obtains approval from the applicable state commission, after the minimum 5-year period, to reduce, eliminate, or withdraw it. For at least the Defined Time Period, in the legacy Qwest ILEC territory, the Merged Company shall meet or exceed the average wholesale performance provided by Qwest to each CLEC for one year prior to the Merger Filing Date for each PID, product, and disaggregation. If the Merged Company fails to provide wholesale performance as described in the preceding sentence, the Merged Company will also make remedy payments to each affected CLEC in an amount as would be calculated using the methodology (*e.g.*, modified

Z test, critical Z values, and escalation payments) in the Current PAP, for each missed occurrence when comparing performance post- and pre- Closing Date ("Additional PAP").

b. In the legacy Qwest ILEC territory, for at least the Defined Time Period, the Merged Company will meet or exceed the average monthly performance provided by Qwest to each CLEC for one year prior to the Merger Filing Date for each metric contained in the CLEC-specific monthly special access performance reports that Qwest provides, or was required to provide, to CLECs as of the Merger Filing Date. For each month that the Merged Company fails to meet Qwest's average monthly performance for any of these metrics, the Merged Company will make remedy payments (calculated on a basis to be determined by the state commission or FCC) on a per-month, per-metric basis to each affected CLEC.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY WITH RESPECT TO RECOMMENDED CONDITION NUMBER 4?

A. The purpose of this testimony is to explain the additional performance assurance plan ("APAP") proposal, as described in part a of Joint CLEC recommended condition number 4.

Q. PLEASE DESCRIBE THE ADDITIONAL PERFORMANCE ASSURANCE PLAN ("APAP") PROPOSAL.

A. The APAP is a minimum five year performance assurance plan applicable to the legacy Qwest ILEC territory. This plan is in addition to the existing Arizona PAP and does not alter or change the existing Arizona PAP. The APAP would compare the Merged Company's post-merger ("current performance") monthly performance with the performance that existed in the twelve months prior ("prior performance") to the Merger Filing Date (*i.e.*, May 2009 through April 2010). This comparison would be made using the current Arizona Performance Assurance Performance Indicators ("PIDs"), products and disaggregation, thus no new measures are required to be created. Further, the data for the year prior to the Merger Filing Date already exists, and thus also would not need to be created. The APAP would compare the current and prior performance results using the same statistical methodology that exists in the Arizona PAP to determine whether a statistically significant deterioration in performance exists.[8] If such deterioration does exist, then the APAP would calculate payments for each missed occurrence using the methodology from the Arizona PAP, including one allowable miss[9] and escalation payments for consecutive months of below standard performance.[10]

Q. HOW IS THE APAP DIFFERENT FROM THE CURRENT ARIZONA PAP?

A. In terms of the methodology (*e.g.*, modified Z test, critical Z values, and escalation payments), not at all. The current Arizona PAP, which is a part of many carriers' interconnection agreements, compares Qwest's wholesale performance for CLECs to Qwest's retail performance.[11] In other words, the current Arizona PAP is intended to assure that Qwest does not treat itself more favorably than it treats CLECs, who rely upon Qwest's wholesale facilities. These plans were put in place when Qwest entered the interLATA long distance market to help assure that local markets remained opened to

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8 See section 4.0 of the Qwest Arizona SGAT Fourteenth Revision, Fourth Amended Exhibit K, June 22, 2007 ("AZ PAP"), http://www.qwest.com/about/policy/sgats/SGATSdocs/arizona/AZ_14th_revised_Exhibit_K_062207-1.pdf. Note: this document is attached to the interconnection agreements of all CLECs who have opted into the Arizona PAP.

9 See section 3.1.2, AZ PAP.

10 See section 6.2.1, AZ PAP.

11 In some cases a benchmark is used rather than Qwest's retail performance.

competition. The APAP does not replace the Arizona PAP, but works in addition to the existing PAP. The purpose of the proposed APAP is to compare the current level of Qwest's wholesale performance to CLECs with a past level of wholesale performance to CLECs, rather than compare wholesale and retail performance. A plan such as the APAP would help to assure that wholesale performance does not deteriorate post merger. The Arizona PAP, which was not developed to identify merger-related harm, would not capture deteriorating performance, if the Merged Company's performance deteriorated for both wholesale and retail services simultaneously or if wholesale performance deteriorated, but remained above the minimum benchmarks. The APAP uses the same methodology but is tailored to the purpose of measuring merger-related performance issues.

Q. DO YOU HAVE AN EXAMPLE OF A DOCUMENT DESCRIBING THE RECOMMENDED APAP?

A. Yes. Exhibit DD-1 is nearly identical in function to the existing PAPs in the Qwest territory, except that it relies upon a comparison of current and prior wholesale performance to CLECs. While at first glance the document may appear complicated, this is not the case as it is based upon the existing, well-familiar Arizona PAP in place today. The proposed APAP does not create new PIDs, statistical tests, or payment structures, but instead utilizes the existing structures from the PAPs in place across the Qwest region. The difference is simply the standard to which performance is compared.

Q. PLEASE PROVIDE AN EXAMPLE OF HOW A CALCULATION FROM THE APAP WOULD WORK AND HOW IT COMPARES TO THE ARIZONA PAP.

A. Below are two hypothetical examples comparing APAP and Arizona PAP payments. One involves the measure OP-3, Installation Commitments Met, for 2-wire analog loops. This measures how often Qwest meets its installation commitments and has a benchmark standard of 90%,[12] which means that as long as Qwest's actual performance is greater than 90% it does not make Arizona PAP payments to CLECs. Qwest's prior wholesale performance for CLECs is approximately 96.7%.[13] The second example involves MR-7, Repeat Trouble Reports, for DS1 capable loops. This measures how often Qwest is called on to repair a circuit with troubles in the Qwest network that it has already been called on to repair in the past 30 days. This measure is a parity measure and is compared to how Qwest performs for its DS1 private line circuits. Qwest's prior wholesale performance for CLECs is approximately 16.7%,[14] meaning 16.7% of CLEC circuits with troubles in the Qwest network, require a second repair from Qwest within 30 days. Qwest's average retail parity performance is 17.3%.[15]

The table below shows what happens if Qwest's wholesale performance on installation commitments falls to 93%, almost doubling the number of commitments missed, as well as what would happen if both Qwest's retail and wholesale repair repeat rates

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[12] See AZ PAP.

[13] This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

[14] This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

[15] This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

deteriorated post merger and climbed to 25%, about 50% greater than the prior rate.

Hypothetical APAP and QPAP Payment Comparison Examples

	OP-3 Installation Commitments Met	MR-7 Repair Repeat Rate	APAP Ref
	2-wire analog loop	DS1 Capable Loops	
Average Prior Performance	96.7%	16.7%	
Standard	benchmark 90.0%	parity 17.3%	
Prior Payment	$0.00	$0.00	
Post Merger Performance	93.0%	25.0%	
CLEC Observations	250	70	
QPAP Standard	benchmark 90.0%	parity 25.0%	
QPAP Payment	$0.00	$0.00	
APAP Standard	96.7%	16.7%	
Z Stat	3.15	1.79	Sec 4.2
Z Table	2.00	1.65	Sec 5.0 Table 1
Calculated Value	94.3%	24.3%	Sec 8.2
Non Conforming Occurances	3	0.49	Sec 8.2
Payment per Occurance	$150.00	$150.00	Sec 6.0 Table 2
APAP Payment	$487.00	$74.00	Sec 8.2

As can be seen in the example for OP-3, Installation Commitments Met, even if Qwest's wholesale performance became worse post merger, Qwest would make no payments under the current Arizona PAP so long as Qwest's performance is above the 90 percent benchmark. However, under the proposed APAP mechanism, a payment would occur to CLECs as a result of the significant deterioration in performance. The "calculated value" in the table above shows how performance would have to deteriorate, for a CLEC with about 250 installations a month, in order for the deterioration to be considered statistically significant and thus require a payment. Another way of looking at the "calculated value," for this example, is that missed commitments would have to increase by more than 72.7%[16] before a payment would be triggered under the APAP.[17]

Likewise, in the example for repeat troubles, no payment would be made under the current Arizona PAP if both retail and wholesale service deteriorates; however, a payment would be required under the APAP as a result of a significant deterioration of wholesale service quality post merger. Again the "calculated value" shows how far service would have to degrade,[18] for a CLEC with 70 repeat troubles a month, before a payment would be triggered under the APAP.

Q. THERE APPEARS TO BE A SIGNIFICANT DEGRADATION OF WHOLESALE SERVICE QUALITY BEFORE A PAYMENT WOULD BE TRIGGERED UNDER THE ADDITIONAL PAP. ARE THE PERFORMANCE INCENTIVES LARGE ENOUGH TO PROTECT WHOLESALE SERVICE QUALITY POST MERGER?

A. The question identifies an important concern, because a key factor in performance assurance plans is not to let poor performance simply become a cost of doing business. Setting performance payments too low could lead to this result. One method to care for this potential error is through the use of an escalation provision. An escalation provision ratchets up the payments that are made for each non-conforming occurrence when the

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16 72.7% = (1 - 94.3%) / (1 - 96.7%) – 1.

17 Note that the actual percent will be different for each CLEC depending on both performance and order volumes prior to and after the merger.

18 Again, in this example, service would have to degrade by 45.5% (24.3% / 16.7% - 1), before a payment would be triggered under the APAP.

company misses a performance standard in consecutive months. The current Arizona PAP contains an escalation provision,[19] and we propose that the same type of provision be used in the APAP. An escalation provision is crucial to assure that substandard performance does not simply become a cost of doing business.

CenturyLink has professed a commitment to wholesale service quality,[20] thus hopefully no payment will ever be made under an APAP, and we will never have to find out whether the payment levels were too low. However, we do propose that the Commission use the escalation provisions from the current Arizona PAP in the APAP. The escalation provisions increase the non-conforming payment amounts when substandard performance continues for consecutive months, clearly indicating a problem. CenturyLink recognizes that "***ensuring that CenturyLink continues to provide high quality service*** and customer experience pre- and post-merger is vitally important"[21] (emphasis added). The APAP helps to ensure this result and the escalation provision is crucial to assure that substandard performance does not simply become a cost of doing business.

III. ICA NEGOTIATION PROCESS (JOINT CLEC RECOMMENDED CONDITIONS 8 AND 9)

[19] See section 6.2.1 and table 2 of the AZ PAP.

[20] Direct Testimony of James P. Campbell, Arizona Corporation Commission Docket No. T-01051B-10-0194, May 24, 2010, p. 23, lines 23-25. See also, Direct Testimony of Michael R. Hunsucker, Oregon Public Utility Commission Docket No. UM 1484, June 22, 2010, CTL/400, Hunsucker/9, lines 9-12 ("Q. Is CenturyLink commited (sic) to providing quality service to its wholesale customers? A. Certainly…")

[21] Direct Testimony of Kristen McMillan, Arizona Corporation Commission Docket No. T-01051B-10-0194, May 24, 2010, p. 13, lines 15-16.

Q. ARE YOU INVOLVED IN NEGOTIATING INTERCONNECTION AGREEMENTS WITH QWEST?

A. Yes, I participate in multiple entity, multi-state[22] ICA negotiations with Qwest on behalf of Integra and, before that, I participated in ICA negotiations with Qwest on behalf of Eschelon. I participate in developing negotiation positions and proposals and in reviewing and responding to proposals from Qwest. I have taken part in numerous negotiation sessions with Qwest, along with a number of other company personnel.

Q. PLEASE DESCRIBE THE TIMELINE FOR THE INTERCONNECTION AGREEMENT NEGOTIATIONS BETWEEN QWEST AND INTEGRA.

A. On September 17, 2007, the parties entered into an extension of the statutory arbitration timeframes under Section 252 of the Act, agreeing upon an arbitration window of December 31, 2007, through January 25, 2008. As discussed below, at that time, Qwest and Eschelon had recently completed ICA arbitration hearings. Integra was not in a position to opt-in to the Eschelon agreements, because Qwest adheres to the "all-or-nothing" rule, which does not allow a CLEC to opt-in to an ICA if any changes are needed. Because Integra entities' business needs differ in some respects from Eschelon's business needs (*e.g.*, Integra entities desire reciprocal compensation whereas Eschelon's ICAs have bill-and-keep), Integra could not opt-in in all cases to the Eschelon ICA. Nonetheless, the majority of the Eschelon arbitrated ICA meets Integra's needs.

[22] The Qwest-Eschelon ICAs, which I discuss below, were also negotiated in multi-state negotiations, with most of the multi-state negotiations draft containing the same language for several states, with certain sections identified as state-specific language. After conclusion of negotiations, a state-specific draft was then prepared for the state-specific ICA arbitration. Similarly, at the conclusion of the Integra negotiation, a state-specific ICA will be prepared per entity for each state.

Therefore, Integra proposed using the recently negotiated and arbitrated Eschelon ICA as a basis for further discussions. Qwest's position was that it would only negotiate from the Qwest negotiations template. Qwest took this position even though Qwest and another CLEC had recently litigated the issue of the basis for negotiations, and the result was not to negotiate from the Qwest template. Specifically, McLeodUSA (now PAETEC) had filed a Petition for Section 252(a)(2) Mediation in which it said:

> McLeodUSA requests the Commission or delegated Commission staff mediate whether, as McLeodUSA contends, an existing interconnection agreement ('ICA') between McLeodUSA and Qwest under which the parties have been operating for the last nine (9) years is the appropriate starting point for negotiations for a successor ICA between the parties, or whether, as Qwest contends, the starting point should be a 'template' agreement proposed by Qwest that McLeodUSA was never involved in creating.[23]

Given that McLeodUSA was forced to litigate before it obtained any movement on this issue from Qwest, Integra attempted to avoid litigation by instead – in response to Qwest's position that negotiations must begin with Qwest's template – redlining the Qwest template with a proposal that, after incorporating the Integra redlines, resembled in large part the terms of the Qwest-Eschelon arbitrated ICA. This was a large undertaking. The body of the Qwest negotiations template proposal is approximately 400 pages, and the body of the Qwest-Eschelon ICA is approximately 350 pages. To compare and redline the two documents to attempt to reconcile most of the language required

[23] McLeodUSA Petition for Meditation, *In the Matter of Petition of McLeodUSA Telecommunications Services, Inc. for Commission Mediation Pursuant to 47 U.S.C. §252(a)(2) of a Dispute With Qwest*, MPUC Docket No. P-5323,421/M-07-609 (May 9, 2007), p. 1.

extensive work, resulting in a redlined document that was 762 pages in length. Integra provided this negotiations proposal document to Qwest on December 20, 2007.

On January 8, 2008, Qwest and Integra entered into an amended extension of the statutory arbitration timeframes under Section 252 of the Act. Under the amended extension, Qwest was to respond to all of Integra's proposals by February 25, 2008; Integra was to reply by March 26, 2008; and the arbitration window would open on April 25, 2008. The amended extension provided that, if Qwest missed the February 25, 2008, deadline, the start of the arbitration window would automatically extend by a corresponding amount of time. Qwest still has not provided a complete response to Integra's proposals. Since February 25, 2008, months have passed with no response from Qwest. The arbitration window continues to automatically extend as negotiations continue.

Today, while there are important issues in the multi-state draft that remain open for resolution, the vast majority of the body of the multi-state draft contains closed (agreed upon) language. And, the vast majority of that language is the same as the language from Qwest-Eschelon ICAs that, in 2007, Integra had proposed to use as a basis for negotiations, in light of all the work Eschelon and Qwest had already done in those negotiations and arbitrations. In short, after a significant expenditure of additional resources and time, the parties are pretty much where they could have been almost three years ago, had Qwest not used its template as the basis for negotiations. The negotiations are not yet concluded. As I discuss in my next responses, arbitrations can then add years to the process before a final compliance filing of an ICA is approved in each state.

Q. PLEASE DESCRIBE THE TIMELINE FOR THE INTERCONNECTION AGREEMENT NEGOTIATIONS BETWEEN QWEST AND ESCHELON.

A. Eschelon initiated negotiations with Qwest in early 2001 in anticipation of the expiration of the interconnection agreements that were then in effect between the parties, which were set to expire and go into "evergreen" status beginning March 17, 2002. Negotiations went into hiatus on more than one occasion. For example, between six months and a year negotiations were not held while Qwest worked on its multi-state arbitration template. Negotiations also lapsed due to *Triennial Review Order/Triennial Review Remand Order (or TRO/TRRO)* developments. Eschelon and Qwest continued to operate under the terms and conditions of the existing agreement in evergreen status while they negotiated a successor agreement. The process involved numerous negotiation sessions, email exchanges, and the exchange of red-lined drafts of proposed language. Eschelon became concerned regarding the tenor of the proceedings and asked the Minnesota Commission to act as a mediator in an attempt to move the parties to resolution on the issues. Qwest in turn then asked the Minnesota Department of Commerce (the Department) to observe or participate in the sessions but not to mediate. Representative(s) of the Department took part in the parties' negotiation conference calls after May of 2004. When negotiations were in session, the parties held numerous telephone conference calls, most frequently twice a week and lasting two hours per session.

The negotiation process took a number of years, from March of 2001 through mid-2006, when arbitrations commenced, as described below. Eschelon devoted substantial resources to the negotiation process, including the efforts of legal counsel and administrative staff in Eschelon's law and policy department, carrier relations and cost and policy personnel, and subject matter experts working in a variety of areas within Eschelon who provided information and analysis needed to support the negotiation effort. Executives from Eschelon's network and finance organizations participated regularly in negotiation sessions.

Q. DID THE NEGOTIATIONS RESULT IN A RESOLUTION OF ALL ISSUES?

A. No. Although the parties were able to close the vast majority of the contract language, the parties negotiated to impasse on a number of issues and, thereafter, submitted those issues to arbitration before the state commissions in Arizona, Colorado, Minnesota, Oregon, Utah, and Washington.

Q. DID YOU PARTICIPATE IN THE ARBITRATION PROCEEDINGS?

A. Yes, I was a witness in all six states, as was my colleague, Bonnie Johnson. In addition, Eschelon's arbitration effort was supported by its in-house legal team and subject matter experts. Eschelon also retained outside counsel and outside experts who assisted with the arbitrations.

Q. PLEASE DESCRIBE THE STATUS OF THE VARIOUS ARBITRATION PROCEEDINGS IN WHICH YOU PARTICIPATED.

A. The arbitration proceedings occurred from mid-2006 through hearings in early to mid-2007. In each case, the parties submitted multiple rounds of extensive written testimony and exhibits, participated in evidentiary hearings before an administrative law judge(s), and provided briefing of their legal positions. In all but one state, commission orders approving the arbitration agreements were issued in 2008 (with a follow-up order in Arizona in 2009). The agreements in the five states, based on negotiations that commenced in March of 2001, went into effect between March of 2008 and December of 2009. In Colorado, the parties are yet awaiting a decision. Relevant state by state details are as follows:

- Arizona: *In the Matter of the Petition of Eschelon Telecom, Inc., for Arbitration with Qwest Corporation, Pursuant to 47 U.S.C. Section 252(b) of the Federal Telecommunications Act of 1996,* Docket Nos. T-03406A-06-0572 and T-01051B-06-0572 – A petition for arbitration was filed on September 7, 2006, and the interconnection agreement was approved to be effective on December 8, 2009.
- Colorado: *In the Matter of the Petition of Qwest Corporation for Arbitration with Eschelon Telecom, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996*, Docket No. 06B-497T – A petition for arbitration was filed on September 8, 2006, an evidentiary hearing was held before the ALJ on April 17 and 18, 2007, and the parties submitted post-hearing briefing on May 22, 2007. A decision is pending.
- Minnesota: *In re the Matter of the Joint Application for Approval of an Arbitrated Agreement for Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services Between Eschelon Telecom of Minnesota, Inc., and Qwest Corporation,* Docket No. P-5340, 421/IC-06-768 – A petition for arbitration was filed on May 26, 2006, and the Commission approved the parties' interconnection agreement to be effective March 24, 2008. In its order resolving the disputed issues, the Minnesota Commission referred certain interconnection terms and conditions for arbitration issues relating to

conversions of UNEs to non-UNEs and to commingling of UNEs and non-UNEs to a separate, generic docket, in which Eschelon, through its parent, Integra, actively participated. Although the Commission has issued an order in that matter, Qwest's motion for reconsideration of that order is still pending.

- Oregon: *In the Matter of Eschelon Telecom of Oregon, Inc. Petition for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to Section 252(b) of the Telecommunications Act,* ARB 775 – A petition for arbitration was filed on October 6, 2006, and the Commission approved an interconnection agreement to be effective November 7, 2008.

- Utah: *In the Matter of the Petition of Eschelon Telecom of Utah, Inc. for Arbitration with Qwest Corporation Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996*, Docket No. 07-2263-03 – A petition for arbitration was filed on April 27, 2007, the Commission issued its order resolving the arbitrated issues on July 11, 2008, and issued its order on reconsideration on September 11, 2008. The interconnection agreement was effective on November 13, 2008.

- Washington: *In the Matter of the Petition of Qwest Corporation for Arbitration with Eschelon Telecom, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal Telecommunications Act of 1996*, Docket No. UT-063061 – A petition for arbitration was filed on August 9, 2006, and the Commission approved the interconnection agreement to be effective on April 2, 2009. Qwest subsequently appealed from the portion of the Commission's order regarding terms and conditions for conversion of UNEs to non-UNEs and commingling of UNEs and non-UNEs and the Federal District Court for the District of Washington recently affirmed the Washington Commission's decision. It is not known whether Qwest will appeal that decision.

Q. WHAT IS THE SIGNIFICANCE OF INTEGRA'S AND ESCHELON'S EXPERIENCE IN THE NEGOTIATION AND ARBITRATION PROCESS FOR THE ISSUES TO BE DETERMINED BY THE COMMISSION IN THIS PROCEEDING?

A. The Commission must decide whether the proposed transaction is in the public interest and whether customers and competition will be harmed. As part of that assessment, the Commission needs to consider the status of ICAs, how long existing agreements should remain in place, and the starting document for negotiations of replacement ICAs. As further discussed by Dr. Ankum in his testimony regarding interconnection rights and responsibilities under the Act, the ILEC's wholesale customers need to know that the terms and conditions currently available, will continue to be available and that service will at least be constant if not improve, and that the Merged Company will not backslide with respect to its obligations, including OSS obligations, that were developed initially in 271 proceedings and later incorporated in ICAs. The experience of Integra and Eschelon with the negotiation and arbitration process sheds light on the length of time protections from merger-related harm need to remain in place.

Proposed Joint CLEC recommended condition number 8 is that the Merged Company be required to allow requesting carriers to extend existing interconnection agreements, whether or not the initial or current term has expired and is in "evergreen" status. Proposed Joint CLEC recommended condition number 9 addresses negotiation of the subsequent interconnection agreement, stating:

> The Merged Company shall allow a requesting competitive carrier to use its pre-existing interconnection agreement, including agreements entered into with Qwest, as the basis for negotiating a new replacement interconnection agreement. If Qwest and a requesting competitive carrier are in negotiations for a replacement interconnection agreement before the Closing Date, the Merged Company will allow the requesting carrier to continue to use the negotiations draft upon which negotiations prior to the Closing Date have been conducted as the basis for negotiating a replacement interconnection agreement. In the latter situation (ongoing negotiations), after the Closing Date, the Merged Company will not substitute a negotiations template interconnection agreement proposal of any legacy CenturyLink operating company for the negotiations proposals made before the Closing Date by legacy Qwest.

As the preceding discussion of the Qwest-Integra negotiations and the Qwest-Eschelon negotiations and arbitrations shows, the negotiation and arbitration process is an extremely resource-intensive, time-consuming process that is exacerbated by the ILEC's insistence on use of its template negotiations proposal. As a practical matter, the length of time necessary for negotiations and arbitration means that parties may operate under an expired agreement in evergreen status for an extended period of time while they negotiate and arbitrate a new agreement. That does not mean, however, that the agreement is static in the meantime. The existing agreements have been amended on multiple occasions over time, including amendments to reflect changes in law.

CenturyLink and Qwest have sponsored testimony in support of CenturyLink's application that asserts that "All prices, terms and conditions" of the interconnection agreements between Qwest and CLECs "will remain in effect until such time as they are renegotiated or expire by their own terms."[24] For agreements already in evergreen status, this is no time at all. For agreements that will expire and go into evergreen status in the Spring or Fall of 2011,[25] this is also little or no time, particularly as the closing date of the transaction may be after at least the Spring date. After carriers raised concerns about this issue with the FCC, the Joint Applicants filed Reply Comments with the FCC in which they said:

> CenturyLink plans to continue operating both CenturyLink and Qwest existing OSS uninterrupted for the immediate future until it completes its evaluation of the best options

[24] Direct Testimony of James P. Campbell, Arizona Corporation Commission Docket No. T-01051B-10-0194, May 24, 2010, p. 10, lines 11-13.

[25] The Minnesota Qwest-Eschelon ICA went into effect on March 24, 2008, with a three-year term before it goes into evergreen status. For other CLECs with this ICA term in Minnesota, see Exhibit BJJ-9 to the testimony of Ms. Johnson. The Qwest-Eschelon ICAs in Arizona, Oregon, Utah, and Washington also have a three-year term before they go into evergreen status.

> for all stakeholders. This is expected to take 12 months at the very least...[T]he immediate plan is to maintain both companies' separate OSS and continue operations as usual."[26]

The statement is noncommittal, particularly as to interconnection agreements. To the extent that "continue operations as usual" suggests that the Merged Company may operate under existing interconnection agreements for 12 months after the closing date of the transaction, this plan offers little comfort to carriers, like Eschelon, that have spent years negotiating and arbitrating with the ILEC to obtain an interconnection agreement. Assuming the current pace of negotiations, one year is insufficient time to complete negotiations much less obtain an arbitrated resolution of remaining impasse issues. And, if the Merged Company insists upon negotiations based on a new or revised template after the closing date, not only will the amount of time needed to obtain an effective ICA be extended, but also literally years of effort and extensive use of resources will be lost.

Q. WHY DO JOINT CLECS PROPOSE BOTH CONDITIONS 8 AND 9 TO ADDRESS THIS PROBLEM?

A. Joint CLECs' proposed condition number 8 deals with extending existing ICAs, while proposed condition number 9 relates to negotiation of new ICAs. Based on the experience of Integra and Eschelon to-date regarding the length of time needed for negotiations and arbitrations, even an extension of existing ICAs that would be the equivalent of one three-year term would not be sufficient to address the time period needed to fully negotiate and arbitrate a new ICA. Only if existing ICAs are extended for

[26] Applicants' FCC Reply Comments, WC Docket No. 10-110 (July 27, 2010), p. 20.

the longer requested period of seven years would the time period of the extension begin to cover the time period of the Qwest-Eschelon negotiations starting in March of 2001 through the Arizona effective date of December of 2009. And, in Colorado, for which no ruling has been issued, or Minnesota, for which the conversions and commingling issue raised in negotiations has not yet resulted in final ICA language, the time period would be longer.

In any event, whenever a new ICA is needed, the issue will remain as to the starting point for those negotiations and whether the Merged Company may force carriers to negotiate from an ILEC template instead of the carrier's existing agreement or pre-closing date negotiations draft. Providing business certainty now will avoid disputes later and protect customers and competition from harm caused by the post-merger company backsliding from existing ICA terms and conditions. At the same time, the Merged Company will be protected going forward, as the existing ICAs contain provisions for dealing with changes in law.

IV. UNE PROVISIONING AND MARKETING PRACTICES DOCKET (JOINT CLEC RECOMMENDED CONDITIONS 18 AND 27)

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY WITH RESPECT TO CONDITION NUMBERS 18 AND 27?

A. The purpose of my testimony relating to these conditions is to discuss Exhibit BJJ-1 and Exhibit BJJ-1a, collectively Exhibit BJJ-1, which are attached to the Direct Testimony of Ms. Johnson, and explain how Exhibit BJJ-1 is relevant to the issues to be determined by the Commission. The testimony of Mr. Gates addresses in detail the necessity of condition numbers 18 and 27.

Q. WHAT IS THE JOINT CLEC RECOMMENDED CONDITION NUMBER 18?

A. Condition number 18 requires that the Merged Company maintain sufficient, adequately-trained staff to assure that service provided to wholesale customers is equal to or greater than the level of wholesale service provided by Qwest before the Merger Filing Date, including maintaining staffing necessary to protect against the misuse of CLEC information in the Merged Company's retail operations and improper marketing activities. Condition number 18 provides as follows:

> The Merged Company shall ensure that the legacy Qwest Wholesale and CLEC support centers are sufficiently staffed, relative to wholesale order volumes, by adequately trained personnel dedicated exclusively to wholesale operations so as to provide a level of service that is equal to or superior to that which was provided by Qwest prior to the Merger Filing Date and to ensure the protection of CLEC information from being used for the Merged Company's retail operations or marketing purposes of any kind. The Merged Company will employ people who are dedicated to the task of meeting the needs of CLECs and other wholesale customers. The total number of the Merged Company's employees dedicated to supporting wholesale services for CLEC customers will be no fewer than the number of such employees (including agents and contractors) employed by legacy Qwest and legacy CenturyLink as of the Merger Filing Date, unless the Merged Company obtains a ruling from the applicable regulatory body that wholesale order volumes materially decline or other circumstances warrant corresponding employee reductions.

Q. WHAT IS THE JOINT CLEC RECOMMENDED CONDITION NUMBER 27?

A. Condition number 27 concerns the Merged Company's obligations with respect to conditioned copper loops. Condition number 27 provides as follows:

> The Merged Company will provide conditioned copper loops in compliance with federal and state law and at rates approved by the applicable state commission.

> Line conditioning is the removal from a copper loop of any device that could diminish the capability of the loop to deliver xDSL. Such devices include bridge taps, load coils, low pass filters, and range extenders. Insofar as it is technically feasible, the Merged Company shall test and report troubles for all the features, functions and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only. If the Merged Company seeks to change rates approved by a state commission for conditioning, the Merged Company will provide conditioned copper loops in compliance with the relevant law at the current commission-approved rates unless and until a different rate is approved.

Mr. Gates' testimony lays out the federal rules upon which this condition is based in his testimony.

Q. PLEASE DESCRIBE EXHIBIT BJJ-1.

A. Exhibit BJJ-1 consists of comments submitted on behalf of a coalition of CLECs in *In the Matter of a Commission Investigation into Qwest Corporation's Provision of Network Elements to CLECs and into Related Marketing Practices Targeting CLEC Customers* ("*UNE Provisioning and Marketing Practices Docket*"), MPUC Docket No. P-421/CI-09-1066. Exhibit BJJ-1a is a corrected (errata) version of the table of contents to Exhibit BJJ-1 (showing corrected page numbers to reflect the correct corresponding pages of Exhibit BJJ-1. Exhibit BJJ-2 through Exhibit BJJ-17 and Exhibit BJJ-19 include attachments that were filed with the initial comments at that time. In this testimony, I will sometimes refer to these documents collectively as the "Joint CLEC Comments." The Joint CLEC Comments were submitted to the Minnesota Public Utilities Commission on behalf of Integra Telecom of Minnesota, Inc., Eschelon Telecom of Minnesota, Inc., Popp.Com, Velocity Telephone, Inc., US Link, Inc., d/b/a TDS Metrocom, and McLeodUSA Telecommunications Services, Inc., a PAETEC company.

Q. HAVE YOU VERIFIED THE INFORMATION IN THE JOINT CLEC COMMENTS?

A. Yes. I have reviewed the information filed in these comments. In addition, I have been involved with many of these issues on behalf of Integra and participated in the preparation of these initial comments.

Q. ARE THE CLECS SEEKING IN THIS CASE TO LITIGATE THE SAME ISSUES AS ARE BEING ADDRESSED IN THE *UNE PROVISIONING AND MARKETING PRACTICES DOCKET*?

A. No. In this docket, merger conditions are sought to ensure that, following the merger, the new combined entity complies with applicable UNE provisioning laws. As the above-quoted condition 27 shows, the condition creates an enforceable commitment to comply with the law, but does not further address implementation of the law. These conditions do not ask the Commission to rule on the appropriateness of any Qwest policy or practice. In contrast, the *UNE Provisioning and Marketing Practices Docket* was established in Minnesota to determine whether Qwest is violating certain laws and to adjudicate, in a contested case, proper implementation of aspects of those laws. In other words, the requested end result in this docket (confirm duty to comply with the law) is just the starting point of that docket (where those laws are in place but disputes have arisen pertaining to those laws). The recommended merger condition does not go farther than the current law (which is quoted almost verbatim in the condition), so Applicants cannot reasonably argue that a new or different standard will be applied in that case as a result of this docket.

Unlike the high-level nature of recommended condition 27, resolution of the *UNE Provisioning and Marketing Practices Docket* may involve detailed implementation issues, and ultimately, resolution of the issues in that docket could include more granular solutions. For example, the Minnesota Commission could order the parties to draft ICA language that incorporates processes required to comply with the Commission's orders, as occurred in the Conversions and Commingling docket.[27] Additionally, or alternatively, the Commission could require Qwest to file compliance filings and, if those are not accepted, file additional compliance filings, as occurred in a Minnesota docket relating to improper contacts between Qwest wholesale and Qwest retail.[28] The Commission need not do any of that here to simply require compliance with existing laws. Recommended condition 27, as a means to address conditioned copper loops to avoid merger-related harm, is in no way redundant of those efforts.

The Joint CLECs are proposing merger conditions to ensure that the post-merger entity fully complies with the law. The Merged Company should have no issue with a condition that it comply with the law unless its intent is to not comply. To the extent the Merged Company refuses to accept such a condition, this should be a red flag for the Commission.

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[27] *Order Resolving Interconnection Issues and Requiring Compliance Filing,* In the Matter of Qwest Corporation's Conversion of UNEs to Non-UNEs and In the Matter of Qwest's Corporation's Arrangements for Commingled Elements, Docket Nos. P-421/C-07-370 and P-421/C-07-371, May 24, 2010.

[28] See Exhibit BJJ-25, July 31, 2003, and November 12, 2003, Orders from *In The Matter of a Request by Eschelon Telecom for an Investigation Regarding Customer Conversion by Qwest and Regulatory Procedures,* Minnesota PUC Docket P-421lC-03-616 ("MN 616 orders").

Moreover, the proposed merger conditions are also intended to ensure that adequate resources are devoted to wholesale customers in the face of the otherwise strong incentive the merged entity will have to achieve synergy savings at the expense of providing reliable, quality services to its CLEC competitors.

Q. ARE THE ISSUES ADDRESSED IN THE JOINT CLEC COMMENTS UNIQUE TO MINNESOTA?

A. No. The issues, and the facts supporting those issues, are not limited to Minnesota. They have been raised in Minnesota because only the Minnesota Commission has commenced an investigation regarding these issues. The Qwest policies and practices that are the subject of the attachments to Ms. Johnson's testimony are not state-specific, nor are the legal requirements relating to those policies and practices state-specific. However, a decision by the Minnesota Commission will be state-specific, as well as entity-specific. A Minnesota decision will not be binding on Qwest in any other state or on the other operating entity in any other state.

I am aware of other instances in which a state commission has ordered Qwest to remedy certain region-wide Qwest conduct, and Qwest has taken the position that the remedy the commission ordered only applied in that state. For example, in Minnesota, as the result of the complaint brought by Eschelon concerning a Qwest service error that caused Eschelon to lose a large business customer, the Commission issued an order[29] that required Qwest to adopt procedures to promptly acknowledge and take responsibility for

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[29] *MN 616 Order.*

mistakes that impacted Eschelon's customers. In subsequent arbitration proceedings in other states, Qwest took the position that it should not be required to implement the process for promptly acknowledging mistakes in any state other than Minnesota and also took the position that the process would not be made available to CLECs other than Eschelon. Similarly, although Eschelon prevailed in five of five states on its challenge of a region-wide Qwest process for jeopardy notices (Arbitration Issue Nos. 12-71 – 12-73) in the Qwest-Eschelon ICA arbitrations, Qwest did not implement this process for any other state or carrier.[30]

Q. IF THE JOINT CLECS OBTAIN THE REMEDY THAT THEY SEEK IN THE *UNE PROVISIONING AND MARKETING PRACTICES DOCKET*, WON'T THAT ELIMINATE THE NEED FOR THE MERGER CONDITIONS RELATING TO CONFIDENTIAL CLEC INFORMATION AND LOOP CONDITIONING?

A. No. First, as discussed above, the *UNE Provisioning and Marketing Practices Docket* is an investigation initiated by the Minnesota Commission concerning Qwest, and not the legacy CenturyLink entities. In contrast, an enforceable merger condition would apply in each state where it is adopted and would apply to all of the Merged Company's operating companies. In addition, given the importance of these issues, the Commission should be clear about its expectation that the Merged Company will not misuse CLEC information in its marketing efforts and will comply with its legal obligations regarding conditioning

[30] *See* for example, Utah PSC Docket No. 07-2263-03, Report and Order on Arbitration of Interconnection Agreement, July 11, 2008, p. 89. The docket numbers for the Qwest-Eschelon ICA arbitrations decisions are, for Arizona, T-03406A-06-0572; T-01051B-06-0572 ("Arizona arbitration"); for Minnesota, P-5340, 421/IC-06-768 ("Minnesota arbitration"); for Oregon, ARB 775 ("Oregon arbitration"); for Utah, 07-2263-03; ("Utah arbitration"); and for Washington, UT-063061 ("Washington arbitration").

of copper loops. Setting forth a clear expectation and commitment on these issues is essential to ensure that the merger is consistent with the public interest as required by law. The obligation to ensure that this merger is in the public interest requires conditions that address areas of potential harm, including potential harm to competitors and competition from noncompliance with laws that provide for the network access competitors' needs to provide competitive services. As such, it is common practice for merger conditions to refer to compliance with the law, particularly when there have been disputes regarding compliance issues, as further discussed by Mr. Gates.

The evidence contained in the attachments to Ms. Johnson's testimony reflects that there is, at the very least, reason for concern about these issues. Putting the Merged Company on notice of the Commission's expectation through the adoption of these conditions may eliminate the necessity for CLECs to bring complaints in the future regarding these issues. Such complaints not only consume the Commission's resources, they are extremely expensive and time-consuming for CLECs and a distraction from the CLECs' core mission of serving their customers and competing to provide service to new customers.

Finally, there is an issue of timing. Under the current schedule, the Minnesota Commission will not make a decision in the *UNE Provisioning and Marketing Practices Docket* until after the date anticipated for a decision in this case.

V. CONCLUSION

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

IN THE MATTER OF THE JOINT NOTICE AND APPLICATION OF QWEST CORPORATION, QWEST COMMUNICATIONS COMPANY, LLC, QWEST LD CORP., EMBARQ COMMUNICATIONS, INC. D/B/A CENTURY LINK COMMUNICATIONS, EMBARQ PAYPHONE SERVICES, INC. D/B/A CENTURYLINK, AND CENTURYTEL SOLUTIONS, LLC, FOR APPROVAL OF THE PROPOSED MERGER OF THEIR PARENT CORPORATIONS, QWEST COMMUNICATIONS INTERNATIONAL, INC., AND CENTURYTEL, INC.	DOCKET NO. T-01051B-10-0194 T-02811B-10-0194 T-04190A-10-0194 T-20443A-10-0194 T-03555A-10-0194 T-03902A-10-0194

EXHIBIT DD-1

TO THE

DIRECT TESTIMONY OF

DOUGLAS DENNEY

ON BEHALF OF

INTEGRA TELECOM

September 27, 2010

ADDITIONAL PERFORMANCE ASSURANCE PLAN

1.0 Introduction

1.1 As set forth in this Agreement, Qwest[1] and CLEC agree to the terms of the following Additional Performance Assurance Plan ("APAP"), initially prepared in conjunction with CenturyLink's merger with Qwest.

2.0 Plan Structure

2.1 The APAP is a self-executing remedy plan. CLEC shall be provided with payments if, as applicable, Qwest does not provide parity between the service it provides to CLEC and that which it provided to CLECs in the year prior to the Merger Filing Date.[2]

2.2 As specified in sections 6.0 and 7.0 and Attachments 1 and 2, payment is generally on a per occurrence basis, (i.e., a set dollar payment times the number of non-conforming service events). For the performance measurements which do not lend themselves to per occurrence payment, payment is on a per measurement basis, (i.e., a set dollar payment). The level of payment also depends upon the number of consecutive months of non-conforming performance, (i.e., an escalating payment the longer the duration of non-conforming performance) unless otherwise specified.

2.3 Qwest shall be in conformance with the parity standard when service Qwest provides to CLEC in the current month ("CLEC current") is at least equivalent to the service Qwest provided to CLEC in the year prior to the Merger Filing Date ("CLEC prior"). The APAP relies upon statistical scoring to determine whether any difference between CLEC current and CLEC prior performance results is significant, that is, not attributable to simple random variation. Statistical parity shall exist when performance results for CLEC current performance and CLEC prior performance result in a z-value that is no greater than the critical z-values listed in the Critical Z-Statistical Table in section 5.0.

3.0 Performance Measurements

3.1 The performance measurements that are in the APAP are identified in Attachment 1 and sections 6.3 and 7.4. Each performance measurement identified is

[1] "Qwest," as used in this agreement, refers to the legacy Qwest ILEC territory.
[2] The "Merger Filing Date" refers to May 10, 2010, which is the date on which Qwest and CenturyLink made their merger filing with the FCC.

defined in the Performance Indicator Definitions ("PIDs") included in the SGAT at Exhibit B.

3.1.1 On Attachment 1 the measurements have been given a High, Medium, or Low designation.

3.1.2 Where applicable elsewhere in the APAP, this provision modifies other provisions and operates as follows: For any non-interval parity performance sub-measure, Qwest shall apply one allowable miss to a sub-measure disaggregation that otherwise would require 100% performance before the performance is considered as non-conforming to standard (1) if at the CLEC-aggregate level, the performance standard is met or (2) where the CLEC-aggregate performance must be 100% to meet the standard, the CLEC-aggregate performance is conforming after applying one allowable miss at that level.

4.0 Statistical Measurement

4.1 Qwest uses a statistical test, namely the modified "z-test," for evaluating the difference between two means or two percentages, to determine whether a parity condition exists between the results for CLEC current and CLEC prior. The modified z-tests shall be applicable if the number of data points are greater than 30 for a given measurement. For testing measurements for which the number of data points are 30 or less, Qwest will use a permutation test to determine the statistical significance of the difference between CLEC current and CLEC prior performance.

4.2 Qwest shall be in conformance when the monthly performance results for parity measurements (whether in the form of means, percents, or proportions and at the equivalent level of disaggregation) are such that the calculated z-test statistics are not greater than the critical z-values as listed in Table 1, section 5.0.

The formula for determining parity using the modified z-test is:

$$z = \text{DIFF} / \sigma_{\text{DIFF}}$$

Where:

$\text{DIFF} = M_{\text{Prior}} - M_{\text{CLEC}}$

M_{Prior} = CLEC prior average or proportion from May 2009 through April 2010

M_{CLEC} = CLEC current average or proportion

σ_{DIFF} = square root $[\sigma^2_{\text{Prior}} (1/ n_{\text{CLEC}} + 1/ n_{\text{Prior}})]$

σPrior = calculated variance for CLEC prior performance from May 2009 through April 2010

n_{Prior} = number of observations or samples used in CLEC prior measurement

n_{CLEC} = number of observations or samples used in CLEC current measurement

The modified z-tests will be applied to reported parity measurements that contain more than 30 data points.

In calculating the difference between CLEC prior and CLEC current performance, the above formula applies when a larger CLEC prior value indicates a better level of performance. In cases where a smaller CLEC prior value indicates a higher level of performance, the order is reversed, i.e., M_{CLEC} - M_{Prior}.

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4.3.1 For parity measurements where the number of data points is 30 or less, Qwest will apply a permutation test to test for statistical significance. Permutation analysis will be applied to calculate the z-statistic using the following logic:

Calculate the modified z-statistic for the actual arrangement of the data
Pool and mix the CLEC prior and CLEC current data sets
Perform the following 1000 times:
- Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC current data set (n_{CLEC}) and one reflecting the remaining data points, (which is equal to the size of the original CLEC prior data set or n_{Prior}).
- Compute and store the modified z-test score (Z_S) for this sample.

Count the number of times the z-statistic for a permutation of the data is greater than the actual modified z- statistic
Compute the fraction of permutations for which the statistic for the rearranged data is greater than the statistic for the actual samples

If the fraction is greater than α, the significance level of the test, the hypothesis of no difference is not rejected, and the test is passed. The α shall be .05 when the critical z value is 1.645 and .15 when the critical z value is 1.04.

5.0 Critical Z-Value

5.1 The following table shall be used to determine the critical z-value that is referred to in section 6.0. It is based on the monthly business volume of the CLEC for the particular performance measurements for which statistic testing is being performed.

TABLE 1: CRITICAL Z-VALUE

CLEC volume (Sample size)	LIS Trunks, UDITs, Resale, UBL-DS1 and DS-3	All Other
1-10	1.04*	1.645
11-150	1.645	1.645
151-300	2.0	2.0
301-600	2.7	2.7
601-3000	3.7	3.7
3001 and above	4.3	4.3

* The 1.04 applies for individual month testing for performance measurements involving LIS trunks and DS-1 and DS-3 that are UDITs, Resale, or Unbundled Loops. The performance measurements are OP-3d/e, OP-4d/e, OP-5a, OP-6-4/5, MR-5a/b, MR-7d/e, and MR-8.
For purposes of determining consecutive month misses, 1.645 shall be used. Where performance measurements disaggregate to zone 1 and zone 2, the zones shall be combined for purposes of statistical testing.

6.0 Payments to CLEC

6.1 Payments to CLEC shall be made solely for the performance measurements designated on Attachment 1. The payment amount for non-conforming service varies depending upon the designation of performance measurements as High, Medium, and Low and the duration of the non-conforming service condition as described below. Non-conforming service is defined in section 4.0.

6.1.1 Determination of Non-Conforming Measurements: The number of performance measurements that are determined to be non-conforming and, therefore, eligible for payments, are limited according to the critical z-value shown in Table 1, section 5.0. The critical z-values are the statistical standard that determines for each CLEC performance measurement whether Qwest has met parity with CLEC prior performance. The critical z-value is selected from Table 1 according to the monthly CLEC volume for the performance measurement. For instance, if the CLEC sample size for that month is 100, the critical z-value is 1.645 for the statistical testing of that parity performance measurement.

6.2 Determination of the Amount of Payment: Payments to CLEC, except as provided for in sections 6.2.3, 6.3 and 10.0, are calculated and paid monthly based on the number of performance measurements exceeding the critical z-value. Payments will be made on either a per occurrence or per measurement basis, depending upon the performance measurement, using the dollar amounts specified in Table 2 below. The dollar amounts vary depending upon whether the performance measurement is designated High, Medium, or Low and escalate depending upon the number of consecutive months for which Qwest has not met the standard for the particular measurement.

6.2.1 The escalation of payments for consecutive months of non-conforming service will be matched month for month with de-escalation of payments for every month of conforming service. For example, if Qwest has four consecutive monthly "misses" it will make payments that escalate from month 1 to month 4 as shown in Table 2. If, in the next month, service meets the standard, Qwest makes no payment. A payment "indicator" de-escalates down from month 4 to month 3. If Qwest misses the following month, it will make payment at the month 3 level of Table 2 because that is where the payment "indicator" presently sits. If Qwest misses again the following month, it will make payments that escalate back to the month 4 level. The payment level will de-escalate back to the original month 1 level only upon conforming service sufficient to move the payment "indicator" back to the month 1 level.

6.2.2 For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Caps," excluding BI-3A, payment to a CLEC in a single month shall not exceed the amount listed in Table 2 below for the "Per Measurement Cap" category. For those performance measurements listed on Attachment 2 as "Performance Measurements Subject to Per Measurement Payments," if any should be added at a later time, payment to a CLEC will be the amount set forth in Table 2 below under the section labeled "Per Measurement Cap."

TABLE 2: PAYMENTS TO CLEC

Per Occurrence							
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Each following month after Month 6 add
High	$150	$250	$500	$600	$700	$800	$100
Medium	$ 75	$150	$300	$400	$500	$600	$100
Low	$ 25	$ 50	$100	$200	$300	$400	$100

Per Measurement Cap							
Measurement Group	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Each following month after Month 6 add
High	$25,000	$50,000	$75,000	$100,000	$125,000	$150,000	$25,000
Medium	$10,000	$20,000	$30,000	$ 40,000	$ 50,000	$ 60,000	$10,000
Low	$ 5,000	$10,000	$15,000	$ 20,000	$ 25,000	$ 30,000	$ 5,000

6.2.3 For the BI-3A performance measurement, the dollar payment amount for non-conforming performance varies depending upon the Total Bill Adjustment Amount for the CLEC. The payment amount is calculated using Table 2A below by multiplying the per occurrence amount times the number of occurrences based on the Total Bill Adjustment Amount,[3] capped at the amount shown in the table for that Total Bill Adjustment Amount. The escalation of payments for consecutive months as stated in section 6.2.1 does not apply.

TABLE 2A: PAYMENTS TO CLECS FOR BI-3A

Total Bill Adjustment Amount	Per Occurrence Amount	Cap
$0 - $0.99	$0	$0
$1 - $199.99	$1	$200
$200 - $999.99	$10	$5,000
$1,000 - $9,999.99	$10	$10,000
$10,000 - $49,999.99	$15	$15,000
$50,000 - $99,999.99	$20	$20,000
$100,000 and over	$25	$25,000

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7.4 Performance Measurements Subject to Per Measurement Payment: The following performance measurements shall have their performance results measured on a region-wide (14 state) basis. Failure to meet the performance standard,

[3] Total Bill Adjustment Amount is determined by subtracting the BI-3A numerator from the BI-3A denominator as defined in the BI-3 PID formula.

therefore, will result in a per measurement payment in each of the Qwest in-region 14 states adopting this APAP. The performance measurements are:

GA-1: Gateway Availability - IMA-GUI
GA-3: Gateway Availability – EB-TA
GA-4: System Availability – EXACT
GA-6: Gateway Availability – GUI-Repair
GA-8: Gateway Availability – IMA XML
PO-1: Pre-Order/Order Response Times
OP-2: Call Answered within Twenty Seconds – Interconnect Provisioning Center
MR-2: Calls Answered within Twenty Seconds – Interconnect Repair Center

GA-1 has two sub-measurements: GA-1A and GA-1D. PO-1 shall have two sub-measurements: PO-1A and PO-1X. PO-1A and PO-1X shall have their transaction types aggregated together.

For these measurements, Qwest will make a payment based upon monthly performance results according to Table 6: Per Measurement Payments will be allocated to CLECs that have opted into the APAP based on their relative level of circuits as contained in the denominator to the MR-8 measure.

TABLE 6: PER MEASUREMENT PAYMENTS TO STATE FUNDS

Measurement	Performance	State Payment	14 State Payment
GA-1,3,4,6,8	1% or lower	$1,000	$14,000
	>1% to 3%	$10,000	$140,000
	>3% to 5%	$20,000	$280,000
	>5%	$30,000	$420,000
PO-1	2 sec. Or less	$1,000	$14,000
	>2 sec. to 5 sec.	$5,000	$70,000
	>5 sec. to 10 sec.	$10,000	$140,000
	>10 sec.	$15,000	$210,000
OP-2/MR-2	1% or lower	$1,000	$14,000
	>1% to 3%	$5,000	$70,000
	>3% to 5%	$10,000	$140,000
	>5%	$15,000	$210,000

8.0 Step by Step Calculation of Monthly Payments to CLEC

8.1 Application of the Critical Z-Values: Qwest shall identify the parity performance measurements that measure the service provided to CLEC by Qwest for the month in question and the critical z-value from Table 1 in section 5.0 that shall be used for purposes of statistical testing for each particular performance measurement. The statistical testing procedures described in section 4.0 shall be applied. For the purpose of determining the critical z-values, each disaggregated category of a performance measurement is treated as a separate sub-measurement. The critical z-value to be applied is determined by the CLEC current volume at each level of disaggregation or sub-measurement.

8.2 Performance Measurements for which Payment is Per Occurrence:

8.2.1 Performance Measurements that are Averages or Means:

8.2.1.1 Step 1: For each performance measurement, the average or the mean that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used.

8.2.1.2 Step 2: The percentage differences between the actual averages and the calculated averages shall be calculated. The calculation is % diff = (CLEC result – Calculated Value)/Calculated Value. The percent difference shall be capped at a maximum of 100%. In all calculations of percent differences in sections 8.0 and 9.0, the calculated percent differences is capped at 100%.

8.2.1.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the percentage calculated in the previous step and the per occurrence dollar amounts from the Payment Table shall determine the payment to the CLEC for each non-conforming performance measurement.

8.2.2 Performance Measurements that are Percentages:

8.2.2.1 Step 1: For each performance measurement, the percentage that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z- statistic for the measurement shall be used.

8.2.2.2 Step 2: The difference between the actual percentages for the CLEC and the calculated percentages shall be determined.

8.2.2.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference in percentage calculated in the previous step, and the per occurrence dollar amount taken from the Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

8.2.3 Performance Measurements that are Ratios or Proportions:

8.2.3.1 Step 1: For each performance measurement the ratio that would yield the critical z-value shall be calculated. The same denominator as the one used in calculating the z-statistic for the measurement shall be used.

8.2.3.2 Step 2: The absolute difference between the actual rate for the CLEC and the calculated rate shall be determined.

8.2.3.3 Step 3: For each performance measurement, the total number of data points shall be multiplied by the difference calculated in the previous step, and the per occurrence dollar amount taken from the Payment Table, to determine the payment to the CLEC for each non-conforming performance measurement.

8.3 Performance Measurements for which Payment is Per Measure:

8.3.1 For each performance measurement where Qwest fails to meet the standard, the payment to the CLEC shall be the dollar amount shown on the "per measure" portion of Table 2: Payments to CLEC.

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11.0 Payment

11.1 Payments to CLEC or the State shall be made one month following the due date of the performance measurement report for the month for which payment is being made. Qwest will pay interest on any late payment and underpayment at the prime rate as reported in the Wall Street Journal. On any overpayment, Qwest is allowed to offset future payments by the amount of the overpayment plus interest at the prime rate.

11.2 Payment to CLEC shall be made via bill credits. To the extent that a monthly payment owed to CLEC under this APAP exceeds the amount owed to Qwest by CLEC on a monthly bill, Qwest will issue a check or wire transfer to CLEC in the amount of the overage. Payment to the State shall be made via check or wire transfer.

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13.0 Limitations

13.1 The APAP shall not become available in the State unless and until the CenturyLink / Qwest merger closes.

13.2 Qwest will not be liable for payments to CLEC until the Commission has approved an interconnection agreement between CLEC and Qwest which adopts the provisions of this APAP.

13.3 Qwest shall not be obligated to make payments for any measurement if and to the extent that non-conformance for that measurement was the result of any of the following: 1) a Force Majeure event, including but not limited to acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers; 2) an act or omission by a CLEC that is contrary to any of its obligations under its interconnection agreement with Qwest or under federal or state law; an act or omission by CLEC that is in bad faith. Examples of bad faith conduct include, but are not limited to: unreasonably holding service orders and/or applications, "dumping" orders or applications in unreasonably large batches, "dumping" orders or applications at or near the close of a business day, on a Friday evening or prior to a holiday, and failing to provide timely forecasts to Qwest for services or facilities when such forecasts are required to reasonably provide services or facilities; or 3) problems associated with third-party systems or equipment, which could not have been avoided by Qwest in the exercise of reasonable diligence, *provided, however*, that this third party exclusion will not be raised in the State more than three times within a calendar year.

> 13.3.1 Qwest will not be excused from payments for any reason except as described in Section 13.0. Qwest will have the burden of demonstrating that its non-conformance with the performance measurement was excused on one of the grounds described in this APAP.

13.4 The implementation of these enforcement terms, and specifically Qwest's payment of any "liquidated damages" hereunder, will not be considered as an admission against interest or an admission of liability in any legal, regulatory, or other proceeding relating in whole or in part to the same performance.

> 13.4.1 CLEC may not use: 1) the existence of this enforcement plan; or 2) Qwest's payment of Tier –1 "liquidated damages" as evidence that Qwest has discriminated in the provision of any facilities or services under Sections 251 or 252, or has violated any state or federal law or regulation. Qwest's conduct

underlying its performance measures, however are not made inadmissible by its terms.

13.4.2 By accepting this performance remedy plan, CLEC agrees that Qwest's performance with respect to this remedy plan may not be used as an admission of liability or culpability for a violation of any state or federal law or regulation. (Nothing herein is intended to preclude Qwest from introducing evidence of any "liquidated damages" under these provisions for the purpose of offsetting the payment against any other damages or payments a CLEC might recover.) .

13.5 By incorporating these liquidated damages terms into the APAP, Qwest and CLEC accepting this APAP agree that proof of damages from any non-conforming performance measurement would be difficult to ascertain and, therefore, liquidated damages are a reasonable approximation of any contractual damages that may result from a non-conforming performance measurement. Qwest and CLEC further agree that payments made pursuant to this APAP are not intended to be a penalty. The application of the damages provided for herein is not intended to foreclose other noncontractual legal and non-contractual regulatory claims and remedies that may be available to a CLEC.

13.6 This APAP contains a comprehensive set of performance measurements, statistical methodologies, and payment mechanisms that are designed to function together, along with the Qwest Performance Assuranace Plan ("QPAP"), as an integrated whole. To elect the APAP, CLEC must adopt the APAP and QPAP in their entirety, in its interconnection agreement with Qwest in lieu of other alternative standards or relief for the same wholesale services governed by the APAP and QPAP. Where alternative standards or remedies for Qwest wholesale services governed by the APAP and QPAP are available under rules, orders, or contracts, including interconnection agreements, CLEC will be limited to either APAP and QPAP standards and remedies or the standards and remedies available under rules, orders, or contracts and CLECs choice of remedies shall be specified in its interconnection agreement.

13.7 Any liquidated damages payment by Qwest under these provisions is not hereby made inadmissible in any proceeding related to the same conduct where Qwest seeks to offset the payments against any other damages a CLEC may recover; whether or not the nature of the damages sought by the CLEC is such that an offset is appropriate will be determined in the relevant proceeding.

13.9 Whenever a Qwest payment to an individual CLEC exceeds $3 million in a month, Qwest may commence a proceeding to demonstrate why it should not be required to pay any amount in excess of the $3 million. Upon timely commencement of the proceeding, Qwest must pay the balance of payments owed in excess of $3 million into escrow, to be held by a third-party pending the outcome of the proceeding. To invoke these escrow provisions, Qwest must file, not later than the due date of the payments, its application. Qwest will have the burden of proof to demonstrate why, under the circumstances, it would be unjust to require it to make the payments in excess of $3 million. If Qwest reports non-conforming performance to CLEC for three consecutive months on 20% or more of the measurements reported to CLEC and has incurred no more than $1 million in liability to CLEC, then CLEC may commence a similar proceeding. In any such proceeding CLEC will have the burden of proof to demonstrate why, under the circumstances, justice requires Qwest to make payments in excess of the amount calculated pursuant to the terms of the APAP. The disputes identified in this section shall be resolved in a manner specified in the Dispute Resolution section of the SGAT or interconnection agreement with the CLEC.

14.0 Reporting

14.1 Upon the Closing Date[4], Qwest will provide CLEC that has an approved interconnection agreement with Qwest, a monthly report of Qwest's performance for the measurements identified in the APAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Qwest will collect, analyze, and report performance data for the measurements listed on Attachment 1 in accordance with the most recent version of the PIDs. Upon CLEC's request, data files of the CLEC's raw data, or any subset thereof, will be transmitted, without charge, to CLEC in a mutually acceptable format, protocol, and transmission medium.

14.2 Qwest will also provide the Commission a monthly report of aggregate CLEC performance results pursuant to the APAP by the last day of the month following the month for which performance results are being reported. However, Qwest shall have a grace period of five business days, so that Qwest shall not be deemed out of compliance with its reporting obligations before the expiration of the five business day grace period. Solely upon the specific order of the Commission, data files of participating CLEC raw data, or any subset thereof, will be transmitted, without charge, to the Commission in a mutually acceptable format, protocol, and transmission form, provided that Qwest shall first initiate any procedures necessary to protect the confidentiality and to prevent the public release of the information pending any applicable Commission procedures. Qwest shall provide such notice as the Commission directs to the CLEC involved. By accepting this APAP, CLEC consents to Qwest providing CLEC's report and raw data to the Commission.

14.3 In the event Qwest does not provide CLEC and the Commission with a monthly report by the last day of the month following the month for which performance results are being reported, Qwest will pay to the State a total of $500 for

[4] The "Closing Date" refers to the closing date of the transaction for which the Applicants have sought approval from the Federal Communications Commission (FCC) and state commissions.

each business day for which performance reports are 6 to 10 business days past the due date; $1,000 for each business day for which performance reports are 11 to 15 business days past the due date; and $2,000 for each business day for which performance results are more than 15 business days past the due date. If reports are on time but are missing performance results, Qwest will pay to the State a total of one-fifth of the late report amount for each missing performance measurement, subject to a cap of the full late report amount. These amounts represent the total payments for omitting performance measurements or missing any report deadlines, rather than a payment per report. Prior to the date of a payment for late reports, Qwest may file a request for a waiver of the payment, which states the reasons for the waiver. The Commission may grant the waiver, deny the waiver, or provide any other relief that may be appropriate.

14.4 To the extent that Qwest recalculates payments made under this APAP, such recalculation shall be limited to the preceding three years (measured from the later of the provision of a monthly credit statement or payment due date). Qwest shall retain sufficient records to demonstrate fully the basis for its calculations for long enough to meet this potential recalculation obligation. CLEC verification or recalculation efforts should be made reasonably contemporaneously with Qwest measurements. In any event, Qwest shall maintain the records in a readily useable form for one year. For the remaining two years, the records may be retained in archived format. Any payment adjustments shall be subject to the interest rate provisions of section 11.1.

15.0 Integrated Audit Program/Investigations of Performance Results

15.1 Audits of the APAP may be conducted in a two-year cycle under the auspices of the participating Commissions in accordance with a detailed audit plan developed by an independent auditor retained for a two-year period. The participating Commissions may select the independent auditor with input from Qwest and CLECs.

15.1.1 The participating Commissions may form an oversight committee of Commissioners who will choose the independent auditor and approve the audit plan. Any disputes as to the choice of auditor or the scope of the audit shall be resolved through a vote of the chairs of the participating commissions pursuant to Section 15.1.4.

15.1.2 The audit plan may be conducted over two years. The audit plan will identify the specific performance measurements to be audited, the specific tests to be conducted, and the entity to conduct them. The audit plan will give priority to auditing the higher risk areas identified in the OSS report. The two-year cycle will examine risks likely to exist across that period and the past history of testing, in order to determine what combination of high and more moderate areas of risk should be examined during the two-year cycle. The first year of a two-year cycle will concentrate on areas most likely to require follow-up in the second year.

15.1.3 The audit plan shall be coordinated with other audit plans that may be conducted by other state commissions so as to avoid duplication, shall not impede Qwest's ability to comply with the other provisions of the APAP and should be of a nature and scope that can be conducted in accordance with the reasonable course of Qwest's business operations.

15.1.4 Any dispute arising out of the audit plan, the conduct of the audit, or audit results shall be resolved by the oversight committee of Commissioners. Decisions of the oversight committee of Commissioners may be appealed to a committee of the chairs of the participating Commissions.

15.2 Qwest may make management processes more accurate or more efficient to perform without sacrificing accuracy. These changes are at Qwest's discretion but will be reported to participating CLECs, the state Commissions and the independent auditor, if any, in meetings in which any party may ask questions about changes made in the Qwest measurement regimen.

15.3 In the event of a disagreement between Qwest and CLEC as to any issue regarding the accuracy or integrity of data collected, generated, and reported pursuant to the APAP, including disagreement regarding changes as part of 15.2, Qwest and the CLEC shall first consult with one another and attempt in good faith to resolve the issue. If an issue is not resolved within 45 days after a request for consultation, CLEC and Qwest may, upon a demonstration of good cause, (e.g., evidence of material errors or discrepancies) request an independent audit to be conducted, at the initiating party's expense. The independent auditor will assess the need for an audit based upon whether there exists a material deficiency in the data or whether there exists an issue not otherwise addressed by the audit plan for the current cycle. The dispute resolution provision of section 18.0 is available to any party questioning the independent auditor's decision to conduct or not conduct a CLEC requested audit and the audit findings, should such an audit be conducted. An audit may not proceed until dispute resolution is completed. Audit findings will include: (a) general applicability of findings and conclusions (i.e., relevance to CLECs or jurisdictions other than the ones causing test initiation), (b) magnitude of any payment adjustments required and, (c) whether cost responsibility should be shifted based upon the materiality and clarity of any Qwest non-conformance with measurement requirements (no pre-determined variance is appropriate, but should be based on the auditor's professional judgment). CLEC may not request an audit of data more than three years from the later of the provision of a monthly credit statement or payment due date.

16.0 Reviews

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16.1.1 Any party may submit a root cause analysis to the Commission requesting removal of a PID or sub-measure from the APAP. In the analysis and recommendations concerning the root cause analysis, the Commission is to consider, at a minimum, whether the root cause analysis provides evidence of no harm, the same harm as covered by other PID measures, non-Qwest related causes, or other factors which directly relate to the harm or circumstances specific to the PID or sub-measure being analyzed.

16.3 Qwest will make the APAP available for CLEC interconnection agreements until five years after the Closing Date. At that time, the Commission and Qwest shall review the appropriateness of the APAP and whether its continuation is necessary.

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18.0 Dispute Resolution

For the purpose of resolving disputes over the meaning of the provisions of the APAP and how they should be applied, the dispute resolution provisions of the CLEC Interconnection Agreement, shall apply.

Attachment 1: Performance Measurements Subject to Per Occurrence Payment

Performance Measurement		Payments					
		Low	Med	High			
GATEWAY							
Timely Outage Resolution	GA-7			X			
PRE-ORDER/ORDERS							
LSR Rejection Notice Interval	PO-3[a]	X					
Firm Order Confirmations On Time	PO-5	X					
Work Completion Notification Timeliness	PO-6[b]	X					
Billing Completion Notification Timeliness	PO-7[b]	X					
Jeopardy Notice Interval	PO-8	X					
Timely Jeopardy Notices	PO-9	X					
Release Notifications	PO-16			X			
(Expanded) – Manual Service Order Accuracy	PO-20		X				
ORDERING AND PROVISIONING							
Installation Commitments Met	OP-3[g]			X			
Installation Intervals	OP-4[c,g]			X			
New Service Quality	OP-5a[g],b[d,g]			X			
Delayed Days	OP-6[e,g]			X			
Number Portability Timeliness	OP-8			X			
Coordinated Cuts On Time – Unbundled Loops	OP-13a			X			
LNP Disconnect Timeliness	OP-17			X			
MAINTENANCE AND REPAIR							
Out of Service Cleared within 24 hours	MR-3[g]			X			
All Troubles Cleared within 4 hours	MR-5[g]			X			
Mean time to Restore	MR-6a[g],b[g],c[g],d[f],e[f]			X			
Repair Repeat Report Rate	MR-7[g]			X			
Trouble Rate	MR-8[g]			X			
LNP Trouble Reports Cleared within Specified Timeframes	MR-11			X			
BILLING							
Time to Provide Recorded Usage Records	BI-1	X					
Billing Accuracy-Adjustments for Errors	BI-3	X					
Billing Completeness	BI-4	X					
NETWORK PERFORMANCE							
Trunk Blocking	NI-1			X			
NXX Code Activation	NP-1			X			

a. PO-3 is limited to PO-3a-1, PO-3b-1, and PO-3c.

b. PO-6 is included with PO-7 as two "families:" PO-6a/PO-7a and PO-6b/PO-7b. Measurements within each family share a single payment opportunity with only the measurements with the highest payment being paid.

c. OP-4 is included with OP-6 as five "families:" OP-4a/OP-6-1, OP-4b/OP-6-2, OP-4c/OP-6-3, OP-4d/OP-6-4, and OP-4e/OP-6-5. Measurements within each family share a single payment opportunity with only the measurement with the highest payment being paid.

d. Section 3.1.2 applies to OP-5b only if the number of orders with trouble in OP-5a is no more than one.

e. For purposes of the APAP, OP-6a and OP-6b will be combined and treated as one. The combined OP-6 breaks down to OP-6-1 (within MSA), OP-6-2 (outside MSA), OP-6-3 (no dispatch), OP-6-4 (zone 1), and OP-6-5 (zone 2).

f. Applicable only to xDSL-I capable loops.

g. Excludes the following product disaggregations as applicable to this PID: Resale Centrex, Resale Centrex 21, Resale DS0 (non-designed), Resale DS0 (designed), Resale DS0, E911/911 Trunks, Resale Frame Relay, Resale Basic ISDN (non-designed), Resale Basic ISDN (designed), Resale Basic ISDN, Resale Primary ISDN (non-designed), Resale Primary ISDN (designed), Resale Primary ISDN, Resale PBX (non-designed), Resale PBX (designed), Resale PBX, Sub-Loop Unbundling, UNE-P (POTS), UNE-P (Centrex), and UNE-P (Centrex 21).

Attachment 2: Performance Measurements Subject to Per Measurement Caps

Billing

- Time to Provide Recorded Usage Records – BI-1
- Billing Accuracy – Adjustments for Errors – BI-3
- Billing Completeness – BI-4