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BEFORE THE ARIZONA CORPORATIC

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PAUL NEWMAN
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BOB STUMP

2010 SEP 27 A 11: 51

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE JOINT NOTICE AND)	DOCKET NOS. T-01051B-10-0194
APPLICATION OF QWEST CORPORATION,)	T-02811B-10-0194
QWEST COMMUNICATIONS COMPANY, LLC,)	T-04190A-10-0194
QWEST LD CORP., EMBARQ)	T-20443A-10-0194
COMMUNICATIONS, INC. D/B/A CENTURY)	T-03555A-10-0194
LINK COMMUNICATIONS, EMBARQ)	T-03902A-10-0194
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.)	

Arizona Corporation Commission

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SEP 27 2010

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NOTICE OF FILING DIRECT TESTIMONY

(PUBLIC VERSION)

Eschelon Telecom of Arizona, Inc., Electric Lightwave, LLC and Mountain Telecommunications of Arizona, Inc. dba Integra Telecom, Level 3 Communications, LLC, McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services, and tw telecom of arizona llc hereby give notice that they are filing the attached Direct Testimony of Timothy J. Gates. The confidential and highly confidential version of the Direct Testimony is being provided to the parties who have executed an Exhibit A and B to the protective order in this docket.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN MAYES, Chairman
GARY PIERCE, Commissioner
SANDRA KENNEDY, Commissioner
PAUL NEWMAN, Commissioner
BOB STUMP, Commissioner

JOINT NOTICE AND APPLICATION OF)	
QWEST CORPORATION, QWEST)	
COMMUNICATIONS COMPANY, LLC,)	
QWEST LD CORP., EMBARQ)	Docket No. T-01051B-10-0194
COMMUNICATIONS, INC. D/B/A)	Docket No. T-02811B-10-0194
CENTURYLINK COMMUNICATIONS,)	Docket No. T-04190A-10-0194
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D/B/A CENTURYLINK, AND CENTURYTEL)	Docket No. T-03555A-10-0194
SOLUTIONS, LLC FOR APPROVAL OF THE)	Docket No. T-03902A-10-0194
PROPOSED MERGER OF THEIR PARENT)	
CORPORATIONS QWEST)	
COMMUNICATIONS INTERNATIONAL INC.)	
AND CENTURYTEL, INC.)	

DIRECT TESTIMONY

OF

TIMOTHY J GATES

ON BEHALF OF

Eschelon Telecom of Arizona, Inc., Electric Lightwave, LLC, Mountain
Telecommunications of Arizona, Inc. d/b/a Integra Telecom;
tw telecom of arizona llc; Level 3 Communications, LLC; and
McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services

PUBLIC VERSION

CONFIDENTIAL AND HIGHLY CONFIDENTIAL DATA HAS BEEN REDACTED

September 27, 2010

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Exhibits

- Exhibit TG-1 – *Curriculum Vitae* of Timothy J Gates
Exhibit TG-2 – Description of Qwest’s OSS Testing in Relation to 271 Authority
Exhibit TG-3 – Assurances Not Met
Exhibit TG-4 – Letters Regarding Streamlined Discovery Process
Exhibit TG-5 – CLEC Comments on Problems with Legacy Embarq OSS
Exhibit TG-6 – Integra Telecom’s May 19th Letter re: OSS problems
Exhibit TG-7 – Charleston Daily Mail Articles
Exhibit TG-8 – CLEC Recommended Conditions
Exhibit TG-9 – Map of Recommended Conditions to Previously-Adopted
Conditions
Exhibit TG-10 – CenturyLink Notice re: Changes to OSS

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Timothy J Gates. My business address is QSI Consulting, 10451 Gooseberry
4 Court, Trinity, Florida 34655.

5 **Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION WITH**
6 **THE FIRM?**

7 A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in regulatory and litigation
8 support, economic and financial modeling, and business plan modeling and development.
9 QSI provides consulting services for regulated utilities, competitive providers,
10 government agencies (including public utility commissions, attorneys general and
11 consumer councils) and industry organizations. I currently serve as Senior Vice
12 President.

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
14 **EXPERIENCE.**

15 A. I received a Bachelor of Science degree from Oregon State University and a Master of
16 Management degree, with an emphasis in Finance and Quantitative Methods, from
17 Willamette University's Atkinson Graduate School of Management. Since I received my
18 Masters, I have taken additional graduate-level courses in statistics and econometrics. I
19 have also attended numerous courses and seminars specific to the telecommunications
20 industry, including both the National Association of Regulatory Utility Commissioners

1 (“NARUC”) Annual and NARUC Advanced Regulatory Studies Programs.

2 Prior to joining QSI, I was a Senior Executive Staff Member at MCI WorldCom, Inc.
3 (“MWC.COM”). I was employed by MCI and/or MWC.COM for 15 years in various public
4 policy positions. While at MWC.COM I managed various functions, including tariffing,
5 economic and financial analysis, competitive analysis, witness training and MWC.COM’s
6 use of external consultants. Prior to joining MWC.COM, I was employed as a Telephone
7 Rate Analyst in the Engineering Division at the Texas Public Utility Commission and
8 earlier as an Economic Analyst at the Oregon Public Utility Commission. Exhibit TG-1
9 contains a complete summary of my work experience and education.

10 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE ARIZONA**
11 **CORPORATION COMMISSION (“COMMISSION”)?**

12 A. Yes, on several occasions. I testified as an expert witness in the following Commission
13 dockets: T-03654-05-0350/T-01051B-05-0350, T-01051B-0454, T-00000A-03-0369, T-
14 00000A-00-0194, T-03654A-00-0882/T-01051B-00-0882, and T-03175A-9-0251. In
15 addition, I have testified more than 200 times in 45 states and Puerto Rico, and filed
16 comments with the Federal Communications Commission (FCC) on various public policy
17 issues including costing, pricing, local entry, competition, universal service, strategic
18 planning, mergers and network issues. *See*, Exhibit TG-1.

19 **Q. DO YOU HAVE EXPERIENCE WITH THE ISSUES IN THIS PROCEEDING?**

1 A. Yes. While at MCI I was involved in several mergers. I have also observed the
2 consolidation in the telecommunications industry over the last ten years or so. Over the
3 course of my career, I have investigated and/or testified on virtually every issue that
4 defines the wholesale relationship between a Bell Operating Company (“BOC”) or
5 incumbent local exchange carrier (“ILEC”) and their competitive local exchange carrier
6 (“CLEC”) customers/competitors. Further, I have experience assisting CLECs in their
7 wholesale relationships with both companies involved in the proposed transaction. For
8 instance, I have participated in dozens of arbitrations since the 1996 amendments to the
9 Communications Act of 1934 (“Act”)¹ were enacted, including arbitrations and other
10 proceedings involving Qwest and CenturyLink (and/or their predecessors).

11 I am knowledgeable about the interconnection and business practice issues addressed in
12 this testimony as well as the potential impacts the proposed transaction may have on the
13 market, competitors and consumers. Further, I have reviewed the Application filed by
14 Qwest and CenturyLink in this proceeding² and the associated documentation.

15 **Q. ON WHOSE BEHALF ARE YOU FILING THIS DIRECT TESTIMONY?**

16 A. My testimony is being filed on behalf of a number of CLECs: Eschelon Telecom of
17 Arizona, Inc., Electric Lightwave, LLC, Mountain Telecommunications of Arizona, Inc.
18 d/b/a Integra Telecom; tw telecom of arizona llc; Level 3 Communications, LLC; and

¹ Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996) (“Telecom Act” or “Act”).

² See, Joint Notice and Application for Expedited Approval of Proposed Merger Transaction, Arizona Corporation Commission Docket Nos. T-01051B-10-0194, May 13, 2010 (“Arizona Joint Application”). For the purposes of this testimony, I will use CenturyLink (as opposed to CenturyTel) to refer to the company seeking to acquire Qwest, unless referring specifically to the legacy CenturyTel company that existed prior to the merger with Embarq.

1 McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services
2 (collectively referred to in my testimony as “Joint CLECs”).

3 **II. PURPOSE AND ORGANIZATION OF TESTIMONY**

4 **Q. PLEASE EXPLAIN THE PURPOSE OF YOUR TESTIMONY.**

5 A. The purpose of my testimony is to demonstrate that the proposed transaction should be
6 rejected, or in the alternative, approved only subject to robust, enforceable commitments
7 or conditions necessary to protect the public interest. The information (or lack thereof)
8 provided by the Joint Applicants to date is woefully insufficient to demonstrate that the
9 proposed transaction is in the public interest, and in fact, that sparse information shows
10 that there is substantial harm that could befall competition and competitors, their end
11 users and ultimately the public interest.

12 At this point, there is only one thing certain about the proposed transaction: uncertainty.
13 The Joint Applicants have put the parties on notice that material changes are coming
14 post-transaction, but has been unable or unwilling to provide any detail about those
15 material changes – *i.e.*, what will and will not change, when changes will occur, how the
16 changes will or will not impact consumers and/or competitors, or why those changes will
17 be made. The significant commercial and regulatory uncertainty surrounding the
18 proposed transaction, in and of itself, is harmful because it provides the Merged

1 Company³ the opportunity to operate to the detriment of competitors and the public.
2 Such uncertainty and the very real potential for harm to the public interest must be
3 addressed by either rejecting the transaction or putting in place enforceable
4 conditions/commitments to prevent or offset this harm. Likewise, as Dr. Ankum
5 explains, the alleged benefits touted by the Joint Applicants amount to nothing more than
6 unsupported, vague statements made to secure transaction approval, and are not verifiable
7 benefits on which the Commission should rely. As a result, the future of
8 telecommunications markets, telecommunication competition upon which consumers
9 rely, and economic development in the state is in serious question due to the proposed
10 transaction.

11 Further, I place this proposed transaction in context by identifying significant problems
12 that have occurred following similar, recent mergers, including the systems meltdown
13 following the FairPoint acquisition of Verizon properties. These examples provide the
14 Commission and competitors an indication of the problems that could be anticipated in
15 Qwest's territory post-transaction, and should give the Commission serious pause when
16 evaluating the Joint Applicants' unsupported claims – particularly in the absence of any
17 true measureable commitments from the Joint Applicants that benefits will result.

18 Finally, to the extent the Commission does not reject the transaction outright, my
19 testimony describes and recommends conditions that the Commission should adopt or

³ "Merged Company" as used in this testimony is defined in Exhibit TG-8 as: "the post-merger company (CenturyLink and its Operating Companies, collectively, after the Closing Date)."

1 enforceable commitments the Commission should obtain from the Joint Applicants as
2 prerequisites to transaction approval to prevent or offset the harm that would result if the
3 transaction is approved as filed.

4 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

5 A. The remainder of my testimony is organized as follows:

- 6 • Section III discusses the requirements and obligations related to interconnection,
7 UNEs and collocation, as well as the significant efforts (and costs) expended by
8 CLECs to get ILECs to live up to these requirements and obligations so that CLECs
9 can secure interconnection, UNEs and collocation on terms, rates and conditions that
10 are just, reasonable and nondiscriminatory.
- 11 • Section IV discusses the harm to CLECs related to CenturyLink taking control of
12 Qwest's wholesale operations, including the challenges of integrating the two
13 companies as well as examples from this very proceeding showing that the Merged
14 Company is attempting to increase transaction costs and undermine CLECs' ability to
15 protect themselves from merger-related harm.
- 16 • Section V discusses the lessons learned from recent, similar transactions. These
17 examples show that the post-transaction integration process in recent mergers caused
18 significant harm to CLECs and retail customers, despite the merging companies in
19 those cases making the same types of unsupported statements about merger benefits
20 that the Joint Applicants have made in this proceeding.
- 21 • Section VI discusses certain commitments/conditions that the Commission should
22 impose upon the Joint Applicants if the Commission is inclined to approve the
23 proposed transaction. Other commitments/conditions are discussed in the testimony
24 of Dr. Ankum. These commitments/conditions are critical to prevent or offset the
25 harms the proposed transaction will cause for the market, CLECs and consumers.

26 **III. CLEC EFFORTS FOR EFFICIENT INTERCONNECTION**

27 A. *Interconnection Rights and Responsibilities Under the Act*

28 **Q. PLEASE DESCRIBE THE INTERCONNECTION REQUIREMENTS UNDER**
29 **THE TELECOM ACT.**

1 A. The FCC and state regulatory bodies have recognized that the various subsections of
2 Section 251 of the Act impose escalating interconnection obligations on carriers
3 depending upon their classifications (*i.e.*, telecommunications carrier, LEC, or ILEC).
4 These classifications are based upon their market power, economic position (*e.g.*,
5 monopoly) and attendant public obligations (*e.g.*, common carrier obligations).
6 Section 251(a) of the Act identifies the general duties of telecommunications carriers to
7 “interconnect directly or indirectly with the facilities and equipment of other
8 telecommunications carriers.” Section 251(b) of the Act identifies the general duties of
9 all LECs which include number portability, dialing parity, and reciprocal compensation.
10 Section 251(c) imposes additional obligations and specific interconnection duties on
11 ILECs, including the duty to negotiate an interconnection agreement (“ICA”) in good
12 faith, provide interconnection on more specific rates, terms and conditions, provide
13 unbundled network elements (“UNEs”), offer services for resale at wholesale rates,
14 provide notice of network changes and provide collocation when requested. The FCC’s
15 *Local Competition Order*⁴ at paragraph 1241 describes these additional obligations as
16 follows:

17 Section 251(c) imposes obligations on incumbent LECs in addition to the
18 obligations set forth in sections 251(a) and (b). It establishes obligations
19 of incumbent LECs regarding: (1) good faith negotiation; (2)
20 interconnection; (3) unbundling network elements; (4) resale; (5)
21 providing notice of network changes; and (6) collocation.

⁴ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; First Report and Order, CC Docket No. 96-98, FCC 96-325, Released August 8, 1996 (“*Local Competition Order*”).

1 These duties and obligations are all focused on affording CLECs equal, non-
2 discriminatory access to ILEC network facilities, systems and services.

3 **Q. ARE ALL ILECS SUBJECT TO THE SAME REQUIREMENTS UNDER THE**
4 **ACT?**

5 A. All ILECs are subject to the requirements of Section 251(c) of the Act. However, some
6 ILECs –such as Qwest – are both ILECs *and* Bell Operating Companies (or BOCs) under
7 the Act. The Act requires BOCs to comply not only with Section 251(c) of the Act, but
8 also Section 271 of the Act. Section 271 requires BOCs to demonstrate compliance with
9 the 14-point competitive checklist before they are allowed to provide in-region
10 interLATA services. The FCC granted Qwest 271 authority throughout its 14-state BOC
11 territory in the 2002-2003 timeframe. Non-BOC ILECs, such as CenturyLink, are not
12 required to comply with Section 271 requirements.

13 **Q. HOW DOES THE STATE GET INVOLVED IN IMPLEMENTING THE**
14 **FEDERAL TELECOMMUNICATIONS REGULATORY FRAMEWORK?**

15 A. The state commissions have jurisdiction over approving ICAs and related disputes (*e.g.*,
16 arbitrations) pursuant to Section 252 of the Act⁵ and numerous provisions of state law.
17 State commissions also establish the rates ILECs are permitted to charge for UNEs,
18 interconnection and collocation under Sections 251 and 252, applying the FCC’s total
19 element long-run incremental cost methodology (“*TELRIC*”). State commissions also

⁵ 47 U.S.C. §§ 252(b), (c) (empowering state regulators to arbitrate interconnection agreements between ILECs and competitors; establishing arbitration procedures; establishing substantive arbitration standards).

1 determine whether certain ILEC central offices meet the federal standards for “delisting”
2 UNE loops or transport as a Section 251 unbundled network element. In addition, states
3 provided consultation to the FCC in relation to the BOCs’ applications for Section 271
4 approval. As explained below, in this role, the state commissions conducted several
5 years’ worth of fact-finding, hearings, and testing, and issued extensive recommendations
6 to the FCC regarding the BOCs’ adherence to the 14-point competitive checklist. Many
7 states have continued their role in monitoring Qwest’s compliance with Section 271
8 requirements by monitoring the Change Management Process (“CMP”) and Qwest’s
9 wholesale performance indicators and associated performance remedy plans.
10 Furthermore, states have an important role in determining whether a telecommunications
11 company should be relieved of its duties under Section 251 based upon the rural status of
12 that company.

13 ***B. ILEC Impacts on Market Entry Methods***

14 **Q. DID THE ACT MANDATE A PARTICULAR ENTRY STRATEGY FOR**
15 **COMPETITION?**

16 A. No. Back in 1995, when Congress was establishing the final terms of the new federal law
17 (the Telecom Act was signed into law in early February 1996), nobody was really sure
18 how, exactly, competition would develop. In the FCC’s *Local Competition Order* the
19 FCC discussed the Act’s anticipated market entry methods.

20 The Act contemplates three paths of entry into the local market -- the
21 construction of new networks, the use of unbundled elements of the

1 incumbent's network, and resale. The 1996 Act requires us to implement
2 rules that eliminate statutory and regulatory barriers and remove economic
3 impediments to each. We anticipate that some new entrants will follow
4 multiple paths of entry as market conditions and access to capital permit.
5 Some may enter by relying at first entirely on resale of the incumbent's
6 services and then gradually deploying their own facilities.⁶

7 Since passage of the Act, competitors have used all three paths of entry – (1) resale, (2)
8 UNEs, and (3) entirely separate network. The clients I represent in this proceeding fall
9 into all three categories. In cases two and three, the carriers are facilities-based – *i.e.*,
10 they own their own switches and in some instances, their own metro fiber rings that
11 provide interoffice transport. For instance, Integra and PAETEC primarily install their
12 own switching and fiber networks and purchase local access loops, interoffice transport,
13 collocation and other services from the ILEC in order to access customers (though both
14 serve a limited number of customers via resale). By comparison, cable-based CLECs
15 own both the switch and the “last mile” facilities (*i.e.*, hybrid fiber coaxial distribution
16 plant). But, like Integra and PAETEC, cable-based CLECs must still interconnect with
17 the ILEC in order to send and receive traffic to the public switched telephone network.
18 In this way, the road to local competition always goes through the ILEC no matter what
19 entry strategy is employed.

20 **Q. CAN RELYING ON THE ILEC FOR NETWORK ELEMENTS OR**
21 **INTERCONNECTION RESULT IN CHALLENGES FOR THE CLEC?**

22 A. Yes. Putting aside the normal competitive risks of any business, a CLEC faces the
23 “Catch 22” of obtaining essential elements of its productive resource – material pieces of

⁶ *Local Competition Order* at ¶ 12.

1 its local network – from its principal competitor. For this competitive model to work, the
2 business, technical and operational terms by which the bottleneck elements are available
3 and by which networks are interconnected must be efficient, technology-neutral and
4 stable, so that CLECs can plan their business and make reasonable investment decisions.
5 The problem with this model is that ILECs have the incentive to hinder the CLECs'
6 efforts at every turn. As the FCC correctly noted in the *Local Competition Order*, “An
7 incumbent LEC also has the ability to act on its incentive to discourage entry and robust
8 competition by not interconnecting its network with the new entrant’s network or by
9 insisting on supracompetitive prices or other unreasonable conditions for terminating
10 calls from the entrant’s customers to the incumbent LEC’s subscribers.”⁷ That is why
11 one of the most critical components of this regulatory scheme is the vigilant enforcement
12 of the “stringent” nondiscrimination standard that Congress imposed on ILECs in the
13 Telecom Act. Under the stringent standard of nondiscrimination, not only is the ILEC
14 required to treat other carriers equally, the ILEC is also required to treat competitors the
15 same as it treats itself in providing access to the bottleneck elements of the local
16 network.⁸ As the FCC noted, this more stringent nondiscrimination requirement is
17 essential to ensure that competitors have a “meaningful opportunity to compete” against
18 the ILEC.⁹

⁷ *Local Competition Order* at ¶ 10.

⁸ *Id.* at ¶¶ 313-315. Equal treatment is subject to two limited exceptions - legitimate cost differences and technical infeasibility, the later which the FCC said would rarely occur. Also, the burden to prove legitimate cost differences or technical infeasibility rests with the ILEC.

⁹ *Id.* at ¶ 315.

1 **Q. TELECOMMUNICATIONS COMPETITION SEEMS TO DIFFER FROM THE**
2 **STANDARD COMPETITIVE BUSINESS MODEL. WOULD YOU AGREE?**

3 A. Yes. With most retail products or services, if customers want to switch suppliers, they
4 just switch. But in local telecommunications markets, the old provider (which in a
5 majority of cases is the ILEC) has to help move the retail customer to the new provider.
6 Likewise, with most retail products or services, if a customer switches, the old supplier is
7 simply out of the picture. But in local telecommunications, the old provider (when it is
8 the ILEC) remains constantly involved, sending calls to, and receiving calls from, its own
9 former customers (or the old provider may continue a relationship with the customer by
10 continuing to provide long-distance service, for example, after the customer has switched
11 local providers). And all the while, the new provider must rely on the old provider for
12 critical inputs to the new provider's retail services such as interconnection, UNEs,
13 collocation and resale.

14 Because of this unusual but unavoidable continuing interaction among providers, for
15 local telecommunications competition to work, competing providers must cooperate
16 behind-the-scenes, even though they are rivals, and even though their economic incentive
17 (as profit-maximizing firms) is to undermine – not help – the other provider's ability to
18 compete for end user customers. As a result, no matter how much retail competition
19 there might be, regulation is needed to make sure that the critical behind-the-scenes
20 cooperation actually occurs. This is the essence and purpose of Sections 251 and 271 of
21 the Act. Because ILECs and BOCs enjoy a significant advantage over CLECs in terms of

1 determining whether the wholesale relationship between them is successful, Sections 251
2 and 271 (and continued enforcement and compliance with those sections) are absolutely
3 critical to ensuring that ILECs and BOCs continue to cooperate with CLECs.

4 **Q. BASED ON THE INFORMATION ABOVE, IT SEEMS THAT THE CLECS ARE**
5 **ALSO CUSTOMERS OF THE ILEC. IS THAT CORRECT?**

6 A. Yes. The CLECs are frequently customers of the ILECs, purchasing network elements or
7 services from the ILEC on a wholesale basis for use in providing competitive retail
8 services to end-user customers. Significantly, the ILEC will continue to compete for that
9 retail end-user customer's business, while at the same time, acting as a wholesale
10 provider of critical inputs to the competitor. Thus, the ILEC is both a competitor of, and
11 wholesale supplier to, the competitive providers in that market.

12 **Q. DOES THE FACT THAT CLECS ARE CUSTOMERS OF QWEST AND, TO A**
13 **MUCH LESSER EXTENT, CENTURYLINK INFLUENCE THE CLECS'**
14 **CONCERNS REGARDING THE PROPOSED TRANSACTION?**

15 A. Absolutely. Not only are the CLECs concerned about the potential to pass through costs
16 of the proposed transaction in rates, they are also concerned with the ongoing stability
17 and viability of the companies. As customers, they also want to know that the services
18 currently purchased will continue to be available and that the quality and features will at
19 least be constant, if not improve. Further, if this transaction is approved they want to
20 ensure that the Merged Company does not continue to impose certain anti-competitive
21 wholesale practices on competitors. Qwest and CenturyLink should not be rewarded

1 with merger approval for past violations or noncompliance with regulatory requirements,
2 and the Merged Company should not be allowed to continue anti-competitive practices
3 going forward. The proposed transaction is contrary to the public interest if a merging
4 party is violating the law. The proposed transaction could make this problem worse in
5 each of the states at issue by increasing the Merged Company's incentive to engage in or
6 continue anticompetitive conduct and efforts to achieve the enormous synergy savings
7 projected by the Joint Applicants. Finally, integration has been difficult in many mergers
8 that Dr. Ankum and I discuss in our testimonies and the CLECs need enforceable, written
9 conditions/commitments that the best systems of the merging companies will be in place
10 following the proposed transaction, and that the integration of the merging companies
11 will not negatively impact the competitors' operations and ability to compete.

12 **Q. PLEASE CONTINUE WITH YOUR DISCUSSION OF THE UNIQUE**
13 **CONDITIONS IN TELECOMMUNICATIONS AS OPPOSED TO OTHER**
14 **INDUSTRIES.**

15 A. There is a phenomenon referred to in the industry as "network effects," or, sometimes, as
16 "Metcalfe's Law." The basic idea is that a network becomes more and more valuable as
17 more and more people are connected to it. A telephone "network" with only one phone
18 attached is useless. A network with two phones is useful, a thousand phones is better,
19 and a million is even better. To state the obvious, the value of a service is maximized if
20 the customer can contact any other person on the network. In competitive terms, though,

1 this means that, other things being equal, whichever network is the biggest will be the
2 most valuable, and the one to which consumers will want to be connected.

3 **Q. DOES THE NETWORK EFFECT RESULT IN THE INCUMBENT'S NETWORK**
4 **ALWAYS BEING MORE VALUABLE THAN SMALLER NETWORKS?**

5 A. Absent regulation that would be the case. Even in the Arizona Joint Application (at p.
6 11), the Joint Applicants discuss the importance of size in order to compete:

7 Even a carrier that knows its customers' preferences cannot compete
8 effectively in today's marketplace without sufficient size and scope to
9 match those preferences with suitable products or services offered at
10 affordable rates.

11 As long as the existing, incumbent network is bigger than a competing network, the
12 competing network will not be able to attract any customers – unless those customers can
13 call, and be called by, the people connected to the existing network. Additionally, as the
14 incumbent's network gets bigger, it is able to spread its costs over a larger customer base
15 – resulting in efficiencies and economies of scale and scope. CenturyLink has stated that
16 “greater economies of scale result in lower overhead costs per customer, or per access
17 line” and “increased product availability and decreased per unit cost for a given
18 service...”¹⁰ Competition simply cannot develop if competitors do not have clear and
19 stable terms, conditions and rates for connecting to, and exchanging traffic with, the
20 existing incumbent network. Similarly, competition would not develop if the ILEC is
21 able to keep the benefits of its economies of scale and scope, and associated efficiencies
22 for itself and provide competitors access to critical bottleneck elements of the local

¹⁰ CenturyLink Response to Colorado Office of Consumer Counsel Data Request #1-15(a) and (b).

1 network on a more costly or less efficient basis. Again, Sections 251 and 271 of the Act
2 are designed to ensure that CLECs are on an equal footing with the ILEC and the benefits
3 accrued by the ILEC due to network effects and economies of scale and scope are
4 realized by the local telecommunications market as a whole, including CLECs.

5 **Q. HAS FACILITIES-BASED COMPETITION BEEN ABLE TO OVERCOME THE**
6 **MARKET POWER AND CONTROL THAT ILECS AND BOCS POSSESS OVER**
7 **THEIR LOCAL MARKETS?**

8 A. No. The latest FCC reports, even when adding in interconnected VoIP offerings, still
9 show the ILECs with more than 70 percent of the market.¹¹ Further, the FCC has
10 recognized Qwest's monopoly over wholesale inputs relied upon by CLECs. In rejecting
11 Qwest's recent petition for forbearance in the Minneapolis, Denver, Seattle and Phoenix
12 metropolitan statistical areas ("MSAs"), the FCC concluded that "[t]he record does not
13 reflect any significant alternative sources of wholesale inputs for carriers in the four
14 MSAs."¹² And specifically with respect to Qwest's serving area in Phoenix, Arizona, in
15 June 2010, the FCC concluded:

16 ...based on the data in the record, Qwest fails to demonstrate that there is
17 sufficient competition to ensure that, if we provide the requested relief,
18 Qwest will be unable to raise prices, discriminate unreasonably, or harm
19 customers. For example, the record reveals that no carrier besides Qwest
20 provides meaningful wholesale services throughout the Phoenix

¹¹ FCC "Local Telephone Competition: Status as of June 30, 2009" released September 2010 at Table 11 (showing non-ILEC share of total end-user switched access lines and VoIP subscriptions to be 28%).

¹² *In the Matter of Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, Memorandum Opinion and Order, WC Docket No. 07-97, FCC 08-174, Released July 25, 2008 ("*Qwest Forbearance Order*") at ¶ 37.

1 marketplace, and that competitors offering business services largely must
2 rely on inputs purchased from Qwest itself to provide service.¹³

3 Importantly, the FCC pointed to the lack of options for wholesale customers as a reason
4 for denying Qwest's forbearance petition. This market power not only extends to
5 wholesale services such as UNEs, interconnection and collocation required of ILECs
6 pursuant to Section 251(c) of the Act, but also to other wholesale services provided by
7 the ILECs, such as special access,¹⁴ as evidenced by the supracompetitive rates ILECs are
8 currently charging for special access in areas where they have received special access
9 pricing flexibility. The fact is that ILECs and BOCs continue to be entrenched
10 incumbents in their local territories and the competition in those spaces is fragile and
11 depends largely on use of incumbent facilities for its very existence.

12 **C. Imposition of Costs on CLECs for Interconnection**

13 **Q. HAVE CLECS SPENT LARGE SUMS OF MONEY ESTABLISHING THE**
14 **RATES, TERMS AND CONDITIONS BY WHICH THEY PURCHASE**
15 **NETWORK ELEMENTS, COLLOCATION AND INTERCONNECTION FROM**
16 **ILECS?**

17 **A. Absolutely. First, CLECs and ILECs must negotiate those rates, terms and conditions for**
18 **a period of time. Then, for each issue on which the companies are unable to reach**

¹³ *In the Matter of Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113, Released June 22, 2010 ("*Qwest Phoenix MSA Forbearance Order*") at ¶ 2.

¹⁴ Wholesale services also includes "commercial agreements," which "include but are not limited to wholesale metro Ethernet agreements, OCN (SONET) agreements, Local Services Platform (e.g., QLSP) agreements, Dark Fiber agreements, Broadband for Resale agreements, and line sharing agreements." See, Exhibit TG-8.

1 agreement, they must arbitrate that issue before each state commission. It is not
2 uncommon for a CLEC and ILEC to disagree on dozens of issues, each of which must be
3 arbitrated. Once the final agreement is established, it must be submitted to the state
4 commission for approval. I have been involved in dozens of these arbitration cases and
5 can say, first hand, that they consume an enormous amount of time and money for both
6 the CLEC and the ILEC. Indeed, even after a final order from the state commission,
7 there may be appeals that consume substantial additional time and money. On a separate
8 but related note, often cost-based rates that apply to UNEs, interconnection and
9 collocation in an ICA are established in separate generic cost dockets in which CLECs
10 participate to ensure that the resulting rates satisfy the federal TELRIC¹⁵ pricing
11 standards. My firm, QSI, recently participated in generic cost dockets for Qwest in
12 Minnesota and Colorado. The Minnesota cost proceeding (Minnesota Docket No. P-
13 421/AM-06-713) lasted for about three years, and it has been about one and one-half
14 years since Qwest filed its initial testimony in the ongoing Colorado proceeding
15 (Colorado Docket No. 07A-211T). During this time, CLECs have expended a significant
16 amount of time and money in an attempt to ensure that Qwest's rates for UNEs,
17 interconnection and collocation comply with the law. Furthermore, CLECs have spent an
18 enormous amount of time and money attempting to ensure that the BOCs comply (and

¹⁵ "TELRIC" stands for Total Element Long Run Incremental Cost and is discussed and defined in the FCC's *Local Competition Order* at ¶¶ 674-703. That pricing methodology is used to price UNEs and interconnection services. The FCC rules which require the ILEC to price its network elements using TELRIC also require the ILEC to provide non-discriminatory access to those same elements as well as interconnection. *See*, 47 C.F.R. § 51 Subpart F (Pricing of Elements) and 47 C.F.R. §§ 51.305, 51.311 and 51.313.

1 continue to comply) with the obligations set forth in approved ICAs and Sections 251 and
2 271 of the Act.

3 **Q. PLEASE EXPLAIN WHY LITIGATION HAS BEEN REQUIRED TO RESOLVE**
4 **THESE ISSUES?**

5 A. There is much at stake for the ILECs and the CLECs; ILECs want to retain or grow their
6 market share and CLECs want to offer competitively-priced innovative services to gain
7 more customers, which results in reduced ILEC market share. Since ILECs continue to
8 have the largest percentage of local customers in the local exchanges by far, that means
9 that CLECs most often increase market share by converting existing ILEC customers to
10 CLEC services.

11 FCC orders discuss the ILEC incentives in detail and the FCC's observations have
12 proven, over and over again, to be correct. For instance, just after the passage of the Act,
13 the FCC noted in the *Local Competition Order*, that:

14 Given that the incumbent LEC will be providing interconnection to its
15 competitors pursuant to the purpose of the 1996 Act, the LEC has the
16 incentive to discriminate against its competitors by providing them less
17 favorable terms and conditions of interconnection than it provides itself.¹⁶

18 The FCC recognized that one of the goals of the Act, and competition in general, was to
19 eliminate this ILEC incentive and ability to impose financial and operational burdens on
20 CLECs. At paragraph four of the *Local Competition Order* the FCC stated,

21 Competition in local exchange and exchange access markets is desirable,
22 not only because of the social and economic benefits competition will

¹⁶ *Local Competition Order* at ¶ 218.

1 bring to consumers of local services, but also because competition
2 eventually will eliminate the ability of an incumbent local exchange
3 carrier to use its control of bottleneck local facilities to impede free market
4 competition. Under section 251, incumbent local exchange carriers
5 (LECs), including the Bell Operating Companies (BOCs), are mandated to
6 take several steps to open their networks to competition, including
7 providing interconnection, offering access to unbundled elements of their
8 networks, and making their retail services available at wholesale rates so
9 that they can be resold.

10 These incentives have not changed, and indeed, one could argue that in today's more
11 difficult business climate for wireline LECs, the incentive to protect their legacy
12 customer base has increased for ILECs. Thus, ILECs continue to have the ability and
13 incentive to impede competition. One way ILECs have attempted to impede competition
14 is by making it very difficult and costly for CLECs to secure rates, terms and conditions
15 required by federal and state law.

16 **Q. PLEASE PROVIDE AN EXAMPLE.**

17 A. During the 271 approval process for Qwest, one thing the state commissions and FCC did
18 was to require a Statement of Generally Available Terms ("SGAT"). SGATS were to
19 include a baseline offering of UNEs, interconnection and collocation services of the BOC
20 that complied with the 271 obligations, and were offered by the BOCs to CLECs in
21 negotiations. After Qwest received 271 approval, however, it unilaterally withdrew its
22 SGATs, replacing them instead with Qwest's template proposals as Qwest's baseline
23 offering in negotiations.

24 **Q. DID THE NEW QWEST TEMPLATE PROPOSAL RESULT IN MORE**
25 **DISPUTES?**

1 A. Yes. Qwest's template proposals contain *Qwest's* view of its obligations under the Act
2 and implementing rules, and do not necessarily reflect the terms and conditions that were
3 reviewed and found satisfactory during the 271 process. Not surprisingly, this has
4 created additional disputes, delay and litigation as CLECs are now forced to arbitrate
5 issues where Qwest's view of its obligations does not comport with CLECs' view (or the
6 view of various state regulatory agencies when they reviewed Qwest's SGATs).

7 **Q. CAN YOU PROVIDE SOME OTHER EXAMPLES OF DISPUTES THAT MAY**
8 **ARISE OVER AN ICA?**

9 A. Yes. In addition to the disputes I just mentioned, there are frequently billing disputes
10 over traffic types, jurisdiction of traffic, bills for services rendered or not rendered, etc.
11 There are also disputes over network engineering responsibilities, response times for
12 trouble reports, and quality of service, not to mention issues with submitting orders
13 through the various system interfaces. In addition, I have recently been involved in a
14 number of disputes surrounding the customer acquisition and migration processes that are
15 a component of interconnection agreements between incumbents and competitors (I will
16 discuss several examples of these problems later in my testimony). Further, the legal
17 teams sometimes have disputes over orders and rulings that may or may not apply to
18 services under an ICA.¹⁷ Resolving these types of issues results in additional time and
19 expense for both CLECs and ILECs.

¹⁷ The legal teams sometimes invoke the "Change of Law" provisions of an ICA to renegotiate a condition or term or to eliminate them altogether.

1 **IV. HARM FROM CENTURYLINK'S CONTROL OF QWEST'S WHOLESALE**
2 **OPERATIONS**

3 **A. *CenturyLink's Lack of Experience Provisioning Services On The Scale of***
4 ***Qwest's Wholesale Operations***

5 **Q. CENTURYLINK CLAIMS THAT WHOLESALE ISSUES SHOULD BE OF NO**
6 **CONCERN BECAUSE THE TRANSACTION IS A STOCK-FOR-STOCK,**
7 **PARENT LEVEL TRANSACTION.¹⁸ IS THE COMPANY CORRECT?**

8 A. No. Regardless of how the transaction is structured, the end result is that Qwest will be
9 controlled by CenturyLink if the transaction is approved. CenturyLink acknowledges this
10 in the following statement: "At closing, Qwest will become a direct, wholly-owned
11 subsidiary of CenturyLink and all Qwest subsidiaries, including QC, will be indirectly
12 *owned and controlled by CenturyLink...*"¹⁹ This means that post-merger, CenturyLink
13 will make the decisions about how Qwest interacts with its wholesale customers, how
14 much Qwest will attempt to charge for its wholesale services, the resources that will be
15 dedicated to wholesale service quality and provisioning, the amount Qwest invests in its
16 network for advanced services, etc.

¹⁸ See, e.g., Joint Comments of CenturyLink and Qwest on Procedural Issues, Minnesota Docket No. P-430/PA-10-456, filed June 1, 2010, at p. 2 ("A key aspect of the transaction, reflected in the Joint Petition, is the fact that all Minnesota Operating Companies will continue to operate as separate entities under their respective certificates of authority after the transaction is completed. Thus, issues and disputes that involve the relationship between the Operating Companies and other carriers need not be part of this proceeding.")

¹⁹ Direct Testimony of Kristen McMillan on behalf of Embarq Communications, Inc. d/b/a CenturyLink Communications, Embarq Payphone Services, Inc. d/b/a CenturyLink, and CenturyTel Solutions, LLC, Arizona Docket Nos. T-01051B-10-0194, et al., May 24, 2010 ("McMillan Arizona Direct"), at p. 5, lines 23-25.

1 Further, CenturyLink's claim that the merger will be a non-event has been rejected in the
2 past. The Embarq/CenturyTel merger was a stock-for-stock parent level transaction, like
3 the proposed transaction, yet both the FCC and state commissions found it necessary to
4 impose numerous wholesale-related conditions on the Embarq/CenturyTel merger. That
5 CenturyLink would offer the previously rejected argument as the basis for approval
6 without conditions is an apparent attempt on the Joint Applicants' part to avoid
7 addressing head-on the legitimate concerns raised by wholesale customers.

8 **Q. DO YOU HAVE CONCERNS ABOUT TURNING OVER THE CONTROL OF**
9 **QWEST'S WHOLESALE OPERATIONS TO CENTURYLINK?**

10 A. Yes. Unlike Qwest, CenturyLink is not a BOC in any of its existing territories. As such,
11 CenturyLink has not been required to satisfy the critical market-opening provisions found
12 in the 14-point competitive checklist under Section 271 of the Act.²⁰ I will explain below
13 why the lack of CenturyLink experience as a BOC is of grave concern to CLECs and
14 should be of paramount concern to the Commission.

15 Traditionally, CenturyLink has operated mostly in rural areas²¹ (CenturyLink has rural
16 exemptions that limit its section 251 wholesale duties in some of its areas²²), and only
17 recently acquired a few more urban areas through its acquisition of Embarq.

²⁰ 47 U.S.C. § 271(c)(2)(B).

²¹ See, e.g., Direct Testimony of James Campbell on behalf of Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp., Arizona Docket Nos. T-01051B-10-0194, May 24, 2010 ("Campbell Arizona Direct"), at p. 13, lines 25-26 ("CenturyLink's distinctive experience in serving smaller, rural areas...") See also, Arizona Joint Application at p. 5 ("CenturyLink has a successful history of providing services to rural America...")

²² Section 251(f) of the Telecommunications Act of 1996 exempts rural telephone companies from the obligations applicable to ILECs under Section 251(c) of the Act until a state commission lifts the rural exemption.

1 CenturyLink recently stated: "The Qwest merger will change the profile of our local
2 exchange markets to include more large urban areas, with which we have limited
3 operating experience."²³ Accordingly, CenturyLink has very little, if any, experience
4 with the types and quantities of wholesale obligations and relationships that are found in
5 Qwest's BOC territories. Moreover, CenturyLink has provided no commitments that it
6 will maintain or improve the wholesale services, rates and service quality that CLECs
7 experience with Qwest today.

8 **Q. PLEASE ELABORATE ON THE DIFFERENCE BETWEEN QWEST'S AND**
9 **CENTURYLINK'S EXPERIENCE IN THIS REGARD.**

10 A. Since CenturyLink has traditionally operated in rural areas exempt from full competition,
11 it has not been required to handle the same quantities of wholesale customers and
12 wholesale orders as Qwest is accustomed to handling. For example, CenturyLink
13 provided data showing that it processed a total of ***BEGIN CONFIDENTIAL [REDACTED]
14 END CONFIDENTIAL***²⁴ LNP number ports in Arizona in 2009, and ***BEGIN
15 CONFIDENTIAL [REDACTED] END CONFIDENTIAL***²⁵ LNP number ports company-
16 wide in 2009. By comparison, Qwest processed ***BEGIN CONFIDENTIAL
17 [REDACTED] END CONFIDENTIAL***²⁶ ports in Arizona and ***BEGIN
18 CONFIDENTIAL [REDACTED] END CONFIDENTIAL***²⁷ ports company-wide *in the*

²³ CenturyTel, Inc. 10-Q, filed August 6, 2010, at p. 33 (emphasis added).

²⁴ CenturyLink Response to Integra Arizona Data Request #2(i), Confidential.

²⁵ CenturyLink Response to Integra Arizona Data Request #2(i), Confidential.

²⁶ Qwest Response to Integra Arizona Data Request #2-1(i), Confidential Attachment B.

²⁷ Qwest Response to Integra Arizona Data Request #2-1(i), Confidential Attachment B.

1 *first half of 2010 alone.* Or, in other words, Qwest processes, on average, ***BEGIN
2 CONFIDENTIAL [REDACTED] END CONFIDENTIAL*** number ports in Arizona
3 alone than does CenturyLink throughout its entire legacy territory. And Qwest processes
4 ***BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL*** number
5 ports company-wide than CenturyLink processes company-wide.

6 Regarding UNE loops, CenturyLink has stated that in Arizona, CLECs purchase
7 ***BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***²⁸ UNE loops from
8 CenturyLink, and company-wide CLECs purchase ***BEGIN CONFIDENTIAL
9 [REDACTED] END CONFIDENTIAL***²⁹ UNE loops from CenturyLink. By comparison,
10 CLECs purchase ***BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***³⁰
11 UNE loops from Qwest in Arizona alone. Qwest provisions ***BEGIN
12 CONFIDENTIAL [REDACTED] END CONFIDENTIAL*** the number of loops in
13 Arizona alone than CenturyLink provisions in its 33-state territory. Regarding Enhanced
14 Extended Links (EELs), CenturyLink states that CLECs purchase ***BEGIN
15 CONFIDENTIAL [REDACTED] END CONFIDENTIAL***³¹ EEL(s) from CenturyLink in
16 Arizona and ***BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***³²
17 EEL(s) company-wide. By comparison, CLECs purchase ***BEGIN

²⁸ CenturyLink Response to Integra Arizona Data Request #2(b), Confidential.

²⁹ CenturyLink Response to Integra Arizona Data Request #2(b), Confidential.

³⁰ Qwest Response to Integra Arizona Data Request #1(b), Confidential Attachment A.

³¹ CenturyLink Response to Integra Arizona Data Request #2(d), Confidential.

³² CenturyLink Response to Integra Arizona Data Request #2(d), Confidential.

1 **CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL*****³³ EELs from Qwest in Arizona,
2 or *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL***** EELs
3 than are purchased from CenturyLink throughout CenturyLink's entire legacy territory.
4 In Arizona, *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL*****³⁴ CLECs
5 purchase *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL*****³⁵ collocation
6 arrangement(s) from CenturyLink and, company-wide, *****BEGIN CONFIDENTIAL**
7 [REDACTED] **END CONFIDENTIAL*****³⁶ CLECs purchase a total of *****BEGIN**
8 **CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL*****³⁷ collocation arrangements from
9 CenturyLink. Qwest sells *****BEGIN CONFIDENTIAL** [REDACTED] **END**
10 **CONFIDENTIAL*****³⁸ collocation arrangements to *****BEGIN CONFIDENTIAL** [REDACTED]
11 **END CONFIDENTIAL***** CLECs in Arizona.³⁹ This data shows that CenturyLink
12 will inherit a much larger wholesale operation than it has operated to date.

13 **B. *Integration Challenges And The Complete Lack Of Information Regarding That***
14 ***Integration Effort***

15 **Q. CENTURYLINK AND QWEST SUGGEST THAT THE PROPOSED**
16 **TRANSACTION WILL NOT NEGATIVELY AFFECT WHOLESALE**

³³ Qwest Response to Integra Arizona Data Request #2-1(d), Confidential Attachment A.

³⁴ CenturyLink Response to Integra Arizona Data Request #2(e), Confidential.

³⁵ CenturyLink Response to Integra Arizona Data Request #2(f), Confidential.

³⁶ CenturyLink Response to Integra Arizona Data Request #2(e), Confidential.

³⁷ CenturyLink Response to Integra Arizona Data Request #2(f), Confidential.

³⁸ Qwest Response to Integra Arizona Data Request #1(f), Confidential Attachment A.

³⁹ Qwest Response to Integra Arizona Data Request #1(e), Confidential Attachment A.

1 **OPERATIONS POST-MERGER.⁴⁰ WHY DOES THAT NOT PROVIDE YOU**
2 **COMFORT ABOUT POST-MERGER WHOLESALE OPERATIONS?**

3 A. My primary concern relates to the integration effort that will take place after the proposed
4 transaction. CenturyLink has estimated \$625 million in synergy savings resulting from
5 the transaction; therefore, the Merged Company will be under intense pressure to meet
6 those savings estimates, post-merger. At the same time the Merged Company is
7 attempting to find synergies, it will be under pressure to produce meaningful dividends,
8 pay down debt and invest in advanced services. In other words, achieving the estimated
9 synergy savings is paramount to meeting shareholder expectations, satisfying retail
10 customers, and keeping the Merged Company solvent. Given these priorities,
11 maintaining wholesale service quality may be low on the Merged Company's priority list,
12 or worse yet, wholesale service quality may be targeted for cutbacks in the pursuit of
13 synergy savings.

14 **Q. PLEASE DISCUSS HOW THE MERGED COMPANY WILL ATTEMPT TO**
15 **ACHIEVE SYNERGIES.**

16 A. The Merged Company has indicated that it will seek synergy savings through operating
17 cost savings (*i.e.*, eliminating duplicative functions and systems related to corporate
18 overhead, network and operational, IT, advertising/marketing, increased purchasing
19 power) and capex savings.⁴¹ All told, the company expects \$575 million in operating

⁴⁰ See, e.g., Arizona Joint Application at p. 13 ("because the Transaction results in no direct change to the operating entities, it is seamless to customers.")

⁴¹ See, e.g., Direct Testimony of Jeff Glover on behalf of Embarq Communications, Inc. d/b/a CenturyLink Communications Embarq Payphone Services, Inc. d/b/a CenturyLink, and CenturyTel Solutions, LLC, Arizona

1 cost synergies and \$50 million in capital expense synergies, for a total of \$625 million
2 over a three-to-five year period. The elimination of duplicative functions (or headcount)
3 and systems will impact wholesale (and retail) operations. For example, based on the
4 very high level information provided by CenturyLink about its synergy estimates,⁴² it
5 expects that *****BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY**
6 **CONFIDENTIAL***** of this amount will be cut from *****BEGIN HIGHLY**
7 **CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL***** and another
8 *****BEGIN HIGHLY CONFIDENTIAL [REDACTED]**
9 **[REDACTED] END HIGHLY CONFIDENTIAL***** from *****BEGIN**
10 **HIGHLY CONFIDENTIAL [REDACTED] END**
11 **HIGHLY CONFIDENTIAL*****.

12 **Q. HAS CENTURYLINK PUT CLECS ON NOTICE THAT THEY SHOULD**
13 **EXPECT CHANGES POST-MERGER?**

14 **A. Yes. CenturyLink has stated that CLECs can expect changes to occur post-merger.**⁴³
15 However, CenturyLink has been either unable or unwilling to provide any details about

Corporation Commission Docket Nos. T-01051B-10-0194, et al., May 24, 2010 (“Glover Arizona Direct”), Exhibit JG-1 at p. 13.

⁴² CenturyLink Response to Integra Arizona Data Request #52(a), Highly Confidential Attachment 52a.

⁴³ CenturyLink’s S-4A, filed July 16, 2010, identifying, among others, the following as transaction-related risks: (1) “substantial expenses in connection with completing the merger and integrating the business, operations, networks, systems, technologies, policies and procedures of Qwest with those of CenturyLink”. *See also*, Direct Testimony of Michael Hunsucker on behalf of CenturyLink, Inc., Oregon Public Utility Commission Docket No. UM 1484, CTL/400, June 22, 2010 (“Hunsucker Oregon Direct”) at p. 8 lines 16-19 (“there will be no immediate changes to Qwest’s or CTL’s Operations Support Systems. The merger is intended to bring about improved efficiencies and practices in all parts of the combined company, so changes could be expected over time.”) Hunsucker Oregon Direct is available at: <http://edocs.puc.state.or.us/efdocs/HTB/um1484htb152954.pdf>

1 what changes will be made, what CenturyLink will or will not integrate, or what “best
2 practices” will guide the Merged Company going forward.⁴⁴ As a result, the Joint
3 Applicants are asking the Commission to trust that the Merged Company’s pursuit of
4 synergies will not result in decisions that degrade the quality of the current wholesale
5 systems and processes CLECs rely upon and currently experience with Qwest. Such trust
6 must be backed by quantifiable wholesale conditions, however, with meaningful
7 consequences and remedies for failing to meet those conditions.

8 **Q. DO YOU HAVE AN UNDERSTANDING OF THE MERGED COMPANY’S**
9 **INCENTIVES REGARDING INTEGRATION?**

10 A. Yes. First, as a publicly-traded company, the Merged Company will be under intense
11 pressure to achieve its estimated synergy savings through integrating the two companies.
12 This will be the key to servicing the increased debt load that CenturyLink will inherit
13 from the transaction, issuing dividends that shareholders expect and deploying the
14 advanced services demanded by end users. In other words, the Merged Company will
15 have the strongest incentive to do what it takes to deliver on integration-related synergy
16 savings. Second, as Dr. Ankum explains in more detail, given that the Merged Company
17 is a profit-maximizing firm, its natural incentive is to reduce costs at the expense of
18 competitors; this is where the Merged Company gets most *bang for its buck*. If, for

⁴⁴ “Identification of ‘best practices’ associated with the integration of CenturyLink and Qwest operations will be completed as part of the detailed integration planning efforts. Until the integration teams are formed, and the detailed data gathering process can be completed, an analysis regarding the identification and/or adoption of ‘best practices’ is not available.” CenturyLink Response to Integra Arizona Data Request #52(g). *See also*, CenturyLink Response to Integra Data Request #52(g) in Colorado (dated 7/19/10), Minnesota (dated 7/8/10), Oregon (7/14/10), Utah (7/20/10), Washington (dated 7/16/10), and PAETEC Iowa Data Request #52(g) (dated 7/23/10).

1 example, the Merged Company cuts back headcount in groups that serve wholesale
2 customers, and wholesale service is degraded as a result, not only has CenturyLink saved
3 money to achieve synergy savings, but it will also make it easier to win back retail
4 customers that will leave the CLEC's service due to the perception (albeit erroneous) that
5 the CLEC's service has declined.⁴⁵ It is well-recognized that when a CLEC's retail end
6 user experiences service troubles due to underlying wholesale service quality problems
7 on the ILEC's end, the end user perceives it as a problem caused by the CLEC and not
8 the ILEC.

9 What's more, there are many ways that the Merged Company can pursue this two-headed
10 incentive (reducing costs and disadvantaging competitors) during integration of the two
11 companies; degrade access to systems by integrating a system with less functionality;
12 integrate alleged "best practices" that results in inferior access; integrate its rate structures
13 such that new rate elements are introduced that were not previously assessed; integrate its
14 negotiations template proposals to reduce or discontinue certain services; and the list goes
15 on. I am not casting aspersions here, I am just stating what economic theory dictates and
16 what the FCC recognized in its *Local Competition Order*: ILECs have a strong incentive
17 to discriminate against CLECs. Moreover, recent experience with other mergers supports
18 the CLEC concerns. Left unchecked, the integration effort that will be undertaken by the
19 Merged Company will be a prime opportunity for the (bigger) ILEC to follow through on

⁴⁵ The Joint Applicants state: "A financially stronger company can...compete against...CLECs." Arizona Joint Application at p. 14.

1 its incentive to reduce costs at the expense of CLECs and their end users. Of course,
2 doing so would be bad for competition and the public interest.

3 **Q. ARE YOU SAYING THAT CENTURYLINK LACKS THE INCENTIVE TO**
4 **INTEGRATE THE COMPANIES TO THE BENEFIT OF CLECS AND**
5 **COMPETITION?**

6 A. Yes. The lack of incentive to open up local markets to competition and to keep those
7 markets open is precisely why the Section 271 14-point competitive checklist is so
8 important – it created a “carrot” (*i.e.*, in-region interLATA authority) for the BOCs so
9 that they would open their local areas to competition instead of following their natural
10 incentive as a profit-maximizing firm to keep local competitors out. Since CenturyLink
11 has no experience dealing with 271 obligations, there is no knowledge base from which
12 to discern if and how CenturyLink would abide by 271 obligations post-merger, or if the
13 systems or processes CenturyLink will ultimately utilize will remain 271 compliant in
14 Qwest’s territory.

15 **1. CenturyLink’s Attempts To Integrate OSS, Or Other Systems Or**
16 **Processes, Will Cause Harm**

17 **Q. ARE OPERATIONS SUPPORT SYSTEMS (“OSS”) IMPORTANT FOR CLECS?**

18 A. Yes. The ability of a CLEC to be able to access the ILEC systems and databases to
19 review customer information and submit and review orders is absolutely vital. The
20 systems must be efficient, reliable and accurate. Inefficient systems that require
21 extensive manual intervention, for instance, would make doing business with the ILEC

1 difficult, more costly, and more prone to error because of the increased manual nature of
2 the work.

3 Not surprisingly, OSS was one of the first issues that the FCC had to address in Section
4 271 proceedings. Specifically, the FCC concluded that it:

5 generally must determine whether the access to OSS functions provided
6 by the RBOC to competing carriers sufficiently supports each of the three
7 modes of competitive entry strategies established by the Act:
8 interconnection, unbundled network elements, and services offered for
9 resale.⁴⁶

10 The FCC found that CLECs would be “severely disadvantaged, if not precluded
11 altogether, from fairly competing,” if they did not have nondiscriminatory access to
12 OSS.⁴⁷ Qwest itself has described its existing OSS as playing “a crucial role in the
13 transactions between Qwest and all CLECs”⁴⁸ and “the lifeblood of...Qwest’s wholesale
14 operation...”⁴⁹

15 **Q. WHAT IS OSS?**

16 A. The FCC defines OSS to include five functions: (1) pre-ordering, (2) ordering, (3)
17 provisioning, (4) maintenance and repair, and (5) billing.⁵⁰ OSS includes all of the

⁴⁶ *Application of Ameritech Michigan pursuant to § 271 of the Communications Act of 1934, as amended, to provide In-Region, Inter-LATA services in Michigan*, CC Docket 79-137, Memorandum Op. and Order, Released August 19, 1997 (“*Ameritech Michigan 271 Order*”) at ¶ 133.

⁴⁷ *Local Competition Order* at ¶518.

⁴⁸ Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.

⁴⁹ Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at p. 39.

⁵⁰ *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah,*

1 computer systems, databases and personnel that an ILEC uses to perform internal
2 functions necessary for these five functions. The FCC also requires an adequate CMP to
3 handle changes to the OSS systems.⁵¹

4 **Q. IS OSS A UNE?**

5 A. Yes. The FCC has determined OSS to be a “network element.”⁵² Consequently, a CLEC
6 must be permitted nondiscriminatory access to an ILEC’s OSS functions in order to
7 provide pre-order information to potential customers, sign up customers, place orders for
8 services or facilities, track the progress of its orders to completion, obtain relevant billing
9 information from the ILEC, and obtain prompt repair and maintenance services for its
10 customers.

11 **Q. IS THIS DUTY TO PROVIDE OSS FUNCTIONS CONTAINED IN THE**
12 **TELECOM ACT?**

13 A. Yes. The duty to provide access to OSS functions falls squarely within an ILEC’s duties
14 under Section 251(c)(3) to provide UNEs on terms and conditions that are
15 nondiscriminatory, just and reasonable, in accordance with the pricing standards of
16 Section 252, and under Section 251(c)(4) to offer services for resale without imposing

Washington, and Wyoming, Memorandum Opinion and Order, WC Docket No. 02-314, FCC 02-332, Released December 23, 2002 (“Qwest 9 State 271 Order”) at ¶ 33.

⁵¹ *Qwest 9 State 271 Order* at ¶ 33. *See also*, 47 C.F.R. §51.319(g).

⁵² *Local Competition Order* at ¶ 516.

1 any limitations or conditions that are discriminatory or unreasonable.⁵³
2 Nondiscriminatory access to OSS is also required under the Section 271 14-point
3 competitive checklist applicable to BOCs.⁵⁴

4 **Q. IS OSS AN EXAMPLE OF HOW CENTURYLINK COULD INTEGRATE THE**
5 **TWO COMPANIES IN SUCH A WAY AS TO HARM CLECS?**

6 A. Yes. The post-merger integration of OSS is a prime example. OSS impacts all wholesale
7 customers that do business with Qwest and CenturyLink, regardless of whether the CLEC
8 is resale-based, UNE-based, or completely facilities-based. The statements from the FCC
9 above, and Qwest's statement that OSS is the "lifblood" of its wholesale operations,
10 shows that the importance of OSS to competition cannot be exaggerated. Out of the
11 many ways that the Merged Company could integrate the two companies to the detriment
12 of competition, degrading the quality or access to OSS would be the most effective, and
13 could be, if not done through a transparent CMP process, one of the most difficult to
14 detect and remedy.

15 **Q. HOW WILL CLECS BE HARMED BY INTEGRATION OF OSS?**

16 A. First, CenturyLink uses different OSS than Qwest. And, unlike Qwest's OSS, which was
17 extensively tested during the 271 approval process, CenturyLink's OSS has not been

⁵³ *Ameritech Michigan 271 Order* at ¶ 130; see also, *Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in South Carolina*, CC Docket No. 97-208, *Memorandum Op. and Order*, Released December 24, 1997, at ¶ 83.

⁵⁴ The FCC states: "Under checklist item 2, a BOC must demonstrate that it provides nondiscriminatory access to the five OSS functions: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing. In addition, a BOC must show that it provides nondiscriminatory access to UNEs and that it has an adequate change management process in place to accommodate changes made to its systems." *Qwest 9 State 271 Order* at ¶ 34.

1 third-party tested to determine whether they meet the nondiscriminatory requirements of
2 Section 271. Second, the existing Qwest OSS and its functionality are more well-
3 documented, and preferred by carriers such as Charter that use both of the merging
4 companies' systems, than the existing CenturyLink OSS. Just as carriers in Embarq
5 territory did not want to revert to the more manual processes of CenturyTel in that
6 merger,⁵⁵ CLECs do not want Qwest to backslide from the 271-evaluated systems in
7 Qwest territory to CenturyLink systems that have not been subjected to rigorous third-
8 party testing.⁵⁶ In fact, I would argue that backsliding from using a 271-compliant OSS
9 would be a violation of Qwest's 271 obligations, and, therefore, could subject the Merged
10 Company to complaints and enforcement action under Section 271(d)(6). If the Merged
11 Company is found to be out of compliance with the 271 obligations, it would be subject
12 to sanctions, up to, and including, the possible revocation of the previously granted
13 authority to offer in-region long distance and advanced information services. However,
14 even if a CLEC has the option to file complaints in response to the Merged Company
15 making unilateral changes – post-merger – that contravenes its 271 obligations, this could
16 turn the burden of proof on the CLEC to substantiate its claims against the Merged
17 Company. However, the CLECs have already expended enormous amounts of time and
18 money in their effort to ensure that Qwest's OSS complies with the nondiscriminatory

⁵⁵ See, e.g., *In the Matter of Applications Filed for Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238, FCC 09-54, Released June 25, 2009 (“FCC *Embarq/CenturyTel Merger Order*”), Appendix C “Conditions,” at p. 28 (“CenturyTel will integrate, and adopt for CenturyTel CLEC orders, the automated Operation Support Systems (“OSS”) of Embarq within fifteen months of the transaction’s close.”).

⁵⁶ CenturyLink Response to Integra Arizona Data Request #18 (“While CenturyLink has not conducted third-party testing of its systems...”)

1 requirement of Section 271 of the Act, and the burden should be on the Merged Company
2 to demonstrate that any post-merger change is consistent with its ongoing 271 obligations
3 in Qwest's legacy territory. Hence, any attempt to integrate CenturyLink's OSS into the
4 legacy Qwest region would be a step in the wrong direction for competitors, competition
5 and potentially even the Merged Company.

6 **Q. HAVE THE CLECS AND STATE COMMISSION STAFFS ATTEMPTED TO**
7 **DETERMINE WHETHER CENTURYLINK PLANS TO INTEGRATE**
8 **DIFFERENT OSS INTO QWEST'S LEGACY TERRITORY POST-MERGER?**

9 A. Yes. When the CLECs asked CenturyLink about its post-merger OSS integration plans,
10 it responded as follows:

11 Upon merger closing, CenturyLink does not anticipate any immediate
12 changes to the Qwest CLEC OSS systems. Integration planning is in the
13 early stages and decisions have not been made at this time. However,
14 because the transaction results in the entirety of Qwest, including
15 operations and systems, merging into and operating as a subsidiary of
16 CenturyLink, it will allow a disciplined approach to reviewing systems
17 and practices and will allow integration decisions to proceed in an orderly
18 disciplined manner...⁵⁷

19 The Arizona Commission Staff also asked CenturyLink about its post-merger OSS
20 integration plans, both on a region-wide basis and in Arizona.⁵⁸ CenturyLink responded:

21 While integration planning is in the early stages, and final decisions have
22 not been made at this time, CenturyLink anticipates separately operating
23 the CenturyLink CLEC OSS systems in areas served by CenturyLink, and
24 Qwest CLEC OSS systems in areas served by Qwest (including Arizona)
25 for a minimum of 12 months following closing of the Transaction. This
26 will allow ample time for Century Link to conduct a proper evaluation of

⁵⁷ CenturyLink Response to Integra Arizona Data Request #23.

⁵⁸ Arizona Corporation Commission Staff Data Request STF 5.2.

1 all systems in an orderly and disciplined manner. To the extent any
2 changes are made, CenturyLink will comply with all applicable state and
3 federal laws, rules and regulations as well as any applicable terms
4 contained in interconnection agreements or tariffs, in the same manner as
5 they would apply notwithstanding the merger.⁵⁹

6 In response to Arizona Commission Staff Data Request 7.15, CenturyLink raised further
7 questions about the status of Qwest's OSS post-merger by stating, "CenturyLink
8 anticipates...the consolidation of OSS..." without providing any further details.

9 When asked by the Washington Utilities and Transportation Commission Staff about
10 post-merger OSS plans, CenturyLink stated:

11 Until the Transaction is complete, and the necessary decisions have been
12 made on how to best integrate the two companies, plans for specific
13 changes to the Qwest or CenturyLink Operations Support Systems (OSS)
14 have not been fully developed.⁶⁰

15 When asked by Oregon PUC Staff whether CenturyLink intends to transition Qwest's
16 OSS to CenturyLink's legacy OSS within the next three to five years, CenturyLink
17 responded:

18 At this time, system integration plans for the proposed transaction with
19 Qwest have not been fully developed. In fact, complete integration plans
20 cannot be developed until the merger is concluded. However, because the
21 transaction results in the entirety of Qwest, including operations and
22 systems, merging into and operating as a subsidiary of CenturyLink, it will
23 allow a disciplined approach to systems and practices integration decisions
24 to proceed in a disciplined manner.⁶¹

⁵⁹ CenturyLink Response to Arizona Corporation Commission Staff Data Request STF 5.2.

⁶⁰ CenturyLink Response to Washington UTC Staff Data Request #84 (June 25, 2010). *See*, Exhibit AA-3.

⁶¹ CenturyLink Response to Oregon PUC Staff Data Request #32. *See also*, CenturyLink Response to Integra Arizona Data Request #27 ("At this time, system integration plans for the proposed transaction with Qwest have not been fully developed. However, because the transaction results in the entirety of Qwest, including operations and systems, merging into and operating as a subsidiary of CenturyLink, it will allow a disciplined

1 When the Oregon Staff probed further to determine potential changes to the Qwest OSS
2 post-merger, CenturyLink, again, responded with a “patented” answer that CenturyLink
3 has given on many questions related to post-merger integration plans:

4 Integration planning is in the early stages and decisions on wholesale OSS
5 systems have not been made at this time. Upon merger closing, there will
6 be no immediate changes to Qwest’s or CenturyLink’s OSS. Any changes
7 will occur only after a thorough and methodical review of both
8 companies’ systems and processes to determine the best system to be used
9 on a go-forward basis. Decisions will be made from both a combined
10 company and a wholesale customer perspective and consistent with the
11 continued provision of quality service to our wholesale customers.⁶²

12 In sum, CenturyLink’s claims that it cannot respond until the merger is complete,
13 provides the Commission an insufficient basis to evaluate a critical aspect of the merger:
14 OSS integration. While CenturyLink has made vague statements publicly about
15 operations in Qwest territories being unaffected by the proposed transaction, it would
16 seem that issues like the OSS issue would be very easy for the Joint Applicants to put to
17 rest with a straightforward commitment to leave existing Qwest wholesale processes and
18 OSS in place for a significant timeframe, as well as a commitment to follow similar
19 objective, third-party testing if and when changes are made to the system. However, in
20 sworn testimony or discovery responses, the Joint Applicants have been unwilling or
21 unable to make that simple commitment or give a straight answer – often refusing to
22 provide a meaningful answer at all. That certainly gives me strong concerns about the
23 Joint Applicants’ intent, and it should concern the Commission as well.

approach to reviewing systems and practices and will allow integration decisions to proceed in an orderly manner.”)

⁶² CenturyLink Response to Oregon PUC Staff Data Request #60. *See also*, Hunsucker Oregon Direct at pp. 8-9.

1 **Q. IN ADDITION TO THIS LACK OF DETAILS REGARDING CENTURYLINK'S**
2 **OSS INTEGRATION PLANS, IS THERE ANYTHING ELSE THAT SUPPORTS**
3 **YOUR CONCERN ABOUT CENTURYLINK REPLACING LEGACY QWEST**
4 **OSS WITH OSS THAT HAVE NOT BEEN SHOWN TO BE 271 COMPLIANT?**

5 A. Yes. Discovery responses that CenturyLink and Qwest submitted in Minnesota last week
6 indicate that at least some of Qwest's CLEC-facing OSS interfaces will be modified or
7 replaced if the proposed transaction is approved. Specifically, CenturyLink states:
8 "...after the systems of the [merged] company have been consolidated after the merger,
9 the company intends to support a [unified ordering model] UOM interface for LSRs."⁶³
10 At the same time, Qwest states that, "IMA is not UOM compliant. IMA has its own
11 XML Gateway and does accept XML files for LSR order submission...IMA only offers a
12 customer GUI written in java or the custom XML interface mentioned above."⁶⁴ These
13 responses necessarily mean that the interface Qwest currently uses to process CLEC
14 LSRs (IMA) will no longer be available in its present form. CenturyLink will either
15 replace it or modify it. If CenturyLink considers its EASE system to be UOM compliant,
16 CenturyLink's response may suggest an intention by CenturyLink to use EASE for LSRs,
17 contrary to the recommendation of the Joint CLECs. In any event, the discovery

⁶³ CenturyLink Response to Integra Minnesota Data Request #3-9, dated September 23, 2010. Integra asked CenturyLink: "Please indicate whether, after all of the systems of the Merged Company have been consolidated, the interface that the Merged Company will provide will support a UOM interface for LSRs." Unified Ordering Model ("UOM") Guidelines Document, established by the Ordering and Billing Forum ("OBF"), are described as follows: "The Unified Ordering Model (UOM) describes a complete set of system documentation using an end-to-end structured methodology. The scope of UOM encompasses business requirements, analysis, design and implementation." <http://www.atis.org/obf/UOMASRsumm.asp>

⁶⁴ Qwest Response to Integra Data Request #11, dated September 23, 2010. Integra asked Qwest: "Is the interface that Qwest currently uses to process LSRs for CLECs a UOM interface. If so..."

1 responses confirm that CenturyLink does not intend to use Qwest IMA as it exists today.
2 Investigation is needed, therefore, into how and when CenturyLink intends to change or
3 replace Qwest's IMA. The Joint CLECs and state commission staffs have attempted to
4 obtain information about CenturyLink's plans through discovery, but until it provided
5 this new information CenturyLink had not even indicated it had such plans much less
6 explain what they mean. CenturyLink still has not provided any explanation as to when
7 or how it will implement its plan to, after systems consolidation, support a UOM
8 compliant system.

9 The following CenturyLink testimony underscores the CLECs' concerns in this regard:

10 [t]he combined company will continue to meet these [271] obligations
11 through its wholesale operations *leveraging* the key resources and
12 expertise of *both entities*.⁶⁵

13 The problem with this statement, beyond its obviously vague nature, is that only *Qwest's*
14 wholesale systems, processes and resources have been shown to satisfy the market-
15 opening and nondiscrimination requirements of Section 271 of the Act – CenturyLink's
16 have (admittedly⁶⁶) not. So, when CenturyLink says that it will integrate at least some of
17 CenturyLink's wholesale resources and expertise into Qwest's territory (such as an OSS
18 interface), it is likely that some of the interfaces and processes that have been deemed as
19 271-compliant would be replaced by interfaces and processes that have not been found to
20 be 271-compliant.

⁶⁵ Hunsucker Oregon Direct at pp. 12-13.

⁶⁶ CenturyLink Response to Integra Washington Data Request #18 ("While CenturyLink has not conducted third-party testing of its systems...") See also, Hunsucker Oregon Direct at p. 12, lines 15-17 ("CTL is not a BOC and as such has no similar 271 obligations that apply to its territories nor should there be any 271 obligations placed on the legacy CTL territories...").

1 **Q. WILL CLECS BE HARMED BY CENTURYLINK MODIFYING OR**
2 **REPLACING QWEST'S EXISTING IMA INTERFACE FOR PROCESSING**
3 **LSRS?**

4 A. Yes. First, CLECs, like PAETEC, have already built internal systems to interface with
5 Qwest's IMA-XML interface for processing LSRs. Integra is in the process of
6 transitioning to IMA-XML and currently plans to cut-over to IMA-XML in first quarter
7 of 2011. Accordingly, CLECs have already expended significant time and money to
8 interface with the Qwest OSS interface that CenturyLink now states it will modify or
9 replace post-merger. Based on CenturyLink's plans, additional CLEC time and money
10 will be required to adapt to CenturyLink's modifications or replacement of IMA-XML.
11 These additional costs are a direct result of the proposed transaction. Second, it is my
12 understanding from CenturyLink's discovery responses that there are functionalities and
13 order types that are currently supported by Qwest's IMA-XML that are not supported by
14 CenturyLink's EASE OSS. So, any attempt by CenturyLink to implement its current
15 version of EASE into Qwest's territory would result in inferior functionality. Third,
16 Qwest already looked into UOM during its transition from EDI to XML in 2006. Qwest
17 stated: "we did research taking the UOM approach and when we tried to map there was a
18 lot of overhead and suggested that we continue to use the disclosure worksheet."⁶⁷ If
19 there was "a lot of overhead" associated with the UOM approach back in 2006, then there

⁶⁷ CR SCR121305-01 Detail, available at:
http://www.qwest.com/wholesale/cmp/archive/CR_SCR121305-01.html

1 is certainly “a lot of overhead” associated with it today, for both Qwest and CLECs (who
2 have expended significant time and money to interface with IMA-XML since 2006).

3 **Q. IS THERE ANOTHER REASON WHY THIS CONCERN IS WARRANTED?**

4 A. Yes. CenturyLink has estimated *****BEGIN HIGHLY CONFIDENTIAL** [REDACTED]
5 **END HIGHLY CONFIDENTIAL***** of the total estimated \$575 million in
6 operational synergy savings to come from *****BEGIN HIGHLY CONFIDENTIAL**
7 **END HIGHLY CONFIDENTIAL*****.⁶⁸ Given the
8 magnitude of the estimated savings from this item relative to the overall synergy savings
9 estimate, it is likely that integration efforts will involve OSS. It is also curious that
10 CenturyLink can so precisely calculate savings for this item when, as discussed above, it
11 has stated: “system integration plans for the proposed transaction with Qwest have not
12 been fully developed.”⁶⁹

13 **Q. YOU MENTION ABOVE THAT QWEST’S OSS WAS THIRD-PARTY TESTED**
14 **DURING THE 271 APPROVAL PROCESS. PLEASE ELABORATE.**

15 A. Qwest’s existing OSS, CMP and supporting processes and data, were thoroughly tested
16 during the Qwest 271 approval process to ensure that they provided the
17 nondiscriminatory access required by Section 271. According to Qwest, the collaborative
18 OSS test “was the most comprehensive and collaborative of all of the OSS tests

⁶⁸ CenturyLink Response to Integra Arizona Data Request #52(a), Highly Confidential Attachment 52a.

⁶⁹ See, e.g., CenturyLink Responses to Integra Arizona Data Requests #27, #30, #31, #51, #61, #64, #67, #68, #82, #83, #84, #91, #107, #108, #112, #137, #155(f).

1 conducted to date.”⁷⁰ And referring to the final report of the third-party tester, Qwest
2 said: “This *Final Report* marked the culmination of more than three years of exhaustive
3 and comprehensive effort, *unlike any seen before*, to determine whether Qwest’s OSS
4 meet the standards set forth under Section 271 of the Telecommunications Act of 1996,
5 as those standards have been amplified and applied by the FCC.”⁷¹ Qwest’s opinion was
6 shared by the state commissions that participated and oversaw the third-party testing,
7 such as the Arizona Corporation Commission which stated:

8 The ACC believes that during the last four years, Qwest systems,
9 processes, and performance measurements have undergone one of the
10 most comprehensive reviews to-date...result[ing] in an extremely rigorous
11 test, resolution of many disputed issues through compromise, and
12 meaningful and effective changes to Qwest’s systems and processes.⁷²

13 The FCC said “...the OSS testing conducted under the auspices of the ROC [Regional
14 Oversight Committee] was broad-based and comprehensive.”⁷³ Attached to my
15 testimony as Exhibit TG-2 is a detailed description of the extensive, three-year process
16 that was undertaken by state regulators, the FCC, Qwest, CLECs and third-party testers to
17 ensure that Qwest’s existing OSS, performance metrics, and CMP met the requirements
18 of Section 271. This exhibit also explains that hundreds of issues of concern were
19 identified during third-party testing and resolved through improvements to Qwest’s OSS.

⁷⁰ Brief of Qwest Corp., WC Docket No. 02-148, June 13, 2002, at p. 111.

⁷¹ Qwest Verified Comments, Washington Docket No. UT-003022 at pp. 1-2 (emphasis added). Qwest also described the OSS testing as: “years of rigorous fact finding and analysis...” Reply Comments of Qwest Corp., WC Docket No. 02-148 at p. 2.

⁷² Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003 (“ACC Evaluation”), at p. 5. The Colorado Public Utilities Commission referred to the testing process as “the epitome of collaborative, open decision making.” Reply Comments of Qwest Corp., WC Docket No. 02-148 at p. 2.

⁷³ *Qwest 9 State 271 Order* at ¶ 12.

1 **Q. YOU MENTIONED THAT THE THIRD-PARTY TEST INVOLVED AN**
2 **EVALUATION OF QWEST’S PERFORMANCE MEASUREMENTS. PLEASE**
3 **ELABORATE.**

4 A. The third-party test included an audit of Qwest’s performance assurance plan (“QPAP”)
5 (a self-executing remedy plan to ensure Qwest continues to comply with the competitive
6 checklist) and related performance indicators or “PIDs” (which are used in the QPAP to
7 measure Qwest’s performance and to determine whether Qwest must make remedy
8 payments to CLECs or the state for substandard wholesale service quality). A coalition
9 was formed – the Regional Oversight Committee (“ROC”) Post-Entry Performance Plan
10 (“PEPP”) – to discuss and address issues related to Qwest’s wholesale performance,
11 including the PAP. Qwest filed its PAP on June 29, 2001, and a multi-state proceeding
12 (conducted by a third-party Facilitator from Liberty Consulting) was initiated to review
13 Qwest’s PAP.⁷⁴ Qwest’s PIDs were developed collaboratively by the ROC for use in the
14 third-party test to measure Qwest’s ability to process commercial volumes through its
15 OSS.⁷⁵ Qwest’s PIDs measure performance in three ways: retail parity (for measures
16 with retail analogues), benchmark (for measures without retail analogues) and “parity by

⁷⁴ See, e.g., *In the Matter of the Investigation Into US WEST Communications, Inc.’s Compliance with Section 271 of the Telecommunications Act of 1996*, Thirtieth Supplemental Order, Commission Order Addressing Qwest’s Performance Assurance Plan, Washington UTC Docket Nos. UT-003022/003040, April 2002 (“*Washington 30th Supplemental Order*”) at ¶¶ 10-11.

⁷⁵ *In the Matter of the Investigation Into US WEST Communications, Inc.’s Compliance with Section 271 of the Telecommunications Act of 1996*, Thirty-Ninth Supplemental Order, Commission Order Approving SGAT and QPAP, and Addressing Data Verification, Performance Data, OSS Testing, Change Management, and Public Interest, Washington UTC Docket Nos. UT-003022/003040, July 1, 2002 (“*Washington 39th Supplemental Order*”) at ¶ 345.

1 design” (for measures without retail analogues or benchmarks).⁷⁶ The Master Test Plan
2 directed Liberty Consulting to “develop and perform an audit to insure that all aspects of
3 Qwest’s wholesale performance measures and retail parity standards are sound and in
4 compliance with the collaboratively developed ROC PID.”⁷⁷

5 Qwest’s PAPs and associated PIDs are absolutely essential to ensure that local markets in
6 Qwest’s region remain open to competition (*i.e.*, Qwest does not backslide). For
7 instance, the FCC said:

8 As set forth below, we find that the performance assurance plans (PAP)
9 that will be in place...provide assurance that the local market will remain
10 open after Qwest receives section 271 authorization in the nine application
11 states...and are likely to provide incentives that are sufficient to foster
12 post-entry checklist compliance.⁷⁸

13 It is my understanding that with a few exceptions in the legacy Embarq territory,
14 CenturyLink is not subject to PAPs or PIDs, and certainly not PAPs or PIDs that were
15 extensively tested during the 271 approval process. And since Qwest’s PAPs and PIDs
16 go hand-in-hand with Qwest’s existing OSS systems, any change to the existing Qwest
17 OSS would likely mean changes for Qwest’s PAPs and PIDs. This would have a
18 dramatic negative effect on the ability to identify discriminatory treatment by the Merged
19 Company and would give the Merged Company more opportunity to backslide on its 271
20 obligations in Qwest’s legacy territory.

⁷⁶ *Washington 39th Supplemental Order* at ¶ 32.

⁷⁷ *Washington 39th Supplemental Order* at ¶ 33.

⁷⁸ *Qwest 9 State 271 Order* at ¶ 440.

1 **Q. DOES YOUR EXPLANATION AND EXHIBIT REGARDING THE TESTING OF**
2 **QWEST'S OSS UNDERSCORE THE CLEC CONCERNS ABOUT OSS**
3 **INTEGRATION?**

4 A. Yes. Post-merger, CenturyLink may attempt to replace OSS that has been tested under a
5 process "unlike any seen before" with OSS that has not been independently tested at all.
6 Once such changes are made, much if not all of the work by the ROC and FCC during the
7 271 approval process will have been squandered and Qwest can no longer show that it is
8 providing nondiscriminatory access to OSS under 271 of the Act – that is, unless and
9 until the Merged Company demonstrates, using the same stringent testing process that
10 took place during the Qwest 271 approval process, that its new wholesale system or
11 process meets the 271 requirements.

12 **Q. CENTURLINK APPEARS CONFIDENT THAT ITS WHOLESALE OSS AND**
13 **OPERATIONS, IF INTEGRATED IN QWEST'S LEGACY TERRITORY,**
14 **WOULD COMPLY WITH 271 REQUIREMENTS.⁷⁹ SHOULD THE**
15 **COMMISSION SHARE THIS CONFIDENCE?**

16 A. No. There is absolutely no basis for CenturyLink's claim. Ironically, Qwest made a
17 similar claim back in 1999 that its OSS and CMP at that time satisfied the Section 271
18 requirements. However, three years of third-party testing under ROC supervision, dozens

⁷⁹ Hunsucker Oregon Direct at pp. 12-13 ("CTL is not a BOC and as such has no similar 271 obligations that apply to its territories nor should there be any 271 obligations placed on the legacy CTL territories in Oregon post merger closing. However, the legacy Qwest territories will continue to have 271 obligations. The combined company will continue to meet these obligations through its wholesale operations leveraging the key resources and expertise of both entities.")

1 of “meaningful and effective changes to Qwest’s systems and processes[,]”⁸⁰ and millions
2 of dollars later, it was proven that Qwest’s confident assurances about its OSS and CMP
3 being 271 compliant were baseless. I have provided as Exhibit TG-3 the “Assurances
4 Not Met” exhibit which compares the assurances Qwest made in 1999 about its then-
5 flawed OSS and CMP to the assurances CenturyLink is now making. As this exhibit
6 shows, it would be unwise for the Commission to accept CenturyLink’s promises in this
7 regard at face value.

8 **Q. YOU STATE ABOVE THAT CENTURYLINK AND QWEST USE DIFFERENT**
9 **OSS. PLEASE ELABORATE ON THE DIFFERENCES BETWEEN THE TWO**
10 **COMPANIES’ OSS.**

11 A. Take the CLEC-facing OSS interfaces for pre-ordering, ordering and maintenance/repair
12 for example. For pre-ordering, ordering and provisioning of UNEs/resale Local Service
13 Requests (“LSRs”), Qwest uses Interconnect Mediated Access Graphical User Interface
14 (“IMA GUI”) and Interconnect Mediated Access Extensible Markup Language (“IMA
15 XML”) as its CLEC-facing systems. IMA GUI is a web-based electronic interface and
16 IMA XML is a business-to-business electronic interface allowing bilateral information
17 exchange between Qwest and CLEC systems.⁸¹ These IMA systems interface with

⁸⁰ ACC Evaluation at p. 5.

⁸¹ Qwest Response to Integra Arizona Data Request #19. According to Qwest: “The IMA GUI is a user-to-computer interface while IMA XML is a computer-to-computer interface. The Qwest IMA GUI presents the user with a series of browser-based screens. Using these screens the CLEC can process pre-order, order, and post-order IMA transactions. There are no screens associated with XML. All of the information that is exchanged is done so in the form of data files.” IMA XML FAQs Available at: <http://www.qwest.com/wholesale/ima/xml/> See also, Direct Testimony of Christopher Viveros on behalf of Qwest Communications International, Inc., Oregon Public Utility Commission Docket No. UM 1484, Qwest/2,

1 Qwest back-office systems and databases in support of queries and transactions.⁸² For
2 access services and unbundled dedicated interoffice transport (“UDIT”), Qwest uses
3 Qwest Online Request Application Graphical User Interface (“QORA GUI”), a web-
4 based interface, and QORA Gateway, a company-to-company interface, for CLEC-facing
5 systems.⁸³ Though QORA does not provide all of the functionality that IMA provides,
6 like the IMA systems for LSRs, QORA provides for electronic submission of Access
7 Service Requests (“ASRs”). For maintenance and repair, Qwest uses Customer
8 Electronic Maintenance and Repair (“CEMR”) and Repair Call Expert (“RCE”) as its
9 web-based CLEC-facing systems, and Mediated Access Electronic Bonding Trouble
10 Administration (“MEDIACC-EBTA”) as its business-to-business gateway CLEC-facing
11 system.⁸⁴

June 22, 2010 (“Viveros Oregon Direct”), at p. 8 (“IMA provides pre-ordering and ordering/provisioning functions for all local competitive products that are ordered via Local Service Requests (‘LSRs’). IMA provides both a Graphical User Interface (‘GUI’) and an application-to-application option using Extensive Markup Language (‘XML’).”) Available at: <http://edocs.puc.state.or.us/efdocs/HTB/um1484htb152122.pdf>

⁸² Qwest Response to Arizona Data Request #19.

⁸³ Qwest Response to Integra Arizona Data Request #19. *See also*, Viveros Oregon Direct at p. 8 (“QORA supports ordering for all wholesale products ordered via an Access Service Request (‘ASR’). QORA provides CLECs with a GUI interface, or CLECs’ systems can submit ASRs via QORA’s Network Data Mover (‘NDM’) and Unified Order Model (‘UOM’) gateways.”)

⁸⁴ Qwest Response to Integra Arizona Data Request #19. Qwest states: “CEMR and MEDIACC-EBTA are used to mechanically process telephone circuit repair activities including repair ticket generation and MLT (Mechanized Loop Tests).” *See also*, Viveros Oregon Direct at p. 8 (“CEMR is Qwest’s GUI that provides CLECs with maintenance and repair functions for their existing products and services. CEMR allows CLECs to perform trouble administration activities such as creating and editing trouble reports, monitoring trouble report status and reviewing trouble history...MEDIACC EBTA provides CLECs with the ability to perform maintenance and repair functions in their own systems. MEDIACC EBTA is the electronic gateway that CLECs’ systems use to communicate with Qwest’s systems.”)

1 By comparison, CenturyLink uses a system called EASE for pre-ordering and ordering
2 for both LSRs and ASRs.⁸⁵ EASE includes both a GUI (web-based) and EDI (business-
3 to-business) version. For trouble reporting, CenturyLink uses “Access Care,” wherein a
4 wholesale customer calls into Special Service Operations (“SSO”) and CenturyLink
5 records the information on a trouble ticket.⁸⁶ In the legacy Embarq territories,
6 CenturyLink also provides the option to use WebRRS, a web-based repair ticket system
7 that allows CLECs to report and track trouble tickets.⁸⁷

8 **Q. PLEASE COMPARE THE VOLUMES HANDLED BY QWEST’S OSS VERSUS**
9 **THE VOLUMES HANDLED BY CENTURYLINK’S OSS.**

10 A. Both CenturyLink and Qwest provided data regarding the volumes of Local Service
11 Requests or LSRs submitted by type of OSS (i.e., application-to-application, web-based
12 GUI or fax/email) in Arizona. CenturyLink processed *****BEGIN CONFIDENTIAL**
13 **■■■■ END CONFIDENTIAL*****⁸⁸ LSRs in Arizona in 2009, compared to *****BEGIN**
14 **CONFIDENTIAL ■■■■ END CONFIDENTIAL*****⁸⁹ LSRs processed by Qwest in

⁸⁵ CenturyLink Response to Integra Arizona Data Request #16. *See also*, Hunsucker Oregon Direct at p. 7 (“CTL utilizes a system called EASE in its legacy Embarq territories. EASE is used to process both access service requests (ASRs) and local service requests (LSRs)...”)

⁸⁶ CenturyLink Response to Integra Arizona Data Request #16.

⁸⁷ CenturyLink Response to Washington UTC Staff Data Request #86 (“Relative to maintenance and repair, CenturyLink provides CLECs with access to WebRRS, via the wholesale website, as a means to report and track trouble tickets or CLECs have the option of utilizing ‘800’ access numbers to reach the appropriate repair center.”). *See also*, Hunsucker Oregon Direct at p. 8 (“Relative to maintenance and repair, CenturyLink provides CLECs with access to WebRRS, via the wholesale website, as a means to report and track trouble tickets or CLECs have the option of utilizing ‘800’ access numbers to reach the appropriate repair center.”)

⁸⁸ CenturyLink Response to Integra Arizona Data Request #77, Confidential Attachment Integra-77.

⁸⁹ Qwest Response to Integra Arizona Data Request #77, Confidential Attachment A.

1 Arizona in 2009. There is no reason to believe that CenturyLink's legacy OSS could
2 handle the volumes experienced in Qwest's legacy region.

3 **Q. HOW LONG HAVE THESE VARIOUS CLEC-FACING INTERFACES BEEN IN**
4 **PLACE?**

5 A. Qwest's interfaces were tested during the 271 approval process which took place between
6 1999-2002, which means that Qwest's existing OSS has largely (*i.e.*, with incremental
7 changes made via the CMP process) been in place since 2002. CenturyLink's EASE, on
8 the other hand, was first implemented in legacy CenturyLink (Embarq) territory in May
9 2008 for ASRs and October 2009 for LSRs. In the legacy CenturyTel territory, EASE
10 was introduced for ASRs in January 2010, and CenturyLink is currently in the process of
11 implementing EASE for LSRs in legacy CenturyTel territory. None of these systems
12 recently introduced in legacy CenturyLink territory were subjected to any third party
13 testing. And, prior to the recent introduction of EASE in the legacy CenturyTel territory,
14 CenturyTel's OSS were "largely manual with little if any automated or interactive
15 capabilities."⁹⁰

16 **Q. IF CENTURYLINK WERE TO ATTEMPT TO INTEGRATE OSS POST-**
17 **MERGER, WOULD IT BE A MATTER OF SIMPLY SWAPPING OUT THE IMA**
18 **INTERFACE WITH THE EASE INTERFACE?**

19 A. No. The Qwest IMA and CenturyLink EASE interfaces are just the CLEC-facing
20 interfaces. Behind those interfaces are a number of back-office systems, underlying data

⁹⁰ FCC *Embarq/CenturyTel Merger Order* at ¶ 22.

1 sets, business processes, product catalogs,⁹¹ billing systems, business rules, performance
2 metrics, etc., that are all directly fed information received from the interfaces without
3 manual intervention. All of these various pieces work together to provide the five
4 functions of OSS (pre-ordering, ordering, provisioning, maintenance and repair, and
5 billing). This requires systems to be compatible with other systems, recognize certain
6 computer code, and be properly linked to upstream and downstream systems, databases
7 and workgroups. Obviously, it is not possible to simply unplug IMA and plug in EASE
8 (like, for example, swapping out Netscape® Navigator with Internet Explorer as the
9 browser on a personal computer). Changing out CLEC-facing interfaces would create a
10 complete breakdown in the linkages with underlying systems, databases and processes.
11 Given the complexity of Qwest's OSS, such an integration attempt would be an
12 enormous effort just to make sure everything worked, let alone to ensure that the
13 replacement system provides the type of nondiscriminatory access to the full features and
14 functions of the OSS to which CLECs are entitled.

15 **Q. CAN YOU PROVIDE EXAMPLES DEMONSTRATING HOW COMPLEX THIS**
16 **PROCESS WOULD BE?**

17 **A.** Yes, however, these examples are just the tip of the iceberg – as the complexities of such
18 an effort are virtually endless. The colossal effort that went into testing Qwest's OSS
19 during the 271 approval process shows how challenging it is to ensure that OSS works
20 properly and provides nondiscriminatory access. One example is data mapping.

⁹¹ Product catalogs used in this context do not refer to the Qwest on-line documentation of its products and business processes often referred to as Qwest "PCATs."

1 CenturyLink would require data extracts from Qwest's systems to populate the new
2 replacement systems. This would require not only great familiarity of the legacy systems
3 and replacement systems, but also an extensive data mapping effort. Another example is
4 product catalogs. Such an integration effort would require that source system product
5 catalogs be remapped to the replacement systems. This process is very complex given
6 that legacy BOC product catalogs reside in multiple systems and include thousands of
7 universal service ordering codes ("USOCs"), USOC identifiers, and feature identifiers.
8 Moreover, the new systems would need to also synch up with all of the underlying data
9 sources such as circuit inventory and loop qualification databases.

10 **Q. WOULD SUCH A CHANGE RESULT IN SIGNIFICANT COST TO THE CLEC?**

11 A. Yes. Not only would CLECs have to expend significant time and money testing the
12 CenturyLink replacement systems, but they would also have to materially modify their
13 own systems. For instance, the CLECs have built their own interfaces to electronically
14 bond directly to the existing Qwest systems. These CLEC systems would need to be
15 modified, at significant expense, by the CLEC to work with the new replacement system.
16 For instance, Qwest's IMA XML exchanges information between the CLEC and Qwest's
17 OSS in data files based on Qwest's standard XML Web Service Definition Languages or
18 "WSDLs." As Qwest explains: "There must be a mechanism to translate data from the
19 proprietary format as it exists in the CLEC system to a format that the receiving
20 organization can understand. This is done using XML translation software."⁹² All of

⁹² IMA XML FAQs Available at: <http://www.qwest.com/wholesale/ima/xml/>

1 these systems, software, and proprietary formats would need to be changed in both
2 Qwest's and CLECs systems if CenturyLink attempts to replace Qwest's OSS post-
3 merger. The CLEC would then need to test all of these new systems before going "live"
4 to ensure that they work properly (which is the purpose of Qwest's Stand Alone Test
5 Environment or "SATE"), and would also need to test them in a production environment
6 (which is why Qwest offers controlled production testing). CenturyLink has not
7 indicated whether it would provide any of these capabilities if it decides to integrate OSS.

8 Also, like Qwest, some CLECs have integrated their electronic interfaces into their own
9 back end systems. PAETEC's systems, for example, take Qwest line loss data received
10 through the XML interface, and feed that information directly into PAETEC's billing
11 system, which results in the termination of billing for end users for whom the line loss
12 data has been received via the interface without manual intervention. The
13 interconnectivity of systems has effectively eliminated the "billing after downgrade"
14 issues that plagued CLECs and end users that existed for a number of years (assuming the
15 line loss data provided by Qwest is accurate). A similar linkage is made by PAETEC
16 between Qwest's OSS interfaces and the PAETEC's own systems for directory listings to
17 ensure accurate directory listings for the CLECs' customers. Another example is for
18 trouble ticket reporting. PAETEC, for example, has established electronic bonding
19 capability with Qwest that allows automated escalation of the trouble ticket, and
20 automated resolution or closing of the trouble ticket and notification to the customer. In
21 other words, by establishing the electronic bonding with Qwest, a CLEC trouble ticket

1 can go from “open” to “closed” with little or no intervention by the CLEC’s technicians.
2 These automated capabilities are possible because the CLEC undertook a substantial
3 effort to develop its own back end systems and processes and then code, test and link
4 those systems and processes to Qwest’s systems and interfaces. These CLEC back end
5 systems would be subject to change if the Merged Company changed Qwest’s legacy
6 OSS post-transaction, and could require CLECs to revert to significantly less efficient
7 manual processes if the modified OSS offered by the Merged Company does not afford
8 CLECs access to the same degree of the Merged Company’s back end systems and data
9 via the electronic interface.

10 During the third-party test of Qwest’s OSS, a “pseudo-CLEC” (Hewlett Packard or
11 “HP”) was hired to act as a CLEC (or “to live the CLEC experience”⁹³). HP was charged
12 with establishing electronic bonding with Qwest, ensuring that Qwest provided the
13 necessary information and tools to electronically interface with Qwest’s OSS, and
14 determine whether Qwest’s systems were operationally ready to handle the volumes and
15 types of orders CLECs would submit through the business-to-business electronic
16 interfaces. Likewise, KPMG Consulting tested Qwest’s testing environments. If
17 CenturyLink attempted to modify the CLEC-facing OSS interfaces in Qwest’s territory,
18 all of the work done by the third-party testers during the third-party test, and the work
19 done by CLECs to establish these business-to-business interfaces would be undermined.

⁹³ Draft Final Report of KPMG Consulting, Qwest Communications OSS Evaluation, Version 1.1, April 26, 2002 (“KPMG 4/26/02 OSS Report”) at p. 10.

1 This work would need to be performed all over again to ensure that the replacement
2 system provides the same functionality and at the same quality as Qwest's system.

3 **Q. COULD THIS TYPE OF INTEGRATION BE DONE IN ONE YEAR?**

4 A. No, not even close. CenturyLink has indicated to the FCC that it intends to operate both
5 companies' OSS for at least one year following transaction approval. One year is
6 insufficient time for such an enormous effort. It took Qwest three years to satisfy third-
7 party testing of its existing OSS, and that was during a time when Qwest faced 271
8 approval as a "carrot" to encourage the company to work with CLECs and regulators to
9 improve its OSS. By contrast, even if CenturyLink abides by its claim to leave Qwest's
10 OSS in place for one year, it will have no incentive to work with CLECs and regulators
11 during the integration to ensure that the access or quality to Qwest's existing OSS are not
12 degraded, because the proposed transaction will already have been approved (*i.e.*, there
13 will be no "carrot").

14 Moreover, the idea that a CenturyLink-Qwest integration can be quick and smooth, or not
15 hinder CLECs, is belied by the petition CenturyLink filed with the FCC, shortly after
16 filing its application for merger, seeking relief from the deadline to implement one-day
17 number porting.⁹⁴ In its request for a waiver of the deadline, CenturyLink argued that it
18 was still in the process of integrating the CenturyTel and Embarq systems. Now, before
19 that process is completed and while it is still causing delays in functions like number

⁹⁴ CenturyLink Petition for Waiver of Deadline, *In re Local Number Portability Interval and Validation Requirements*, WC Dkt. No. 07-244, at 5 (filed June 7, 2010).

1 porting that are critical to competitors, CenturyLink wants to begin yet another
2 integration effort, thereby adding another completely different system to the mix. The
3 Commission should be very concerned about the timing of this proposed transaction
4 given the Embarq merger is, in an operational sense, not finished yet and the end result
5 remains unknown.

6 **Q. IS THERE AN EXAMPLE FROM THE INFORMATION PRESENTED ABOVE**
7 **WHICH SHOWS THAT DIFFERENCES IN THE COMPANIES' OSS LEAD TO**
8 **DIFFERENCES IN FUNCTIONALITIES TO CLECS?**

9 A. Yes. CenturyLink explains that its "Access Care for trouble reporting system for
10 circuits" entails:

11 [t]he Wholesale customer will call in to the SSO (Special Service
12 Operations) and CenturyLink will record all the pertinent information on
13 the ticket. If SSO has remote test access, SSO will then do a diagnostic
14 test to isolate the trouble. Once it is determined if it is a central office,
15 cable, or premise issue, the SSO will request dispatch to the proper
16 technician to resolve the issue. Once the field technician has fixed the
17 issue, they will call back into SSO to test the circuit to confirm the repair.
18 CenturyLink will then call the reporting party and do acceptance testing, if
19 circuit is working and they accept it, the ticket is closed.⁹⁵

20 Also, in legacy Embarq territory, CLECs have the option to submit and track trouble
21 tickets for unbundled loops and features electronically via a web-based repair ticket
22 ordering system ("WebRRS").

23 Qwest's MEDIACC-EBTA, by comparison, provides the ability to "mechanically
24 process telephone circuit repair activities including repair ticket generation and MLT

⁹⁵ CenturyLink Response to Integra Arizona Data Request #16.

1 (Mechanized Loop Tests).”⁹⁶ Qwest’s MEDIACC allows for “M&R queries [to be]
2 forwarded directly from the MEDIACC gateway for processing by Loop Maintenance
3 Operations System (LMOS) and Work Force Administration (WFA)”⁹⁷ “without having
4 to go through the Business Process Layer...”⁹⁸ What this comparison demonstrates is
5 that Qwest allows electronic bonding capability for maintenance and repair that permits a
6 direct connection between the CLEC’s M&R query and the Qwest repair technicians – a
7 capability that is not available through either CenturyLink’s Access Care (SSO) process
8 (which requires multiple phone calls and increased manual intervention, with the
9 increased possibility of error) or CenturyLink’s web-based WebRRS. Further, based on
10 the information Qwest and CenturyLink have provided to date, it appears that Qwest’s
11 web-based maintenance and repair GUI, CEMR, has functionality that CenturyLink’s
12 web-based maintenance and repair GUI, WebRRS, does not have. One such example is
13 that CLECs can submit trouble tickets for special access circuits through Qwest’s
14 CEMR,⁹⁹ which is not permitted through CenturyLink’s WebRRS.¹⁰⁰

15 **Q. DO YOU HAVE OTHER CONCERNS ABOUT TRYING TO INTEGRATE**
16 **LEGACY CENTURYLINK OSS INTO QWEST’S TERRITORY?**

⁹⁶ Qwest Response to Integra Arizona Data Request #19.

⁹⁷ Final Report of the Qwest OSS Test, May 3, 2002, Issued by Cap Gemini Ernst & Young (Third Party Tester), Version 3.0 at p. 247.

⁹⁸ Final Report of the Qwest OSS Test, May 3, 2002, Issued by Cap Gemini Ernst & Young (Third Party Tester), Version 3.0 at p. 251.

⁹⁹ <http://www.qwest.com/wholesale/systems/WebHelp/Introduction.htm>

¹⁰⁰ See, e.g., A Guide to Embarq Online Wholesale Repair System, available at: http://embarq.centurylink.com/wholesale/docs/webrrs_app.pdf (“For special access circuits or switched access circuits, customers continue to call 888-883-1484 to report trouble.”)

1 A. Yes. Based on information provided in discovery¹⁰¹ CenturyLink's EASE system uses
2 the Virtual Front Office ("VFO"), a platform originally developed by Wisor Telecom
3 Corp, a subsidiary of Synchronoss. This same Synchronoss/Wisor VFO platform was
4 used by FairPoint Communications in its OSS cutover in Northern New England and
5 Frontier Communications in its recent OSS cutover in West Virginia. A competitor in
6 West Virginia that makes extensive use of the Frontier OSS, FiberNet, recently asked the
7 West Virginia Public Service Commission to review problems arising with that platform.

8 FiberNet explained that:

9 Since the cutover to Frontier's Synchronoss VFO [Virtual Front Office]
10 OSS on July 1, 2010, however, FiberNet has experienced significant and
11 ongoing problems with the proper functionality of Frontier's OSS and
12 have unfortunately been compelled to conclude that Frontier's OSS as
13 presently constituted is substantially less sophisticated and far less
14 automated than the former Verizon OSS it was intended to replace.¹⁰²

15 Based on this recent experience, there is a real concern that the same problems
16 experienced by CLECs in Northern New England and now being experienced by CLECs
17 in West Virginia may also occur in Qwest's region post-merger.

18 **Q. ARE YOU CONCERNED ONLY BY THE COMPANY'S ATTEMPT TO**
19 **INTEGRATE CLEC-FACING OSS INTERFACES OR IS YOUR CONCERN**
20 **BROADER THAN THAT?**

21 A. My concern is much broader than CLEC-facing OSS interfaces. As explained above,
22 OSS includes all of the computer systems, databases, personnel and business processes

¹⁰¹ See, e.g., CenturyLink Response to Integra Arizona Data Request #17.

¹⁰² FiberNet LLC Petition to Reopen, July 21, 2010 (filed in West Virginia PSC Docket No. 09-087 1-T-PC), at p. 3.

1 that an ILEC uses to perform internal functions necessary to support the OSS systems
2 interfaces – not just the CLEC-facing interfaces. The third-party test of Qwest’s OSS
3 during the 271 approval process went much deeper than just the CLEC-facing interfaces.
4 Rather, the test included an evaluation of Qwest’s PIDS,¹⁰³ Qwest’s PAP,¹⁰⁴ Qwest’s
5 back-office systems, Qwest’s business processes,¹⁰⁵ the integrity of Qwest’s data,¹⁰⁶
6 Qwest’s SGAT,¹⁰⁷ and Qwest’s CMP.¹⁰⁸ Changes in any of these areas will cause Qwest

¹⁰³ See, e.g., *Washington UTC 39th Supplemental Order*, ¶ 29 ("The performance measures Qwest uses to report its monthly commercial performance in Washington and other states in its operating territory were collaboratively developed by the Regional Oversight Committee's (ROC) Technical Advisory Group (TAG) to be used in the third-party testing of Qwest's Operations Support Systems (OSS)."); ACC Evaluation at 3 ("As part of the collaborative testing process, the parties worked together to develop a comprehensive set of Performance Indicator Definitions ('PIDs'). These PIDs, with some modification, also formed the basis for the [ROC's] Performance Measurement Evaluation and testing process."). Qwest's PIDs measure performance in three ways: retail parity (for measures with retail analogues), benchmark (for measures without retail analogues) and "parity by design" (for measures without retail analogues or benchmarks). Statistical measures (modified "z-tests") are used for determining whether Qwest satisfies the parity and benchmark performance measures. See *In re Qwest Corp. 's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process et al.*, New Mexico Utility Case Nos. 3269 et al., Final Order Regarding Compliance with Outstanding Section 271 Requirements, 2002 N.M. PUC LEXIS 2, October 8, 2002, at ¶ 65.

¹⁰⁴ See, e.g., Comments of the Nebraska Public Service Commission, WC Docket No. 02-148, filed July 3, 2002 ("Nebraska PSC Comments"), at 4 (describing the 12-state ROC Post Entry Performance Plan collaborative's extensive conference calls and multi-day workshops to examine and discuss Qwest's PAP).

¹⁰⁵ The Master Test Plan contained "a description of a comprehensive plan to test Qwest's OSS, interfaces *and processes...*" *Washington 39th Supplemental Order* at ¶ 109, quoting the Master Test Plan. (emphasis added)

¹⁰⁶ Liberty Consulting was retained to conduct a data reconciliation audit, during which 10,000 orders or trouble tickets were evaluated. Order Regarding Operational Support Systems, ROC OSS Test, and Commercial Performance Data, South Dakota Public Service Commission Docket TC01-165, November 22, 2002 ("South Dakota PSC 271 Order"), at p. 22.

¹⁰⁷ See, e.g., Evaluation of the Colorado Public Utilities Commission, WC Docket No. 02-148, filed July 2, 2002 ("Colorado PUC Evaluation"), at 26 ("This retelling of bringing Qwest's SGAT into compliance with the 14-point competitive checklist only begins to touch on the volume and breath of issues that arose in Colorado's six SGAT workshops.... After evaluating these six staff workshop reports and the enormous record behind these reports, the [Colorado PUC] concluded Qwest's SGAT complies with the 14-point checklist."); see also Written Consultation of the Idaho Public Utilities Commission, WC Docket No. 02-148, July 3, 2002, Exhibit A at 3 ("The checklist items were addressed in the context of Qwest's SGAT, and so the focus of the workshops was the SGAT terms required to comply with the checklist items. Qwest accordingly has filed the SGAT with the reports showing the terms as they were developed through the workshops and subsequent reports.")

¹⁰⁸ See, e.g. Colorado PUC Evaluation ("Qwest's change management process (CMP) has undergone a complete overhaul during the § 271 process. It is now compliant with the FCC's change management criteria. The [Colorado PUC] staff has closely monitored CMP, and through no small amount of goading, Qwest has brought it into compliance."); see also *Id.* at 45 ("Beginning in July 2001, Qwest, CLECs and [Colorado PUC] staff

1 to backslide on its 271 obligations and result in harm for CLECs, and competition
2 generally.

3 **Q. ARE YOU SAYING THAT QWEST'S WHOLESALE SYSTEMS AND**
4 **PROCESSES ARE WITHOUT FLAW?**

5 A. No. As explained above, it has taken many years, an enormous amount of industry effort
6 led by the ROC, and many millions of dollars to get Qwest's wholesale OSS, CMP,
7 processes, procedures and practices to where they are today. Qwest's systems and
8 processes are not perfect, but they are much better than they were prior to the 271 process
9 and CLECs have experience with dealing with those systems. By contrast,
10 CenturyLink's OSS has not been through independent third-party testing, and has not
11 been tested for commercial volumes or shown to be operationally ready for Qwest's
12 territory. And, given its relatively recent deployment, CenturyLink's OSS is much less
13 familiar to CLECs.¹⁰⁹ There is a grave concern – grounded in CenturyLink's lack of
14 experience, the lack of information from CenturyLink and Qwest, and recent system
15 integration failures – that OSS performance will get worse after the proposed transaction

began meeting in a collaborative effort to redesign Qwest's change management process (CMP). The participants in the redesign process have met for more than 45 days over the past 11 months to discuss every aspect of Qwest's CMP. CLECs and Qwest have made every effort to achieve consensus. As a result, the [Colorado PUC] agrees with Qwest's contention that 'it has in place the most comprehensive, inclusive, and forward-looking change management plan in the nation.'")

¹⁰⁹ Qwest's third-party tested OSS has been in place for about seven years. By contrast, CenturyLink is currently in the process of integrating Embarq's legacy OSS into CenturyLink's legacy territory. *See, e.g.,* Hunsucker Oregon Direct at p. 8 ("At the current time in legacy CenturyTel markets, the actual order processing is then completed via a manual process internal to CenturyLink. Integration efforts are underway and should be completed later this year to migrate legacy CenturyTel markets to the EASE platform.")

1 absent binding conditions/commitments that ensure continued availability of Qwest's
2 OSS and the continuation of PIDs and PAPs to measure the ongoing performance.

3 **2. Integrating CenturyLink's Local Operating Model Into Qwest's**
4 **Region Will Cause Harm**

5 **Q. CAN YOU PROVIDE ANOTHER EXAMPLE OF HOW CENTURYLINK'S**
6 **INTEGRATION EFFORTS COULD BE HARMFUL TO NOT ONLY CLECS**
7 **BUT ALSO RETAIL CUSTOMERS AND THE ECONOMIC DEVELOPMENT**
8 **OF THE STATE?**

9 A. Yes. CenturyLink touts its "region-based, local operating model" – or "go-to-market"
10 model – which, according to CenturyLink, determines the amount of network investment
11 that will be deployed in each region of the Merged Company.¹¹⁰ Since CenturyLink has
12 stated that this model will likely be incorporated into the Qwest region,¹¹¹ understanding
13 this model is critical to determining the impacts of integration post-merger.
14 Unfortunately, CenturyLink has provided almost no detail, and what detail has been
15 provided is concerning.

16 **Q. PLEASE EXPLAIN YOUR CONCERNS.**

¹¹⁰ "CenturyLink's local operating model provides the framework for investment decisions across its operating territory... Upon completion of the merger, it is anticipated that CenturyLink will implement its local operating model in the Qwest operating territories." CenturyLink Response to Washington UTC Staff Data Request #92.

¹¹¹ Direct Testimony of Todd Schafer on behalf of Embarq Communications, Inc. d/b/a CenturyLink Communications, Embarq Payphone Services, Inc. d/b/a CenturyLink, and CenturyTel Solutions, LLC, Arizona Docket Nos. T-01051B-10-0194, May 24, 2010 ("Schafer Arizona Direct"), at p. 9, lines 11-14 ("Q. Will that [go-to-market] model be incorporated into the areas of Qwest's operational structure upon the completion of the Transaction? A. Yes, we anticipate it likely will...") See also, Arizona Joint Application at pp. 10-11.

1 A. The Merged Company's investment in network maintenance and upgrades is an issue that
2 is critical to wholesale and retail customers (who rely on that network for services) as
3 well as the economic development of the state. However, when asked to provide details
4 about the go-to-market model, which is said to determine that investment, CenturyLink
5 states: "[d]etailed planning regarding the integration of Qwest areas into CenturyLink's
6 local operating model has *not* begun."¹¹² Indeed, CenturyLink was unable or unwilling
7 to identify the regions or region headquarters that would apply to Qwest's territory once
8 the go-to-market model is implemented post-merger.¹¹³ So, at this point, no one knows
9 how investment decisions will be made in a given state post-merger, who will be making
10 those decisions, what factors will influence those decisions or where those decisions will
11 be made.

12 **Q. DID CLECS ATTEMPT TO GET INFORMATION ABOUT THE "GO-TO-**
13 **MARKET" MODEL?**

14 A. Yes. When Integra asked CenturyLink some very basic questions about the go-to-market
15 model, CenturyLink objected to answering those questions.¹¹⁴ Amazingly, CenturyLink
16 based its objection, in part, on the claim that the information: "is not relevant to the

¹¹² CenturyLink Response to Iowa Office of Consumer Advocate Data Request #1-008C (emphasis added).

¹¹³ "While CenturyLink does anticipate its local operating model will be incorporated into the areas of Qwest's operational structure upon the completion of the Transaction, the detailed analysis and planning associated with identifying specific region headquarters has not taken place. Without regard to the locations of any region headquarters, CenturyLink intends to continue its local market focus, which drives operations and service decision-making closer to the customer. This operating model focuses on empowering local personnel to meet the distinct needs of their markets and places the customer at the center of what the company does." CenturyLink Response to Washington UTC Staff Data Request #80.

¹¹⁴ CenturyLink Objection to Integra Arizona Data Request #129. CenturyLink also objected to: describing the "customized back-office support" associated with the go-to-market model that CenturyLink described to the FCC in the Declaration of Karen Puckett in WC Docket No. 10-110.

1 subject matter of this action and is not reasonably calculated to lead to the discovery of
2 admissible evidence.”¹¹⁵ Contrary to CenturyLink’s claim, the model that will be used to
3 determine how much and what type of investment is made in the state as well as how the
4 Merged Company will conduct “direct response marketing efforts” to stem wireline
5 losses is directly relevant to the public interest.¹¹⁶

6 **Q. ARE CONCERNS ABOUT CENTURYLINK’S PLANS TO IMPLEMENT THE**
7 **GO-TO-MARKET MODEL IN QWEST’S REGION WARRANTED?**

8 A. Yes. This is a model that has been applied to primarily rural areas, and there is little, if
9 any, evidence that it can be successfully implemented in the more urban areas served by
10 Qwest. CenturyLink explained this concern in its S-4/A to the Securities Exchange
11 Commission (“SEC”) (at page 17):

12 Prior to the Embarq acquisition, CenturyLink provided local exchange
13 telephone services to predominantly rural areas and small to mid-size
14 cities. Although Embarq’s local exchange markets include Las Vegas,
15 Nevada and suburbs of Orlando and several other large U.S. cities,
16 CenturyLink has operated these more dense markets only since mid-2009.
17 Qwest’s markets include Phoenix, Arizona, Denver, Colorado,
18 Minneapolis — St. Paul, Minnesota, Seattle, Washington, Salt Lake City,
19 Utah, and Portland, Oregon, and, on average, are substantially denser than
20 those traditionally served by CenturyLink. While CenturyLink believes its
21 strategies and operating models developed serving rural and smaller
22 markets can successfully be applied to larger markets, it can not assure
23 you of this. CenturyLink’s business, financial performance and prospects

¹¹⁵ CenturyLink Objections to Integra Arizona Data Requests #129, #130, and #131.

¹¹⁶ CenturyLink has indicated that the go-to-market model will play an important role in achieving merger synergies. For instance, CenturyLink states: “This more de-centralized local structure enables a leaner, more efficient central corporate operation.” Schafer Arizona Direct at p. 9, lines 1-2. CenturyLink has identified corporate overhead as a primary synergy-related operating cost savings (Glover Arizona Direct, Exhibit JG-1). Given that the companies’ estimate of synergies funnels directly into the Merged Company’s ability to pay down debt, return to investment grade, satisfy shareholders’ dividend expectations and continue to invest in its network, the go-to-market model is a key component of the public interest analysis.

1 could be harmed if its current strategies or operating models cannot be
2 successfully applied to larger markets following the merger, or are
3 required to be changed or abandoned to adjust to differences in these
4 larger markets.

5 In addition to concerns related to using the go-to-market model in urban areas, there is
6 anecdotal evidence that this model is causing problems in the legacy CenturyLink
7 territory. For instance, Lincoln City, Oregon (the City) recently filed a petition to
8 intervene in Oregon Docket UM 1484 describing problems it has experienced attempting
9 to work with CenturyLink (in the legacy Embarq territory) to get redundant pathways for
10 telephone service including 911 calls. The City states that despite working with
11 CenturyLink (*i.e.*, legacy Embarq in this instance) for over two years and despite
12 promises from Embarq to fix the problem, Embarq has not kept those promises.¹¹⁷
13 Importantly, it is the City's belief that "[i]n the name of post-merger cost savings,
14 CenturyTel has enlarged its management districts with fewer managers overall, and
15 fewer, local knowledgeable technicians..."¹¹⁸ and "[i]f the pattern following the
16 Embarq/CenturyTel merger continues with the CenturyTel/Qwest merger, fewer and
17 fewer managers and technicians will be responsible for more and more territory."¹¹⁹
18 Based on the City's experience, erratic implementation of CenturyLink's local operating
19 model (or "management districts") in the legacy Embarq territory is causing harm,
20 instead of the benefits touted by the Joint Applicants. Again, because CenturyLink has

¹¹⁷ Petition to Intervene by City of Lincoln City, Oregon PUC Docket UM 1484, July 30, 2010 ("City Petition"), at pp. 3-4.

¹¹⁸ City Petition at p. 4. The City states: "City can prove, if necessary, that the experienced former Embarq technicians and managers who were knowledgeable about the switches and related equipment controlling north Lincoln County and Tillamook County were systematically fired or retired by CenturyTel making the performance of its promises ever more speculative and unlikely."

¹¹⁹ City Petition at p. 4.

1 provided no details about its plans regarding the go-to-market post-merger (other than
2 that CenturyLink plans to import it to Qwest's region), there is no way to tell whether
3 CenturyLink's plans are realistic, whether it can be successful in urban areas, or whether
4 harmful impacts will result in Qwest legacy territory like those described by the City.

5 **3. CenturyLink's Integration Effort May Result in Additional Charges for**
6 **CLECs**

7 **Q. BY PROVIDING THE FOLLOWING EXAMPLES, ARE CLECS ATTEMPTING**
8 **TO RESOLVE ISSUES NOT RELATED TO THE PROPOSED TRANSACTION?**

9 A. No. The examples are meant to show how CenturyLink does business with CLECs, and
10 how integrating CenturyLink's OSS, processes and practices into Qwest territory could
11 result in harm to CLECs.

12 **Q. CAN YOU PROVIDE AN EXAMPLE OF CENTURYLINK WHOLESALE**
13 **PRACTICES THAT UNREASONABLY INCREASE COMPETITORS' COSTS?**

14 A. Yes. Comcast was forced to arbitrate a single issue in numerous states over Embarq's
15 attempt to impose a monthly recurring per subscriber charge for storing and maintaining
16 Comcast's customer directory listing ("DL") information in Embarq's DL databases.¹²⁰
17 Embarq sought to impose this recurring Directory Listing Storage and Maintenance
18 Charge ("DLSM") charge *in addition* to the high per listing, non-recurring charge for
19 loading Comcast's listings into the DL database in the first place.

¹²⁰ See United Telephone Company of the Northwest d/b/a Embarq Response to Comcast Petition in Washington Docket No. U-083025, filed May 27, 2008, at ¶ 10.

1 As I noted in my testimony in those arbitrations on behalf of Comcast, the charge
2 violated Embarq's statutory obligation to provide nondiscriminatory access to directory
3 listing functions.¹²¹ Embarq sought to impose the recurring DSLM charge only on
4 facilities-based competitors that utilize their own-last mile facilities as opposed to the
5 unbundled loops and services of Embarq. The Washington Commission, for example,
6 which ultimately ruled in Comcast's favor, stated in pertinent part:

7 The record is clear that Embarq does not impose a recurring DSLM charge
8 on its own retail customers or on other CLECs that purchase resale
9 services or UNE loops from Embarq. Embarq wishes to impose the
10 recurring DSLM charge only on facilities-based CLECs such as Comcast
11 that do not rely on Embarq's "last-mile" facilities or services to compete
12 within Embarq's service area. Given the expansive language of Section
13 251(b)(3) and the FCC's definition of "nondiscriminatory access", we find
14 it unreasonable and contrary to federal law for Embarq to single out a
15 particular type of competitor, in this case a facilities-based CLEC, to
16 impose a charge related to directory listing only when a carrier does not
17 purchase another service such as resold service or UNE loops.¹²²

18 This type of litigation, where the ILEC attempts to impose anti-competitive charges that
19 recover additional revenue for services for which it has already been compensated, shows
20 the tendencies of CenturyLink and its attitude towards CLECs in general.

21 **Q. ARE THERE OTHER ANTI-COMPETITIVE CHARGES THAT**
22 **CENTURYLINK ASSESSES IN ITS LEGACY TERRITORY OF WHICH YOU**
23 **ARE AWARE?**

24 **A.** Yes. Over the past few years Charter's telephone affiliates arbitrated numerous issues
25 with CenturyLink in establishing new ICAs. One issue that was particularly

¹²¹ 47 U.S.C. § 251(b)(3); 47 C.F.R. § 51.217 (a) and (b).

¹²² See, Arbitrator's Report and Decision, WUTC Docket No. UT-083025, January 13, 2009, at pp. 11-12.

1 objectionable is CenturyLink's continued attempts to charge Charter for access to the
2 customer side of the network interface device ("NID") enclosure.

3 **Q. WHAT IS A NID?**

4 A. The FCC has defined the NID in several orders. As an example, in 1999 the FCC stated,
5 "Specifically, we define the NID to include any means of interconnection of customer
6 premises wiring to the incumbent LEC's distribution plant, such as a *cross-connect*
7 *device used for that purpose.*"¹²³ That "means of interconnection" (again, usually a
8 cross-connect device) is then enclosed in a small gray box, about the size of a shoe box,
9 placed on the side of single family dwellings. The NID and its enclosure will be referred
10 to here, in my testimony, simply as the "NID enclosure."

11 **Q. WHAT WAS THE ISSUE REGARDING THE NID ENCLOSURE?**

12 A. Recall that Charter, like other cable companies who also provide telephone service, is a
13 facilities-based provider with its own loop facilities, and which does not need or purchase
14 UNEs. When Charter wins a customer, it must disconnect the other carrier's loop (in this
15 case CenturyLink) prior to connecting its own loop facilities to the customer's inside
16 wiring. To disconnect the CenturyLink loop, Charter opens the customer side of the NID
17 enclosure and disconnects the jumper. CenturyLink wanted to charge Charter for
18 accessing and "using" the NID enclosure as if it were a UNE.

¹²³ See, e.g., *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report And Order And Fourth Further Notice Of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*") at ¶ 233.

1 **Q. WHAT DID STATE COMMISSIONS IN MISSOURI AND WISCONSIN DECIDE**
2 **IN THESE CASES?**¹²⁴

3 A. These state commissions ruled that Charter should not be required to compensate
4 CenturyLink for accessing the customer side of the NID enclosure. This was especially
5 true since CenturyLink admitted that its alleged costs were already recovered by other
6 charges. CenturyLink incurs no costs or technical obligations when Charter unplugs the
7 short cross connect between network side and the customer side of the NID enclosure. In
8 fact, once the end user has been transferred to Charter, CenturyLink no longer has any
9 engineering and service obligations to that customer. In addition, Charter's limited use of
10 the customer side of the NID enclosure to connect its network to the customer's inside
11 wire generally only arises when CenturyLink has installed an enclosure on the customer's
12 premises in a way that blocks any reasonable access to the customer's inside wire.

13 **Q. DOES CENTURYLINK ALSO ATTEMPT TO IMPOSE ANTI-COMPETITIVE**
14 **CHARGES FOR LOCAL NUMBER PORTABILITY?**

15 A. Yes. CenturyLink attempts to assess separate charges on CLECs for local number
16 portability activities that are specifically prohibited under the Act and under the FCC's
17 rules. In arbitration, CenturyLink proposed to charge Charter a service order charge for
18 porting customers. Charter countered that costs for LNP activities, except in very unique

¹²⁴ See, e.g., *Petition of Charter Fiberlink, LLC for Arbitration of an Interconnection Agreement Between the CenturyTel Rural and Non-Rural Telephone Companies of Wisconsin*, Order Determining Disputed Issues Regarding Arbitration Award, Dockets 5-MA-148, 5-MA-149, 2010 Wis. PUC LEXIS 131 (Wis. PSC Mar. 2010); and *Petition of Charter Fiberlink-Missouri, LLC for Arbitration of Interconnection Rates, Terms, Conditions, And Related Arrangements with the CenturyTel of Missouri, LLC Pursuant to 47 U.S.C. § 252(b)*, Order Adopting Final Arbitrator's Report, Case No. TO-2009-0037, 2009 Mo. PSC LEXIS 559 (Mo. PSC 2010).

1 circumstances that do not apply to Charter,¹²⁵ are to be recovered from an ILEC's end
2 users. Specifically, the FCC's rule states that ILECs may recover their carrier-specific
3 costs directly related to providing long-term number portability by establishing in tariffs
4 filed with the FCC, certain charges over a five (5) year term assessed against end users.¹²⁶
5 In other words, to recover their costs associated with number porting, ILECs may assess
6 separate charges on their end users – not competitors. Qwest does not assess similar,
7 separate number porting charges, so there is a genuine risk that the Merged Company
8 may try to import these anti-competitive charges to Qwest's legacy territory as a result of
9 integration efforts because CenturyLink is the acquiring, and controlling, entity and
10 because of the pressures on the Merged Company to show a financial benefit from the
11 transaction. Such an outcome would reflect the integration of worst (not best) practices,
12 would raise competitors' barriers in Qwest's legacy territory and result in harm to the
13 public interest directly related to the proposed transaction.

14 **4. CenturyLink's Attempts to Increase Transaction Costs for CLECs**

15 **Q. DO YOU HAVE ANOTHER EXAMPLE THAT SUGGESTS THAT**
16 **INTEGRATION COULD HARM CLECS?**

17 **A.** Yes. CenturyLink has demonstrated in these very merger cases either a disregard for
18 CLECs or a desire to drive up the CLECs' transaction costs. A number of CLECs are

¹²⁵ Specifically, FCC rules permit ILECs to assess LNP charges upon other carriers only when other carriers purchase: (a) the ILEC's switching ports as unbundled network elements, (b) Feature Group A access lines; or, when the carrier resells the ILEC's local service. *See* 47 C.F.R. § 52.33(a)(1)(ii). Also, ILECs may assess a LNP "query service" charge when that function is provided to other carriers. *Id.* at § 52.33(a)(3).

¹²⁶ *See* 47 C.F.R. § 52.33(a)(1)(i) and (a)(3).

1 intervening in multiple state proceedings where CenturyLink and Qwest are seeking
2 approval of the proposed transaction. Since the issues and questions are going to be very
3 similar, if not the same, across all states, the CLECs at the outset asked CenturyLink and
4 Qwest to allow a streamlined discovery process where the CLECs could issue one set of
5 discovery on CenturyLink and Qwest and the public responses to those questions could
6 be used in all states where the CLECs are parties (except for state specific differences).

7 **Q. WHAT WAS CENTURYLINK'S OR QWEST'S REPLY?**

8 A. They refused to accept the CLECs' request. I have attached as Exhibit TG-4 the refusal
9 letter sent by Qwest and CenturyLink. Despite Qwest and CenturyLink claims that such
10 a streamlined discovery process would "result in an impractical and burdensome process
11 for the Applicants, as well as the potential that the approval proceedings may be
12 unnecessarily delayed" and that there is a "lack of commonality between all the states,"
13 the CLECs' follow-up letter (also attached in Exhibit TG-4) explained that just the
14 opposite is true. The CLECs asked Qwest and CenturyLink to reconsider their refusal,
15 but that request was ignored. And because CenturyLink and Qwest are requesting
16 expedited treatment of the proposed transactions filed in the numerous states,¹²⁷ deadlines
17 were approaching fast, so the CLECs were forced to create and serve substantially the
18 same discovery questions for each individual state. This requires the CLECs to track and
19 log responses separately for each state, review those individual responses line-by-line to

¹²⁷ See, e.g., Campbell Arizona Direct at p. 7, lines 13-15 ("Expedited treatment is requested to allow the Joint Applicants to more quickly integrate the companies in order to bring the benefits described in my testimony to consumer, business, wholesale customers, and shareholders sooner.")

1 check for any subtle differences, etc. Furthermore, the reasons provided by Qwest and
2 CenturyLink for refusing the CLECs' request were undermined by CenturyLink's
3 subsequent actions.

4 **Q. SINCE QWEST AND CENTURYLINK REFUSED THE STREAMLINED**
5 **DISCOVERY PROCESS, IS IT FAIR TO ASSUME THAT THEY PROVIDED**
6 **STATE-SPECIFIC INFORMATION IN THEIR RESPONSES?**

7 A. No. Ironically, Qwest and CenturyLink refused to participate in the streamlined
8 discovery process due, in part, to their assertion that it "complicates the drafting and
9 researching of responses unnecessarily[;]" nevertheless, most of the discovery responses
10 they provided to my clients' discovery requests were virtually identical across different
11 states. For example, in the Iowa merger proceeding, PAETEC served a set of discovery
12 on CenturyLink that was substantially the same as discovery served on CenturyLink by
13 Integra here in Arizona and other state proceedings, including Colorado. For its
14 responses to PAETEC's discovery in Iowa, CenturyLink inadvertently filed its responses
15 to the similar discovery from Colorado (CenturyLink's initial responses in Iowa
16 referenced the Iowa docket in the heading, but referred to Colorado in the responses).
17 After PAETEC's counsel inquired about this apparent error, CenturyLink indicated that
18 none of its responses would change whether they apply to Iowa or Colorado. In other
19 words, instead of providing the same response once for multiple states, as CLECs
20 wanted, CenturyLink is apparently "copying and pasting" the same responses from state
21 to state. More evidence of this is found in Exhibit AA-3 to the testimony of Dr. Ankum,

1 which shows that CenturyLink's responses to many of the CLECs' discovery questions
2 have been identical across states. Qwest's responses across states have also been
3 virtually identical. The facts show that it is the refusal of Qwest and CenturyLink to
4 agree to the CLECs' streamlined discovery approach that is "complicat[ing] the drafting
5 and researching of responses unnecessarily." To make matters worse, CenturyLink
6 refused to answer discovery questions in *this* proceeding in Arizona about statements the
7 Joint Applicants made in another state such as Oregon.¹²⁸ As a result, the CLECs had to
8 comb through each individual state filing by Qwest and CenturyLink (some of which was
9 not word-searchable) to match up state-specific cites for the discovery questions.

10 **Q. HAS THE LACK OF A STREAMLINED DISCOVERY PROCESS HAMPERED**
11 **THE ANALYSIS OF THE PROPOSED TRANSACTION IN OTHER WAYS?**

12 A. Yes. The CLECs have to wait for responses to be issued in each individual state before
13 being able to use the discovered data, which creates unnecessary delays and imposes
14 additional costs on CLECs. For example, Qwest and CenturyLink provided certain
15 confidential data in response to identical discovery questions issued in multiple states.

16 However, for some inexplicable reason, they failed to provide that data in response to

¹²⁸ For example, CenturyLink filed testimony in Oregon proceeding UM1484 that, to my knowledge, has not been filed in other state commission proceedings related to the proposed transaction. Accordingly, some of the CLECs' discovery questions in Arizona and other states pertained to testimony CenturyLink submitted in Oregon that had not been submitted in other states. None of the additional Oregon testimony addressed Oregon-specific issues and the CLEC questions about the additional Oregon testimony were not Oregon-specific, yet, CenturyLink objected to answering questions related to this additional Oregon testimony in its discovery responses in other states, including Arizona, because "this Direct Testimony was not submitted in Arizona and therefore is not relevant to this proceeding." *See, e.g.*, CenturyLink Objection to Integra Arizona Data Requests #49, #76, #78 and #79. CenturyLink objected to answering these discovery requests in Arizona even though the witness who filed the additional testimony in Oregon (Michael Hunsucker) sponsored a number of CenturyLink's data request responses in Arizona. *See, e.g.*, CenturyLink Responses to Integra Arizona Data Requests #121 and #122.

1 those questions issued by PAETEC in Iowa (which requests were served on Qwest and
2 CenturyLink in Iowa on July 16, 2010, and responses were due on July 23, 2010). As a
3 result, PAETEC, counsel and QSI had to modify my initial testimony the very day
4 testimony was originally due to delete the discussion of issues that would have likely
5 been supported by the confidential data Qwest and CenturyLink failed to provide in Iowa.
6 To add insult to injury, the day after Qwest and CenturyLink secured an extension of the
7 testimony filing deadline in Iowa, they then provided some of the confidential data
8 PAETEC requested, but provided it to PAETEC's counsel after 5 p.m. on Friday even
9 though the revised testimony deadline was Noon the following Monday. Clearly, the
10 Qwest and CenturyLink approach to discovery for the merger proceedings alone has cost
11 CLECs many extra person-hours and thousands of dollars.

12 **Q. HAS QWEST PREVIOUSLY AGREED TO A STREAMLINED DISCOVERY**
13 **PROCESS LIKE THAT PROPOSED BY THE CLECS IN THESE CASES?**

14 **A.** Yes. My firm, QSI, recently represented PAETEC (McLeodUSA) in a number of
15 complaints against Qwest regarding collocation power charges before a handful of state
16 commissions. Since the issues in those cases were similar across states, McLeodUSA
17 and Qwest were able to agree that discovery responses issued in one state could be used
18 in another state so as to avoid duplicative requests and responses and save time and
19 money. Indeed, I understand that this arrangement was originally suggested by Qwest's
20 counsel. So, while the companies disagreed on substantive issues in the proceeding, at

1 least Qwest agreed to a logistical process that made the process more efficient and less
2 costly for all involved.

3 **Q. HOW SHOULD THE COMMISSION INTERPRET QWEST'S AND**
4 **CENTURYLINK'S ACTIONS IN THE EXAMPLES YOU JUST PROVIDED?**

5 A. If the recent conduct of Qwest and CenturyLink is how the Merged Company will
6 conduct itself post-merger, I expect the Merged Company to be more difficult for
7 competitors to work with than Qwest. I see this as a significant step backwards. If this
8 litigious, "compartmentalizing" attitude of CenturyLink drives the process of integrating
9 "best practices" post-merger, I expect CLEC transaction costs to significantly increase
10 post-merger – particularly given the patchwork organization of rural and non-rural
11 companies CenturyLink intends to maintain post-merger.

12 **C. *Assurances of Integration Success Are Exaggerated and Ignore The Serious***
13 ***Challenges Facing CenturyLink Post-merger***

14 **Q. CENTURYLINK STATES THAT IT IS AN EXPERIENCED INTEGRATOR**
15 **BASED ON ITS PREVIOUS ACQUISITIONS.¹²⁹ SHOULD THAT PROVIDE**
16 **CLECS AND THE COMMISSION COMFORT ABOUT CENTURYLINK'S**
17 **ABILITY TO INTEGRATE QWEST?**

18 A. No. CenturyLink has acknowledged to the SEC that there is a risk of CenturyLink being
19 unable to successfully integrate the two companies, and more specifically, that
20 "performance shortfalls" at one or both of the companies may result from the "diversion

¹²⁹ See, e.g., McMillan Arizona Direct at pp. 13, 17 and Schafer Arizona Direct at pp. 5-6 and Exhibit TS-1.

1 of management's attention caused by completing the merger and integrating the
2 companies' operations."¹³⁰ In addition, there are several key differences between past
3 acquisitions and the proposed acquisition of Qwest. Some of those differences are listed
4 below:

- 5 • The magnitude of this acquisition dwarfs all other prior transactions, so CenturyLink
6 could very well be "biting off more than it can chew." As the investment research
7 company Morningstar stated: "CenturyTel is taking an unnecessary risk with the
8 Qwest merger" and "the timing and scope of the Qwest deal will present far greater
9 challenges" than the Embarq acquisition.¹³¹
- 10 • The Merged Company is taking on much more debt by acquiring Qwest than it has in
11 past acquisitions. As Integra and others explained to the FCC: "At the conclusion of
12 the transaction, legacy CenturyTel will have *more than quadrupled* its debt load in
13 approximately three years."¹³²
- 14 • No prior CenturyLink acquisitions involved acquiring a BOC (and all BOC-related
15 obligations) like the proposed transaction does.
- 16 • CenturyLink is still in the process of integrating the recent acquisition of Embarq,
17 which raises concerns about the Merged Company spreading its resources too thin in
18 attempting to complete multiple integrations at the same time. Just to put the Merged
19 Company's integration efforts in perspective, CenturyTel before its acquisition of
20 Embarq in 2009 served "roughly two million telephone access lines."¹³³ In 2009, it
21 acquired "nearly 5.9 million telephone access lines"¹³⁴ when it acquired Embarq –
22 which approximately tripled the size of the company in terms of access lines. With
23 the proposed transaction of Qwest, CenturyLink will acquire another 10.3 million
24 access lines.¹³⁵ So, if the transaction is approved, CenturyLink will have grown by
25 nine times its size in just two short years. No matter how experienced the

¹³⁰ CenturyLink Form S-4A, filed July 16, 2010, at p. 17.

¹³¹ Morningstar Report, "CenturyTel is Taking an Unnecessary Risk with the Qwest Merger, in Our View," May 27, 2010, cited in Comments of Communications Workers of America, WC Docket No. 10-110, July 12, 2010, at pp. 11-12.

¹³² Ned Douthat, *Tough Times on the Way to the Altar for CenturyTel and Qwest*, Forbes, April 26, 2010. Forbes article available at: <http://blogs.forbes.com/greatspeculations/2010/04/26/tough-times-on-the-way-to-the-altar-for-centurytel-and-qwest/>

¹³³ FCC *Embarq/CenturyTel Merger Order* at ¶ 4.

¹³⁴ *Id.* at ¶ 3.

¹³⁵ Arizona Joint Application at p. 7.

1 management team at the Merged Company is, an integration effort of this magnitude
2 will be extremely challenging to say the least.¹³⁶

3 **Q. IS THERE INFORMATION THAT SUGGESTS THAT THE EMBARQ**
4 **INTEGRATION IS HINDERING CENTURYLINK'S ABILITY TO ABIDE BY**
5 **ITS REGULATORY OBLIGATIONS?**

6 **A.** Yes. Despite CenturyLink's glowing reports of the Embarq integration in its testimony,
7 other information suggests that the integration effort is monopolizing much of the
8 Merged Company's time and efforts. For example, CenturyLink recently requested a
9 waiver of the FCC's one business-day porting interval requirement on the basis that such
10 compliance would disrupt "ongoing system changes related to the [CenturyTel/Embarq]
11 merger" to the point where the integration effort would have to be "suspended, which
12 would create large numbers of problems with retail and carrier customer processes, and
13 lead to service disruptions, delays and errors that would likely cause incalculable
14 additional costs."¹³⁷ CenturyLink explained that strict adherence to the FCC's
15 requirement could require CenturyLink to "divert resources and implementation activity
16 away from the wholesale systems" and would jeopardize timely completion of its
17 integration of legacy Embarq's wholesale OSS required by the FCC merger conditions.¹³⁸

¹³⁶ Standard & Poor's has observed that "integration efforts will be difficult given the size of the combined company and CenturyTel's integration of previously acquired Embarq will likely not be complete until the end of 2011." Glover Arizona Direct, Exhibit JG-4 at p. 3. See also, Glover Arizona Direct, Exhibit JG-3 at p. 1, wherein Moody's states: "The negative rating outlook for CenturyTel reflects the considerable execution risks in integrating a sizeable company so soon after another large acquisition (Embarq in 2009) while confronting the challenges of a secular decline in the wireline industry."

¹³⁷ CenturyLink Petition for Waiver of Deadline, CC Docket No. 95-116, WC Docket No. 07-244, June 3, 2010, at p. 5.

¹³⁸ *Id.* at p. 7.

1 This waiver request not only calls into question the purported seamlessness of the
2 Embarq integration efforts, but also casts serious doubt on the Merged Company's ability
3 to integrate both Embarq and Qwest simultaneously, let alone in an efficient manner.¹³⁹
4 That is, if CenturyLink's efforts to integrate Embarq jeopardize its ability to meet its
5 regulatory obligations, then surely integration of Qwest (which will more than double
6 CenturyLink's size) will similarly jeopardize CenturyLink's ability to abide by regulatory
7 requirements and obligations. CenturyLink has already noted that the simultaneous
8 integration of Qwest and Embarq poses risks:

9 [CenturyLink/Qwest] integration initiatives are expected to be initiated
10 before CenturyLink has completed a similar integration of its business with
11 the business of Embarq, acquired in 2009, which could cause both of these
12 integration initiatives to be delayed or rendered more costly or disruptive
13 than would otherwise be the case.¹⁴⁰

14 **Q. HAVE THE CLECS REPORTED PROBLEMS WITH EMBARQ OR**
15 **CENTURYTEL SINCE THAT MERGER WAS APPROVED?**

16 **A.** Yes. Recent experience of CLECs indicates that CenturyLink's integration track record
17 is not as perfect as its testimony seems to suggest. As discussed in the CLEC comments
18 to the FCC, tw telecom and Socket Telecom explained problems they experienced during
19 CenturyLink's transition of wholesale customers in the legacy Embarq territory from one
20 ordering system to another in 2009. I have attached the relevant portion of those
21 comments as Exhibit TG-5. As described therein, the CLECs have experienced system

¹³⁹ CenturyLink represented in a SEC filing that integration efforts associated with the Qwest acquisition would likely be initiated before the integration of Embarq was complete. CenturyLink Form S-4 at p. 16. See also, Schafer Arizona Direct, Exhibit TS-2, showing overlap between the integration of Embarq and Qwest during 2011.

¹⁴⁰ CenturyLink Form S-4 at p. 16.

1 outages (during which time LSRs could not be submitted), could not complete pre-
2 ordering, and experienced slow response times.

3 **Q. HAVE CENTURYLINK'S SYSTEM INTEGRATION EFFORTS ALWAYS BEEN**
4 **ON-TIME AND ON-BUDGET?**

5 A. No. Prior attempts by CenturyLink to integrate systems were neither on-time nor on-
6 budget. CenturyTel stated that this billing system integration effort required
7 "substantially more time and money to develop than originally anticipated" and estimated
8 a cost overrun of between \$50 million and \$60 million.¹⁴¹ Furthermore, CenturyTel
9 stated:

10 there is no assurance that the system will be completed in accordance with
11 this schedule or budget, or that the system will function as anticipated. If
12 the system does not function as anticipated, the company may have to
13 write-off part or all of its remaining costs and further explore its other
14 billing and customer care system alternatives.¹⁴²

15 CenturyTel stated in its 2001 10-K that "The Company is in the process of developing an
16 integrated billing and customer care system" and completion ... is expected to occur in
17 early 2003." However, two years later CenturyTel stated in its 2003 10K that "the
18 system remains in the development stage and has required substantially more time and
19 money to develop than originally anticipated. The Company currently expects to
20 complete all phases of the new system no later than mid-2005. In addition, the Company
21 expects to incur additional costs related to completion of the project, including (i)
22 approximately \$15 million of customer service related and data conversion costs."

¹⁴¹ *Financial Watch: Integration Costs Loop Over OSS Deployments*, Billing and OSS World, October 1, 2003.

¹⁴² *Id.*

1 Therefore CenturyTel's integrated billing and customer care system implementation was
2 delivered over two years later than planned and additional operational costs were incurred
3 as a result. The same risks are inherent in any system integration CenturyLink may
4 attempt in Qwest's region post-merger – "there is no assurance" that the integration will
5 be on time, on budget, or function properly. Indeed, it is these types of customer-
6 impacting problems with systems integration that have caused the serious problems
7 associated with recent mergers.

8 **Q. WHAT SPECIFIC KINDS OF CHALLENGES WILL CENTURYLINK FACE**
9 **WHEN ATTEMPTING TO INTEGRATE THE BACK-END SYSTEMS AND**
10 **CLEC-FACING OSS CURRENTLY USED BY QWEST?**

11 A. I discussed some of these major challenges above. The point is that changing CLEC-
12 facing OSS is not just a matter of implementing or migrating a new CLEC-facing system;
13 rather, it involves synching up that new system with all of the underlying back-office
14 systems, billing systems, underlying data sets, business processes, product catalogs,
15 billing systems, business rules, and performance metrics, remapping data extracts, as well
16 as testing those new systems in a standard test environment and in controlled production
17 testing. In other words, replacing Qwest's existing OSS would have a domino effect that
18 impacts virtually every aspect of the wholesale customer's relationship with Qwest.
19 Other non-BOC entities such as The Carlyle Group and FairPoint Communications have
20 tried to integrate BOC systems in the past and encountered some of the same challenges I
21 have identified.

1 **Q. DID THE FCC IMPOSE A CONDITION ON ITS APPROVAL OF THE**
2 **EMBARQ/CENTURYTEL MERGER THAT THE MERGED COMPANY**
3 **WOULD HAVE TO SHOW THAT IT WAS CONTINUING TO MAINTAIN ITS**
4 **WHOLESALE SERVICE QUALITY PERFORMANCE TO CLECS IN THE**
5 **FORMER EMBARQ TERRITORIES?**

6 **A.** Yes. When the FCC approved the CenturyTel-Embarq merger in June 2009, it imposed a
7 series of conditions, including that “[f]or two years after the Transaction Closing Date,
8 the Merged Company will maintain service levels for the Embarq operating companies
9 that are comparable to those Embarq wholesale customers experienced pre-merger.”¹⁴³
10 To help ensure compliance with this condition, the FCC also required the Embarq
11 operating companies to continue to produce and make available wholesale service
12 performance reporting for two years after the closing date.¹⁴⁴ The FCC prescribed that
13 the reporting would include comparison of actual quarterly performance results to a
14 benchmark value, set equal to the 12-month average results achieved from April 1, 2008
15 through March 31, 2009.¹⁴⁵ The FCC required that the Embarq operating companies
16 meet a service performance standard of “no less than one standard deviation from the
17 benchmark value, 90 percent of the time.”¹⁴⁶ The specific metrics applied are as follows:

- Pre-ordering – average response time to pre-order queries calculated in seconds, which measures the number of seconds from Embarq’s receipt of a query from a CLEC to the time Embarq returns the requested data to the CLEC.

¹⁴³ FCC *Embarq/CenturyTel Merger Order*, Appendix C (Conditions) at p. 1.

¹⁴⁴ *Id.* at p. 1.

¹⁴⁵ *Id.* at p. 2.

¹⁴⁶ *Id.* at p. 2.

- 1 • Provisioning – average completed interval measured in days, which measures the
2 average number of business days from receipt of a valid, error-free service request to
3 the completion date in the service order entry system for new, move and change
4 service orders, separately for all UNE, resale, and other CLEC services;
- 5 • Repair/Maintenance – customer trouble report rate, which measures the total number
6 of network customer trouble reports received within a calendar month per 100
7 units/UNEs, separately for all UNE, resale, and other CLEC services;
- 8 • Repair/Maintenance – average time to restore (service), which measures the average
9 duration from the receipt of the customer trouble report to the time the trouble is
10 cleared, separately for all UNE, resale, and other CLEC services; and
- 11 • Work Center – center responsiveness, which measures the average time it takes
12 Embarq’s work center to answer a call expressed as the percentage of calls that are
13 answered within 20 seconds.¹⁴⁷

14 **Q. WHAT DOES CENTURYLINK’S MOST RECENT EMBARQ COMPLIANCE**
15 **FILING WITH THE FCC REVEAL ABOUT ITS WHOLESALE SERVICE**
16 **QUALITY PERFORMANCE IN THE FORMER EMBARQ TERRITORIES?**

17 A. In response to discovery, CenturyLink has provided its most recent wholesale service
18 quality compliance report pursuant to these FCC conditions.¹⁴⁸ It presents the Embarq
19 operating companies’ wholesale performance on the metrics identified above, by state,
20 for each quarter from 3Q 2009 through 2Q 2010. These are compared to the baseline
21 performance average for the period April 1, 2008 through March 31, 2009. ***BEGIN

22 **CONFIDENTIAL** [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

¹⁴⁷ *Id.* at pp. 1-2.

¹⁴⁸ CenturyLink Response to Integra Arizona Data Request #59(d), Confidential Attachment Integra-59(d).

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] END CONFIDENTIAL***

18 **Q. THE DATA YOU PRESENT ABOVE RELATES TO WHOLESALE SERVICE.**
19 **ARE THERE OTHER DATA APPLICABLE TO RETAIL SERVICE THAT**
20 **SHOWS THAT VERBAL STATEMENTS ABOUT CENTURYLINK'S**
21 **COMMITMENT TO QUALITY SERVICES ARE NOT SUFFICIENT TO**
22 **PREVENT MERGER-RELATED HARM?**

23 **A.** Yes. Recent JD Power & Associates studies show that retail customers have reasons to
24 be concerned if CenturyLink were to own and control Qwest. On September 15, 2010,
25 JD Power & Associates released its *2010 U.S. Residential Telephone Customer*

1 *Satisfaction Survey*.¹⁴⁹ This study measures customer satisfaction with both local and
2 long distance telephone services in four regions through the United States and covers five
3 factors in determining overall satisfaction: (i) performance and reliability, (ii) cost of
4 service, (iii) billing, (iv) offerings and promotions, (v) and customer service. In the West
5 Region, where results for both Qwest and CenturyLink are reported, Qwest was ranked
6 3rd out of 10 and CenturyLink was ranked 8th out of 10. CenturyLink performed below
7 average, while Qwest performed slightly above average. In the three other regions where
8 CenturyLink's (but not Qwest's) residential customer satisfaction was ranked,
9 CenturyLink ranked 7th out of 9 (East Region), 8th out of 9 (South Region), and 7th out of
10 10 (North Central Region). Regarding business customer satisfaction, JD Power &
11 Associates released its *2010 U.S. Major Provider Business Telecommunications Study –*
12 *Voice Service* on July 15, 2010.¹⁵⁰ This study measures customer satisfaction with
13 providers of landline voice telephone service for businesses, and providers are ranked in
14 three segments: (i) home-based businesses, (ii) small/midsize businesses and (iii) large
15 enterprise businesses. The same five factors listed above are used to determine overall
16 satisfaction. Both Qwest and CenturyLink results are reported for two of the three
17 segments – home-based business and small/midsize business. In the home-based
18 business segment, Qwest performed slightly better than CenturyLink, with both
19 companies performing below the average. In the small/midsize business segment,

¹⁴⁹ The JD Power & Associates press release and summary results for this study are available at:
<http://businesscenter.jdpower.com/JDPACContent/CorpComm/News/content/Releases/pdf/2010184-rtss.pdf>

¹⁵⁰ The JD Power & Associates press release and summary results for this study are available at:
<http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2010111>

1 CenturyLink ranked last (5th out of 5), which is below average, and Qwest ranked slightly
2 above average at 3rd out of 5. With Qwest consistently performing better than
3 CenturyLink in these retail customer satisfaction studies, it is unclear how CenturyLink
4 taking control of Qwest will bring any better service or “best practices” to the legacy
5 Qwest territory. Indeed, just the opposite is true. These studies, along with other data
6 presented in this proceeding, shows that both wholesale and retail customers have good
7 reason to be concerned about CenturyLink taking control of Qwest.

8 **Q. SINCE CLECS ARE COMPETITORS OF CENTURYLINK/QWEST,**
9 **WOULDN'T CLECS BENEFIT FROM RETAIL CUSTOMER**
10 **DISSATISFACTION ABOUT CENTURYLINK'S/QWEST'S RETAIL**
11 **SERVICES?**

12 A. Not necessarily. A reduction in retail service quality will likely also translate into a
13 reduction in wholesale service quality. Since Qwest's performance assurance plans
14 generally compares wholesale service quality to retail service quality, as retail service
15 quality declines, there would be no protections for CLECs against a deterioration in
16 wholesale service quality. This, in part, is why the CLECs have recommended condition
17 4.a. regarding the additional performance assurance plan. This condition would protect
18 CLECs in the event of a deterioration in retail service quality.

19 **Q. CENTURYLINK HAS, IN OTHER STATE PROCEEDINGS, POINTED TO**
20 **“BEST IN CLASS” AWARDS IT HAS WON AS ALLEGED EVIDENCE OF**
21 **CENTURYLINK'S COMMITMENT TO PROVIDE QUALITY WHOLESALE**

1 **SERVICES.¹⁵¹ DID CENTURYLINK DISCUSS THOSE AWARDS IN ITS**
2 **TESTIMONY IN ARIZONA?**

3 A. No. Despite discussing these awards in its merger testimony in other states,¹⁵²
4 CenturyLink does not mention them in its testimony here in Arizona.

5 **Q. IF CENTURYLINK MENTIONS THESE AWARDS AT SOME POINT HERE IN**
6 **ARIZONA, DO THESE AWARDS PROVIDE ANY COMFORT ABOUT**
7 **WHOLESALE SERVICE QUALITY POST-MERGER?**

8 A. No. CenturyLink stated in Oregon: "CTL won four 'Best in Class' awards based on the
9 2009 Metro Wholesale Carrier Report Card study from Atlantic-ACM. The awards were
10 in four key areas: customer service, sales representatives, provisioning, and billing. CTL
11 has won the award for provisioning for three consecutive years and the award for
12 customer service and sales representatives for two consecutive years."¹⁵³ Based on
13 information provided by Atlantic-ACM, the Best in Class awards are based on a survey,
14 and for taking the time to respond to the survey, the respondent is entered in a drawing
15 for a 16 GB Apple iPad (WiFi), Amazon Kindle Global Wireless, Garmin Nuvi550, Flip
16 MiniHD camcorder, or cash equivalent. In addition, the surveys are not necessarily
17 provided to the appropriate CLEC representatives and therefore are unlikely to represent
18 the CLEC's overall experience and view point. Further, the companies you vote for

¹⁵¹ See, e.g., Hunsucker Oregon Direct at p. 9, lines 12-20.

¹⁵² See, e.g., Hunsucker Oregon Direct at p. 9. See also, Direct Testimony of John Jones, Minnesota PUC Docket No. P-421, et al./PA-10-456, June 14, 2010, p. 13. Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={56979297-3D21-4FC8-8F2C-341B495F4BD0}&documentTitle=20106-51540-02>

¹⁵³ Hunsucker Oregon Direct at p. 9.

1 sponsor the research, which suggests that not all telecommunications companies are
2 candidates on the survey. While the Atlantic-ACM awards may provide a useful
3 marketing data point for CenturyLink, it is not based on the type of verifiable statistical
4 data on which the Qwest wholesale Performance Indicators (“PIDs”) and Performance
5 Assurance Plans (“PAPs”) are based, or the type of data used in CenturyLink’s wholesale
6 service quality reports submitted to the FCC. In other words, the Atlantic-ACM awards
7 are not based on objective, verifiable performance data.

8 **V. LESSONS FROM RECENT ILEC MERGERS AND ACQUISITIONS**

9 **Q. WHAT LESSONS CAN WE LEARN FROM OTHER RECENT TELECOM**
10 **MERGERS AND/OR ACQUISITIONS?**

11 A. Significant problems have been experienced after recent mergers – problems that could
12 occur after the proposed transaction if it is approved as filed. These examples are further
13 evidence that the Joint Applicants’ unsupported assertions about the proposed transaction
14 cannot be taken at face value; failures do occur no matter how well-intentioned the
15 company is and the stakes associated with failure are simply too high.

16 **Q. ARE YOU GENERALLY FAMILIAR WITH THE RECENT MERGERS IN THE**
17 **TELECOMMUNICATIONS INDUSTRY?**

18 A. Yes, I am.

1 **Q. IS THERE ANYTHING TO BE LEARNED BY CONSIDERING THE**
2 **OUTCOMES OF OTHER RECENT MERGERS AND ACQUISITIONS**
3 **INVOLVING ILEC OPERATIONS?**

4 A. Yes, there certainly is. The recent bankruptcies of FairPoint and Hawaiian Telecom, as
5 well as ongoing problems with Frontier's cutover of former Verizon lines, demonstrate
6 the challenges and risks associated with transactions similar to this one, particularly with
7 respect to a smaller LEC's ability to integrate the OSS and other back-office systems of a
8 materially larger organization.

9 These are examples wherein the merging companies' high expectations and promised
10 public benefits regarding the merger failed to be realized, in large part because of
11 problems with integrating the two companies' operations and OSS. In particular, I am
12 referring to:

- 13 • The Carlyle Group's acquisition of Verizon Hawaii (renamed Hawaiian
14 Telcom), which led to Hawaiian Telcom's filing for Chapter 11 bankruptcy
15 protection in 2008;
- 16 • FairPoint's acquisition of Verizon's operations in northern New England
17 (Maine, New Hampshire, and Vermont), which led to FairPoint's Chapter 11
18 bankruptcy filing in October 2009; and
- 19 • The on-going integration difficulties experienced by Frontier as it attempts to
20 absorb former Verizon exchanges acquired in fourteen states.

21 **Q. BEFORE YOU TURN TO THE SPECIFICS OF THESE CASES, CAN YOU**
22 **SUMMARIZE THE LESSONS THAT YOU DRAW FROM THEM?**

23 A. Yes. The primary lessons that I draw from these experiences are as follows:

- 1 (1) Mergers and acquisitions involving the transfer and integration of ILEC local
2 telephone operations carry a high degree of risk of failure, even when
3 implemented by purportedly highly-experienced management teams and well-
4 financed companies;
5
6 (2) The integration and/or change-out of ILEC back-office systems and OSS can
7 pose a tremendous challenge, and integration failures can be so costly as to
8 not only eliminate the forecasted transaction cost savings and other synergies,
9 but to place the post-merger company under severe financial pressure; and
10
11 (3) From a public interest standpoint, the outcome of such failed transactions can
12 indeed be an “unmitigated disaster,” including financial instability, service
13 quality deteriorations and dissatisfied customers, curtailed network investment
14 and broadband deployment, and the disruption of wholesale services
15 provisioning and ordering that are crucial to a smoothly-functioning
16 competitive marketplace.

17 **Q. PLEASE DESCRIBE THE EVENTS THAT LED TO HAWAIIAN TELCOM’S**
18 **BANKRUPTCY FILING AFTER ITS ACQUISITION BY THE CARLYLE**
19 **GROUP.**

20 A. In May 2005, the private investment firm The Carlyle Group (“Carlyle”) closed on its
21 purchase of Verizon Hawaii, the franchised ILEC serving most of the state of Hawaii. At
22 the time of that acquisition, Carlyle proclaimed that it “has a track record of successful
23 telecommunications investments, deep knowledge of the local telephony business, and
24 deep understanding of the complex regulatory issues affecting the industry.”¹⁵⁴ Carlyle
25 assembled a highly-experienced management team for the acquired firm (renamed
26 Hawaiian Telcom) that included a former Chairman of the FCC, a former Executive Vice
27 President of Verizon and GTE, and Carlyle’s founder, who is also a former CFO of MCI

¹⁵⁴ Carlyle Group press release, “The Carlyle Group to Buy Verizon Hawaii for \$1.65 billion – New Services, Jobs, and Capital Investment Expected with Transition to Locally Managed Company,” May 24, 2004, at page 2.

1 and Chairman of Nextel Communications.¹⁵⁵ Carlyle also committed \$1.65 Billion to
2 purchase the company, and proclaimed that it "...plans to invest significant capital to
3 transition the company to an independent local company in a manner that maintains
4 service quality and is seamless to customers."¹⁵⁶ Just prior to the acquisition, Carlyle
5 promised that: "In short order we will offer new services to our customers, including
6 expanded broadband, and we expect to add many new jobs after the acquisition."¹⁵⁷ The
7 FCC approved the transaction in August 2004, under its streamlined procedures for
8 domestic Section 214 transfers of control.¹⁵⁸ The Hawaii PUC conducted its own review
9 and approved the transaction, subject to certain conditions, on March 16, 2005.¹⁵⁹

10 **Q. DID HAWAIIAN TELCOM EXPERIENCE TROUBLES RELATED TO OSS?**

11 A. Yes. One aspect of the transaction was that the transferred company would develop its
12 own back-office and OSS systems and processes to replace those of Verizon. Hawaiian
13 Telcom hired the management and technology consulting company BearingPoint, Inc. to
14 take on the task of designing and implementing those systems by the end of March 2006.
15 The Hawaii PUC required testing of the new systems as a condition to its approval of the
16 transaction,¹⁶⁰ but the scope and rigor of that testing was nowhere near that required of

¹⁵⁵ *Id.* at p. 2.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at p. 1.

¹⁵⁸ FCC DA 04-2541, WC 04-234, Streamlined Domestic Section 214 Application Granted, Released August 17, 2004.

¹⁵⁹ *In the Matter of the Application of Paradise Mergersub, Inc., GTE Corporation, Verizon Hawaii Inc. Bell Atlantic Communications, Inc. and Verizon Select Services Inc. for Approval of a Merger Transaction and Related Matters*, Hawaii PUC Docket No. 04-0140, Decision and Order No. 21696, March 16, 2005.

¹⁶⁰ *Id.* at Ordering Paragraph 1.

1 Qwest's systems under the Section 271 regime.¹⁶¹ In 2007 Hawaiian Telcom made a
2 filing with the FCC seeking a waiver from certain ARMIS reporting requirements. In
3 that filing Hawaiian Telcom described the troubles it was experiencing:

4 The transition from Verizon's systems to the new BearingPoint-designed
5 systems at the end of March, 2006 did not go smoothly. As has been
6 widely reported in the press, see Attachment 1 (representative press
7 clippings), critical BearingPoint-designed systems related to customer
8 care, order management, billing and data collection necessary for various
9 reporting obligations lacked significant functionality, leading to problems
10 with ordering, provisioning, billing and collection.

11 ...

12 These shortcomings therefore affected not only Hawaiian Telcom's ability
13 to collect ARMIS related data, but also its basic ability to bill its
14 customers, collect revenue for services provided, and process payments.¹⁶²

15 In February 2007, Hawaiian Telcom reached an settlement with Bearing Point:
16 "According to Hawaiian Telcom, BearingPoint agreed to pay \$52 million in cash on
17 March 27 and to waive outstanding invoices, bringing the total value of the settlement to
18 \$90 million."¹⁶³ Although Hawaiian Telcom received a cash settlement, it was still left
19 with poorly functioning systems. To try to correct the situation, in February 2007,
20 Hawaiian Telcom entered into a seventeen-month, \$46-million contract with the
21 management consulting and technology services company Accenture. That contract
22 required Accenture to develop and remediate the company's business support and
23 customer service systems, including the OSS used to interact with CLECs and other

¹⁶¹ Exhibit TG-2 ("Description of Qwest's OSS Testing in Relation to 271 Authority").

¹⁶² Petition of Hawaiian Telcom, Inc., for Waiver of Sections 43.21(g) and 43.21(j) of the Commission's Rules, 47.C.F.R. §§ 43.21(g) and 43.21(j), CC Docket No. 86-182, filed February 21, 2007 ("Hawaiian Telcom ARMIS Petition"), at p. 2.

¹⁶³ Pacific Business News, BearingPoint Pays Hawaiian Telcom \$52M, March 29, 2007 Available at: <http://www.bizjournals.com/pacific/stories/2007/03/26/daily36.html>

1 wholesale customers.¹⁶⁴ In the interim, Hawaiian Telcom was forced to use costly
2 manual work-arounds, third-party temporary call centers, and other inefficient and
3 expensive processes to undertake basic provisioning and ordering activities.¹⁶⁵
4 Numerous retail customers received erroneous bills, including double-billing due to
5 delayed bill processing.¹⁶⁶ Wholesale customers, such as tw telecom, also endured
6 systems failures by Hawaiian Telcom, including (1) missed deadlines for special access
7 circuit orders, (2) delays in porting end user customers' telephone numbers, and (3) lack
8 of a functioning electronic interface (GUI) for wholesale customers to submit and
9 monitor the status of trouble tickets for the services they received from the company.¹⁶⁷

10 In five years the Company's reported annual rate of return plummeted from the
11 essentially breakeven level it had at the time of the transaction's close, -0.8%, down to
12 -29.3%.¹⁶⁸ In December 2008, Hawaiian Telcom filed for Chapter 11 bankruptcy
13 protection, "listing \$1.4 billion in assets and \$1.3 billion in debts."¹⁶⁹

14 **Q. WAS HAWAIIAN TELCOM THE ONLY ILEC TO FILE FOR BANKRUPTCY**

¹⁶⁴ *Id.* at p. 4, and Carlyle Group press release (issued by portfolio company), "Hawaiian Telcom Contracts with Accenture to Complete Systems Transformation; Firms Sign Agreement for Development, Deployment and Maintenance of Key Customer-Service and Business-Operations Capabilities," February 8, 2007, at p. 1.

¹⁶⁵ *See, e.g.*, Hawaiian Telecom Communications, Inc. Form 10-Q, filed November 14, 2006, at p. 26.

¹⁶⁶ *See*, "Billing woes overwhelm Hawaiian Telcom systems," Honolulu Star-Bulletin, June 21, 2006; provided in Attachment 1 to the Hawaiian Telcom ARMIS Petition.

¹⁶⁷ *In the Matter of the Public Utilities Commission Instituting a Proceeding Regarding Hawaiian Telcom, Inc 's Service Quality and Performance Levels and Standards in Relation to Its Retail and Wholesale Customers*, Hawaii PUC Docket No. 2006-0400, Time Warner Telecom of Hawaii, L.P., d/b/a Oceanic Communications' Post-Hearing Brief, November 9, 2007, at p. 23.

¹⁶⁸ *See* Public Utilities Commission of Hawaii, Annual Report for Fiscal Year 2008-2009, Released November 2009, at p. 43, Figure 18 (Verizon Hawaii/Hawaiian Telcom's reported actual annual RoR for past 12 months, for June 2005 and June 2009, respectively).

¹⁶⁹ The Washington Post, "Carlyle Takes Another Hit As Telecom Firm Goes Under," December 2, 2008, at p. 1.

1 **AFTER AN ACQUISITION OR MERGER?**

2 A. No, unfortunately not. FairPoint Communications Corp. closed on its acquisition of
3 Verizon's ILEC operations in northern New England (Maine, New Hampshire, and
4 Vermont) in March 2008, with approval from regulators in all three states. Barely a year
5 and a half later, in October 2009, the company filed for Chapter 11 bankruptcy
6 protection. As NASUCA has pointed out in its initial Comments in the FCC's Qwest-
7 CenturyLink merger proceeding, "...the track record is that the FairPoint transaction has
8 turned out to be a virtually unmitigated disaster."¹⁷⁰ In its recent decision rejecting
9 FairPoint's Chapter 11 reorganization plan, the Vermont Public Service Board made the
10 following observations concerning FairPoint's pre-acquisition expectations and
11 commitments, and the ensuing reality:

12 On March 31, 2008, FairPoint consummated its merger and acquisition of
13 Spinco (Verizon's NNE operations) resulting in FairPoint as the surviving
14 entity. Previously, on December 21, 2007, we issued our first order in
15 Docket No. 7270 initially denying FairPoint's request to acquire Spinco.
16 During the course of our proceedings leading up to that decision, FairPoint
17 submitted a substantial amount of testimony and information in support of
18 its argument that it was financially ready to step into Verizon's shoes. In
19 general, FairPoint made the following key assertions:

- 20 (a) Initial annual line loss of 6.2%, gradually tapering off to 2.3% per year.
21 (b) Line-loss increases will be sufficiently offset by the build-out and sale
22 of DSL service.
23 (c) Cutover to FairPoint's new systems will be achievable within five
24 months of closing.
25
26
27
28

¹⁷⁰ FCC WC Docket No. 10-110, Comments of the National Association of State Utility Consumer Advocates, July 12, 2010, at p. 2.

1 (d) Transition expenses under the Transfer of Service Agreement ("TSA")
2 with Verizon will not exceed \$100 million and will not extend beyond
3 2008.

4
5 (e) Synergies resulting from new systems integration and replacement of
6 Verizon's higher cost functions will result in additional cost savings of
7 \$65-75 million in 2008.

8
9 (f) Average year-to-year increases in operating expenses not to exceed
10 1%.

11
12 (g) Annual reductions in employee count of 4% to 4.5% resulting in
13 additional cost savings for salary and wage expense.

14
15 (h) Unforeseen increases in operating or capital expenditures will be
16 sufficiently offset by a reduction or elimination of shareholder dividends.

17
18 (i) Free cash flow will be relatively stable at approximately \$200 to \$220
19 million annually over the first five years after closing.

20
21 (j) An annual free cash flow cushion after dividends of \$70 million will be
22 available for unforeseen financial difficulties.

23
24 Based upon the substantial historical record contained in Docket No. 7270,
25 a record which spans FairPoint's progression through the merger
26 transaction, subsequent cutover, and eventual bankruptcy, **it is**
27 **abundantly clear that FairPoint failed to realize any of the above**
28 **forecasts.** Even with the enhancements to FairPoint's financial metrics
29 provided by the revised merger transaction, which we approved on
30 February 15, 2008, those enhancements (reduced purchase price and
31 reduced leverage) were not sufficient to allow FairPoint to achieve its
32 projections. For example, we now know that: (i) line losses were
33 substantially greater than projected for 2008 and 2009; (ii) systems
34 functionality issues delayed cutover for an additional five months resulting
35 in substantial increased operating costs; (iii) FairPoint's suspension of its
36 dividend in March 2009 was not sufficient to assist FairPoint in meeting
37 its debt-servicing requirements; (iv) customer service issues caused
38 FairPoint to staff-up in 2009 as opposed to staffing down; and (v) ongoing
39 systems issues in 2009 resulted in a \$28.8 million increase in operating
40 expenses. **We note that then, like now, FairPoint maintained that its**

1 **projections were reasonable, conservative, and provided for a**
2 **sufficient margin of error.**¹⁷¹

3 The Vermont Board went on to observe that “FairPoint's actual performance throughout
4 2008 and 2009 turned out to be worse than the Board's most pessimistic assumptions.”¹⁷²

5 **Q. DID THE VERMONT PUBLIC SERVICE BOARD REACH ANY**
6 **CONCLUSIONS AS TO WHY FAIRPOINT FAILED TO LIVE UP TO ITS PRE-**
7 **TRANSACTION FORECASTS AND ASSURANCES?**

8 A. Yes. The Board concluded that FairPoint's financial crisis was caused in large part by its
9 inability to successfully integrate the legacy Verizon exchanges into its OSS and other
10 back-office systems. As the Board explained in its Order:

11 FairPoint has not demonstrated that it can achieve its projected reductions
12 in operating costs or realize additional cost savings from systems
13 improvements and new networks that have yet to be completed. As we
14 have found above, **a major source of these costs have been FairPoint's**
15 **ongoing systems issues which have persisted since cutover and**
16 **contributed greatly to FairPoint's eventual financial downfall.**
17 FairPoint has undertaken a considerable effort, most recently its CDIP
18 initiatives, involving the deployment of significant financial resources and
19 personnel to address these issues. ... **While we accept FairPoint's**
20 **assertion that it has made strides in resolving many of these problems,**
21 **system defects remain and manual workarounds continue to serve as**
22 **temporary solutions until automated processes can be designed and**
23 **implemented. Moreover, we are aware that there have been instances**
24 **where FairPoint assumed a problem to be fixed only to have that**
25 **problem reappear at a later time.**we have received no evidence,
26 or guarantees from FairPoint, that would lead us to conclude that these
27 remediation efforts will not need to be continued beyond 2010 or even
28 2011.¹⁷³

¹⁷¹ Vermont PSB Docket No. 7599, Order Entered June 28, 2010, at pp. 56-57 (footnote omitted, emphasis added).

¹⁷² *Id.* at p. 58.

¹⁷³ *Id.* at p. 61-62 (footnotes omitted, emphasis added).

1 **Q. AT THE TIME THAT THE VERMONT BOARD APPROVED THE FAIRPOINT-**
2 **VERIZON TRANSACTION, DID IT ADOPT A CONDITION THAT**
3 **FAIRPOINT'S OSS SYSTEMS WOULD BE SUBJECTED TO TESTING IN**
4 **ADVANCE OF THE CUTOVER OF VERIZON'S OPERATIONS?**

5 A. Yes. The Board later stated that it did so specifically because “we were mindful that after
6 Verizon's sale of its Hawaii properties, the last major telecommunications acquisition that
7 required transition to new systems, major problems for wholesale and retail customers
8 occurred that have taken years to correct.”¹⁷⁴ Unfortunately, the condition that it adopted
9 – which required a third-party consultant (Liberty Consulting) to monitor the cutover
10 progress and “to evaluate FairPoint’s cutover readiness criteria”¹⁷⁵ – did not include
11 independent third-party testing itself.¹⁷⁶ This is dramatically different than the
12 comprehensive third-party testing that Qwest and other BOCs had to undergo to
13 demonstrate that their OSS satisfied the obligations of Section 271.¹⁷⁷ As a consequence,
14 the Board’s condition, though well-intentioned, was insufficient to prevent FairPoint’s
15 subsequent systems failures.

16 **Q. DID THE VERMONT BOARD FIND THAT FAIRPOINT'S SYSTEMS**
17 **INTEGRATION PROBLEMS HAD ADVERSELY IMPACTED THE QUALITY**
18 **OF ITS SERVICES?**

¹⁷⁴ Vermont PSB Docket No. 7270, Order Re: Notice of Cutover Readiness, November 26, 2008, at p. 4.

¹⁷⁵ <http://www.puc.nh.gov/Telecom/Filings/FairPoint/Monthly%20Monitoring%20Reports/FairPoint%20Cutover%20Monitoring%20Monthly%20Report%2012-07-07.pdf>

¹⁷⁶ *Id.* at pp. 4-5.

¹⁷⁷ Exhibit TG-2 (“Description of Qwest’s OSS Testing in Relation to 271 Authority”).

1 A. Yes. The Vermont Board also made specific findings concerning the negative impacts
2 that FairPoint's systems failure had on its service quality for retail customers and CLECs.

3 Among the Board's findings:

- 4 • In 2009, FairPoint failed to meet 10 of the 18 performance standards in the RSQP
5 [Retail Service Quality Plan]. This performance triggered 1470 service quality
6 compensation points and resulted in an obligation to provide service quality
7 compensation of \$10,515,650.¹⁷⁸
- 8 • Other areas of FairPoint's service remain problematic and either do not show
9 signs of significant improvement or early improvements have leveled. These
10 include late orders for retail and wholesale, late disconnects, billing errors and
11 adjustments, and customer complaint escalations.¹⁷⁹
- 12 • Automated flow-through for orders designed to flow-through to provisioning and
13 billing without manual intervention has not improved to acceptable levels and
14 exacerbates other problem areas. Order fall-out requires unplanned manual effort,
15 which reduces the ability of staff to address other issues. It also increases the
16 chance that an order will be late.¹⁸⁰
- 17 • The level of known FairPoint billing errors and billing adjustments are resulting
18 in billing-related customer complaints 400% to 500% higher than during
19 Verizon's operations.¹⁸¹
- 20 • Some number of the known billing errors and adjustments are likely the result of
21 problems in upstream systems and processes, including faulty service-order data
22 entry, late disconnections, and inconsistent or unsynchronized data as
23 examples.¹⁸²

24 While the Vermont Board recognized that recently FairPoint had made significant
25 progress on its systems issues, it ultimately rejected FairPoint's reorganization plan on
26 the grounds that it had not demonstrated that the plan would restore its financial
27

28
29
30

¹⁷⁸ Vermont PSB Docket No. 7599, Order Entered June 28, 2010, at pp. 67 (Finding No. 153).

¹⁷⁹ *Id.* at p. 68 (Finding No. 156).

¹⁸⁰ *Id.* at p. 68 (Finding No. 158).

¹⁸¹ *Id.* at p. 69 (Finding No. 172).

¹⁸² *Id.* at p. 69 (Finding No. 171).

1 soundness.¹⁸³ Recently, it has been reported that FairPoint may ask the federal court that
2 is overseeing its bankruptcy and reorganization to overrule the Vermont Board's rejection
3 of its plan.¹⁸⁴

4 **Q. ARE THERE SOME PARALLELS HERE BETWEEN THE PROGRESS OF**
5 **FAIRPOINT'S ORIGINAL ACQUISITION PROPOSAL AND ITS**
6 **REORGANIZATION PLAN?**

7 A. Yes, I think there are. In a nutshell, the Vermont Board's experience with FairPoint can
8 be recapped as follows:

- 9 (1) In 2007, FairPoint sought approval to purchase Verizon lines in Vermont.
10 Throughout the proceedings, the Board is told they are a hold out and everyone
11 else has approved.¹⁸⁵
- 12 (2) In 2008, the Vermont Board approves the transaction with limited conditions;
- 13 (3) By 2009, the cutover is disastrous and greatly affects the financial performance of
14 FairPoint;
- 15 (4) In October 2009, FairPoint declares bankruptcy;
- 16 (5) In February 2010, FairPoint management submits a reorganization plan that the
17 Vermont Board judges to be overly optimistic;
- 18 (6) In June 2010, the Vermont Board rejects FairPoint's reorganization plan;
- 19 (7) In August 2010, once again, the Vermont Board is told they are a hold out and
20 now FairPoint is considering asking the Bankruptcy Court to supersede the PSB's

¹⁸³ *Id.* at p. 95.

¹⁸⁴ Vermont Public Radio, "FairPoint May Ask Bankruptcy Court To Overrule Vermont Regulators," August 2, 2010. See http://www.vpr.net/news_detail/88585/

¹⁸⁵ *See, e.g.*, Transcript in West Virginia Docket 09-0871-T-PC at p. 34. On January 12, 2010 Vermont Senator Illuzzi drove to West Virginia to testify regarding the experience in Northern New England with the FairPoint merger. Senator Illuzzi testified: "We were told over and over at the State House, don't be the fly in the ointment; New Hampshire and Maine are ready to approve this deal. Don't be the state that sort of jinxes the whole thing. It turns out they were saying the same thing to New Hampshire. They'd say to New Hampshire, jeez, New Hampshire, don't be the fly in the ointment. Vermont and Maine are preparing to approve the deal. It turns out Maine was the first State that rejected the deal, then the other States followed suit and then came back with the revised proposal...If you have those lingering doubts, don't hesitate to fight that intuitive kind of pressure that you feel, that I feel..."

1 authority.

2 Like the Vermont Board, other state regulators should not be hesitant to exercise their
3 authority when major public interest ramifications are at stake. One important way to do
4 that is to establish meaningful conditions on these types of transactions, as I shall explain
5 later in my testimony.

6 **Q. HOW HAVE THE NEW HAMPSHIRE AND MAINE PUBLIC UTILITY**
7 **COMMISSIONS CHARACTERIZED THE FAIRPOINT TRANSACTION AND**
8 **ITS OUTCOMES?**

9 A. The New Hampshire PUC ultimately approved FairPoint's Chapter 11 reorganization
10 plan, but offered a very critical assessment of the consequences of FairPoint's acquisition
11 of Verizon's operations in northern New England. In its Conclusion to the reorganization
12 approval Order dated July 7, 2010, the New Hampshire Commission found that:

13 FairPoint has failed to meet the obligations it made in 2008 to the states of
14 New Hampshire, Maine and Vermont and their citizens. Among other
15 things, FairPoint made promises about service quality, relations with
16 wholesale competitors and broadband build-out, and committed itself to
17 performance superior to Verizon, whose performance had become an issue
18 of increasing concern in the three states. Due to FairPoint's widespread
19 operational shortcomings arising from its systems cutover, however,
20 residential and business customers, as well as wholesale customers and
21 competitors who rely on FairPoint services, endured even poorer service
22 quality than was the case under Verizon.¹⁸⁶

23 The Maine PUC also approved FairPoint's Chapter 11 reorganization plan by a two-to-
24 one vote, but the text of the majority decision does not contain any overall

¹⁸⁶ New Hampshire PUC Docket DT 10-025, Order 25,129, July 7, 2010, at p. 75.

1 characterization of the FairPoint experience as contained in the New Hampshire PUC
2 order.¹⁸⁷ Maine Commissioner Vafiades, however, offered this assessment in his written
3 dissent appended to that decision:

4 In February of 2008, I voted with my colleagues to approve the sale of
5 Verizon wireline assets to FairPoint Communications. My approval was
6 based on FairPoint's representations that the Company would improve
7 customer service by updating and streamlining its back office systems,
8 replacing and upgrading its deteriorating infrastructure, and operating a
9 competent wholesale customer service operation. Additionally, for at least
10 five years, customers of FairPoint's DSL broadband service would receive
11 the benefit of statewide price averaging for that service and customers of
12 FairPoint's telephone services would either receive service quality that
13 satisfies the existing SQI measurements or they would receive rate rebates
14 should FairPoint fail to meet its SQI targets. Finally, FairPoint agreed to
15 system improvements benefiting all customers and made a commitment to
16 expand broadband to meet 90% addressability by 2013.

17
18 Despite FairPoint's early struggles to take control of the wireline assets,
19 provide adequate customer service and modernize the back office systems,
20 the Commission stayed the course and following a number of approvals
21 for cutover extensions authorized cutover from Verizon to FairPoint
22 operating systems in January of 2009. Unfortunately, FairPoint was not
23 competent in managing the extensive back office rebuild, could not get its
24 wholesale business running smoothly despite cooperation from the
25 CLECs, failed to provide basic services to residential and business
26 customers and suffered from competitive business pressure and a faltering
27 economy. FairPoint's financial position became precarious.¹⁸⁸

28 **Q. MR. GATES, WHAT LESSONS DO YOU THINK SHOULD BE DRAWN FROM**
29 **THE HAWAIIAN TELCOM AND FAIRPOINT EXPERIENCES?**

30 **A.** As stated, the primary lessons that I draw from these two disappointing experiences are
31 the following:

¹⁸⁷ Maine PUC Docket No. 2010-76, Order Approving Reorganization and Regulatory Settlement, July 6, 2010.

¹⁸⁸ *Id.* at p. 21 ("Dissenting Opinion of Commissioner Vafiades").

- 1 (1) Mergers and acquisitions involving the transfer and integration of ILEC local
2 telephone operations carry a high degree of risk of failure, even when
3 implemented by purportedly highly-experienced management teams and well-
4 financed companies;
5
6 (2) The integration of two companies' disparate operations and OSS can pose a
7 tremendous challenge, and integration failures can be so costly as to not only
8 eliminate the forecasted transaction cost savings and other synergies, but to
9 place the post-merger company under severe financial pressure; and
10
11 (3) From a public interest standpoint, the outcome of such failed transactions can
12 indeed be an "unmitigated disaster," including financial instability, service
13 quality deteriorations and dissatisfied customers, and the disruption of
14 wholesale services provisioning and ordering that are crucial to a smoothly-
15 functioning competitive marketplace.

16 **Q. HOW DOES FRONTIER'S RECENT ACQUISITION OF VERIZON**
17 **EXCHANGES IN FOURTEEN STATES FIT INTO THIS PICTURE?**

18 A. While the worst consequences of the Hawaiian Telcom and FairPoint transactions are
19 (presumably) winding down, the problems besetting Frontier's acquisition of certain
20 Verizon exchanges in fourteen states¹⁸⁹ are occurring right now, as systems cutovers and
21 transitions have been occurring this spring and summer, with an "official" cutover date of
22 July 1, 2010. For thirteen states, Verizon created replicas of its existing wholesale OSS
23 systems that were being operated on an interim basis by Spinco, the temporary corporate
24 entity created to effect the Frontier transaction. These "replicated systems" were then
25 transferred to Frontier on the cutover date, and thereafter serve as Frontier's wholesale

¹⁸⁹ As set forth in Verizon's Amended Application, "transaction involves the transfer to Frontier of all of Verizon's local wireline operating territories in Arizona, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia and Wisconsin. In addition, the transaction will include a small number of Verizon's exchanges in California, including those bordering Arizona, Nevada and Oregon." See WC 09-95, Verizon and Frontier's amended and revised "Consolidated Application for Transfer of Control and Assignment of International and Domestic Section 214 Authority," July 30, 2009, at p. 2, footnote 3.

1 OSS, to fulfill orders for UNEs and other wholesale services. In the fourteenth state,
2 West Virginia, Verizon's systems were not replicated, and instead these functions were
3 transferred to Frontier's own OSS system, Synchronoss VFO. As I shall explain, to date
4 both transfers have been beset by systems problems, which are having adverse impacts
5 upon CLECs and their customers. It remains to be seen how serious and long-lasting
6 these problems may ultimately prove to be, and whether they will rise to the nightmarish
7 levels experienced in the Hawaiian Telcom and FairPoint cases.

8 **Q. WHAT SPECIFIC PROBLEMS HAVE CLECS CONFRONTED DURING**
9 **FRONTIER'S CUTOVER TO THE VERIZON REPLICATED SYSTEMS?**

10 A. In recent comments and *ex parte* filings with the FCC, Integra and PAETEC have
11 provided detailed descriptions of how problems with the transition to the Verizon
12 replicated systems in the thirteen states (excluding West Virginia) have been adversely
13 affecting their operations and the retail customers that they serve.

14 In its May 17, 2010 *ex parte* letter to the FCC, PAETEC explained that, even before the
15 Verizon replicated systems were transferred to Frontier, it "is already encountering
16 serious service deterioration due to lack of adequate (much less adequately trained)
17 personnel at SpinCo [the corporate vehicle for the Frontier transaction]. All of these
18 problems exist even though SpinCo is still under the Verizon umbrella."¹⁹⁰ PAETEC
19 describes a range of problems that it has encountered, including:

¹⁹⁰ Letter from Mark C. Del Bianco, Counsel for PAETEC Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket. No. 09-95, filed May 17, 2010, Attachment A, at p. 6.

- 1 • Increased response times for Access Service Requests (“ASRs”), *i.e.*,
2 PAETEC’s electronic orders for access services from Frontier – causing
3 missed due dates or orders that need to be escalated/expedited in order to meet
4 end user customer expectations;
- 5
- 6 • Increased Access Ordering system errors, causing delays in submission of
7 ASRs;
- 8
- 9 • Hold times of 30 minutes or more when calling Access Order centers to reach
10 an Access Ordering representative; and
- 11
- 12 • Apparent reduction of Access Ordering staff – Verizon North Central Access
13 Ordering staff have told PAETEC that they were a staff of 50 that was cut to
14 12 and now they only have 6 individuals working ASRs.¹⁹¹

15 **Q. HAS INTEGRA ALSO EXPERIENCED PROBLEMS IN ITS USE OF THE**
16 **VERIZON REPLICATED SYSTEMS?**

17 A. Yes. As documented in its May 13, 2010, *ex parte* letter to the FCC, Integra also has
18 been experiencing the same sorts of problems when using the Verizon replicated systems
19 in Oregon and Washington.¹⁹² Integra’s follow-up *ex parte* letter of May 19, 2010,
20 documented that the performance of the replicated systems was failing to meet the
21 wholesale service quality benchmarks previously applied to Verizon in areas including
22 Order Confirmation Timeliness for ASRs and Completion Notice Interval.¹⁹³ In its May
23 19th letter, Integra explains that these problems are in fact worse than they seem, and that
24 end users are being adversely impacted:

¹⁹¹ *Id.* at p. 6-7.

¹⁹² Letter from Thomas Jones and Nirali Patel, Counsel for Integra Telecom, Inc. et al, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, filed May 13, 2010, at pp. 1-2.

¹⁹³ Letter from Thomas Jones, Counsel for Integra Telecom, Inc. et al, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, filed May 19, 2010, at p. 2.

1 Verizon's actual performance in the area of timely order completion is
2 obscured in part by the fact that Verizon has been increasingly sending
3 Service Activation Reports ("SARs") without actually completing the
4 work requested on an order. This was true for orders NM-2556620-DS1,
5 SM-2560987-BDSL, SM-2497851-BDSL, CL-2568000-BDSL, DS-
6 2502748-WASA, and JT-2566473- CHG. This practice negatively impacts
7 Integra's ability to serve its end-user customers. For example, if Verizon
8 sends Integra a completion notice but has not performed the requested
9 installation, Integra is forced to conduct multiple technician dispatches for
10 a single end-user customer, and delivery of service to that customer is
11 delayed. In addition, if Integra receives an SAR from Verizon, Verizon
12 begins billing Integra, and Integra may mistakenly begin billing its end-
13 user customer before service is actually delivered to the customer.¹⁹⁴

14 Significantly, Integra personnel found that some of the Verizon representatives answering
15 calls in Verizon call centers were inexperienced or had been inadequately trained.¹⁹⁵
16 Integra employees "sometimes found themselves educating Verizon's representatives on
17 Verizon's internal processes and the requirements of Verizon's CLEC-facing systems."¹⁹⁶
18 In some cases, the Verizon employees operating the systems themselves told their Integra
19 counterparts that "...they d[id] not know the appropriate workarounds to resolve specific
20 types of problems."¹⁹⁷ The full text of Integra's May 19th letter, which is provided in
21 Exhibit TG-6, also describes additional ordering problems attributable to failures in the
22 Verizon replicated systems.

23 **Q. HAS THE CUTOVER OF FRONTIER'S ACQUIRED VERIZON EXCHANGES**
24 **IN WEST VIRGINIA GONE ANY MORE SMOOTHLY THAN IN THE OTHER**
25 **THIRTEEN STATES?**

¹⁹⁴ *Id.* at pp. 2-3 (footnotes omitted).

¹⁹⁵ *Id.* at p. 4.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

1 A. No. In fact, the West Virginia cutover appears worse in certain respects, as it is adversely
2 impacting some retail customers as well as CLECs. In West Virginia, the former Verizon
3 exchanges, which encompass approximately 617,000 access lines in 47 counties, were
4 officially cutover to Frontier on July 1, 2010.¹⁹⁸ Charleston's major newspaper, the
5 *Charleston Daily Mail*, has been monitoring the progress of the cutover since that time,
6 and has reported on the problems confronted by retail customers, including a local
7 pharmacy chain that endured a Frontier service outage that lasted more than 39 hours in
8 their 25 stores, cutting off their on-line systems needed to fulfill prescriptions and
9 rendering them "incapacitated."¹⁹⁹ These types of problems appear to be continuing. On
10 July 28, the *Charleston Daily Mail* reported that Frontier has declared an "emergency and
11 long-term service difficulty," which under its labor contract with CWA, allows Frontier
12 to require unionized employees to work overtime up to 70 hours a week to attempt to
13 resolve its service problems.²⁰⁰ Notably, CWA has indicated that CenturyLink is
14 currently requiring CWA members to work mandatory overtime to address problems
15 stemming from the integration of CenturyTel and Embarq.²⁰¹

¹⁹⁸ *Charleston Daily Mail*, "Phone transition not going smoothly for a few customers," July 1, 2010, at p. 2. This article is reproduced in Exhibit TG-7.

¹⁹⁹ *Charleston Daily Mail*, "Local Business Having Major Problems Since Frontier Switch," July 21, 2010. This article is reproduced in Exhibit TG-7.

²⁰⁰ *Charleston Daily Mail*, "Frontier claims overtime is needed: Problems force telecom company to work employees up to 70 hours a week," July 28, 2010. This article is reproduced in Exhibit TG-7.

²⁰¹ Direct Testimony of Jasper Gurganus on behalf of Communications Workers of America (CWA), Minnesota Docket P-421, et al./PA-10-456, August 19, 2010, at p. 11 ("It also appears that one of CenturyLink's solutions is just to require people to work longer hours to deal with the backlog of work created by improper dispatch, inaccurate information, and inefficient systems. CWA members in Ohio and North Carolina have been placed on mandatory overtime. For example, in North Carolina I&R [installation and repair] techs have been on mandatory six-day weeks for two months.") Available at:

1 Q. WHAT IMPACTS HAS FRONTIER'S WEST VIRGINIA CUTOVER HAD ON
2 CLECS OPERATING IN THE STATE?

3 A. CLECs are also experiencing significant wholesale ordering problems relating to the
4 West Virginia cutover. One CLEC operating in that service territory, FiberNet, has
5 petitioned the West Virginia PSC to reopen its proceeding to review the Verizon-
6 FairPoint transaction, claiming that FairPoint has failed to live up to its commitment that
7 its wholesale OSS would be functionally at par with those of Verizon.²⁰² As expressed
8 by FiberNet in its Petition:

9 Since the cutover to Frontier's Synchronoss VFO OSS on July 1, 2010,
10 however, FiberNet has experienced significant and ongoing problems with
11 the proper functionality of Frontier's OSS and have unfortunately been
12 compelled to conclude that Frontier's OSS as presently constituted is
13 substantially less sophisticated and far less automated than the former
14 Verizon OSS it was intended to replace.

15 FiberNet's Petition identifies fifteen separate types of problems it is experiencing with
16 Frontier's wholesale OSS systems that span the entire range of pre-ordering, ordering,
17 and installation functions that the systems are intended to provide.²⁰³ Some of these
18 issues impede FiberNet's ability to offer its services to West Virginia customers, *e.g.*, the
19 inability to input orders related to the digitally qualified loops necessary for the provision
20 of DSL service, or high-capacity DS-1s.²⁰⁴ Other issues are having a direct impact on the

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={3BAC3216-79EA-4367-B0FD-2C44F6DFDF17}&documentTitle=20108-53661-01>

²⁰² FiberNet LLC Petition to Reopen, July 21, 2010 (filed in West Virginia PSC Docket No. 09-087 1-T-PC), at p. 3.

²⁰³ *Id.* at Exhibit A.

²⁰⁴ *Id.* at p. 5.

1 customers themselves, *e.g.*, “several new FiberNet customers have been put out of service
2 because Frontier prematurely processed disconnection orders in its OSS for these
3 migrating customers without simultaneously processing the corresponding order
4 necessary to successfully complete the migration of the customer’s loop and telephone
5 number to FiberNet.”²⁰⁵ FiberNet also notes that “Customers with pending orders for
6 new service or additional services have lost patience with the length of time necessary to
7 get their requested service installed, which has resulted in several customers simply
8 cancelling their pending orders with FiberNet.”²⁰⁶

9 **Q. HOW DO THE KINDS OF WHOLESALE-RELATED PROBLEMS BEING**
10 **EXPERIENCED BY INTEGRA, PAETEC, AND FIBERNET IMPACT**
11 **COMPETITORS’ ABILITY TO OFFER COMPETITIVE SERVICES AND**
12 **MAINTAIN THEIR CUSTOMER RELATIONSHIPS?**

13 A. As a general matter, when CLECs confront the sorts of delays, errors, and backlogs in
14 wholesale ordering transactions that Integra, PAETEC, and FiberNet have experienced
15 with Frontier, it not only increases their costs of doing business, but it also damages
16 (perhaps irreparably) CLECs’ relationships with their end user customers.

17 **Q. DO END USERS UNDERSTAND THAT SUCH PROBLEMS ARE CAUSED BY**
18 **THE ILEC AND NOT THE CLEC?**

19 A. Generally no. End users do not recognize (or care) that the service delays they endure are

²⁰⁵ *Id.*

²⁰⁶ *Id.* at pp. 6-7.

1 the fault of the provider of wholesale services (*i.e.*, the ILEC) rather than the CLEC. Of
2 course, this circumstance benefits the ILEC as it can serve those retail customers leaving
3 the CLEC with the ILEC's own retail offerings.

4 **VI. THE PROPOSED TRANSACTION SHOULD BE REJECTED; OR IN THE**
5 **ALTERNATIVE, APPROVED ONLY SUBJECT TO ROBUST CONDITIONS**

6 **Q. IS IT YOUR RECOMMENDATION THAT THE PROPOSED TRANSACTION**
7 **BE DENIED BY THE COMMISSION?**

8 A. Yes. The Joint Applicants have failed to demonstrate that the public interest will not be
9 harmed and has failed to substantiate any benefits resulting from the proposed
10 transaction. As it relates to CLECs, the Joint Applicants have not identified (let alone
11 substantiated) any benefits resulting from the proposed transaction; instead, the CLECs
12 are faced with complete uncertainty and potential severe disruption and harm in every
13 aspect of their wholesale relationship with Qwest. If the Commission disagrees with my
14 primary recommendation, however, and is inclined to approve the proposed transaction, it
15 should do so only if the transaction is subject to robust, enforceable conditions.

16 **Q. WHAT IS THE GOAL OF THESE CONDITIONS?**

17 A. The overall objective of the conditions is to ensure that the proposed transaction does not
18 harm the industry and ultimately serves the public interest. More specifically, however,
19 these conditions are intended to mitigate the harm that is likely to happen (and has

1 occurred elsewhere) if the proposed transaction is approved as filed,²⁰⁷ primarily by
2 providing the much-needed certainty that CLECs need to continue to operate their
3 businesses and make prudent decisions. These conditions also attempt to ensure that the
4 Merged Company is not further entrenched as a result of the merger as an
5 overwhelmingly dominant wholesale provider/competitor, to the detriment of
6 competition and the public interest.

7 **Q. IS THERE PRECEDENT FOR APPROVING A PROPOSED TRANSACTION**
8 **SUBJECT TO CONDITIONS?**

9 A. Yes. Both the FCC and state commissions have required conditions (or voluntary
10 enforceable commitments from the merging companies) in exchange for transaction
11 approval in the past. For example, both the FCC and state commissions imposed
12 conditions on the Embarq/CenturyTel merger. Further, Qwest itself proposed conditions
13 for the Iowa Telecom/Windstream merger, which further validates the notion that it is
14 generally accepted that conditions must be imposed on a proposed acquisition to prevent
15 or offset harm.²⁰⁸

16 **Q. WHAT CONDITIONS ARE YOUR CLIENTS PROPOSING?**

²⁰⁷ The FCC has stated: "it will impose conditions to remedy harms that arise from the transaction..." FCC *Embarq/CenturyTel Merger Order* at ¶ 12.

²⁰⁸ Qwest asked the Iowa Board to place conditions on the approval of the Iowa Tel/Windstream merger that would "prohibit Windstream from requiring new local service providers to provide Windstream-provided Personal Identification Numbers when porting a customer's number to the new provider" and "require, as a condition of Board approval, the new company to provide the new local service provider direct access to its resold Customer Service Record information." Order Canceling Hearing and Terminating Docket, Iowa Utilities Board, April 30, 2010, at p. 26.

1 A. I have attached as Exhibit TG-8 to my testimony a list of conditions that my clients are
2 proposing as prerequisites to merger approval, in case the Commission does not reject the
3 proposed transaction outright. These conditions have been carefully and narrowly crafted
4 to address the specific concerns my carrier clients have about the harm that will result
5 from approving the proposed transaction as filed by the Joint Applicants. These
6 conditions are also intended to be enforceable so that the Merged Company abides by
7 them after the merger and so remedies are in place should wholesale service quality
8 degrade following the merger. Recent experience with the FairPoint acquisition of
9 Verizon, wherein FairPoint reneged on its merger conditions, shows that enforceable
10 conditions are necessary.²⁰⁹ CenturyLink should not be allowed to pull the rug out from
11 underneath competitors and consumers after the transaction is approved by reneging on
12 the very commitments that were critical to transaction approval. In addition, because
13 discovery is not yet complete and all testimony has not yet been filed, the list of proposed
14 conditions in Exhibit TG-8 (as discussed in this testimony below and the testimony of Dr.
15 Ankum) is preliminary and subject to change. Furthermore, all of the conditions are

²⁰⁹ *FairPoint Wants to Renege on Terms of Verizon Merger*, May 3, 2010. Available at: <http://www.von.com/news/2010/05/fairpoint-wants-to-renege-on-terms-of-verizon-mer.aspx> (“According to reports, the initial deal between FairPoint and regulators called for FairPoint to cut the cost of basic phone service by more than \$4 per month for at least five years; make broadband available to 83 percent of all lines within two years, and 90 percent over five years; and freeze prices for current Verizon 768kbps DSL customers at \$15 a month with a two-year contract, and \$18 with a one-year contract, for at least two years. FairPoint wants to move those deadlines back and lower the percentage of 768kbps DSL-capable lines.”) The Maine Commission approved these adjustments to FairPoint’s merger conditions in June 2010, which is a component of FairPoint’s bankruptcy reorganization plan. Maine Commissioner Vafiades voted against approving the changes to the conditions stating: “FairPoint has made promises to this Commission and to Maine consumers. The Company is using the bankruptcy process to renege on broadband commitments which were a central aspect of approving the FairPoint takeover of the Verizon phone network. These changes were not required by bankruptcy court and are a disservice to rural customers.” Available at: <http://www.maine.gov/tools/whatsnew/index.php?topic=puc-pressreleases&id=102933&v=article08>

1 important and no inference regarding priority should be based on the numbering of the
2 conditions, which is for ease of reference only.

3 **Q. SHOULD CENTURYLINK HAVE A PROBLEM ADOPTING THESE**
4 **CONDITIONS AS PREREQUISITES TO TRANSACTION APPROVAL?**

5 A. No. CenturyLink has represented that there will be no “immediate” changes post-merger
6 and “no harm” to existing wholesale processes, systems and service quality post-merger.
7 CenturyLink has also claimed that it is “willing and able to abide by” its 251 and 271
8 obligations post-merger and it is “truly committed to providing quality service to our
9 CLEC customers today and in the future.”²¹⁰ Given these representations, CenturyLink
10 should have no problem agreeing to conditions that provide protections to prevent or
11 offset harm and ensure that Qwest does not backslide in its obligations as an ILEC and a
12 BOC. In addition, CenturyLink should not be permitted to keep all of the benefits of
13 increased economies and efficiencies for itself,²¹¹ rather, the FCC’s *Local Competition*
14 *Order* requires those to be shared with new entrants.²¹²

15 **Q. HAVE THE SAME OR SIMILAR CONDITIONS BEEN ADOPTED BY STATE**
16 **COMMISSIONS OR THE FCC IN RECENT MERGER CASES?**

²¹⁰ Hunsucker Oregon Direct at pp. 13-14.

²¹¹ See, e.g., Campbell Arizona Direct at p. 13, lines 1-4 (“Q. Will the post-merger company be able to take advantage of increased economies of scope and scale? A. Yes. The Transaction will result in a combined enterprise that can achieve greater economies of scale and scope than the two companies operating independently.”)

²¹² See, e.g., *Local Competition Order* at ¶ 11: “...the local competition provisions of the Act require that these economies be shared with entrants.”

1 A. Yes. I've attached Exhibit TG-9 to my testimony, which is the list of conditions that my
2 clients are proposing in this proceeding matched up with some previous FCC or state
3 commission order(s) that adopted a similar condition. Most of the CLEC-proposed
4 conditions are grounded in previous merger conditions, and the few that are not were
5 designed to address specific harms related to this particular proposed transaction.

6 **Q. THE LIST OF PRELIMINARY CONDITIONS DEFINES THE TERM "DEFINED**
7 **TIME PERIOD." PLEASE EXPLAIN THIS TERM.**

8 A. The Joint Applicants have said that the transaction is expected to create annual operating
9 synergies of \$575 million and annual capital expenditure synergies of \$50 million, and
10 that those synergies will be "fully-recognized over a three-to-five year period following
11 closing."²¹³ Successful integration does not always occur on-time and/or on-budget, as
12 CenturyLink is aware from prior system projects.²¹⁴ That is particularly true here, when
13 CenturyLink will be attempting to integrate both the Embarq acquisition and Qwest
14 acquisition at the same time. Therefore, the time period during which merger-related

²¹³ Glover Arizona Direct at p. 13, line 13.

²¹⁴ See, e.g., *Financial Watch: Integration Costs Loom Over OSS Deployments*, *Billing and OSS World*, October 1, 2003. available at <http://www.billingworld.com/articles/2003/10/financial-watch-integration-costs-loom-over-oss-d.aspx> ("Another example of a vendor-driven project that fell short involves CenturyTel, a Louisiana-based service provider, which in 2000 selected Amdocs for convergent billing. This project has experienced delays due to the project going over budget. According to a 10-Q that CenturyTel recently filed with the Securities and Exchange Commission, this project remains in the development stage and has required 'substantially more time and money to develop than originally anticipated.' The 10-Q filing states that CenturyTel expects to complete all phases of the new system no later than mid-2005 at a cost in excess of the previously disclosed estimate of \$180 million. CenturyTel currently believes completion of the project may require it to revise its previously disclosed cost estimate by between \$50 and \$60 million. The company also states that 'there is no assurance that the system will be completed in accordance with this schedule or budget, or that the system will function as anticipated. If the system does not function as anticipated, the company may have to write-off part or all of its remaining costs and further explore its other billing and customer care system alternatives.'")

1 activities intended to result in synergies will occur may be longer than the three-to-five
2 year period anticipated by the Joint Applicants.

3 Some proposed conditions are to apply for a specific time period, and other conditions
4 (such as continuing BOC/271 obligations in Qwest's legacy territory) do not have an
5 expiration date. The term "Defined Time Period" was developed to specify the effective
6 time period for those conditions that are time-sensitive. "Defined Time Period" is
7 established at either (a) at least 5-7 years after the Closing Date²¹⁵ or, (b) at least 42
8 months (3.5 years)²¹⁶ and continuing thereafter until the Merged Company is granted
9 Section 10 forbearance from the condition. The "Defined Time Period" is established
10 based on the facts of this particular transaction²¹⁷ and designed to ensure that the
11 combined company's pursuit of merger-related savings does not jeopardize wholesale
12 customers or impede competition. At the same time, the "Defined Time Period" grants
13 the combined company flexibility to terminate the merger condition in 3.5 years (shortly
14 after the lower end of the Joint Applicants' expected timeframe) via a forbearance request
15 if the Merged Company's integration efforts prove to be successful.

²¹⁵ "Closing Date" is defined as "when used in this list of conditions, refers to the closing date of the transaction for which the Applicants have sought approval from the Federal Communications Commission (FCC) and state commission (the 'transaction')." Exhibit TG-8.

²¹⁶ In the *AT&T/BellSouth Merger Order*, AT&T proposed that conditions would last 42 months (3.5 years) from the merger closing date unless specified otherwise. *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) ("*AT&T/BellSouth Merger Order*").

²¹⁷ For example, the lower end of the 5-7 year range is based on Joint Applicants' own expectations regarding how long it will take the combined company to fully recognize merger-related savings, and the upper end is based on the fact that CenturyLink will be straining its resources to simultaneously integrate Embarq and Qwest as well as the fact that not all of CenturyLink's integration efforts have been on-time and/or on-budget.

1 **Q. PLEASE ELABORATE ON WHY THE TIME HORIZONS ASSOCIATED WITH**
2 **THE “DEFINED TIME PERIOD” ARE APPROPRIATE FOR THE PROPOSED**
3 **TRANSACTION WHEN OTHER (SHORTER) TIME HORIZONS HAVE BEEN**
4 **ADOPTED IN THE PAST.**

5 A. This 3.5 year minimum duration is appropriate, given the Joint Applicants’ own
6 representation of a minimum three to five-year synergy period. During the time period
7 when the Merged Company is making merger-related changes to achieve synergies,
8 customers and competition should be protected from harm resulting from those changes.
9 In considering the Frontier-Verizon merger, the Oregon Commission required Frontier to
10 honor Verizon wholesale price lists and tariffs and to avoid increases for at least two
11 years after closing.²¹⁸ In that proceeding, unlike here, Frontier did not state that the
12 anticipated synergies would occur over a three-to-five year period. The Joint Applicants’
13 representation regarding the anticipated time period for realizing synergies is specific to
14 this proposed merger and should be considered when establishing needed time periods for
15 this proposed merger.

16 **Q. WHAT TIME PERIOD WAS PROPOSED FOR THE AT&T/BELLSOUTH**
17 **MERGER?**

²¹⁸ *In the Matter of Verizon Communications Inc. and Frontier Communications Corporation Joint Application for an Order Declining to Assert Jurisdiction, or, in the Alternative, to Approve the Indirect Transfer of Control of Verizon Northwest Inc.*, Oregon Public Utility Commission Docket No. UM1431, Order No. 10-067, February 24, 2010, 2010 Ore. PUC LEXIS 64 (“Oregon Frontier-Verizon Order”), 2010 Ore. PUC LEXIS 64, *46.

1 A. In the *AT&T/BellSouth Merger Order*, AT&T proposed that conditions would last 3.5
2 years (42 months) from the merger closing date unless specified otherwise.²¹⁹ The
3 AT&T/BellSouth merger involved an existing BOC (AT&T) covering 13 states acquiring
4 an existing BOC (BellSouth) covering 9 states, and the acquiring BOC in that transaction
5 (AT&T) already had experience not only operating as a BOC but also integrating BOC
6 operations during the merger of AT&T and SBC, and before that, the merger of
7 Ameritech and SBC. Further, when seeking approval of the AT&T/BellSouth Merger,
8 AT&T stated that the synergy savings resulting from the AT&T/SBC merger were
9 greater than and achieved more quickly than AT&T's original forecast.²²⁰ Despite
10 AT&T's past experience in this regard, the FCC conditioned approval of the
11 AT&T/BellSouth merger subject to enforceable conditions that applied for 42 months
12 (3.5 years). By contrast, this proposed transaction involves a non-BOC ILEC – which
13 has traditionally operated primarily as a rural LEC facing little competition – acquiring a
14 BOC spanning 14 states. Though CenturyTel has acquired numerous
15 telecommunications companies in the past, none of them were BOCs and none of them
16 were even close to the size of Qwest. Further, though CenturyTel touts its management's
17 ability as successful integrators²²¹ and claims that the ongoing Embarq integration is

²¹⁹ *AT&T/BellSouth Merger Order*, Appendix F, Conditions at p. 147.

²²⁰ AT&T Description of Transaction Public Interest Showing and Related Demonstrations, WC Docket No. 06-74, March 31, 2006, at p. 42, citing *See Id.* ¶ 5; Kahan Decl. ¶¶ 40-42; *see also* AT&T Analyst Conference Presentation, at 51 (Jan. 31, 2006), available at http://library.corporate-ir.net/library/11/113/113088/items/181348/analyst06_b.pdf (noting that synergies are now estimated at \$18 billion vs. \$15 billion).

²²¹ *See, e.g.*, McMillan Arizona Direct at pp. 13, 17 and Schafer Arizona Direct at pp. 5-6 and Exhibit TS-1.

1 running smoothly,²²² similar representations were made by AT&T during the
2 AT&T/BellSouth merger and the FCC still put in place enforceable conditions for a
3 period of 42 months (3.5 years). The point being: acquisition of a BOC raises serious
4 concerns than are not present in non-BOC acquisitions, and those concerns necessitate
5 more protection. These concerns are even greater when the BOC is being acquired by a
6 company that is not currently a BOC and has no experience with all of the obligations
7 that come along with being a BOC.

8 The ultimate question is what time period is necessary to protect the public interest.²²³
9 Here, the need for protection is even greater than in the AT&T/BellSouth merger. The
10 latter merger involved two BOCs, both of which have been subject to 271 proceedings
11 and interconnection agreement arbitrations through which they have had to learn and
12 accept wholesale obligations that they may otherwise have had incentives to ignore.
13 Unlike a merger between two BOCs, both well-acquainted with wholesale obligations
14 and 271 requirements, here the Joint Applicants propose the purchase of a BOC by a non-
15 BOC ILEC that has been acting in many cases as primarily a rural carrier claiming
16 exemption from ILEC, much less BOC, obligations. Because the BOC has greater
17 wholesale obligations than an ILEC, and certainly more obligations than an exempt (or,
18 self-proclaimed exempt) rural ILEC, non-BOC, such ILECs lack a long history of

²²² Schafer Arizona Direct at p. 6, lines 8-11.

²²³ *In the Matter of Embarq Corporation and CenturyTel, Inc. Joint Application for Approval of Merger between the Two Companies and Their Regulated Subsidiaries*, Oregon Public Utility Commission Docket No. UM1416, Order No. 09-169, May 11, 2009 (“Oregon Embarq-CenturyTel Merger Order”), 2009 Ore. PUC LEXIS 152, *11 (rejecting the Joint Applicants proposal to reduce various conditions from five years to three years, concluding that the longer five year period “serves to protect customers should a significant negative event occur with the new parent” and “is a more reasonable means to protect customers.”)

1 fulfilling such commitments. Wholesale customers therefore need protective conditions
2 firmly in place throughout the time that merger-related changes are occurring and the
3 time during which the results of those changes continue to affect customers and
4 competition.

5 **Q. SOME OF THE JOINT CLEC PROPOSED CONDITIONS APPLY TO LEGACY**
6 **CENTURYLINK ILEC TERRITORIES. DOES CENTURYLINK HAVE**
7 **LEGACY ILEC TERRITORIES IN ARIZONA?**

8 A. No, not according to CenturyLink.²²⁴

9 **Q. IF CENTURYLINK HAS NO LEGACY ILEC TERRITORIES IN ARIZONA,**
10 **PLEASE EXPLAIN INCLUSION OF CONDITIONS THAT APPLY TO LEGACY**
11 **CENTURYLINK ILEC TERRITORIES ON THE JOINT CLEC LIST OF**
12 **RECOMMENDED CONDITIONS IN THIS MATTER.**

13 A. Both CenturyLink and the Joint CLECs are participating in proceedings like this one in
14 multiple states in Qwest territory. Using the same recommended conditions list for the
15 Joint CLECs across these states helps avoid confusion and offers consistency when
16 addressing these issues, which introduces at least some efficiencies. For example, the
17 Applicants do not have to compare lists state-to-state for differences and modify all of
18 their responses accordingly. Also, there is no downside to including conditions that
19 apply to legacy CenturyLink ILEC territories in the conditions adopted in Arizona
20 because they will not require the Merged Company to do anything.

²²⁴ McMillan Arizona Direct at p. 5, lines 6-9.

1 **Q. PLEASE EXPLAIN HOW YOUR TESTIMONY ON PROPOSED CONDITIONS**
2 **IS ORGANIZED?**

3 A. The proposed conditions are grouped into the following categories: (A) Operations
4 Support Systems, (B) Wholesale Service Quality, (C) Wholesale Customer Support, (D)
5 Wholesale Service Availability, (E) Wholesale Rate Stability, and (F) Compliance. In
6 the testimony that follows, I will address: (A) Operations Support Systems, (B)
7 Wholesale Service Quality, (C) Wholesale Customer Support, and (F) Compliance. Dr.
8 Ankum addresses: (D) Wholesale Service Availability and (E) Wholesale Rate Stability.

9 **A. *Operations Support Systems (“OSS”)***

10 **Q. PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO OSS.**

11 A. There are two conditions in this category – conditions 19 and 20:

- 12 • Condition 19 (and subparts) states that after the closing date, the Merged Company
13 will use and offer to wholesale customers in the legacy Qwest ILEC territory the
14 legacy Qwest OSS for at least three years, with at least the same level of wholesale
15 service quality, including support, data, functionality, performance, and electronic-
16 bonding provided by Qwest prior to the merger filing date. This condition also
17 requires that after the three-year period the Merged Company will not replace or
18 integrate Qwest systems without first: (a) submitting a detailed plan to the FCC
19 Wireline Competition Bureau and state commissions of affected states, including a
20 detailed description and contingency plan, with opportunity for comment from
21 interested parties (Condition 19(a)); (b) conducting robust third-party testing (similar
22 to what was performed during the 271 approval process) of any system that will
23 replace any Qwest system that was subject to third-party testing to ensure that it
24 provides needed functionality and can handle commercial volumes (Condition 19(b));
25 and (c) coordinated testing with CLECs (Condition 19(c)).
- 26 • Condition 20 states that following the transaction in the CenturyLink legacy territory,
27 the Merged Company will use the wholesale pre-ordering, quoting, ordering,
28 provisioning and maintenance/repair functionalities (including electronic bonding) of

1 the legacy Qwest territory to provide interconnection, UNEs, collocation, and special
2 access services.

3 **Q. WHY ARE THESE CONDITIONS NECESSARY?**

4 A. The FCC has found that CLECs would be “severely disadvantaged, if not precluded
5 altogether, from fairly competing,” if they do not have nondiscriminatory access to
6 OSS.²²⁵ Likewise, Qwest has described its existing OSS as playing “a crucial role in the
7 transactions between Qwest and all CLECs”²²⁶ and characterized its OSS as “the
8 lifeblood of...Qwest’s wholesale operation...”²²⁷ I would agree with these statements.
9 So, by all accounts, nondiscriminatory access to OSS is absolutely essential to
10 competition. Unfortunately, the future of Qwest’s OSS is in serious question due to the
11 proposed transaction. All we know at this point in time is that a CenturyLink person (Mr.
12 Bill Cheek) will be in charge of wholesale for the combined company and that no
13 decisions have been made as to systems, staffing or locations of the staff. Given this lack
14 of information, these conditions will provide the much-needed certainty in this area so
15 that wholesale customers can plan their business for the foreseeable future, and will help
16 ensure that CLECs have nondiscriminatory access to OSS across the Merged Company’s
17 footprint.

18 **Q. PLEASE ELABORATE ON YOUR STATEMENT THAT THE FUTURE OF**
19 **QWEST’S OSS IS IN SERIOUS QUESTION.**

²²⁵ *Local Competition Order* at ¶518.

²²⁶ Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.

²²⁷ Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at p. 39.

1 A. CenturyLink has provided very little information about its post-merger plans for OSS,
2 other than that CLECs should expect change. When asked whether CenturyLink
3 anticipates modifying, integrating or otherwise changing OSS in legacy Qwest service
4 territories, CenturyLink responded:

5 Upon merger closing, CenturyLink does not anticipate any immediate
6 changes to the Qwest CLEC OSS systems. Integration planning is in the
7 early stages and decisions have not been made at this time. However,
8 because the transaction results in the entirety of Qwest, including
9 operations and systems, merging into and operating as a subsidiary of
10 CenturyLink, it will allow a disciplined approach to reviewing systems
11 and practices and will allow integration decisions to proceed in an orderly
12 disciplined manner. To the extent any changes are made, CenturyLink will
13 comply with all applicable state and federal laws and rules, as wells (sic)
14 as the provisions of any applicable interconnection agreements or tariffs,
15 in the same manner as they would apply notwithstanding the merger.²²⁸

16 Similarly, when asked whether CenturyLink anticipates importing CenturyLink's EASE
17 system into Qwest's legacy territory, the company replied (in part):

18 The merger is intended to bring about improved efficiencies and practices
19 in all parts of the combined company, so changes could be expected over
20 time...any changes will occur only after a thorough and methodical review
21 of both companies' systems and processes to determine the best system to
22 be used on a go-forward basis from both a combined company and a
23 wholesale customer perspective.²²⁹

24 So, in a nutshell, CenturyLink has told wholesale customers that they can expect changes
25 to the "lifblood" of Qwest's wholesale operations, but has provided no detail about what
26 changes will be made or when those changes will be made. This simply does not provide
27 wholesale customers with the certainty they need to plan their business going forward.

²²⁸ CenturyLink Response to Integra Arizona Data Request #23.

²²⁹ CenturyLink Response to Integra Arizona Data Request #35(h).

1 **Q. HAS CENTURYLINK PROVIDED ANY INFORMATION ABOUT HOW LONG**
2 **IT PLANS ON MAINTAINING THE EXISTING OSS IN LEGACY QWEST**
3 **TERRITORY?**

4 A. My clients have asked in every state where they have intervened about CenturyLink's
5 post-merger plans for OSS, and in every state, CenturyLink has submitted the same
6 answer about anticipating no "immediate changes" but that "changes could be expected
7 over time." On July 27, 2010, CenturyLink filed its Reply Comments and supporting
8 declarations in the FCC's review of the proposed transaction (WC Docket No. 10-110).
9 In that filing, the Joint Applicants represented that "[i]t is expected that CenturyLink will
10 operate both CenturyLink (in CenturyLink areas) and Qwest OSS (in Qwest areas) until it
11 completes its evaluation of the best options for all stakeholders. It is expected that
12 CenturyLink will operate both systems for 12 months at the very least."²³⁰ CenturyLink
13 made similar statements about operating both Qwest and CenturyLink OSS for at least 12
14 months following the merger in its recent testimony in the Iowa merger review
15 proceeding.²³¹ While these recent statements are different than what CenturyLink has
16 stated in discovery responses, they provide none of the certainty that wholesale customers
17 need. As an initial matter, 12 months is not a sufficient period of time to provide

²³⁰ Declaration of William E. Cheek in Support of Reply Comments of CenturyLink, Inc. and Qwest Communications International, Inc., WC Docket No. 10-110, July 27, 2010.

²³¹ *See, e.g.*, Rebuttal Testimony of Guy Miller, III on behalf of CenturyLink, Inc., Iowa Board Docket No. SPU-2010-0006, August 26, 2010, at p. 42 ("In the FCC's merger review proceeding, the Applicants have provided a sworn statement that 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 for all stakeholders. This is expected to take 12 months at the very least.")

1 certainty. Second, continuing to operate the systems does not mean that they will
2 continue to meet 271 standards.

3 **Q. WHY IS OPERATING BOTH SYSTEMS FOR “AT LEAST 12 MONTHS”**
4 **INSUFFICIENT?**

5 A. CenturyLink has estimated synergy savings to be achieved over a three-to-five year
6 period, which means that the greatest risk to CLECs of CenturyLink degrading access to
7 OSS is during that three-to-five year window, and even for a period of time after the five
8 years if the combined company does not integrate Qwest on-time and on-budget post-
9 merger. Since one year does not even come close to covering this time period during
10 which wholesale customers and local competition are at the greatest risk due to the
11 merger, it is not satisfactory. In addition, CenturyLink states that it “is expected” to
12 operate both systems for at least 12 months. This is not a firm commitment.
13 CenturyLink’s expectations may change post-merger, and that is why an enforceable
14 commitment/condition to maintain OSS is critical.

15 **Q. SHOULD CENTURYLINK BE ABLE TO UNILATERALLY MAKE CHANGES**
16 **TO QWEST’S OSS POST-MERGER IN THE PURSUIT OF SYNERGY**
17 **SAVINGS?**

18 A. No. Regardless of whether or not CenturyLink performs a “methodical review” or if it
19 takes into account the “wholesale customer perspective”²³² – CenturyLink should not be

²³² See also, Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 21 (“Whether post-transaction CenturyLink ultimately chooses an existing OSS or selects new systems should be left to be resolved through the ordinary course of business and the need to respond to marketplace conditions.”)

1 allowed to make changes to Qwest's OSS post-merger without extensive analysis as
2 rigorous and extensive as that conducted during the Qwest Section 271 approval process.
3 As explained in Exhibit TG-2, an extensive third-party test of Qwest's OSS was
4 conducted over a three-year period for the express purpose of determining whether
5 Qwest's OSS satisfied the nondiscriminatory access requirement under Section 271 of
6 Act. Despite Qwest claiming at the outset that its OSS and CMP were compliant with
7 Section 271, the third party testing revealed hundreds of problem areas that were resolved
8 through OSS improvements and re-testing. Countless hours and millions of dollars went
9 into this process, and Qwest ultimately received Section 271 authority to provide in-
10 region interLATA services based, in significant part, on this extensive test of its existing
11 OSS. If CenturyLink changes Qwest's existing OSS post-merger (without the same level
12 of testing that was previously conducted), it will have single-handedly undermined all of
13 the work that was conducted by 14 state commissions, the FCC, third-party testers, Qwest
14 and industry participants.

15 **Q. HAS CENTURYLINK ADMITTED IN DISCOVERY THAT ITS OSS HAS NOT**
16 **BEEN THIRD-PARTY TESTED?**

17 A. Yes. CenturyLink has admitted that its OSS has not been third-party tested,²³³ and the
18 FCC has stated that a "third-party test provides an objective means by which to evaluate a

Fortunately for CLECs, the state commissions and FCC did not take such this approach when evaluating whether Qwest's OSS provides nondiscriminatory access required by Section 271 of the Act. CenturyLink's claim that it should be left up to the Merged Company as to whether Qwest's OSS should be replaced with different systems raises questions as to whether CenturyLink truly understands and takes seriously the BOC obligations it will inherit in Qwest's legacy territory if the proposed transaction is approved.

²³³ CenturyLink Response to Integra Arizona Data Request #18.

1 BOC's OSS readiness."²³⁴ Accordingly, replacing Qwest's legacy OSS with
2 CenturyLink's legacy (or new) OSS would cause Qwest to backslide on its 271
3 obligations because Qwest would no longer be providing the nondiscriminatory access to
4 OSS that was a quid pro quo for 271 approval.

5 **Q. ARE THERE OTHER REASONS WHY CENTURYLINK SHOULD NOT BE**
6 **ALLOWED TO CHANGE QWEST'S OSS UNILATERALLY?**

7 A. Yes. As Dr. Ankum explains, CenturyLink has the incentive and ability to direct its
8 synergy savings efforts in areas that are most profitable to the Merged Company. Given
9 that Qwest has referred to OSS as the "lifeblood" of its wholesale operations, making
10 changes to Qwest's wholesale OSS is obviously an area that would be profitable to the
11 Merged Company. If CenturyLink stopped maintaining and investing in Qwest's OSS, or
12 started using it incorrectly, CenturyLink would save money (increase synergies) and
13 disadvantage its competitors (again resulting in more revenues for Qwest). If CLECs'
14 access to OSS is degraded or melts down altogether due to integration failures, it will
15 give CenturyLink a leg up in competing for end users. In addition, the severe systems
16 integration problems experienced following recent mergers is proof positive that OSS
17 integration failures can wreak havoc post-merger.

²³⁴ *Qwest 9 State 271 Order* at ¶ 49.

1 **Q. THE COMPANY HAS STATED THAT THE INTEGRATION “WILL LARGELY**
2 **INVOLVE THE USE OF EXISTING SYSTEMS RATHER THAN CREATING**
3 **NEW ONES.”²³⁵ DOES THIS ALLAY YOUR CONCERNS?**

4 A. No. If CenturyLink tries to import legacy CenturyLink OSS into Qwest’s legacy territory
5 post-merger, those OSS would be “new” to Qwest’s region, and the same types of
6 problems that have been experienced with other mergers could be experienced in Qwest’s
7 region when the Merged Company attempts to incorporate those new OSS. As just one
8 example, CenturyLink’s legacy OSS has not been tested to handle commercial volumes
9 that would be experienced in Qwest’s legacy territory, and could fail under the strain of
10 attempting to process that higher number of orders.

11 **Q. DO THE CLEC CONDITIONS LOCK-IN CENTURYLINK TO USING QWEST’S**
12 **LEGACY OSS FOREVER?**

13 A. No. After the minimum three-year period, the Merged Company has the opportunity to
14 make changes so long as the Merged Company (a) files a detailed plan with regulators;
15 (b) conducts third-party testing (for Qwest systems that were third-party tested) to ensure
16 that the replacement system provides the needed functionality and can handle commercial
17 volumes in Qwest’s legacy territory; and (c) allows for coordinated testing with CLECs.
18 These three requirements are eminently reasonable and were undertaken to ensure that
19 Qwest’s existing OSS met the requirements of Section 271.

²³⁵ Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 9.

1 Regulators as well as CLECs have a vested interest in overseeing any changes to Qwest's
2 OSS and ensuring that Qwest does not backslide in carrying out its obligations under
3 Section 271 and does not experience the same types of trouble experienced after recent,
4 similar mergers. Third-party testing will provide an objective means for determining
5 whether the replacement system is at least equal in functionality and capability as the
6 system it is replacing (which was originally third-party tested).

7 **Q. ARE YOU SAYING THAT QWEST'S OSS IS PERFECT?**

8 A. No. What I am saying is that while CLECs have expressed concerns about Qwest's OSS,
9 Qwest's OSS has been third-party tested and received a passing grade by regulators, and
10 CenturyLink's has not. So, replacing Qwest's OSS with CenturyLink's OSS post-merger
11 will result in a step backwards for competition.

12 **Q. PLEASE DISCUSS IN MORE DETAIL CONDITION 20 – OSS IN LEGACY**
13 **CENTURYLINK TERRITORY.**

14 A. Whereas Condition 19 addresses the OSS to be used in legacy Qwest territory post-
15 merger, Condition 20 addresses the OSS to be used in legacy CenturyLink territory post-
16 merger. The existing Qwest OSS and its functionality is more well-documented, and
17 preferred by carriers that use both of the merging companies' systems, than the existing
18 CenturyLink OSS. For example, tw telecom, a carrier that has experience as a wholesale
19 customer of both Qwest and CenturyLink,²³⁶ explained that the electronic-bonding
20 capabilities of legacy Embarq's OSS is inferior to the electronic-bonding capabilities of

²³⁶ Integra, et al. FCC Comments, WC Docket No. 10-110, July 12, 2010.

1 legacy Qwest's OSS.²³⁷ And as discussed above, Qwest's OSS has been tested
2 independently and extensively, while Embarq's legacy OSS has not.²³⁸

3 **Q. GIVEN THE STATE OF THE VARIOUS OSS YOU JUST DESCRIBED, WOULD**
4 **CENTURYLINK SELECT THE QWEST OSS IF IT WAS PURSUING A "BEST**
5 **PRACTICES" APPROACH TO ITS SYSTEMS?**

6 A. Yes. The integration effort should adopt the best practices and systems, and the only
7 logical conclusion is that Qwest's OSS should be integrated in CenturyLink's legacy
8 ILEC territory post-merger. This is the intent of Condition 20. This will serve the public
9 interest and foster competition in CenturyLink's legacy territory by incorporating OSS
10 that has been more thoroughly tested and is preferred by CLECs who do business in both
11 legacy Qwest and legacy CenturyLink territories.

12 **Q. ARE THERE OTHER REASONS WHY THE QWEST OSS SHOULD BE**
13 **MIGRATED TO SERVE THE LEGACY CENTURYLINK EXCHANGES,**
14 **INCLUDING THE EMBARQ EXCHANGES?**

15 A. Arguably the enforcement of the stringent nondiscrimination mandated by Section 251(c)
16 might require such a result. Although CenturyLink intimates that it will keep local
17 control, the fact of the matter is that it may ultimately seek to have business customers
18 view CenturyLink as a single global entity. That will allow CenturyLink to market
19 services throughout its bigger footprint. Thus, if CenturyLink evolves its OSS to a single

²³⁷ *Id.* at pp. 41-42.

²³⁸ *See*, Exhibit TG-2, providing quotes from state commissions and the FCC about the extensive testing that was conducted on Qwest's OSS during the 271 approval process.

1 ordering system for retail customers (*i.e.*, a retail customer would only have to submit a
2 single order to have service provisioned in both Qwest and legacy CenturyLink
3 exchanges), the same would be required for wholesale customers.

4 **B. Wholesale Service Quality**

5 **Q. PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO**
6 **WHOLESALE SERVICE QUALITY.**

7 A. There are three conditions in this category – conditions 4, 5, and 11:

- 8 • Condition 4 states that the Merged Company shall comply with all wholesale
9 performance requirements and associated remedy regimes applicable to Qwest in the
10 legacy Qwest ILEC territory. This includes the Merged Company continuing to
11 comply with all wholesale performance requirements and remedy regimes and
12 continuing to provide to CLECs wholesale performance metrics reports Qwest
13 currently provides. Condition 4(a) states that Qwest will not reduce, eliminate or
14 withdraw any Performance Indicator Definition (PID) or Performance Assurance Plan
15 (PAP) offered or provided as of the merger filing date for a period of at least five
16 years after the closing date, and only then, after the Merged Company obtains
17 approval from the applicable state commission to reduce/eliminate/withdraw it after
18 the minimum 5-year period. Condition 4(a) also states that, for at least the Defined
19 Time Period, the Merged Company shall meet or exceed the average wholesale
20 performance provided by Qwest to each CLEC for one year prior to the merger filing
21 date for each PID, product, and disaggregation. If the Merged Company fails to
22 provide wholesale service as described in the preceding sentence, the Merged
23 Company will also make remedy payments to each affected CLEC in an amount as
24 would be calculated using the methodology in the current PAP for each missed
25 occurrence when comparing pre and post-merger performance. This remedy payment
26 related to pre and post-merger service quality (“Additional PAP”) would apply in
27 addition to the Current PAP, and state commissions/FCC would have the authority to
28 assess additional remedies if the remedies described above are insufficient to bring
29 about satisfactory wholesale service quality. Condition 4(b) states that in the legacy
30 Qwest ILEC territory, for at least the Defined Time Period, the Merged Company will
31 meet or exceed the average monthly performance provided by Qwest to each CLEC
32 for one year prior to the merger filing date for each metric in the CLEC-specific
33 monthly special access performance reports Qwest provides to CLECs as of the

1 merger filing date. For each month that the Merged Company fails to meet Qwest's
2 average monthly special access performance for each metric, the Merged Company
3 will make remedy payments (calculated on a basis to be determined by the state
4 commission/FCC) on a per-month, per-metric basis to each affected CLEC.

- 5 • Condition 5 states that, for at least the Defined Time Period, in the legacy
6 CenturyLink ILEC territory the Merged Company shall comply with all wholesale
7 performance requirements and associated remedy regimes applicable to legacy
8 CenturyLink as of the merger filing date, and continue to provide to CLECs the
9 wholesale performance metrics that CenturyLink provides to CLECs as of the merger
10 filing date. This condition allows state commissions/FCC to assess additional
11 penalties if the remedy payments are insufficient to bring about quality wholesale
12 service or if the merger conditions are violated. Condition 5(a) states that the Merged
13 Company will provide to CLECs the wholesale special access performance metrics
14 reports Qwest provides as of the merger filing date, and beginning 12 months after
15 the closing date, the requirements in Condition 4(b) shall apply to the Merged
16 Company in the legacy CenturyLink ILEC territory.
- 17 • Condition 11 states that to the extent an ICA is silent as to a provisioning interval for
18 a product or refers to Qwest's Service Interval Guide (SIG), the applicable interval,
19 after closing date, will be no longer than the interval in Qwest's SIG as of the merger
20 filing date.

21 **Q. WHY ARE THESE CONDITIONS NECESSARY?**

22 A. These conditions are critical to ensure that wholesale service quality is not degraded post-
23 merger as the Merged Company cuts costs to achieve synergy savings. Condition 4(a),
24 for instance, maintains the current PIDs and PAPs that Qwest currently provides for a
25 period of at least 5 years following the merger. The five year time period corresponds
26 with the upper limit of the Joint Applicants' synergy savings time horizon which is the
27 time during which the risk of merger-related wholesale service quality degradation is
28 greatly amplified. The critical nature of maintaining wholesale service quality post-
29 merger is reflected in the minimum five-year time period in this condition as well as the
30 requirement for the Merged Company to obtain approval of reducing or eliminating the

1 PIDs or PAP. To provide the proper signals to the Merged Company and to discourage it
2 from paying current PAP remedies as a cost of doing business, this condition would
3 require the Merged Company to pay an additional remedy payment for merger-related
4 service quality degradation (Additional PAP). The current PIDs and PAPs are the best
5 available way to identify and root out wholesale service quality degradation – they rely
6 on trusted statistical methods as well as business rules and data that were extensively
7 tested during the 271 approval process.

8 Likewise, these conditions (*e.g.*, Condition 5 and subpart) ensure that the Merged
9 Company adheres to quality performance standards and submits reports on that
10 performance throughout its footprint. CenturyLink is not subject to performance plans
11 and reports in all of its legacy territory, and as such, it would be extremely challenging in
12 these areas to identify any discriminatory conduct of the Merged Company post-merger.
13 Hence, this condition provides public interest benefits by tracking, identifying and
14 eliminating discriminatory conduct in all areas of the Merged Company's territory.

15 **Q. DID CENTURYLINK PROVIDE ANY ASSURANCES REGARDING**
16 **WHOLESALE SERVICE QUALITY POST-MERGER?**

17 A. Not really. When asked specifically whether CenturyLink will comply with Qwest's
18 wholesale performance requirements, continue to provide wholesale performance metrics
19 reports, make reasonable efforts to meet or exceed the average wholesale performance
20 provided by Qwest, and remit remedy payments for substandard performance post-
21 merger, CenturyLink replied that it "intends to comply" with existing Qwest wholesale

1 performance plans and went on to explain that changes could be expected due to
2 integration.²³⁹ “Intend[ing] to comply” and actually complying are two entirely different
3 things as amply demonstrated by history of the Hawaii, FairPoint and Frontier
4 transactions previously discussed – particularly if the proposed transaction is approved as
5 filed and the Merged Company’s pre-merger “intentions” are trumped by the Merged
6 Company’s efforts to deliver on synergy savings post-merger.

7 **Q. CONDITION 11 ADDRESSES PROVISIONING INTERVALS. PLEASE**
8 **EXPLAIN HOW THIS RELATES TO WHOLESALE SERVICE QUALITY.**

9 A. The longer the wholesale provisioning interval, the longer wholesale customers must wait
10 to serve end user customers (and the longer end users must wait to take advantage of
11 competitive options). Further, the Merged Company, as part of its integration efforts,
12 could attempt to lengthen wholesale provisioning intervals so that it may reduce
13 personnel costs post-merger.

14 **Q. WHY IS THIS CONDITION NECESSARY?**

15 A. The reason this condition is needed is that some ICAs with Qwest are either silent or refer
16 to Qwest’s SIG for the applicable provisioning interval for a product (*i.e.*, the interval is
17 not specified in the ICA), and as such, the applicable interval can be unilaterally changed
18 by the Merged Company post-merger by changing its SIG. However, CLECs should not
19 be required to wait longer for wholesale services as a result of the proposed transaction,

²³⁹ CenturyLink Response to Integra Arizona Data Request #61.

1 so in cases where the ICA is silent or references the SIG, the standard interval applied at
2 the time of the merger filing date should apply post-merger.

3 **Q. WHAT HAS BEEN QWEST'S POSITION ON HOW SERVICE INTERVALS IN**
4 **THE SIG SHOULD BE MODIFIED?**

5 A. Qwest has opposed including service intervals in ICAs, and instead proposed to leave
6 intervals out of ICAs so that they can be modified through CMP.²⁴⁰

7 **Q. IS THERE A CONCERN ABOUT SERVICE INTERVALS IN THE SIG BEING**
8 **SUBJECT TO CHANGES IN CMP?**

9 A. Yes. Qwest has in the past made unilateral changes in CMP over CLECs objections.²⁴¹

10 **Q. DOES THE SERVICE INTERVAL IMPACT COMPETITION AND**
11 **CONSUMERS?**

12 A. Yes. This condition is critical because it impacts the customers of CLECs directly.
13 CLECs make commitments to customers based on the provisioning intervals agreed upon
14 or as required. Should the Merged Company not meet the provisioning intervals, then

²⁴⁰ Testimony of Renee Albersheim on behalf of Qwest Corp., Minnesota Docket No. P-5340, 421/IC-06-768, August 25, 2006, at p. 31 ("The effect of Eschelon's language is to take control of service interval management away from its appropriate forum, the CMP, and to give control to Eschelon. Historically, Qwest has modified service intervals through CMP. As I discussed in Section III above, the CMP would be undermined if it was necessary to conduct interconnection agreement amendment negotiations before CMP changes could be implemented.")

²⁴¹ For example, Qwest has unilaterally implemented unwanted changes over CLEC objections. *See, e.g., In re Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996* ["Qwest-Eschelon Minnesota ICA Arbitration"], Arbitrators' Report, MPUC Dkt. Nos. P-5340,421/IC-06-768, ¶ 22 (rel. Jan. 16, 2007) ("Eschelon has provided convincing evidence that the CMP process does not always provide CLECs with adequate protection from Qwest making important unilateral changes in the terms and conditions of interconnection.").

1 CLEC customers will be upset with the CLEC for missing the deadlines. Frustrating
2 consumers and creating tension between a CLEC and its customers may benefit
3 CenturyLink, but it is not consistent with the requirements of the Act or the public
4 interest.

5 **C. Wholesale Customer Support**

6 **Q. PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO**
7 **WHOLESALE CUSTOMER SUPPORT.**

8 A. There are four conditions in this category – conditions 15, 16, 17 and 18:

- 9 • Condition 15 states that the Merged Company shall provide to wholesale customers at
10 least 30 days prior to the closing date, and maintain on a going-forward basis, up-to-
11 date escalation information, contact lists, and account manager information. For
12 changes to support center location, organizational structure, or contact information,
13 the Merged Company will provide at least 30 days advance written notice to
14 wholesale customers; and will provide reasonable advance notice for other changes.
15 The information and notice will be consistent with the terms of applicable ICAs.
- 16 • Condition 16 states that the Merged Company will make available to wholesale
17 customers the types and level of data, information, and assistance that Qwest made
18 available as of merger filing concerning wholesale OSS and wholesale business
19 practices and procedures. This includes information on Qwest's wholesale website
20 such as the PCAT, notices, industry letters, the CMP and databases/tools.
- 21 • Condition 17 states that the Merged Company will maintain Qwest's CMP using the
22 terms in the Qwest CMP Document, and will dedicate resources needed to complete
23 pending CLEC change requests in a commercially reasonable time frame.
- 24 • Condition 18 states that the Merged Company will ensure that the legacy Qwest
25 Wholesale and CLEC support centers are sufficiently staffed by adequately trained
26 personnel dedicated to wholesale operations so as to provide service at a level equal
27 to or greater than provided by Qwest prior to the merger (relative to wholesale order
28 volumes), and to protect CLEC information from being used by the Merged
29 Company's retail operations. This condition also states that the total number of
30 employees dedicated to supporting wholesale services for CLECs will be no fewer
31 than employed by legacy Qwest and legacy CenturyLink as of the Merger Filing Date

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1 unless the Merged Company obtains a ruling from the applicable regulatory body that
2 wholesale order volumes materially decline or other circumstances warrant
3 corresponding employee reductions.

4 **Q. WHY ARE THESE CONDITIONS NECESSARY?**

5 A. These conditions dovetail with the wholesale service quality conditions and in some
6 respects the OSS conditions discussed above. These conditions are needed to ensure that
7 the transition to the Merged Company runs smoothly for wholesale customers – and by
8 extension their end user customers – and that the Merged Company does not diminish the
9 level of wholesale support currently provided in Qwest’s BOC territory when it integrates
10 the two companies and pursues synergy savings.

11 CenturyLink has provided no detail about what wholesale customers should expect other
12 than “change.” To ensure that the transition runs smoothly for wholesale customers,
13 Condition 15 requires the Merged Company to provide at least 30 days prior to the
14 closing date (and on a going forward basis) up-to-date escalation information, contact
15 lists, and account manager information, and provides for 30 days notice for changes to
16 support center location, organizational structure, or contact information. These resources
17 are critical to managing the carrier-to-carrier relationship between an ILEC and CLECs,
18 and will likely incur significant changes due to the proposed transaction. Therefore,
19 CLECs must be made aware of these changes in advance so that they can make the
20 appropriate adjustments to their processes and operations and avoid disruption when the
21 change is made. This requirement is particularly important given that when CenturyLink

1 was asked about its plans in this regard post-merger, its response was not specific or
2 instructive.²⁴²

3 **Q. PLEASE ELABORATE ON WHY CONDITIONS 16 AND 17 ARE NECESSARY.**

4 A. These conditions are necessary in order to ensure that Qwest does not backslide in its
5 obligations under the Act. The OSS provided by Qwest to CLECs goes beyond just the
6 CLEC-facing system interfaces, and includes the back-office systems, databases,
7 personnel,²⁴³ as well as associated business processes and up-to-date data maintained in
8 those systems.²⁴⁴ The third-party test conducted on Qwest's OSS during the 271
9 approval process tested the availability and functionality of the system interfaces as well
10 as business practices and procedures, data integrity and Qwest's CMP.²⁴⁵ The test
11 involved these components because they are directly related to whether Qwest provides
12 nondiscriminatory access to its OSS under the Act. In other words, the current level of

²⁴² CenturyLink Response to Integra Arizona Data Request #71. To CenturyLink's credit, it states that "Wholesale customers will be informed of any changes to contact information in advance." CenturyLink Response to Integra Arizona Data Request #72. However, CenturyLink does not indicate how far in advance that notice will be given or how the notice will be provided. This is insufficient.

²⁴³ See, e.g., *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, FCC 03-36, August 21, 2003 ("*Triennial Review Order*") at footnote 822 ("OSS are composed of various 'back office' systems, databases and personnel that an incumbent LEC uses to commercially provision telecommunications services to...purchasers of unbundled network elements.")

²⁴⁴ *Local Competition Order* at ¶¶ 517-18.

²⁴⁵ See, e.g., Colorado PUC Evaluation ("Qwest's change management process (CMP) has undergone a complete overhaul during the § 271 process. It is now compliant with the FCC's change management criteria. The [Colorado PUC] staff has closely monitored CMP, and through no small amount of goading, Qwest has brought it into compliance."); see also *Id.* at 45 ("Beginning in July 2001, Qwest, CLECs and [Colorado PUC] staff began meeting in a collaborative effort to redesign Qwest's change management process (CMP). The participants in the redesign process have met for more than 45 days over the past 11 months to discuss every aspect of Qwest's CMP. CLECs and Qwest have made every effort to achieve consensus. As a result, the [Colorado PUC] agrees with Qwest's contention that 'it has in place the most comprehensive, inclusive, and forward-looking change management plan in the nation.'").

1 data, current business practices and procedures, and current CMP in Qwest's region are
2 essential components of Qwest complying with the market-opening provisions of 271 of
3 the Act, and these components would be undermined – and the Merged Company would
4 backslide on its 271 obligations – if the Merged Company withdrew or replaced such
5 information, practices and procedures, or CMP, post-merger.

6 **Q. DOES CENTURYLINK SEEM TO UNDERSTAND THE IMPORTANCE OF**
7 **THE QWEST 271 OBLIGATIONS?**

8 A. No. CenturyLink appears to be taking a cavalier attitude towards these obligations in its
9 discovery responses, creating additional uncertainty. For example, in response to a
10 question about whether CenturyLink anticipates seeking modification to Qwest's existing
11 CMP and asking CenturyLink to describe any anticipated changes, CenturyLink
12 responded as follows:

13 The merger is intended to bring about improved efficiencies and practices
14 in all parts of the combined company, so changes [to Qwest's existing
15 CMP and/or CMP Document] could be expected over time. However, any
16 changes will occur only after a thorough and methodical review of both
17 companies' processes to determine the best process to be used on a go-
18 forward basis from both a combined company and a wholesale customer
19 perspective.²⁴⁶

20 Based on this response, CLECs should expect changes, but nothing is known about those
21 changes or how the Merged Company will determine whether to make changes or what
22 changes to make. CenturyLink's vague reference to a "methodical review" falls woefully

²⁴⁶ CenturyLink Response to Integra Arizona Data Request #118. *See also*, CenturyLink response to Integra Arizona Data Request #91. After explaining that changes may be made in the future, CenturyLink states: "Generally, CenturyLink is a proponent of web-based guidelines and materials for wholesale customer usage and is an effective means used by CenturyLink today." This response provides absolutely no commitment to maintain the information Qwest currently makes available on its website, such as its Product Catalogs.

1 short of providing any certainty.²⁴⁷ Moreover, the Merged Company should not be
2 allowed to cast away all the work that was conducted to ensure Qwest's OSS provided
3 nondiscriminatory access to OSS; nor should the Merged Company be allowed to
4 unilaterally²⁴⁸ implement new OSS or modify CMP because it unilaterally determined it
5 was more efficient (in the "combined company['s] perspective"). In fact, that is precisely
6 the type of conduct that the 271 approval process was intended to identify and root out.
7 Yet, that is what could happen if the proposed transaction is approved without conditions.

8 **Q. ARE YOU SAYING THAT QWEST'S BUSINESS PRACTICES AND**
9 **PROCEDURES, LEVEL OF INFORMATION, AND CMP ARE FLAWLESS OR**
10 **SHOULD BE SET IN STONE?**

11 A. No. Regarding the role of Qwest CMP, CLECs including Integra said in their recent
12 FCC Comments in the Qwest-CenturyLink Merger docket that the CMP performs an
13 essential function, even though CLECs have encountered difficulties with Qwest's CMP.

²⁴⁷ CenturyLink was asked in Arizona about what it meant by "methodical review" (Integra Arizona Data Request #49(a)) and what it meant by "from both a combined company and a wholesale customer perspective" (Integra Arizona Data Request #49(b)), but CenturyLink objected to the questions because the quoted testimony was submitted in the Oregon merger proceeding and not submitted in the Arizona merger proceeding. When these questions were asked in the Oregon proceeding, CenturyLink responded that it will take into consideration carriers throughout its entire footprint as well as "operational efficiencies for" the Merged Company. CenturyLink Response to Joint CLECs Oregon Data Request #53. The Merged Company should not be permitted to replace processes, CMP, etc. that were extensively reviewed during the 271 approval process and critical to nondiscriminatory access to OSS with different processes or CMP that have not been tested and which may be more efficient for the Merged Company. This is a prime example of a situation in which the Merged Company could integrate the two companies to the detriment of wholesale customers. Therefore, conditions are warranted.

²⁴⁸ CenturyLink's statement that it will take into account the "wholesale customer perspective" is a hollow promise. Assuming that the Merged Company even takes into account the wholesale customer perspective when integrating OSS, it could simply ignore that perspective and instead implement changes based on the "combined company...perspective." In fact, Qwest already makes changes through its CMP over CLEC objections, and this problem is sure to worsen as the Merged Company begins overhauling OSS.

1 As an example, CLECs pointed to Qwest's implementation of unwanted changes over
2 CLEC objections. After reviewing examples Eschelon provided in the Minnesota
3 Eschelon-Qwest arbitration case, the Minnesota Arbitrators, as affirmed by the Minnesota
4 Commission, found that "Eschelon has provided convincing evidence that the CMP
5 process does not always provide CLECs with adequate protection from Qwest making
6 important unilateral changes in the terms and conditions of interconnection."²⁴⁹ In a
7 complaint Eschelon filed against Qwest in Arizona regarding expedites, the Arizona Staff
8 said, "This case is about not only a breach of Eschelon's ICA, but inappropriate use of
9 the CMP to affect a material change to all CLECs' rights under their current ICAs with
10 Qwest."²⁵⁰ Nevertheless, in a relative comparison, Qwest's CMP, with all of its flaws, is
11 still better than the untested, unknown process that CenturyLink may replace it with post-
12 merger.

13 **Q. DOES LEGACY CENTURYLINK HAVE A CHANGE MANAGEMENT**
14 **PROCESS?**

15 A. No. CenturyLink does not have a Change Management Process in either the legacy
16 CenturyTel legacy territory or the legacy Embarq territory, (CenturyLink has separate
17 wholesale processes and wholesale websites for each of the legacy CenturyLink and

²⁴⁹ Minnesota Arbitrators' Report, OAH 3-2500-17369-2/MPUC No. P-5340,421/IC-06-768 at ¶ 22. The Minnesota Commission adopted the Arbitrators' Report in relevant part. See, Order Resolving Arbitration Issues, Requiring Filed Interconnection Agreement, Opening Investigation and Referring Issue to Contested Case Proceeding, *In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996*. ["Minnesota Qwest-Eschelon ICA Arbitration"], OAH No. 3-2500-17369-2; MPUC Docket No. P-5340,421/IC-06-768 (March 30, 2007) ["MN PUC Arbitration Order"].

²⁵⁰ Arizona Corporation Commission Staff Reply Brief, AZ Docket No. T-03406A-06-0257 at p. 1.

1 Embarq territories.) In the legacy CenturyTel territory, there is a “Wholesale Markets
2 Carrier Notification” process²⁵¹ wherein CenturyTel simply issues a notice informing
3 wholesale customers about a coming change or a change that has already taken place.
4 For example, CenturyTel issued Wholesale Markets Carrier Notification GN122009²⁵² to
5 announce to wholesale customers that CenturyTel was implementing the EASE OSS.
6 Noticeably absent from this notification is any opportunity for input from the affected
7 wholesale customer. Similarly, CenturyTel issues these notices to inform wholesale
8 customers about changes CenturyTel makes to its Service Guide, such as Carrier
9 Notification GN102009,²⁵³ which informed wholesale customers that CenturyTel had
10 *already* made changes to its Service Guide regarding billing disputes. Again, there is no
11 opportunity for input from the affected wholesale customers in this process.

12 In the legacy Embarq territory, CenturyLink uses a similar notice approach. I have
13 attached as Exhibit TG-10 a copy of a recent notice issued by CenturyLink in the legacy
14 Embarq territory, in which CenturyLink announced a change to its WebRRS web-based
15 GUI for maintenance and repair. Like the CenturyTel notice, notably absent from this
16 notice in legacy Embarq territory is any mention of opportunity for input or feedback
17 from the affected wholesale customers, or even the reasonable expectation that a CLEC
18 could get enough notice to communicate the information internally and provide

²⁵¹<http://www.centurylink.com/business/Wholesale/InterconnectionServices/AlertsAndNotifications/generalNotifications.jsp>

²⁵²http://www.centurylink.com/business/Wholesale/InterconnectionServices/Library/EASE_Implementation_Notice_07072009.pdf

²⁵³http://www.centurylink.com/business/Wholesale/InterconnectionServices/Library/Service_Guide_Update_07012009.pdf

1 documentation updates and training if needed. Indeed, the notice indicates that the
2 change is effective the day the notice was issued (“Effective today...”).

3 **Q. DID THE CLECS ASK LEGACY EMBARQ ABOUT ITS CMP?**

4 A. Yes. In late 2007, Integra asked its Embarq account manager whether a change
5 management process existed in legacy Embarq territory, and was directed to Embarq’s
6 “CLEC Issue Resolution” process.²⁵⁴ According to Embarq’s wholesale website, the
7 CLEC Issue Resolution process consists of:

8 two different venues for resolving business issues with our CLEC
9 customers: an annual face-to-face meeting (CLEC Forum) and a six month
10 CLEC Forum follow-up conference call (CRM).

11 **Customer Relations Meeting (CRM)**

12 This six month follow-up meeting provides an opportunity for
13 CenturyLink to update its CLEC partners on items and issues of interest
14 discussed during the annual CLEC Forum. Meetings will be held six
15 months after the CLEC Forum and participants will interact via conference
16 call.

17 **CLEC Forum**

18 This annual meeting provides an opportunity for face-to-face interaction
19 between CenturyLink and its CLEC partners.²⁵⁵

20 **Q. BASED ON YOUR REVIEW, DOES LEGACY CENTURYLINK HAVE AN**
21 **ADEQUATE CMP?**

22 A. No. After reviewing both legacy CenturyTel and legacy Embarq wholesale websites and
23 based on information provided by the Embarq wholesale customer account manager, the
24 annual CLEC Forum meeting and six month follow up Customer Relations Meeting

²⁵⁴ http://embarq.centurylink.com/wholesale/clec_forum.html

²⁵⁵ http://embarq.centurylink.com/wholesale/clec_forum.html

1 (“CRM”) is the only process identified for CLEC input, and that is minimal. Nothing
2 about that process manages change. Although CenturyLink has claimed that it has a
3 “streamlined change management process,”²⁵⁶ the facts do not support this claim.
4 Although CLECs have encountered difficulties with Qwest’s CMP,²⁵⁷ at the very least,
5 Qwest’s CMP is documented,²⁵⁸ contains an escalation process,²⁵⁹ allows a CLEC the
6 time required to communicate and implement the change (even if Qwest implements the
7 change over CLEC objection), and memorializes a CMP process that was evaluated
8 during the 271 approval process. As the CMP Document developed via the extensive
9 271 process shows,²⁶⁰ notification is only one aspect of a CMP. CenturyLink’s
10 notice/alert processes have not been subjected to any such extensive investigation.

11 **Q. HAS THE FCC EMPHASIZED THE IMPORTANCE OF AN ADEQUATE CMP**
12 **PROCESS?**

13 A. Yes. The FCC has found that adequate change management procedures are a critical
14 component to a CLEC’s “meaningful opportunity to compete by providing sufficient

²⁵⁶ Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 24.

²⁵⁷ For example, Qwest has unilaterally implemented unwanted changes over CLEC objections. *See, e.g., In re Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996* [“Qwest-Eschelon Minnesota ICA Arbitration”], Arbitrators’ Report, MPUC Dkt. Nos. P-5340,421/IC-06-768, ¶ 22 (rel. Jan. 16, 2007) (“Eschelon has provided convincing evidence that the CMP process does not always provide CLECs with adequate protection from Qwest making important unilateral changes in the terms and conditions of interconnection.”).

²⁵⁸ <http://www.qwest.com/wholesale/cmp/index.html> Qwest “CMP Document” is attached as Exhibit BJJ-24 to the testimony of Bonnie Johnson.

²⁵⁹ Qwest CMP Document Section 14. *See*, Exhibit BJJ-24 to the testimony of Bonnie Johnson.

²⁶⁰ Qwest testified in the Qwest-Eschelon Minnesota ICA Arbitration: “The CMP was evaluated as a part of the extensive section 271 investigation.” Qwest (Renee Albersheim) Direct Testimony (Aug. 25, 2006), p. 6, line 24.

1 access to the BOC's OSS."²⁶¹ The FCC has said that it will evaluate the adequacy of a
2 BOC's CMP according to five factors:

3 (1) that information relating to the change management process is clearly
4 organized and readily accessible to competing carriers; (2) that competing
5 carriers had substantial input in the design and continued operation of the
6 change management process; (3) that the change management plan defines
7 a procedure for the timely resolution of change management disputes; (4)
8 the availability of a stable testing environment that mirrors production;
9 and (5) the efficacy of the documentation the BOC makes available for the
10 purpose of building an electronic gateway.²⁶²

11 None of the five factors applies to the legacy CenturyLink processes, and they certainly
12 have not been evaluated in relation to these five factors as Qwest's CMP evaluated during
13 the 271 approval process. This underscores the importance of Condition 17, to maintain
14 Qwest's CMP post-merger, in spite of its flaws, because the CenturyLink alternative is no
15 change management process at all.

16 **Q. WHY IS CONDITION 18 NECESSARY?**

17 A. Yes. Changes to or reductions in employees that service wholesale and CLEC support
18 centers will have a direct impact on the level of wholesale service quality provided post-
19 merger, and is one of the most likely candidates for reductions.²⁶³ Again, the little
20 information provided by CenturyLink about future changes and reductions in this
21 headcount heightens those concerns.

²⁶¹ *Qwest 9 State 271 Order* at ¶ 132.

²⁶² *Qwest 9 State 271 Order* at ¶ 132.

²⁶³ CenturyLink has stated that it will achieve synergies through "elimination of duplicative functions and systems." Glover Arizona Direct at p. 12, lines 20-21. The Merged Company will more than likely have duplicative functions in this area given that both Qwest and CenturyLink must have their own separate wholesale/CLEC support centers today. Further, because cuts in this area will improve CenturyLink's position relative to its competitors, these changes would be profitable to the Merged Company.

1 **Q. PLEASE DESCRIBE HOW CENTURYLINK’S INFORMATION HEIGHTENS**
2 **YOUR CONCERN ABOUT FUTURE CUTBACKS IN HEADCOUNT FOR**
3 **WHOLESALE SERVICES?**

4 A. When asked directly about anticipated changes to staffing levels for groups that interface
5 with wholesale customers post-merger, CenturyLink gives its patented answer about no
6 “immediate changes” but that changes can be expected due to integration.²⁶⁴ To
7 CenturyLink’s credit, it states that “the combined company will continue to employ
8 experienced and dedicated personnel to provide quality service” and “will continue to be
9 managed by knowledgeable and experienced employees dedicated to their local
10 communities” and the “workforce of the combined company will continue to be sufficient
11 to meet customer and business needs and to ensure compliance with all regulatory
12 obligations.”²⁶⁵

13 **Q. HAS CENTURYLINK PROVIDED ANY INFORMATION ON HOW IT MIGHT**
14 **LIVE UP TO THESE PROMISES?**

15 A. No. These are merely paper promises because CenturyLink has neither explained how it
16 will live up to these promises nor offered commitments to back them up. These promises
17 should carry no weight given that if the transaction is approved as filed, the Merged
18 Company will be focused on achieving synergies, not on making good on unenforceable
19 statements made to achieve merger approval. These representations do indicate,
20 however, that the Merged Company should have no issue with abiding by the provisions

²⁶⁴ CenturyLink Response to Integra Arizona Data Requests #46 and #136.

²⁶⁵ CenturyLink Response to Integra Arizona Data Request #136.

1 of Condition 18 that requires sufficiently staffed and adequately trained wholesale
2 operations.

3 **Q. CONDITION 18 STATES THAT THE TOTAL NUMBER OF EMPLOYEES**
4 **DEDICATED TO SUPPORTING WHOLESALE SERVICES WILL BE NO**
5 **FEWER THAN AS OF THE MERGER FILING DATE UNLESS THE MERGED**
6 **COMPANY DEMONSTRATES THAT DECLINING WHOLESALE VOLUMES**
7 **(OR OTHER CIRCUMSTANCES) WARRANT HEADCOUNT REDUCTION**
8 **RELATIVE TO ORDER VOLUMES. WHY IS THIS WARRANTED?**

9 A. The discovery responses indicate that over the past five years in the legacy Qwest service
10 areas, the total number of employees dedicated to supporting wholesale services for
11 CLEC customers dropped by about *****BEGIN CONFIDENTIAL [REDACTED] END**
12 **CONFIDENTIAL*****.²⁶⁶ Similarly, the Qwest wholesale total headcount dropped by
13 about *****BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***** during that
14 same time-frame.²⁶⁷ The headcount currently dedicated to serving wholesale customers
15 in Qwest's legacy territory is as low as it has been in the recent past, and reducing this
16 headcount further could very well have a detrimental impact on wholesale customers of
17 Qwest. And, for Qwest Network Technicians who perform both repair and installation
18 functions for Qwest customers, the trend has been similar. Qwest provided data showing
19 that in Arizona, the Network Technicians involved in installation and repairing customer
20 services has dropped by about *****BEGIN CONFIDENTIAL [REDACTED] END**

²⁶⁶ Qwest Response to Integra Arizona Data Request #2-69, Confidential Attachment A.

²⁶⁷ Qwest Response to Integra Arizona Data Request #2-1(m), Confidential Attachment C.

1 **CONFIDENTIAL***** between 2005-2009.²⁶⁸ So, when the Merged Company is
2 pursuing these synergy savings, it should ensure that whatever changes are made do not
3 reduce the total number of employees dedicated to wholesale customers in Qwest's
4 territory so that wholesale service quality is not degraded post-merger.

5 **Q. CONDITION 18 DISCUSSES PROTECTING CLEC INFORMATION FROM**
6 **BEING USED BY THE MERGED COMPANY'S RETAIL OPERATIONS. IS**
7 **THERE SIGNIFICANT UNCERTAINTY SURROUNDING THIS ISSUE**
8 **RESULTING FROM THE PROPOSED TRANSACTION?**

9 A. Yes. A key aspect of competition is smoothly handling the transfer of a customer from
10 one provider to the other when a customer chooses to switch carriers and keep its
11 number. Over the past several years, we have seen disputes regarding retention
12 marketing activities based on the use of confidential information provided in connection
13 with arranging for number porting, for example.

14 **Q. CAN YOU PROVIDE AN EXAMPLE DEMONSTRATING THE IMPORTANCE**
15 **OF PROTECTING CLEC INFORMATION FROM THE MERGED COMPANY'S**
16 **RETAIL OPERATIONS?**

17 A. Yes, a very recent example. Attached to the testimony of Bonnie Johnson on behalf of
18 Integra is Exhibit BJJ-18 which includes a document entitled "Example: ILEC Improper
19 Marketing Activity"²⁶⁹ which documents an email exchange between an Integra

²⁶⁸ Qwest Response to Integra Arizona Data Request #2-139, Confidential Attachment A.

²⁶⁹ See Exhibit BJJ-18 to the Direct Testimony of Bonnie Johnson (final page).

1 Customer Account Manager and an Integra customer about inappropriate marketing
2 activity by Qwest representatives. In this example, the customer had a full disclosure
3 conversation and shared the customer's invoice with the representative – all the while
4 thinking the representative was from Integra when the representative was actually from
5 Qwest. The customer reported that the Qwest representative pretended to be from
6 Integra, and only at the end of the conversation informed the customer that the
7 representative was from Qwest and stated that Qwest could beat Integra's pricing. When
8 the Qwest representative later called the customer again to attempt to get the customer to
9 switch over to Qwest, and was unsuccessful, according to the customer, the Qwest
10 representative stated, "Well, we'll do all we can to get them [Integra] out of business." It
11 is my understanding that Qwest acknowledged to Integra that this problem occurred and
12 has since terminated the employee; however, this is just one example of a number of
13 recent examples that have occurred after announcement of the merger in which Qwest
14 personnel are directing inappropriate marketing activity to CLEC customers. *See*,
15 Exhibit BJJ-18 to the Direct Testimony of Bonnie Johnson detailing numerous recent
16 examples of inappropriate marketing activities.

17 **Q. ARE THERE OTHER EXAMPLES THAT STRESS THE IMPORTANCE OF**
18 **PROTECTING CLEC INFORMATION FROM THE ILEC'S RETAIL**
19 **OPERATIONS?**

20 **A.** Yes. During 2007 and 2008, Verizon and Bright House (along with other cable-affiliated
21 CLECs) engaged in extensive litigation with Verizon regarding Verizon's use of Bright

1 House's (and the other CLECs') confidential customer proprietary network information
2 ("CPNI" or "ordering information").²⁷⁰ Essentially, when Bright House would win a
3 customer and place an order with Verizon to transfer the customer's telephone number
4 and directory listing over to Bright House, Verizon would take that confidential
5 information and use it to immediately try to retain the customer (*i.e.*, prevent the
6 customer from leaving in the first place). Bright House argued that this was a violation
7 of federal law, which requires a carrier receiving confidential information of this sort –
8 here, the specific identities of customers who were leaving Verizon – to use that
9 information *only* for the purpose for which it was supplied – here, to perform the
10 administrative tasks associated with transferring the customer from one carrier to the
11 other.

12 The FCC ruled against Verizon, finding that Verizon violated the statute by using
13 confidential information from Bright House for Verizon's own marketing purposes.
14 Verizon took its case to federal court on an expedited basis, and received a 3-0 ruling
15 from the D.C. Circuit that the FCC was correct and that Verizon was wrong. Given this
16 example and others, it is clear that the CLECs' have a valid concern about how
17 information is used during the customer transfer process.

18 **Q. WHAT HAS CENTURYLINK SAID ABOUT THIS?**

²⁷⁰ See Bright House Networks, LLC *et al.* v. Verizon California, Inc., *et al.*, Memorandum Opinion and Order, 23 FCC Rcd 10704 (2008), *affirmed*, Verizon California, Inc. v. FCC, 555 F.3d 270 (D.C. Cir. 2009).

1 A. When asked about its plans post-merger to ensure the protection of CLEC information,
2 CenturyLink responded that it “works to ensure” that wholesale customer information is
3 kept away from the retail marketing group and will do so post-merger, but that changes
4 could be expected in Qwest’s legacy territory due to integration decisions. Again, this is
5 simply not satisfactory. There is no information that I am aware of about how
6 CenturyLink protects CLEC data from retail operations in its legacy territory, and if
7 CenturyLink imports its unknown practices into Qwest’s region post-merger in the name
8 of “best practices,” CLECs are at risk of the Merged Company lessening the protection
9 Qwest currently provides and engaging in anti-competitive conduct.

10 ***D. Compliance***

11 **Q. PLEASE IDENTIFY AND DESCRIBE THE PROPOSED CONDITIONS**
12 **RELATING TO COMPLIANCE.**

13 A. There are eleven conditions in this category – conditions 13, 21, 22, 23, 24, 25, 26, 27,
14 28, 29, and 30:

- 15 • Condition 13 states that the Merged Company will be classified as a BOC in the
16 legacy Qwest ILEC territory post-merger and subject to BOC requirements in the
17 Telecommunications Act, including the 14-point competitive checklist under Section
18 271 and anti-backsliding provisions under Section 272.
- 19 • Condition 21 states that the Merged Company will process orders in compliance with
20 law and applicable ICAs.
- 21 • Condition 22 states that the Merged Company will provide number portability in
22 compliance with law and applicable ICAs; unlock E-911 records at the time of
23 porting (Condition 22(a)); and address trouble reports involving unlocking E-911
24 records within 24 hours (Condition 22(a)). Condition 22(b) states that the Merged
25 Company will not assign a passcode, password or PIN to retail customers in a manner

1 that prevents or delays a change in local service providers. Condition 22(c) states that
2 the Merged Company shall not limit the number of ports that can be processed.

- 3 • Condition 23 states that the Merged Company will provide nondiscriminatory access
4 to directory listings and directory assistance in compliance with law, including being
5 responsible for ensuring that all directory listings submitted by a CLEC are
6 incorporated into the appropriate databases and making the CLEC's subscriber
7 listings equally available to requesting entities.
- 8 • Condition 24 states that states that the merged company shall not assess porting
9 charges (Condition 24(a)), NID access fees (Condition 24(b)), or directory storage
10 and maintenance fees (Condition 24(c)) after the closing date, to the extent that those
11 charges were not charged by legacy Qwest territory based upon commission-
12 approved rates before the closing date.
- 13 • Condition 25 states that the Merged Company will provide routine network
14 modifications in compliance with law and applicable ICAs.
- 15 • Condition 26 states that the Merged Company will engineer and maintain its network
16 in compliance with law and applicable ICAs, which includes not diverting resources
17 from maintenance to merger integration activities. Condition 26(a) states that the
18 Merged Company shall not engineer the transmission capabilities of its network or
19 engage in any policy, practice or procedure that disrupts or degrades access to the
20 local loop. Condition 26(b) requires the Merged Company to abide by law and
21 applicable ICAs when retiring copper, and Condition 26(c) prohibits the Merged
22 Company from engineering/maintaining its network (including routing of traffic) in a
23 manner that results in the application of higher rates for traffic or inefficiencies for
24 wholesale customers.
- 25 • Condition 27 states that the Merged Company will provide conditioned copper loops
26 in compliance with law and Commission-approved rates, and will (when technically
27 feasible) test and report troubles for all features and functions of the copper line and
28 not just for voice transmission only.
- 29 • Condition 28 states that, at the CLEC's option, the Merged Company will
30 interconnect with CLEC at a single point of interconnection per LATA, regardless of
31 whether the merged entity operates in that LATA via multiple operating affiliate
32 companies or a single operating company.
- 33 • Condition 29 states that conditions adopted in this state may be expanded or modified
34 based on conditions adopted by other state commissions or the FCC.
- 35 • Condition 30 states that in the case of a dispute between the parties about merger
36 conditions, either party may seek resolution before the state commission.

37 **Q. WHY ARE THESE CONDITIONS NECESSARY?**

1 A. These conditions are designed to ensure that the Merged Company complies with its
2 obligations to wholesale customers under the Act and related FCC's rules post-merger.
3 While CenturyLink has promised in its filings to comply with many of the provisions
4 discussed in these conditions, paper promises are not enough, especially considering
5 CenturyLink's inexperience as a BOC, issues previously addressed in CenturyLink's
6 legacy territory, and problems experienced by wholesale customers following recent
7 mergers. Commission-approved conditions are needed to turn the paper promises into
8 enforceable commitments.

9 **Q. WHY IS IT NOT SELF-EVIDENT THAT THE MERGED COMPANY WILL**
10 **COMPLY WITH STATE AND FEDERAL LAWS AND RULES POST-**
11 **TRANSACTION?**

12 A. As the FCC noted in the CenturyTel/Embarq Merger Order:

13 the merger may result in increased anticompetitive behavior on the part of
14 the Applicants. Consistent with the 'Big Footprint' theory that the
15 Commission addressed in prior BOC mergers, we find that the increase in
16 the size of CenturyTel's study area resulting from the merger may increase
17 its incentive to engage in anticompetitive activity, although we think it is
18 likely to have a lesser effect in the instant case than in the prior BOC
19 mergers. Additionally, to the extent that CenturyTel has been less willing
20 to cooperate with competitors than Embarq – as numerous commenters
21 allege – following the merger, CenturyTel may extend this behavior to the
22 Embarq territories. In order to address these potential harms, the
23 Applicants have proposed a series of voluntary commitments...we
24 therefore make them enforceable conditions of the merger.²⁷¹

25 The increase in the size of the CenturyTel study area following the proposed transaction
26 is about double (in terms of line counts) the increase in CenturyTel's study area that

²⁷¹ FCC *Embarq/CenturyTel Merger Order* at ¶ 33.

1 occurred due to the Embarq/CenturyTel merger. Further, the proposed transaction
2 (unlike the Embarq/CenturyTel merger) involves the acquisition of a BOC by a non-
3 BOC. As such, the risk of increased anti-competitive behavior (*i.e.*, non-compliance with
4 the law) following the proposed transaction is greater than the risk posed by the
5 Embarq/CenturyTel merger which was approved subject to enforceable conditions.

6 Providing evidence of a risk of harm that compliance with certain laws may, in particular,
7 be in jeopardy justifies singling out those laws with merger conditions that require
8 compliance. For example, one of the enforceable conditions in the Embarq/CenturyTel
9 merger was that "Orders will be processed in compliance with federal and state law, as
10 well as the terms of applicable interconnection agreements."²⁷² Though it would seem
11 self-evident that the combined Embarq/CenturyTel company would comply with laws
12 and ICAs when processing orders following the Embarq/CenturyTel merger, the FCC
13 adopted an enforceable condition to the merger requiring them to do so, based on
14 concerns identified by wholesale customers,²⁷³ to preserve the public interest and avoid
15 merger-related harm.

16 Likewise, the FCC adopted the following enforceable condition for the
17 Embarq/CenturyTel merger: "When a number is ported from CenturyTel, E-911 records
18 will be unlocked at the time of porting. Trouble reports involving locked E-911 records

²⁷² FCC *Embarq/CenturyTel Merger Order* at Appendix C, at p. 27.

²⁷³ *See, e.g.*, Declaration of D. Anthony Mastando and Kim Sharp on Behalf of DeltaCom, Inc. WC Docket No. 08-238 (Jan. 23, 2009), pp. 3-5; Declaration of R. Matthew Kohly on Behalf of Socket Telecom, WC Docket No. 08-238 (Jan. 8, 2009), at pp. 3-6.

1 will be addressed within 24 hours.”²⁷⁴ Though it would also seem self-evident that the
2 combined Embarq/CenturyTel company would comply with laws and standards
3 regarding unlocking of E911 records, the FCC’s approved merger conditions specifically
4 singled out this issue, based on concerns identified by wholesale customers,²⁷⁵ to preserve
5 the public interest and avoid merger-related harm. One of the concerns expressed was
6 that “the record updating process and the accuracy of records will suffer as a result of this
7 acquisition.”²⁷⁶ CLECs expended the resources to raise and address the issue of
8 unlocking E-911 records with Qwest via Qwest’s Change Management Process
9 commencing in 2001 – *nine years* ago.²⁷⁷ Naturally, after reading the concerns raised by
10 CLECs in the Embarq/CenturyTel merger on this issue, CLECs are concerned about
11 going backward to pre-271 workshop days such that the record updating process and the
12 accuracy of records will suffer as a result of this acquisition. Condition 22(a) is proposed
13 to address this concern.

14 The FCC, by adopting these enforceable conditions (and the merging companies, by
15 proposing this as an agreed upon commitment²⁷⁸), recognized the need to preserve the
16 public interest and protect competitors from merger-related harm by ensuring that the

²⁷⁴ FCC *Embarq/CenturyTel Merger Order* at Appendix C, at p. 29.

²⁷⁵ See, e.g., Declaration of R. Matthew Kohly on Behalf of Socket Telecom, WC Docket No. 08-238 (Jan. 8, 2009), at p. 12.

²⁷⁶ *Id.*

²⁷⁷ Change Request (“CR”) #CR PC122801-1 (“**Qwest to document, distribute and train an adhered to process to unlock numbers for 911**”), submitted by Eschelon on December 28, 2001 and completed by Qwest on April 17, 2002, available at http://www.qwest.com/wholesale/cmp/archive/CR_PC122801-1.html

²⁷⁸ Although CenturyLink may argue that these conditions were strictly “voluntary,” they cannot show that the merger would have been approved without them. Without the commitments, there is no showing that the merger would do no harm or be in the public interest.

1 combined Embarq/CenturyTel abides by its obligations under law – even when it would
2 otherwise seem self-evident that those obligations apply independently of the merger.
3 These conditions were adopted to ensure that the combined Embarq/CenturyTel company
4 did not follow its increased incentive to engage in anti-competitive conduct or spread
5 existing worst practices throughout its larger service territory post-merger.

6 **Q. HAVE STATE COMMISSIONS ALSO ADOPTED MERGER CONDITIONS**
7 **REQUIRING THE MERGED COMPANY TO COMPLY WITH LAW**
8 **FOLLOWING THE MERGER?**

9 A. Yes. One such example is the South Carolina Commission’s decision in the
10 Verizon/Frontier proceeding. In that case, the merging companies made a number of
11 commitments to encourage a finding that the merger was in the public interest, which
12 were adopted as conditions of merger approval, including: “contribut[ing] to the State
13 Universal Service Fund in compliance with Commission Orders” and “comply[ing] with
14 all Commission orders, rules and regulations.”²⁷⁹ Also, the Illinois Commerce
15 Commission recently adopted a merger condition for Verizon/Frontier, which states:

²⁷⁹ *IN RE: Joint Application of Frontier Communications Corporation, New Communications of the Carolinas Inc., New Communications Online and Long Distance Inc., Verizon South Inc., Verizon Long Distance LLC and Verizon Enterprise Solutions LLC for Approval of the Transfer of Assets, Authority and Certificates*, South Carolina Public Service Commission Docket No. 2009-220-C, Order No. 2009-769, October 29, 2009, 2009 S.C. PUC LEXIS 506, *26.

1 "Frontier will continue to comply with 83 Ill. Admin. Code 771, Cost Allocation Rules
2 for Large Local Exchange Carriers."²⁸⁰

3 **Q. MUST THERE BE A PREVIOUS ORDER CONCLUSIVELY FINDING**
4 **COMPLIANCE PROBLEMS FOR THESE TYPES OF CONDITIONS TO BE**
5 **WARRANTED?**

6 A. No. As indicated above, enforceable merger conditions requiring compliance with
7 specified laws have resulted from concerns raised by non-applicants about potential harm
8 of the proposed transactions. When sufficient concerns are raised, it is incumbent upon
9 the Commission to protect the public interest by approving enforceable conditions to
10 protect customers and competition from that harm. After all, the proposed conditions are
11 not burdensome – they commit the merged company to do what it already should do –
12 comply with the law. The Joint Applicants can hardly argue that the Commission does
13 not have the authority to expect and require compliance with the law. To the extent that
14 the Joint Applicants make that claim, concerns about its intent with respect to these laws
15 would be heightened.

16 In the case of the Embarq/CenturyTel Merger Order, the FCC did not make a finding of
17 noncompliance regarding CenturyTel's then-existing order processing or unlocking of E-
18 911 records; rather, wholesale customers identified problems related to these issues and
19 the FCC found that enforceable conditions were necessary to preserve the public interest

²⁸⁰ *Frontier Communications Corporation, Verizon Communications, Inc. et al. Joint Application for the Approval of a Reorganization Pursuant to Section 7-204 of the Public Utilities Act*, Order, ICC Docket No. 09-0268, April 21, 2010, Conditions Appendix at p. 4, Condition 4,

1 and avoid merger-related harm. Whether or not the merging companies had or were in
2 fact violating law (or whether the law applies to the individual companies independent of
3 the merger) was not a determining factor as to whether voluntary
4 commitments/enforceable merger conditions were necessary to preserve the public
5 interest and avoid merger-related harm. To expressly require compliance with existing
6 law, it is sufficient that a legitimate basis for concern is raised that, without the condition,
7 compliance with the law will suffer as a result of the acquisition.

8 Despite CLECs identifying important, service-affecting issues that need to be addressed
9 in relation to their business relationships with Qwest and CenturyLink, the Joint
10 Applicants have made no commitments and oppose wholesale merger conditions in
11 relation to the proposed transaction. Yet, the need to preserve the public interest and
12 avoid harm in relation to the proposed transaction is just as important (or more so) than it
13 was in the prior cases wherein the merging companies agreed to enforceable conditions
14 that require compliance with law in exchange for merger approval. For purposes of
15 reviewing the merger, the Commission need not find here that Qwest or CenturyLink
16 acted in an anti-competitive manner in the examples CLECs provide, but instead should
17 take the examples into account when finding that the proposed transaction as filed (*i.e.*,
18 without commitments or enforceable conditions) does not serve the public interest.

19 **Q. HAVE QWEST AND CENTURYLINK ALREADY AGREED TO COMPLY**
20 **WITH THE OBLIGATIONS THAT ARE EMBODIED IN THESE CONDITIONS**
21 **POST-MERGER?**

1 A. For many of them, yes. For example, regarding condition 13, the Merged Company has
2 agreed that it will be classified as a BOC in Qwest legacy territory post-merger and will
3 comply with all Section 271 obligations.²⁸¹ Similarly, as it relates to condition 21, the
4 Merged Company has agreed to process wholesale orders in compliance with law and
5 applicable ICAs.²⁸² And for condition 22 (and subparts), CenturyLink has agreed to
6 “provide number portability in compliance with federal and state law, as well as the terms
7 of applicable interconnection agreements”²⁸³ and to comply with federal and state law
8 and applicable ICAs when unlocking E-911 records and addressing trouble reports
9 related to unlocking E-911 records.²⁸⁴ Likewise, Qwest and CenturyLink have indicated

²⁸¹ See, e.g., CenturyLink Response to Integra Arizona Data Request #3 (“The merger will not change the BOC status of Qwest Corporation in Arizona.”); CenturyLink Response to Integra Arizona Data Request #4 (“...Qwest Corporation, as a wholly owned subsidiary of CenturyLink, will continue to meet all ongoing 271 obligations in the legacy Qwest service areas that are required.”). See also, Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010 (“And though CenturyLink previously has not operated subject to the requirements of Section 271, it is fully aware of (and has acknowledged) its duty to do so within Qwest’s in-region service areas, and the company will ensure that the resources and expertise required to meet those obligations are in place.”) Notably, Integra asked in Arizona Data Request #3 for CenturyLink to “explain what, if any, measures the merged company will put in place to ensure against backsliding on its 271 obligations?” CenturyLink did not answer this portion of the question, thereby making the portion of Condition 13 related to anti-backsliding that much more important.

²⁸² CenturyLink Response to Integra Arizona Data Request #102 (“Yes, in all service areas post-merger, CenturyLink will continue to process wholesale orders in compliance with federal and state laws and with applicable terms in interconnection agreements.”)

²⁸³ CenturyLink Response to Integra Arizona Data Request #100(a) (“Yes, CenturyLink will provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements.”) Though CenturyLink states that it will provide number portability in accordance with law, the fact that CenturyLink attributed its recent waiver request of the one-day porting requirement to the ongoing integration efforts related to the Embarq merger shows that an enforceable condition is needed to ensure that the integration of the Qwest merger does not similarly impact the Merged Company’s ability to meet number porting requirements.

²⁸⁴ CenturyLink Response to Integra Arizona Data Request #100(b) and 100(c). Notably, CenturyLink states that it “has not evaluated or reached any conclusions regarding” the issues of when CenturyLink will unlock E911 records or address trouble reports related to unlocking E911 records. The uncertainty caused by CenturyLink’s vacillation on this issue makes Condition 22(a) that much more important. The Merged Company should have no problem abiding by condition 22(a) given that it offered an identical commitment to the FCC in conjunction with the Embarq/CenturyTel merger and states that “within legacy service areas E911 records are being

1 that their policies regarding passcodes/PINs would not be disrupted by Condition 22(b)²⁸⁵
2 and that the number of ports that can be processed are not currently limited (Condition
3 22(c)).²⁸⁶ For Condition 25, CenturyLink has agreed that “in all service areas post
4 merger, CenturyLink will continue to provide routine network modifications in
5 compliance with federal and state laws and with applicable terms in interconnection
6 agreements.”²⁸⁷ For Condition 26 (and subparts), CenturyLink has repeatedly
7 represented that it will continue to invest in its network post-merger and that it is fully
8 capable of allocating resources to both maintain current operations and to conduct
9 merger-related activities post-merger.²⁸⁸ CenturyLink has also represented that it will
10 comply with all applicable state and federal laws and rules and ICAs in relation to copper
11 retirement.²⁸⁹ As it relates to Condition 27, “CenturyLink states that it will comply with

unlocked at the time of porting in accordance with the FCC’s merger condition.” CenturyLink Response to Integra Arizona Data Request # 100(d).

²⁸⁵ CenturyLink states that it assigns passwords in some instances such as online access in accordance with CPNI rules and in cases where customers protect their account against unauthorized changes, but otherwise “does not currently assign a passcode or Personal Identification Number (PIN) to retail customers that must be used before the customer may switch to an alternative local service provider.” CenturyLink Response to Integra Arizona Data Request #7. Qwest states that “in none of its states does Qwest assign a passcode or Personal Identification Number (PIN)/passcode to retail customers and require that the passcode or PIN be submitted in order for the retail customer to switch to an alternative local service provider.” Qwest Response to Integra Arizona Data Request #7. Based on the information provided by Qwest and CenturyLink, this condition would require them to maintain the current policies, not change their policies to accommodate the condition. Notably, Qwest asked the Iowa Board to place a very similar condition on the approval of the Iowa Tel/Windstream merger: “prohibit Windstream from requiring new local service providers to provide Windstream-provided Personal Identification Numbers when porting a customer’s number to the new provider” Order Canceling Hearing and Terminating Docket, Iowa Utilities Board, April 30, 2010, at p. 26.

²⁸⁶ CenturyLink Response to Integra Arizona Data Request #37 (“CenturyLink does not limit the number of service requests (including number ports) a given CLEC can make.”)

²⁸⁷ CenturyLink Response to Integra Arizona Data Request #101.

²⁸⁸ *See, e.g.*, Arizona Joint Application at p. 2 (“It will provide the combined company with greater financial resources and access to capital enabling it to invest in networks...”) and p. 16 (“CenturyLink has a demonstrated ability to acquire and successfully integrate companies, and to combine systems and practices, while continuing to provide high-quality service to customers.”)

²⁸⁹ CenturyLink Response to Integra Arizona Data Request #104.

1 all applicable state and federal laws and rules, as well as the provisions of any applicable
2 interconnection agreements...” for conditioning of copper loops.²⁹⁰ The fact that
3 CenturyLink has agreed to comply with these requirements post-merger shows that it
4 should have no problem with these conditions being adopted in conjunction with any
5 decision approving the proposed transaction. Again, conditions are needed to turn
6 CenturyLink’s paper promises into enforceable commitments.

7 **Q. PLEASE ELABORATE ON WHY IT IS IMPORTANT TO INCLUDE A**
8 **CONDITION THAT THE MERGED COMPANY WILL COMPLY WITH**
9 **SECTION 271 OBLIGATIONS IN QWEST’S BOC TERRITORY POST-**
10 **MERGER (CONDITION 13)?**

11 A. For starters, the company that will be in control of Qwest post-merger has no experience
12 operating as a BOC, so the potential for backsliding on Qwest’s 271 obligations is great
13 (at least greater than prior to the proposed transaction when Qwest was controlled by a
14 company that had more than seven years experience operating as a BOC with 271
15 approval²⁹¹). Second, to date, Qwest has exploited the lack of clear rules implementing
16 271 obligations to impose excessive, non-negotiable rates for 271 network elements on
17 CLECs.²⁹² The Merged Company should not be allowed to evade its 271 obligations

²⁹⁰ CenturyLink Response to Integra Arizona Data Request #106.

²⁹¹ For example, the FCC order granting Qwest 271 authority in nine states was released on December 23, 2002. See, *Qwest 9-State 271 Order*, WC Docket No. 02-314, FCC 02-332 (12/23/02).

²⁹² See, e.g., Comments of Joint Commenters, WC Docket No. 10-110, July 12, 2010, at pp. 68-69, citing Petition for Modification of McLeodUSA Telecommunications Services, Inc., WC Docket No. 04-223, July 23, 2007, at pp. 4-12.

1 post-merger, and that includes avoiding the requirement to provide 271 network elements
2 on just and reasonable rates, terms and conditions.²⁹³

3 **Q. WHY IS CONDITION 21 NECESSARY?**

4 A. As explained above, Condition 21, which states that the Merged Company will process
5 orders in compliance with law and applicable ICAs, is the same voluntary commitment
6 Embarq/CenturyTel offered to the FCC to secure approval of the Embarq/CenturyTel
7 merger after concerns were raised by competitors. The FCC adopted this as an
8 enforceable condition because of the potential for increased anti-competitive conduct of
9 the combined Embarq/CenturyTel company and the potential for problems spreading to
10 CenturyTel's newly-acquired territory. For the same reasons, this condition should be
11 adopted for the proposed transaction. And, because the proposed transaction involves
12 CenturyLink acquiring a BOC as well as a service territory that is double the size
13 (expressed in line counts) of its existing territory (including newly-acquired Embarq), the
14 rationale for adopting this condition in relation to the proposed transaction is even more
15 compelling now.

16 **Q. PLEASE DISCUSS CONDITION 22 (AND SUBPARTS).**

17 A. Condition 22 states that the Merged Company: will provide number portability in
18 compliance with law and applicable ICAs; unlock E-911 records at the time of porting

²⁹³ Covad Communications Company, PAETEC Communications, Inc., Access Point, Inc. Deltacom, Inc., Granite Telecommunications, LLC, HickoryTech Corporation, Metropolitan Telecommunication, Inc., OrbitCom, Inc., TDS Metrocom, LLC, and TelePacific Communications ("Joint Commenters") have proposed specific conditions related to 271 obligations to the FCC in conjunction with the FCC's review of the proposed transaction. *See*, Comments of Joint Commenters, WC Docket No. 10-110, July 12, 2010, at pp. 70-71.

1 Condition 22(a)); will address trouble reports involving unlocking E-911 records within
2 24 hours (Condition 22(a)); will not assign a passcode, password or PIN to retail
3 customers in a manner that prevents or delays a change in local service providers
4 (Condition 22(b)); and shall not limit the number of ports that can be processed.

5 **Q. WHAT IS CONDITION 22 (AND SUBPARTS) NECESSARY?**

6 A. Condition 22 is necessary to protect CLEC rights under the Act for efficient and
7 nondiscriminatory local number portability (“LNP”). In short, this Condition is
8 necessary to ensure that the Merged Company fulfills its LNP obligations in a
9 competitively neutral manner as prescribed in Sections 251(b)(2) and 251(e)(2) of the
10 Act. As the Act and the FCC have noted, LNP is critical for consumers and competitors
11 and for the efficient functioning of the local telecommunications market.

12 In its most basic form, LNP is important because consumers want to be able to retain
13 their existing telephone numbers when switching providers. Retaining your telephone
14 number is important for obvious reasons: consumers do not want to have to alert their
15 friends and family of new telephone numbers, and change billing statements, stationery,
16 business cards, and other items every time they switch telephone providers. For these
17 reasons (and others), number porting is very important to customers. Indeed, without
18 number portability consumers may choose not to change their providers because of the
19 impact on their personal and business lives.

20 **Q. WHY IS NUMBER PORTING IMPORTANT TO COMPETITORS?**

1 A. As noted above, getting customers to change providers can be difficult. The customer
2 inertia for a service is difficult to overcome in the first place, but without number
3 portability consumers may not even consider an alternative provider. And, getting the
4 porting done in the proper manner and in the proper time frame is also critical. If that is
5 to happen, a competitor cannot erect operational barriers that are intended to delay the
6 process.

7 **Q. SUBPARTS A, B, AND C OF CONDITION 22 INCLUDE REFERENCES TO**
8 **UNLOCKING E-911 RECORDS, PASSCODES AND LIMITS ON PORTING.**
9 **ARE THESE ISSUES IMPORTANT TO CLECS AND CONSUMERS?**

10 A. Absolutely. Once an LNP order is completed the donor company will disconnect and/or
11 migrate the existing E-911 record via a service order. This results in an “unlocked
12 record” in the E-911 Automatic Location Identification (“ALI”) database. The recipient
13 company must then update the E-911 ALI database with a “migrate” order which “locks”
14 the end-user’s record. Any delay in the “unlocking” process will result in an error report
15 in response to the migrate order sent by the recipient provider. Given the importance of
16 E-911 for the safety of the end-user consumer, this requirement is absolute and must be
17 conducted in compliance with federal and state law.

18 Requiring pass codes or PINs may also result in the delay of porting. The Merged
19 Company must not be allowed to require such pass words or PINs unless specifically
20 requested by the end user customer.

1 Finally, artificially limiting the number of ports that may be submitted in a particular time
2 period is anticompetitive and disruptive to the competitive process. The porting process
3 should be largely if not completely automated, so limits on the number of ports is not
4 necessary.

5 **Q. PLEASE EXPLAIN CONDITION 23.**

6 A. Condition 23 is necessary to protect CLEC rights under the Act to nondiscriminatory
7 access to directory listing (“DL”) and directory assistance (“DA”) functions.

8 **Q. WHAT POSITIONS HAS CENTURYLINK TAKEN WITH RESPECT TO DL**
9 **AND DA THAT ARE HARMFUL AND INCONSISTENT WITH THE**
10 **INDUSTRY?**

11 A. CenturyLink has attempted to shift its responsibilities under Section 251(b)(3) of the Act
12 to third parties. CenturyLink refuses to enter into ICAs that include language which
13 ensures that a competitor’s subscribers have the same access to DA and DL databases as
14 CenturyLink provides its own customers. As a result, directory services provided by
15 competitors like Charter may be degraded if CenturyLink, or its vendor, fails to properly
16 maintain these databases in a manner that ensures nondiscriminatory access.

17 **Q. CAN YOU PROVIDE AN EXAMPLE OF THE PROBLEMS CENTURYLINK’S**
18 **DA AND DL POLICIES HAVE CREATED?**

19 A. Yes. As noted above, CenturyLink has attempted to impose a recurring per customer
20 DLSM Charge in numerous states. Other providers, including Verizon, Comcast and

1 Charter, have litigated LNP issues with CenturyLink at great expense over the last few
2 years.²⁹⁴

3 **Q. OTHER THAN THE LITIGATION EXPENSE, HAS THERE BEEN CUSTOMER**
4 **IMPACTING PROBLEMS AS WELL?**

5 A. Yes. In the recent past, directory listing information of Charter's subscribers was not
6 available to CenturyLink subscribers. Put simply, when a CenturyLink subscriber dialed
7 "4-1-1" and requested listing information on a Charter subscriber, that information was
8 not provided.²⁹⁵ As a result, thousands of Charter subscribers were effectively excluded
9 from the directory assistance database used by CenturyLink. Charter repeatedly sought a
10 remedy and presented several requests for relief to the relevant state commission.
11 CenturyLink acknowledged the problem, but blamed the problem on its vendor, who was
12 not accessing the proper database. Ultimately the situation was resolved, but
13 CenturyLink's refusal to acknowledge its responsibility to provide nondiscriminatory
14 access to Charter (and its subscribers) under Section 251(b)(3) prolonged a
15 discriminatory and anticompetitive situation. That, in turn, meant that many more
16 subscribers were affected, even after the problem was identified, and isolated, for
17 CenturyLink.

²⁹⁴ See, e.g., United Telephone Company of the Northwest d/b/a Embarq Response to Comcast Petition in Washington Docket No. U-083025, filed May 27, 2008, at ¶ 10. This is an example of a case in which Comcast opposed Embarq's DSLM charge. Charter has litigated numerous LNP related charges which CenturyLink attempted to impose under the guise of "service order charges."

²⁹⁵ See, e.g., the Direct Testimony of Amy Hankins on behalf Charter Fiberlink-Missouri, LLC, Before the Public Service Commission of the State of Missouri, Case No. TO-2009-0037; dated September 30, 2008.

1 Q. PLEASE PROVIDE SOME BACKGROUND INFORMATION ON THE
2 DIRECTORY LISTING FUNCTION IN ORDER TO FRAME THE POSITION
3 THAT CENTURLINK HAS TAKEN.

4 A. In simple terms, a directory listing is the customer's name, phone number, and address
5 that are published in a directory, such as a telephone book, or included in a directory
6 database, such as that used when a caller dials "411." The FCC's regulations define
7 "Directory listings" as follows:

8 Directory listings. Directory listings are any information:

9
10 (1) Identifying the listed names of subscribers of a telecommunications carrier
11 and such subscriber's telephone numbers, addresses, or primary advertising
12 classifications (as such classifications are assigned at the time of the
13 establishment of such service), or any combination of such listed names,
14 numbers, addresses or classifications; and

15
16 (2) That the telecommunications carrier or an affiliate has published, caused to
17 be published, or accepted for publication in any directory format.²⁹⁶
18

19 In addition, Section 251(b)(3) of the Act requires all local exchange carriers to provide
20 competing providers with "nondiscriminatory access to ... directory assistance, and
21 directory listing."²⁹⁷ The FCC has interpreted the statutory term "directory listing" to
22 mean "the act of placing a customer's listing information in a directory assistance
23 database or in a directory compilation for external use (such as a white pages)."²⁹⁸

²⁹⁶ 47 C.F.R. § 51.5.

²⁹⁷ 47 U.S.C. § 251(b)(3) (emphasis added).

²⁹⁸ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934 [sic], As Amended*, CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, ¶ 160 (1999) ("SLI/DA Order").

1 Among other things, Section 251(b)(3) and 47 C.F.R. § 51.5 require that LECs “publish
2 competitors’ business customers in ... [their] director[ies] on a nondiscriminatory basis,”
3 regardless of whether LECs own those directories or not.²⁹⁹

4 **Q. IS THERE ANYTHING WRONG WITH USING A THIRD PARTY FOR DL OR**
5 **DA ACTIVITIES?**

6 A. Not necessarily. It is common for LECs to use third-party vendors for directory
7 assistance activities. The problem arises when an ILEC like CenturyLink, with specific
8 requirements under Section 251(b)(3) of the Act, attempts to shift its responsibilities to a
9 third-party, or worse, to claim that it no longer has any such obligations under Section
10 251(b)(3).

11 **Q. PLEASE EXPLAIN.**

12 A. The FCC has recognized that carriers may agree to have subscriber listing databases
13 administered by a third party.³⁰⁰ However, the FCC has also recognized that such
14 agreements for third-party administration must still be included in interconnection
15 agreements because entering into a side agreement for access to subscriber listing
16 databases contravenes the FCC requirement that LECs provide directory listing on a
17 nondiscriminatory basis and make such provisions related thereto available to other

²⁹⁹ See *MCI Telecomm. Corp. v. Michigan Bell Tel. Co.*, 79 F. Supp. 2d 768, 801 (E.D. Mich. 1999); see also *U.S. West Comm., Inc. v. Hix*, 93 F. Supp. 2d 1115, 1132 (D. Colo. 2000) (citing *MCI Telecomm.*).

³⁰⁰ See, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 11 FCC Rcd 19392 at ¶ 144 (1996) (“Local Competition Second Report and Order”), vacated in part, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), rev. on other grounds, *AT&T Corp. v. Iowa Util. Bd.*, 119 S. Ct. 721 (Jan. 25, 1999).

1 carriers in interconnection agreements for adoption through the mechanism of Section
2 252 of the Act.³⁰¹ Therefore, CenturyLink must include rates, terms and conditions of
3 access to its subscriber listing databases within the interconnection agreement despite use
4 of a third-party database administrator or publisher.

5 Condition 23 ensures that CenturyLink will comply with federal and state law with
6 respect to its DL/DA responsibilities. It further ensures that CenturyLink does not shift
7 its responsibilities to a third party vendor and specifically identifies the responsibilities
8 with respect to nondiscriminatory access to DL/DA. CenturyLink's worst practices
9 should not be adopted; instead, the Commission should require the Qwest practices of (1)
10 placing a basic white pages and yellow pages directory listing in its directories without
11 charge to the CLEC, and (2) ensuring that the ILEC customers are given the CLEC's
12 customers' DA information, when the ILEC's customers dial directory assistance.

13 **Q. PLEASE EXPLAIN CONDITION 24 (AND SUBPARTS).**

14 A. This condition is necessary to ensure that the Merged Company does not extend
15 CenturyLink's anticompetitive practice of imposing unsupported surcharges and fees
16 upon facilities-based competitors at the point of subscriber acquisition and migration. In
17 contrast, Qwest does not impose these separate surcharges upon competitors when no
18 underlying wholesale service is being provided to the competitor. For example, although
19 Qwest may assess a service order charge upon a competitor that orders a UNE loop in

³⁰¹ *Provision of Directory Listing Information under the Communications Act of 1934, As Amended*, FCC 01-27, 16
FCC Rcd 2736 at ¶ 36 (2001) ("SLI/DA First Report and Order").

1 conjunction with the acquisition of a new subscriber, it does not assess a separate
2 surcharge when the competitor simply requests that the subscriber's number be ported
3 away in conjunction with the subscriber change process. Because Qwest does not impose
4 the same separate fees upon competitors, any attempt to impose these separate charges in
5 Qwest's legacy territory post-merger would result in the implementation of worst (not
6 best) practices, and, in turn, merger-related harm to competition.

7 **Q. PLEASE IDENTIFY THE SPECIFIC ANTICOMPETITIVE FEES AND**
8 **SURCHARGES THAT CENTURYLINK ASSESSES UPON COMPETITORS**
9 **ADDRESSED IN CONDITION 24.**

10 A. CenturyLink, and its affiliate Embarq, imposes several different surcharges each time that
11 a facilities-based competitor, like Charter, "wins" a new customer from CenturyLink.
12 First, CenturyLink imposes a separate number porting service order charge each time that
13 CenturyLink is asked to port a telephone number to a competitor. Second, CenturyLink
14 assesses "use" or access fees upon competitors each time the competitor attempts to
15 connect its own network facilities to a customer's inside wire through the customer side
16 of a CenturyLink NID enclosure. Third, CenturyLink's affiliate, Embarq, imposes
17 "storage" charges upon competitors that submit directory listing information for inclusion
18 in directory listing databases. These charges increase wholesale customers' (*i.e.*,
19 competitors') costs of obtaining new subscribers and generating new revenue sources to
20 offset subscriber losses. It is, therefore, more costly (and operationally challenging) for
21 competitors to compete in CenturyLink markets.

1 **Q. PLEASE EXPLAIN YOUR CONCERN WITH THESE SURCHARGES.**

2 A. In an earlier portion of my testimony, Section IV, I provided some background on the
3 second and third type of improper surcharges assessed upon competitors concerning the
4 NID enclosure, and directory storage fees at issue. Let me explain the circumstances
5 surrounding the imposition of the number porting surcharges.

6 Each time that a competitor obtains a new customer that is a former CenturyLink
7 subscriber, and that subscriber wishes to port their telephone number away from
8 CenturyLink, the competitor must pay a surcharge to CenturyLink to effectuate the
9 number port. This surcharge, which ranges from \$13 to over \$20 (depending upon the
10 state) is imposed upon every competitor that obtains wholesale services under
11 CenturyLink interconnection agreements. To date, this is only a CenturyLink practice,
12 and has not been implemented in the Qwest territories. Obviously, if this anticompetitive
13 practice were extended to all of the Merged Company's territories post-merger, merger-
14 related harm would occur and the harm would be substantial.

15 **Q. WHAT ARE THE RULES REGARDING CARRIER FEES FOR NUMBER**
16 **PORTING?**

17 A. In several orders implementing Section 251(e)(2) of the Act, the FCC held that carriers
18 are required to recover their costs of implementing LNP through tariffed end-user
19 charges.³⁰² In these orders, the FCC determined that ILECs may recover through *end-*

³⁰² The FCC's rulings were set forth in several orders: *Telephone Number Portability*, Third Report and Order (the "Cost Recovery Order"), 13 FCC Rcd 11701 (1998), *aff'd*, *Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review (the "Cost Recovery

1 *user charges* their carrier-specific costs directly related to providing number portability.
2 The FCC concluded that this framework for cost recovery (from end users rather than
3 other carriers) best serves the statutory goal of competitive neutrality.

4 **Q. HOW DOES THE CONCEPT OF “COMPETITIVE NEUTRALITY” APPLY TO**
5 **NUMBER PORTING CHARGES?**

6 A. Section 251(e)(2) of the Act requires that the costs of establishing number portability be
7 “borne by all telecommunications carriers on a competitively neutral basis.”³⁰³ This
8 principle of competitive neutrality is an important component of the FCC’s number
9 porting cost recovery rules. However, CenturyLink’s repeated attempts to assess charges
10 on CLECs undermine competition and the competitive neutrality the FCC sought to
11 establish. As the FCC explained, “[i]f the [FCC] ensured the competitive neutrality of
12 only the distribution of costs, carriers could effectively undo this competitively neutral
13 distribution by recovering from other carriers.”³⁰⁴

14 **Q. WHAT ABOUT INTERCONNECTION-BASED NUMBER PORTING CHARGES**
15 **ASSESSED UPON COMPETITORS. HAS THE FCC EVER ADDRESSED THE**
16 **LEGALITY OF SUCH CHARGES?**

17 A. Yes, the FCC has clearly said such charges are prohibited by federal law. That is the
18 most troubling aspect of CenturyLink’s wholesale practice, it violates clear policies set

Reconsideration Order”), 17 FCC Rcd 2578 (2002); and *Telephone Number Portability Cost Classification Proceeding*, Memorandum Opinion and Order, 13 FCC Rcd 24495 (CCB 1998).

³⁰³ 47 U.S.C. § 251(e)(2).

³⁰⁴ *Cost Recovery Order* at ¶ 39.

1 forth by the FCC in early number portability cost recovery orders. Specifically, in a 2002
2 Number Portability Cost Reconsideration Order the FCC ruled that:

3 [I]ncumbent LECs may not recover any number portability costs through
4 interconnection charges or add-ons to interconnection charges to their
5 carrier “customers,” nor may they recover carrier-specific costs through
6 interconnection charges to other carriers where no number portability
7 functionality is provided.³⁰⁵

8 This language clearly prohibits interconnection-based surcharges on number porting
9 actions like those imposed by CenturyLink. The statement leaves no doubt that the
10 Commission does not permit incumbent LECs to assess charges upon other carriers for
11 number porting. This decision is still valid law, and has never been reversed or modified.

12 **Q. HAVE THOSE RULINGS BEEN CODIFIED INTO THE FCC’S RULES?**

13 A. Yes, the prohibition on such charges is codified at 47 C.F.R. § 52.33, and FCC regulation
14 entitled “Recovery of carrier specific costs directly related to providing long-term
15 number portability.”

16 **Q. WHY DO YOU BELIEVE THESE SURCHARGES, AND OTHERS, MAY BE**
17 **ASSESSED UPON COMPETITORS BY THE MERGED COMPANY?**

18 A. These fees are currently assessed upon competitors because CenturyLink is able to
19 leverage its market power to impose these surcharges as a condition of interconnection
20 with CenturyLink. If the proposed transaction is approved, CenturyLink will be the third
21 largest ILEC in the nation, and its market power will span 37 states.³⁰⁶ That is why I

³⁰⁵ *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578, at ¶ 62 (2002).

³⁰⁶ “CenturyLink and Qwest Agree to Merge,” Available at:

1 expect these surcharges will be assessed by the merged company unless this Commission
2 adopts a condition that prohibits the merged company from doing so.

3 **Q. IS THAT WHY YOU BELIEVE CONDITION 24 IS NECESSARY?**

4 A. Yes. Condition 24 is included to prevent CenturyLink's objectionable charges directed
5 specifically at facilities-based competitors from being applied throughout the Qwest
6 legacy territory post-merger. Even if the Merged Company attempted to introduce these
7 types of separate, distinct charges in Qwest's territory post-merger (but was ultimately
8 unsuccessful), CLECs and state commissions would have to still have to expend
9 significant time and expense combating the integration of this worst practice.

10 **Q. ARE THERE OTHER FEES AND SURCHARGES THAT CONDITION 24**
11 **ADDRESSES?**

12 A. Yes. This condition also addresses the separate fees and surcharges CenturyLink
13 imposes upon competitors' for accessing the NID enclosure and for "storage" of
14 competitors' customers' directory listings. Each of these separate charges is discussed
15 above in Section IV. These NID enclosure and storage surcharges raise the same
16 concerns with respect to increasing competitors' costs, and are therefore part of
17 Condition 24.

18 **Q. DO YOU HAVE SOME GENERAL CONCERNS REGARDING THE MERGED**
19 **COMPANY NETWORK AS TO CONDITIONS 25 AND 26?**

<http://news.qwest.com/centurylinkqwestmerger>

1 A. Yes. Both of these conditions, in part, address the CLECs' concern regarding ongoing
2 maintenance and investment in the network post-merger. Condition 25 addresses routine
3 network upgrades and modifications and Condition 26 (and subparts) states that the
4 Merged Company will not engage in activities that disrupts or degrades access to the
5 local loop, will follow the law and ICA provisions if it retires copper loops and will not
6 engineer/maintain its network in a way that increases costs for wholesale customers.

7 As the Commission is aware, one of the ways to increase profits is to reduce expenses.
8 Reducing routine network maintenance and modifications will harm CLECs that rely on
9 that network for the exchange of traffic.

10 **Q. HAS THE IMPORTANCE OF THESE REQUIREMENTS TO COMPETITION**
11 **BEEN PREVIOUSLY RECOGNIZED?**

12 A. Yes. The FCC, in its *Triennial Review Order*, addressed and promulgated rules regarding
13 routine network modifications³⁰⁷ to “resolve[] a controversial competitive
14 issue...and...provide competitive carriers with greater certainty as to the availability of
15 unbundled high-capacity loops and other facilities throughout the country.”³⁰⁸ Likewise,
16 Condition 26(a) is grounded in 47 C.F.R. §§ 51.319(a)(8) (engineering policies, practices,

³⁰⁷ Routine network modifications are “those activities that incumbent LECs regularly undertake for their own customers.” *Triennial Review Order* at ¶ 632. This includes attaching electronics to high-capacity loops and line conditioning to ensure that a copper loop is suitable for providing xDSL service. *Triennial Review Order* at ¶¶ 250, 634-635.

³⁰⁸ *Triennial Review Order* at ¶ 632.

1 and procedures³⁰⁹) and Condition 26(b) is grounded in 47 C.F.R. §51.333 (notice of
2 network changes related to retirement of copper loops or copper subloops).

3 **Q. CAN YOU PROVIDE AN EXAMPLE THAT SHOWS A NEED FOR CONDITION**
4 **26 (AND SUBPARTS)?**

5 A. Yes. Integra has arbitrated the issue of network modernization and maintenance with
6 Qwest in several states. A review of the excerpts in Exhibit BJJ-8 to the Direct
7 Testimony of Bonnie Johnson shows that the commissions in all five states agreed with
8 Eschelon's position that Qwest's network maintenance and modernization activity should
9 not disrupt or degrade service to a CLEC's end user customers. Ms. Johnson provides
10 quotes from the various orders to support this condition. In Washington, for instance, the
11 Arbitrator stated:

12 While Qwest should have the discretion to modernize its own network, it
13 should be apparent that 'modernization' and 'maintenance' efforts should
14 enhance or maintain, not diminish transmission quality.³¹⁰

15 Ms. Johnson provides an extended discussion of Condition 26(a) in her testimony, and
16 provides in Exhibit BJJ-8 additional excerpts from Qwest-Eschelon interconnection
17 arbitration proceedings on this point.

³⁰⁹ 47 C.F.R. §§ 51.319(a)(8) ("An incumbent LEC shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to a local loop or subloop, including the time division multiplexing-based features, functions, and capabilities of a hybrid loop, for which a requesting telecommunications carrier may obtain or has obtained access pursuant to paragraph (a) of this section.")

³¹⁰ See, Washington Utilities and Transportation Commission Docket UT-063061, Arbitrator's Report; Order No. 16 (aff'd), at ¶ 83.

1 **Q. CAN YOU PROVIDE ANOTHER EXAMPLE THAT SHOWS THE NEED FOR**
2 **CONDITION 26 (AND SUBPARTS)?**

3 A. Yes. PAETEC has had experiences with Qwest where they reported trouble on a Qwest
4 loop. PAETEC submitted a trouble ticket but Qwest reported that there was no trouble
5 and closed the ticket. When PAETEC persisted with its complaint by opening another
6 trouble ticket (based on ongoing trouble with the loop), Qwest refused to go to the site
7 unless PAETEC agreed to a “joint meet.” The “joint meet” makes this a “special
8 request” which would require PAETEC to pay for Qwest’s truck roll even if there is
9 trouble on the Qwest loop. This type of process increases the costs to CLECs who must
10 send a technician to meet Qwest while Qwest investigates its network.

11 **Q. IS CONDITION 26(A) CONSISTENT WITH THE FCC’S UNBUNDLING RULE**
12 **(47 C.F.R. § 51.319(A)(8))?**

13 A. Yes, it is. That rule states, in pertinent part, “An incumbent LEC shall not engineer the
14 transmission capabilities of its network in a manner, or engage in any policy, practice, or
15 procedure, that disrupts or degrades access to the local loop.” Condition 26 is based on
16 the sound logic in that FCC rule.

17 **Q. SHOULDN’T THE COMMISSION JUST RELY ON THAT RULE AS**
18 **CONTROLLING THE MERGED COMPANY POST-MERGER WITHOUT**
19 **MAKING IT A MERGER CONDITION?**

20 A. No. The language in the rule seems self-evident, but Qwest has forced Eschelon to
21 arbitrate this issue in six states rather than simply abide by those precepts. As the

1 exhibits to Ms Johnson's Direct Testimony shows, Qwest is not complying with those
2 arbitration rulings today with respect to conditioned copper loops.³¹¹

3 Failure to maintain adequate investment and maintenance on the Merged Company
4 network could degrade the network for the Merged Company, the public switched
5 telephone network ("PSTN") and for CLECs. Such a reduction in the quality of the
6 network and related services, and resulting degradation for CLECs who must rely on that
7 network, is not in the public interest. Condition 26 is meant to prevent inappropriate
8 diversion of resources that would normally be directed to the network.

9 **Q. WHAT PROBLEM DOES CONDITION 27 RELATING TO CONDITIONED**
10 **COPPER LOOPS ADDRESS?**

11 A. Digital subscriber line technology, "commonly referred to as xDSL, permits high speed
12 connections...over ordinary copper loops."³¹² This includes services "such as ISDN,
13 ADSL, HDSL, and DS1-level signals."³¹³ The importance of using copper to provide
14 advanced services is apparent in the FCC's conclusion that CLECs are "impaired"
15 without access to unbundled "xDSL-capable stand-alone copper loops."³¹⁴ As explained
16 by the FCC's SBC/Ameritech merger order, a merger of this sort will increase the
17 Merged Company's incentive and ability to discriminate against its competitors with
18 respect to the provision of advanced services:

³¹¹ See Exhibit BJJ-1 to the Direct Testimony of Bonnie Johnson.

³¹² *Triennial Review Order* at footnote 77 to ¶26.

³¹³ *Local Competition Order* at ¶380.

³¹⁴ *Triennial Review Order* at ¶ 642. Unbundling of the local loop includes "two and four-wire loops conditioned to transmit the digital signals needed to provide xDSL service." *Triennial Review Order* at ¶ 249.

1 We find that the combined entity is likely to increase the level of
2 discrimination that rivals must overcome to provide retail advanced
3 services, interexchange services, and local exchange services. In the retail
4 market for advanced services, incumbent LECs can engage in
5 discriminatory conduct with respect to competitors' provision of services
6 such as xDSL by refusing to cooperate with competitors' requests for the
7 evolving type of interconnection and access arrangements necessary to
8 provide new types of advanced services.³¹⁵

9 There is substantial evidence warranting a concern that the ILEC is already improperly
10 inhibiting CLECs' provision of advanced services using conditioned copper loops
11 throughout Qwest's legacy territory, as discussed below and in the testimony of Mr.
12 Denney and Ms. Johnson of Integra. Absent a condition to ensure compliance with the
13 laws regarding conditioned copper loops, the proposed transaction will further entrench
14 the company's discriminatory conduct and potentially spread this discriminatory
15 treatment throughout the Merged Company's territory.

16 Condition 27 will help ensure that the Merged Company does not implement its increased
17 incentive to engage in anti-competitive conduct or spread worst practices throughout its
18 larger service territory post-merger. It states:

19 The Merged Company will provide conditioned copper loops in
20 compliance with federal and state law and at rates approved by the
21 applicable state commission. Line conditioning is the removal from a
22 copper loop of any device that could diminish the capability of the loop to
23 deliver xDSL. Such devices include bridge taps, load coils, low pass
24 filters, and range extenders. Insofar as it is technically feasible, the
25 Merged Company shall test and report troubles for all the features,
26 functions and capabilities of conditioned copper lines, and may not restrict

³¹⁵ *In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279, October 8, 1999 ("FCC SBC/Ameritech Merger Order")* at ¶ 196. (footnotes omitted)

1 its testing to voice transmission only. If the Merged Company seeks to
2 change rates approved by a state commission for conditioning, the Merged
3 Company will provide conditioned copper loops in compliance with the
4 relevant law at the current commission-approved rates unless and until a
5 different rate is approved.

6 In this condition, the second sentence reflects the definition of line conditioning in 47
7 C.F.R. §51.319(a)(1)(iii)(A).³¹⁶ The third sentence reflects the requirements of 47 C.F.R.
8 §51.319(a)(1)(iii)(C).³¹⁷ The final sentence recognizes that, in each state in Qwest's
9 territory, the Commission has already established rates (either non-recurring charges or
10 recovery via recurring charges) for line conditioning and therefore the Merged Company
11 must either charge that rate or seek state commission approval to charge a different rate.
12 As I discussed earlier with respect to compliance with the law generally, though it would
13 seem self-evident that the Merged Company would comply with these laws and cost
14 orders, an enforceable merger condition is needed when concerns are raised by wholesale
15 customers sufficient to justify singling out compliance with specific laws in merger
16 conditions to preserve the public interest and avoid merger-related harm.

17 **Q. WHAT CONCERNS DO WHOLESALE CUSTOMERS RAISE REGARDING**
18 **QWEST ENGAGING IN DISCRIMINATORY CONDUCT WITH RESPECT TO**
19 **COMPETITORS' PROVISION OF SERVICES SUCH AS xDSL?**

³¹⁶ In 47 C.F.R. §51.319(a)(1)(iii)(A), line conditioning is defined as "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." Loops must be "stripped of accretive devices." *Triennial Review Order* at ¶ 643.

³¹⁷ "Insofar as it is technically feasible, the incumbent LEC 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." 47 C.F.R. §51.319(a)(1)(iii)(C).

1 A. Integra, PAETEC and other competitors have raised concerns that Qwest's region-wide
2 policies violate legal and contractual obligations with respect to conditioned copper loops
3 used for providing advanced services, including: (a) Qwest refusing digital level signals
4 via conditioned copper loops; (b) Qwest restricting testing to voice transmission; (c)
5 Qwest refusing digital signals for two-wire loops; (d) Qwest denying access to ADSL
6 capable loops based on improper grandparenting of ADSL; and (e) Qwest refusing to
7 repair/restore service to data/digital levels, leaving customer adversely affected; (f)
8 Qwest refusing to remove certain devices, including bridge tap.³¹⁸ CLECs have provided
9 documentation, including Qwest-prepared communications and admissions, showing that
10 Qwest's stated region-wide position or practice violates legal and contractual obligations
11 in each of these areas.³¹⁹

12 For example, when installing and repairing loops, Qwest refuses to test unbundled
13 conditioned copper loops to digital levels to ensure that they will support the type of
14 xDSL service (e.g., HDSL2) ordered by the CLEC, even though the federal rule clearly
15 states that the ILEC "may not restrict its testing to voice transmission only."³²⁰ Rather
16 than undertake industry-standard tests to ensure that an unbundled copper loop will
17 support certain levels of digital signal,³²¹ Qwest maintains that it will test only to voice-

³¹⁸ See Exhibit BJJ-1 to the Direct Testimony of Bonnie Johnson.

³¹⁹ See Exhibit BJJ-2 to the Direct Testimony of Bonnie Johnson (Matrix – Legal Authority Compared to Qwest Position: xDSL *Capable* Copper Loops) and supporting documentation cited in the Matrix and found in Exhibit BJJ-3 (Johnson) through Exhibit BJJ-16 (Johnson) and Exhibit BJJ-20 (Johnson) through Exhibit BJJ-23 (Johnson).

³²⁰ See 47 C.F.R. §51.319(a)(1)(iii)(C) (quoted in footnote above).

³²¹ See ANSI Standard T1-417, quoted in Qwest's own technical publications (Qwest Technical Publication 77384, pg. 1-1) describing the characteristics of its unbundled loops.

1 related parameters.³²² Without proper testing and trouble isolation, CLECs cannot
2 effectively provide advanced services without placing their end-user customers' services
3 at risk. Qwest's policies do not provide CLECs with a meaningful opportunity to
4 compete. Additional examples and documentation are provided in the exhibits to the
5 testimony of Ms. Johnson.

6 **Q. DO THE FCC'S RULES PROVIDE QWEST THIS TYPE OF DISCRETION TO**
7 **DISCRIMINATE IN THE PROCESS OF LOOP CONDITIONING?**

8 A. No, as the federal rules cited above in support of condition 27 show, Qwest does not have
9 that discretion. The documentation provided by CLECs makes clear that Qwest has
10 policies in place that impede the ability of CLECs to deliver innovative xDSL-based
11 advanced services to small and medium-sized businesses.

12 **Q. WOULD YOU EXPECT THE MERGED COMPANY TO ADOPT QWEST'S**
13 **PRACTICES IN THIS REGARD FOR THE COMPANY AS A WHOLE, ABSENT**
14 **A MERGER CONDITION REQUIRING COMPLIANCE WITH THESE LAWS?**

15 A. Yes. As explained by the FCC's *SBC/Ameritech Merger Order*, the Merged Company
16 will have an increased incentive and ability to discriminate against its competitors with
17 respect to the provision of advanced services.³²³ This incentive will militate in favor of
18 expanding discriminatory practices to the company as a whole. Consistent with this

³²² See Row Nos. 1-2, Exhibit BJJ-2 to the Direct Testimony of Johnson (Attachment A to *Joint CLEC Initial Comments*, November 24, 2009, MN PUC Docket No. P-421/CI-09-1066); see also Attachment B, p. 11 at Exhibit BJJ-3 to the Direct Testimony of Bonnie Johnson.

³²³ FCC *SBC/Ameritech Merger Order* at ¶ 196. (footnotes omitted)

1 incentive, when given an opportunity in discovery to clarify that CenturyLink would
2 comply with 47 C.F.R. §51.319(a)(1)(iii)(C), CenturyLink declined to do so.³²⁴ That
3 CenturyLink did not immediately confirm that it would not restrict testing for conditioned
4 copper loops to voice transmission only, when the requirements of the rule are so clear,
5 supports the need for Condition 27 to confirm what CenturyLink would not regarding its
6 compliance with the law.

7 The proposed transaction is contrary to the public interest if a merging party (Qwest in
8 this example) is rewarded for violating the law. Condition 27 must be included to ensure
9 that the public interest is not harmed post-transaction by requiring the Merged Company
10 to condition loops in compliance with law and Commission-approved rates, including
11 testing and reporting troubles for all features and functionalities of the copper loops,³²⁵
12 and using the FCC's definition of line conditioning.³²⁶ In other words, this condition
13 requires the Merged Company to comply with existing law post-transaction.³²⁷ Although
14 the Merged Company should be expected to comply with the law in any event, a
15 condition specific to this issue is needed based on Qwest's conduct to date.

³²⁴ For example, when asked whether CenturyLink would test and report troubles for all features, functions and capabilities of conditioned copper loops or restrict its testing to voice transmission only for conditioned copper loops post-transaction, CenturyLink replied: "CenturyLink has not made any determination on this issue at this time." CenturyLink Response to Integra Arizona Data Request #106.

³²⁵ 47 C.F.R. § 51.319(a)(1)(iii)(C).

³²⁶ 47 C.F.R. §51.319(a)(1)(iii)(A).

³²⁷ This is particularly important in light of the National Broadband Plan which seeks to foster broadband deployment and competition. The National Broadband Plan states: "Competitive carriers are currently using copper to provide SMBs with a competitive alternative for broadband services. Incumbent carriers are required to share (or 'unbundle') certain copper loop facilities, which connect a customer to the incumbent carrier's central office" and that "[b]y leasing these copper loops and connecting them to their own DSL or Ethernet over copper equipment that is collocated in the central office, competitive carriers are able to provide their own set of integrated broadband, voice and even video services to consumers and small businesses." National Broadband Plan, Chapter 4 at p. 48.

1 **Q. PLEASE EXPLAIN CONDITION 28.**

2 A. Condition 28 relates to the CLECs' right to interconnect with the Merged Company at a
3 single point of interconnection ("POI") per local access and transport area ("LATA").

4 **Q. WHY IS CONDITION 28 NECESSARY?**

5 A. In the past, CenturyLink has argued against the established right of CLECs to a single
6 POI in arbitration proceedings. Specifically, CenturyLink has stated that because it is not
7 a BOC, the concepts of LATA and single POI do not apply to CenturyLink. CenturyLink
8 has also argued that a single POI per LATA would be technically infeasible and would
9 result in "superior" interconnection agreements in violation of the FCC's rules. There is
10 a genuine risk that the Merged Company will incorporate this legacy CenturyLink
11 mindset into legacy Qwest territory post-merger, which would increase CLECs' costs of
12 interconnection with the Merged Company and allow the Merged Company to enjoy a
13 competitive advantage over CLECs. Condition 28 is necessary to ensure that this "worst
14 practice" is not incorporated by the Merged Company.

15 **Q. IS THERE A DISTINCTION BETWEEN BOCS AND OTHER ILECS RELATED**
16 **TO INTERCONNECTION OBLIGATIONS UNDER SECTION 251 OF THE**
17 **ACT?**

18 A. No. Section 251(c) of the Act is entitled "Additional Obligations of Incumbent Local
19 Exchange Carriers" and requires, among other things, all ILECs – not just BOCs – to
20 provide interconnection "at any technically feasible point within the carrier's network"
21 and "that is at least equal in quality to that provided by the local exchange carrier to itself

1 or any subsidiary, affiliate, or any other party to which the carrier provides
2 interconnection.” So, the fact that CenturyLink is an ILEC and Qwest is both an ILEC
3 and a BOC should have no bearing on whether CLECs should be permitted to
4 interconnect with the Merged Company at a single POI per LATA. Furthermore, the goal
5 of the Act was to open local markets to competition for all ILECs, not just the BOCs.³²⁸

6 **Q. DOES THE DATA SHOW THAT INCREASED EFFICIENCIES COULD BE**
7 **ACHIEVED BY ESTABLISHING A SINGLE POI PER LATA WITH THE**
8 **MERGED COMPANY POST-MERGER?**

9 A. Yes. If the merger is consummated, the Merged Company will have not only have a
10 larger footprint, but also will have many legacy CenturyLink exchanges that are adjacent
11 to or contiguous to Qwest exchanges, and which reside in the same LATA.³²⁹ Though
12 CenturyLink has stated that it has no ILEC exchanges in Arizona,³³⁰ it has touted the
13 benefits that will accrue to the Merged Company in Arizona due to the larger, more
14 interconnected footprint of the combined company. For instance, Qwest says:

15 The Transaction will result in a combined enterprise that can achieve
16 greater economies of scale and scope than the two companies operating
17 independently. In addition to those benefits described above related to

³²⁸ *Local Competition Order* at ¶ 4 (Emphasis added.)

³²⁹ In the Oregon merger proceeding, I explained that about 92% of the CenturyLink exchanges in Oregon are either adjacent to or directly interconnected with Qwest exchanges through another adjacent CenturyLink exchange, and the 155 total exchanges that the Merged Company would operate in Oregon post-merger reside in four LATAs. In Colorado, I explained that 93% of CenturyLink exchanges in Colorado are adjacent or contiguous to Qwest exchanges, and 167 total exchanges the Merged Company would operate in Colorado post-merger reside in two LATAs. Likewise, in Washington, I explained that 95% of CenturyLink exchanges in Washington are adjacent or contiguous to Qwest exchanges, and 195 total exchanges the Merged Company would operate in Washington post-merger reside in four LATAs.

³³⁰ Campbell Arizona Direct at p. 11, footnote 6. *See also*, CenturyLink Response to Integra Data Request #15, Attachment Integra-15, showing no CenturyLink ILEC exchanges in Arizona.

1 capital investment and the ability to aggressively deploy advanced
2 products and services, the increased size of the combined company is also
3 likely to enhance its purchasing power, which may lead to a reduction in
4 some input costs. The combination of the serving areas in many states
5 will provide for increased economies of scale that will benefit customers
6 not only in those states where Qwest and CenturyLink operate
7 independently, but also states like Arizona that will indirectly benefit from
8 the increased efficiencies of the company as a whole.³³¹

9 It is this larger, more interconnected footprint of the Merged Company that the Company
10 attributes a number of the benefits it says will result from the proposed transaction.³³²

11 Hence, the Merged Company expects benefits to itself and its customers (presumably
12 retail customers, since the Joint Applicants have been unable to point to one benefit that
13 will accrue to CLECs as a result of the proposed transaction), but is notably silent about
14 sharing those benefits with new entrants. One way these benefits should flow through to
15 the benefit of the public interest is by allowing CLECs interconnecting with the Merged
16 Company, at the CLECs' option, to do so at a single point per LATA.³³³ This would

³³¹ Campbell Arizona Direct at p. 13, lines 3-11.

³³² See, e.g., McMillan Arizona Direct at p. 9, lines 7-11 ("As a combined company, with complementary strengths and operating footprints, we will have greater potential to effectively reach more types of customers with a broader range of competitive products and connectivity solutions than either company could standing alone.") See also, Schafer Arizona Direct at p. 11, lines 6-10 ("The Transaction brings together two leading communications companies with complementary networks and operating footprints. By building on each company's operational and network strengths, the combined company will have an impressive national presence with the local depth that will allow it to better serve all of its customers."); McMillan Arizona Direct at p. 10, lines 7-9 ("A key benefit will come from leveraging each company's operational and network strengths, resulting in a company with an impressive national presence and local depth.")

³³³ See, e.g., *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 at ¶ 87 (2005) (reaffirming that "[u]nder section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA" (emphasis added). See also *Petition of WorldCom, Inc., et al., Pursuant to § 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Comm'n*, Memorandum Opinion and Order, 17 FCC Rcd 27039 at ¶ 52 (2002) (emphasis added). The Fourth Circuit has affirmed that the Bureau's decision is entitled to the same deference that would normally be granted to a decision of the full Commission. *MCI Metro Access Transmission Servs. v. BellSouth Telecomms., Inc.* 352 F.3d 872, n. 8 (4th Cir. 2003).

1 lower barriers to entry for competitors by capitalizing on the increased scale and
2 efficiencies of the Merged Company – benefits that the Act and FCC require to be shared
3 with CLECs.³³⁴ Given the contiguous and interconnected exchanges of Qwest and
4 CenturyLink, efficiencies can be achieved by routing traffic to and from the Merged
5 Company at a single POI per LATA, as opposed to having separate interconnections for
6 legacy Qwest and legacy CenturyLink. While the Merged Company may want to
7 continue its corporate organizational structure that exists today post-merger, CLECs
8 should not have to pay more to interconnect with the Merged Company because of it.

9 **Q. OTHER THAN TECHNICAL FEASIBILITY AND THE LOCATION OF THE**
10 **INTERCONNECTION, ARE ILECS ALLOWED TO REFUSE AN**
11 **INTERCONNECTION PROPOSAL, SUCH AS SINGLE POI?**

12 A. No. That is why Qwest and CenturyLink are required to provide a single POI per LATA
13 today. The promotion of efficient markets dictates that CLECs only be required to
14 interconnect in a specific area where its own assessment of traffic volumes, customer
15 demand, and available technology justify investment in facilities needed to reach that
16 area. Nevertheless, after the merger, an objection to a single POI interconnection would
17 be even less persuasive given the claimed benefits of the transaction. The Merged
18 Company claims it will be more efficient and able to respond to competition, but it
19 should not accomplish those goals at the expense of its competitors. Given these claimed

³³⁴ See, e.g., *Local Competition Order* at ¶ 11: “Congress addressed these problems in the 1996 Act by mandating that the most significant economic impediments to efficient entry into the monopolized local market must be removed. The incumbent LECs have economies of density, connectivity, and scale; traditionally, these have been viewed as creating a natural monopoly. As we pointed out in our NPRM, the local competition provisions of the Act require that these economies be shared with entrants.”

1 benefits it would be wrong to further disadvantage competitors by arguing against an
2 efficient interconnection method that has been used, and approved, for more than a
3 decade.

4 **Q. PLEASE EXPLAIN CONDITION 29.**

5 A. Condition 29 states that conditions imposed in this proceeding may be expanded or
6 modified as a result of other decision in other states. This would also include decisions
7 based on settlements reached in proceedings.

8 **Q. HOW WILL THIS CONDITION BENEFIT THE PUBLIC INTEREST?**

9 A. This will provide a degree of consistency and spread “best practices” across the Merged
10 Company’s service territory, while at the same time likely lowering the Merged
11 Company’s cost of post-merger compliance activities. A similar condition was adopted
12 by the Oregon Commission in the Frontier/Verizon merger proceeding,³³⁵ wherein the
13 Oregon Commission concluded that this type of condition “benefit[s] the various
14 stakeholders in Oregon while, at the same time, allow[ing] applicants to promptly
15 conclude the regulatory approval process.”³³⁶ This is particularly appropriate to the
16 proposed transaction given that the Joint Applicants have requested expedited approval of
17 the proposed transaction.³³⁷

18 **Q. PLEASE EXPLAIN CONDITION 30.**

³³⁵ Order No. 10-067 at Appendix A, page 12 of 12 (Docket UM 1431, February 24, 2010).

³³⁶ Order 10-167 at 23.

³³⁷ See, e.g., Campbell Arizona Direct at p. 7, lines 13-15 (“Expedited treatment is requested to allow the Joint Applicants to more quickly integrate the companies in order to bring the benefits described in my testimony to consumer, business, wholesale customers, and shareholders sooner.”)

1 A. Condition 30 addresses disputes that may arise with respect to any pre-closing or post-
2 closing conditions. Specifically, this condition would allow either party to seek
3 resolution of the dispute by filing a petition with a state commission.

4 **Q. WHY DO CLECS NEED THE ABILITY TO BRING DISPUTES ABOUT**
5 **MERGER CONDITION COMPLIANCE TO THE STATE COMMISSION?**

6 A. Since a number of these conditions expire after a certain period of time, it is important
7 that the CLECs have a way to quickly and efficiently resolve disputes related to merger
8 condition compliance – otherwise, the Merged Company could just drag disputes out
9 until some of the conditions expire or argue over the proper forum for addressing these
10 types of disputes. This is a condition that the CLECs have included based on past
11 experience. AT&T has repeatedly argued (an argument that has been repeatedly rejected)
12 that state commissions do not have authority to enforce merger commitments related to
13 ICAs.³³⁸ CLECs should not have to fight these same types of battles after the proposed
14 transaction at significant cost and delay.

15 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

16 A. Yes, it does.

³³⁸ See, e.g., Comments of Cox Communications and Charter Communications, Inc., WC Docket No. 10-110, July 12, 2010, at pp. 11-12.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN MAYES, Chairman
GARY PIERCE, Commissioner
SANDRA KENNEDY, Commissioner
PAUL NEWMAN, Commissioner
BOB STUMP, Commissioner

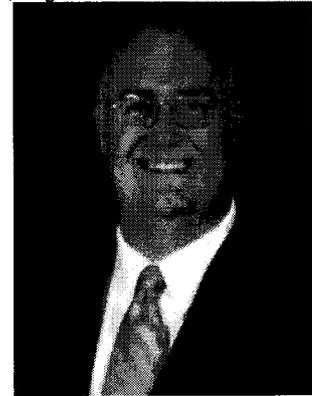
JOINT NOTICE AND APPLICATION OF)	
QWEST CORPORATION, QWEST)	
COMMUNICATIONS COMPANY, LLC,)	
QWEST LD CORP., EMBARQ	)	Docket No. T-01051B-10-0194
COMMUNICATIONS, INC. D/B/A	)	Docket No. T-02811B-10-0194
CENTURYLINK COMMUNICATIONS,	)	Docket No. T-04190A-10-0194
EMBARQ PAYPHONE SERVICES, INC.	)	Docket No.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

EXHIBIT TG-1

Timothy J Gates

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Biography

Mr. Gates is a QSI partner and currently serves as Senior Vice President, managing some of QSI's largest clients. Before joining QSI, Mr. Gates held key management positions over a 15-year period with MCI, Inc.'s Law and Public Policy Group. Mr. Gates has focused on telecommunications issues ranging from costing, pricing, alternative forms of regulation, local entry, and universal service to strategic planning, legislation, and merger and network issues over a telecommunications career spanning 25 years. He has extensive experience working with attorneys, analysts, external consultants, regulators, lobbyists, and company executives on issues associated with the convergence of competition, technologies, services, and companies. Mr. Gates has developed policy positions and advocated those positions before regulatory commissions and legislatures across the nation. During his tenure with MCI, Mr. Gates managed its many external consultants and the associated budget. He has testified in more than 200 proceedings in 45 states and Puerto Rico and before the FCC and the Department of Justice. Mr. Gates is widely recognized in the telecommunications industry as one of the most talented witnesses and witness trainers.

Before joining MCI, Mr. Gates was employed by the Texas Public Utility Commission as a Telephone Rate Analyst in the Telecommunications Division's Engineering Department. Prior to joining the Texas staff, Mr. Gates was employed by the Oregon Public Utility Commission as an Economic Analyst in the Telecommunications Division. Mr. Gates also has experience in the energy industry, having worked with the Bonneville Power Administration (United States Department of Energy), where he was employed as a Financial Analyst. Mr. Gates also spent 10 years in the forest industry in the Northwest, where he held numerous positions of increasing responsibility for International Paper, Weyerhaeuser and the Oregon Department of Forestry.

Educational Background

Master of Management, Emphasis in Finance and Quantitative Methods
Willamette University's Atkinson Graduate School of Management, Salem, Oregon

Bachelor of Science, Forest Management
Oregon State University, Corvallis, Oregon





Timothy J Gates

Professional Experience

QSI Consulting, Inc.

2000 – Current
Senior Vice President
Denver, Colorado

MCI Telecommunications

1994 – 1996
Executive Staff Member II
World Headquarters, Washington D.C.

MCI Telecommunications

1988 – 1992
Senior Manager – Legal and Regulatory
Affairs -- Midwest Division
Chicago, Illinois

MCI Telecommunications

1985 – 1986
Financial Analyst III and Senior Staff
Specialist – Southwest Division
Austin, Texas

Public Utility Commission of Oregon

1983 – 1984
Economic Analyst
Salem, Oregon

MCI WorldCom

1996 – 2000
Senior Executive Staff Member
National Public Policy Group
Denver, Colorado

MCI Telecommunications

1992 – 1994
Senior Manager
National Public Policy Group
Chicago, Illinois

MCI Telecommunications

1986 – 1988
Manager of Tariffs and Economic Analysis –
West Division
Denver, Colorado

Public Utility Commission of Texas

1984 – 1985
Engineering Division
Telephone Rate Analyst
Austin, Texas

Bonneville Power Administration

1982 – 1983
Financial Analyst
Portland, Oregon



Timothy J Gates

Expert Testimony – Profile

The information below is Mr. Gates' best effort to identify proceedings wherein he has either provided pre-filed written testimony or provided live testimony or formal comments. This information does not reflect all proceedings, cases, projects or other work done by Mr. Gates.

Before the Alabama Public Service Commission

Docket No. 27867

Adelphia Business Solutions Arbitration with BellSouth Telecommunications

Direct

October 18, 2000

Rebuttal

January 31, 2001

Before the Arizona Corporation Commission

Docket No. T-03654-05-0350, T-01051B-05-0350

In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corp.

On Behalf of Level 3

Direct

July 15, 2005

Rebuttal

August 15, 2005

Before the Arizona Corporation Commission

Docket No. T-01051B-0454

In the Matter of Qwest Corporation's Amended Renewed Price Regulation Plan

On Behalf of Time Warner Telecom, Inc.

Direct

November 18, 2004

Before the Arizona Corporation Commission

Docket No. T-00000A-03-0369

In the Matter of ILEC Unbundling Obligations as a Result of the Federal Triennial Review Order

On Behalf of WorldCom, Inc. (MCI)

Direct

January 9, 2004

Before the Arizona Corporation Commission

Docket No. T-00000A-00-0194

Phase II – A; Investigation into Qwest's Compliance with Wholesale Pricing Requirements for

Unbundled Network Elements and Resale Discounts

On Behalf of WorldCom, Inc.

Rebuttal

September 2, 2001

Before the Superior Court of Arizona

Case CV 99-20649

Superior Court of Arizona; Count of Maricopa; ESI Ergonomic Solutions, LLC, Plaintiff, vs.

United Artists Theatre Circuit

On Behalf of United Artists Theatre Circuit

Affidavit

February 20, 2001



Timothy J Gates

Before the Arizona Corporation Commission

Docket Nos. T-03654A-00-0882, T-01051B-00-0882

Petition of Level 3 Communications, LLC, for Arbitration with Qwest Corporation

On Behalf of Level 3

Direct

January 8, 2001

Before the Arizona Corporation Commission

Docket No. T-00000B-97-238

USWC OSS Workshop

On Behalf of MCI WorldCom, Inc.

Comments

September 20, 1999

Before the Arizona Corporation Commission

Docket No. T-03175A-97-0251

Application of MCI metro Access Transmission Services, Inc. to Expand It's CCN to Provide IntraLATA Services and to Determine that Its IntraLATA Services are Competitive

On Behalf of MCI WorldCom, Inc.

Direct

November 9, 1998

Before the Arizona Corporation Commission

Arizona Corporation Commission Workshop on Special Access Services

On Behalf of MCI

Comments

September 23, 1987

Before the Arizona Corporation Commission

Docket No. R-0000-97-137

Comments to the Universal Service Fund Working Group

On Behalf of MCI

Comments

October 24, 1997

Comments

May 8, 1998

Before the Arizona Corporation Commission

Judgment; Nos. CV 95-14284, CV-96-03355, CV-96-03356, (consolidated).

Affidavit in Opposition to USWC Motion for Partial Summary

On Behalf of MCI

Affidavit

August 21, 1996

Before the Arkansas Public Service Commission

Docket No. 04-0999-U

In the Matter of Level 3 Petition for Arbitration with Southwestern Bell Telephone, L.P. D/B/A

SBC Arkansas

On Behalf of Level 3

Direct

September 7, 2004



Timothy J Gates

Before the California Public Utilities Commission

Case No. C.07-03-008

Complaint of Neutral Tandem, Inc. v. Level 3 Communications, LLC

On Behalf of Level 3

Declaration

Direct

May 7, 2007

May 25, 2007

Before the California Public Utilities Commission

Docket No. A.04-06-004

Petition of Level 3 Communications for Arbitration with SBC

On Behalf of Level 3 Communications LLC

Direct

June 1, 2004

Before the California Public Utilities Commission

Application 00-04-037

Petition of Level 3 Communications for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company

On Behalf of Level (3) Communications, LLC

Direct

June 5, 2000

Before the California Public Utilities Commission

Application No. 96-09-012

MCI Petition for Arbitration with GTE California, Inc.

On Behalf of MCI

Direct

September 10, 1996

Before the California Public Utilities Commission

Application No. 96-08-068

MCI Petition for Arbitration with Pacific Bell

On Behalf of MCI

Direct

August 30, 1996

Before the Colorado Public Utilities Commission

Docket No. 06F-039T

Adams County E-911 Emergency Telephone Service Authority Complaint Against Qwest

On Behalf of Adams, Arapahoe, Douglas, El Paso, Teller, Jefferson, Larimer Counties & the City of Aurora

Direct

October 24, 2007

Before the Colorado Public Utilities Commission

Docket No. 05B-210T

Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation

On Behalf of Level 3

Direct

July 11, 2005

Rebuttal

December 19, 2005



Timothy J Gates

Before the Colorado Public Utilities Commission

Docket No. 04A-411T

Regarding Application of Qwest for Reclassification and Deregulation of Certain Products and Services

On Behalf of Time Warner Telecom

Direct

February 18, 2005

Before the Colorado Public Utilities Commission

Docket No. 03I-478T

Regarding the Unbundling Obligations of ILECs Pursuant to the Triennial Review Order

On Behalf of WorldCom, Inc. (MCI)

Direct

January 26, 2004

Before the Colorado Public Utilities Commission

Docket No. 99I-577T

US WEST Statement of Generally Available Terms and Conditions

On Behalf of Covad Communications Company, Rhythms Links, Inc., and New Edge Networks, Inc.

Direct

June 27, 2001

Before the District Court, City and County of Denver, State of Colorado

Case No. 99CV8252

Qwest Corporation, Inc., Plaintiff, v. IP Telephony, Inc., Defendant. District Court, City and County of Denver, State of Colorado

On Behalf of IP Telephony

Direct

January 29, 2001

Before the Colorado Public Utilities Commission

Docket No. 00B-601T

Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation

On Behalf of Level 3

Direct

January 4, 2001

Rebuttal

January 16, 2001

Before the Colorado Public Utilities Commission

Docket No. 99R-128T

Proposed Amendments to the Rules on Local Calling Area Standards

On Behalf of MCI WorldCom

Oral Comments before the Commissioners

May 13, 1999

Before the Colorado Public Utilities Commission

Docket No. 98R-426T

Proposed Amendments to the Rules Prescribing IntraLATA Equal Access

On Behalf of MCI WorldCom and AT&T Communications of the Mountain States, Inc.

Comments

November 4, 1998



Timothy J Gates

Before the Colorado Public Utilities Commission

Docket No. 97A-494T

Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.

Affidavit in Response to GTE

May 8, 1998

Before the Colorado Public Utilities Commission

Docket No. 97A-494T

Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.

On Behalf of MCI.

Supplemental Direct

March 10, 1998

Rebuttal

March 26, 1998

Before the Colorado Public Utilities Commission

Docket Nos. 97K-237T, 97F-175T (consolidated) and 97F-212T (consolidated)

Complaint of MCI to Reduce USWC Access Charges to Economic Cost

On Behalf of MCI

Direct

July 18, 1997

Rebuttal

August 15, 1997

Before the Colorado Public Utilities Commission

Docket No. 90A-665T (consolidated)

Application of U S WEST Communications, Inc. To Modify Its Rate and Service Regulation Plan

On Behalf of MCI

Direct

September 26, 1996

Rebuttal

October 7, 1996

Before the Colorado Public Utilities Commission

Docket No. 96A-366T (consolidated)

MCI metro Petition for Arbitration wit U S WEST Communications, Inc.

On Behalf of MCI

Direct

September 6, 1996

Rebuttal

September 17, 1996

Before the Colorado Public Utilities Commission

Docket No. 1766

Investigation and Suspension; Mountain States Telephone and Telegraph Company's Local

Calling Access Plan

On Behalf of MCI

Direct

October 26, 1988

Before the Colorado Public Utilities Commission

Docket No. 1720

Investigation and Suspension; Rate Case of Mountain States Telephone and Telegraph Company

On Behalf of MCI

Direct

December 1, 1986



Timothy J Gates

Before the Connecticut Department of Public Utility Control

Docket No. 07-02-29

Petition of Neutral Tandem, Inc., for Interconnection with Level 3 Communications and Request for Interim Order

On Behalf of Level 3

Direct

May 1, 2007

Before the Connecticut Department of Public Utility Control

Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) with Southern New England Telephone Company d/b/a/ SBC Connecticut; Level 3/SNET Arbitration

On Behalf of Level 3 Communications, LLC

Direct

November 2, 2004

Before the Delaware Public Service Commission

Docket No. 92-47

Diamond State Telephone Company's Application for a Rate Increase

On Behalf of MCI

Direct

February 12, 1993

Before the Florida Public Service Commission

Docket No. 090501-TP

In Re: Petition for Arbitration for an Interconnection Agreement with Verizon Florida, LLC by Bright House Networks Information Services (Florida), LLC.

On Behalf of Bright House

Direct

March 26, 2010

Rebuttal

April 16, 2010

Before the Florida Public Service Commission

Case No. 000475-TP

In Re: Complaint by BellSouth Telecommunications, Inc. Against Thrifty Call, Inc. Regarding Practices in the Reporting of Percent Interstate Usage for Compensation for Jurisdictional Access Service.

On Behalf of Thrifty Call

Direct

February 7, 2008

Rebuttal

March 3, 2008

Before the Florida Public Service Commission

Docket Nos. 050119-TP/050125-TP

Petition and Complaint for Suspension and Cancellation of Transit Traffic Service Tariff No. FL2004-284 filed by BellSouth Telecommunications, Inc., by AT&T Communications of the Southern States, LLC

On Behalf of CompSouth

Direct

December 19, 2005

Rebuttal

January 30, 2006



Timothy J Gates

Before the Florida Public Service Commission

Docket No. 031047-TP

Petition of KMC Telecom for Arbitration with Sprint Communications: On Behalf of KMC
Telecom III, L.L.C, KMC Telecom V, Inc., and KMC Data, L.L.C.

Direct June 11, 2004
Rebuttal July 9, 2004

Before the Florida Public Service Commission

Docket No. 000084-TP

Petition of BellSouth for Arbitration with US LEC of Florida Inc.
On Behalf of US LEC

Direct October 13, 2000
Rebuttal October 27, 2000

Before the Florida Public Service Commission

Docket No. 000907-TP

Petition of Level 3 for Arbitration with BellSouth
On Behalf of Level 3.

Direct October 5, 2000
Rebuttal November 1, 2000

Before the Florida Public Service Commission

Docket No. 930330-TP

Investigation into IntraLATA Presubscription
On Behalf of MCI

Direct July 1, 1994

Before the Georgia Public Service Commission

Docket No. 27830-U

*Petition of Charter Fiberlink – Georgia, LLC for Arbitration of Interconnection Rates, Terms and
Conditions Pursuant to 47 U.S.C. §252(b)*
On Behalf of Charter Fiberlink

Direct November 20, 2009
Rebuttal December 18, 2009

Before the Georgia Public Service Commission

Docket No. 24844

Petition of Neutral Tandem for the Establishment of Interconnection with Level 3
On Behalf of Level 3

Direct April 13, 2007
Rebuttal April 24, 2007

Before the Georgia Public Service Commission

Docket No. 12645-U

Petition of Level 3 for Arbitration with BellSouth
On Behalf of Level 3

Direct December 6, 2000
Rebuttal December 20, 2000



Timothy J Gates

Before the Idaho Public Utilities Commission

Case No. QWE-T-05-11

In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation

On Behalf of Level 3

Direct

August 12, 2005

Rebuttal

September 16, 2005

Before the Idaho Public Utilities Commission

Case No. GNR-T-02-16

Petition of Potlatch, CenturyTel, the Idaho Telephone Association for Declaratory Order

Prohibiting the Use of "Virtual NXX Calling"

On Behalf of Level 3, AT&T, WorldCom, and Time Warner Telecom

Comments/Presentation

November 25, 2002

Before the Idaho Public Utilities Commission

Case No. U-1500-177

Investigation of the Universal Local Access Service Tariff

On Behalf of MCI

Direct

March 17, 1988

Rebuttal

April 26, 1988

Before the Idaho Public Utilities Commission

Case No. U-1150-1

Petition of MCI for a Certificate of Public Convenience and Necessity

On Behalf of MCI

Direct

November 20, 1987

Before the Illinois Commerce Commission

Docket No. 07-0277

Complaint of Neutral Tandem, Inc. v. Level 3 Communications, LLC

On Behalf of Level 3

Direct

May 15, 2007

Before the Illinois Commerce Commission

Docket No. 04-0428

Level 3 Petition for Arbitration to Establish an Interconnection Agreement with Illinois Bell

Telephone Company

On Behalf of Level (3) Communications, LLC

Direct

June 22, 2004

Direct

September 3, 2004

Before the Illinois Commerce Commission

Docket No. 00-0332

Level 3 Petition for Arbitration to Establish and Interconnection Agreement with Illinois Bell

Telephone Company

On Behalf of Level (3) Communications, LLC

Direct

May 30, 2000

Supplemental Verified Statement

July 11, 2000



Timothy J Gates

Before the Illinois Commerce Commission

Docket No. 93-0044

Complaint of MCI and LDDS re Illinois Bell Additional Aggregated Discount and Growth Incentive Discount Services

On Behalf of MCI and LDDS.

Direct

November 18, 1993

Rebuttal

January 10, 1994

Before the Illinois Commerce Commission

Case No. 90-0425

Presentation to the Industry Regarding MCI's Position on Imputation.

July 29, 1991

Before the Illinois Commerce Commission

Docket No. 83-0142

Industry presentation to the Commission re Docket No. 83-0142 and issues for next generic access docket re the Imputation Trial and Unitary Pricing/Building Blocks

On Behalf of MCI

Comments

November 19, 1990

Before the Illinois Commerce Commission

Docket No. 88-0091

IntraMSA Dialing Arrangements

On Behalf of MCI

Direct

November 22, 1989

Rebuttal

February 9, 1990

Before the Illinois Commerce Commission

Docket No. 89-0033

Illinois Bell Telephone Company's Rate Restructuring

On Behalf of MCI

Direct

May 3, 1989

Rebuttal

July 14, 1989

Before the Illinois Commerce Commission

Docket No. 83-0142

Appropriate Methodology for Intrastate Access Charges Regarding ICTC's Access Charge Proposal

On Behalf of MCI

Surrebuttal

February 16, 1989

Before the Illinois Commerce Commission

Docket No. 83-0142

Appropriate Methodology for Intrastate Access Charges Regarding Toll Access

On Behalf of MCI

Rebuttal

January 16, 1989



Timothy J Gates

Before the Indiana Utility Regulatory Commission

Cause No. 43462

Petition of Comcast Phone of Central Indiana, LLC for Arbitration with United Telephone Companies of Indiana (DBA Embarq);
On Behalf of Comcast

Direct

May 23, 2008

Rebuttal

June 12, 2008

Before the Indiana Utility Regulatory Commission

Cause No. 43299

Complaint of Neutral Tandem, Inc. and Neutral Tandem – Indiana, LLC Against Level 3 Communications, LLC, Concerning Interconnection with Level 3 Communications, LLC

On Behalf of Level 3

Reply

July 23, 2007

Before the Indiana Utility Regulatory Commission

Cause No. 42663-INT-01

In the Matter of Level 3 Communications, LLC Petition for Arbitration with SBC Indiana

On Behalf of Level 3 Communications, LLC

Direct

September 2, 2004

Rebuttal

October 5, 2004

Before the Indiana Utility Regulatory Commission

Cause No. 39032

MCI Request for IntraLATA Authority

On Behalf of MCI

Direct

October 25, 1990

Rebuttal

April 4, 1991

Before the Indiana Utility Regulatory Commission

Cause No. 38560

Reseller Complaint Regarding 1+ IntraLATA Calling

On Behalf of MCI

Direct

June 29, 1989

Before the Indiana Utility Regulatory Commission

Cause No. 37905

Intrastate Access Tariffs -- Parity with Federal Rates

On Behalf of MCI

Direct

June 21, 1989

Before the Indiana Utility Regulatory Commission

Cause No. 38561

Deregulation of Customer Specific Offerings of Indiana Telephone Companies

On Behalf of MCI Regarding Staff Reports.

Direct

April 14, 1989



Timothy J Gates

Before the Indiana Utility Regulatory Commission

Cause No. 38561

Deregulation of Customer Specific Offerings of Indiana Telephone Companies

On Behalf of MCI Regarding GTE

Direct

December 16, 1988

Before the Indiana Utility Regulatory Commission

Cause No. 38561

Deregulation of Customer Specific Offerings of Indiana Telephone Companies

On Behalf of MCI

Direct

October 28, 1988

Before the Iowa Utilities Board

Docket No. INU-08-2

In the Matter of 360networks (USA), Inc., LH Telecom, Inc. and McLeod Telecommunications Services, Inc. Against Qwest Corporation re Wire Center Impairment

On Behalf of the CLECs

Direct

February 23, 2009

Before the Iowa Utilities Board

Docket No. FCU-06-42

In the Matter of Coon Creek Telecommunications Corp. Complaint Against Iowa Telecommunications Services

On Behalf of CCTC

Direct

July 14, 2006

Rebuttal

August 21, 2006

Before the Iowa Utilities Board

Docket No. ARB-05-4

In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest

On Behalf of Level 3

Direct

July 20, 2005

Rebuttal

August 12, 2005

Surrebuttal

August 24, 2005

Before the Iowa Utilities Board

Docket Nos. INU-03-4, WRU-03-61

In Re: Qwest Corporation

Sworn Counter Statement of Position on Behalf of MCI

December 15, 2003

Before the Iowa Utilities Board

Docket Nos. INU-03-4, WRU-03-61

In Re: Qwest Corporation

Sworn Statement of Position on Behalf of MCI

November 14, 2003



Timothy J Gates

Before the Iowa Utilities Board

Docket NOI-99-1

Universal Service Workshop; Responded to questions posed by the Staff of the Board during one day workshop

On Behalf of MCIW and AT&T

Comments

October 27, 1999

Before the Iowa Utilities Board

Docket NOI-99-1

Universal Service Workshop; Participated on numerous panels during two day workshop

On Behalf of MCI WorldCom

Comments

June 8, 1999

Before the Iowa Utilities Board

Docket No. NOI-90-1

Presentation on Imputation of Access Charges and the Other Costs of Providing Toll Services

On Behalf of MCI

Presentation

October 3, 1991

Before the Iowa Utilities Board

Docket No. RPU-91-4

Investigation of the Earnings of U S WEST Communications, Inc.

On Behalf of MCI

Direct

September 25, 1991

Rebuttal

November 5, 1991

Supplemental

December 23, 1991

Rebuttal

January 10, 1992

Surrebuttal

January 20, 1992

Before the Iowa Utilities Board

Docket No. RPU-88-1

Regarding the Access Charges of Northwestern Bell Telephone Company

On Behalf of MCI

Direct

September 20, 1988

Before the Iowa Utilities Board

Docket No. RPU-88-6

IntraLATA Competition in Iowa

On Behalf of MCI

Direct

September 1, 1988

Before the Kansas Corporation Commission

Docket No. 04-L3CT-1046-ARB

In the Matter of Arbitration Between Level 3 Communications LLC and SBC Communications

On Behalf of Level 3 Communications, LLC

Direct

August 31, 2004



Timothy J Gates

Before the Kansas Corporation Commission

Docket No. 181,097-U

General Investigation into IntraLATA Competition within the State of Kansas

On Behalf of MCI

Direct

June 10, 1992

Rebuttal

September 16, 1992

Before the Kentucky Public Service Commission

Case No. 2000-477

Petition of Adelphia Business Solutions for Arbitration with BellSouth

On Behalf of Adelphia

Direct

January 12, 2001

Before the Kentucky Public Service Commission

Case No. 2000-404

Petition of Level 3 Communications, LLC for Arbitration with BellSouth

On Behalf of Level 3

Direct

December 21, 2000

Before the Kentucky Public Service Commission

Administrative Case No. 323

Phase I; An Inquiry into IntraLATA Toll Competition, an Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality

On Behalf of MCI

Direct

May 20, 1993

Before the Louisiana Public Service Commission

Docket No. U-25301

Petition of Adelphia Business Solutions for Arbitration with BellSouth

On Behalf of Adelphia

Direct

December 28, 2000

Rebuttal

January 5, 2001

Before the Maryland Public Service Commission

Case No. 8879

Rates for Unbundled Network Elements Pursuant to the Telecommunications Act of 1996

Testimony on behalf of the Staff of the Public Service Commission of Maryland

Rebuttal

September 5, 2001

Surrebuttal

October 15, 2001

Before the Maryland Public Service Commission

Case No. 8585

Competitive Safeguards Required re C&P's Centrex Extend Service

On Behalf of MCI

Rebuttal

June 2, 1994



Timothy J Gates

Before the Maryland Public Service Commission

Case No. 8585

Re Bell Atlantic Maryland, Inc.'s Transmittal No. 878

On Behalf of MCI

Direct

May 19, 1994

Before the Maryland Public Service Commission

Case No. 8585

Competitive Safeguards Required re C&P's Centrex Extend Service

On Behalf of MCI

Direct

November 12, 1993

Rebuttal

January 14, 1994

Before the Massachusetts Department of Telecommunications and Energy

D.P.U. 93-45

New England Telephone Implementation of Interchangeable NPAs

On Behalf of MCI

Direct

April 22, 1993

Rebuttal

May 10, 1993

Before the Michigan Public Service Commission

Case No. U-15230

Complaint and Application for Emergency Relief by Neutral Tandem Inc. for Interconnection with Level 3 Communications

On Behalf of Level 3

Direct

June 26, 2007

Before the Michigan Public Service Commission

Case No. U-14152

Petition of Level 3 Communications LLC for Arbitration with SBC Michigan

On Behalf of Level 3 Communications, LLC

Direct

June 1, 2004

Before the Michigan Public Service Commission

Case No. U-12528

In the Matter of the Implementation of the Local Calling Area Provisions of the MTA

On Behalf of Focal Communications, Inc.

Rebuttal

September 27, 2000

Before the Michigan Public Service Commission

Case No. U-12460

Petition of Level 3 Communications for Arbitration to Establish an Interconnection Agreement with Ameritech Michigan

On Behalf of Level (3) Communications, LLC

Direct

June 8, 2000



Timothy J Gates

Before the Michigan Public Service Commission

Case No. U-12321

AT&T Communications of Michigan, Inc. Complainant v. GTE North Inc. and Contel of the South, Inc., d/b/a GTE Systems of Michigan

On Behalf of AT&T.

Direct (Adopted Testimony of Michael Starkey)

February 16, 2000

Rebuttal

May 11, 2000

Before the Michigan Public Service Commission

Case No. U-10138 (Reopener)

MCI v Michigan Bell and GTE re IntraLATA Equal Access

On Behalf of MCI

Direct

July 22, 1993

Before the Michigan Public Service Commission

Case No. U-10138

MCI v Michigan Bell and GTE re IntraLATA Equal Access

On Behalf of MCI

Direct

July 31, 1992

Rebuttal

November 17, 1992

Before the Michigan Public Service Commission

Case No. U-8987

Michigan Bell Telephone Company Incentive Regulation Plan

On Behalf of MCI

Direct

June 30, 1989

Before the Michigan Public Service Commission

Case Nos. U-9004, U-9006, U-9007 (Consolidated)

Industry Framework for IntraLATA Toll Competition

On Behalf of MCI

Direct

September 29, 1988

Rebuttal

November 30, 1988

United States District Court; District of Minnesota; Fourth Division – Minneapolis

Tekstar Communications, Inc., Plaintiff v. Sprint Communications Company L.P., Defendant.

Court File No. 08-cv-1130 (JNE/RLE); Complaint of Tekstar against Sprint for Nonpayment of Tariffed Charges.

On Behalf of Tekstar

Expert Report

April 20, 2009

Before the Minnesota Public Utilities Commission

PUC Docket No. P-5535, 421/M-08-952

In the Matter of a Petition of Charter Fiberlink LLC for Arbitration with Qwest

On Behalf of Charter Fiberlink LLC

Direct

October 24, 2008

Rebuttal

December 12, 2008



Timothy J Gates

Before the Minnesota Public Utilities Commission

Docket No. P-3123, 430/M-08-570

In the Matter of a Petition of Comcast Phone of Minnesota, Inc., for Arbitration of an Interconnection Agreement with Embarq

On Behalf of Comcast

Direct

August 5, 2008

Reply

August 26, 2008

Before the Minnesota Public Utilities Commission

Docket No. P-5733/C-07-296

In the Matter of a Complaint and Request for Expedited Hearing of Neutral Tandem, Inc. Against Level 3 Communications, LLC & In the Matter of the Application of Level 3 Communications, LLC to Terminate Services to Neutral Tandem, Inc. (Consolidated)

On Behalf of Level 3

Direct

June 14, 2007

Reply

July 24, 2007

Before the Minnesota Public Utilities Commission

Docket No.: P-999/CI-03-961

In the Matter of the Commission Investigation into ILEC Unbundling Obligations as a Result of the Federal Triennial Review Order

On Behalf of WorldCom, Inc. (MCI)

Direct

January 23, 2004

Before the Minnesota Public Utilities Commission

Docket Nos. P-442, 421, 3012/M-01-1916; P-421/C1-01-1375; OAH Docket No. 12-2500-14490

Commission Investigation of Qwest's Pricing of Certain Unbundled Network Elements

On Behalf of McLeod USA Telecommunications Services, Inc., Eschelon Telecom of Minnesota, Inc., US Link, Inc., Northstar Access, LLC, Otter Tail Telecomm LLC, VAL-Ed Joint Venture, LLP, dba 702 Communications

Rebuttal

April 18, 2002

Before the Minnesota Public Utilities Commission

Docket No. P-999/R-97-609

Universal Service Group

On Behalf of MCI WorldCom, Inc. and AT&T Communications

Comments

September 28, 1999

Before the Minnesota Public Utilities Commission

USWC OSS Workshop; re OSS Issues

On Behalf of MCI WorldCom, Inc.

Comments

September 14-16, 1999



Timothy J Gates

Before the Minnesota Public Utilities Commission

**Docket No. P-442, 421/M-96-855; P-5321, 421/M-96-909; and P-3167, 421/M-96-729
(consolidated)**

Petition for Arbitration with U S WEST Communications, Inc

On Behalf of MCI

Direct

September 20, 1996

Rebuttal

September 30, 1996

Before the Minnesota Public Utilities Commission

Docket Nos. P-999/CI-85-582, P-999/CI-87-697 and P-999/CI-87-695

In the Matter of an Investigation into IntraLATA Equal Access and Presubscription; Comments of MCI on the Report of the Equal Access and Presubscription Study Committee

On Behalf of MCI

Comments

September 7, 1993

Before the Minnesota Public Utilities Commission

Docket No. P-421/CI-86-88

Summary Investigation into Alternative Methods for Recovery of Non-traffic Sensitive Costs

On Behalf of MCI

Comments to the Commission

January 30, 1987

Before the Mississippi Public Service Commission

Docket No. 2000-AD-846

Petition of Adelpia Business Solutions for Arbitration with BellSouth Telecommunications

On Behalf of Adelpia

Direct

February 2, 2001

Rebuttal

February 16, 2001

Before the Missouri Public Service Commission

Case No. TO-2009-0037

Petition of Charter Fiberlink Missouri, LLC for Arbitration of an Interconnection Agreement with CenturyTel of Missouri, LLC.

On Behalf of Charter Fiberlink LLC

Direct

September 30, 2008

Rebuttal

October 21, 2008

Before the Montana Public Service Commission

Docket No. D97.10.191

Application of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.

On Behalf of MCI

Rebuttal

May 12, 1998

Amended Rebuttal

June 1, 1998

Before the Montana Public Service Commission

Docket No. 88.1.2

Rate Case of Mountain States Telephone and Telegraph Company

On Behalf of MCI

Direct

September 12, 1988



Timothy J Gates

Before the Montana Public Service Commission

Docket No. 86.12.67

Rate Case of AT&T Communications of the Mountain States, Inc.

On Behalf of MCI

Direct

May 1, 1987

Before the Nebraska Public Service Commission

Application No. C-749

Application of United Telephone Long Distance Company of the Midwest for a Certificate of Public Convenience and Necessity

On Behalf of MCI

Direct

March 31, 1988

Before the Nebraska Public Service Commission

Application No. C-627

Nebraska Telephone Association Access Charge Proceeding

On Behalf of MCI

Direct

November 6, 1986

Before the New Hampshire Public Utilities Commission

Docket No. DT 00-223

Investigation Into Whether Certain Calls are Local

On Behalf of BayRing Communications

Direct

January 12, 2001

Rebuttal

April 5, 2002

Before the New Hampshire Public Utilities Commission

Docket DE 93-003

Investigation into New England Telephone's Proposal to Implement Seven Digit Dialing for Intrastate Toll Calls

On Behalf of MCI

Direct

April 30, 1993

Before the New Jersey Board of Public Utilities

Docket Nos. TX90050349, TE92111047, and TE93060211

Petitions of MCI, Sprint and AT&T for Authorization of IntraLATA Competition and Elimination of Compensation

On Behalf of MCI

Direct

April 7, 1994

Rebuttal

April 25, 1994

Before the New Jersey Board of Public Utilities

Docket No. TX93060259

Notice of Pre-Proposal re IntraLATA Competition; Response to the Board of Regulatory Commissioners

On Behalf of MCI

Comments

September 15, 1993

Reply Comments

October 1, 1993



Timothy J Gates

Before the New Mexico Public Regulation Commission

Case Nos. 09-00094-UT

Development of an Alternative Form of Regulation Plan for Qwest Corporation

On Behalf of the New Mexico Attorney General

Direct

May 22, 2009

Response

June 24, 2009

Before the New Mexico Public Regulation Commission

Case Nos. 08-00326-UT/08-00197-UT

Objections to Qwest Residence and Business Competitive Response Program

On Behalf of the New Mexico Attorney General

Direct

December 5, 2008

Before the New Mexico Public Regulation Commission

Case No. 06-00325-UT

Settlement Agreement

On Behalf of the New Mexico Attorney General

Direct

December 15, 2006

Before the New Mexico Public Regulation Commission

Case No. 05-00094-UT (Phase II)

In the Matter of the Implementation and Enforcement of Qwest Corporation's Amended

Alternative Form of Regulation

On Behalf of the New Mexico Attorney General

Direct

July 24, 2006

Direct (on proposed settlement agreement)

September 25, 2006

Before the New Mexico Public Regulation Commission

Case No. 05-00466-UT

In the Matter of the Development of an Alternative Form of Regulation for Qwest Corporation

On Behalf of the New Mexico Attorney General

Direct

February 24, 2006

Rebuttal

March 31, 2006

Before the New Mexico Public Regulation Commission

Case No. 05-00484-UT

In the Matter of Level 3 Communications, LLC's Petition for Arbitration with Qwest Corporation

On Behalf of Level 3

Direct

December 15, 2005

Before the New Mexico Public Regulation Commission

Case No. 05-00094-UT

In the Matter of the Implementation and Enforcement of Qwest Corporation's Amended

Alternative Form of Regulation

On Behalf of the New Mexico Attorney General

Direct

December 5, 2005



Timothy J Gates

Before the New Mexico Public Regulation Commission

Case No. 05-00211-UT

In the Matter of a Notice of Inquiry to Develop a Rule to Implement House Bill 776, Relating to Access Charge Reform

On Behalf of MCI

Oral Comments

September 14, 2005

Before the New Mexico Public Regulation Commission

Case No. 00108-UT

Regarding Unfiled Agreements between Qwest Corporation and Competitive Local Exchange Carriers

On Behalf of Time Warner Telecom

Direct

May 11, 2004

Before the New Mexico Public Regulation Commission

Case Nos. 03-00403-UT and 03-00404-UT

Triennial Review Proceedings (Batch Hot Cut and Local Circuit Switching)

On Behalf of WorldCom, Inc. (MCI).

Direct

February 9, 2004

Before the New Mexico Public Regulation Commission

Utility Case No. 3495, Phase B

Consideration of Costing and Pricing Rules for OSS, Collocation, Shared Transport, Nonrecurring Charges, Spot Frames, Combination of Network Elements and Switching

On Behalf of the Staff of the New Mexico Public Regulation Commission

Direct

September 16, 2002

Before the New Mexico Public Regulation Commission

Docket No. 95-572-TC

Petition of AT&T for IntraLATA Equal Access

On Behalf of MCI

Rebuttal

August 30, 1996

Before the New Mexico Public Regulation Commission

Docket No. 87-61-TC

Application of MCI for a Certificate of Public Convenience and Necessity

On Behalf of MCI

Direct

September 28, 1987

Before the New York Public Service Commission

Case No. 07-C-0233

Petition of Neutral Tandem for Interconnection with Level 3 Communications, LLC and Request for Interim Order

On Behalf of Level 3

Direct

March 23, 2007



Timothy J Gates

Before the New York Public Service Commission

Case No. 28425

Comments of MCI Telecommunications Corporation on IntraLATA Presubscription

On Behalf of MCI

Initial Comments

April 30, 1992

Reply Comments

June 8, 1992

Before the North Carolina Public Utilities Commission

Docket No. P-886, SUB 1

Petition of Adelphia Business Solutions or North Carolina, LP for Arbitration with BellSouth

On Behalf of Adelphia

Direct

October 18, 2000

Rebuttal

December 8, 2000

Before the North Carolina Public Utilities Commission

Docket No. P779 SUB4

Petition of Level (3) Communications, LLC for Arbitration with Bell South

On Behalf of Level (3) Communications, LLC

Direct

August 4, 2000

Rebuttal

September 18, 2000

Before the North Dakota Public Service Commission

Case No. PU-08-97

Midcontinent Communications v. Consolidated Telecom -- Arbitration

On Behalf of Midcontinent

Direct

July 21, 2008

Before the North Dakota Public Service Commission

Case Nos. PU-08-61, PU-08-176, Consolidated

Midcontinent Communications v. Missouri Valley Communications, Inc. -- Arbitration

On Behalf of Midcontinent

Direct

July 2, 2008

Before the North Dakota Public Service Commission

Case No. PU-05-451

Midcontinent Communications v. North Dakota Telephone Company

On Behalf of Midcontinent

Direct

December 21, 2005

Rebuttal

January 16, 2006

Before the North Dakota Public Service Commission

Case No. PU-2342-01-296

Qwest Corporation Price Investigation

On Behalf of the CLEC Coalition (US Link, Inc., VAL-ED Joint Venture LLP d/b/a 702

Communications, McLeodUSA Telecommunications, Inc. and IdeaOne Telecom Group, LLC)

Direct

May 2, 2003



Timothy J Gates

Before the North Dakota Public Service Commission

Case No. PU-2065-02-465

Petition of Level 3 for Arbitration with SRT Communications Cooperative

On Behalf of Level (3) Communications, LLC

Direct

December 4, 2002

Before the North Dakota Public Service Commission

Case No. PU-2320-90-183

Implementation of SB 2320 -- Subsidy Investigation

On Behalf of MCI

Direct

June 24, 1991

Rebuttal

October 24, 1991

Before the Public Utilities Commission of Ohio

Case No. 04-35-TP-COI

In the Matter of the Implementation of the FCC's Triennial Review Regarding Local Circuit

Switching in the Cincinnati Bell Telephone Company's Mass Market

On Behalf of AT&T

Direct

February 26, 2004

Before the Oklahoma Corporation Commission

Cause No. 28713

Application of MCI for Additional CCN Authority to Provide IntraLATA Services

On Behalf of MCI

Direct

April 2, 1992

Rebuttal

June 22, 1992

Before the Oregon Public Utility Commission

Docket No. ARB 665

In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation

On Behalf of Level 3

Direct

August 12, 2005

Rebuttal

September 6, 2005

Before the Oregon Public Utility Commission

Docket No. UM 1058

Investigation into the Use of Virtual NPA/NXX Calling Patterns

On Behalf of Level (3) Communications, LLC

Comments/Presentation

November 6, 2002

Before the Oregon Public Utility Commission

Docket No. ARB 9

Interconnection Contract Negotiations Between MCImetro and GTE

On Behalf of MCI

Direct

October 11, 1996

Rebuttal

November 5, 1996



Timothy J Gates

Before the Oregon Public Utility Commission

Docket ARB3/ARB6

Petition of MCI for Arbitration with U S WEST Communications, Inc

On Behalf of MCI

Direct

September 6, 1996

Before the Oregon Public Utility Commission

Docket No. AR 154

Administrative Rules Relating to the Universal Service Protection Plan

On Behalf of MCI

Rebuttal

October 31, 1986

Before the Oregon Public Utility Commission

Docket No. UT 17

Pacific Northwest Bell Telephone Company Business Measured Service

On Behalf of the Public Utility Commissioner of Oregon

Direct

April 23, 1984

Rebuttal

May 7, 1984

Before the Oregon Public Utility Commission

Docket No. UT 9

Pacific Northwest Bell Telephone Company Business Measured Service

On Behalf of the Public Utility Commissioner of Oregon

Direct

October 27, 1983

Before the Pennsylvania Public Utility Commission

Docket No. A-310190

Petition of Comcast Business Communications, LLC d/b/a Comcast Long Distance for

Arbitration of an Interconnection Agreement with The United Telephone Company of

Pennsylvania LLC d/b/a Embarq Pennsylvania Pursuant to Section 252 of the Federal

Communications Act of 1934 as Amended, and Applicable State Law

On Behalf of Comcast

Direct

June 6, 2008

Rebuttal

July 9, 2008

Before the Pennsylvania Public Utility Commission

Docket Nos. A-310922F7003/A-310922F7038

Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms and

Conditions with the RTCC, the PTA and the Frontier Companies

On Behalf of Core

Direct

December 7, 2007

Rebuttal

February 5, 2008

Surrebuttal

March 4, 2008



Timothy J Gates

Before the Pennsylvania Public Utility Commission

Docket No. A-310922F7004

Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms and Conditions Pursuant to 47 USC §252(b) with Windstream Pennsylvania, Inc. f/k/a Alltell

On Behalf of Core

Direct

August 17, 2007

Rebuttal

September 6, 2007

Before the Pennsylvania Public Utility Commission

Docket No. A-310922F7002

Petition of Core Communications, Inc. for Arbitration with the United Telephone Company of Pennsylvania d/b/a Embarq

On Behalf of Core

Direct

April 27, 2007

Rebuttal

June 4, 2007

Before the Pennsylvania Public Utility Commission

Docket No. C-20028114

Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company

On Behalf of Level (3) Communications, LLC

Direct

September 5, 2002

Before the Pennsylvania Public Utility Commission

Docket No. I-00940034

Investigation Into IntraLATA Interconnection Arrangements (Presubscription)

On Behalf of MCI

Direct

December 9, 1994

Puerto Rico Telecommunications Board

Case No. JRT-2003-SC-2002

In the Matter of Regulation of Transit Traffic Service in Puerto Rico

On Behalf of Centennial Puerto Rico License Corp.

Affidavit

December 15, 2008

Puerto Rico Telecommunications Board

Case Nos. JRT-2008-AR-0001

Petition of Centennial Puerto Rico License Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Puerto Rico Telephone Company.

On Behalf of Centennial Puerto Rico License Corp.

Direct

June 9, 2008

Rebuttal

July 7, 2008



Timothy J Gates

Puerto Rico Telecommunications Board

Case Nos. JRT-2005-Q-0121, JRT-2005-Q-0128, JRT-2003-Q-0297, JRT-2004-Q-0068

Telefonica Larga Distancia de Puerto Rico, Inc., Worldnet Telecommunications, Inc., Sprint Communications Company, LP, and AT&T of Puerto Rico, Inc., v. Puerto Rico Telephone Company, Inc.

On Behalf of Centennial Puerto Rico License Corporation
Direct

January 19, 2006

Before the Rhode Island Public Utilities Commission

Docket No. 2089

Dialing Pattern Proposal Made by the New England Telephone Company

On Behalf of MCI
Direct

April 30, 1993

Before the South Carolina Public Service Commission

Docket No. 2000-516-C

Adelphia Business Solutions of South Carolina, Inc. Arbitration with BellSouth Telecommunications

On Behalf of Adelphia
Direct
Rebuttal

November 22, 2000
December 14, 2000

Before the South Carolina Public Service Commission

Docket No. 2000-0446-C

US LEC of South Carolina Inc. Arbitration with BellSouth Telecommunications

On Behalf of US LEC
Direct

October 20, 2000

Before the South Dakota Public Utilities Commission

Docket No. TC01-098

Determining Prices for Unbundled Network Elements (UNEs) in Qwest's Statement of Generally Available Terms (SGAT)

On Behalf of the Staff of the Public Utilities Commission
Direct

June 16, 2003

Before the South Dakota Public Utilities Commission

Docket No. TC03-057

Application of Qwest to Reclassify Local Exchange Services as Fully Competitive

On Behalf of WorldCom, Inc., Black Hills FiberCom and Midcontinent Communications
Direct

May 27, 2003

Before the South Dakota Public Utilities Commission

Docket No. F-3652-12

Application of Northwestern Bell Telephone Company to Introduce Its Contract Toll Plan

On Behalf of MCI
Direct

November 11, 1987



Timothy J Gates

Before the Tennessee Regulatory Authority

Docket No. 00-00927

Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications

On Behalf of Adelphia

Direct

January 31, 2001

Rebuttal

February 7, 2001

Before the Texas Public Utilities Commission

PUC Case No. 35869

Petition of Charter Fiberlink TX-CCO, LLC for Arbitration of Interconnection Agreement with CenturyTel of Lake Dallas, Inc.

On Behalf of Charter Fiberlink LLC

Direct

October 3, 2008

Rebuttal

October 17, 2008

Before the Texas Public Utilities Commission

PUC Docket No. 35402

Petition of Comcast Phone of Texas, LLC for Arbitration with United Telephone Company of Texas, Inc. d/b/a Embarq Pursuant to Section 252 of the Federal Communications Act of 1934, as Amended, and Applicable State Laws.

On Behalf of Comcast

Direct

April 14, 2008

Rebuttal

April 28, 2008

Before the Texas Public Utilities Commission

PUC Docket No. 28821

Arbitration of Non-costing Issues for Successor Interconnection Agreement to the Texas 271 Agreement

On Behalf of KMC Telecom III, LLC, KMC Telecom V, Inc. (d/b/a KMC Network Services, Inc.), and KMC Data, LLC

Direct

July 19, 2004

Rebuttal

August 23, 2004

Before the Texas Public Utilities Commission

PUC Docket No. 26431

Petition of Level 3 for Arbitration with CenturyTel of Lake Dallas, Inc. and CenturyTel of San Marcos, Inc.

On Behalf of Level (3) Communications, LLC

Direct

October 10, 2002

Reply

October 16, 2002

Before the Texas Public Utilities Commission

PUC Docket No. 22441

Petition of Level 3 for Arbitration with Southwestern Bell Telephone Company

On Behalf of Level (3) Communications, LLC

Direct

June 5, 2000

Rebuttal

June 12, 2000



Timothy J Gates

Before the Utah Public Service Commission

Docket No. 03-999-04

In the Matter of a Proceeding to Address Actions Necessary to Respond to the FCC's Triennial Review Order

On Behalf of WorldCom, Inc. (MCI)

Direct

January 13, 2004

Before the Utah Public Service Commission

Docket No. 00-999-05

In the Matter of the Investigation of Inter-Carrier Compensation for Exchanged ESP Traffic

On Behalf of Level 3 Communications, LLP

Direct

February 2, 2001

Before the Utah Public Service Commission

Docket No. 97-049-08

USWC Rate Case

On Behalf of MCI

Surrebuttal

Revised Direct

September 3, 1997

September 29, 1997

Before the Utah Public Service Commission

Docket No. 96-095-01

MCImetro Petition for Arbitration with USWC Pursuant to 47 U.S.C. Section 252

On Behalf of MCI

Direct

Rebuttal

November 8, 1996

November 22, 1996

Before the Utah Public Service Commission

Case No. 83-999-11

Investigation of Access Charges for Intrastate InterLATA and IntraLATA Telephone Services

On Behalf of MCI

Direct

July 7, 1988

Before the Utah Public Service Commission

Case No. 87-049-05

Petition of the Mountain State Telephone and Telegraph Company for Exemption from

Regulation of Various Transport Services

On Behalf of MCI

Direct

November 16, 1987

Before the Washington Utilities and Transportation Commission

Docket No. UT-083041

In the Matter of Petition of Charter Fiberlink WA, CCVII, LLC for Arbitration of an Interconnection Agreement with Qwest Corporation

On Behalf of Charter

Direct

Rebuttal

October 8, 2008

November 17, 2008



Timothy J Gates

Before the Washington Utilities and Transportation Commission

Docket No. UT-083025

In the Matter of Comcast Phone of Washington v. Embarq; Arbitration for Interconnection

On Behalf of Comcast

Direct
Rebuttal

July 2, 2008
August 1, 2008

Before the Washington Utilities and Transportation Commission

Docket No. UT-033011

In the Matter of Washington Utilities and Transportation Commission, Petitioners, v. Advanced Telecom Group, Inc., et al, Respondents

On Behalf of Time Warner Telecom of Washington, LLC

Direct

September 13, 2004

Before the Washington Utilities and Transportation Commission

Docket No. UT-030614

In the Matter of the Petition of Qwest Corporation for Competitive Classification of Basic Exchange Telecommunications Services

On Behalf of MCI, Inc.

Direct
Rebuttal

August 13, 2003
August 29, 2003

Before the Washington Utilities and Transportation Commission

Docket No. UT-021569

Developing an Interpretive or Policy Statement relating to the Use of Virtual NPA/NXX Calling Patterns

On Behalf of MCI, KMC Telecom, and Level (3) Communications, LLC
Workshop Participation

May 1, 2003

Before the Washington Utilities and Transportation Commission

Docket No. UT-021569

Developing an Interpretive or Policy Statement relating to the Use of Virtual NPA/NXX Calling Patterns

On Behalf of WorldCom, Inc. and KMC Telecom
Comments

January 31, 2003

Before the Washington Utilities and Transportation Commission

Docket No. UT-023043

Petition of Level 3 for Arbitration with CenturyTel of Washington, Inc.

On Behalf of Level (3) Communications, LLC

Direct
Rebuttal

October 18, 2002
November 1, 2002

Before the Washington Utilities and Transportation Commission

Docket No. UT-003013, Part D

Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination

On Behalf of WorldCom, Inc.

Direct

December 21, 2001



Timothy J Gates

Before the Washington Utilities and Transportation Commission

Docket No. UT-970325

Rulemaking Workshop re Access Charge Reform and the Cost of Universal Service

On Behalf of MCI

Comments and Presentation

January 13, 1998

Before the Washington Utilities and Transportation Commission

Docket No. UT-960338

Petition of MCI Metro for Arbitration with GTE Northwest, Inc., Pursuant to 47 U.S.C.252

On Behalf of MCI

Direct

October 11, 1996

Rebuttal

November 20, 1996

Before the Washington Utilities and Transportation Commission

Docket No. U-88-2052-P

Petition of Pacific Northwest Bell Telephone Company for Classification of Services as Competitive

On Behalf of MCI

Direct

September 27, 1988

Before the West Virginia Public Service Commission

Case No. 97-1338-T-PC

Petition of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.

On Behalf of MCI

Rebuttal

June 18, 1998

Before the West Virginia Public Service Commission

Case No. 94-0725-T-PC

Bell Atlantic - West Virginia Incentive Regulation Plan

On Behalf of MCI

Direct

October 11, 1994

Before the Wisconsin Public Service Commission

Docket Nos. 05-MA-148 and 05-MA-149

Petition of Charter Fiberlink LLC for Arbitration with CenturyTel Rural and Non-Rural Telephone Companies of Wisconsin

On Behalf of Charter Fiberlink LLC

Direct

November 7, 2008

Rebuttal

November 24, 2008

Before the Wisconsin Public Service Commission

Docket No. 05-MA-135

Petition of Level 3 for Arbitration with Wisconsin Bell, Inc. d/b/a/ SBC Wisconsin

On Behalf of Level (3) Communications, LLC

Direct

September 1, 2004



Timothy J Gates

Before the Wisconsin Public Service Commission

Docket No. 05-MA-130

Petition of Level 3 for Arbitration with CenturyTel

On Behalf of Level (3) Communications, LLC

Direct

September 30, 2002

Reply

October 9, 2002

Before the Wisconsin Public Service Commission

Docket No. 05-NC-102

Petition of MCI for IntraLATA 10XXX 1+ Authority

On Behalf of MCI

Direct

April 3, 1992

Before the Wisconsin Public Service Commission

Docket No. 05-TR-103

Investigation of Intrastate Access Costs and Intrastate Access Charges

On Behalf of MCI

Direct

November 15, 1990

Before the Wisconsin Public Service Commission

Docket No. 2180-TR-102

GTE Rate Case and Request for Alternative Regulatory Plan

On Behalf of MCI

Direct

October 1, 1990

Rebuttal

October 15, 1990

Before the Wisconsin Public Service Commission

Docket No. 6720-TR-104

Wisconsin Bell Rate Case

On Behalf of MCI

Direct

April 16, 1990

Before the Wisconsin Public Service Commission

Docket No. 05-TR-102

Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges

On Behalf of MCI

Direct

December 1, 1989

Before the Wisconsin Public Service Commission

Docket No. 6720-TI-102

Review of the WBI Rate Moratorium

On Behalf of MCI

Direct

October 9, 1989

Rebuttal

November 17, 1989



Timothy J Gates

Before the Wisconsin Public Service Commission

Docket No. 05-TI-112

Disconnection of Local and Toll Services for Nonpayment -- Part A; Examination of Industry Wide Billing and Collection Practices -- Part B

On Behalf of MCI

Direct

July 5, 1989

Rebuttal

July 12, 1989

Before the Wisconsin Public Service Commission

Docket No. 6720-TR-103

Investigation Into the Financial Data and Regulation of Wisconsin Bell, Inc.

On Behalf of MCI

Rebuttal

May 11, 1989

Before the Wisconsin Public Service Commission

Docket No. 05-NC-100

Amendment of MCI's CCN for Authority to Provide IntraLATA Dedicated Access Services

On Behalf of MCI

Direct

May 1, 1989

Before the Wisconsin Public Service Commission

Docket No. 6720-TI-102

Review of Financial Data Filed by Wisconsin Bell, Inc.

On Behalf of MCI

Direct

March 6, 1989

Before the Wisconsin Public Service Commission

Docket No. 05-TI-116

In the Matter of Provision of Operator Services

On Behalf of MCI

Rebuttal

December 12, 1988

Before the Wisconsin Public Service Commission

Docket No. 05-TR-102

Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges

On Behalf of MCI

Direct

October 31, 1988

Rebuttal

November 14, 1988

Before the Wyoming Public Service Commission

Docket No. 70043-TK-05-10; Docket No. 70000-TK-05-1132; Record No. 9891

In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation

On Behalf of Level 3

Direct

September 8, 2005

Rebuttal

November 18, 2005



Timothy J Gates

Before the Wyoming Public Service Commission

Docket No. 9746 Sub 1

Application of MCI for a Certificate of Public Convenience and Necessity

On Behalf of MCI

Direct

June 17, 1987

Before the Wyoming Public Service Commission

Docket No. 72000-TC-97-99

In the Matter of Compliance with Federal Regulations of Payphones

On Behalf of MCI

Oral Testimony

May 19, 1997

Comments Submitted to the Federal Communications Commission and/or the Department of Justice

Comments to the Department of Justice (Task Force on Telecommunications) on the Status of OSS Testing in Arizona and the USWC Collaborative on Behalf of MCI WorldCom, Inc.

November 9, 1999

Comments to FCC Staff of Common Carrier Bureau on the Status of OSS Testing in Arizona on Behalf of MCI WorldCom, Inc.

November 9, 1999

Presentation to FCC Staff on the Status of Intrastate Competition on Behalf of MCI.

February 16, 1995

Ameritech Transmittal No. 650

Petition to Suspend and Investigate on Behalf of MCI re Ameritech 64 Clear Channel Capability Service.

September 4, 1992

Ameritech Transmittal No. 578

Petition to Suspend and Investigate on Behalf of MCI re Ameritech Directory Search Service.

November 27, 1991

CC Docket No. 91-215

Opposition to Direct Cases of Ameritech and United (Ameritech Transmittal No. 518; United Transmittal No. 273) on Behalf of MCI re the introduction of 64 Kbps Special Access Service.

October 15, 1991

Ameritech Transmittal No. 562

Petition to Suspend and Investigate on Behalf of MCI re Proposed Rates and Possible MFJ Violations Associated with Ameritech's OPTINET Reconfiguration Service (AORS).

September 30, 1991

Ameritech Transmittal No. 555

Petition to Suspend and Investigate on Behalf of MCI re Ameritech Directory Search Service.

August 30, 1991

Ameritech Transmittal No. 526

Petition to Suspend and Investigate on Behalf of MCI re Proposed Flexible ANI Service.

April 17, 1991



Timothy J Gates

Ameritech Transmittal No. 518
Petition to Suspend and Investigate on Behalf of MCI re Proposed Rates for OPTINET 64 Kbps Service.

March 6, 1991

Selected Reports, Presentations and Publications

COMPTTEL PLUS Spring 2009 Regulatory Workshop; Sponsored by Davis Wright Tremaine LLP; "Critical Telecom Issues Now and On the Horizon"; March 5, 2009.

CLE International 10th Annual Conference, "Telecommunications Law," "Technology Update – The State of Wireless Technologies in Canada – A Comparison of Wireless Technologies in Canada and the United States of America."
December 13-14, 2007

"The State of Wireless Technologies in Canada – A Comparison of Wireless Technologies in Canada and the United States of America"; Presented to Bell Canada Enterprises.
May 25, 2007.

CLE International 8th Annual Conference, "Telecommunications Law," "VoIP and Brand X – Legal and Regulatory Developments."
December 8-9, 2005

QSI Technical Report No. 012605A "IP-Enabled Voice Services: Impact of Applying Switched Access Charges to IP-PSTN Voice Services"
Ex Parte filing in FCC dockets WC Dockets No. 04-36 (In the Matter of IP-Enabled Services), 03-266 (In the Matter of Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b); IP Enabled Services)
Washington DC, January 27, 2005

QSI Report to the Wyoming Legislature "The Wyoming Universal Service Fund. *An Evaluation of the Basis and Qualifications for Funding*" December 3, 2004.

Presentation to the Iowa Senate Committee Regarding House Study Bill 622/Senate Study Bill 3035; Comments on Behalf of MCI
February 19, 2004

National Association of Regulatory Utility Commissioners Summer Committee Meetings; Participated in Panel regarding "Wireless Substitution of Wireline – Policy Implications."
July 25, 2003

Seminar for the New York State Department of Public Service entitled "Emerging Technologies and Convergence in the Telecommunications Network". Presented with Ken Wilson of Boulder Telecommunications Consultants, LLC
February 19-20, 2003



Timothy J Gates

"Litigating Telecommunications Cost Cases and Other Sources of Enlightenment"; Educational Seminar for State Commission and Attorney General Employees on Litigating TELRIC Cases; Denver, Colorado.
February 5-6, 2002

Illinois; Presentation to the Environment & Energy Senate Committee re Emerging Technologies and Their Impact on Public Policy, on Behalf of MCI WorldCom, Inc.
March 8, 2000

"Interpreting the FCC Rules of 1997"; The Annenberg School for Communication at the University of Southern California; Panel Presentation on Universal Service and Access Reform.
October 23, 1997

"NECA/Century Access Conference"; Panel Presentation on Local Exchange Competition.
December 13-14, 1995

"TDS Annual Regulatory Meeting"; Panel Presentation on Local Competition Issues.
August 29, 1995

"Phone+ Supershow '95"; Playing Fair: An Update on IntraLATA Equal Access; Panel Presentation.
August 28-30, 1995

"The LEC-IXC Conference"; Sponsored by Telecommunications Reports and Telco Competition Report; Panel on Redefining the IntraLATA Service Market -- Toll Competition, Extended Area Calling and Local Resale.
March 14-15, 1995

The 12th Annual National Telecommunications Forecasting Conference; Represented IXCs in Special Town Meeting Segment Regarding the Convergence of CATV and Telecommunications and other Local Competition Issues.
May 23-26, 1994

TeleStrategies Conference -- "IntraLATA Toll Competition -- Gaining the Competitive Edge"; Presentation on Carriers and IntraLATA Toll Competition on Behalf of MCI.
May 13-14, 1993

NARUC Introductory Regulatory Training Program; Panel Presentation on Competition in Telecommunications on Behalf of MCI.
March 14-17, 1993

TeleStrategies Conference -- "IntraLATA Toll Competition -- A Multi-Billion Dollar Market Opportunity." Presentations on the interexchange carriers' position on intraLATA dialing parity and presubscription and on technical considerations on behalf of MCI.
December 2-3, 1992



Timothy J Gates

North Dakota Association of Telephone Cooperatives Summer Conference, July 8-10, 1992.
Panel presentations on "Equal Access in North Dakota: Implementation of PSC Mandate" and
"Open Network Access in North Dakota" on Behalf of MCI.
July 9, 1992

TeleStrategies Conference -- "Local Exchange Competition: The \$70 Billion Opportunity."
Presentation as part of a panel on "IntraLATA 1+ Presubscription" on Behalf of MCI.
November 19, 1991

Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation Course; May
13-16, 1991; Participated in IntraLATA Toll Competition Debate on Behalf of MCI.
May 16, 1991

Michigan; Presentation to the Michigan Senate Technology and Energy Commission and the
House Public Utilities Committee re MCI's Building Blocks Proposal and SB 124/HB 4343.
May 15, 1991

Wisconsin; Comments Before the Wisconsin Assembly Utilities Committee Regarding the
Wisconsin Bell Plan for Flexible Regulation, on Behalf of MCI.
May 16, 1990

Michigan; Presentation to the Michigan Senate Technology and Energy Committee re SB 124 on
behalf of MCI.
March 20, 1991

Illinois Telecommunications Sunset Review Forum; Two Panel Presentations: Discussion of the
Illinois Commerce Commission's Decision in Docket No. 88-0091 for the Technology Working
Group; and, Discussion of the Treatment of Competitive Services for the Rate of Return
Regulation Working Group; Comments on Behalf of MCI.
October 29, 1990

Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation; May 14-18,
1990; Presentation on Alternative Forms of Regulation.
May 16, 1990

Michigan; Presentation Before the Michigan House and Senate Staff Working Group on
Telecommunications; "A First Look at Nebraska, Incentive Rates and Price Caps," Comments on
Behalf of MCI.
October 30, 1989

National Association of Regulatory Utility Commissioners -- Summer Committee Meeting, San
Francisco, California. Panel Presentation -- Specific IntraLATA Market Concerns of
Interexchange Carriers; Comments on Behalf of MCI.
July 24, 1989

Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation; May 15-18,
1989; Panel Presentation -- Interexchange Service Pricing Practices Under Price Cap Regulation;
Comments on Behalf of MCI.
May 17, 1989



Timothy J Gates

Minnesota; Senate File 677; Proposed Deregulation Legislation; Comments before the House
Committee on Telecommunications.
April 8, 1987

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN MAYES, Chairman
GARY PIERCE, Commissioner
SANDRA KENNEDY, Commissioner
PAUL NEWMAN, Commissioner
BOB STUMP, Commissioner

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

EXHIBIT TG-2

DESCRIPTION OF QWEST'S OSS TESTING IN RELATION TO 271 AUTHORITY

BOC Requirements for Nondiscriminatory Access to OSS Pursuant to Section 271

Because Qwest is a Bell Operating Company (BOC) in its 14-state local service territory, it is required to demonstrate and maintain compliance with the competitive checklist under Section 271 of the Telecommunications Act in order for Qwest to provide in-region, interLATA long distance service. A primary component of satisfying the competitive checklist is for Qwest to show that it provides nondiscriminatory access to Operations Support Systems (OSS) under checklist item 2 pursuant to Section § 271(c)(2)(B)(ii). The FCC defines OSS to include five functions: (1) pre-ordering, (2) ordering, (3) provisioning, (4) maintenance and repair, and (5) billing.¹ The FCC also requires an adequate change management process (CMP) to handle changes to the OSS systems.² To satisfy its obligations under Section 271 regarding OSS, a BOC must show that it provides access to OSS for competitive LECs (CLECs) to perform functions in substantially the same time and manner as the BOC's retail operations, or (for functions with no retail analogue) must show that the access affords an efficient competitor a "meaningful opportunity to compete."³ The FCC uses a two-step approach to determine whether a BOC satisfies this obligation:

- Step 1 is determining whether the BOC has deployed the necessary systems, databases, and personnel to provide sufficient access to each of the necessary OSS functions, and whether the BOC is adequately assisting CLECs to understand and implement and use all of the OSS functions available.

¹ FCC Memorandum Opinion and Order, WC Docket No. 02-314 (FCC 02-332), December 23, 2002 ("Qwest 9 State 271 Order"), ¶ 33.

² Qwest 9 State 271 Order, ¶ 34.

³ Qwest 9 State 271 order, ¶ 38.

- Step 2 is determining whether the deployed OSS functions are operationally ready as a practical matter.⁴ The FCC has said that the most probative evidence that OSS functions are operationally ready is actual commercial usage.⁵

Qwest's OSS Underwent Extensive Testing to Determine Whether the Nondiscrimination Standard was Met

Qwest's OSS underwent extensive testing in conjunction with Qwest's pursuit of 271 relief. This testing involved the participation of Qwest, numerous CLECs, commission staffs from all 14 state commissions in Qwest's local service territory, numerous state regulatory commissioners, six separate vendors, a multi-state collaborative and a third-party facilitator. The testing involved an evaluation of Qwest's OSS systems, OSS processes, underlying data and collection, CMP, performance assurance plan (PAP) and Performance Indicator Definitions (PIDs). The testing process and evaluation lasted more than three years.⁶ During the testing and evaluation process countless conference calls and workshops were held, third-party testing occurred, testimony was submitted and hearings were held to address the testing process and results, and those results were examined by numerous state commissions and the FCC. The FCC considered the analyses and conclusions drawn by state commissions about Qwest's OSS when evaluating Qwest's compliance with the Section 271 competitive checklist.

Regional Oversight Committee & Third Party Vendors

In 1999, a collaborative process was initiated by the Regional Oversight Committee (ROC) to "design and execute a third-party OSS test to ensure that Qwest's wholesale support

⁴ Minnesota PUC Docket No. P-421/CI-01-1371, Commission Findings of Fact, Conclusions of Law, and Recommendations, January 24, 2003, p. 74; See Also Qwest 9 State 271 Order, Appendix K, ¶ 29.

⁵ Id. at p. 75. See also, Qwest 9 State 271 Order, Appendix K, ¶ 31.

⁶ The Regional Oversight Committee was initiated in mid to late 1999 and the FCC issued its first order on Qwest's 271 applications in December 2002.

systems would be available to competitive LECs in an open and non-discriminatory manner.”⁷

The ROC consisted of participants from 13 of the 14 state commissions from Qwest’s local service region,⁸ and was charged with designing the structure of the collaborative process, determining the scope of the OSS test, selecting third-party testers⁹ and designing a Master Test Plan (MTP) and PIDs.¹⁰ The structure of the ROC included an executive committee, a steering committee, and a Technical Advisory Group (TAG).¹¹ The ROC executive committee consisted of seven state commissioners; the ROC steering committee consisted of state commission staffs; and the TAG was a collaborative group including Qwest, CLECs, state commission staffs and industry representatives.¹² The TAG provided technical assistance, subject matter planning, developed principles applied during the development and conduct of the test, assisted in reviewing the results of the test, and sought comment and reached agreement on the PIDs to use to measure Qwest’s commercial performance.¹³ Issues and disputes were first addressed by TAG and escalated first to the steering committee, and then escalated to the executive committee (as needed).

⁷ Qwest 9 state 271 Order, ¶ 9.

⁸ The Arizona Corporation Commission did not participate in the 13-state ROC, but instead conducted its own OSS test using Cap Gemini Ernst & Young (CGE&Y) as the OSS third-party tester, HP as the pseudo-CLEC, and Liberty for data reconciliation. The third-party test conducted by CGE&Y in Arizona was similar to the ROC OSS test, and included a TAG, a Master Test Plan, a military-style test, performance measures audit, etc. See, CGE&Y Final Report of the Qwest OSS Test, dated May 3, 2002 (Version 3.0) and CPGE&Y Functionality Test Results Comparison Report, March 29, 2002. *See also*, Memorandum Opinion and Order, WC Docket No. 03-194 (FCC 03-309), December 3, 2003 (“Qwest Arizona 271 Order”), ¶¶ 5 and 16. *See also*, Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003, p. 3.

⁹ The FCC states that a “third-party test provides an objective means by which to evaluate a BOC’s OSS readiness.” Qwest 9 State 271 Order, ¶ 49.

¹⁰ Qwest 9 State 271 Order, ¶ 9.

¹¹ See, e.g., Qwest 9 State 271 Order, fn. 15 and ¶ 10.

¹² Id.

¹³ Qwest 9 State 271 Order, ¶ 10. *See also*, KPMG Draft Final Report on Qwest Communications OSS Evaluation, dated April 26, 2002 (“KPMG 4/26/02 Draft Final Report”), Evaluation Overview, p. 8.

The ROC hired the National Regulatory Research Institute (NRRI) as the Project Administrator and Maxim Telecom Group as the Project Manager in July 1999 and September 1999, respectively.¹⁴ In September 1999, the ROC and Qwest agreed on a regional approach for OSS third-party testing¹⁵ and by November 1999 the ROC was meeting weekly (or more often) to carry out this charge.¹⁶ On March 9, 2000, the ROC issued the Test Requirements Document (TRD) to define the scope and specific approaches to testing, and to define the roles for the three testing vendors – the Test Administrator, the pseudo-CLEC and Performance Measures Auditor.¹⁷ The TRD specified that third-party testing should cover the following service delivery methods: resale, UNE loops, UNE-Platform, UNE combinations, unbundled dedicated transport, others methods of delivery that become available during testing. In addition, the TRD identified four OSS functions – or “domains” – for testing purposes: (1) pre-order, order and provisioning (POP), (2) Maintenance and Repair (M&R), (3) Billing, and (4) Relationship Management and Infrastructure. Further, the TRD required normal, peak and stress volume testing of OSS interfaces supporting preordering, ordering, and M&R functions for resale and UNE services.¹⁸ The TRD was used to solicit proposals from prospective vendors.

In July 2000, the ROC selected KPMG Consulting (KPMG) as the test administrator and Hewlett Packard (HP) as the pseudo-CLEC.¹⁹ As a “pseudo-CLEC,” HP’s role was to replicate the conduct of a CLEC interfacing with Qwest’s OSS systems to determine if Qwest’s OSS was

¹⁴ Washington Docket Nos. UT-003022/UT-003040, 39th Supplemental Order, dated July 1, 2002 (“Washington 39th Supplemental Order”), ¶ 105. *See also*, Qwest Corp. Comments in Washington Docket Nos. UT-003022/003040, dated June 3, 2002, p. 8 (“Qwest Washington Comments”).

¹⁵ Washington 39th Supplemental Order, ¶ 105.

¹⁶ Washington 39th Supplemental Order, ¶ 107.

¹⁷ KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 8.

¹⁸ KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 9.

¹⁹ Qwest 9 State 271 Order, ¶ 10.

operationally ready to handle the types of orders and transactions that CLECs would actually submit in a commercial environment, and to ensure that OSS provided the information and tools necessary for a CLEC to interface with Qwest. HP's role was like that of a CLEC Information Technology and Order Operations Group, and included HP establishing electronic bonding with Qwest, translating back and forth between business rule and electronic interface rule formats, creating and tracking orders, resolving problems with missing orders and responses, and entering trouble tickets.²⁰ The ROC also hired the Liberty Consulting Group (Liberty) to conduct an audit of Qwest's performance data, verify the integrity of Qwest's commercial data, perform data reconciliation and validate each PID.²¹

The OSS Test

One of the first steps of third-party testing was KPMG's Regional Differences Assessment (RDA), which was performed to determine the extent to which Qwest's systems were similar or different across Qwest's region, such that a regional OSS test would be appropriate.²² According to KPMG, the results of the RDA showed that Qwest's systems were sufficiently similar across its region to perform a regional OSS test,²³ and KPMG tailored the test to address any state or regional differences so that the test environment represented the 13 states participating in the ROC.²⁴

²⁰ KPMG 4/26/10 Draft Final Report, Evaluation Overview, p. 10.

²¹ Qwest 9 State 271 Order, ¶ 13. Arizona, the only state in Qwest's region not to participate in the ROC, selected Cap Gemini Ernst & Young (CGE&Y) to serve as test administrator and HP to serve as the pseudo-CLEC.

²² Qwest 9 State 271 Order, ¶ 11.

²³ Qwest 9 State 271 Order, ¶ 11.

²⁴ Qwest 9 State 271 Order, ¶ 36.

KPMG, with assistance from the TAG, developed the Master Test Plan (MTP) based on the TRD. The MTP contained “a description of a comprehensive plan to test Qwest’s OSS, interfaces and processes”²⁵ and was designed to “...evaluate the operational readiness, performance and capability of Qwest to provide pre-ordering, ordering, provisioning, maintenance and repair and billing Operations Support Systems (OSS) documentation, interfaces, and functionality to....CLECs.”²⁶

As noted above, the MTP required KPMG to test Qwest’s OSS in relation to four “domains” (or business functions): (i) POP, (ii) M&R, (iii) Billing and (iv) Relationship Management and Infrastructure.²⁷ The MTP identified tests by domain and explained the objective for each test and criteria for passing each test.²⁸ Two types of testing were used for Qwest’s OSS: (1) a “transaction” test that tested real-world conditions of the pseudo-CLEC (HP) during which the pseudo-CLEC submitted the same types of pre-order, order and repair transactions as a real CLEC (*i.e.*, what KPMG referred to as “to live the CLEC experience”²⁹), and (2) an operational analysis test that examined the form, structure, and content of Qwest’s business practices. This second type of testing by KPMG was accomplished by evaluating Qwest’s day-to-day operations, as well as reviewing management practices and operating procedures in relation to legal/statutory requirements or “best practices.”³⁰ The OSS test was designed as a “military-style” test, or “test until pass” approach, whereby KPMG tested and re-

²⁵ Washington 39th Supplemental Order, ¶ 109, quoting the MTP.

²⁶ Washington 39th Supplemental Order, ¶ 109, quoting the MTP.

²⁷ Washington 39th Supplemental Order, ¶ 110.

²⁸ Washington 39th Supplemental Order, ¶ 110.

²⁹ KPMG 4/26/02 Draft Final Report Evaluation Overview, p. 10.

³⁰ Washington 39th Supplemental Order, ¶¶ 111-113. See also, KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 11.

tested until Qwest either satisfied the test or it was determined that further testing or action by Qwest would not be beneficial.³¹ The test was also designed to address commercial volumes of transactions. KPMG's test used projected transaction volumes simulating peak (150% of normal) and stress (250% of normal) transaction volume conditions.³²

Actual transactional testing of Qwest's OSS began on April 9, 2001.³³ Transactional-based testing was used extensively in the POP, M&R and Billing domains.³⁴ KMPG and HP's third-party testing of the POP domain included transactions submitted via two pre-ordering interfaces (Electronic Data Interexchange (EDI) interface and Graphical User Interface (GUI)) as well as facsimile and a participating CLEC's EXACT/TELIS system.³⁵ The M&R domain testing involved submitting trouble tickets through the Customer Electronic and Maintenance and Repair (CEMR) and Electronic Bonding – Trouble Administration (EB-TA) interfaces. The Billing domain was tested by evaluating three regional (Central, Eastern and Western) Customer Records Information Systems (CRIS) invoicing systems and the Daily Usage Feed (DUF) process.³⁶ During the transaction testing in the ROC OSS test, third-party vendors submitted more than 21,000 pre-order transactions, more than 600 pre-order test cases,³⁷ 4,058 IMA-GUI transactions, 17,486 IMA-EDI transactions,³⁸ 4,300 initial order test scenarios and more than

³¹ Washington 39th Supplemental Order, ¶ 114. See also, KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 11.

³² Qwest 9 State 271 Order, ¶ 108.

³³ Qwest Washington Comments, p. 16.

³⁴ KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 10.

³⁵ KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 10.

³⁶ KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 10.

³⁷ Qwest Washington Comments, p. 26.

³⁸ Qwest Washington Comments, p. 26.

3,500 order retest scenarios.³⁹ During the transaction testing in the Arizona OSS test, more than 10,000 pre-order transactions were executed, more than 1,700 ordering and provisioning transactions were executed, and more than 80 M&R transactions executed.⁴⁰

Ultimately, the third-party testing of Qwest's OSS evaluated Qwest's performance in the following areas: POP functionality and performance versus parity standards and benchmarks (Test 12), loop qualification process "parity by design" (Test 12.7), POP manual order processing (Test 12.8), order flow-through (Test 13), provisioning (Test 14), provisioning process parity (Test 14.7), provisioning coordination process (Test 14.8), POP volume performance test (Test 15), CEMR functional and performance (Test 16), MEDIACC (EB-TA) M&R trouble functional (Test 17), M&R end-to-end trouble reporting processing (Test 18), M&R work center support process (Test 18.7), end-to-end M&R process (Test 18.8), billing usage functional (Test 19), DUF returns, production and distribution processes (Test 19.6), carrier bill functional (Test 20), bill production and distribution process (Test 20.7), CLEC network provisioning – network design request, collocation and interconnection trunks (Test 22), change management (Test 23), account establishment and management (Test 24.3), CLEC forecasting (Test 24.4), CLEC training (Test 24.5), OSS interface development (Test 24.6), wholesale systems help desk (Test 24.7), interconnect service center support (Test 24.8), network surveillance and outage support (Test 24.9), and ISC/billing and collection center (Test 24.10).⁴¹

³⁹ Qwest Washington Comments, p. 33.

⁴⁰ CGE&Y Final Report of the Qwest OSS Test, May 3, 2002, p. 15.

⁴¹ KPMG 4/26/02 Draft Final Report, Section III (Test Summaries).

During the 271 evaluation process, Qwest completely revamped its change management process in the “CMP Redesign” process⁴² by a redesign team consisting of CLECs, Qwest, state commission staffs, and third-party vendors (i.e., KPMG for the ROC test and CPGE&Y for the test in Arizona).⁴³ The re-designed CMP was memorialized in the “Qwest Wholesale Change Management Process Document.” KPMG evaluated Qwest’s revamped CMP process during the ROC test, testing separately for systems changes and product/process changes.⁴⁴ KPMG specifically tested the following:

- whether the CMP responsibilities and activities were defined;
- whether the CMP is in place and documented;
- whether a framework exists to evaluate/categorize/prioritize proposed changes;
- whether it allowed input from interested parties;
- the Stand-Alone Test environment for CLECs to test new releases in a non-production environment; and,
- whether Qwest’s CMP contained time intervals for considering and notifying CLECs about change requests.⁴⁵

The third-party test also included an audit of Qwest’s performance assurance plan (QPAP) (a self-executing remedy plan to ensure Qwest continues to comply with the competitive checklist)⁴⁶ and related PIDs (which are used in the QPAP to measure Qwest’s performance and

⁴² Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, 9/24/2003, p. 12.

⁴³ Qwest Washington Comments, p. 96.

⁴⁴ Washington 39th Supplemental Order, ¶ 193.

⁴⁵ Qwest 9 State 271 Order, ¶ 147. See also, Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003, p. 12.

⁴⁶ Washington Docket Nos. UT-003022/003040 30th Supplemental Order, April 2002 (“Washington 30th Supplemental Order”), ¶ 20. The QPAP requires Qwest to periodically submit reports to state commissions on Qwest’s wholesale service quality. See, e.g., New Mexico Utility Case No. 3269, et al., Final Order Regarding Compliance with Outstanding Section 271 Requirements, 2002 N.M. PUC LEXIS 2; 220 P.U.R. 4th 421 (10/8/2002). (“New Mexico PRC 271 Order”), ¶ 66.

to determine whether Qwest must make remedy payments to CLECs or the state for substandard wholesale service quality).⁴⁷

In August 2000, 11 states in Qwest's region formed a collaborative process known as the ROC Post-Entry Performance Plan (PEPP), after which a series of conference calls and five multi-day workshops were held to discuss and address issues related to Qwest's wholesale performance, including the QPAP.⁴⁸ Qwest filed its PAP on June 29, 2001, and a multi-state proceeding conducted by a third-party Facilitator from Liberty was initiated to review Qwest's PAP.⁴⁹ Qwest's PIDs were developed collaboratively by the ROC TAG for use in the third-party test to measure Qwest's ability to process commercial volumes through its OSS.⁵⁰ Qwest's PIDs measure performance in three ways: retail parity (for measures with retail analogues), benchmark (for measures without retail analogues) and "parity by design" (for measures without retail analogues or benchmarks).⁵¹ Statistical measurements (modified "z- tests") were used for determining whether Qwest satisfied the parity and benchmark performance measures.⁵² The MTP directed Liberty Consulting to "develop and perform an audit to insure that all aspects of Qwest's wholesale performance measures and retail parity standards are sound and in compliance with the collaboratively developed ROC PID."⁵³ During the testing of the PIDs, Qwest reported on anywhere between 656 and 850 sub-measures.⁵⁴ The ROC subsequently

⁴⁷ Washington 39th Supplemental Order, ¶ 29.

⁴⁸ Comments of the Nebraska Public Service Commission, WC Docket No. 02-148, July 3, 2002, p. 4.

⁴⁹ Washington 30th Supplemental Order, ¶¶ 10-11.

⁵⁰ Washington 39th Supplemental Order.

⁵¹ Washington 39th Supplemental Order, ¶ 32.

⁵² New Mexico PRC 271 Order, ¶ 65.

⁵³ Washington 39th Supplemental Order, ¶ 33.

⁵⁴ Order Regarding Operational Support Systems, ROC OSS Test, and Commercial Performance Data, South Dakota Public Service Commission Docket TC01-165, November 22, 2002 ("South Dakota PSC 271 Order"),

retained Liberty to conduct a data reconciliation audit, during which 10,000 orders or trouble tickets were evaluated.⁵⁵

KPMG's and HP's Final Report on Qwest's OSS testing was issued on May 28, 2002.⁵⁶ Likewise, CGE&Y's Final Report of the Qwest OSS Test was issued on May 3, 2002 (version 3.0). Liberty Consulting issued its PID audit Final Report for the ROC test on September 25, 2001,⁵⁷ and issued its Final Report on data reconciliation on April 19, 2002.⁵⁸

The OSS Test Identified Hundreds of Issues and Resulted in Substantial Improvement to Qwest's OSS

Overall, KPMG and HP executed a total of 32 tests, consisting of 711 evaluation criteria during the ROC OSS test.⁵⁹ There were 256 "Exceptions" and 242 "Observations" (or issues of concern) identified by KPMG and HP during the test, which through improvements to systems and retesting was reduced to 14 Exceptions and 1 Observation.⁶⁰ For the OSS testing conducted in Arizona, CGE&Y documented and addressed 399 issues identified during testing.⁶¹ As a result of this testing hundreds of issues of concern regarding Qwest's OSS were identified and resolved through OSS improvements and re-testing.

One such example that was identified through HP's work as a pseudo-CLEC related to Qwest's failure to properly process manually handled orders – a problem the Idaho Public

p. 4; Washington 39th Supplemental Order, ¶ 31; and Minnesota PUC Findings of Fact, Conclusions of Law and Recommendations, Docket No. CI-01-1371, January 24, 2003, p. 72.

⁵⁵ South Dakota PSC 271 Order, p. 22.

⁵⁶ Washington 39th Supplemental Order, ¶ 117; KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 14.

⁵⁷ Washington 39th Supplemental Order, ¶ 33.

⁵⁸ Washington 39th Supplemental Order, ¶ 37.

⁵⁹ Brief of Qwest Corp., WC Docket No. 02-148, June 13, 2002, p. 111.

⁶⁰ Qwest 9 State 271 Order, ¶ 12. See also, Washington 39th Supplemental Order, ¶ 115.

⁶¹ Qwest Arizona 271 Order, ¶ 17.

Utilities Commission described as “an unacceptably high level of human errors in the manual processing of orders.”⁶² For this problem, HP logged observations and exceptions to Qwest’s performance related to manually handled orders; Qwest then investigated the causes of the exceptions/observations (which revealed Qwest errors) and made improvements such as system upgrades,⁶³ additional training and revised documentation after which re-testing occurred. Further, KPMG developed, under the direction of the ROC, modified Qwest’s PIDs to ensure adequate performance for manually handled orders.⁶⁴ Similarly, Liberty Consulting discovered a number of deficiencies in Qwest’s measurement and reporting processes and PIDs during its audit, which when resolved, resulted in “significant improvements to both the processes used by Qwest and the specificity and clarity of the PID.”⁶⁵ Liberty’s data reconciliation audit also revealed the need for Qwest to revise its data collection efforts and provide additional user documentation and training.⁶⁶ One state commission which participated in this testing process stated that the OSS testing resulted in “meaningful and effective changes to Qwest’s systems and processes.”⁶⁷

The Testing of Qwest’s OSS was Extensive

⁶² Written Consultation of the Idaho Public Utilities Commission, WC Docket No. 02-148, June 11, 2002, p. 6.

⁶³ See, e.g., Qwest Washington Comments, p. 40 (“Qwest will implement an IMA 10.1 enhancement...substantially reducing manual processing errors in this area. In addition, Qwest has instituted an extensive quality assurance program...”)

⁶⁴ Qwest Manual Order Entry Performance Indicator Description Adequacy Study, issued by KPMG Consulting, June 11, 2002.

⁶⁵ Washington 39th Supplemental Order, ¶ 34 (quoting Liberty’s 9/25/01 Final Report).

⁶⁶ Washington 39th Supplemental Order, ¶¶ 35-39.

⁶⁷ Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003, p. 5.

According to Qwest, the ROC OSS test “was the most comprehensive and collaborative of all of the OSS tests conducted to date.”⁶⁸ Referring to KPMG’s OSS report, Qwest said: “This *Final Report* marked the culmination of more than three years of exhaustive and comprehensive effort, *unlike any seen before*, to determine whether Qwest’s OSS meet the standards set forth under Section 271 of the Telecommunications Act of 1996, as those standards have been amplified and applied by the FCC.”⁶⁹ Qwest also described the OSS testing as: “years of rigorous factfinding and analysis...”⁷⁰ and the Liberty audits as “extensive audits of Qwest’s performance measures.”⁷¹ Qwest’s opinion was shared by the state commissions that participated and oversaw the testing. For instance the Arizona Corporation Commission said: “The ACC believes that during the last four years, Qwest systems, processes, and performance measurements have undergone one of the most comprehensive reviews to-date...result[ing] in an extremely rigorous test, resolution of many disputed issues through compromise, and meaningful and effective changes to Qwest’s systems and processes.”⁷² The Colorado Public Utilities Commission referred to the testing process as “the epitome of collaborative, open decision making.”⁷³ Furthermore, the FCC said “the OSS testing conducted under the auspices of the ROC was broad-based and comprehensive.”⁷⁴

Today, despite the extensive industry efforts, Qwest’s OSS is not perfect from a CLEC perspective. Nevertheless, it is far better than it was prior to the OSS investigation and testing.

⁶⁸ Brief of Qwest Corp., WC Docket No. 02-148, June 13, 2002, p. 111.

⁶⁹ Qwest Verified Comments, Washington Docket No. UT-003022, pp. 1-2 (emphasis added).

⁷⁰ Reply Comments of Qwest Corp., WC Docket No. 02-148, p. 2.

⁷¹ Rebuttal Testimony of Renee Albersheim, Utah Docket No. 07-2263-03, July 27, 2007, p. 66, lines 16-19.

⁷² Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003, p. 5.

⁷³ Reply Comments of Qwest Corp., WC Docket No. 02-148, p. 2.

⁷⁴ Qwest 9 State 271 Order, ¶ 12.

Clearly the industry and consumers have benefitted from the Section 271 review process and the resulting changes that came from that extensive process.

The OSS Test Experience Demonstrates that Commitments on OSS Capabilities Must be Evaluated and Monitored

Before the test of Qwest's OSS test began, Qwest claimed that its OSS met the Section 271 obligations imposed on BOCs. In November 1999, Qwest testified:

US West has deployed the necessary system and personnel to provide sufficient access to its OSS, adequately assists CLECS to use all of the OSS functions available to them, and demonstrates that its OSS functions are operational ready, as a practical matter.⁷⁵

Qwest made the same claims regarding the CMP (or Co-Provider Industry Change Management Process or CICMP) process that existed in 1999.⁷⁶ However, this was *before* the hundreds of issues of concern regarding Qwest's OSS were identified and addressed through third-party testing, and *before* Qwest's CICMP was completely revamped into the CMP by the CMP Redesign. This was also *before* tens of millions of dollars⁷⁷ and countless hours⁷⁸ were spent to ensure that the OSS that Qwest uses in its BOC territories would provide CLECs with the same level of quality as Qwest's retail operations enjoy and a meaningful opportunity to compete.

⁷⁵ Colorado Docket 97I-198T, Notarianni Affidavit on behalf of US WEST, November 30, 1999, p. 4.

⁷⁶ See, e.g., *In the Matter of the Investigation into Qwest Corporation's Compliance with §271(C) of the Telecommunications Act of 1996*, Washington Docket No. UT-003022, Direct Testimony of James H. Allen on behalf of Qwest Corp., May 16, 2001, p. 5 ("Yes. The CICMP has been working effectively since Qwest implemented it.")

⁷⁷ See, e.g., US WEST's Status Report and Notice of Intent to File with FCC Pursuant to Section 27(C) of the Telecommunications Act of 1996, November 30, 1999, p. 27 ("US WEST has spent over \$160 million developing these interfaces and adjusting its systems to meet the demands of CLECs.") This does not account for the millions of dollars expended by CLECs to build interfaces with Qwest's OSS, observing and participating in testing process and related regulatory proceedings, etc.

⁷⁸ The Arizona Corporation Commission states: "The parties contributed extensive time, resources and expertise to the process over the last four years." Evaluation Report of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003, p. 5.

Obviously, the claims Qwest was making about its OSS and CMP back in 1999 – no matter how well-intentioned – did not square with the evidence that was subsequently collected and examined through third-party OSS testing.

This shows that CLEC concerns about the proposed acquisition of Qwest by CenturyLink are well-founded. CenturyLink and Qwest use different OSS, and, importantly, CenturyLink's OSS has not undergone the third-party OSS tests that brought about the "meaningful and effective changes to Qwest's systems and processes."⁷⁹ While CenturyLink is making similar statements about its OSS as Qwest made back in 1999,⁸⁰ the test of Qwest's OSS shows that these statements cannot be accepted at face value. Moreover, CenturyLink has indicated that CLECs should expect changes if the acquisition is approved without providing any information about those future changes.⁸¹ This is particularly concerning to CLECs because it is well-known that OSS in CenturyTel's legacy service territory has traditionally been overly-manual, and CenturyLink is still in the process of integrating OSS as a result of the CenturyTel/Embarq merger.

The FCC has found that CLECs would be "severely disadvantaged, if not precluded altogether, from fairly competing," if they did not have nondiscriminatory access to OSS,⁸² and Qwest has described its existing OSS as playing "a crucial role in the transactions between

⁷⁹ Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003, p. 5.

⁸⁰ See, e.g., Direct Testimony of Michael Hunsucker on behalf of CenturyLink, Inc. Oregon Docket UM-1484, June 22, 2010 ("Hunsucker Direct"), pp. 2-3. ("The purpose of my direct testimony is to: 1) provide an overview of the CTL Wholesale Operations organization, 2) provide a high level overview of CTL's ability to service our wholesale customers via our Operations Support System (OSS), and 3) **provide assurances** relative to the current obligations of Qwest relative to the CLEC market. . . . In addition, the combined company will continue to employ highly skilled and experienced personnel in its wholesale operations group.") (emphasis added)

⁸¹ See, e.g., Hunsucker Direct, p. 8 ("...so changes could be expected over time.")

⁸² FCC *Local Competition First Report and Order*, ¶518.

Qwest and all CLECs”⁸³ and “the lifeblood of...Qwest’s wholesale operation...”⁸⁴ The proposed merger should not be approved when the “lifeblood” of the CLECs’ relationship with Qwest is “up in the air.”

⁸³ Qwest Post Hearing Brief, Utah Docket 07-2263-03, p. 75.

⁸⁴ Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, p. 39.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN MAYES, Chairman
GARY PIERCE, Commissioner
SANDRA KENNEDY, Commissioner
PAUL NEWMAN, Commissioner
BOB STUMP, Commissioner

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

EXHIBIT TG-3

ASSURANCES NOT MET

USWC/Qwest 1999/2000 Assurances:

“In summary, US West has deployed the necessary system and personnel to provide sufficient access to its OSS, adequately assists CLECS to use all of the OSS functions available to them, and demonstrates that its OSS functions are operational ready, as a practical matter.” *USWC, CO 271 97I-198T, 11/30/99, Notarianni Affidavit, p. 4.*

- Type of interfaces: “US WEST meets [the FCC’s OSS] standards. US WEST will submit the testimony . . . which will demonstrate that, to provide CLECs nondiscriminatory access to OSS, US WEST has built a computer-to-computer EDI [Electronic Data Interchange] interface and a GUI [Graphical User Interface] interface called IMA.” *USWC Prelim. Statement, WUTC UT-970300, 3/22/00, p. 30.*

CenturyLink/Qwest 2010 Assurances:

“The purpose of my direct testimony is to: 1) provide an overview of the CTL Wholesale Operations organization, 2) provide a high level overview of CTL’s ability to service our wholesale customers via our Operations Support System (OSS), and 3) **provide assurances** relative to the current obligations of Qwest relative to the CLEC market. . . . In addition, the combined company will continue to employ highly skilled and experienced personnel in its wholesale operations group.” *CL OR Supp. Direct (Hunsucker), pp. 2-3.*

- Types of Interfaces: “EASE provides Wholesale customers with both a web-based GUI (graphical user interface) as well as electronic data interface options to allow flexibility to our customers in placing orders with CTL.” *Id. p. 7.*

After USWC/Qwest made similar assurances in 1999 and 2000, what happened?

NUMEROUS FAILINGS OF QWEST’S OSS SYSTEMS AND PROCESSES WERE IDENTIFIED AND RESOLVED THROUGH OSS IMPROVEMENTS OVER A 3-YEAR PERIOD

- KPMG performed third party testing of OSS, revealing hundreds of issues of concern (known as exceptions and observations). 256 Exceptions and 242 Observations identified during third-party testing, reduced to 14 Exceptions and 1 Observation through OSS improvements and re-testing.
- Hewlett Packard, acting as a pseudo CLEC, identified problems, such as the one described by the Idaho Public Utilities Commission as “an unacceptably high level of human errors in the manual processing of orders” that resulted in 75 Observations and Exceptions.
- Liberty Consulting, which audited both PIDs and data reconciliation (Qwest versus CLEC reporting), discovered a number of deficiencies in Qwest’s measurement and reporting processes and PIDs that, when addressed, resulted in what Liberty referred to as “significant improvements to both the processes used by Qwest and the specificity and clarity of the PID.” Liberty also identified problems during the data reconciliation audit, such as the need for additional user documentation and training, revised data collection efforts and computer programming fixes.

What did the third-party testing of Qwest's OSS indicate?

CLECs would have been “severely disadvantaged, if not precluded altogether, from fairly competing” absent the third-party testing of Qwest’s OSS. *See, Local Competition Order, ¶ 518.* In other words, there would have been no meaningful opportunity to compete.

Did USWC/Qwest systems eventually pass OSS testing for 271 purposes?

Yes, after addressing the numerous problems identified during third-party OSS testing

“This *Final Report* marked the culmination of more than three years of exhaustive and comprehensive effort, ***unlike any seen before***, to determine whether Qwest’s OSS meet the standards set forth under Section 271 of the Telecommunications Act of 1996, as those standards have been amplified and applied by the FCC.” *Qwest Verified Comments, WUTC UT-003022, pp. 1-2* (emphasis added).

Have CenturyLink's systems passed similar testing?

No.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN MAYES, Chairman
GARY PIERCE, Commissioner
SANDRA KENNEDY, Commissioner
PAUL NEWMAN, Commissioner
BOB STUMP, Commissioner

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

EXHIBIT TG-4



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Re: Discovery in proceedings of Qwest Corporation et al. and CenturyLink et al. for state commission approvals of transfer of control

Dear Ms. Gardner and Mr. Lundy:

Integra and Paetec are disappointed at CenturyLink/Qwest's refusal to explore greater efficiencies in the discovery process in their multi-state merger application proceedings. While CenturyLink/Qwest's July 1, 2010, letter in response to CLECs' discovery proposal expressed a shared goal of efficiency, and the companies' merger application and state-by-state advocacy have strongly emphasized a tight procedural timeline, you in fact refused to even discuss our proposal. Further, the reasons that CenturyLink/Qwest offered for precluding any multi-state discovery are without merit.

CenturyLink/Qwest's response seems to confuse parties' mutual gathering of information through discovery with the use of such information in participants' filings and decision makers' considerations. Thus, CenturyLink/Qwest insist that discovery must be issued state by state because "stark differences" exist among various states' "legal review and intervention standards," "policy issues," and "public interest concerns." The applicants state further that the discovery proposal would unduly complicate matters because they would be required to "...consider the question from the standpoint of the state in which it was asked and all others, thereby exponentially multiplying the amount of work and time necessary to respond, even if the data request has little do with the public interests of any of the other states." Integra and Paetec disagree that the facts contained in any participant's responses to discovery should be dictated by the "standpoint," "policy issues," or "public interest concerns," of any particular state. For example, the answer to a request regarding the capability of a CenturyLink system that is used in multiple states would not vary based on policy issues. It creates extra work for all parties to request, respond, and track the same question and response in multiple states, when the parties

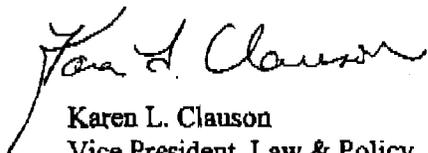
Linda Gardner
Todd Lundy
July 9, 2010
Page 2

could simply agree to a more efficient multi-state discovery approach. Integra's, Paetec's, and, we presume, other intervenors', discovery requests to CenturyLink/Qwest will seek facts underlying the assertions made in the application, which is virtually identical in all states. That set of facts should properly be available for use by all public and private intervenors, as well as by all state decision makers, who can apply them as their legal, policy, and public interest factors determine.

CenturyLink/Qwest's argument that they will be unduly burdened by a multi-state discovery approach ignores a number of key principles in CLECs' proposal. First, CLECs have proposed the discovery process for all participants, not just the applicants. The same burdens and benefits flow to all participants. Second, Integra made clear in its June 21, 2010, letter that its proposal was meant to initiate discussion of multi-state discovery among the parties, with the goal of arriving at a mutually acceptable and beneficial system. If there is an objection because states other than Qwest states are part of the merger proceedings, for example, we would be willing to discuss a multi-state discovery approach by territory or other solution. CenturyLink/Qwest have not only failed to offer their own suggestions to assist the process, but have categorically refused to participate in the development of discovery efficiencies. Third, in its initial proposal, Integra specifically answered many of the allegations of undue burden raised by CenturyLink/Qwest in their response. Thus, Integra anticipated CenturyLink/Qwest's issue of needless "drafting and researching" burden, among others, when Integra proposed that, "[i]f a respondent believes that a response varies by state, the respondent should provide state-specific information in its response. If a respondent believes that a certain response for some reason should not be available for use outside the original state proceeding, the responding party can explain that in its response." CenturyLink/Qwest's allegations of unfair and burdensome treatment by other parties ignore the realities of the workload created for public and private intervenors and decision makers by the simultaneous multi-state application; the clear benefits of Integra's and Paetec's discovery proposal; and the ability of ALJs and commissions to resolve any residual discovery issues.

For the above reasons, Integra and Paetec ask CenturyLink/Qwest to reconsider their refusal to participate in a mutual multi-state approach to discovery. Should the applicants wish to discuss Integra's and Paetec's proposal, or to offer their own version of an efficient means of trading discovery, we will be happy to hear from you.

Sincerely,



Karen L. Clauson
Vice President, Law & Policy
Integra Telecom
Voice: (763) 745-8461
klclauson@integratelecom.com



William Haas
PAETEC
1 Martha's Way
Hiawatha, IA 52233
William.Haas@PAETEC.com



July 1, 2010

Via email
klclauson@integratelecom.com

Ms. Karen L. Clauson
Vice President, Law & Policy
Integra Telecom
6160 Golden Hills Drive
Golden Valley, MN 55416-1020

Dear Ms. Clauson:

Thank you for your June 21, 2010, email proposing a nationwide discovery system for the Qwest/CenturyLink merger applications. While we share your goal to improve efficiencies for all parties in the discovery process, we believe your proposal is impractical given the varying substantive and procedural standards governing the numerous approval dockets throughout the region and the nation. It would also create unreasonable and unfair burdens on Qwest and CenturyLink, make the process far more inefficient for us, and may cause confusion or misapplication for the states and other intervenors. Thus, Qwest and CenturyLink respectfully decline your proposal.

Qwest and CenturyLink currently have approval proceedings pending in twenty states, seven in which both Qwest and CenturyLink are incumbents, two in which Qwest only is an incumbent, six of which CenturyLink only is an incumbent, and five of which neither Qwest nor CenturyLink are incumbent carriers. The varying carrier status for Qwest and Century Link is the first indication that stark differences exist among the various state proceedings. The states also have different legal review and intervention standards, discovery norms, and regulatory jurisdiction over the operating entities, relating to such matters as service quality, network, retail and wholesale standards, and more. This assortment of statutory mandates and the variety of policy issues necessarily results in each state addressing different and often unique state public interests concerns. In addition, when considered across all the states, the intervening parties and the positions they assert in the pending cases will also differ. Consequently, this is not a situation in which two, or even a few, common parties are engaged in multi-state litigation addressing a common issue under the same legal standard, as was the case in the Qwest-McLeod litigation relating to power rates for collocation. Accordingly, the merger approval dockets do not share the commonality of issues and parties that is a threshold criterion to any effort at consolidated discovery.

Karen Clausen
July 1, 2010
Page 2

Your proposal also complicates the drafting and researching of responses unnecessarily, because under it we must consider the question from the standpoint of the state in which it was asked and all others, thereby exponentially multiplying the amount of work and time necessary to respond, even if the data request has little to do with the public interests of any of the other states. The result is an impractical and burdensome process for the Applicants, as well as the potential that the approval proceedings may be unnecessarily delayed.

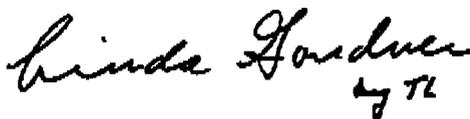
In addition, a nationwide discovery process creates difficult conflicts among state confidentiality orders and procedures, as well as the logistical issue of ensuring that a single discovery response is compliant with several different confidentiality rules and protective orders. The process for serving responses under your proposal is rendered even more impractical by the fact that several parties have asked Qwest and CenturyLink to serve upon them every other discovery response for that state.

Lastly, there is the potential for misuse, though inadvertent. That is, a party may ask a question that would be pertinent to only one or a couple of states, but may require different answers across all states, thus forcing the Applicants to expend enormous and wasted resources to answer for all. Not to mention the fact that it would be unfair to witnesses in different states to have to be responsible for discovery responses that were answered for one state, but under your proposal would be applicable to several others.

These are the problems and issues apparent to us upon our first review of your proposal, and more may arise if we were to actually implement the process you suggest. In sum, given the lack of commonality between all the states, the unnecessary burdens placed on the Applicants, and the fact that the intervenors have the ability to request and obtain discovery in the individual states of their choosing without adoption of your proposal, we must decline your proposal.

Regards,

CenturyLink



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Qwest Corporation



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN MAYES, Chairman
GARY PIERCE, Commissioner
SANDRA KENNEDY, Commissioner
PAUL NEWMAN, Commissioner
BOB STUMP, Commissioner

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

EXHIBIT TG-5

REDACTED - FOR PUBLIC INSPECTION

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Applications Filed by Qwest Communications) WC Dkt. No. 10-110
International Inc. and CenturyTel, Inc., d/b/a/)
CenturyLink for Consent to Transfer of Control)

**COMMENTS OF
CBEYOND, INTEGRA TELECOM, SOCKET TELECOM, AND TW TELECOM**

WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, D.C. 20006
(202) 303-1000

*Attorneys for Cbeyond, Inc., Integra
Telecom, Inc., Socket Telecom, LLC, and
tw telecom inc.*

July 12, 2010

REDACTED - FOR PUBLIC INSPECTION

difficult to complete the CenturyTel-Embarq integration. CenturyLink has warned its investors that the CenturyLink-Qwest integration will likely begin before the CenturyTel-Embarq integration is finished, thereby compounding potential integration risks.⁹⁸ As CenturyLink stated in a recent SEC filing,

[CenturyLink-Qwest] integration initiatives are expected to be initiated before CenturyLink has completed a similar integration of its business with the business of Embarq, acquired in 2009, which could cause both of these integration initiatives to be delayed or rendered more costly or disruptive than would otherwise be the case.⁹⁹

Third-party observers have highlighted this risk. For instance, Standard & Poor's has observed that "integration efforts will be difficult given the size of the combined company and [that] CenturyTel's integration of previously acquired Embarq will likely not be complete until the end of 2011."¹⁰⁰

Furthermore, CenturyLink's transition of wholesale customers in the legacy Embarq territory from one ordering system to another in late 2009 raises questions about CenturyLink's OSS integration abilities. Following CenturyLink's cutover from the Integrated Request Entry System ("IRES") GUI for LSR ordering to the successor EASE system in the legacy Embarq territory in December 2009, tw telecom began to experience numerous problems, including

⁹⁸ CenturyLink Form S-4 at 16.

⁹⁹ *Id.*

¹⁰⁰ Direct Testimony of Jeff Glover, ACC Dkt. No. T-01051B-10-0194 *et al.* (filed May 24, 2010), Exhibit JG-4, "Standard & Poor's Research Update: CenturyTel 'BBB-' Rating On Watch Negative On Deal To Acquire Qwest Communications; Qwest 'BB' Rating On Watch Positive," at 3 (Apr. 22, 2010), available at <http://images.edocket.azcc.gov/docketpdf/0000111908.pdf>. See also *id.*, Exhibit JG-3, "Moody's Investor Service Rating Action: Moody's changes CenturyTel's outlook to negative; reviews Qwest's ratings for upgrade," at 1 (Apr. 22, 2010) ("The negative rating outlook for CenturyTel reflects the considerable execution risks in integrating a sizeable company so soon after another large acquisition (Embarq in July 2009) while confronting the challenges of a secular decline in the wireline industry.").

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system outages, with the EASE system. More specifically, since the beginning of 2010, tw telecom has received numerous "Interface Outage Bulletins" from CenturyLink because EASE users could not submit LSRs, could not complete pre-ordering, were experiencing slow response times, or were denied access entirely because the EASE system was being taken out of service for maintenance. Socket Telecom has experienced similar problems with the EASE system. These delays in the LSR ordering process ultimately result in delays in the delivery of service by tw telecom and Socket Telecom to their end-user customers.

Socket Telecom has also found that the EASE system offers less functionality than the legacy Embarq IRES system. In particular, IRES populated a CLEC's LSR with information (e.g., the end-user customer's address) from the pre-order validation form.¹⁰¹ EASE does not provide this option. In addition, unlike Embarq's legacy interface for directory listings ("eSUDS"), EASE, which CLECs such as Socket Telecom are currently required to use for directory listings, does not provide CLECs with access to full directory listing information for a customer. In fact, in Socket Telecom's experience, EASE sometimes lists only the customer's address and omits such basic information as the customer's name.¹⁰²

¹⁰¹ Similarly, Qwest's IMA GUI populates a CLEC's LSR with information from the pre-order validation form. Change requests in Qwest's CMP contributed to the development of this capability. *See, e.g.,* Change Request to "Provide CSR recap functionality in IMA when a request type of 'P' is selected," *available at* http://www.qwest.com/wholesale/cmp/archive/CR_SCR032602-1.html.

¹⁰² In contrast, Qwest's Directory Listing Inquiry System ("DLIS") provides CLECs with access to full directory listing information for a customer. Improvements to Qwest's DLIS were made through Qwest's CMP. *See, e.g.,* Change Request to obtain "Changes to the DLIS System to enhance the customer experience," *available at* http://www.qwest.com/wholesale/cmp/archive/CR_SCR011205-01.html; Change Request to obtain "IMA LSTR (Listing Reconciliation) Enhancement," *available at* http://www.qwest.com/wholesale/cmp/archive/CR_SCR010709-3.html. CLECs that have expended time and resources to work through issues via the CMP and to train their own personnel in use of these systems should not have to go backward in terms of functionality, as Socket has had to do, as a result of a merger.

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Socket Telecom, which has a substantial presence in both the legacy CenturyTel and legacy Embarq territories has also found that the merged CenturyTel-Embarq notification process has been poor. For example, Socket Telecom did not receive notice that CenturyLink was switching from the legacy CenturyTel Local Number Portability (“LNP”) system to the legacy Embarq LNP system until the day the change took place. In the absence of sufficient notice, Socket Telecom submitted LNP requests in the wrong format, thereby causing prospective customers to have a delayed and unsatisfactory changeover process.

As the foregoing discussion demonstrates, CenturyLink has failed to show that it will be able to manage the wholesale OSS of Qwest or make other changes without causing substantial harm to wholesale customers and their end-user customers. This is particularly true because CenturyLink has not shown that its EASE system (before or after any integration) provides at least the equivalent functionalities of Qwest’s systems or that its EASE system has handled commercial volumes of wholesale orders that equal or even approach the volumes of wholesale orders processed by Qwest’s systems.

For all of the reasons discussed above, regardless of whether the Merged Company makes changes to its OSS months or even years after closing, such changes will impact CLECs and their opportunity to meaningfully compete in the Merged Company’s territory. Such changes may also impact CLECs’ end-user customers. Therefore, procedures must be established before closing of the proposed transaction regarding how such changes will occur, whenever they occur. For example, for any Qwest system that was subject to third-party testing (e.g., as part of the Section 271 process), robust, transparent third-party testing should be conducted for any CenturyLink replacement system to ensure that it provides the needed

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN MAYES, Chairman
GARY PIERCE, Commissioner
SANDRA KENNEDY, Commissioner
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JOINT NOTICE AND APPLICATION OF)	
QWEST CORPORATION, QWEST)	
COMMUNICATIONS COMPANY, LLC,)	
QWEST LD CORP., EMBARQ)	Docket No. T-01051B-10-0194
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D/B/A CENTURYLINK, AND CENTURYTEL)	Docket No. T-03555A-10-0194
SOLUTIONS, LLC FOR APPROVAL OF THE)	Docket No. T-03902A-10-0194
PROPOSED MERGER OF THEIR PARENT)	
CORPORATIONS QWEST)	
COMMUNICATIONS INTERNATIONAL INC.)	
AND CENTURYTEL, INC.)	

EXHIBIT TG-6

WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1000
Fax: 202 303 2000

May 19, 2010

VIA ECFS

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control, WC Dkt. No. 09-95*

Dear Ms. Dortch:

Integra Telecom, Inc. (“Integra”), tw telecom inc., Cbeyond, Inc., and One Communications Corp. (collectively, the “Joint Commenters”), through their undersigned counsel, submit this letter in the above-referenced proceeding. On May 18, 2010, Thomas Jones, representing the Joint Commenters, spoke with Angie Kronenberg of Commissioner Clyburn’s Office and also with Nick Alexander of the Wireline Competition Bureau and Zac Katz of the Office of Strategic Planning and Policy Analysis regarding the proposed transaction between Frontier and Verizon (the “Applicants”). The substance of these conversations is discussed herein.

I. *Integra Continues To Experience Significant Problems With Verizon’s Wholesale Service Performance Using The “Replicated Systems” That Will Be Transferred To Frontier Post-Transaction.*

Verizon’s recent wholesale service performance using the Replicated Systems has improved in certain respects. Nevertheless, Integra continues to experience a number of significant problems with Verizon’s wholesale systems and processes in the Oregon and Washington markets. Integra describes these problems and responds to the statements made by Verizon in the Applicants’ May 14th Letter¹ below.

First, Verizon suggests that while there were “minor delays” with respect to order confirmation timeliness “during a short period of time immediately after realignment,” this problem has been

¹ See generally Letter from John T. Nakahata, Counsel for Frontier Communications Corporation, and Karen Zacharia, Counsel for Verizon, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 09-95 (filed May 14, 2010) (“Applicants’ May 14th Letter”).

Marlene H. Dortch
May 19, 2010
Page 2

resolved.² However, the timeliness of Verizon's order confirmations continues to be substandard. Specifically, between May 10, 2010 and May 14, 2010, Verizon timely responded to only 7 out of 11, or approximately 64%, of the Access Service Requests ("ASRs") submitted by Integra.³ In addition, Verizon timely responded to only 1 out of 3, or approximately 33%, of the ASRs with installation activity submitted by Integra during that time period. These percentages are well below the 95% benchmark for FOC/LSC Notice Timeliness (Order Confirmation Timeliness) under Joint Partial Settlement Agreement ("JPSA") metric OR-1.⁴ Based on Integra's review of a sample of Local Service Requests ("LSRs") submitted during the same period, Verizon timely responded to 88 out of 99, or approximately 89%, of the Integra LSRs in the sample. This percentage is still below the 95% benchmark for order confirmation timeliness under the JPSA. Moreover, the fact that "[Verizon's] 13-states centers have averaged nearly 95% on-time performance for FOCs for special access"⁵ is irrelevant. The vast majority of Integra's wholesale orders from Verizon are for unbundled network elements, not special access.

Second, although Verizon states that it "provided timely completion notices to Integra for Local Service Requests more than 95% of the time in April 2010,"⁶ Verizon's more recent performance has been substandard. Specifically, between May 10, 2010 and May 14, 2010, in Integra's Oregon market, Integra received 55 out of 66, or approximately 83%, of completion notices from Verizon within 24 hours. This is less than even the 90% within-24-hours benchmark for manual processes under the JPSA (*i.e.*, JPSA metric OR-4-18 for Completion Notice Interval).

Third, Verizon's actual performance in the area of timely order completion is obscured in part by the fact that Verizon has been increasingly sending Service Activation Reports ("SARs") without actually completing the work requested on an order. This was true for orders NM-2556620-DS1, SM-2560987-BDSL, SM-2497851-BDSL, CL-2568000-BDSL, DS-2502748-WASA, and JT-2566473-CHG. This practice negatively impacts Integra's ability to serve its end-user customers. For example, if Verizon sends Integra a completion notice but has not performed the requested installation, Integra is forced to conduct multiple technician dispatches for a single end-user customer, and delivery of service to that customer is delayed. In addition, if Integra receives an SAR from Verizon, Verizon begins

² *See id.* at 2.

³ Verizon's poor performance on such a small set of ASRs does not bode well for a much higher volume of requests that would result if Integra or another competitor were to launch an aggressive marketing effort in the future.

⁴ Although 2 of the 11 ASRs submitted by Integra were for special access and the 95% JPSA benchmark does not apply to ASRs for special access, Verizon's percentages for timely ASR responses during the May 10, 2010 to May 14, 2010 period are nevertheless inadequate.

⁵ *Id.*

⁶ *Id.* at 3.

Marlene H. Dortch
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Page 3

billing Integra, and Integra may mistakenly begin billing its end-user customer before service is actually delivered to the customer.

Integra has also found that Verizon has increasingly performed the requested work on orders without sending Integra completion notices. This was the case for orders NM-2524155-FDIS, NM-2573201-DIS, HS-2528012-DIS, and HS-2552278-DS1. This practice also negatively affects Integra's ability to serve its end-user customers. For instance, if Verizon fails to update the completion of the requested work in its systems, Verizon could inadvertently disconnect the service of a customer migrating from Verizon to Integra because it has no supporting records for the service in its systems. In addition, without a completion notice from Verizon, Integra's delivery of service to its end-user customer is delayed.

Fourth, Verizon states that it "has reduced the time it takes to resolve PSCC trouble tickets for Integra by an average of 7 days following the realignment."⁷ However, tickets for certain types of systems issues are staying open for longer periods of time since the transition to the Replicated Systems. For example, some of the PSCC tickets for Verizon's failure to update its Connecting Facility Assignment and Cross Connect Equipment Assignment databases to reflect the disconnects requested by Integra and completed by Verizon have been open for more than 3 weeks. These include PSCC ticket numbers S0928372, S0928373, S0928374, S0928461, S0928505, S0928507, S0928543, and S0928546.

Fifth, Verizon states that "between April 23 and present, Verizon completed all of Integra's hot cuts on time."⁸ However, the rate at which Verizon completes hot cuts on time does not, by itself, provide a sufficiently comprehensive assessment of Verizon's performance in this area. For example, since the transition to the Replicated Systems, when Integra has submitted supplemental LSRs for coordinated conversions (*i.e.*, hot cuts), Verizon has been increasingly disconnecting the end-user customers' Verizon retail service before conversions to Integra are completed. Such premature disconnection causes unnecessary service outages for customers seeking to migrate from Verizon to Integra. This was true of orders JT-2565579-CHG and AB-2459369-LLNP. In an effort to fix this problem, Integra has been forced to add to its internal process for coordinated conversions the manual step of calling Verizon to ensure that Verizon does not disconnect an order before the conversion to Integra is completed.

Similarly, since the transition to the Replicated Systems, Integra has increasingly experienced problems with Verizon's processing of supplements to LSRs. For example, when Integra supplements LSRs to postpone the requested due date, Verizon's technicians continue to process the orders using the original requested due dates, resulting in service outages for customers migrating from Verizon to Integra. This was true of orders SS-2468866-PRT and SS-2468866-LLNP. Again, in an effort to fix

⁷ *Id.*

⁸ *Id.*

Marlene H. Dortch
May 19, 2010
Page 4

this problem, Integra has been forced to add to its internal processes the manual step of calling Verizon to ensure that Verizon processes the supplement properly.⁹

Sixth, while hold times for calls to Verizon's call centers have improved, Integra has found that some of the Verizon representatives answering these calls are inexperienced or have been inadequately trained. Integra employees have sometimes found themselves educating Verizon's representatives on Verizon's internal processes and the requirements of the CLEC-facing Verizon systems. In some cases, Verizon representatives operating the Replicated Systems have also indicated to Integra that they do not know the appropriate workarounds to resolve specific types of problems. For instance, when Integra has submitted ASRs for DS1 EELs that use DS3 transport rather than DS1 transport, Verizon's systems have been increasingly rejecting these orders on the basis that Integra has exceeded the regulatory cap on DS1 transport. This was true for orders CA-2484208-VGT, CA-2484208-VGT2, and SE-2542970-EEL. When Integra has contacted Verizon to resolve this type of error, the Verizon representatives have not always understood the nature of the problem, and Integra has had to educate them on the fact that the DS1 transport cap does not apply to individual channels on DS3 transport. Even where the Verizon representatives have understood the problem, they have had to consult with their manager to learn the relevant workaround, thereby causing further delays in the delivery of service to Integra end-user customers.

Finally, in response to Integra's concern that the Applicants are effectively asking Integra to agree to an amendment of its Wholesale Advantage Services Agreement with Verizon (*i.e.*, by requesting that Integra sign the "Adoption Agreement" attached to the Applicants' January 21, 2010 letter to Integra),¹⁰ Frontier states that "Frontier will comply with all terms and requirements in the Washington and Oregon settlements."¹¹ Accordingly, as indicated by Integra in its letter to Frontier dated May 18, 2010,¹² Integra assumes that it is no longer being asked to sign the aforementioned "Adoption Agreement."

⁹ Another area in which Integra has been forced to add manual validation to its internal processes is vendor "meets" (otherwise known as coordinated dispatches). Because Verizon had been increasingly missing vendor meets, Integra added the manual step of calling Verizon after it electronically submits a vendor meet ticket to Verizon to ensure that Verizon properly distinguishes the vendor meet ticket from other trouble tickets that are handled by Verizon dispatchers on an ad-hoc basis.

¹⁰ See Attachments A & B to Letter from Thomas Jones, Counsel for Integra Telecom, Inc., tw telecom inc., Cbeyond, Inc., and One Communications Corp., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 09-95 (filed May 13, 2010) ("Joint Commenters' May 13th Letter").

¹¹ See Letter from Kevin Saville, Associate General Counsel, Frontier Communications Corp., to Dennis D. Ahlers, Associate General Counsel, Integra Telecom, Inc. et al., at 1 (dated May 14, 2010), attached as Attachment 1 to Applicants' May 14th Letter.

¹² See Letter from Dennis D. Ahlers, Associate General Counsel, Integra Telecom, Inc., to Kevin Saville, Associate General Counsel, Frontier Communications Corp., at 2 (dated May 18, 2010) (attached hereto as "Attachment A").

Marlene H. Dortch
May 19, 2010
Page 5

II. The Commission Should Require Frontier To Meet The Performance Benchmarks Proposed By The Joint Commenters.

In light of the problems that Integra has experienced with Verizon's wholesale service performance using the Replicated Systems, as well as similar problems described in the record by PAETEC,¹³ there is a substantial risk that these problems will continue after the Commission approves the merger. Accordingly, as the Joint Commenters have explained throughout this proceeding, the Commission should adopt robust conditions to ensure close FCC oversight of the relevant wholesale operations. Among other things, the FCC should require that an independent third-party OSS expert review and assess the sufficiency of the relevant OSS. To the extent that the Commission requires Frontier to report on defined performance measures, it should require Frontier to meet or exceed Verizon's average monthly performance for 2008 for: (1) each of the metrics listed in Frontier's Voluntary Commitment # 12; and (2) the ten JPSA metrics listed in the Joint Commenters' May 13th Letter.¹⁴ At the very least, as a condition of its merger approval, the Commission should require Frontier to meet or exceed Verizon's average monthly performance for these metrics for the twelve months preceding the transition to the Replicated Systems.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones
Nirali Patel

*Counsel for Integra Telecom, Inc., tw telecom inc.,
Cbeyond, Inc., and One Communications Corp.*

Attachment

cc (via e-mail): Nicholas Alexander
Alexis Johns
Carol Simpson
Zachary Katz
Angela Giancarlo
Angela Kronenberg
Jennifer Schneider
Christi Shewman

¹³ Letter from Mark C. Del Bianco, Counsel for PAETEC Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 09-95, Attachment A, at 6-7 (filed May 17, 2010).

¹⁴ See Joint Commenters' May 13th Letter at 4-6.

ATTACHMENT A



Integra Telecom
6160 Golden Hills Drive
Golden Valley, MN 55418
www.integratelecom.com

May 18, 2010

Kevin Saville
Associate General Counsel
Frontier Communications
2378 Wilshire Blvd.
Mound, MN 55364

Via UPS Overnight Delivery

Re: Verizon Communications Inc. and Frontier Communications Corporation Joint Application, or, in the alternative, to Approve the Indirect Transfer of Control of Verizon Northwest, Inc.
OR Docket No.: UM 1431

Verizon Communications Inc., and Frontier Communications Corporation for an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest, Inc.
WA Docket No.: UT-090842

Dear Kevin:

I am writing in response to your letter of May 14, 2010, responding to my letter of May 10, 2010, in which I raised Integra's concern that the "Adoption Agreement" proposed by Frontier and Verizon did not comply with the orders of the Washington and Oregon utility commissions and the settlements upon which those orders were based. In your letter you imply that Integra should have raised its concerns earlier. To the contrary, Integra believes that it was premature and presumptuous of Frontier and Verizon to expect Integra and other CLECs to review and agree to "Adoption Agreements" prior to review and approval of the transaction by the state commissions and the Federal Communication Commission. The Washington Commission approved the transaction, with conditions, on April 16, 2010 and as of the date of your letter, FCC approval of the transaction was still pending.

As you know, subsequent to the distribution of the "Adoption Agreement," Verizon and Frontier entered into settlements with several CLECs in Oregon and Washington that addressed the assumption of Verizon agreements by Frontier. Later, both Commissions adopted those settlements and made them part of their orders. At that point, Integra expected Frontier to rescind its request that Integra sign the "Adoption Agreement" and instead indicate that Frontier would comply with the Oregon and Washington orders and settlements. When no further correspondence was forthcoming, Integra felt that it had to make it clear that it did not consider the "Adoption Agreement" to be consistent with the settlements or the orders, and thus would not be signing it.

Kevin Saville
May 18, 2010
Page 2

In your letter, you confirm that "Frontier has agreed and will honor its commitment in the Washington and Oregon settlement agreements, including to assume and take assignment of all obligations of Verizon Northwest's current interconnection agreements and other existing wholesale arrangements with Integra (and its affiliates)." Integra is encouraged by that response and assumes that that will be self-effectuating and that it is no longer being asked to sign the previously provided "Adoption Agreement." Please confirm that that assumption is correct.

Sincerely,



Dennis D. Ahlers
Associate General Counsel
Integra Telecom
763-745-8460 (Direct)
763-745-8459 (Facsimile)
ddahlers@integratelecom.com

cc: Jeff Oxley
Thomas Jones & Nirali Patel—Willkie, Farr & Gallagher

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN MAYES, Chairman
GARY PIERCE, Commissioner
SANDRA KENNEDY, Commissioner
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BOB STUMP, Commissioner

JOINT NOTICE AND APPLICATION OF)	
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QWEST LD CORP., EMBARQ)	Docket No. T-01051B-10-0194
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CENTURYLINK COMMUNICATIONS,)	Docket No. T-04190A-10-0194
EMBARQ PAYPHONE SERVICES, INC.)	Docket No. T-20443A-10-0194
D/B/A CENTURYLINK, AND CENTURYTEL)	Docket No. T-03555A-10-0194
SOLUTIONS, LLC FOR APPROVAL OF THE)	Docket No. T-03902A-10-0194
PROPOSED MERGER OF THEIR PARENT)	
CORPORATIONS QWEST)	
COMMUNICATIONS INTERNATIONAL INC.)	
AND CENTURYTEL, INC.)	

EXHIBIT TG-7

Thursday July 1, 2010 Phone transition not going smoothly for a few customers

by George Hohmann
Daily Mail Business Editor
Advertiser

CHARLESTON, W.Va. – The transition from Verizon's landline network to Frontier Communications Corp. went smoothly for all but a few West Virginia customers.

Some customers reported that their caller ID didn't work and there was a report that attempts to use a landline to call a cell phone number resulted in either a "fast -busy" signal or a false automated message that said the cell phone number was no longer in service.

Both of those problems may have been related to a couple of situations where Verizon customers who had been served by out -of-state facilities were being switched to in -state facilities.

Frontier Communications Manager Karen Miller said the cutover from Verizon to Frontier was going very well. She said Frontier hadn't received any reports of problems with caller ID but was looking into it.

"However, we did find that Verizon had a problem" on Wednesday with some calls being made from landlines to cell phones, she said.

Frontier brought 250 employees from out of state to West Virginia to help resolve any issues that crop up.

David Armentrout, president and chief operating officer of FiberNet, said his company had 15 circuits in Ridgeley and Wiley Ford that had been served out of Cumberland, Md., that had to be "re -homed" to a central office in Keyser.

"Some have been out of service for several days and they're still out of service," he said Thursday morning. But Thursday afternoon Armentrout said those problems had been fixed.

Regarding "re-homed" customers, Frontier spokeswoman Christy Reap said, "Over the past couple of weeks there have been customers, one or two at a time, who needed a new cable drop or there was a records mismatch – things like that. But nothing related to Frontier."

Armentrout said Thursday morning that his company had technicians standing around, unable to get into co-location sites to make service installations, repairs or upgrades because security passes didn't work. Thursday afternoon he said, "The access issue has been addressed and is being resolved today."

Early Thursday, FiberNet was unable to process trouble tickets. But that problem was also resolved by Thursday afternoon.

Frontier has been very responsive to our concerns and issues," Armentrout said. "Certainly we have seen a better response from them than (we had) historically with Verizon.

"They (Frontier) are working on it and cooperating very well."

Frontier has about 2,100 employees in West Virginia, including workers who were employed by Verizon until Thursday.

Frontier, which already served more than 144,000 customers in 38 West Virginia counties, acquired about 617,000 landlines in 47 counties from Verizon.

It was the largest telecommunications deal in West Virginia's history. It involved landlines in a total of 14 states and was valued at \$8.6 billion.

Frontier issued a press release that said the transaction "positions Frontier as the largest pure rural telecommunications carrier in the United States."

As a result of the all-stock deal, Verizon stockholders now collectively own about 68 percent of Frontier's common stock.

Frontier's stock trades on the New York Stock Exchange under the ticker symbol "FTR." The company is headquartered in Stamford, Conn.

Frontier's new Southeast Region headquarters is at 1500 MacCorkle Ave. in Charleston, in the building that formerly housed Verizon's West Virginia headquarters.

Contact writer George Hohmann at *busin...@dailymail.com* or 304-348-4836.

July 21, 2010 FRONTIER PROBLEMS Local Business Having Major Problems Since Frontier Switch

Reported by:  Darrah Wilcox
Videographer: Chad Hypes
Web Producer: Darrah Wilcox
Reported: Jul. 21, 2010 12:35 PM EDT
Updated: Jul. 21, 2010 12:45 PM EDT

Just three weeks into their takeover of Verizon customers, Frontier is feeling some heat from local customers.

Fruth Pharmacy is one of those unsatisfied customers.



They say just after the switch this month, they had a n outage that lasted more than 39 hours in their 25 stores.

They were unable to consult insurance companies through their online system, and many other compliance checks they have to go through to fill a prescription.

There have also been outages on at least four other days this month.

Fruth employees say they've been given the run-around with frontier blaming verizon and vice versa. Employees say they are getting extremely frustrated.

Pharmacist in charge at the Summers Street location Sam Arco say s, "Without that kind of connection, we're just incapacitated. We just cannot do anything basically. It's really, really an inconvenience to us and also to our customers, and that's who our main concern is."

Chairman of the board Lynne Fruth says she told Frontier, "This is completely unacceptable. We are a health care provider. People are counting on us for their medication, for things that they cannot do without."

Fruth says she has filed a formal complaint with the Public Service Commission. Several other business owners and residential customers who have had major service problems in the past couple weeks have emailed Eyewitness News.

We are waiting on a formal statement from Frontier Communications, but a spokesperson told us over the phone that any customers experiencing problems should call their customer service hotline for help.



Arizona Corporation Commission
Docket No. T-01051B-10-0194
Joint CLECs - Exhibit TG-7
Direct Testimony of Timothy Gates
September 27, 2010, Page 4

Frontier claims overtime is needed: Problems force telecom company to work employees up to 70 hours a week

Posted on: Wed, 28 Jul 2010 13:05:49 EDT
Symbols: FTRW

Jul 28, 2010 (Charleston Daily Mail - McClatchy-Tribune Information Services via COMTEX) -

CHARLESTON, W.Va. -Frontier Communications Corp. said it is requiring unionized employees in West Virginia to work overtime so the company can take care of urgent problems.

The company acquired Verizon's landline networks in West Virginia and 13 other states on July 1. FiberNet, a Charleston-based competitor, immediately complained that some trouble tickets were not being resolved in a timely manner.

Last week FiberNet claimed Frontier's operational support system is so bad the state Public Service Commission should re-open the case that allowed Frontier to buy Verizon's network. Frontier has not yet replied to FiberNet's petition and the commission has not yet acted.

On July 9, Frontier notified the Communications Workers of America of an "emergency and longterm service difficulty" - labor contract language that allows Frontier to require unionized employees to work up to 70 hours of overtime a week.

Frontier has about 2,100 employees in West Virginia, including many who are union members that previously worked for Verizon.

An anonymous e-mailer wrote the Daily Mail to say that some employees are overstressed, including some older workers "who are having a very difficult time coping with 70-hour weeks, especially those who work outside in this unbearable heat. "Frontier employees are willing to help the company succeed, but this is not the way to proceed," the e-mailer wrote. "It is alienating employees and showing a total lack of respect for their mental and physical well-being. Their family lives are suffering and the company doesn't seem to care at all."

Frontier spokesman Steve Crosby said that if an employee has a specific need and can't work the required overtime, "they need to work with their manager to work through the accommodation."

Crosby said he doesn't know how many employees have been required to work overtime since July 9 or how much overtime West Virginia employees have worked. He said the union might have that information.

Union spokeswoman Elaine Harris said, "They're telling people they have to work up to 30 hours of overtime, for a total of 70 hours. That's a requirement. I don't have a breakdown but a lot of people are being asked and required to work that. They (Frontier) should be able to answer that."

Harris said the fact the company had declared an emergency and invoked mandatory overtime was the reason she objected a few weeks ago when Frontier required employees to attend a series of speeches around the state by Chief Executive Officer Maggie Wilderotter.

"The company said they were declaring an emergency and we were saying, "Wait a minute - an emergency is for things like floods,"" Harris said.

"We've had quality of service issues in the past with Verizon. "We do have a difference in opinion of what's an emergency, what's a service quality issue in the collective bargaining agreement," Harris said.

Arizona Corporation Commission
Docket No. 010518-0009
Joint CLECs - Exhibit TG-7

Direct Testimony of Timothy Gates
September 27, 2010, Page 5

"We'll handle those issues through the grievance and arbitration process if necessary. We believe the company has not properly applied the 'emer

"I don't want to come across as uncaring about the customers because we do care," Harris said. "But there has to be a balance here. People are tired

Under the contract, "Employees can tell the company they have a reasonable excuse" and be excused from overtime, she said. "Some employees may coach their kids' ball

Crosby said that in addition to unionized employees working overtime, "we have management and other people who are non-union who are working equal or more hours and t

"This is not 'us vs. them,'" Crosby said. This is a 'we.' We are the team, all working very long hours to make sure we're doing the right thing for customers in West Virginia and

"The (unionized) men and women in West Virginia are getting paid for overtime. It's not like we're not paying them for their work. I would think getting paid overtime is a nice

Crosby said he is among those working long hours and not getting paid overtime. "In this economy I'm going to continue to work as much as I need to," he said. "I do the work to

He said the company asked non-union employees in other states to come to West Virginia to help during the transition and 250 volunteered. "We have a lot of folks who came

"The bottom line is we're trying to run a business, satisfy the customer, do what's right for the state," Crosby said. "So you have certain provisions in the collective bargaining

Frontier spokeswoman Brigid Smith said the date the emergency declaration will end "depends upon reducing the backlog of troubles, orders and other requests that we

-- Long-term service difficulties, as evidenced by the Public Service Commission's recent investigation of Verizon's service quality.

-- Net work degradation on events such as cable outages and repeated thefts of copper cable, especially in Logan County.

"We also need a change for the better in the severely hot weather and thunderstorms that are hitting so much of the state," she said.

Although Frontier has invoked mandatory overtime, "safety is paramount," Smith said.

Contact writer George Hohmann at business@dailymail.com or 304-348-4836.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN MAYES, Chairman
GARY PIERCE, Commissioner
SANDRA KENNEDY, Commissioner
PAUL NEWMAN, Commissioner
BOB STUMP, Commissioner

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

EXHIBIT TG-8

PRELIMINARY CONDITIONS

RESERVATION OF RIGHTS:

Discovery is not yet complete and all testimony has not yet been filed. This list is preliminary and subject to change. Parties reserve their right to expand or modify the proposed conditions as needed. The conditions are grouped generally by subject matter. All of the conditions are important and no inference regarding priority should be made based on the numbering of the conditions, which is for ease of reference only.

DEFINITIONS:

“Closing Date,” when used in this list of conditions, refers to the closing date of the transaction for which the Applicants have sought approval from the Federal Communications Commission (FCC) and state commissions (the “transaction”).¹

“Commercial” agreements include but are not limited to wholesale metro Ethernet agreements, OCN (SONET) agreements, Local Services Platform (*e.g.*, QLSP) agreements, Dark Fiber agreements, Broadband for Resale agreements, and line sharing agreements.

“Defined Time Period,” when used in this list of conditions, refers to a time period of at least 5-7 years² after the Closing Date or, alternatively, a time period that is a minimum of 42 months (*i.e.*, 3.5 years)³ and continues thereafter until the Applicants are granted Section 10 forbearance from the condition. With respect to agreements, the Defined Time Period applies whether or not the initial or current term of an agreement has expired (“evergreen” status).

“Merger Announcement Date,” when used in this list of conditions, refers to April 21, 2010, which is the date on which Qwest and CenturyLink entered into their merger agreement.

¹ See *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc., d/b/a/ CenturyLink for Consent to Transfer of Control, Pleading Cycle Established*, Public Notice, DA 10-993, WC Dkt. No. 10-110 (rel. May 28, 2010) (“Public Notice”) and related applications filed in state proceedings.

² The Applicants have said that the transaction is expected to create annual operating synergies of approximately \$575 million, which are expected to be fully realized **three to five years** following closing. FCC Application, p. 21. Successive integration processes, with a period of substantial overlap between them, may not be accomplished smoothly, on-time and on-budget. In fact, CenturyLink has previously underestimated the length of time and the budget needed for a systems project. See Comments of Cbeyond, Integra, Socket, and tw telecom, FCC WC Dkt. No. 10-110 (July 12, 2010), pp. 47-48 & footnotes 145 & 146, quoting *Financial Watch: Integration Costs Loom Over OSS Deployments*, BILLING AND OSS WORLD, Oct. 1, 2003, available at <http://www.billingworld.com/articles/2003/10/financial-watch-integration-costs-loom-over-oss-d.aspx>. Therefore, the time period during which merger-related activities intended to result in synergies may occur over a longer time period.

³ In the *AT&T/BellSouth Merger Order*, AT&T proposed that conditions would last 3.5 years (42 months) from the merger closing date unless specified otherwise. *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) (“*AT&T/BellSouth Merger Order*”).

“Merged Company,” when used in this list of conditions, refers to the post-merger company (CenturyLink and its Operating Companies, collectively, after the Closing Date).

“Merger Filing Date,” when used in this list of conditions, refers to May 10, 2010, which is the date on which Qwest and CenturyLink made their merger filing with the FCC.

“Technically Feasible,” when used in this list of conditions, has the meaning set forth here. Interconnection, access to Unbundled Network Elements, Collocation, and other methods of achieving Interconnection or access to Unbundled Network Elements at a point in the network shall be deemed Technically Feasible absent technical or operational concerns that prevent the fulfillment of a request by a Telecommunications Carrier for such Interconnection, access, or methods. A determination of Technical Feasibility does not include consideration of economic, accounting, Billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is Technically Feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the Commission by clear and convincing evidence that such Interconnection, access, or methods would result in specific and significant adverse network reliability impacts.⁴

CONDITIONS

1. Any wholesale service offered to competitive carriers at any time between the Merger Filing Date up to and including the Closing Date will be made available and will not be discontinued for at least the Defined Time Period, except as approved by the Commission.
2. The Merged Company will not recover, or seek to recover, through wholesale service rates or other fees paid by CLECs, and will hold wholesale customers harmless for, one-time transfer, branding, or any other transaction-related costs. For purposes of this condition, “transaction-related costs” shall be construed broadly and, for example, shall not be limited in time to costs incurred only through the Closing Date.
3. The Merged Company will not recover, or seek to recover, through wholesale service rates or other fees paid by CLECs, and will hold wholesale customers harmless for, any increases in overall management costs that result from the transaction, including those incurred by the Operating Companies.
4. 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

⁴ Definition of “Technically Feasible” is taken from Qwest’s template interconnection agreement negotiations proposal, Section 4.0 (“Definitions”), available at <http://www.qwest.com/wholesale/clecs/nta.html>.

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.
5. For at least the Defined Time Period, in the legacy CenturyLink 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 CenturyLink 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 CenturyLink 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. The Merged Company shall provide to CLECs the reports of wholesale special access performance metrics that Qwest provides, or was required to provide, to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to the Commission staff, when requested. Beginning 12 months after the Closing Date, the requirements set forth in condition 4(b) shall apply to the Merged Company in the legacy CenturyLink ILEC territory, thereby requiring the Merged Company's average monthly performance in providing special access services in the legacy CenturyLink ILEC territory to meet or exceed the Merged Company's average monthly performance for each CLEC in the legacy Qwest ILEC territory for one year prior to the Merger Filing Date.
6. As of the Closing Date, the Merged Company will assume or take assignment of all obligations under Qwest's interconnection agreements, interstate tariffs (including the Annual Incentive contract tariff), and intrastate tariffs, Commercial agreements, and other existing arrangements with wholesale customers ("Assumed Agreements"). The Merged Company will assume or take assignment of all obligations under Qwest alternative form of regulation plans. The Merged Company shall not require wholesale customers to execute any documents(s) to effectuate the Merged Company's assumption or taking assignment of these obligations.
 - a. The Merged Company shall make available to requesting carriers and shall not terminate or change the rates, terms or conditions of any Assumed Agreements during the unexpired term of any Assumed Agreement or for at least the Defined Time Period, whichever occurs later, unless requested by the non-ILEC party, or required by a change of law.
 - b. In the legacy CenturyLink ILEC territory, the Merged Company will offer Commercial agreements (including those offered pursuant to condition 7), at prices

no higher, and for time periods no shorter, than those offered in the legacy Qwest ILEC territory.

7. Rates charged by legacy CenturyLink and rates charged by legacy Qwest (including those described in condition 6) for tandem transit service, any interstate special access tariffed or non-tariffed and Commercial offerings, any intrastate wholesale tariffed offering, and any service for which prices are set pursuant to Sections 252(c)(2) and Section 252(d) of the Communications Act shall not be increased for at least the Defined Time Period. The Merged Company will not create any new rate elements or charges for distinct facilities or functionalities that are already provided under rates as of the Closing Date.
 - a. The Merged Company shall continue to offer any term and volume discount plans offered as of the Merger Announcement Date, for at least the Defined Time Period, without any changes to the rates, terms, or conditions of such plans. The Merged Company will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term.
 - b. In the legacy CenturyLink territory, the Merged Company will comply with its statutory obligations pursuant to Section 251(c), and will provide tandem transit services to CLECs in interconnection agreements established pursuant to Sections 251 and 252, at rates no greater than any cost-based rate approved by the state commission for the Qwest ILEC territories, or current tandem transit rate, whichever is lower.
8. The Merged Company will allow requesting carriers to extend existing interconnection agreements, whether or not the initial or current term has expired or is in “evergreen” status, for at least the Defined Time Period or the date of expiration in the agreement, whichever is later.
9. 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.

10. In the legacy CenturyLink ILEC territory, the Merged Company will permit a requesting carrier to opt into any interconnection agreement to which Qwest is a party in the same state, including agreements in evergreen status. If there is no Qwest ILEC in a state, the Merged Company will permit a requesting carrier to opt into any interconnection agreement to which Qwest is a party in any state in which Qwest is an ILEC. Agreements subject to the opt-in rights described in this condition will apply in full, without modification and subject to the other conditions set forth herein. To the extent that the Merged Company seeks to modify agreements subject to the opt-in rights described in this condition, the Merged Company will permit the opt-in and the agreement shall become effective, subject to the Merged Company's right to subsequently seek from the applicable state commission an order modifying the agreement. The state commission may require modification of the agreement to the extent that the commission determines that the Merged Company has established that (1) it is not Technically Feasible for the Merged Company to comply with one or more provisions of the agreement or (2) the price(s) set forth in the agreement are inconsistent with TELRIC-based prices in the state in question. More consistency in interconnection agreement offerings will provide more consistency for wholesale customers dealing with CenturyLink in multiple states, and will enable the industry to rely on interconnection agreement terms from the pre-closing entity that both has been through Section 271 approval proceedings and has the greater volume of CLEC wholesale business.

- a. "CenturyLink ILEC territory," as used in this condition, excludes any CenturyLink ILEC for which a state commission has granted CenturyLink a rural exemption pursuant to Section 251(f) of the Federal Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. (the Communications Act") before the Merger Filing Date.
- b. Nothing in this condition precludes a regulatory body from determining that any operating company of the Merged Company, which as of the Merger Closing Date operates under a Section 251(f) exemption or a 251(f)(2) suspension or modification, must cease to do so. In the event that such a ruling is made, this condition would then apply to the applicable operating company as well.⁵

⁵ Charter Fiberlink further proposes as a condition of approval of this transaction that any operating company affiliates of CenturyLink or Qwest that currently operate under a Section 251(f) exemption or waiver relinquish and surrender such legal rights upon the Closing Date.

11. To the extent that an interconnection agreement is silent as to an interval for the provision of a product, service or functionality or refers to Qwest's website or Service Interval Guide (SIG), the applicable interval, after the Closing Date, shall be no longer than the interval in Qwest's SIG as of the Merger Filing Date.
12. The Merged Company will not seek to avoid any of the obligations of CenturyLink under the Assumed Agreements on the grounds that CenturyLink is not an incumbent local exchange carrier ("ILEC") under the Communications Act. The Merged Company will waive its right to seek the exemption for rural telephone companies under Section 251(f)(1) and its right to seek suspensions and modifications for rural carriers under Section 251(f)(2) of the Communications Act.
13. In the legacy Qwest ILEC territory, the Merged Company shall be classified as a Bell Operating Company ("BOC"), pursuant to Section 3(4)(A)-(B) of the Communications Act and shall be subject to all requirements applicable to BOCs, including but not limited to the "competitive checklist" set forth in Section 271(c)(2)(B) and the obligation to ensure there is no backsliding, and the nondiscrimination requirements of Section 272(e) of the Communications Act.
14. For at least the Defined Time Period, the Merged Company will not seek to reclassify as "non-impaired" any wire centers for purposes of Section 251 of the Communications Act, nor will the Merged Company file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 or 271 obligation or dominant carrier regulation in any wire center.
15. The Merged Company shall provide to wholesale carriers, and maintain and make available to wholesale carriers on a going-forward basis, up-to-date escalation information, contact lists, and account manager information at least 30 days prior to the Closing Date. For changes to support center location, organizational structure, or contact information, the Merged Company will provide at least 30 days advance written notice to wholesale carriers. For other changes, the Merged Company will provide reasonable advanced notice of the changes. The information and notice provided shall be consistent with the terms of applicable interconnection agreements.
16. The Merged Company will make available to each wholesale carrier the types and level of data, information, and assistance that Qwest made available as of the Merger Filing Date concerning wholesale Operational Support Systems functions and wholesale business practices and procedures, including information provided via the wholesale web site (which

Qwest sometimes refers to as its Product Catalog or “PCAT”), notices, industry letters, the change management process, and databases/tools (loop qualification tools, loop make-up tool, raw loop data tool, ICONN database, *etc.*).

17. After the Closing Date, the Merged Company will maintain the Qwest Change Management Process (“CMP”), utilizing the terms and conditions set forth in the CMP Document, including those terms and conditions governing changes to the CMP Document. The Merged Company will dedicate the resources needed to complete pending CLEC change requests in a commercially reasonable time frame.
18. 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.
19. In legacy Qwest ILEC territory, after the Closing Date, the Merged Company will use and offer to wholesale customers the legacy Qwest Operational Support Systems (OSS) for at least three years and provide at least the same level of wholesale service quality, including support, data, functionality, performance, and electronic bonding, provided by Qwest prior to the Merger Filing Date. After the minimum three-year period, the Merged Company will not replace or integrate Qwest systems without first complying with the following procedures:
 - a. The Merged Company will prepare and submit a detailed plan to the Wireline Competition Bureau of the FCC and the state commission of any affected state before replacing or integrating Qwest system(s). The Merged Company’s plan will describe the system to be replaced or integrated, the surviving system, and why the change is being made. The plan will describe steps to be taken to ensure data integrity is maintained. The plan will describe CenturyLink’s previous experience with replacing or integrating systems in other jurisdictions, specifying any problems that occurred

during that process and what has been done to prevent those problems in the planned transition for the affected states. The Merged Company's plan will also identify planned contingency actions in the event that the Merged Company encounters any significant problems with the planned transition. The plan submitted by the Merged Company will be prepared by information technology professionals, retained at the Merged Company's expense, with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. Interested carriers will have the opportunity to comment on the Merged Company's plan.

- b. For any Qwest system that was subject to third party testing (*e.g.*, as part of a Section 271 process), robust, transparent third party testing will be conducted for the replacement system to ensure that it provides the needed functionality and can appropriately handle existing and continuing wholesale services in commercial volumes. The types and extent of testing conducted during the Qwest Section 271 proceedings will provide guidance as to the types and extent of testing needed for the replacement systems. The Merged Company will not limit CLEC use of, or retire, the existing system until after third party testing has been successfully completed for the replacement system.
 - c. Before implementation of any replacement or to be integrated system, the Merged Company will allow for coordinated testing with CLECs, including a stable testing environment that mirrors production and, when applicable, controlled production testing. The Merged Company will provide the wholesale carriers training and education on any wholesale OSS implemented by the Merged Company without charge to the wholesale carrier.
20. In the legacy CenturyLink ILEC territory, as soon as reasonably possible, the Merged Company will use the wholesale pre-ordering, quoting, ordering, provisioning, and maintenance and repair functionalities (including electronic bonding) of the legacy Qwest territory to provide interconnection, Unbundled Network Elements, and special access services in the legacy CenturyLink ILEC territory. Specifically, in the legacy CenturyLink ILEC territory, the Merged Company will use the legacy Qwest IMA (GUI and XML), CORA, DLIS, CEMR, MEDIAC, Q.pricer, and Qwest Control systems for those services and functionalities for which Qwest provides wholesale services through these systems as of the Merger Filing Date.

21. The Merged Company will process orders in compliance with federal and state law, as well as the terms of applicable interconnection agreements.
22. The Merged Company will provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements.
 - a. When a number is ported from the Merged Company, E-911 records will be unlocked at the time of porting. Trouble reports involving locked E-911 records will be addressed within 24 hours.
 - b. The Merged Company will not assign any pass code, password or Personal Identification Number (PIN) to retail customer accounts in a manner that will prevent or delay a change in local service providers. The Merged Company will require only pass codes that an end user customer requests for the purpose of limiting or preventing activity and changes to their account. The Merged Company will not require that a new local service provider provide, on a service request, a password or PIN that the end user customer uses or used to access its account information on-line [including Customer Proprietary Network Information (CPNI)].
 - c. The Merged Company shall not limit the number of ports that can be processed.
23. The Merged Company will provide nondiscriminatory access to directory listings and directory assistance in compliance with federal and state law. Specifically, the Merged Company will be responsible for ensuring that all directory listings submitted by CLECs for inclusion in directory assistance or listings databases are properly incorporated into such databases (whether such databases are maintained by the Merged Company or a third party vendor). Further the Merged Company will ensure that CLECs' subscriber listings are accessible to any requesting person on the same terms and conditions that the Merged Company's subscriber listings are available to any requesting person.
24. After the Closing Date, the Merged Company shall not assess any fees, charges, surcharges or other assessments upon CLECs for activities that arise during the subscriber acquisition and migration process other than any fees, charges, surcharges or other assessments that were approved by the applicable commission and charged by Qwest in the legacy Qwest ILEC territory before the Closing Date. This condition prohibits the Merged Company from charging fees, charges, surcharges or other assessments, including:

- a. Service order charges assessed upon CLECs submitting local service requests (“LSRs”) for number porting;
 - b. Access or “use” fees or charges assessed upon CLECs that connect a competitor’s own self-provisioned loop, or last mile facility, to the customer side of the Merged Company’s network interface device (“NID”) enclosure or box; and
 - c. “Storage” or other related fees, rents or service order charges assessed upon a CLECs’ subscriber directory listings information submitted to the Merged Company for publication in a directory listing or inclusion in a directory assistance database.
25. The Merged Company will provide routine network modifications in compliance with federal and state law, as well as the terms of applicable interconnection agreements.
26. After the Closing Date, the Merged Company will engineer and maintain its network in compliance with federal and state law, as well as the terms of applicable interconnection agreements. Resources will not be diverted to merger-related activities at the expense of maintaining the Merged Company’s network.
- a. The Merged Company shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop.
 - b. The Merged Company will retire copper in compliance with federal and state law, as well as the terms of applicable interconnection agreements and as required by a change of law.
 - c. The Merged Company will not engineer or maintain the network (including routing of traffic) in a manner that results in the application of higher rates for traffic or inefficiencies for wholesale customers.
27. 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.

28. At CLEC's option, the Merged Company will interconnect with CLEC at a single point of interconnection per LATA, regardless of whether the Merged Company provides service in such LATA via multiple operating company affiliates or a single operating company.
29. All Conditions herein may be expanded or modified as a result of regulatory decisions concerning the proposed transaction in other states, including decisions based upon settlements, that impose conditions or commitments related to the transaction. CenturyLink agrees that the state commission of any state may adopt any commitments or conditions from other states or the FCC that are adopted after the final order in that state.
30. In the event a dispute arises between the parties with respect to any of the pre-closing and post-closing conditions herein, either party may seek resolution of the dispute by filing a petition with the state commission at any time. Alternative dispute resolution provisions in an interconnection agreement shall not prevent any party from filing a petition with the state commission at any time.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN MAYES, Chairman
GARY PIERCE, Commissioner
SANDRA KENNEDY, Commissioner
PAUL NEWMAN, Commissioner
BOB STUMP, Commissioner

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

EXHIBIT TG-9

**COMPARISON OF CLEC-PROPOSED CONDITIONS TO
SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS**

No.	Conditions	Where Similar Condition Has Been Previously Adopted
1	Any wholesale service offered to competitive carriers at any time between the Merger Filing Date up to and including the Closing Date will be made available and will not be discontinued for at least the Defined Time Period, except as approved by the Commission.	<ul style="list-style-type: none"> • FCC Verizon/Frontier Merger¹ • Oregon Verizon/Frontier Merger²
2	The Merged Company will not recover, or seek to recover, through wholesale service rates or other fees paid by CLECs, and will hold wholesale customers harmless for, one-time transfer, branding, or any other transaction-related costs. For purposes of this condition, “transaction-related costs” shall be construed broadly and, for example, shall not be limited in time to costs incurred only through the Closing Date.	<ul style="list-style-type: none"> • FCC Verizon/Frontier Merger³ • Oregon CenturyTel/Embarq Merger⁴ • Oregon Verizon/Frontier Merger⁵ • Illinois Verizon/Frontier Merger⁶
3	The Merged Company will not recover, or seek to recover, through wholesale service rates or other fees paid by CLECs, and will hold wholesale customers harmless for, any increases in overall management costs that result from the transaction, including those incurred by the Operating Companies.	<ul style="list-style-type: none"> • FCC Verizon/Frontier Merger⁷ • Oregon CenturyTel/Embarq Merger⁸ • Oregon Verizon/Frontier Merger⁹ • Illinois Verizon/Frontier Merger¹⁰

¹ *In the Matter of Applications Filed by Frontier Communications Corp. and Verizon Communications Inc. for Assignment of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 09-95; FCC 10-87, May 21, 2010 (“FCC Verizon/Frontier Merger”), Appendix C, p. 35, Condition 16 (one year).

² *In the Matter of Verizon Communications Inc. and Frontier Communications Corp. Joint Application for an Order Declining to Assert Jurisdiction, or, in the alternative, to Approve the Indirect Transfer of Control of Verizon Northwest Inc.*, Order Granting Joint Application with Conditions, UM 1431, Order No. 10-067, February 24, 2010 (“Oregon Verizon/Frontier Merger”), Appendix A, p. 10, Condition 36 (one year).

³ FCC Verizon/Frontier Merger, Appendix C, p. 35, Condition 17.

⁴ *In the Matter of Embarq Corp. and CenturyTel, Inc. Joint Application for Approval of Merger between the two companies and their regulated subsidiaries*, Order Granting Joint Application with Conditions, UM 1416, Order No. 09-169, May 22, 2009 (“Oregon CenturyTel/Embarq Merger”), Appendix B, p. 2, Condition 4(g).

⁵ Oregon Verizon/Frontier Merger, Appendix A, p. 2, Condition 9..

⁶ *Frontier Communications Corp., Verizon North, Inc. et al. Joint Application for the approval of a Reorganization pursuant to Section 7-204 of the Public Utilities Act*, Order, Docket No. 09-0268, April 21, 2010 (“Illinois Verizon/Frontier Merger”), Conditions Appendix, p. 9, Condition 9.

⁷ FCC Verizon/Frontier Merger, Appendix C, p. 35, Condition 17.

⁸ Oregon CenturyTel/Embarq Merger, Appendix B, p. 3, Condition 4(o).

⁹ Oregon Verizon/Frontier Merger, Appendix A, p. 10, Condition 10.

¹⁰ Illinois Verizon/Frontier Merger, Conditions Appendix, p. 9, Condition 9.

**COMPARISON OF CLEC-PROPOSED CONDITIONS TO
SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS**

No.	Conditions	Where Similar Condition Has Been Previously Adopted
4	<p>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.</p> <p>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 (<i>e.g.</i>, 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”).</p> <p>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.</p>	<ul style="list-style-type: none"> • FCC Verizon/Frontier Merger¹¹ • FCC CenturyTel/Embarq Merger¹²

¹¹ Verizon/Frontier Merger, Appendix C, p. 35, Condition 23 (substantially the same as the first two sentences).

¹² FCC CenturyTel/Embarq Merger, Appendix C, p. 27 (requiring the merged company to maintain wholesale service levels and continue to provide service performance reports (to CLECs and the regulator agency) for two years after closing date).

**COMPARISON OF CLEC-PROPOSED CONDITIONS TO
SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS**

No.	Conditions	Where Similar Condition Has Been Previously Adopted
5	<p>For at least the Defined Time Period, in the legacy CenturyLink 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 CenturyLink 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 CenturyLink 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.</p> <p>a. The Merged Company shall provide to CLECs the reports of wholesale special access performance metrics that Qwest provides, or was required to provide, to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to the Commission staff, when requested. Beginning 12 months after the Closing Date, the requirements set forth in condition 4(b) shall apply to the Merged Company in the legacy CenturyLink ILEC territory, thereby requiring the Merged Company’s average monthly performance in providing special access services in the legacy CenturyLink ILEC territory to meet or exceed the Merged Company’s average monthly performance for each CLEC in the legacy Qwest ILEC territory for one year prior to the Merger Filing Date.</p>	<ul style="list-style-type: none"> • FCC Verizon/Frontier Merger¹³ • FCC CenturyTel/Embarq Merger¹⁴ • FCC AT&T/SBC Merger¹⁵
6	<p>As of the Closing Date, the Merged Company will assume or take assignment of all obligations under Qwest’s interconnection agreements, interstate tariffs (including the Annual Incentive contract tariff), and intrastate tariffs, Commercial agreements, and other existing arrangements with wholesale customers (“Assumed Agreements”). The Merged Company will assume or take assignment of all obligations under Qwest alternative form of regulation plans. The Merged Company shall not require wholesale customers to execute any documents(s) to effectuate the Merged Company’s assumption or taking assignment of these obligations.</p>	<ul style="list-style-type: none"> • Illinois Verizon/Frontier Merger¹⁶ • Oregon Verizon/Frontier Merger¹⁷ • Subpart (b) has been developed to offset harm resulting from this particular transaction.

¹³ FCC Verizon/Frontier Merger, Appendix C, p. 35, Condition 23.

¹⁴ *In the Matter of Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, Memorandum Opinion and Order, WC Docket No. 08-239; FCC 09-54, June 25, 2009 (“FCC CenturyTel/Embarq Merger”), Appendix C, pp. 27-28 (requiring the merged company to maintain wholesale service levels and continue to provide service performance reports (to CLECs and the regulator agency) for two years after closing date).

¹⁵ *In the Matter of SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 05-65; FCC 05-183, November 17, 2005 (“FCC AT&T/SBC Merger”), p. 123 (requiring implementation of special access quality measurement plan and associated reporting).

¹⁶ Illinois Verizon/Frontier Merger, Conditions Appendix, p. 5, Condition 5-1 (30 months from closing instead of at least 36 months from the merger announcement date).

¹⁷ Oregon Verizon/Frontier Merger, Appendix A, p. 9, Conditions 32 and 33 (24 months from closing date instead of at least 36 months from the merger announcement date).

**COMPARISON OF CLEC-PROPOSED CONDITIONS TO
SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS**

No.	Conditions	Where Similar Condition Has Been Previously Adopted
	<p>a. The Merged Company shall make available to requesting carriers and shall not terminate or change the rates, terms or conditions of any Assumed Agreements during the unexpired term of any Assumed Agreement or for at least the Defined Time Period, whichever occurs later, unless requested by the non-ILEC party, or required by a change of law.</p> <p>b. In the legacy CenturyLink ILEC territory, the Merged Company will offer Commercial agreements (including those offered pursuant to condition 7), at prices no higher, and for time periods no shorter, than those offered in the legacy Qwest ILEC territory.</p>	
7	<p>Rates charged by legacy CenturyLink and rates charged by legacy Qwest (including those described in condition 6) for tandem transit service, any interstate special access tariffed or non-tariffed and Commercial offerings, any intrastate wholesale tariffed offering, and any service for which prices are set pursuant to Sections 252(c)(2) and Section 252(d) of the Communications Act shall not be increased for at least the Defined Time Period. The Merged Company will not create any new rate elements or charges for distinct facilities or functionalities that are already provided under rates as of the Closing Date.</p> <p>a. The Merged Company shall continue to offer any term and volume discount plans offered as of the Merger Announcement Date, for at least the Defined Time Period, without any changes to the rates, terms, or conditions of such plans. The Merged Company will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term.</p> <p>b. In the legacy CenturyLink territory, the Merged Company will comply with its statutory obligations pursuant to Section 251(c), and will provide tandem transit services to CLECs in interconnection agreements established pursuant to Sections 251 and 252, at rates no greater than any cost-based rate approved by the state commission for the Qwest ILEC territories, or current tandem transit rate, whichever is lower.</p>	<ul style="list-style-type: none"> • Oregon Verizon/Frontier Merger¹⁸ • Illinois Verizon/Frontier Merger¹⁹ • FCC Verizon/MCI Merger²⁰ FCC AT&T/BellSouth Merger²¹

¹⁸ Oregon Verizon/Frontier Merger, Appendix A, p. 9, Condition 32 (24 months instead of 36 months) and p. 9 Condition 34 (requires the merged company to continue to provide transit service subject to same rates, terms and conditions as provided pre-merger).

¹⁹ Illinois Verizon/Frontier Merger, Conditions Appendix, p. 5, Condition 5-3 (30 month instead of 36 months).

²⁰ *In the Matter of Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 05-75; FCC 05-184, November 17, 2005 (“FCC Verizon/MCI Merger”), Appendix G, p. 128, UNEs condition 1 (two years instead of three years).

²¹ FCC AT&T/BellSouth Merger, Appendix F, p. 153 (rate cap on transit rates for 42 months instead of 36 months).

**COMPARISON OF CLEC-PROPOSED CONDITIONS TO
SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS**

No.	Conditions	Where Similar Condition Has Been Previously Adopted
8	The Merged Company will allow requesting carriers to extend existing interconnection agreements, whether or not the initial or current term has expired or is in “evergreen” status, for at least the Defined Time Period or the date of expiration in the agreement, whichever is later.	<ul style="list-style-type: none"> • FCC AT&T/BellSouth Merger²² • Illinois Verizon/Frontier Merger²³ • Oregon Verizon/Frontier Merger²⁴
9	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.	<ul style="list-style-type: none"> • FCC AT&T/BellSouth Merger²⁵ • The conditions regarding ongoing negotiations have been developed to offset harm resulting from this particular transaction.
10	In the legacy CenturyLink ILEC territory, the Merged Company will permit a requesting carrier to opt into any interconnection agreement to which Qwest is a party in the same state, including agreements in evergreen status. If there is no Qwest ILEC in a state, the Merged Company will permit a requesting carrier to opt into any interconnection agreement to which Qwest is a party in any state in which Qwest is an ILEC. Agreements subject to the opt-in rights described in this condition will apply in full, without modification and subject to the other conditions set forth herein. To the extent that the Merged Company seeks to modify agreements subject to the opt-in rights described in this condition, the Merged Company will permit the opt-in and the agreement shall become effective, subject to the Merged Company’s right to subsequently seek from the applicable state commission an order modifying the agreement. The state commission may require modification of the agreement to the extent that the commission determines that the Merged Company has established that (1) it is not Technically Feasible for the Merged Company to comply with one or more provisions of the agreement or (2) the price(s) set forth in the agreement are inconsistent with TELRIC-based prices in the state in question. More consistency in interconnection agreement offerings will provide more consistency for wholesale customers dealing with CenturyLink in multiple states, and will enable the industry to rely on interconnection agreement terms from the pre-closing entity that both has	<ul style="list-style-type: none"> • FCC AT&T/BellSouth Merger²⁷

²² *In the Matter of AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 06-74; FCC 06-189, March 26, 2007 (“FCC AT&T/BellSouth Merger”), Appendix F, p. 150 (“up to three years” instead of “at least three years.”)

²³ Illinois Verizon/Frontier Merger, Conditions Appendix, p. 5, Condition 5-2 (for at least 30 months instead of at least 36 months).

²⁴ Oregon Verizon/Frontier Merger, Appendix A, p. 9, Condition 32 (for at least 30 months instead of at least 36 months).

²⁵ FCC AT&T/BellSouth Merger Order, Appendix F, p. 149 (substantially the same as the first sentence)

²⁷ FCC AT&T/BellSouth Merger Order, Appendix F, p. 149.

**COMPARISON OF CLEC-PROPOSED CONDITIONS TO
SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS**

No.	Conditions	Where Similar Condition Has Been Previously Adopted
	<p>been through Section 271 approval proceedings and has the greater volume of CLEC wholesale business.</p> <p>a. “CenturyLink ILEC territory,” as used in this condition, excludes any CenturyLink ILEC for which a state commission has granted CenturyLink a rural exemption pursuant to Section 251(f) of the Federal Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. (the Communications Act”) before the Merger Filing Date.</p> <p>b. Nothing in this condition precludes a regulatory body from determining that any operating company of the Merged Company, which as of the Merger Closing Date operates under a Section 251(f) exemption or a 251(f)(2) suspension or modification, must cease to do so. In the event that such a ruling is made, this condition would then apply to the applicable operating company as well.²⁶</p>	
11	<p>To the extent that an interconnection agreement is silent as to an interval for the provision of a product, service or functionality or refers to Qwest’s website or Service Interval Guide (SIG), the applicable interval, after the Closing Date, shall be no longer than the interval in Qwest’s SIG as of the Merger Filing Date.</p>	<ul style="list-style-type: none"> • Oregon Verizon/Frontier Merger²⁸
12	<p>The Merged Company will not seek to avoid any of the obligations of CenturyLink under the Assumed Agreements on the grounds that CenturyLink is not an incumbent local exchange carrier (“ILEC”) under the Communications Act. The Merged Company will waive its right to seek the exemption for rural telephone companies under Section 251(f)(1) and its right to seek suspensions and modifications for rural carriers under Section 251(f)(2) of the Communications Act.</p>	<ul style="list-style-type: none"> • Oregon Verizon/Frontier Merger²⁹ • FCC Verizon/Frontier Merger³⁰
13	<p>In the legacy Qwest ILEC territory, the Merged Company shall be classified as a Bell Operating Company (“BOC”), pursuant to Section 3(4)(A)-(B) of the Communications Act and shall be subject to all requirements applicable to BOCs, including but not limited to the “competitive checklist” set forth in Section 271(c)(2)(B) and the obligation to ensure there is no backsliding, and the nondiscrimination requirements of Section 272(e) of the Communications Act.</p>	<ul style="list-style-type: none"> • This condition has been developed to offset harm resulting from this particular transaction.
14	<p>For at least the Defined Time Period, the Merged Company will not seek to reclassify as “non-impaired” any wire centers for purposes of Section 251 of the Communications Act, nor will the Merged Company file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 or 271 obligation or dominant carrier regulation in any wire center.</p>	<ul style="list-style-type: none"> • FCC AT&T/BellSouth Merger³¹ • Oregon Verizon/Frontier Merger³²

²⁶ Charter Fiberlink further proposes as a condition of approval of this transaction that any operating company affiliates of CenturyLink or Qwest that currently operate under a Section 251(f) exemption or waiver relinquish and surrender such legal rights upon the Closing Date.

²⁸ Oregon Verizon/Frontier Merger, Appendix A, p. 11, Condition 44.

²⁹ Oregon Verizon/Frontier Merger, Appendix A, pp. 9-10, Condition 35.

³⁰ Verizon/Frontier Merger, Appendix C, p. 35, Condition 18.

³¹ FCC AT&T/BellSouth Merger, Appendix F, p. 155 (42 months).

³² Oregon Verizon/Frontier Merger, Settlement Condition10, 2010 Ore. PUC LEXIS 64, *124 (one year).

**COMPARISON OF CLEC-PROPOSED CONDITIONS TO
SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS**

No.	Conditions	Where Similar Condition Has Been Previously Adopted
15	<p>The Merged Company shall provide to wholesale carriers, and maintain and make available to wholesale carriers on a going-forward basis, up-to-date escalation information, contact lists, and account manager information at least 30 days prior to the Closing Date. For changes to support center location, organizational structure, or contact information, the Merged Company will provide at least 30 days advance written notice to wholesale carriers. For other changes, the Merged Company will provide reasonable advanced notice of the changes. The information and notice provided shall be consistent with the terms of applicable interconnection agreements.</p>	<ul style="list-style-type: none"> • Oregon Verizon/Frontier Merger³³
16	<p>The Merged Company will make available to each wholesale carrier the types and level of data, information, and assistance that Qwest made available as of the Merger Filing Date concerning wholesale Operational Support Systems functions and wholesale business practices and procedures, including information provided via the wholesale web site (which Qwest sometimes refers to as its Product Catalog or “PCAT”), notices, industry letters, the change management process, and databases/tools (loop qualification tools, loop make-up tool, raw loop data tool, ICONN database, etc.).</p>	<ul style="list-style-type: none"> • FCC Verizon/Frontier Merger³⁴ • Oregon Verizon/Frontier Merger³⁵
17	<p>After the Closing Date, the Merged Company will maintain the Qwest Change Management Process (“CMP”), utilizing the terms and conditions set forth in the CMP Document, including those terms and conditions governing changes to the CMP Document. The Merged Company will dedicate the resources needed to complete pending CLEC change requests in a commercially reasonable time frame.</p>	<ul style="list-style-type: none"> • FCC Verizon/Frontier Merger³⁶ • Oregon Verizon/Frontier Merger³⁷

³³ Oregon Verizon/Frontier Merger, Appendix A, p. 10, Condition 39 (substantially the same as first sentence).

³⁴ FCC Verizon/Frontier Merger, Appendix C, pp. 34-35, Condition 13.

³⁵ Oregon Verizon/Frontier Merger, Appendix A, p. 10, Condition 40.

³⁶ FCC Verizon/Frontier Merger, Appendix C, p. 35, Condition 14.

³⁷ Oregon Verizon/Frontier Merger, Appendix A, p. 10, Condition 41.

**COMPARISON OF CLEC-PROPOSED CONDITIONS TO
SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS**

No.	Conditions	Where Similar Condition Has Been Previously Adopted
18	<p>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.</p>	<ul style="list-style-type: none"> • FCC Verizon/Frontier Merger³⁸ • FCC CenturyTel/Embarq Merger³⁹ • Oregon Verizon/Frontier Merger⁴⁰
19	<p>In legacy Qwest ILEC territory, after the Closing Date, the Merged Company will use and offer to wholesale customers the legacy Qwest Operational Support Systems (OSS) for at least three years and provide at least the same level of wholesale service quality, including support, data, functionality, performance, and electronic bonding, provided by Qwest prior to the Merger Filing Date. After the minimum three-year period, the Merged Company will not replace or integrate Qwest systems without first complying with the following procedures:</p> <p>a. The Merged Company will prepare and submit a detailed plan to the Wireline Competition Bureau of the FCC and the state commission of any affected state before replacing or integrating Qwest system(s). The Merged Company’s plan will describe the system to be replaced or integrated, the surviving system, and why the change is being made. The plan will describe steps to be taken to ensure data integrity is maintained. The plan will describe CenturyLink’s previous experience with replacing or integrating systems in other jurisdictions, specifying any problems that occurred during that process and what has been done to prevent those problems in the planned transition for the affected states. The Merged Company’s plan will also identify planned contingency actions in the event that the Merged Company encounters any significant problems with the planned transition. The plan submitted by the Merged Company will be prepared by information technology professionals, retained at the Merged Company’s expense,</p>	<ul style="list-style-type: none"> • South Carolina Verizon/Frontier Merger⁴¹

³⁸ FCC Verizon/Frontier Merger, Appendix C, p. 35, Condition 15 (substantially same as first sentence).

³⁹ FCC CenturyTel/Embarq Merger, Appendix C, p. 28 (requiring the merged company to maintain a certain number of employees to handle port orders during the interim until integration).

⁴⁰ Oregon Verizon/Frontier Merger, Appendix A, p. 10, Condition 42 (substantially same as first sentence).

⁴¹ *In Re: Joint Application of Frontier Communications Corp., et al. for Approval of the Transfer of Assets, Authority and Certificates*, South Carolina PSC Docket No. 2009-220-C, Order No. 2009-769, October 29, 2009 (“South Carolina Verizon/Frontier Merger”), 2009 S.C.PUC LEXIS 506, *29, Condition 10(h) (requires replacement systems to be “properly tested and certified” and does not expressly mention “third-party tested”).

**COMPARISON OF CLEC-PROPOSED CONDITIONS TO
SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS**

No.	Conditions	Where Similar Condition Has Been Previously Adopted
	<p>with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. Interested carriers will have the opportunity to comment on the Merged Company's plan.</p> <p>b. For any Qwest system that was subject to third party testing (<i>e.g.</i>, as part of a Section 271 process), robust, transparent third party testing will be conducted for the replacement system to ensure that it provides the needed functionality and can appropriately handle existing and continuing wholesale services in commercial volumes. The types and extent of testing conducted during the Qwest Section 271 proceedings will provide guidance as to the types and extent of testing needed for the replacement systems. The Merged Company will not limit CLEC use of, or retire, the existing system until after third party testing has been successfully completed for the replacement system.</p> <p>c. Before implementation of any replacement or to be integrated system, the Merged Company will allow for coordinated testing with CLECs, including a stable testing environment that mirrors production and, when applicable, controlled production testing. The Merged Company will provide the wholesale carriers training and education on any wholesale OSS implemented by the Merged Company without charge to the wholesale carrier.</p>	
20	<p>In the legacy CenturyLink ILEC territory, as soon as reasonably possible, the Merged Company will use the wholesale pre-ordering, quoting, ordering, provisioning, and maintenance and repair functionalities (including electronic bonding) of the legacy Qwest territory to provide interconnection, Unbundled Network Elements, and special access services in the legacy CenturyLink ILEC territory. Specifically, in the legacy CenturyLink ILEC territory, the Merged Company will use the legacy Qwest IMA (GUI and XML), CORA, DLIS, CEMR, MEDIAC, Q.pricer, and Qwest Control systems for those services and functionalities for which Qwest provides wholesale services through these systems as of the Merger Filing Date.</p>	<ul style="list-style-type: none"> • FCC CenturyTel/Embarq Merger⁴²
21	<p>The Merged Company will process orders in compliance with federal and state law, as well as the terms of applicable interconnection agreements.</p>	<ul style="list-style-type: none"> • FCC CenturyTel/Embarq Merger⁴³

⁴² FCC CenturyTel/Embarq Meter, Appendix C, p. 28 (required the replacement of an inferior OSS with a better OSS).

⁴³ FCC CenturyTel/Embarq Merger, Appendix C, p. 27.

**COMPARISON OF CLEC-PROPOSED CONDITIONS TO
SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS**

No.	Conditions	Where Similar Condition Has Been Previously Adopted
22	<p>The Merged Company will provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements.</p> <p>a. When a number is ported from the Merged Company, E-911 records will be unlocked at the time of porting. Trouble reports involving locked E-911 records will be addressed within 24 hours.</p> <p>b. The Merged Company will not assign any pass code, password or Personal Identification Number (PIN) to retail customer accounts in a manner that will prevent or delay a change in local service providers. The Merged Company will require only pass codes that an end user customer requests for the purpose of limiting or preventing activity and changes to their account. The Merged Company will not require that a new local service provider provide, on a service request, a password or PIN that the end user customer uses or used to access its account information on-line [including Customer Proprietary Network Information (CPNI)].</p> <p>c. The Merged Company shall not limit the number of ports that can be processed.</p>	<ul style="list-style-type: none"> • FCC CenturyTel/Embarq Merger⁴⁴ • The condition regarding pass code/password/PIN has been developed to offset harm resulting from this particular transaction.⁴⁵
23	<p>The Merged Company will provide nondiscriminatory access to directory listings and directory assistance in compliance with federal and state law. Specifically, the Merged Company will be responsible for ensuring that all directory listings submitted by CLECs for inclusion in directory assistance or listings databases are properly incorporated into such databases (whether such databases are maintained by the Merged Company or a third party vendor). Further the Merged Company will ensure that CLECs' subscriber listings are accessible to any requesting person on the same terms and conditions that the Merged Company's subscriber listings are available to any requesting person.</p>	<ul style="list-style-type: none"> • This condition has been developed to offset harm resulting from this particular transaction.⁴⁶

⁴⁴ FCC CenturyTel/Embarq Merger, Appendix C, pp. 27-28.

⁴⁵ See, e.g., *In re: Local Number Portability Porting Interval and Validation Requirements*, Report and Order, 25 FCC Rcd. 6593, ¶ 16 (2010) (adopting the NANC's recommendation that "a passcode not be required unless the passcode has been requested and assigned by the end user rather than the service provider" in order to prevent "anticompetitive effects").

⁴⁶ See, e.g., 47 C.F.R. §51.217(b).

**COMPARISON OF CLEC-PROPOSED CONDITIONS TO
SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS**

No.	Conditions	Where Similar Condition Has Been Previously Adopted
24	<p>After the Closing Date, the Merged Company shall not assess any fees, charges, surcharges or other assessments upon CLECs for activities that arise during the subscriber acquisition and migration process other than any fees, charges, surcharges or other assessments that were approved by the applicable commission and charged by Qwest in the legacy Qwest ILEC territory before the Closing Date. This condition prohibits the Merged Company from charging fees, charges, surcharges or other assessments, including:</p> <ol style="list-style-type: none"> a. Service order charges assessed upon CLECs submitting local service requests (“LSRs”) for number porting; b. Access or “use” fees or charges assessed upon CLECs that connect a competitor’s own self-provisioned loop, or last mile facility, to the customer side of the Merged Company’s network interface device (“NID”) enclosure or box; and c. “Storage” or other related fees, rents or service order charges assessed upon a CLECs’ subscriber directory listings information submitted to the Merged Company for publication in a directory listing or inclusion in a directory assistance database. 	<ul style="list-style-type: none"> • This condition has been developed to offset harm resulting from this particular transaction.
25	<p>The Merged Company will provide routine network modifications in compliance with federal and state law, as well as the terms of applicable interconnection agreements.</p>	<ul style="list-style-type: none"> • This condition has been developed to offset harm resulting from this particular transaction.⁴⁷
26	<p>After the Closing Date, the Merged Company will engineer and maintain its network in compliance with federal and state law, as well as the terms of applicable interconnection agreements. Resources will not be diverted to merger-related activities at the expense of maintaining the Merged Company’s network.</p> <ol style="list-style-type: none"> a. The Merged Company shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop. b. The Merged Company will retire copper in compliance with federal and state law, as well as the terms of applicable interconnection agreements and as required by a change of law. c. The Merged Company will not engineer or maintain the network (including routing of traffic) in a manner that results in the application of higher rates for traffic or inefficiencies for wholesale customers. 	<ul style="list-style-type: none"> • This condition has been developed to offset harm resulting from this particular transaction.⁴⁸

⁴⁷ See, e.g., 47 C.F.R. §51.319(a)(7).

⁴⁸ See, e.g., 47 C.F.R. §§ 51.319(a)(8) and 51.333.

**COMPARISON OF CLEC-PROPOSED CONDITIONS TO
SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS**

No.	Conditions	Where Similar Condition Has Been Previously Adopted
27	<p>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.</p>	<ul style="list-style-type: none"> • This condition has been developed to offset harm resulting from this particular transaction.⁴⁹
28	<p>At CLEC's option, the Merged Company will interconnect with CLEC at a single point of interconnection per LATA, regardless of whether the Merged Company provides service in such LATA via multiple operating company affiliates or a single operating company.</p>	<ul style="list-style-type: none"> • This condition has been developed to offset harm resulting from this particular transaction.
29	<p>All Conditions herein may be expanded or modified as a result of regulatory decisions concerning the proposed transaction in other states, including decisions based upon settlements, that impose conditions or commitments related to the transaction. CenturyLink agrees that the state commission of any state may adopt any commitments or conditions from other states or the FCC that are adopted after the final order in that state.</p>	<ul style="list-style-type: none"> • Oregon CenturyTel/Embarq Merger⁵⁰ • Oregon Verizon/Frontier Merger⁵¹
30	<p>In the event a dispute arises between the parties with respect to any of the pre-closing and post-closing conditions herein, either party may seek resolution of the dispute by filing a petition with the state commission at any time. Alternative dispute resolution provisions in an interconnection agreement shall not prevent any party from filing a petition with the state commission at any time.</p>	<ul style="list-style-type: none"> • Oregon Verizon/Frontier Merger⁵² • Illinois Verizon/Frontier Merger⁵³

⁴⁹ See, 47 C.F.R. §§ 51.319(a)(1)(iii)(A) and 51.319(a)(1)(iii)(C).

⁵⁰ Oregon CenturyTel/Embarq Merger, Appendix B, pp. 3-4, Condition 4(r).

⁵¹ Oregon Verizon/Frontier Merger, Appendix A, pp. 12-13, Condition 56.

⁵² Oregon Verizon/Frontier Merger, Settlement Condition 16, 2010 Ore. PUC LEXIS 64, *131.

⁵³ Illinois Verizon/Frontier Merger, Conditions Appendix, p. 11, Condition 20.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN MAYES, Chairman
GARY PIERCE, Commissioner
SANDRA KENNEDY, Commissioner
PAUL NEWMAN, Commissioner
BOB STUMP, Commissioner

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

EXHIBIT TG-10



August 10, 2010

Subject: My Account/WebRRS Access Changes for Legacy EMBARQ CLECs

Dear Legacy EMBARQ CLEC:

Effective today, CLECs utilizing "MyAccount" at [CenturyLink - MyAccount Login](#) for submission of a repair ticket into the WebRRS system, or Resale CLECs in Ohio/North Carolina utilizing MyAccount for on-line bill view, will be prompted to enter an account number.

Resale CLECs (Ohio/North Carolina) will enter the new Ensemble 9 digit account number. MyAccount for on-line bill view is available only to Resale CLECs in Ohio/North Carolina that have converted to the Ensemble billing system. Resale CLECs in Ohio/North Carolina will be able to view the on-line invoice; however, will not have access to the WebRRS functionality for an interim period of time.

All other CLECs, including Resale CLECs in all other states, UNE-Loop and LWS Complete CLECs, utilizing MyAccount for the WebRRS functionality will enter their existing "MyAccount" 13 digit account number (consecutive numbers: no dashes/spaces, etc). On-line bill view is only available to Resale CLECs in Ohio/North Carolina.

An error message will be received if the account number is not valid.

Should you have any questions regarding these changes, please contact your account manager or contact the NEAC at 1-800-578-8169 for assistance with MyAccount.

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