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Arizona Corporation Commission

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

DOCKET NO. T-01051B-10-0194
DOCKET NO. T-02811B-10-0194
DOCKET NO. T-04190A-10-0194
DOCKET NO. T-20443A-10-0194
DOCKET NO. T-03555A-10-0194
DOCKET NO. T-03902A-10-0194

**JOINT APPLICANTS' NOTICE OF
FILING REBUTTAL
TESTIMONIES**

The joint applicants listed in the above caption ("Joint Applicants") hereby file
their rebuttal testimony on behalf of the following witnesses:

Qwest:

- Robert Brigham, Staff Director, Qwest Corporation
- Jim Campbell, State President for Arizona, Qwest Corporation
- Karen Anne Stewart, Director-Legal Issues & Regulatory Compliance,
Qwest Corporation
- Michael G. Williams, Director-Public Policy, Qwest Corporation

CenturyLink:

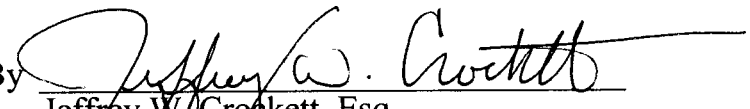
- Jeffrey S. Glover, Vice President, Regulatory Operations and Policy,
CenturyLink

- Michael R. Hunsucker, Director, CLEC Management, CenturyLink
- Kristin McMillan, Vice President, State External Relations-Western Region, CenturyLink
- Todd Schafer, President, Mid-Atlantic Region, CenturyLink.

Confidential Exhibit MGW-1 to the Rebuttal Testimony of Michael G. Williams is Confidential Information pursuant to the Protective Order entered in these consolidated dockets. Accordingly, Confidential Exhibit MGW-1 has been redacted in this filing. However, a copy of Confidential Exhibit MGW-1 is being provided to parties in these consolidated dockets who have signed a copy of Exhibit A to the protective order.

RESPECTFULLY SUBMITTED this 27th day of October, 2010.

SNELL & WILMER L.L.P.

By 
 Jeffrey W. Crockett, Esq.
 Bradley S. Carroll, Esq.
 One Arizona Center
 400 E. Van Buren
 Phoenix, AZ 85004-2202
 Attorneys for CenturyLink

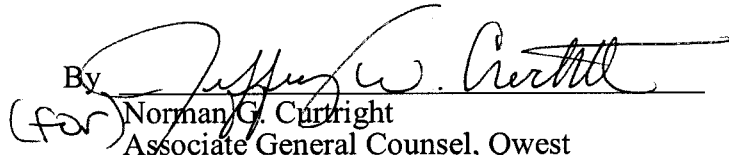
and

Kevin K. Zarling, Senior Counsel
 (admitted *pro hac vice*)
 Senior Counsel, CenturyLink
 400 W. 15th Street, Suite 315
 Austin, Texas 78701

Attorneys for CenturyLink

QWEST CORPORATION

By


(for) Norman G. Curtright

Associate General Counsel, Qwest
20 East Thomas Road, 16th Floor
Phoenix, Arizona 85012

Attorney for Qwest Corporation

ORIGINAL and 13 copies filed
this 27th day of October, 2010, with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 27th day of October, 2010, to:

Belinda Martin, Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007

Janice Alward, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007

Steve Olea, Director
Utilities Division
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, Arizona 85007

Daniel Pozefsky, Chief Counsel
Residential Utility Consumer Office
1110 West Washington, Suite 220
Phoenix, Arizona 85007
dpozefsky@azruco.gov

Michael Patten
Roshka DeWulf & Patten, PLC
One Arizona Center
400 E. Van Buren St. - 800
Phoenix, Arizona 85004
mpatten@rdp-law.com

Joan Burke
Law Office of Joan S. Burke
1650 N. First Avenue
Phoenix, Arizona 85003
joan@jsburkelaw.com

COPY of the foregoing sent via First Class
Mail this 27th day of October, 2010, to:

Lyndall Nipps
Vice President, Regulatory Affairs
twtelecom of Oregon, llc
9665 Granite Ridge Drive, Ste. 500
San Diego, California 97123
lyndall.nipps@twtelecom.com

Katherine Mudge
Director, State Affairs & ILEC Relations
Covad Communications, Inc.
7000 N. Mopac Expressway, 2nd Floor
Austin, Texas 78731
kmudge@covad.com

Gregory L. Rogers
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, Colorado 80021
Greg.rogers@level3.com

James C. Falvey
Senior Regulatory Counsel
Pac-West Telecomm, Inc.
420 Chinguapin Round Rd., Ste. 2-1
Annapolis, Maryland 21401
jfalvey@pacwest.com

Rogelio Pena
Pena & Associates
4845 Pearl East Circle, - 101
Boulder, Colorado 80301

Harry Gildea
Snavelly King Majoros O'Connor & Bedell,
Inc.
1111 14th St., N.W., Suite 300
Washington, District of Columbia 20005
hgildea@snavelly-king.com

John Ilgen, Vice President
Sales and Marketing
WESTEL INC.
99606 North Mopac Expressway, Ste 700
Austin, TX 78759
john.ilgen@westel.net

Mark DiNunzio
Cox Arizona Telcom, LLC
1550 W. Deer Valley Rd.
MS:DV3-16, Bldg. C
Phoenix, Arizona 85027
Mark.DiNunzio@cox.com

Rex Knowles
XO Communications, Inc.
7050 Union Park Ave., Ste. 400
Midvale, Utah 84047
Rex.knowles@xo.com

William A. Haas
Vice President of Public Policy & Regulatory
PAETEC Holding Corp.
One Martha's Way
Hiawatha, Iowa 52233
William.haas@paetec.com

Stephen S. Melnikoff
Regulatory Law Office
U.S. Army Litigation Center
901 N. Stuart St., Suite 700
Arlington, Virginia 22203-1837
Stephen.melnikoff@hqda.army.mil

Karen L. Clauson
Vice President, Law & Policy
Integra Telecom
6160 Golden Hills Dr.
Golden Valley, Minnesota 55416-1020
klclauson@integratelecom.com

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21
22
23
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Gregory Merz
Gray Plant Mooty
500 IDS Center
80 S. Eighth St.
Minneapolis, Minnesota 55402
Gregory.merz@spmlaw.com



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ROBERT H. BRIGHAM

BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN MAYES

Chairman

GARY PIERCE

Commissioner

SANDRA KENNEDY

Commissioner

PAUL NEWMAN

Commissioner

BOB STUMP

Commissioner

**JOINT NOTICE AND APPLICATION OF
QWEST CORPORATION, QWEST
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LINK COMMUNICATIONS, EMBARQ
PAYPHONE SERVICES, INC. D/B/A/
CENTURYLINK, AND CENTURYTEL
SOLUTIONS, LLC FOR APPROVAL OF THE
PROPOSED MERGER OF THEIR PARENT
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) **DOCKET NO. T-03902A-10-0194**

REBUTTAL TESTIMONY

OF

ROBERT H. BRIGHAM

ON BEHALF OF

QWEST CORPORATION

QWEST COMMUNICATIONS COMPANY, LLC, AND

QWEST LD CORP.

OCTOBER 27, 2010

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1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION**
3 **WITH QWEST.**

4 A. My name is Robert H. Brigham. My business address is 1801 California Street,
5 Denver, Colorado, and I am currently employed by Qwest Corporation ("QC") as a
6 Staff Director in the Public Policy department. I am testifying on behalf of Qwest
7 Corporation, Qwest Communications Company, LLC, and Qwest LD Corp.
8 (collectively, "Qwest").

9 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**
10 **PROCEEDING?**

11 A. No.

12 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
13 **EMPLOYMENT EXPERIENCE.**

14 A. In 1983, I received a Master of Business Administration (MBA) degree from the
15 University of Colorado in Denver, Colorado. My area of emphasis was financial
16 analysis. I received a Bachelor of Arts degree in 1974 from Stetson University.

17 I began my employment with Qwest (formerly Mountain Bell and U S WEST) in
18 1976. Between 1976 and 1980, I held various positions in the Mountain Bell
19 Commercial (marketing) department. In 1980, I accepted the position of Analyst in
20 the Cost, Rates and Regulatory Matters department, working primarily on the
21 development of embedded cost data. In June 1987, I accepted the position of
22 Manager in the U S WEST Service Cost organization, with responsibility for
23 economic analysis and the development of incremental costing methodologies. In

1 September 1992, I accepted the position of Director- Product Cost Specialist, and
2 assumed responsibility for developing and supporting U S WEST cost studies in
3 formal regulatory proceedings, and representing U S WEST in costing and pricing
4 workshops sponsored by various regulatory commissions in the U S WEST region.
5 Between May 1994 and June 1997, I served as Director- Product and Market Issues.
6 In that position, I managed competitive and local interconnection issues, supporting
7 U S WEST's interconnection negotiation and arbitration efforts. In June, 1997,
8 I rejoined the U S WEST cost organization as Director- Service Costs, where I was
9 responsible for managing cost issues, developing cost methods and representing
10 Qwest in proceedings before regulatory commissions. I held this position until
11 April 2004, when I assumed my present responsibilities. In my current role,
12 I represent Qwest on issues concerning pricing, competition and regulatory issues.

13 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE**
14 **ARIZONA COMMISSION?**

15 A. Yes. I have previously testified before the Arizona Corporation Commission in
16 Docket No. T-01051B-03-0087, Docket T-00000A-00-0194 and Docket E-1051-
17 93-183.

18 **Q. HAVE YOU TESTIFIED BEFORE OTHER STATE REGULATORY**
19 **COMMISSIONS?**

20 A. Yes. I have presented testimony before commissions in Colorado, Iowa,
21 Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South
22 Dakota, Utah and Wyoming.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my rebuttal testimony is to address certain aspects of the testimonies of Dr. August Ankum and Mr. Timothy Gates filed on behalf of the Joint CLECs,¹ the testimony of Mr. Charles King filed on behalf of the Department of Defense (“DOD”) and the testimony of Mr. Armando Fimbres filed on behalf of the Commission’s Utilities Division. My rebuttal testimony, which complements the rebuttal testimonies of Ms. Kristin McMillan, Mr. Jeff Glover, Mr. Todd Schafer and Mr. Michael Hunsucker filed on behalf of CenturyLink and the rebuttal testimonies of Mr. James Campbell, Ms. Karen Stewart and Mr. Mike Williams filed on behalf Qwest, demonstrates that the Arizona telecommunications market is extremely competitive, and that the merger between CenturyLink and Qwest (the “Transaction”) will cause no competitive harm in the state. In fact, the Transaction will enhance competition and will provide many benefits to Arizona consumers and businesses. Therefore, the Transaction is in the public interest and should be approved.

¹ The *Joint CLECs* include Eschelon Telecom of Arizona, Inc., Electric Lightwave, LLC, Mountain Telecommunications of 11 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.

1 **III. COMPETITIVE IMPACT OF THE MERGER**

2 **A. Intervenor Claims of Competitive “Harm”**

3 **Q. MR. GATES AND DR. ANKUM CLAIM THAT THERE ARE NUMEROUS**
4 **COMPETITIVE “HARMS” THAT “COULD” RESULT FROM THE**
5 **MERGER. PLEASE COMMENT.**

6 **A.** I am struck by the highly-speculative and unsupported nature of Dr. Ankum’s and
7 Mr. Gates’ testimony regarding how this merger will impact the competitive
8 landscape in Arizona. Throughout their testimonies, they refer to the “harms” that
9 “could” occur if the merger is approved (without onerous conditions), and the
10 alleged “incentives” of the combined company to thwart competition, act in a
11 discriminatory non-competitive manner, or otherwise harm CLECs. Yet these
12 witnesses provide no evidence suggesting that these claims are likely to become a
13 reality in Arizona as a result of this transaction. As described below, Mr. Gates and
14 Dr. Ankum speculate that the proposed transaction will harm competition, but this
15 speculation is not supported by any evidence.

16 **Q. CAN YOU PROVIDE AN EXAMPLE OF THIS LACK OF EVIDENCE?**

17 **A.** Yes. Both Mr. Gates and Dr. Ankum (and Mr. King) provide a lengthy discussion
18 of previous mergers and acquisitions.² Mr. Gates and Dr. Ankum repeatedly
19 present these mergers as “lessons” of the awful things that “could” happen in this
20 transaction. For example, Mr. Gates allegedly puts the Transaction in “context” by
21 identifying the “significant problems that have occurred” following allegedly
22 “similar” mergers, including the recent FairPoint acquisition of Verizon properties

² In this discussion, Mr. Gates and Dr. Ankum focus solely on a couple of less-successful transactions, while fully ignoring many other more-successful transactions.

1 in New England and the investment firm Carlyle Group's acquisition of Verizon
2 properties in Hawaii.³ He states that "[s]ignificant problems have been experienced
3 after recent mergers – problems that could occur after the proposed transaction if it
4 is approved as filed."⁴ However, as described in Ms. McMillan's rebuttal
5 testimony, the FairPoint transaction, as well as other recent transactions (including
6 the Hawaiian Telecom transaction), bear little resemblance to the proposed merger
7 of CenturyLink and Qwest.⁵ There is no reason to assume that the problems
8 experienced during these very different transactions would somehow translate into
9 harmful consequences for the competitive telecommunications market in Arizona
10 after approval of this merger. The Commission should not place any reliance on
11 references to these non-comparable transactions, as they provide no evidentiary
12 basis to reject this transaction or impose significant onerous conditions.

13 **B. Merger Synergies and Competition**

14 **Q. ACCORDING TO DR. ANKUM, HOW WILL THE MERGER IMPACT**
15 **CLECs AND COMPETITION IN ARIZONA?**

16 A. Dr. Ankum testifies that the Transaction represents a predominantly horizontal
17 merger of companies that are generally in the same line of business in different
18 geographic service areas.⁶ While touting the possible benefits of vertical mergers,⁷

³ Direct Testimony of Timothy J. Gates ("Gates Direct"), p. 5

⁴ Gates Direct, p. 86.

⁵ As Ms. McMillan explains, FairPoint and Hawaiian Telcom experienced financial distress that can be traced directly to their inability to create functioning Operational Support Systems ("OSS") "from scratch." However, in ILEC transactions where there has not been the need to create new OSS—as is the case with the proposed Transaction—there is a long track record of successful integrations resulting in improved combined operations, including numerous transactions involving CenturyLink.

⁶ Direct Testimony of August H. Ankum, Ph.D. ("Ankum Direct"), pp. 40-41.

⁷ A *horizontal* merger is a merger between companies producing similar goods or offering similar services. A *vertical* merger is a merger between two companies producing different goods or services for

1 he argues that the horizontal combination of these allegedly “struggling” companies
2 with a “shrinking landline base” is unlikely to provide substantial merger benefits,⁸
3 and will instead yield a riskier company that may never even recoup the upfront
4 costs of integration.⁹ According to Dr. Ankum, “a major concern is that, under the
5 pressure of its debt load, the promises of merger savings to shareholders and
6 regulators, and significant integration costs, CenturyLink will be forced to cut costs
7 when integrating the two companies, leading to a degradation of services to
8 wholesale customers and harm to competition.”¹⁰ He claims that the post-merger
9 company will have the “incentive” to decrease wholesale service quality in order to
10 reduce costs, and to improve its competitive positioning in the retail market against
11 CLECs.¹¹

12 **Q. DOES MR. GATES MAKE SIMILAR CLAIMS?**

13 A. Yes. Mr. Gates claims that “[o]ut of the many ways that the Merged Company
14 could integrate the two companies to the detriment of competition, degrading the
15 quality or access to OSS [Operational Support Systems] would be the most
16 effective.”¹²

one specific finished product. In this instance, a company may purchase a supplier or customer to obtain upstream and downstream market benefits.

⁸ Ankum Direct, pp. 40, 42.

⁹ *Id.*, p. 43

¹⁰ *Id.*, p. 47.

¹¹ Ankum Direct, p. 13, stating: “Further, CLECs compete with CenturyLink and Qwest for business and residential customers, which creates a perverse incentive structure in which CenturyLink and Qwest may have disincentives to provide CLECs with quality, reasonably priced, nondiscriminatory wholesale services and network access.”

¹² Gates Direct, p. 34.

1 **Q. IS THERE ANY BASIS FOR THESE CLAIMS?**

2 A. No. Dr. Ankum and Mr. Gates list various negative competitive impacts that
3 “could” occur based on the merger, but they provide no evidence that their asserted
4 scenarios will occur or that the merger is likely to have any negative impact on
5 competition. It is true that the post-merger company seeks to take advantage of
6 synergies that the merger will provide, and to capitalize on the strengths of each
7 company, as described in the testimonies of Ms. McMillan and Mr. Glover.
8 However, there is no basis to assume that the combined company will cut costs in a
9 manner that harms CLECs—who will remain major customers of the post-merger
10 company. As competitive options from other facilities-based providers such as
11 cable and wireless companies (who may serve customers without use of the Qwest
12 or CenturyLink facilities) continue to grow, the post-merger company will have
13 every incentive to meet CLECs’ needs with high-quality service and OSS in order
14 to keep wholesale providers—and their retail customers—on the combined
15 company’s network. The post-merger company cannot afford, and has no
16 incentive, to degrade OSS or offer inferior service quality because customers—
17 including CLECs—have competitive options. Importantly, the synergies realized
18 by the merger will reduce costs by eliminating duplicative functions and increasing
19 economies of scale and scope. However, the actual functions needed to provide
20 outstanding service will *not* be eliminated or compromised. As described in the
21 testimonies of Mr. Hunsucker, Ms. Stewart and Mr. Williams, the combined
22 company will offer high-quality wholesale service and OSS after the Transaction is
23 completed, just as Qwest and CenturyLink do today.

24 Furthermore, the arguments of Dr. Ankum and Mr. Gates regarding OSS and
25 service quality are red herrings because, even after the merger, wholesale services

1 that the Qwest subsidiary provides will remain subject to current Interconnection
2 Agreements ("ICAs"), tariffs and/or other existing contractual obligations. For
3 example, the provision of Unbundled Network Elements ("UNEs") will still be
4 regulated under Section 251 of the Telecommunications Act, and the Commission
5 will retain the authority to approve or deny changes to interconnection agreements
6 that provide for CLEC access to UNEs. In addition, the Performance Assurance
7 Plan ("PAP") that applies today to Qwest is reflected in the vast majority of ICAs,
8 and as such, will still apply after the merger is completed, as described by Mr.
9 Williams. Every contractual and legal protection available to CLECs today will
10 still be available after the merger is completed.

11 **Q. DO YOU AGREE WITH DR. ANKUM'S CHARACTERIZATION OF THE**
12 **TRANSACTION AS A DESPERATE MERGER OF "STRUGGLING"**
13 **COMPANIES?**

14 A. No. Qwest and CenturyLink are clearly experiencing competitive pressures from
15 CLECs, cable providers, VoIP providers and wireless carriers, and like all
16 companies, are navigating through a difficult economic environment. However, it
17 is not fair to say that Qwest and CenturyLink are "struggling" today, and that this is
18 a merger of desperate companies. In fact, it is interesting that Dr. Ankum
19 characterizes the companies as "struggling," while at the same time arguing that the
20 companies are able to dominate the market and exercise "market power" to thwart
21 competition. Dr. Ankum is unable to reconcile this contradiction. In reality,
22 despite a challenging competitive and economic environment, Qwest and
23 CenturyLink have maintained high-quality service and continued to invest in their
24 networks, while effectively managing costs and earning a profit. The key point is

1 that the merger will result in a company that is better able to meet future challenges
2 than each company would be on its own.

3 **Q. HAS QWEST PROVIDED OUTSTANDING WHOLESALE SERVICE**
4 **QUALITY OVER THE PAST SEVERAL YEARS IN ARIZONA?**

5 A. Yes. Qwest has been providing outstanding service quality to CLECs over the past
6 several years, even as it has been carefully monitoring and reducing its costs and
7 improving its balance sheet. On the wholesale side, Qwest payments based on the
8 QPAP have generally declined in Arizona over the years, as described by Mr.
9 Williams. This high level of service quality has occurred at the same time that
10 Qwest's total headcount has declined from approximately 41,000 in December
11 2004 to approximately 30,000 in December 2009.¹³ The bottom line is that
12 pressures to reduce costs and operate efficiently are not new phenomena resulting
13 from the merger; like every company, Qwest has always been under pressure to
14 keep costs as low as possible. Even so, Qwest has continued to improve wholesale
15 service quality while pursuing all available efficiencies. Given past performance
16 and the legal and contractual protections that CLECs already possess, the Joint
17 CLECs' claims that any synergies realized by the combined company and any
18 potential future headcount reductions will harm wholesale service quality are
19 unfounded and represent nothing more than speculation.

¹³ See Qwest Quarterly Earnings reports, Fourth Quarter 2004 and Fourth Quarter 2009, at <http://investor.qwest.com/earningsarchive>.

1 **C. The Competitive Environment in Arizona**

2 **Q. ACCORDING TO MR. GATES AND DR. ANKUM, IS THE ARIZONA**
3 **TELECOMMUNICATIONS MARKET SUFFICIENTLY COMPETITIVE**
4 **TODAY?**

5 A. No. Mr. Gates and Dr. Ankum argue that the Arizona telecommunications market
6 is not sufficiently competitive, and that Qwest and CenturyLink possess a level of
7 market power that allows them to dominate the wholesale and retail
8 telecommunications market in the state today. According to Mr. Gates and Dr.
9 Ankum, the merger will harm competition by conferring the merged company with
10 additional market power, which would allegedly allow the company to act in an
11 anti-competitive manner to the detriment of retail and wholesale customers and the
12 public interest in Arizona. According to Dr. Ankum “[i]t is in the Joint Applicants’
13 interests to strengthen their already dominant market positions in order to realize
14 benefits that justify the merger.”¹⁴ These “interests” would allegedly lead to anti-
15 competitive actions by the merged company.

16 **Q. DO YOU AGREE WITH THIS ASSESSMENT?**

17 A. No. First, this assessment appears to ignore the very significant fact that
18 *CenturyLink has no presence in Arizona today.* Since the post-merger company in
19 Arizona will cover the same footprint and serve the same customers that Qwest
20 serves today, it makes no sense to claim that the combined company will somehow
21 have increased market power in Arizona as a result of the merger. It thus is
22 apparent that Mr. Gates’s and Mr. Ankum’s testimonies are not based upon any
23 analysis of the state of competition in Arizona.

¹⁴ Ankum Direct, p. 22.

1 In addition, as described below, and in Mr. Campbell's direct testimony, the
2 Arizona telecommunications market is extremely competitive—a fact also
3 recognized by Mr. Fimbres.¹⁵ Because of this high level of competition, and the
4 ability for customers to take advantage of competitive alternatives, Qwest and
5 CenturyLink (who has no presence in Arizona today) do not have “already
6 dominant positions” that would allow the merged company to take advantage of
7 undue “market power” in the Arizona retail and wholesale markets. While the
8 Transaction should result in a post-merger company that is stronger and more
9 competitive than the two companies standing alone (as described by Ms. McMillan
10 and Mr. Glover) there is no basis for Dr. Ankum's assumption that the merged
11 company will take advantage of synergies and increased financial strength to
12 threaten the “viability of competition.”¹⁶ The “market power” claims of these
13 parties are based entirely on speculation, are not fact-based, and ignore the realities
14 of the market.

15 **1. The Retail Market**

16 **Q. DO MR. GATES AND DR. ANKUM CLAIM THAT ILECs DOMINATE**
17 **THE RETAIL LOCAL EXCHANGE MARKET IN ARIZONA?**

18 A. Yes. Mr. Gates claims that “the latest FCC reports, even when adding in
19 interconnected VoIP offerings, still show the ILECs with more than 70 percent of
20 the market.”¹⁷ Based on this alleged “share,” he claims that ILECs, including
21 Qwest and CenturyLink, dominate the Arizona retail telecommunications market.
22 Dr. Ankum claims that freedom of choice does not exist for “captive” retail

¹⁵ Direct Testimony of Armando Fimbres (“Fimbres Direct”), p. 7.

¹⁶ Ankum Direct, p. 23.

¹⁷ Gates Direct, p. 16.

1 customers, who he claims are totally dependent on Qwest and CenturyLink.¹⁸
2 According to Mr. Gates and Dr. Ankum, since Qwest and CenturyLink allegedly
3 have a large share of the “wireline” telecommunications market, they possess
4 significant retail market power and an incentive—and the ability—to act in an anti-
5 competitive manner, to the detriment of consumers and businesses. They argue that
6 this situation will only be exacerbated by the merger.

7 **Q. IS THIS A PROPER CHARACTERIZATION OF THE ARIZONA RETAIL**
8 **TELECOMMUNICATIONS MARKET TODAY?**

9 A. No. First, as noted above, CenturyLink does not operate in Arizona today. Thus, it
10 is erroneous to argue that CenturyLink has “captive” retail customers or
11 “dominates” the retail market anywhere in Arizona, or that the merger will
12 “exacerbate” any such alleged “market dominance.” In addition, as Mr. Campbell
13 describes in his direct testimony, the Arizona retail telecommunications market is
14 very competitive today.¹⁹ Qwest faces significant competition in Arizona from:

- 15 • Cable companies including Cox (who has a significant presence in the
16 Phoenix and Tucson areas),²⁰ Comcast, Time Warner Cable, Cable One
17 and NPG Cable;

¹⁸ Ankum Direct, p. 9: “Specifically, retail customers in captive segments of retail markets have little or no choice”

¹⁹ Direct Testimony of James Campbell (“Campbell Direct”), pp. 14-21

²⁰ The direct testimony of Kim Howell describes Cox’s operations in Arizona: “Cox provides voice, data and video services primarily in the Phoenix and Tucson areas but also provides all of its services in many smaller communities such as Queen Creek, Florence, Coolidge, Benson, Sierra Vista, Casa Grande, Douglas and St. David Arizona.” (Direct testimony of Kim Howell, page 2). Ms. Howell also provides, on a confidential basis, the number of Cox residential and business lines in its Arizona service territory (Direct testimony of Kim Howell, page 3)

- 1 • CLECs (including tw telecom, Integra, PAETEC/McLeod, Level 3 and
- 2 many others);
- 3 • VoIP providers (including Google, Vonage, MagicJack and many others),
- 4 and:
- 5 • Wireless carriers (including AT&T, Verizon, Sprint and T-Mobile).

6 Arizona consumers and businesses have numerous alternatives to meet their local
7 voice calling and broadband needs. The Arizona telecommunications market is
8 becoming more competitive every day, and there is no reason to conclude that this
9 explosion of competitive alternatives will subside as new technologies are
10 developed and customer preferences evolve. Just as Qwest's "market power" is
11 constrained by competition today, the market power of the combined company will
12 be constrained by increasing competition in the future.

13 **Q. DOES MR. FIMBRES ACKNOWLEDGE THAT THE ARIZONA RETAIL**
14 **TELECOMMUNICATIONS MARKET IS COMPETITIVE?**

15 A. Yes. Mr. Fimbres states that "Qwest continues to face significant competition from
16 one facilities-based CLEC, Cox Arizona Telcom, L.L.C. ("Cox"), in the residential
17 market. The impact of intermodal competition in the residential market from
18 Wireless and VoIP is difficult to measure but is undeniably present and
19 increasing."²¹ He also states that "[t]he business market, particularly the Enterprise
20 Market, is also very competitive but differs from residence in the type and number
21 of alternative providers . . ."²²

²¹ Fimbres Direct, page 7.

²² *Id.* Mr. Fimbres also argues that many business providers are "dependent on the Qwest network,"
an issue that is addressed later in my testimony.

1 Q. ARE THERE SPECIFIC FLAWS IN MR. GATES' "MARKET SHARE"
2 ANALYSIS?

3 A. Yes. First, Mr. Gates' competitive "market share" analysis is erroneous because he
4 misquotes the FCC's *Local Competition Report*. While Mr. Gates claims ILECs'
5 have "70% of the market" for switched access lines and VoIP connections, the
6 *Local Competition Report* in fact states that the ILECs' share of "total end-user
7 switched access lines and VoIP subscriptions"²³ in Arizona was 60%, not 70%, as
8 of June 2009. Thus, non-ILECs had a 40% share of the *wireline* voice market in
9 June 2009.

10 However, even had Mr. Gates cited the correct 60% *wireline* ILEC share number,
11 his use of this data to attribute market power would still be problematic because he
12 ignores *wireless* competition and relies on measures of historical market share that
13 do not account for market trends. The ILEC share of "total end-user switched
14 access lines and VoIP subscriptions" identified in Table 8 of the FCC's *Local*
15 *Competition Report* does not account for wireless competition from companies such
16 as AT&T, Verizon, Sprint and T-Mobile. Mr. Gates ignores wireless service, even
17 though it is clear that many Arizonans are substituting wireless service for wireline
18 service today, and that wireless serves as a price-constraining substitute for wireline
19 services. As described in Mr. Campbell's direct testimony, 25% of Americans had
20 already "cut the cord" in the second half of 2009 and no longer had a wireline
21 phone, while another 15% had a landline yet received all or almost all calls on

²³ See *Local Telephone Competition: Status as of June 30, 2009*, Industry Analysis and Technology Division, Wireline Competition Bureau, September 2010, Table 8. In addition, the ILEC market share in the FCC's report includes all ILECs in the state, not just Qwest. It is likely that the share for Qwest is lower than the state average because Qwest provides service in the most competitive urban areas in the state.

1 wireless telephones.²⁴ According to the latest FCC data, ILEC wirelines represent
2 only 22% of all switched wireline, VoIP and wireless connections in Arizona, and
3 combined ILEC/CLEC wirelines account for only 37% of all switched wireline,
4 VoIP and wireless connections in the state.²⁵ The impact of wireless services on the
5 local exchange market in Arizona cannot be ignored in any reasonable competitive
6 analysis.

7 **Q. SHOULD THE COMMISSION RELY ON HISTORICAL MARKET SHARE**
8 **MEASURES TO DRAW INFERENCES REGARDING A FIRM'S MARKET**
9 **POWER?**

10 A. No. The Commission should not rely exclusively or predominantly on historical
11 local exchange market share measures to draw inferences regarding market power,
12 for several reasons.²⁶ First, the relationship between "market share" and "market
13 power" is likely to be particularly misleading in a regulated environment where
14 rates have been set by regulators to meet policy objectives (such as, for example,
15 universal service) rather than by market forces. Second, any measure of market
16 share is necessarily static, based on some historical time period. In that sense,
17 market share does not provide an indicator of where the market is headed, or what
18 competitive alternatives are available to customers. That is particularly true when

²⁴ Centers for Disease Control and Prevention, National Center for Health Statistics, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2009, released May 12, 2010, p. 1.

²⁵ *Local Telephone Competition: Status as of June 30, 2009*; Industry Analysis and Technology Division, Wireline Competition Bureau, September 2010, Tables 8 and 17. For Arizona, this report shows 1.741 million ILEC lines, 1.156 million non-ILEC lines, and 5.005 million wireless connections.

²⁶ See, for example: *Principles of Competition and Regulation for The Design of Telecommunications Policy*, Dennis Weisman and Timothy Tardiff, filed with Qwest's Reply Comments (Exhibit 1s) in FCC Docket WC Docket No. 09-135, *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, October 21, 2009, pp. 21-26.

1 one provider, such as Qwest or CenturyLink, started out with 100% of the market in
2 its ILEC territory, but is now subject to competition from many directions, and is
3 experiencing declining subscribership. Third, it is important to understand that
4 competitive *capacity* provides a better indicator of market power than market share.
5 If competitive *capacity* exists, a high historical market share is not determinative
6 that the firm has a high level of market power. For example, if a cable company
7 enters an ILEC voice service market (with ubiquitous facilities), it may appear
8 initially that the ILEC has a dominant market share since the cable company has not
9 yet gained a significant number of customers. However, the significant factor is
10 that the cable service is *available* to the ILEC customers, and thus the share of
11 *capacity* is closer to 50% for each provider.²⁷

12 For these reasons, the Commission should not rely on historical market share in
13 isolation as a measure of the level of Qwest or CenturyLink market power—before
14 or after the merger. Even so, the fact that ILECs now have only 22% of the
15 combined wireline and wireless connections in Arizona (based on the
16 aforementioned FCC data) demonstrates the lack of market power these firms
17 possess. And importantly, Qwest's access lines continue to decline as customers
18 move to CLEC, cable telephony, wireless and VoIP alternatives that are available
19 throughout its Arizona serving area.

²⁷ Dr. Dennis Weisman and Dr. Timothy Tardiff provide an example: "Consider, for example, a particular market in which the ILEC and a cable company compete. Suppose the cable company quickly garners 5 percent of the customers and the ILEC files for deregulation. There may be a tendency to conclude that the ILEC continues to maintain market power since it has 95 percent of the customers. And yet, if capacity is truly the relevant measure of market share, and both the ILEC and the cable company are able to address 100 percent of the customers, the ILEC's market share is actually only 48.72 percent ($95/(95 + 100)$)" See: *Principles Of Competition And Regulation For The Design Of Telecommunications Policy*, Dennis Weisman and Timothy Tardiff, filed with Qwest's Reply Comments (Exhibit 1s) in FCC Docket WC Docket No. 09-135, *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, October 21, 2009, pp. 23-24.

1 **Q. DOES MR. KING AGREE THAT COMPETITION IS FIERCE IN THE**
2 **RESIDENTIAL RETAIL SERVICES MARKET?**

3 A. Yes. Mr. King acknowledges that the residential voice market in Arizona is very
4 competitive, and that Qwest today and the post-merger company in the future, face
5 increasing competition that constrains prices. He states: "In light of the fierce
6 competition for these services, it is unlikely that Qwest could sustain significant
7 rate increases either for its residential wireline service or its residential multi-
8 service bundles."²⁸

9 **Q. DO YOU AGREE WITH MR. KING'S ASSESSMENT OF THE**
10 **RESIDENTIAL RETAIL MARKET?**

11 A. Yes. I agree with Mr King that there is a significant level of competition in the
12 Arizona residential voice market, and that this competition constrains Qwest's retail
13 pricing.

14 **Q. HOW DOES MR. KING CHARACTERIZE THE MARKET FOR BUSINESS**
15 **TELECOMMUNICATIONS SERVICES IN ARIZONA?**

16 A. Mr. King claims that businesses in Arizona (especially small businesses) are
17 "heavily dependent on the conventional telephone."²⁹ He argues that cable TV
18 companies are "somewhat less of a competitive threat" in the business market than
19 in the residence market,³⁰ and that CLEC competition in the business market is
20 "small and declining."³¹ To support this conclusion, Mr. King alleges that

²⁸ Direct Testimony of Charles W. King ("King Direct"), p. 15.

²⁹ *Id.*

³⁰ *Id.*, p. 16.

³¹ *Id.*

1 according to the FCC's *Local Competition Report*, "as of June 30, 2009 only 33.5
2 percent of the land lines in Arizona were handled by competitive carriers, down
3 from 36.8 percent a year earlier."³²

4 **Q. DO YOU AGREE WITH MR. KING'S ASSESSMENT OF THE BUSINESS**
5 **TELECOMMUNICATIONS MARKET IN ARIZONA?**

6 A. No. Mr. King has not accurately characterized the level of competition from
7 CLECs and other providers in the Arizona business market today, and he has
8 misapplied the FCC's *Local Competition Report* data by not counting VoIP lines.
9 Table 8 of the FCC's *Local Competition Report* identifies "total end-user switched
10 access lines and VoIP subscriptions by state as of June 30, 2009" for ILECs and
11 non-ILECs. Mr. King's analysis incorporates 877,000 non-ILEC switched access
12 lines as listed in Table 8 of the FCC report, but fails to consider the 280,000 non-
13 ILEC lines listed in the report that utilize VoIP technology.³³ The FCC's *Local*
14 *Competition Report* specifically states that the Arizona non-ILEC share of end-user
15 switched access lines and VoIP connections as of June 2009 was 40%, not 33.5% as
16 claimed by Mr. King.³⁴ ³⁵ The non-ILEC's 40% share of the Arizona wireline

³² *Id.*

³³ *Local Telephone Competition: Status as of June 30, 2009*; Industry Analysis and Technology Division, Wireline Competition Bureau, June 2010, Table 8.

³⁴ *Id.*, Tables 8 and 11. It may be argued that the non-ILEC share of wirelines increased from 36.8% in June 2008 to 40% in June 2009. However, it is difficult to compare June 2008 data with June 2009 data because the FCC *Local Competition Report* did not begin to count all VoIP connections until the release of December 2008 data.

³⁵ Mr. King does not address the fact that the *Local Competition Report* also provides separate wireline share data for *business and residence* access lines and VoIP connections. Table 10 of the report shows that the ILEC share of end user switched access lines and VoIP connections as of June 30, 2009 was 39%-- slightly lower than the 40% share for all end users. However, whether the *total* or *business-only* non-ILEC percentages are used, the percentage of non-ILEC access lines and VoIP connections is approximately 40%.

1 market certainly cannot be characterized as “small.”³⁶ Furthermore, the non-ILEC
2 percentage is likely to be higher in the Qwest-served portion of the state, which
3 includes the Phoenix and Tucson areas where non-ILECs are most prevalent.

4 The reality is that in Qwest’s Arizona serving area, there are numerous CLECs,
5 including Integra, Level 3, XO, PAETEC, tw telecom, AT&T, Verizon, Granite and
6 others that are focused *solely* on marketing services to small, medium and
7 enterprise business customers. The competitive presence of these providers has
8 increased over the past several years, and it likely to increase in the future. Further,
9 Cox competes vigorously with Qwest in the business market in Phoenix and
10 Tucson, providing a broad range of business products to business customers of all
11 sizes.³⁷ Cox offers voice telephone service, private line service (DS1, DS3 and OC3
12 to OC192), transparent LAN service, metro Ethernet, virtual private network
13 service and business video service.³⁸ In fact, Cox has established a separate
14 marketing division, Cox Business Services, focused *specifically* on the small,
15 medium and Enterprise business market segments.³⁹

16 The intervenor witnesses cannot reasonably argue that the combined company will
17 be able to harm competition by increasing concentration in the enterprise market.
18 As Mr. Campbell described in his direct testimony, Qwest’s presence in the
19 enterprise business market today is dwarfed by other national providers, including
20 AT&T and Verizon. Mr. Campbell noted that “[f]or total year 2009, Qwest *total*

³⁶ As described earlier, historical market share measures do not provide an indicator of market power, as they do not capture the dynamic nature of the market or the availability of alternatives.

³⁷ See: <http://ww2.cox.com/business/arizona/home.cox>, visited 10-18-10.

³⁸ *Id.*

³⁹ *Id.*

1 Business Markets Group revenues were \$4.09 billion, compared to business
2 revenues of \$14.74 billion for AT&T and \$14.99 billion for Verizon.⁴⁰ He
3 continues that “[i]n terms of business revenues for 10 of its top competitors,⁴¹
4 Qwest’s share of that business market is less than 10%, compared to 33% each for
5 AT&T and Verizon.”⁴² Further, the Commission previously recognized the high
6 level of Arizona Enterprise competition in the Qwest Communications Corporation
7 (“QCC”) certification case in 2006.⁴³ In that proceeding, Staff stated: “The
8 Enterprise Market is highly competitive. The level of competition by large
9 participants, such as MCI and AT&T, should help temper the behavior of QC &
10 QCC and limit the effectiveness of any attempts to leverage QC’s ILEC position.”⁴⁴

11 **Q. DOES MR. KING PROPOSE A CAP ON BUSINESS RATES FOR THE**
12 **POST-MERGER COMPANY?**

13 A. Yes. Due to the allegedly declining competition from CLECs, Mr. King concludes
14 that the post-merger company “will probably seek additional revenues from the
15 small business market.” He states that “additional revenue is likely to take the form

⁴⁰ See 2009 10K reports for Qwest at <http://qwest.investorroom.com/qcii-sec-filings>, Verizon at <http://investor.verizon.com/sec/index.aspx> and AT&T at http://phx.corporate-ir.net/phoenix.zhtml?c=113088&p=irol-sec&control_selectgroup=Show%20All. The revenues provided represent total company business revenues from corporate reports, and are not limited to Arizona.

⁴¹ Includes AT&T, Verizon, Sprint, Cbeyond, Cogent, Global Crossing, Level 3, PAETEC, tw telecom and XO Communications.

⁴² Campbell Direct, p. 15.

⁴³ *In The Matter of the Application of Qwest Communications Corporation D/B/A Qwest Long Distance for Extension of its Existing Certificate of Convenience and Necessity to Include Authority to Provide Resold and Facilities-Based Local Exchange and Resold Long Distance Services in Addition to its Current Authority to Provide Facilities-based Long Distance Services, and Petition for Competitive Classification of Proposed Services Within the State of Arizona*, Opinion and Order, Docket No. T-02811b-04-0313, Decision No. 68447, February 2, 2006, ¶58

⁴⁴ Memorandum from Ernest Johnson, Arizona Utilities Division, Docket No. T-02811b-04-0313, May 13, 2005, p. 2.

1 of unilateral rate increases,”⁴⁵ and would be “motivated by the need to raise revenue
2 to implement the merger.”⁴⁶ In order to address this “problem” Mr. King
3 recommends that the Commission impose a three year price cap for most business
4 services, including single and multiple line rates, PBX, Centrex and Special Access
5 services.⁴⁷

6 **Q. IS THERE ANY BASIS FOR A CAP ON BUSINESS RATES AS PROPOSED**
7 **BY MR. KING ?**

8 A. No. Mr. King’s recommendation is based on an erroneous evaluation of the level of
9 competition in the business telecommunications market in Arizona, as described
10 above. Contrary to Mr. King’s assertions, the market for retail business
11 telecommunications services is highly competitive in the state; competition from
12 CLECs, cable companies and VoIP providers is significant and likely to grow in the
13 future. This competitive market pressure will constrain the post-merger company’s
14 business service prices, just as it constrains Qwest’s business service prices today.
15 Thus, there is no justification for a merger condition that would place a cap on the
16 post-merger company’s business rates.

17 **Q. HOW ARE QWEST BUSINESS RATES CURRENTLY REGULATED IN**
18 **ARIZONA?**

19 A. Qwest operates under the Price Cap Plan approved by the Commission in Docket
20 No. T-01051B-03-0454 (Decision 68604, March 23, 2006). Under the terms of this
21 plan, a primary basic business local exchange line (e.g., 1FB) is classified as a

⁴⁵ King direct, p. 16.

⁴⁶ *Id.*, p. 17.

⁴⁷ *Id.*, pp. 17-18.

1 “Basket 1” service and is capped at the current rate for the duration of the plan.
2 Some business services, such as business additional lines, custom calling services
3 and Direct Inward Dialing (“DID”) are classified as “Basket 2” and are subject to
4 limited pricing flexibility with an overall revenue cap of \$15.0⁴⁸ million for the
5 basket over the duration of the plan.⁴⁹ Other business services, such as Centrex and
6 DS1 service are classified as “Basket 3” and are considered “flexibly priced
7 competitive services” with an overall revenue cap of \$30 million plus the remainder
8 of the \$15.0 million not used for “Basket 2.” At this time, Qwest has exhausted the
9 bulk of the “head room” for these revenue caps, with only \$43,963 remaining for
10 Basket 2 and \$711,680 remaining for Basket 3 for the duration of the plan. Thus,
11 basic 1FB rates for primary lines are capped at current rates and Qwest has limited
12 ability to raise prices for any other business service at this time. After the merger,
13 the plan will still be in place, and the Qwest Corporation subsidiary will continue to
14 comply with all requirements as defined in the Price Plan.

15 In sum, both the pressures of a highly competitive market and the terms of the
16 existing Qwest Price Plan render Mr. King’s price cap proposal unnecessary and
17 unjustified.

⁴⁸ In the Matter of Qwest Corporation’s Filing of Renewed Price Regulation Plan, Docket No. T-01051b-03-0454 Decision No. 68604, Opinion and Order, p. 30.

⁴⁹ Increases in individual service prices for Basket 2 services shall not exceed 25% in any 12 month period.

1 **Q. WILL THE POST-MERGER COMPANY ENJOY SIGNIFICANT MARKET**
2 **POWER IN THE BROADBAND MARKET?**

3 A. No. The intervenors' claim that the merger will cause harmful concentration in the
4 broadband market is not reasonable; Qwest clearly does not "dominate" the
5 broadband market in Arizona today. Based on the FCC's latest *Internet Access*
6 *Services Report*, DSL broadband connections—like those offered by Qwest—
7 represent only 21% of the total broadband connections in the state.⁵⁰ And since
8 CenturyLink has no meaningful presence in Arizona, the broadband share of the
9 combined company will not increase as a result of the merger. The post-merger
10 company will hardly "dominate" the broadband market or be able to exert undue
11 "market power" in Arizona. Instead, the merger will provide the combined
12 company with the financial and operational resources to invest in broadband
13 networks, and to better compete against more prevalent cable modem and wireless
14 broadband options. This is clearly in the public interest, and will benefit Arizona
15 consumers, businesses and wholesale customers.

16 **Q. DOES DR. ANKUM CLAIM THAT THE MERGER WILL**
17 **SIGNIFICANTLY IMPACT COMPETITION, TO THE DETRIMENT OF**
18 **THE PUBLIC INTEREST?**

19 A. Yes. Dr. Ankum argues that:

20 A merger of CenturyLink and Qwest reduces competition in areas and
21 for services in which the companies compete. While, for the most part,
22 the companies operate in their own separate service areas, there are

⁵⁰ *Internet Access Services Status as of June 30, 2009*, Industry Analysis and Technology Division, Wireline Competition Bureau, September 2010, Table 14. As of June 30, 2009, the FCC reported 487,000 ADSL connections, 1,043,000 cable modem connections and 734,000 mobile broadband connections out of a total of 2.314 million (at least 200kbps in one direction) in Arizona.

1 significant instances in which they do compete. Clearly, a merger would
2 eliminate this competition, and in doing so harm the public interest.⁵¹

3 **Q. ARE THESE LEGITIMATE CONCERNS?**

4 A. No. Since CenturyLink has no customers in Arizona today, Dr. Ankum is wrong
5 when he claims that “there are significant instances in which they [CenturyLink and
6 Qwest] do compete” in Arizona. Dr. Ankum also cites the existence of a
7 certificated CenturyLink CLEC in Arizona (CenturyTel Solutions LLC) that is
8 authorized to provide resold long distance services and competitive local exchange
9 services in the state. He argues that the merger will thus harm competition by
10 eliminating this “potential” competitor. However, CenturyTel Solutions currently
11 has no customers in Arizona, and it is absurd to claim that the elimination of this
12 “potential” competitor will have a negative impact on competition in Arizona or
13 harm the public interest.

14 **Q. AFTER THE TRANSACTION IS COMPLETED, WILL THE ARIZONA**
15 **TELECOMMUNICATIONS MARKET STILL BE ROBUSTLY**
16 **COMPETITIVE?**

17 A. Yes. After the Transaction is completed, all of the same providers that compete
18 against Qwest and CenturyLink today—as described above and in Mr. Campbell’s
19 direct testimony—will still be competing with the combined company in Arizona.
20 In fact, it is likely that the impact of competition will continue to grow as
21 alternative providers continue to attract new customers and invest in additional
22 network capacity. There is no basis to conclude, as Dr. Ankum and Mr. Gates do,
23 that the merger will somehow harm competition in the state.

⁵¹ Ankum Direct, p. 48.

1 **Q. HAS THE U. S. DEPARTMENT OF JUSTICE (“DOJ”) AND THE**
2 **FEDERAL TRADE COMMISSION (“FTC”) DETERMINED THAT THE**
3 **MERGER IS NOT A RISK FROM AN ANTITRUST PERSPECTIVE?**

4 A. Yes. On July 15, 2010, Qwest and CenturyLink received notification from the DOJ
5 and the FTC that their merger reviews received “early termination” under the Hart-
6 Scott-Rodino Act. Thus, the proposed merger of Qwest and CenturyLink has
7 received clearance from an antitrust perspective,⁵² as the DOJ and FTC have
8 determined that there will not be a significant erosion of competition resulting from
9 the merger. There are very few overlapping areas served by the two companies in
10 the U.S., and the DOJ expressed little concern regarding the existence of adjacent
11 Qwest-CenturyLink exchanges in any state. Significantly, the DOJ specifically
12 evaluated overlaps and adjacencies in all states and determined that these overlaps
13 and adjacencies do not pose concerns that would warrant further review.

14 **2. The Wholesale Market**

15 **Q. DOES DR. ANKUM CLAIM THAT THE MERGER WILL “UPSET THE**
16 **WHOLESALE RELATIONSHIP BETWEEN ILECs AND CLECs AND**
17 **HARM COMPETITION IN ARIZONA.”⁵³**

18 A. Yes. Dr. Ankum claims that “without reasonable, reliable and nondiscriminatory
19 access to Qwest’s and CenturyLink’s networks, CLECs cannot get access to
20 customers.”⁵⁴ Thus, he implies that the merger will somehow eliminate Qwest’s

⁵² See Form 425 filed with SEC on July 22, 2010, available at <http://investor.qwest.com/qcii-sec-filings>.

⁵³ Ankum Direct, p. 8.

⁵⁴ *Id.*

1 requirement to provide CLEC access to its network, and that downstream retail
2 residence and business customers will be harmed.

3 **Q. IS THIS A LEGITIMATE CLAIM?**

4 A. No. After the merger transaction is consummated, the Qwest subsidiary (QC) will
5 still be subject to Sections 251, 252 and 271 of the Telecommunications Act, just as
6 Qwest is today. UNE loops will be available to CLECs at TELRIC-based prices⁵⁵
7 in all wire centers except those that this Commission has declared “non-impaired”
8 based on the FCC’s Triennial Review Remand Order (“TRRO”) criteria.⁵⁶ These
9 wire centers are in the most dense urban areas of the state where there is a high
10 concentration of prospective business customers. In Arizona, only three wire
11 centers—Tempe, Phoenix North and Phoenix Main—have been declared non-
12 impaired for DS3 loops, and *no* wire centers have been declared non-impaired for
13 DS1 loops.⁵⁷ Thus, CLECs may purchase DS1 unbundled loops at TELRIC-based
14 prices in every wire center in Arizona, and may purchase DS3 loops at TELRIC-
15 based prices in every wire center except the three listed above,⁵⁸ where they can

⁵⁵ TELRIC (Total Element Long Run Incremental Cost) assumes the long-run incremental forward-looking costs of providing an element based on the least-cost most efficient technologies that could be deployed. These costs represent the theoretical costs that would be incurred to replace the network using least-cost technologies. TELRIC pricing is required per 47 C.F.R. Section 51.

⁵⁶ See *In the Matter of Unbundled Access to Network Elements and Review of Section 251 Unbundling Obligations*, Order on Remand, 20 FCC Rcd 2533 (2005). In determining that a CLEC is not impaired without access to a UNE, the FCC has specifically found that CLECs are no longer impaired without access to that element, and that cost-based TELRIC rates are no longer necessary. With regard to DS1 and DS3 services, when the FCC determined in the *TRRO* that either DS1/DS3 loops or transport in a particular wire center are non-impaired, it specifically determined that market conditions are such that a CLEC is highly likely to have alternatives to Qwest DS1 and DS3 services.

⁵⁷ See Qwest Wholesale web site at
http://www.qwest.com/wholesale/downloads/2010/100111/Non_Impaired_Wire_Center_12_23_09.xls.

⁵⁸ Per the *TRRO*, other wire centers have been determined to be “Tier 1” or “Tier 2.” In Tier 1 wire centers, CLECs are not impaired without access to DS1 and DS3 transport (interoffice) facilities, and in Tier 2 wire centers, CLECs are not impaired without access to DS3 transport.

1 purchase DS3 loops at just, reasonable and not unduly discriminatory (non-
2 TELRIC-based) rates per Section 271 of the Telecommunications Act.⁵⁹ The
3 merger poses no risk that “last mile” facilities will not be available in Arizona at
4 reasonable rates post-merger. Thus, the CLECs’ claims of the merger’s
5 “competitive harm” are without merit and should be given no weight in this
6 proceeding.

7 It is also interesting that Dr. Ankum refers to the “market power” that Qwest and
8 CenturyLink allegedly enjoy, while at the same time admitting that regulatory
9 constraints will prevent the post-merger company from exercising such power in
10 the wholesale market.⁶⁰ As described above, Qwest today is required by law to
11 provide access to its network based on Sections 251 and 271, and the Qwest
12 subsidiary will be required to do the same after the merger, which constrains
13 Qwest’s and the post-merger company’s market power.

14 **Q. MR. GATES CLAIMS QWEST HAS A “MONOPOLY OVER WHOLESALE**
15 **INPUTS RELIED UPON BY CLECs,” AND THERE ARE NO**
16 **ALTERNATIVE SOURCES OTHER THAN QWEST FOR WHOLESALE**
17 **INPUTS.⁶¹ PLEASE COMMENT.**

18 **A.** First, as noted above, certain wire centers in Arizona have been declared to be
19 “non-impaired” for unbundled loops and/or transport, based on the FCC’s *TRRO*

⁵⁹ Rates for elements subject to Section 271 must be just, reasonable and not unreasonably discriminatory. See *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order, 17 FCC Rcd 16978 (2003); ¶¶ 656, 659.

⁶⁰ Dr. Ankum admits that “economically efficient access by CLECs to the ILECs’ network elements serves to constrain the ILECs’ ability to exploit market power in wholesale markets to the detriment of competition in downstream, retail markets.” Ankum Direct, page 47.

⁶¹ Gates Direct, p. 16.

1 non-impairment criteria. When a wire center is determined to be non-impaired, it
2 means that CLECs have competitive wholesale options and are clearly not "captive
3 customers" of Qwest.⁶² Mr. Gates cannot reasonably claim that CLECs do not have
4 competitive alternatives in areas where it has been determined that CLECs are not
5 "impaired" without access to a network element.⁶³ Second, even in areas where
6 non-impairment has not been declared, CLECs often have competitive alternatives
7 to Qwest service, including the option of self-provisioning. Companies with fiber
8 networks in Arizona include Integra, Level 3, PAETEC, tw telecom, XO, AT&T,
9 Verizon, Cox, SRP Telecom, AboveNet, Zayo Group and 360 Networks. Several
10 fiber providers operating in the Phoenix area specifically market services to carriers
11 as an alternative to Qwest. For example, SRP Telecom, Zayo Group and AboveNet
12 each market fiber and bandwidth services to CLECs and other carriers utilizing
13 their expansive fiber networks in the Phoenix area.⁶⁴ ⁶⁵ ⁶⁶ In addition, Cox

⁶² According to the FCC: This Order [*TRRO*] imposes unbundling obligations only in those situations where we find that carriers genuinely are impaired without access to particular network elements and where unbundling does not frustrate sustainable, facilities-based competition. This approach satisfies the guidance of courts to weigh the costs of unbundling, and ensures that our rules provide the right incentives for both incumbent and competitive LECs to invest rationally in the telecommunications market in the way that best allows for innovation and sustainable competition. *In the Matter of Unbundled Access to Network Elements and Review of Section 251 Unbundling Obligations*, Order on Remand, 20 FCC Rcd 2533 (2005), ¶ 2. (Footnotes omitted.)

⁶³ The FCC has spent more than a decade addressing Section 251 issues and has issued several rulings specifically addressing the issue of non-impairment, as noted above. If the CLECs have concerns over the FCC's criteria for non-impairment, these concerns must be addressed in an appropriate FCC UNE proceeding.

⁶⁴ See: <http://www.srpnet.com/telecom/Default.aspx>, visited 10-18-10. SRP Telecom states: "Our 2,900-square-mile service territory extends from one end of the Valley of the Sun to another, spanning all or part of 15 cities. This is unparalleled market reach by a dark fiber or cell site provider. Our 950-route mile fiber network allows us to be extremely flexible in designing fiber solutions to reach your customers. Because our fiber generally parallels our electric system, there are few customers we don't reach." Dozens of buildings are already connected to the SRP Telecom network.

⁶⁵ See: <http://zayo.com/>, visited 10-18-10. Zayo offers a wide variety of carrier services using its extensive network. Many buildings are already connected to its network.

⁶⁶ See: <http://www.abovenet.com/>, visited 10-18-10. AboveNet, Inc. provides high bandwidth connectivity solutions for business and carriers.

1 Communications offers its “Carrier Access” loop and transport services to other
2 carriers in the Phoenix MSA. These services—offered over Cox’s own network—
3 represent a direct substitute for Qwest unbundled network elements and carrier
4 access services. CLECs also have the option to obtain access from *fixed wireless*
5 providers.

6 **Q. WHAT DO YOU CONCLUDE?**

7 A. The CLECs argue, incorrectly, that the Transaction will harm the competitive
8 telecommunications environment in Arizona. These arguments do nothing to
9 detract from the Joint Applicants’ position that the proposed merger of CenturyLink
10 and Qwest is in the public interest under the legal standard outlined in Mr.
11 Campbell’s direct testimony. As described above, and in the testimonies of Mr.
12 Hunsucker and Ms Stewart, existing wholesale obligations will continue to be in
13 place after the merger is completed. The post-merger QC entity will still be subject
14 to Sections 251, 252, and 271 of the Telecommunications Act, and will provide
15 unbundled DS1 loops at regulated TELRIC-based rates in every Qwest wire center
16 in Arizona, and DS3 loops at regulated TELRIC rates in all but three wire centers in
17 the state. In geographic areas where CLECs “rely” on Qwest, they will continue to
18 be able to do so after the merger is consummated utilizing the same rates, terms,
19 and conditions contained in the existing tariffs and interconnection agreements.
20 Since nothing about the merger changes these obligations, and *CenturyLink has no*
21 *current presence in Arizona*, there is no basis to assume that the merger will
22 negatively impact the competitive market or harm the interests of Arizona
23 consumers, businesses or CLECs.

3. Summary of Competitive Impact

Q. IN SUM, IS THERE ANY BASIS FOR THE CLAIMS BY MR. GATES AND DR. ANKUM THAT THE MERGER WILL HARM COMPETITION AND WILL NOT SERVE THE PUBLIC INTEREST?

A. No. Dr. Ankum states that the Commission should not succumb to the belief that the “invisible hand” of the marketplace will safeguard the public interest in this merger.”⁶⁷ While CenturyLink and Qwest have demonstrated the significant benefits of this merger, in fact, the competitive nature of the market, along with the continued regulation of retail and wholesale services, *will* protect customers and the public interest once the merger is completed. In this environment, the post-merger company has every incentive to provide high-quality innovative services to retail and wholesale customers.

D. Merger Benefits

Q. DR. ANKUM ARGUES THAT THE BENEFITS OF THE MERGER WILL ONLY ACCRUE TO SHAREHOLDERS AND THAT OTHER “STAKEHOLDERS” WILL NOT BENEFIT. PLEASE COMMENT.

A. Dr. Ankum argues that the Commission should balance the benefits of the merger to shareholders with the harmful effects that will allegedly be borne by other stakeholders, such as customers.⁶⁸ He implies that shareholders will benefit at the expense of consumers, businesses, and wholesale customers.

⁶⁷ Ankum Direct, p. 24.

⁶⁸ Ankum Direct, p. 9.

1 This advocacy is misplaced because the merger is likely to benefit shareholders *and*
2 other stakeholders. The Transaction will create a financially-strong and stable
3 provider that has an enhanced ability to invest in local and national networks,
4 deploy broadband and other advanced services, and provide outstanding service
5 quality to its customers, large and small, as Ms. McMillan further describes. The
6 combined CenturyLink-Qwest entity will be stronger and more stable from a
7 financial perspective than either company would be on its own. As a result, the
8 combined company will have access to the necessary capital to invest in a network
9 capable of providing enhanced products and services. Rather than harming
10 customers/stakeholders, this transaction will provide benefits to customers and will
11 serve the public interest—this is not a zero sum transaction. In this and any other
12 industry, in order to provide benefits to shareholders, a company must also serve
13 and benefit its customers.

14 **Q. DR. ANKUM ARGUES THAT THE MERGER INVOLVES SIGNIFICANT**
15 **“UNCERTAINTIES” AND “RISKS,” AND THAT THESE “RISKS AND**
16 **GAINS ARE UNEVENLY DIVIDED BETWEEN SHAREHOLDERS AND**
17 **THE BROADER PUBLIC INTEREST, INCLUDING CAPTIVE**
18 **CUSTOMERS, SUCH AS CLECs.”⁶⁹ PLEASE COMMENT.**

19 A. Essentially, Dr. Ankum and Mr. Gates argue that the merger has a risk of failure,
20 and therefore, the Commission should deny the merger or impose onerous
21 conditions. Of course, as Ms. McMillan describes in her testimony, Dr. Ankum and
22 Mr. Gates overstate the risk of this transaction by comparing it with several
23 previous transactions that have experienced problems, such as the FairPoint

⁶⁹ Ankum Direct, p. 38.

1 purchase of access lines from Verizon or the Carlyle Group's purchase of Verizon
2 properties in Hawaii. Based on an apples-to-oranges discussion of a select group of
3 less-successful transactions that are not even remotely comparable with this
4 transaction in most respects, they imply that the risk of this transaction is simply too
5 great. Dr. Ankum then argues that stakeholders (customers) are much more "at
6 risk" from the merger transaction than shareholders, and that this is a reason to deny
7 the merger or impose onerous conditions.

8 This CLEC testimony represents a flawed assignment of risk. If the merger were to
9 fail—which is highly unlikely—the losses to shareholders would be substantial and
10 would likely exceed any negative impact on other stakeholders, especially since
11 shareholders could potentially lose all of their investment. To give but one
12 example, when WorldCom—which had purchased MCI—went bankrupt,
13 shareholders lost their entire investment. Conversely, customer services were
14 generally not interrupted or degraded, and the surviving company was ultimately
15 acquired by Verizon. It is wrong to conclude that a merger presents less risk to
16 shareholders than to other stakeholders.

17 **E. Competitive Impact of Proposed Reporting Conditions**

18 **Q. DOES THE COMMISSION STAFF PROPOSE THE IMPOSITION OF**
19 **NUMEROUS REPORTING REQUIREMENTS ON THE POST-MERGER**
20 **COMPANY?**

21 **A.** Yes. The Staff's proposed list of conditions includes several additional regulatory
22 reporting requirements (e.g., conditions 37-46).⁷⁰

⁷⁰ Fimbres Direct, pp. 32-34.

1 **Q. IN TODAY'S COMPETITIVE ENVIRONMENT, ARE THESE**
2 **REPORTING REQUIREMENTS JUSTIFIED?**

3 A. No. Other witnesses, including Mr. Glover, Mr. Schafer, Mr Hunsucker, Ms
4 Stewart, and Ms. McMillan provide the Joint Applicants' specific response to each
5 of these reporting conditions. However, I am struck by the burdensome nature of
6 some of these conditions, some of which appear to have little to do with the merger
7 itself or ensuring that the merger is in the public interest. For example, conditions
8 40 and 41 (which are addressed by Mr. Schafer) require significant and burdensome
9 wire-center specific network reporting, yet Staff has made little showing that such
10 reporting is justified by the merger.⁷¹ It appears that these conditions are, for the
11 most part, designed to use the merger as cover for obtaining network planning data
12 from Qwest that is not provided to the Staff today, and for which Staff has not
13 explained the need.

14 The imposition of such burdensome reporting requirements is unjustified, especially
15 given the competitive nature of the Arizona telecommunications market. Mr.
16 Fimbres agrees that Qwest continues to face significant competition from cable
17 providers such as Cox, wireless providers, VoIP providers and CLECs;⁷² yet Staff
18 recommends imposing significant reporting burdens on the post-merger company
19 that are not faced by its competitors. In a fiercely competitive marketplace, it is
20 improper to single out one provider and impose conditions and regulatory burdens
21 that do not also apply to all other providers. Further, there is no basis for
22 unnecessarily micro-managing the combined company and reversing the

⁷¹ Mr. Fimbres and Ms. Genung briefly discuss these conditions, but as demonstrated by Mr. Schafer, they provide little evidence to justify their imposition on the post-merger company.

⁷² Fimbres Direct, p. 7.

1 deregulatory trend of reduced reporting requirements that is appropriate in a
2 competitive environment. The Staff has provided no evidence to justify the need to
3 create a wider gap in regulatory parity by increasing the combined company's
4 reporting requirements.

5 **IV. CONCLUSION**

6 **Q. WHAT ACTION SHOULD THE COMMISSION TAKE IN THIS**
7 **PROCEEDING?**

8 A. The Commission should approve the Transaction, without the onerous,
9 unreasonable and unnecessary conditions proposed by other parties. As described
10 above, the Arizona telecommunications market is very competitive, and the merger
11 of CenturyLink and Qwest will cause no competitive harm in the state. Contrary to
12 the claims of the CLECs in this proceeding, the Transaction will provide many
13 benefits to Arizona consumers and businesses, as described in Mr. Campbell's
14 direct and rebuttal testimony, as well as in the direct and rebuttal testimonies of Ms.
15 McMillan. In addition, as Ms. McMillan and Mr. Hunsucker describe in their
16 rebuttal testimonies, CLECs will not be harmed by the Transaction.

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

18 A. Yes, it does.

JAMES P. CAMPBELL

BEFORE THE ARIZONA CORPORATION COMMISSION

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
COMMUNICATIONS, INC. D/B/A/ CENTURY
LINK COMMUNICATIONS, EMBARQ
PAYPHONE SERVICES, INC. D/B/A/
CENTURYLINK, AND CENTURYTEL
SOLUTIONS, LLC FOR APPROVAL OF THE
PROPOSED MERGER OF THEIR PARENT
CORPORATIONS QWEST
COMMUNICATIONS INTERNATIONAL INC.
AND CENTURYTEL, INC.**

)
)
) **DOCKET NO. T-01051B-10-0194**
) **DOCKET NO. T-02811B-10-0194**
) **DOCKET NO. T-04190A-10-0194**
) **DOCKET NO. T-20443A-10-0194**
) **DOCKET NO. T-03555A-10-0194**
) **DOCKET NO. T-03902A-10-0194**

REBUTTAL TESTIMONY

OF

JAMES P. CAMPBELL

ON BEHALF OF

QWEST CORPORATION

QWEST COMMUNICATIONS COMPANY, LLC, AND

QWEST LD CORP.

OCTOBER 27, 2010

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH QWEST CORPORATION.

A. My name is James P. Campbell. I am Arizona State President for Qwest Communications. My business address is 20 E. Thomas Road, Phoenix, AZ, 85012.

Q. ARE YOU THE SAME JAMES P. CAMPBELL THAT FILED DIRECT TESTIMONY ON MAY 24, 2010 IN THIS PROCEEDING?

A. Yes I am.

II. PURPOSE OF TESTIMONY

Q. ON WHAT PARTIES' BEHALF ARE YOU FILING REBUTTAL TESTIMONY IN THIS PROCEEDING?

A. My rebuttal testimony is prepared on behalf of the Qwest telecommunications entities operating in Arizona, who have joined with the CenturyLink companies to file the Joint Notice and Application for Approval (the "Application").

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my rebuttal testimony is to comment on Staff's recommended conditions 7 and 47 as outlined in the Direct Testimony of Staff witness Armando Fimbres.

Q. ARE OTHER WITNESSES ALSO OFFERING REBUTTAL TESTIMONY IN THIS PROCEEDING ON BEHALF OF THE JOINT APPLICANTS?

A. Yes.

1 **III. STAFF RECOMMENDED CONDITION NO. 7**

2 **Q. IN STAFF RECOMMENDED CONDITION NO. 7, STAFF RECOMMENDS THAT**
3 **THE MERGED COMPANY SHALL CONTINUE TO COMPLY WITH ALL**
4 **RELEVANT PRIOR COMMISSION ORDERS AND DECISIONS UNLESS THE**
5 **COMMISSION FINDS THAT THEY ARE NO LONGER APPLICABLE. DID YOU**
6 **ADDRESS THIS ISSUE IN YOUR DIRECT TESTIMONY PREVIOUSLY FILED**
7 **IN THIS PROCEEDING?**

8 **A. Yes, I did. On page 9 I stated:**

9 **"Q. WILL THE POST-MERGER REGULATED ENTITIES CONTINUE**
10 **TO HONOR ALL EXISTING REGULATORY OBLIGATIONS?**

11 **A. Yes. The new company will abide by all regulatory obligations under which**
12 **the Qwest regulated entities, including QC, operate in Arizona."**

13 **Q. IS YOUR ANSWER STILL THE SAME IN YOUR REBUTTAL TESTIMONY?**

14 **A. Yes, it is.**

1 **IV. STAFF RECOMMENDED CONDITION NO. 47**

2 **Q. IN STAFF RECOMMENDED CONDITION NO. 47, STAFF RECOMMENDS**
3 **THAT THE MERGED COMPANY EVALUATE EXISTING LITIGATION**
4 **INVOLVING THE COMMISSION AND MAKE A GOOD FAITH EFFORT TO**
5 **RESOLVE THE ISSUES WITHOUT FURTHER LITIGATION AND LISTS**
6 **THREE OUTSTANDING CASES. WHAT IS YOUR POSITION ON THIS**
7 **RECOMMENDATION?**

8 **A.** Staff states that the merger should not be approved unless all 47 of its recommended
9 conditions are part of the merger approval. Condition 47 requests that Qwest abandon its
10 legal rights to pursue certain litigation involving Qwest and the Commission related to
11 previous orders. It is inappropriate for Staff to recommend that the Merged Company
12 abandon its legal rights to appeal as a condition of merger approval. It is one thing for the
13 Merged Company to voluntarily offer to withdraw litigation in a negotiated settlement as
14 something of value in the negotiations and it is quite another to be told that its legal rights
15 to appeal must be given up in exchange for merger approval. As further demonstration of
16 the problems associated with this condition, one of the cases (McLeodUSA v ACC,
17 Arizona District Case Court Case No. CV07-2145-PHX-HRH) is an appeal brought by a
18 CLEC challenging a Commission decision. (This case has been fully briefed to the 9th
19 Circuit Court of Appeals, and all that remains is oral argument, which has been stayed for
20 the time being to permit further settlement discussions—at the joint request of all the
21 litigants). Another case, (Pac-West/Level3 VNXX Remand Proceeding ACC [Docket Nos.
22 T-01051B-05-0495, T-03693A-05-0495, T-01051B-05-0415, T-03654A-05-0415]) is back
23 before the Commission on remand from the United States District Court, which enjoined
24 portions of earlier Commission complaint decisions against Qwest.

1 The Staff does not assert that the litigation is frivolous or brought in bad faith, or even state
2 that the matters litigated are unimportant. Qwest understands and appreciates that litigation
3 is costly and time consuming, and is not undertaken lightly. Qwest is generally willing to
4 explore resolution outside of litigation, and remains willing to do so in these cases at every
5 juncture. But, making only one side of a dispute show 'good faith' attempt to settle does
6 not bode well for a fair settlement discussion. It would also seem to indicate an unspoken
7 and incorrect assumption that Qwest's litigation positions are unreasonable or indefensible.

8 The Staff's condition that Qwest should make a good faith effort to resolve litigation is not
9 a benign requirement if the same obligation does not apply equally to all the litigating
10 parties—including the CLECs and the Commission itself. By imposing condition 47 in this
11 merger docket, with no corresponding pressure or duty on the other litigants, it appears that
12 Staff is simply leveraging the merger approval into other unrelated dockets.
13 Recommended condition 47 is both unacceptable and inappropriate.

14 **V. CONCLUSION**

15 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

16 **A.** Yes, it does.

KAREN A. STEWART

BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN MAYES

Chairman

GARY PIERCE

Commissioner

SANDRA KENNEDY

Commissioner

PAUL NEWMAN

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**JOINT NOTICE AND APPLICATION OF
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REBUTTAL TESTIMONY

OF

KAREN A. STEWART

ON BEHALF OF

QWEST CORPORATION, QWEST COMMUNICATIONS COMPANY, LLC, AND

QWEST LD CORP.

OCTOBER 27, 2010

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1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION**
3 **WITH QWEST CORPORATION.**

4 A. My name is Karen A. Stewart and my business address is 310 SW Park Avenue, 11th
5 Floor, Portland, Oregon 97205. I am employed by Qwest Corporation ("Qwest") as a
6 Director – Legal Issues in the Law Department.

7 **Q. PLEASE REVIEW YOUR PRESENT RESPONSIBILITIES.**

8 A. In my current position, I am responsible for regulatory compliance activities, as well
9 as preparing testimony and testifying on Qwest's behalf in a variety of regulatory
10 proceedings, predominantly about Qwest's wholesale services.

11 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
12 **EMPLOYMENT EXPERIENCE.**

13 A. I received a Bachelors of Science degree in Business Administration from Portland
14 State University in 1980, and a Masters degree in Business Administration from the
15 University of Oregon in July 1994. I have been employed by Qwest and its
16 predecessor companies since 1981. I have held a variety of positions in Qwest,
17 including sales, product management, E911 project management and technical
18 design, regulatory affairs manager, and regulatory compliance.

19 I represented Qwest in a number of workshops conducted under Section 271 of the
20 Telecommunications Act of 1996 ("the Act") related to Qwest's provisioning of

1 unbundled network elements ("UNEs") region-wide and specifically in the Arizona
2 271 proceeding.

3 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THIS**
4 **COMMISSION?**

5 A. Yes. I have appeared before the Arizona Corporation ("Commission") in connection
6 with various dockets, including the Qwest/Covad Arbitration in Docket No. T-
7 03632A-04-0425 and the Qwest/Eschelon Arbitration in Docket No. T-01051B-06-
8 0572.

9 **Q. HAVE YOU TESTIFIED BEFORE OTHER STATE REGULATORY**
10 **COMMISSIONS?**

11 A. Yes. I have also testified in the states of Colorado, Idaho, Iowa, Minnesota, Montana,
12 Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington,
13 and Wyoming.

14 **II. INTRODUCTION**

15 **Q. ON WHICH PARTIES' BEHALF ARE YOU FILING TESTIMONY IN THIS**
16 **PROCEEDING?**

17 A. My rebuttal testimony is prepared on behalf of Qwest Corporation, Qwest
18 Communications Company, LLC, and Qwest LD Corp. (collectively, the "Qwest
19 Applicants") in this proceeding.

1 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**
2 **PROCEEDING?**

3 A. No.

4 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

5 A. The purpose of my rebuttal testimony is to address certain aspects of the testimonies
6 of Mr. Timothy Gates filed on behalf of the *Joint CLECs*,¹ the testimony of Mr.
7 Armando Fimbres filed on behalf of the Commission's Utilities Division ("Staff"),
8 the Direct Testimony of Douglas Denney, on behalf of Integra and the testimony and
9 numerous proposed conditions identified in the Direct Testimony of Richard E.
10 Thayer, on behalf of Level 3 Communications, LLC ("Level 3").² To the extent that
11 Mr. Thayer's or Mr. Fimbres' proposed conditions overlap those of the Joint CLECs,
12 my testimony addresses their similar proposed conditions as well. I separately
13 address the unique Level 3 proposed conditions later in my testimony.

14 My rebuttal testimony clearly demonstrates that a number of these conditions pertain
15 to issues that have nothing to do with this merger review proceeding and thus are not
16 appropriate in this proceeding, and that such issues can be addressed in
17 interconnection agreements ("ICAs"), interconnection enforcement complaints, or
18 other Commission proceedings.

¹ The *Joint CLECs* include Eschelon Telecom of Arizona, Inc., Electric Lightwave, LLC, Mountain Telecommunications of 11 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.

² Direct Testimony of Richard Thayer ("Thayer Direct"), pp. 2-4.

1 **Q. ARE OTHER WITNESSES OFFERING TESTIMONY ON THE PROPOSED**
2 **WHOLESALE CONDITIONS?**

3 A. Yes. CenturyLink witness Mr. Michael R. Hunsucker provides testimony in response
4 to many of the proposed wholesale-related conditions and demonstrates that the post-
5 merger company will have the expertise and ability to manage any on-going
6 wholesale obligations. In addition, the testimony of Qwest Applicants' witness Mr.
7 Michael G. Williams will address the proposed conditions specific to the wholesale
8 performance measurements and the Qwest Performance Assurance Plan ("QPAP"),
9 including Integra witness Douglas Denney's proposal of an "Additional"
10 Performance Assurance Plan ("APAP").

11 **III. CURRENT CLEC SAFEGUARDS**

12 **Q. WHAT IS THE BASIS FOR QWEST'S WHOLESALE OBLIGATIONS?**

13 A. Because Qwest³ is an Incumbent Local Exchange Carrier ("ILEC") in Arizona, the
14 majority of the wholesale obligations that are of interest to this Commission are a
15 result of the Telecommunications Act of 1996 ("the Telecom Act" or "the Act") and
16 the Federal Communications Commission's ("FCC's") implementing orders and
17 decisions that apply to Qwest. Qwest's wholesale obligations also include various
18 obligations applicable to Bell Operating Companies ("BOCs", such as Qwest), as a
19 result of Section 271 of the Act which were put in place to open up the local markets
20 to competition.

³ For the remainder of my testimony, when I refer to "Qwest" I am using that name to refer to Qwest Corporation, unless the context would indicate otherwise.

1 **Q. PRIOR TO ADDRESSING ANY SPECIFIC CONDITIONS, DO YOU HAVE**
2 **ANY GENERAL STATEMENTS REGARDING THE SAFEGUARDS THAT**
3 **ARE CURRENTLY IN PLACE FOR COMPETITIVE LOCAL EXCHANGE**
4 **CARRIERS (“CLECs”)?**

5 **A.** Yes. The Joint CLECs have expressed purported concerns regarding the potential
6 future conduct of the Qwest entity and CenturyLink post-merger. It is almost as if the
7 Joint CLECs are assuming the merger would result in complete deregulation of both
8 companies, and that neither would be required to comply with any current rules, laws,
9 regulations or ICAs. Nothing could be further from the truth. The post-merger
10 entities will continue to be subject to all of the federal and state rules and regulations
11 to which the pre-merger entities are subject, and it will continue to meet all of the
12 applicable rules, laws, regulations and their numerous contractual obligations.

13 The merger will also have no impact on the combined companies’ obligations under
14 the Act. The Act ensures that the local telecommunications market is open to
15 competition. For example, the Act requires that post-merger Qwest will continue to
16 negotiate ICAs with CLECs in good faith and that this Commission will continue to
17 have oversight over those agreements in Arizona. Therefore, all of the obligations
18 placed upon Qwest under the Act will remain, and this merger will not impact or
19 impair any of the substantive or procedural protections afforded CLECs.

1 **Q. BEFORE YOU RESPOND TO THE SPECIFICS OF MR. GATES'**
2 **TESTIMONY, WOULD YOU DESCRIBE THE QWEST CHANGE**
3 **MANAGEMENT PROCESS ("CMP") THAT MR. GATES HAS TESTIFIED**
4 **ABOUT?**

5 **A. Yes. Mr. Gates in his testimony made several references to the Qwest Change**
6 **Management Process ("CMP"). It is important, however, to understand the**
7 **significance of this formal process in addressing purported concerns that the Joint**
8 **CLECs may have about changes that may impact it.**

9 The CMP is a business-relation process that is intended to facilitate a discussion
10 between CLECs and Qwest about product, process or Operational Support Systems
11 ("OSS") Interface release changes, release life cycles, release notifications and
12 communication through regularly-scheduled meetings. Team Members of the CMP
13 process include CLEC and Qwest representatives, who gather to review Change
14 Requests ("CRs") initiated by CLECs and/or Qwest and to discuss Qwest
15 notifications.

16 Since 1999, Qwest and CLECs have jointly participated in a CMP forum for
17 managing changes related to Qwest's products, processes, and systems that support
18 the five categories of OSS functionality (pre-ordering, ordering, provisioning,
19 maintenance and repair, and billing). This process is used to communicate to CLECs
20 any changes to Qwest's OSS interfaces and to products and processes that are within
21 the scope of CMP. The CMP also provides CLECs with the opportunity to have input
22 into Qwest-proposed changes and to propose changes of their own. CLECs and

1 Qwest meet collaboratively at least once per month to consider these CRs. Minutes
2 from these meetings are posted on Qwest's CMP website,⁴ and are distributed to
3 participating CLECs regularly.

4 **Q. ARE THE CHANGE MANAGEMENT REQUIREMENTS DEFINED IN THE**
5 **ACT?**

6 A. No. As the FCC evaluated Section 271 applications for a BOC's entry into the
7 interLATA toll market in the early part of the decade, it recognized that OSS systems
8 are not static and would change over time. As a result, the FCC amplified its
9 requirements in recognition that, once it granted a BOC Section 271 relief, a
10 mechanism was needed to manage OSS changes. That mechanism was a change
11 management process (or CMP) that met specific FCC requirements.

12 **Q. DO QWEST'S INTERCONNECTION AGREEMENTS TYPICALLY**
13 **IDENTIFY AND INCLUDE THE CMP PROCESS?**

14 A. Yes. CMP is described and included in Qwest's interconnection agreements. The
15 Qwest negotiation template ICA identifies the CMP process at Section 12.2.6.
16 Specific language varies from agreement to agreement, but the Qwest negotiation
17 template provides an accurate description of CMP:

18 12.2.6 Change Management. Qwest agrees to maintain a change
19 management process, known as (CMP), that is consistent with or exceeds
20 industry guidelines, standards and practices to address Qwest's OSS, products
21 and processes. The CMP shall include, but not be limited to, utilization of the

⁴ Qwest's CMP website can be found at <http://www.qwest.com/wholesale/cmp>. Minutes of CMP team meetings are available at <http://www.qwest.com/wholesale/cmp/teammeetings.html>.

1 following: (i) a forum for CLEC and Qwest to discuss CLEC and Qwest
2 change requests (CR), CMP notifications, systems release life cycles, and
3 communications; (ii) provide a forum for CLECs and Qwest to discuss and
4 prioritize CRs, where applicable pursuant to the CMP Document; (iii) a
5 mechanism to track and monitor CRs and CMP notifications; (iv) established
6 intervals where appropriate in the process; (v) processes by which CLEC
7 impacts that result from changes to Qwest's OSS, products or processes can
8 be promptly and effectively resolved; (vi) processes that are effective in
9 maintaining the shortest timeline practicable for the receipt, development and
10 implementation of all CRs; (vii) sufficient dedicated Qwest processes to
11 address and resolve in a timely manner CRs and other issues that come before
12 the CMP body; (viii) processes for OSS Interface testing; (ix) information that
13 is clearly organized and readily accessible to CLECs, including the
14 availability of web-based tools; (x) documentation provided by Qwest that is
15 effective in enabling CLECs to build an electronic gateway; and (xi) a process
16 for changing CMP that calls for collaboration among CLECs and Qwest and
17 requires agreement by the CMP participants. Pursuant to the scope and
18 procedures set forth in the CMP Document, Qwest will submit to CLECs
19 through the CMP, among other things, modifications to existing products and
20 technical documentation available to CLECs, introduction of new products
21 available to CLECs, discontinuance of products available to CLECs,
22 modifications to pre-ordering, ordering/provisioning, maintenance/repair or
23 billing processes, introduction of pre-ordering, ordering/provisioning,
24 maintenance/repair or billing processes, discontinuance of pre-ordering,
25 ordering/provisioning, maintenance/repair or billing processes, modifications
26 to existing OSS interfaces, introduction of new OSS interfaces, and retirement
27 of existing OSS interfaces. Qwest will maintain as part of CMP an escalation
28 process so that CMP issues can be escalated to a Qwest representative
29 authorized to make a final decision and a process for the timely resolution of
30 disputes. The governing document for CMP, known as the "Change
31 Management Process" Document is the subject of ongoing negotiations
32 between Qwest and CLECs in the ongoing CMP. The CMP Document will
33 continue to be changed through those discussions. The CMP Document
34 reflects the commitments Qwest has made regarding maintaining its CMP and
35 Qwest commits to implement agreements made in the CMP process as soon as
36 practicable after they are made. The CMP Document will be subject to
37 change through the CMP, as set forth in the CMP Document. Qwest will
38 maintain the most current version of the CMP Document on its wholesale web
39 site.
40

41 12.2.6.1 In the course of establishing operational ready system interfaces
42 between Qwest and CLEC to support local service delivery, CLEC and Qwest
43 may need to define and implement system interface specifications that are
44 supplemental to existing standards. CLEC and Qwest will submit such

1 specifications to the appropriate standards committee and will work towards
2 their acceptance as standards.

3
4 12.2.6.2 Release updates will be implemented pursuant to the CMP.

5
6 **Q. GIVEN THAT CMP IS IN CLECs' ICAs, WILL CMP CONTINUE TO BE IN-**
7 **PLACE POST-MERGER?**

8 A. Yes. Because CMP is in virtually all Qwest ICAs, and this Commission has approved
9 all ICAs in Arizona, CMP will be in place post-merger to govern the processes for
10 changes to Qwest wholesale-related products, processes or OSS.

11 **IV. PROPOSED MERGER CONDITIONS**

12 **Q. CAN YOU PLEASE IDENTITY THE PROPOSED MERGER CONDITIONS**
13 **YOU WILL ADDRESS IN YOUR TESTIMONY?**

14 A. Yes. I provide background information on the Joint CLECs' proposed Conditions 2,
15 3, 7, 11, 14, 15, 17, 19b and 19c, 25, 26, and 27 as identified in Exhibit TG- 8
16 attached to Mr. Gates' testimony. In addition, I respond to Staff's proposed
17 conditions 24, 28, 32 and 33.

18 **Q. PLEASE IDENTITY THE FIRST GROUP OF PROPOSED CONDITIONS**
19 **YOU WILL ADDRESS.**

20 A. Below are the Joint CLECs' proposed merger conditions that all appear to be rate-
21 related.

22 2. The Merged Company will not recover, or seek to recover, through
23 wholesale service rates or other fees paid by CLECs, and will hold wholesale

1 customers harmless for, one-time transfer, branding, or any other transaction-
2 related costs. For purposes of this condition, "transaction related costs" shall
3 be construed broadly and, for example, shall not be limited in time to costs
4 incurred only through the Closing Date.

5 3. The Merged Company will not recover, or seek to recover, through
6 wholesale service rates or other fees paid by CLECs, and will hold wholesale
7 customers harmless for, any increases in overall management costs that result
8 from the transaction, including those incurred by the Operating Companies.

9 7. Rates charged by legacy CenturyLink and rates charged by legacy
10 Qwest (including those described in condition 6) for tandem transit service,
11 any interstate special access tariffed or non-tariffed and commercial offerings,
12 any intrastate wholesale tariffed offering, and any service for which prices are
13 set pursuant to Sections 252(c)(2) and Section 252(d) of the Communications
14 Act shall not be increased for at least the Defined Time Period. The Merged
15 Company will not create any new rate elements or charges for distinct
16 facilities or functionalities that are already provided under rates as of the
17 Closing Date.

18 7.a. The Merged Company shall continue to offer any term and volume
19 discount plans offered as of the Merger Announcement Date, for at least the
20 Defined Time Period, without any changes to the rates, terms, or conditions of
21 such plans. The Merged Company will honor any existing contracts for
22 services on an individualized term pricing plan arrangement for the duration
23 of the contracted term.

24 **Q. DOES STAFF ALSO HAVE A RATE-RELATED PROPOSED CONDITION**
25 **YOU WILL ADDRESS.**

26 **A.** Yes. Below is Staff's proposed merger condition No. 33:

27 That the Merged Company shall not impose any new or additional charges
28 upon CLECs for functions already undertaken by Qwest without the prior
29 approval of the Commission.

1 **Q. DOES THE COMMISSION ALREADY HAVE A PROCESS IN PLACE TO**
2 **ADDRESS RATES FOR NEW AND EXISTING SECTION 251-RELATED**
3 **SERVICES, AS IDENTIFIED IN THE PROPOSED CONDITIONS?**

4 A. Yes. The Commission typically conducts cost dockets and interconnection
5 arbitrations to establish rates for services that ILECs provide to CLECs pursuant to
6 Section 251 of the Act. In fact, the Act requires that rates for products and services
7 subject to Section 251 be priced at Total Element Long Run Incremental Cost
8 ("TELRIC"). Thus, Qwest cannot unilaterally alter existing TELRIC-established
9 rates. Changing of rates or a rate structure would require ICA amendment
10 negotiations or Commission approval through a TELRIC cost docket. Any CLEC
11 concerns can be addressed through the opportunity to participate in Commission cost
12 proceedings, or through amendment negotiations. Thus, no unique merger conditions
13 are necessary to address these theoretical rate issues.

14 **Q. BASED ON THE FACT THAT THE COMMISSION GENERALLY**
15 **APPROVES SECTION 251 RATES, AND THAT A CLEC CAN REQUEST**
16 **THAT COMMISSION-APPROVED RATES BE ESTABLISHED, IS THERE**
17 **ANY NEED FOR MERGER CONDITIONS THAT SPEAK TO HOW RATES**
18 **WILL BE ESTABLISHED POST-MERGER?**

19 A. No. To the extent that CLECs (or Staff) have any concerns regarding Section 251-
20 related rates which are subject to Commission approval, there are ample safeguards
21 already in place for CLECs and Staff to express any future cost model concerns in the
22 appropriate cost proceeding.

1 **Q. SHOULD THE COMMISSION AGREE TO RATE FREEZES ON THE**
2 **VARIOUS NON-SECTION 251 PRODUCTS AND SERVICES THAT THE**
3 **JOINT CLECS IDENTIFY IN PROPOSED CONDITION 7?**

4 **A.** No. The Joint CLECs are asking for broad and sweeping rate freezes for a variety of
5 services (including interstate services) and this Commission should reject the Joint
6 CLECs' attempt to change the rate making processes that are currently in place for
7 these products and services. It is not appropriate for the Joint CLECs to attempt to
8 leverage the merger proceeding as a way to make changes to the rate setting
9 mechanisms for a broad range of products and services. The testimony of Mr.
10 Hunsucker provides additional testimony on the inappropriateness of this attempt to
11 set new tariff and contract rates as part of the merger proceeding.

12 **Q. SHOULD THE COMMISSION ALSO GENERICALLY LIMIT ANY NEW OR**
13 **ADDITIONAL CHARGES FOR EXISTING NON-SECTION 251 FUNCTIONS**
14 **AS STAFF IMPLIES IN STAFF PROPOSED CONDITION 33?**

15 **A.** No. Similar in nature to the Joint CLECs asking for broad and sweeping rate freezes
16 for a variety of services (including interstate services), Staff is seeking a generic
17 “freeze” on Qwest’s ability to have new or additional charges for existing functions
18 without prior Commission approval. The Commission should also reject Staff’s
19 attempt to change the rate making processes that are currently in place for non-251
20 function, products and services. This is an overly vague and broad proposed
21 condition that does not include any factual information that could be used to
22 determine the reasonableness or appropriateness given that this could even be

1 interpreted to include interstates services or Commercial Agreement services over
2 which the Commission does not have rate setting authority. Further, the issue of
3 authority over non-251 services has been the subject of extensive litigation, the result
4 of which is that rates for non-251 services are not set by the Commission.

5 **Q. PLEASE IDENTIFY THE NEXT PROPOSED CONDITION YOU ARE**
6 **ADDRESSING.**

7 A. The next proposed condition I will address is the Joint CLECs' proposed Condition
8 11:

9 11. To the extent that an interconnection agreement is silent as to an
10 interval for the provision of a product, service or functionality or refers to
11 Qwest's website or Service Interval Guide (SIG), the applicable interval, after
12 the Closing Date, shall be no longer than the interval in Qwest's SIG as of the
13 Merger Filing Date.

14 **Q. PROPOSED CONDITION 11 REQUESTS THAT THE COMMISSION**
15 **ESTABLISH LIMITATIONS ON INSTALLATION INTERVALS FOR**
16 **POTENTIALLY ALL QWEST WHOLESALE PRODUCTS, SERVICES AND**
17 **"FUNCTIONALITY."⁵ IS THIS APPROPRIATE?**

18 A. No. The issue of installation intervals involves a number of very complicated legal,
19 factual and practical issues. The proposed condition would impose a broad-brush
20 restriction on installation intervals without any factual support. Qwest's installation
21 intervals are established based on a variety of factors, including underlying
22 technology, which can be subject to change over time. In addition, Qwest had

⁵ Gates Direct, pp. 130-132.

1 concerns regarding the term “functionality” as not being clearly defined, however, the
2 Joint CLECs have subsequently informed Qwest the term is meant to only identify all
3 services currently identified in the Qwest Service Interval Guide (“SIG”).⁶ Qwest has
4 developed and implemented separate and distinct procedures and provisioning
5 intervals for Unbundled Network Elements (“UNEs”), combinations of UNEs,
6 commercial products and services, retail local exchange services, and tariffed private
7 line services, to name a few. These installation intervals should not be artificially
8 limited due to the same CLECs’ desires to control this key component of the Qwest
9 provisioning process for all its products and services.

10 **Q. ARE INSTALLATION INTERVALS FOR UNEs THAT CLECs USE TO**
11 **COMPETE WITH QWEST IN THE LOCAL EXCHANGE MARKET**
12 **INCLUDED IN CURRENT QWEST ICAs?**

13 A. While service installation intervals are included in many CLECs’ ICAs, more
14 recently, numerous CLECs have agreed with Qwest to make reference to the Qwest
15 SIG.

16 **Q. DO YOU HAVE ANY OTHER CONCERNS REGARDING THE JOINT**
17 **CLECS’ POSITION ON PROPOSED CONDITION 11?**

18 A. Yes. It appears based on the testimony of Mr. Gates in Minnesota (as mentioned
19 above) that the installation dates would be set as of the filing date for the proposed

⁶ Surrebuttal Testimony of Timothy Gates, September 27, 2010, Public Version p. 85 “Obviously, the products, services or functionalities to which Condition 11 applies are those that are currently in Qwest’s SIG as of the Merger Filing Date.”

1 merger. Given the period of time from the filing for merger approval, and actual
2 approval being obtained, Qwest and CenturyLink must continue to do business as
3 usual, which may include changes to the SIG installation dates. Examples might be
4 the addition of new products, and changes in existing intervals. For example, since
5 the filing of the merger approval request, per FCC requirements, simple Local
6 Number Portability Port installation intervals have changed to a 24 hour interval.
7 While I understand this would be permitted under the proposed Condition 11 (since it
8 is a decrease in interval), it however, demonstrates that trying to set artificial controls
9 on intervals for a long period of time is not reasonable and does not allow Qwest to
10 manage its installation of services and to make necessary interval adjustments as
11 changes in the telecommunications marketplace occur.

12 **Q. IF QWEST MAKES A CHANGE IN THE INSTALLATION INTERVAL OF A**
13 **PRODUCT OR SERVICE, IS THERE A MECHANISM IN PLACE TO**
14 **NOTIFY CLECs, IN ADVANCE, AND THUS GIVE THEM AMPLE TIME TO**
15 **PREPARE FOR ANY CHANGE IN AN INTERVAL?**

16 **A.** Yes. Qwest follows the CMP notification intervals to provide advance notice of SIG
17 changes, and specific reseller notices are issued, when appropriate, to advise resellers
18 of changes in applicable retail intervals. Clearly, there are safeguards in place to keep
19 CLECs informed regarding any interval changes in Qwest's retail and wholesale
20 products and services, and thus there is no need for the Commission to establish any
21 artificial limitations that would only serve to restrict the merged company from
22 having the flexibility to manage its operations in response to changes in the

1 marketplace. Existing requirements to provide CLECs with non-discriminatory
2 access to provisioning, coupled with the notice obligations contained in the CMP, are
3 sufficient. For the foregoing reasons, as well as those reasons contained in Mr.
4 Hunsucker's rebuttal testimony, the Commission should reject the Joint CLECs'
5 proposed Condition 11.

6 **Q. PLEASE IDENTIFY THE NEXT PROPOSED CONDITION THAT YOU**
7 **WILL ADDRESS.**

8 A. Below is the Joint CLECs' proposed Condition 14:

9 14. For at least the Defined Time Period, the Merged Company will not
10 seek to reclassify as "non-impaired" any wire centers for purposes of Section
11 251 of the Communications Act, nor will the Merged Company file any new
12 petition under Section 10 of the Communications Act seeking forbearance
13 from any Section 251 or 271 obligation or dominant carrier regulation in any
14 wire center.

15 **Q. IS PROPOSED CONDITION 14 (WHICH PROPOSES LIMITATIONS ON**
16 **QWEST'S ABILITY SEEK "NON-IMPAIRED" STATUS FOR NEW WIRE**
17 **CENTERS) CONSISTENT WITH STATE AND FEDERAL ORDERS?**

18 A. No, it is not. First, CLECs have no legal basis to require Qwest to waive any rights it
19 has under federal law, nor does the Commission have authority to do so. Further, my
20 understanding is that the rules and guidelines that the FCC established in the
21 *Triennial Review Remand Order* ("TRRO") are not subject to change simply
22 because of an ILEC merger proceeding, and I am not aware that any state utility
23 commission has ever required an ILEC to waive rights it has under federal law to
24 seek non-impairment status of its wire centers. Moreover, filings for non-

1 impaired status are based on the competitive marketplace and the alternatives that
2 CLECs have in that marketplace to buy (or self-provision) network elements that
3 they need to compete.

4 In addition, this proposed condition ignores the extensive work that Qwest and a
5 representative body of CLECs (many of which are intervenors in this proceeding)
6 have already done to establish clear and consistent procedures for future wire
7 center reclassification petitions.⁷ Finally, the CLECs' proposed condition ignores
8 their own agreement regarding the process that would be used for addressing
9 reclassification petitions.

10 Specifically, several of the Joint CLECs and Qwest worked cooperatively in 2006 and
11 2007 to develop and stipulate to the process and procedures to be used when Qwest
12 would request that future wire centers be added to the non-impaired wire center list.
13 The stipulation that the Commission approved in Docket No. T-03632A-06-0091
14 includes the following section:

15 **Settlement Section VI: Future Qwest Filings to Request Commission**
16 **Approval of Non-Impairment Designations and Additions to the**
17 **Commission-Approved Wire Center List.⁸**

18 **Q. DID THE COMMISSION REVIEW AND APPROVE THIS STIPULATION?**

19 **A. Yes. On May 16, 2008, the Commission approved the stipulation:**

⁷ See Docket No. T-03632A-06-0091 Decision No. 70355 dated May 16, 2008 for a re-cap of the procedural history.

⁸ See Docket No. T-03632A-06-0091 Decision No. 70355 dated May 16, 2008 (Commission approval of stipulation and settlement agreement between Qwest and numerous CLECs, including several of the Joint CLECs). Exhibit A beginning at p. 8.

1 It is therefore ordered that the Settlement Agreement filed by Qwest
2 Corporation, DIECA Communications, Inc., doing business as Covad
3 Communications Company and Mountain Telecommunications, Inc.,
4 Eschelon Telecom of Arizona, Inc., McLeodUSA Telecommunications
5 Services, Inc., and XO Communications Services, Inc. is approved subject to
6 the directives of the Commission set forth herein.⁹

7 **Q. HAS THE SETTLEMENT AGREEMENT THAT THE COMMISSION**
8 **APPROVED BEEN TERMINATED IN ARIZONA?**

9 A. No, it has not.

10 **Q. DOES THE MERGER TRANSACTION AT ISSUE IN THIS PROCEEDING**
11 **IMPACT THE LEGAL STANDARD OR THE FACTUAL ANALYSIS**
12 **ASSOCIATED WITH WIRE CENTER RECLASSIFICATIONS?**

13 A. No. This is simply another of the CLECs' numerous attempts to extract or leverage a
14 legal or operational concession from CenturyLink and Qwest for their own self-
15 interest, despite that there is no connection between the merger approval process and
16 this issue. The condition also attempts to supersede and invalidate an otherwise
17 lawful order of the Commission approving the stipulation. Thus, the Commission
18 should reject this inappropriate proposal.

19 **Q. DO YOU HAVE ANY COMMENTS REGARDING THE JOINT CLECS'**
20 **PROPOSED CONDITION 15 AND THE SIMILAR STAFF PROPOSED**
21 **CONDITION 28?**

22 A. Yes. The Joint CLECs' proposed Condition 15 reads as follows:

⁹ See Docket No. T-03632A-06-0091 Decision No. 70355 dated May 16, 2008 p. 34.

1 15. The Merged Company shall provide to wholesale carriers, and
2 maintain and make available to wholesale carriers on a going-forward basis,
3 up-to-date escalation information, contact lists, and account manager
4 information at least 30 days prior to the Closing Date. For changes to support
5 center location, organizational structure, or contact information, the Merged
6 Company will provide at least 30 days advance written notice to wholesale
7 carriers. For other changes, the Merged Company will provide reasonable
8 advanced notice of the changes. The information and notice provided shall be
9 consistent with the terms of applicable interconnection agreements.

10 This proposed condition is simply not necessary, especially given the notice
11 requirements of the CMP.

12 **Q. WHY ARE THESE PROPOSED CONDITIONS UNNECESSARY GIVEN THE**
13 **NOTICE REQUIREMENTS OF CMP?**

14 A. CMP requires Qwest to notify CLECs of any changes that the CMP has determined
15 may impact CLECs. The CMP guidelines define various levels of Qwest-originated
16 product/process changes, and these guidelines are what Qwest has consistently
17 followed to originate and implement changes that may impact CLECs. Here are two
18 examples of changes that may impact CLECs and for which the CMP requires certain
19 notice by Qwest:

- 20 • Changes in escalation information, such as a change to a telephone
21 number or fax number, is considered a Level 2 CMP change and has a
22 standard notice interval of 21 days.
- 23 • A change to documented hours of operation for a center is a Level 3 CMP
24 change, which typically requires 45 days notice be given to CLECs.
- 25 •

26 Further, this proposed condition fails to account for the varying notice periods already
27 defined in CMP. The Joint CLECs have advocated for the merged company to

1 commit to continue the CMP while at the same time proposing conditions contrary to
2 some of its terms. This proposed condition should not be adopted.

3 **Q. ARE THE JOINT CLECS' PROPOSED CONDITION 17 OR STAFF'S**
4 **PROPOSED CONDITION 24 REGARDING THE QWEST CMP**
5 **ACCEPTABLE?**

6 A. No. The proposed conditions as written go beyond the existing requirements of
7 Qwest's CMP. The proposed conditions, if adopted, would create a conflict with the
8 documented process requirements, which Qwest has committed to following through
9 incorporation of ICA terms addressing CMP as I discussed previously in my
10 testimony.¹⁰ Moreover, it would subject the legacy CenturyLink operating entities to
11 the requirements of the Qwest CMP – a process for which neither CenturyLink
12 entities nor its wholesale customers had input. While it is heartening to read how
13 much Qwest's wholesale customers value the CMP, it is unreasonable to simply
14 expect other CLECs that operate in CenturyLink territory to have this process
15 unilaterally imposed upon them.

16 In addition to requiring the continuance of Qwest's CMP, proposed condition 17
17 would also require that "The Merged Company will dedicate the resources needed to
18 complete pending CLEC Change Requests in a commercially reasonable time frame."
19 However, the CMP has explicit procedures for prioritizing changes for inclusion in
20 scheduled releases. If a change is initiated through CMP, but is not highly prioritized

¹⁰ See *supra*, pp. 8-10.

1 by CLECs, the change can remain pending for an extended period of time. This
2 proposed condition is not needed for the CMP to continue to serve its intended
3 purpose of providing an established, documented mechanism to manage change –
4 whether the change is CLEC-initiated or Qwest-initiated. In fact, the proposed
5 condition could be interpreted to require Qwest to add resources in order to
6 implement changes that CLECs do not value simply based on when the request was
7 initiated. Abiding by the CMP is a contractual obligation of Qwest's that is not
8 altered by this transaction. At best, this condition is duplicative and unnecessary.
9 But when interpreted literally, the condition undermines the existing CMP process
10 despite the Joint CLECs' claim that "...the importance of Condition 17 to maintain
11 Qwest's CMP post-merger".¹¹ For the foregoing reasons as well as the reasons in Mr.
12 Hunsucker's rebuttal, Joint CLECs' proposed condition 17 and Staff's proposed
13 condition 24 should be rejected.

14 **Q. WILL YOU BE ADDRESSING ALL OF THE JOINT CLECS' PROPOSED**
15 **CONDITION NUMBER 19?**

16 A. No. Mr. Hunsucker's testimony addresses proposed Condition 19 overall, and I will
17 be addressing proposed Condition 19b, which would require expensive and
18 unnecessary third-party testing of any new proposed Operations Support Systems
19 (OSS), and proposed Condition 19c, which is unnecessary because Qwest ICAs
20 already include a commitment to train CLECs on OSS changes.

¹¹ Gates Response, p 141.

1 19b. For any Qwest system that was subject to third party testing (e.g., as part
2 of a Section 271 process), robust, transparent third party testing will be
3 conducted for the replacement system to ensure that it provides the needed
4 functionality and can appropriately handle existing and continuing wholesale
5 services in commercial volumes. The types and extent of testing conducted
6 during the Qwest Section 271 proceedings will provide guidance as to the
7 types and extent of testing needed for the replacement systems. The Merged
8 Company will not limit CLEC use of, or retire, the existing system until after
9 third party testing has been successfully completed for the replacement
10 system.

11 19c. Before implementation of any replacement or to be integrated system, the
12 Merged Company will allow for coordinated testing with CLECs, including a
13 stable testing environment that mirrors production and, when applicable,
14 controlled production testing. The Merged Company will provide the
15 wholesale carriers training and education on any wholesale OSS implemented
16 by the Merged Company without charge to the wholesale carrier.

17 **Q. ACCORDING TO MR. GATES, SECTION 271 OF THE ACT REQUIRES**
18 **NON-DISCRIMINATORY ACCESS TO OSS.¹² DO YOU AGREE?**

19 A. I agree that the Act requires non-discriminatory access to OSS, however, Mr. Gates'
20 testimony alludes to a separate and distinct Section 271 checklist requirement,
21 specifically for OSS. However, there is no such requirement beyond the Sections 251
22 and 252 requirements, and accompanying regulations, applicable to *all ILECs* to
23 provide non-discriminatory access to UNEs and the resale of telecommunication
24 services. The 14-point competitive checklist found in Section 271(c)(2)(B) requires,
25 in pertinent part:

26 (ii) Non-discriminatory access to network elements in accordance with the
27 requirements of *sections 251(c)(3) and 252(d)(1)*, and

28
29 (xiv) Telecommunications services are available for resale in accordance with
30 the requirements of *sections 251(c)(4) and 252(d)(3)*. (Emphasis added.)

¹² Gates Direct, p. 34.

1 In summary, Section 271 requires non-discriminatory access to *all* Section 251
2 UNEs, of which OSS is but one. However, access to OSS is not unique to Qwest as a
3 BOC that sought interLATA long distance authority (i.e., Section 271 approval), but
4 rather, is required of *all ILECs*.

5 **Q. DOES THE ACT REQUIRE THAT A BOC'S OSS UNDERGO THIRD-**
6 **PARTY TESTING?**

7 A. No. Code of Federal Regulations ("CFR") § 51.319(g), which defines OSS
8 obligations, does not require third-party testing:

9 (g) Operations support systems. An incumbent LEC shall provide a
10 requesting telecommunications carrier with nondiscriminatory access to
11 operations support systems on an unbundled basis, in accordance with section
12 251(c)(3) of the Act and this part. Operations support system functions
13 consist of pre-ordering, ordering, provisioning, maintenance and repair, and
14 billing functions supported by an incumbent LEC's databases and
15 information. An incumbent LEC, as part of its duty to provide access to the
16 pre-ordering function, shall provide the requesting telecommunications carrier
17 with nondiscriminatory access to the same detailed information about the loop
18 that is available to the incumbent LEC.

19 **Q. BEYOND THE OSS UNE DEFINITION, DOES SECTION 271 REQUIRE**
20 **THAT A BOC'S OSS UNDERGO THIRD-PARTY TESTING TO BE**
21 **"SECTION 271 COMPLIANT"?**

22 A. No. There is nothing in Section 271 that obligates a BOC to conduct third-party
23 testing in order to satisfy the Section 271 competitive checklist. The competitive
24 checklist merely requires a BOC to provide non-discriminatory access to UNEs,
25 including OSS as defined in CFR § 51.319(g). Third-party testing is simply not a
26 requirement for any ILEC, including a BOC.

1 **Q. MR. GATES CONTENDS THAT ABSENT THIRD-PARTY TESTING, ANY**
2 **REPLACEMENT SYSTEM WILL CAUSE HARM. DO YOU AGREE?**

3 A. No. Mr. Gates provides no supporting evidence, but rather merely speculates, that an
4 existing interface that is currently handling commercial volumes, such as
5 CenturyLink's OSS does today,¹³ cannot be modified and adapted to function as well
6 as (or better than) an existing interface.

7 **Q. IS THERE EVIDENCE THAT CONTRADICTS MR. GATES' TESTING**
8 **DEMAND?**

9 A. Yes. The Qwest systems and processes that were third-party tested more than eight
10 years ago during the Section 271 approval process are *not the same systems and*
11 *processes* that Qwest utilizes in its territory today. Since the conclusion of the third-
12 party tests, there have been hundreds, if not thousands, of changes implemented to
13 Qwest's OSS. These changes include the retirement of the third-party tested
14 Interconnect Mediated Access – Electronic Data Interchange ("IMA-EDI") interface,
15 and the introduction of a replacement interface, Interconnect Mediated Access –
16 Extensible Mark-up Language ("IMA-XML").¹⁴

¹³ CenturyLink's OSS is estimated to handle approximately 1 million orders in 2010, based on January – May year to date volumes. See Rebuttal Testimony of Michael Hunsucker at p. 14.

¹⁴ The IMA-XML interface was first made available in October 2006, with the first CLEC migrations occurring in April 2007.

1 **Q. WERE THESE CHANGES ALL QWEST-INITIATED CHANGES?**

2 A. No. Some of these changes were Qwest-initiated, while others were CLEC-initiated,
3 including the migration to the IMA-XML interface. However, all of these changes
4 were managed successfully through the Qwest CMP, without third-party testing.

5 **Q. DO QWEST ICAs COMMIT TO IMPLEMENTING OSS CHANGES VIA THE**
6 **CMP?**

7 A. Yes, Qwest commits to use the CMP for OSS system improvements. Specifically, the
8 Qwest template also makes this commitment for all new ICAs:

9 12.1.1 Qwest has developed and shall continue to provide Operational
10 Support System (OSS) interfaces using electronic gateways and manual
11 processes. These gateways act as a mediation or control point between
12 CLEC's and Qwest's OSS. These gateways provide security for the interfaces,
13 protecting the integrity of the Qwest OSS and databases. Qwest's OSS
14 interfaces have been developed to support Pre-ordering, Ordering and
15 Provisioning, Maintenance and Repair and Billing. This section describes the
16 interfaces and manual processes that Qwest has developed and shall provide
17 to CLEC. Additional technical information and details shall be provided by
18 Qwest in training sessions and documentation and support, such as the
19 "Interconnect Mediated Access User's Guide." Qwest will continue to make
20 improvements to the electronic interfaces as technology evolves, Qwest's
21 legacy systems improve, or CLEC needs require. Qwest shall provide
22 notification to CLEC consistent with the provisions of the Change
23 Management Process (CMP) set forth in Section 12.2.6.

24 The use of the CMP provides a forum for Qwest or CLECs to explain any proposed
25 system changes and a formalized process for CMP participants to voice any concerns
26 they may have about any proposed change.

1 **Q. THE JOINT CLECS' PROPOSED CONDITION 19c PROPOSES THAT**
2 **CLECS HAVE AN OPPORTUNITY TO PERFORM TESTING WITH ANY**
3 **NEW OSS SYSTEM, AND THAT THE MERGED COMPANY WOULD**
4 **PROVIDE TRAINING FOR CLECS ON THE NEW SYSTEM. IS THIS ISSUE**
5 **ADDRESSED IN CURRENT ICAs?**

6 **A. Yes, it is. The Qwest ICA commits to training CLECS on its OSS systems, and initial**
7 **training on systems will be at no charge to the CLEC: Specifically, Sections**
8 **12.1.3.2.1 and 12.1.3.2.2 of the standard Qwest ICA provides as follows:**

9 12.1.3.2.1 Qwest shall provide assistance for CLEC to understand how to
10 implement and use all of the available OSS functions. Qwest shall provide
11 CLEC sufficient electronic and manual interfaces to allow CLEC equivalent
12 access to all of the necessary OSS functions. Through its web site, training,
13 disclosure documentation and development assistance, as available, Qwest
14 shall disclose to CLEC any internal business rules, specifications, test cases,
15 mapping examples and other formatting information necessary to ensure that
16 CLEC's requests and orders are processed efficiently and necessary to enable
17 CLEC to design its own systems. Qwest will provide information to CLEC in
18 writing. Qwest will post such information, including business rules regarding
19 out-of-hours Provisioning, on Qwest's web site. If Qwest fails to provide
20 such information or provides inaccurate information, Qwest will remedy the
21 situation within Qwest systems. Qwest shall provide training to enable CLEC
22 to devise its own course work for its own employees. Through its
23 documentation available to CLEC, Qwest will identify how its interface
24 differs from national guidelines or standards.

25 12.1.3.2.2 Additional technical information and details about Qwest's OSS
26 shall be provided by Qwest to CLEC in training sessions and documentation
27 and support, such as Qwest's "Interconnect Mediated Access User's Guide."
28 Qwest shall maintain its Interconnect Mediated Access User's Guide on
29 Qwest's wholesale web site. Qwest shall offer introductory training on
30 procedures that CLEC must use to access Qwest's OSS at no cost to CLEC. If
31 CLEC asks Qwest personnel to travel to CLEC's location to deliver training,
32 CLEC will pay Qwest's reasonable travel related expenses unless the Parties
33 agree otherwise.

1 **Q. DO QWEST ICAs ALSO DISCUSS EXTENSIVE TESTING OPTIONS THAT**
2 **QWEST WILL PROVIDE FOR CLECs WHEN THERE ARE OSS SYSTEM**
3 **CHANGES AND UPDATES?**

4 A. Yes. Beginning at Section 12.2.9.3 of Qwest's standard ICA, Qwest makes several
5 pages of testing commitments to CLEC for its OSS systems:

6 12.2.9.3 Qwest will provide CLEC with access to a stable testing
7 environment that mirrors production to certify that its OSS will be capable of
8 interacting smoothly and efficiently with Qwest's OSS. Qwest has
9 established the following test processes to assure the implementation of a
10 solid interface between Qwest and CLEC:

11 Subsections 12.2.9.3.1, 12.2.9.3.2, 12.2.9.3.3, and 12.2.9.3.4 of the ICA specify
12 various processes, including Connectivity Testing, Stand-Alone Testing Environment
13 ("SATE") regression testing, SATE progression testing, and Controlled Production.

14 **Q. SHOULD THE COMMISSION ADOPT THE JOINT CLECS' PROPOSED**
15 **CONDITIONS 19b AND 19c?**

16 A. No. The Joint CLECs have failed to identify any legitimate reason to subject the
17 merged company to costs for third party testing which would be expensive and is
18 simply not required. The FCC repeatedly affirmed in Section 271 approvals that
19 actual commercial use was the most persuasive evidence of satisfactory OSS. That,
20 coupled with all the components of proposed Condition 19c, already being a
21 contractual obligation that will remain intact post-merger, calls for rejection of these
22 proposed conditions.

1 **Q. PLEASE IDENTIFY THE NEXT PROPOSED CONDITIONS YOU WILL**
2 **ADDRESS.**

3 **A. Below are identified the Joint CLECs' proposed Conditions 25, 26 and 27:**

4 25. The Merged Company will provide routine network modifications in
5 compliance with federal and state law, as well as the terms of applicable
6 interconnection agreements.

7
8 26. After the Closing Date, the Merged Company will engineer and
9 maintain its network in compliance with federal and state law, as well as the
10 terms of applicable interconnection agreements. Resources will not be
11 diverted to merger-related activities at the expense of maintaining the Merged
12 Company's network.

13
14 a. The Merged Company shall not engineer the transmission capabilities
15 of its network in a manner, or engage in any policy, practice, or procedure,
16 that disrupts or degrades access to the local loop.

17
18 b. The Merged Company will retire copper in compliance with federal and
19 state law, as well as the terms of applicable interconnection agreements
20 and as required by a change of law.

21
22 c. The Merged Company will not engineer or maintain the network
23 (including routing of traffic) in a manner that results in the application of
24 higher rates for traffic or inefficiencies for wholesale customers.

25
26 27. The Merged Company will provide conditioned copper loops in
27 compliance with federal and state law and at rates approved by the applicable
28 state Commission. Line conditioning is the removal from a copper loop of any
29 device that could diminish the capability of the loop to deliver xDSL. Such
30 devices include bridge taps, load coils, low pass filters, and range extenders.
31 Insofar as it is technically feasible, the Merged Company shall test and report
32 troubles for all the features, functions and capabilities of conditioned copper
33 lines, and may not restrict its testing to voice transmission only. If the Merged
34 Company seeks to change rates approved by a state Commission for
35 conditioning, the Merged Company will provide conditioned copper loops in
36 compliance with the relevant law at the current Commission approved rates
37 unless and until a different rate is approved.

1 **Q. THE JOINT CLECS PROVIDES TESTIMONY REGARDING PROPOSED**
2 **CONDITIONS 25, 26 AND 27. DO YOU HAVE ANY GENERAL**
3 **COMMENTS TO THIS TESTIMONY?**

4 A. Yes. Each of these conditions begin with a statement that the merged company will
5 comply with the law on the identified topics. As such, the conditions are redundant
6 and unnecessary. However, the conditions, particularly condition 26, contain
7 additional language with particular CLEC slants or views of what they believe the
8 law should be. Despite the Joint CLECs claims to the contrary,¹⁵ these proposed
9 conditions attempt to litigate issues in this merger approval proceeding that can be
10 addressed in other, more appropriate and focused Commission proceedings.

11 **Q. DO YOU BELIEVE IT IS APPROPRIATE TO ADDRESS IN THIS MERGER**
12 **PROPOSED CONDITIONS THAT CAN BE ADDRESSED IN OTHER MORE**
13 **APPROPRIATE AND FOCUSED PROCEEDINGS?**

14 A. No, I do not. These are very complex issues and disputes that have no place in this
15 merger approval docket. To ask this Commission to take a position on these
16 proposed conditions, based on the sparse record in this docket and, potentially setting
17 some precedent for issues which are complex telecommunications industry issues and
18 which may be, and should be, considered in other proceedings, is inappropriate.

¹⁵ Direct Testimony of Douglas Denney ("Denney Direct"), pp. 28-30, Direct Testimony of Bonnie Johnson ("Johnson Direct"), pp. 5-6. Gates Direct, pp. 154-157.

1 Q. MR. DENNEY IMPLIES THAT PROPOSED CONDITION 27 IS
2 NECESSARY TO INSURE THAT THE INTEGRA-DESIRED OUTCOME OF
3 THE DISPUTED ISSUES IN THE MINNESOTA COMMISSION DOCKET
4 NO. P-421/CI-09-1066 EXTEND TO THE CENTURYLINK PRE-MERGER
5 ENTITIES.¹⁶ IS THIS APPROPRIATE?

6 A. No. Minnesota Commission Docket No. P-421/CI-09-1066 is specific to Qwest
7 product offerings, ICAs and interconnection obligations in Minnesota. While I am
8 not an attorney, and Qwest will cover this issue in its post-hearing briefs, it does not
9 make logical sense that the outcome of a Minnesota docket, such as Docket No. P-
10 421/CI-09-1066, would extend to Qwest in Arizona, much less extend to CenturyLink
11 when it has a different set of products and ICAs, and because CenturyLink ILEC
12 entities have not been, and post-merger will not be, BOCs, and thus they have
13 different sets of interconnection obligations. In his testimony, Mr. Hunsucker
14 demonstrates that none of the CenturyLink entities are BOCs for purposes of
15 interconnection obligations.

16 Q. DOES MR. DENNEY AGREE WITH YOU THAT THE RESULTS OF A
17 MINNESOTA DOCKET SHOULD NOT BE BINDING IN ARIZONA OR ON
18 CENTURYLINK'S ENTITIES?

19 A. Yes, Mr. Denney states:

¹⁶ Denney Direct, pp. 31-32.

1 However, a decision by the Minnesota Commission will be state-specific, as
2 well as entity-specific. A Minnesota decision will not be binding on Qwest in
3 any other state or on the other operating entities in any other state.¹⁷

4 **Q. WHAT WOULD BE THE APPROPRIATE PROCESS IF THE JOINT CLECS**
5 **HAVE A CONCERN REGARDING THE PRODUCTS AND/OR TERMS AND**
6 **CONDITIONS OF ITS ARIZONA ICA?**

7 A. If the Joint CLECs have a concern regarding any Qwest product or term or condition
8 in its Arizona ICA, it should use the dispute resolution process spelled out in its ICA
9 to resolve any issues or concerns and not expect this Commission to rule on proposed
10 conditions in this proceeding.

11 **Q. MR. DENNEY IMPLIES THAT TO ADDRESS ANY CONCERNS**
12 **REGARDING ITS ICA WOULD BE A LENGTHY PROCESS. DO YOU**
13 **AGREE?**

14 A. No. Any CLEC can bring a complaint before this Commission and obtain resolution
15 of their issues within the parameters of the Commission's schedule.

¹⁷ Denney Direct, p. 30.

1 Q. MR. DENNEY STATES THAT CENTURYLINK AND QWEST SHOULD
2 HAVE NO ISSUE WITH THESE PROPOSED MERGER CONDITIONS,
3 BECAUSE THE PROPOSED CONDITIONS ARE INTENDED TO GO NO
4 FURTHER THAN THE CURRENT LAW.¹⁸ WHAT IS YOUR RESPONSE TO
5 THESE STATEMENTS?

6 A. If that was Integra's sole intent, these issues would be moot, as the ICAs already
7 obligate Qwest to be compliant with current law and address the process to negotiate
8 changes in existing laws.¹⁹ Mr. Gates also acknowledges that Qwest and
9 CenturyLink have already agreed they will comply with the law.²⁰ However, as
10 discussed in more detail in Mr. Hunsucker's rebuttal testimony, these proposed
11 conditions demand much more than compliance with existing law, which
12 CenturyLink and Qwest are already obligated to follow, and which they do follow. In
13 fact, both companies make clear in their ICAs that their contractual obligations are
14 based on current federal and state law. Examples of such requirements in the Qwest
15 ICAs include:²¹

16 • Section 2.2 The provisions in this Agreement are intended to be in
17 compliance with and based on the existing state of the law, rules,
18 regulations and interpretations thereof, including but not limited to state
19 rules, regulations, and laws, as of March 11, 2005 (the Existing Rules). . . .
20 To the extent that the Existing Rules are vacated, dismissed, stayed or
21 materially changed or modified, then this Agreement shall be amended to
22 reflect such legally binding modification or change of the Existing Rules.

¹⁸ Denney Direct, pp. 28-29.

¹⁹ Moreover, Qwest and CenturyLink are required to comply with applicable laws, rules, regulations, and contractual obligations in any event, even without Section 251 ICAs.

²⁰ Gates Direct, pp. 154-157.

²¹ Qwest/Eschelon Arizona ICA effective December 8, 2009.

1 Where the Parties fail to agree upon such an amendment within sixty (60)
2 Days after notification from a Party seeking amendment due to a
3 modification or change of the Existing Rules or if any time during such
4 sixty (60) Day period the Parties shall have ceased to negotiate such new
5 terms for a continuous period of fifteen (15) Days, it shall be resolved in
6 accordance with the Dispute resolution provision of this Agreement.
7

- 8 • Section 5.19.1 This Agreement is offered by Qwest and accepted by CLEC
9 in accordance with applicable federal law and the state law of Arizona. It
10 shall be interpreted solely in accordance with applicable federal law and
11 the state law of Arizona.

12 Specifically, as to the issue of retirement and replacement of copper loops (proposed
13 Condition 26), there is an extensive section in the ICA (Section 9.2.1.2.3) that
14 addresses that issue.

15 In summary, there is absolutely no reason to adopt these proposed conditions,
16 especially since the current ICAs ensure the intent and contractual obligation of
17 Qwest, today and in the future, to be compliant with current state and federal laws.

18 **Q. ARE THERE ANY SPECIFIC LEVEL 3 PROPOSED CONDITIONS THAT**
19 **YOU WOULD LIKE TO ADDRESS?**

20 **A.** Yes. In this testimony, I address Level 3's proposed Conditions 1c, 2, 8 and 9.

21 **Q. DO YOU AGREE WITH LEVEL 3'S PROPOSED CONDITION 1c AND**
22 **STAFF'S PROPOSED CONDITION 32 THAT THE COMMISSION**
23 **REQUIRE QWEST TO HAVE A STATEMENT OF GENERALLY**
24 **AVAILABLE TERMS ("SGAT") ON FILE WITH THE COMMISSION?**

25 **A.** No. At the time that Qwest began its effort to obtain Section 271 relief, it elected to
26 obtain state approval using a collaborative workshop process to explore and resolve

1 the literally hundreds of issues relating to specific provisions of Qwest's then-Section
2 271-related obligations. In the Section 271 collaborative workshop process, Qwest,
3 CLECs, and Commission Staff members worked through proposed contract language
4 that would serve to implement the Section 271 requirements as they were developed.
5 At the time, the SGAT was the document that provided a single, common vehicle for
6 these collaborative workshops with CLECs and state commissions to assure that
7 Qwest's agreements met the Section 271 14-point checklist requirements.

8 Despite the SGAT's utility as a reference for the provisions incorporated during the
9 collaborative workshop phase of the Section 271 process, the SGAT itself was not the
10 basis for Qwest's successful multi-state Section 271 application to the FCC. The Act
11 provides two paths by which BOCs could seek approval to enter new markets:

- 12 • 271(c)(1)(A) provides that "A Bell operating company meets the
13 requirements of this subparagraph if it has entered into one or more binding
14 agreements that have been approved under section 252 specifying the terms
15 and conditions under which the Bell operating company is providing access
16 and interconnection to its network facilities for the network facilities of one
17 or more unaffiliated competing providers of telephone exchange
18 service...."
- 19 • 271(c)(1)(B) provides that "A Bell operating company meets the
20 requirements of this subparagraph if, after 10 months after the date of
21 enactment of the Telecommunications Act of 1996, no such provider has
22 requested the access and interconnection described in subparagraph
23 (A)...and a statement of the terms and conditions that the company
24 generally offers to provide such access and interconnection has been
25 approved or permitted to take effect by the State commission under section
26 252(f)."
- 27

28 The path provided under subsection 271(c)(1)(A) is known as "Track A," while the
29 path provided under subsection 271(c)(1)(B) is referred to as "Track B." In

1 requesting relief under Section 271 in Arizona, Qwest followed the Track A path,
2 relying on the binding agreements it had with CLECs that the Commission had
3 approved under Section 252 of the Act. Qwest did not rely on its SGAT, or pursue
4 the Track B alternative.

5 **Q. DID THIS COMMISSION FIND THAT QWEST SATISFIED THE**
6 **REQUIREMENTS FOR TRACK A?**

7 A. Yes. On August 19, 2003, the Commission Staff entered its Supplemental Final
8 Report on Track A and on page 11, paragraph 51, states that “. . . Staff believes
9 that Qwest now unconditionally meets the requirements of Public Interest and
10 Track A.” Moreover, the FCC in its Memorandum and Order approving Qwest’s
11 271 application stated, “We agree with the Arizona Commission that Qwest
12 satisfies the requirements of Track A.”²²

13 **Q. DOES THE TELECOM ACT REQUIRE THAT AN SGAT BE MAINTAINED?**

14 A. No. There is no provision in the Act that requires that an SGAT be in place or be
15 maintained. For example, in Maine, several CLECs attempted to argue that the lack
16 of a SGAT or tariff precluded a finding that Verizon was meeting its Section 251
17 obligations. The FCC, however, looked at the multiple interconnection agreements
18 that Verizon had entered into with Maine CLECs, and the ability of other CLECs to
19 opt into agreements, as evidence of continuing Section 251 compliance.²³ The FCC

²² Paragraph 42, FCC 03-309, adopted December 3, 2003.

²³ *In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc.*
(d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon

1 paid particular emphasis to the fact that Section 252(f)(1) states that a BOC “may”
2 file a SGAT, and not that it must file one.²⁴

3 Furthermore, Qwest is not required to continue to make the SGAT available simply
4 because it was the basis of previously-approved interconnection agreements. The fact
5 that Qwest maintains multiple interconnection agreements in Arizona demonstrates
6 that Qwest continues to meet its Section 251 requirements.

7 To facilitate the process of entering into an ICA, Qwest makes available a “template”
8 interconnection agreement (“Template Agreement”). The Template Agreement
9 serves as Qwest’s initial ICA offer to CLECs, and it can be adopted as their ICA. As
10 Qwest’s initial contract offer, if the Template Agreement does not meet all of a
11 CLEC’s business needs, it serves as a starting point for subsequent negotiations and,
12 if necessary, arbitrations, of ICAs that are ultimately submitted to the state
13 commission for approval.

14 In addition, CLECs may “opt in” to existing agreements between Qwest and other
15 carriers that have been recently negotiated (or arbitrated) and approved by the
16 Commission under its Section 252 authority. Therefore, the absence of a SGAT in no
17 way diminishes the Commission’s role in overseeing and approving the terms and
18 conditions of Section 252 agreements. Qwest submits every agreement containing

Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services In Maine, CC Docket No. 02-61, 17 FCC Rcd 11659, 11687-11688 (June 19, 2002).

²⁴ *Id.* at 11688, n. 185.

1 Section 251 terms (including rates associated with those products and services) to the
2 Commission for review and approval pursuant to the requirements of Section 252.

3 As a final safeguard, the Commission maintains its authority under Section 252 to
4 serve as the arbitrator, and thus to render the final decisions on disputed
5 interconnection agreement terms and conditions between Qwest and CLECs. The
6 Commission also maintains its authority to reject any agreement or amendment if:
7 a) it is found to discriminate against a telecommunications carrier not a party to the
8 agreement; b) the implementation of such agreement or portion is not consistent with
9 the public interest, convenience and necessity; or, c) the agreement does not meet the
10 requirements of Section 251.

11 **Q. HAS QWEST FILED TO WITHDRAW THE SGAT IN ARIZONA?**

12 A. Yes. In pending Docket No. T-01051B-08-0613, Qwest filed to withdraw its Arizona
13 SGAT. Should the CLECs or Commission Staff have any concerns regarding the
14 continuation of the SGAT, Docket No. T-01051B-08-0613 is the appropriate place to
15 address those concerns, not in this merger proceeding.

16 **Q. WHAT IS THE STATUS OF DOCKET T-01051B-08-0613?**

17 A. As required by the Commission's order in Decision No. 70557 to either update its
18 SGAT or file to withdraw it, Qwest made its filing to withdraw on December 22,
19 2008. Nothing has happened in the almost two years that have elapsed since then. I
20 am not aware of any complaints by any CLECs regarding Qwest's SGAT status, so
21 the reasonable conclusion has to be that an updated SGAT is not important to them. I

1 also note that at the time Qwest filed to withdraw the SGAT in Arizona, since 2004,
2 forty-five CLECS had entered into ICAs that were based on non-SGAT templates or
3 that were arbitrated or negotiated.

4 **Q. HAS QWEST BEEN ALLOWED TO WITHDRAW ITS SGAT IN ANY**
5 **OTHER STATE?**

6 Yes. In Idaho, for example, Qwest petitioned to the Idaho Commission specifically to
7 withdraw its outdated SGAT, and the Commission noted in its order approving the
8 withdrawal:

9 It is equally undisputed that the Act does not mandate that an SGAT be
10 maintained, nor has this Commission ordered Qwest to file and maintain an
11 SGAT. Thus, although the Intervenor discuss numerous advantages to an
12 SGAT, they do not identify a legal requirement in this state that an SGAT
13 remain in effect. On this record, the Commission grants Qwest's motion to
14 allow it to withdraw its SGAT in Idaho.²⁵

15 Moreover, it is not an inconvenience to CLECs if an SGAT is withdrawn. Given the
16 numerous changes of law, arbitrations and wholesale updates since the SGAT process
17 was concluded, it is an outdated document that would not make a reasonable starting
18 document for negotiating a new interconnection agreement. Nor is it reasonable to
19 require, on a going-forward basis, that an SGAT be filed and kept current. Many
20 CLECs will often seek to review and consider adopting an agreement that has been
21 tailored to meet their needs, and not a generic SGAT document.

²⁵ In the Matter of the Petition of Qwest Corporation Requesting Authorization to Withdraw its
Statement of Generally Available Terms and Conditions, Case No. QWE- 08-T-08-04, Order No. 30750, Idaho
PUC (March 17, 2009).

1 **Q. PLEASE IDENTIFY THE NEXT PROPOSED LEVEL 3 CONDITIONS YOU**
2 **WILL ADDRESS.**

3 **A. Level 3 proposed the following conditions:**

4 2 a. The Combined Entity shall compensate terminating carriers at the
5 appropriate rate for ISP-bound traffic and that ISP-bound traffic shall
6 include traffic provisioned using virtual NXX codes; and

7
8 2 b. The Combined Entity shall treat all locally-dialed ISP-bound
9 traffic including virtual NXX traffic, as telecommunications traffic in
10 the calculation of relative use factors for purposes of 51 C.F.R.
11 §703(b).

12 **Q. ARE THERE ANY ASPECTS OF LEVEL 3'S PROPOSED CONDITION 2**
13 **THAT YOU WOULD LIKE TO ADDRESS?**

14 **A. Yes. In Condition 2a, Level 3 seeks to impose an obligation for the merged company**
15 **to pay a reciprocal compensation rate for all Internet Service Provider ("ISP")-bound**
16 **traffic inclusive of Virtual NXX ("VNXX") calls. In Condition 2b, Level 3 proposes**
17 **that all locally-dialed ISP-bound traffic would be utilized in the calculation of**
18 **Relative Use Factors ("RUFs"). These are both extremely complicated issues that**
19 **have been extensively litigated throughout many states. This merger proceeding is**
20 **certainly not the proper forum for re-litigating these issues.**

1 **Q. IN HIS TESTIMONY, MR. THAYER MENTIONS SEVERAL FEDERAL**
2 **DOCKETS TO SUPPORT PROPOSED CONDITION 2A. DO YOU AGREE**
3 **WITH HIS INTERPRETATIONS OF FINDINGS IN THESE DOCKETS?**

4 A. No. Mr. Thayer takes the position that all ISP traffic is subject to reciprocal
5 compensation pursuant to FCC and Court decisions.²⁶ This interpretation is incorrect.
6 While I am not an attorney, and cannot specifically address the inaccurate legal
7 interpretations that Mr. Thayer has made, Qwest's interpretation is quite contrary to
8 his. In various courts and agencies, the question of whether the orders that he cites
9 provide that calls to ISPs' Virtual NXX numbers are calls that would require a local
10 exchange carrier ("LEC") like Qwest to pay reciprocal compensation are being
11 litigated. I don't think those orders provide what Mr. Thayer claims they provide,
12 and neither does Qwest. Burdening this merger docket with those complicated
13 questions, however, would do a disservice to the public interest, which would be
14 better served by having a fair, informed, resolution of both the merger and the VNXX
15 matters in separate dockets. Clearly, the VNXX questions should be decided
16 separately. In fact, one such docket is currently before this Commission on remand
17 from the District Court. I refer to Docket Nos. T-01051B-05-0495, T-03693A-05-
18 0495, T-03654A-05-0415, T-01051B-05-0415.

²⁶ Thayer Direct at p. 11.

1 **Q. DOES THE CURRENT QWEST AND LEVEL 3 COMMISSION-APPROVED**
2 **INTERCONNECTION-AGREEMENT (ICA) IN ARIZONA ADDRESS**
3 **RECIPROCAL COMPENSATION FOR ISP TRAFFIC?**

4 A. Yes. Section 7.3.6, "ISP-Bound Traffic," specifically addresses reciprocal
5 compensation for ISP bound traffic.

6 **Q. DOES QWEST SPECIALLY AGREE TO APPLY COMPENSATION**
7 **CONSISTENT WITH THE FEDERAL ISP REMAND ORDER?**

8 A. Yes. Section 7.3.6.1 of Qwest's ICA with Level 3 provides that Qwest will pay
9 reciprocal compensation consistent with the FCC's *ISP Remand Order*. Specifically:

10 7.3.6.1 Subject to the terms of this Section, intercarrier compensation
11 for ISP-bound traffic exchanged between Qwest and CLEC will be
12 billed without limitation as to the number of MOU ("minutes of use")
13 or whether the MOU are generated in "new markets" as that term has
14 been defined by the FCC, at \$.0007 per MOU.²⁷

15 **Q. IF LEVEL 3 IS CONCERNED THAT QWEST IS NOT PAYING**
16 **COMPENSATION CONSISTENT WITH FCC ORDERS, DOES IT HAVE**
17 **ANY RECOURSE FOR THAT CONCERN?**

18 A. Absolutely. Level 3 can invoke Section 5.18 of its ICA that addresses dispute
19 resolution. Thereafter, if Level 3 has exhausted that provision, it can proceed with a
20 complaint with the Commission, or an action in court. Indeed, Level 3 has availed
21 itself of that process in several states, including previous interconnection enforcement

²⁷ Qwest/Level 3 ICA, approved January 17, 2007.

1 complaints and federal court petitions for judicial review, on issues such as
2 compensation for VNXX traffic.

3 **Q. ARE YOU AWARE IF THE ARIZONA COMMISSION HAS ALREADY**
4 **RULED ON THE ISSUES IN PROPOSED CONDITIONS 2A AND 2B?**

5 A. Yes, in Decision No. 68817,²⁸ the Commission banned VNXX in Arizona and
6 permitted Level 3 to carry FX-like traffic and to be compensated for FX-like traffic at
7 the FCC's \$0.0007 per MOU rate. The Commission also determined that ISP-bound
8 traffic would be attributed to the terminating carrier in the calculation of the Relative
9 Use Factor.

10 In summary, this Commission has already clearly ruled on these issues, and the
11 Commission should reject Level 3's attempt to use proposed Conditions 2a and 2b in
12 a merger proceeding to "back door" a different decision from this Commission.

13 **Q. LEVEL 3'S PROPOSED CONDITION 8 IMPLIES THAT QWEST HAS**
14 **UNLAWFUL BILLING DISPUTE PROCESSES. DO YOU AGREE?**

15 A. No. Qwest follows its established billing processes, and to the extent that specific
16 billing terms and conditions are identified in ICAs, tariffs or other agreements, Qwest
17 honors the identified conditions. Further, to the extent that a wholesale service or
18 product is silent specifically to the treatment of disputed claims, as identified in Level
19 3's proposed condition 8, Qwest is in the process of negotiating agreements that will

²⁸ Decision No. 68817, In the Matter of the Petition of Level 3 Communications LLC for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket Nos. T-03654A-05-0350 and T-01051B-05-350 (June 29, 2006).

1 provide more explicit guidelines. To the extent that Level 3 is concerned about its
2 specific billing terms and conditions, Qwest will address those directly with Level 3.
3 It is inappropriate to use this merger docket to address Level 3's specific issues and
4 disputes that are not relevant to the Commission's determination whether this merger
5 is in the public interest and thus should be approved. The Commission should
6 therefore reject Level 3's proposed Condition 8.

7 **Q. LEVEL 3'S PROPOSED CONDITION 9 IMPLIES THAT QWEST DOES NOT**
8 **FOLLOW ITS INTERSTATE AND INTRASTATE TARIFFS AS TO THE**
9 **BILLING OF RATE ELEMENTS. IS THIS ACCURATE?**

10 A. No. Qwest follows its established rates, terms and conditions as identified in its
11 tariffs. Specifically, Qwest does not inappropriately borrow rates from its interstate
12 tariffs to establish intrastate rates, as this condition implies. Mr. Thayer's testimony
13 was general and not specific enough to address the testimony factually. Moreover,
14 Mr. Thayer's testimony appears to imply that Qwest is not using an interstate rate in
15 error, but rather, Mr. Thayer appears to object to the fact that the tariffed intrastate
16 rate structure does not match the interstate expanded interconnection rate structure.
17 To the extent that Level 3 has any concerns with the billing of its tariffed services,
18 Qwest has and will continue to address those concerns directly with Level 3, and
19 Level 3 has recourse under the dispute resolution provisions of its ICA with Qwest. It
20 is not appropriate, however, for Level 3 to attempt to use proposed merger conditions
21 as leverage against Qwest to address specific issues between the two carriers. Neither
22 Level 3's dispute nor its right to dispute resolution is affected in any manner by this

1 merger, and it is not relevant to this merger proceeding. The Commission should
2 therefore reject Level 3's proposed Condition 9.

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

4 **A. Yes.**

MICHAEL G. WILLIAMS

BEFORE THE ARIZONA CORPORATION COMMISSION

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
COMMUNICATIONS, INC. D/B/A/ CENTURY
LINK COMMUNICATIONS, EMBARQ
PAYPHONE SERVICES, INC. D/B/A/
CENTURYLINK, AND CENTURYTEL
SOLUTIONS, LLC FOR APPROVAL OF THE
PROPOSED MERGER OF THEIR PARENT
CORPORATIONS QWEST
COMMUNICATIONS INTERNATIONAL INC.
AND CENTURYTEL, INC.**

)
)
) **DOCKET NO. T-01051B-10-0194**
) **DOCKET NO. T-02811B-10-0194**
) **DOCKET NO. T-04190A-10-0194**
) **DOCKET NO. T-20443A-10-0194**
) **DOCKET NO. T-03555A-10-0194**
) **DOCKET NO. T-03902A-10-0194**

REBUTTAL TESTIMONY

OF

MICHAEL G. WILLIAMS

ON BEHALF OF

QWEST CORPORATION, QWEST COMMUNICATIONS COMPANY, LLC, AND

QWEST LD CORP.

OCTOBER 27, 2010

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1 **I. IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND CURRENT**
3 **POSITION.**

4 A. My name is Michael Williams. My business address is 1801 California Street,
5 Denver, Colorado 80202. I am a Senior Director of Public Policy for Qwest.

6 **Q. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THIS**
7 **COMMISSION?**

8 A. Yes. In Docket No. T-00000-97-0238, I testified in support of Qwest's application
9 for approval to offer interLATA services under Section 271 of the Federal
10 Telecommunications Act of 1996 ("the Act") and in the related matters establishing
11 and administering Qwest's performance assurance plan ("PAP") in Arizona since
12 then. Otherwise, I have testified in a variety of other dockets before this
13 Commission over the past two decades.

14 **Q. PLEASE STATE YOUR BACKGROUND AND QUALIFICATIONS.**

15 A. I hold an MBA degree from the University of Utah, 1985, and a Bachelor of Science
16 degree in electrical engineering from Brigham Young University, 1976. Since 1981,
17 I have worked for Qwest or its predecessors in various management positions,
18 including engineering, technical sales, regulatory, new technologies, international
19 cellular joint venture leadership, wholesale interconnection operations and regulatory
20 finance. My responsibilities have included service quality-related metrics and
21 payments since 1997. In Qwest's Section 271 application with states and the FCC, I

1 was the service quality witness. I have held my current responsibilities since July
2 2005. Specifically, I am responsible for Qwest's policies and compliance associated
3 with regulatory retail and wholesale service quality requirements. I have submitted
4 testimony and participated in workshops in each of the 14 states in Qwest's local
5 services region.

6 **II. PURPOSE**

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

8 A. My testimony responds to the direct testimonies of Armando Fimbres and Pamela
9 Genung of the Commission Staff, Charles King on behalf of the Department of
10 Defense (DOD), Douglas Denney of Integra Telecom ("Integra"), and Timothy
11 Gates of QSI Consulting on behalf of Integra, on the topics of wholesale
12 performance assurance, generally, and to Mr. Denney's proposed "Additional
13 Performance Assurance Plan" ("APAP"), specifically. Overall, their statements
14 about retail service quality and wholesale service performance are irrelevant to this
15 merger proceeding, especially because sufficient and significant market pressures,
16 Commission rules (including remedy and penalty provisions), and provisions in the
17 PAP will continue to address any legitimate concerns there may be in those areas,
18 and the merger transaction does nothing to change that. Moreover, the proposed
19 APAP is unnecessary, inappropriate, and unreasonable – because it would
20 significantly penalize Qwest even if post-merger performance levels were exactly
21 the same as pre-merger performance levels, and because the APAP fails to account
22 for whether any service degradation is as a result of the merger.

1 and wholesale service quality data that is already available through reports to this
2 Commission is far greater than anything that was available during the
3 Qwest/U S WEST merger.¹ Regarding the suggestion that a plan be submitted for
4 switch replacements, “so that the Merged Company will be able to meet Arizona
5 quality of service standards,” I would note that Qwest is already able to meet quality
6 of service standards. The merger transaction will simply make the merged company
7 stronger – both financially and competitively – the strong market forces provide
8 more than adequate incentive to manage switch replacements in a manner that
9 maintains or improves service quality, and the existing service quality tariffs will
10 help assure that. All of these current provisions continue to be more than fully
11 adequate to address any concerns.

12 I must emphasize that such issues are irrelevant to this merger proceeding, especially
13 because sufficient and significant market pressures are in operation to assure
14 continued high levels of service quality – and the merger transaction does nothing to
15 change that. I further mention these market pressures later in this testimony, in
16 addressing wholesale service quality.

17 **Q. WHAT RETAIL SERVICE QUALITY INFORMATION IS CURRENTLY**
18 **PROVIDED BY QWEST TO THE COMMISSION?**

19 **A.** Please see Confidential Exhibit MGW-1 of this testimony, which consists of a

¹ Specifically, the service quality reporting provided under the Arizona Qwest Performance Assurance Plan, while focusing on wholesale service quality, nevertheless also provides a vast amount of retail service quality information covering far more items than under the retail service quality tariffs. Each measurement result both for wholesale and for the retail comparatives, give the numerator, denominator, and metric result, along with statistical parameters.

1 quarterly service quality report filed this year with the Commission. These reports,
2 typically about 60 pages in length, are provided quarterly:

- 3 • Access to Repair and Business Offices
- 4 • Held Orders – total and percentages
- 5 • Out of Service Repair Times
- 6 • Held Orders by wire center
- 7 • Number of Repair Reports
- 8 • Repair Rates per 100 Access Lines
- 9 • Number of Access Lines.
- 10 • Complaints – Executive and Commission
- 11 • Retail Service Results OP-3a,b,c, OP-4a,b,c, MR-3a,b,c & MR-9a,b,c
- 12 • Customer Credits

13 **Q. ON PAGE 22 OF HIS TESTIMONY, MR. KING PROPOSES WHAT HE**
14 **CALLS “TWO ENHANCEMENTS” TO THE ARIZONA SERVICE**
15 **QUALITY PLAN. ARE HIS SUGGESTIONS NECESSARY?**

16 **A.** He makes his suggestions after acknowledging that the Service Quality Plan is
17 “adequate for the purposes of maintaining high service quality.” However, his
18 suggestions are not actually enhancements, because they place unnecessary
19 additional burdens on the Commission and Qwest through more-frequent reporting.
20 His suggestions have no basis, because there has been no showing that service
21 quality is likely to be negatively affected or that the Service Quality Plan will be in
22 any way less “adequate” without his suggestions. Instead, his suggestions would
23 actually weaken the current Plan by unnecessarily burdening the Staff with three-
24 times the frequency of reports and by eviscerating powerful incentives that have
25 existed in the Plan since 1995.

1 **Q. PLEASE ELABORATE ON THE UNNECESSARY ADDITIONAL BURDENS**
2 **ON THE COMMISSION AND ON QWEST.**

3 A. The context that I mentioned earlier is important (i.e., strong, effective market
4 pressures and well-established regulatory requirements and consequences), along
5 with the fact that the Staff of the Commission is the expert agency charged with
6 receiving and evaluating service quality reports and performance levels. The Staff
7 was involved in establishing the current framework, which was implemented with
8 the approval of this Commission. Thus, in this docket, it is instructive that Staff's
9 witnesses, Mr. Fimbres and Ms. Genung, have expressed no dissatisfaction with the
10 Service Quality Plan, its frequency of reporting, or the frequency for applying its
11 offsets and monetary consequences. It is in this context that Mr. King's suggestions
12 would place an unnecessary burden on Staff to receive and evaluate reports three
13 times as frequently, as well as on Qwest to prepare and file the reports monthly,
14 rather than quarterly.

15 More importantly, the reasons Mr. King offers for his suggestions do not take into
16 account the real-world processes involved, and they appear to ignore the solid policy
17 basis upon which the current Plan is based. For example, on page 22, he says that
18 "the present arrangement builds in a delay of several months between the time the
19 service performance falls below any standard and the time that failure is known to
20 the Commission." However, the quarterly dimension, by its approved place in the
21 Service Quality Plan, is itself an integral part of the standards. Moreover, the current
22 Plan recognizes the fact that performance levels in this industry are cyclical and can

1 be affected by a number of factors, such as seasonal conditions. Quarterly reporting
2 helps account for those factors and establish whether there are meaningful trends, as
3 opposed to isolated occurrences.

4 Further, having instituted quarterly reporting, the Commission is basically allowing
5 the Company to focus on the month-to-month results and manage its business. With
6 this approach, for example, if the very first month in a quarter shows signs of
7 problems, the Company will confirm those results in the second month, act upon
8 them, and then observe whether the third month's results indicate success. With
9 quarterly reporting, it is appropriately at this point that the Commission would get
10 the quarterly report and can see same results.

11 **Q. WHAT ABOUT MR. KING'S SUGGESTION TO CLEAR PENALTIES AND**
12 **OFFSETS QUARTERLY INSTEAD OF ANNUALLY?**

13 A. That suggestion essentially would eviscerate the most powerful aspect of the
14 innovative penalty offset concept that this Commission instituted in 1995, along with
15 other foundational elements of the current Service Quality Plan. Specifically – and
16 particularly in light of seasonal external factors – the current approach provides a
17 strong incentive for the Company to strive to overcome adverse periods with
18 performance that not only meets standards, but exceeds them significantly enough to
19 generate offsets. Reducing the offset opportunity from annually to quarterly will
20 virtually remove the ability to respond in a manner that could achieve meaningful
21 offsets. I believe this would seriously weaken the power of the current Plan. It has
22 worked well for fifteen years and should be allowed to continue through the merger

1 transaction and beyond.

2 **IV. WHOLESALE SERVICE PERFORMANCE ASSURANCE**

3 **Q. BOTH MR. DENNEY AND MR. GATES SUPPORT THE CLECS'**
4 **PROPOSED MERGER CONDITION 4, INCLUDING TWO PARTS. WHAT**
5 **ARE THESE TWO PARTS, AND ARE THEY RELEVANT TO THIS**
6 **MERGER PROCEEDING?**

7 A. Part "(a)" deals with current PIDs and the PAP, while part "(b)" deals with special
8 access performance reports. Part "(a)" is the subject of the CLECs' proposed
9 "APAP," which I address later in this testimony. Part "(b)" is irrelevant,
10 unnecessary, and inappropriate, because (1) there are no regulatory requirements in
11 Arizona for Qwest to provide special access performance reports to CLECs, and (2)
12 special access is almost totally in the interstate jurisdiction of the FCC. In addition,
13 since part "(b)" includes the same approach as part "(a)" in terms of incorrectly
14 defining performance degradation and then attempting to automatically declare that
15 performance degradation is merger-related, that it created CLEC harm, and to trigger
16 monetary consequences based on these inappropriate and unreasonable criteria.
17 Accordingly, in addition to my above two objections to part "(b)," my comments
18 about the APAP in response to part "(a)," also apply in principle to part "(b)" even
19 though no specific "APAP-like" terms were proposed for that part.

1 **A. Background and Purpose of the PAP**

2 **Q. IN HIS TESTIMONY PROPOSING AN “ADDITIONAL PERFORMANCE**
3 **ASSURANCE PLAN” (“APAP”), MR. DENNEY REFERS TO THE**
4 **ARIZONA “PAP.” WHAT IS THE ARIZONA PAP?**

5 A. The Arizona Performance Assurance Plan (“PAP”) is a self-executing plan based on
6 Qwest's level of wholesale service quality performance under a variety of metrics
7 called “PIDs” (“performance indicator definitions”). The PIDs are measurements of
8 specific dimensions of Qwest’s wholesale service performance. For example, PIDs
9 cover the areas of pre-order/order, billing, provisioning, maintenance and repair,
10 network performance, and so forth. PID results for Arizona are reported on an
11 individual CLEC basis, as well as on an aggregate-CLEC basis, statewide.

12 The PIDs have three types of standards: “parity,” “benchmark,” or “diagnostic.”
13 Parity standards compare Qwest’s performance for CLECs to its performance for its
14 own retail customers or operations, while benchmark standards compare Qwest’s
15 performance to specified fixed performance levels. Diagnostic standards designate
16 that the PID results are for monitoring purposes. PAP payments to CLECs (so called
17 “Tier 1 payments”) and payments to states (“Tier 2 payments”) are triggered as
18 provided in the PAP for Qwest’s non-conformance with the standards only by
19 measurements with parity or benchmark standards in the PIDs, and as further
20 delineated in the body of the PAP.

21 **Q. WHAT IS THE PURPOSE OF THE PAP?**

22 A. The PAP was adopted to assure the Commission and CLECs that Qwest would

1 provide reasonable, just, and non-discriminatory service to CLECs so that the
2 telecommunications markets in Qwest territory remain open to competition. Qwest
3 obtained approval of the PAP in conjunction with obtaining interLATA long
4 distance approval from the Federal Communications Commission ("FCC") under
5 Section 271 of the Telecommunications Act of 1996 ("the Act"). The FCC looked
6 for assurances that wholesale markets would remain open after the requirements of
7 Section 271 had been met and interLATA freedom granted to the Bell Operating
8 Companies ("BOCs") such as Qwest. While it accepted performance assurance
9 plans ("PAPs") for this purpose, the FCC noted at the time that it could not require
10 such plans.² Instead, the FCC stated it would deem a properly-designed plan as
11 "probative evidence that the BOC will continue to meet its Section 271 obligations
12 after a grant of such authority."³ Since it was adopted, changes in law,
13 telecommunications markets, and Qwest's performance have led to changes in the
14 PAP.

15 **Q. HOW DOES THE PAP RELATE TO INTERCONNECTION AGREEMENTS**
16 **BETWEEN QWEST AND CLECS?**

17 A. If adopted by a CLEC, the PAP becomes part of the CLEC's interconnection
18 agreement ("ICA") in the form of two exhibits. Exhibit B sets forth the
19 measurement definitions and standards, and Exhibit K sets forth the payment
20 framework. Thus, Qwest cannot make unilateral changes to the PAP, because the

² *Qwest 9 State 271 FCC Order* at ¶ 453.

³ *Ibid.*

1 PAP is part of a contractual agreement. The proposed merger will not impact these
2 contractual rights and obligations.

3 **Q. PLEASE DESCRIBE THE PROCESS OF HOW THE PAP CAME INTO**
4 **EXISTENCE.**

5 A. Overall, the PIDs and the PAPs were developed through a process of multiple years
6 of negotiations with numerous CLECs and commission staffs, involving a number of
7 frequent forums, including business-to-business negotiations, commission-facilitated
8 collaboratives, and operational support systems ("OSS") testing – most on a multi-
9 state basis.⁴ These activities took place, generally, from 1998 through 2003, when
10 Qwest obtained Section 271 approvals, and then afterward in the form of audits,
11 reviews, and further negotiations.

12 A. The PIDs were selected and defined, with lengthy attention to large volumes of
13 minute details. Statistical methods were discussed exhaustively, involving Ph.D-
14 level statisticians from multiple parties. Then, PAP workshops of various types took
15 place and, finally, each state commission considered the resulting PAPs, and
16 sometimes made state-specific modifications. In the years since then, further
17 modifications have been made, as negotiated among interested parties and as
18 approved by commissions. Generally, these latter modifications consisted of
19 changes to PIDs or refinements in standards.

20 All of this activity took place in connection with Section 271 requirements, and not

1 as a result of an issue raised by a self-interested CLEC as a condition for a merger.
2 Further, no state commission has ordered additional PAPs in any previous merger to
3 the best of my knowledge.

4 **Q. WHAT LIGHT DOES THIS EXTENSIVE PROCESS OF PAP**
5 **DEVELOPMENT SHED ON MR. DENNEY'S PROPOSAL TO ESTABLISH**
6 **AN "APAP"?**

7 A. This background and context highlight how improper it is for a CLEC to use a
8 merger proceeding to attempt to establish a completely new overlay that is designed
9 to obtain more payments from the post-merger company. At the outset, before
10 addressing the numerous flaws of the proposed APAP, it is clear that a merger
11 proceeding is not the place for such an endeavor.

12 This is particularly clear when considering the extensive CLEC involvement in
13 developing the PAP and the PIDs, including Integra and its subsidiary predecessors
14 (e.g., Eschelon). The prior process was aimed at assuring the Commission and
15 CLECs that Qwest's wholesale service quality remains sufficient to enable open
16 competition on reasonable, just, and non-discriminatory terms. The QPAP
17 development process took place shortly after the U S WEST/Qwest merger, so the
18 possibility of mergers was an important part of the factual context of addressing
19 wholesale service quality. Integra participated in the dockets and negotiations that
20 led to current standards, so its current advocacy for higher standards and increased

⁴ Arizona held a collaborative OSS test, which included PID and statistical workshops and third-party validation of PID mechanisms.

1 penalties appears to be an attempt to obtain new standards different from those
2 Integra either agreed to or were adopted by the Commission in those prior
3 proceedings. The proposed APAP sets off in a direction that Mr. Denney admits is
4 different from that addressed by the current PAP. Thus, even though the proposed
5 APAP purports to be based on the PIDs of the current Arizona PAP, its purpose is
6 entirely different from the PAP's purpose, as I explain in more detail later.

7 Also, the current PAP is already comprehensive and is not going away in the
8 foreseeable future. The merger transaction does not diminish the fact that the PAP
9 will continue to be in force, post-merger, and that any material changes would need
10 Commission approval, along with Staff and CLEC input, before they could be
11 implemented.

12 Finally, there are *fundamental fairness* concerns relative to the CLECs trying to
13 force onto Qwest and CenturyLink an additional PAP, based on only about six pages
14 of testimony and one exhibit, which deal with very complex issues and potentially-
15 significant amounts of money, without anything remotely resembling a full record.
16 The CLEC APAP proposal, if it were to be adopted in any form here, represents an
17 undeveloped, unfair and unwise shortcut to the appropriate process – a process that
18 had its origins more than seven years ago in the Section 271 proceedings regionwide.

1 **B. The Current PAP**

2 **Q. PLEASE DESCRIBE THE ARIZONA PAP, INCLUDING HOW IT WORKS**
3 **GENERALLY AND THE TYPES OF MEASUREMENTS, OR METRICS,**
4 **THAT IT TRACKS.**

5 A. As I mentioned, the PAP consists of PIDs in Exhibit B and payment provisions in
6 Exhibit K of interconnection agreements in which it resides. The payment
7 provisions use PID results as the self-executing basis for triggering payments when
8 service performance is nonconforming to parity or benchmark standards set forth in
9 the PIDs. The PIDs contain what can be called “business rules” that define what is
10 to be included, and what is to be excluded, from the measurements in order to
11 properly and accurately account for Qwest’s wholesale service quality performance,
12 while striving to minimize the effects of external factors that parity standards or
13 benchmark allowances may not necessarily account for.

14 **Q. WHY ARE THERE BOTH PARITY AND BENCHMARK STANDARDS?**

15 A. At the lowest (most detailed) level of disaggregation, each PID with a parity or
16 benchmark standard has only one or the other: a parity standard or a benchmark
17 standard. The nondiscrimination standard of the Act calls for a comparison between
18 an ILEC’s wholesale and retail service quality performance. However, precisely
19 comparable retail services do not always exist. If there were truly comparable retail
20 services available for all wholesale services and elements measured by the PIDs,
21 there would be only parity standards in the PIDs. Strictly speaking, “parity” is not
22 an explicit requirement of the Act, but it is a factor in evaluating nondiscrimination.

1 Accordingly, in the original collaborative proceedings in which the PIDs were
2 developed, the parties agreed to use parity as the primary basis for setting standards.
3 For unbundled elements where precise apples-to-apples comparisons with retail
4 “analogues” were not available,⁵ proxies were selected that were as close as possible
5 to the measured elements, such as for specific types of unbundled loops. For other
6 elements, there were no retail analogues, and no reasonable proxies for such
7 analogues, and thus benchmark standards were adopted through negotiations in the
8 various proceedings that pre-dated the Qwest Section 271 FCC applications.
9 Benchmarks were also used to evaluate the “pre-order” processes where, for
10 example, CLECs submit local service requests (“LSRs”) and trouble reports through
11 interfaces that do not exist in the retail context.

12 All of these considerations were heavily influenced by the purposes at hand –
13 namely, addressing whether service performance was nondiscriminatory. As I point
14 out later, this is in stark contrast with the purposes of Mr. Denney’s proposed APAP.

15 **Q. HOW ARE PAYMENT AMOUNTS DETERMINED UNDER THE PAP?**

16 A. Payment amounts are determined by the extent to which Qwest’s PID results do not
17 conform to or meet the applicable standards. Specifically, the difference between a
18 PID result and the applicable standard is translated into a number of occurrences
19 (e.g., orders or tickets) that do not meet the relevant standard, which number is then
20 multiplied by the applicable “per-occurrence” payment level to calculate the

⁵ For example, there are no retail “unbundled loops” with which to compare wholesale unbundled loops that Qwest provided to CLECs.

1 payment amount due for that PID result.

2 The PAP defines two categories of payments: Tier 1 and Tier 2. Tier 1 payments are
3 made to individual CLECs, and Tier 2 payments are placed into an escrow account
4 for the State, the disbursements from which are directed by the Commission. The
5 PAP also defines other payment-affecting procedures, such as payment escalations
6 (where there are consecutive nonconforming months) and minimum payments
7 (where the low volumes of small CLECs generate small payments).

8 **Q. HOW DOES THIS CONTRAST WITH THE PROPOSED APAP'S**
9 **APPROACH?**

10 A. The current PAP triggers payments on a "self-executing" basis according to business
11 rules that, after extensive negotiations, testing, and audits, Qwest voluntarily agreed
12 to accept in connection with obtaining Section 271 relief. In contrast, the proposed
13 APAP has not had the benefit of such extensive consideration, does not have
14 Qwest's acceptance, and a merger proceeding is not the proper place for such to
15 occur. Further, as I explain later, the goals of the PAP and the proposed APAP are
16 not the same.

1 **C. The CLECs' Proposal for an "APAP" is Unnecessary, Inappropriate, and**
2 **Unreasonable**

3 **1. The Proposed APAP is Unnecessary**

4 **Q. ON PAGE 45 OF HIS DIRECT TESTIMONY, MR. GATES STATES THAT**
5 **"QWEST'S PAPS AND ASSOCIATED PIDS ARE ABSOLUTELY**
6 **ESSENTIAL TO ENSURE THAT LOCAL MARKETS IN QWEST'S**
7 **REGION REMAIN OPEN TO COMPETITION (I.E., QWEST DOES NOT**
8 **BACKSLIDE)." DO YOU AGREE?**

9 **A.** No, and Mr. Gates provides no evidence whatsoever to support his claim. Instead,
10 he merely quotes an FCC statement out of context, and he ignores the dramatic
11 changes that have taken place in the telecommunications industry since the FCC
12 made that statement in 2002. However, because Qwest cannot remove the PAP or
13 its associated PIDs from existing or future interconnection agreements without
14 Commission approval or CLEC agreement, his concern is moot.

15 First, Mr. Gates loses sight (as does Mr. Denney) that there is already a
16 comprehensive and robust PAP in place in Arizona today that Qwest, numerous
17 CLECs, and this Commission and its Staff labored hard for many years to develop.
18 There is absolutely no basis, or need, to try to cram several years' worth of work, by
19 hundreds of people and stakeholders, into this merger docket in order to develop a
20 new, additional plan, especially considering that the proposal is based on only few
21 pages of testimony and an exhibit. Adopting such a plan here, in any form, would

1 effectively undermine the extensive work done that this Commission and the
2 numerous parties and stakeholders did years ago in the various Section 271 dockets.

3 Second, contrary to Mr. Gates' assertion that a performance plan is "absolutely
4 essential," the FCC went on to say later in the same quoted paragraph that a
5 performance assurance plan is not a requirement for the authority of a BOC like
6 Qwest to provide interLATA toll services under Section 271, but merely that a PAP
7 would be "probative evidence" that a BOC will continue to meet its Section 271
8 obligations.⁶

9 Third, in acknowledging that a PAP was not required but could constitute "probative
10 evidence," the FCC thus recognized that there are other ways to show that a BOC
11 will continue to meet its obligations. In this vein, Mr. Gates ignores the fact that,
12 nearly eight years after the FCC issued that order, telecommunications market
13 conditions have changed dramatically. When the FCC originally made that
14 statement, there was relatively little other evidence available. The local
15 telecommunications market was only on the brink of being determined by the FCC
16 to be open, and there was certainly no crystal ball that could assure that the market
17 would remain open. However, now, almost eight years later, the evidence is clear
18 that the market has not only remained open, but that it will continue to be so, with or
19 without a PAP.

20 Again, it bears repeating that there is already a PAP that has been held by the

⁶ *Qwest 9 State 271 Order* at paragraph 453.

1 Commission to adequately protect CLECs against poor wholesale service quality,
2 and which is part of most if not all CLEC interconnection agreements, and which
3 Qwest cannot remove without Commission approval. Thus, there is no need for an
4 "additional" PAP. The CLECs' proposal for an APAP appears to be merely a self-
5 interested attempt to saddle the post-merger company with additional regulatory
6 obligations, with their concomitant financial (penalty) costs, perhaps because
7 Qwest's payments under the Arizona PAP have decreased so dramatically in recent
8 years as shown below. In other words, this proposed APAP concept is completely
9 unnecessary, and a transparently self-serving attempt to enrich CLECs at Qwest's
10 expense.

11 **Q. ON WHAT DO YOU BASE YOUR STATEMENT THAT THE LOCAL**
12 **MARKET IS AND WILL REMAIN "OPEN"?**

13 A. First, I base that statement in part on the fact that as of the end of 2009, 97 CLECs in
14 Arizona have opted into interconnection agreements ("ICAs") that contain the PAP.
15 I also base it on the competitive data and analysis that Qwest's Arizona President
16 James Campbell provides in his direct testimony and Qwest witness Robert Brigham
17 discusses in his rebuttal testimony. The FCC found the market to be open; the
18 market is still open and will continue to be so through and beyond the merger.

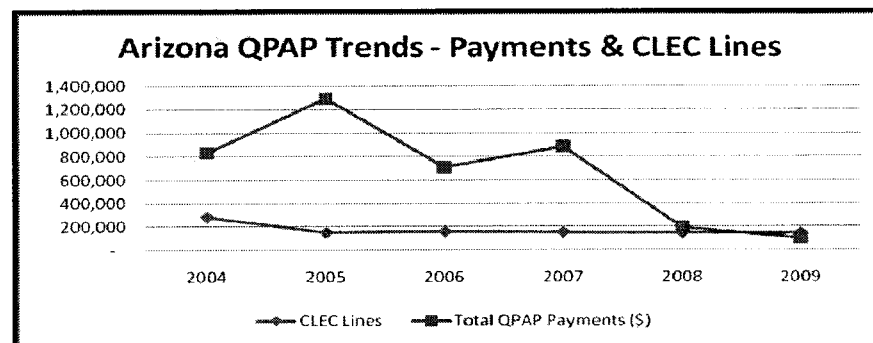
19 **Q. DOES THE DECREASING TREND IN QWEST'S PAP PAYMENT LEVELS**
20 **INDICATE THAT QWEST'S SERVICE LEVELS SUPPORT AN OPEN AND**
21 **FAIR TELECOMMUNICATIONS MARKET?**

22 A. Absolutely. Despite this large number of CLECs having the PAP in their ICAs,

Qwest's payments under the PAP have been declining significantly over the past several years. For example, in the first full year (2004) of PAP operation, Qwest paid almost \$830,000 in payments in Arizona. In contrast, in 2009, Qwest's PAP payments in Arizona amounted to slightly more than \$100,000 for the entire year – a fraction of its payment levels in 2004.

Q. ON PAGE 13 OF HIS TESTIMONY, MR. FIMBRES SAYS THAT THE DECLINE IN QPAP PAYMENTS “IS BELIEVED TO BE ATTRIBUTED IN LARGE PART TO THE DECLINE IN THE NUMBER OF CLECS SEEKING WHOLESALE SERVICES IN ARIZONA.” IS THIS BELIEF CORRECT?

A. No. If you look at the number of CLEC lines that are subject to QPAP payments and compare their volume trends with the QPAP payment trends, it is clear that declines in CLEC lines have very little impact on the decline in QPAP payments. The following Arizona chart compares the trend in QPAP payments in Arizona with the trend in CLEC lines. As the chart demonstrates, the decline in QPAP payments is far steeper than the decline in CLEC lines that are measured by the QPAP.



The following data table supports the above graph and shows numerically that the

1 visual impression is correct, in that Arizona CLEC lines measured by QPAP have
2 declined 50 percent,⁷ while total Arizona QPAP payments have declined far more –
3 by 88 percent:

Table of Values	2004	2005	2006	2007	2008	2009	% Change
CLEC Lines	279,962	147,493	156,157	150,305	139,860	140,653	-50%
Total QPAP Payments (\$)	828,755	1,290,475	708,872	879,747	193,422	100,965	-88%

4
5 **Q. ARE THERE OTHER FACTORS THAT SUPPORT YOUR ASSERTION**
6 **THAT THE MARKET REMAINS OPEN?**

7 A. Yes. Again, as Mr. Campbell testifies in his direct testimony and as Mr. Brigham
8 also discusses in his rebuttal testimony, there are intense competitive pressures on
9 Qwest in Arizona, and they are increasing rapidly. Specifically, the immense market
10 forces, which are reflected in the significant line losses that Mr. Campbell and Mr.
11 Brigham enumerate, and the competition from cable telephony, wireless, VOIP, and
12 CLECs, are both expanding. While all wireline carriers (including CLECs) are
13 generally losing lines to wireless providers, the only competitive alternatives that
14 offer Qwest the opportunity to retain customers on its wireline network are those
15 same CLECs who purchase Qwest's wholesale services and elements in order to
16 provide the services they offer to their customers. Accordingly, Qwest values
17 CLECs, and recognizes them as extremely important in helping to keep customers on

⁷ This is not to say that these are the total number of CLEC lines in Arizona. Rather, CLECs have also had lines that have moved out of the QPAP, e.g., changed to elements that are no longer under Section 251 of the Act (such as QLSP or "Qwest Local Services Platform," formerly "UNE-P). Nevertheless, the above Table of Values does represent average annual line volumes that were measured by QPAP.

1 Qwest's wireline network. It is this robust local market that provides the meaningful
2 incentives that will assure CLECs that Qwest (and thus CenturyLink) will continue
3 to provide a high level of wholesale service quality, regardless of the existence of the
4 current merger transaction.

5 **2. The Proposed APAP is Inappropriate**

6 **Q. BEGINNING ON PAGE 8 OF HIS DIRECT TESTIMONY, MR. DENNEY**
7 **PROVIDES DETAILS OF THE PROPOSED APAP TO IMPLEMENT THE**
8 **JOINT CLECS' CONDITION NUMBER 4. WHAT DOES THE APAP**
9 **REPRESENT?**

10 **A.** The "APAP" concept that Mr. Denney proposes represents an additional, extensive
11 set of standards, above and beyond the standards already in place in the PAP that is
12 already more than sufficient and working well today. I characterize the proposed
13 APAP as "extensive" because the APAP concept – which I do not believe any other
14 state regulatory commission has implemented, and certainly not in any merger
15 proceeding to my knowledge – would apply additional standards, as well as the
16 associated evaluations and calculations, to each and every measurement that is in the
17 PAP today. The proposed APAP would also apply to additional measurements that
18 are not even currently in the PAP.

19 **Q. ON WHAT DO YOU BASE YOUR EARLIER ASSERTION THAT THE**
20 **PROPOSED APAP IS INAPPROPRIATE?**

21 **A.** First, the proposed APAP is inappropriate because Mr. Denney loses sight of the fact

1 that, as I said before, there is already a comprehensive PAP in place in Arizona today
2 that Qwest, numerous CLECs, and the Commission and its Staff labored hard for
3 many years to develop to ensure wholesale service quality. Accordingly, I reiterate,
4 a scant few pages of self-serving testimony filed in this merger docket establishes no
5 basis for subverting the existing PAP – which is the product of several years’ worth
6 of work, by hundreds of people and stakeholders – by overlaying the PAP with an
7 additional plan whose transparently self-serving purpose is to enrich the CLECs that
8 are proposing it..

9 The proposed APAP concept is further inappropriate because, in addition to being
10 unreasonable, as I describe later, the appropriate standard to apply to wholesale
11 service performance is “nondiscrimination,” and not simply “performance
12 degradation.” In the proposed APAP, its improperly-defined “performance
13 degradation” in reality would penalize Qwest’s performance in the future that might
14 be lower than its superb results at the present time, even though those differences
15 may have nothing to do with the merger, still reflect nondiscriminatory service, and
16 continue to meet the various standards in the PAP. As I explain in more detail
17 below, Mr. Denney’s improperly-defined concept of “performance degradation” is
18 problematic, especially because it holds Qwest to a much higher standard than the
19 PAP, proposing to punish the post-merger entity because Qwest’s service quality
20 performance in recent years has been outstanding and far higher than required under
21 the PAP. Further, while Mr. Denney attempts to justify his proposed APAP concept

1 by arguing that it focuses on “merger-related harm,”⁸ it is not appropriate to attempt
2 to redress alleged but unspecified potential harm in an involuntary, self-executing
3 manner. The proposed APAP cannot distinguish between normal variations in
4 performance that could occur, with or without the merger, from variations that might
5 be alleged to be merger-related.

6 **Q. HAS THE QUESTION OF THE APPROPRIATENESS OF SELF-**
7 **EXECUTING PENALTIES OUTSIDE OF A VOLUNTARY MECHANISM**
8 **LIKE THE PAP BEEN ADDRESSED BY THE COURTS?**

9 A. I am not aware of any such case in Arizona. However, in 2005, the State of
10 Minnesota Supreme Court concluded that the Minnesota Commission could not levy
11 self-executing consequences for reasons of principles that I believe also apply in
12 Arizona. Specifically, the Minnesota Supreme Court stated:

13 [W]e conclude that the MPUC does not have statutory authority, either
14 express or implied, to impose the self-executing payments as an enforcement
15 mechanism and therefore hold that the MPUC exceeded its statutory
16 authority in ordering Qwest to make such payments for failure to comply
17 with the wholesale service quality standards.⁹

18 Although this is not an Arizona ruling, my understanding is that Arizona statutes
19 also contain no express or implied authority for the Commission to impose self-
20 executing payments for failure to comply with wholesale service quality standards.

⁸ Direct Testimony of Douglas Denney, Integra Telecom, September 27, 2010, page 10.

⁹ Opinion, *In the Matter of Qwest's Wholesale Service Quality Standards*, Case A03-1409, State of Minnesota Supreme Court, August 18, 2005.

1 3. **The Proposed APAP is Unreasonable**

2 **Q. EVEN IF THE COMMISSION WERE TO CONSIDER THE APAP**
3 **CONCEPT, IN WHAT WAYS IS THE PROPOSED APAP**
4 **UNREASONABLE?**

5 A. Even if the Commission *were* inclined to consider the APAP concept here, there are
6 many reasons that the proposed APAP itself is unreasonable. Chief among these
7 reasons are that the proposed APAP (1) has no provisions or criteria that even relate
8 to whether the performance levels are merger related and requires no proof of
9 merger-related harm before involving monetary payments, (2) creates an improper
10 definition of “performance degradation,” and (3) triggers consequences based on
11 comparisons with prior performance levels that were already far better, on the whole,
12 than what has been required in the PAP. In other words, Qwest would be essentially
13 *punished* by being held to a higher standard going forward simply because its
14 performance under the PAP in recent years has been much better than is required in
15 the PAP. In addition, the proposed APAP is seriously flawed as a performance plan
16 – in part because it purports to be based on PAP PIDs and provisions. The goals of
17 the PAP and the proposed APAP are different, however, and PIDs and PAP
18 provisions simply are not designed to support the proposed APAP’s self-executing
19 goals.

1 *a. The Proposed APAP Requires No Proof of Merger-Related Harm*

2 **Q. DOES THE PROPOSED APAP CONTAIN ANY PROVISIONS OR**
3 **CRITERIA THAT WOULD DEMONSTRATE THAT ANY DECLINES IN**
4 **SERVICE QUALITY ARE AS A RESULT OF THE MERGER?**

5 **A.** No. The only factor the proposed APAP considers is the coincidence of time – i.e.,
6 the closing of the merger and then a service quality decrease, which is insufficient to
7 demonstrate a merger connection within any reasonable standard. This is especially
8 problematic, as I have stated, because the APAP uses an improper definition of
9 service degradation.

10 **Q. PLEASE EXPLAIN YOUR POINT ABOUT PROOF OF MERGER-**
11 **RELATED HARM. WHY IS THE PROPOSED APAP UNREASONABLE IN**
12 **NOT REQUIRING PROOF OF HARM?**

13 **A.** This issue is really a matter of fairness. The CLECs' purported concern appears to
14 be that current market forces and the PAP may not be sufficient to address wholesale
15 service performance issues after the merger. As I have stated, however, this concern
16 is irrelevant because the merger transaction does nothing to change
17 nondiscrimination obligations, market forces, the PAP, or the Commission's
18 authority or involvement in the future of the PAP. Further, the merger does not
19 diminish the contractual dimension of the PAP in the CLECs' interconnection
20 agreements with Qwest or the Commission's authority over these matters.

21 That said, it is important to remember that the PAP is a *voluntary* commitment on

1 Qwest's part in the context of Section 271 approval, while the proposed APAP
2 would not be voluntary. The reason this is important revolves around necessity for
3 proof of harm, in light of the fact that Qwest already has been providing consistently
4 very-high levels of performance. The fact that Qwest is providing such high levels
5 of service quality has nothing to do with harm that CLECs might allege in the future,
6 and it has nothing to do with any future performance decrease being associated with
7 the merger. Therefore, as regards the proposed APAP, if CLECs believe they have
8 been harmed by issues beyond those that the PAP addresses, such as alleged merger-
9 related harm, it would only be proper that they would have the burden to bring forth
10 any confirming evidence. The mere "degradation of performance" from already-
11 superb service quality levels would not automatically translate into harm, nor could
12 it magically quantify any alleged harm.

13 **Q. DID THE MINNESOTA SUPREME COURT OPINION WHICH YOU CITED**
14 **EARLIER ALSO ADDRESS THIS ASPECT OF THE ISSUE?**

15 A. Yes, in denying the Minnesota Commission the authority to levy self-executing
16 payments related to its wholesale service quality rules, the Minnesota Supreme Court
17 stated: "Because the payments here are not restricted to compensation for losses
18 resulting from Qwest's failure to comply with the standards, they go beyond the
19 scope of permissible liquidated damages."¹⁰ Mr. Denney's proposal purports to be
20 based on "merger-related harm," and as such, would essentially be an ill-conceived
21 attempt to receive *liquidated damages* on the same basis as that the Minnesota

1 Supreme Court denied – namely, payments that were not tied to any actual damage
2 or harm suffered by CLECs or their customers. A self-executing approach is not
3 capable of allowing payments to be tied to actual damage or harm.

4 ***b. The Proposed APAP Creates an Improper Definition of “Performance***
5 ***Degradation”***

6 **Q. IN WHAT WAYS DOES THE PROPOSED APAP CREATE AN IMPROPER**
7 **DEFINITION OF “PERFORMANCE DEGRADATION”?**

8 A. In purporting to address “merger-related harm,” the proposed APAP glosses over
9 immense gaps in attempting to define “performance degradation,” and it makes no
10 attempt to link performance trends to any CLEC harm.¹¹ The mere existence of
11 lower performance levels that might be observed – particularly when compared to
12 already-superior performance – cannot necessarily be characterized as Qwest’s
13 performance degradation, nor can it be properly translated automatically into any
14 level of CLEC harm, and it certainly cannot be ascribed automatically to the merger.

¹⁰ Opinion, *In the Matter of Qwest’s Wholesale Service Quality Standards*, Case No A03-1409, State of Minnesota Supreme Court, August 18, 2005.

¹¹ These “gaps” include (1) ignoring that seasonal, external factors can cause lower performance in a given month when compared to the average of a prior year, (2) giving no consideration of other factors that might explain or mitigate observed differences between performance in a given month, and the prior annual average performance, and (3) using a method for quantifying “merger-related” harm that is completely without evidence to support any connection to the magnitude of harm.

1 **Q. PLEASE GIVE SOME OTHER EXAMPLES OF THE OTHER FACTORS**
2 **YOU MENTIONED THAT COULD EXPLAIN OR MITIGATE OBSERVED**
3 **DIFFERENCES IN PERFORMANCE IN A GIVEN MONTH AGAINST THE**
4 **PRIOR ANNUAL AVERAGE PERFORMANCE?**

5 A. Numerous factors that are not related to Qwest-driven impacts on performance levels
6 can affect service performance levels. In virtually all cases, it is not feasible to
7 identify these factors in advance, or in a mechanized way, in order to make it
8 possible to exclude them from any reporting measurements. Further, even if such
9 factors could be identified and excluded, the PIDs in the PAP are not designed in any
10 way that would permit identifying whether any observed differences in performance
11 are merger-related. Nevertheless, these other factors include such things as weather-
12 related impacts, changes in CLECs' underlying customer bases, changes in CLEC
13 operating practices, and comparing a current month's performance against a past
14 average annual performance.

15 On this last point, Qwest notes that performance that is staying the same or
16 improving overall may appear to be deteriorating in individual months of a current
17 year, in comparison with average performance of the previous year. For example,
18 performance levels from month to month rarely, if ever, produce straight lines on a
19 graph of results. Rather, the results range higher or lower, with or without seasonal
20 effects, around a trend line. Thus, if compared against a 12-month average, any of
21 the monthly results that are "worse" than the improving trend line would be judged,
22 standing alone, as degradation when, in reality, they could be part of an improving

1 trend. Indeed, most likely half of the months used to compute the previous year's
2 average fell below the average in that year. Penalties generated by this approach
3 would be significant for such normal variations and thus would be unreasonable and
4 arbitrary. As I point out later, this can create substantial penalties, even though
5 performance is staying the same or improving.

6 *c. The Proposed APAP Unfairly Triggers Payments Based on Superior Prior-*
7 *year Performance Levels*

8 **Q. YOU HAVE MENTIONED THE SUPERB LEVELS OF QWEST'S 2009**
9 **PERFORMANCE UNDER THE PAP. WHY IS THE PROPOSED APAP**
10 **MEASURE THAT IS BASED ON THE PAST 12 MONTHS PRIOR TO THE**
11 **MERGER AN UNREASONABLE STANDARD FOR DEFINING**
12 **PERFORMANCE DEGRADATION OR IDENTIFYING MERGER-**
13 **RELATED HARM?**

14 **A.** Apart from the problems that I have already mentioned with the proposed APAP, the
15 question whether and how much merger-related harm might occur becomes even
16 more absurd when considering that only 1.6% of Arizona PAP performance metrics
17 actually triggered payments in 2009. In contrast, in the same year, 18.4 percent of
18 the Arizona performance metrics that are based on "parity" had performance results
19 that were significantly *better* than the parity standard. Even if performance were to
20 degrade below these superior levels, while still remaining nondiscriminatory, there
21 would be no basis for automatically claiming harm.

1 *d. PAP PIDs Are Not and Cannot Be Designed to Support the Proposed*

2 *APAP's Goals*

3 **Q. PLEASE EXPLAIN YOUR ASSERTION THAT THE PAP PIDS ARE NOT**
4 **DESIGNED TO SUPPORT THE PROPOSED APAP'S GOALS.**

5 **A.** As I have stated, the PAP's goals are different from the proposed APAP's goals.
6 Mr. Denney effectively admits this on page 10 of his direct testimony, where he
7 states, "The Arizona PAP, which was not developed to identify merger-related harm,
8 would not capture deteriorating performance...." Earlier on the same page of his
9 testimony, Mr. Denney points out that the PAP "is intended to assure that Qwest
10 does not treat itself more favorably than it treats CLECs...." Then, three sentences
11 later, he states, "The purpose of the proposed APAP is to compare the current level
12 of Qwest's wholesale performance to CLECs with a past level of wholesale
13 performance to CLECs" In other words, the PAP focuses on satisfying "parity"
14 or established benchmarks, whereas the proposed APAP focuses on defining
15 allegedly merger-related "performance degradation." This is one of the many fatal
16 flaws of proposed APAP: the PIDs were defined to measure performance against
17 parity or fixed benchmarks, not to properly identify "performance degradation" by
18 some simplistic definition, and certainly not to automatically imply merger-related
19 harm.

1 **Q. WHY ARE THE PIDS UNABLE TO INDEPENDENTLY AND**
2 **AUTOMATICALLY SUPPORT A DEFINITIVE CONCLUSION THAT**
3 **PERFORMANCE DEGRADATION EXISTS?**

4 A. In short, the PIDs cannot automatically account for or explain the reasons for an
5 observed trend or difference in performance levels. There are many factors –
6 including many that are not caused by Qwest, as I have already explained – that can
7 cause the performance levels in a given month, post-merger, to be different from the
8 proposed APAP's comparisons with annual average levels of pre-merger Qwest
9 performance. Further, it is not possible for the PIDs to be defined and implemented
10 in a manner that would permit them to account for all such factors. Thus, the PID
11 results cannot support automatic conclusions that merger-related performance
12 degradation has occurred, much less that such degradation actually represents harm,
13 and nothing in the proposed APAP does anything to overcome this.

14 **D. The Proposed APAP Would Significantly Penalize Post-Merger**
15 **Performance that is Exactly the Same as Pre-Merger Performance**

16 **Q. ON PAGES 11 THROUGH 15 OF HIS RESPONSIVE TESTIMONY, MR.**
17 **DENNEY PROVIDES A HYPOTHETICAL EXAMPLE OF HOW THE**
18 **PROPOSED APAP WOULD WORK AND REACHES SOME**
19 **CONCLUSIONS. WHAT ARE HIS CONCLUSIONS AND HOW DO YOU**
20 **RESPOND?**

21 A. Mr. Denney's examples are completely hypothetical and bear no real likeness to the
22 reality of the proposed APAP. He sets up hypothetical examples and then treats

1 them as if they were fact. For example, after discussing his examples on pages 13
2 and 14, he says, "Again, the 'calculated value' shows how far service would have to
3 degrade for a CLEC with 70 repeat troubles a month, before payment would be
4 triggered under APAP." The very next question begins with, "There appears to be a
5 significant degradation of wholesale service quality before a payment would be
6 triggered under the additional PAP." Both of these statements claim that
7 performance would have to degrade significantly before the proposed APAP would
8 trigger payments. That is completely false in terms of how the proposed APAP
9 actually works under real-world condition.

10 **Q. DO YOU HAVE REAL-WORLD FACTS THAT SHOW WHAT THE**
11 **PROPOSED APAP WOULD DO IF APPLIED IN ARIZONA?**

12 A. Yes. I have analyzed actual wholesale service performance for Arizona and found
13 that, even if post-merger service levels were *exactly the same* in every way to pre-
14 merger service levels, with the proposed APAP in place, the payments would be
15 substantial. The proposed APAP would penalize Qwest significantly, even if post-
16 merger performance was precisely the same as before the merger.

17 **Q. WHAT ARE THE FACTS YOU USED IN REACHING THIS CONCLUSION?**

18 A. I directed an analysis that was based on actual Qwest performance data for the year
19 2009 as used in the Arizona QPAP. This analysis applied the APAP provisions to
20 the data, for both the pre-merger and post-merger periods. In other words, the
21 analysis examined how the APAP would treat a situation in which pre-merger
22 service levels were exactly like 2009, *and* post-merger performance, month by

1 month and transaction by transaction, were also exactly like 2009.

2 **Q. WHAT DID YOU FIND?**

3 A. I found that, as I just described, if both post-merger and pre-merger were identical
4 and based on 2009 data, the APAP would have penalized Qwest over \$660,000, in
5 addition to QPAP payments – again, for absolutely no degradation in performance.
6 In contrast, as I reported earlier, we actually paid only about \$100,000 in QPAP
7 payments in Arizona for 2009.¹² So, using this example, if the merger had closed at
8 the end of 2009, the APAP would have penalized Qwest over seven times as much
9 as the QPAP, based on 2009 data, even though the pre- and post-period performance
10 was exactly the same. (Please see my Exhibit MGW-2 for a summary of this
11 analysis and an example of the calculations.)

12 **Q. WHAT EXPLAINS THE DRAMATIC DIFFERENCE BETWEEN THE**
13 **PROPOSED APAP'S PAYMENTS IN THIS ANALYSIS VERSUS THE**
14 **ACTUAL QPAP PAYMENTS FOR 2009?**

15 A. As I have explained, the primary cause of the high APAP payments is the improper
16 definition of performance degradation. By comparing a single month of post-merger
17 performance against an average for the entire pre-merger year, it is inevitable that
18 some months will be worse than the average and others better, even when comparing
19 the exact same year with itself. Then, the escalation provisions of the proposed

¹² This analysis looked only at 2009 data, and so it incorporated only a portion of the escalation provisions that are designed into both the QPAP and the proposed APAP – i.e., the portion that would have existed if the starting point were January 1, 2009. Thus, actual payments of the proposed APAP, if it had been in effect before and since 2009, would have been even larger.

1 APAP exacerbate the problem. Further, in the categories with the largest APAP
2 payments, the very fact that Qwest's performance has been consistently superb, as I
3 explained earlier, causes the statistical procedures to effectively become over-
4 precise, resulting in declaring the tiniest difference as significant.¹³ This, when
5 multiplied by the payment increments and the escalation factors, results in large
6 payments under the proposed APAP, even though the performance levels for the
7 "post-merger" period are precisely the same as for the "pre-merger." This evidence
8 demonstrates that the proposed APAP's structure is fatally flawed. By penalizing
9 the merged company even if service remains at its currently-high levels, the APAP
10 fails to advance even the CLECs' proposed purpose of providing an incentive for the
11 company to maintain its current service levels.

12 **E. The PAP is Sufficient to Provide Post-Merger Performance Monitoring**

13 **Q. DOES THE PAP PROVIDE SUFFICIENT INFORMATION TO DETECT**
14 **TRENDS IN SERVICE PERFORMANCE LEVELS, POST-MERGER?**

15 A. Certainly. I believe the fact that Mr. Denney bases his proposed APAP concept on
16 the PAP's PIDs is an implicit admission that PAP can be used to detect trends in
17 performance levels post-merger. The PAP performance results produce monthly
18 "indications" of performance levels (as the "PID" acronym for "performance

¹³ By statistical "over precision" I mean either that the performance is superb or nearly perfect in the case of a percentage measurement, and/or that there is very little variation in the data. Although the statistical results can be calculated in these instances, they tend to magnify miniscule differences in performance and, while finding significance from a statistical point of view, certainly do not find substantial or meaningful differences in the data. These miniscule statistical differences, when combined with large volumes (for example, billing measurements) in the APAP payment calculations, can result in high payments that, when looking at the data on which they are based, are completely unrealistic.

1 *indicator* definitions” implies). Thus, as it does now, PAP data can continue to be
2 used by any party to identify trends in Qwest’s wholesale service quality
3 performance.

4 **Q. WHY ARE THE CURRENT PID RESULTS A REASONABLE**
5 **ALTERNATIVE TO THE PROPOSED APAP APPROACH IN**
6 **MONITORING POST-MERGER PERFORMANCE TRENDS?**

7 **A.** In a nutshell, using the PID-generated performance results to monitor performance
8 trends is more complete and fair than focusing on single-point comparisons of one
9 current month’s results with a 12-month average of past performance results. The
10 approach of using PID performance results to monitor trends also allows for
11 examining the causes of trends, if necessary. As I stated above, the 12-month
12 proposed APAP approach could conclude there was “performance degradation”
13 when, in fact, the trend in service levels was improving. The PAP’s PID results, on
14 the other hand, give visibility to the significant trends are over time, which trends
15 can then be examined further. This broader, more-holistic approach is more
16 reasonable in helping to identify whether a valid question might exist about post-
17 merger performance levels. Still, given the dynamic nature of the environment in
18 which Qwest’s network exists, as well as the many external factors that can affect
19 performance levels – independent of the merger or of Qwest’s actions – the actual
20 conditions that exist across the entire relevant time period must be considered. This
21 consideration of trends supports a proactive approach toward resolving problems,
22 regardless of their causes, rather than merely arguing about whether penalties or

1 damages should be assessed, and on what basis. At the same time, neither the
2 merger nor this approach of providing continued visibility to performance levels
3 takes anything away from any party that wishes to raise a concern about service
4 quality.

5 **Q. AT THE SAME TIME, DOESN'T THE CURRENT ARIZONA QPAP HAVE**
6 **PROVISIONS THAT WOULD ALLOW CLECS, IF THEY DISCOVERED**
7 **AN INADEQUACY IN THE WAY IT ADDRESSES QWEST'S**
8 **PERFORMANCE, TO SEEK MODIFICATIONS?**

9 A. Yes, section 16.0 of the Arizona QPAP provides for six-month reviews "to
10 determine whether measurements should be added, deleted, or modified; whether the
11 applicable benchmark standards should be modified or replaced by parity standards;
12 and whether to move a classification of a measure" Thus, under the supervision
13 of the Commission if necessary, CLECs have an avenue already built into the QPAP
14 to permit a fair opportunity to seek changes.

15 **V. CONCLUSION**

16 **Q. HAVE THE CLECS PROVIDED ANY BASIS FOR THE COMMISSION TO**
17 **CONSIDER MERGER CONDITIONS RELATED TO THE PAP?**

18 A. No. The merger does nothing to change or jeopardize the existing provisions found
19 in the PAP. As importantly, the wholesale market remains competitively open, and
20 the post-merger company will face the same immense market pressures that Qwest
21 faces today in its operating territories. These pressures will continue to provide

1 incentives and protections far greater than the PAP or the rules in assuring that the
2 post-merger company will continue to provide the necessary attention to wholesale
3 service quality. The CLECs' purported concerns about "merger-related harm" that
4 allegedly might be caused by some kind of performance degradation, if any occurs at
5 all, cannot be defined, identified, quantified, or penalized on an automatic basis. The
6 proposed APAP is particularly ill-equipped to attempt such alleged remedies, as
7 I have explained, and the PAP is sufficient to provide continued visibility to trends in
8 Qwest's wholesale service quality performance, without bypassing the essential
9 tenets of fairness and reasonableness.

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

11 **A. Yes.**

Docket No. T-01051B-10-0194

Confidential Exhibit MGW-1

Rebuttal Testimony of Michael G. Williams

October 27, 2010

REDACTED

Summary of Analysis – Proposed APAP Payments with Identical Pre-Merger and Post-Merger Performance Levels (using 2009 data)

PID Category	# Metrics Missing APAP Standard	Total # Metrics	Percent of Metrics Missed	Actual Comparable PAP payments	Projected APAP payments
Billing	62	1,293	4.8%	\$244	\$140,082
Collocation	17	108	15.7%	-	435
Gateway	9	60	15.0%	11,000	18,000
Maintenance/Repair	146	3,280	4.5%	53,452	32,346
Network Trunking	2	306	0.7%	-	2,824
NXX Activation	0	3	0.0%	-	-
Order/Provisioning	213	2,768	7.7%	22,369	59,160
Pre-Order	257	1,838	14.0%	300	408,908
Grand Total	706	9,656	7.3%	\$87,365	\$661,755

Average APAP Payments per Missed Metric
\$2,259
26
2,000
222
1,412
-
278
1,591
\$937

Example Calculation from the Above Analysis

Metric: PO-6A (Work Completion Notice Interval – LSRs Received via IMA-GUI)

Note: In this example, PO-6A generated zero QPAP payments

A	B	C	D	E	F	G	H	I	J	K	L	M	N
Reporting month	CLEC Vol	CLEC result (mins)	PAP bench-mark (mins)	APAP compare volume (full year)	APAP standard (year avg) (mins)	APAP compare standard deviation	APAP critical value	APAP z-score ¹	APAP standard result	APAP "Miss" occurrences	APAP payment level	APAP per occurrence	APAP payment
Month 1	86	9.6	360	1039	46.0	14.7	1.645	-22.2	48.7	No	0	-	-
Month 2	123	9.2	360	1039	46.0	14.7	1.645	-26.4	48.3	No	0	-	-
Month 3	112	37.1	360	1039	46.0	14.7	1.645	-6.1	48.4	No	0	-	-
Month 4	85	67.4	360	1039	46.0	14.7	1.645	12.9	48.8	Yes	1	\$25	\$813
Month 5	69	71.1	360	1039	46.0	14.7	1.645	13.8	49.0	Yes	2	50	1,555
Month 6	72	72.5	360	1039	46.0	14.7	1.645	14.8	49.0	Yes	3	100	3,464
Month 7	45	81.2	360	1039	46.0	14.7	1.645	15.7	49.7	Yes	4	200	5,701
Month 8	57	78.1	360	1039	46.0	14.7	1.645	16.1	49.3	Yes	5	300	9,985
Month 9	95	69.3	360	1039	46.0	14.7	1.645	14.8	48.6	Yes	6	400	16,131
Month 10	122	68.1	360	1039	46.0	14.7	1.645	15.7	48.3	Yes	7	400	19,978
Month 11	86	26.6	360	1039	46.0	14.7	1.645	-11.8	48.7	No	6	-	-
Month 12	87	6.7	360	1039	46.0	14.7	1.645	-24.1	48.7	No	5	-	-
Grand Total												\$57,627	

¹ A zero or positive z-score (Col. "I") indicates "statistical significance at the 95% confidence level, based on the specified "critical value" (Col. "H").

² The APAP payment is calculated by multiplying the value in Column "K" by the value in Column "L" (which is based on the Column "L" payment level in the APAP).

JEFF GLOVER

BEFORE THE ARIZONA CORPORATION COMMISSION

Joint notice and application of Qwest Corporation, Qwest Communications Company, LLC, Qwest LD Corp., EMBARQ Communications, Inc. d/b/a CenturyLink Communications, EMBARQ Payphone Services, Inc. d/b/a CenturyLink, and CenturyTel Solutions, LLC for approval of the proposed merger of their parent corporations Qwest Communications International, Inc. and CenturyTel, Inc.

DOCKET NOS.

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

REBUTTAL 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**

OCTOBER 27, 2010

1 **Q. Please state your name and business address.**

2 A. My name is Jeff Glover and my business address is 100 CenturyLink Drive, Monroe,
3 Louisiana 71203.

4
5 **Q. Who is your employer and what is your position?**

6 A. I am employed as Vice President – Regulatory Operations & Policy for CenturyLink, Inc.
7 (“CenturyLink” or the “Company”).

8
9 **Q. Are you the same Jeff Glover who supplied direct testimony in this proceeding on**
10 **May 24, 2010?**

11 A. Yes. I am.

12
13 **Q. What is the purpose of your Rebuttal Testimony?**

14 A. I am providing rebuttal testimony concerning financial and related issues raised in the
15 direct testimonies of certain parties in the proceeding before the Arizona Corporation
16 Commission (“Commission”) related to the proposed merger (the “Transaction”) of
17 Qwest Communications International, Inc. (“Qwest”) and CenturyLink. Specifically, I
18 will address the testimonies of Mr. Armando Fimbres¹, Mr. Pedro M. Chaves², and Ms.

¹ Direct Testimony of Armando Fimbres, Public Utilities Analyst V, on behalf of Utilities Division, Arizona Corporation Commission, [hereafter “Staff, Fimbres”].

² Direct Testimony of Pedro M. Chaves, Public Utilities Analyst III, on behalf of Utilities Division, Arizona Corporation Commission, [hereafter “Staff, Chaves”].

1 Pamela J. Genung³, who provided testimony on behalf of the Utilities Division of the
2 Commission (collectively "Staff"); Mr. William A. Rigsby⁴, who provided direct
3 testimony on behalf of the Residential Utility Consumer Office ("RUCO"); Mr. Timothy
4 Gates⁵ and Dr. August Ankum⁶, who provided direct testimony on behalf of Eschelon
5 Telecom of Arizona, Inc., Electric Lightwave, LLC, Mountain Telecommunications of
6 Arizona, Inc. d/b/a Integra Telecom; tw telecom of Arizona, LLC, Level 3
7 Communications, LLC, and McLeod USA Telecommunications Services, Inc. d/b/a
8 PAETEC Business Services (collectively, these competitive local exchange carriers are
9 the "Joint CLECs"); and Mr. Charles King⁷, who provided responsive testimony on
10 behalf of The Department of Defense and all other Federal Executive Agencies ("DOD").
11 I note that on October 21st, the Communications Workers of America ("CWA") filed a
12 Notice of Withdrawal that seeks, among other things, to withdraw CWA's intervention
13 and pre-filed testimony in this case⁸. As a result, I will not directly address the direct
14 testimony of CWA witnesses Mr. Randy Barber and Mr. Jasper Gurganus, but I will

³ Direct Testimony of Pamela J. Genung, Public Utilities Analyst V, on behalf of Utilities Division, Arizona Corporation Commission, [hereafter "Staff, Genung"].

⁴ Direct Testimony of William A. Rigsby on behalf of the Residential Utility Consumer Office, [hereafter "RUCO, Rigsby"].

⁵ 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, [hereafter "Joint CLECs, Gates"].

⁶ Direct Testimony of August H. Ankum, Ph.D. 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, [hereafter "Joint CLECs, Ankum"].

⁷ Initial Testimony of Charles W. King on behalf of The Department of Defense and all other Federal Executive Agencies, [hereafter "DOD, King"].

⁸ CWA's: 1) Notice of Withdrawal; and 2) Notice of filing settlement agreement between CWA and Joint Applicants, filed October 21, 2010.

1 address concerns raised by other parties that appear to be based on Mr. Barber's or Mr.
2 Gurganus' direct testimony.

3 My rebuttal testimony regarding financial and related issues is to be read in conjunction
4 with the rebuttal testimonies provided by other witnesses representing CenturyLink and
5 Qwest (collectively, the "Joint Applicants"). I have reviewed and agree with the rebuttal
6 testimonies presented by those other Joint Applicant witnesses.

7
8 **Q. Please summarize your rebuttal testimony.**

9 **A.** I will respond to the Staff and intervenor witness testimonies noted above regarding
10 financial concerns raised in the testimonies, principally based on the relevant Staff
11 recommended conditions for approval of the proposed Transaction. I will address the
12 following general matters:

- 13 1. The standard of review applied and the approach used in evaluating the
14 proposed Transaction, notably based on the testimonies of Mr. Fimbres and
15 Mr. Chaves;
- 16 2. The financial analyses of Staff witnesses Mr. Fimbres and Mr. Chaves, as
17 well as of RUCO witness Mr. Rigsby, which analyses lead them to endorse
18 the financial public interest benefits of the Transaction;
- 19 3. CenturyLink's responses to certain of Staff's proposed conditions for
20 approval;

4. Perspectives on use of the Risk Factors section of the Securities and Exchange (“SEC”) Form S-4 filing (“S-4”) in this proceeding;⁹
5. The Joint CLECs’ recommendation that CenturyLink and Qwest should be required to share synergy savings with wholesale customers in Arizona;
6. The claim that the Transaction is similar to certain previous problematic incumbent local exchange carriers (“ILEC”) mergers, including those in which there were fundamental flaws that led to bankruptcies; and
7. Other financial issues raised by intervenor witnesses.

**I. THE STANDARD OF REVIEW APPLIED AND THE APPROACH USED
IN EVALUATING THE PROPOSED TRANSACTION, NOTABLY
BASED ON THE TESTIMONIES OF MR. FIMBRES AND MR.
CHAVES.**

Q. What is your understanding of the standard of review to be applied by the Commission in this transfer of control proceeding?

A. I am not an attorney, but I have reviewed the testimony of Staff witness Mr. Fimbres, who responds to a question about the standard of review used by the Staff in evaluating if the merger is in the public interest, saying that . . .

“[t]he Public Interest can be explained simply as ‘the benefits or merits which will flow to the public’ from any transaction filed for consideration by the Commission. Logically this test or standard means that the transaction, the acquisition of Qwest by CenturyLink in this matter, should first cause no harm to

⁹ CenturyLink SEC Form S-4, filed July 16, 2010, available at <http://www.sec.gov/Archives/edgar/data/18926/000095012310066042/y84818a1sv4za.htm#113>.

1 customers of the entities involved in the transaction. If a transaction can be
2 evaluated to first cause no harm, the more important determination of considering
3 the benefits or merits can be undertaken.”¹⁰
4

5 Mr. Fimbres does not provide a source for this standard, which is different from the
6 standard of review cited by CenturyLink in its Joint Notice and Application for Expedited
7 Approval of Proposed Merger (“Application”).¹¹ I note that, in the Application,
8 CenturyLink cited A.A.C. R14-2-803(C): “At the conclusion of any hearing on the
9 organization or reorganization of a utility holding company, the Commission may reject
10 the proposal if it determines that it would impair the financial status of the public utility,
11 otherwise prevent it from attracting capital at fair and reasonable terms, or impair the
12 ability of the public utility to provide safe, reasonable and adequate service.” RUCO
13 witness Mr. Rigsby indicates in his testimony that he also relied upon the standard of
14 review referenced by CenturyLink.¹² CenturyLink witness Ms. Kristin McMillan
15 addresses the standard more fully in her testimony.
16
17

¹⁰ Staff, Fimbres, p. 23, line 26 through p. 24, line 3.

¹¹ See *Before the Arizona Corporation Commission, Joint Notice and Application of Qwest Corporation, Qwest Communications Company, LLC, Qwest LD Corp., Embarq Communications, Inc. d/b/a CenturyLink Communications, and CenturyTel Solutions, LLC for Approval of the Proposed Merger of their Parent Corporations Qwest Communications International Inc. and CenturyTel, Inc.*, Docket Nos. T-01051B, T-03902A, T-02811B, T-2043A, T-04190A, T-03555A, May 13, 2010 [hereafter “Application”], p. 9, ¶¶ 16-17.

¹² RUCO, Rigsby, p. 3, line 18 through p. 4, line 25.

1 **Q. Can you summarize from a financial point of view why the proposed Transaction is**
2 **expected to benefit Arizona customers and, therefore, satisfies the Arizona standard**
3 **of review if it does require a showing of benefit?**

4 **A. Yes. The merger is a direct and constructive response to industry pressures. Competition**
5 **in the telecommunications industry is robust and is increasing in terms of business**
6 **services provided by competitive local exchange carriers ("CLECs"), and residential and**
7 **business services provided by cable operators, including those that offer voice over**
8 **Internet protocol ("VoIP") services. Wireless carriers also are capturing a very large**
9 **percentage of the marketplace, particularly among residential subscribers; it is generally**
10 **accepted that currently more than 25% of the residential telephone customer base**
11 **nationwide has "cut the cord" to use only wireless voice telecommunications services.**¹³
12 **Illustrating the competitive pressures, Qwest reported total access lines that fell by 10.5%**
13 **year-over-year at the end of the second quarter of 2010, while CenturyLink reported an**
14 **8.0% decline pro forma (adjusting for the acquisition of Embarq Corporation**
15 **("Embarq")).**¹⁴ Technologies are changing as customers are demanding higher

¹³ Dan Frommer, *Almost a Third of U.S. Households Have Cut the Landline Cord*, SFGate (San Francisco Chronicle), August 18, 2010, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/g/a/2010/08/18/businessinsider-chart-of-the-day-almost-a-third-of-us-households-have-cut-the-landline-cord-2010-8.DTL>; Frommer states that "[a]lmost 30% of U.S. households have cut the cord, up from about 25% a year ago, via a Citi Investment Research report by analyst Jason Bazinet." At the end of 2009, the Center for Disease Control reported that 24.5% of homes were wireless-only; see Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, *National Center for Health Statistics, Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2009*, available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.pdf>. See, also, Dane Jasper, *Why Include Phone*, September 9, 2010, Sonic.net CEO, available at

¹⁴ Qwest Communications 2010: Second Quarter Historical Financial Info, August 4, 2010, available at <http://investor.qwest.com/index.php?s=68>, slide 12. CenturyLink Reports Second Quarter 2010 Earnings, August 4, 2010, available at <http://phx.corporate->

1 throughput for data and a range of new applications, including those provided by wireless
2 carriers (that are in the process of introducing 4G technologies) or cable television
3 companies (that are moving toward deployment of very high-speed DOCSIS 3.0
4 services).

5
6 From a financial point of view, the wireline telecommunications industry is coping with a
7 shrinking base of voice-only customers (generally contracting between 6% and 12%
8 annually), greater risks in terms of deploying technologies (with uncertainty surrounding
9 how far fiber should be pushed toward the premises), pressures on margins and cash
10 flows (as most carriers are reporting at least some margin compression), more critical
11 scrutiny from debt and equity investors (among the major carriers only three, including
12 CenturyLink, have corporate credit ratings that are investment grade), the need to
13 rationalize operations to achieve efficiencies (such that rapid consolidation is occurring in
14 the industry, including among the largest carriers), and pending federal financial
15 regulatory reforms. The financial benefits of the proposed Transaction, therefore, are
16 centered on creating a combined company with greater scope and scale, strong financial
17 characteristics (low leverage, prudent dividend payout ratio, diversification of markets
18 and revenue sources, increased access to financial markets, etc.), and the ability to
19 generate significant free cash flows. It is also important to note that the combined
20 company is not acquiring any new debt as the Transaction is a stock-for-stock merger.

1 The combined company is positioning itself to generate incremental cash flows through
2 synergies and incremental revenues from expanded service offerings based on the
3 combination of CenturyLink and Qwest assets. The result will be higher cash flows that
4 can be used to fund operations, invest in new service capabilities, and reduce debt from
5 current levels, which are affirmative benefits of the merger. In addition, CenturyLink
6 believes that the merged company's market capitalization will provide a larger and more
7 liquid equity base (more shares outstanding and a higher market capitalization). All else
8 being equal, the increase in market capitalization generally improves access to capital
9 markets, which is an important consideration for the Commission in this review process.
10 Finally, the combined company will be run by a management team that has been effective
11 in responding to customers, in generating better operating results through synergies and
12 efficiencies, and in investing in network and services.

13
14 Based on the financial benefits of the proposed Transaction, CenturyLink believes that
15 the Arizona standard has been met, even if it were judged to include the requirement of a
16 benefit showing by the Joint Applicants. As such, the imposition of unnecessary
17 conditions could undermine the expected financial benefits and hinder the Company's
18 ability to respond flexibly to the rapidly changing and increasingly competitive
19 telecommunications marketplace—a result which would harm Arizona customers and
20 public policy.

1 **II. THE FINANCIAL ANALYSES OF STAFF WITNESSES MR. FIMBRES**
2 **AND MR. CHAVES, AS WELL AS OF RUCO WITNESS MR. RIGSBY,**
3 **WHICH ANALYSES LEAD THEM TO ENDORSE THE FINANCIAL**
4 **PUBLIC INTEREST BENEFITS OF THE TRANSACTION.**

5 **Q. How does Staff financial witness Mr. Chaves evaluate the proposed Transaction?**

6 A. Mr. Chaves focuses his assessment of the Transaction on the capital structure of Qwest
7 today and the capital structure of the post-merger combined company. Mr. Chaves
8 summarizes CenturyLink's capital structure and Qwest's capital structure, and then
9 compares them with capital structures of other companies in the local telephone industry.
10 Mr. Chaves' conclusion regarding CenturyLink's capital structure is that the Company is
11 "less leveraged when compared to the average of telephone companies," as he
12 summarizes in his Table 2, and that CenturyLink's equity ratio is better than the threshold
13 level of equity that Staff considers financially prudent.¹⁵

14
15 **Q. What is Staff witness Mr. Chaves' overall conclusion regarding whether the**
16 **proposed Transaction will be beneficial from a financial perspective to Arizona**
17 **customers?**

18 A. As noted above, Staff witness Mr. Chaves concludes that the Arizona Qwest subsidiaries
19 will "benefit" from the proposed Transaction, which will provide "improved access to the
20 capital markets because the post-merger ultimate parent, CenturyTel, Inc., will have a

¹⁵ Staff, Chaves, p. 4, lines 5-11; see, also p. 4, lines 1-3, and p. 5, line 1 through p. 6, line 12.

1 financially prudent capital structure as opposed to [Qwest's] negative equity position.”¹⁶
2 However, despite finding conclusively that the proposed Transaction meets Staff’s
3 definition of the required standard for approval, Mr. Chaves and Staff propose specific
4 financial conditions about which I will comment in the following section of my
5 testimony.

6
7 **Q. Does Staff witness Mr. Fimbres add financial commentary about the proposed**
8 **Transaction?**

9 A. Yes. Staff witness Mr. Fimbres affirms the combined company’s capacity for increased
10 investment, testifying that “Arizona customers could benefit from the increased financial
11 strength of the combined company to more aggressively pursue FTTN [fiber-to-the-node]
12 and fiber-to-the-cellular tower (‘FTTCT’)”.¹⁷ Mr. Fimbres also points to “issues and
13 questions” raised by the Arizona Consumers Council (the “Council”) related to whether
14 the post-merger company has a plan to service the “unprecedented debt that they want to
15 acquire” and whether CenturyLink will have “the resources to expand and incorporate the
16 new and expanded internet operations.”¹⁸ In addition, Mr. Fimbres cites another Council
17 concern, whether CenturyLink will be able to “expand and build . . . operations in rural
18 Arizona that are unserved or under served at reasonable rates.”¹⁹ Mr. Fimbres provides
19 no financial analyses about these issues raised by the Council, but lists them as questions

¹⁶ Staff, Chaves, p. 6, lines 16-19.

¹⁷ Staff, Fimbres, p. 10, lines 8-10.

¹⁸ Staff, Fimbres, p. 23, lines 14-17.

¹⁹ Staff, Fimbres, p. 23, lines 18-19.

1 for which he will seek answers. Finally, Mr. Fimbres summarizes Staff's position
2 regarding the financial benefits of the proposed Transaction, stating that Staff concludes
3 "that the proposed transaction does offer financial benefits and is, therefore, in the Public
4 Interest from a purely financial prospective [sic]."²⁰

5
6 **Q. Do you agree with the evaluations by Staff witnesses Fimbres and Chaves?**

7 A. Both Staff witnesses are correct that Qwest will be strengthened through the proposed
8 Transaction. The combined company's balance sheet will be improved over Qwest's
9 current balance sheet, as the various credit rating agencies have signaled and as will be
10 discussed below. I will provide more detail about the fact that Qwest's credit rating is on
11 watch for upgrade at all three credit rating agencies. Further, the assumption is that post-
12 merger CenturyLink's balance sheet, combined with incremental cash flows generated
13 through the proposed Transaction, should support ongoing investment in the Company's
14 network in Arizona.

15
16 **Q. What about the concerns of the Council that Mr. Fimbres notes in his testimony?**

17 A. With respect to the Council's concerns about whether the Company has a "plan" to
18 service the increased level of debt, I note that CenturyLink has provided Highly
19 Confidential information regarding its plan to further strengthen its balance sheet and I
20 will discuss later in my testimony that the Company also will generate higher levels of

²⁰ Staff, Chaves, p. 24, lines 23-25.

1 cash flow to service the debt. At the very least, the combination of CenturyLink and
2 Qwest will improve the balance sheet of Qwest as Mr. Chaves has testified. However,
3 with the improved cash flows from synergies, the Company is confident that the “balance
4 sheet plan” (already provided to the Commission) is credible as it reveals positive
5 improvement over the next five years. No Staff witness or other intervenor credibly can
6 suggest that the proposed Transaction will result in a balance sheet that is a problem.²¹
7 With respect to the questions about whether the combined company will have the
8 resources for ongoing investment, including in unserved or underserved regions, the
9 simple answer is that the combined company will generate significant levels of free cash
10 flows (that I detail later in my testimony) and the merger provides *increased cash flows*
11 because of the expected synergies compared with the cash flows that might have been
12 available to Qwest in Arizona if the merger were not to occur. Staff witness Genung
13 provides commentary about the sources of synergy savings in her testimony, and does not
14 suggest that the targets are unrealistic.²² The post-merger company, therefore, clearly
15 will have the financial resources necessary to fund network investments in Arizona.
16

17 **Q. What is RUCO witness Mr. Rigsby’s assessment of the proposed Transaction?**

²¹ RUCO witness Mr. Rigsby reinforces this point when he states, “Although CenturyLink would be taking on Qwest’s additional long-term debt, the combined entity would have improved cash flow of \$7.8 billion versus CenturyLink’s \$3.5 billion in cash flow based on CenturyLink’s adjusted 2009 income statement figures – a point cited earlier by analysts with Bank of America/Merrill Lynch.” RUCO, Rigsby, p. 23, line 20 through p. 24, line 3.

²² Staff, Genung, p. 25, lines 1-17.

1 A. Mr. Rigsby recommends that the Commission should approve the proposed Transaction
2 provided that no integration or acquisition costs are passed on to Arizona ratepayers.²³

3 Mr. Rigsby provides a balanced, substantive view of the merger when he testifies that
4 RUCO's . . .

5 "recommendation is based on my belief that the Proposed Merger should result in
6 a combined entity which will be financially stronger, be able to mitigate the
7 effects of land-line losses, and be able to provide additional and improved
8 telecommunications products and services to Qwest's Arizona ratepayers. As
9 discussed in further detail, I find the Proposed Merger results in the merged
10 company having a better balanced capital structure and an improved cash flow.
11 Furthermore, the CEO and CFO of CenturyLink have established track records of
12 conservative financial policies."²⁴
13

14 Mr. Rigsby, therefore, highlights three fundamental financial benefits resulting from the
15 proposed Transaction, which are that the combined company will have (i) a better
16 balanced capital structure than Qwest (as also explained by Staff witness Mr. Chaves),
17 (ii) improved operating focus, including enhanced cash flows and the potential for
18 mitigated line losses versus Qwest on a standalone basis (as explained separately by Staff
19 witness Ms. Genung), and (iii) sound leadership with "established track records of
20 conservative financial policies."²⁵ I believe that Mr. Rigsby has captured important
21 benefits for Arizona flowing from the Transaction, and I would add only that the post-
22 merger company will have new operating capabilities in combining the Qwest assets with
23 those of CenturyLink. As such, the RUCO witness provides additional support for core
24 financial benefits arising from the combination of Qwest and CenturyLink.

²³ RUCO, Rigsby, p. 4, lines 29-31.

²⁴ RUCO, Rigsby, p. 5, lines 1-9.

²⁵ Staff, Genung, p. 8, lines 16-18.

1 **Q. How does RUCO witness Mr. Rigsby analyze the proposed merger?**

2 A. Mr. Rigsby begins by summarizing the published comments of the independent financial
3 community, including financial analysts who track the public equity markets and the
4 credit analysts who track the public debt markets. Mr. Rigsby's summaries of the
5 analysts' commentaries appear fair and accurate. Mr. Rigsby's analysis adds a theme that
6 is important, as he reports that Bank of America/Merrill Lynch credit analysts Kevin
7 Christiano and Connie Chan stated, according to Mr. Rigsby, that "bondholders should be
8 comforted by the fact that both CenturyLink's Glen Post and Stewart Ewing will be the
9 respective CEO and CFO of the merged company. According to the analysts, both
10 CenturyLink executives have a long track record of pursuing conservative financial
11 policies."²⁶ Mr. Rigsby points throughout his testimony to this important insight—that
12 CenturyLink's leadership is proven and its policies are consistently conservative in
13 managing financial risk. In CenturyLink's opinion, this history is substantive evidence
14 about the Company's capabilities and good judgment in providing customer-centric
15 service while maintaining a sound financial profile.

16
17 **Q. Does RUCO witness Mr. Rigsby point to other CenturyLink capabilities that he**
18 **considers important?**

19 A. Yes. Mr. Rigsby points to CenturyLink's success in competing for customers, including
20 its success in reducing access line losses:

²⁶ RUCO, Rigsby, p. 12, lines 18-21.

1 "CenturyLink's response [regarding its success in the most urban of the former
2 Embarq areas] is consistent with opinions expressed in Value Line's quarterly
3 update of the telecommunications utility industry in which analyst Mary Beth
4 Wiedenkiller observed that 'lines losses have abated somewhat of late, likely
5 thanks to aggressive pricing and bundling options, particularly those that
6 incorporate Internet and TV programming.' Ms. Wiedenkiller went on to say that
7 by diversifying service network areas and offerings, many companies in the
8 telecommunications utility group have been able to generate handsome cash flows
9 ..."²⁷
10

11 Mr. Rigsby continues in a later section of his testimony to make a similar point, when he
12 quotes another Value Line analyst, Justin Hellman, who "went on to say that the merged
13 entity will probably be better positioned to offset the declining access line situation noted
14 above by offering competitive video and high-speed Internet services."²⁸ CenturyLink
15 believes that its success in competing for customers, to which Mr. Rigsby and the
16 analysts point, is a sign of the Company's focus on meeting the needs of its customers,
17 which is entirely consistent with the public interest.
18

19 **Q. What does RUCO witness Mr. Rigsby conclude as a result of his review of**
20 **independent financial analysts' commentary regarding the proposed Transaction?**

21 **A.** Mr. Rigsby concludes that the "majority of professional securities analysts [he] reviewed
22 expressed neutral to positive recommendations on the Proposed Merger."²⁹ CenturyLink
23 believes that the opinions of professional independent analysts, while still opinions,
24 provide an important sanity check about the financial logic of a company's decisions.

²⁷ RUCO, Rigsby, p. 13, line 21 through p. 14, line 6, citing The Value Line Investment Survey, quarterly update of CenturyLink dated June 25, 2010.

²⁸ RUCO, Rigsby, p. 16, lines 9-12.

²⁹ RUCO, Rigsby, p. 16, lines 3-5.

1 And, that financial logic generally is based on the longer-term strategic positioning of the
2 company in serving customers. In addition, Mr. Rigsby affirms that the Joint Applicants'
3 shareholders "overwhelmingly voted to approve the Proposed Merger"³⁰—reinforcing the
4 public equity market's positive view of the Transaction—and that other state regulators
5 already have approved the Transaction.³¹ Thus, Mr. Rigsby provides additional data that
6 affirm the benefits that are expected to result from the proposed Transaction.

7
8 **Q. Did RUCO witness Mr. Rigsby perform an independent financial analysis of the**
9 **proposed Transaction?**

10 A. Yes. My Rigsby stated that he performed his own financial analysis of the merger as a
11 "reasonable sanity check on the projections presented by CenturyLink."³² After
12 explaining that his independent estimates of CenturyLink forward-looking EBITDA were
13 higher than those estimated by CenturyLink and his estimates of the projected Qwest
14 results were lower than those provided for Qwest, Mr. Rigsby summarizes his conclusion
15 from his independent financial analysis:

16 "I believe that the combined entity, resulting from the Proposed Merger, would
17 have an improved financial status which would have the ability to attract capital
18 on fair and reasonable terms and have the financial ability to provide safe,
19 reasonable and adequate service."³³
20

21 **Q. What is RUCO witness Mr. Rigsby's final recommendation?**

³⁰ RUCO, Rigsby, p. 15, lines 17-20.

³¹ RUCO, Rigsby, p. 15, lines 20-23.

³² RUCO, Rigsby, p. 18, line 30 through p. 31, line 2.

³³ RUCO, Rigsby, p. 22, lines 5-9.

1 A. As summarized above, Mr. Rigsby recommends that the "Commission approve the
2 Proposed Merger on the condition that Qwest's Arizona ratepayers be shielded from any
3 integration/acquisition costs that the combined entity may attempt to pass on to them."³⁴

4 As noted in CenturyLink's discovery responses, the one-time transaction costs incurred
5 by CenturyLink associated with the merger are recorded at the parent company level and
6 are not allocated to operating subsidiaries. The proper treatment of integration costs
7 should be determined under the applicable laws or regulations, as appropriate, not as a
8 condition to the approval of the transaction.

9
10 **III. CENTURYLINK'S RESPONSES TO CERTAIN OF STAFF'S PROPOSED**
11 **CONDITIONS FOR APPROVAL.**

12 **Q. Please respond to Staff proposed Condition 1 that requires that the merged**
13 **company will not recover any one-time transfer, branding, or any merger or**
14 **transaction-related costs through any rates or fees charged to retail or wholesale**
15 **customers.**³⁵

16 A. As noted in CenturyLink's discovery responses, the one-time transaction costs incurred
17 by CenturyLink associated with the merger are recorded at the parent company level and
18 are not allocated to operating subsidiaries. The proper treatment of integration costs
19 should be determined under the applicable laws or regulations, as appropriate, not as a
20 condition to the approval of the transaction.

³⁴ RUCO, Rigsby, p. 24, lines 19-22.

³⁵ Staff, Fimbres, p. 28, lines 6-10.

1 **Q. Please respond to Staff proposed Condition 2 that requires the post-merger**
2 **Company to provide the Commission with access to all books of account, all**
3 **documents, data, and records that pertain to the proposed merger.**³⁶

4 **A.** CenturyLink will continue to abide by all current rules and regulations regarding access
5 to books of account, as well as all Qwest and CenturyLink agreements that remain in
6 force as of closing. However, to grant access to “all documents, data and records that
7 pertain to the proposed merger”—as the Staff suggests in Condition 2—is overly broad,
8 potentially intrusive, and could generate costs that would unfairly burden the combined
9 company relative to its competitors. CenturyLink objects to the expansive language in
10 Staff’s Condition 2, which is proposed without evidence that it will mitigate any defined
11 harm.

12
13 **Q. Please respond to Staff proposed Condition 3 regarding the Commission’s right to**
14 **“review, for reasonableness, all financial aspects of this transaction at any time and**
15 **in any rate proceeding or earnings review, regardless of the form of regulation.”**³⁷

16 **A.** CenturyLink recognizes that the Commission and the Staff have the right to evaluate how
17 the financial aspects of this Transaction affect rate proceedings or earnings’ reviews.
18 CenturyLink does not agree that there is evidence of the need for such a condition as part
19 of this merger review proceeding. As such, CenturyLink will agree to discuss with the
20 Commission and the Staff those matters in any rate proceedings or earnings reviews, and

³⁶ Staff, Fimbres, p. 28, lines 11-13.

³⁷ Staff, Fimbres, p. 28, lines 14-16.

1 the Company respects the Commission's rights to seek pertinent financial information in
2 such review processes.

3
4 **Q. Please respond to the Staff proposed Condition 8 that requires the Company to**
5 **maintain books and records in accordance with the Uniform System of Accounts**
6 **("USOC").³⁸**

7 **A.** CenturyLink has complied with, and intends to comply with, all applicable rules and
8 regulations regarding its books and records. As such, Staff Condition 8 does not appear
9 necessary.

10
11 **Q. Please respond to Staff proposed Condition 10 that requires the post-merger**
12 **company to provide the Commission access to books and records as part of the**
13 **Commission's responsibility for ensuring just and reasonable rates.³⁹**

14 **A.** CenturyLink will continue to abide by all current rules and regulations regarding access
15 to books and records, as well as all Qwest and CenturyLink agreements that remain in
16 force as of closing.

17
18 **Q. Please respond to Staff proposed Condition 13 that requires that the post-merger**
19 **company will not file for funding from the Arizona Universal Service Fund**
20 **("AUSF").⁴⁰**

³⁸ Staff, Fimbres, p. 28, lines 34-36.

³⁹ Staff, Fimbres, p. 29, lines 6-9.

1 A. CenturyLink objects to Condition 13, as the Company believes that the AUSF is intended
2 to provide support for investment that benefits customers in high-cost areas. The
3 Company believes that it should not forfeit the potential for such funding as it could
4 prove harmful to customers whose rights to telecommunications services are protected by
5 such a program. CenturyLink will comply with all rules and regulations of the
6 Commission, but seeks to protect its customers against decisions or conditions that could
7 create harm in this merger process. Through proposed Condition 13, Staff is seeking, as
8 a result of this merger review, to change what is defined today under Commission
9 decision and rules, without asking the Commission to engage in a properly conducted
10 rulemaking proceeding. Without addressing the intent of the combined company to file
11 for AUSF funding in the future, CenturyLink believes that such a condition in the context
12 of this transaction review proceeding is highly inappropriate.

13
14 **Q. Please respond to Staff proposed Condition 34 that requires notification of the**
15 **Commission if the post-merger company's equity-to-total capital ratio is below 40**
16 **percent.⁴¹**

17 A. CenturyLink objects to Staff's proposed Condition 34 as such a requirement is not
18 imposed on Qwest or other Arizona communications companies at the present. Further,
19 Mr. Chaves provides no specific support for the 40% percent threshold. Based on Table
20 2 of his testimony, eight out of the 12 common equity ratios for the companies shown are

⁴⁰ Staff, Fimbres, p. 29, lines 16-17.

⁴¹ Staff, Fimbres, p. 32, lines 15-19.

1 below 40%, including Verizon Communications.⁴² The proposed condition does not
2 protect against any potential merger-related harm, as the merged company expects to
3 have an *improved* capital structure, which was confirmed by Staff witness Mr. Chaves
4 and RUCO witness Mr. Rigsby.

5
6 **Q. Please respond to Staff proposed Condition 35 that requires notification of the**
7 **Commission related to specific financial events.**⁴³

8 A. Staff Condition 35 requires that, within 30 days from filing its Form 10-Q or 10-K, the
9 merged company will report if any of several financial events occur: 1) default on any
10 CenturyLink loan or any loan of the Company's Arizona subsidiaries; 2) a delisting of
11 CenturyLink from trading on a major trading exchange; and 3) the assignment of a non-
12 investment grade credit rating by Fitch Ratings, Standard and Poor's or Moody's Investor
13 Services or their successors to CenturyLink or its Arizona subsidiaries. The proposed
14 condition adds a "requirement" that the Company will "utilize [its] access to the capital
15 markets provided through [the] parent company as necessary and appropriate to maintain
16 an adequate capital structure and to provide funds for capital and operational needs."
17 CenturyLink believes that the Condition is unnecessary, including the provision
18 regarding maintaining an adequate capital structure. The occurrence of any of identified
19 "events" would be publicly available information. CenturyLink's current financial

⁴² Staff, Chaves, p. 5, Table 2.

⁴³ Staff, Fimbres, p. 32, lines 20-30.

1 strength and historic commitment to maintaining a conservative balance sheet should
2 provide assurance to the Commission and put aside unwarranted concerns and reporting.
3

4 **Q. Please respond to Staff proposed Condition 36 that prohibits CenturyLink from**
5 **recovering “any acquisition adjustment.”⁴⁴**

6 A. CenturyLink objects to the proposed condition, as it is my understanding that the
7 treatment of “any acquisition adjustment” is a ratemaking issue and is not appropriately
8 addressed in a merger review proceeding but instead in a future proceeding based on then
9 applicable laws and regulations.
10

11 **Q. Please respond to Staff proposed Condition 38 that proposes that CenturyLink will**
12 **report on synergy savings on an annual basis.⁴⁵**

13 A. CenturyLink notes that such reporting is very difficult to track as the Company does not
14 have specific systems for verifying and reporting on a semi-annual basis “[c]osts and
15 projected savings associated with each respective activity on a Merged Company total
16 company basis; . . . [c]onsolidation and organizational changes to network operations and
17 staffing levels in the Arizona operations; . . . [and i]mpacts on Arizona operations and
18 customers.”⁴⁶ Not only is the condition vague and overly broad (e.g., “impacts on
19 Arizona operations and customers”), but, as time passes, it will become increasingly
20 difficult to discern what is a merger-related synergy and what is an ongoing business

⁴⁴ Staff, Fimbres, p. 32, line 31.

⁴⁵ Staff, Fimbres, p. 33, lines 3-8.

⁴⁶ Staff, Fimbres, p. 33, lines 5-8.

1 decision. Finally and possibly more fundamental, proposed Condition 38 does not
2 protect against any defined potential harm to Arizona or Arizona customers. If the
3 proposed condition is somehow related to concerns regarding service quality, there are
4 service quality standards and reporting requirements that provide more direct and helpful
5 information to the Commission. As such, Staff's proposed Condition 38 is unnecessary
6 and should not be adopted by the Commission.

7
8 **Q. Please respond to Staff proposed Condition 43 that sets out terms for reporting any**
9 **material changes to the Transaction's terms or conditions.⁴⁷**

10 A. Based on its past experience, CenturyLink does not anticipate any material changes to the
11 Transaction's terms and conditions, however, CenturyLink will notify the Commission if
12 there are any material changes.

13
14 **Q. Please respond to Staff proposed Condition 46 that requires the post-merger**
15 **company to report certain operating statistics annually during the first three years**
16 **after the close.⁴⁸**

17 A. CenturyLink objects to Staff proposed Condition 46 that creates new and unnecessary
18 reporting requirements that are not imposed on Qwest at the present or on other
19 communications companies operating in the state. First, there is no defined harm against
20 which the proposed condition protects. Second, the costs associated with such a

⁴⁷ Staff, Fimbres, p. 33, lines 36-39.

⁴⁸ Staff, Fimbres, p. 34, lines 7-15.

1 condition are unnecessary and potentially harmful to customers through the diversion of
2 resources and the potential to force expense, investment and employees to deployed
3 formulaically rather than based on identified need. Third, the Commission has service
4 quality metrics to ensure customers' needs are met satisfactorily, and those metrics
5 capture the most important information about whether a carrier is failing to maintain the
6 appropriate staffing levels or network plant investment. Fourth, the metrics proposed by
7 the Staff—Operating Expense per 1,000 Working Access Lines, Annual Investment per
8 1,000 Working Access Lines, and Full-Time Equivalent Employees per 1,000 Working
9 Access Lines ratios by Wire Center—focus the Commission on attempting to
10 micromanage the Company, which is a waste of the Commission's limited time and
11 resources as well as Company management's time and money. As such, the Commission
12 should reject Staff's proposed Condition 46.

13
14 **IV. PERSPECTIVES ON USE OF THE RISK FACTORS SECTION OF THE**
15 **FORM S-4 IN THIS PROCEEDING.**

16 **Q. Several of the intervenor witnesses cite the SEC Form S-4 that CenturyLink filed on**
17 **July 16, 2010, noting the "Risk Factors" associated with the Transaction as reasons**
18 **to be concerned. Can you respond?**

19 **A. Yes. Obviously, there are numerous benefits associated with the Transaction, which also**
20 **are detailed in the CenturyLink S-4 and in the CenturyLink and Qwest testimonies in this**
21 **proceeding. Certain intervenor witnesses highlight the recitation of Risk Factors as if**

1 CenturyLink is suggesting some degree of probability that OSS systems will be changed
2 or that integrations or other risks noted are *likely* problems.⁴⁹ It is important to
3 understand the purpose of the "Risk Factors" section in SEC filings by companies with
4 publicly-traded securities. These items are mentioned as a matter of full disclosure of
5 any and all risks to shareholders, as would be included in any public company's SEC
6 Form S-4 or annual Form 10-K. As described, these "Risk Factors" represent general
7 recitals of risks of which companies and the public are generally well aware. The
8 disclosure of risk factors provides legal protection to investors and to a company whose
9 securities are publicly-traded; but the disclosures are not intended to suggest that the
10 risks are likely outcomes. As noted previously and affirmed in the testimony of RUCO
11 witness Mr. Rigsby, CenturyLink has a long history of successfully executing ILEC
12 transactions, a fact that underscores that the Company fully understands the importance
13 of the customer, and is capable of managing operating risks, and delivering superior
14 service through these types of combinations.⁵⁰ In summary, there is no evidence that
15 failures or problems such as those recited in the "Risk Factors" have occurred in past
16 CenturyLink transactions, and CenturyLink believes there is little likelihood that those
17 types of problems will occur in the proposed Transaction. I also believe that, if undue
18 emphasis were placed upon the risk factors, mergers and financings for new investment
19 likely would never occur. As noted earlier, despite the cited risk factors, recently the
20 shareholders of CenturyLink and Qwest overwhelmingly approved the proposed

⁴⁹ Joint CLECs, Ankum, p. 52, line 25- page 53, line 3; Dr. Ankum cites risks related to expenses to argue that CenturyLink "has put CLECs on notice to expect changes."

⁵⁰ RUCO, Rigsby, p. 5, lines 7-9; p. 12, lines 18-21; p. 17, lines 13-14; p. 22, lines 14-21.

1 transaction because they concluded that the likely benefits of the proposed merger
2 outweighed the potential risks.

3
4 **Q. Are all of the S-4 Risk Factors the result of the proposed Transaction?**

5 A. No. In fact, the S-4 operating risks cited include those that are industry-related as well as
6 transaction-related. CenturyLink and Qwest will face many of the risks with or without
7 the merger, that is, the companies may not be able to retain key employees; access line
8 losses could lead to financial pressures; competitive pressures could intensify;
9 technology changes could put the company at risk; the industry is undergoing change and
10 the company cannot assure that its diversifications will be successful; the company may
11 not be able to grow through future acquisitions; in the future, the relationship with other
12 key communications companies may be at risk; and network disruptions could harm
13 performance. If one considers many of the risks in the S-4, it is apparent that these are
14 general disclosures of what might go wrong in any business in the telecommunications
15 industry, and the merger-related items are potential costs which are typical in any
16 combination, against which the thoughtful investor or observer or manager will weigh
17 the potential benefits associated with greater efficiencies and capabilities. When
18 CenturyLink operates its business or engages in acquisitions, the Company works to
19 identify any and all risks. Then, the Company focuses on evaluating those risks and
20 determining whether they can be managed adequately. To point to the Risk Factor
21 discussion in the S-4 filing does not provide any evidence that the intervenors or Staff

1 have assessed the risks in any detail. The Joint Applicants' boards of directors,
2 management and investors believe that the risks are manageable and there is a net benefit
3 to the Company's core operations—serving the customer base—in moving forward with
4 the proposed Transaction.

5
6 **V. THE CLECS' RECOMMENDATION THAT CENTURYLINK AND**
7 **QWEST SHOULD BE REQUIRED TO SHARE SYNERGY SAVINGS**
8 **WITH WHOLESALE CUSTOMERS IN ARIZONA.**

9 **Q. Please respond to the intervenor witnesses who argue that the Commission should**
10 **require sharing of the financial benefits of the merger?**

11 A. Dr. Ankum and Mr. Gates, on behalf of the Joint CLECs, each argue that wholesale
12 customers should "share" in the financial benefits that flow from the merger. Dr. Ankum
13 testifies: "And without a concrete commitment that allows CLECs to *rightfully share in*
14 *the cost-savings* the combined company achieves, this will be very low on CenturyLink's
15 priority list post-transaction."⁵¹ [Emphasis added.] Mr. Gates argues that "CenturyLink
16 should not be permitted to keep all of the benefits of increased economies and
17 efficiencies for itself."⁵² As such, the intervenor witnesses are not satisfied that the
18 Commission should find "no harm" or more general benefits if such a requirement is

⁵¹Joint CLECs, Ankum, p. 66, lines 7-10.

⁵²Joint CLECs, Gates, p.110 lines 12-14; Mr. Gates footnotes the concept, citing to the FCC's *Local Competition Order* ("Order") from 1996, ¶11, and his footnote selectively states "...the local competition provisions of the Act require that these economies be shared with entrants." In reality, the Order's paragraph concerns setting initial rules based on "economies of density, connectivity, and scale [that have] traditionally . . . been viewed as creating a natural monopoly." Nowhere does the FCC's Order suggest that there should be a sharing of economic benefits resulting from a merger.

1 appropriate in Arizona. The Joint CLEC intervenors contend that the Commission should
2 make approval of the transfer of control contingent on competitive and wholesale carriers
3 being direct financial beneficiaries of the Transaction. CenturyLink believes that the
4 Company should be subject to the same regulations and agreements that are currently in
5 force, but should not be obligated to make additional financial concessions that protect
6 against no probable harms. In fact, there are more appropriate venues for resolving
7 appropriate rates or enforcing negotiated agreements, and CenturyLink suggests that a
8 merger proceeding is not the forum to alter rules, regulations or contractual terms.

9
10 **Q. Please provide more explanation about your response to the intervenor witnesses'**
11 **argument that the merged company should "share" directly with wholesale**
12 **customers the financial benefits that flow from the proposed Transaction.**

13 **A.** CenturyLink believes that the intervenor witnesses have no right to claim a financial
14 share of the efficiencies or other benefits. First, CenturyLink believes that the
15 Commission is evaluating this Transaction to determine whether the merger results in "no
16 harm," or possibly in some benefits to Arizona, in part as measured by the merged
17 company's financial capabilities. Both Staff witness Mr. Chaves and RUCO witness Mr.
18 Rigsby affirm the positive financial benefits of the combination, without reference to any
19 need for financial "sharing" with the Joint CLECs. In fact, Mr. Chaves and Mr. Rigsby
20 focus on the improved capital structure and the capacity to create a stronger service
21 provider, but without reference to "shared" financial benefits. Second, the intervenors

1 here are recommending the redirection of cash flows to narrowly benefit CLECs and
2 other wholesale customers, in spite of the fact that wholesale-specific synergies are
3 estimated to be only approximately 2% of the entire synergy savings. Third,
4 CenturyLink and Qwest are committed to goals that are the same as those of the
5 Commission—achieving financial flexibility to respond to customers and market
6 conditions—through improved balance sheet characteristics, network investment, more
7 compelling service offerings, or some combination of these or other benefits. Requiring
8 that retail or wholesale customers should “share” directly in the cost savings that are to be
9 realized through the merger would undercut the combined company’s ability to respond
10 to a challenging industry and the Company’s efforts to strengthen the merged entity’s
11 financial position. Importantly, the Joint Applicants have made a commitment to merge,
12 to bear the integration risk, and to create a stronger service provider for the benefit of all
13 Arizona customers. On the contrary, the Joint CLECs are not putting any capital at risk
14 as part of the proposed Transaction, are not incurring any of the transaction costs, and are
15 not taking any of the risks to create a stronger service provider for Arizona. As such,
16 there is no rational basis for directing a dedicated new financial benefit from the
17 Transaction to wholesale and CLEC customers.

18
19 **VI. THE CLAIM THAT THE TRANSACTION IS SIMILAR TO CERTAIN**
20 **PREVIOUS PROBLEMATIC ILEC MERGERS, INCLUDING THOSE IN**

1 **WHICH THERE WERE FUNDAMENTAL FLAWS THAT LED TO**
2 **BANKRUPTCIES.**

3 **Q. Please respond to the concerns raised by several intervenors that the proposed**
4 **transaction might be similar to the Hawaiian Telcom, Inc. ("Hawaiian Telcom") and**
5 **FairPoint Communications, Inc. ("FairPoint") mergers, which eventually resulted**
6 **in bankruptcies.**

7 **A. Several intervenors, including Joint CLEC witnesses Mr. Gates and Dr. Ankum, and**
8 **DOD witness Mr. King, describe the failure of The Carlyle Group's ("Carlyle's")**
9 **purchase of Hawaiian Telcom and the similar problems in the FairPoint acquisition of**
10 **Verizon Communications Inc.'s ("Verizon") wireline operations in Maine, New**
11 **Hampshire, and Vermont, but they fail to analyze with appropriate diligence or present**
12 **facts regarding whether similar problems are likely in the instant Transaction.⁵³ Dr.**
13 **Ankum and Mr. Gates summarily conclude that "ILEC local telephone operations carry a**
14 **high degree of risk of failure" and the "integration of two companies' disparate**
15 **operations and OSS can pose a tremendous challenge."⁵⁴ Dr. Ankum proposes two**
16 **additional unsupported conclusions, which are that, "company management tends to**
17 **overstate the anticipated benefits and understate the risks and uncertainties," and that**
18 **"integration of a Bell Operating Company's ILEC operation can prove to be extremely**
19 **expensive and difficult, and integration failures can be so costly as to not only eliminate**
20 **the forecasted transaction cost savings and other synergies, but to place the post-**

⁵³ Joint CLECs, Gates, pp. 87-103; Joint CLECs, Ankum, pp. 27-38; DOD, King, pp. 4-11.

⁵⁴ Joint CLECs, Gates, p. 100, lines 1-9; Joint CLECs, Ankum, p. 37, lines 24-25.

1 transaction company under severe financial pressure.”⁵⁵ All of these testimonies focus on
2 speculation about what the witnesses think “can” happen, but provide no substantive
3 evidence relevant to the current Transaction to indicate that the problems related to the
4 Hawaiian Telcom and FairPoint combinations will or are likely to happen in this
5 Transaction.

6
7 **Q. Please elaborate on your comment that the intervenor witnesses failed to analyze**
8 **diligently the problems in the Hawaiian Telcom and FairPoint Mergers and**
9 **compare those transactions with the facts in the proposed transaction.**

10 A. First, Dr. Ankum and Mr. Gates focus on only two ILEC-to-ILEC transactions, in spite of
11 the fact that there have been a large number of successful transactions combining ILEC
12 operations—involving independent operations, properties sold by Regional Bell
13 Operating Companies (“RBOCs”), and combinations of RBOCs—over the last decade
14 and indeed well before that time.⁵⁶ In addition to several smaller transactions,
15 CenturyLink successfully has acquired and integrated Verizon-owned properties that
16 totaled nearly 2 million access lines in Wisconsin, Missouri, Arkansas, and Alabama
17 since the year 2000, and has been integrating Embarq over the last year. Windstream

⁵⁵ Joint CLECs, Ankum, p. 38, lines 5-9.

⁵⁶ Dr. Ankum testifies vaguely that “most mergers are not successful.” See Joint CLECs, Ankum, p. 10, line 9. It might be assumed that he is referring to mergers outside the ILEC industry, but his testimony provides no data or references to verify the statement about “most mergers.” Dr. Ankum does cite in general terms several other mergers but they did not involve two ILECs combining their businesses; i.e., the combination of MCI and WorldCom (Joint CLECs, Ankum, p. 10, lines 16-22), and Qwest and US West (Joint CLECs, Ankum, p. 26, lines 15 ff.); and he makes passing reference without specifics to the combinations of SBC and BellSouth, as well as SBC and Ameritech. Dr. Ankum also alleges that Frontier is having “cut-over problems with backoffice and OSS systems reminiscent of the prior two transactions [Hawaiian Telcom and FairPoint]” but the source cited in his footnote is only a Fact Sheet from Frontier, announcing the transaction (see p. 28, footnote 33).

1 Corporation (“Windstream”) successfully acquired Verizon properties (about 600,000
2 lines) in Kentucky in 2002. I know of no “failed” ILEC-to-ILEC mergers except the two
3 cited by the intervenor witnesses. Second, CenturyLink believes that the Hawaiian
4 Telcom and FairPoint transactions are distinguishable from virtually every other ILEC-
5 to-ILEC transaction in terms of the specific problem that precipitated those companies’
6 financial failure. That is, in both of those transactions, the acquiring companies were
7 required to *create entirely new OSS* and then to cut over (“flash cut”) the acquired
8 carrier’s services to those newly-created OSS. Dr. Ankum and Mr. Gates both
9 acknowledge that every one of the state commissions that reviewed those two
10 transactions—in Hawaii, Vermont, Maine, and New Hampshire—trace the financial and
11 service problems to those specific OSS challenges, which then led to financial distress.⁵⁷
12 I reiterate that I know of no other “failed” ILEC combinations besides Hawaiian Telcom
13 and FairPoint, and, in those two cases, the root problem, according to Mr. Gates and Dr.
14 Ankum themselves and according to the respective commissions, was the inability to
15 develop and implement entirely new OSS to replace the legacy Verizon OSS. In contrast,
16 the current Transaction does not force the Company to create and implement entirely new
17 OSS.

⁵⁷ See, for example, Joint CLECs, Gates, p. 89, line 10 through p. 100, line 15; Joint CLECs, Ankum, p. 34, line 2 through p. 35, line 25.

1 **Q. Can you be more specific about the distinguishing characteristics between the**
2 **proposed transaction on the one hand and the FairPoint-Verizon and the Hawaiian**
3 **Telcom acquisitions on the other?**

4 **A.** Yes. The proposed Transaction does not at all resemble the FairPoint-Verizon
5 transaction or the Hawaii divestiture. The proposed Transaction is a stock-for-stock
6 merger with no incremental debt. All Qwest systems, including the back-office systems
7 (OSS), and all personnel will transfer to CenturyLink as part of the merger. These factors
8 eliminate important risks that apparently proved highly detrimental in the cases of the
9 two cited bankruptcies.

10
11 Turning to the specific problems that led to the bankruptcies cited by the intervenors,
12 both Carlyle, which acquired Hawaiian Telcom, and FairPoint were required to build “de
13 novo” the back-office software (i.e., OSS) that manages key operational functions. Those
14 systems support order-taking, provisioning those orders through the company’s systems,
15 billing, maintenance and repair. However, as has been well-reported, the newly-
16 developed Hawaiian Telcom and FairPoint systems performed poorly due to design and
17 integration flaws, which resulted in a loss of customers and related financial problems. I
18 emphasize that those significant financial commitments made by Carlyle and FairPoint
19 are not required in the proposed Transaction because CenturyLink and Qwest have well-
20 established, fully operational and tested systems. The financial reports issued by
21 Hawaiian Telcom and FairPoint further point to the *substantial* costs required in

1 developing (and then fixing) newly-developed, but ineffective, systems. In its 2007 Form
2 10-K filing with the Securities and Exchange Commission ("SEC"), Hawaiian Telcom
3 reported that it initially had engaged BearingPoint, Inc. ("BearingPoint") to build the
4 back-office and information technology ("IT") infrastructure. According to the SEC
5 filing, the back-office and IT systems then required "substantial investments" when
6 BearingPoint failed to perform.⁵⁸ And, in its 2008 Form 10-K filing, Hawaiian Telcom
7 explained that the failure of the back-office systems "led to deficiencies in billings and
8 collections, revenue assurance, and order entry flow-through," which adversely affected
9 its business.⁵⁹ FairPoint's investment in systems development was originally estimated to
10 be \$200 million.⁶⁰ FairPoint also reported the high costs to remediate its failed systems:
11 "In addition to the significant incremental expenses we incurred as a result of these

⁵⁸ 2007 10-K for the fiscal year ended December 31, 2007, Hawaiian Telcom Communications, Inc, available at http://www.sec.gov/Archives/edgar/data/1349120/000110465908020904/a08-2974_110k.htm, p. 7. Hawaiian Telcom described in the 10-K at p. 12 the eventual settlement that provides a sense of the magnitude of back-office systems cost: "Effective as of February 6, 2007, we reached a mutual agreement with BearingPoint that was memorialized in a Settlement Agreement and Transition Agreement. Under the Settlement Agreement, BearingPoint paid to us the aggregate amount of \$52.0 million (the "Settlement Payment") on March 27, 2007 and agreed to discharge previously-submitted invoices in an aggregate amount of approximately \$29.6 million as well as other amounts otherwise payable to BearingPoint. The total benefit to us under the settlement includes the cash Settlement Payment and a reduction in accounts payable (\$38.6 million at February 6, 2007, including certain accrued costs) associated with reversing amounts accrued under our agreement with BearingPoint. For the year ended December 31, 2006, we recorded a recovery contractually due under our agreement with BearingPoint amounting to \$24.1 million. The remaining settlement consideration was recognized in the first quarter of 2007."

⁵⁹ Hawaiian Telcom 2008 10-K, p. 12; "This [failure of the back-office systems] led to deficiencies in billings and collections, revenue assurance, and order entry flow-through. Despite BearingPoint's efforts to improve the functionality of the related systems, we continued to experience many of these same issues, requiring us to incur significant incremental expenses in 2006 to retain third-party service providers to provide call center and manual processing services in order to operate our business. To help remediate deficiencies, we also engaged the services of Accenture, which has expertise in telecommunications back-office software systems and processes. In addition to the third-party costs, we incurred additional internal labor costs in the form of overtime pay. As a result, we engaged in discussions with BearingPoint seeking reimbursement of the aforementioned costs and compensation for damages arising from failures to deliver promised services in a timely manner."

⁶⁰ "FairPoint Communications, January 16, 2008," p. 8; transcript of investor call available at http://www.sec.gov/Archives/edgar/data/1062613/000110465907003517/a07-1924_2ex99d1.htm; see, especially, p. 5.

1 cutover issues, we have been unable to fully implement our operating plan for 2009 and
2 effectively compete in the marketplace”⁶¹ Although, to my knowledge, neither
3 FairPoint nor Hawaiian Telcom reported the full extent of the costs associated with lost
4 customers, the companies have made clear that the losses were significant.⁶²

5
6 I note that, to my knowledge, in all other ILEC transactions where there has not been the
7 need to create new OSS—and there is no need in the proposed Transaction—there is a
8 long track record of successful integrations resulting in improved combined operations,
9 including numerous transactions involving CenturyLink. Had Dr. Ankum, Mr. Gates and

⁶¹ *Id.*

⁶² FairPoint Second Quarter 10-Q 2009, available at

<http://www.sec.gov/Archives/edgar/data/1062613/000104746909007239/a2193968z10-q.htm>,
p. 40: “Following the cutover [from Verizon’s systems to FairPoint’s in 2009], many of these [back-office] systems

functioned without significant problems, but a number of the key back-office systems, such as order entry, order management and billing, experienced certain functionality issues. As a result of these systems functionality issues, as well as work force inexperience on the new systems, we experienced increased handle time by customer service representatives for new orders, reduced levels of order flow-through across the systems, which caused delays in provisioning and installation, and delays in the processing of bill cycles and collection treatment efforts. These issues impacted customer satisfaction and resulted in large increases in customer call volumes into our customer service centers. While many of these issues were anticipated, the magnitude of difficulties experienced was beyond our expectations. . . . Because of these cutover issues, during the three months and six months ended June 30, 2009 we incurred \$8.6 million and \$28.0 million, respectively, of incremental expenses in order to operate our business, including third-party contractor costs and internal labor costs in the form of overtime pay. The cutover issues also required significant staff and senior management attention, diverting their focus from other efforts. We expect to continue to incur a modest amount of incremental costs during the third quarter of 2009 as we fully complete our cutover restoration efforts. In addition to the significant incremental expenses we incurred as a result of these cutover issues, we have been unable to fully implement our operating plan for 2009 and effectively compete in the marketplace, which we believe is having an adverse effect on our business, financial condition, results of operations and liquidity, as well as our ability to continue to comply with the financial covenants in our credit agreement.”

See, also, Hawaiian Telcom 2008 10-K, p. 15: “In addition to the significant expenses we have incurred, because we do not have fully functional back-office and IT systems, we have been unable to fully implement our business strategy and effectively compete in the marketplace, which has had an adverse effect on our business and results of operations. While we are continuing to work to improve the functionality of our systems and we have seen improvement, there is no certainty that these activities will be successful or when we will achieve the desired level of functionality. Until we are able to achieve this level of functionality, our lack of critical back-office and IT infrastructure will negatively impact our ability to operate as a stand-alone provider of telecommunication services, and will have an adverse effect on our business and operations.” See also, p. 18.

1 Mr. King looked beyond the two "failed" transactions upon which they selectively focus
2 their testimonies, they would have discovered that the ILEC industry in general, and
3 CenturyLink in particular, have a long history of successful transactional activity and that
4 ongoing industry consolidation is appropriate and positive as telecommunications
5 becomes a more intensely competitive industry.

6
7 **Q. Is there any risk in the proposed transaction similar to the risks that caused the**
8 **financial distress for Hawaiian Telcom and for FairPoint?**

9 A. No. The proposed Transaction does not include the risk associated with creating new
10 OSS or a "flash cut" to a different OSS on the day the merger is completed. I note that
11 CenturyLink has extensive experience in successfully "flash cutting" acquired operations
12 to its own OSS, as was the case in the acquisitions of the Verizon properties in
13 Wisconsin, Missouri, Arkansas, and Alabama over the last ten years. However, in the
14 proposed Transaction, no immediate cutover of systems is required nor are there new and
15 unproven systems that must be relied upon in the combination between CenturyLink and
16 Qwest. The proposed transaction is completely and fundamentally distinguishable from
17 the two merger-related ILEC failures. Immediately after the close of the proposed
18 Transaction, Qwest will operate using the same systems it currently has in place, and
19 CenturyLink will operate using its existing systems, with both OSS fully functioning and
20 staffed by operating personnel who have been managing those systems. If the affected
21 state commissions were correct in identifying the foundational problem in the two ILEC

1 “failures” (i.e., the need to develop and implement entirely new OSS “from scratch” to
2 replace the legacy Verizon systems), there clearly and definitively is no similar risk in the
3 current Transaction. The similarities between FairPoint and Hawaiian Telcom are very
4 clear, and the precipitating problem in those transactions is not a factor in executing the
5 proposed Transaction.
6

7 **Q. Please comment on the risks related to mergers that Mr. Gates and Dr. Ankum**
8 **outline as a result of their assessment of two ILEC bankruptcies.**

9 A. Mr. Gates and Dr. Ankum conclude from the problems of Hawaiian Telcom and
10 FairPoint that ILEC mergers in general bear a “high degree of risk of failure.”⁶³ This
11 claim is not accurate or balanced, as, to my knowledge; there have been two and only two
12 notable ILEC transactional failures in recent years. Mr. Gates cites that “the integration
13 of two companies’ disparate operations and OSS pose a tremendous challenge” which
14 can lead to elimination of synergies and “severe financial pressures.”⁶⁴ CenturyLink will
15 not be challenged to migrate or “integrate disparate systems” at the time the merger is
16 completed. CenturyLink reserves the right to improve its systems and integrate
17 operations (similar to the operating rights at any other carrier including Verizon or
18 AT&T), but there are no plans to effect a flash cut or transition at the consummation of
19 the merger or in the months that immediately follow. Dr. Ankum also generalizes that
20 “company management tends to overstate the anticipated benefits and understate the

⁶³ Joint CLECs, Gates, p. 100, lines 1-4; Joint CLECs, Ankum, p. 37, line 24 through p. 38 line 2.

⁶⁴ Joint CLECs, Gates, p. 100, lines 6-9; see also Joint CLECs, Ankum, p. 38, line 5-9.

1 risks.”⁶⁵ On the contrary, in CenturyLink’s past transactions, the Company generally has
2 made accurate assumptions, integrated operations successfully, generated new services
3 for customers, and achieved synergies at levels consistent with or in excess of
4 expectations going into the transactions. In addition, other proven ILEC acquirers, such
5 as Frontier Communications Corporation (“Frontier”) and Windstream frequently have
6 engaged in successful combinations that have achieved financial results that have
7 exceeded expectations. I know of no other ILEC-to-ILEC transaction over the last ten
8 years that can be characterized as overstating benefits and understating risks except in the
9 Hawaiian Telcom and FairPoint transactions. Mr. Gates and Dr. Ankum are speculating
10 about potential problems unique to two companies, but CenturyLink has provided
11 convincing evidence related to a proven and long history of its capabilities with respect to
12 acquisitions, high-quality services, and responsible management of local exchange
13 operations—none of which have resulted in failure. Finally, on a related point,
14 CenturyLink believes that its management team has significantly more experience in
15 operating telecommunications businesses and integrating acquisitions than the intervenor
16 witnesses. As such, the Commission should be wary of accepting the theoretical and
17 speculative assertions of the intervenor witnesses.

18
19 **Q. Can you address the “issues” that Mr. King raises in relation to the recently**
20 **consummated Frontier transaction?**⁶⁶

⁶⁵ Joint CLECs, Ankum, p. 38, lines 3-4.

⁶⁶ DOD, King, pp. 8-9.

1 A. Yes. Mr. King attempts to create concerns that the recently completed Frontier-Verizon
2 transaction may face difficulties similar to the Hawaiian Telcom and FairPoint
3 transactions (although Mr. King indicates that the Frontier transaction is “so recent” that
4 its performance “cannot yet be determined”). However, Mr. King can only cite to one
5 complaint proceeding involving a single CLEC—FiberNet—in one state as the basis for
6 concern that Frontier is experiencing systems problems in the fourteen states in which it
7 acquired Verizon operations. As Mr. King is aware, the West Virginia Public Service
8 Commission (“WVPSC”) found that FiberNet’s allegations were specific to FiberNet and
9 transferred FiberNet’s petition to a complaint proceeding for mediation. In its reply to
10 the FiberNet accusations, Frontier noted several facts. Most importantly, any problems
11 encountered by FiberNet with completing trouble tickets reported since closing have
12 stemmed mainly from issues that have nothing to do with Frontier’s OSS. The issues are
13 attributable to the network Frontier inherited, and they are being addressed. In fact, the
14 FiberNet trouble tickets in question were entered into Verizon’s system before closing on
15 July 1, 2010, but were left by Verizon for Frontier to resolve after close. Importantly, at
16 this time, no other CLECs have filed complaints or disputes against Frontier with the
17 WVPSC, and in any event, the filing of a single complaint does not equate to a showing
18 that there is a meaningful problem with Frontier’s transition efforts in West Virginia.

19
20 Finally, it is instructive to note Mr. King’s own testimony regarding CenturyLink and the
21 proposed Transaction when compared to these other recent transactions:

1 CenturyLink is a much larger, more experienced and financially healthier
2 company than the Carlyle Group, FairPoint or Frontier. Unlike previous
3 acquisitions, this transaction is a stock transfer that involves no new debt. So, far,
4 the record of CenturyLink's acquisitions has been relatively trouble-free. The
5 combined company will display a much stronger balance sheet relative to that of
6 Qwest at the present time.⁶⁷

7
8 Therefore, it appears to be evident even to Mr. King that discussions of problems in other
9 transactions have no relevance in assessing the proposed Transaction, in the absence of
10 proof or evidence.

11
12 **VII. OTHER FINANCIAL ISSUES RAISED BY INTERVENORS.**

13 **Q. Some of the Intervenor Parties filing testimony in this proceeding express concern**
14 **over CenturyLink's ability to accomplish an integration of this magnitude. Are**
15 **these integration concerns valid?**

16 **A.** No, they are not, and I believe that those concerns are based more on speculation than
17 fact. As RUCO witness Mr. Rigsby noted, CenturyLink has a proven track record of
18 successfully integrating the operations of the companies it acquires—not once or twice,
19 but multiple times over a 20 year period. The DOD witness, Mr. King, also affirms, as
20 do the Joint Applicants, CenturyLink's proven track record of successfully integrating the
21 operations of the companies it acquires.⁶⁸ As I stated in my direct testimony, the senior
22 officers who will lead the combined company are tested leaders in the
23 telecommunications industry with multiple decades of both individual and combined
24 experience. The majority of the CenturyLink leadership team has been together since the

⁶⁷ DOD, King, p. 11, lines 21-26.

⁶⁸ DOD, King, p. 11, lines 24-25.

1 1980s, a fact that highlights the stability and experience of the Company's management.

2 The long historical record is important as it demonstrates convincingly that the

3 CenturyLink leadership team consistently has worked to provide exceptional customer

4 service over an extended period while successfully managing multiple acquisitions and

5 integrations. With respect to the management team's transactional experience,

6 CenturyLink has increased its size over the years through a number of sizeable

7 acquisitions, starting in 1997 with the acquisition of Pacific Telecom, Inc. and most

8 recently with the 2009 acquisition of Embarq. An important by-product of the multiple

9 acquisitions by CenturyLink is the accumulation of experienced employees and critical

10 skill sets needed for successful acquisition and integration outcomes. At times these

11 acquisitions have more than doubled or tripled the size of the Company within a fairly

12 short span of years. In each instance, the integration has been successful in terms of

13 customer service improvements and operating performance. This proven and

14 uncontested history demonstrates that CenturyLink is accustomed to managing and

15 executing on mergers and acquisitions of varying types, sizes and complexity, while

16 continuing to operate as a successful service provider in a challenging industry

17 environment.

18

1 **Q. DOD witness Mr. King is concerned that the integration will require investment**
2 **before the realization of synergies. Mr. King also recommends a three-year rate cap**
3 **on basic business services.⁶⁹ Can you respond?**

4 **A.** Yes. Mr. King states that he does “not necessarily” oppose the transaction, as
5 CenturyLink is a larger, financially healthier company compared with other acquirers of
6 ILEC properties, and has a “trouble-free” history.⁷⁰ However, Mr. King cites a concern
7 related to the source of funding for the integration expenses.⁷¹ Mr. King then speculates
8 that “costs will be incurred before the benefits of the synergies are felt, so that they
9 represent a new net requirement for funds. Left unstated is where the money for these
10 transition costs will come from CenturyLink may look to its local operations,
11 including those in Arizona, to meet the urgent requirement to increase revenue.”⁷² Mr.
12 King is concerned that “additional revenue” in the form of rate increases will be required
13 to pay for integration costs.⁷³ Mr. King is incorrect, as no rate increases will be required
14 to pay for the integration process, and CenturyLink has indicated clearly that rates, if and
15 when they are changed, will be altered only upon proper regulatory review and negotiated
16 terms, as rate changes were handled before the merger. The other direct response to Mr.
17 King is that post-merger CenturyLink will have the ability to pay for one-time integration

⁶⁹ DOD, King, p. 17, line 26- p. 18, line 4.

⁷⁰ DOD, King, p. 11, lines 19-27.

⁷¹ DOD, King, p. 13, lines 7-10.

⁷² DOD, King, p. 13, lines 27-28.

⁷³ DOD, King, p. 17, lines 1-3; “Based on the foregoing, I believe that basic business services are most susceptible to unilateral rate increases motivated by the need to raise revenue to implement the merger.” Mr. King also incorrectly alleges that the post-merger company may need to engage in “cost cutting in the form of reduced resources, including capital investment and the manpower devoted to plant maintenance and customer service.” DOD, King, p. 20, lines 10-13. As indicated, post-merger CenturyLink’s free cash flow generation, even before synergies, will be sufficient to cover the integration costs, making Mr. King’s cost cutting “concern” moot.

1 costs out of pre-synergy cash flow generated by the combined operations, and network
2 investment will not be put at risk nor will ratepayers be burdened with one-time merger
3 costs. The Company anticipates generating annual "excess" free cash flow that, based on
4 2009 pro forma results *and before including any synergies*, would be \$1.7 billion. This
5 residual cash flow assumes that the Company has paid all operating expenses, *and*
6 invested approximately \$2.4 billion in capital plant, *and* met its dividend obligations to
7 equity-holders who supply critical capital. As Mr. King points out, the one-time
8 integration expenses are expected to be \$650 million to \$800 million, with another \$150
9 million to \$200 million in one-time capital costs.⁷⁴ In addition, the integration expenses
10 will not occur in a single year immediately after closing, but are expected to be phased-in
11 over five years, while the one-time capital costs will be incurred over a shorter multi-year
12 period. CenturyLink believes that the post-merger company will be able comfortably to
13 fund *one-time* integration costs that at the highest estimated level *total* an aggregate \$1.0
14 billion (the combination of the high figures of the ranges for one-time integration and
15 capital costs) and are expected to be spread over a multi-year period. Additionally, as has
16 been the experience of the Company in previous transactions, including the Embarq
17 acquisition, synergies begin to be realized immediately after the consummation of the
18 merger, providing a still larger buffer for the merged company to fund one-time
19 integration costs without reducing the priority of network investment or raising rates. As
20 such, Mr. King's proposed condition requiring a three-year cap on basic business services

⁷⁴ DOD, King, p. 13, lines 2-5; Mr. King reports that the high end of the one-time integration costs is \$850, but the announced range is \$650 million to *\$800 million* (not \$850 million), as found in the Merger Conference Call, slide 13.

1 rates is entirely unnecessary as the "concern" Mr. King is attempting to address is
2 nonexistent.

3
4 **Q. Are the published synergy targets extraordinarily large or aggressive in the**
5 **proposed Transaction?**

6 A. No, they are not. The reality is that the estimate of \$575 million in operating expense
7 savings is approximately 7% of Qwest's 2009 cash operating costs. Further, the synergy
8 targets are modest compared with synergy expectations announced in other ILEC
9 mergers. Illustrating the reasonableness of the expected synergies for the proposed
10 Transaction, the estimates (operating costs and capital expenditure savings) as a
11 percentage of cash operating costs are below the 11% expected cost savings announced
12 when CenturyTel merged with Embarq, and are well below other merger-related
13 synergies from ILEC transactions that generally have been 20%+ of the target company's
14 cash operating costs in recent years, as verified by independent financial analysts.⁷⁵

15
16 **Q. Does the synergy target create an incremental risk for CLECs, based on investor**
17 **expectations, as suggested by Mr. Gates?**

18 A. No. Mr. Gates states that the merged company will be seeking "to find synergies [and] it
19 will be under pressure to produce meaningful dividends, pay down debt and invest in
20 advanced services" which might result in making wholesale service a "low . . .

⁷⁵ Simon Flannery, *CenturyTel: 1Q10 Preview: Awaiting Embarq Synergy/Integration Update and Additional Color on Qwest Deal*, Morgan Stanley Research, North America, April 29, 2010.

1 priority.”⁷⁶ CenturyLink’s management believes the estimated synergies can be achieved
2 while continuing to provide high-quality service to customers and to invest in the
3 network. As noted above, using pro forma 2009 financials, *before any expected*
4 *synergies*, the merged CenturyLink and Qwest estimate that, after meeting all operating,
5 capital and financial costs, the combined company would have had about \$1.7 billion in
6 remaining cash flow—without assuming any synergies—that could be used for additional
7 investment (beyond the \$2.4 billion in capital investment noted above), debt repayment,
8 and other appropriate uses. As such, CenturyLink expects to be financially sound even if
9 no synergies are achieved and, therefore, will not be unduly pressured by investors or
10 other stakeholders. CenturyLink understands its business, and its priorities are aligned
11 with successfully managing and operating the business in a manner that benefits its
12 customers and other key stakeholders.

13
14 **Q. Please comment on the concerns raised by the intervenor witnesses regarding the**
15 **risks due to increased levels of debt on the merged company’s balance sheet.**

16 A. Staff witness Mr. Fimbres raised a question about the Company’s ability to service the
17 higher level of debt.⁷⁷ Representing the Joint CLECs, Mr. Gates testifies that
18 CenturyLink “will have *more than quadrupled* its debt load in approximately three
19 years.”⁷⁸ [Emphasis in the original.] What Mr. Gates fails to mention is that the merged
20 company will be far larger, and, as important, will generate significantly larger levels of

⁷⁶ Joint CLECs, Gates p.27, lines 7-11.

⁷⁷ Staff, Fimbres, p. 23, lines 14-15.

⁷⁸ Joint CLECs, Gates, p. 75, lines 12-13.

1 cash flows to service its debt. Illustrating the proportionate growth in operating cash
2 flow to support investment and debt, CenturyLink's earnings before interest, taxes,
3 depreciation and amortization ("EBITDA") at the end of 2006 was \$1.2 billion and, at the
4 end of 2007, EBITDA was \$1.3 billion, while the pro forma EBITDA for the combined
5 company at the end of 2009 was approximately \$8.2 billion.⁷⁹ Accordingly, the pro
6 forma 2009 EBITDA is higher by 6.9 times from 2006 and by 6.2 times from 2007.
7 Further, the Company expects within three-to-five years to generate synergies that will
8 result in annual operating cash flows that improve by \$575 million and an annual capital
9 expenditure benefit that is estimated at \$50 million. Thus, the Company expects to
10 produce operating cash flows that permit incremental reductions of debt and incremental
11 investments in plant and services. This increased capacity to strengthen the merged
12 company's balance sheet is a financial benefit for customers, employees and all the other
13 stakeholders.

14
15 **Q. Can you provide additional comments on the debt leverage of the pro forma**
16 **company?**

17 **A.** Yes. More specifically responding to Staff witness Mr. Fimbres, Qwest debt leverage
18 will go down even as CenturyLink's leverage rises slightly. While CenturyLink's pro
19 forma net leverage (Net Debt-to-EBITDA) will rise modestly in the near term from the

⁷⁹ The EBITDA in 2006 (in thousands) was \$1,189,044 and in 2007 was \$1,329,333; see 2007 CenturyTel SEC Form 10-K, available at <http://www.sec.gov/Archives/edgar/data/18926/000001892608000004/form10k2007.htm>; 2006 D&A was \$523,506 and operating income was \$665,538, while 2007 D&A was \$536,255 and operating income was \$793,078.

1 current level of 2.0 times, the Net Debt-to-EBITDA for Qwest should be reduced through
2 the combination. Qwest's net leverage is expected to *improve* from 2.7 times at the end
3 of 2009 to the pro forma 2009 net leverage for the merged company, which is estimated
4 to be 2.4 times before including the positive impact of expected synergies and 2.2 times
5 after including the full run-rate synergies.⁸⁰ The combined company's leverage level is
6 more favorable, even before synergies, than the 2009 net leverage of the two most
7 comparable companies in the incumbent local exchange carrier industry—Windstream
8 and Frontier—and, again, is better than that of Qwest.⁸¹ Because CenturyLink has no
9 ILEC operations in Arizona, the Commission is most concerned about the effect for
10 Qwest and its customers in the state. The pro forma company's Arizona customers (those
11 from legacy Qwest) will be served by a merged company with a net leverage ratio *below*
12 that of Qwest today, and the conclusion should be that this improved leverage ratio is a
13 net benefit for the company's Arizona customer base. In addition, as I have stated, the
14 combined company is not acquiring any new debt as the Transaction is a stock-for-stock
15 merger, and the combined company is positioning itself to generate incremental cash
16 flows through synergies and incremental revenues from expanded service offerings based
17 on the combination of CenturyLink and Qwest assets.

18
19 **Q. Is it correct that the merged company's debt *may not* be rated investment grade**
20 **after the close of the Transaction?**

⁸⁰ See Merger Conference Call, slides 7 and 12.

⁸¹ Merger Conference Call, slide 12.

1 A. Yes, it is possible that one or several of the credit rating agencies could rate the merged
2 company's debt below investment grade. It also is possible that some of the merged
3 company's debt could be rated investment grade and that other debt could be rated non-
4 investment grade (as is the case with Qwest today). Qwest, which will contribute
5 approximately 100% of the pro forma company's Arizona ILEC lines, is expected to have
6 a stable or higher credit rating, *which presumably will not slip*, since it is combining with
7 a company that has a higher credit rating. In fact, all three of the major credit rating
8 agencies have noted that Qwest's debt possibly could be upgraded in the future as a result
9 of the proposed Transaction. Moody's, at the time of its recent upgrade of Qwest's debt
10 to one step below investment grade, stated that Qwest's ratings *remain* on review for
11 upgrade, as the planned acquisition "could lead to a further improvement in Qwest's
12 credit profile."⁸² In addition, S&P revised its outlook on Qwest's debt to "CreditWatch
13 Positive" on April 22, 2010, when the Qwest-CenturyLink merger was announced,
14 because of S&P's assessment that the combination might result in improved financial
15 characteristics for Qwest.⁸³ Finally, Fitch Ratings improved its outlook on Qwest's
16 ratings to "Watch Positive" that same day, again as a result of the announced
17 combination.⁸⁴ The possible improved credit rating for the state's largest

⁸² "Moody's upgrades Qwest rating," Bloomberg BusinessWeek, August 13, 2010, available at <http://www.businessweek.com/ap/financialnews/D9HINI3G0.htm>.

⁸³ Standard & Poor's Global Credit Portal, Ratings Direct, "Qwest 'BB' Rating On Watch Positive," April 22, 2010, p. 2.

⁸⁴ Fitch Ratings, *Fitch Places CenturyTel's Ratings on Watch Negative; Qwest's Ratings on Watch Positive*, April 22, 2010.

1 telecommunications carrier immediately after the close of the proposed Transaction is
2 clearly a significant net benefit to Arizona customers.

3
4 **Q. How will the cash flows generated by the forecasted synergies be used?**

5 A. Staff witness Mr. Fimbres asked about the ability of the merged company to “expand and
6 build . . . operations in rural Arizona [where customers] are unserved or under served
7 [and do so] at reasonable rates.”⁸⁵ CenturyLink has not yet defined how it will allocate
8 the improved cash flows it expects to generate from the synergies. However, the
9 Company intends to use the cash flows that remain after meeting all of its cash operating
10 expenses, network investment and financial obligations to commit to additional
11 investments and to repay debt, among other purposes.⁸⁶ Thus, the synergies will position
12 to Company to do as well or better than Qwest could have done in the absence of the
13 merger.

14
15 **Q. Do you have concluding remarks?**

16 A. Yes. CenturyLink wishes to serve its customers—retail and wholesale—in a manner
17 consistent with the history of CenturyLink and Qwest, while striving to improve that
18 service over time. CenturyLink objects to assertion of unverified and speculative risks
19 that will lead to the imposition of costly and inefficient conditions. CenturyLink will
20 abide by all regulatory requirements and negotiated agreements and terms, and is

⁸⁵ Staff, Fimbres, p. 23, lines 18-19.

⁸⁶ Glover Direct, p. 14, lines 2-4.

1 committed to providing superior telecommunications services to its customers.
2 CenturyLink could not find evidence that any of the risks outlined by the Staff or other
3 intervenor witnesses were likely to result in net harm to Arizona or Arizona customers as
4 a result of the Transaction. In fact, the combined company's Arizona customers—the
5 current Qwest customers—will benefit from the improved operating performance and
6 financial strength of the post-merger company when compared to Qwest today. Thus,
7 there will be no net harm to Arizona customers, and the Transaction will provide
8 meaningful public interest benefits. Further, I believe that CenturyLink and Qwest have
9 given the Commission facts that provide assurance that the merged company will have
10 the resources and capabilities to provide services, that the Transaction will result in no
11 net harm to customers, and that the proposed Transaction is in the public interest.

12
13 **Q. Does this complete your Rebuttal Testimony?**

14 **A. Yes.**

**MICHAEL R.
HUNSUCKER**

BEFORE THE ARIZONA CORPORATION COMMISSION

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.)	

REBUTTAL TESTIMONY OF

MICHAEL R. HUNSUCKER

DIRECTOR, CLEC MANAGEMENT

ON BEHALF OF

**EMBARQ COMMUNICATIONS INC. D/B/A CENTURYLINK COMMUNICATIONS,
EMBARQ PAYPHONE SERVICES, INC. D/B/A CENTURYLINK, AND CENTURYTEL
SOLUTIONS, LLC,**

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Rebuttal Testimony of Michael R. Hunsucker

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Michael R. Hunsucker. My business address is 5454 W. 110th Street,
Overland Park, Kansas 66211.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?

A. I am currently employed by CenturyLink as Director-CLEC Management. I was named
to the position in April 2008 in legacy Embarq and have continued in the same capacity
after the CenturyTel/Embarq merger.

**Q. WHAT ARE YOUR RESPONSIBILITIES AS DIRECTOR - CLEC
MANAGEMENT?**

A. I and my team manage CenturyLink's Section 251/252 interconnection agreement ("ICA")
negotiations, the implementation of ICAs, and all account management relations with our
CLEC customers. My group is also responsible for managing revenue assurance, reciprocal
compensation/access expense, wholesale service performance reporting and dispute
resolution.

**Q. WHAT POSITION DID YOU HOLD BEFORE BECOMING DIRECTOR-CLEC
MANAGEMENT?**

1 A. I was Embarq's State Executive for Texas from 2002 and Tennessee from 2007 until I
2 accepted my current position. As State Executive, I managed Embarq's relationship with
3 public utility commissions and state legislatures. I also managed Embarq's public affairs
4 activities in the two states. Prior to being named to that position, I was Director-Policy for
5 Sprint Corporation from 1992 until 2002. As Director-Policy, I developed regulatory and
6 legislative policy for the corporation and provided written and oral testimony before state
7 regulatory commissions for Sprint and its operating subsidiaries including its incumbent local
8 exchange carriers ("ILECs"), and interexchange/competitive local exchange carrier
9 ("CLEC"). Prior to being named Director-Policy, I held a variety of management positions
10 with Sprint and its predecessor companies, primarily dealing with regulatory matters. I began
11 my telecommunications career in 1979.

12
13 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE ANY STATE AGENCY?**

14 A. Yes. I have testified before regulatory agencies in Florida, North Carolina, South Carolina,
15 Tennessee, Virginia, Pennsylvania, Ohio, Illinois, Maryland, Nebraska, Georgia, Texas and
16 Nevada.

17 **II. PURPOSE OF TESTIMONY**

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

19 A. The purpose of my testimony is three-fold. First, I will complement and reinforce the
20 rebuttal testimony of Ms. Kristin McMillan and Mr. Jeff Glover that CenturyLink's
21 acquisition of Qwest is in the public interest as it relates to the provision of wholesale

1 services by CenturyLink to interconnected carriers and that the CLEC testimony does not
2 accurately reflect current or post-merger operations of CenturyLink and Qwest and
3 demands numerous self-serving conditions. Second, my testimony explains the positions
4 of CenturyLink and Qwest regarding the proposed merger conditions and related
5 assertions made in the testimony of Staff. Finally, by my comprehensive treatment of the
6 wholesale and interconnection-related issues that have been raised by the CLECs, my
7 testimony demonstrates that where such issues are concerned the acquisition of Qwest by
8 CenturyLink (the "Transaction") meets the applicable standard of review that is
9 appropriate for this Transaction, as explained further by CenturyLink witness Kristin
10 McMillan. I am not an attorney, but I will reference applicable law in my testimony to
11 the best of my ability, and explain my understanding of the law based on my experiences
12 with implementing and interpreting it from a business perspective on a daily basis.

13
14 **Q. DO YOU INTEND TO ADDRESS EVERY ASSERTION OR CRITICISM IN THE**
15 **DIRECT TESTIMONIES OF INTERVENER WITNESSES?**

16 **A.** No. The Rebuttal Testimony from myself and the Joint Applicants' other rebuttal
17 witnesses will discuss in considerable detail why CenturyLink and Qwest believe the
18 application should be granted and will attempt to respond to a number of the positions of
19 the intervener witnesses. However, it is simply not necessary nor reasonable to respond
20 to each and every statement in the CLECs' and Staff's Direct testimony. To the extent
21 particular statements in the Direct testimony are not addressed in our Rebuttal

1 Testimony, this does not necessarily mean that the Joint Applicants agree with or
2 acquiesce in those statements. We have attempted to focus on the major points addressed
3 in the Direct testimony and to organize the Rebuttal Testimony around those points.
4

5 **III. PUBLIC INTEREST AND PRE-/POST-MERGER OPERATIONS**
6

7 **Q. THE TESTIMONY SUBMITTED BY STAFF AND THE CLECs ASSERTS THAT**
8 **THE COMMISSION SHOULD PLACE NUMEROUS CONDITIONS ON ITS**
9 **APPROVAL OF THIS TRANSACTION SO IT “DOES NOT HARM THE**
10 **INDUSTRY.”¹ DO YOU AGREE WITH THIS ASSERTION?**

11 **A.** No. There are several reasons why the conditions proposed are unnecessary to protect
12 the CLEC industry. First, the existing Qwest ILEC operating entity, including wholesale
13 operations, will stay in place post-merger, so the relationships between Qwest and the
14 CLECs will remain status quo and there will be none of the impacts that CLECs might
15 encounter with completely new incumbent entities and completely new Operations
16 Support Systems (“OSS”). Next, CLECs have significant legal protections in place today
17 that remain in place post-merger. These protections include the provisions and
18 obligations of the federal Telecommunications Act (“FTA” or “Telecom Act”), federal
19 and State orders, interconnection agreements (“ICAs”), tariffs, and Qwest’s § 271

¹ Gates Direct at 107.

1 protections, Performance Assurance Plans (“QPAP”), and Change Management Process
2 (“CMP”) commitments.² Additionally, the Commission retains its jurisdiction provided
3 under the Telecom Act, including review of interconnection agreement terms and its
4 ability to resolve disputes related to such interconnection agreements.

5
6 Furthermore, I believe CLECs will benefit from the merger without imposition of their
7 requested conditions. A financially stronger company promotes stability and thus
8 further the goal of continuing to have a solid and resilient provider of quality wholesale
9 services to CLECs and other carriers. CenturyLink already has a very robust and
10 experienced Wholesale Operations team in place today. Likewise, Qwest has a very
11 robust and experienced Wholesale Operations team in place as Ms. Genung notes.³ The
12 result of this merger will result in the combination of two quality teams and companies.
13 The combining of these two quality teams and companies ensures that the post-merger
14 organization will be able to draw upon the best wholesale and interconnection practices,
15 capabilities and personnel of each entity, thereby continuing to provide quality service to
16 interconnecting carriers.

² On page 9 of his Direct, Mr. Fimbres expresses a concern regarding the impact to CLECs if there is any rapid or radical change to the post-merger affiliate’s provision of transport or last mile facilities. An ILEC’s obligations for transport and last mile facilities are set for in 47 CFR§ 51. There is nothing an ILEC can unilaterally do to “rapidly” or “radically” change its transport and last mile facilities obligations. Any change could only come from change to the law or to regulation and would therefore be what the lawmakers or regulators consider is appropriate to serve the public interest. Mr. Fimbres’s concern is therefore misplaced.

³ Genung Direct at 20.

1 Finally, as Mr. Fimbres notes, Qwest already faces significant competition in Arizona
2 and this merger will not affect the post-merger competitive environment.⁴ The proposed
3 conditions would only serve to hamper the post-merger Qwest affiliate while conferring
4 unwarranted competitive benefit on the CLECs. The premise that this Transaction would
5 cause harm to the industry is speculative, unsubstantiated, and, in my opinion, false.
6

7 **Q. CAN YOU PLEASE DESCRIBE THE CENTURYLINK WHOLESALE**
8 **OPERATIONS ORGANIZATION AS IT EXISTS TODAY?**

9 A. Yes. A description of the CenturyLink Wholesale Operations Organization, and the
10 planned structure for the Organization going forward, should allay concerns about the
11 post-merger company's abilities and commitment to quality wholesale service.

12 CenturyLink recognizes the value of its wholesale customers to its business operations
13 and created the current organizational structure to ensure high quality services for its
14 customers.

15 The Wholesale Operations Organization is a separate business unit within CenturyLink
16 that is led by Bill Cheek, President - Wholesale Operations, who will retain this position
17 in the merged company. Mr. Cheek reports directly to Glen Post, the CEO of

⁴ Fimbres Direct at 7-8. Mr. Fimbres further agrees that any long term impact to the competitive environment is difficult to assess; Fimbres Direct at 8; therefore any assertions regarding long term impacts are speculative at best. See footnote 2 for example.

1 CenturyLink. Prior to Mr. Cheek's current position, he served in the same capacity for
2 the legacy Embarq company and its predecessors for more than ten years. Wholesale
3 Operations is organized around five functional areas; 1) product management and
4 marketing, 2) wholesale operations, 3) national public access, 4) wholesale sales and
5 account management and 5) CLEC management and service reporting.

6 The product management and marketing group develops and implements all wholesale
7 products including CLEC services such as resale, unbundled network elements,
8 collocation, and also our commercial wholesale offerings such as Local Wholesale
9 Service (an unbundled network element – platform, which is the product that performs
10 the functionality of CenturyLink's former "UNE-P" product).

11 The wholesale operations group is responsible for the company's wholesale operating
12 support systems ("OSS") system and has four regional operation centers (Wentzville,
13 Mo; Leesburg FL, Decatur, IN and La Crosse, WI), each of which has dedicated teams
14 handling specific wholesale functions. These functions include order administration,
15 project management and quality assurance.

16 The national public access group handles public payphones and payphone services
17 provided to state, county and local correctional facilities across the country.

18 The wholesale sales and account management group is the direct sales channel for
19 CenturyLink's data and special access products, sales engineering and account
20 management to non-CLEC wholesale customers. This includes both in-territory sales and

1 out-of-territory sales on the 17,500 route mile fiber optic facilities owned by corporate
2 affiliates.

3 The CLEC management and service reporting group manages the ICA negotiations
4 process, the implementation of the ICAs, account management and in-territory sales to
5 CLEC wholesale customers. This group is essentially responsible for all aspects of the
6 company's interactions with CLECs pursuant to applicable law across the current thirty-
7 three state territory.

8
9 **Q. HAS THE COMPANY MADE ANY RECENT STAFFING DECISIONS IN**
10 **REGARDS TO POST-MERGER WHOLESALE OPERATIONS AND IF SO,**
11 **PLEASE DESCRIBE THE DECISIONS AND THE IMPACT ON CLECs?**

12 **A.** Yes, there was an internal announcement on Monday, September 20, 2010, regarding the
13 Tier 2 leaders, including Wholesale Operations, effective with the close of the merger
14 Transaction. Specifically, in regards to Wholesale Operations, Bill Cheek, President-
15 Wholesale Operations announced the wholesale structure and Tier 2 leaders as follows:

16 Eric Bozich, Vice President-Product and Marketing who is currently Vice
17 President-Product Management for Qwest.

18
19 Paul Cooper, Director-National Public Access who is currently Director-Public
20 Access for CenturyLink.

21
22 Craig Davis, Vice President-Sales and Account Management who is currently
23 Vice President-Wholesale Sales and Account Management for CenturyLink.

24
25 Mike Hunsucker, Vice President-Wholesale Services and Support who is
26 currently Director-CLEC Management and Service for CenturyLink.

1
2 Warren Mickens, Vice President-Wholesale Operations who is currently Vice
3 President-Customer Service Operations for Qwest.
4

5 This leadership team represents leaders from both CenturyLink and Qwest and represents
6 experienced employees (in excess of 100 years of experience in the telecom industry)
7 who are not only well-equipped to provide quality service but also committed to
8 continuing to provide quality service to wholesale customers. As I stated earlier in my
9 testimony, the provision of quality service to wholesale customers is a priority and will
10 remain so after the merger closing. The CLECs have expressed concerns regarding the
11 leadership of the wholesale organization,⁵ but this recent announcement demonstrates
12 that CenturyLink understands the need to have experienced personnel from both
13 CenturyLink and Qwest. In fact, in the Wholesale Operations organization, CenturyLink
14 will be retaining the same Qwest executives in the areas of wholesale operations,
15 including OSS, and product development that are currently responsible for the Qwest
16 systems and products that the CLECs appear to be most concerned with.
17

18 **Q. IS CENTURYLINK COMMITTED TO PROVIDING QUALITY WHOLESALE**
19 **SERVICES TO CLECS?**

⁵ See Gates Direct at 22 for example.

1 A. Yes. CenturyLink has a long-standing history of and commitment to providing quality
2 wholesale services. The provision of quality service to wholesale customers is a priority
3 at CenturyLink, and will remain so after the merger closing.

4
5 Specifically in the Wholesale Operations area, CenturyLink has recently completed the
6 migration of legacy CenturyTel's CLEC customers to the legacy Embarq EASE
7 wholesale OSS system ahead of the timeframe required by the Federal Communications
8 Commission's ("FCC's") Order in the CenturyTel/Embarq merger. CenturyLink agreed
9 to this migration to ensure that CLEC customers had an automated system for order
10 processing. This attention to providing quality customer service to CLECs is an integral
11 part of CenturyLink's commitment to the wholesale market and will be maintained post-
12 merger closing.

13
14 The CLECs assert that CenturyLink has incentives to discriminate against them in favor
15 of CenturyLink's retail operations. While CenturyLink certainly will compete for
16 customers on a retail basis, CenturyLink also has a strong interest in ensuring that our
17 network is utilized by CLECs on a wholesale basis. The CLECs ignore the existence of
18 other competitors in the market such as cable telephony providers, wireless providers and
19 other voice over internet protocol ("VOIP") providers who do not necessarily utilize
20 CenturyLink's network in the provision of retail end user services. CenturyLink and
21 Qwest have invested billions of dollars in their networks in an effort to promote universal

1 service and it should be self-evident that it is in CenturyLink's best interest to provide
2 high quality wholesale services to CLECs that utilize those investments to provide retail
3 services versus the worst possible outcome of losing customers to providers who do not
4 use CenturyLink's investment at all.
5

6 **Q. HOW HAS CENTURYLINK LEVERAGED ITS PREVIOUS ACQUISITION**
7 **EXPERIENCE TO BENEFIT ITS WHOLESALE CUSTOMERS?**

8 A. CenturyLink in recent years has completed significant upgrades to its billing, wholesale,
9 financial, and human resources systems in order to successfully accommodate its growth
10 and future growth opportunities. To date much of the systems integration that
11 CenturyLink planned as part of its integration of Embarq has been completed on or ahead
12 of schedule. This real-world experience puts CenturyLink in the best position to assess
13 and address impacts to its wholesale customers that may result from this transaction.
14

15 **Q. YOU PREVIOUSLY STATED THAT THE CLECS' TESTIMONY DOES NOT**
16 **ACCURATELY REFLECT CURRENT OR POST-MERGER OPERATIONS.**
17 **CAN YOU PROVIDE EXAMPLES?**

18 A. Yes. A significant portion of the CLECs' Direct testimony consists of general comments
19 about industry issues that do *not* relate to CenturyLink or Qwest but are offered merely to
20 imply that these issues *could* apply to the Joint Applicants. Mr. Falvey, for example,

1 speculates that the merger “will draw resources away from Qwest wholesale operations”
2 when there is no evidence to support such a claim.⁶ In fact, the evidence CenturyLink
3 and Qwest have provided in this and other testimony shows the opposite to be true. This
4 Commission should not base its decision on speculation, but rather on its reasonable
5 judgment based on the facts presented as a part of the record. Moreover, the CLECs offer
6 no convincing evidence to suggest their concerns are reasonable and well-founded as
7 applied to this transaction.

8
9 A statement made by Mr. Gates shows the CLECs’ mindset and purpose that is
10 inconsistent with that which CenturyLink has. Mr. Gates noted that CLECs and the Joint
11 Applicants “are rivals, and ... their economic incentive (as profit-maximizing firms) is to
12 undermine – not help – the other provider’s ability to compete for end user customers...”⁷
13 While I reject Mr. Gates’ cynical view of the Joint Applicants’ wholesale business
14 practices, I believe his statement reveals the true objective of the CLEC parties. The
15 CLECs are hoping to achieve by their proposed conditions a series of competitive
16 advantages that existing interconnection agreements, commission-approved processes
17 and other accepted practices do not currently provide or apparently not to the degree
18 desired by the CLECs.

⁶ Falvey Direct at 6.

⁷ Gates Direct at 12.

1 **Q. MR. GATES IS CONCERNED THAT BECAUSE “CENTURYLINK HAS**
2 **TRADITIONALLY OPERATED IN RURAL AREAS EXEMPT FROM FULL**
3 **COMPETITION, IT HAS NOT BEEN REQUIRED TO HANDLE THE SAME**
4 **QUANTITIES OF WHOLESALE CUSTOMERS AND WHOLESALE ORDERS**
5 **AS QWEST IS ACCUSTOMED TO HANDLING.⁸ DO YOU AGREE?**

6 **A.** No, I do not. This statement does not appropriately reflect the realities of the
7 CenturyLink Wholesale Operations as compared to Qwest’s Wholesale Operations on a
8 national basis and lacks merit. First, the premise is wrong, because it assumes that
9 Qwest’s “experience” and systems somehow vanish as a result of the merger. As
10 discussed above, Qwest will continue to be the sole operating affiliate in Arizona post-
11 merger and the combined company will retain key Qwest executives in wholesale
12 functions, including Wholesale Operations. This merger transaction continues the
13 corporate identity, systems, and human and other resources for both Qwest and
14 CenturyLink. Qwest’s “experience” and systems will not be lost, but rather will be
15 integrated with CenturyLink to create better experiences for retail and wholesale
16 customers alike. The structure of this transaction allows CenturyLink to use and benefit
17 from the Qwest experience, while also using and benefiting from the ample experience
18 CenturyLink brings to the table.

⁸ Gates Direct at 24.

1 Second, CenturyLink is an experienced and effective wholesale provider. CenturyLink
2 has almost two thousand active CLEC agreements on a national basis and in excess of
3 five hundred agreements with wireless carriers across its 33-state region. Based on May
4 2010 YTD order volumes, CenturyLink is on pace to process almost one million ASRs
5 and LSRs in 2010. The facts are that CenturyLink has more interconnection
6 agreements than Qwest and the volume of orders processed are not dwarfed by the Qwest
7 volumes at all. In addition, CenturyLink has experience with a CLEC performance plan
8 in Nevada that is substantially similar to Qwest's Arizona Performance Assurance Plan.
9 CenturyLink also provides certain 271 services including line sharing and local wholesale
10 solutions, which is the successor to the unbundled network element – platform (“UNE-
11 P”) product. The appropriate and relevant comparison of the CenturyLink and Qwest
12 wholesale operations is on a national basis, not a state-specific basis, as systems, services
13 and staffing requirements are based on national operations and commercial volumes, not
14 state-specific requirements. And, as demonstrated above, CenturyLink compares quite
15 well.

16
17 In addition, it should be noted that on a national basis, less than 15% of CenturyLink's
18 ILEC retail access lines are in companies that are covered under the Telecom Act's “rural
19 exemption.” The inverse is that approximately 85% of CenturyLink's retail access lines
20 are not operating under the “rural exemption” and thus have been and will continue to be
21 subject to the same Section 251/252 obligations of the Telecom Act as Qwest. This fact

1 serves as the foundation for the number of interconnection agreements and order volumes
2 discussed previously. The fact is that CenturyLink is more similar to Qwest in serving
3 wholesale customers (CLECs and other carriers) than suggested and acknowledged by
4 Mr. Gates and the CLECs.

5 **Q. MR. GATES ADDRESSES OSS SYSTEMS. DOES HE FAIRLY ACCOUNT FOR**
6 **THE OSS CAPABILITIES OF THE POST-MERGER COMPANY?**

7 A. No. A considerable portion of Mr. Gates' testimony is related to intermittent discussion
8 of OSS issues. Mr. Gates begins this discussion with a reference to Qwest's § 271
9 compliance requirement and circles back to that topic several more times. In Mr. Gates'
10 opinion, because CenturyLink's OSS systems have not been subject to review under §
11 271 he believes CenturyLink has no experience with § 271 obligations.⁹ To Mr. Gates, it
12 follows that the post-merger systems may not remain § 271 compliant.¹⁰ Mr. Gates is
13 misconstruing § 271. Under § 251 of the Telecommunications Act, under which
14 CenturyLink has been performing for years, the obligations to provide OSS are the same
15 as they are under § 271. Qwest did undergo testing of its systems as part of the process to
16 obtain approval to provide long-distance services, while CenturyLink did not need to
17 undergo that process because it was never restricted from providing inter-LATA services,
18 but there is no evidence that its systems do not meet the requirements of the Telecom

⁹ Gates Direct at 24.

¹⁰ Gates Direct at 31 and 40.

1 Act. Qwest witness Karen Stewart will address § 271 issues in greater detail in her
2 rebuttal testimony.

3
4 Mr. Gates' speculation regarding post-merger OSS degradation is also unfounded. As
5 stated previously, CenturyLink is not merely acquiring territory from Qwest, but instead
6 is acquiring the entire company with its existing systems, personnel and documented
7 policies and processes. The Qwest experience and OSS knowledge will still reside in the
8 post-merger company, and Mr. Gates' speculation that § 271 compliant systems might
9 just "disappear" is nonsense.

10
11 As regards the future OSS to be used by the merged company, CenturyLink and Qwest
12 have publicly stated that they are each dedicated to having strong OSS for wholesale
13 operations, that they have met their obligations to wholesale customers in the past and
14 will continue to do so. The merged company will have the option to retain Qwest's
15 existing § 271 compliant systems or to choose an OSS that better addresses the provision
16 of service to the merged company's entire customer base. Having said that, nothing
17 about the Transaction will excuse the merged company from its important ICA and §251
18 obligations, as well as the obligations under § 271 where those apply.

19

1 **Q. A COMMON THEME IN THE CLEC TESTIMONY IS THE ALLEGED LACK**
2 **OF DETAILED CENTURYLINK DOCUMENTATION OF ITS FUTURE PLANS**
3 **AND INTENT. HOW DO YOU RESPOND?**

4 **A. As Mr. Todd Schafer testifies, it is unreasonable to believe that CenturyLink and Qwest**
5 should have conducted a thorough operating capabilities and operating expense review of
6 the legacy systems and practices by this point in time. It is also incorrect to assume that
7 the merged company has made the decisions regarding which systems and practices will
8 be used post-merger.

9
10 This Transaction is not like other acquisitions that were cited in CLEC testimony.
11 Because the immediate plan is to maintain both companies' separate OSS and continue
12 operations as usual, there was no need for CenturyLink and Qwest to rush to decide OSS
13 integration issues early in the process. Wholesale customers in CenturyLink areas and in
14 Qwest areas will not face immediate changes in their existing systems interfaces and
15 existing OSS arrangements will not be disrupted. This stands in stark contrast to the
16 FairPoint and Hawaiian Telcom transactions cited by the CLECs, both of which required
17 the creation of entirely new OSS. The ILECs involved in those other acquisitions had to
18 quickly develop integration plans because they had to operate under new systems and
19 processes. Unlike those ILECs, CenturyLink will have legacy systems, processes and
20 experienced personnel in place post-merger so CenturyLink can undertake a highly
21 disciplined process to convert systems and processes as necessary for smooth integration.

1 Accordingly, CenturyLink will take a deliberate and thorough approach to considering
2 how it will operate in the future. CenturyLink wants to ensure that it makes its
3 operational decisions based on a) sound quality of service and fiscal responsibility
4 principles; that also b) meets the needs of its entire customer base. The CLECs should
5 want no less.

6
7 CenturyLink and Qwest recognize that any future changes to OSS will require significant
8 advance planning by wholesale customers, and CenturyLink pledges to give its CLEC
9 customers ample and adequate notice of any future changes as set forth and in
10 compliance with all rules and terms of the interconnection agreements, the Qwest Change
11 Management Process, and accepted business practices. Additionally, CenturyLink
12 acknowledges that any future CenturyLink changes must comply with state and federal
13 laws and rules, and that Qwest's Performance Indicator Definitions and Performance
14 Assurance Plans apply.¹¹ As Mr. Schafer states in his rebuttal testimony, it is to the
15 benefit of all of CenturyLink's and Qwest's retail and wholesale customers for
16 CenturyLink to conduct a thorough review of the legacy systems and to make decisions
17 regarding the systems and practices to be used post-merger in a timely manner. Having
18 said that, CenturyLink should not be required to provide business plan information that

¹¹ Qwest witness Mike Williams will provide greater insight into the provisions of the Performance Indicator Definitions and Performance Assurance Plans.

1 affords the CLECs advantages in the marketplace and to which CLECs are not entitled
2 under applicable law.
3

4 **Q. CAN YOU PROVIDE THE COMMISSION WITH SOME INSIGHT INTO THE**
5 **INTEGRATION ACTIVITIES THE COMPANY IS CONDUCTING?**

6 A. Yes. CenturyLink is leveraging key learnings from its Embarq systems evaluation,
7 selection and implementation, as well as 20-plus years of successful integration
8 experience with other acquisitions. An in-depth analysis will be conducted on systems
9 capabilities, skill sets required for operation, and overall business processes before any
10 decisions are made. Senior level management will then review and approve all core
11 system selections and implementation plans. The critical systems migration criteria
12 CenturyLink is using include:

- 13 - Minimal impact to customers,
- 14 - Systems scalability,
- 15 - Ease of operation,
- 16 - Overall support of key business needs, including functionality, efficiency,
- 17 dependability, and quality of service.
- 18 - IT systems infrastructure simplification where possible,
- 19 - Meeting legal and contractual obligations, and
- 20 - Meeting all State and Federal notification requirements.

21

1 As I previously stated, CLECs will continue to operate with Qwest and CenturyLink as
2 they do today and, when the necessary determinations have been made that would cause a
3 change in that operation, CenturyLink will provide appropriate notice and the required
4 information and training.
5

6 **IV. DISCUSSION OF STAFF CONDITIONS**
7

8 **Q. STAFF WITNESSES FIMBRES AND GENUNG HAVE INCLUDED A LIST OF**
9 **SUGGESTED WHOLESALE MERGER CONDITIONS IN THEIR DIRECT**
10 **TESTIMONIES.¹² ARE THESE SUGGESTED CONDITIONS REQUIRED FOR**
11 **THE MERGER TO MEET THE STANDARD FOR APPROVAL?**

12 **A.** No. As discussed in Ms. McMillan's rebuttal testimony, the Arizona standard for
13 approval of this Transaction takes into consideration whether the proposed Transaction
14 would impair the ability of the public utility to provide safe, reasonable and adequate
15 service. As I have previously discussed, given CenturyLink's and Qwest's
16 acknowledgement of the value they place upon their wholesale customers and the
17 protections the CLECs already have under applicable law, ICA terms and other existing
18 commitments, Staff's suggested conditions are not required to meet the standard for
19 approval in Arizona. Equally important, beyond the legal standard that may apply, the

¹² Fimbres Direct at 28-34 and Genung Direct at 29-35. Staff's suggested conditions are reproduced for the Commission's benefit in Exhibit A to this testimony.

1 Staff does not demonstrate a real or practical need for the proposed conditions. To
2 illustrate this point, of the twenty-one states and the District of Columbia requiring
3 applications or review of this merger, to date, twelve have concurred that this Transaction
4 is very much in the public interest.¹³

5
6 Further, the existing, lawful ICA terms the CLECs agreed to or arbitrated have been
7 approved by this Commission as reasonable, just and nondiscriminatory, and consistent
8 with the public interest by the Commission. Many of the conditions proposed by the
9 CLECs would constitute new or amended terms to Qwest's and CenturyLink's ICAs, and
10 if imposed would result in the bypassing of the negotiations and arbitration process called
11 for by §§ 251 and 252 of the FTA, in direct contradiction of the intent of that law.

12
13 **Q. IN SUGGESTED CONDITION 6, STAFF WISHES TO SUSTAIN EXISTING**
14 **REGULATORY AND CONTRACTUAL QWEST PERFORMANCE**
15 **REQUIREMENTS UNTIL RELEASED BY THE APPROPRIATE**
16 **REGULATORY AUTHORITY. SHOULD THESE REQUIREMENTS AND**
17 **PLANS BE SUSTAINED BEYOND THEIR STATED TERMS?**

18 **A.** No. As already discussed, the post-merger company intends to adhere to the terms of
19 existing regulatory and contractual requirements and plans pursuant to the obligations of

¹³ The merger also has cleared regulatory review from the United States Department of Justice and Federal Trade Commission. <http://www.centurylinkqwestmerger.com/index.php?page=approval-progress>

1 those regulations and contracts, inclusive of any time-bound terms. The post-merger
2 Qwest affiliate must retain the ability to address future wholesale needs as permitted
3 under current regulations and applicable law. For example, the artificial extension of a
4 plan could constrain Qwest from proposing an overall improvement that would benefit
5 the wholesale customers but could not be accommodated if another plan requirement was
6 sustained unchanged. The rebuttal testimony of Qwest witness Mr. Williams provides a
7 further discussion of the existing QPAP and PID.
8

9 **Q. IN STAFF SUGGESTED CONDITION 19, THE STAFF WANTS THE QWEST**
10 **LEGACY OSS TO REMAIN INTACT FOR THREE YEARS. SUGGESTED**
11 **CONDITION 20 WOULD FURTHER OBLIGATE THE POST-MERGER**
12 **COMPANY TO AN ONEROUS NOTICE REQUIREMENT FOR FUTURE OSS**
13 **CHANGES. ARE THESE CONDITIONS NECESSARY?**

14 **A.** No, they are not. Staff's primary concern seems to be the issue of integrating the Qwest
15 OSS while the Embarq OSS integration is underway.¹⁴ In fact, the Embarq OSS
16 integration will be winding up before the Qwest OSS integration begins. This fact should
17 alleviate Staff's concern. Further, Staff and the CLECs offer no evidence that this merger
18 will negatively impact OSS, but rely on speculation, such as the fear that § 271
19 compliance may not be maintained. As Ms. McMillan states in her rebuttal testimony
20 "[i]mmmediately after the close of the proposed Transaction, Qwest will operate using the

¹⁴ Fimbres Direct at 15.

1 *same systems it currently has in place, ... fully functioning and staffed by operating*
2 *personnel who have been managing those systems.”*¹⁵ This factor clearly eliminates any
3 speculative risk described by Staff and the CLECs. In stark contrast to the Fairpoint and
4 Hawaii Telecom transactions, this Transaction conveys the entirety of the Qwest systems
5 and personnel and allows for both systems to be continued pending a thorough and
6 methodical review of the systems and integration aimed at ensuring the continued
7 provision of quality service to wholesale customers.

8
9 Mr. Cheek stated to the FCC in an affidavit that, “CenturyLink recognizes the importance
10 of having industry leading OSS, and acknowledges the value of OSS for wholesale
11 operations.”¹⁶ In addition, Mr. Cheek stated that CenturyLink plans to operate both the
12 CenturyLink and the Qwest OSS systems for 12 months, in the very least. CenturyLink
13 is willing to commit to this 12 month time period but is unwilling to extend this time
14 period for the Staff suggested three years. Three years is unreasonably long if changing
15 the Qwest OSS system is in the best interest of the company and its customers, as
16 determined by thorough review, and if such change is undertaken in compliance with
17 ICAs and applicable requirements, including notice.

¹⁵ McMillan Rebuttal at 13.

¹⁶ *In the Matter of Applications Filed by Qwest Communications International, Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer of Control*, WC Docket No. 10-110. See, Reply Comments of CenturyLink, Inc. and Qwest Communications International, Inc. (July 27, 2010), Ex. A1 – Declaration of William Cheek.

1 Both CenturyLink and Qwest have processes and procedures in place to ensure a smooth
2 transition in regards to changes in OSS systems. Qwest and CLECs have included a
3 detailed process in their negotiated interconnection agreements which have been
4 subsequently approved by the Commission. This process and document is the CMP.
5 This process will remain in place and will be the controlling document for changes, if
6 made, to the Qwest OSS systems, just like it is today. Nothing in this Transaction
7 eliminates or changes the CMP process as it relates to Qwest, and CenturyLink should
8 not be required to give up its rights to seek changes to OSS or the CMP documents itself
9 as a part of this merger proceeding. The obligations and the rights of both the CLECs
10 and Qwest should remain unchanged in this proceeding.

11
12 **Q. SUGGESTED STAFF CONDITION 24 SEEKS TO MODIFY THE EXISTING**
13 **QWEST CHANGE MANAGEMENT PROCESS ("CMP"). IS THIS PROPOSED**
14 **CONDITION NECESSARY?**

15 **A.** No. The CMP is incorporated in Qwest ICAs via an attached exhibit. Ms. Stewart
16 discusses the CMP in more detail in her rebuttal testimony. As already discussed, the
17 post-merger company intends to adhere to the terms of existing regulatory and
18 contractual requirements and plans pursuant to the obligations of those regulations and
19 contracts. Qwest and the CLECs have certain rights and obligations outlined in the ICAs
20 and CMP that should remain unchanged. Changes to the contracts can only occur with
21 Commission approval or agreement between the ILEC and the CLEC. Any condition

1 that seeks to have CenturyLink waive its post-merger rights or expand its obligations
2 related to the CMP is not warranted and unnecessary. Existing law and contracts thus
3 provide full protection to maintain the CMP, and additional requirements would either be
4 redundant or improperly change existing ICAs.

5
6 **Q. IN STAFF SUGGESTED CONDITION 25, STAFF PROPOSES THAT CLECs BE**
7 **ALLOWED TO UNILATERALLY EXTEND EXISTING INTERCONNECTION**
8 **AGREEMENTS UP TO THREE YEARS. IS THIS CONDITION NECESSARY?**

9 **A.** No. The CLECs have voluntarily negotiated and consented to the terms contained within
10 existing ICAs, or the Commission has ordered such terms in arbitrations. Given that
11 section 252 of the Telecom Act requires interconnection agreements to be "binding," it is
12 not appropriate for a merger process to be used to mandate an extension that would not be
13 required under federal law. Nor has Staff demonstrated that there is a need for an
14 artificial extension of the ICA terms.

15
16 The remaining portion of suggested condition 25 - honoring the obligations of current
17 ICAs, tariffs and contracts - is a non-issue. The post-merger Qwest affiliate is legally
18 bound to honor any contracts pursuant to the written terms of those contracts. No
19 condition is necessary.

1 **Q. IN STAFF SUGGESTED CONDITION 26, STAFF SEEKS TO SUSTAIN**
2 **EXISTING WHOLESALE INTRASTATE SERVICES FOR A PERIOD OF TWO**
3 **YEARS. DOES THIS CONDITION SERVE THE PUBLIC INTEREST?**

4 **A.** No. Wholesale intrastate services are either ICA services or tariffed services and the
5 Commission already has jurisdiction for approving ICAs and tariff changes.
6 Notwithstanding that fact, since no party in this proceeding can predict what future
7 wholesale service changes might be necessary to serve the public interest or to meet
8 evolving service provider needs, the Commission and the post-merger affiliates must all
9 retain the flexibility to work within the established rules rather than be constrained from
10 addressing regulatory and competitive needs in an appropriate manner. Further, some
11 wholesale intrastate services are provided under commercial agreements which are not
12 subject Commission authority.

13
14 **Q. STAFF SUGGESTED CONDITION 27 GENERALLY OBLIGATES THE**
15 **MAINTENANCE OF EXISTING QUALITY OF SERVICE STANDARDS FOR**
16 **WHOLESALE OPERATIONS THROUGH THE MECHANISM OF AN**
17 **ADEQUATE NUMBER OF DEDICATED TRAINED PERSONNEL. SHOULD**
18 **THERE BE ANY CONCERN THAT THIS IS NOT ALREADY A**
19 **CENTURYLINK PRIORITY?**

20 **A.** No. No imposed condition will affect the priority that CenturyLink already maintains in
21 this area. Earlier, I went into some detail regarding CenturyLink's Wholesale

1 Operations, its expertise, and its commitment to excellence. As the continuing head of
2 this organization, Mr. Cheek has already made clear to his organization the company's
3 ongoing commitment to service quality. CenturyLink has a long-standing history of and
4 commitment to providing quality wholesale services. The provision of quality service to
5 wholesale customers is a priority and will remain so after the merger closing.

6
7 Moreover, the proposed condition appears to improperly permit Staff and/or the
8 Commission to step in to the shoes of CenturyLink management and make staffing and
9 resource allocation decisions. The terms "sufficiently staffed" and "adequately trained"
10 are so vague that they would invite disputes and create tremendous inefficiencies if
11 CenturyLink's staffing decisions had to be litigated before the Commission. Such a
12 condition would actually be counterproductive to carrying out CenturyLink's priorities in
13 providing quality wholesale services discussed above.

14
15 **Q. STAFF SUGGESTED CONDITION 28 REQUIRES PROVIDING AND**
16 **MAINTAINING CONTACT AND SUPPORT INFORMATION; ALWAYS WITH**
17 **30 DAYS ADVANCE NOTICE OF CHANGES. WOULDN'T CENTURYLINK**
18 **DO THIS REGARDLESS OF AN IMPOSED CONDITION?**

19 **A.** Yes, as appropriate. As I stated earlier in my testimony, providing quality wholesale
20 service to CLECs is a priority at CenturyLink. Providing and updating contact and
21 support information is not an issue as this already occurs today under CenturyLink's and

1 Qwest's existing CMP processes. Further, the subjects of contact information provision
2 and notice are already covered in ICA terms and those terms will govern any required
3 timeframes. No conditions need be imposed to cover obligations that already exist in
4 contracts or regulatory requirements. Additionally, no conditions should be imposed that
5 do not take into account unforeseen circumstances that may prevent adherence. For
6 example, should a designated contact employee leave the company suddenly, or a support
7 center be temporarily closed due to an Act of God, advance notice to the CLECs is not
8 possible. For these reasons, this condition is not necessary and could create an
9 unworkable requirement.

10
11 **Q. THE ONGOING PROVISION OF INFORMATION RELATED TO OSS AND**
12 **BUSINESS PRACTICES AND PROCEDURES IS THE SUBJECT OF**
13 **SUGGESTED STAFF CONDITION 29. WHAT ASSURANCES CAN YOU GIVE**
14 **THE COMMISSION ON THIS TOPIC?**

15 **A.** Because the immediate plan is to maintain CenturyLink and Qwest' separate OSS and
16 continue operations as usual post-merger, and because in-place ICAs will continue
17 pursuant to their terms, wholesale customers in CenturyLink areas and in Qwest areas
18 will not face immediate changes in their existing operations with the post-merger
19 affiliates. CenturyLink and Qwest recognize that any future changes to OSS or business
20 practices and procedures will require significant advance planning by wholesale
21 customers, and CenturyLink pledges to give its CLEC customers ample and adequate

1 notice of any future changes in compliance with all rules and terms of their
2 interconnection agreements and accepted business practices. Additionally, CenturyLink
3 acknowledges that any future CenturyLink changes must comply with state and federal
4 laws and rules and with other applicable formal obligations such as Qwest's CMP. With
5 the existing OSS, business practices and procedures and CMP obligations in place, no
6 condition is necessary.

7
8 **Q. SUGGESTED STAFF CONDITION 30 WOULD PERMIT THE USE OF ANY**
9 **EXISTING ICA AS THE TEMPLATE FOR A REPLACEMENT AGREEMENT.**
10 **WHAT IS YOUR UNDERSTANDING OF A CLEC's NEGOTIATION RIGHTS**
11 **UNDER FEDERAL LAW?**

12 A. Under the Telecom Act, both parties to an interconnection negotiation, ILECs as well as
13 CLECs, have the right under applicable law to propose the terms they think are most
14 appropriate for an interconnection agreement. A CLEC has the right to propose terms
15 from any existing ICA, or any other terms, that it wishes to use. However, federal law
16 does not contemplate the ILEC being constrained before the fact from utilizing the same
17 right under law to propose the terms it believes are most appropriate. CenturyLink must
18 retain the ability to propose terms that consider changes of law and updating of processes
19 and capabilities that make a relationship function more smoothly, and to address
20 competitive industry issues and conditions that did not exist at the time an earlier ICA

1 was approved. It is to both parties' benefit to minimize future disputes by negotiating
2 agreement terms that do not lend themselves to more than one interpretation.
3

4 **Q. ALLOWING CLECs TO AMEND EXISTING ICAs TO ADD A \$.004**
5 **RECIPROCAL COMPENSATION RATE FOR ALL ISP-BOUND TRAFFIC,**
6 **INCLUDING VNXX TRAFFIC, IS PROPOSED IN SUGGESTED CONDITION**
7 **31. CAN THE COMMISSION GIVE CLECs THE ABILITY TO AMEND AN**
8 **EXISTING ICA?**

9 A. No. As an initial matter, CenturyLink believes VNXX traffic is interexchange traffic
10 and is not subject to § 251(b)(5). CenturyLink has arbitrated this issue in a number of
11 states and has consistently prevailed on this point. Notwithstanding the above, the
12 CLECs have voluntarily negotiated and consented to the terms contained within existing
13 ICAs, or the Commission has ordered such terms in arbitrations. Given that § 252(a)(1)
14 of the Telecom Act requires interconnection agreements to be "binding," and the courts
15 have held that § 252(e) does not contemplate any Commission authority to order a
16 modification of ICA terms except as a result of an arbitration,¹⁷ it is not appropriate for

¹⁷ PACIFIC BELL, a California corporation, Plaintiff-Appellant, and UNITED STATES OF AMERICA, Intervenor, v. PAC-WEST TELECOMM, INC.; PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA; et sec, Defendants-Appellees. No. 01-17161, No. 01-17166, No. 01-17181, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, December 12, 2002, Submitted, April 7, 2003, Filed.

1 this merger process to be used to suggest an amendment that changes the existing ICA
2 terms.

3
4 **Q. SUGGESTED STAFF CONDITION 33 ADDRESSES NEW OR ADDITIONAL**
5 **CLEC CHARGES. IS THIS SUGGESTED CONDITION NECESSARY?**

6 A. No. The charges assessed to the CLECs are set forth in the existing ICAs. CenturyLink
7 believes those charges and the terms related to such cannot be unilaterally changed by
8 either party to an ICA. Any new or additional charges would therefore emerge only in
9 regards to a newly negotiated ICA. A new ICA would contain charges agreed to by the
10 parties or otherwise arbitrated by the Commission. This suggested condition is
11 unnecessary.

12
13 **V. DISCUSSION OF CLEC CONDITIONS**

14
15 **Q. DO YOU HAVE ANY INITIAL COMMENTS THAT YOU WOULD LIKE TO**
16 **MAKE REGARDING THE LISTED CLEC CONDITIONS?**

17 A. Yes. Both CenturyLink and Qwest take very seriously their wholesale provisioning
18 obligations and opportunities. Serving their wholesale customers is important to each
19 company, and is important to the future financial success of the combined company.
20 Merger commitments that address speculative issues or constrain existing rights are not
21 necessary to confirm CenturyLink's and Qwest's treatment of wholesale customers. As I

1 discussed when addressing Staff's suggested conditions, considering the combination of
2 CenturyLink's and Qwest's recognition of the value of their wholesale customer base and
3 the protections the CLECs already have under applicable law, ICA terms and other
4 existing commitments, the proposed conditions are not necessary to show that the
5 Transaction should be approved by the Commission in Arizona.

6
7 To put the CLECs' proposed conditions into the correct context, let us take this merger
8 out of the equation. The CLECs and their ILEC competitors have rights and obligations
9 granted under applicable law and set forth in ICAs and regulatory requirements. None of
10 the CLECs' existing rights and obligations will change whether or not this merger takes
11 place. None of Qwest's or CenturyLink's existing rights and obligations will change
12 whether or not this merger takes place. The CLECs are not "faced with complete
13 uncertainty and potential severe disruption and harm in every aspect of [its] wholesale
14 relationship" as Mr. Gates asserts,¹⁸ but rather already have "the much-needed certainty
15 that CLECs need to continue to operate their businesses and make prudent decisions."¹⁹

16 As Ms. Howell admits, her company has competed successfully across the country and
17 will continue to do so whether or not this merger takes place.²⁰ By her own words, Ms.
18 Howell therefore admits that the proposed merger conditions are not necessary for a
19 CLEC to continue to successfully compete.

¹⁸ Gates Direct at 107.

¹⁹ Gates Direct at 107-108.

²⁰ Howell Direct at 9.

1
2 The Commission should not permit CLECs to use this proceeding to attempt to change
3 the status quo by obtaining concessions that substantially modify the existing, lawful ICA
4 terms the CLECs agreed to or arbitrated, and that have been approved as consistent with
5 the public interest by the Commission. The Commission should also not allow the
6 CLECs to bypass the good faith negotiations called for by §§ 251 and 252 for further
7 agreements. To the extent that the CLECs believe they have legitimate disputes over the
8 quality or availability of wholesale services, CenturyLink and Qwest will continue to
9 work with these wholesale customers to expeditiously resolve those disputes and the
10 appropriate process for dealing with intercarrier disputes are contained in the
11 interconnection agreements.

12
13 **Q. THE CLECS BELIEVE CENTURYLINK SHOULD HAVE NO PROBLEM**
14 **ADOPTING THEIR PROPOSED CONDITIONS BECAUSE CENTURYLINK**
15 **REPRESENTED THAT THERE WOULD BE “NO IMMEDIATE CHANGES**
16 **POST-MERGER AND NO HARM TO EXISTING WHOLESALE PROCESSES,**
17 **SYSTEMS AND SERVICE QUALITY POST-MERGER.”²¹ CAN YOU RESPOND**
18 **TO THIS CLAIM?**

19 **A.** The CLECs’ mischaracterization of the Transaction only serves to demonstrate that their
20 proposed conditions are unnecessary. If there are no immediate changes post-merger and

²¹ Gates Direct at 110.

1 no harm to existing processes, systems and service quality, then everything is status quo
2 for the CLECs and for the CLECs' competitive and financial outlook. Even if changes
3 are made in the future, there are appropriate safeguards in place. The Transaction is not
4 contrary to the public interest, it does not result in net harms, and no conditions are
5 needed to protect the public interest.
6

7 **Q. ARE THE CLEC CONDITIONS SOMEWHAT SIMILAR TO THE STAFF'S**
8 **CONDITIONS?**

9 A. To some degree, yes. Many of the CLEC's conditions are similar to the Staff's suggested
10 conditions and have already been addressed in my rebuttal testimony as it relates to the
11 Staff's Direct. In most cases, however, the CLECs go well beyond the Staff's proposals
12 and as such, it is necessary to respond to the CLEC's proposals with additional
13 discussions on each condition.
14

15 I would also note that Level 3 and Cox submitted their own separate lists of proposed
16 conditions. To the extent Level 3's and Cox's proposed conditions overlap those of the
17 other CLECs, my testimony is meant to address the similar Level 3 and Cox proposed
18 conditions as well. I will separately address any unique Level 3 proposed conditions later
19 in this testimony.
20

1 To assist the Commission, I will reproduce the CLEC's jointly proposed conditions in
2 Exhibit B to this testimony.

3
4 **Q. IS THERE A GENERAL THEME IN THE INTERCONNECTION CONTRACT**
5 **RELATED CONDITIONS?**

6 A. Yes. The CLECs' proposed conditions alter the status quo of established terms and
7 conditions negotiated by the contracting parties and approved by this Commission under
8 §§ 251 and 252 of the FTA. They therefore deny CenturyLink's right to negotiate new
9 terms and to operate under existing approved terms pursuant to that law. In other words,
10 granting the proposed conditions would unilaterally extract new interconnection terms
11 that are above and beyond the ILEC obligations required by the FTA or otherwise
12 negotiated in good faith.

13
14 Once again, Mr. Gates' own words explain the CLECs' world view that is the motivation
15 for their demands: the CLECs "are [CenturyLink's and Qwest's] rivals, and ... their
16 economic incentive (as profit-maximizing firms) is to undermine – not help – the other
17 provider's ability to compete for end user customers..."²² The CLECs' proposed
18 conditions would undermine CenturyLink's ability to compete fairly and may not be
19 terms the CLECs would obtain in the negotiation and arbitration process contemplated

²² Gates Direct at 12.

1 under applicable law.²³ Further, the proposed interconnection-related conditions are not
2 required to protect the public interest from any alleged harm arising from the Transaction,
3 or have already been addressed through existing laws or contracts, thus this proceeding is
4 not the proper forum to explore and adjudicate any of these issues.

5
6 **Q. THE CLECS ARE CONCERNED ABOUT THE "LARGE SUMS OF MONEY"**
7 **THEY HAVE SPENT TO GET INTERCONNECTION TERMS FROM**
8 **INCUMBENT LOCAL EXCHANGE CARRIERS ("ILECS") SUCH AS**
9 **CENTURYLINK AND QWEST.²⁴ WOULD THIS CHARACTERIZATION BE**
10 **EQUALLY APPLICABLE TO CENTURYLINK?**

11 **A.** Yes, as we likewise spend considerable resources of time and money on the
12 interconnection process, but I take exception to Mr. Gates' assertion that CLECs must
13 spend "enormous amounts of time and money attempting to ensure that the BOCs comply
14 (and continue to comply) with the obligations set forth in approved ICAs and §§ 251 and
15 271 of the FTA."²⁵ CenturyLink takes its obligations very seriously and there is no
16 evidence to the contrary. To imply that we comply only because the CLECs spend
17 "enormous amounts of time and money" to force our compliance is wrong.

²³ As an example, Mr. Falvey improperly seeks to impose Pac-West's terms for ISP-bound compensation, including VNXX, as a merger condition. As Karen Stewart discusses in her Rebuttal testimony, these VNXX issues are in litigation and have been remanded back to the Arizona Commission. It is inappropriate to suggest a condition on an issue that is in litigation. ISP-bound compensation between Pac-West and CenturyLink is subject to other regulatory and court decisions not acknowledged in Mr. Falvey's testimony. Falvey Direct at 10-17.

²⁴ Gates Direct at 17-18.

²⁵ Gates Direct at 18-19.

1
2 **Q. IN CONDITION 6, THE CLECS WANT THE MERGED COMPANY TO**
3 **ASSUME OR TAKE ASSIGNMENT OF OBLIGATIONS UNDER QWEST'S**
4 **INTERCONNECTION AGREEMENTS, TARIFFS, COMMERCIAL**
5 **AGREEMENTS AND ARRANGEMENTS AND ALTERNATIVE FORM OF**
6 **REGULATION PLANS WITHOUT REQUIRING WHOLESALE CUSTOMERS**
7 **TO EXECUTE ANY DOCUMENTS(S) TO EFFECTUATE THE MERGED**
8 **COMPANY'S ASSUMPTION. IS THIS CONDITION NECESSARY?**

9 **A.** No. As I previously stated in regards to the similar suggested condition from Staff, this
10 condition is unnecessary given the structure of this Transaction – a complete acquisition
11 of a corporate entity and all of its existing obligations under law and contracts. The post-
12 merger Qwest affiliate will continue to be the only provider of service to the CLECs in
13 Arizona under the terms of their current contracts with Qwest; the post-merger
14 CenturyLink affiliates will not become parties to those contracts. Thus, this proposed
15 condition would change and add to the named parties to the contracts for the CenturyLink
16 entities, impermissibly changing the interconnection agreements the parties agreed to or
17 the Commission arbitrated.

18
19 **Q. THE CLECS ALSO SUGGEST THAT AGREEMENTS SHOULD NOT BE**
20 **TERMINATED OR CHANGED DURING THE UNEXPIRED TERM OF ANY**

1 **ASSUMED AGREEMENT OR UP TO A MAXIMUM "DEFINED TIME**
2 **PERIOD," WHICH MAY BE UP TO SEVEN YEARS. IS THIS REASONABLE?**

3 A. No. The CLECs' Defined Time Period of up to seven years under which they argue that
4 certain merger conditions should last, is unreasonable and unprecedented. CLECs have
5 voluntarily negotiated and consented to the terms contained within existing ICAs. It is
6 not appropriate for competitors to use the merger process to unilaterally seek to enforce a
7 lengthy extension. Furthermore, the CLECs have not offered any evidence that such a
8 unilateral condition would even *be* appropriate under federal law, let alone necessary to
9 satisfy the not contrary to the public interest standard.²⁶ A unilateral ability for CLECs to
10 extend an ICA is an outcome not contemplated within the context of the bilateral
11 negotiations ordered by Congress. It is contrary to the FTA and should be rejected.

12
13 Accordingly, as regards the rest of the concessions demanded in CLEC Condition 6, such
14 as CenturyLink affiliates offering commercial agreements at prices no higher, and for
15 time periods no shorter, than those offered in the legacy Qwest ILEC territory, there are
16 no legacy CenturyLink affiliates in Arizona.

17
18 CLEC Condition 8, extending existing interconnection agreements in "evergreen" status,
19 for at least the Defined Time Period, falls into the same category as CLEC Condition 6.

²⁶ Mr. Falvey falsely asserts a post-merger affiliate could unilaterally terminate an ICA as his basis for giving the CLECs a unilateral extension of the ICAs. (Falvey direct at 8.) An ICA can only be terminated pursuant to its written terms as approved by the Commission.

1 Agreements may continue in “evergreen” status only as permitted by the term and
2 termination clauses that the CLECs negotiated and willingly agreed to. Any artificial
3 extension of an ICA fails to account for the status of specific interconnection contracts
4 that may be or become outdated, incorrectly presumes that there will be no changes to
5 regulations, and also fails to consider new technologies that must be addressed,
6 marketplace changes, and changes to costs. There are very good reasons all ICAs have a
7 designated term. Agreements become outdated within a short span of time. And changes
8 to the industry and marketplace fuel more and more disputes over what is and is not
9 covered in the ICAs, and how existing terms should be interpreted in new situations that
10 have arisen since the terms were negotiated.²⁷ I know from personal experience that
11 disputes can be exponentially more costly and time intensive as compared to normal
12 negotiations. Further, the FTA places an emphasis upon company to company
13 negotiations to promote agreements that address the business concerns of both parties. It
14 is simply unwise to unilaterally impose artificial time extensions on the terms of contracts
15 and an effective ban upon contract negotiations. Existing laws that require bilateral
16 negotiations, change-of-law provisions, and term provisions are proven vehicles for
17 keeping a contractual relationship current and balanced – arbitrary unilaterally imposed
18 extensions of contract terms are not and may have unintended and unanticipated
19 consequences.

²⁷ For example, many LECs, including CenturyLink, are currently engaged in interpretation disputes over the application of existing ICA terms to new IP-based services. Amendment negotiations have not borne fruit in many of these disputes. CLECs moving to or adding a wholesale business model under existing ICA terms is another example of an interpretation issue that is so comprehensive, it does not lend itself to an ICA amendment.

1
2 For all the reasons already stated, CLECs should not be allowed to unilaterally change
3 the contract terms to extend existing ICAs.
4

5 **Q. IN CLEC CONDITION 9, THE CLECS WANT TO USE PRE-EXISTING**
6 **INTERCONNECTION AGREEMENTS AS THE BASIS FOR NEGOTIATING**
7 **NEW REPLACEMENT INTERCONNECTION AGREEMENTS. IS THIS**
8 **CONDITION NECESSARY?**

9 A. No. As I addressed in responding to Staff's conditions, the CLECs have the right to
10 propose an existing ICA as the starting point for negotiations. CenturyLink also has the
11 right to propose its suggested structure as well and should not be constrained before the
12 fact from doing so.
13

14 Notwithstanding the above, if the question is whether the combined company will
15 consider the use of existing terms and operations in a renegotiation process, the answer is
16 "of course." The existing terms came about for a reason, whether due to legal obligations
17 or as a result of bilateral negotiations. However, any renegotiation must consider
18 changes of law, updating of processes and capabilities that make the relationship function
19 more smoothly, and competitive industry issues and conditions that did not exist at the
20 time of the first negotiation. It would be inappropriate, for example, for the Commission
21 to in effect pre-approve agreements that may have been negotiated or arbitrated ten or

1 more years ago as complying with the FTA in 2010 or beyond. Again, ICA negotiations
2 are governed by and encouraged under §§ 251 and 252; it is inconsistent with applicable
3 law and underlying policies to impose restraints upon the negotiation process.
4

5 Further, while it is not entirely clear what the Joint CLECs intend to accomplish by this
6 condition, nothing can permit CLECs to “pick and choose” provisions from existing
7 agreements. The FCC has adopted the “all or nothing” rule, which necessarily means
8 that CLECs may not select only those parts of existing agreements they want to adopt.
9

10 **Q. MR. DENNEY BELIEVES IT IS ACCEPTABLE TO USE EXISTING ICA’S AS**
11 **THE STARTING POINT FOR REPLACEMENT ICA NEGOTIATIONS**
12 **BECAUSE THE MERGED COMPANY WILL BE PROTECTED BY**
13 **INCORPORATED CHANGE OF LAW PROVISIONS.²⁸ IS THIS TRUE?**

14 **A.** Only to a point. Change of law provisions only cover changes of law. Such provisions
15 do not address interpretation deficiencies within an existing ICA that were only
16 discovered *after* ICA implementation or that arose pursuant to technology or other
17 changes within the industry. In my experience, most ICA disputes are caused by the
18 parties asserting differing interpretations of specific or interrelated ICA terms. It is to
19 both parties’ benefit to minimize disputes by negotiating terms that do not lend
20 themselves to more than one interpretation.

²⁸ Denney Direct at 25.

1
2 **Q. DOES PROPOSED CLEC CONDITION 9 ALSO ADDRESS ATTEMPTS TO**
3 **INSERT A NEW TEMPLATE INTO ICA NEGOTIATIONS THAT ARE**
4 **ALREADY UNDERWAY?**

5 A. Yes. Regarding negotiations for a replacement ICA that are in progress before the
6 Closing Date, I have already stated that CenturyLink has no plans to terminate and restart
7 negotiations with a different template. In any event, no condition or restriction on this
8 issue is needed because CenturyLink cannot unilaterally impose new provisions or terms
9 on CLECs. CLECs retain the right to arbitrate if they disagree with any proposal made
10 during the negotiation process, and the Commission will retain the jurisdiction to
11 determine the appropriate resolution of any such disagreement through the existing § 252
12 arbitration process and applicable legal standards. Because the CLECs have the
13 protection of applicable law, no condition is needed.

14
15 **Q. CLEC CONDITION 10 WOULD PERMIT CLECS TO OPT INTO A QWEST**
16 **AGREEMENT IN NON-QWEST LEGACY AREAS. IS THIS CONSISTENT**
17 **WITH THE EXPECTATONS OF THE PARTIES THAT NEGOTIATED THE**
18 **QWEST AGREEMENT OR THAT NEGOTIATED THE AGREEMENTS IN**
19 **NON-QWEST LEGACY AREAS?**

20 A. No. As an initial matter, I will again note that there are no legacy CenturyLink areas in
21 Arizona. Notwithstanding that fact I will address this issue so that the Commission can

1 understand the motive behind the CLECs' multistate proposal of this condition. The
2 CLECs are asking for the right to unilaterally terminate contracts that they voluntarily
3 negotiated and signed with CenturyLink, and to cherry-pick the best ICA terms from the
4 Qwest agreements for themselves outside of the standard negotiation process. The
5 CLECs attempt to get terms they may perceive as more accommodating, without having
6 to negotiate and arbitrate whether the other terms are even appropriate for the ILEC at
7 issue or whether the contract on balance is one both parties would agree upon. As such,
8 the CLECs do not seek to preserve the status quo or protect the public interest, but rather
9 seek self-interested competitive advantages through the merger process with proposed
10 conditions such as this.

11
12 CenturyLink's and Qwest's ICAs were negotiated with the particular network and
13 facilities in mind, and it would be contrary to the parties' expectations that an ICA could
14 be involuntarily and arbitrarily imposed upon another entities' network and facilities. It
15 would also be contrary to the review and approval process conducted by the Commission;
16 in other words, that the Commission reviewed and approved Qwest ICA terms as only
17 applicable to Qwest and its network, systems, processes and costs, and not to
18 CenturyLink and its network, systems, processes, and costs. Finally, agreements are
19 entered into between specific legal entities and such terms cannot be involuntarily
20 imposed on a non-signatory third party legal entity. So this proposed condition is really

1 an attempt to circumvent contractual obligations and bind a third party legal entity to a
2 contract it did not negotiate and may not be able to accommodate.
3

4 **Q. PROPOSED CLEC CONDITION 10 AND LEVEL 3 SUGGESTED CONDITION**
5 **1.b²⁹ WOULD ALSO ALLOW CLECS TO ADOPT ANY EXISTING ICA, EVEN**
6 **IF THAT ICA EXISTS IN ANOTHER STATE. DO THESE SUGGESTED**
7 **CONDITIONS COMPORT WITH THE CIRCUMSTANCES UNDER WHICH**
8 **THE ICAS WERE NEGOTIATED AND APPROVED?**

9 A. No, and that condition is neither necessary nor appropriate for this Transaction. Not all
10 negotiated terms can technically and logically be applied to all companies and in all
11 jurisdictions, or to Arizona specifically. All sorts of questions abound about how state-
12 specific terms for one legal entity ILEC would apply in Arizona. For example, other
13 state commissions have made differing substantive rulings to address competitive
14 conditions and state laws specific to those states. Importing terms from another state
15 could allow the CLECs to effectively ignore or inappropriately modify Arizona rulings
16 on specific issues. Accordingly, this proposal ignores prior Commission decisions in this
17 area.
18

19 Mr. Falvey, for example, believes a CLEC should be permitted to port any ICA and if the
20 ILEC has any issue with compliance, the ILEC can petition *after the effective date*, for an

²⁹ Thayer Direct at 3.

1 order to modify the ICA terms.³⁰ Mr. Falvey's approach is not consistent with 47 CFR
2 § 51.809 wherein it states that *the ILEC shall make available* an ICA to which it is a
3 party and *the obligation shall not apply* where the ILEC can prove the costs of provision
4 are greater or provision is technically infeasible. Applicable law states the ILEC shall
5 provide, not the CLEC shall choose without the ILEC's knowledge. The law states the
6 ICA must be one under which the ILEC is a party; CenturyLink is not a party to a Qwest
7 ICA and vice versa. And the law gives the ILEC the right to prove the cost or technical
8 impact before the obligation is effective, not after. Further, under Mr. Falvey's approach,
9 there will be a potential increase of disputes that the Commission will have to address
10 because a CLEC can invoke ILEC obligations before the cost and technical issues are
11 reviewed and resolved.

12
13 The CLECs fail to show any reason why a review of the proposed merger should include
14 taking the terms directed to operations from another state, and from another legal entity,
15 and impose them on the post-merger CenturyLink affiliate operations in Arizona.
16 Further, it is not rational, reasonable, or consistent with §251 for the Commission to order
17 CenturyLink and Qwest to allow competitors to cherry-pick the best ICA terms for
18 themselves outside of the standard negotiation process, merely because CenturyLink and
19 Qwest are engaging in a merger. Even if one can get past some of the logistical and
20 practical questions of which conditions could theoretically be applied to CenturyLink's

³⁰ Falvey Direct at 7.

1 ILECs in Arizona, there still remains the fundamental problem of the lack of fairness in
2 simply imposing such a broad condition under the facts of this particular Transaction and
3 under the statutory standard of review.
4

5 **Q. SEVERAL OF THE CLEC CONDITIONS, SPECIFICALLY 21, 23, 26, AND 27,**
6 **SPEAK TO REQUIRING CENTURYLINK TO COMPLY WITH APPLICABLE**
7 **LAW AND AGREEMENT TERMS. MR. DENNEY THINKS THE MERGED**
8 **COMPANY SHOULD NOT HAVE ANY ISSUE WITH AGREEING TO THIS**
9 **TYPE OF CONDITION.³¹ WHY IS AGREEING TO THESE PROPOSED**
10 **CONDITIONS AN ISSUE?**

11 **A.** If the conditions requested stopped at compliance with applicable law and agreement
12 terms, then the conditions would be acceptable for CenturyLink. Of course, if the
13 conditions merely required compliance with the law it really is a non-issue that would not
14 require any Commission order since we must comply with the law regardless. What the
15 CLECs request, however, is much more than compliance with applicable law and
16 agreement terms. These specific proposed conditions do not stand in isolation. The
17 CLECs have proposed other interrelated conditions and add descriptive language beyond
18 the simple "comply with the law" condition, in an effort to achieve their slant on what
19 they believe the law should be. In short, the CLECs are trying to establish substantive
20 terms and conditions that are not required by applicable law and can be or have been

³¹ Denney Direct at 29.

1 subject to negotiation or arbitration. See for example the interrelated proposed conditions
2 22 and 24. The CLEC issues -- 911, LNP, network construction and maintenance and the
3 provision of copper loops -- all have specific requirements in 47 CFR § 51 and are also
4 covered within the ICAs that the CLECs have voluntarily negotiated and signed, or that
5 have already been arbitrated and approved by the Commission. Once again, the
6 Commission should not permit the CLECs to add new obligations, and cannot
7 unilaterally impose conditions that are more expansive than those required by the law or
8 contractual terms.

9
10 **Q. CLEC CONDITIONS 12 AND 14 WOULD COMPEL CENTURYLINK TO**
11 **WAIVE ALL SECTION 251(f) RURAL EXEMPTIONS AND FORGO THE**
12 **RIGHT TO DECLARE NONIMPAIRED SECTION 251 STATUS TO ANY**
13 **IMPAIRED CENTRAL OFFICES. DO THESE TOPICS INDIVIDUALLY**
14 **REQUIRE A THOROUGH COMMISSION REVIEW AND SUBSEQUENT**
15 **FINDING OUTSIDE OF A MERGER PROCEEDING?**

16 **A.** Yes, but the CLECs seek to undermine the review that is required. Setting aside the fact
17 that there are no CenturyLink rural affiliates in Arizona, as an initial matter, CenturyLink
18 and Qwest have legal rights granted by the FTA and the FCC rules, and the CLECs'
19 proposed condition would thwart the important public policies underlying those rules.³²

³² Examples include the policy of not imposing below cost rates on ILECs when CLECs have viable alternatives and the FCC policies aimed at encouraging facilities-based carriers.

1 Further, the rural exemption and central office impairment issues require petitions to the
2 Commission, a Commission review of all pertinent facts and mitigating factors, and a
3 subsequent finding. Those legal processes should not be circumvented or closed down.
4 This proceeding is not the proper forum to submit the documentation required by law and
5 to conduct the necessary reviews necessary for the required Commission determinations.
6 The CLECs should not be permitted to tell the Commission it should change the law or
7 take short cuts. The CLECs proposals have little in common with the evaluation of
8 Transaction, and nothing in common with the public interest in the rule of law.

9
10 **Q. ON PAGE 17 OF HIS DIRECT TESTIMONY, MR. THAYER SPECULATES**
11 **THAT THE JOINT APPLICANTS COULD USE TRAFFIC ROUTING**
12 **PRACTICES TO INCREASE TRANSPORT REVENUE JUST LIKE A TRAFFIC**
13 **PUMPING SCHEME. WHAT RELEVANCE IS THIS TESTIMONY TO THE**
14 **MERGER PROCEEDING?**

15 **A.** None. Despite Mr. Thayer's assertions and speculations, CenturyLink does not engage in
16 such practices. Furthermore, as regards raising the specter of "traffic pumping," it is my
17 understanding Qwest continues its pursuit of cases against traffic pumping CLECs in
18 Minnesota, Iowa, and South Dakota, and is vigorously contesting before the FCC any and
19 all forms of traffic pumping, independent of the proposed merger.³³ This testimony is

³³ See In the Matter of the Complaint by Qwest Communications Company, LLC against Tekstar Communications, Inc. regarding Traffic Pumping, MPUC Docket No. P-5096, 5542/C-09-265; Qwest Communications Company LLC v. Tekstar Communications, Inc., Free Conferencing Corp. and Audiocom, LLC, USDC Case No. 10-cv-490-

1 unfounded speculation that is meant to impose an unnecessary condition when the facts
2 show to the contrary that no condition is needed.
3

4 **Q. CLEC CONDITION 24 APPEARS TO DENY CENTURYLINK THE ABILITY**
5 **TO CHARGE FOR PROVIDING CERTAIN SERVICES TO THE CLECS. IS**
6 **THIS APPROPRIATE?**

7 A. No. As an initial matter, setting charges for services provided to CLECs is an extremely
8 complex and fact-intensive process; it has nothing to do with mergers and is raised
9 merely to be a distraction, and a way for CLECs to get something to which they are
10 otherwise not entitled. Second, independent of the proposed merger, these very issues
11 have already been arbitrated in other state venues, and the rates at issue as contained in
12 interconnection agreements have been approved by state commissions, including
13 Arizona, as non-discriminatory, compliant with the Telecom Act, and in the public
14 interest.³⁴ To the extent the arbitrating CLECs lost the issues in those venues, what they
15 seek here is to circumvent the arbitration process under applicable law and have their
16 proposed outcome imposed upon CenturyLink in an unrelated proceeding. This is not an

MJD-SRN; and Qwest Communications Corporation v. Superior Telephone Cooperative, et al., IUB Docket No. FCU-07-2.

³⁴ See for example, AAA Case No. 51 494 Y 00524-07; Petition of Charter Fiberlink TX-CCO, LLC for Arbitration of an Interconnection Agreement with CenturyTel of Lake Dallas, Inc., Texas Public Utility Commission Docket 35869; In the Matter of a Petition for Arbitration by Sprint Communications Company LP vs. CenturyTel of Mountain Home, Inc., Arkansas Public Service Commission Docket 08-031-U; In the Matter of Sprint Communications Company LP's Petition for Arbitration with CenturyTel of Eagle, Inc, Colorado Public Utilities Commission Docket C08-1059; and In the Matter of Sprint Communications Company LP Petition For Arbitration of an Interconnection Agreement with CenturyTel of Colorado, Inc., Colorado Public Utility Commission ARB 830.

1 arbitration proceeding; it is a merger Transaction approval proceeding, and not the proper
2 forum for raising these issues.
3

4 **Q. ARE THE CLECS ATTEMPTING TO IMPOSE CONDITIONS THAT ARE**
5 **CONTRARY TO APPLICABLE LAW?**

6 **A.** Based on the facts as I understand them, yes. The crux of the NID rate issue, for
7 example, is whether a CLEC can unilaterally use CenturyLink's NIDs for free, or
8 whether a CLEC must submit an order to CenturyLink and compensate CenturyLink for
9 the use of its unbundled NID element to house all or a portion of the interconnection with
10 a customer who elects to obtain telephone service from a CLEC rather than from
11 CenturyLink. I will not provide a complete discussion of this issue such as would be
12 made in an ICA arbitration setting but, in brief, CenturyLink does not dispute a CLEC's
13 right to access the customer access side of the NID for the purpose of disconnecting the
14 customer's inside wire from CenturyLink's local loop. Further, CenturyLink does not
15 seek any compensation from a CLEC with regard to such access or disconnection
16 activity. However, if a CLEC places its facilities in CenturyLink's NID and thus uses the
17 CenturyLink NID as an unbundled network element, compensation is properly payable to
18 CenturyLink.
19

20 **Q. WHAT IS THE BENEFIT TO A CLEC OF ATTACHING ITS FACILITIES TO**
21 **THE PREMISE INSIDE WIRING WITHIN THE CENTURYLINK NID?**

1 A. By using CenturyLink's property, the CLEC avoids the cost of purchasing and installing
2 its own NID.

3
4 Q. DOES A CLEC HAVE ANY OTHER CONNECTION OPTIONS BESIDES
5 INSTALLING ITS OWN NID OR USING CENTURYLINK'S NID UNE?

6 A. Yes. Except for very unusual wiring installations, a CLEC can connect to the inside
7 wiring at any location within the premises; such as the jack nearest the placement of the
8 cable modem for most cable CLECs.

9
10 Q. IS THERE ANY APPLICABLE RULE THAT ADDRESSES THIS POINT?

11 A. Yes. For example, 47 CFR § 51.319(c), addresses the NID as a UNE:

12 ...an incumbent LEC also shall provide nondiscriminatory access to the network
13 interface device *on an unbundled basis*, in accordance with section 251(c)(3) of
14 the Act and this part. The *network interface device element is a stand-alone*
15 *network element* and is defined as any means of interconnection of customer
16 premises wiring to the incumbent LEC's distribution plant, such as a cross-
17 connect device used for that purpose. An incumbent LEC shall permit a
18 requesting telecommunications carrier *to connect its own loop facilities to on-*
19 *premises wiring through the incumbent LEC's network interface device*, or at
20 any other technically feasible point. [Emphasis added]

21 § 51.307(c) indicates that any use of a UNE whatsoever is included in the UNE
22 definition:

23 . . . access to an unbundled network element, along with *all of the unbundled*
24 *network element's features, functions, and capabilities*, in a manner that allows
25 the requesting telecommunications carrier to provide any telecommunications
26 service that can be offered by means of that network element. [Emphasis added]

1 And finally, § 51.509(h) indicates that there is a price for the stand alone NID UNE:

2 An incumbent LEC must establish a *price* for the network interface device when
3 that unbundled network element is purchased on a stand-alone basis pursuant to
4 Sec. 51.319(c). [Emphasis added]

5
6 These citations show that CenturyLink's charges for use of the NID are authorized under
7 applicable law and are not "customer acquisition surcharges" as Ms. Howell attempts to
8 claim.³⁵ Notwithstanding the preceding discussion, the NID terms of existing Qwest
9 ICAs will not change post-merger.

10
11 **Q. CLEC CONDITION 24 WOULD PREVENT LEGACY CENTURYLINK FROM**
12 **ASSESSING A SERVICE ORDER CHARGE FOR ORDERS SUBMITTED FOR**
13 **NUMBER PORTING PURPOSES. IS THAT CONDITION REASONABLE?**

14 **A.** No, for two reasons. First, any setting of rate elements by the Commission should be
15 thoroughly examined in the context of a cost docket. Second, it is consistent with the
16 cost recovery provisions of the FTA for one party to recover the administrative costs of
17 service order activity from the other party when that party requests the processing of a
18 number port or any other service ordered and performed pursuant to the terms of the
19 Agreement. As the FCC³⁶ and several other state agencies³⁷ have held, the administrative

³⁵ Howell Direct at 7.

³⁶In the Matter of Telephone Number Portability and BellSouth Corporation Petition for Declaratory Ruling and/or Waiver, released April 13, 2004 in CC Docket No. 95-116.

1 processing costs that are the subject of this issue are an incidental consequence of number
2 portability, and are not costs directly related to providing number portability. This
3 administrative service order charge is therefore not a charge to "port the telephone
4 number" as Ms. Howell claims.³⁸ Recovery of these costs is competitively neutral in that
5 they apply to both carriers when either makes a request of the other. The CLECs only
6 make this charge an issue because they assume they will be sending more porting orders
7 than CenturyLink, and as the greater cost-causer, they seek to avoid paying CenturyLink
8 for services performed at the CLEC's request. As I have previously stated, however,
9 none of the terms of the existing Qwest ICAs will change post-merger.

10
11 **Q. IN THEIR PROPOSED CONDITIONS, THE CLECS ALSO REFERENCE**
12 **ELIMINATING DIRECTORY LISTING CHARGES; APPARENTLY AS A**
13 **PROSPECTIVE PROHIBITION FOR FUTURE ARIZONA ICAs. ISN'T THIS**
14 **ISSUE SIMILAR TO THE OTHER SERVICE ORDER CHARGES THAT THE**
15 **CLECs SEEK TO AVOID?**

16 **A.** Yes, and as with the administrative service order charge, the directory listing fees are
17 independent of and irrelevant to this matter. It is instructive to know, however, that while

³⁷ See for example, Petition of Charter Fiberlink TX-CCO, LLC for Arbitration of an Interconnection Agreement with CenturyTel of Lake Dallas, Inc., Texas Public Utility Commission Docket 35869; In the Matter of a Petition for Arbitration by Sprint Communications Company LP vs. CenturyTel of Mountain Home, Inc., Arkansas Public Service Commission Docket 08-031-U; In the Matter of Sprint Communications Company LP's Petition for Arbitration with CenturyTel of Eagle, Inc., Colorado Public Utilities Commission Docket C08-1059; and In the Matter of Sprint Communications Company LP Petition For Arbitration of an Interconnection Agreement with CenturyTel of Colorado, Inc. Colorado Public Utility Commission ARB 830.

³⁸ Howell Direct at 7.

1 the CLECs seek to use CenturyLink's services without cost, they already have an option
2 in the legacy CenturyLink areas in other states to submit directory listings directly to the
3 same third party directory publishers and DA providers that are used by CenturyLink,
4 with no involvement of CenturyLink in the process, and therefore no charges assessed by
5 CenturyLink.

6
7 The bottom line regarding all of the CLEC proposed conditions relating to charges
8 imposed by CenturyLink is where a charge is contained in an ICA, it has been either
9 agreed upon or approved by the reviewing regulatory agency as consistent with the public
10 interest. Further, this is not the appropriate place to negotiate the terms of future
11 interconnection agreements. The Commission can see therefore, that this is not the
12 "anticompetitive practice" that Mr. Gates claims it is.³⁹ And, all of the rate issues for
13 specific services are best left to the § 251 negotiations and arbitration process that is
14 specifically established in the FTA for just such an obligation and through which the
15 issues can be fully developed and explored.

16
17 **Q. IS A SINGLE POINT OF INTERCONNECTION ("POI") PER LATA FOR**
18 **TRAFFIC EXCHANGE WITH ALL CENTURYLINK AFFILIATES IN THAT**
19 **LATA (CLEC CONDITION 28) A REASONABLE REQUEST?**

³⁹ Gates Direct at 165.

1 A. No. This is a relatively complex issue that has a lengthy and complicated body of
2 decisions, but the existing interconnection arrangements between CLECs and Qwest, will
3 remain as required by ICA terms. Further, this merger creates no interconnection cost to
4 the CLECs that the CLECs do not already have today. No merger condition is needed or
5 applicable for Arizona.

6
7 **Q. IS CLEC CONDITION 15, ASKING FOR CONTACT INFORMATION, A**
8 **SIMPLE AND STRAIGHTFORWARD REQUEST?**

9 A. No. Providing and updating the contact information is not an issue. As I testified in
10 regards to Staff's suggested conditions, this already occurs today under CenturyLink's
11 and Qwest's existing wholesale processes. Once again, however, the CLECs attempt to
12 go beyond a simple assurance of an existing requirement, and seek to impose new
13 requirements. In this condition, the CLECs want imposed timeframes. The subjects of
14 contact information provisions and notice are already covered in ICA terms and those
15 terms will govern any required timeframes. The CLECs should not be permitted to
16 impose new conditions that modify negotiated agreements that are already in place, and
17 to do so without clear and compelling evidence that this protects the public interest from
18 a probable and real harm.

19
20 **Q. WHAT IS THE NEXT GROUP OF PROPOSED CLEC CONDITIONS THAT**
21 **YOU WILL ADDRESS?**

1 A. I will address the CLECs' proposed OSS conditions, which are 16, 19, and 20. I have
2 already touched upon OSS earlier in my testimony but I will now explore this topic in
3 more detail.
4

5 **Q. IN CLEC CONDITIONS 16, 19, and 20 THE CLECS SEEK TO BIND THE POST-**
6 **MERGER COMPANY TO A LITANY OF OSS OBLIGATIONS. ARE THESE**
7 **REASONABLE REQUESTS?**

8 A. No. The Transaction itself will not change any of the rights or obligations of any party,
9 and CenturyLink and Qwest will abide by their OSS obligations. As I previously stated,
10 no harm to CLECs will result from the Transaction, and it is unreasonable to impose an
11 arbitrary moratorium upon potential integration practices that could otherwise provide
12 compliant services to CLECs and result in efficiencies for the combined company.
13

14 As an initial matter, both CenturyLink and Qwest take very seriously their wholesale
15 provisioning obligations and opportunities. Wholesale provisioning is governed by a
16 comprehensive array of existing regulations, laws, and contracts, and the Commission
17 should not impose conditions that change the legal obligations or voluntary agreements
18 that the parties have previously entered into. Beyond legal obligations, however, serving
19 wholesale customers is important to each company and is crucial to the future of the
20 combined company. CenturyLink and Qwest are each dedicated to having strong OSS
21 for wholesale operations, and they have long satisfied their various legal obligations.

1 There is no reason to assume that they will suddenly abandon their responsibilities
2 following the close of this Transaction.

3
4 The merger is intended to bring about improved efficiencies and practices in all parts of
5 the combined company, so changes could be expected over time.⁴⁰ What those changes
6 are have not been determined, and it is pure, unsupported speculation on the part of the
7 CLECs to allege that harm will result from these changes. Further, any changes will
8 occur only after a thorough and methodical review of both companies' systems and
9 processes to determine the best system to be used on a going-forward basis from both a
10 combined company and a wholesale customer perspective. And, importantly, any
11 changes will comply with the companies' respective legal obligations, including the
12 obligation in Qwest territory to coordinate such changes in advance through the CMP.

13
14 In the FCC's merger review proceeding, CenturyLink and Qwest have provided a sworn
15 statement that CenturyLink plans to continue operating both CenturyLink and Qwest
16 existing OSS uninterrupted for the immediate future until it completes its evaluation of
17 the best options for all stakeholders. This is expected to take 12 months at the very least.

18 It is reasonable and appropriate from a regulatory, business, and operational perspective

⁴⁰ For example, upgrades to the existing OSS based on the new industry standard Unified Ordering Model (UOM). An upgrade to a new industry standard, however, is not a disruptive change to OSS or a replacement of existing OSS as Mr. Gates implies on pages 39-42 of his Direct. Further, UOM is the replacement for the Electronic Data Interface (EDI) that Ms. Howell touts on page 8 of her Direct testimony. CenturyLink's implementation of UOM brings its OSS to the latest standard and this OSS is therefore not a "large step backwards" as Ms. Howell suggests.

1 for CenturyLink and Qwest to evaluate the strengths and weaknesses of Qwest's and
2 CenturyLink's respective OSS, to consider the desires of the broad, multi-state base of
3 CLEC customers, and to analyze the logistical and economic factors that bear on whether
4 or how to migrate to a single OSS platform for all states. Wholesale customers in
5 CenturyLink areas and in Qwest areas will not face immediate changes in their existing
6 systems interfaces and existing OSS arrangements will not be disrupted. The post-
7 merger entities will continue to comply with existing requirements of the Telecom Act
8 and any reporting and testing obligations under law.

9
10 The CLECs allege that the CenturyLink OSS is inferior to the Qwest OSS, but do not
11 support their claim.⁴¹ Likewise, the CLECs imply CenturyLink does not have equal OSS
12 experience to that of Qwest. As CenturyLink and Qwest explained in their Reply
13 Comments in the FCC proceeding,⁴² allegations about performance "differences"
14 between the Qwest and CenturyLink OSS are false, and the alleged limitations of the
15 CenturyLink OSS do not exist. Once again, the CLECs' testimony reveals that their
16 proposed conditions are not directed toward protecting against some verifiable potential
17 public interest harm in Arizona. The proposed Transaction will not change any
18 operations in the near term or obligations of any of the CLECs or of CenturyLink and
19 Qwest, so there is no new and likely harm which merits such a condition.

⁴¹ For example, Ms. Howell attempts to demean CenturyLink's current OSS by stating a capability missing from the company's former OSS. Howell Direct at 4.

⁴² In the Matter of Application Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer of Control; WC Docket No. 10-110

1
2 In the longer term, post-merger CenturyLink is dedicated to having industry-leading
3 OSS. Whether post-Transaction CenturyLink ultimately chooses an existing OSS or
4 selects new systems should be left to be resolved through a refined analysis and the need
5 to respond to marketplace conditions, governed and controlled by existing laws and
6 contracts. For example, the geographic location of the CLEC may have an impact on
7 which system a particular CLEC desires. If a CLEC provides service in only the
8 southeastern part of the country (where Qwest does not operate), it might prefer the
9 CenturyLink OSS system. Likewise a CLEC in the southwest that provides service in
10 only Qwest's territory may want to continue to use the Qwest system. Moreover, if each
11 state commission approving the merger imposes a condition regarding the future OSS
12 system, there could be conflicting, state-specific mandates which will impede proper
13 selections of the most efficient and productive systems. These are just some of the
14 numerous factors that must be considered when making a decision on the future of any
15 OSS system. Accordingly, CenturyLink and Qwest recognize that any future changes to
16 OSS, if and when they occur, will require significant advance planning with wholesale
17 customers, and CenturyLink pledges to give its CLEC customers ample and adequate
18 notice of any future changes, consistent with its legal obligations and accepted business
19 practices.
20

1 Further, CenturyLink contends that it is wrong for CLECs to require onerous reporting
2 requirements, including those above and beyond anything required by current law or
3 regulation, and it is wrong to require new and special review by the FCC and
4 Commission. In a competitive world, CenturyLink's competitors should not control what
5 systems and functionalities are acceptable for CenturyLink operations. The ultimate
6 decision is whether the system CenturyLink decides upon complies with all legal
7 requirements. Undue deference to the CLECs' wishes might simply delay system and
8 process upgrades that would provide a benefit to the entire post-merger CenturyLink
9 customer base, without addressing any true merger-related harm. Accordingly, the
10 CLECs' OSS proposed conditions are not reasonable or pragmatic under all the facts and
11 circumstances.

12
13 **Q. IS CENTURYLINK'S EASE OSS THE SAME OSS THAT WAS USED BY**
14 **FAIRPOINT COMMUNICATIONS IN ITS OSS CUTOVER IN NORTHERN**
15 **NEW ENGLAND AND BY FRONTIER COMMUNICATIONS IN ITS RECENT**
16 **OSS CUTOVER IN WEST VIRGINIA AS MR. GATES IMPLIES?⁴³**

17 **A.** No. EASE is a proprietary system that has never been used in New England or West
18 Virginia. The only commonality is that EASE leverages an ordering software framework
19 provided by the same vendor used by Frontier, but business rules, messaging

⁴³ Gates Direct at 58.

1 infrastructure, operating infrastructure and back office interfaces and applications were
2 developed by Embarq.

3
4 **Q. THE CLECS SEEM CONCERNED THAT THE MERGED COMPANY MAY**
5 **NOT MAINTAIN CURRENT WHOLESALE SERVICE QUALITY; THAT**
6 **WHOLESALE SERVICE QUALITY MAY BE A LOW PRIORITY; AND THAT**
7 **THERE MAY BE CUTBACKS.⁴⁴ CAN YOU EXPLAIN WHY THIS IS NOT AN**
8 **ISSUE?**

9 A. The CLECs engage in baseless speculation that the merged company may integrate
10 systems with less functionality than now exists and will discontinue services or provide
11 inferior access.⁴⁵ None of these assertions explains how CenturyLink might chart such a
12 path in defiance of applicable law and binding contractual terms. As Staff witness
13 Fimbres concludes, the existing Qwest QPAP and CMP will help prevent any adverse
14 impacts upon service quality.⁴⁶

15
16 Further, the operating efficiencies for both CenturyLink and the CLECs are not mutually
17 exclusive. CenturyLink is committed to maximizing its internal efficiencies associated
18 with providing quality service to CLECs which also means that the CLECs benefit from

⁴⁴ Gates Direct at 27.

⁴⁵ Gates Direct at 30.

⁴⁶ Fimbres Direct at 15.

1 this efficiency. Thus the benefits of these efficiencies inure to the benefit of both
2 CenturyLink and the CLECs.

3
4 **Q. DID THE FCC REQUIRE CENTURYLINK TO USE THE EMBARQ OSS AS MS.**
5 **HOWELL CLAIMS ON PAGE 5 OF HER DIRECT TESTIMONY?**

6 A. No. The FCC issued no conditions on the CenturyTel-Embarq merger. In fact, the FCC
7 has no authority to issue any conditions on this type of Transaction. The Joint Applicants
8 to that earlier proceeding made what they believed were appropriate voluntary
9 commitments for the situation that existed at that time and those were accepted by the
10 FCC.⁴⁷

11
12 **Q. MS. HOWELL ALSO CLAIMS THAT (LEGACY) CENTURYTEL'S**
13 **CAPABILITY TO HANDLE PORTING REQUESTS WAS SUCH A CONCERN**
14 **IN THE EMBARQ MERGER THAT THE FCC CAPPED THE NUMBER OF**
15 **PORTS CENTURYTEL COULD IMPLEMENT IN A DAY. IS THAT TRUE?**

16 A. No. Ms. Howell claims that in paragraph 25 of the Embarq merger order the FCC capped
17 the number of ports processed by CenturyTel. Paragraph 25 deals with commenter

⁴⁷ In the Matter of Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.;
Memorandum Opinion, and Order; WC Docket No. 08-238, June 25, 2009 at ¶ 29.

1 allegations; it is not an FCC ordering paragraph.⁴⁸ Further, in no other paragraph in the
2 FCC Order did the FCC take the action claimed by Ms. Howell.

3
4 **Q. MS. HOWELL SAYS CENTURYLINK'S GRANTED WAIVER OF THE ONE**
5 **DAY PORTING INTERVAL RAISES A "CONCERN ABOUT THE PRIORITY**
6 **CENTURYLINK PLACES ON ITS COMPETITIVE OBLIGATIONS" AND**
7 **ALSO "ABOUT THE ABILITIES OF CENTURYLINK TO TIMELY AND**
8 **ACCURATELY HANDLE LARGE VOLUMES OF PORTS." ⁴⁹ DOES THE ONE**
9 **DAY PORTING INTERVAL WAIVER HAVE ANYTHING TO DO WITH**
10 **THESE ISSUES AS MS. HOWELL SUGGESTS?**

11 **A.** No. CenturyLink is engaged in a rolling cutover to the Embarq OSS in order to assure
12 continuing billing quality for its end users. Meeting the one day interval date proposed in
13 the FCC's order would cause the company to implement changes to a system that is being
14 discontinued. Contrary to the implication in Ms. Howell's testimony that CenturyLink
15 initiated the request, the FCC offered a waiver process for just such a situation.
16 CenturyLink applied for and was granted a waiver under that process. As can be seen,
17 this waiver has nothing to do with order volume management and contrary to Ms.
18 Howell's assertion, this issue does show the priority CenturyLink places upon providing
19 quality service to its customers.

⁴⁸ Id. at ¶ 25.

⁴⁹ Howell Direct at 5.

1 Further, the waiver is only for a specific time period and will expire in February 2011.
2 CenturyLink will be processing porting orders within a one day interval long before any
3 OSS integration activities take place in regards to the Qwest OSS.

4
5 **Q. IS THERE ANY OTHER CATEGORY UNDER WHICH YOU CAN GROUP**
6 **PROPOSED CLEC CONDITIONS?**

7 A. Yes. Several of the proposed CLEC conditions appear to be related to products and
8 services. These are proposed conditions 1, 2, 3, and 7.

9
10 **Q. OTHER THAN THE BEING RELATED TO THE PRODUCTS AND SERVICES**
11 **USED BY CLECS, IS THERE ANY OTHER COMMONALITY TO THIS SET OF**
12 **CONDITIONS?**

13 A. Yes. Within this set of proposed product and service conditions, the CLECs include
14 several rate-associated conditions that are improper and are plainly designed to give them
15 competitive advantages rather than to address any legitimate merger-related concerns.
16 First, each of the rates associated with services provided to CLECs should be carefully
17 determined in independent proceedings and are inappropriate for resolution here.⁵⁰ As
18 far as I am aware, the Arizona Commission has not imposed wholesale rate changes as a

⁵⁰ The Iowa Utilities Board, for example, recently made this same determination in the Windstream / Iowa Telecom merger. Order Granting Motion To Strike, In Part, Denying Motion To Strike, In Part, And Requesting Additional Information, *In Re: Windstream Corporation And Minnesota Telecommunications Services, Inc., D/B/A Iowa Telecom*, Docket No. SPU-2009-00010, p. 10 (2010) ("... the Board has consistently declined to decide rate-related issues in the context of a reorganization proceeding.")

1 part of any merger review. Next, the CLECs once again argue that certain merger
2 conditions should last an unprecedented seven years. The term is unreasonable, and the
3 effect would be irresponsible in a competitive market. The combined company will
4 continue to face substantial competition, including from much larger carriers, which will
5 discipline its pricing and market conduct. To hobble a company's ability to make
6 important financial business decisions for seven years would not preserve or promote
7 competition, but is more likely to hamper competition substantially by placing an
8 unnecessary anticompetitive burden on one of the market players.

9
10 All of these product and service conditions, including the proposed rate-related
11 conditions, are unnecessary. The CLECs do not attempt to portray these conditions as
12 legitimate merger concerns and, in any event, rate setting procedures, including proper
13 review and oversight, are already well established in applicable law and Commission
14 rules, and thus no conditions related to rates are necessary. These proposed conditions
15 appear to be attempts to circumvent applicable law and rules to increase CLEC
16 profitability through terms CLECs are unlikely to gain under the current regulatory
17 reviews and processes.

18
19 **Q. WOULD YOU PLEASE SUMMARIZE FOR THE COMMISSION YOUR**
20 **CONCLUSIONS ABOUT THE TERMS SOUGHT BY CENTURYLINK'S**
21 **COMPETITORS IN THIS PROCEEDING?**

1 A. Yes. Each of the pricing issues raised by the CLECs can be reduced to a common theme.
2 Each and every condition places a cost on CenturyLink. If the CLECs request work to be
3 performed or want to use CenturyLink property to avoid purchasing their own property,
4 the FTA compels compensation for what is requested or used. If the CLECs believe that
5 there are any legitimate concerns regarding the charges to be levied, the proper forum for
6 investigating them is through negotiations and arbitration of ICA terms, not in the context
7 of a merger approval proceeding.
8

9 **Q CLEC CONDITION 11 SEEKS TO SET PROVISIONING INTERVALS. CAN**
10 **YOU COMMENT ON THIS DEMAND?**

11 A. CLEC provisioning intervals reflect retail provisioning intervals for the same or like
12 services because federal law requires a carrier to treat all customers at parity. The
13 CLECs want priority for their needs over those of CenturyLink's end user subscribers
14 and wholesale customers.
15

16 I previously discussed how the legacy OSS and other processes will remain in place for a
17 period of time post-merger. The legacy intervals are inherent in the legacy processes and
18 systems. The Company cannot change existing provisioning intervals for its separate
19 operating subsidiaries without significant process or systems improvements. Most
20 basically, I note that the CLECs have demonstrated no harm to Arizona or Arizona
21 customers resulting from the continuation of the existing provisioning intervals.

1
2 **Q. CAN THE MERGED COMPANY BE CLASSIFIED AS A BOC AS THE CLECS**
3 **DEMAND IN CONDITION 13?**

4 A. No. The definition of "BOC" is a matter of federal law and a state agency like the
5 Commission is not able to alter that definition. The merged company will not be a BOC
6 under federal law. Qwest Corporation is a BOC as the successor to US West, and the
7 Qwest ILEC in Arizona is a BOC today and will remain a BOC after the close of the
8 merger. Legacy CenturyLink has no ILEC operations in Arizona and the legacy
9 CenturyLink ILECs in other states are not BOCs and will not become BOCs after this
10 Transaction.

11
12 **Q. IN CONDITIONS 17 AND 18, THE CLECS SEEK TO DICTATE THE NUMBER**
13 **OF WHOLESALE EMPLOYEES ON THE CENTURYLINK PAYROLL AND**
14 **ALSO, IN 17, DICTATE CERTAIN PROCESSES. SHOULD THEY BE**
15 **ALLOWED TO DO THAT?**

16 A. No. After arguing for the greatest and best automation of processes, the CLECs now
17 suggest the Company cannot be allowed to reduce its costs through attrition of employees
18 whose functions have been automated or are redundant, and must retain some legacy
19 processes rather than determine if the processes can be automated or improved to benefit
20 both the company and the CLECs. Qwest witness Bob Brigham also notes that Qwest
21 has been reducing its headcount in wholesale operations even as the Company has grown

1 more effective, and as the Qwest penalty payments on its QPAP have generally declined
2 in Arizona over the years. There is no rationale for this demand other than not allowing
3 the merged company the opportunity to control its costs appropriately and therefore
4 ensure the company has a more difficult time competing financially.
5

6 **Q. CLEC CONDITION 29 SEEMS TO BE A "MOST FAVORED NATION" ("MFN")**
7 **CATCHALL. IS AN MFN CONDITION ACCEPTABLE TO THE COMPANY?**

8 A. No. An MFN condition is neither necessary nor appropriate for this Transaction.
9 Voluntary FCC conditions, if any, that are *generally* applicable to the post-merger
10 CenturyLink operations will automatically apply to CenturyLink's operations in Arizona
11 even in the absence of an MFN clause in this Commission's Order. However, not all
12 possible FCC conditions will automatically apply to all jurisdictions, as not all conditions
13 can logically or legally be applied to all jurisdictions, or to Arizona specifically. This
14 limitation on a condition's universal applicability is equally true for conditions that may
15 be imposed by another state.
16

17 For example, another commission that is reviewing this merger may have a totally
18 different legal standard and a totally different set of facts to consider (e.g., level of
19 competition, service quality performance, pricing regulations, CLECs with different
20 issues, etc.). Again, merger review before this Commission is conducted under the
21 standard of review in Arizona, under Arizona law, so it is unreasonable to take conditions

1 imposed on CenturyLink operations in another state, under other standards, and impose
2 them on operations in Arizona.

3
4 Second, conditions imposed, or negotiated and agreed to, in other states result from a
5 myriad of different circumstances and considerations. And, if another state imposed a
6 condition that may have been practical under its circumstances, but impractical in
7 another, an MFN clause could result in the imposition of a condition that makes no sense
8 for the State of Arizona.

9
10 Even if one can get past some of the legal, logistical and practical questions of which
11 conditions could theoretically be applied to CenturyLink's ILECs in Arizona; there still
12 remains the fundamental problem of the lack of fairness in simply imposing such a broad
13 condition under the facts of this particular Transaction and the Arizona statutory standard
14 of review.

15
16 Finally, an MFN condition restricts the incentive for both parties to negotiate state-
17 specific terms in Arizona and elsewhere, because the resulting terms may be imposed in
18 states where the conditions are impractical, overly costly, or unnecessary. So, to the
19 extent parties seek to negotiate terms that acknowledge state-specific needs, issues and
20 conditions, such negotiations would be stymied by such an MFN provision.

21

1 **Q. PLEASE COMMENT ON CLEC CONDITION 30 – THE CLEC PROPOSAL FOR**
2 **ALLOWING DISPUTES TO BE BROUGHT BEFORE THE COMMISSION.**

3 **A.** This condition is unnecessary. Every Arizona interconnection agreement already
4 contains language addressing resolution of interconnection disputes, including the role of
5 the Commission in regards to such disputes. This proposed condition improperly seeks to
6 override those existing and approved agreement terms.

7
8 **Q. THE CLECS ASSERT THAT CENTURYLINK AND QWEST WANT TO**
9 **DELIBERATELY DRIVE UP THE TRANSACTION-RELATED COSTS FOR**
10 **THE CLECS. MR. GATES CITES CENTURYLINK AND QWEST’S REFUSAL**
11 **TO AGREE TO A STREAMLINED DISCOVERY PROCESS AS AN**
12 **EXAMPLE.⁵¹ CAN YOU COMMENT?**

13 **A.** Yes. First, I believe it makes no sense to equate litigation discovery disputes to the actual
14 operation of a business and there were legitimate reasons to disagree with this request as
15 the reply letter from CenturyLink and Qwest attorneys explained. But importantly, the
16 actual question asked of Mr. Gates that resulted in his testimony on the streamlined
17 discovery process was: “Do you have another example that suggests that *integration*
18 could harm CLECs?” [emphasis added] The pre-merger approval discovery process has
19 nothing to do with any speculative *harm* that could be caused by the integration of
20 CenturyLink’s and Qwest’s operations.

⁵¹ Gates Direct at 69-74.

1
2 **Q. ARE THERE ANY SPECIFIC LEVEL 3 PROPOSED CONDITIONS THAT**
3 **HAVE NOT BEEN SUFFICIENTLY COVERED IN THE DISCUSSION OF THE**
4 **OTHER PROPOSED MERGER CONDITIONS?**

5 A. Yes. Level 3 seeks to impose an obligation for the merged company to pay a reciprocal
6 compensation rate for all ISP-bound traffic inclusive of Virtual NXX ("VNXX"). This is
7 a topic better addressed in a comprehensive arbitration proceeding.

8
9 Further, Mr. Thayer incorrectly states that CenturyLink has agreed to pay reciprocal
10 compensation for *all* ISP-bound traffic.⁵² The legacy CenturyTel affiliates do not pay
11 reciprocal compensation to Level 3 for ISP-bound traffic (inclusive of VNXX traffic)
12 pursuant to ICA terms that were negotiated between the parties.

13
14 What Mr. Thayer neglected to mention in his testimony regarding the legacy Embarq
15 ICA terms is that Embarq agreed to this payment because Level 3 agreed to POI terms
16 that favored Embarq, agreed to a lower rate than that set in the FCC's Remand Order, and
17 also agreed to use the lower rate in *all* of Embarq's states; including those where Embarq
18 had opted in to the higher Remand Order rate. In other words, the parties negotiated an
19 entire agreement with holistic terms that reflected a give-and-take balancing of interests,
20 just as Congress intended with the FTA.

⁵² Thayer Direct at 12.

1
2 The separate CenturyLink affiliates and Level 3 already have existing ICAs that cover
3 any compensation obligations for such traffic. The Commission should not change
4 individual terms of these ICAs just because Level 3 seeks a better deal than it agreed to in
5 negotiations or received in arbitrations.
6

7 **Q. LEVEL 3 CLAIMS LEGACY EMBARQ ENGAGES IN 8YY ACCESS**
8 **ARBITRAGE.⁵³ IS THIS TRUE?**

9 A. No. First, there are no rules that require a carrier to use the closest tandem, without
10 consideration of tandem ownership, for required 8YY database dips. The genesis of this
11 issue dates back to when Embarq was not a standalone ILEC but was a division of Sprint
12 Corporation. When a Sprint wireless subscriber made a call to an 800 number, Sprint's
13 management wanted the call to be dipped in the database owned by Sprint's Local
14 entities. Some limited transport charges do apply to this transited traffic, but Mr. Thayer
15 is incorrect in asserting Embarq charges for "all the transport from the point of picking up
16 the call...and back..."⁵⁴ This is traffic that is sent to Embarq for handling and, like all
17 carriers, Embarq does charge for its services. Level 3 seeks to use Embarq to collect this
18 traffic, but then have Embarq "pass it on" to a lower cost provider for further handling so
19 that Level 3 can optimize its costs. As I stated, this is not required by any law or

⁵³ Thayer Direct at 16.

⁵⁴ Thayer Direct at 17.

1 industry rules. Given that this issue predates the CenturyTel acquisition of Embarq, if
2 this is valid a concern for Level 3, it is instructive to note that Level 3 never raised the
3 issue in that prior merger. And again, this dispute has nothing to do with the merger and
4 whether the merger is not contrary to the public interest in Arizona, but is a separate, pre-
5 existing, and independent dispute Level 3 improperly asks the Commission to resolve in
6 the merger proceeding.

7
8 **Q. MR. THAYER GETS INTO A DISCUSSION OF BILLING DISPUTE ISSUES TO**
9 **JUSTIFY A LEVEL 3 PROPOSED MERGER CONDITION.⁵⁵ IS THERE ANY**
10 **CREDENCE TO HIS TESTIMONY?**

11 A. No. Mr. Thayer's testimony on billing disputes, which involves a fear that
12 CenturyLink could leverage existing billing disputes with one ILEC affiliate to threaten
13 nationwide disconnection of a CLEC's services, falls into the same category that we have
14 seen with other CLEC testimony; that is Mr. Thayer speculates what *might* happen
15 instead of relating any specific facts. Mr. Thayer also fails to state how the merged
16 company would engage in this speculative behavior in defiance of ICA terms that legally
17 dictate the operating relationship between Level 3 and a single legal entity CenturyLink
18 affiliate.

19 Further, Mr. Thayer testifies to his support for proposed conditions that would bind the
20 post-merger CenturyLink and Qwest affiliates as a single entity,⁵⁶ such as the porting of

⁵⁵ Thayer Direct at23.

1 affiliate agreements and a single POI per LATA, but for this alleged issue he offers
2 contradictory testimony, expressing a concern over a hypothetical issue that would occur
3 only if the affiliates were bound as one company.
4

5 **Q. DO YOU HAVE ANY FINAL THOUGHTS TO BRING TO THE**
6 **COMMISSION'S ATTENTION?**

7 A. Yes. The CLECs are attempting to use this merger approval proceeding to impose new
8 and specialized interconnection obligations upon CenturyLink and Qwest, obligations
9 which are not authorized by law, and which have not been obtained through good faith
10 negotiations or arbitrations contemplated under §§ 251 and 252 of the FTA. The CLECs
11 are also attempting to use this merger proceeding to resolve non-merger disputes that
12 have been or should be resolved in other proceedings or forums. The Commission should
13 not permit CLECs to dictate terms different than those already negotiated and approved
14 by the Commission, and to circumvent other established procedures for dealing with such
15 issues. For the foregoing reasons, and for the reasons stated in the Application, the
16 Commission should promptly approve the proposed transfer of control without any
17 conditions.
18

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

20 A. Yes.

⁵⁶ Thayer Direct at 3-4.

EXHIBIT A- WHOLESALE MERGER CONDITIONS SUGGESTED BY STAFF

6. *That the Merged Company shall continue to comply with all Section 271 obligations adopted by this Commission and the FCC, including all Qwest Performance Assurance Plan ("QPAP") and Performance Indicator Definition ("PID") obligations, until it is released of those obligations by the FCC and this Commission, as appropriate.*
19. *That the Merged Company shall for a period of three years following merger close keep intact pre-merger Operational Support Systems ("OSSs") that support wholesale services in Arizona, unless the Merged Company obtains Commission approval to make changes prior to that time.*
20. *That the Merged Company shall give at least 6 months notice to the Commission and CLECs of any plans to integrate portions of Qwest's wholesale Operational Support Systems OSSs with portions of the CenturyLink and/or Embarq OSS. If the integration is to be accomplished in phases, 6-month notice should be given before each separate phase. The Merged Company shall make a filing with the Commission in this Docket explaining the proposed integration, a schedule for its implementation and a detailed plan of integration. The Merged Company shall indicate what support system is being replaced and what support system will survive. It shall also discuss any anticipated problems and any problems that occurred with similar integrations in other jurisdictions and how such problems will be mitigated in Arizona. The Merged Company shall be required to demonstrate that the proposed integration, where it affects wholesale operations, will not result in a degradation of current Qwest wholesale support systems. The Merged Company shall coordinate any transition with the CLECs. The Merged Company shall notify the Commission and CLECs when the integration is complete.*
24. *That the Merged Company shall continue with the Qwest Change Management Process ("CMP"), utilizing the terms and conditions set forth in the Qwest CMP Document, including those terms and conditions governing changes to the CMP Document. The Merged Company shall be required to meet with the CLECs and adopt changes to the CMP process which will allow for meaningful input by the CLECs on any proposed changes. The Merged Company shall agree to complete all CLEC change requests in a commercially reasonable timeframe.*
25. *That the Merged Company shall continue to honor all obligations under Qwest's current interconnection agreements, tariffs, and other existing contractual arrangements with CLECs. That for three years following merger close, the Merged Company shall allow requesting carriers to extend existing interconnection agreements, pending the completion of newly negotiated agreements.*

26. *That no Qwest wholesale intrastate service offered to competitive carriers as of the merger filing date will be discontinued for two years after closing of the merger, unless approved by the Commission.*
27. *That the Merged Company shall ensure that Wholesale and CLEC support centers are sufficiently staffed with adequately trained personnel dedicated exclusively to wholesale operations and will provide a level of service comparable to that provided to the Qwest service areas prior to the merger.*
28. *After the Closing Date of the transaction, the Merged Company shall provide and maintain updated escalation information, contact lists and account manager information that are in place at least 30 days prior to the transaction close 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 all CLECs and Commission.*
29. *The Merged Company shall continue to make available to each wholesale carrier in Arizona the types of information that Qwest made available as of the Merger Filing Date concerning wholesale OSS functions and wholesale business practices and procedures, including information provided via the wholesale web site, notices, industry letters, the change management process, and databases/tools.*
30. *That the Merged Company shall allow a requesting competitive provider to use any approved Interconnection Agreement ("ICA") in Arizona, as the basis for negotiating a replacement ICA.*
33. *That the Merged Company shall not impose any new or additional charges upon CLECs for functions already undertaken by Qwest without the prior approval of the Commission.*

EXHIBIT B- PROPOSED CLEC MERGER CONDITIONS

Proposed CLEC Interconnection Related Conditions

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 CLECs 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 CLEC, 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.*
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.

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.
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.

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.*

Proposed CLEC OSS Conditions

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.).*
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.*

Proposed CLEC Product and Service Related 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 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.*
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.*

Miscellaneous Proposed CLEC Conditions

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.*
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.

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.*
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.*

KRISTIN MCMILLAN

BEFORE THE ARIZONA CORPORATION COMMISSION

Joint notice and application of Qwest Corporation, Qwest Communications Company, LLC, Qwest LD Corp., EMBARQ Communications, Inc. d/b/a CenturyLink Communications, EMBARQ Payphone Services, Inc. d/b/a CenturyLink, and CenturyTel Solutions, LLC for approval of the proposed merger of their parent corporations Qwest Communications International, Inc. and CenturyTel, Inc.

DOCKET NOS.

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

REBUTTAL TESTIMONY OF

Kristin McMillan

ON BEHALF OF

**EMBARQ COMMUNICATIONS, INC. D/B/A CENTURYLINK
COMMUNICATIONS, EMBARQ PAYPHONE SERVICES, INC. D/B/A CENTURYLINK,
AND CENTURYTEL SOLUTIONS, LLC**

OCTOBER 27, 2010

1 **Q. Please state your name and business address.**

2 A. My name is Kristin McMillan and my business address is 6700 Via Austi Parkway, Las
3 Vegas, Nevada.

4

5 **Q. Who is your employer and what is your position?**

6 A. I am employed by CenturyLink, Inc. as Vice President, State External Relations –
7 Western Region.

8

9 **Q. Are you the same Kristin McMillan that filed direct testimony in this proceeding?**

10 A. Yes, I am.

11

12 **Q. What is the purpose of your rebuttal testimony?**

13 A. I am providing rebuttal testimony on behalf of the Arizona subsidiaries of CenturyLink,
14 Inc. in this proceeding before the Arizona Corporation Commission (“Commission”)
15 concerning the proposed merger of Qwest Communications International, Inc. and
16 CenturyLink, Inc. (the “Transaction”).¹ My rebuttal testimony relates to certain policy
17 issues and proposed conditions raised in the direct testimonies of witnesses representing
18 the Utilities Division of the Commission (“Staff” or “Commission Staff”) and various
19 intervenors in the proceeding. Specifically, I will address portions of the testimonies of
20 Mr. Armando Fimbres and Ms. Pamela Genung on behalf of the Commission Staff; Mr.

¹ The CenturyLink subsidiaries in Arizona filed the merger approval application (the “Application”) in conjunction with the Qwest subsidiaries in Arizona (together, the “Joint Applicants”). The CenturyLink subsidiaries consist of Embarq Communications, Inc. d/b/a CenturyLink Communications, Embarq Payphone Services, Inc. d/b/a CenturyLink, and CenturyTel Solutions, LLC (collectively, for purposes of this testimony, “CenturyLink” or the “Company”).

1 Timothy Gates, who provides testimony on behalf of Eschelon Telecom of Arizona, Inc.,
2 Electric Lightwave, LLC, and Mountain Telecommunications of Arizona, Inc d/b/a
3 Integra Telecom; tw telecom of arizona, llc; Level 3 Communications, LLC; and
4 McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services;
5 (collectively, these competitive local exchange carriers are the "Joint CLECs"); Dr.
6 August Ankum, who also provides testimony on behalf of the Joint CLECs; and Mr.
7 Charles King on behalf of the Department of Defense and all other Federal Executive
8 Agencies ("DOD").
9

10 **Q. Are there other CenturyLink and Qwest witnesses providing rebuttal testimony?**

11 A. Yes. CenturyLink witness Jeff Glover provides rebuttal testimony concerning financial
12 and related issues, including proposed conditions raised in the testimonies of Commission
13 Staff, the Residential Utility Consumer Office ("RUCO") and intervenor witnesses.
14 CenturyLink witness Todd Schafer provides rebuttal testimony on operational and
15 integration issues, as well as certain proposed conditions raised in the testimonies of
16 Commission Staff. Qwest witness James Campbell provides rebuttal testimony
17 addressing certain conditions proposed by the Commission Staff. CenturyLink witness
18 Michael Hunsucker and Qwest witnesses Karen Stewart and Michael Williams provide
19 rebuttal testimony concerning wholesale issues and conditions raised in the testimonies of
20 Staff and the intervenor witnesses. Mr. Williams also addresses retail service quality
21 issues in Staff's testimony. Qwest witness Robert Brigham provides rebuttal testimony
22 concerning issues related to competition raised in the testimonies of Staff and the
23 intervenor witnesses.

1
2 **Q. Do the Joint Applicants intend to address every assertion or criticism in the**
3 **testimonies of other witnesses?**

4 A. No. Rebuttal testimony from the Joint Applicants will discuss in more detail why
5 CenturyLink and Qwest believe the Application should be granted and will respond to
6 and rebut a number of the positions of the Staff, RUCO and intervenor witnesses.
7 However, it is not feasible to respond to each and every statement in the direct testimony
8 of other parties and, to do so, would make the rebuttal testimony unnecessarily lengthy.
9 To the extent particular statements are not addressed by the Joint Applicants, this does
10 not necessarily mean that Joint Applicants agree with or acquiesce in those statements.
11 We have attempted to focus on the major points addressed in the responsive testimony
12 and to organize the rebuttal around those points. Joint Applicants will also be addressing
13 some topics in our post-hearing briefs, including legal issues raised in the testimonies.

14
15 **I. THE TRANSACTION MEETS THE APPLICABLE STANDARD OF**
16 **REVIEW, AND THE APPLICATION SHOULD BE GRANTED.**

17
18 **Q. Are you aware of the standard of review to be applied in this merger proceeding?**

19 A. Yes. I will provide some comments in response to testimony filed by Staff on the
20 standard of review, but will do so in the following context. I am not testifying in my
21 capacity as an attorney in this proceeding and, while licensed in Nevada and California, I
22 am not a licensed attorney in the State of Arizona. Accordingly, this testimony reflects
23 my understanding of the applicable legal standard of review. To the extent that any legal

1 issues arise regarding the application of the appropriate, correct standard of review, Joint
2 Applicants will address those issues in the post-hearing brief.

3
4 **Q. What is your understanding of the standard of review to be applied in this**
5 **proceeding?**

6 A. It is my understanding that the Transaction is subject to review in accordance with the
7 Commission's "Affiliated Interest Rule" relating to public utility holding company
8 reorganizations. This standard is relatively narrow. If the Commission decides to hold a
9 hearing on a proposed reorganization, it may reject the transaction only upon a
10 determination that the proposal would "...impair the financial status of the public utility,
11 otherwise prevent it from attracting capital at fair and reasonable terms, or impair the
12 ability of the public utility to provide safe, reasonable and adequate service."²

13
14 There is also a provision of Arizona statute that is not directly applicable but provides
15 some guidance in a related context. It prohibits a "public service corporation" from
16 merging with or acquiring capital stock of any other public service corporation organized
17 or existing under the laws of this state without prior authorization from the
18 Commission."³ While the Transaction at hand does not involve "public service
19 corporations," it is my understanding that the Commission generally applies a "public
20 interest" standard of review to transactions that fall within this statute.

21

² A.A.C. R14-2-803(C).

³ A.R.S. § 40-285. Because Qwest and CenturyLink, Inc. are not public service corporations, the Applicants believe that A.R.S. § 40-285 does not directly apply to the Transaction.

1 **Q. Do you agree with the testimony of Staff witness Armando Fimbres relative to the**
2 **Affiliated Interest Rule and the standard of review in this proceeding?**

3 **A. I agree with the statements made by Mr. Fimbres that the Joint Applicants have provided**
4 **appropriate information in the Application and direct testimony to satisfy review under**
5 **the Affiliated Interest Rule. Mr. Fimbres also states that Staff used a “public interest”**
6 **standard to review the Transaction, and explains the Commission should first determine**
7 **that the Transaction causes no harm to customers and, then, evaluate its benefits or**
8 **merits.⁴ While I essentially agree that the standard of review for transactions of this kind**
9 **could be considered a form of “public interest” standard, I do believe the Commission is**
10 **bound to focus on facts and circumstances that would support the more specific findings**
11 **required by the Commission’s Affiliated Interest Rule; that is, whether or not, as a result**
12 **of the Transaction, there would be impairment to the financial status of the Joint**
13 **Applicants, or they would otherwise be prevented from attracting capital at fair and**
14 **reasonable terms, or there would be an impairment of their ability to provide safe,**
15 **reasonable and adequate service. If the Commission determines that this standard has**
16 **been satisfied, then, by inference and consistent with the Affiliated Interest Rule, the**
17 **Transaction would be deemed to be in the public interest. As discussed in detail in the**
18 **Application and, upon viewing all of the testimony in this proceeding in a reasonable**
19 **light, CenturyLink believes the Commission can find that the Joint Applicants have**
20 **satisfied this standard.**

21
22 **Q. Regardless of the applicable legal standard, are there benefits to the Transaction?**

⁴ Fimbres Direct Testimony, pp. 23-24.

1 A. Absolutely. There are wide-ranging, positive benefits to the Transaction as discussed in
2 the Application and all of the direct and rebuttal testimony of the Joint Applicants. The
3 proposed merger also will be beneficial to the State of Arizona from a number of
4 important perspectives. Like other states, Arizona is witnessing dramatic changes in the
5 way its citizens are communicating. Increasingly robust data demand is reshaping the
6 industry and the networks of all providers. Consumers and businesses continue to require
7 increased broadband speeds and affordable communication packages from reliable,
8 service-focused providers.

9
10 The merger will address these demands and bring key benefits to multiple states,
11 including Arizona. In today's challenging economy, Arizona will benefit from a reliable,
12 stable service provider and one that is well-positioned for long-term strategic investment
13 within the communities it serves. The scale, scope and resources of the combined
14 operations will place the merged company in a better position to ensure that meaningful
15 broadband deployment and investment will continue; that voice, data and other essential
16 services will be available; that evolving needs for 911 and other key first-responder
17 services will be met; that schools, libraries, health care facilities, government entities and
18 businesses will continue to have the benefits of a significant and well-established
19 underlying network provider; and that the needs of low income customers will be met.
20 The proposed merger with CenturyLink should be viewed by this Commission as a
21 critical and timely enterprise that will enable the Qwest ILEC in Arizona to move
22 forward in a positive direction, to the benefit of its customers and employees. This is

1 particularly important as the industry approaches the next, not-yet-defined, phase of
2 telecommunications evolution.

3
4 **Q. Have specific plans been developed for the introduction of new products and**
5 **services to Arizona consumers?**

6 A. At this point in the approval process, specific plans have not been developed, which is
7 not surprising as further discussed in the rebuttal testimony of CenturyLink witness Todd
8 Schafer.⁵ Staff witness Armando Fimbres understands and acknowledges that
9 information regarding specific plans now will not increase the certainty that the potential
10 benefits of the merger will be realized and that “[i]nsistence on reviewing key plans
11 before granting approval in this matter may actually serve to undermine potential benefits
12 by shifting the planning resources allocated by the Applicants.”⁶ In this regard, the
13 Commission should look to the financial, technical and managerial strengths of the two
14 organizations being combined, the vast integration expertise of CenturyLink, and the
15 complementary assets of CenturyLink and Qwest, all of which provide the base upon
16 which benefits in the form of new products and services will be delivered to Arizona.

17
18 Additionally, as mentioned in the testimony of the Joint Applicant witnesses, the merged
19 company will possess the scale and stability to ensure that it will be well-positioned to
20 make ongoing infrastructure improvements and invest in the advanced networks needed
21 to serve customers into the future. This, in turn, will increase the likelihood that the

⁵ Nor is the identification of specific plans for new products, services or other benefits a requirement for the approval of the proposed Transaction in Arizona.

⁶ Fimbres Direct Testimony, p. 25.

1 merged company will introduce new and advanced products, adding choices for
2 consumers in a competitive marketplace. These choices will include alternatives for
3 voice, data, broadband and video products and services in Arizona. CenturyLink plans to
4 continue its deployment of IPTV technology in various markets and considers the product
5 a key growth driver for its future.⁷ Such deployment requires skilled technicians who can
6 assist with enablement in residential areas, as well as sales personnel to promote the
7 product and vendors to supply services.

8
9 **Q. How does the Commission's existing regulatory authority ensure that the**
10 **Transaction will not result in the impairment of safe, reasonable and adequate**
11 **service to consumers?**

12 A. The Commission's present authority has proven to be very effective in assuring that
13 service to consumers is not harmed. Both Qwest and CenturyLink are regulated entities
14 in the state today; they meet existing service standards, file reports, make investments,
15 and maintain a constant focus to meet the evolving needs of Arizona citizens. The
16 Commission has invested extensive time and resources to ensure that the public interest is
17 protected in terms of service quality, fair treatment of retail and wholesale customers, and
18 other important matters, even as market and economic conditions change.

19
20 In addition, as described in detail by Qwest rebuttal witness Robert Brigham, the Arizona
21 retail telecommunications market is very competitive today and competition will become

⁷ CenturyLink is not providing a commitment as to when it will launch IPTV in Arizona, but understands the importance of this product in meeting the demands of our customers. The company is in the process of evaluating when and where to deploy this service. Importantly, the company has already launched IPTV in other markets, and has the knowledge and technical ability to provide this service.

1 more intense as new technologies are developed and customer preferences evolve. In
2 this environment, the post-merger company has every incentive to provide high quality,
3 innovative products and services to customers. As Mr. Brigham concludes, the
4 competitive nature of the market, along with regulatory safeguards such as those
5 described above, will continue to protect customers and the public interest once the
6 merger is completed.

7
8 **II. STATUS OF APPROVALS**
9

10 **Q. Please update the Commission on the activity in the other state proceedings or other**
11 **approval processes regarding the proposed Transaction.**

12 **A.** The Transaction requires state commission approvals in 21 states and the District of
13 Columbia. While CenturyLink and Qwest are in the transaction review process for many
14 of these jurisdictions, the approval process is now (as of October 27, 2010) favorably
15 concluded in 11 of the 21 states requiring state commission approval—California,
16 Hawaii, Maryland, Georgia, West Virginia, New York, Ohio, Mississippi, Louisiana,
17 Virginia and Pennsylvania, as well as the District of Columbia.

18
19 Moreover, on July 15, 2010, CenturyLink and Qwest were notified by the Department of
20 Justice and the Federal Trade Commission that the proposed Transaction review was
21 completed early under the Hart Scott Rodino Act, and, as such, has clearance from a
22 federal antitrust perspective. On July 16, 2010, CenturyLink filed with the Securities and
23 Exchange Commission a final joint proxy statement-prospectus, which describes the

1 Transaction with Qwest. This final joint proxy statement-prospectus was mailed to
2 shareholders of both CenturyLink and Qwest. Based on the information provided in the
3 joint proxy statement-prospectus, each company held a special meeting on August 24,
4 2010 at which their respective shareholders voted overwhelmingly to approve the
5 Transaction.

6
7 **Q. The Application and your direct testimony identified the senior leadership of the**
8 **combined company. Have additional leaders been announced?**

9 A. Yes, on September 20, 2010, "Tier 2" leadership appointments were announced in the
10 Operations, Business Markets, Wholesale, Finance, Network Services, Corporate
11 Strategy & Development, Public Policy and Government Relations, Legal, Human
12 Resources and IT organizations. Tier 2 positions are those that report directly to the
13 senior executives identified in the Application and direct testimony. This announcement
14 also included the alignment of the combined company's Arizona operations into one of
15 six Regions. Arizona will be part of the newly formed Southwest Region which also
16 includes operations in the states of Nevada and New Mexico. Terry Beeler, currently
17 President of the Western Region for CenturyLink, will become the Southwest Region
18 President upon the close of the Transaction. On October 19, 2010, there was an
19 announcement of additional Tier 2 appointments, including Jerry Fenn, currently State
20 President for Qwest in Utah, as Vice President - West Region Regulatory and Legislative
21 Affairs, supporting the Northwest and Southwest Regions (including Arizona) except for
22 New Mexico and with the addition of Utah.

23

1 **III. THE INTERVENORS' SPECULATIVE FEARS, BASED ON**
2 **COMPLETELY UNRELATED TRANSACTIONS, ARE NOT WELL**
3 **FOUNDED AS THEY PERTAIN TO PROBABLE OUTCOMES IN THIS**
4 **TRANSACTION.**
5

6 **Q. Please respond to the concerns raised by certain intervenors that the proposed**
7 **Transaction might be similar to the Hawaiian Telcom, Inc. ("Hawaiian Telcom")**
8 **and FairPoint Communications, Inc. ("FairPoint") mergers.**

9 **A. The intervenors which raise these concerns⁸ attempt to justify the imposition of various**
10 proposed conditions based in large part upon inapt facts about other unrelated
11 transactions and companies. For example, the intervenor witnesses attempt to compare
12 problems resulting from the Carlyle Group's ("Carlyle's") purchase of Hawaiian Telcom
13 and FairPoint's acquisition of Verizon Communications Inc.'s ("Verizon's") wireline
14 operations in Maine, New Hampshire and Vermont, but the comparisons fail to correlate.
15 The testimonies amount to mere speculation. They provide no substantive demonstration
16 that the negative outcomes of the Hawaiian Telcom and FairPoint complications will or
17 are likely to happen in this Transaction, and provide no basis to justify the proposed
18 conditions.

19
20 While this matter is discussed more completely by CenturyLink witnesses Jeff Glover
21 and Mike Hunsucker in their rebuttal testimonies, I would like to briefly emphasize two
22 points. First, the intervenor witnesses focus largely on only two ILEC transactions, in
23 spite of the fact that there have been a large number of successful transactions combining

⁸ See generally, Ankum Direct Testimony, pp. 28 - 30; Gates Direct Testimony, pp. 87 - 99; and King Direct Testimony, pp. 4 - 8.

1 ILEC-to-ILEC operations over the last decade and even before that time. CenturyLink
2 itself has demonstrated extensive experience in successfully converting lines and systems
3 in similarly acquired operations to its own operational support systems (“OSS”), as
4 described in detail in the direct and rebuttal testimonies of CenturyLink witness Todd
5 Schafer and other CenturyLink witnesses. Second, the proposed Transaction is
6 fundamentally distinguishable from the two merger-related ILEC failures relied upon by
7 the intervenors. That is, in both of those transactions, the acquiring companies were
8 required to create entirely new OSS and then to cut over the acquired carrier’s services to
9 those newly-created OSS either immediately upon closing or within a set time period.
10 Dr. Ankum and Mr. Gates, on behalf of the Joint CLECs, both acknowledge that the state
11 commissions which reviewed those two transactions—in Hawaii, Vermont, Maine, and
12 New Hampshire—trace the financial and service problems to specific OSS challenges,
13 which then led to financial distress.⁹ In contrast, as discussed by CenturyLink rebuttal
14 witnesses Jeff Glover and Todd Schafer, the current Transaction will involve the phased-
15 in integration of systems. As these witnesses describe, immediately after the close of the
16 proposed Transaction, Qwest will operate using the same systems it currently has in
17 place, and CenturyLink will operate using its systems, with both OSS fully functioning
18 and staffed. Thus, in stark contrast to the failed companies, there is no time-bound
19 cutover of systems required; nor are there new systems that must be created or relied
20 upon in the combination between CenturyLink and Qwest. Thus, the intervenor witnesses
21 are speculating about potential problems unique to two other companies, but CenturyLink

⁹ See, for example, Ankum Direct Testimony pp. 34 - 36; Gates Direct Testimony at page 89, line 10 through page 91, and pp. 94 - 96.

1 has shown a history of proven capability with respect to acquisitions, integrations and
2 responsible management of local exchange operations.
3

4 **IV. MANY OF THE CONDITIONS PROPOSED BY STAFF ARE**
5 **UNNECESSARY AND UNFOUNDED, AND SHOULD NOT BE**
6 **ADOPTED.**
7

8 **Q. What is the position of Staff in this Transaction, as evidenced by its direct**
9 **testimony?**

10 A. The Executive Summary of Staff witness Armando Fimbres states that, "Staff believes
11 the public interest will be served by the proposed merger of Qwest Communications
12 International and CenturyLink if the goals and objectives of the proposed merger are
13 achieved."¹⁰ Further, Staff witness Pamela Genung states that, "While CenturyLink
14 continues to be busy integrating Embarq's systems, it should have a highly talented and
15 experienced pool of employees available between the combined Qwest and CenturyLink
16 companies to fulfill its obligations of the merger between the two companies."¹¹ Finally,
17 Staff witness Pedro Chaves concludes that, "the proposed transaction will benefit
18 [Qwest's] Arizona subsidiaries by providing improved access to the capital markets
19 because the post-merger ultimate parent, [CenturyLink, Inc.], will have a financially
20 prudent capital structure...."¹² Despite these positive endorsements and conclusions, and
21 no assertion or demonstration of probable harm, Staff goes on to recommend denial of
22 the Application unless forty seven (47) separate conditions are imposed. For the reasons

¹⁰ Fimbres Direct Testimony, Executive Summary.

¹¹ Genung Direct Testimony, Executive Summary, and p. 27, lines 19 – 22.

¹² Chavez Direct Testimony, Executive Summary and p. 6, lines 16 – 18.

1 set forth in my testimony and the testimonies of the other Joint Applicant witnesses, there
2 is no justification for the imposition of numerous and burdensome conditions on top of
3 already present Commission requirements in the form of regulations, orders, rules,
4 reporting and procedures, particularly in such a fiercely competitive environment as
5 Arizona where competitive carriers are not faced with the same types of burdens. As
6 supported through the testimonies of CenturyLink and Qwest witnesses, the post-merger
7 company will be financially, managerially and operationally solid, and even stronger as a
8 combined company, without the need to impose inappropriate or unnecessary conditions.
9

10 **Q. What is Staff's basis for this recommendation?**

11 A. Staff witness Armando Fimbres concludes that conditions are needed to ensure the
12 merger is found to be in the public interest.¹³ He further comments that CenturyLink has
13 not developed detailed state-level plans at this point, but goes on to conclude that
14 "[i]nsistence on reviewing key plans before granting approval in this matter may actually
15 serve to undermine potential benefits by shifting the planning resources allocated by the
16 Applicants" and, further, that "delayed approval of the proposed merger is likely to have
17 consequences for Qwest and the Arizona telecommunications environment."¹⁴ Staff
18 witness Pamela Genung primarily seems to be concerned that "mergers and acquisitions
19 carry a certain level of risk and speculation that the new company will perform properly
20 and as expected, [and] it can be difficult to eliminate all risks."¹⁵
21

¹³ Fimbres Direct Testimony, Executive Summary and p. 24, lines 19 – 21.

¹⁴ Fimbres Direct Testimony, p. 25, lines 16 - 21.

¹⁵ Genung Direct Testimony, Executive Summary.

1 Identification of merely hypothetical harms is not a valid justification to place
2 burdensome, overly broad and competitively unfair conditions on the Transaction,
3 particularly given the pervasive benefits that have been shown to be associated with the
4 Transaction and the absence of any demonstration of probable financial harm or service
5 impairment. There are risks associated with *any* transaction of this nature, and the
6 Transaction is not without complexity; however, there are also possible risks if the
7 companies remain static in the midst of explosive competition and changing market
8 dynamics in the telecommunications industry. Balancing all of the relevant factors – the
9 financial, technical and managerial strengths of the two organizations being combined,
10 the vast integration expertise of CenturyLink, the attention to customer demands and
11 service quality, the excellent employee base of both companies, and the complementary
12 CenturyLink and Qwest assets which provide the foundation upon which benefits will be
13 delivered to Arizona¹⁶ – there is a high probability that this Transaction will be successful
14 and the Joint Applicants in Arizona will be better positioned than they are today to meet
15 the advancement of new technology and evolving demands of customers. Staff has
16 provided no assertions or facts to show that CenturyLink is unable to provide safe,
17 reasonable and adequate service¹⁷ and, therefore, these conditions are not necessary.
18 While Joint Applicants maintain that no conditions are necessary to approve the
19 Transaction, if any conditions are imposed, they should be narrowly tailored and provide
20 a clear, demonstrable link to the applicable standard of review.

¹⁶ Staff attests to the experience of the CenturyLink management team and the technical skills and experience of the CenturyLink and Qwest workforces. Staff also has no concerns about CenturyLink's ability to meet local exchange service quality standards. See, for example, Genung Direct Testimony, p. 12, lines 18 – 24 and p. 20, lines 10 - 18.

¹⁷ Ibid.

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Q. Can you comment on some of the burdens associated with the proposed conditions?

A. Yes. A number of Staff's conditions will increase, at some level, the post-merger Joint Applicants' costs to ensure compliance and demand on allocated resources, as well as the Commission's workload to monitor, track and process the voluminous amount of information and data being sought. The sheer magnitude of the conditions, particularly those containing multiple, new tracking and reporting requirements, will generate the need for additional paperwork, personnel time and resources, and extraneous costs because much of the proposed tracking and reporting would not be required in other states in which the merged company will operate, as discussed in greater detail by CenturyLink rebuttal witnesses Jeff Glover and Todd Schafer. CenturyLink believes these resources could be directed to more productive integration and customer-serving activities, particularly when other regulatory reporting requirements exist through Commission requirements. Further, Staff's conditions, and their associated costs, would not be applicable to other providers in the market and, therefore, unnecessarily and unfairly would result in an unequal level of regulation in a highly competitive market. This would place the Joint Applicants at a competitive disadvantage in relation to other competitive market providers.

I will address a number of Staff's proposed conditions in my testimony, and other CenturyLink and Qwest rebuttal witnesses will address certain Staff conditions in their rebuttal testimonies as well.

1 **Q. Mr. Fimbres states in support of the proposed conditions that many “parallel those**
2 **adopted in other jurisdictions in the Qwest ILEC region.”¹⁸ Do you agree?**

3 **A.** No. While I agree that there are some similarities in “proposed” conditions offered in the
4 testimony presented by parties such as Staff and intervenors in other states, no
5 Commission in the Qwest ILEC states has completed its review and, thus, no conditions
6 have been adopted in these states. The applicable CenturyLink and Qwest entities have
7 reached settlements with certain parties in support of the proposed Transaction in some of
8 the Qwest ILEC states, but these agreements contain a limited number of conditions. The
9 parties with whom the applicable joint applicants have reached agreements include the
10 Iowa Office of Consumer Advocate, the Minnesota Department of Commerce, the Utah
11 Division of Public Utilities, the Utah Office of Consumer Services and the Salt Lake
12 Community Action Program. In addition, the joint applicants in Iowa have reached a
13 settlement with all of the CLEC intervenors in that case. Also, the Communications
14 Workers of America (CWA), the International Brotherhood of Electrical Workers
15 (IBEW), CenturyLink, Inc. and Qwest Communications International, Inc. reached an
16 agreement which resolves the concerns of the unions in all of the states in which they
17 intervened, as well as before the FCC; consequently, the unions have withdrawn all of
18 their interventions and support the Transaction as being in the public interest. These
19 agreements are all publicly available documents on the respective commission websites.

20
21 **Q. Please comment on Staff Condition 4 regarding conditions from other states and the**
22 **FCC.**

¹⁸ Fimbres Direct Testimony, p. 22, lines 12-13.

1 A. This proposed condition would allow any party to bring conditions adopted by other
2 states and the FCC to the Commission for review and possible adoption in Arizona.¹⁹
3 Mr. Gates also recommends a similar provision in his recommended Condition 29.²⁰
4 CenturyLink strongly objects to these proposals. Any individual state conditions that
5 may be imposed on the proposed Transaction should be based on state-specific approval
6 standards, facts, circumstances and regulations. Due to the differences in each state,
7 conditions and commitments do not necessarily translate from one state to another as
8 being necessary or appropriate. In Arizona, as in other states, the Transaction is being
9 reviewed in accordance with all of the facts and circumstances in the record before the
10 Commission, as well as state-specific statutes and regulations. Under this scenario, it
11 would be unfeasible to import and incorporate the commission record from another state
12 into Arizona, just as it would be unworkable to take the Arizona record and apply it
13 before a commission elsewhere. Even if such a process were viable and able to satisfy
14 any procedural concerns, reopening of the hearing, potentially multiple times, would be
15 expensive and time consuming. It would burden the resources of the Commission and all
16 participants by unnecessarily requiring parties to re-litigate issues, facts and
17 circumstances that have already been subject to full cross-examination, review and
18 deliberation. As such, this proposed condition represents a latent, future unplanned
19 expense that would subject the Joint Applicants (and all parties) to ongoing uncertainty
20 and delay, and could negatively impact integration efforts and set back the delivery of
21 specific plans that are potentially beneficial to Arizona. The public interest is best served
22 by bringing all issues to light in the timeframe set for the scheduled proceedings. The

¹⁹ Fimbres Direct Testimony, Attachment 1, p. 28, lines 18 – 21.

²⁰ Gates Direct Testimony, p. 184, lines 4 - 17.

1 Joint CLECs and Staff have had ample time to fully review the Transaction in discovery,
2 and all parties and the Commission already have invested considerable resources in this
3 docket. There is no justification for needlessly prolonging the process with this condition,
4 especially when weighed against the significant potential for uncertainty, expense and the
5 resulting delay of benefits to consumers. For these reasons and other legal infirmities
6 that may be addressed in post-hearing briefs, the proposed condition should be rejected.
7

8 **Q. Please comment on Staff Condition 5 proposing that the legacy Qwest ILEC**
9 **continue to be classified as a Bell Operating Company (“BOC”) pursuant to federal**
10 **law and remain subject to requirements applicable to BOCs including the**
11 **“competitive checklist” set forth in Section 271(c)(2)(B) of the federal law.²¹**

12 **A.** Once the merger closes, the legacy Qwest ILEC will continue to be classified as a BOC
13 pursuant to federal law and remain subject to requirements applicable to BOCs including
14 the “competitive checklist” set forth in Section 271(c)(2)(B) of the federal law, just as it
15 is today. Since this is a matter of federal law, there is no need to include a state-specific
16 condition addressing this matter.
17

18 **Q. Does CenturyLink have any concerns with Staff’s Condition 7, proposing that the**
19 **merged company continue to comply with all relevant prior Commission**
20 **orders/decisions unless the Commission finds they are no longer applicable?²²**

²¹ Fimbres Direct Testimony, Attachment 1, p. 28, lines 22 – 26.

²² Fimbres Direct Testimony, Attachment 1, p. 28, lines 31 – 33.

1 A. Yes, CenturyLink is concerned that Condition 7, as proposed by Staff, could be
2 interpreted to mean that previous Commission orders and decisions, which have by their
3 own terms been completed or fulfilled, must be resumed or reinstated unless the
4 Commission issues a new finding that they are no longer applicable. A more accurate
5 statement of responsibility would be that the Qwest ILEC in Arizona should continue to
6 comply with all relevant prior Commission orders and decisions, but only to the extent
7 that (i) such orders and decisions are still consistent with applicable laws and regulations
8 and/or (ii) the provisions of such orders and decisions have not already expired based
9 upon their original terms or intent or have not been fully discharged by the Qwest ILEC.
10 The Company does not believe such a condition is necessary because it restates an
11 obligation that already exists, but CenturyLink does not have a significant objection if the
12 proposed condition is worded more accurately.

13
14 **Q. Can you respond to Staff's proposed Condition 9?**

15 A. Staff witness Fimbres proposes that CenturyLink notify the Commission of any plans to
16 merge the "ILEC operating companies of CenturyTel, Embarq and/or Qwest at least one
17 year before any proposed internal reorganization," in accordance with applicable statutes
18 and A.A.C. R14-2-801 *et seq.*²³ This condition should be rejected for at least two reasons.

19
20 First, there is no CenturyTel, CenturyLink or Embarq ILEC operating in Arizona. Of the
21 Joint Applicants, Qwest Corporation is the *only* ILEC operating within the state. As
22 such, there are no ILECs to reorganize or consolidate, and this proposal is, therefore, not

²³ Fimbres Direct Testimony, Attachment 1, p. 29, lines 1 – 5.

1 needed or supported. Second, if Staff is referring to a general consolidation of the
2 various CenturyLink and Qwest operating entities within the state, such a consolidation is
3 not likely to occur. In the improbable event that a reorganization does occur, existing
4 statutes and regulations will govern the transaction. Under those circumstances, if the
5 requirements of A.A.C. R14-2-801 *et seq.* are applicable, then the 120-day notice period
6 set forth in A.A.C. R14-2-803(A) would apply, and Staff has not articulated any reason to
7 deviate from the 120-day period. Staff's proposal would require an arbitrary revision of
8 Commission rules on an "ad hoc" basis with no justification for treating CenturyLink
9 differently than other carriers.

10
11 **Q. Staff is proposing in Condition 11 that CenturyLink file to cancel its Certificate of**
12 **Convenience & Necessity ("CPCN") for CenturyTel Solutions within 90 days**
13 **following merger close.²⁴ Do you agree?**

14 **A.** No. CenturyTel Solutions is a certificated company in eighteen states. It was established
15 to provide competitive local exchange and, in some cases, resold long distance services
16 and has been certificated in Arizona since 2001 pursuant to Commission Decision No.
17 63638. While the company has no customers in Arizona today, a condition that would
18 require cancellation of a CPCN after the close of the merger would be unreasonable and
19 improper in this proceeding, and would not allow CenturyTel Solutions an adequate
20 opportunity to be heard, after proper notice has been given under the relevant laws and
21 Commission rules.

22

²⁴ Fimbres Direct Testimony, Attachment 1, p. 29, lines 11 – 12.

1 In addition, Staff makes this recommendation based on Commission Decision No. 68447,
2 which was based on market place findings made over four years ago and facts and
3 circumstances that are not necessarily applicable to the current situation. The
4 telecommunications industry and Arizona market have changed dramatically since then,
5 having become much more competitive. There has been no showing that maintaining the
6 existence of CenturyTel Solution's Arizona certificate, upon close of the merger, would
7 cause potential harm to customers or the marketplace, or that the legal standard
8 applicable to a forced cancellation of a CPCN even would apply in the context of this
9 proceeding. As an adequate safeguard, the Commission Staff can periodically monitor
10 the number of lines sold by CenturyTel Solutions within the Qwest ILEC territory to
11 determine any potentially adverse impacts to Qwest's retail operations. If Staff believes
12 that potential harms exist, it may bring an appropriate action for Commission review.
13 This merger proceeding is not the proper forum to force the cancellation of a certificated
14 right.

15
16 **Q. Does CenturyLink agree to Staff's Condition 16 that no Commission regulated**
17 **intrastate retail service currently offered by Qwest should be discontinued for a**
18 **period of at least one year following the merger close, unless otherwise approved by**
19 **the Commission?**²⁵

20 **A.** No. Again, Staff supplies no justification for imposing a one-year embargo of this nature
21 and identifies no harm or impairment that this condition would reasonably be designed to
22 address. The proposed condition is unnecessary because Qwest Corporation is already

²⁵ Fimbres Direct Testimony, Attachment 1, p. 29, lines 28 – 30.

1 required to seek Commission approval before discontinuing a tariffed retail intrastate
2 service in accordance with existing Commission requirements and practice.²⁶ If the
3 Commission determines that a request for discontinuance is not warranted, it can act on
4 the filing at that time. Thus, this condition does not pertain in any way to the ability of
5 Qwest Corporation to provide safe, reasonable and adequate service, and overlooks the
6 fact that adequate protections are already in place. It should be rejected.

7
8 **Q. Please comment specifically on Staff's recommended reporting Condition 44²⁷ and,**
9 **more generally, on the extensive nature of the reporting proposals set forth in**
10 **Conditions 37 – 46.²⁸**

11 A. CenturyLink will comply with Condition 44 and provide notice of the merger closure to
12 the Commission within 45 days following the completion of the proposed merger.
13 CenturyLink witnesses Jeff Glover, Todd Schafer and Qwest witness Jim Campbell will
14 address the remaining reporting conditions more specifically in their rebuttal testimonies.
15 In general, and with the exception of a couple of the conditions in that group, the
16 proposed reporting Conditions 37 – 46 would require CenturyLink to file detailed reports
17 for one to three years and, in at least one case, without any expiration. As detailed more
18 specifically by witnesses Glover and Schafer, these conditions contain overly broad, and

²⁶ ARS § 40-367 requires a prior 30-day notice for any tariff changes, which includes the discontinuance of a service that is under an existing tariff. ARS § 40-321 provides that the Commission shall determine adequacy and sufficiency of service. Further, A.A.C. R14-2-510(F)(2) and (3) require that, "[A]ny proposed changes to the tariffs on file with the Commission shall be accompanied by a statement of justification supporting the proposed change in tariff" and "any proposed change to the tariffs on file with the Commission shall not be effective until reviewed and approved by the Commission, except as provided for by law." Thus, there are adequate protections in place via statute and rule to address the discontinuance of a service.

²⁷ Fimbres Direct Testimony, Attachment 1, p. 34, lines 1 – 2.

²⁸ Fimbres Direct Testimony, Attachment 1, p. 32, line 33 through p.34, line 15.

1 in some cases, vague and complicated requests for information and data on cost savings,
2 complaint levels, new services and bundles, service quality measures, infrastructure
3 improvements, expanded broadband coverage, costs and projected savings associated
4 with merged company activity, organizational changes to network operations, staffing
5 levels, layoffs or facility closings, multi-year strategic planning regarding switches, wire-
6 specific information relating to fixed VoIP, broadband and capital expenditures,
7 integration plans, and more. This is in addition to several other elaborate retail operations
8 reporting conditions proposed by Staff, also addressed by Mr. Schafer.²⁹ The production
9 of such reports, even if they were practicable to track and prepare, would not only be
10 burdensome, but also would divert valuable human resources needed to attend to
11 important integration efforts, other standard reporting requirements in various states, and
12 initiatives focused on serving customers. Also, the combined company would be
13 singularly saddled with the extensive reporting requirements in an intensely competitive
14 market.

15
16 These proposals are not justified by any potential, demonstrable harm.³⁰ Any such
17 reporting would place needless and competitively unfair burdens on the merged
18 company. The bottom line is that these reporting conditions do not bear a reasonable
19 relationship to the ability of Qwest Corporation to provide safe, reasonable and adequate

²⁹ See, for example, Fimbres Direct Testimony, Attachment 1, p. 29, lines 20 – 27, 31 – 38 and p.30, lines 1 – 3.

³⁰ Mr. Fimbres states that the reporting conditions are designed to give the Commission “useful” information on a variety of matters. Fimbres Direct Testimony, Executive Summary and p. 27, lines 3-6. CenturyLink does not believe that the desire for useful information outweighs the hardship of producing and tracking such information in the elaborate manner that Staff proposes, particularly given the competitively uneven level of reporting it will create.

1 service. Thus, the proposed reporting conditions should be rejected outright or tailored
2 narrowly only after careful consideration of any clear and verifiable relationship between
3 a potential harm and the need to protect the public interest under the applicable standard
4 of review and jurisdictional limitations.

5
6 **VI. RESPONSE TO CERTAIN TESTIMONY OF THE JOINT CLECS AND**
7 **DOD AND THEIR RECOMMENDED CONDITIONS**
8

9 **Q. Please comment on the concern of Mr. Gates that CenturyLink is not a BOC and**
10 **could have problems fulfilling the responsibilities of a BOC.³¹**

11 **A.** There is no justification for Mr. Gates' concern. CenturyLink and Qwest are merging
12 their entire companies. This is different from a scenario in which CenturyLink might
13 have acquired some of Qwest's assets or operations. In addition, unlike other states
14 where Mr. Gates raised this concern, CenturyLink does not have an ILEC presence in
15 Arizona. As stated previously, the Arizona ILEC, Qwest, will continue operations as a
16 BOC. Qwest's assets, personnel and systems will be absorbed in full. That is, on the day
17 after the closing of the Transaction, the Qwest systems and personnel that currently
18 manage BOC operations will continue to meet any and all obligations to customers and
19 regulators. Qwest has operated as a BOC, even as management at Qwest has transitioned
20 over time, and will continue to operate as a BOC with the retained ability to meet BOC
21 obligations.

22

³¹ Gates Direct Testimony at page 23, lines 8 - 14.

1 Q. Please respond to Mr. Gates' recommendation in Condition 13 that, the merged
2 company be classified as a BOC, pursuant to applicable sections of the federal
3 Communications Act and subject to all requirements applicable to BOCs, including
4 but not limited to the "competitive checklist."³²

5 A. CenturyLink believes that the type of condition proposed by Mr. Gates regarding the
6 federal definition of, and requirements imposed on, a BOC is an FCC matter, and thus is
7 not appropriate in a state transactional review process. The definition of a BOC is
8 established under federal law. As such, Mr. Gates' proposed condition is unnecessary
9 and not appropriate for this proceeding. Again, the Qwest ILEC in Arizona is a BOC
10 today and will remain a BOC after the close of the merger. Furthermore, the
11 CenturyLink Arizona operations are not BOC properties, and will not become BOCs after
12 the merger because they are not ILECs. Mr. Gates' concerns are misplaced.

13
14 Q. Could you comment on DOD's direct testimony related to security clearances?³³

15 A. Yes. Mr. King expresses concern that personnel changes after the completion of the
16 merger might jeopardize the merged company's ability to meet its performance
17 requirements under government contracts. CenturyLink understands the implications of
18 security clearances related to performance on certain government contracts and is
19 committed to making certain that such clearances are obtained as needed to ensure that
20 contractual obligations on government contracts are being met. Further, unlike other
21 states where Mr. King may have raised this concern, CenturyLink does not have an ILEC
22 presence in Arizona. As stated previously, the Arizona Qwest ILEC will continue

³²Gates Direct Testimony, Exhibit TG-8, p. 7.

³³ King Direct Testimony, p. 22, line 26 through p. 23, line 17.

1 operations with its assets and personnel absorbed in full. For all of these reasons,
2 Commission oversight is not needed to reinforce this commitment.
3

4 **Q. Can you summarize your rebuttal testimony?**

5 A. Yes. CenturyLink and Qwest are confident that the proposed Transaction will result in
6 the creation of a viable, financially sound, and stable service provider. The proposed
7 Transaction addresses market conditions and challenges as it combines assets and skills
8 in response to a rapidly changing, data-centric world. The potential for enhanced scope
9 and scale better assures employees and customers of a stable and capable
10 telecommunications provider.
11

12 CenturyLink's long-standing and proven track record of broadband investment,
13 integration and operational execution is broad in scope and over-shadows and negates
14 unsubstantiated and speculative concerns expressed by other parties in this proceeding.
15 As our nation transitions into a broadband centered economy and operating environment,
16 Arizona consumers must be a part of that future. They will benefit from the assurance of
17 having a financially stable, long-term service provider with a history of good customer
18 service, significant investment in advanced services and network reliability.
19

20 For all of the reasons set forth in the Application and the direct and rebuttal testimonies
21 of CenturyLink and Qwest witnesses, CenturyLink recommends that the Commission
22 approve this merger. It contains many benefits to support the public interest and properly
23 meets the standard of review in Arizona. That is, the proposed Transaction will not

1 "...impair the financial status of the public utility, otherwise prevent it from attracting
2 capital at fair and reasonable terms, or impair the ability of the public utility to provide
3 safe, reasonable and adequate service."

4

5 **Q. Does this conclude your rebuttal testimony?**

6 **A. Yes.**

7

TODD SCHAFER

BEFORE THE ARIZONA CORPORATION COMMISSION

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

REBUTTAL 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**

OCTOBER 27, 2010

1 **Q. Please state your name and business address.**

2 A. My name is Todd Schafer and my business address is 14111 Capital Blvd, Wake Forest,
3 NC 27587.

4

5 **Q. Who is your employer and what is your position?**

6 A. I am employed by CenturyLink as the President for the Mid-Atlantic Region.

7

8 **Q. Are you the same Todd Schafer that filed direct testimony in this proceeding?**

9 A. Yes, I am.

10

11 **Q. What is the purpose of your rebuttal testimony?**

12 A. I am providing rebuttal testimony concerning certain operational issues and proposed
13 conditions raised in various direct testimonies in the proceeding before the Arizona
14 Corporation Commission ("Commission") related to the proposed merger of CenturyLink
15 and Qwest Communications International, Inc. ("Qwest"). Specifically, I will address
16 portions of the direct testimony and certain of the proposed conditions of Mr. Armando
17 Fimbres and Ms. Pamela Genung¹ on behalf of the Utilities Division Staff of the
18 Commission ("Staff" or the "Commission Staff").

19 I note that on October 21st, the Communications Workers of America ("CWA") filed a
20 Notice of Withdrawal that seeks, among other things, to withdraw and remove CWA's

¹ Direct Testimony of Mr. Armando Fimbres and Ms. Pamela Genung , on behalf of Utilities Division, Arizona Corporation Commission.

1 intervention and pre-filed testimony in this case². As a result, I will not directly address
2 the direct testimony of CWA witness Mr. Jasper Gurganus, but I will address
3 CenturyLink's integration process, the status of the Embarq integration and concerns
4 raised by other parties that appear to be based on or relate to Mr. Gurganus' direct
5 testimony.

6
7 **I. RESPONSE TO CONCERNS REGARDING CENTURYLINK'S**
8 **INTEGRATION OF QWEST OPERATIONS**
9

10 **Q. Some of the intervenor parties³ filing testimony in this proceeding express concern**
11 **over CenturyLink's ability to accomplish an integration of this magnitude. Are**
12 **these integration concerns valid?**

13 **A.** No. I believe their concerns are based far more on speculation than fact. CenturyLink has
14 a proven track record of successfully integrating the operations of the companies it
15 acquires not once or twice, but multiple times over a 20-year period, and this experience
16 substantiates the fact that the CenturyLink possesses the know-how, ability and expertise
17 to successfully execute an integration of this nature. CenturyLink is a company that has
18 grown and evolved through both small and large acquisitions—Bell lines and non-Bell
19 lines—each of them unique in their own right. Each of these transactions has been
20 successful from a financial, employee and operational perspective. The senior officers
21 who will lead the combined company are proven leaders in the telecommunications

² CWA's: 1) Notice of Withdrawal; and 2) Notice of filing settlement agreement between CWA and Joint Applicants, filed October 21, 2010.

³ Direct Testimony of Armando Fimbres at p. 15, Direct Testimony of Pamela Genung at p. 27, Direct Testimony of Charles King at p. 10-11, Direct Testimony of Timothy Gates at p. 26, and the Direct Testimony of August Ankum at p. 39.

1 industry with multiple decades of both individual and combined experience. The
2 majority of the CenturyLink leadership team has been together since the 1980s, a fact that
3 highlights the stability and experience of the Company's management. This level of
4 management continuity and the successful operational track record over that time
5 demonstrates convincingly that the CenturyLink leadership team consistently has
6 maintained a sharp focus on achieving exceptional customer service while successfully
7 managing multiple acquisitions and integrations. As a result of successfully managing the
8 integrations, CenturyLink has increased its scope and scale over the years through a
9 number of sizeable transactions, starting in 1997 with the acquisition of Pacific Telecom,
10 Inc. (600,000 + lines in multiple states) and most recently with the 2009 acquisition of
11 Embarq (6 million + lines in multiple states). An important by-product of the multiple
12 acquisitions by CenturyLink is the accumulation of experienced employees and critical
13 skill sets needed for successful integration outcomes. At times, these acquisitions have
14 more than doubled or tripled the size of the company within a fairly short span of years.
15 Moreover, in each instance, the integration has been successful in improving customer
16 service and operating performance. This proven history demonstrates that CenturyLink is
17 accustomed to managing and executing on mergers and acquisitions of varying types,
18 sizes and complexity while continuing to operate as a successful service provider in a
19 challenging industry environment.

20
21 **Q. Is integration planning underway?**

22 A. Yes, it is. Preparation for the Qwest integration process is underway. Joint
23 CenturyLink/Qwest integration teams are hard at work reviewing all functional areas to

1 determine the best organizational structure for the company post-merger.⁴ In addition,
2 there is an early and important focus on planning for the integrating of various company
3 systems and practices. CenturyLink approaches the systems integration process with an
4 open mind as the Company evaluates and prepares to adopt the best systems of merged
5 companies. However, prior to actual adoption decisions, the planning process attempts to
6 address such issues as critical functionality, efficiency, integration with other systems and
7 an overall positive customer experience. It is important to note that a key factor in both
8 the CenturyTel/Embarq transaction and this one, which sets them apart from other
9 mergers in a very positive way, is that CenturyLink is integrating entire companies, not
10 partial companies. Acquiring total companies such as Embarq and Qwest—personnel,
11 systems, network assets, etc. — provides CenturyLink the ability to operate using dual
12 systems for as long as management believes is prudent. Preparation is further focused as
13 the employees of both companies are committed to coordinating and transitioning the
14 companies' operations. Accordingly, there are shared integration goals between the two
15 companies, minimizing the potential for conflicts of interest that more readily may arise
16 when a company sells only parts of its operations.

17 Additionally, while final staffing decisions have not yet been made, identification of key
18 personnel is a part of the overall process. A majority of both companies' employees are
19 expected to be retained to help the merged company achieve its local operational and
20 service objectives. By seeking expeditious regulatory approvals, Joint Applicants are
21 trying to mitigate the pressure associated with uncertainty that employees and their
22 families nationwide experience during this interim period when regulatory approvals are

⁴ See Updated Response to Staff Data Request 3.2.

1 pending as a pre-requisite to close of the transaction. The Staff seems to recognize that
2 extended approval timelines and uncertainty regarding approvals can have a negative
3 impact on Arizona.⁵
4

5 **Q. Several parties express concern with the purported lack of details that CenturyLink**
6 **has provided with regard to its integration plans with Qwest⁶. How do you**
7 **respond?**

8 A. CenturyLink is experienced in large integrations which require processes that are
9 thorough, well thought-out and customer focused. CenturyLink's goal is to make sure
10 that the integration process is successful for multiple types of customers. A
11 comprehensive review of all systems is very complex and time consuming. Various
12 intervenors demand, on the one hand, extensively detailed execution plans early in the
13 planning process but on the other hand they are also seeking extended timelines for any
14 potential systems conversions. These processes require deliberate and disciplined efforts
15 to complete. While much integration planning can begin pre-merger, as is the case with
16 the proposed Transaction, most of the final decisions regarding integration cannot be
17 made, and do not need to be made, until after the merger has closed.
18

19 From a sequencing standpoint, we have begun naming Tier 2 leadership, with Tier 3
20 leaders following later this year. CenturyLink witness Ms. Kristin McMillan provides an
21 update on the staffing process in her Rebuttal Testimony. These individuals will be

⁵ Direct Testimony of Armando Fimbres, p. 25.

⁶ Direct Testimony of Armando Fimbres, p. 20 and Direct Testimony of Timothy Gates on behalf of the Joint CLECs, beginning at p. 36.

1 responsible for structuring their respective areas, building teams and actually operating
2 many of the systems in question. From our perspective, it makes little sense to select
3 systems without the input of critical, hands-on employee leaders.

4
5 The structure of this kind of parent-level transaction does not force the Company into
6 short timelines. Having the latitude to operate the companies' systems independently
7 upon Transaction close removes any need to rush the selection and integration of critical
8 systems designed to seamlessly serve millions of customers. By the same token,
9 mandating arbitrary dates before which implementation of systems integration cannot
10 occur would be just as ill-advised. CenturyLink is committed to follow proven processes
11 that involve careful review of all aspects of the integration to ensure that the merger goes
12 as smoothly as possible for customers, employees and other key stakeholders.

13
14 **Q. Can you generally describe CenturyLink's approach to the integration process?**

15 **A.** Yes, I can. CenturyLink and Qwest are applying a disciplined method to on-going
16 integration planning. Specifically, in the first phase of integration planning, management
17 will: (i) establish guiding principles and strategies for companywide integration planning;
18 (ii) identify and commit resources to integration planning efforts; (iii) resolve and
19 escalate any critical issues as needed; and (iv) track and communicate progress to
20 business leadership. Each functional group then has a leader who heads a functional
21 integration team focused on the organization for which he or she has responsibility. The
22 functional integration teams then, over time, will create objectives and also detailed work
23 plans that assign task owners, deliverables and due dates for integration work. The work

1 plans also will help identify resource constraints, dependencies and other issues. Finally,
2 functional sub-teams will be employed to manage integration planning for specific
3 functions within each leader's area of responsibility.

4
5 **II. RESPONSE TO SPECIFIC CONCERNS REGARDING THE EMBARQ**
6 **INTEGRATION PROCESS.**

7 **Q Several witnesses express concerns regarding operational problems allegedly arising**
8 **out of CenturyLink's integration of Embarq Corporation ("Embarq")⁷. Are these**
9 **concerns justified?**

10 **A.** No. First of all, there are no Embarq properties in Arizona, so the specific Embarq
11 integration issues are not relevant here. The CenturyLink/Qwest merger will allow
12 continuous operation of the separate Arizona operating companies during the course of a
13 thoughtful and careful integration process, and concerns that have been suggested by
14 intervenors related to the continuing Embarq integration are not an issue in Arizona, nor
15 have any issues been insoluble in other states.

16
17 With any integration of large, complex systems, some issues are expected to arise, but
18 CenturyLink has and will be able to minimize the impacts of such issues. CenturyLink
19 strives during every integration process to minimize the number and severity of those
20 problems, and to mitigate any potential negative impact on the Company's customers and
21 employees. CenturyLink has successfully completed conversions of multiple systems
22 from multiple different companies over the years and has learned new things with every

⁷ Direct Testimony of Pamela Genung at p. 6, Direct Testimony of Timothy Gates beginning at p.63.

1 conversion. Those learnings are applied to future conversions to help reduce the
2 integration issues that may arise.

3
4 During the recent conversion of the North Carolina market to the CenturyLink billing and
5 operational systems, some of the outside plant records were loaded incorrectly. The way
6 in which plant was constructed in the legacy Embarq areas was not consistent between
7 areas and not consistent with the legacy CenturyTel areas. As a result, records for some
8 of the devices initially did not load correctly in the conversion. This led to certain
9 problems that one of CWA witnesses cited in testimony. However, it would be helpful to
10 add some perspective to the situation. CenturyLink researched the problem and learned
11 that the records of approximately 2,000 out of approximately 11,500 devices did not load
12 correctly. At this time, the records for approximately 95% of those 2,000 devices have
13 been fixed and CenturyLink continues to work diligently on the remaining 5%. The
14 problems were found to be manageable. Finally, CenturyLink is working to ensure that
15 the outside plant records are correct and consistent prior to any future conversions
16 resulting from the Embarq integration. As such, CenturyLink does not expect this
17 problem to recur, and as I already stated, this is not an issue in Arizona, since there are no
18 legacy Embarq territories in Arizona.

19
20 **Q. What is CenturyLink doing to ensure that problems with incorrect plant records do**
21 **not occur in future conversions?**

22 **A.** As I indicated earlier, every system conversion or integration inevitably is going to have
23 some issues. Now that we are more fully aware of the differences in outside plant

1 records, CenturyLink is taking additional steps to identify and to correct those plant
2 records *before* the conversion takes place. For instance, CenturyLink has identified those
3 devices that may be at a higher risk for having incorrect plant records and is going to
4 have technicians test those devices to determine if there are any problems prior to future
5 conversions. In proactively implementing these additional steps, CenturyLink is
6 confident that it will minimize the problems encountered in future conversions.

7
8 **Q. Why is it necessary to integrate the CenturyLink and Embarq systems?**

9 A. The systems need to be integrated so that all employees are working off the same
10 platform and using the same processes. It is very inefficient to have employees working
11 with multiple systems and platforms. Doing so would require employees to have a
12 working knowledge of a number of systems. That inefficiency would translate over to
13 longer times to complete service orders. Having multiple different systems would also
14 increase the likelihood of inconsistencies or inaccuracy of records information. As
15 already indicated earlier, increasing the risks of inaccurate information does not align
16 with CenturyLink's goals of providing the highest level of customer service delivered
17 efficiently.

18
19 **Q. Is the integration of Embarq's operations moving along as planned?**

20 A. Yes. A significant amount of planning and testing goes into the conversion of each
21 Embarq market prior to that conversion taking place. As I mentioned previously,
22 CenturyLink takes what was learned from each previous market conversion and applies
23 that learning to future conversions. It is for this very reason that we chose to convert

1 Embarq to CenturyLink's systems on a phased basis, rather than to "flash cut" all of
2 Embarq's customers at once. A phased approach to the conversion minimizes the
3 potential for system-wide problems and mitigates any possible negative impacts on
4 customers and employees alike. In my view, CenturyLink's experience with these issues
5 is really unmatched in the industry. Our experience in successfully integrating
6 companies in merger transactions better positions CenturyLink to achieve a smooth and
7 efficient integration in the Qwest merger.

8
9 **Q. Please place the Embarq conversion processes in Ohio and North Carolina in their**
10 **proper perspective.**

11 **A.** The Ohio and North Carolina markets have been converted, representing approximately
12 25% of the legacy Embarq access lines.⁸ It is important not to lose perspective of the
13 entirety of what was completed. Since the conversions of North Carolina and Ohio, over
14 8 million bills have been accurately produced over one million customer orders have
15 been processed and over 350,000 jobs dispatched to technicians have been completed in
16 these two states on the converted systems. The problems encountered in North Carolina
17 on top of the heavy seasonal summer load caused CenturyLink to produce lower service
18 level metrics than desired since conversion. However, as the plant records for these
19 devices have been corrected, as seasonal load levels have started to ease, and as
20 employees have become more familiar with the new systems, the service quality levels

⁸ In addition, the Nevada, New Jersey, Tennessee, and Virginia markets were also recently converted in the first weekend of October bringing the total number of converted lines to approximately 50%. These recent conversion has gone well.

1 have improved. We believe our customer service metrics should continue improving and
2 have already returned to levels being experienced prior to the conversion.

3
4 **III. RESPONSE TO ISSUES AND CONDITIONS AS PROPOSED BY STAFF.**
5

6 **Q. Please comment on Staff Condition 14 regarding maintaining or improving service**
7 **quality.**

8 **A.** First, let me state that CenturyLink is committed to provide the quality of service its
9 customers demand, CenturyLink believes that the Commission's existing service quality
10 rules and the Qwest Service Quality Tariff provide the necessary requirements, incentive
11 and enforcement mechanisms to encourage continued quality service and enable the
12 Commission to monitor results. In addition, the genesis of Staff's concern and
13 justification for this condition is absent. Ms. Genung initially concludes that, based on
14 complaint data she gathered independently from eleven current CenturyLink ILEC states,
15 that her analysis "produced more favorable results for CenturyLink when compared to
16 Qwest in Arizona on an annualized basis." She also concludes that "Staff has no
17 significant concerns about CenturyLink's ability to meet the standards in the Qwest
18 Service Quality Tariff". "She questions some of the "more extensive" information
19 supplied by CenturyLink that she states "cannot be compared explicitly" due to
20 differences in the size of markets being compared, but this does not provide a reasonable
21 justification for imposing a condition regarding maintaining or improving Qwest's pre-
22 merger complaint status. Because Staff has found no significant concerns about

1 CenturyLink's ability to meet its service quality obligation, such a condition is not
2 warranted⁹.

3
4 **Q. Please comment on Staff Conditions 15, 17, 37, and 39 that require various**
5 **commitments and extensive reporting regarding retail support centers, reporting of**
6 **rearrangement plans for major network components, integration reporting,**
7 **consumer benefits, layoffs and facilities closings, etc.**

8 **A.** CenturyLink does not support these conditions. Staff's proposed conditions are intrusive,
9 burdensome and place a unique requirement on the newly combined company to provide
10 advance notice (up to 6 months) of changes that, absent the transaction, would have been
11 routinely planned and implemented without Commission involvement. More importantly,
12 these types of reports are not requirements of any of the competitive providers. They also
13 will utilize resources of Qwest in Arizona that would be better focused on the
14 marketplace. The conditions restrict management discretion and would place additional
15 burdens on the process of integration, distracting management from its important focus
16 on ensuring quality service in Arizona through existing or newly integrated systems.

17 CenturyLink understands the need to keep the Commission and its Staff informed of
18 system integration plans and progress in a timely and reasonable manner and agrees to do
19 so in Arizona. However, mandatory conditions are not needed, particularly impositions
20 of the types of heavy burdens proposed by Staff that do not specifically address
21 demonstrable harms.

⁹ See also the Rebuttal Testimony of Qwest witness Mike Williams for a discussion of Qwest's current service quality results.

1

2 **Q. What is your position regarding Staff Condition 18 requiring an Internet Protocol**
3 **Television (“IPTV”) and Broadband deployment plan for Commission**
4 **consideration within six months of a decision in the docket?**

5 A. CenturyLink does not support this condition as proposed. CenturyLink is committed to
6 bringing advanced services including broadband to Arizona but a disciplined review of
7 the readiness of the network and the marketplace is required and a mandatory deadline is
8 not appropriate. It is unclear from Staff’s testimony what it expects to be contained in the
9 requested plans. It is also not clear what “Commission consideration” entails since, it is
10 my understanding the Commission does not regulate broadband or IPTV service due to
11 the lack of authority to do so. CenturyLink is willing to update the Commission on its
12 plans, as developed, and therefore, a mandatory condition is not necessary.

13

14 **Q. Please comment on Staff Condition 41 requiring an additional annual report on a**
15 **wire center basis showing (a) the number of local exchange subscribers utilizing**
16 **fixed VoIP technology; (b) the number of broadband capable subscriber lines by**
17 **technology and (c) total capital expenditures associated with broadband deployment**
18 **by technology.**

19 A. CenturyLink does not believe this reporting requirement is either justified or appropriate
20 as a condition of approval of the transaction. Qwest’s current annual reporting includes
21 an identification of local exchange subscribers using fixed VoIP technology, additional
22 reporting by wire center is unnecessary. In addition, Qwest’s broadband subscriber
23 information is currently available to the Staff pursuant to the FCC’s Form 477 semi-

1 annual report and does not need to be replicated here. Finally, the Commission's current
2 annual report contains information regarding Qwest's capital spending in Arizona and
3 will remain available as required by Commission regulation after the transaction. Specific
4 information regarding broadband capital expenditures is not necessary given the
5 Commission's lack of jurisdiction over broadband.

6
7 **Q. Please comment on Staff Condition 42 requiring a 6 month report for two years on**
8 **the Embarq integration progress.**

9 A. This condition is unnecessary and inappropriate. There is no legacy CenturyLink or
10 Embarq ILEC operating in Arizona. Thus the integration of Embarq will not impact
11 Qwest's Arizona operations. Further, the integration process of the Embarq properties is
12 on schedule and anticipated to be completed in the third quarter of 2011. Any concerns
13 relating to overlap with the Qwest integration processes are unfounded.

14
15 **Q. Do you have any concluding remarks?**

16 A. Yes. The Transaction brings together two leading communications companies with
17 complementary networks and operating footprints. By building on each company's
18 operational and network strengths, the combined company will have an impressive
19 national presence with the local depth that will allow it to better serve all of its customers.
20 The combination creates a company that will be well-positioned to lead in the
21 deployment of advanced services as well as successfully manage the challenging and
22 rapidly changing telecommunications environment.

1 Further, the imposition of far-reaching and burdensome reporting conditions, such as
2 those proposed by the Commission Staff, are unfounded. Considering the vast
3 operational, managerial and integration expertise of CenturyLink and the combined
4 companies, the Transaction will produce no harmful effects to service and customers.
5 Therefore, it is in the public interest and we respectfully ask the Commission for
6 approval.

7 **Q. Does this conclude your rebuttal testimony?**

8 **A. Yes.**