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**Transcript Exhibit(s)**

Docket #(s): T-01051B-10-0194

T-02811B-10-0194

T-03555A-10-0194

T-03902A-10-0194

T-04190A-10-0194

T-20443A-10-0194

Exhibit #: PLT1-PLT6

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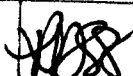
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Arizona Corporation Commission

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Date: December 28, 2010

Re: Qwest Corporation, et al. / Merger  
T-01051B-10-0194, et al.  
Volumes I through III  
Volume I, taken on December 13, 2010;  
Volume II, taken on December 20, 2010; and  
Volume III, taken on December 21, 2010

### STATUS OF ORIGINAL EXHIBITS

#### *FILED WITH DOCKET CONTROL*

#### CenturyLink

Exhibit Designation: CTL  
1 through 9

#### Cox

Exhibit Designation: Cox  
1 and 2

#### Department of Defense & Federal Executive Agencies

Exhibit Designation: DoD/FEA  
1 through 4, 4 revised, and 5  
Joint 1

Integra

Exhibit Designation: I  
1

Joint Applicants

Exhibit Designation: JA  
1 and 2

Level 3

Exhibit Designation: Level 3  
1 and 2

PAETEC

Exhibit Designation: PAETEC  
1 and 2

Pac-West

Exhibit Designation: PW  
1 and 2

PAETEC, Level 3, and TW Telecom

Exhibit Designation: PLT  
1 through 6

Qwest

Exhibit Designation: Q  
1 through 10

RUCO

Exhibit Designation: RUCO  
1 through 3

Staff

Exhibit Designation: S  
1 through 4, and 6 through 9

***CONFIDENTIAL EXHIBITS***  
***Remitted to Belinda Martin, ALJ***

CenturyLink

Exhibit Designation: CTL  
10 CF

Cox

Exhibit Designation: Cox  
1 CF

PAETEC

Exhibit Designation: PAETEC  
1 CF

PAETEC, Level 3, and TW Telecom

Exhibit Designation: PLT  
1 CF and 2 CF

Qwest

Exhibit Designation: Q  
7 CF

Staff

Exhibit Designation: S  
5 CF

Copy to:

Ms. Belinda A. Martin, Administrative Law Judge

Mr. Jeffrey W. Crockett, CenturyLink Entities

Mr. Norman G. Curtright, Qwest Companies

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Mr. Stephen S. Melnikoff, DoD/FEA

Ms. Joan S. Burke, TW Telecom, LLC; Pac-West Telecomm

Mr. Craig A. Marks, Integra Telecom

Mr. Michael Patten, Level 3 Communications, McLeodUSA

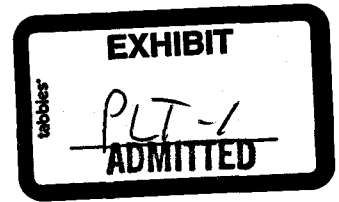
Telecommunications Services d/b/a PAETEC Business

Solutions, Covad Communications Company, Cox Arizona  
Telcom

Mr. Gregory Merz, Level 3 Communications, McLeodUSA

Telecommunications Services d/b/a PAETEC Business  
Solutions

BEFORE THE ARIZONA CORPORATION COMMISSION



COMMISSIONERS

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

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JOINT NOTICE AND APPLICATION OF )	
QWEST CORPORATION, QWEST )	
COMMUNICATIONS COMPANY, LLC, )	
QWEST LD CORP., EMBARQ )	Docket No. T-01051B-10-0194
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. )	

---

DIRECT TESTIMONY

OF

TIMOTHY J GATES

ON BEHALF OF

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

PUBLIC VERSION

CONFIDENTIAL AND HIGHLY CONFIDENTIAL DATA HAS BEEN REDACTED

September 27, 2010

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**Exhibits**

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



1       **I.       INTRODUCTION**

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

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

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

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

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

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

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

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

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

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

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

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

11 I am knowledgeable about the interconnection and business practice issues addressed in  
12 this testimony as well as the potential impacts the proposed transaction may have on the  
13 market, competitors and consumers. Further, I have reviewed the Application filed by  
14 Qwest and CenturyLink in this proceeding<sup>2</sup> and the associated documentation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

15 A. The state commissions have jurisdiction over approving ICAs and related disputes (*e.g.*,  
16 arbitrations) pursuant to Section 252 of the Act<sup>5</sup> and numerous provisions of state law.  
17 State commissions also establish the rates ILECs are permitted to charge for UNEs,  
18 interconnection and collocation under Sections 251 and 252, applying the FCC’s total  
19 element long-run incremental cost methodology (“*TELRIC*”). State commissions also

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



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

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

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

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

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

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

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

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

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

---

<sup>6</sup> *Local Competition Order* at ¶ 12.

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

---

<sup>7</sup> *Local Competition Order* at ¶ 10.

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

<sup>9</sup> *Id.* at ¶ 315.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>16</sup> *Local Competition Order* at ¶ 218.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Traditionally, CenturyLink has operated mostly in rural areas<sup>21</sup> (CenturyLink has rural  
16 exemptions that limit its section 251 wholesale duties in some of its areas<sup>22</sup>), and only  
17 recently acquired a few more urban areas through its acquisition of Embarq.

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<sup>20</sup> 47 U.S.C. § 271(c)(2)(B).

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **A.** Yes. CenturyLink has stated that CLECs can expect changes to occur post-merger.<sup>43</sup>

15 However, CenturyLink has been either unable or unwilling to provide any details about

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **Q. WHAT IS OSS?**

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

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

<sup>47</sup> *Local Competition Order* at ¶518.

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

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

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



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

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

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

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

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

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

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

<sup>52</sup> *Local Competition Order* at ¶ 516.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>57</sup> CenturyLink Response to Integra Arizona Data Request #23.

<sup>58</sup> Arizona Corporation Commission Staff Data Request STF 5.2.

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

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

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

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

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

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

<sup>59</sup> CenturyLink Response to Arizona Corporation Commission Staff Data Request STF 5.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 The problem with this statement, beyond its obviously vague nature, is that only *Qwest's*  
14 wholesale systems, processes and resources have been shown to satisfy the market-  
15 opening and nondiscrimination requirements of Section 271 of the Act – CenturyLink's  
16 have (admittedly<sup>66</sup>) not. So, when CenturyLink says that it will integrate at least some of  
17 CenturyLink's wholesale resources and expertise into Qwest's territory (such as an OSS  
18 interface), it is likely that some of the interfaces and processes that have been deemed as  
19 271-compliant would be replaced by interfaces and processes that have not been found to  
20 be 271-compliant.

<sup>65</sup> Hunsucker Oregon Direct at pp. 12-13.

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



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

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

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<sup>67</sup> CR SCR121305-01 Detail, available at:  
[http://www.qwest.com/wholesale/cmp/archive/CR\\_SCR121305-01.html](http://www.qwest.com/wholesale/cmp/archive/CR_SCR121305-01.html)

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>73</sup> *Qwest 9 State 271 Order* at ¶ 12.

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

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

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

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

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

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

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

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

<sup>76</sup> *Washington 39<sup>th</sup> Supplemental Order* at ¶ 32.

<sup>77</sup> *Washington 39<sup>th</sup> Supplemental Order* at ¶ 33.

<sup>78</sup> *Qwest 9 State 271 Order* at ¶ 440.

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

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

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

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

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

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

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

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

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<sup>80</sup> ACC Evaluation at p. 5.

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

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

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

<sup>82</sup> Qwest Response to Arizona Data Request #19.

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

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



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

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

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

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

<sup>86</sup> CenturyLink Response to Integra Arizona Data Request #16.

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

<sup>88</sup> CenturyLink Response to Integra Arizona Data Request #77, Confidential Attachment Integra-77.

<sup>89</sup> Qwest Response to Integra Arizona Data Request #77, Confidential Attachment A.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>95</sup> CenturyLink Response to Integra Arizona Data Request #16.



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

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

<sup>96</sup> Qwest Response to Integra Arizona Data Request #19.

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

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

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

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

1 A. Yes. Based on information provided in discovery<sup>101</sup> CenturyLink's EASE system uses  
2 the Virtual Front Office ("VFO"), a platform originally developed by Wisor Telecom  
3 Corp, a subsidiary of Synchronoss. This same Synchronoss/Wisor VFO platform was  
4 used by FairPoint Communications in its OSS cutover in Northern New England and  
5 Frontier Communications in its recent OSS cutover in West Virginia. A competitor in  
6 West Virginia that makes extensive use of the Frontier OSS, FiberNet, recently asked the  
7 West Virginia Public Service Commission to review problems arising with that platform.  
8 FiberNet explained that:

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

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

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

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

<sup>101</sup> See, e.g., CenturyLink Response to Integra Arizona Data Request #17.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>115</sup> CenturyLink Objections to Integra Arizona Data Requests #129, #130, and #131.

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

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

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

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

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

<sup>119</sup> City Petition at p. 4.



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

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

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

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

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

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

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

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

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

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

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

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

<sup>121</sup> 47 U.S.C. § 251(b)(3); 47 C.F.R. § 51.217 (a) and (b).  
<sup>122</sup> See, Arbitrator's Report and Decision, WUTC Docket No. UT-083025, January 13, 2009, at pp. 11-12.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>134</sup> *Id.* at ¶ 3.

<sup>135</sup> Arizona Joint Application at p. 7.

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

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

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

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

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

<sup>138</sup> *Id.* at p. 7.

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

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

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

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

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

<sup>140</sup> CenturyLink Form S-4 at p. 16.

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

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

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

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

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

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

<sup>142</sup> *Id.*

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

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

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

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

6       **A.** Yes. When the FCC approved the CenturyTel-Embarq merger in June 2009, it imposed a  
7       series of conditions, including that “[f]or two years after the Transaction Closing Date,  
8       the Merged Company will maintain service levels for the Embarq operating companies  
9       that are comparable to those Embarq wholesale customers experienced pre-merger.”<sup>143</sup>  
10       To help ensure compliance with this condition, the FCC also required the Embarq  
11       operating companies to continue to produce and make available wholesale service  
12       performance reporting for two years after the closing date.<sup>144</sup> The FCC prescribed that  
13       the reporting would include comparison of actual quarterly performance results to a  
14       benchmark value, set equal to the 12-month average results achieved from April 1, 2008  
15       through March 31, 2009.<sup>145</sup> The FCC required that the Embarq operating companies  
16       meet a service performance standard of “no less than one standard deviation from the  
17       benchmark value, 90 percent of the time.”<sup>146</sup> The specific metrics applied are as follows:

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

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

<sup>144</sup> *Id.* at p. 1.

<sup>145</sup> *Id.* at p. 2.

<sup>146</sup> *Id.* at p. 2.



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

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

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

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

<sup>147</sup> *Id.* at pp. 1-2.

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

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[REDACTED] **END CONFIDENTIAL\*\*\***

- Q. THE DATA YOU PRESENT ABOVE RELATES TO WHOLESALE SERVICE. ARE THERE OTHER DATA APPLICABLE TO RETAIL SERVICE THAT SHOWS THAT VERBAL STATEMENTS ABOUT CENTURYLINK'S COMMITMENT TO QUALITY SERVICES ARE NOT SUFFICIENT TO PREVENT MERGER-RELATED HARM?**
- A. Yes. Recent JD Power & Associates studies show that retail customers have reasons to be concerned if CenturyLink were to own and control Qwest. On September 15, 2010, JD Power & Associates released its *2010 U.S. Residential Telephone Customer*

1           *Satisfaction Survey*.<sup>149</sup> This study measures customer satisfaction with both local and  
2           long distance telephone services in four regions through the United States and covers five  
3           factors in determining overall satisfaction: (i) performance and reliability, (ii) cost of  
4           service, (iii) billing, (iv) offerings and promotions, (v) and customer service. In the West  
5           Region, where results for both Qwest and CenturyLink are reported, Qwest was ranked  
6           3<sup>rd</sup> out of 10 and CenturyLink was ranked 8<sup>th</sup> out of 10. CenturyLink performed below  
7           average, while Qwest performed slightly above average. In the three other regions where  
8           CenturyLink's (but not Qwest's) residential customer satisfaction was ranked,  
9           CenturyLink ranked 7<sup>th</sup> out of 9 (East Region), 8<sup>th</sup> out of 9 (South Region), and 7<sup>th</sup> out of  
10          10 (North Central Region). Regarding business customer satisfaction, JD Power &  
11          Associates released its *2010 U.S. Major Provider Business Telecommunications Study –*  
12          *Voice Service* on July 15, 2010.<sup>150</sup> This study measures customer satisfaction with  
13          providers of landline voice telephone service for businesses, and providers are ranked in  
14          three segments: (i) home-based businesses, (ii) small/midsize businesses and (iii) large  
15          enterprise businesses. The same five factors listed above are used to determine overall  
16          satisfaction. Both Qwest and CenturyLink results are reported for two of the three  
17          segments – home-based business and small/midsize business. In the home-based  
18          business segment, Qwest performed slightly better than CenturyLink, with both  
19          companies performing below the average. In the small/midsize business segment,

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

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

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

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

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

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

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

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

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

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

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

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

<sup>153</sup> Hunsucker Oregon Direct at p. 9.

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

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

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

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

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

18 A. Yes, I am.

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

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

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

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

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

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

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

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

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

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



1 and Chairman of Nextel Communications.<sup>155</sup> Carlyle also committed \$1.65 Billion to  
2 purchase the company, and proclaimed that it "...plans to invest significant capital to  
3 transition the company to an independent local company in a manner that maintains  
4 service quality and is seamless to customers."<sup>156</sup> Just prior to the acquisition, Carlyle  
5 promised that: "In short order we will offer new services to our customers, including  
6 expanded broadband, and we expect to add many new jobs after the acquisition."<sup>157</sup> The  
7 FCC approved the transaction in August 2004, under its streamlined procedures for  
8 domestic Section 214 transfers of control.<sup>158</sup> The Hawaii PUC conducted its own review  
9 and approved the transaction, subject to certain conditions, on March 16, 2005.<sup>159</sup>

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

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

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<sup>155</sup> *Id.* at p. 2.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at p. 1.

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

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

<sup>160</sup> *Id.* at Ordering Paragraph 1.

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

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

11 ...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           **AFTER AN ACQUISITION OR MERGER?**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11                   FairPoint has not demonstrated that it can achieve its projected reductions  
12                   in operating costs or realize additional cost savings from systems  
13                   improvements and new networks that have yet to be completed. As we  
14                   have found above, **a major source of these costs have been FairPoint's**  
15                   **ongoing systems issues which have persisted since cutover and**  
16                   **contributed greatly to FairPoint's eventual financial downfall.**  
17                   FairPoint has undertaken a considerable effort, most recently its CDIP  
18                   initiatives, involving the deployment of significant financial resources and  
19                   personnel to address these issues. ... **While we accept FairPoint's**  
20                   **assertion that it has made strides in resolving many of these problems,**  
21                   **system defects remain and manual workarounds continue to serve as**  
22                   **temporary solutions until automated processes can be designed and**  
23                   **implemented. Moreover, we are aware that there have been instances**  
24                   **where FairPoint assumed a problem to be fixed only to have that**  
25                   **problem reappear at a later time.** ... ..we have received no evidence,  
26                   or guarantees from FairPoint, that would lead us to conclude that these  
27                   remediation efforts will not need to be continued beyond 2010 or even  
28                   2011.<sup>173</sup>

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

<sup>172</sup> *Id.* at p. 58.

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

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

5 A. Yes. The Board later stated that it did so specifically because “we were mindful that after  
6 Verizon's sale of its Hawaii properties, the last major telecommunications acquisition that  
7 required transition to new systems, major problems for wholesale and retail customers  
8 occurred that have taken years to correct.”<sup>174</sup> Unfortunately, the condition that it adopted  
9 – which required a third-party consultant (Liberty Consulting) to monitor the cutover  
10 progress and “to evaluate FairPoint’s cutover readiness criteria”<sup>175</sup> – did not include  
11 independent third-party testing itself.<sup>176</sup> This is dramatically different than the  
12 comprehensive third-party testing that Qwest and other BOCs had to undergo to  
13 demonstrate that their OSS satisfied the obligations of Section 271.<sup>177</sup> As a consequence,  
14 the Board’s condition, though well-intentioned, was insufficient to prevent FairPoint’s  
15 subsequent systems failures.

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

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

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

<sup>176</sup> *Id.* at pp. 4-5.

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

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

3 Among the Board's findings:

- 4 • In 2009, FairPoint failed to meet 10 of the 18 performance standards in the RSQP  
5 [Retail Service Quality Plan]. This performance triggered 1470 service quality  
6 compensation points and resulted in an obligation to provide service quality  
7 compensation of \$10,515,650.<sup>178</sup>
- 8 • Other areas of FairPoint's service remain problematic and either do not show  
9 signs of significant improvement or early improvements have leveled. These  
10 include late orders for retail and wholesale, late disconnects, billing errors and  
11 adjustments, and customer complaint escalations.<sup>179</sup>
- 12 • Automated flow-through for orders designed to flow-through to provisioning and  
13 billing without manual intervention has not improved to acceptable levels and  
14 exacerbates other problem areas. Order fall-out requires unplanned manual effort,  
15 which reduces the ability of staff to address other issues. It also increases the  
16 chance that an order will be late.<sup>180</sup>
- 17 • The level of known FairPoint billing errors and billing adjustments are resulting  
18 in billing-related customer complaints 400% to 500% higher than during  
19 Verizon's operations.<sup>181</sup>
- 20 • Some number of the known billing errors and adjustments are likely the result of  
21 problems in upstream systems and processes, including faulty service-order data  
22 entry, late disconnections, and inconsistent or unsynchronized data as  
23 examples.<sup>182</sup>

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

28  
29  
30  

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

<sup>179</sup> *Id.* at p. 68 (Finding No. 156).

<sup>180</sup> *Id.* at p. 68 (Finding No. 158).

<sup>181</sup> *Id.* at p. 69 (Finding No. 172).

<sup>182</sup> *Id.* at p. 69 (Finding No. 171).



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

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

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

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

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<sup>183</sup> *Id.* at p. 95.

<sup>184</sup> Vermont Public Radio, "FairPoint May Ask Bankruptcy Court To Overrule Vermont Regulators," August 2, 2010. See [http://www.vpr.net/news\\_detail/88585/](http://www.vpr.net/news_detail/88585/)

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

1 authority.

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

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

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

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

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

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

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

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

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

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

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

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

<sup>188</sup> *Id.* at p. 21 ("Dissenting Opinion of Commissioner Vafiades").

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

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

18 A. While the worst consequences of the Hawaiian Telcom and FairPoint transactions are  
19 (presumably) winding down, the problems besetting Frontier's acquisition of certain  
20 Verizon exchanges in fourteen states<sup>189</sup> are occurring right now, as systems cutovers and  
21 transitions have been occurring this spring and summer, with an "official" cutover date of  
22 July 1, 2010. For thirteen states, Verizon created replicas of its existing wholesale OSS  
23 systems that were being operated on an interim basis by Spinco, the temporary corporate  
24 entity created to effect the Frontier transaction. These "replicated systems" were then  
25 transferred to Frontier on the cutover date, and thereafter serve as Frontier's wholesale

---

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

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

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

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

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

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

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

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

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

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<sup>191</sup> *Id.* at p. 6-7.

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

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

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

14 Significantly, Integra personnel found that some of the Verizon representatives answering  
15 calls in Verizon call centers were inexperienced or had been inadequately trained.<sup>195</sup>

16 Integra employees "sometimes found themselves educating Verizon's representatives on  
17 Verizon's internal processes and the requirements of Verizon's CLEC-facing systems."<sup>196</sup>

18 In some cases, the Verizon employees operating the systems themselves told their Integra  
19 counterparts that "...they d[id] not know the appropriate workarounds to resolve specific  
20 types of problems."<sup>197</sup> The full text of Integra's May 19<sup>th</sup> letter, which is provided in  
21 Exhibit TG-6, also describes additional ordering problems attributable to failures in the  
22 Verizon replicated systems.

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

<sup>194</sup> *Id.* at pp. 2-3 (footnotes omitted).

<sup>195</sup> *Id.* at p. 4.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

1 A. No. In fact, the West Virginia cutover appears worse in certain respects, as it is adversely  
2 impacting some retail customers as well as CLECs. In West Virginia, the former Verizon  
3 exchanges, which encompass approximately 617,000 access lines in 47 counties, were  
4 officially cutover to Frontier on July 1, 2010.<sup>198</sup> Charleston's major newspaper, the  
5 *Charleston Daily Mail*, has been monitoring the progress of the cutover since that time,  
6 and has reported on the problems confronted by retail customers, including a local  
7 pharmacy chain that endured a Frontier service outage that lasted more than 39 hours in  
8 their 25 stores, cutting off their on-line systems needed to fulfill prescriptions and  
9 rendering them "incapacitated."<sup>199</sup> These types of problems appear to be continuing. On  
10 July 28, the *Charleston Daily Mail* reported that Frontier has declared an "emergency and  
11 long-term service difficulty," which under its labor contract with CWA, allows Frontier  
12 to require unionized employees to work overtime up to 70 hours a week to attempt to  
13 resolve its service problems.<sup>200</sup> Notably, CWA has indicated that CenturyLink is  
14 currently requiring CWA members to work mandatory overtime to address problems  
15 stemming from the integration of CenturyTel and Embarq.<sup>201</sup>

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

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

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

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



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

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

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

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

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

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

<sup>203</sup> *Id.* at Exhibit A.

<sup>204</sup> *Id.* at p. 5.

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

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

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

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

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

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<sup>205</sup> *Id.*

<sup>206</sup> *Id.* at pp. 6-7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>210</sup> Hunsucker Oregon Direct at pp. 13-14.

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

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

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

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

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

<sup>213</sup> Glover Arizona Direct at p. 13, line 13.

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

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

3 Some proposed conditions are to apply for a specific time period, and other conditions  
4 (such as continuing BOC/271 obligations in Qwest's legacy territory) do not have an  
5 expiration date. The term "Defined Time Period" was developed to specify the effective  
6 time period for those conditions that are time-sensitive. "Defined Time Period" is  
7 established at either (a) at least 5-7 years after the Closing Date<sup>215</sup> or, (b) at least 42  
8 months (3.5 years)<sup>216</sup> and continuing thereafter until the Merged Company is granted  
9 Section 10 forbearance from the condition. The "Defined Time Period" is established  
10 based on the facts of this particular transaction<sup>217</sup> and designed to ensure that the  
11 combined company's pursuit of merger-related savings does not jeopardize wholesale  
12 customers or impede competition. At the same time, the "Defined Time Period" grants  
13 the combined company flexibility to terminate the merger condition in 3.5 years (shortly  
14 after the lower end of the Joint Applicants' expected timeframe) via a forbearance request  
15 if the Merged Company's integration efforts prove to be successful.

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

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

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



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

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

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

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

1 A. In the *AT&T/BellSouth Merger Order*, AT&T proposed that conditions would last 3.5  
2 years (42 months) from the merger closing date unless specified otherwise.<sup>219</sup> The  
3 AT&T/BellSouth merger involved an existing BOC (AT&T) covering 13 states acquiring  
4 an existing BOC (BellSouth) covering 9 states, and the acquiring BOC in that transaction  
5 (AT&T) already had experience not only operating as a BOC but also integrating BOC  
6 operations during the merger of AT&T and SBC, and before that, the merger of  
7 Ameritech and SBC. Further, when seeking approval of the AT&T/BellSouth Merger,  
8 AT&T stated that the synergy savings resulting from the AT&T/SBC merger were  
9 greater than and achieved more quickly than AT&T's original forecast.<sup>220</sup> Despite  
10 AT&T's past experience in this regard, the FCC conditioned approval of the  
11 AT&T/BellSouth merger subject to enforceable conditions that applied for 42 months  
12 (3.5 years). By contrast, this proposed transaction involves a non-BOC ILEC – which  
13 has traditionally operated primarily as a rural LEC facing little competition – acquiring a  
14 BOC spanning 14 states. Though CenturyTel has acquired numerous  
15 telecommunications companies in the past, none of them were BOCs and none of them  
16 were even close to the size of Qwest. Further, though CenturyTel touts its management's  
17 ability as successful integrators<sup>221</sup> and claims that the ongoing Embarq integration is

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

<sup>220</sup> AT&T Description of Transaction Public Interest Showing and Related Demonstrations, WC Docket No. 06-74, March 31, 2006, at p. 42, citing *See Id.* ¶ 5; Kahan Decl. ¶¶ 40-42; *see also* AT&T Analyst Conference Presentation, at 51 (Jan. 31, 2006), available at [http://library.corporate-ir.net/library/11/113/113088/items/181348/analyst06\\_b.pdf](http://library.corporate-ir.net/library/11/113/113088/items/181348/analyst06_b.pdf) (noting that synergies are now estimated at \$18 billion vs. \$15 billion).

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

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

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

<sup>222</sup> Schafer Arizona Direct at p. 6, lines 8-11.

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

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

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

8 A. No, not according to CenturyLink.<sup>224</sup>

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

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

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<sup>224</sup> McMillan Arizona Direct at p. 5, lines 6-9.

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

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

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

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

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

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

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

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

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

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

<sup>225</sup> *Local Competition Order* at ¶518.

<sup>226</sup> *Qwest Post Hearing Brief*, Utah Docket 07-2263-03 at p. 75.

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

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

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

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

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

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

<sup>228</sup> CenturyLink Response to Integra Arizona Data Request #23.

<sup>229</sup> CenturyLink Response to Integra Arizona Data Request #35(h).

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

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

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

<sup>231</sup> See, e.g., Rebuttal Testimony of Guy Miller, III on behalf of CenturyLink, Inc., Iowa Board Docket No. SPU-2010-0006, August 26, 2010, at p. 42 ("In the FCC's merger review proceeding, the Applicants have provided a sworn statement that CenturyLink plans to continue operating both CenturyLink and Qwest existing OSS uninterrupted for the immediate future until it completes its evaluation of the best options for all stakeholders. This is expected to take 12 months at the very least.")



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

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

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

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

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

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

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

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

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

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

<sup>233</sup> CenturyLink Response to Integra Arizona Data Request #18.

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

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

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

<sup>234</sup> *Qwest 9 State 271 Order* at ¶ 49.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>237</sup> *Id.* at pp. 41-42.

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

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

4 **B. Wholesale Service Quality**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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<sup>239</sup> CenturyLink Response to Integra Arizona Data Request #61.

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

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

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

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

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

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

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

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

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

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

5 **C. Wholesale Customer Support**

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

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

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

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

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

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

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

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

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

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

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

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

<sup>244</sup> *Local Competition Order* at ¶¶ 517-18.

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

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

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

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

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

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

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

1 short of providing any certainty.<sup>247</sup> Moreover, the Merged Company should not be  
2 allowed to cast away all the work that was conducted to ensure Qwest's OSS provided  
3 nondiscriminatory access to OSS; nor should the Merged Company be allowed to  
4 unilaterally<sup>248</sup> implement new OSS or modify CMP because it unilaterally determined it  
5 was more efficient (in the "combined company['s] perspective"). In fact, that is precisely  
6 the type of conduct that the 271 approval process was intended to identify and root out.  
7 Yet, that is what could happen if the proposed transaction is approved without conditions.

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

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

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

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



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

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

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

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

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

1           Embarq territories.) In the legacy CenturyTel territory, there is a “Wholesale Markets  
2           Carrier Notification” process<sup>251</sup> wherein CenturyTel simply issues a notice informing  
3           wholesale customers about a coming change or a change that has already taken place.  
4           For example, CenturyTel issued Wholesale Markets Carrier Notification GN122009<sup>252</sup> to  
5           announce to wholesale customers that CenturyTel was implementing the EASE OSS.  
6           Noticeably absent from this notification is any opportunity for input from the affected  
7           wholesale customer. Similarly, CenturyTel issues these notices to inform wholesale  
8           customers about changes CenturyTel makes to its Service Guide, such as Carrier  
9           Notification GN102009,<sup>253</sup> which informed wholesale customers that CenturyTel had  
10          *already* made changes to its Service Guide regarding billing disputes. Again, there is no  
11          opportunity for input from the affected wholesale customers in this process.

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

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

<sup>252</sup>[http://www.centurylink.com/business/Wholesale/InterconnectionServices/Library/EASE\\_Implementation\\_Notice\\_07072009.pdf](http://www.centurylink.com/business/Wholesale/InterconnectionServices/Library/EASE_Implementation_Notice_07072009.pdf)

<sup>253</sup>[http://www.centurylink.com/business/Wholesale/InterconnectionServices/Library/Service\\_Guide\\_Update\\_07012009.pdf](http://www.centurylink.com/business/Wholesale/InterconnectionServices/Library/Service_Guide_Update_07012009.pdf)

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

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

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

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

11 **Customer Relations Meeting (CRM)**

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

17 **CLEC Forum**

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

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

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

<sup>254</sup> [http://embarq.centurylink.com/wholesale/clec\\_forum.html](http://embarq.centurylink.com/wholesale/clec_forum.html)

<sup>255</sup> [http://embarq.centurylink.com/wholesale/clec\\_forum.html](http://embarq.centurylink.com/wholesale/clec_forum.html)

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>261</sup> *Qwest 9 State 271 Order* at ¶ 132.

<sup>262</sup> *Qwest 9 State 271 Order* at ¶ 132.

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

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

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

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

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

<sup>264</sup> CenturyLink Response to Integra Arizona Data Requests #46 and #136.

<sup>265</sup> CenturyLink Response to Integra Arizona Data Request #136.

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

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

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

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

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

1           **CONFIDENTIAL\*\*\*** between 2005-2009.<sup>268</sup> So, when the Merged Company is  
2           pursuing these synergy savings, it should ensure that whatever changes are made do not  
3           reduce the total number of employees dedicated to wholesale customers in Qwest's  
4           territory so that wholesale service quality is not degraded post-merger.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

10 ***D. Compliance***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 will be addressed within 24 hours.”<sup>274</sup> Though it would also seem self-evident that the  
2 combined Embarq/CenturyTel company would comply with laws and standards  
3 regarding unlocking of E911 records, the FCC’s approved merger conditions specifically  
4 singled out this issue, based on concerns identified by wholesale customers,<sup>275</sup> to preserve  
5 the public interest and avoid merger-related harm. One of the concerns expressed was  
6 that “the record updating process and the accuracy of records will suffer as a result of this  
7 acquisition.”<sup>276</sup> CLECs expended the resources to raise and address the issue of  
8 unlocking E-911 records with Qwest via Qwest’s Change Management Process  
9 commencing in 2001 – *nine years* ago.<sup>277</sup> Naturally, after reading the concerns raised by  
10 CLECs in the Embarq/CenturyTel merger on this issue, CLECs are concerned about  
11 going backward to pre-271 workshop days such that the record updating process and the  
12 accuracy of records will suffer as a result of this acquisition. Condition 22(a) is proposed  
13 to address this concern.

14 The FCC, by adopting these enforceable conditions (and the merging companies, by  
15 proposing this as an agreed upon commitment<sup>278</sup>), recognized the need to preserve the  
16 public interest and protect competitors from merger-related harm by ensuring that the

<sup>274</sup> FCC *Embarq/CenturyTel Merger Order* at Appendix C, at p. 29.

<sup>275</sup> See, e.g., Declaration of R. Matthew Kohly on Behalf of Socket Telecom, WC Docket No. 08-238 (Jan. 8, 2009), at p. 12.

<sup>276</sup> *Id.*

<sup>277</sup> Change Request (“CR”) #CR PC122801-1 (“**Qwest to document, distribute and train an adhered to process to unlock numbers for 911**”), submitted by Eschelon on December 28, 2001 and completed by Qwest on April 17, 2002, available at [http://www.qwest.com/wholesale/cmp/archive/CR\\_PC122801-1.html](http://www.qwest.com/wholesale/cmp/archive/CR_PC122801-1.html)

<sup>278</sup> Although CenturyLink may argue that these conditions were strictly “voluntary,” they cannot show that the merger would have been approved without them. Without the commitments, there is no showing that the merger would do no harm or be in the public interest.

1 combined Embarq/CenturyTel abides by its obligations under law – even when it would  
2 otherwise seem self-evident that those obligations apply independently of the merger.  
3 These conditions were adopted to ensure that the combined Embarq/CenturyTel company  
4 did not follow its increased incentive to engage in anti-competitive conduct or spread  
5 existing worst practices throughout its larger service territory post-merger.

6 **Q. HAVE STATE COMMISSIONS ALSO ADOPTED MERGER CONDITIONS**  
7 **REQUIRING THE MERGED COMPANY TO COMPLY WITH LAW**  
8 **FOLLOWING THE MERGER?**

9 A. Yes. One such example is the South Carolina Commission’s decision in the  
10 Verizon/Frontier proceeding. In that case, the merging companies made a number of  
11 commitments to encourage a finding that the merger was in the public interest, which  
12 were adopted as conditions of merger approval, including: “contribut[ing] to the State  
13 Universal Service Fund in compliance with Commission Orders” and “comply[ing] with  
14 all Commission orders, rules and regulations.”<sup>279</sup> Also, the Illinois Commerce  
15 Commission recently adopted a merger condition for Verizon/Frontier, which states:

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<sup>279</sup> *IN RE: Joint Application of Frontier Communications Corporation, New Communications of the Carolinas Inc., New Communications Online and Long Distance Inc., Verizon South Inc., Verizon Long Distance LLC and Verizon Enterprise Solutions LLC for Approval of the Transfer of Assets, Authority and Certificates*, South Carolina Public Service Commission Docket No. 2009-220-C, Order No. 2009-769, October 29, 2009, 2009 S.C. PUC LEXIS 506, \*26.



1 “Frontier will continue to comply with 83 Ill. Admin. Code 771, Cost Allocation Rules  
2 for Large Local Exchange Carriers.”<sup>280</sup>

3 **Q. MUST THERE BE A PREVIOUS ORDER CONCLUSIVELY FINDING**  
4 **COMPLIANCE PROBLEMS FOR THESE TYPES OF CONDITIONS TO BE**  
5 **WARRANTED?**

6 A. No. As indicated above, enforceable merger conditions requiring compliance with  
7 specified laws have resulted from concerns raised by non-applicants about potential harm  
8 of the proposed transactions. When sufficient concerns are raised, it is incumbent upon  
9 the Commission to protect the public interest by approving enforceable conditions to  
10 protect customers and competition from that harm. After all, the proposed conditions are  
11 not burdensome – they commit the merged company to do what it already should do –  
12 comply with the law. The Joint Applicants can hardly argue that the Commission does  
13 not have the authority to expect and require compliance with the law. To the extent that  
14 the Joint Applicants make that claim, concerns about its intent with respect to these laws  
15 would be heightened.

16 In the case of the Embarq/CenturyTel Merger Order, the FCC did not make a finding of  
17 noncompliance regarding CenturyTel’s then-existing order processing or unlocking of E-  
18 911 records; rather, wholesale customers identified problems related to these issues and  
19 the FCC found that enforceable conditions were necessary to preserve the public interest

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<sup>280</sup> *Frontier Communications Corporation, Verizon Communications, Inc. et al. Joint Application for the Approval of a Reorganization Pursuant to Section 7-204 of the Public Utilities Act, Order, ICC Docket No. 09-0268, April 21, 2010, Conditions Appendix at p. 4, Condition 4.*

1 and avoid merger-related harm. Whether or not the merging companies had or were in  
2 fact violating law (or whether the law applies to the individual companies independent of  
3 the merger) was not a determining factor as to whether voluntary  
4 commitments/enforceable merger conditions were necessary to preserve the public  
5 interest and avoid merger-related harm. To expressly require compliance with existing  
6 law, it is sufficient that a legitimate basis for concern is raised that, without the condition,  
7 compliance with the law will suffer as a result of the acquisition.

8 Despite CLECs identifying important, service-affecting issues that need to be addressed  
9 in relation to their business relationships with Qwest and CenturyLink, the Joint  
10 Applicants have made no commitments and oppose wholesale merger conditions in  
11 relation to the proposed transaction. Yet, the need to preserve the public interest and  
12 avoid harm in relation to the proposed transaction is just as important (or more so) than it  
13 was in the prior cases wherein the merging companies agreed to enforceable conditions  
14 that require compliance with law in exchange for merger approval. For purposes of  
15 reviewing the merger, the Commission need not find here that Qwest or CenturyLink  
16 acted in an anti-competitive manner in the examples CLECs provide, but instead should  
17 take the examples into account when finding that the proposed transaction as filed (*i.e.*,  
18 without commitments or enforceable conditions) does not serve the public interest.

19 **Q. HAVE QWEST AND CENTURYLINK ALREADY AGREED TO COMPLY**  
20 **WITH THE OBLIGATIONS THAT ARE EMBODIED IN THESE CONDITIONS**  
21 **POST-MERGER?**

1 A. For many of them, yes. For example, regarding condition 13, the Merged Company has  
2 agreed that it will be classified as a BOC in Qwest legacy territory post-merger and will  
3 comply with all Section 271 obligations.<sup>281</sup> Similarly, as it relates to condition 21, the  
4 Merged Company has agreed to process wholesale orders in compliance with law and  
5 applicable ICAs.<sup>282</sup> And for condition 22 (and subparts), CenturyLink has agreed to  
6 “provide number portability in compliance with federal and state law, as well as the terms  
7 of applicable interconnection agreements”<sup>283</sup> and to comply with federal and state law  
8 and applicable ICAs when unlocking E-911 records and addressing trouble reports  
9 related to unlocking E-911 records.<sup>284</sup> Likewise, Qwest and CenturyLink have indicated

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<sup>281</sup> See, e.g., CenturyLink Response to Integra Arizona Data Request #3 (“The merger will not change the BOC status of Qwest Corporation in Arizona.”); CenturyLink Response to Integra Arizona Data Request #4 (“...Qwest Corporation, as a wholly owned subsidiary of CenturyLink, will continue to meet all ongoing 271 obligations in the legacy Qwest service areas that are required.”). See also, Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010 (“And though CenturyLink previously has not operated subject to the requirements of Section 271, it is fully aware of (and has acknowledged) its duty to do so within Qwest’s in-region service areas, and the company will ensure that the resources and expertise required to meet those obligations are in place.”) Notably, Integra asked in Arizona Data Request #3 for CenturyLink to “explain what, if any, measures the merged company will put in place to ensure against backsliding on its 271 obligations?” CenturyLink did not answer this portion of the question, thereby making the portion of Condition 13 related to anti-backsliding that much more important.

<sup>282</sup> CenturyLink Response to Integra Arizona Data Request #102 (“Yes, in all service areas post-merger, CenturyLink will continue to process wholesale orders in compliance with federal and state laws and with applicable terms in interconnection agreements.”)

<sup>283</sup> CenturyLink Response to Integra Arizona Data Request #100(a) (“Yes, CenturyLink will provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements.”) Though CenturyLink states that it will provide number portability in accordance with law, the fact that CenturyLink attributed its recent waiver request of the one-day porting requirement to the ongoing integration efforts related to the Embarq merger shows that an enforceable condition is needed to ensure that the integration of the Qwest merger does not similarly impact the Merged Company’s ability to meet number porting requirements.

<sup>284</sup> CenturyLink Response to Integra Arizona Data Request #100(b) and 100(c). Notably, CenturyLink states that it “has not evaluated or reached any conclusions regarding” the issues of when CenturyLink will unlock E911 records or address trouble reports related to unlocking E911 records. The uncertainty caused by CenturyLink’s vacillation on this issue makes Condition 22(a) that much more important. The Merged Company should have no problem abiding by condition 22(a) given that it offered an identical commitment to the FCC in conjunction with the Embarq/CenturyTel merger and states that “within legacy service areas E911 records are being

1 that their policies regarding passcodes/PINs would not be disrupted by Condition 22(b)<sup>285</sup>  
2 and that the number of ports that can be processed are not currently limited (Condition  
3 22(c)).<sup>286</sup> For Condition 25, CenturyLink has agreed that “in all service areas post  
4 merger, CenturyLink will continue to provide routine network modifications in  
5 compliance with federal and state laws and with applicable terms in interconnection  
6 agreements.”<sup>287</sup> For Condition 26 (and subparts), CenturyLink has repeatedly  
7 represented that it will continue to invest in its network post-merger and that it is fully  
8 capable of allocating resources to both maintain current operations and to conduct  
9 merger-related activities post-merger.<sup>288</sup> CenturyLink has also represented that it will  
10 comply with all applicable state and federal laws and rules and ICAs in relation to copper  
11 retirement.<sup>289</sup> As it relates to Condition 27, “CenturyLink states that it will comply with

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unlocked at the time of porting in accordance with the FCC’s merger condition.” CenturyLink Response to Integra Arizona Data Request # 100(d).

<sup>285</sup> CenturyLink states that it assigns passwords in some instances such as online access in accordance with CPNI rules and in cases where customers protect their account against unauthorized changes, but otherwise “does not currently assign a passcode or Personal Identification Number (PIN) to retail customers that must be used before the customer may switch to an alternative local service provider.” CenturyLink Response to Integra Arizona Data Request #7. Qwest states that “in none of its states does Qwest assign a passcode or Personal Identification Number (PIN)/passcode to retail customers and require that the passcode or PIN be submitted in order for the retail customer to switch to an alternative local service provider.” Qwest Response to Integra Arizona Data Request #7. Based on the information provided by Qwest and CenturyLink, this condition would require them to maintain the current policies, not change their policies to accommodate the condition. Notably, Qwest asked the Iowa Board to place a very similar condition on the approval of the Iowa Tel/Windstream merger: “prohibit Windstream from requiring new local service providers to provide Windstream-provided Personal Identification Numbers when porting a customer’s number to the new provider” Order Canceling Hearing and Terminating Docket, Iowa Utilities Board, April 30, 2010, at p. 26.

<sup>286</sup> CenturyLink Response to Integra Arizona Data Request #37 (“CenturyLink does not limit the number of service requests (including number ports) a given CLEC can make.”)

<sup>287</sup> CenturyLink Response to Integra Arizona Data Request #101.

<sup>288</sup> *See, e.g.*, Arizona Joint Application at p. 2 (“It will provide the combined company with greater financial resources and access to capital enabling it to invest in networks...”) and p. 16 (“CenturyLink has a demonstrated ability to acquire and successfully integrate companies, and to combine systems and practices, while continuing to provide high-quality service to customers.”)

<sup>289</sup> CenturyLink Response to Integra Arizona Data Request #104.

1 all applicable state and federal laws and rules, as well as the provisions of any applicable  
2 interconnection agreements...” for conditioning of copper loops.<sup>290</sup> The fact that  
3 CenturyLink has agreed to comply with these requirements post-merger shows that it  
4 should have no problem with these conditions being adopted in conjunction with any  
5 decision approving the proposed transaction. Again, conditions are needed to turn  
6 CenturyLink’s paper promises into enforceable commitments.

7 **Q. PLEASE ELABORATE ON WHY IT IS IMPORTANT TO INCLUDE A**  
8 **CONDITION THAT THE MERGED COMPANY WILL COMPLY WITH**  
9 **SECTION 271 OBLIGATIONS IN QWEST’S BOC TERRITORY POST-**  
10 **MERGER (CONDITION 13)?**

11 A. For starters, the company that will be in control of Qwest post-merger has no experience  
12 operating as a BOC, so the potential for backsliding on Qwest’s 271 obligations is great  
13 (at least greater than prior to the proposed transaction when Qwest was controlled by a  
14 company that had more than seven years experience operating as a BOC with 271  
15 approval<sup>291</sup>). Second, to date, Qwest has exploited the lack of clear rules implementing  
16 271 obligations to impose excessive, non-negotiable rates for 271 network elements on  
17 CLECs.<sup>292</sup> The Merged Company should not be allowed to evade its 271 obligations

<sup>290</sup> CenturyLink Response to Integra Arizona Data Request #106.

<sup>291</sup> For example, the FCC order granting Qwest 271 authority in nine states was released on December 23, 2002. See, *Qwest 9-State 271 Order*, WC Docket No. 02-314, FCC 02-332 (12/23/02).

<sup>292</sup> See, e.g., Comments of Joint Commenters, WC Docket No. 10-110, July 12, 2010, at pp. 68-69, citing Petition for Modification of McLeodUSA Telecommunications Services, Inc., WC Docket No. 04-223, July 23, 2007, at pp. 4-12.

1 post-merger, and that includes avoiding the requirement to provide 271 network elements  
2 on just and reasonable rates, terms and conditions.<sup>293</sup>

3 **Q. WHY IS CONDITION 21 NECESSARY?**

4 A. As explained above, Condition 21, which states that the Merged Company will process  
5 orders *in compliance with law and applicable ICAs*, is the same voluntary commitment  
6 Embarq/CenturyTel offered to the FCC to secure approval of the Embarq/CenturyTel  
7 merger after concerns were raised by competitors. The FCC adopted this as an  
8 enforceable condition because of the potential for increased anti-competitive conduct of  
9 the combined Embarq/CenturyTel company and the potential for problems spreading to  
10 CenturyTel's newly-acquired territory. For the same reasons, this condition should be  
11 adopted for the proposed transaction. And, because the proposed transaction involves  
12 CenturyLink acquiring a BOC as well as a service territory that is double the size  
13 (expressed in line counts) of its existing territory (including newly-acquired Embarq), the  
14 rationale for adopting this condition in relation to the proposed transaction is even more  
15 compelling now.

16 **Q. PLEASE DISCUSS CONDITION 22 (AND SUBPARTS).**

17 A. Condition 22 states that the Merged Company: will provide number portability in  
18 compliance with law and applicable ICAs; unlock E-911 records at the time of porting

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<sup>293</sup> Covad Communications Company, PAETEC Communications, Inc., Access Point, Inc. Deltacom, Inc., Granite Telecommunications, LLC, HickoryTech Corporation, Metropolitan Telecommunication, Inc., OrbitCom, Inc., TDS Metrocom, LLC, and TelePacific Communications ("Joint Commenters") have proposed specific conditions related to 271 obligations to the FCC in conjunction with the FCC's review of the proposed transaction. *See*, Comments of Joint Commenters, WC Docket No. 10-110, July 12, 2010, at pp. 70-71.

1 Condition 22(a)); will address trouble reports involving unlocking E-911 records within  
2 24 hours (Condition 22(a)); will not assign a passcode, password or PIN to retail  
3 customers in a manner that prevents or delays a change in local service providers  
4 (Condition 22(b)); and shall not limit the number of ports that can be processed.

5 **Q. WHAT IS CONDITION 22 (AND SUBPARTS) NECESSARY?**

6 A. Condition 22 is necessary to protect CLEC rights under the Act for efficient and  
7 nondiscriminatory local number portability (“LNP”). In short, this Condition is  
8 necessary to ensure that the Merged Company fulfills its LNP obligations in a  
9 competitively neutral manner as prescribed in Sections 251(b)(2) and 251(e)(2) of the  
10 Act. As the Act and the FCC have noted, LNP is critical for consumers and competitors  
11 and for the efficient functioning of the local telecommunications market.

12 In its most basic form, LNP is important because consumers want to be able to retain  
13 their existing telephone numbers when switching providers. Retaining your telephone  
14 number is important for obvious reasons: consumers do not want to have to alert their  
15 friends and family of new telephone numbers, and change billing statements, stationery,  
16 business cards, and other items every time they switch telephone providers. For these  
17 reasons (and others), number porting is very important to customers. Indeed, without  
18 number portability consumers may choose not to change their providers because of the  
19 impact on their personal and business lives.

20 **Q. WHY IS NUMBER PORTING IMPORTANT TO COMPETITORS?**

1 A. As noted above, getting customers to change providers can be difficult. The customer  
2 inertia for a service is difficult to overcome in the first place, but without number  
3 portability consumers may not even consider an alternative provider. And, getting the  
4 porting done in the proper manner and in the proper time frame is also critical. If that is  
5 to happen, a competitor cannot erect operational barriers that are intended to delay the  
6 process.

7 **Q. SUBPARTS A, B, AND C OF CONDITION 22 INCLUDE REFERENCES TO**  
8 **UNLOCKING E-911 RECORDS, PASSCODES AND LIMITS ON PORTING.**  
9 **ARE THESE ISSUES IMPORTANT TO CLECS AND CONSUMERS?**

10 A. Absolutely. Once an LNP order is completed the donor company will disconnect and/or  
11 migrate the existing E-911 record via a service order. This results in an “unlocked  
12 record” in the E-911 Automatic Location Identification (“ALI”) database. The recipient  
13 company must then update the E-911 ALI database with a “migrate” order which “locks”  
14 the end-user’s record. Any delay in the “unlocking” process will result in an error report  
15 in response to the migrate order sent by the recipient provider. Given the importance of  
16 E-911 for the safety of the end-user consumer, this requirement is absolute and must be  
17 conducted in compliance with federal and state law.

18 Requiring pass codes or PINs may also result in the delay of porting. The Merged  
19 Company must not be allowed to require such pass words or PINs unless specifically  
20 requested by the end user customer.



1 Finally, artificially limiting the number of ports that may be submitted in a particular time  
2 period is anticompetitive and disruptive to the competitive process. The porting process  
3 should be largely if not completely automated, so limits on the number of ports is not  
4 necessary.

5 **Q. PLEASE EXPLAIN CONDITION 23.**

6 A. Condition 23 is necessary to protect CLEC rights under the Act to nondiscriminatory  
7 access to directory listing (“DL”) and directory assistance (“DA”) functions.

8 **Q. WHAT POSITIONS HAS CENTURYLINK TAKEN WITH RESPECT TO DL**  
9 **AND DA THAT ARE HARMFUL AND INCONSISTENT WITH THE**  
10 **INDUSTRY?**

11 A. CenturyLink has attempted to shift its responsibilities under Section 251(b)(3) of the Act  
12 to third parties. CenturyLink refuses to enter into ICAs that include language which  
13 ensures that a competitor’s subscribers have the same access to DA and DL databases as  
14 CenturyLink provides its own customers. As a result, directory services provided by  
15 competitors like Charter may be degraded if CenturyLink, or its vendor, fails to properly  
16 maintain these databases in a manner that ensures nondiscriminatory access.

17 **Q. CAN YOU PROVIDE AN EXAMPLE OF THE PROBLEMS CENTURYLINK’S**  
18 **DA AND DL POLICIES HAVE CREATED?**

19 A. Yes. As noted above, CenturyLink has attempted to impose a recurring per customer  
20 DLSM Charge in numerous states. Other providers, including Verizon, Comcast and

1 Charter, have litigated LNP issues with CenturyLink at great expense over the last few  
2 years.<sup>294</sup>

3 **Q. OTHER THAN THE LITIGATION EXPENSE, HAS THERE BEEN CUSTOMER**  
4 **IMPACTING PROBLEMS AS WELL?**

5 A. Yes. In the recent past, directory listing information of Charter's subscribers was not  
6 available to CenturyLink subscribers. Put simply, when a CenturyLink subscriber dialed  
7 "4-1-1" and requested listing information on a Charter subscriber, that information was  
8 not provided.<sup>295</sup> As a result, thousands of Charter subscribers were effectively excluded  
9 from the directory assistance database used by CenturyLink. Charter repeatedly sought a  
10 remedy and presented several requests for relief to the relevant state commission.  
11 CenturyLink acknowledged the problem, but blamed the problem on its vendor, who was  
12 not accessing the proper database. Ultimately the situation was resolved, but  
13 CenturyLink's refusal to acknowledge its responsibility to provide nondiscriminatory  
14 access to Charter (and its subscribers) under Section 251(b)(3) prolonged a  
15 discriminatory and anticompetitive situation. That, in turn, meant that many more  
16 subscribers were affected, even after the problem was identified, and isolated, for  
17 CenturyLink.

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<sup>294</sup> See, e.g., United Telephone Company of the Northwest d/b/a Embarq Response to Comcast Petition in Washington Docket No. U-083025, filed May 27, 2008, at ¶ 10. This is an example of a case in which Comcast opposed Embarq's DLSP charge. Charter has litigated numerous LNP related charges which CenturyLink attempted to impose under the guise of "service order charges."

<sup>295</sup> See, e.g., the Direct Testimony of Amy Hankins on behalf Charter Fiberlink-Missouri, LLC, Before the Public Service Commission of the State of Missouri, Case No. TO-2009-0037; dated September 30, 2008.

1 Q. PLEASE PROVIDE SOME BACKGROUND INFORMATION ON THE  
2 DIRECTORY LISTING FUNCTION IN ORDER TO FRAME THE POSITION  
3 THAT CENTURYLINK HAS TAKEN.

4 A. In simple terms, a directory listing is the customer's name, phone number, and address  
5 that are published in a directory, such as a telephone book, or included in a directory  
6 database, such as that used when a caller dials "411." The FCC's regulations define  
7 "Directory listings" as follows:

8 Directory listings. Directory listings are any information:

9  
10 (1) Identifying the listed names of subscribers of a telecommunications carrier  
11 and such subscriber's telephone numbers, addresses, or primary advertising  
12 classifications (as such classifications are assigned at the time of the  
13 establishment of such service), or any combination of such listed names,  
14 numbers, addresses or classifications; and

15  
16 (2) That the telecommunications carrier or an affiliate has published, caused to  
17 be published, or accepted for publication in any directory format.<sup>296</sup>

18  
19 In addition, Section 251(b)(3) of the Act requires all local exchange carriers to provide  
20 competing providers with "*nondiscriminatory* access to ... directory assistance, and  
21 directory listing."<sup>297</sup> The FCC has interpreted the statutory term "directory listing" to  
22 mean "the act of placing a customer's listing information in a directory assistance  
23 database or in a directory compilation for external use (such as a white pages)."<sup>298</sup>

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<sup>296</sup> 47 C.F.R. § 51.5.

<sup>297</sup> 47 U.S.C. § 251(b)(3) (emphasis added).

<sup>298</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934 [sic], As Amended*, CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, ¶ 160 (1999) ("SLI/DA Order").

1 Among other things, Section 251(b)(3) and 47 C.F.R. § 51.5 require that LECs “publish  
2 competitors’ business customers in ... [their] director[ies] on a nondiscriminatory basis,”  
3 regardless of whether LECs own those directories or not.<sup>299</sup>

4 **Q. IS THERE ANYTHING WRONG WITH USING A THIRD PARTY FOR DL OR**  
5 **DA ACTIVITIES?**

6 A. Not necessarily. It is common for LECs to use third-party vendors for directory  
7 assistance activities. The problem arises when an ILEC like CenturyLink, with specific  
8 requirements under Section 251(b)(3) of the Act, attempts to shift its responsibilities to a  
9 third-party, or worse, to claim that it no longer has any such obligations under Section  
10 251(b)(3).

11 **Q. PLEASE EXPLAIN.**

12 A. The FCC has recognized that carriers may agree to have subscriber listing databases  
13 administered by a third party.<sup>300</sup> However, the FCC has also recognized that such  
14 agreements for third-party administration must still be included in interconnection  
15 agreements because entering into a side agreement for access to subscriber listing  
16 databases contravenes the FCC requirement that LECs provide directory listing on a  
17 nondiscriminatory basis and make such provisions related thereto available to other

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<sup>299</sup> See *MCI Telecomm. Corp. v. Michigan Bell Tel. Co.*, 79 F. Supp. 2d 768, 801 (E.D. Mich. 1999); see also *U.S. West Comm., Inc. v. Hix*, 93 F. Supp. 2d 1115, 1132 (D. Colo. 2000) (citing *MCI Telecomm.*).

<sup>300</sup> See, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 11 FCC Rcd 19392 at ¶ 144 (1996) “Local Competition Second Report and Order”, vacated in part, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), rev. on other grounds, *AT&T Corp. v. Iowa Util. Bd.*, 119 S. Ct. 721 (Jan. 25, 1999).

1 carriers in interconnection agreements for adoption through the mechanism of Section  
2 252 of the Act.<sup>301</sup> Therefore, CenturyLink must include rates, terms and conditions of  
3 access to its subscriber listing databases within the interconnection agreement despite use  
4 of a third-party database administrator or publisher.

5 Condition 23 ensures that CenturyLink will comply with federal and state law with  
6 respect to its DL/DA responsibilities. It further ensures that CenturyLink does not shift  
7 its responsibilities to a third party vendor and specifically identifies the responsibilities  
8 with respect to nondiscriminatory access to DL/DA. CenturyLink's worst practices  
9 should not be adopted; instead, the Commission should require the Qwest practices of (1)  
10 placing a basic white pages and yellow pages directory listing in its directories without  
11 charge to the CLEC, and (2) ensuring that the ILEC customers are given the CLEC's  
12 customers' DA information, when the ILEC's customers dial directory assistance.

13 **Q. PLEASE EXPLAIN CONDITION 24 (AND SUBPARTS).**

14 A. This condition is necessary to ensure that the Merged Company does not extend  
15 CenturyLink's anticompetitive practice of imposing unsupported surcharges and fees  
16 upon facilities-based competitors at the point of subscriber acquisition and migration. In  
17 contrast, Qwest does not impose these separate surcharges upon competitors when no  
18 underlying wholesale service is being provided to the competitor. For example, although  
19 Qwest may assess a service order charge upon a competitor that orders a UNE loop in

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<sup>301</sup> *Provision of Directory Listing Information under the Communications Act of 1934, As Amended*, FCC 01-27, 16  
FCC Rcd 2736 at ¶ 36 (2001) ("SLI/DA First Report and Order").

1 conjunction with the acquisition of a new subscriber, it does not assess a separate  
2 surcharge when the competitor simply requests that the subscriber's number be ported  
3 away in conjunction with the subscriber change process. Because Qwest does not impose  
4 the same separate fees upon competitors, any attempt to impose these separate charges in  
5 Qwest's legacy territory post-merger would result in the implementation of worst (not  
6 best) practices, and, in turn, merger-related harm to competition.

7 **Q. PLEASE IDENTIFY THE SPECIFIC ANTICOMPETITIVE FEES AND**  
8 **SURCHARGES THAT CENTURYLINK ASSESSES UPON COMPETITORS**  
9 **ADDRESSED IN CONDITION 24.**

10 A. CenturyLink, and its affiliate Embarq, imposes several different surcharges each time that  
11 a facilities-based competitor, like Charter, "wins" a new customer from CenturyLink.  
12 First, CenturyLink imposes a separate number porting service order charge each time that  
13 CenturyLink is asked to port a telephone number to a competitor. Second, CenturyLink  
14 assesses "use" or access fees upon competitors each time the competitor attempts to  
15 connect its own network facilities to a customer's inside wire through the customer side  
16 of a CenturyLink NID enclosure. Third, CenturyLink's affiliate, Embarq, imposes  
17 "storage" charges upon competitors that submit directory listing information for inclusion  
18 in directory listing databases. These charges increase wholesale customers' (*i.e.*,  
19 competitors') costs of obtaining new subscribers and generating new revenue sources to  
20 offset subscriber losses. It is, therefore, more costly (and operationally challenging) for  
21 competitors to compete in CenturyLink markets.

1       **Q.   PLEASE EXPLAIN YOUR CONCERN WITH THESE SURCHARGES.**

2       A.   In an earlier portion of my testimony, Section IV, I provided some background on the  
3           second and third type of improper surcharges assessed upon competitors concerning the  
4           NID enclosure, and directory storage fees at issue. Let me explain the circumstances  
5           surrounding the imposition of the number porting surcharges.

6           Each time that a competitor obtains a new customer that is a former CenturyLink  
7           subscriber, and that subscriber wishes to port their telephone number away from  
8           CenturyLink, the competitor must pay a surcharge to CenturyLink to effectuate the  
9           number port. This surcharge, which ranges from \$13 to over \$20 (depending upon the  
10          state) is imposed upon every competitor that obtains wholesale services under  
11          CenturyLink interconnection agreements. To date, this is only a CenturyLink practice,  
12          and has not been implemented in the Qwest territories. Obviously, if this anticompetitive  
13          practice were extended to all of the Merged Company's territories post-merger, merger-  
14          related harm would occur and the harm would be substantial.

15       **Q.   WHAT ARE THE RULES REGARDING CARRIER FEES FOR NUMBER**  
16       **PORTING?**

17       A.   In several orders implementing Section 251(e)(2) of the Act, the FCC held that carriers  
18           are required to recover their costs of implementing LNP through tariffed end-user  
19           charges.<sup>302</sup> In these orders, the FCC determined that ILECs may recover through *end-*

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<sup>302</sup> The FCC's rulings were set forth in several orders: *Telephone Number Portability*, Third Report and Order (the "Cost Recovery Order"), 13 FCC Rcd 11701 (1998), *aff'd*, *Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review (the "Cost Recovery

1 *user charges* their carrier-specific costs directly related to providing number portability.  
2 The FCC concluded that this framework for cost recovery (from end users rather than  
3 other carriers) best serves the statutory goal of competitive neutrality.

4 **Q. HOW DOES THE CONCEPT OF “COMPETITIVE NEUTRALITY” APPLY TO**  
5 **NUMBER PORTING CHARGES?**

6 A. Section 251(e)(2) of the Act requires that the costs of establishing number portability be  
7 “borne by all telecommunications carriers on a competitively neutral basis.”<sup>303</sup> This  
8 principle of competitive neutrality is an important component of the FCC’s number  
9 porting cost recovery rules. However, CenturyLink’s repeated attempts to assess charges  
10 on CLECs undermine competition and the competitive neutrality the FCC sought to  
11 establish. As the FCC explained, “[i]f the [FCC] ensured the competitive neutrality of  
12 only the distribution of costs, carriers could effectively undo this competitively neutral  
13 distribution by recovering from other carriers.”<sup>304</sup>

14 **Q. WHAT ABOUT INTERCONNECTION-BASED NUMBER PORTING CHARGES**  
15 **ASSESSED UPON COMPETITORS. HAS THE FCC EVER ADDRESSED THE**  
16 **LEGALITY OF SUCH CHARGES?**

17 A. Yes, the FCC has clearly said such charges are prohibited by federal law. That is the  
18 most troubling aspect of CenturyLink’s wholesale practice, it violates clear policies set

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Reconsideration Order”), 17 FCC Rcd 2578 (2002); and *Telephone Number Portability Cost Classification Proceeding*, Memorandum Opinion and Order, 13 FCC Rcd 24495 (CCB 1998).

<sup>303</sup> 47 U.S.C. § 251(e)(2).

<sup>304</sup> *Cost Recovery Order* at ¶ 39.



1           forth by the FCC in early number portability cost recovery orders. Specifically, in a 2002  
2           Number Portability Cost Reconsideration Order the FCC ruled that:

3                        [I]ncumbent LECs may not recover any number portability costs through  
4                        interconnection charges or add-ons to interconnection charges to their  
5                        carrier “customers,” nor may they recover carrier-specific costs through  
6                        interconnection charges to other carriers where no number portability  
7                        functionality is provided.<sup>305</sup>

8           This language clearly prohibits interconnection-based surcharges on number porting  
9           actions like those imposed by CenturyLink. The statement leaves no doubt that the  
10          Commission does not permit incumbent LECs to assess charges upon other carriers for  
11          number porting. This decision is still valid law, and has never been reversed or modified.

12          **Q.    HAVE THOSE RULINGS BEEN CODIFIED INTO THE FCC’S RULES?**

13          A.    Yes, the prohibition on such charges is codified at 47 C.F.R. § 52.33, and FCC regulation  
14          entitled “Recovery of carrier specific costs directly related to providing long-term  
15          number portability.”

16          **Q.    WHY DO YOU BELIEVE THESE SURCHARGES, AND OTHERS, MAY BE**  
17          **ASSESSED UPON COMPETITORS BY THE MERGED COMPANY?**

18          A.    These fees are currently assessed upon competitors because CenturyLink is able to  
19          leverage its market power to impose these surcharges as a condition of interconnection  
20          with CenturyLink. If the proposed transaction is approved, CenturyLink will be the third  
21          largest ILEC in the nation, and its market power will span 37 states.<sup>306</sup> That is why I

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<sup>305</sup> *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578, at ¶ 62 (2002).

<sup>306</sup> “CenturyLink and Qwest Agree to Merge,” Available at:

1 expect these surcharges will be assessed by the merged company unless this Commission  
2 adopts a condition that prohibits the merged company from doing so.

3 **Q. IS THAT WHY YOU BELIEVE CONDITION 24 IS NECESSARY?**

4 A. Yes. Condition 24 is included to prevent CenturyLink's objectionable charges directed  
5 specifically at facilities-based competitors from being applied throughout the Qwest  
6 legacy territory post-merger. Even if the Merged Company attempted to introduce these  
7 types of separate, distinct charges in Qwest's territory post-merger (but was ultimately  
8 unsuccessful), CLECs and state commissions would have to still have to expend  
9 significant time and expense combating the integration of this worst practice.

10 **Q. ARE THERE OTHER FEES AND SURCHARGES THAT CONDITION 24**  
11 **ADDRESSES?**

12 A. Yes. This condition also addresses the separate fees and surcharges CenturyLink  
13 imposes upon competitors' for accessing the NID enclosure and for "storage" of  
14 competitors' customers' directory listings. Each of these separate charges is discussed  
15 above in Section IV. These NID enclosure and storage surcharges raise the same  
16 concerns with respect to increasing competitors' costs, and are therefore part of  
17 Condition 24.

18 **Q. DO YOU HAVE SOME GENERAL CONCERNS REGARDING THE MERGED**  
19 **COMPANY NETWORK AS TO CONDITIONS 25 AND 26?**

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<http://news.qwest.com/centurylinkqwestmerger>

1 A. Yes. Both of these conditions, in part, address the CLECs' concern regarding ongoing  
2 maintenance and investment in the network post-merger. Condition 25 addresses routine  
3 network upgrades and modifications and Condition 26 (and subparts) states that the  
4 Merged Company will not engage in activities that disrupts or degrades access to the  
5 local loop, will follow the law and ICA provisions if it retires copper loops and will not  
6 engineer/maintain its network in a way that increases costs for wholesale customers.

7 As the Commission is aware, one of the ways to increase profits is to reduce expenses.  
8 Reducing routine network maintenance and modifications will harm CLECs that rely on  
9 that network for the exchange of traffic.

10 **Q. HAS THE IMPORTANCE OF THESE REQUIREMENTS TO COMPETITION**  
11 **BEEN PREVIOUSLY RECOGNIZED?**

12 A. Yes. The FCC, in its *Triennial Review Order*, addressed and promulgated rules regarding  
13 routine network modifications<sup>307</sup> to “resolve[] a controversial competitive  
14 issue...and...provide competitive carriers with greater certainty as to the availability of  
15 unbundled high-capacity loops and other facilities throughout the country.”<sup>308</sup> Likewise,  
16 Condition 26(a) is grounded in 47 C.F.R. §§ 51.319(a)(8) (engineering policies, practices,

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<sup>307</sup> Routine network modifications are “those activities that incumbent LECs regularly undertake for their own customers.” *Triennial Review Order* at ¶ 632. This includes attaching electronics to high-capacity loops and line conditioning to ensure that a copper loop is suitable for providing xDSL service. *Triennial Review Order* at ¶¶ 250, 634-635.

<sup>308</sup> *Triennial Review Order* at ¶ 632.

1 and procedures<sup>309</sup>) and Condition 26(b) is grounded in 47 C.F.R. §51.333 (notice of  
2 network changes related to retirement of copper loops or copper subloops).

3 **Q. CAN YOU PROVIDE AN EXAMPLE THAT SHOWS A NEED FOR CONDITION**  
4 **26 (AND SUBPARTS)?**

5 A. Yes. Integra has arbitrated the issue of network modernization and maintenance with  
6 Qwest in several states. A review of the excerpts in Exhibit BJJ-8 to the Direct  
7 Testimony of Bonnie Johnson shows that the commissions in all five states agreed with  
8 Eschelon's position that Qwest's network maintenance and modernization activity should  
9 not disrupt or degrade service to a CLEC's end user customers. Ms. Johnson provides  
10 quotes from the various orders to support this condition. In Washington, for instance, the  
11 Arbitrator stated:

12 While Qwest should have the discretion to modernize its own network, it  
13 should be apparent that 'modernization' and 'maintenance' efforts should  
14 enhance or maintain, not diminish transmission quality.<sup>310</sup>

15 Ms. Johnson provides an extended discussion of Condition 26(a) in her testimony, and  
16 provides in Exhibit BJJ-8 additional excerpts from Qwest-Eschelon interconnection  
17 arbitration proceedings on this point.

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<sup>309</sup> 47 C.F.R. §§ 51.319(a)(8) ("An incumbent LEC shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to a local loop or subloop, including the time division multiplexing-based features, functions, and capabilities of a hybrid loop, for which a requesting telecommunications carrier may obtain or has obtained access pursuant to paragraph (a) of this section.")

<sup>310</sup> See, Washington Utilities and Transportation Commission Docket UT-063061, Arbitrator's Report; Order No. 16 (aff'd), at ¶ 83.

1       **Q.    CAN YOU PROVIDE ANOTHER EXAMPLE THAT SHOWS THE NEED FOR**  
2       **CONDITION 26 (AND SUBPARTS)?**

3       A.    Yes. PAETEC has had experiences with Qwest where they reported trouble on a Qwest  
4       loop. PAETEC submitted a trouble ticket but Qwest reported that there was no trouble  
5       and closed the ticket. When PAETEC persisted with its complaint by opening another  
6       trouble ticket (based on ongoing trouble with the loop), Qwest refused to go to the site  
7       unless PAETEC agreed to a “joint meet.” The “joint meet” makes this a “special  
8       request” which would require PAETEC to pay for Qwest’s truck roll even if there is  
9       trouble on the Qwest loop. This type of process increases the costs to CLECs who must  
10      send a technician to meet Qwest while Qwest investigates its network.

11      **Q.    IS CONDITION 26(A) CONSISTENT WITH THE FCC’S UNBUNDLING RULE**  
12      **(47 C.F.R. § 51.319(A)(8))?**

13      A.    Yes, it is. That rule states, in pertinent part, “An incumbent LEC shall not engineer the  
14      transmission capabilities of its network in a manner, or engage in any policy, practice, or  
15      procedure, that disrupts or degrades access to the local loop.” Condition 26 is based on  
16      the sound logic in that FCC rule.

17      **Q.    SHOULDN’T THE COMMISSION JUST RELY ON THAT RULE AS**  
18      **CONTROLLING THE MERGED COMPANY POST-MERGER WITHOUT**  
19      **MAKING IT A MERGER CONDITION?**

20      A.    No. The language in the rule seems self-evident, but Qwest has forced Eschelon to  
21      arbitrate this issue in six states rather than simply abide by those precepts. As the

1 exhibits to Ms Johnson's Direct Testimony shows, Qwest is not complying with those  
2 arbitration rulings today with respect to conditioned copper loops.<sup>311</sup>

3 Failure to maintain adequate investment and maintenance on the Merged Company  
4 network could degrade the network for the Merged Company, the public switched  
5 telephone network ("PSTN") and for CLECs. Such a reduction in the quality of the  
6 network and related services, and resulting degradation for CLECs who must rely on that  
7 network, is not in the public interest. Condition 26 is meant to prevent inappropriate  
8 diversion of resources that would normally be directed to the network.

9 **Q. WHAT PROBLEM DOES CONDITION 27 RELATING TO CONDITIONED**  
10 **COPPER LOOPS ADDRESS?**

11 A. Digital subscriber line technology, "commonly referred to as xDSL, permits high speed  
12 connections...over ordinary copper loops."<sup>312</sup> This includes services "such as ISDN,  
13 ADSL, HDSL, and DS1-level signals."<sup>313</sup> The importance of using copper to provide  
14 advanced services is apparent in the FCC's conclusion that CLECs are "impaired"  
15 without access to unbundled "xDSL-capable stand-alone copper loops."<sup>314</sup> As explained  
16 by the FCC's SBC/Ameritech merger order, a merger of this sort will increase the  
17 Merged Company's incentive and ability to discriminate against its competitors with  
18 respect to the provision of advanced services:

<sup>311</sup> See Exhibit BJJ-1 to the Direct Testimony of Bonnie Johnson.

<sup>312</sup> *Triennial Review Order* at footnote 77 to ¶26.

<sup>313</sup> *Local Competition Order* at ¶380.

<sup>314</sup> *Triennial Review Order* at ¶ 642. Unbundling of the local loop includes "two and four-wire loops conditioned to transmit the digital signals needed to provide xDSL service." *Triennial Review Order* at ¶ 249.

1 We find that the combined entity is likely to increase the level of  
2 discrimination that rivals must overcome to provide retail advanced  
3 services, interexchange services, and local exchange services. In the retail  
4 market for advanced services, incumbent LECs can engage in  
5 discriminatory conduct with respect to competitors' provision of services  
6 such as xDSL by refusing to cooperate with competitors' requests for the  
7 evolving type of interconnection and access arrangements necessary to  
8 provide new types of advanced services.<sup>315</sup>

9 There is substantial evidence warranting a concern that the ILEC is already improperly  
10 inhibiting CLECs' provision of advanced services using conditioned copper loops  
11 throughout Qwest's legacy territory, as discussed below and in the testimony of Mr.  
12 Denney and Ms. Johnson of Integra. Absent a condition to ensure compliance with the  
13 laws regarding conditioned copper loops, the proposed transaction will further entrench  
14 the company's discriminatory conduct and potentially spread this discriminatory  
15 treatment throughout the Merged Company's territory.

16 Condition 27 will help ensure that the Merged Company does not implement its increased  
17 incentive to engage in anti-competitive conduct or spread worst practices throughout its  
18 larger service territory post-merger. It states:

19 The Merged Company will provide conditioned copper loops in  
20 compliance with federal and state law and at rates approved by the  
21 applicable state commission. Line conditioning is the removal from a  
22 copper loop of any device that could diminish the capability of the loop to  
23 deliver xDSL. Such devices include bridge taps, load coils, low pass  
24 filters, and range extenders. Insofar as it is technically feasible, the  
25 Merged Company shall test and report troubles for all the features,  
26 functions and capabilities of conditioned copper lines, and may not restrict

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<sup>315</sup> *In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279, October 8, 1999 ("FCC SBC/Ameritech Merger Order")* at ¶ 196. (footnotes omitted)

1 its testing to voice transmission only. If the Merged Company seeks to  
2 change rates approved by a state commission for conditioning, the Merged  
3 Company will provide conditioned copper loops in compliance with the  
4 relevant law at the current commission-approved rates unless and until a  
5 different rate is approved.

6 In this condition, the second sentence reflects the definition of line conditioning in 47  
7 C.F.R. §51.319(a)(1)(iii)(A).<sup>316</sup> The third sentence reflects the requirements of 47 C.F.R.  
8 §51.319(a)(1)(iii)(C).<sup>317</sup> The final sentence recognizes that, in each state in Qwest's  
9 territory, the Commission has already established rates (either non-recurring charges or  
10 recovery via recurring charges) for line conditioning and therefore the Merged Company  
11 must either charge that rate or seek state commission approval to charge a different rate.  
12 As I discussed earlier with respect to compliance with the law generally, though it would  
13 seem self-evident that the Merged Company would comply with these laws and cost  
14 orders, an enforceable merger condition is needed when concerns are raised by wholesale  
15 customers sufficient to justify singling out compliance with specific laws in merger  
16 conditions to preserve the public interest and avoid merger-related harm.

17 **Q. WHAT CONCERNS DO WHOLESALE CUSTOMERS RAISE REGARDING**  
18 **QWEST ENGAGING IN DISCRIMINATORY CONDUCT WITH RESPECT TO**  
19 **COMPETITORS' PROVISION OF SERVICES SUCH AS xDSL?**

<sup>316</sup> In 47 C.F.R. §51.319(a)(1)(iii)(A), line conditioning is defined as "the removal from a copper loop of any device that could diminish the capability of the loop to deliver xDSL. Such devices include bridge taps, load coils, low pass filters, and range extenders." Loops must be "stripped of accretive devices." *Triennial Review Order* at ¶ 643.

<sup>317</sup> "Insofar as it is technically feasible, the incumbent LEC shall test and report troubles for all the features, functions and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only." 47 C.F.R. §51.319(a)(1)(iii)(C).



1 A. Integra, PAETEC and other competitors have raised concerns that Qwest's region-wide  
2 policies violate legal and contractual obligations with respect to conditioned copper loops  
3 used for providing advanced services, including: (a) Qwest refusing digital level signals  
4 via conditioned copper loops; (b) Qwest restricting testing to voice transmission; (c)  
5 Qwest refusing digital signals for two-wire loops; (d) Qwest denying access to ADSL  
6 capable loops based on improper grandparenting of ADSL; and (e) Qwest refusing to  
7 repair/restore service to data/digital levels, leaving customer adversely affected; (f)  
8 Qwest refusing to remove certain devices, including bridge tap.<sup>318</sup> CLECs have provided  
9 documentation, including Qwest-prepared communications and admissions, showing that  
10 Qwest's stated region-wide position or practice violates legal and contractual obligations  
11 in each of these areas.<sup>319</sup>

12 For example, when installing and repairing loops, Qwest refuses to test unbundled  
13 conditioned copper loops to digital levels to ensure that they will support the type of  
14 xDSL service (e.g., HDSL2) ordered by the CLEC, even though the federal rule clearly  
15 states that the ILEC "may not restrict its testing to voice transmission only."<sup>320</sup> Rather  
16 than undertake industry-standard tests to ensure that an unbundled copper loop will  
17 support certain levels of digital signal,<sup>321</sup> Qwest maintains that it will test only to voice-

<sup>318</sup> See Exhibit BJJ-1 to the Direct Testimony of Bonnie Johnson.

<sup>319</sup> See Exhibit BJJ-2 to the Direct Testimony of Bonnie Johnson (Matrix – Legal Authority Compared to Qwest Position: xDSL Capable Copper Loops) and supporting documentation cited in the Matrix and found in Exhibit BJJ-3 (Johnson) through Exhibit BJJ-16 (Johnson) and Exhibit BJJ-20 (Johnson) through Exhibit BJJ-23 (Johnson).

<sup>320</sup> See 47 C.F.R. §51.319(a)(1)(iii)(C) (quoted in footnote above).

<sup>321</sup> See ANSI Standard T1-417, quoted in Qwest's own technical publications (Qwest Technical Publication 77384, pg. 1-1) describing the characteristics of its unbundled loops.

1 related parameters.<sup>322</sup> Without proper testing and trouble isolation, CLECs cannot  
2 effectively provide advanced services without placing their end-user customers' services  
3 at risk. Qwest's policies do not provide CLECs with a meaningful opportunity to  
4 compete. Additional examples and documentation are provided in the exhibits to the  
5 testimony of Ms. Johnson.

6 **Q. DO THE FCC'S RULES PROVIDE QWEST THIS TYPE OF DISCRETION TO**  
7 **DISCRIMINATE IN THE PROCESS OF LOOP CONDITIONING?**

8 A. No, as the federal rules cited above in support of condition 27 show, Qwest does not have  
9 that discretion. The documentation provided by CLECs makes clear that Qwest has  
10 policies in place that impede the ability of CLECs to deliver innovative xDSL-based  
11 advanced services to small and medium-sized businesses.

12 **Q. WOULD YOU EXPECT THE MERGED COMPANY TO ADOPT QWEST'S**  
13 **PRACTICES IN THIS REGARD FOR THE COMPANY AS A WHOLE, ABSENT**  
14 **A MERGER CONDITION REQUIRING COMPLIANCE WITH THESE LAWS?**

15 A. Yes. As explained by the FCC's *SBC/Ameritech Merger Order*, the Merged Company  
16 will have an increased incentive and ability to discriminate against its competitors with  
17 respect to the provision of advanced services.<sup>323</sup> This incentive will militate in favor of  
18 expanding discriminatory practices to the company as a whole. Consistent with this

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<sup>322</sup> See Row Nos. 1-2, Exhibit BJJ-2 to the Direct Testimony of Johnson (Attachment A to *Joint CLEC Initial Comments*, November 24, 2009, MN PUC Docket No. P-421/CI-09-1066); see also Attachment B, p. 11 at Exhibit BJJ-3 to the Direct Testimony of Bonnie Johnson.

<sup>323</sup> FCC *SBC/Ameritech Merger Order* at ¶ 196. (footnotes omitted)

1 incentive, when given an opportunity in discovery to clarify that CenturyLink would  
2 comply with 47 C.F.R. §51.319(a)(1)(iii)(C), CenturyLink declined to do so.<sup>324</sup> That  
3 CenturyLink did not immediately confirm that it would not restrict testing for conditioned  
4 copper loops to voice transmission only, when the requirements of the rule are so clear,  
5 supports the need for Condition 27 to confirm what CenturyLink would not regarding its  
6 compliance with the law.

7 The proposed transaction is contrary to the public interest if a merging party (Qwest in  
8 this example) is rewarded for violating the law. Condition 27 must be included to ensure  
9 that the public interest is not harmed post-transaction by requiring the Merged Company  
10 to condition loops in compliance with law and Commission-approved rates, including  
11 testing and reporting troubles for all features and functionalities of the copper loops,<sup>325</sup>  
12 and using the FCC's definition of line conditioning.<sup>326</sup> In other words, this condition  
13 requires the Merged Company to comply with existing law post-transaction.<sup>327</sup> Although  
14 the Merged Company should be expected to comply with the law in any event, a  
15 condition specific to this issue is needed based on Qwest's conduct to date.

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<sup>324</sup> For example, when asked whether CenturyLink would test and report troubles for all features, functions and capabilities of conditioned copper loops or restrict its testing to voice transmission only for conditioned copper loops post-transaction, CenturyLink replied: "CenturyLink has not made any determination on this issue at this time." CenturyLink Response to Integra Arizona Data Request #106.

<sup>325</sup> 47 C.F.R. § 51.319(a)(1)(iii)(C).

<sup>326</sup> 47 C.F.R. §51.319(a)(1)(iii)(A).

<sup>327</sup> This is particularly important in light of the National Broadband Plan which seeks to foster broadband deployment and competition. The National Broadband Plan states: "Competitive carriers are currently using copper to provide SMBs with a competitive alternative for broadband services. Incumbent carriers are required to share (or 'unbundle') certain copper loop facilities, which connect a customer to the incumbent carrier's central office" and that "[b]y leasing these copper loops and connecting them to their own DSL or Ethernet over copper equipment that is collocated in the central office, competitive carriers are able to provide their own set of integrated broadband, voice and even video services to consumers and small businesses." National Broadband Plan, Chapter 4 at p. 48.

1 **Q. PLEASE EXPLAIN CONDITION 28.**

2 A. Condition 28 relates to the CLECs' right to interconnect with the Merged Company at a  
3 single point of interconnection ("POI") per local access and transport area ("LATA").

4 **Q. WHY IS CONDITION 28 NECESSARY?**

5 A. In the past, CenturyLink has argued against the established right of CLECs to a single  
6 POI in arbitration proceedings. Specifically, CenturyLink has stated that because it is not  
7 a BOC, the concepts of LATA and single POI do not apply to CenturyLink. CenturyLink  
8 has also argued that a single POI per LATA would be technically infeasible and would  
9 result in "superior" interconnection agreements in violation of the FCC's rules. There is  
10 a genuine risk that the Merged Company will incorporate this legacy CenturyLink  
11 mindset into legacy Qwest territory post-merger, which would increase CLECs' costs of  
12 interconnection with the Merged Company and allow the Merged Company to enjoy a  
13 competitive advantage over CLECs. Condition 28 is necessary to ensure that this "worst  
14 practice" is not incorporated by the Merged Company.

15 **Q. IS THERE A DISTINCTION BETWEEN BOCS AND OTHER ILECS RELATED**  
16 **TO INTERCONNECTION OBLIGATIONS UNDER SECTION 251 OF THE**  
17 **ACT?**

18 A. No. Section 251(c) of the Act is entitled "Additional Obligations of Incumbent Local  
19 Exchange Carriers" and requires, among other things, all ILECs – not just BOCs – to  
20 provide interconnection "at any technically feasible point within the carrier's network"  
21 and "that is at least equal in quality to that provided by the local exchange carrier to itself

1 or any subsidiary, affiliate, or any other party to which the carrier provides  
2 interconnection.” So, the fact that CenturyLink is an ILEC and Qwest is both an ILEC  
3 and a BOC should have no bearing on whether CLECs should be permitted to  
4 interconnect with the Merged Company at a single POI per LATA. Furthermore, the goal  
5 of the Act was to open local markets to competition for all ILECs, not just the BOCs.<sup>328</sup>

6 **Q. DOES THE DATA SHOW THAT INCREASED EFFICIENCIES COULD BE**  
7 **ACHIEVED BY ESTABLISHING A SINGLE POI PER LATA WITH THE**  
8 **MERGED COMPANY POST-MERGER?**

9 A. Yes. If the merger is consummated, the Merged Company will have not only have a  
10 larger footprint, but also will have many legacy CenturyLink exchanges that are adjacent  
11 to or contiguous to Qwest exchanges, and which reside in the same LATA.<sup>329</sup> Though  
12 CenturyLink has stated that it has no ILEC exchanges in Arizona,<sup>330</sup> it has touted the  
13 benefits that will accrue to the Merged Company in Arizona due to the larger, more  
14 interconnected footprint of the combined company. For instance, Qwest says:

15 The Transaction will result in a combined enterprise that can achieve  
16 greater economies of scale and scope than the two companies operating  
17 independently. In addition to those benefits described above related to

<sup>328</sup> *Local Competition Order* at ¶ 4 (Emphasis added.)

<sup>329</sup> In the Oregon merger proceeding, I explained that about 92% of the CenturyLink exchanges in Oregon are either adjacent to or directly interconnected with Qwest exchanges through another adjacent CenturyLink exchange, and the 155 total exchanges that the Merged Company would operate in Oregon post-merger reside in four LATAs. In Colorado, I explained that 93% of CenturyLink exchanges in Colorado are adjacent or contiguous to Qwest exchanges, and 167 total exchanges the Merged Company would operate in Colorado post-merger reside in two LATAs. Likewise, in Washington, I explained that 95% of CenturyLink exchanges in Washington are adjacent or contiguous to Qwest exchanges, and 195 total exchanges the Merged Company would operate in Washington post-merger reside in four LATAs.

<sup>330</sup> Campbell Arizona Direct at p. 11, footnote 6. *See also*, CenturyLink Response to Integra Data Request #15, Attachment Integra-15, showing no CenturyLink ILEC exchanges in Arizona.

1 capital investment and the ability to aggressively deploy advanced  
2 products and services, the increased size of the combined company is also  
3 likely to enhance its purchasing power, which may lead to a reduction in  
4 some input costs. The combination of the serving areas in many states  
5 will provide for increased economies of scale that will benefit customers  
6 not only in those states where Qwest and CenturyLink operate  
7 independently, but also states like Arizona that will indirectly benefit from  
8 the increased efficiencies of the company as a whole.<sup>331</sup>

9 It is this larger, more interconnected footprint of the Merged Company that the Company  
10 attributes a number of the benefits it says will result from the proposed transaction.<sup>332</sup>

11 Hence, the Merged Company expects benefits to itself and its customers (presumably  
12 retail customers, since the Joint Applicants have been unable to point to one benefit that  
13 will accrue to CLECs as a result of the proposed transaction), but is notably silent about  
14 sharing those benefits with new entrants. One way these benefits should flow through to  
15 the benefit of the public interest is by allowing CLECs interconnecting with the Merged  
16 Company, at the CLECs' option, to do so at a single point per LATA.<sup>333</sup> This would

<sup>331</sup> Campbell Arizona Direct at p. 13, lines 3-11.

<sup>332</sup> See, e.g., McMillan Arizona Direct at p. 9, lines 7-11 ("As a combined company, with complementary strengths and operating footprints, we will have greater potential to effectively reach more types of customers with a broader range of competitive products and connectivity solutions than either company could standing alone.") See also, Schafer Arizona Direct at p. 11, lines 6-10 ("The Transaction brings together two leading communications companies with complementary networks and operating footprints. By building on each company's operational and network strengths, the combined company will have an impressive national presence with the local depth that will allow it to better serve all of its customers."); McMillan Arizona Direct at p. 10, lines 7-9 ("A key benefit will come from leveraging each company's operational and network strengths, resulting in a company with an impressive national presence and local depth.")

<sup>333</sup> See, e.g., *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 at ¶ 87 (2005) (reaffirming that "[u]nder section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA") (emphasis added). See also *Petition of WorldCom, Inc., et al., Pursuant to § 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Comm'n*, Memorandum Opinion and Order, 17 FCC Rcd 27039 at ¶ 52 (2002) (emphasis added). The Fourth Circuit has affirmed that the Bureau's decision is entitled to the same deference that would normally be granted to a decision of the full Commission. *MCI Metro Access Transmission Servs. v. BellSouth Telecomms., Inc.* 352 F.3d 872, n. 8 (4<sup>th</sup> Cir. 2003).

1 lower barriers to entry for competitors by capitalizing on the increased scale and  
2 efficiencies of the Merged Company – benefits that the Act and FCC require to be shared  
3 with CLECs.<sup>334</sup> Given the contiguous and interconnected exchanges of Qwest and  
4 CenturyLink, efficiencies can be achieved by routing traffic to and from the Merged  
5 Company at a single POI per LATA, as opposed to having separate interconnections for  
6 legacy Qwest and legacy CenturyLink. While the Merged Company may want to  
7 continue its corporate organizational structure that exists today post-merger, CLECs  
8 should not have to pay more to interconnect with the Merged Company because of it.

9 **Q. OTHER THAN TECHNICAL FEASIBILITY AND THE LOCATION OF THE**  
10 **INTERCONNECTION, ARE ILECS ALLOWED TO REFUSE AN**  
11 **INTERCONNECTION PROPOSAL, SUCH AS SINGLE POI?**

12 A. No. That is why Qwest and CenturyLink are required to provide a single POI per LATA  
13 today. The promotion of efficient markets dictates that CLECs only be required to  
14 interconnect in a specific area where its own assessment of traffic volumes, customer  
15 demand, and available technology justify investment in facilities needed to reach that  
16 area. Nevertheless, after the merger, an objection to a single POI interconnection would  
17 be even less persuasive given the claimed benefits of the transaction. The Merged  
18 Company claims it will be more efficient and able to respond to competition, but it  
19 should not accomplish those goals at the expense of its competitors. Given these claimed

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<sup>334</sup> See, e.g., *Local Competition Order* at ¶ 11: “Congress addressed these problems in the 1996 Act by mandating that the most significant economic impediments to efficient entry into the monopolized local market must be removed. The incumbent LECs have economies of density, connectivity, and scale; traditionally, these have been viewed as creating a natural monopoly. As we pointed out in our NPRM, the local competition provisions of the Act require that these economies be shared with entrants.”

1 benefits it would be wrong to further disadvantage competitors by arguing against an  
2 efficient interconnection method that has been used, and approved, for more than a  
3 decade.

4 **Q. PLEASE EXPLAIN CONDITION 29.**

5 A. Condition 29 states that conditions imposed in this proceeding may be expanded or  
6 modified as a result of other decision in other states. This would also include decisions  
7 based on settlements reached in proceedings.

8 **Q. HOW WILL THIS CONDITION BENEFIT THE PUBLIC INTEREST?**

9 A. This will provide a degree of consistency and spread “best practices” across the Merged  
10 Company’s service territory, while at the same time likely lowering the Merged  
11 Company’s cost of post-merger compliance activities. A similar condition was adopted  
12 by the Oregon Commission in the Frontier/Verizon merger proceeding,<sup>335</sup> wherein the  
13 Oregon Commission concluded that this type of condition “benefit[s] the various  
14 stakeholders in Oregon while, at the same time, allow[ing] applicants to promptly  
15 conclude the regulatory approval process.”<sup>336</sup> This is particularly appropriate to the  
16 proposed transaction given that the Joint Applicants have requested expedited approval of  
17 the proposed transaction.<sup>337</sup>

18 **Q. PLEASE EXPLAIN CONDITION 30.**

<sup>335</sup> Order No. 10-067 at Appendix A, page 12 of 12 (Docket UM 1431, February 24, 2010).

<sup>336</sup> Order 10-167 at 23.

<sup>337</sup> See, e.g., Campbell Arizona Direct at p. 7, lines 13-15 (“Expedited treatment is requested to allow the Joint Applicants to more quickly integrate the companies in order to bring the benefits described in my testimony to consumer, business, wholesale customers, and shareholders sooner.”)



1 A. Condition 30 addresses disputes that may arise with respect to any pre-closing or post-  
2 closing conditions. Specifically, this condition would allow either party to seek  
3 resolution of the dispute by filing a petition with a state commission.

4 **Q. WHY DO CLECS NEED THE ABILITY TO BRING DISPUTES ABOUT**  
5 **MERGER CONDITION COMPLIANCE TO THE STATE COMMISSION?**

6 A. Since a number of these conditions expire after a certain period of time, it is important  
7 that the CLECs have a way to quickly and efficiently resolve disputes related to merger  
8 condition compliance – otherwise, the Merged Company could just drag disputes out  
9 until some of the conditions expire or argue over the proper forum for addressing these  
10 types of disputes. This is a condition that the CLECs have included based on past  
11 experience. AT&T has repeatedly argued (an argument that has been repeatedly rejected)  
12 that state commissions do not have authority to enforce merger commitments related to  
13 ICAs.<sup>338</sup> CLECs should not have to fight these same types of battles after the proposed  
14 transaction at significant cost and delay.

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

16 A. Yes, it does.

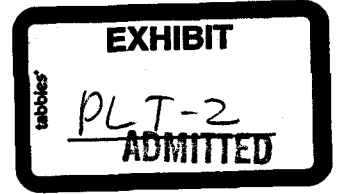
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<sup>338</sup> See, e.g., Comments of Cox Communications and Charter Communications, Inc., WC Docket No. 10-110, July 12, 2010, at pp. 11-12.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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



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JOINT NOTICE AND APPLICATION OF )	
QWEST CORPORATION, QWEST )	
COMMUNICATIONS COMPANY, LLC, )	
QWEST LD CORP., EMBARQ )	Docket No. T-01051B-10-0194
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. )	
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SURREBUTTAL TESTIMONY

OF

TIMOTHY J GATES

ON BEHALF OF

tw telecom of arizona llc; Level 3 Communications, LLC; and  
McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services

PUBLIC VERSION

HIGHLY SENSITIVE AND CONFIDENTIAL TRADE SECRET, HIGHLY CONFIDENTIAL  
AND CONFIDENTIAL INFORMATION HAS BEEN REDACTED

November 10, 2010

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**EXHIBITS**

Exhibit TG-11 – Systems flow diagram.

Exhibit TG-12 – Excerpt from Qwest’s online Product Catalog called “Pre-Ordering Overview” containing a Qwest table reflecting how Qwest back-end service order processing (“SOP”) systems process CLEC orders differently depending on Qwest Region (Central, East, or West).

Exhibit TG-13 – Issues Matrix summarizing Joint Applicants’ Position Statements and Joint CLECs’ Position Statements for each issue presented by the Joint CLEC list of recommended conditions for resolution in this matter.

Exhibit TG-14 – Excerpt from the FCC *Local Competition Order*.

Exhibit TG-15 – Excerpt from the FCC *Qwest 9-State 271 Order*.

Exhibit TG-16 – Matrix Comparing CenturyLink’s and Qwest’s LSR Submission OSS Functionality

Exhibit TG-17 – CenturyLink Discovery Responses Regarding OSS Pre-Order Functions and Order Types

Exhibit TG-18 – CMP August 14 and August 16, 2001, CMP Redesign Meeting Minute Excerpts

Exhibit TG-19 – Hart-Scott-Rodino (“HSR”) documents.

1 **I. INTRODUCTION AND PURPOSE**

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

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

5 **Q. ARE YOU THE SAME TIMOTHY GATES WHO FILED DIRECT TESTIMONY**  
6 **IN THIS PROCEEDING ON SEPTEMBER 27, 2010?**

7 A. Yes.

8 **Q. ON WHOSE BEHALF ARE YOU FILING THIS SURREBUTTAL TESTIMONY?**

9 A. My testimony is being filed on behalf of a number of CLECs: tw telecom of arizona llc;  
10 Level 3 Communications, LLC; and McLeodUSA Telecommunications Services, Inc.  
11 d/b/a PAETEC Business Services (collectively referred to in my testimony as "Joint  
12 CLECs").

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

14 A. The purpose of my testimony is to respond to the rebuttal testimony of CenturyLink and  
15 Qwest (collectively referred to in my testimony as "Joint Applicants"), which was filed  
16 on October 27, 2010. Specifically, I will respond to the rebuttal testimony of the  
17 following CenturyLink witnesses: Jeffrey Glover,<sup>1</sup> Michael Hunsucker,<sup>2</sup> Kristin

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<sup>1</sup> 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, Arizona Docket Nos. T-01051B-10-0194 et al., October 27, 2010 ("Glover Rebuttal").

1       McMillan,<sup>3</sup> and Todd Schafer.<sup>4</sup> I will also respond to the rebuttal testimony of the  
2       following Qwest witnesses: Robert Brigham,<sup>5</sup> James Campbell,<sup>6</sup> Karen Stewart,<sup>7</sup> and  
3       Michael Williams.<sup>8</sup>

4       **Q. DO YOU HAVE ANY PRELIMINARY COMMENTS ABOUT THE JOINT**  
5       **APPLICANTS' REBUTTAL TESTIMONY?**

6       A. The Joint Applicants have gone to great lengths in their rebuttal testimony to disagree  
7       with the conditions proposed by the Joint CLECs (including misstating what the  
8       conditions actually say). The Joint Applicants refuse *all* conditions, even though the  
9       proposed conditions by Joint CLECs and by, in part, Commission Staff provide the  
10      certainty needed by wholesale customers in their wholesale customer relationship with  
11      the Joint Applicants during the post-merger integration process, reflect what the Joint

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<sup>2</sup> Rebuttal Testimony of Michael Hunsucker on behalf of Embarq Communications, Inc. d/b/a CenturyLink Communications, Embarq Payphone Services, Inc. d/b/a CenturyLink, and CenturyTel Solutions, LLC, Arizona Docket Nos. T-01051B-10-0194 et al., October 27, 2010 ("Hunsucker Rebuttal").

<sup>3</sup> 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, Arizona Docket Nos. T-01051B-10-0194 et al., October 27, 2010 ("McMillan Rebuttal").

<sup>4</sup> 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, Arizona Docket Nos. T-01051B-10-0194 et al., October 27, 2010 ("Schafer Rebuttal").

<sup>5</sup> Rebuttal Testimony of Robert Brigham on behalf of Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp., Arizona Docket Nos. T-01051B-10-0194 et al., October 27, 2010 ("Brigham Rebuttal").

<sup>6</sup> Rebuttal Testimony of James Campbell on behalf of Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp., Arizona Docket Nos. T-01051B-10-0194 et al., October 27, 2010 ("Campbell Rebuttal").

<sup>7</sup> Rebuttal Testimony of Karen Stewart on behalf of Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp., Arizona Docket Nos. T-01051B-10-0194 et al., October 27, 2010 ("Stewart Rebuttal").

<sup>8</sup> Rebuttal Testimony of Michael Williams on behalf of Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp., Arizona Docket Nos. T-01051B-10-0194 et al., October 27, 2010 ("Williams Rebuttal").

1 Applicants say they will do if the proposed transaction is approved (albeit without any  
2 commitments), and reflect conditions that have been approved by the Federal  
3 Communications Commission (“FCC”) and state commissions in the past. The Joint  
4 Applicants’ across-the-board rejection of the Joint CLECs’ proposed conditions stands in  
5 stark contrast to the Joint Applicants’ claims that they are “commit[ed] to providing  
6 quality wholesale services”<sup>9</sup> and “value[] CLECs and recognize[] them as extremely  
7 important...”<sup>10</sup> If the Joint Applicants truly valued CLECs as important customers, it is  
8 logical to conclude that they would be willing to work with CLECs to address concerns  
9 and ensure that the transition caused by the proposed transaction runs as smoothly as  
10 possible for their valued customers.

11 At the same time, Joint Applicants’ rebuttal testimony further supports the Joint CLECs’  
12 concerns about merger-related harm. Not only do the Joint Applicants provide no  
13 additional useful details about their post-merger plans to overcome the severe uncertainty  
14 caused by the proposed transaction, they also describe service-impacting problems that  
15 have occurred during CenturyLink’s systems integration effort related to the merger with  
16 Embarq – problems that could be devastating to wholesale and retail customers if they  
17 occurred in Qwest’s region. This only heightens the systems integrations concerns I  
18 discussed in my direct testimony, particularly when CenturyLink now refers to systems

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<sup>9</sup> Hunsucker Rebuttal at p. 9, line 18 – p. 10, line 1; p. 27, lines 3-4.

<sup>10</sup> Williams Rebuttal at p. 21, lines 16-17.

1 integration following a merger as “necessary”<sup>11</sup> and problems that arise during those  
2 integration efforts as “inevitabl[e].”<sup>12</sup>

3 In an apparent recognition of the lack of facts for their claims that the proposed  
4 transaction is in the public interest, the Joint Applicants claim that the Joint CLECs’  
5 positions are unfounded and paint the Joint CLECs as seeking unfair advantages. These  
6 claims cannot be supported given the evidence that Dr. Ankum and I provided in our  
7 direct testimony. They ignore, among other things, the data provided about  
8 CenturyLink’s wholesale service quality performance following the Embarq merger,<sup>13</sup> the  
9 examples provided about the differences in functionalities between Qwest’s Operations  
10 Support Systems (“OSS”) and CenturyLink’s OSS,<sup>14</sup> the data comparing the size of the  
11 existing wholesale operations of Qwest and CenturyLink,<sup>15</sup> and the data in Dr. Ankum’s  
12 Exhibits AA-3 and AA-4 which demonstrate (through information collected during the  
13 discovery process) that significant uncertainty surrounds the proposed transaction and  
14 alleged benefits have not been substantiated by Joint Applicants. The Joint Applicants  
15 also erroneously claim that the Joint CLECs are seeking unfair competitive advantages  
16 and a *cut* of the expected synergy savings. That is not accurate. A fair reading of the  
17 testimony shows that the Joint CLECs seek to avoid deterioration in the quality of

<sup>11</sup> Schafer Rebuttal at p. 9, lines 8-10.

<sup>12</sup> Schafer Rebuttal at p. 8, lines 22-23.

<sup>13</sup> Direct Testimony of Timothy Gates, Arizona Docket Nos. T-01051B-10-0194, September 27, 2010 (“Gates Direct”) at pp. 81-82 (confidential version).

<sup>14</sup> Gates Direct at pp. 56-57.

<sup>15</sup> Gates Direct at pp. 24-26 (confidential version).



1 Qwest's wholesale services and products, wholesale systems, and wholesale support, as  
2 well as deterioration in their opportunity to compete with Qwest and CenturyLink – each  
3 which would result in harms to the public interest.

4 It appears that the Joint Applicants have forgotten that they are the companies asking for  
5 approval of the proposed transaction, and that it is their responsibility to provide  
6 information to demonstrate that the proposed transaction is in the public interest. Joint  
7 Applicants have not provided such information in this proceeding, and as a result, the  
8 proposed transaction should be denied. If the Arizona Commission is inclined to approve  
9 the proposed transaction despite the uncertainties, lessons learned from other mergers,  
10 and likely harms that would result, then the Commission should adopt the conditions  
11 proposed by Joint CLECs, as well as any additional conditions, such as retail conditions,  
12 that the Commission determines are needed to permit a finding that the proposed  
13 transaction is in the public interest. The Joint CLEC conditions are designed to address  
14 the harms to CLECs, their end users, and competition that would occur from this  
15 particular transaction. Adopting conditions to protect and foster competition is a  
16 reasonable alternative to merger denial, as it allows the Commission to render a decision  
17 approving the merger on an expedited basis (as requested by Joint Applicants), which  
18 allows the Joint Applicants to move forward with the transaction, while affording CLECs  
19 a degree of certainty to plan their business going forward, and providing CLECs and their  
20 customers some degree of protection to avoid or offset merger-related harms.

1 **Q. DO YOU HAVE ANY PRELIMINARY COMMENTS ABOUT ACC STAFF'S**  
2 **TESTIMONY?**

3 A. Yes. ACC Staff proposes 47 conditions, including conditions related to “regulatory” and  
4 “wholesale operations.” I agree with ACC Staff that conditions are needed before the  
5 proposed transaction can be found to be in the public interest. A number of Staff’s  
6 proposed conditions are complementary to the Joint CLECs’ proposed conditions and I  
7 will identify some of those below.

8 **II. THE JOINT APPLICANTS’ ATTEMPTS TO DEFLECT JOINT CLEC**  
9 **CONCERNS ABOUT MERGER-RELATED HARM ARE UNPERSUASIVE.**

10 *A. Joint Applicants’ attempts to trivialize the Joint CLECs’ concerns is not*  
11 *indicative of a true commitment to maintaining and providing high quality*  
12 *service to their CLEC wholesale customers.*

13 **Q. JOINT APPLICANTS HAVE TESTIFIED THAT CLECS’ STATED CONCERNS**  
14 **ABOUT “WHOLESALE SERVICE PERFORMANCE ARE IRRELEVANT TO**  
15 **THIS MERGER PROCEEDING”<sup>16</sup> AND “RAISED MERELY TO BE A**  
16 **DISTRACTION.”<sup>17</sup> DOES THIS HEIGHTEN YOUR CONCERNS ABOUT**  
17 **MERGER-RELATED HARM TO CLECS AND COMPETITION?**

<sup>16</sup> Williams Rebuttal at p. 2, lines 13-15 and p. 4, line 12.

<sup>17</sup> Hunsucker Rebuttal at p. 49, lines 8-9. See also, Rebuttal Testimony of Robert Brigham, Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010, at p. 25, lines 7-9 (“The competitive issues raised by the CLECs in this proceeding represent nothing more than ‘noise’ that is designed to distract the Commission from the real issue in this case...”)

1 A. Yes. These statements demonstrate a complete disregard of the Joint Applicants'  
2 wholesale customers who have spent a great deal of time, effort and expense intervening  
3 in these merger review proceedings to voice their legitimate concerns to the Commission.

4 In addition, these statements call into question CenturyLink's claims that: (i)  
5 CenturyLink is committed to providing quality wholesale services,<sup>18</sup> (ii) wholesale  
6 customers are a top priority for CenturyLink and will remain so post-merger,<sup>19</sup> (iii)  
7 "[b]oth CenturyLink and Qwest take very seriously their wholesale provisioning  
8 obligations and opportunities"<sup>20</sup> and (iv) "serving wholesale customers is important to  
9 each company and is crucial to the future of the combined company."<sup>21</sup> This rhetoric,  
10 which is designed to secure approval of the transaction, is belied by the Joint Applicants'  
11 refusal to provide facts or to consider the reasonable conditions of the Joint CLECs.

12 It is simply not good business for a service provider to belittle its customers' concerns as  
13 "irrelevant," "merely...a distraction" and "noise." In other industries with competitive  
14 markets, that type of attitude would likely lead to failure (as customers would leave that  
15 service provider for other service providers that value customers' opinions and concerns).  
16 For example, if customers of McDonald's raised concerns about long waiting times in the  
17 drive-thru because of a reduction in employees, and McDonald's dismissed these  
18 concerns as "irrelevant" or "noise," the chances are good that customers would *vote with*

<sup>18</sup> Hunsucker Rebuttal at p. 6, lines 10-11 and p. 9, lines 7-8.

<sup>19</sup> Hunsucker Rebuttal at p. 9, lines 9-10; p. 10, lines 2-3; p. 27, lines 4-5 and lines 19-20.

<sup>20</sup> Hunsucker Rebuttal at p. 31, lines 17-18 and p. 56, lines 14-15.

<sup>21</sup> Hunsucker Rebuttal at p. 56, lines 18-20.

1        *their feet* and go to Arby's or Hardees instead. Unfortunately, the CLECs do not have the  
2        same option when it comes to the products and services they purchase from Qwest, and  
3        the need to exchange traffic to maintain the efficient operation of the Public Switched  
4        Telephone Network ("PSTN").<sup>22</sup>

5        **Q. DO THE JOINT APPLICANTS ALSO DISMISS CONCERNS RAISED ABOUT**  
6        **RETAIL SERVICE QUALITY?**

7        A. Yes. Mr. Williams states: "statements about retail service quality...are irrelevant to this  
8        merger proceeding..."<sup>23</sup> The Joint Applicants' claim that the service quality provided by  
9        the combined company to both wholesale and retail customers post-closing is "irrelevant"  
10       to determining whether the proposed transaction is in the public interest demonstrates  
11       how narrow and self-serving the Joint Applicants' view of the "public interest" is.  
12       Contrary to Joint Applicants' claims, the service quality that the combined company will  
13       provide to customers if the proposed transaction is approved is paramount to this  
14       proceeding, and meaningful, enforceable commitments are needed before the merger is  
15       approved so that service quality does not deteriorate post-merger.

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<sup>22</sup> Mr. Williams states at pages 21-22 of his Rebuttal Testimony: "Qwest values CLECs, and recognizes them as extremely important in helping to keep customers on Qwest's wireline network." The dismissive statements made by Joint Applicants about the Joint CLECs' proposed conditions are not indicative of a service provider that "values" its customers. Mr. Williams fails to mention in his Arizona testimony that Qwest competes with CLECs in local retail markets, and has economic incentives to serve an end user customer with its retail services rather than permit a CLEC wholesale customer to serve that end user customer using Qwest's wholesale services – a point that Mr. Williams acknowledged at the Minnesota hearing. (Q. "And would you also agree with me that given a choice between providing retail service to a customer on the one hand, or on the other hand providing a CLEC with wholesale service to serve the same customer, Qwest would rather be providing the retail service? A. That's why we compete. We compete for retail customers, I agree to that." Minnesota Docket No. P-421, et al./PA-10-456, Hearing Transcript Volume 2A (public) at p. 92 (Williams)).

<sup>23</sup> Williams Rebuttal at p. 2, lines 13-15.

1           **B.     *CenturyLink's description of its prior integration efforts glosses over problems***  
2           ***and merger-related harms.***

3                           **1. CenturyLink's integration of Embarq in North Carolina and Ohio**

4           **Q.     DOES CENTURYLINK'S QWEST'S OWN TESTIMONY SUPPORT THE JOINT**  
5           **CLECS' CONCERNS ABOUT MERGER-RELATED HARM AND THE NEED**  
6           **FOR JOINT CLECS' CONDITIONS IF THE PROPOSED TRANSACTION IS**  
7           **APPROVED?**

8           A.     Yes.    The same day I filed my direct testimony (September 27, 2010), the  
9           Communications Workers of America ("CWA") filed the direct testimony of Jasper  
10           Gurganus,<sup>24</sup> which described problems CenturyLink was experiencing during its  
11           integration of Embarq in North Carolina and Ohio. CenturyLink filed the rebuttal  
12           testimony of Todd Schafer on October 27, 2010, to respond to Mr. Gurganus' testimony.  
13           In his rebuttal testimony, CenturyLink witness Mr. Schafer acknowledged the problems  
14           discussed by Mr. Gurganus. Mr. Schafer's acknowledgement of these integration  
15           problems was surprising because he referred to the ongoing Embarq integration in his  
16           direct testimony as running "smooth and successful"<sup>25</sup> and because CenturyLink failed to  
17           disclose information about these problems in discovery responses in a timely fashion  
18           despite being specifically asked for it.

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<sup>24</sup> Pre-Filed Direct Testimony of Jasper Gurganus on behalf of CWA, Arizona Docket Nos. T-01051B-10-0194, et. al., September 27, 2010 ("Gurganus Direct").

<sup>25</sup> Schafer Direct at p. 6, lines 10-11.

1 **Q. DID CENTURYLINK HAVE AN OBLIGATION TO PROVIDE THIS EVIDENCE**  
2 **EARLIER?**

3 A. Yes. On July 7, 2010, Integra served discovery requests upon Joint Applicants in which  
4 Integra referenced the direct testimony of Mr. Schafer regarding integration efforts  
5 related to CenturyTel's acquisition of Embarq and Mr. Schafer's claims that they have  
6 been successful, and asked CenturyLink to: (1) Describe in detail the integration efforts  
7 undertaken by the company for CenturyTel's acquisition and specifically to answer  
8 fourteen sub-questions, including "Description of problems the company experienced (or  
9 is experiencing) during integration,"<sup>26</sup> and (2) Provide a detailed description of these  
10 conversions, including "how the company determined that the integration efforts 'have  
11 been successful.'"<sup>27</sup> As part of its information requests on July 7, 2010, Integra included  
12 an instruction stating that the information requests are intended to be continuing in nature  
13 and indicating that the respondents should supplement the responses promptly.<sup>28</sup>  
14 CenturyLink responded to these Integra Information Requests on July 21, 2010, and  
15 CenturyLink supplemented its responses on August 30, 2010.

16 In its initial and supplemental responses, CenturyLink stated that the integrations were  
17 proceeding as planned, without disclosing any of the problems that CenturyLink has  
18 acknowledged only after CWA brought them to light in testimony. CenturyLink  
19 represented that the conversion to CenturyLink's retail end user billing system is

<sup>26</sup> Integra Arizona Information Request No. 41 to Joint Applicants (July 7, 2010).

<sup>27</sup> Integra Arizona Information Request No. 42 to Joint Applicants (July 7, 2010).

<sup>28</sup> Integra Arizona Information Requests to Joint Applicants (July 7, 2010) at p. 2.

1 proceeding as planned “without customer disruption.”<sup>29</sup> CenturyLink’s affirmative  
2 statement appears inconsistent with Mr. Schafer’s rebuttal testimony that the problems  
3 encountered in North Carolina have caused CenturyLink “to produce lower service level  
4 metrics than desired since conversion.”<sup>30</sup>

5 While continuing to pursue expedited treatment of this matter, CenturyLink has allowed  
6 the months in which these problems could have been investigated – i.e., between  
7 CenturyLink’s July 21, 2010, non-responsive discovery answer and CenturyLink’s  
8 admissions in its October 27, 2010, rebuttal testimony – to lapse without disclosing this  
9 requested relevant information. Further, there are numerous unanswered questions  
10 associated with CenturyLink’s tardy explanation of these problems, such as (i) what  
11 “devices” were not loaded correctly,<sup>31</sup> (ii) what “outside plant records” were impacted by  
12 the data inconsistency,<sup>32</sup> (iii) why the data inconsistency was not revealed in data  
13 validation efforts, (iv) why the data inconsistency was not revealed in quality assurance  
14 testing, and (v) other information needed to help determine whether similar problems are  
15 likely to occur in this merger and, if so, what may be done to avoid them. With top  
16 executives at Qwest expected to receive multi-millions of dollars upon closing<sup>33</sup> and

<sup>29</sup> CenturyLink’s Response to Integra Arizona Information Request No. 41 (July 21, 2010).

<sup>30</sup> Schafer Rebuttal at p. 10, lines 16-18.

<sup>31</sup> Schafer Rebuttal at p. 8, lines 7-8.

<sup>32</sup> Schafer Rebuttal at p. 8, lines 4-7.

<sup>33</sup> See, e.g., Windfall for Qwest top execs, by Andy Vuong, *The Denver Post*, 7/18/2010. [http://www.denverpost.com/search/ci\\_15536725](http://www.denverpost.com/search/ci_15536725). The article notes: “Seven top executives at Qwest stand to reap more than *\$110 million in cash and stock* from the Denver-based company’s proposed merger with CenturyLink, according to a new regulatory filing.” (Emphasis added.)

1 CenturyLink estimating over \$600 million in synergy savings if the transaction is  
2 approved, it is clear why Qwest and CenturyLink are in a hurry. However, it becomes  
3 less and less clear what public interest may be served by not inquiring into and  
4 adequately investigating these problems, particularly when CenturyLink delayed proper  
5 investigation into these issues by not disclosing required information in discovery.

6 **Q. PLEASE BRIEFLY DESCRIBE THE INTEGRATION-RELATED PROBLEMS**  
7 **CWA AND CENTURYLINK HAVE REPORTED.**

8 A. Mr. Schafer states that, during the conversion in North Carolina to CenturyLink billing  
9 and operational systems, outside plant records and “devices” were loaded incorrectly,  
10 which led to the problems discussed by the CWA.<sup>34</sup> CenturyLink has also attributed  
11 these problems to “differences between the old and new systems”<sup>35</sup> and a “lack of  
12 familiarity with the new systems...”<sup>36</sup> Some of the problems that the CWA described in  
13 its testimony include:

- 14 • “workers...being dispatched to incorrect locations for service”<sup>37</sup>
- 15 • “workers reported being dispatched for service with insufficient or incorrect  
16 information”<sup>38</sup>
- 17 • longer out of service periods and longer delays in initiating service<sup>39</sup>
- 18 • differing and confusing software that dispatches/assigns technicians<sup>40</sup>

<sup>34</sup> Schafer Rebuttal at p. 8, lines 4-9.

<sup>35</sup> Rebuttal Testimony of Duane Ring, Minnesota PUC Docket No. P-421, et al./PA-10-456, September 13, 2010 (“Ring Minnesota Rebuttal Testimony”), at p. 2, lines 21-22.

<sup>36</sup> Ring Minnesota Rebuttal Testimony at p. 3, lines 5-6.

<sup>37</sup> Gurganus Direct at p. 5, lines 3-4.

<sup>38</sup> Gurganus Direct at p. 5, lines 13-14.

<sup>39</sup> Gurganus Direct at p. 5, lines 7-10.



- 1 • “the systems do not appear to be interconnected or coordinated”<sup>41</sup>
- 2 • negative impacts on work flow<sup>42</sup>
- 3 • “inefficiencies in the new systems”<sup>43</sup>
- 4 • “insufficient training and resources”<sup>44</sup> and
- 5 • consumer frustration about installation and service appointments not being met
- 6 and long hold times.<sup>45</sup>

7 **Q. HAS CENTURYLINK ADMITTED THAT THESE PROBLEMS HAVE LED TO**  
8 **SERVICE QUALITY DETERIORATION?**

9 A. Yes. Mr. Schafer states that these problems have “caused CenturyLink to produce lower  
10 service level metrics than desired since conversion.”<sup>46</sup> In fact, according to a service  
11 quality report from the North Carolina Utilities Commission, CenturyLink has failed to  
12 meet the service quality standards for Business Office Answer Time, Repair Service  
13 Answer Time and Out-of-Service Troubles Cleared within 24 hours.<sup>47</sup> CenturyLink was  
14 asked about the service quality deterioration in North Carolina under cross-examination  
15 at the hearing in the Minnesota merger review proceeding:

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<sup>40</sup> Gurganus Direct at pp. 5-6.

<sup>41</sup> Gurganus Direct at p. 6, lines 16-17.

<sup>42</sup> Gurganus Direct at pp. 7-8.

<sup>43</sup> Gurganus Direct at p. 8, line 8. *See also*, Gurganus Direct at p. 9 (“I also received a report that the new CenturyLink systems are so inefficient (improper orders, bad tickets, delays from being on hold while calling in for information that should have been included on the work orders) that tasks that should take a tech one hour to complete are taking as long as three hours...some of the new systems require a lot of manual override.”)

<sup>44</sup> Gurganus Direct at p. 4, line 14.

<sup>45</sup> Gurganus Direct at p. 10.

<sup>46</sup> Schafer Rebuttal at p. 10, lines 16-18.

<sup>47</sup> North Carolina Utilities Commission Service Quality Report, for period July 1, 2009 through June 30, 2010. Available at:  
<http://www.ncuc.commerce.state.nc.us/consumer/svcqlty.pdf>

1 Q. First, in your opening remarks you mentioned the situation in  
2 North Carolina, you did not mention your compliance with the  
3 service quality standards of the North Carolina Utilities  
4 Commission, are you familiar with that?

5 A. I am not directly familiar with those.

6 Q. All right. Would you accept that there are service quality  
7 standards in that state for telephone service?

8 A. I would assume there are.

9 Q. And I'm looking here at a service quality report that's available on  
10 that commission's website covering the period July 1, 2009  
11 through June 30, 2010. And would you accept that it shows that  
12 your operating companies in North Carolina are out of compliance  
13 with the business office answer time standard?

14 A. If that's what it says.

15 Q. And also that they're out of compliance with the repair service  
16 answer time standard?

17 A. If that's what it says.

18 Q. And also with the out-of-service troubles cleared within 24 hours,  
19 would you accept that also?

20 A. If that's what it says.

21 Q. All right. And just to be clear, your operating companies in that  
22 state are Carolina Telephone and Telegraph and also Central  
23 Telephone Company, correct?

24 A. Correct.

25 Q. Now, let's try to put the North Carolina conversion into a little  
26 perspective. You serve just under a million access lines in North  
27 Carolina, don't you?

28 A. It's right around a million.<sup>48</sup>

29 It is clear that the problems encountered by CenturyLink in North Carolina when  
30 integrating Embarq have resulted in service quality deterioration that has negatively

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<sup>48</sup> Minnesota Docket No. P-421, et al./PA-10-456, Hearing Transcript, Volume 2A (Public) at pp. 65-66 (Duane Ring).

1 impacted customers. And given that CenturyLink serves about one million access lines  
2 in North Carolina, the problems must be widespread.

3 **Q. WHAT SHOULD THE COMMISSION TAKE FROM THE TESTIMONY ABOUT**  
4 **INTEGRATION PROBLEMS IN NORTH CAROLINA?**

5 A. This testimony is additional evidence that reinforces the Joint CLECs' concerns related to  
6 CenturyLink's integration of Qwest if the proposed transaction is approved. This  
7 testimony also undermines the Joint Applicants' attempts to dismiss the Joint CLECs'  
8 concerns and conditions.

9 **Q. PLEASE EXPLAIN HOW MR. SCHAFFER'S TESTIMONY UNDERMINES THE**  
10 **JOINT APPLICANTS' ATTEMPTS TO DISMISS THE CLEC CONCERNS AND**  
11 **CONDITIONS?**

12 A. CenturyLink testified in its direct testimony that "CenturyLink is confident that...the  
13 execution of this integration [of Qwest] will be as smooth and successful as the Embarq  
14 integration and others have been in the past."<sup>49</sup> CenturyLink also testified in its direct  
15 testimony that there are no "potential harms that could result from the [Qwest] merger."<sup>50</sup>  
16 However, in rebuttal testimony, Mr. Schafer testifies that the types of problems  
17 experienced in North Carolina are to be expected with every merger; he states: "With any  
18 integration of large, complex systems, some issues are expected to arise..."<sup>51</sup> He goes

<sup>49</sup> Schafer Direct at p. 6, lines 8-11.

<sup>50</sup> McMillan Direct at p. 16, lines 3-6.

<sup>51</sup> Schafer Rebuttal at p. 7, lines 17-18.

1 even further, stating that “every system conversion or integration inevitably is going to  
2 have some issues.”<sup>52</sup> Despite claiming in its direct testimony that there are no potential  
3 harms that could result from the proposed transaction, CenturyLink now states that  
4 problems are “inevitabl[e]” in every merger (and has admitted that these types of  
5 problems led to service quality deterioration in North Carolina).

6 **Q. DOES MR. SCHAFER’S TESTIMONY UNDERMINE THE JOINT**  
7 **APPLICANTS’ ATTEMPTS TO DISMISS CLEC CONCERNS IN OTHER**  
8 **WAYS?**

9 A. Yes. As explained above, CenturyLink has stated that “differences between the old  
10 systems and new systems” and “lack of familiarity with the new systems” have led to  
11 integration problems and service quality deterioration in North Carolina. However, in  
12 responding to my concerns about post-merger OSS integration, Mr. Hunsucker states:  
13 “Mr. Gates’ speculation that § 271 compliant systems might just ‘disappear’ is  
14 nonsense.”<sup>53</sup> Despite Mr. Hunsucker’s assertion, the testimony about the problems in  
15 North Carolina shows that Embarq system functionality did just “disappear.” Mr.  
16 Gurganus testified that:

17 Prior to the merger between Embarq and CenturyLink, if a concentrator  
18 went down, the business office would issue an outage ticket that would  
19 alert people throughout the system that there is a known outage in a  
20 specific area. That meant when customers called to report the outage, the  
21 customer service representatives would be able to tell them the company  
22 knew about the outage, that it was being worked on, and even an estimated

<sup>52</sup> Schafer Rebuttal at p. 8, lines 22-23.

<sup>53</sup> Hunsucker Rebuttal at p. 16, lines 8-9.

1 time the service would be restored. Under the new system, the business  
2 office can take a trouble report, but it is not issued as an outage report, so  
3 our customers cannot be told that we may already be working on the  
4 problem or when their service might be restored.<sup>54</sup>

5 While Mr. Schafer testifies that it is “necessary” to integrate Embarq and CenturyTel  
6 systems “so that all employees are working off the same platform and using the same  
7 processes[,]”<sup>55</sup> Dr. Ankum and I explained in our direct testimony that the Joint  
8 Applicants have failed to provide critical details about their post-merger systems  
9 integration plans. As I explain below, the minimal information that Joint Applicants have  
10 provided is cause for concern.

11 **Q. HAVE JOINT APPLICANTS INDICATED THAT OSS *WILL* CHANGE POST-**  
12 **MERGER?**

13 A. Yes. I discussed this issue at pages 39-40 of my direct testimony. In addition,

14 **\*\*\*BEGIN HIGHLY CONFIDENTIAL** [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

<sup>54</sup> Gurganus Direct at pp. 8-9.

<sup>55</sup> Schafer Rebuttal at p. 9, lines 8-10.

1 [REDACTED]  
2 [REDACTED] END HIGHLY CONFIDENTIAL\*\*\*]<sup>56</sup>

3 **Q. HAVE JOINT APPLICANTS INDICATED THAT QWEST'S EXISTING OSS**  
4 **WILL CHANGE POST-MERGER?**

5 A. Yes. Discovery responses that CenturyLink and Qwest submitted in response to Integra's  
6 third set of discovery in Arizona indicate that at least Qwest's CLEC-facing OSS  
7 interface for Local Service Requests ("LSRs") will be modified or replaced if the  
8 proposed transaction is approved.<sup>57</sup> This particular OSS interface is used to place orders  
9 for most unbundled network elements used by CLECs to provide local service.  
10 Specifically, CenturyLink states: "...after the systems of the [merged] company have  
11 been consolidated after the merger, the company intends to support a [unified ordering  
12 model] UOM<sup>58</sup> interface for LSRs."<sup>59</sup> At the same time, Qwest states that, "IMA is not

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<sup>56</sup> See also CenturyLink's Responses to Arizona Corporation Commission Staff's Seventh Set of Data Requests to CenturyLink, ACC Docket Nos. T-01051B-10-0194 et al., at 9 (dated Aug. 13, 2010) (response to Arizona Corporation Commission Staff Data Request 7.15 by Mark Harper, Director of Regulatory Operations and Policy for CenturyLink) (stating that "CenturyLink anticipates improved wholesale customer service over time through the consolidation of OSS and billing systems and sales and account management teams").

<sup>57</sup> I made this same point in my direct testimony at pp. 39-40 using public discovery responses from Minnesota. Since that time, Joint Applicants have provided the same discovery responses in Arizona. I reiterate my point here with the Arizona-specific data request responses.

<sup>58</sup> Unified Ordering Model ("UOM") Guidelines Document, established by the Ordering and Billing Forum ("OBF"), are described as follows: "The Unified Ordering Model (UOM) describes a complete set of system documentation using an end-to-end structured methodology. The scope of UOM encompasses business requirements, analysis, design and implementation." <http://www.atis.org/obf/UOMASRsumm.asp>

<sup>59</sup> CenturyLink Response to Integra Arizona Data Request No. 3-9. Integra asked CenturyLink: "Please indicate whether, after all of the systems of the Merged Company have been consolidated, the interface that the Merged Company will provide will support a UOM interface for LSRs." CenturyLink provided a supplemental response to Integra Data Request No. 3-9 stating: "CenturyLink clarifies that no decisions have been made regarding the potential consolidation of systems after the merger." CenturyLink's "clarification" does nothing to alleviate the concerns and potential public interest harms related to systems integration, and only adds to the uncertainty.

1 UOM compliant...”<sup>60</sup> These responses necessarily mean that the interface Qwest  
2 currently uses to process CLEC LSRs (Interconnect Mediated Access or “IMA”) will no  
3 longer be available in its present form. CenturyLink will either replace it or modify it.  
4 Given that CenturyLink states that its OSS is UOM compliant,<sup>61</sup> the chances are likely  
5 that CenturyLink would replace Qwest’s OSS with CenturyLink’s legacy OSS.

6 **\*\*\*BEGIN HIGHLY CONFIDENTIAL** [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED] **END HIGHLY CONFIDENTIAL\*\*\*]**

16 **Q. IS THERE INFORMATION WHICH SHOWS THAT INTEGRATING**  
17 **CENTURYLINK’S SYSTEMS INTO QWEST’S REGION WOULD REDUCE**  
18 **THE FUNCTIONALITY AND EFFICIENCY OF QWEST’S SYSTEMS?**

<sup>60</sup> Qwest Response to Integra Arizona Data Request No. 3-11, dated September 24, 2010. Integra asked Qwest: “Is the interface that Qwest currently uses to process LSRs for CLECs a UOM interface. If so...” Qwest also indicated in its response: “IMA has its own XML Gateway and does accept XML files for LSR order submission...IMA only offers a customer GUI written in java or the custom XML interface mentioned above.”

<sup>61</sup> “I mean, our system is also UOM compliant, universal ordering module compliant, now.” Minnesota Docket P-421 et al./PA-10-456, Hearing Transcript Volume 2B (public) at p. 149 (Hunsucker).

1 A. Yes. There is ample information in this regard. I have attached to my testimony Exhibit  
2 TG-16 a matrix which compares the functionality of CenturyLink and Qwest OSS for  
3 handling Local Service Requests (“LSRs”). This exhibit, which is based on the discovery  
4 responses provided by CenturyLink and Qwest (attached as Exhibit TG-17), shows that  
5 there are numerous functionalities and order types related to LSRs that are available from  
6 Qwest’s OSS but are not available from CenturyLink’s OSS. Some of these examples  
7 include, for the pre-order functions, Raw Loop Data Validation and Loop Qualification  
8 (for ISDN, ADSL, and commercial broadband services). Each of these have a “no” in the  
9 CenturyLink EASE column for which there is a “yes” in the Qwest IMA column in  
10 Exhibit TG-16. This is an important difference between EASE, which does not have this  
11 pre-order functionality, and Qwest’s IMA, which does. Qwest’s Raw Loop Data and  
12 Loop Qualification pre-order tool helps CLECs to determine the likelihood of being able  
13 to provide an end user with xDSL service *before the CLEC* places an order for the  
14 customer. This process allows a CLEC to review loop make-up information when trying  
15 to determine what service may best meet the customer’s needs before the LSR process  
16 even starts. I also discussed some differences between the functionalities of the two  
17 companies’ OSS in my direct testimony.<sup>62</sup>

18 Furthermore, [\*\*\*BEGIN CONFIDENTIAL [REDACTED]

19 [REDACTED]

20 [REDACTED]

<sup>62</sup> Gates Direct at pp. 56-57.



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[REDACTED]

[REDACTED] **END CONFIDENTIAL\*\*\*]** This

diagram was provided by CenturyLink in response to Integra Data Request as

Confidential Attachment Integra-22c.2. This diagram is attached to this testimony as

Exhibit TG-11 (confidential). The diagram [**\*\*\*BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**END CONFIDENTIAL\*\*\*]** As I explained at page 49 of my direct testimony, Access

Care is CenturyLink's trouble reporting process through which a wholesale customer

calls into Special Service Operations and CenturyLink manually records the information

1 on a trouble ticket. I explained at pages 56-57 of my direct testimony that this manual  
2 intervention, [\*\*\*BEGIN CONFIDENTIAL [REDACTED]  
3 [REDACTED] END CONFIDENTIAL\*\*\*], decreases efficiency due to the lack of  
4 automation and electronic flow through and increases the possibility for human error.  
5 [\*\*\*BEGIN CONFIDENTIAL [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] END  
13 CONFIDENTIAL\*\*\*]

14 This increased risk of human error is a key reason why the FCC, when evaluating a  
15 BOC's 271 capabilities, evaluates the amount of electronic flow through offered by the  
16 BOC. The FCC has looked to order flow through as a potential indicator of a wide range  
17 problems that underlie a determination of whether a BOC provides nondiscriminatory  
18 access to its OSS.<sup>63</sup> The FCC has concluded that, to meet a BOC's ongoing 271  
19 obligations, the BOC must show that its OSS are capable of flowing through orders in a

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<sup>63</sup> *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, Memorandum Opinion and Order, WC Docket No. 02-314, FCC 02-332, December 23, 2002 ("Qwest 9 State 271 Order") at ¶ 85.

1 manner that affords competing carriers a meaningful opportunity to compete and its OSS  
2 are capable of flowing through orders in substantially the same time and manner as for  
3 retail orders.<sup>64</sup> Also important to the analysis of whether a BOC is providing access to  
4 ordering functions in a nondiscriminatory manner is the BOC's ability to return timely  
5 order confirmation and reject notices, accurately process manually handled orders, and  
6 scale its system.<sup>65</sup>

7 Despite the significance of flow through, CenturyLink has indicated that it *does not even*  
8 *track* the number of orders that flow through systems without manual intervention.<sup>66</sup> In  
9 contrast, Qwest "routinely provides" flow through information on its website.<sup>67</sup> The FCC  
10 said that it expects "flow through rates will *improve* over time."<sup>68</sup> Any deterioration in  
11 flow through [\*\*\*BEGIN CONFIDENTIAL [REDACTED]  
12 **END CONFIDENTIAL\*\*\*]** would reflect serious merger-related harm, as well as  
13 backsliding with respect to the Company's BOC obligations.

<sup>64</sup> Qwest 9 State 271 Order at ¶106.

<sup>65</sup> Qwest 9 State 271 Order at ¶¶ 85 and 106.

<sup>66</sup> CenturyLink response to Integra Arizona Data Request No. 25(f) ("CenturyLink does not currently track the number of orders that flow through the systems without manual intervention. However, the company remains committed to a quality customer experience in all states and has staffed its wholesale operations team with the resources necessary to deliver CLEC service in a timely, high quality manner.")

<sup>67</sup> Qwest response to Integra Data Request No. 25(g).

<sup>68</sup> Qwest 9 State 271 Order at ¶111 (emphasis added).

1 **Q. MR. SCHAFER STATES THAT THE PROBLEMS EXPERIENCED DURING**  
2 **THE INTEGRATION OF EMBARQ IN NORTH CAROLINA ARE**  
3 **MANAGEABLE AND SHOULD NOT RECUR.<sup>69</sup> PLEASE RESPOND.**

4 A. Mr. Schafer's testimony in this regard appears to be another attempt by CenturyLink to  
5 gloss over the integration problems it has encountered and the potential harm facing  
6 CLECs and their end user customers in Qwest's region if the proposed transaction is  
7 approved. On October 1, 2010 (about three weeks before Mr. Schafer's rebuttal  
8 testimony), CWA witness Mr. Gurganus submitted pre-filed surrebuttal testimony in the  
9 Minnesota merger review proceeding which provided updated information about  
10 CenturyLink's integration problems. The CWA witness said:

11 The Leaders in Ohio, where Embarq systems were converted to  
12 CenturyLink systems beginning in October of 2009, responded that they  
13 still were not back to the level of efficiency they had before the cutover.  
14 That is to say, even after a year, they are still experiencing so-called  
15 transition problems. In particular, they report continued problems with  
16 missing or incomplete order information so that they must ask the  
17 customers what they ordered and hope that they have the necessary  
18 equipment on hand to complete the order.

19 One tech in Ohio described arriving at an attorney's office this week with  
20 an incomplete order. When the tech asked the customer what services and  
21 equipment they wanted, the customer berated him, saying he spent three  
22 hours on the phone trying to place the order and he wasn't going to spend  
23 anymore time repeating himself.<sup>70</sup>

<sup>69</sup> Schafer Rebuttal at p. 8, lines 13-17.

<sup>70</sup> Pre-Filed Surrebuttal Testimony of Jasper Gurganus on behalf of the Communications Workers of America (CWA), Minnesota Docket No. P-421, et al./PA-10-456, October 1, 2010 ("Gurganus Minnesota Surrebuttal Testimony"), at p. 2, lines 5-17. Available at:  
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={DC87A4D2-0C00-417A-8A4E-01B408BE6CE9}&documentTitle=201010-55078-01>

1 The CWA also provided an update on the integration problems in North Carolina: “our  
2 North Carolina techs report that nothing has really improved.”<sup>71</sup> The CWA reports that  
3 problems are still occurring regarding “missing or incomplete information on orders[,]”  
4 “techs in North Carolina are struggling to complete orders on time[,]” and “employees  
5 are still working overtime trying to complete tasks.”<sup>72</sup>

6 **Q. HAS CENTURYLINK PROVIDED ANY INFORMATION TO SHOW THAT IT**  
7 **COULD MANAGE OR AVOID SIMILAR INTEGRATION PROBLEMS IN**  
8 **QWEST’S REGION?**

9 A. No. What Mr. Schafer fails to mention is that a problem that may be manageable in  
10 North Carolina may not be manageable in Arizona. Since CenturyLink has served  
11 primarily rural areas, it has no experience with the volumes and types of orders,  
12 complexity of systems, etc. that it will have to manage in Qwest’s BOC territory if the  
13 proposed transaction is approved. There is no evidence that CenturyLink could manage  
14 problems that may arise during its efforts to integrate Qwest if the proposed transaction is  
15 approved. And because Qwest has significantly larger wholesale operations in Arizona  
16 (and elsewhere)<sup>73</sup> than does CenturyLink, the risk to wholesale customers is higher with

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<sup>71</sup> Gurganus Minnesota Surrebuttal Testimony at pp. 2-3.

<sup>72</sup> Gurganus Minnesota Surrebuttal Testimony at p. 3, lines 6-10.

<sup>73</sup> Gates Direct at pp. 24-26. At page 14 of his rebuttal testimony, Mr. Hunsucker suggests that scale and experience of CenturyLink’s wholesale operations “compares quite well” to Qwest’s wholesale operations. As support, he point to: (1) “almost two thousand active CLEC agreements,” (2) about 1 million ASRs and LSRs CenturyLink is expected to process in 2010, (3) “a CLEC performance assurance plan in Nevada that is substantially similar to Qwest’s Arizona Performance Assurance Plan” and (4) 271 services purchased from CenturyLink. However, Mr. Hunsucker makes no attempt to compare: CenturyLink’s and Qwest’s CLEC agreements; the volume of each company’s ASR/LSR volumes; CenturyLink’s performance assurance plan to

1 the proposed transaction. Problems in loading outside plant records is just one out of  
2 many problems that could occur if CenturyLink attempted to replace Qwest's OSS with  
3 CenturyLink's OSS post-merger. Mr. Schafer describes a root cause of the problems  
4 with the Embarq North Carolina conversion as:

5 some of the outside plant records were loaded incorrectly. The way in  
6 which plant was constructed in the legacy Embarq areas was not  
7 consistent between areas and not consistent with the legacy CenturyTel  
8 areas. As a result, records for some of the devices initially did not load  
9 correctly in the conversion. This led to certain problems that one of the  
10 CWA witnesses cited in testimony.<sup>74</sup>

11 Data inconsistencies are not uncommon in legacy systems. As reported by Liberty  
12 Consulting in its FairPoint Post-Cutover Status Report on April 1, 2009, in regards to the  
13 FairPoint conversion:

14 data problems have affected a large number of accounts. These  
15 unexpected problems have included such issues and incorrect data  
16 mapping and misinterpretation of Verizon data, and have had a major  
17 impact on such critical function as loop qualification, validation of  
18 customer addresses, assignment of telephone numbers, and identification  
19 of serving wire centers for customers.<sup>75</sup>

20 CenturyLink and Qwest have provided no evidence that such data inconsistencies, and  
21 the resulting conversion problems, are any less likely with the proposed transaction with  
22 Qwest. To the contrary, there is ample evidence that data within Qwest's systems and

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Qwest's performance assurance plans; or the types, volumes, or rates of 271 services offered by each company. Mr. Hunsucker's claim that CenturyLink "compares quite well" does not square with the facts I provided at pages 24-26 of my direct testimony showing that Qwest's wholesale operations are much larger than CenturyLink's, both in Arizona and company-wide.

<sup>74</sup> Schafer Rebuttal at p. 8, lines 5-9.

<sup>75</sup> Available at:

<http://www.puc.nh.gov/telecom/Filings/FairPoint/Post-Cutover/FairPoint%20Post-Cutover%20Status%20Report%2004-01-09.pdf>

1 processes varies by region and thus such inconsistencies and related data integrity  
2 conversion issues are likely to occur in any Qwest-CenturyLink integration. At least  
3 some of the Qwest regional differences stem from the legacy companies of Mountain  
4 Bell (now known as Qwest Central Region), Pacific Northwestern Bell (now known as  
5 Qwest West Region), and Northwestern Bell (now known as Qwest Eastern Region) that  
6 later became part of US West, and then Qwest. Therefore, this transaction presents not  
7 only the risk of data inconsistencies between CenturyLink legacy areas and Qwest legacy  
8 areas, but also between and among each of the legacy Qwest Regions and each of the  
9 legacy CenturyLink areas. Evidence of regional differences include, for example, Qwest  
10 implementing system business rules that vary by Qwest Region;<sup>76</sup> Qwest periodically  
11 sending notices to CLECs indicating that it is unable to process orders in one or more  
12 (but not all) of the three Qwest Regions;<sup>77</sup> and Qwest implementing a change request to

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<sup>76</sup> See Local Service Ordering Guide (LSOG), at <http://www.qwest.com/wholesale/clecs/lsog.html> (with links to forms which identify Qwest Regional Differences). For example, for Exchange Company Circuit ID (ECCKT), the Qwest LSOG (on page 24 of the Loop Services form and on page 24 of the Loop Service With Number Portability form) requires CLECs to use different formats for circuit identification depending on the Qwest Region. In fact, the last two alpha characters of the ECCKT indicate which Qwest Region (with MS being Central, PN being Western, and NW being Eastern). Another example reflects differences in Qwest's Service Order Processor (SOP) by Region. In the Qwest LSOG (on page 20 of Pending Service Order Notification Form), Qwest informs CLECs of action taken by Qwest differently depending on regional SOP. For Eastern and Western Qwest Regions, Qwest provides an action code ("R") to CLECs to show that, for existing information, Qwest has "recapped" that information on the PSON sent to CLEC. For the Central Region, the same information is provided by not populating the action code. The Qwest back-end systems (SOP) handle the Qwest Regions differently, so the information is presented to CLECs differently. There are dozens of such regional differences noted in the Qwest LSOG.

<sup>77</sup> See, e.g., Qwest Systems Notification Event **Ticket Number: 4697877** (Aug. 14, 2010), stating: "**Description of Trouble:** IMA pre-order function 'Validate Address' was not available in the Eastern region; **Business Impact:** You may have received an error when attempting this Pre-Order function. Your LSR could have been submitted but may have to be manually processed resulting in delayed FOC's (Firm Order Confirmations)." <http://systemevents.qwestapps.com/notices/1433>. The same problem occurred in 2007, but for the Qwest Central Region. See Event Ticket Number 3171819 (Sept. 25, 2007), available at <http://systemevents.qwestapps.com/notices/775>. See, e.g., Qwest Systems Notification Event **Ticket Number:**

1 access Customer Service Records for VoIP first in the Central and Eastern Qwest  
2 Regions and later in the West Region, because of complexities unique to the Qwest West  
3 Region.<sup>78</sup> Attached to my testimony as Exhibit TG-12 is an excerpt from Qwest's online  
4 Product Catalog called "Pre-Ordering Overview." Exhibit TG-12 contains a Qwest table  
5 that describes how customer ("CUS") codes "may change during the bill posting process  
6 after a Completion Notice ("CN") is issued. The changes to the CUS Code are based  
7 upon service order activity, product, and region."<sup>79</sup> The table contains a complex  
8 description that reflects how Qwest's back-end service order processing ("SOP") systems  
9 process CLEC orders differently depending on the Qwest Region (Central, East, or  
10 West).

11 **Q. ARE THERE OTHER REASONS TO QUESTION CENTURYLINK'S CLAIM**  
12 **THAT THE PROBLEMS IT ENCOUNTERS DURING INTEGRATION ARE**  
13 **"MANAGEABLE"?**

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4697877 (Aug. 14, 2010), stating: "**Description of Trouble:** IMA pre-order function 'Validate Address' was not available in the Eastern region; **Business Impact:** You may have received an error when attempting this Pre-Order function. Your LSR could have been submitted but may have to be manually processed resulting in delayed FOC's (Firm Order Confirmations)." <http://systemevents.qwestapps.com/notices/1433>. The same problem occurred in 2007, but for the Qwest Central Region. See Event Ticket Number 3171819 (Sept. 25, 2007), available at <http://systemevents.qwestapps.com/notices/775>.

<sup>78</sup> See Qwest CR # SCR042108-01, Qwest May 5, 2009, CMP Meeting Minutes, stating: "Mark Coyne-Qwest said that this CR deployed on 4/20/09 with the IMA 25.0 Release. Mark reminded everyone that partial CSRs for VOIP DID numbers will not be available in the Western Region until 6/22/09. Mark said this was communicated on the original release notice and will be sending out a subsequent notice later this week." See [http://www.qwest.com/wholesale/cmp/archive/CR\\_SCR042108-01.html](http://www.qwest.com/wholesale/cmp/archive/CR_SCR042108-01.html).

<sup>79</sup> <http://www.qwest.com/wholesale/clecs/preordering.html>.



1 A. Yes. I do not know how Mr. Schafer defines a “manageable” problem,<sup>80</sup> but given that  
2 the problems in North Carolina “produce[d] lower service level metrics than desired since  
3 conversion[,]”<sup>81</sup> CenturyLink did not manage the problems sufficiently to avoid a  
4 deterioration in service quality. Again, if this type of service quality deterioration  
5 occurred during CenturyLink’s integration of Qwest, the problems would have a more  
6 widespread impact on both wholesale and retail customers.

7 In addition, one of the ways CenturyLink has attempted to “manage” the problems is to  
8 force employees to work longer hours. CWA witness Mr. Gurganus states: “CWA  
9 members in Ohio and North Carolina have been placed on mandatory overtime.”<sup>82</sup>  
10 CenturyLink has provided no evidence demonstrating that the workforce in Qwest’s  
11 region would be capable of handling integration problems by working more hours.

12 **Q. IS THERE INFORMATION THAT RAISES FURTHER QUESTIONS ABOUT**  
13 **CENTURLINK’S ABILITY TO “MANAGE” PROBLEMS DURING**  
14 **INTEGRATION OF QWEST BY FORCING EMPLOYEES TO WORK LONGER**  
15 **HOURS?**

16 A. Yes. Joint Applicants have testified that “Qwest has been reducing its headcount in  
17 wholesale operations.”<sup>83</sup> Furthermore, [\*\*\*BEGIN HIGHLY CONFIDENTIAL ■

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<sup>80</sup> Schafer Rebuttal at p. 8, lines 13-14.  
<sup>81</sup> Schafer Rebuttal at p. 10, lines 16-18.  
<sup>82</sup> Gurganus Direct at p. 11, lines 21-22.  
<sup>83</sup> Hunsucker Rebuttal at p. 67, lines 20-21.

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[REDACTED]

[REDACTED] END HIGHLY CONFIDENTIAL\*\*\*]

**Q. THE INTEGRATION PROBLEMS CENTURYLINK ENCOUNTERED IN NORTH CAROLINA AND OHIO INCLUDED INCORRECT DATA MAPPING, DISPATCH INEFFICIENCIES, AND RECORDS BEING LOADED INTO SYSTEMS INCORRECTLY. HAVE JOINT APPLICANTS PROVIDED ADDITIONAL INFORMATION WHICH SHOWS THAT THESE SAME PROBLEMS COULD OCCUR DURING AN INTEGRATION OF QWEST?**

**A. [\*\*\*BEGIN HIGHLY CONFIDENTIAL [REDACTED]**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] END HIGHLY CONFIDENTIAL\*\*\*]

The integration problems CenturyLink has encountered in North Carolina negatively

1 impacted dispatch efficiency and service delivery.<sup>84</sup> In other words, [\*\*\*BEGIN  
2 HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY  
3 CONFIDENTIAL\*\*\*] were applied in North Carolina, service quality deteriorated.<sup>85</sup>

4 Likewise, [\*\*\*BEGIN HIGHLY CONFIDENTIAL [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED] END HIGHLY CONFIDENTIAL\*\*\*] CenturyLink

10 replaced legacy Embarq systems with legacy CenturyTel systems with less functionality  
11 [\*\*\*BEGIN HIGHLY CONFIDENTIAL [REDACTED]

12 [REDACTED] END  
13 HIGHLY CONFIDENTIAL\*\*\*]; data about outside plant records were not mapped

14 correctly [\*\*\*BEGIN HIGHLY CONFIDENTIAL [REDACTED]  
15 [REDACTED] END HIGHLY CONFIDENTIAL\*\*\*]; data was

16 misinterpreted and not loaded correctly [\*\*\*BEGIN HIGHLY CONFIDENTIAL [REDACTED]  
17 [REDACTED] END

18 HIGHLY CONFIDENTIAL\*\*\*]; a deterioration in service quality occurred

<sup>84</sup> See, e.g., Gurganus Direct at pp. 8-10.

<sup>85</sup> Schafer Rebuttal at p. 10, lines 16-18 (“The problems encountered in North Carolina on top of the heavy seasonal summer load caused CenturyLink to produce lower service level metrics than desired since conversion.”)

1 **[\*\*\*BEGIN HIGHLY CONFIDENTIAL** [REDACTED]

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED] **END HIGHLY CONFIDENTIAL\*\*\*]** service-impacting

5 problems can and do occur.

6 **Q. MR. SCHAFER CLAIMS THAT THE INTEGRATION PROBLEMS**  
7 **ENCOUNTERED DURING THE INTEGRATION OF EMBARQ ARE**  
8 **IRRELEVANT TO THE PROPOSED TRANSACTION BECAUSE THERE ARE**  
9 **NO LEGACY EMBARQ TERRITORIES IN ARIZONA.<sup>86</sup> PLEASE RESPOND.**

10 **A.** Mr. Schafer's claim is a red herring. Integration problems are not unique to transactions  
11 involving Embarq as Mr. Schafer suggests, as evidenced by the Hawaiian Telcom,  
12 FairPoint, and Frontier transactions discussed in the Joint CLECs' direct testimony.  
13 Indeed, Mr. Schafer says: "*every* system conversion or integration *inevitably* is going to  
14 have some issues."<sup>87</sup>

15 Because CenturyLink will be making post-merger integration decisions on a company-  
16 wide (as opposed to a state-wide) basis, whether there are legacy CenturyLink exchanges  
17 in a state or not has no bearing on the changes that CenturyLink will make post-merger.  
18 For example, if CenturyLink were to decide to replace Qwest's CLEC-facing OSS  
19 interface that handles LSRs (IMA) with CenturyLink's CLEC-facing OSS interface that

<sup>86</sup> Schafer Rebuttal at p. 8, lines 17-18.

<sup>87</sup> Schafer Rebuttal at p. 8, lines 22-23. (emphasis added)

1 handles LSRs (EASE), that change would likely be implemented in Qwest's 14-state  
2 region (not just those states where there are legacy CenturyLink exchanges) and the  
3 CLECs in Arizona would be significantly impacted even though there are no legacy  
4 CenturyLink exchanges in Arizona.

5 **Q. MR. SCHAFFER STATES THAT CENTURYLINK CHOSE TO INTEGRATE**  
6 **EMBARQ ON A PHASED BASIS INSTEAD OF A "FLASH CUT" OF ALL**  
7 **EMBARQ CUSTOMERS AT ONCE TO MINIMIZE SYSTEM-WIDE**  
8 **PROBLEMS AND MITIGATE POSSIBLE NEGATIVE IMPACTS ON**  
9 **CUSTOMERS AND EMPLOYEES.<sup>88</sup> HAS THIS BEEN SUCCESSFUL IN**  
10 **AVOIDING ALL PROBLEMS?**

11 A. No, as evidenced by Mr. Schaffer's own rebuttal testimony. Despite integrating Embarq  
12 on a "phased basis" rather than a "flash cut," CenturyLink has still encountered service-  
13 impacting problems. And even if a phased approach decreases problems for states that  
14 are converted in later phases,<sup>89</sup> this provides little comfort for those states that are  
15 converted in early phases and will serve as the test cases.

16 **Q. ARE THERE OTHER REASONS WHY CENTURYLINK'S RELIANCE ON A**  
17 **PHASED APPROACH DOES NOT ALLEVIATE YOUR CONCERNS?**

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<sup>88</sup> Schafer Rebuttal at pp. 9-10. See also, McMillan Rebuttal at p. 12.

<sup>89</sup> "CenturyLink takes what was learned from each previous market conversion and applies that learning to future conversions." Schafer Rebuttal at p. 9, lines 22-23.

1 A. Yes. CenturyLink's "phased" approach means that CLECs will be forced to  
2 accommodate the phase-in on a state-by-state basis, which will require CLECs operating  
3 in multiple Qwest states to themselves use different platforms to interact with  
4 CenturyLink depending on the state.

5 Furthermore, CenturyLink has provided no details regarding its "go/no go criteria," or in  
6 other words, the criteria for determining if the conversion should move ahead as  
7 scheduled or should be delayed until issues such as data validation efforts or testing can  
8 take place. The fact that the Embarq North Carolina conversion experienced the  
9 problems Mr. Schafer discusses calls into question what CenturyLink's "go/no go  
10 criteria" is and what testing is taking place prior to conversion. The fact that  
11 CenturyLink did not provide adequate training to its employees on using new systems is  
12 apparently also not adequately accounted for in the "go/no go" decision.

13 **2. CenturyLink's integration of Wisconsin exchanges**

14 **Q. ARE THERE ANY OTHER EXAMPLES OF CENTURYLINK GLOSSING OVER**  
15 **PREVIOUS INTEGRATION EXPERIENCES?**

16 A. Yes. CenturyLink points to exchanges it has acquired from a BOC, Verizon,<sup>90</sup> to  
17 demonstrate that there have been "successful transactions combining ILEC operations –

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<sup>90</sup> In the Minnesota merger review proceeding, CenturyLink pointed to exchanges acquired from both Verizon *and* Ameritech to "demonstrate that CenturyLink has in fact integrated operations and personnel in exchanges previously managed by BOCs." Rebuttal Testimony of John Jones, Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010 at p. 23. In Arizona, however, CenturyLink mentions only the acquisitions of Verizon exchanges and omits the discussion of the acquisition of Ameritech exchanges. As will be discussed below, a number of problems arose after CenturyTel's acquisition of Ameritech's exchanges in Wisconsin, including a

1 involving...properties sold by Regional Bell Operating Companies ('RBOCs'), and  
2 combinations of RBOCs..."<sup>91</sup> Mr. Glover states: "CenturyLink successfully has acquired  
3 and integrated Verizon-owned properties that totaled nearly 2 million access lines in  
4 Wisconsin, Missouri, Arkansas, and Alabama since the year 2000..."<sup>92</sup>

5 **Q. IS IT FAIR TO ASSUME THAT THESE PRIOR TRANSACTIONS GAVE**  
6 **CENTURYLINK THE *BOC EXPERIENCE* OR PROVIDED CENTURYLINK**  
7 **WITH THE TYPE OF EXPERIENCE IT NEEDS TO SUCCESSFULLY**  
8 **INTEGRATE QWEST'S BOC OPERATIONS, AS MR. GLOVER SEEMS TO**  
9 **SUGGEST?**

10 A. No. These acquisitions involved primarily rural exchanges, which are not representative  
11 of all the exchanges CenturyLink would acquire in the proposed transaction. For  
12 example, for the exchanges CenturyTel acquired from Verizon in Arkansas, Missouri and  
13 Wisconsin in 2000, the exchanges in Arkansas had an average of 2,179 lines per  
14 exchange, the exchanges in Missouri had an average of 1,187 lines per exchange, and the  
15 exchanges in Wisconsin had an average of 1,679 lines per exchange.<sup>93</sup> In its 10-K  
16 describing these acquisitions, CenturyTel stated that it "conducts its telephone operations  
17 in rural, suburban and small urban communities..." and that "[c]ompetition...has thus far

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price increase on competitive providers that violated state statute. CenturyLink excluded the discussion of its acquisition of Ameritech exchanges in Wisconsin from its merger testimony in Arizona.

<sup>91</sup> Glover Rebuttal at p. 32, lines 11-13. See *also*, Schafer Rebuttal at p. 2, lines 17-19.

<sup>92</sup> Glover Rebuttal at p. 32, lines 15-17.

<sup>93</sup> CenturyLink's 10-K for year-ending 2000 states: "the Company purchased approximately 231,000 telephone access lines...comprising 106 exchanges throughout Arkansas...purchased approximately 127,000 telephone access lines...comprising 107 exchanges throughout Missouri...purchased approximately 70,500 telephone access lines...comprising 42 exchanges throughout Wisconsin..."

1 affected large urban areas to a greater extent than rural, suburban and small urban areas  
2 such as those in which the Company's operations are located." Regarding the  
3 acquisitions of Verizon exchanges in Missouri and Alabama in 2002 CenturyLink  
4 described them as "predominantly rural markets."<sup>94</sup>

5 The sizes of the exchanges involved in these prior acquisitions are much smaller than  
6 some of the exchanges CenturyLink would acquire under the proposed transaction. For  
7 example, there are 32,735 network access lines in the Chandler-Main Arizona exchange  
8 (CHNDAZMA).<sup>95</sup> This means that Qwest's Chandler-Main exchange is between 15  
9 times and 27 times the size of the exchanges acquired from Verizon (measured in line  
10 counts). Other Qwest exchanges in Arizona are similar to the Chandler-Main exchange,  
11 containing access lines substantially in excess of the number of access lines in the  
12 exchanges that CenturyLink acquired from Verizon.<sup>96</sup>

13 The exchanges that CenturyTel acquired from Verizon were, by CenturyTel's own  
14 words, rural markets that did not provide CenturyLink with a similar experience as a  
15 BOC, which also operates in large, densely populated exchanges. Nor does the  
16 integration of these primarily rural properties give CenturyLink a similar experience as  
17 would occur in an attempt to integrate Qwest. That Mr. Glover would even suggest that

<sup>94</sup> CenturyTel 10-K, YE 12/31/02.

<sup>95</sup> [http://www.qwest.com/cgi-bin/iconn/iconn\\_centraloffice.pl](http://www.qwest.com/cgi-bin/iconn/iconn_centraloffice.pl)

<sup>96</sup> For example, Qwest's Superstition West exchange (SPRSAZWE) has 36,183 network access lines, Tucson North exchange (TCSNAZNO) has 32,785 network access lines, Rincon exchange (TCSNAZRN) has 31,718 network access lines, and McClintock exchange (TEMPAZMC) has 26,779 network access lines. See, [http://www.qwest.com/cgi-bin/iconn/iconn\\_centraloffice.pl](http://www.qwest.com/cgi-bin/iconn/iconn_centraloffice.pl)



1 these previous transactions somehow give CenturyLink the experience it needs to  
2 integrate an entire BOC raises questions about how seriously CenturyLink is taking its  
3 BOC obligations.

4 **Q. CENTURYLINK HAS MADE NUMEROUS CLAIMS ABOUT ITS ABILITY TO**  
5 **“SUCCESSFULLY” INTEGRATE COMPANIES AND MAINTAIN THE**  
6 **“STATUE QUO” POST-MERGER.<sup>97</sup> DOES PAST EXPERIENCE CALL THESE**  
7 **CLAIMS INTO QUESTION?**

8 A. Yes. After acquiring exchanges in Wisconsin, CenturyTel raised rates, and did so  
9 without Commission approval and in violation of Wisconsin statutes.<sup>98</sup>

10 **Q. PLEASE ELABORATE ON THE CENTURYTEL RATE INCREASES**  
11 **FOLLOWING THE ACQUISITION OF WISCONSIN EXCHANGES.**

12 A. After CenturyTel acquired 19 exchanges in Wisconsin, it raised rates for local services  
13 and access services.

14 Regarding CenturyLink’s access rate increase, the Wisconsin Commission found that  
15 CenturyTel “increased its access rates on December 1, 1998, *without a hearing and*  
16 *Commission approval*, and that such action was a violation of Wis. Stat. §  
17 196.20(2m).”<sup>99</sup> The Wisconsin Commission ordered CenturyTel to issue refunds, but it

<sup>97</sup> Glover Rebuttal at p. 26, line 11; p. 32, line 15; Hunsucker Rebuttal at p. 4, lines 13-14; p. 33, lines 2-3; p. 34, lines 1-2.

<sup>98</sup> These price increases apparently occurred in the exchanges that CenturyTel acquired from Ameritech in 1998.

<sup>99</sup> Wisconsin Public Service Commission Docket No. 2815-TI-101, Final Decision, April 18, 2001. [http://psc.wi.gov/apps35/ERF\\_view/viewdoc.aspx?docid=3117](http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=3117) (emphasis added)

1 took complaints from competitive carriers to initiate an investigation of the increases, and  
2 about two years of litigation. It took CenturyTel about two and one-half years from the  
3 time of its unauthorized and unilateral rate increases to make refunds to affected  
4 competitive carriers.

5 Regarding local rates, after acquiring the Wisconsin exchanges, CenturyTel sought  
6 interim price increases for local and access services pending the approval of permanent  
7 price increases. After conducting a rate-of-return rate case, the Wisconsin Commission  
8 found that CenturyTel's interim rates were too high and required rate decreases from the  
9 interim level as well as refunds to CenturyTel's customers.<sup>100</sup> The Wisconsin  
10 Commission also concluded that CenturyTel "has charged rates that are not in  
11 compliance with its tariffs" and required an audit of CenturyTel's billing system.<sup>101</sup>

12 **Q. SHOULD THIS PAST EXPERIENCE FROM WISCONSIN GIVE THE**  
13 **ARIZONA COMMISSION PAUSE WITH REGARD TO THE PROPOSED**  
14 **TRANSACTION?**

15 A. Yes. These are examples of merger-related harm. Rates were increased after the merger,  
16 and more specifically, rates were raised on competitive carriers without a hearing,  
17 without commission approval and in violation of state statutes. Furthermore, competitive  
18 carriers had to expend considerable time and resources filing a complaint with the

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<sup>100</sup> Wisconsin Public Service Commission Docket No. 2815-TR-103, Final Decision, October 31, 2001.  
[http://psc.wi.gov/apps35/ERF\\_view/viewdoc.aspx?docid=3812](http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=3812)

<sup>101</sup> Wisconsin Public Service Commission Docket No. 2815-TR-103, Final Decision, October 31, 2001.  
[http://psc.wi.gov/apps35/ERF\\_view/viewdoc.aspx?docid=3812](http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=3812)

1 Commission, litigating the complaint, and waiting for more than two years to get refunds  
2 for the unilateral rate increases CenturyTel had instituted.

3 Moreover, the existing protections in Wisconsin (which included the authority of the  
4 Wisconsin Commission, state statutes, the federal Act and applicable rules) did not  
5 prevent CenturyTel from unilaterally raising rates for competitive carriers, from charging  
6 rates not in compliance with its tariffs, or from attempting to charge higher rates than  
7 allowed after a thorough rate investigation.

8 **Q. HAVE YOU REVIEWED INFORMATION THAT SUGGESTS THAT QWEST**  
9 **MAY HAVE A MORE DIFFICULT TIME COMPLYING WITH APPLICABLE**  
10 **LAWS AND RULES POST-MERGER?**

11 A. **[\*\*\*BEGIN HIGHLY CONFIDENTIAL** [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 **[REDACTED] END HIGHLY CONFIDENTIAL \*\*\*]** This, in turn, could put more  
18 burden and cost on CLECs and the Arizona Commission to monitor and track Qwest's  
19 compliance post-merger.

1 Q. HAVE YOU REVIEWED INFORMATION WHICH SUGGESTS THAT  
2 CENTURLINK MAY ATTEMPT TO RAISE RATES ON COMPETITIVE  
3 CARRIERS MUCH LIKE IN THE EXAMPLE FROM WISCONSIN?

4 A. [\*\*\*BEGIN HIGHLY SENSITIVE AND CONFIDENTIAL TRADE SECRET  
5 INFORMATION SUBJECT TO ADDITIONAL PROTECTION

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 [REDACTED] END HIGHLY SENSITIVE AND CONFIDENTIAL TRADE SECRET  
21 INFORMATION SUBJECT TO ADDITIONAL PROTECTION\*\*\*]

1           C.     *Joint Applicants' attempts to distinguish the proposed transaction from recent*  
2                 *troubled mergers relies upon distinctions without differences.*

3           Q.     MR. GLOVER STATES THAT YOU AND OTHERS "FAIL TO ANALYZE  
4                 WITH APPROPRIATE DILIGENCE OR PRESENT FACTS REGARDING  
5                 WHETHER SIMILAR PROBLEMS" THAT OCCURRED IN RECENT  
6                 MERGERS INVOLVING ILECS "ARE LIKELY IN THE INSTANT  
7                 TRANSACTION."<sup>102</sup> IS THIS TRUE?

8           A.     No. One only needs to read Section V of my direct testimony, including Exhibits TG-6  
9                 and TG-7, and to review Dr. Ankum's Exhibit AA-2 to see that this claim is inaccurate.  
10                Ample analysis and facts were provided that show that the same types of problems that  
11                occurred in the Hawaiian Telcom and FairPoint transactions could occur after the  
12                proposed transaction. The fact that the Joint Applicants have failed to provide critical  
13                information about their post-merger OSS integration plans makes it impossible to  
14                precisely analyze post-merger impacts on CLECs; yet, that is not a failing of the CLECs,  
15                as Mr. Glover suggests. There can be no question that the CLECs made best attempts to  
16                analyze the Merged Company's plans with regard to systems integration during the  
17                discovery process, and CenturyLink repeatedly stated that plans could not be provided  
18                until after the proposed transaction was approved.<sup>103</sup>

<sup>102</sup> Glover Rebuttal at p. 31, lines 11-12.

<sup>103</sup> Exhibit AA-3 to the Direct Testimony of Dr. Ankum.

1 Furthermore, the information regarding problems during the ongoing conversion of  
2 Embarq to CenturyLink OSS in North Carolina and Ohio confirms that the problems that  
3 occurred in recent mergers are likely in the instant transaction. As I discussed earlier,  
4 data in the three Qwest Regions (East, West, Central) contain inconsistencies, and  
5 CenturyLink cannot show that data in any or all of these three Qwest regions are  
6 consistent with the legacy CenturyTel areas. For example, Qwest and CenturyLink  
7 provided no evidence that outside plant was constructed over time consistently in all  
8 three Qwest Regions or consistent with the CenturyLink areas. Just as some of the  
9 outside plant records were loaded incorrectly in the Embarq-CenturyTel integration  
10 because the way in which plant was constructed in the legacy Embarq areas was not  
11 consistent between areas and not consistent with the legacy CenturyTel areas,<sup>104</sup> the  
12 outside plant records may be loaded incorrectly in this transaction due to the way in  
13 which the plant was constructed, or other differences, in each of the three Qwest regions,  
14 and due to differences from the CenturyLink areas. The identical problem may occur for  
15 the same reason, and additional data integrity problems may occur because of the  
16 regional differences among the Qwest West, Qwest East, and Qwest Central Regions.

17 **Q. IS THERE OTHER INFORMATION THAT UNDERMINES THE JOINT**  
18 **APPLICANTS' CLAIM THAT RECENT, TROUBLED MERGERS INVOLVING**  
19 **ILECS ARE IRRELEVANT TO THE PROPOSED TRANSACTION?**

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<sup>104</sup> Schafer Rebuttal at p. 8.

1 A. **[\*\*\*BEGIN HIGHLY CONFIDENTIAL** [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] **END HIGHLY**  
13 **CONFIDENTIAL\*\*\*]**

14 Q. **CENTURYLINK STATES THAT THE HAWAIIAN TELCOM AND FAIRPOINT**  
15 **TRANSACTIONS ARE DISTINGUISHABLE FROM THE PROPOSED**  
16 **TRANSACTION BECAUSE THOSE OTHER TRANSACTIONS INVOLVED**  
17 **CREATING ENTIRELY NEW OSS AND A "FLASH CUT."<sup>105</sup> ARE THESE**  
18 **RELEVANT DISTINCTIONS?**

<sup>105</sup> Glover Rebuttal at p. 33, lines 6-8 and p. 37, lines 9-10. See also, Schafer Rebuttal at p. 4, lines 11-12 ("provides CenturyLink the ability to operate using dual systems for as long as management believes is prudent.").

1 A. No. First of all, the Joint Applicants have not provided critical details about their post-  
2 merger systems integration plans, so the claim that the proposed transaction will not  
3 involve any new OSS and will be conducted in a phased fashion is not supported by any  
4 facts or any enforceable commitments. And when CenturyLink's claim about not  
5 creating new OSS was tested under cross-examination at the hearing in the Minnesota  
6 merger review proceeding, it became clear that this claim is mere speculation on the Joint  
7 Applicants' part:

8 A. Okay. Let me break it down. To the extent that we move away  
9 from a Qwest system – that's the first part of the hypothetical –  
10 that our only other choice is then a legacy CenturyTel system?

11 Q. No, not your only other choice. That is your present intention?

12 A. That is our present intention, would be to use one system or the  
13 other, or we still have the capability of modifying one or the other  
14 or, you know, perhaps creating a new system.

15 Q. But the preference – just to be clear, the preference would be to  
16 have a single system for both the CenturyLink legacy companies  
17 and the Qwest legacy companies, correct?

18 A. Yes.

19 Q. Now, you say that you will largely involve the use of existing  
20 systems. In what ways will the integration of Qwest not involve  
21 the use of existing systems?

22 A. We – you know, at this point we're not far enough into the  
23 integration process to know if there could be another system. It is  
24 our intent to largely use them. That can mean any – that can mean  
25 we absolutely use them all the time.

26 Q. And so I take it – I take it what you're saying is you don't know  
27 whether you might replace a Qwest system with a brand new  
28 system?



1           A.     We don't know what system we're going to use in any situation at  
2           this point.<sup>106</sup>

3           What is a fact, however, is that Qwest and CenturyLink use entirely different OSS and  
4           back-office systems today. Therefore, even if CenturyLink does not create entirely  
5           “new” OSS and instead decides to integrate CenturyLink’s legacy systems into Qwest’s  
6           BOC territory after the merger closes, those systems would be entirely new to the Qwest  
7           region exchanges, and system development would be required. CenturyLink’s legacy  
8           systems have not been developed or tested for use in Qwest’s BOC territory (where  
9           volumes are higher and automated flow through is a higher priority) any more than any  
10          entirely new OSS that may be available. The same types of problems could occur in  
11          Qwest’s region from integrating legacy CenturyLink systems as could occur from  
12          integrating entirely new OSS.

13          Further, CenturyLink’s attempts to integrate Embarq systems in North Carolina did not  
14          include any new systems or “flash cuts” – yet, service-impacting problems still occurred.  
15          Regarding its “conversion methodology,” CenturyLink has said that [\*\*\*BEGIN

16          **CONFIDENTIAL** [REDACTED]

17          [REDACTED]  
18          [REDACTED]  
19          [REDACTED]  
20          [REDACTED]

<sup>106</sup> Minnesota Docket No. P-421/et al./PA-10-456, Hearing Transcript Volume 2B (public) at pp. 33-34 (Hunsucker).

1 [REDACTED] **END CONFIDENTIAL\*\*\*]** As CenturyLink begins to convert lines in  
2 Embarq states that contain major markets such as Las Vegas, Tallahassee and Orlando, it  
3 can be anticipated that the complexity of the integration and potential for what  
4 CenturyLink calls “inevitabl[e]” problems will increase as well.

5 **Q. DO YOU AGREE WITH CENTURYLINK’S ATTEMPT TO DISTINGUISH**  
6 **RECENT PROBLEMATIC MERGERS FROM THE PROPOSED**  
7 **TRANSACTION BASED ON A “FLASH CUT”?**

8 A. No. The claim that the Hawaiian Telcom and FairPoint transactions involved a “flash  
9 cut” is misleading. After the Hawaiian Telcom and FairPoint transactions closed, the  
10 new company remained on Verizon’s OSS for 9 to 12 months under a transition services  
11 agreement. If CenturyLink intends to continue to utilize Qwest systems post-merger and  
12 migrate to new systems at a later date (12 months after,<sup>107</sup> for example), the situation in  
13 Qwest’s region would be virtually the same as in the prior mergers (except that  
14 CenturyLink would not have to pay Qwest for using its OSS through a transaction  
15 services agreement). In the case of Hawaiian Telcom and FairPoint, Verizon was  
16 contractually obligated to maintain their systems during the transition services agreement.  
17 In this case, however, CenturyLink is asking the Commission and CLECs to trust  
18 (without any commitment) that CenturyLink will retain certain systems as well as  
19 knowledgeable Qwest systems and process personnel post-merger. When CenturyLink’s  
20 claim about other transactions requiring a “flash cut” to new OSS was tested under cross-

<sup>107</sup> Gates Direct at p. 120, citing Declaration of William Cheek, WC Docket No. 10-110, July 27, 2010.

1 examination during the hearing in the Minnesota merger review proceeding, it became  
2 clear that CenturyLink's claim was inaccurate and unsupported:

3 Q. And on lines 1 through 3 you say that FairPoint and Hawaiian  
4 Telcom had to operate under new systems and processes on day  
5 one after the acquisition closed. That's not accurate, is it?

6 A. I believe that they implemented the systems on day one, but I do  
7 think they had some burn-in period before it was fully turned over  
8 to them.

9 Q. What's the basis of your information about those two transitions?

10 A. It was information that was provided to me by my staff.

11 Q. Okay. In fact, didn't both companies use Verizon's operating  
12 systems for many months after closing?

13 A. You know, I don't recall.<sup>108</sup>

14 It is also important to note what CenturyLink considers to be a "flash cut." CenturyLink  
15 refers to a "flash cut" as integrating/converting a company's entire service territory or  
16 customer base for all states at once, as opposed to a "phased" approach which  
17 integrates/converts certain markets in a staggered fashion by state (a state-by-state  
18 approach).<sup>109</sup> In the case of Hawaiian Telcom, there was only one state involved –  
19 Hawaii – which means that there was no need for a "phased" state-by-state approach.  
20 The FairPoint transactions discussed in my direct testimony involved three relatively  
21 small states – Maine, New Hampshire and Vermont – which shows that a "phased"  
22 approach like that being used for the Embarq integration would likely not have avoided  
23 or limited FairPoint's problems that occurred after its acquisitions. Likewise, the Joint

<sup>108</sup> Minnesota Docket P-421, et al./PA-10-456, Hearing Transcript Volume 2B at pp. 136-137 (Hunsucker).

<sup>109</sup> Schafer Rebuttal at pp. 9-10.

1 Applicants' claim that problems will not occur under its "phase-in" is contradicted by the  
2 problems experienced in Frontier's integration of Verizon exchanges in West Virginia.  
3 As I discussed in my direct testimony,<sup>110</sup> those problems were significant and they  
4 involved a single state integration – not what CenturyLink describes as a "flash cut" (i.e.,  
5 multi-state) integration.

6 **Q. WAS INDEPENDENT THIRD-PARTY SYSTEMS TESTING REQUIRED IN**  
7 **THESE OTHER PROBLEMATIC TRANSACTIONS IN AN ATTEMPT TO**  
8 **MAKE SURE THAT SYSTEMS WOULD WORK PROPERLY POST-**  
9 **INTEGRATION?**

10 A. No. Although systems testing was required,<sup>111</sup> this testing was not conducted by an  
11 independent third-party at commercial volumes. Therefore, the testing was not sufficient  
12 to avoid the systems meltdowns that subsequently occurred. The independent third-party  
13 testing requirement recommended by Joint CLECs' Condition 19(b) is needed to avoid a  
14 similar customer-affecting meltdown in Arizona.

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<sup>110</sup> Gates Direct at pp. 100-107.

<sup>111</sup> Gates Direct at p. 95.

1           **D.     *The continued lack of details about the Joint Applicants' integration plans***  
2           ***creates significant uncertainty.***

3           **Q.     MR. HUNSUCKER STATES THAT IT IS UNREASONABLE TO EXPECT THE**  
4           **JOINT APPLICANTS TO HAVE INTEGRATION PLANS AT THIS POINT.<sup>112</sup> IS**  
5           **THIS AN UNREASONABLE EXPECTATION?**

6           A.     No. When compared to CenturyLink's acquisition of Embarq, CenturyLink had specific  
7           integration plans available at this point in the merger review process. CenturyTel and  
8           Embarq announced their merger in October 2008, and in March 2009 (five months later),  
9           they stated that they would migrate Embarq to CenturyLink's legacy Ensemble system,<sup>113</sup>  
10          as well as utilize CenturyTel's SAP (Systems, Applications, and Products) accounting  
11          system, and utilize Embarq's EASE system for LSRs and ASRs.<sup>114</sup> It has now been over  
12          six months since CenturyLink and Qwest announced the proposed transaction,<sup>115</sup> but the  
13          Joint Applicants have provided no detail about its integration plans similar to that which  
14          was provided around this same point in time during the review of the Embarq/CenturyTel  
15          merger.

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<sup>112</sup> Hunsucker Rebuttal at p. 17, lines 1-8. See also, Schafer Rebuttal at p. 5, lines 14-17.

<sup>113</sup> "As evidence of progress since our initial filing and in response to Dr. Roycroft's testimony, I note the following: we now plan that Embarq's operations will migrate to CenturyTel's Ensemble billing and customer care system. CenturyTel's Ensemble back-office software (the product of an investment of over \$200 million) is a highly-centralized and flexible system that integrates and automates customer care and other provisioning services in a cost-effective manner." Rebuttal Testimony of G. Clay Bailey on behalf of CenturyTel, Inc., Washington UTC Docket No. UT-082119, March 18, 2009. Available at: <http://webcache.googleusercontent.com/search?q=cache:SZWIm2byAOMJ:wutc.wa.gov/rms2.nsf/177d98baa5918c7388256a550064a61e/34a43dc9c6ee474b8825757d007a668b!OpenDocument+centurytel+embarq+will+utilize+Ensemble&cd=8&hl=en&ct=clnk&gl=us>

<sup>114</sup> *Id.*

<sup>115</sup> Exhibit TG-8, "Merger Announcement Date" refers to April 21, 2010.

1 **Q. ARE THERE OTHER REASONS WHY IT IS REASONABLE TO EXPECT THE**  
2 **JOINT APPLICANTS TO HAVE INTEGRATION PLANS AVAILABLE FOR**  
3 **REVIEW AT THIS POINT?**

4 A. Yes. The Joint Applicants' claim that it is unreasonable to expect them to have  
5 integration plans at this point is inconsistent with the Joint Applicants' push to expedite  
6 completion of the proposed transaction. Qwest has said that the Joint Applicants are  
7 seeking expedited approval of the proposed transaction so that they can "more quickly  
8 integrate the companies in order to bring the benefits...to consumer, business, wholesale  
9 customers, and shareholders sooner."<sup>116</sup> It makes little sense to expedite approval of the  
10 proposed transaction and not also expedite the integration planning process that  
11 CenturyLink expects to produce the claimed benefits of the transaction. The Arizona  
12 Commission should investigate whether integration planning work is being performed  
13 and decisions being made that the Joint Applicants are not divulging in the merger review  
14 proceedings.

15 **Q. ACC STAFF STATES THAT "CENTURYLINK...GOES INTO CONSIDERABLE**  
16 **DETAIL EXPLAINING THE COMPANY'S 'GO-TO-MARKET' MODEL."<sup>117</sup>**  
17 **DO YOU AGREE?**

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<sup>116</sup> Direct Testimony of James Campbell, Arizona Docket No. T-01051B-10-0194, May 24, 2010 ("Campbell Direct"), at p. 7, lines 13-15.

<sup>117</sup> Direct Testimony of Pamela Genung, Arizona Docket No. T-01051B-10-0194, October 13, 2010, at p. 7, lines 20-21.

1 A. While CenturyLink discussed its “Go-to-Market” model in its direct testimony, I disagree  
2 that CenturyLink provided “considerable detail” on the model. In fact, when  
3 CenturyLink was asked to provide detail about the model in discovery, CenturyLink  
4 objected.<sup>118</sup>

5 **Q. HAS CENTURYLINK PROVIDED ADDITIONAL DETAIL ABOUT ITS GO-TO-**  
6 **MARKET MODEL SINCE YOU FILED YOUR DIRECT TESTIMONY?**

7 A. [\*\*\*BEGIN HIGHLY CONFIDENTIAL [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED] **END HIGHLY CONFIDENTIAL\*\*\*] As I discussed**  
11 in my direct testimony (at page 63), CenturyLink has stated that “direct response  
12 marketing efforts” is one part of its “Go-to-Market” model. However, when Integra  
13 asked CenturyLink about what was included in these “direct response marketing efforts”  
14 to determine whether these new tactics, if/when they are incorporated into Qwest’s  
15 region, would result in merger-related harm to competition, CenturyLink objected to the  
16 question.<sup>119</sup> The Joint CLECs’ concerns in this regard are warranted, particularly in light  
17 of the recent examples (i.e., since Merger Announcement) of inappropriate marketing  
18 activity that has occurred between Qwest representatives and CLEC end users

<sup>118</sup> Gates Direct at pp. 61-63.

<sup>119</sup> CenturyLink response to Integra Arizona Data Request No. 131.

1 customers.<sup>120</sup> I also discussed CenturyLink's waiver of the one-day porting requirement  
2 as an example of merger-related activities taking precedence over maintaining  
3 compliance with existing obligations, and explained that conditions (such as Condition 22  
4 and subparts related to complying with number porting obligations) are needed.<sup>121</sup>

5 **[\*\*\*BEGIN HIGHLY SENSITIVE AND CONFIDENTIAL TRADE SECRET**  
6 **INFORMATION SUBJECT TO ADDITIONAL PROTECTION** [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED] **END HIGHLY SENSITIVE AND**  
10 **CONFIDENTIAL TRADE SECRET INFORMATION SUBJECT TO**  
11 **ADDITIONAL PROTECTION\*\*\*]**

12 **[\*\*\*BEGIN HIGHLY CONFIDENTIAL** [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED] **END HIGHLY CONFIDENTIAL\*\*\*]**

16 **[\*\*\*BEGIN HIGHLY SENSITIVE AND CONFIDENTIAL TRADE SECRET**  
17 **INFORMATION SUBJECT TO ADDITIONAL PROTECTION** [REDACTED]

18 [REDACTED]  
19 [REDACTED]

<sup>120</sup> Gates Direct at pp. 144-145.

<sup>121</sup> Gates Direct at pp. 76-77, 159-161 and footnote 283.



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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **END HIGHLY  
SENSITIVE AND CONFIDENTIAL TRADE SECRET INFORMATION  
SUBJECT TO ADDITIONAL PROTECTION\*\*\*]**

1           ***E. The recent conduct of the Joint Applicants demonstrates that the Merged***  
2           ***Company will be more difficult to work with if the proposed transaction is***  
3           ***approved.***

4           **Q. YOU DISCUSSED IN YOUR DIRECT TESTIMONY CIRCUMSTANCES**  
5           **REGARDING THE JOINT APPLICANTS REFUSING TO STREAMLINE THE**  
6           **DISCOVERY PROCESS. DID CENTURYLINK RESPOND TO THIS**  
7           **EXAMPLE?**

8           A. Yes. In my direct testimony (pages 69-74), I described the circumstances of the Joint  
9           Applicants refusing to streamline the discovery process and the additional costs imposed  
10           on CLECs. I explained that one of my CLEC clients and Qwest had previously used a  
11           similar streamlined discovery approach at Qwest's urging, and the Joint Applicants'  
12           refusal to do so here is a sign that the Merged Company would be more difficult to work  
13           with than Qwest. Mr. Hunsucker takes issue with this example; he says this example  
14           "has nothing to do with any speculative *harm* that could be caused by the integration of  
15           CenturyLink's and Qwest's operations."<sup>122</sup>

16           **Q. IS MR. HUNSUCKER CORRECT?**

17           A. No. It is perfectly reasonable to analyze conduct of the Joint Applicants since  
18           announcement of the merger as an indication of how the Merged Company may operate  
19           post-merger. This is particularly true in this instance where the Joint Applicants refused  
20           to participate in a streamlined discovery process that Qwest previously participated in

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<sup>122</sup> Hunsucker Rebuttal at p. 70, lines 18-20. (emphasis in original)

1 with (and actually proposed to) CLECs. The early indications are that the Merged  
2 Company could be more difficult to work with than Qwest, and the CLECs can expect  
3 their transaction costs to increase. These are examples of merger-related harms.

4 **Q. IS THERE OTHER INFORMATION THAT VALIDATES YOUR CONCERN**  
5 **ABOUT THE MERGED COMPANY BEING MORE DIFFICULT TO WORK**  
6 **WITH THAN QWEST AND DRIVING UP CLECS' COSTS?**

7 A. [\*\*\*BEGIN HIGHLY CONFIDENTIAL

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 [REDACTED] END HIGHLY CONFIDENTIAL\*\*\*]

16 **III. THE JOINT CLECS' PROPOSED CONDITIONS SHOULD BE ADOPTED**

17 **Q. HAVE THE JOINT APPLICANTS AGREED TO ANY OF THE JOINT CLECS'**  
18 **PROPOSED CONDITIONS?**

19 A. No. The Joint Applicants did not identify a single Joint CLEC proposed condition that  
20 was acceptable to them. The Joint CLECs' conditions provide the certainty needed by

1 wholesale customers (customers Joint Applicants proclaim to value) in their wholesale  
2 customer relationship with Qwest and CenturyLink during the post-merger integration  
3 process and require that the Merged Company comply with applicable laws, regulations  
4 and obligations. Yet, the Joint Applicants go to great lengths to make Joint CLEC  
5 conditions appear unreasonable, and in numerous instances, misconstrue the Joint CLEC  
6 conditions in the process.

7 **Q. HOW IS THIS SECTION OF YOUR TESTIMONY ORGANIZED?**

8 A. I will first address the Joint Applicants' more general criticisms of the Joint CLECs'  
9 proposed conditions, and then address the specific concerns raised about individual Joint  
10 CLEC proposed conditions. I have attached an Issues Matrix as Exhibit TG-13 to my  
11 testimony that summarizes Joint Applicants' Position Statements (directly quoted from  
12 Joint Applicants' discovery responses) and Joint CLECs' Position Statements for each  
13 issue presented by the Joint CLEC list of recommended conditions (Exhibit TG-8) for  
14 resolution in this matter.<sup>123</sup>

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<sup>123</sup> In Minnesota, the Joint Applicants provided Position Statements for each condition in response to discovery by the Minnesota Department of Commerce (DOC). Joint CLECs, in turn, responded with Position Statements of their own. By asking each party to summarize their positions, the Minnesota DOC has assisted the parties in creating an issues list for the issues raised by Joint CLECs through their list of recommended conditions. Since the Joint CLECs' proposed conditions in Minnesota are the same as in Arizona, I believe the issues list that was developed in Minnesota is also informative for Arizona, and have therefore, submitted it as Exhibit TG-13. Because the parties have referred to the Joint CLEC conditions throughout the testimony by the number assigned in Exhibit TG-8, the Issues Matrix is organized in the same manner, for ease of reference to the corresponding condition.

1           **A.     *Joint Applicants' claim broadly that Joint CLEC proposed conditions are***  
2           ***unnecessary but provides no basis for rejecting them.***

3           **Q.     MR. SCHAFFER STATES THAT CLECS' CONCERNS ARE NOT JUSTIFIED**  
4           **BECAUSE "THE CENTURYLINK/QWEST MERGER WILL ALLOW**  
5           **CONTINUOUS OPERATION OF THE SEPARATE ARIZONA OPERATING**  
6           **COMPANIES..."<sup>124</sup> PLEASE RESPOND.**

7           A.     I explained in my direct testimony (at pages 22-23) why Qwest's argument is wrong.  
8           Separate entities on an organizational chart or not, the fact is that Qwest will be "owned  
9           and controlled by CenturyLink"<sup>125</sup> if the proposed transaction is approved. This means  
10          that CenturyLink will be *calling the shots* for Qwest post-merger. Mr. Schafer's  
11          testimony ignores this obvious fact. Mr. Schafer also ignores the fact that in the absence  
12          of enforceable commitments, CenturyLink's plans may change at any time post-merger.  
13          Mr. Schafer's testimony shows that the Merged Company may not operate Qwest and  
14          CenturyLink as separate operating entities post-merger (or for any certain time period).  
15          The key phrase in his statement – "*will allow*" – shows that CenturyLink either does not  
16          have any definitive plans in this regard or are not divulging those in the merger review  
17          proceedings.

18          **Q.     CENTURYLINK ARGUES THAT CONDITIONS ARE NOT NEEDED BECAUSE**  
19          **"THERE ARE NO IMMEDIATE CHANGES POST-MERGER."<sup>126</sup> WHAT**

<sup>124</sup> Schafer Rebuttal at p. 7, lines 11-12.

<sup>125</sup> Gates Direct at p. 22, quoting McMillan Direct at p. 5, lines 23-25.

<sup>126</sup> Hunsucker Rebuttal at p. 33, line 20.

1       **REASON DOES CENTURYLINK GIVE FOR REFUSING TO AGREE TO**  
2       **CONDITIONS THAT MAINTAIN THE STATUS QUO IN SPITE OF**  
3       **CENTURYLINK’S CLAIM THAT IT IS PLANNING TO MAINTAIN THE**  
4       **“STATUS QUO?”**<sup>127</sup>

5       A.     Mr. Hunsucker claims that “[e]ach and every condition places a cost on CenturyLink.”<sup>128</sup>  
6       He also claims that the Joint CLECs’ proposed conditions are intended to “increase  
7       CLEC profitability through terms CLECs are unlikely to gain under the current  
8       regulatory reviews and processes.”<sup>129</sup> Mr. Hunsucker has also claimed: “[i]f the  
9       Commission were to grant concessions under these [i.e., the Joint CLECs’ proposed]  
10      conditions, the concessions would only serve to increase CLECs’ profits by pushing  
11      CLECs’ costs of doing business onto CenturyLink or otherwise hobbling CenturyLink’s  
12      ability to compete fairly.”<sup>130</sup>

13      **Q.     DO YOU AGREE THAT MAINTAINING THE “STATUS QUO” AND**  
14      **REQUIRING COMPLIANCE WITH EXISTING LAWS INCREASES**  
15      **CENTURYLINK’S COSTS AND CLECS’ PROFITS?**

16      A.     No, that claim is absurd to say the least. Maintaining the status quo means to maintain  
17      things as they are. If the status quo is maintained – such that for the Defined Time Period  
18      CLECs in Qwest territory may use the OSS, CMP, ICAs, *etc.*, that they use today –

<sup>127</sup> Hunsucker Rebuttal at p. 4, lines 13-14; p. 34, lines 1-2.

<sup>128</sup> Hunsucker Rebuttal at p. 66, line 2.

<sup>129</sup> Hunsucker Rebuttal at p. 65, lines 14-17.

<sup>130</sup> Rebuttal Testimony of Michael Hunsucker, Minnesota Docket No. P-421 et al./PA-10-456, at p. 16, lines 19-20.

1 CLECs' costs and expenses remain the same. There is no change. Therefore, there are  
2 no CLEC costs to "push" to CenturyLink. On the other hand, if CenturyLink is not  
3 required through conditions to maintain the "status quo" for a set period of time,  
4 CenturyLink has many opportunities to "push" costs to its CLEC competitors to benefit  
5 itself at the CLECs' expense. For example, by requiring CLECs to perform more manual  
6 steps, CenturyLink may push work to CLECs that currently is performed automatically or  
7 by Qwest personnel and may also result in increased service delivery errors or delay that  
8 further drive up CLEC costs.

9 If Joint Applicants are, as they claim, complying with existing laws today, then requiring  
10 them to continue to comply with the law requires no change. Mr. Hunsucker, in claiming  
11 that each and every condition places a cost on CenturyLink, does not explain the source  
12 of these costs for conditions requiring legal compliance, unless CenturyLink must take  
13 steps to bring itself into legal compliance. Given that CenturyLink denies it is out of  
14 compliance, then there are no such steps to take, and no costs associated with these  
15 conditions.

16 In fact, the entire thrust of Mr. Hunsucker's testimony in this respect is troubling. If  
17 satisfying commitments that simply maintain the "status quo" (*i.e.*, obligating  
18 CenturyLink to retain existing service levels provided by Qwest, existing OSS, existing  
19 wholesale staffing, etc.) will impose "costs" on CenturyLink, then the only logical

1 conclusion from that claim is that CenturyLink intends not to satisfy those commitments  
2 post-merger if the proposed transaction is approved.

3 **Q. MR. HUNSUCKER POINTS TO SEVERAL REASONS WHY CENTURYLINK**  
4 **ASSERTS THE JOINT CLEC CONDITIONS ARE UNNECESSARY. WHAT**  
5 **ARE THESE REASONS AND WHAT ARE YOUR RESPONSES?**

6 A. At pages 4-5 of his Rebuttal Testimony, Mr. Hunsucker points to three reasons why  
7 CenturyLink believes the Joint CLEC proposed conditions are unnecessary:

- 8 1. "First, the existing Qwest ILEC operating entity, including wholesale  
9 operations, will stay in place post-merger, so the relationships between Qwest  
10 and the CLECs will remain status quo and there will be none of the impacts  
11 that CLECs might encounter with completely new incumbent entities and  
12 completely new Operations Support Systems ('OSS')."<sup>131</sup>
- 13 2. "CLECs have significant legal protections in place today" including "the  
14 provisions and obligations of the federal Telecommunications Act...federal  
15 and State orders, interconnection agreements ('ICAs'), tariffs, and Qwest's §  
16 271 protections, Performance Assurance Plans ('QPAP'), and Change  
17 Management Process ('CMP') commitments."<sup>132</sup>
- 18 3. "CLECs will benefit from the merger without imposition of their requested  
19 conditions."<sup>133</sup>

20 I addressed the first reason in my direct testimony (pages 22-23) and again above. As I  
21 indicated, CenturyLink plainly ignores the fact that Qwest will be owned and controlled  
22 by a new entity post-merger. I also explain in my direct testimony (pages 110, 118-120,

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<sup>131</sup> Hunsucker Rebuttal at p. 4, lines 12-16. *See also*, Hunsucker Rebuttal at p. 17, lines 13-15 ("Wholesale customers in CenturyLink areas and in Qwest areas will not face immediate changes in their existing systems interfaces and existing OSS arrangements will not be disrupted."); and Hunsucker Rebuttal at p. 58, lines 4-6 ("Wholesale customers in CenturyLink areas and in Qwest areas will not face immediate changes in their existing systems interfaces and existing OSS arrangements will not be disrupted.")

<sup>132</sup> Hunsucker Rebuttal at pp. 4-5.

<sup>133</sup> Hunsucker Rebuttal at p. 5, lines 6-7.



1 and 142-143) and again elsewhere in this testimony that CenturyLink's claims about "no  
2 immediate changes" and "status quo" for wholesale customers post-merger are hollow  
3 promises that are not supported by the facts presented in this case or enforceable  
4 conditions/commitments. After all, if CenturyLink intended to make no changes and  
5 maintain the status quo for a predetermined period of time, there would be no reason for  
6 CenturyLink to reject conditions documenting that fact. CenturyLink is clearly reserving  
7 to itself a right to make changes, including immediate changes.

8 **Q. WHAT IS YOUR RESPONSE TO CENTURYLINK'S CLAIM THAT CLEC**  
9 **CONDITIONS ARE UNNECESSARY BECAUSE PROTECTIONS ARE**  
10 **ALREADY IN PLACE?**

11 A. In the example above regarding CenturyTel's acquisition of Wisconsin exchanges, the  
12 protections that were in place – including state statutes, the federal Act, and applicable  
13 rules – did not prevent CenturyTel from increasing rates it charged to competitive carriers  
14 without a hearing and in violation of statute. The Joint CLEC conditions are designed to  
15 ensure that adherence to applicable obligations are not undermined during CenturyLink's  
16 difficult task of integrating a company much larger than either CenturyTel or Embarq,  
17 while at the same time attempting to complete the integration of Embarq.

18 Furthermore, the FCC and state commissions have time and again found that merger  
19 conditions are necessary in order to avoid or offset harm related to a merger involving  
20 incumbent LECs or BOCs. In each of those instances, the FCC and state commissions

1 have routinely rejected the notion that existing state and federal rules and regulations and  
2 applicable ICAs are sufficient by themselves to address potential harms to the public  
3 interest resulting from a merger involving an ILEC or BOC.

4 **Q. DO YOU HAVE ADDITIONAL CONCERNS ASSOCIATED WITH RELYING**  
5 **ON POST-CLOSING ENFORCEMENT OF LAW AND INTERCONNECTION**  
6 **AGREEMENT TERMS AND CONDITIONS?**

7 A. Yes, relying on what would amount to ad hoc enforcement of the federal  
8 Telecommunications Act, state law, or individual ICAs could easily result in different  
9 CLECs operating in different environments. That is, if one CLEC successfully brings a  
10 complaint action, it may get relief, and other CLECs would not get the same relief.  
11 Qwest has previously claimed that an individual CLEC should not be permitted to bring a  
12 complaint when other CLECs may be affected. The public interest consideration should  
13 compel the Commission to adopt conditions that will protect the competitive environment  
14 by ensuring that all competitors are operating under these same critical conditions.

15 **Q. WILL CLECS BENEFIT FROM THE PROPOSED TRANSACTION WITHOUT**  
16 **IMPOSITION OF THEIR REQUESTED CONDTIONS, AS MR. HUNSUCKER**  
17 **CLAIMS?**

18 A, No. Dr. Ankum explained at pages 60-67 of his direct testimony (and Exhibit AA-4) that  
19 the Joint Applicants had not identified a single benefit that would accrue to CLECs. Mr.  
20 Hunsucker attempts to buttress the Joint Applicants' claim in this regard in his rebuttal

1 testimony, stating: “[a] financially stronger company promotes stability and thus furthers  
2 the goal of having a solid and resilient provider of quality wholesale services to CLECs  
3 and other carriers.”<sup>134</sup> Again, this statement does not identify a benefit to CLECs; Mr.  
4 Hunsucker does not explain how a financially stronger Merged Company with a larger,  
5 more interconnected footprint, translates into benefits for CLECs. The Joint Applicants  
6 have not agreed to reflect the Merged Company’s increased efficiencies in its  
7 relationships with its wholesale customers or even to maintain the products, services or  
8 rates that CLECs purchase from Qwest today. Further, Qwest’s current wholesale  
9 operations are much larger than CenturyLink’s wholesale operations, and Mr. Hunsucker  
10 failed to provide a single benefit or “best practice” that CenturyLink’s wholesale  
11 operations have to offer.

12 **Q. HAS CENTURYLINK PREVIOUSLY INDICATED THAT A FINANCIALLY**  
13 **STRONGER MERGED ENTITY COULD WORK AGAINST CLECS INSTEAD**  
14 **OF IN THEIR BEST INTEREST?**

15 A. Yes. In the Arizona Joint Application, the Joint Applicants state: “One of the  
16 Transaction’s key benefits is the resulting financial condition of the combined company.  
17 *A financially stronger company can continue to...compete against...and CLECs...*”<sup>135</sup>

<sup>134</sup> Hunsucker Rebuttal at p. 5, lines 7-9.

<sup>135</sup> Joint Notice and Application for Expedited Approval of Proposed Merger, May 13, 2010 (“Arizona Joint Application”), at p. 14, ¶ 28 (emphasis added).

1 **Q. CENTURYLINK POINTS TO STATES WHERE THE APPROVAL PROCESS IS**  
2 **NOW FAVORABLY CONCLUDED.<sup>136</sup> WERE THE REVIEWS OF THE**  
3 **PROPOSED TRANSACTION IN THOSE OTHER STATES COMPARABLE TO**  
4 **THE REVIEW BEING CONDUCTED IN ARIZONA?**

5 A. No. Ms. McMillan lists the following states in her rebuttal testimony: California, Hawaii,  
6 Louisiana, Maryland, Mississippi, Georgia, Virginia, West Virginia, New York and Ohio,  
7 Pennsylvania, as well as the District of Columbia. None of the jurisdictions listed by  
8 CenturyLink are states in which Qwest operates as a BOC or ILEC. Further,  
9 CenturyLink is not an ILEC in Hawaii, Maryland, West Virginia, New York, or the  
10 District of Columbia. There are significant public interest concerns surrounding a  
11 proposed acquisition of an BOC or ILEC that do not apply to a transaction involving the  
12 acquisition of a non-ILEC telecommunications company.

13 The states in which CenturyLink (but not Qwest) is an ILEC – California, Georgia, Ohio,  
14 Louisiana, Mississippi, Virginia, and Pennsylvania – are distinguishable from Arizona in  
15 terms of process, standard of review and level of intervention. For example, in California  
16 (where CenturyLink owns 100 access lines<sup>137</sup>), the proposed transaction was filed via an  
17 Advice Letter on May 14, 2010, and deemed approved one month later (on June 14,  
18 2010).<sup>138</sup> This Advice Letter was processed by the Telecommunications Division and  
19 apparently not evaluated by the California Commission under any type of public interest

<sup>136</sup> McMillan Rebuttal at p. 9.

<sup>137</sup> [http://www.centurylinkqwestmerger.com/downloads/centurylink\\_statebystate/centurylink-california.pdf](http://www.centurylinkqwestmerger.com/downloads/centurylink_statebystate/centurylink-california.pdf)

<sup>138</sup> <http://www.centurylinkqwestmerger.com/index.php?page=regulatory-information>

1 standard.<sup>139</sup> CenturyLink filed for approval in Georgia on May 25, 2010, and the Georgia  
2 Commission closed the docket two months later on July 28, 2010, via a one-page letter  
3 from the Director of Telecommunications to Qwest's counsel.<sup>140</sup> Likewise, the Ohio  
4 Public Utilities Commission closed the merger review docket via a one page "Case Status  
5 Form" one month after it was filed. The Mississippi Commission order indicates that  
6 "[n]o party moved to intervene" in the merger review proceeding in that state.<sup>141</sup> In  
7 Pennsylvania, there was no intervention from CLECs.<sup>142</sup> Louisiana (where  
8 CenturyLink's headquarters is currently located and where the Merged Company's  
9 headquarters will reside) issued an order of non-opposition three months after approval  
10 was sought. In that order, the Louisiana Public Service Commission explained that there  
11 was only one intervener Louisiana Cable & Telecommunications Association (LCTA) in  
12 the case (after Cox withdrew) and that the issue was addressed at the Staff level rather  
13 than being assigned to the Commission's Administrative Hearings Division.<sup>143</sup> The order  
14 states: "Based on the comments received from the Applicants...and the lack of comments  
15 filed by the lone Intervenor, the LCTA, Staff recommended that the Commission...issue  
16 its non-opposition to the transaction as proposed, with the standard language placed on all

<sup>139</sup> Memo from Telecommunications Division PAL Coordinator to Telecommunications Carrier Filing Advice Letter regarding Status of Advice Letter 172, effective date June 14, 2010 ("The Telecommunications Division of the California Public Utilities Commission has processed your recent Advice Letter (AL) filing and is returning an AL status certificate for your records.")

<sup>140</sup> Letter from Leon Bowles, Director of Telecommunications for the Georgia Public Service Commission to Terri Lyndall, regarding docket numbers 6543, 10664, 5043, and 6094, dated July 28, 2010. *See also*, <http://www.centurylinkqwestmerger.com/index.php?page=regulatory-information>

<sup>141</sup> Mississippi Public Service Commission Docket No. 2010-UA-218, Order, September 14, 2010.

<sup>142</sup> Pennsylvania PUC Docket No. A-2010-2176733, Recommended Decision at p. 3.

<sup>143</sup> Louisiana Public Service Commission, Docket No. u-31379, Order Number U-31379, September 17, 2010, at p. 1.

1 statements of non-opposition...”<sup>144</sup> Notably, the Louisiana Commission entered its order  
2 of non-opposition based on the following condition:

3 The Applicants shall provide notice to the LPSC of any condition imposed  
4 upon the merger, or agreed to in other jurisdictions, for the Commission’s  
5 review and possible adoption if deemed in the public interest.

6 The Joint Applicants have rejected Joint CLECs’ proposed Condition 29,<sup>145</sup> stating that it  
7 is “neither necessary nor appropriate for this transaction”<sup>146</sup> and “unreasonable”<sup>147</sup> and  
8 “restricts the incentive for both parties to negotiate state-specific terms...”<sup>148</sup> However,  
9 CenturyLink’s home state of Louisiana has imposed a very similar condition on the  
10 merger that would allow the state commission to adopt conditions for the merger after the  
11 decision permitting the proposed transaction has been entered.

12 **Q. IN RESPONSE TO ACC STAFF’S PROPOSED CONDITIONS, CENTURYLINK**  
13 **SAYS THAT “CENTURYLINK AND QWEST ENTITIES HAVE REACHED**  
14 **SETTLEMENTS WITH CERTAIN PARTIES IN SUPPORT OF THE PROPOSED**  
15 **TRANSACTION IN SOME OF THE QWEST ILEC STATES” AND THOSE**  
16 **SETTLEMENTS “CONTAIN A LIMITED NUMBER OF CONDITIONS.”**<sup>149</sup>

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<sup>144</sup> Louisiana Public Service Commission, Docket No. u-31379, Order Number U-31379, September 17, 2010, at p. 2.

<sup>145</sup> Condition 29 states: “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.” Exhibit TG-8 at p. 12.

<sup>146</sup> Hunsucker Rebuttal at p. 68, line 8.

<sup>147</sup> Hunsucker Rebuttal at p. 68, line 21.

<sup>148</sup> Hunsucker Rebuttal at p. 69, lines 16-17.

<sup>149</sup> McMillan Rebuttal at p. 17, lines 6-19.

1           **DOES THIS MEAN THAT ACC STAFF'S OR JOINT CLECS' PROPOSED**  
2           **CONDITIONS ARE UNNECESSARY?**

3           A.    No. CenturyLink mentions a settlement it reached in Iowa with the CLEC interveners in  
4           that case. It is my understanding that on November 4, 2010, the Iowa Board approved  
5           the proposed transaction subject, in part, to this settlement. The Iowa settlement  
6           expressly states, however, that conditions in Iowa are unique and contains terms  
7           expressly precluding its use in any other jurisdiction as an indication of any party's  
8           position on the conditions necessary to satisfy or adequately address CLEC concerns with  
9           the proposed transaction.<sup>150</sup> Due to certain legal limitations in Iowa, the CLECs had little  
10          choice but to accept a settlement that did not address, or addresses inadequately, the  
11          numerous problems that must be addressed in order for the proposed transaction to be  
12          consistent with the public interest.

13          **Q.    WHAT CONDITIONS ARE NOT INCLUDED IN THE IOWA SETTLEMENT?**

14          A.    The Iowa Settlement does not require that the Merged Company provide at least the same  
15          level of wholesale service quality as legacy Qwest or subject the Merged Company to  
16          remedy payments for merger-related service quality deterioration, or require that the  
17          Merged Company provide CLECs with conditioned copper loops in compliance with  
18          applicable interconnection agreements as well as state and federal law, just to name a  
19          few. As a review of that settlement shows, the resolved issues are limited.

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<sup>150</sup> PAETEC's Motion to Enforce Settlement Before the Iowa Utilities Board, Docket No. SPU-2010-0006, dated October 1, 2010, is attached as Exhibit Joint CLECs 2SP.2. PAETEC's Reply In Support of Its Motion to Enforce Settlement, Docket No. SPU-2010-0006, dated October 6, 2010.

1 **Q. PLEASE DESCRIBE THE MINNESOTA AND UTAH SETTLEMENTS.**

2 A. The proposed settlements in Utah and Minnesota discussed by CenturyLink fare no  
3 better. I recently submitted extensive testimony describing the many shortcomings of the  
4 Joint Applicants' proposed settlement with the Minnesota Department of Commerce in  
5 the Minnesota merger review docket,<sup>151</sup> as well as the Joint Applicants' proposed  
6 settlement with the Utah Division of Public Utilities in the Utah merger review docket.<sup>152</sup>  
7 Not only do the settlements with the Minnesota DOC and Utah DPU fall well short of  
8 addressing the potential harm to CLECs, their end user customers and competition from  
9 the proposed transaction, but CLECs were excluded from the negotiations that led up to  
10 these proposed settlements despite the CLECs specifically asking to be involved in such  
11 negotiations.

12 Since the Joint Applicants filed their rebuttal testimony in Arizona, Joint Applicants have  
13 also reached a settlement with Integra Telecom.

14 **Q. PLEASE DESCRIBE THE SETTLEMENT BETWEEN JOINT APPLICANTS**  
15 **AND INTEGRA.**

16 A. This settlement addresses some of the issues that are important to Integra in its wholesale  
17 relationship with Qwest. Indeed, the focal point of the settlement is the expansive line

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<sup>151</sup> Supplemental Surrebuttal Testimony of Timothy Gates, Minnesota Public Utilities Commission Docket No. P-421, et al./PA-10-456, October 18, 2010. Available at:  
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={0DDE9EA3-0AF3-4E45-8CBC-E3ED35345571}&documentTitle=201010-55584-01>

<sup>152</sup> Supplemental Testimony of Timothy Gates, Utah Public Service Commission Docket No. 10-049-16, Exhibit Joint CLECs 2SP, October 28, 2010. Available at:  
<http://www.psc.utah.gov/utilities/telecom/telecomindx/2010/1004916indx.html>



1 conditioning amendment. (Attachment A to the Joint Applicants/Integra Settlement) But  
2 the settlement does not address some of the issues adequately from the perspective of  
3 other CLECs. Further the settlement addresses only about half of the conditions I am  
4 proposing in Exhibit TG-8. It is interesting to note that although Joint Applicants secured  
5 the participation of all CLEC, cable and wireless intervenors from the Iowa merger  
6 review proceeding in the Iowa agreement, this time Joint Applicants negotiated with one  
7 CLEC and crafted a settlement designed to meet the needs of one particular CLEC.  
8 Clearly, Joint Applicants should not be permitted to designate winners and losers by  
9 negotiating terms that meet a particular business plan but be unwilling to meet the public  
10 interest in a broader competitive market.

11 **Q. DOES THE INTEGRA SETTLEMENT PROVIDE AN EXAMPLE OF A**  
12 **PRIVATE INTEREST AGREEMENT?**

13 A. Yes. Based on Integra's business plan, some conditions or length of certain conditions  
14 may have less importance to Integra, not only because of different business plans but  
15 because it may have less invested in its own internal system development such that  
16 moving to a different or modified OSS by CenturyLink will have less impact than would  
17 be the case on other CLECs.

18 The Integra settlement addresses issues from one CLEC's perspective, and cannot be  
19 relied upon to provide assurances that the broader public interest has been adequately  
20 protected. While the Integra settlement is better than having no conditions in place, the

1 Commission's public interest imperative to protect local telecommunications competition  
2 from potential merger-related harm requires reliance on the parties and record in this  
3 proceeding. The Joint CLECs have provided ample evidence demonstrating that the  
4 proposed transaction should be rejected, or in the alternative, approved only if subject to  
5 all of the conditions listed in Exhibit TG-8.

6 **Q. IF THE SETTLEMENTS DO NOT COVER ALL OF THE CONDITIONS YOU**  
7 **BELIEVE ARE NEEDED TO ADDRESS THE MERGER-RELATED HARMS**  
8 **POSED BY THE PROPOSED TRANSACTION, WHY, IN YOUR VIEW, ARE**  
9 **THESE SETTLEMENTS OCCURRING?**

10 A. The proposed transaction has required CLECs to expend enormous amounts of time and  
11 money intervening in the numerous state and FCC dockets reviewing the merger. While  
12 Joint Applicants should be able to recoup the costs they incur during the merger review  
13 process from the \$650 million in annual synergy savings they expect to achieve post-  
14 merger, there is no similar means by which CLECs can recoup the costs they have  
15 incurred to participate in the merger review proceedings. These are resources that could  
16 instead be used for network investment, introduction of new innovative services, or other  
17 initiatives to benefit end user customers. Further, the Joint Applicants have increased  
18 these costs on CLECs by refusing to engage in a more efficient discovery process,<sup>153</sup>  
19 requesting expedited approval without expedited decision-making on key issues,  
20 aggressively litigating discovery disputes on the same documents on a state-by-state

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<sup>153</sup> Gates Direct at pp. 69-74 and Exhibit TG-4.

1 basis, and excluding CLECs from certain settlement negotiations that could have been  
2 conducted more efficiently on a multi-party basis. In light of these challenges, some  
3 parties may have decided to secure conditions that are particularly important to them and  
4 that fit their particular business plans and operations (even though the conditions do not  
5 cover the entire set of conditions the larger CLEC community proposes).

6 **Q. JOINT APPLICANTS REPEATEDLY STATE THAT CENTURYLINK HAS NO**  
7 **LEGACY ILEC TERRITORIES IN ARIZONA. DOES THIS MEAN THAT**  
8 **SOME OF THE JOINT CLECS' PROPOSED CONDITIONS SHOULD BE**  
9 **REJECTED?**

10 A. No. As I discussed at page 116 of my direct testimony, both CenturyLink and the Joint  
11 CLECs are participating in proceedings like this one in multiple states in Qwest territory.  
12 Using the same recommended conditions list for the Joint CLECs across these states  
13 helps avoid confusion and offers consistency when addressing these issues, which  
14 introduces at least some efficiencies. For example, the Joint Applicants do not have to  
15 compare lists state-to-state for differences and modify all of their responses accordingly.  
16 Also, there is no downside to including conditions that apply to legacy CenturyLink  
17 ILEC territories in the conditions adopted in Arizona because they will not require the  
18 Merged Company to do anything.

1           **B.    Increased economies of scale of the Merged Company should benefit**  
2           **competition.**

3           **Q.    CENTURYLINK TAKES ISSUE WITH THE STATEMENT IN YOUR DIRECT**  
4           **TESTIMONY THAT CLECS SHOULD SHARE IN THE INCREASED**  
5           **ECONOMIES OF THE ILEC. CENTURYLINK CLAIMS THAT YOU**  
6           **“SELECTIVELY” QUOTED FROM PARAGRAPH 11 OF THE FCC’S LOCAL**  
7           **COMPETITION ORDER.<sup>154</sup> IS THIS AN ACCURATE CHARACTERIZATION**  
8           **OF YOUR TESTIMONY?**

9           A.    No. To prove that I did not mischaracterize what the FCC said at paragraph 11 of the  
10           *Local Competition Order*, I have attached the entire paragraph 11 as Exhibit TG-14 to my  
11           testimony.

12           The Joint Applicants have identified increases in economies of scale for the Merged  
13           Company as a merger-related benefit.<sup>155</sup> The Joint Applicants have also stated that this  
14           increase in economies of scale would result in efficiencies and lower per-unit costs for  
15           the Merged Company.<sup>156</sup> The purpose of the reference to the *Local Competition Order* at  
16           ¶ 11 in my direct testimony is to explain that one of the cornerstones of the 1996 Act is  
17           that competitive LECs should share in the economies of the ILEC so as to overcome the  
18           “significant economic impediments to efficient entry into the monopolized local

<sup>154</sup> Glover Rebuttal at p. 28, footnote 52.

<sup>155</sup> Campbell Direct at pp. 13 and 24.

<sup>156</sup> CenturyLink states: “greater economies of scale result in lower overhead costs per customer, or per access line” and “increased product availability and decreased per unit cost for a given service...” CenturyLink Response to Colorado Office of Consumer Counsel Data Request #1-15(a) and (b).

1 market[.]” As such, if the Merged Company is able to achieve significant increased  
2 economies of scale due to the merger and those economies are not shared with the  
3 CLECs, then the economic impediments to efficient entry into the local market have been  
4 raised (*e.g.*, the Merged Company enjoys a cost advantage over its competitors). This is  
5 a direct impact of the proposed transaction.

6 CenturyLink’s claim that “[n]owhere does the FCC’s Order suggest that there should be a  
7 sharing of economic benefits resulting from a merger”<sup>157</sup> entirely misses the point. The  
8 FCC said that “economies of density, connectivity, and scale...have been viewed as  
9 creating a natural monopoly[.]” and, as a result, required these economies to be shared  
10 with CLECs. This requirement exists independent of a merger. My point, however, is  
11 that the Joint Applicants have touted significant increases in its economies of scale due to  
12 the proposed transaction, and if these efficiencies are not shared with CLECs as the FCC  
13 requires, it will further entrench the Merged Company in relation to the very factors that  
14 have been viewed as creating a “natural monopoly.” Such a result would be contrary to  
15 the public interest, including the public’s interest in robust competition.

16 **Q. CENTURYLINK GOES ON TO CLAIM THAT CLECS WANT TO “SHARE’**  
17 **DIRECTLY IN THE COST SAVINGS THAT ARE TO BE REALIZED**  
18 **THROUGH THE MERGER”<sup>158</sup> AND REDIRECT “CASH FLOWS TO**

<sup>157</sup> Glover Rebuttal at p. 28, footnote 52.

<sup>158</sup> Glover Rebuttal at p. 30, lines 8-9.

1 **NARROWLY BENEFIT CLECS AND OTHER WHOLESALE CUSTOMERS.”<sup>159</sup>**

2 **IS THAT WHAT CLECS ARE SEEKING?**

3 A. No. The Joint Applicants have estimated approximately \$575 million in annual operating  
4 expense synergies and \$50 million of annual capital expenditure synergies, for a total of  
5 \$625 million in annual operating and capital synergies.<sup>160</sup> The Joint CLECs do not want  
6 a cut of that estimated synergy savings, as CenturyLink suggests. The Joint Applicants  
7 have not provided one example of a CLEC condition that seeks part of the estimated  
8 synergy savings, or any examples of a condition proposed by the Joint CLECs that would  
9 prevent Joint Applicants from achieving their estimated synergy savings. If the Joint  
10 Applicants were to claim that the Joint CLECs’ proposed conditions prevented the Joint  
11 Applicants from achieving their synergy savings, then serious questions would be raised  
12 about the Joint Applicants’ integration plans because the Joint CLEC conditions provide  
13 the certainty needed by Joint CLECs and their end users during post-merger integration  
14 and ensure that the combined company meets its existing obligations while undertaking  
15 the difficult task of combining the two companies.

16 Public interest benefits can accrue to the CLECs and competition from the proposed  
17 merger without the Merged Company flowing through any of the \$650 million in  
18 estimated synergy savings. For example, the increased economies that the Joint  
19 Applicants expect from the Merger could be shared with wholesale customers by

<sup>159</sup> Glover Rebuttal at p. 30, lines 1-2.

<sup>160</sup> Glover Direct at p. 13.

1 allowing a requesting carrier to opt into an ICA that is available elsewhere in the Merged  
2 Company's larger, more interconnected footprint (Condition 11), or agreeing not to raise  
3 wholesale rates given that the Joint Applicants expect lower per-unit costs due to the  
4 increased economies of scale<sup>161</sup> (Condition 7). The Joint CLECs are not seeking any  
5 special advantage or windfall related to the Merged Company's synergy savings as  
6 CenturyLink suggests; rather, the Joint CLECs want to make sure that potential merger-  
7 related harm to CLECs and their customers is offset or avoided, and that CLECs are not  
8 worse off from a competitive standpoint vis-à-vis the larger incumbent LEC if the  
9 proposed transaction is approved.

10 *C. The objective of the Joint CLEC proposed conditions is to offset harm related to*  
11 *the proposed transaction, not to undermine the Joint Applicants' ability to*  
12 *compete.*

13 **Q. MR. HUNSUCKER CLAIMS THAT THE JOINT CLEC CONDITIONS ARE**  
14 **DESIGNED TO UNDERMINE THE MERGED COMPANY'S ABILITY TO**  
15 **COMPETE. IS THIS TRUE?**

16 **A.** No. Mr. Hunsucker's mischaracterization of my testimony leads him to an incorrect  
17 conclusion. Mr. Hunsucker states:

18 A statement made by Mr. Gates shows the CLECs' mindset and purpose  
19 that is inconsistent with that which CenturyLink has. Mr. Gates noted that  
20 CLECs and the Joint Applicants "are rivals, and...their economic  
21 incentive (as profit-maximizing firms) is to undermine – not help – the

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<sup>161</sup> CenturyLink states: "greater economies of scale result in lower overhead costs per customer, or per access line" and "increased product availability and decreased per unit cost for a given service..." CenturyLink Response to Colorado Office of Consumer Counsel Data Request #1-15(a) and (b).

1 other provider's ability to compete for end user customers..." While I  
2 reject Mr. Gates' cynical view of the Joint Applicants' wholesale business  
3 practices, I believe his statement reveals the true objective of the CLEC  
4 parties. The CLECs are hoping to achieve by their proposed conditions a  
5 series of competitive advantages that existing interconnection agreements,  
6 commission-approved processes and other accepted practices do not  
7 currently provide or apparently not to the degree desired by the CLECs.<sup>162</sup>

8 To show how Mr. Hunsucker takes my testimony out of context, I have provided below  
9 the entire paragraph from my testimony with Mr. Hunsucker's selective quote in  
10 bold/underlined text:

11 Because of this unusual but unavoidable continuing interaction among  
12 providers, for local telecommunications competition to work, competing  
13 providers must cooperate behind-the-scenes, even though they **are rivals,**  
14 **and** even though **their economic incentive (as profit-maximizing firms)**  
15 **is to undermine – not help – the other provider's ability to compete**  
16 **for end user customers.** As a result, no matter how much retail  
17 competition there might be, regulation is needed to make sure that the  
18 critical behind-the-scenes cooperation actually occurs. This is the essence  
19 and purpose of Sections 251 and 271 of the Act. Because ILECs and  
20 BOCs enjoy a significant advantage over CLECs in terms of determining  
21 whether the wholesale relationship between them is successful, Sections  
22 251 and 271 (and continued enforcement and compliance with those  
23 sections) are absolutely critical to ensuring that ILECs and BOCs continue  
24 to cooperate with CLECs.<sup>163</sup>

25 Read in proper context, my testimony explains that compliance with and enforcement of  
26 Sections 251 and 271 of the Act are critical to ensure that ILECs and BOCs do not  
27 exploit their economic incentives to discriminate against competitors who also purchase  
28 critical bottleneck elements from them. It is no secret that ILECs/BOCs and CLECs are  
29 rivals in the local telecommunications market, and it is also no secret that ILECs/BOCs

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<sup>162</sup> Hunsucker Rebuttal at 12.

<sup>163</sup> Gates Direct at pp. 12-13.



1 and CLECs are profit-maximizing firms that compete for end user customers.<sup>164</sup> The big  
2 difference, however, is that ILECs/BOCs have control over critical inputs to the services  
3 CLECs offer to end user customers, which gives them the *means* (in addition to the  
4 incentive) to undermine the CLECs ability to compete for end user customers.  
5 Accordingly, Section 251(c) of the Act applies to *incumbent* local exchange carriers and  
6 not competitive local exchange carriers. Likewise, Section 271 of the Act applies to  
7 BOCs and not CLECs. Mr. Hunsucker's claim distorts the obvious point of my  
8 testimony and ignores this important distinction between ILECs/BOCs and CLECs.

9 **Q. ARE CLECS HOPING TO UNDERMINE THE JOINT APPLICANTS' ABILITY**  
10 **TO COMPETE OR ACHIEVE COMPETITIVE ADVANTAGES BY PROPOSING**  
11 **CONDITIONS IN CONJUNCTION WITH APPROVAL OF THE PROPOSED**  
12 **TRANSACTION?**

13 A. No. Mr. Hunsucker's claim makes no sense. The primary thrust of the Joint CLEC  
14 proposed conditions is to ensure that the "existing interconnection agreements,  
15 commission-approved processes and other accepted [Qwest] practices" referred to by Mr.  
16 Hunsucker are continued if the proposed transaction is approved, and not materially

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<sup>164</sup> See, e.g., Minnesota Docket No. P-421, et. al./PA-10-456, Hearing Transcript Volume 2A (public) at p. 92 ("Q. You're also aware that CLECs compete with Qwest to provide retail service to end user customers, correct? A. Yes, they do. Q. And would you also agree with me that given a choice between providing retail service to a customer on the one hand, or on the other hand providing a CLEC with wholesale service to serve that same customer, Qwest would rather be providing the retail service? A. That's why we compete. We compete for retail customers, I agree to that." (Williams)).

1 changed during the time period at which the likelihood of merger-related harm is at its  
2 highest – during post-merger integration.<sup>165</sup>

3 For instance, Joint CLEC Condition 8 would allow requesting carriers to extend existing  
4 interconnection agreements (including evergreen ICAs) for at least the Defined Time  
5 Period or the date of expiration, whichever is later.<sup>166</sup> These ICAs have defined the  
6 CLECs' wholesale relationships with Qwest for many years (some for about a decade)  
7 and have been updated over the years to accommodate changes in laws. They contain  
8 approved processes and accepted practices, and parties are familiar with them. Despite  
9 these facts, Mr. Hunsucker claims that this condition would “undermine CenturyLink’s  
10 ability to compete fairly and may not be the terms the CLECs would obtain in the  
11 negotiation and arbitration process...”<sup>167</sup> CLECs cannot achieve “competitive  
12 advantages” or impair CenturyLink’s ability to compete fairly by extending the same  
13 ICAs because the extension simply maintains what Qwest provides to CLECs today.  
14 What’s more, Mr. Hunsucker’s reference to making changes to these accepted processes  
15 during the negotiation and arbitration process in order for CenturyLink to “compete  
16 fairly” is further evidence that the Merged Company intends to attempt to materially  
17 change the existing terms and conditions of ICAs post-merger to the detriment of CLECs

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<sup>165</sup> Gates Direct at p. 111, stating that the Joint Applicants expect to achieve estimated synergy savings over a three to five year period.

<sup>166</sup> Exhibit TG-8 at p. 5.

<sup>167</sup> Hunsucker Rebuttal at p. 35, lines 17-19.

1 (particularly when Qwest has been able to compete fairly under the existing ICAs for  
2 years).

3 Another example is Joint CLEC proposed condition 17, which requires the Merged  
4 Company to maintain the Qwest Change Management Process (“CMP”) after the Closing  
5 Date, utilizing the terms and conditions set forth in the CMP Document.<sup>168</sup> The Change  
6 Management Process was established during the 271 review process and the CMP  
7 Document contains accepted practices. No competitive advantages will be conferred  
8 upon CLECs if this condition is adopted because it ensures that the existing process is  
9 maintained. Indeed, many CLECs have pointed out over the years that that the existing  
10 Qwest CMP process enables Qwest to make changes over the objections of CLECs.  
11 There is no legitimate basis for a claim that continuing a process that already favors the  
12 ILEC will hamper CenturyLink’s ability to compete in the future. While CenturyLink  
13 may not think the Qwest CMP is one-sided enough for its liking, that is not a reasonable  
14 basis to eliminate it.

15 **Q. WHAT ARE CLECS HOPING TO ACHIEVE WITH THEIR PROPOSED**  
16 **CONDITIONS?**

17 A. The Joint CLECs’ proposed conditions have been carefully and narrowly crafted to  
18 address the specific harms raised by the proposed transaction. The overall objective of the  
19 conditions is to ensure that the proposed transaction does not harm competitors and

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<sup>168</sup> Exhibit TG-8 at p. 8.

1 competition, and ultimately serves the public interest. More specifically, however, these  
2 conditions are intended to mitigate the harm that is likely to happen (and has occurred  
3 elsewhere) if the proposed transaction is approved as filed, primarily by providing much-  
4 needed certainty that CLECs need to continue to operate their businesses and make  
5 prudent decisions. These conditions also attempt to ensure that the Merged Company  
6 does not use its overwhelming size or resources as the dominant incumbent service  
7 provider to the detriment of competitors and the public interest.

8 ***D. The “Defined Time Period” is merger-specific and is an important component***  
9 ***of offsetting merger-related harm in some conditions.***

10 **Q. WHAT IS THE “DEFINED TIME PERIOD”?**

11 A. I discussed the “Defined Time Period” at pages 111-113 of my direct testimony. This  
12 term is defined in the Joint CLEC conditions list (Exhibit TG-8) as follows:

13 “Defined Time Period,” when used in this list of conditions, refers to a  
14 time period of at least 5-7 years after the Closing Date or, alternatively, a  
15 time period that is a minimum of 42 months (*i.e.*, 3.5 years) and continues  
16 thereafter until the Applicants are granted Section 10 forbearance from the  
17 condition. With respect to agreements, the Defined Time Period applies  
18 whether or not the initial or current term of an agreement has expired  
19 (“evergreen” status).”

20 **Q. IN REFERRING TO THE “DEFINED TIME PERIOD,” MR. HUNSUCKER**  
21 **STATES THAT THE “THE CLECS ONCE AGAIN ARGUE THAT CERTAIN**  
22 **MERGER CONDITIONS SHOULD LAST AN UNPRECEDENTED SEVEN**

1           **YEARS.”<sup>169</sup> IS THIS A FAIR DESCRIPTION OF THE DEFINED TIME**  
2           **PERIOD?**

3           A.    No. Mr. Hunsucker ignores relevant portions of the definition of this term (shown  
4           above). The definition speaks for itself, but Mr. Hunsucker fails to mention that the  
5           Defined Time Period would be 42 months (or 3.5 years) under certain circumstances,  
6           which is the same amount of time the AT&T/BellSouth FCC merger conditions  
7           applied.<sup>170</sup> He also fails to mention that the definition of Defined Time Period is flexible  
8           in that it is designed to provide protections from merger-related harm (based on the Joint  
9           Applicants’ own time estimates), while also allowing the Merged Company to terminate  
10          the merger conditions subject to the Defined Time Period sooner by demonstrating that  
11          the integration effort is running smoothly. This condition, therefore, strikes a balance  
12          between the desire of the Joint Applicants to have the proposed transaction approved on  
13          an expedited basis (and in the absence of any useful facts about the Merged Company’s  
14          integration plans) while providing a certain degree of protection for CLECs and their  
15          customers in relation to certain time-sensitive conditions.

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<sup>169</sup> Hunsucker Rebuttal at p. 65, lines 1-2. *See also*, Hunsucker Rebuttal at p. 38, lines 3-4 (“The CLECs’ Defined Time Period of up to seven years under which they argue that certain merger conditions should last, is unreasonable and unprecedented.”)

<sup>170</sup> Gates Direct at p. 112, footnote 216.

1 **E. Joint Applicants' criticisms of the Joint CLEC proposed conditions should be**  
2 **rejected and the conditions adopted.**

3 **1. Conditions 4 and 11**

4 **Q. IN REFERENCE TO CONDITION 4(A), WHICH ADDRESSES QWEST**  
5 **PERFORMANCE ASSURANCE PLANS ("PAPS") AND PERFORMANCE**  
6 **INDICATORS ("PIDS"), MR. WILLIAMS CLAIMS THAT YOU PROVIDE "NO**  
7 **EVIDENCE WHATSOEVER TO SUPPORT" YOUR CLAIM THAT QWEST'S**  
8 **PAPS AND PIDS ARE ESSENTIAL TO ENSURE THAT LOCAL MARKETS IN**  
9 **QWEST'S REGION REMAIN OPEN TO COMPETITION.<sup>171</sup> IS HE CORRECT?**

10 **A.** No. My testimony addressing PAPS and PIDS provided very detailed support for their  
11 importance to keeping markets open to competition. (Gates Direct at pages 44-46). I also  
12 provided Exhibit TG-2, which provided a detailed description (with dozens of cites to  
13 authority) of the Qwest 271 review process that developed and tested the PAPS and PIDS  
14 as well as explained the importance of PAP and PIDS to ensuring that local markets  
15 remain open to competition. Rather than rebut the facts provided in my direct testimony,  
16 Mr. Williams simply ignores them. As further support regarding the importance of the  
17 PAPS and PIDS, the Colorado Commission, when approving the PAP in its state, summed  
18 up the importance and significance of the PAP, stating:

19 We regard the CPAP, or Colorado Performance Assurance Plan, *as the*  
20 *single most important innovation of this § 271 process.* On a *going-*  
21 *forward basis*, the CPAP provides meaningful incentives for Qwest to  
22 meet its wholesale unbundling obligations, compensates CLECs for harm

<sup>171</sup> Williams Rebuttal at p. 17, lines 4-9.

1           suffered, and provides flexibility to adapt to changing market  
2           conditions.<sup>172</sup>

3           The Colorado Commission said that "the CPAP is the *most vital element* in Qwest's  
4           application on a *going-forward basis*" and that "the regulatory regime it established will  
5           remain *a crucial legacy* of the § 271 process."<sup>173</sup> Additionally, Liberty Consulting has  
6           said:

7                     [T]he PAP incentives *continue to be important* in helping ensure that  
8                     Qwest's performance level does not deteriorate, because Qwest's  
9                     wholesale services *remain critical* for the CLECs still relying on them.  
10                    Recent *experiences in Hawaii and northern New England demonstrate*  
11                    *the severe impact on competitors when an incumbent local company*  
12                    *fails to provide adequate wholesale performance, despite the best*  
13                    *intentions and preparations.* The circumstances of those cases are very  
14                    different from what the CLECs face in Qwest's operating territory.  
15                    However, they illustrate conditions that can arise in extreme cases without  
16                    adequate protections. The Qwest PAPs help ensure that the correct  
17                    incentives are in place to prevent such conditions from occurring.<sup>174</sup>

18           Although Liberty Consulting said the circumstances of Hawaii and northern New  
19           England were "very different"<sup>175</sup> in June of 2009 when Liberty Consulting wrote its  
20           report, those circumstances have changed in the relatively short time since then. Today,  
21           Qwest's operating territory is subject to similar circumstances in which a merger, if

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<sup>172</sup> Evaluation of the Colorado Public Utilities Commission, filed in *In the Matter of Application by Qwest Communications International, Inc., for Provision Of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota*, WC Docket No. 02 – 148 at p. 3. (emphasis added)

<sup>173</sup> *Id.* p. 54 (emphasis added).

<sup>174</sup> Liberty Consulting Analysis of Qwest's Performance Assurance Plans Final Report, Prepared for Regional Oversight Committee (June 30, 2009) ("Liberty June 2009 Final Report") at p. 4, available at <http://www.puc.idaho.gov/internet/cases/tele/QWE/QWET0804/staff/20090817LIBERTY%20FINAL%20REP.ORT.PDF> (emphasis added; footnote omitted).

<sup>175</sup> Liberty June 2009 Final Report at p. 4.

1 approved, will also prompt system consolidation and company integration. The PAP and  
2 PIDs are even more essential now than before.

3 **Q. MR. WILLIAMS CLAIMS THAT YOU QUOTE “AN FCC STATEMENT OUT**  
4 **OF CONTEXT” TO SUPPORT YOUR CLAIM THAT PAPS AND PIDS ARE**  
5 **ESSENTIAL.<sup>176</sup> IS THIS CRITICISM WARRANTED?**

6 A. No. To show that Mr. Williams is incorrect, I have reproduced the FCC statement he  
7 claims I take out of context below (shown exactly how I quoted it at page 45 of my direct  
8 testimony):

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

14 Footnote 78 of my direct testimony shows that I attributed this quote to paragraph 440 of  
15 the *Qwest 9-State 271 Order*. To prove that paragraph 440 of the *Qwest 9-State 271*  
16 *Order* contains this quote and that I did not take it out of context, I have attached the  
17 entire paragraph 440 to my surrebuttal testimony as Exhibit TG-15.

18 Indeed, it is Mr. Williams that takes the FCC’s order out of context. Mr. Williams states:

19 the FCC went on to say later in the same quoted paragraph that a  
20 performance assurance plan is not a requirement for the authority of a  
21 BOC like Qwest...but *merely* that a PAP would be ‘probative evidence’  
22 that a BOC will continue to meet its Section 271 obligations.<sup>177</sup>

<sup>176</sup> Williams Rebuttal at p. 17, line 10.

<sup>177</sup> Williams Rebuttal at p. 18, lines 4-8. (emphasis added) Mr. Williams incorrectly cites to paragraph 453 of the Qwest 9-State 271 Order (Williams Rebuttal at footnote 6).



1 Mr. Williams' use of the word "merely" is an obvious attempt to downplay the emphasis  
2 that the FCC has obviously placed on the existence of PAPs to ensure against  
3 backsliding. In doing so, Mr. Williams ignores footnote 1598 of the Qwest 9-State 271  
4 Order (which is in the same paragraph 440 I quoted) which states:

5 We note that in all of the previous applications that the Commission has  
6 granted to date, the applicant was subject to an enforcement plan  
7 administered by the relevant state commission to protect against  
8 backsliding after BOC entry into the long distance market. These  
9 mechanisms are administered by the state commissions and derive from  
10 authority the states have under state law or under the federal Act. As such,  
11 these mechanisms can serve as *critical complements* to the Commission's  
12 authority to preserve checklist compliance pursuant to section 271(d)(6).  
13 (emphasis added)

14 Mr. William also ignores the importance the Arizona Commission has placed on  
15 performance assurance plans to prevent against backsliding after a grant of 271 authority.  
16 The ACC said: "[t]he ACC concluded that an efficient and effective PAP was *necessary*  
17 to assure Qwest's future compliance... with the market opening measures..."<sup>178</sup> and "[a]  
18 Performance Assurance Plan is an important monitoring and enforcement mechanism of  
19 ensuring that the BOC will continue to meet its Section 271 obligations after it receives a  
20 grant of such authority."<sup>179</sup> Indeed, Mr. Williams' primary point – that Section 271 does  
21 not contain an express requirement that a BOC implement a PAP – was obviously  
22 considered by the FCC in 2003 when it approved Qwest's 271 authority and by the

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<sup>178</sup> Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003, at p. 24 (emphasis added).

<sup>179</sup> Decision 64888, Docket No. T-00000A-976-0238 at ¶ 6.

1 Arizona Commission back in 2002-2003 when it approved Qwest's PAP,<sup>180</sup> but they still  
2 found Qwest's PAP to be "critical" and "necessary" to ensure future 271 compliance and  
3 prevent against backsliding. ACC Staff also apparently believes that maintaining the  
4 Qwest PAP and PIDs in Arizona is necessary, as it has proposed in Staff Conditions 6  
5 and 21 to require the Merged Company to maintain Qwest's PAP and PIDs post-merger,  
6 and in Staff Condition 22 to suspend the docket examining Qwest's proposed changes to  
7 its PAP.

8 **Q. MR. WILLIAMS CLAIMS THAT PAPS AND PIDS ARE NO LONGER**  
9 **ESSENTIAL BECAUSE "THE MARKET HAS NOT ONLY REMAINED OPEN,**  
10 **BUT THAT IT WILL CONTINUE TO BE SO, WITH OR WITHOUT A PAP."**<sup>181</sup>  
11 **IS THERE ANY BASIS FOR THIS STATEMENT?**

12 A. No. Mr. Williams asserts that the wholesale market is robustly open to competition.<sup>182</sup>  
13 However, this assertion was rejected by the FCC as recently as four months ago.

14 **Q. PLEASE ELABORATE.**

15 A. In June 2010, the FCC denied Qwest's petition for forbearance in the Phoenix Arizona  
16 Metropolitan Statistical Area ("MSA"). In doing so, the FCC said:

17 First, the Commission has long recognized that a vertically integrated firm  
18 with market power in one market—here upstream wholesale markets  
19 where, as discussed below, Qwest remains dominant—may have the  
20 incentive and ability to discriminate against rivals in downstream retail

<sup>180</sup> Decision 64888 at ¶ 4.

<sup>181</sup> Williams Rebuttal at p. 18, lines 18-19.

<sup>182</sup> Williams Rebuttal at p. 37, line 19.

1 markets or raise rivals' costs. Second, because Qwest was the sole  
2 provider of wholesale facilities and services, there is no reason to expect it  
3 to offer such services at "competitive" rates. Rather, assuming that Qwest  
4 is profit-maximizing, we would expect it to exploit its monopoly position  
5 as a wholesaler and charge supracompetitive rates, especially given that  
6 (absent regulation) Qwest may have the incentive to foreclose competitors  
7 from the market altogether. Moreover, there is little evidence, either in the  
8 record or of which we otherwise are aware, that the BOCs or incumbent  
9 LECs have voluntarily offered wholesale services at competitive prices  
10 once regulatory requirements governing wholesale prices were eliminated.  
11 For example, other than Cox, McLeodUSA was the only other competitor  
12 of significant size cited by the Commission in the *Qwest Omaha*  
13 *Forbearance Order*. The record indicates that subsequent to the *Qwest*  
14 *Omaha Forbearance Order*, Qwest, with one exception, was not spurred  
15 to offer McLeodUSA any wholesale alternatives to UNEs that were not  
16 already offered prior to the grant of forbearance. Moreover, the record  
17 indicates that McLeodUSA has removed most of its employees from the  
18 Omaha marketplace, has limited its operations primarily to serving its  
19 existing customer base, and has ceased sales of residential and nearly all  
20 business services in Omaha. This suggests that McLeodUSA likewise no  
21 longer should be considered a significant competitor in the Omaha  
22 marketplace. We also note record evidence that Integra, which had been  
23 contemplating entry into the Omaha market, abandoned its plans to do so  
24 after the Commission issued the *Qwest Omaha Forbearance Order*.<sup>183</sup>

25 The FCC specifically concluded that Qwest had market power in the upstream wholesale  
26 market, and this market power provides Qwest the incentive and ability to discriminate  
27 against CLECs in downstream retail markets. The Qwest PAPs and PIDs are essential  
28 because they attempt to ensure that Qwest does not use its market power over wholesale  
29 inputs to discriminate against CLECs in relation to Qwest's own retail operations.

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<sup>183</sup> *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*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113, released June 22, 2010 ("Qwest Phoenix Forbearance Order") at ¶ 34.

1 **Q. MR. BRIGHAM REFERS TO “COMPANIES WITH FIBER NETWORKS IN**  
2 **ARIZONA” TO SUPPORT JOINT APPLICANTS’ SUGGESTION THAT THE**  
3 **WHOLESALE MARKET IS COMPETITIVE.<sup>184</sup> HAS MR. BRIGHAM’S CLAIM**  
4 **BEEN REJECTED?**

5 A. Yes. Mr. Brigham says: “[s]everal fiber providers operating in the Phoenix area  
6 specifically market services to carriers as an alternative to Qwest.”<sup>185</sup> Again, Qwest  
7 ignores the FCC’s recent Qwest Phoenix Forbearance Order. The FCC said:

8 The record indicates that Cox offers some wholesale services in the  
9 Phoenix MSA. Cox’s non-cable plant facilities are not widely deployed,  
10 however, and it apparently provides little, if any, wholesale service over  
11 its cable plant, which is deployed primarily in residential areas. The other  
12 potential wholesale suppliers Qwest cites...likewise have comparatively  
13 few networks facilities in the Phoenix MSA and rely primarily upon  
14 Qwest’s facilities to provide services. In addition, the record does not  
15 reveal significant fixed wireless wholesale service offerings in the Phoenix  
16 MSA.<sup>186</sup>

17 The FCC also found that “Evidence that present competitors have deployed limited  
18 amounts of fiber in a larger geographic area does not support a conclusion that those  
19 providers readily could offer wholesale services on a particular route, or that a potential  
20 entrant economically could deploy its own fiber on a particular route in a timely manner  
21 in response to a small but significant and nontransitory increase in the price of wholesale

<sup>184</sup> Brigham Rebuttal at p. 28.

<sup>185</sup> Brigham Rebuttal at p. 28, lines 9-11.

<sup>186</sup> Qwest Phoenix Forbearance Order at ¶ 69.

1 transport services.”<sup>187</sup> Mr. Brigham is attempting to rehash arguments that were rejected  
2 by the FCC just four months ago.<sup>188</sup>

3 **Q. IS THERE OTHER INFORMATION THAT SUPPORTS THE NEED FOR JOINT**  
4 **CLEC CONDITION 4(A) – TO MAINTAIN QWEST’S PAP AND PIDS FOR AT**  
5 **LEAST FIVE YEARS AND REQUIRE AN ADDITIONAL PAP (APAP)?**

6 **A. [\*\*\*BEGIN HIGHLY CONFIDENTIAL** [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

<sup>187</sup> Qwest Phoenix Forbearance Order at ¶ 78.

<sup>188</sup> Mr. Brigham also claims: “Mr. Gates’ competitive ‘market share’ analysis is erroneous because he misquotes the FCC’s *Local Competition Report*.” Brigham Rebuttal at p. 14, lines 3-4. However, I did not misquote the FCC’s Local Competition Report. Footnote 11 to my direct testimony states that Table 11 of the FCC’s Local Competition Report shows non-ILEC share of total end-user switched access lines and VoIP subscriptions to be 28% (or, conversely, ILEC share to be “more than 70 percent of the market.” Gates Direct at p. 16, line 9) Table 11 to the FCC’s Local Competition Report, in fact, shows non-ILEC share of total end-user switched access lines and VoIP subscriptions nationwide to be 28%, which is consistent with my testimony. Though Mr. Brigham apparently objects to me using the nationwide number instead of the Arizona-specific market share number for non-ILEC share of total end-user switched access lines and VoIP subscriptions (which is 40% compared to 28% nationwide), it is incorrect to say that I misquoted the FCC’s Local Competition Report and that my analysis is erroneous. I did not attribute the 28% in my direct testimony to Arizona, and the nationwide number was appropriate because that portion of my testimony discusses the market power and control that ILECs and BOCs possess over their local markets more generally. Moreover, the difference between the 72% market share ILECs possess nationwide and 60% market share they possess in Arizona does not change my analysis or opinion, particularly when ILEC/BOC control over wholesale bottleneck elements is taken into account. See, Gates Direct at p. 16, line 9 – p. 17, line 11 (immediately following the discussion of the ILEC market share).

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[REDACTED]

**END**

**HIGHLY CONFIDENTIAL\*\*\*]** Given that Qwest has already moved to reduce or eliminate PAPs in some states and Joint Applicants have rejected the Joint CLECs' proposed condition related to wholesale service quality in CenturyLink's legacy territory (condition 5 and subparts), it is logical to conclude that CenturyLink's reference to

**\*\*\*BEGIN HIGHLY CONFIDENTIAL** [REDACTED]

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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] **END HIGHLY CONFIDENTIAL\*\*\*]**

Qwest's existing PAP and PIDs should be maintained to ensure that Qwest does not backslide on its 271 obligations and the APAP should be adopted to provide a degree of protection for CLECs and their end users from a deterioration in wholesale service quality due to the merger.

**Q. MS. STEWART STATES THAT CONDITION 11 IS A "BROAD BRUSH RESTRICTION ON INSTALLATION INTERVALS WITHOUT ANY FACTUAL SUPPORT."<sup>189</sup> IS THIS A FAIR CHARACTERIZATION OF CONDITION 11?**

A. No. First, the condition applies to ICAs that are either silent as to an interval or refer to Qwest's website or Standard Interval Guide ("SIG"), and second, it states that these intervals will be no longer than the interval in Qwest's SIG as of the Merger Filing Date. Therefore, it is targeted to apply to intervals that the Merged Company may attempt to lengthen unilaterally, and it simply ensures that the Merged Company will not increase these intervals from those in Qwest's SIG at the time the Joint Applicants announced the proposed transaction. Qwest found these intervals acceptable prior to the proposed transaction (as evidenced by the fact that they were in Qwest's SIG on the Merger Filing

<sup>189</sup> Stewart Rebuttal at p. 13, lines 19-20.

1 Date<sup>190</sup>), and any attempt by the Merged Company to increase these intervals after the  
2 announcement of the merger would be a harm to CLECs resulting directly from the  
3 merger.

4 **Q. HAVE YOU PROVIDED FACTUAL SUPPORT FOR CONDITION 11?**

5 A. Yes. Please refer to pages 130-132 of my direct testimony, where I explained the  
6 importance of service intervals to competition, as well as the fact that Qwest has in the  
7 past attempted to leave service intervals out of ICAs so that they can be lengthened  
8 unilaterally.

9 **Q. MR. HUNSUCKER STATES THAT “CLEC PROVISIONING INTERVALS**  
10 **REFLECT RETAIL PROVISIONING INTERVALS FOR THE SAME OR LIKE**  
11 **SERVICES BECAUSE FEDERAL LAW REQUIRES A CARRIER TO TREAT**  
12 **ALL CUSTOMERS AT PARITY.”<sup>191</sup> DOES HIS TESTIMONY VALIDATE THE**  
13 **CONCERN UNDERLYING CONDITION 11?**

14 A. Yes. Nondiscrimination is an important requirement of Sections 251 and 271 of the Act.  
15 The nondiscrimination requirement, however, does not mean, as Mr. Hunsucker’s  
16 testimony suggests, that CenturyLink may lengthen a wholesale interval post-closing by  
17 lengthening its retail interval and then arguing the wholesale interval must be the same.

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<sup>190</sup> “Merger Filing Date” is defined in Exhibit TG-8 and “refers to May 10, 2010, which is the date on which Qwest and CenturyLink made their merger filing with the FCC.”

<sup>191</sup> Hunsucker Rebuttal at p. 66, lines 11-12.



1 **Q. ARE THERE REASONS WHY WHOLESALE INTERVALS SHOULD NOT BE**  
2 **LENGTHENED TO MATCH A RETAIL INTERVAL?**

3 A. Yes. An interval for a wholesale customer (*e.g.*, a CLEC) establishes the due date upon  
4 which Qwest will deliver the service to the CLEC. For unbundled network element  
5 (“UNE”) loops, there is still more work that the CLEC needs to do after Qwest delivers  
6 the UNE loop to make service work for the CLEC’s end user customer.<sup>192</sup> Accordingly,  
7 in these instances, the CLEC needs to receive the UNE loop in sufficient time to perform  
8 the additional work required and still be able to deliver retail services to end user  
9 customers in the same time frame as the ILEC. If the ILEC wholesale and retail intervals  
10 are the same in these instances, the ILEC would always have an advantage by being able  
11 to deliver services to retail end user customers more quickly than its competitors.

12 One example of this is DS1 UNE loops (1-8 lines): Qwest’s wholesale interval in the SIG  
13 for Arizona and other states is 5 days, compared to a 9 day Qwest retail interval. Qwest  
14 does not perform the end user retail functions for a wholesale service. Qwest has the full  
15 nine days of the interval to prepare for service provisioning on the due date for its End  
16 User Customers. CLECs receive the loop from Qwest on Day 5 and then are allowed  
17 time to perform the additional work a CLEC needs to do to make the service operate for  
18 CLEC’s end user customer.

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<sup>192</sup> See, *e.g.*, Hrg. Ex. Q-2 (Qwest Albersheim Rebuttal), p. 5, lines 8-11, *In re. Complaint of Eschelon Telecom of Arizona, Inc. Against Qwest Corporation*, ACC Docket No. T-01051B-06-0257, T-03406A-06-0257 (Jan. 30, 2007) (Ms. Albersheim testified that the Arizona Commission has found, given that the interval for retail customers is nine days, a five-day interval for CLEC DS1 capable loop orders is appropriate).

1     **Q.    HAVE ANY OTHER STATE COMMISSIONS PREVIOUSLY REJECTED**  
2     **ATTEMPTS TO LENGTHEN WHOLESALE INTERVALS BY LENGTHENING**  
3     **RETAIL INTERVALS AND THEN ARGUING THAT THE WHOLESALE**  
4     **INTERVAL SHOULD BE THE SAME?**

5     A.    Yes. This argument was rejected during the 271 proceedings. When Qwest previously  
6     tried to move from a 5-day to a 9-day loop interval by simultaneously lengthening the  
7     interval for its retail customers, the Minnesota Public Utilities Commission rejected  
8     Qwest’s argument and found that the 5-day loop interval allowed competitors a  
9     meaningful opportunity to compete.<sup>193</sup> The Minnesota Commission found that Qwest  
10    cannot make intervals “unreasonable by lengthening the intervals for provision of retail  
11    service.”<sup>194</sup>

12    **Q.    HAVE ANY OTHER STATE COMMISSIONS RECOGNIZED THE**  
13    **POTENTIALLY HARMFUL EFFECTS OF QWEST LENGTHENING**  
14    **PROVISIONING INTERVALS?**

15    A.    Yes. The Washington Commission recognized this in the context of its review of  
16    Qwest’s request for Section 271 authorization. In that case, Qwest proposed an interval  
17    for DS1 loops that was longer than the interval that the Washington Commission had  
18    established when it approved US WEST’s merger with Qwest, and the Washington

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<sup>193</sup> Findings of Fact, Conclusions of Law and Recommendations, *In the Matter of a Commission Investigation into Qwest’s Compliance with Section 271(c)(2)(B) of the Telecommunications Act of 1996; Checklist Items 1, 2, 4, 5, 6, 11, 13, and 14*, Docket No. P-421/CI-01-1371 (Sept. 16, 2003) (“*MN ALJ 271 Order*”) at ¶125.

<sup>194</sup> *Id.*

1 Commission directed that the proposed interval be reduced to that which the Commission  
2 had previously approved.<sup>195</sup> In another proceeding, the Washington Commission found it  
3 appropriate to include an interval in an ICA to protect both ILEC and CLECs “from  
4 unnecessary delay and gamesmanship.”<sup>196</sup> Condition 11 only applies in situations when  
5 the ICA is silent on an interval or refers to Qwest’s website or SIG – *i.e.*, situations when  
6 the specific interval is not spelled out in the ICA – and would provide protection from the  
7 “unnecessary delay and gamesmanship” discussed by the Washington Commission.

8 **Q. IS CONDITION 11 INDICATIVE OF CLECS “WANT[ING] PRIORITY FOR**  
9 **THEIR NEEDS OVER THOSE OF CENTURYLINK’S END USER**  
10 **SUBSCRIBERS AND WHOLESALE CUSTOMERS” AS MR. HUNSUCKER**  
11 **CLAIMS?**<sup>197</sup>

12 A. No. The opposite is true. If the ILEC wholesale and retail intervals are the same in the  
13 instances described above, the ILEC would always have an advantage by being able to  
14 deliver services to retail end user customers more quickly than its competitors. In some  
15 cases there is work that CLECs need to perform after the wholesale interval in order to

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<sup>195</sup> Twentieth Supplemental Order, Initial Order (Workshop Four): Checklist Item No. 4; Emerging Services, General Terms and Conditions, Public Interest, Track A, and Section 272, *In the Matter of the Investigation into US WEST COMMUNICATIONS, INC.’s Compliance with Section 271 of the Telecommunications Act of 1996 and In the Matter of US WEST COMMUNICATIONS INC.’s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*. Washington Docket Nos. UT-003022 and UT-003040 (November 14, 2001) (“WA 271 Order”) at ¶ 125.

<sup>196</sup> *In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of Verizon Northwest Inc. with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington Pursuant to 47 U.S.C. Section 252(b) and the Triennial Review Order*, Docket No. UT-043013, Order No. 18, September 22, 2005, at ¶ 114.

<sup>197</sup> Hunsucker Rebuttal at p. 66, lines 12-14. See *also*, Stewart Rebuttal at p. 14 (“CLECs’ desire to control this key component of the Qwest provisioning process...”)

1 deliver their services to end user customers. Condition 11 is not about CLECs wanting  
2 priority of their needs, but rather attempting to ensure that the proposed transaction does  
3 not harm their meaningful opportunity to compete. When competition is harmed, end  
4 user customers and the public interest are harmed.

5 Moreover, Mr. Hunsucker asserts that the company “*cannot change existing*  
6 *provisioning intervals* for its separate operating subsidiaries without significant process  
7 or systems improvements.”<sup>198</sup> According to CenturyLink, the company neither *will* nor  
8 *can* change intervals, but still CenturyLink refuses to agree to a condition indicating it  
9 will not change intervals. There is no rational basis for this position, particularly coming  
10 from a company that is before the Commission to gain approval to receive all the claimed  
11 benefits of this merger and on an expedited schedule. Agreeing to reasonable conditions  
12 would expedite the proceedings considerably. Mr. Hunsucker identifies himself as being  
13 in charge of ICA negotiations with CLECs.<sup>199</sup> If CenturyLink takes similar positions in  
14 negotiations – *e.g.*, not agreeing to do something it otherwise planned to do – CLECs  
15 have little hope of resolving issues with CenturyLink by negotiation, and this does not  
16 bode well for the future.

17 Condition 11 does not require anything of the Merged Company that the Joint Applicants  
18 have not already stated will take place post-merger, but it transforms the Joint  
19 Applicants’ paper promises into an enforceable commitment. Notably, Mr. Hunsucker

<sup>198</sup> Hunsucker Rebuttal at p. 66, lines 18-19.

<sup>199</sup> Hunsucker Rebuttal at p. 1, lines 13-15.

1 states: "I note that the CLECs have demonstrated no harm to Arizona or Arizona  
2 customers resulting from the continuation of the existing provisioning intervals."<sup>200</sup>  
3 What Mr. Hunsucker fails to mention is that Condition 11 is proposed to accomplish just  
4 that – *i.e.*, to continue existing provisioning intervals for CLECs with ICAs which are  
5 silent on intervals or reference Qwest's SIG for intervals.

6 **2. Condition 13**

7 **Q. CENTURLINK STATES THAT CONDITION 13 REGARDING BOC STATUS**  
8 **AND SECTION 271 OBLIGATIONS IS UNNECESSARY BECAUSE BOC**  
9 **ISSUES ARE "AN FCC MATTER."<sup>201</sup> DOES THIS CLAIM ELIMINATE THE**  
10 **NEED FOR JOINT CLEC PROPOSED CONDITION 13?**

11 **A.** No. Joint CLEC proposed Condition 13 states:

12 13. In the legacy Qwest ILEC territory, the Merged Company shall be  
13 classified as a Bell Operating Company ("BOC"), pursuant to Section  
14 3(4)(A)-(B) of the Communications Act and shall be subject to all  
15 requirements applicable to BOCs, including but not limited to the  
16 "competitive checklist" set forth in Section 271(c)(2)(B) and the  
17 obligation to ensure there is no backsliding, and the nondiscrimination  
18 requirements of Section 272(e) of the Communications Act.

19 Condition 13 states that Qwest will continue to be a BOC in the legacy Qwest ILEC  
20 territories and subject to existing BOC obligations post-merger. This merger condition is  
21 particularly important to the proposed transaction because this is the first time a non-  
22 BOC ILEC has attempted to acquire an entire BOC and all the obligations that go along

<sup>200</sup> Hunsucker Rebuttal at p. 66, lines 20-21.

<sup>201</sup> McMillan Rebuttal at p. 26, line 6.

1 with it. ACC Staff also sees the merit in such a merger condition as evidenced by ACC  
2 Staff Condition 5.<sup>202</sup>

3 There can be no question that Qwest will be a BOC in the legacy Qwest ILEC territories  
4 post-merger and must maintain ongoing compliance with the Section 271 competitive  
5 checklist in order for Qwest to provide and continue providing long-distance service.<sup>203</sup>

6 In its Order approving Qwest's 271 authority in Arizona, the FCC said:

7 Section 271(d)(6) of the Act requires Qwest to continue to satisfy the  
8 "conditions required for . . . approval" of its section 271 application after  
9 the Commission approves its application...<sup>204</sup>

10 CenturyLink's claims that BOC issues are an "FCC matter" which should be of no  
11 concern to state commissions, ignores the long, established history of state commission  
12 involvement and interest in Qwest's BOC obligations under the federal Act. As  
13 explained in Exhibit TG-2, the state commissions throughout Qwest's 14-state BOC  
14 territory played a crucial role in testing and improving Qwest's OSS and CMP, and  
15 determining the extent to which Qwest had met the requirements of the 271 14-point  
16 checklist. Qwest's CMP was reviewed by the Arizona Commission in association with  
17 Qwest's request for 271 authority. When the FCC reviewed Qwest's 271 application, the  
18 FCC relied heavily on the extensive work completed by the Arizona Commission<sup>205</sup> and

<sup>202</sup> Direct Testimony of Pamela Genung, Attachment 1, Condition 5.

<sup>203</sup> *In the Matter of Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Arizona*, Memorandum Opinion and Order, WC Docket No. 03-194, FCC 03-309, December 3, 2003 ("Qwest Arizona 271 Order"), at ¶¶ 4, 6, 58, 60.

<sup>204</sup> Qwest Arizona 271 Order at ¶ 58.

<sup>205</sup> Qwest Arizona 271 Order at ¶4.

1 upon the Arizona Commission's commitment to oversee Qwest's ongoing compliance  
2 going forward to ensure that local markets remain open in Arizona.<sup>206</sup> The FCC said:

3 2. This Order marks the culmination of years of extraordinary work by the  
4 state commissions. We take this opportunity here, in the Commission's  
5 last section 271 application, to commend all the state commissions for  
6 their work in this area since passage of the 1996 Act. Today, we are  
7 reviewing a Bell operating company's (BOC's) performance that has been  
8 shaped and refined by the Arizona Corporation Commission (Arizona  
9 Commission). The Arizona Commission and its staff performed an  
10 exhaustive review of Qwest's compliance with its section 271 obligations  
11 spanning four years and resulting in several dozen orders. Their efforts  
12 facilitated "an almost complete transformation of Qwest's systems and  
13 processes from one that was not conducive to local competition to one that  
14 . . . will foster local competition." In addition to supervising its own third-  
15 party test of Qwest's operations support systems (OSS), the Arizona  
16 Commission oversaw the development of a comprehensive set of  
17 performance measurements known as performance indicator definitions  
18 (PIDs), reexamined Qwest's wholesale pricing, rewrote Qwest's  
19 Statement of Generally Available Terms and Conditions (SGAT), and  
20 opened enforcement dockets to review issues concerning agreements  
21 between Qwest and certain competitors that were not filed as  
22 interconnection agreements with the Arizona Commission for its approval.  
23 Moreover, the Arizona Commission developed and adopted its own  
24 Performance Assurance Plan (PAP) to ensure that Qwest will continue to  
25 adhere to its performance obligations after it receives section 271  
26 authority.

27 3. The Arizona Commission's outstanding work in conjunction with  
28 Qwest's extensive efforts has resulted in competitive entry in  
29 Arizona....We are confident that the Arizona Commission's and Qwest's  
30 hard work to open the local exchange market in Arizona to competition  
31 will benefit consumers by making increased competition in all  
32 telecommunications service markets possible in this state. Finally, we are  
33 also confident that the Arizona Commission will be vigilant in ensuring  
34 that Qwest continues to meet its statutory obligations.<sup>207</sup>

<sup>206</sup> Qwest Arizona 271 Order at ¶¶25, 58-60.

<sup>207</sup> Qwest Arizona 271 Order at ¶¶ 2-3.

1 Also, regarding the role of the Arizona commission in monitoring Qwest's continued  
2 compliance with Section 271 obligations, the FCC said:

3 Working in concert with the Arizona Commission, we intend to monitor  
4 closely Qwest's post-approval compliance for Arizona to ensure that  
5 Qwest does not "cease[] to meet any of the conditions required for [section  
6 271] approval... We are confident that cooperative state and federal  
7 oversight and enforcement can address any backsliding that may arise with  
8 respect to Qwest's entry into the long distance market in Arizona."<sup>208</sup>

9 In sum, Qwest must continue to satisfy the conditions required for 271 approval, and the  
10 state commissions play an important oversight and enforcement role to address any  
11 Qwest backsliding. This is particularly relevant to the proposed transaction because  
12 CenturyLink – a non-BOC ILEC which lacks experience with Section 271 obligations –  
13 will own and control Qwest<sup>209</sup> if the proposed transaction is approved.

14 **Q. MS. MCMILLAN STATES THAT "THE CENTURYLINK ARIZONA**  
15 **OPERATIONS ARE NOT BOC PROPERTIES, AND WILL NOT BECOME**  
16 **BOCS AFTER THE MERGER..."<sup>210</sup> ARE THE CLECS PROPOSING TO**  
17 **CHANGE THE BOC STATUS OF ANY OPERATING COMPANY?**

18 **A.** No. Both Ms. McMillan<sup>211</sup> and Mr. Hunsucker<sup>212</sup> mischaracterize Condition 13 by  
19 suggesting it would change the BOC status of the Merged Company's operating

<sup>208</sup> Qwest Arizona 271 Order at ¶¶ 25, 59-60.

<sup>209</sup> McMillan Direct at p. 5, lines 23-25 ("At closing, Qwest will become a direct, wholly-owned subsidiary of CenturyLink and all Qwest subsidiaries, including QC, will be indirectly owned and controlled by CenturyLink...")

<sup>210</sup> McMillan Rebuttal at p. 26, lines 10-12.

<sup>211</sup> McMillan Rebuttal at p. 26, lines 10-12.



1 companies. However, Joint CLECs' proposed Condition 13 begins with the words: "[i]n  
2 the legacy Qwest ILEC territory..." which means that the Merged Company would be  
3 classified as a BOC only in the legacy Qwest ILEC territory where Qwest is a BOC  
4 today, and not for any CenturyLink operations. As Mr. Hunsucker has testified, "the  
5 legacy Qwest territories will continue to have 271 obligations"<sup>213</sup> and there is no good  
6 reason for Joint Applicants to object to Joint CLECs' proposed Condition 13.

7 **Q. IS THERE OTHER INFORMATION THAT SUPPORTS THE NEED FOR JOINT**  
8 **CLECS' PROPOSED CONDITION 13?**

9 A. **[\*\*\*BEGIN HIGHLY CONFIDENTIAL** [REDACTED]

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 [REDACTED] **END HIGHLY CONFIDENTIAL\*\*\*]** This  
18 statement is also concerning because CenturyLink, which has no experience as a BOC

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<sup>212</sup> Hunsucker Rebuttal at p. 67 ("Q. Can the Merged Company be classified as a BOC as the CLECs demand in Condition 13? A. No...")

<sup>213</sup> Hunsucker Supplemental Direct Testimony in the Oregon merger docket, Docket No. UM 1484 at p. 12, lines 18-19 (June 22, 2010).

1 and has served primarily rural areas that are exempt from full competition, will be in  
2 control of establishing the [\*\*\*BEGIN HIGHLY CONFIDENTIAL ██████████  
3 END HIGHLY CONFIDENTIAL\*\*\*] that will permeate the Merged Company's  
4 treatment of wholesale customers in Qwest's region going forward. Furthermore, given  
5 CenturyLink's statement that the [\*\*\*BEGIN HIGHLY CONFIDENTIAL ██████████  
6 ██████████  
7 ██████████  
8 ██████████  
9 END HIGHLY CONFIDENTIAL\*\*\*]

10 3. Condition 15

11 Q. THE JOINT APPLICANTS STATE THAT CONDITON 15 REGARDING  
12 WHOLESALE SUPPORT INFORMATION IS UNNECESSARY BECAUSE OF  
13 THE EXISTING NOTICE REQUIREMENTS OF CMP AND ICAS.<sup>214</sup> DO THE  
14 CMP AND ICAS PROVIDE SUFFICIENT PROTECTION FOR CLECS AND  
15 THEIR CUSTOMERS REGARDING THIS ISSUE?

16 A. No. An express condition is needed to address the substantial changes that may occur to  
17 escalation information, contact lists, account manager information, etc., due to the  
18 restructuring associated with the proposed transaction. When the terms of the ICAs were  
19 negotiated, they were intended to address the normal day-to-day changes Qwest may

<sup>214</sup> Stewart Rebuttal at pp. 19-20 and Hunsucker Rebuttal at p. 55.

1 make to this information in the normal course of business; these provisions could not  
2 have addressed (or even considered) the magnitude of changes that would take place if  
3 Qwest was acquired by a different company and the wholesale operations of Qwest were  
4 integrated with the wholesale operations of another company. Undoubtedly, the merger  
5 will create many changes in personnel, which makes ready access to up-to-date  
6 information particularly important. Problems of the scale and type that occurred with the  
7 Hawaiian Telcom and FairPoint transactions, if they occur, will only be compounded if it  
8 is not already known whom to contact and how to escalate such issues. Condition 15 is  
9 designed to address harm related to the proposed transaction.

10 As explained in my direct testimony, Qwest has in the past made unilateral changes  
11 through CMP against the objections of CLECs.<sup>215</sup> Therefore, the existing CMP  
12 provisions cited by Joint Applicants could be changed post-merger against the objections  
13 of CLECs. The fact that the Joint Applicants have refused to adopt Joint CLEC proposed  
14 Condition 17, which requires the Merged Company to maintain Qwest's CMP using the  
15 terms and conditions of the CMP Document, calls into serious question whether the Joint  
16 Applicants intend to continue Qwest's CMP post-merger. Ms. Stewart made a similar  
17 claim about CMP and the ICAs with respect to OSS-related conditions, and I address this  
18 claim further in my discussion below of Conditions 16, 19, and 20.

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<sup>215</sup> Gates Direct at p. 131.

1 In addition, Mr. Hunsucker's claim that Condition 15 would "modify negotiated  
2 agreements that are already in place"<sup>216</sup> is not supported by any actual examples or other  
3 evidence. Mr. Hunsucker's testimony is also contrary to the language of Condition 15  
4 itself, which expressly provides that "the information and notice provided shall be  
5 consistent with the terms of applicable interconnection agreements."

6 **4. Conditions 17 and 18**

7 **Q. CENTURLINK DISAGREES WITH JOINT CLECS' CONDITIONS 17 AND 18.**  
8 **WHAT ARE THOSE CONDITIONS?**

9 A. Joint CLECs' proposed Conditions 17 and 18 are shown below.<sup>217</sup>

10 17. After the Closing Date, the Merged Company will maintain the Qwest  
11 Change Management Process ("CMP"), utilizing the terms and conditions  
12 set forth in the CMP Document, including those terms and conditions  
13 governing changes to the CMP Document. The Merged Company will  
14 dedicate the resources needed to complete pending CLEC change requests  
15 in a commercially reasonable time frame.

16 18. The Merged Company shall ensure that the legacy Qwest Wholesale  
17 and CLEC support centers are sufficiently staffed, relative to wholesale  
18 order volumes, by adequately trained personnel dedicated exclusively to  
19 wholesale operations so as to provide a level of service that is equal to or  
20 superior to that which was provided by Qwest prior to the Merger Filing  
21 Date and to ensure the protection of CLEC information from being used  
22 for the Merged Company's retail operations or marketing purposes of any  
23 kind. The Merged Company will employ people who are dedicated to the  
24 task of meeting the needs of CLECs and other wholesale customers. The  
25 total number of the Merged Company's employees dedicated to  
26 supporting wholesale services for CLEC customers will be no fewer than  
27 the number of such employees (including agents and contractors)

<sup>216</sup> Hunsucker Rebuttal at p. 55, lines 15-16.

<sup>217</sup> Exhibit TG-8 at p. 8.

1 employed by legacy Qwest and legacy CenturyLink as of the Merger  
2 Filing Date, unless the Merged Company obtains a ruling from the  
3 applicable regulatory body that wholesale order volumes materially  
4 decline or other circumstances warrant corresponding employee  
5 reductions.

6 ACC Staff's Condition 24 is similar to Joint CLECs' Condition 17, and ACC Staff's  
7 Condition 27 is similar (and complementary) to Joint CLECs' Condition 18.<sup>218</sup>

8 **Q. HAS CENTURYLINK FAIRLY DESCRIBED JOINT CLECS' PROPOSED**  
9 **CONDITION 17 RELATING TO CMP AND CONDITION 18 RELATING TO**  
10 **WHOLESALE SUPPORT?**

11 A. No. Mr. Hunsucker claims that Joint CLECs' Conditions 17 and 18 would prevent the  
12 Merged Company from "reduc[ing] its costs through attrition of employees whose  
13 functions have been automated or are redundant" and require the Merged Company to  
14 "retain some legacy processes rather than determine if the processes can be automated or  
15 improved to benefit both the company and the CLECs."<sup>219</sup> Mr. Hunsucker also refers to  
16 these conditions as CLECs attempting to "dictate the number of wholesale employees on  
17 the CenturyLink payroll and...dictate certain processes."<sup>220</sup> However, Joint CLECs'  
18 proposed Condition 17 simply maintains the Qwest CMP process, using the terms and  
19 conditions in the existing CMP Document. The Joint Applicants' claim that this  
20 condition attempts to "dictate certain processes" makes no sense given that this process

<sup>218</sup> Direct Testimony of Pamela Genung, Attachment 1, Conditions 24 and 27.

<sup>219</sup> Hunsucker Rebuttal at p. 67, lines 16-20.

<sup>220</sup> Hunsucker Rebuttal at p. 67, lines 12-16.

1 already exists and that the Joint Applicants have proclaimed their intent to maintain  
2 Qwest's CMP post-merger.<sup>221</sup>

3 **Q. ARE CLECS DICTATING THE NUMBER OF WHOLESALE EMPLOYEES ON**  
4 **THE CENTURYLINK PAYROLL UNDER CONDITION 18, AS MR.**  
5 **HUNSUCKER CLAIMS?**

6 A. No. A fair reading of Condition 18 shows that wholesale volumes or other circumstances  
7 warranting employee reductions will dictate the number of CenturyLink/Qwest wholesale  
8 employees post-merger – not CLECs. Under Condition 18, the Merged Company has the  
9 opportunity to demonstrate to the state commission that conditions warrant further  
10 headcount reductions in wholesale operations. It would be the Merged Company and the  
11 state commission determining whether such conditions exist under Condition 18, not  
12 CLECs.

13 **Q. JOINT APPLICANTS STATE THAT QWEST HAS BEEN REDUCING**  
14 **HEADCOUNT AT THE SAME TIME AS IT HAS BEEN INCREASING**  
15 **EFFICIENCY AND REDUCING QWEST QPAP PENALTY PAYMENTS.<sup>222</sup>**  
16 **DOES THIS MEAN THAT CONDITIONS 17 AND 18 ARE INAPPROPRIATE,**  
17 **AS MR. HUNSUCKER CLAIMS?**

18 A. No. Qwest's prior performance is not indicative of how the Merged Company will  
19 operate if the proposed transaction is approved as filed. The control of Qwest's

<sup>221</sup> Hunsucker Rebuttal at p. 24, lines 4-6.

<sup>222</sup> Hunsucker Rebuttal at pp. 67-68.

1 wholesale operations will be taken over by CenturyLink – a company that has a  
2 substantially smaller legacy wholesale operations than Qwest (due to CenturyLink  
3 primarily serving rural areas in the past), and has no experience with Qwest’s systems,  
4 processes or BOC obligations. As the Joint Applicants have explained, Qwest’s  
5 headcount – including headcount dedicated to wholesale customers – has been decreasing  
6 in recent years.<sup>223</sup> There is no evidence that CenturyLink fully understands or appreciates  
7 the resources that will be needed in Qwest’s legacy territory post-merger to sufficiently  
8 handle the significantly larger volumes than it is accustomed to handling – particularly at  
9 a time when it is attempting to integrate a company that is double its current size and  
10 complete the integration of Embarq. And Qwest’s prior performance was not during a  
11 time when Qwest was pursuing merger-related synergy savings through the integration of  
12 systems, platforms and personnel. Therefore, Qwest’s prior performance is not a reliable  
13 indicator concerning the merger-related harms Conditions 17 and 18 are designed to  
14 address.

15 **Q. IS THE JOINT APPLICANTS’ RELIANCE ON QWEST’S PRIOR QPAP**  
16 **PAYMENTS SIMILARLY FLAWED?**

17 A. Yes. The QPAP payments Qwest has made between the years 2004 and 2009<sup>224</sup> has  
18 nothing to do with the proposed transaction, which was announced in April 2010. Again,  
19 Qwest’s wholesale operations will be under the control of CenturyLink if the proposed

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<sup>223</sup> Hunsucker Rebuttal at pp. 67-68 (“Qwest witness Bob Brigham also notes that Qwest has been reducing its headcount in wholesale operations even as the company has grown more effective...”)

<sup>224</sup> Williams Rebuttal at pp. 19-20.

1 transaction is approved, and that new management has not had to deal with a BOC's  
2 wholesale service quality performance reporting or associated penalty payments. Indeed,  
3 CenturyLink has no track record of compliance with and implementation of such  
4 wholesale performance assurance provisions. Mr. Hunsucker states that CenturyLink has  
5 a CLEC performance assurance plan in just one legacy CenturyLink market.<sup>225</sup> Further,  
6 Qwest was not pursuing merger-related synergy savings or integrating the wholesale  
7 operations of another company between 2004 and 2009. A more relevant reference point  
8 about how a CenturyLink acquisition can impact wholesale service quality is the service  
9 quality reports CenturyLink has been providing under the FCC's Embarq/CenturyTel  
10 merger conditions. I discussed these data at pages 81-82 of my direct testimony  
11 (Confidential version).

12 **Q. MR. HUNSUCKER CLAIMS THAT CONDITIONS 17 AND 18 ARE AN**  
13 **ATTEMPT TO MAKE IT MORE DIFFICULT FOR THE MERGED COMPANY**  
14 **TO COMPETE.<sup>226</sup> WHAT IS YOUR RESPONSE?**

15 **A.** Mr. Hunsucker's logic is flawed, that is unless he means that it will be more difficult for  
16 CenturyLink to compete if CenturyLink cannot create synergies for itself at the expense  
17 of its CLEC competitors. Certainly, it would be easier for CenturyLink to compete if it  
18 could disadvantage its competitors by making changes to its systems, process and

<sup>225</sup> Hunsucker Rebuttal at p. 14, lines 7-8.

<sup>226</sup> Hunsucker Rebuttal at p. 68, lines 2-4.



1 products that have a “major effect on existing CLEC operating procedures”<sup>227</sup> without  
2 using the CMP procedures continued by Condition 17 and if it could  
3 “eliminat[e]...duplicate functions”<sup>228</sup> with no requirement to maintain wholesale services  
4 at existing performance levels (Condition 18). In the Arizona Joint Application, Joint  
5 Applicants state: “A financially stronger company can continue to...compete  
6 against...CLECs...”<sup>229</sup> Conditions 17 and 18 are needed to help ensure that the stronger  
7 company with a larger footprint, and substantially greater bargaining power, does not  
8 create synergies for itself at the expense of its CLEC competitors.

9 Condition 17 maintains the existing Qwest CMP and CMP Document and Condition 18  
10 maintains the level of wholesale support that CLECs receive from Qwest today. The  
11 existence of the Qwest CMP and the current level of support for wholesale services have  
12 not impeded Qwest’s ability to compete with CLECs to date, and there is no reason to  
13 believe that maintaining Qwest’s CMP and current level of wholesale support would  
14 impede Qwest’s ability to compete with CLECs post-merger.

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<sup>227</sup> CMP Document, §5.45. CMP Document available at:  
<http://www.qwest.com/wholesale/cmp/>

<sup>228</sup> Joint Applicants’ FCC Joint Application, WC Docket No. 10-110 at p. 21.

<sup>229</sup> Arizona Joint Application at p. 14, ¶ 28.

1                                   **5.       Conditions 16, 19 and 20**

2       **Q.       HAVE YOU REVIEWED MR. HUNSUCKER'S STATED CONCERNS ABOUT**  
3       **CONDITIONS 16, 19 (AND SUBPARTS) AND 20 RELATING TO OSS?**<sup>230</sup>

4       A.       Yes. The concerns Mr. Hunsucker asserts about the OSS-related conditions include the  
5       following:

- 6           • they "change the legal obligations or voluntary agreements"<sup>231</sup>
- 7           • "[t]here is no reason to assume that [Joint Applicants] will suddenly abandon their  
8           responsibilities following the close of this Transaction"<sup>232</sup>
- 9           • "any changes will occur only after a thorough and methodical  
10          review...coordinate[d]...in advance through the CMP"<sup>233</sup>
- 11          • the Merged Company expects to operate Qwest's OSS for at least 12 months post-  
12          merger<sup>234</sup>
- 13          • CLEC statements that "CenturyLink OSS is inferior to the Qwest OSS" are not  
14          supported.<sup>235</sup>

15       **Q.       WHAT ARE YOUR RESPONSES TO THESE CRITICISMS?**

16       A.       First, Mr. Hunsucker does not, and cannot, explain how the requirements of Conditions  
17       16 and 19 to maintain the existing OSS, including associated support (*e.g.*, types and  
18       level of data, online information, industry notices, etc.), that Qwest provides CLECs

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<sup>230</sup> OSS include manual, computerized, and automated systems, together with associated business processes and the up-to-date data maintained in those systems. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499 (1996) ("Local Competition Order") at ¶¶517-18.

<sup>231</sup> Hunsucker Rebuttal at p. 56, lines 16-18.

<sup>232</sup> Hunsucker Rebuttal at p. 57, lines 1-2.

<sup>233</sup> Hunsucker Rebuttal at p. 57, lines 7-12.

<sup>234</sup> Hunsucker Rebuttal at p. 57, line 17.

<sup>235</sup> Hunsucker Rebuttal at p. 58, lines 10-11.

1 today will somehow change its legal obligations or voluntary agreements. It is pursuant  
2 to those legal obligations and agreements that Qwest provides OSS today. ACC Staff  
3 apparently recognizes this fact as evidenced by its proposed Condition 29, which is  
4 similar to Joint CLECs' proposed Condition 16.

5 Second, Mr. Hunsucker's claim that CenturyLink will not "abandon" its responsibilities  
6 ignores that CenturyLink has never had the same BOC obligations that it will have going  
7 forward in legacy Qwest territory. CenturyLink cannot give up what it has not had. This  
8 concern is at the heart of these OSS conditions. It is precisely because CenturyLink has  
9 not had these BOC obligations and has not undergone the extensive 271 review  
10 completed by Qwest that these conditions are necessary.

11 Third, CenturyLink's claims about making changes after a "methodical review" are  
12 addressed in my direct testimony (at pages 121-122 and 135-136) and I will not repeat  
13 those arguments here. Although CenturyLink claims that changes will be coordinated in  
14 advance through CMP, Joint Applicants have refused to provide a commitment in this  
15 regard by adopting Joint CLEC proposed Condition 17.

16 Fourth, I also explained in my direct testimony (at pages 120-121) why CenturyLink's  
17 statement that it is "expected" to operate Qwest's OSS for at least 12 months following  
18 merger approval is insufficient to avoid merger-related harm to CLECs. ACC Staff  
19 appears to agree on this point because Staff Condition 19, similar to Joint CLECs'

1 Condition 19, requires the Merged Company to keep in tact pre-merger OSS that support  
2 wholesale services in Arizona “for a period of three years” following the merger.<sup>236</sup>

3 **Q. WHAT IS YOUR RESPONSE TO MR. HUNSUCKER’S ASSERTION THAT**  
4 **CLECS “DO NOT SUPPORT THEIR CLAIM” THAT CENTURYLINK OSS IS**  
5 **INFERIOR TO THE QWEST OSS?<sup>237</sup>**

6 A. Mr. Hunsucker’s assertion is false. I discussed above Exhibits TG-16 and TG-17 which  
7 show numerous examples of functionalities and order types that are available from  
8 Qwest’s OSS but not CenturyLink’s OSS. I also provided some examples in my direct  
9 testimony.<sup>238</sup> CWA also describes systems features and functionalities that were  
10 previously available in legacy Embarq territory in North Carolina that are no longer  
11 available after CenturyLink’s system integration efforts.<sup>239</sup>

12 Furthermore, the Joint Applicants ignore my direct testimony stating that the existing  
13 Qwest OSS is “preferred by carriers that use both of the merging companies’  
14 systems...”<sup>240</sup> There could hardly be a better source of information related to the  
15 capabilities of Qwest’s and CenturyLink’s wholesale OSS than competitive carriers who

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<sup>236</sup> Joint CLECs’ Condition 19 states in part: “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...” (emphasis added)

<sup>237</sup> Hunsucker Rebuttal at p. 58, lines 10-11.

<sup>238</sup> Gates Direct, at 35, 56-57, 125-126 & Exhibit TG-5. CenturyLink has also indicated that CenturyLink’s “EASE as currently implemented by CenturyLink does not prepopulate information in the LSR.” CenturyLink’s supplemental responses to Integra Data Request No. 3-18 (October 6, 2010). This functionality is available with Qwest’s OSS.

<sup>239</sup> Gurganus Direct at pp. 5-6 and 8-9.

<sup>240</sup> Gates Direct at p. 125, lines 16-17.

1 currently use both companies' OSS. In the opinion of those carriers – i.e., CenturyLink's  
2 future customers if the merger is approved – Qwest's OSS is preferred and should be  
3 used as the Merged Company's OSS platform going forward. If CenturyLink  
4 "recognizes the value of its wholesale customers,"<sup>241</sup> it would take this strongly  
5 expressed preference into account and provide its customers with the measure of business  
6 certainty they need to continue to provide quality services to their end user customers.

7 **Q. REGARDING CONDITION 19 (AND SUBPARTS), THE JOINT APPLICANTS**  
8 **STATE THAT YOUR SUGGESTION THAT THERE IS A "SEPARATE**  
9 **DISTINCT SECTION 271 CHECKLIST REQUIREMENT, SPECIFICALLY FOR**  
10 **OSS" IS INCORRECT.<sup>242</sup> PLEASE RESPOND.**

11 A. At page 34 of my direct testimony, I state: "Nondiscriminatory access to OSS is also  
12 required under the Section 271 14-point competitive checklist applicable to BOCs."

13 Consistent with this, the FCC states:

14 Under checklist item 2, a BOC must demonstrate that it provides  
15 nondiscriminatory access to the five OSS functions: (1) pre-ordering; (2)  
16 ordering; (3) provisioning; (4) maintenance and repair; and (5) billing. In  
17 addition, a BOC must show that it provides nondiscriminatory access to  
18 UNEs and that it has an adequate CMP in place to accommodate changes  
19 made to its systems.<sup>243</sup>

20 The Joint Applicants suggestion that there is not a separate requirement under Section  
21 271 of the Act applicable to OSS is wrong. While both sections 251 and 271 require

<sup>241</sup> Hunsucker Rebuttal at p. 6, line 12.

<sup>242</sup> Stewart Rebuttal at p. 22, lines 19-24. See *also*, Hunsucker Rebuttal at p. 15, lines 12-15.

<sup>243</sup> Qwest Arizona 271 Order at ¶ 13.

1 nondiscriminatory access to OSS, Congress and the FCC have a two-prong requirement  
2 related to OSS for BOCs (Sections 251 and 271) and a single-prong requirement related  
3 to OSS for non-BOC ILECs (Section 251). Accordingly, there is an OSS requirement  
4 under Section 271 that applies to BOCs that does not apply to non-BOC ILECs; BOCs  
5 must not only satisfy Section 251 but also must demonstrate and maintain ongoing  
6 Section 271 compliance in order to provide and continue providing long distance  
7 services.

8 **Q. DOES THIS MEAN THAT IF CENTURYLINK'S OSS IS SUBJECT TO THE**  
9 **SECTION 251 REQUIREMENT THAT IT ALSO SATISFIES THE 271**  
10 **REQUIREMENT THAT APPLIES TO BOCS?**

11 A. No. The Joint Applicants' implication that CenturyLink's OSS is 271 compliant simply  
12 because it has operated under Section 251 is incorrect. Certainly the state commissions,  
13 the FCC and the Regional Oversight Committee would not have performed three years  
14 worth of testing on Qwest's OSS during the 271 review process if operating under  
15 Section 251 was all that was required. Until just recently, CenturyTel's legacy OSS  
16 consisted largely of manual processes instead of automated systems. CenturyTel can  
17 hardly claim that replacing Qwest's automated OSS systems with these manual processes  
18 would have met Qwest's obligations as a BOC under Section 271 – yet, according to  
19 CenturyLink, these manual processes met legacy CenturyTel's obligations under Section  
20 251. Assuming for the sake of argument that CenturyLink is currently integrating more  
21 automated systems in legacy CenturyLink territory, these systems have been designed for

1 CenturyLink (and for CenturyLink's – not Qwest's – volumes). And even if (assuming  
2 for the sake of argument) that this OSS satisfies *CenturyLink's* obligations under Section  
3 251 of the Act, this says nothing about whether this OSS would satisfy *Qwest's*  
4 obligations under Section 271 of the Act.

5 **Q. MR. HUNSUCKER STATES THAT "THERE IS NO EVIDENCE THAT**  
6 **[CENTURYLINK'S] SYSTEMS DO NOT MEET THE REQUIREMENTS OF**  
7 **THE TELECOM ACT."**<sup>244</sup> **PLEASE RESPOND.**

8 A. This appears to be a vague suggestion that CenturyLink's OSS would satisfy Qwest's  
9 requirements under Sections 251 and 271 if the Merged Company decided to replace  
10 Qwest's OSS with CenturyLink's OSS. However, and this is critical, there is absolutely  
11 no evidence regarding CenturyLink's legacy OSS being able to be used in Qwest's  
12 legacy territory. Instead of providing any details about the Joint Applicants' post-merger  
13 OSS plans so that systems experts can explore the viability of the plan and potential  
14 impact, the Joint Applicants blame others for not providing evidence that can be provided  
15 only by the Joint Applicants. This is an effort to place the burden on CLECs when, as the  
16 petitioning parties, the Joint Applicants bear the burden in this case.

17 Moreover, evidence in the record calls into question the ability of CenturyLink's OSS to  
18 meet the requirements of the Act in Qwest's legacy territory. The largely manual nature  
19 of CenturyTel's legacy OSS would not meet the requirements of the Act in Qwest's

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<sup>244</sup> Hunsucker Rebuttal at pp. 15-16.

1 legacy territory. CenturyTel's legacy OSS did not even pass muster in the non-BOC  
2 CenturyTel-Embarq merger, in which the FCC required that wholesale OSS be provided  
3 through Embarq's systems.<sup>245</sup> A manually-intensive OSS cannot efficiently process the  
4 volume and types of wholesale orders experienced in Qwest's BOC territory, particularly  
5 since Qwest has reduced headcount in recent years. I have also described functionalities  
6 that are available through Qwest's OSS that are not available through CenturyLink's  
7 OSS.<sup>246</sup> My point is that there is ample (and mounting) evidence which calls into  
8 question the ability of CenturyLink's OSS to be integrated in Qwest's BOC territory  
9 without a decrease in functionality or service quality.

10 It is objectionable that Mr. Hunsucker would criticize a lack of evidence about the ability  
11 of the Merged Company's OSS to provide nondiscriminatory access in Qwest's territory,  
12 post-merger, when the Joint Applicants have failed to provide critical information about  
13 its plans for systems integration, and particularly about OSS integration, post-merger.  
14 The absence of such information makes it even more critical to adopt CLEC Condition 19  
15 (and subparts). This condition protects wholesale customers, end user customers, and  
16 competition from the significant risk caused by the Joint Applicants' currently-undefined  
17 OSS integration plans, while at the same time providing the Merged Company the ability  
18 to modify its OSS after three years in a similar way to how Qwest's OSS was determined

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<sup>245</sup> *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, FCC 09-54, June 25, 2009 ("CenturyTel-Embarq  
Merger Order"), Appendix C, p. 28.

<sup>246</sup> Gates Direct at pp. 56-57.



1 to be acceptable under Section 271 of the Act. This strikes a reasonable balance between  
2 protecting the wholesale competitive market from harm and allowing the Merged  
3 Company to pursue integration efficiencies.

4 **Q. MS. STEWART CRITICIZES THE THIRD-PARTY TESTING REQUIREMENT**  
5 **OF CONDITION 19(B). SHE SAYS THAT THIRD PARTY TESTING IS NOT**  
6 **REQUIRED BY THE ACT.<sup>247</sup> DOES THIS TELL THE WHOLE STORY?**

7 A. No. As described in detail in my Exhibit TG-2, Qwest's OSS underwent extensive third-  
8 party testing during the 271 review process. The fact that there is no explicit mention of  
9 independent third party testing in the Act did not prevent regulators from requiring third  
10 party testing then, and it should not prevent it now. Third party testing is a mechanism  
11 used to determine compliance with the Act's requirements. This set a "bar" of sorts for  
12 these OSS systems in relation to needed functionality and their ability to handle  
13 commercial volumes in Qwest's territory. Joint CLEC proposed Condition 19(b) requires  
14 that third-party testing be conducted "[f]or any Qwest system that was subject to third  
15 party testing (e.g., as part of a Section 271 process)..." In other words, Condition 19(b)  
16 would ensure that if the Merged Company replaces a system that was originally subject to  
17 third-party testing, the replacement system would undergo similar third-party testing. If  
18 the Merged Company is allowed to replace Qwest systems that have been third-party  
19 tested with systems that have not undergone similar third-party testing, the "bar" would  
20 be effectively lowered for these systems as a result of the merger. The Joint Applicants

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<sup>247</sup> Stewart Rebuttal at p. 23.

1 should not undermine all of the work that was conducted to test Qwest's OSS systems  
2 because they want to merge.

3 **Q. PLEASE ELABORATE ON THE ROLE OF INDEPENDENT, THIRD-PARTY**  
4 **TESTING FOR TESTING OSS COMMERCIAL READINESS.**

5 A. The FCC has previously concluded that the most probative evidence that OSS functions  
6 are operationally ready is actual commercial usage. To date, there is no evidence that  
7 CenturyLink's legacy OSS is capable of handling the actual commercial usage that it  
8 would be required to handle in Qwest's legacy territory if the proposed transaction is  
9 approved. Without this actual commercial usage experience, the second-best option is  
10 independent, third-party testing. The FCC said:

11 The most probative evidence that OSS functions are operationally ready is  
12 actual commercial usage. Absent sufficient and reliable data on  
13 commercial usage, the Commission will consider the results of carrier-to-  
14 carrier testing, independent third-party testing, and internal testing in  
15 assessing the commercial readiness of a BOC's OSS. Although the  
16 Commission does not require OSS testing, a persuasive test will provide  
17 us with an objective means by which to evaluate a BOC's OSS readiness  
18 where there is little to no evidence of commercial usage, or may otherwise  
19 strengthen an application where the BOC's evidence of actual commercial  
20 usage is weak or is otherwise challenged by competitors. *The*  
21 *persuasiveness of a third-party review, however, is dependent upon the*  
22 *qualifications, experience and independence of the third party and the*  
23 *conditions and scope of the review itself. If the review is limited in scope*  
24 *or depth or is not independent and blind, the Commission will give it*  
25 *minimal weight.*<sup>248</sup>

<sup>248</sup> Qwest 9 State 271 Order, Appendix K "Statutory Requirements" at p. K-16 (emphasis added).

1 Internal OSS testing that is not independent and blind is inferior to a truly independent  
2 third-party test in determining a BOC's OSS commercial readiness. Though CenturyLink  
3 claims that it extensively tests its own OSS, it has admitted that this testing does not  
4 involve third-party testing.<sup>249</sup> This means that CenturyLink's OSS testing is not  
5 independent or blind, and would therefore, be a step backwards for Qwest OSS that has  
6 undergone years of extensive and verifiable third-party testing. CenturyLink has  
7 specifically said that it does not intend to engage in third-party testing post-merger for  
8 any replacement OSS that replaces an existing Qwest OSS.<sup>250</sup>

9 **Q. MS. STEWART STATES: "MR. GATES PROVIDES NO EVIDENCE, BUT**  
10 **RATHER MERELY SPECULATES, THAT AN EXISTING INTERFACE THAT**  
11 **IS CURRENTLY HANDLING COMMERCIAL VOLUMES, SUCH AS**  
12 **CENTURLINK'S OSS DOES TODAY, CANNOT BE MODIFIED AND**  
13 **ADAPTED TO FUNCTION AS WELL AS (OR BETTER THAN) AN EXISTING**  
14 **INTERFACE."<sup>251</sup> IS THIS A VALID CRITICISM?**

15 **A.** No. Joint Applicants again attempt to reverse the burden of proof. It is the Joint  
16 Applicants that have provided insufficient evidence to show that an existing interface is  
17 handling commercial volumes today or that it could or should be modified to do so.  
18 Though Ms. Stewart does not clearly identify what "existing interface" would be

<sup>249</sup> Gates Direct at pp. 122-123.

<sup>250</sup> Minnesota Docket P-421, et al./PA-10-456, Hearing Transcript Volume 2B (public) at pp. 88-89 ("Q. No. Is it your – should you migrate the Qwest properties onto the CenturyLink OSS, would you engage in third-party testing before that went live? A. We would not engage in third-party testing." (Hunsucker))

<sup>251</sup> Stewart Rebuttal at p. 24, lines 3-6.

1 replaced, presumably she is talking about replacing an existing *Qwest* interface with an  
2 existing CenturyLink interface. This is an unfair criticism given that, according to the  
3 Joint Applicants, no such evidence exists. As explained in the FCC excerpt above,  
4 whether or not an OSS can handle commercial volumes is best determined through  
5 commercial usage, and if no commercial usage exists, then third-party testing should be  
6 undertaken. There is no commercial usage data of CenturyLink's OSS handling  
7 commercial volumes in Qwest's region because the two companies use different OSS  
8 today. And there is no testing results (third-party or otherwise) showing the extent to  
9 which CenturyLink's legacy OSS could or could not handle Qwest's commercial  
10 volumes. The Joint Applicants have elected to not even attempt to meet their burden in  
11 this respect. That is why Condition 19(b) is critical: it would ensure that after at least  
12 three years, if the Merged Company decides to replace an existing OSS interface that has  
13 been third-party tested, verifiable and independent evidence would be collected and  
14 evaluated to determine whether the replacement interface could handle legacy Qwest's  
15 commercial volumes.

16 **Q. MS. STEWART STATES THAT THE SYSTEMS AND PROCESSES THAT**  
17 **WERE THIRD PARTY TESTED MORE THAN EIGHT YEARS AGO ARE NOT**  
18 **THE SAME SYSTEMS AND PROCESSES BEING UTILIZED IN THE QWEST**  
19 **TERRITORY TODAY.<sup>252</sup> PLEASE RESPOND.**

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<sup>252</sup> Stewart Rebuttal at p. 24.

1 A. Qwest's IMA was subject to third-party testing. Ms. Stewart suggests that because IMA-  
2 EDI was transitioned to IMA-XML, the OSS that was third-party tested has changed and  
3 would not require third-party testing under Condition 19. That is incorrect. Qwest  
4 Change Request ("CR") #SCR121305-01<sup>253</sup> (regarding the change from IMA-EDI to  
5 IMA-XML) indicates that the Business Process Layer ("BPL") did not change in the  
6 transition to XML and indicates that the CR just changes how information is passed and  
7 how the connection is made.<sup>254</sup> In other words, the functionality did not change. This is  
8 different from changing systems, as when CenturyLink changed from CenturyTel's IRES  
9 to Embarq's EASE, and CLECs lost the previously available functionality of the system  
10 populating a CLEC's LSR with information (e.g., the end-user's customer address from  
11 the pre-order validation form).<sup>255</sup> It is also different from changing from Qwest's IMA-  
12 XML to CenturyLink's EASE system, which has different functionality. For example,  
13 CenturyLink has indicated that EASE does not have pre-order functions that Qwest IMA  
14 has. These pre-order functions include Meet Point Query Validation, Raw Loop Data  
15 Validation, Telephone Number Reservation, Loop Qualification, and Appointment  
16 Scheduling.<sup>256</sup>

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<sup>253</sup> Available at: [http://www.qwest.com/wholesale/cmp/archive/CR\\_SCR121305-01.html](http://www.qwest.com/wholesale/cmp/archive/CR_SCR121305-01.html)

<sup>254</sup> For example, Qwest-prepared CMP meeting minutes from a 1/25/06 Ad Hoc CMP Meeting which state:  
"Comcast - said that it would helpful if Qwest could provide a document on the order flow. Connie Winston -  
Qwest said that the flow is not changing and that with EDI all validation is the BPL. Connie said that layer will  
enforce the same business rules with XML." *Id.*

<sup>255</sup> Exhibit TG-5 at p. 30.

<sup>256</sup> Exhibits TG-16 and TG-17.

1 The very fact that Joint Applicants are suggesting that the Merged Company should be  
2 allowed to replace Qwest's existing IMA-XML OSS interface with CenturyLink's EASE,  
3 without independent third-party testing, suggests that CenturyLink intends to move away  
4 from Qwest's OSS (IMA-XML, in this example) and to do so without such third-party  
5 testing. This testimony further supports the need for Joint CLEC proposed Condition 19  
6 (and subparts) to avoid merger-related harm.

7 **Q. MS. STEWART CLAIMS THAT PROTECTIONS ARE ALREADY IN PLACE**  
8 **BECAUSE CHANGES TO QWEST OSS WOULD BE HANDLED THROUGH**  
9 **CMP AND SUBJECT TO ICAS.<sup>257</sup> DOES THIS OBLIATE THE NEED FOR**  
10 **CONDITION 19(B)?**

11 A. No. The Joint Applicants have refused to adopt Joint CLEC proposed Condition 17 that  
12 would assure the Qwest CMP and CMP Document are maintained, and have refused to  
13 adopt Joint CLEC proposed Condition 8 that would allow existing ICAs to be extended.  
14 If the Joint Applicants are going to rely on the existing Qwest CMP and ICAs as the basis  
15 for its claim that sufficient protections already exist, then it seems logical that the Joint  
16 Applicants would agree to Joint CLEC proposed conditions 8 and 17 and commit to  
17 leaving the existing CMP and ICAs in place post-merger. To date, the Joint Applicants  
18 have rejected all of the Joint CLEC proposed conditions.

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<sup>257</sup> Stewart Rebuttal at p. 25.

1 In any event, CMP and the ICAs alone are not enough to prevent merger-related harm  
2 due to replacement of independent third-party tested systems with systems that have not  
3 been third-party tested.

4 **Q. ARE THERE REASONS WHY MAINTAINING QWEST'S CMP IS NOT**  
5 **ENOUGH BY ITSELF?**

6 A. Yes. Whether CMP is used may depend, for example, on how the ILEC interprets the  
7 CMP Document and on how the ILEC interprets what may affect CLECs. Exhibit TG-18  
8 to my testimony is a true and correct copy of pages from minutes of a meeting of working  
9 sessions of the CMP "Re-design" team.<sup>258</sup> The CMP Re-design was a process that  
10 occurred in conjunction with Qwest's request for 271 approval. Through CMP Re-  
11 design, changes were made to Qwest's CMP (formerly known as Co-Provider Industry  
12 Change Management Process or "CICMP"). In CMP Re-Design, CLECs raised concerns  
13 about ILEC changes to retail and back-end systems that may affect CLECs.<sup>259</sup> In  
14 response, Qwest said that "CLECs will be notified on Retail driven changes that impact  
15 CLEC interfaces."<sup>260</sup> In addition, the following footnote was added to every page of the  
16 CMP Document:

17 Throughout this document, OSS interfaces are defined as existing or new  
18 gateways (including application-to-application interfaces and Graphical

<sup>258</sup> CMP Re-Design Final Meeting Minutes (8/14/01 & 8/16/01), also available at  
[http://www.qwest.com/wholesale/downloads/2001/010831/CMP\\_Redesign\\_Aug\\_14\\_16\\_Mtg\\_Minutes\\_FINAL.doc](http://www.qwest.com/wholesale/downloads/2001/010831/CMP_Redesign_Aug_14_16_Mtg_Minutes_FINAL.doc)

<sup>259</sup> Exhibit TG-18 at pp. 14-15.

<sup>260</sup> Exhibit TG-18 at pp. 14-15. See also Completed Action Item 95, available at:  
[http://www.qwest.com/wholesale/downloads/2002/021015/CLOSED-CMP\\_RedesignCoreTeamIssuesActionItemsLog-Rev10-09-02.doc](http://www.qwest.com/wholesale/downloads/2002/021015/CLOSED-CMP_RedesignCoreTeamIssuesActionItemsLog-Rev10-09-02.doc)

1 User Interfaces), connectivity and system functions *that support or affect*  
2 the pre-order, order, provisioning, maintenance and repair, and billing  
3 capabilities for local services (local exchange services) provided by  
4 CLECs to their end users.<sup>261</sup>

5 In addition, the CMP Document states, for change requests (“CRs”) requesting changes  
6 to systems and products/processes: “Qwest will not deny a CR solely on the basis that  
7 the CR involves a change to back-end systems.”<sup>262</sup> At this time, it is not known how  
8 CenturyLink will interpret the CMP Document and how CenturyLink will interpret what  
9 may affect CLECs.

10 **Q. ARE THERE PROCEDURES IN QWEST’S CMP DOCUMENT THAT ADDRESS**  
11 **THE INTRODUCTION AND RETIREMENT OF AN EXISTING OSS**  
12 **INTERFACE AND, IF SO, WHY DO YOU SAY THEY ARE NOT ENOUGH BY**  
13 **THEMSELVES?**

14 A. Section 7.0 of the CMP Document addresses “Introduction of a new OSS interface” and  
15 Section 9.0 addresses “Retirement of an existing OSS interface.”<sup>263</sup> An OSS migration or  
16 integration involves significant back-end systems<sup>264</sup> work, as well as potential changes to  
17 CLEC-facing interfaces. If a change to a back-end system is not intended to impact

<sup>261</sup> (CMP Document), footnote on pages 1-113 (emphasis added). A second footnote on each page states: “Throughout this document, the term “include(s)” and “including” mean “including, but not limited to.” CMP Document available at:

<http://www.qwest.com/wholesale/cmp/>

<sup>262</sup> CMP Document §5.1.4 (Systems Change Request Origination Process) and §5.3 (CLEC Originated Product/Process Change Request Process) (same sentence in both sections).

<sup>263</sup> CMP Document, available at <http://www.qwest.com/wholesale/cmp/>

<sup>264</sup> Unlike EASE or IMA (CLEC-facing interfaces with which CLECs interact for pre-ordering and ordering), billing systems are back-end systems that CLECs do not interact with directly but, when changes to the billing system occur, the changes may also impact CLECs and their customers.



1 CLECs, the change may not be handled in CMP. But, as the experiences in other  
2 mergers have shown, merger-related changes to back-end systems and migration of data  
3 from one back-end system to another can result in significant retail and wholesale  
4 customer impacting problems.

5 While the CMP Document has tools to address introduction and retirement of OSS  
6 interfaces, as well as periodic modification of OSS, those procedures are suited for the  
7 types of systems modifications for which it has been used over the years, and not for the  
8 type of major migration of data that would occur if CenturyLink integrated its legacy  
9 OSS into Qwest's territory. Qwest maintains extensive data in its systems, including  
10 customer-identifying information, retail and wholesale customer account information,  
11 billing and repair records, telephone number assignments, identification of serving wire  
12 centers for customers, network information regarding the design and configuration of the  
13 network, and information indicating where and how CLECs connect with Qwest's  
14 network, and so forth. Changes to, or misinterpretation of, data has the potential to  
15 impact 911 response, the routing of local and long distance calls, billing, directory  
16 listings, dispatching of technicians during service outages, and other customer services.

17 Data integrity is, therefore, a key issue in merger-initiated OSS migrations or  
18 conversions, as I discuss below and in my earlier discussion of the Embarq North  
19 Carolina conversion (in which data mapping errors were at the heart of many problems).

20 No other acquisition of this magnitude involving Qwest, much less of an entire BOC by a

1 non-BOC incumbent LEC, has occurred during the history of Qwest CMP. If  
2 CenturyLink integrates its legacy OSS into Qwest's territory or makes significant  
3 changes to Qwest's OSS, a *combination* of maintaining OSS for a defined time period  
4 for a measure of stability during company upheaval, ensuring readiness and a smooth  
5 transition afterward through oversight and third party testing, and notifying and involving  
6 CLECs through CMP will be required. Together, Joint CLECs' recommended conditions  
7 work to address all of these needs.

8 **Q. ARE THERE OTHER CONCERNS ABOUT CMP IF CENTURYLINK DECIDES**  
9 **TO OVERHAUL QWEST'S EXISTING OSS OR INTEGRATE ITS LEGACY**  
10 **OSS INTO QWEST'S TERRITORY?**

11 A. Yes. CMP is designed to address change requests introduced by Qwest as well as  
12 submitted by CLECs. If the CMP is jammed up due to CenturyLink's decision to replace  
13 Qwest's existing OSS, the backlog of CLEC-requested change requests would quickly  
14 grow, leading to significant delay for systems enhancements that CLECs desire, or  
15 blockage of CLEC-initiated change requests altogether. This would undermine the  
16 purpose of the CMP and harm CLEC access to Qwest's OSS.

17 **Q. ARE THERE EXAMPLES THAT SUGGEST THAT THE USUAL CHANNELS**  
18 **MIGHT GET OVERLOADED?**

1 A. Yes. In the case of the recent FairPoint systems cutover, over 800 “issues” (or problems)  
2 have been raised since February 2009, many of which are major issues.<sup>265</sup> And there are  
3 still significant problems as CRC Communications of Maine, Inc., explained to the New  
4 Hampshire Public Utilities Commission:

5 CLECs continue to experience significant problems with wholesale  
6 provisioning and billing issues despite the fact that more than 15 months  
7 have passed since the cutover from Verizon’s back office systems...The  
8 record before the Commission is quite clear - there are still significant  
9 problems with basic systems functionality that need to be  
10 remediated....the Liberty List of Continuing CLEC Issues - contains over  
11 109 issues that *currently* impact CLECs and their customers.<sup>266</sup>

12 All of these problems have occurred despite the fact that FairPoint is utilizing its  
13 Wholesale User Forum “Change Management” process.<sup>267</sup> CLECs have also conducted  
14 weekly and bi-weekly meetings with FairPoint to attempt to resolve problems:

15 Unfortunately, despite all of the hard work on both sides of the table and  
16 the fact that FairPoint has acknowledged the validity of our concerns and  
17 claims, its personnel are severely limited by FairPoint’s internal billing  
18 systems and are unable to permanently correct the underlying problems  
19 with the software that generate the erroneous bills. FairPoint’s inability to  
20 make permanent fixes or to get long-standing issues addressed causes  
21 frustration for both FairPoint and CRC because it means that the same  
22 billing errors reoccur month after month, generating a continued need for  
23 our bi-weekly meetings and significant manual work by both sides.<sup>268</sup>

<sup>265</sup> FairPoint’s log of issues is available at:

[http://www.fairpoint.com/wholesale/customer\\_resources/change\\_management.jsp](http://www.fairpoint.com/wholesale/customer_resources/change_management.jsp)

<sup>266</sup> Post Hearing Brief of CRC Communications of Maine, Inc., New Hampshire PUC Docket No. DT-10-025, at pp. 2-3.

<sup>267</sup> [http://www.fairpoint.com/wholesale/customer\\_resources/change\\_management.jsp](http://www.fairpoint.com/wholesale/customer_resources/change_management.jsp) (“OSS Interface Change Management”).

<sup>268</sup> Testimony of Ed Tisdale on behalf of CRC Communications of Maine, Inc., New Hampshire PUC Docket No. DT 10-025, April 19, 2010, at p. 3.

1 It is clear that FairPoint's use of its change management process to implement its OSS  
2 cutover, as well as additional frequent meetings, have not been successful in avoiding  
3 hundreds of problems, some of which are continuing.

4 To put FairPoint's problems in perspective, I have compared FairPoint's log of incidents  
5 (or problems) to Qwest's CMP log for systems change requests.<sup>269</sup> Since 2003, Qwest  
6 has had 780 systems change requests, compared to 818 "incidents" logged by FairPoint  
7 since February 2009. In other words, FairPoint has logged more systems problems  
8 (things that are broken) in the last year and one-half than systems change requests (where  
9 Qwest or a CLEC is introducing a systems modification) submitted in Qwest's CMP in  
10 the past seven years.

11 **Q. DID FAIRPOINT PROVIDE ANY ASSURANCES PRIOR TO THE APPROVAL**  
12 **OF ITS MERGER WITH VERIZON THAT ITS EXISTING PROCESSES WERE**  
13 **SUFFICIENT TO ADDRESS THE OSS CHANGES THAT WOULD TAKE**  
14 **PLACE POST-MERGER?**

15 A. Yes. FairPoint testified as follows in May 2007:<sup>270</sup>

16 "Our intention is to collaborate with carriers and make the transition to  
17 FairPoint as smooth and seamless as reasonably possible."

18 CenturyLink testifies in this case:<sup>271</sup>

19 "the Transaction will be seamless to customers."

<sup>269</sup> [http://www.qwest.com/wholesale/cmp/archive/crnumber\\_system\\_index.html](http://www.qwest.com/wholesale/cmp/archive/crnumber_system_index.html)

<sup>270</sup> Direct Testimony of Michael Haga on behalf of FairPoint Communications, Inc., New Hampshire PUC Docket No. DT 07-11, March 23, 2007, at p. 16.

<sup>271</sup> McMillan Direct at p. 7, line 11.

1 FairPoint's prediction about a "seamless" transition certainly proved inaccurate, and there  
2 is no reason to believe that CenturyLink's claim will be any more accurate.

3 **Q. ARE THERE ANY OTHER REASONS WHY CMP IS NOT ENOUGH BY**  
4 **ITSELF TO PREVENT MERGER-RELATED HARMS RELATED TO POST-**  
5 **MERGER SYSTEMS INTEGRATION?**

6 A. Yes. Ambiguity leads to business uncertainty. Operations Support Systems or "OSS"  
7 are of critical importance, and yet it is unclear what CenturyLink considers to be OSS.  
8 As shown on Confidential Exhibit TG-11, [\*\*\*BEGIN CONFIDENTIAL ██████████  
9 ██████████  
10 ██████████ END CONFIDENTIAL\*\*\*] As I explained at pages 32-33 of my direct  
11 testimony, the FCC defines OSS to include five functions: (1) pre-ordering, (2) ordering,  
12 (3) provisioning, (4) maintenance and repair, and (5) billing.<sup>272</sup> OSS also includes all of  
13 the computer systems, data maintained in those systems, and personnel that an ILEC uses  
14 to perform internal functions necessary for these five functions.<sup>273</sup> The FCC also requires  
15 an adequate CMP to handle changes to the OSS systems.<sup>274</sup> Based on my reading of the

<sup>272</sup> Local Competition Order at ¶¶516-528. See also, Qwest 9 State 271 Order at ¶¶ 33-34 & footnote 83 to ¶34, which states: "Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, 15 FCC Rcd 3953, 3989 at ¶ 82 (1999) (Bell Atlantic New York Order), *aff'd*, AT&T Corp. v. FCC, 220 F.3d 607 (D.C. Cir. 2000). **The Commission [FCC] has defined OSS as the various systems, databases, and personnel used by incumbent LECs to provide service to their customers.** See Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18396-97, ¶ 92 (2000) (SWBT Texas Order)" (emphasis added). See also, 47 C.F.R. §51.313(c) and §51.319(g).

<sup>273</sup> Local Competition Order at ¶¶ 517-18 (emphasis added).

<sup>274</sup> Qwest 9 State 271 Order at ¶¶ 33-34. See also, 47 C.F.R. §51.319(g).

1 FCC's definition of OSS – which includes billing functions as well as the computer  
2 systems, databases and personnel used to perform the internal functions necessary to  
3 support billing – [\*\*\*BEGIN CONFIDENTIAL [REDACTED]

4 [REDACTED]  
5 [REDACTED] END

6 CONFIDENTIAL\*\*\*] The CMP Document contains language on every page which  
7 states:

8 Throughout this document, OSS interfaces are defined as existing or new  
9 gateways (including application-to-application interfaces and Graphical  
10 User Interfaces), connectivity and system functions *that support or affect*  
11 the pre-order, order, provisioning, maintenance and repair, and billing  
12 capabilities for local services (local exchange services) provided by  
13 CLECs to their end users.<sup>275</sup>

14 Based on the CMP Document, [\*\*\*BEGIN CONFIDENTIAL [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED] END CONFIDENTIAL\*\*\*]

<sup>275</sup> CMP Document, footnote on pages 1-113 (emphasis added). A second footnote on each page states: "Throughout this document, the term "include(s)" and "including" mean "including, but not limited to." *Id.*

1                   **6.       Conditions 21, 23, 26 and 27**

2           **Q.       REGARDING JOINT CLEC CONDITIONS 21, 23, 26 (AND SUBPARTS) AND 27**  
3           **RELATED TO COMPLIANCE WITH APPLICABLE LAW AND AGREEMENT**  
4           **TERMS, MR. HUNSUCKER STATES: "IF THE CONDITIONS REQUESTED**  
5           **STOPPED AT COMPLIANCE WITH APPLICABLE LAW AND AGREEMENT**  
6           **TERMS, THEN THE CONDITIONS WOULD BE ACCEPTABLE FOR**  
7           **CENTURYLINK" BUT THEY DO "MUCH MORE THAN [REQUEST]**  
8           **COMPLIANCE WITH APPLICABLE LAW AND AGREEMENT TERMS."<sup>276</sup> IS**  
9           **HE CORRECT?**

10          **A.       No. To demonstrate that these conditions do not expand obligations beyond what is**  
11          **required today, I have provided the conditions in their entirety below:**

12                   21. The Merged Company will process orders in compliance with federal and  
13                   state law, as well as the terms of applicable interconnection agreements.

14                   23. The Merged Company will provide nondiscriminatory access to directory  
15                   listings and directory assistance in compliance with federal and state law.  
16                   Specifically, the Merged Company will be responsible for ensuring that all  
17                   directory listings submitted by CLECs for inclusion in directory assistance or  
18                   listings databases are properly incorporated into such databases (whether such  
19                   databases are maintained by the Merged Company or a third party vendor).  
20                   Further the Merged Company will ensure that CLECs' subscriber listings are  
21                   accessible to any requesting person on the same terms and conditions that the  
22                   Merged Company's subscriber listings are available to any requesting person.

23                   26. After the Closing Date, the Merged Company will engineer and maintain its  
24                   network in compliance with federal and state law, as well as the terms of  
25                   applicable interconnection agreements. Resources will not be diverted to merger-  
26                   related activities at the expense of maintaining the Merged Company's network.  
27  
28

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<sup>276</sup> Hunsucker Rebuttal at p. 46.

- 1 a. The Merged Company shall not engineer the transmission capabilities  
2 of its network in a manner, or engage in any policy, practice, or procedure,  
3 that disrupts or degrades access to the local loop.  
4 b. The Merged Company will retire copper in compliance with federal and  
5 state law, as well as the terms of applicable interconnection agreements  
6 and as required by a change of law.  
7 c. The Merged Company will not engineer or maintain the network  
8 (including routing of traffic) in a manner that results in the application of  
9 higher rates for traffic or inefficiencies for wholesale customers.

10  
11 27. The Merged Company will provide conditioned copper loops in compliance  
12 with federal and state law and at rates approved by the applicable state  
13 commission. Line conditioning is the removal from a copper loop of any device  
14 that could diminish the capability of the loop to deliver xDSL. Such devices  
15 include bridge taps, load coils, low pass filters, and range extenders. Insofar as it  
16 is technically feasible, the Merged Company shall test and report troubles for all  
17 the features, functions and capabilities of conditioned copper lines, and may not  
18 restrict its testing to voice transmission only. If the Merged Company seeks to  
19 change rates approved by a state commission for conditioning, the Merged  
20 Company will provide conditioned copper loops in compliance with the relevant  
21 law at the current commission approved rates unless and until a different rate is  
22 approved.

23 All of these conditions expressly refer to applicable law and ICAs, and Mr. Hunsucker  
24 did not provide a single example of a “more expansive”<sup>277</sup> obligation that is required by  
25 them. For example, on its face, Condition 21 requires “compliance with federal and state  
26 law, as well as the terms of applicable interconnection agreements,” but Mr. Hunsucker  
27 does not explain why it is not therefore “acceptable for CenturyLink.”<sup>278</sup> The same is  
28 true of the other conditions, which mirror language from the law. Condition 26(a), for  
29 example, reflects C.F.R. § 51.319(A)(8), which states: “An incumbent LEC shall not

<sup>277</sup> Hunsucker Rebuttal at p. 47, line 7.

<sup>278</sup> Hunsucker Rebuttal at p. 46, lines 12.



1 engineer the transmission capabilities of its network in a manner, or engage in any policy,  
2 practice, or procedure, that disrupts or degrades access to the local loop.”

3 **7. Condition 24**

4 **Q. MR. HUNSUCKER OPPOSES CONDITION 24 RELATING TO SURCHARGES**  
5 **AND OTHER FEES.<sup>279</sup> WHAT IS CONDITION 24?**

6 **A.** Condition 24 applies to the anticompetitive practices and policies that CenturyLink has  
7 engaged in its serving territories. The language of Condition 24 is as follows:

8 After the Closing Date, The Merged Company shall not assess any fees,  
9 charges, surcharges or other assessments upon CLECs for activities that arise  
10 during the subscriber acquisition and migration process other than any fees,  
11 charges, surcharges or other assessments that were approved by the  
12 applicable commission and charged by Qwest in the legacy Qwest ILEC  
13 territory before the Closing Date. This condition prohibits the Merged  
14 Company from charging fees, charges, surcharges or other assessments,  
15 including:

16 (a) Service order charges assessed upon CLECs submitting local service  
17 requests (“LSRs”) for number porting;

18 (b) Access or “use” fees or charges assessed upon CLECs that connect a  
19 competitor’s own self-provisioned loop, or last mile facility, to the  
20 customer side of the Merged Company’s network interface device  
21 (“NID”) enclosure or box; and,

22 (c) “Storage” or other related fees, rents or service order charges assessed  
23 upon a CLECs’ subscriber directory listings information submitted to the  
24 Merged Company for publication in a directory listing or inclusion in a  
25 directory assistance database.

<sup>279</sup> Hunsucker Rebuttal at pp. 49-54.

1 **Q. PLEASE RESPOND TO MR. HUNSUCKER'S TESTIMONY REGARDING**  
2 **CONDITION 24.**

3 A. Mr. Hunsucker incorrectly suggests that the anticompetitive practices that are  
4 prohibited by Condition 24 are a "distraction" and that CLECs are simply trying to  
5 litigate issues in the merger that are best resolved in arbitrations.<sup>280</sup> He ignores,  
6 however, that these charges are not currently imposed by Qwest. Condition 24 is  
7 meant to prevent CenturyLink from importing these "worst practices" into the  
8 Qwest region should the transaction be approved.

9 **Q. AT PAGES 52-54 OF HIS REBUTTAL TESTIMONY, MR. HUNSUCKER**  
10 **ARGUES THAT CENTURYLINK SHOULD BE ALLOWED TO IMPOSE**  
11 **SERVICE ORDER CHARGES FOR LNP ACTIVITIES. IS HE CORRECT?**

12 A. No. Mr. Hunsucker's statements are not supported by the FCC's orders on cost recovery  
13 for LNP. I provided the references to the FCC's rules in my direct testimony at pages  
14 167-169.

15 **Q. DOES QWEST CHARGE CLECS FOR LNP ONLY ORDERS?**

16 A. No.

17 **Q. DO THE FCC ORDERS SPECIFICALLY PRECLUDE CARRIERS FROM**  
18 **IMPOSING LNP COSTS ON OTHER CARRIERS?**

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<sup>280</sup> Hunsucker Rebuttal at 49.

1 A. Yes. In its Third Report and Order, the FCC concluded that Section 251(e)(2) of the Act  
2 requires ILECs to bear the costs to meet the obligations imposed by Section 251(b)(2) on  
3 a competitively-neutral basis. In so holding, the FCC determined that the costs of  
4 establishing number portability include: (1) costs associated with the creation of the  
5 regional databases to support number portability; (2) costs associated with the initial  
6 upgrading of the public switched telephone network; and (3) “ongoing costs of providing  
7 number portability, such as the costs involved in transferring a telephone number to  
8 another carrier...”<sup>281</sup>

9 In explaining the basis for its decision, the FCC has made several statements concerning  
10 the proper way to distinguish carrier-specific costs directly related to providing number  
11 portability (which must be recovered through end user charges), from those carrier-  
12 specific costs that are not directly related to providing number portability (which can be  
13 recovered via other means). For example, the FCC has defined costs directly related to  
14 providing number portability in the following manner:

15 we conclude that the costs of establishing number portability include not  
16 just the costs associated with the creation of the regional databases and  
17 initial physical upgrading of the public switched telephone network for the  
18 provision of number portability, *but also the continuing costs necessary*  
19 *to provide number portability.*<sup>282</sup>

20 The FCC also explained that the costs of number portability include:

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<sup>281</sup> *Telephone Number Portability*, Third Report and Order (the “Cost Recovery Order”), 13 FCC Rcd 11701 (1998) at ¶ 38.

<sup>282</sup> *Id.* at ¶ 8 (emphasis added).

1 the costs that a carrier incurs to make it possible to transfer a telephone  
2 number to another carrier.<sup>283</sup>

3 Based upon this, and other statements, the FCC concluded that “carrier-specific costs  
4 directly related to providing number portability are limited to costs carriers incur  
5 specifically in the provision of number portability services, *such as ... the porting of*  
6 *telephone numbers from one carrier to another.*”<sup>284</sup>

7 **Q. SO WHEN THE FCC USES THE TERM “PORTING OF TELEPHONE**  
8 **NUMBERS FROM ONE CARRIER TO ANOTHER,” IT SPECIFICALLY**  
9 **INCLUDES THE COSTS ASSOCIATED WITH TRANSMITTING AND**  
10 **RECEIVING PORT REQUESTS (VIA THE LSR FORM)?**

11 A. Yes. In paragraph 14 of the Cost Classification Order, the FCC specifically explained  
12 that when it used the phrase “porting telephone numbers from one carrier to another” in  
13 the definition of carrier-specific costs directly related to number porting, it intended to  
14 refer to certain systems used to transmit local routing number information, and to the *act*  
15 *of* “transmitting porting orders between carriers.”<sup>285</sup> This statement tells us that the FCC  
16 expected that carriers would incur “ongoing costs” associated with porting telephone  
17 numbers to other carriers, and that such costs included the costs associated with  
18 “transmitting porting orders” between carriers.

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<sup>283</sup> *Id.* at ¶ 36.

<sup>284</sup> *Id.* at ¶ 72. (emphasis added)

<sup>285</sup> Cost Classification Order, 13 FCC Rcd 24995 at ¶ 14.

1 **Q. DID THE FCC CONTEMPLATE THAT CARRIERS MAY INCUR**  
2 **ADDITIONAL COSTS IN FULFILLING THEIR LNP OBLIGATIONS?**

3 A. Yes. The FCC specifically contemplated that its cost classification decisions would  
4 “cause some carriers, including small and rural LECs, to incur costs that they would not  
5 ordinarily have incurred in providing telecommunications service.”<sup>286</sup> The FCC made  
6 this decision because it is required, by Section 252(e)(2), to establish cost distribution and  
7 recovery rules in a manner that is “competitively neutral.”

8 **Q. HAS THE FCC EXPLAINED WHETHER RECOVERING COSTS FROM**  
9 **OTHER CARRIERS IS CONSISTENT WITH THE COMPETITIVE**  
10 **NEUTRALITY PRINCIPLE?**

11 A. Yes, the FCC has made it clear that recovery of costs through other carriers would *not* be  
12 consistent with the principles of competitive neutrality. For example, the FCC explained  
13 that if the Commission did not use a competitive neutrality standard, or only used that  
14 standard for the distribution (but not recovery) of costs, then “carriers could effectively  
15 undo this competitively neutral distribution by recovering from other carriers.”<sup>287</sup> That is  
16 why the FCC reaffirmed this finding in its *2002 Reconsideration Order*, when it ruled  
17 that carriers “*may not recover number portability costs from other carriers through*

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<sup>286</sup> Cost Recovery Order at ¶ 73.

<sup>287</sup> *Id.* at ¶ 39.

1 *interconnection charges.*<sup>288</sup> The FCC was very clear that assessing number porting  
2 charges on other carriers is not competitively neutral.

3 **Q. MR. HUNSUCKER ALSO ARGUES THAT SOME CABLE-BASED CLECS ARE**  
4 **USING THE NID AS A UNE. IS THIS CORRECT?**

5 A. No. Mr. Hunsucker is correct that NIDs are UNEs, but cable CLECs who have their own  
6 last-mile facilities do not need or use a NID UNE (i.e., the cross connect device  
7 connecting the ILEC's network wire with the customer's inside wire). These CLECs  
8 normally connect to the consumers inside wire within the premises and, in very limited  
9 circumstances, they need to connect to the inside wire within the customer's side of the  
10 NID enclosure. This is not "use" of the NID. In that situation, the CLEC does not use  
11 the cross-connect feature (i.e., the actual NID within the enclosure), does not use the  
12 grounding, the testing functionality, or the posts associated with the NID. As such, the  
13 NID is not used.

14 **Q. DOES QWEST CHARGE CARRIERS FOR ACCESSING THE CUSTOMER**  
15 **SIDE OF THE NID ENCLOSURE AS YOU DESCRIBED ABOVE?**

16 A. No. To the best of my knowledge, only the legacy CenturyTel companies and  
17 Windstream attempt to charge for this activity. The other ILECs, including AT&T,  
18 Verizon and Qwest do not. Since these NID costs are already recovered by the ILEC in

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<sup>288</sup> *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578, ¶ 62 (2002) ("2002 Cost Recovery Reconsideration Order") at ¶ 7 (emphasis added).

1 local rates, and there is no cost associated with the connection that occurs within the NID  
2 enclosure, there is no cost-basis for such a charge.

3 **Q. DOES MR. HUNSUCKER ADDRESS THE THIRD ASPECT OF CONDITION 24,**  
4 **REGARDING STORAGE CHARGES FOR DIRECTORY LISTINGS?**

5 A. He makes vague references to the issue, but doesn't address it specifically. I address the  
6 directory listing storage and maintenance ("DLSM") charge that the legacy Embarq  
7 companies have proposed at pages 65 to 66 of my direct testimony. This is another  
8 example of an anticompetitive charge that CenturyLink attempts to impose in its legacy  
9 ILEC territories that is specifically prohibited by the FCC's rules. Specifically,  
10 CenturyLink does not impose them on its own customers or CLECs who purchase UNEs  
11 or engage in resale. As such, the rates are discriminatory, have no demonstrable basis in  
12 cost, and are anticompetitive. To the best of my knowledge, all states (except Indiana)  
13 that have addressed this charge have rejected it.

14 **Q. DOES QWEST IMPOSE THE DLSM CHARGE IN ITS TERRITORY?**

15 A. No. Again, Condition 24 is meant to prevent CenturyLink from implementing this  
16 "worst practice" throughout its larger service territory post-merger.

17 **8. Condition 28**

18 **Q. WHAT IS CONDITION 28?**

19 A. Condition 28 applies to a single point of interconnection ("SPOF"):

1           28. At CLEC's option, the Merged Company will interconnect with CLEC at a  
2           single point of interconnection per LATA, regardless of whether the Merged  
3           Company provides service in such LATA via multiple operating company  
4           affiliates or a single operating company.

5           **Q.   REGARDING JOINT CLECS' CONDITION 28 – SINGLE POINT OF**  
6           **INTERCONNECTION (“POI”) PER LATA – MR. HUNSUCKER STATES THAT**  
7           **“NO MERGER CONDITION IS NEEDED OR APPLICABLE FOR**  
8           **ARIZONA.”<sup>289</sup> IS CONDITION 28 NEEDED DESPITE THE FACT THAT**  
9           **THERE ARE NO LEGACY CENTURYLINK ILEC EXCHANGES IN**  
10           **ARIZONA?**

11           **A.**   Yes. The language of Condition 28 states that it applies “regardless of whether the  
12           Merged Company provides service in such LATA via multiple operating company  
13           affiliates or a single operating company.” Therefore, Condition 28 was designed to apply  
14           to situations like in Arizona where there are no legacy CenturyLink ILEC exchanges.  
15           And, if the Merged Company decides to change the organization structure of any of the  
16           operating entities in Arizona post-merger, CLECs would be able to continue to  
17           interconnect with the Merged Company at a single point per LATA.

18           CenturyLink has long maintained that it is not required to allow a single POI in its legacy  
19           territory because it is not a BOC, and even recently referred to a single POI as  
20           “technically infeasible” and a “superior” form of interconnection.<sup>290</sup> At the same time,

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<sup>289</sup> Hunsucker Rebuttal at p. 55, lines 4-5.

<sup>290</sup> Rebuttal Testimony of Michael Hunsucker, Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010, at pp. 37-38.



1 CenturyLink has rejected Joint CLECs' proposed Conditions 13 (which would make  
2 clear that the Merged Company will remain a BOC and subject to BOC obligations in  
3 Qwest's legacy territory post-merger) and 28 (which would allow CLECs to, at their  
4 option, to establish a single POI per LATA with the Merged Company even when there is  
5 a single operating entity in the LATA). CenturyLink's prior refusal to allow CLECs to  
6 establish a single POI per LATA in legacy CenturyLink territory coupled with  
7 CenturyLink's refusal to adopt reasonable conditions that would help ensure that CLECs  
8 can continue to interconnect at a single POI in Qwest legacy territory shows that  
9 Condition 28 is warranted.

10 **9. Condition 29**

11 **Q. HAVE YOU REVIEWED CENTURYLINK'S CONCERNS ABOUT CONDITION**  
12 **29?**

13 **A.** Yes. CenturyLink alleges a number of concerns about Condition 29, including: "neither  
14 necessary nor appropriate for this transaction";<sup>291</sup> not all conditions are universally  
15 applicable;<sup>292</sup> there are "myriad of different circumstances and considerations";<sup>293</sup> and  
16 "restricts the incentive for both parties to negotiate state-specific terms in Arizona and  
17 elsewhere".<sup>294</sup>

<sup>291</sup> Hunsucker Rebuttal at p. 68, line 8.

<sup>292</sup> Hunsucker Rebuttal at p. 68, lines 11-15.

<sup>293</sup> Hunsucker Rebuttal at p. 69, lines 4-5. See *also*, McMillan Rebuttal at p. 18.

<sup>294</sup> Hunsucker Rebuttal at p. 69, lines 16-17.

1 **Q. WHAT ARE YOUR RESPONSES TO THESE CONCERNS?**

2 A. CenturyLink reads too much into Condition 29. Condition 29 states:

3 All Conditions herein *may be* expanded or modified as a result of  
4 regulatory decisions concerning the proposed transaction in other states,  
5 including decisions based upon settlements, that impose conditions or  
6 commitments related to the transaction. CenturyLink agrees that the state  
7 commission of any state *may adopt* any commitments or conditions from  
8 other states or the FCC that are adopted after the final order in that state.

9 Contrary to CenturyLink's attempt to make it appear as if this condition would require  
10 every single merger condition adopted by the FCC and other state commissions to be  
11 implemented here in Arizona, a fair reading of Condition 29 shows that whether or not to  
12 expand or modify the conditions in Arizona based on conditions adopted by other  
13 regulatory commissions is left up to the Arizona Commission – *i.e.*, there is not automatic  
14 or universal applicability as Mr. Hunsucker suggests. Accordingly, any differences in  
15 circumstances or considerations would be taken into account. The Joint Applicants have  
16 requested expedited approval of the proposed transaction, and this condition allows the  
17 Arizona Commission to review the proposed transaction in an expedited fashion as  
18 requested by Joint Applicants, while ensuring that public interest benefits that may arise  
19 for stakeholders as a result of conditions agreed to by Joint Applicants in other  
20 jurisdictions (proceedings that may not be progressing as quickly as the Arizona merger  
21 review proceeding) can also be brought to Arizona. While CenturyLink claims that such  
22 a condition would restrict incentives to negotiate state-specific terms in Arizona and  
23 elsewhere, it provides no reason why any public interest benefits related to the merger

1 should not be realized by stakeholders in Arizona just because another state commission  
2 established a longer procedural schedule.

3 To CenturyLink's claim that this condition is not appropriate for this transaction, I would  
4 note that a similar condition was adopted in Oregon for the CenturyTel/Embarq merger  
5 as well as the Verizon/Frontier merger.<sup>295</sup> In addition, the Louisiana Commission  
6 attached a similar to condition to its decision on CenturyLink's proposed acquisition of  
7 Qwest.<sup>296</sup> ACC Staff also sees the merit of such a condition as evidenced by ACC Staff  
8 Condition 4.<sup>297</sup>

9 **10. Condition 30**

10 **Q. CENTURLINK STATES THAT CONDITION 30<sup>298</sup> IS UNNECESSARY**  
11 **BECAUSE ICAS CONTAIN LANGUAGE ALLOWING A PARTY TO SEEK**  
12 **RESOLUTION OF DISPUTES BEFORE THE COMMISSION.<sup>299</sup> DOES THIS**  
13 **OBVIATE THE NEED FOR CONDITION 30?**

14 A. No. Condition 30 states:

15 30. In the event a dispute arises between the parties with respect to any of  
16 the pre-closing and post-closing conditions herein, either party may seek

<sup>295</sup> Exhibit TG-9 at p. 12.

<sup>296</sup> Louisiana Public Service Commission, Docket No. u-31379, Order Number U-31379, September 17, 2010, at p. 2.

<sup>297</sup> Direct Testimony of Pamela Genung, Attachment 1, Condition 4.

<sup>298</sup> Condition 30 states: "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." See Exhibit TG-8 at p. 12.

<sup>299</sup> Hunsucker Rebuttal at p. 70.

1 resolution of the dispute by filing a petition with the state commission at  
2 any time. Alternative dispute resolution provisions in an interconnection  
3 agreement shall not prevent any party from filing a petition with the state  
4 commission at any time.

5 Condition 30 applies specifically to disputes that may arise “with respect to any of the  
6 pre-closing and post-closing conditions” resulting from the proposed transaction.  
7 Condition 30 provides that these disputes can be taken to the state commission for  
8 resolution. While Joint Applicants suggest that this ability already exists, Condition 30  
9 removes any doubt, which will help streamline disputes about merger conditions if they  
10 arise. If customer-impacting problems of the types experienced in other mergers occur  
11 due to issues relating to compliance with a merger condition, for example, parties should  
12 be able to bring those issues to the Commission expeditiously, without having to first  
13 litigate their right to take such disputes to the Commission. The last sentence of  
14 Condition 30 deals with this need for expeditious handling of merger condition related  
15 disputes, by providing that alternative dispute resolution provisions in an ICA shall not  
16 prevent either party to the agreement from filing a petition with the state commission at  
17 any time. If, for example, end user customers are experiencing service outages due to  
18 non-compliance with a merger condition, parties will not be delayed from filing with the  
19 Commission by an ICA provision that otherwise first requires AAA arbitration or some  
20 lengthy negotiation period.

21 **Q. ARE THERE OTHER REASONS WHY CENTURYLINK’S CRITICISMS**  
22 **ABOUT CONDITION 30 SHOULD BE REJECTED?**

1 A. Yes. Other mergers have been subject to a substantially similar merger condition.<sup>300</sup>  
2 Other state commissions have found that a specific merger condition relating to disputes  
3 specifically about merger conditions (much like Joint CLEC proposed Condition 30) was  
4 in the public interest.<sup>301</sup>

5 Also, as explained at page 185 of my direct testimony, many of the Joint CLEC  
6 conditions apply for a limited time period following the merger, so it is important to have  
7 a clear, efficient process for addressing disputes related to merger conditions at the  
8 outset. Otherwise, any disputes about the proper venue could drag out compliance for so  
9 long that these merger conditions are essentially rendered useless due to expiration.

10 **Q. WOULD JOINT CLECS' PROPOSED CONDITION 30 RESULT IN**  
11 **FRIVOLOUS DISPUTES AS CENTURYLINK HAS PREVIOUSLY**  
12 **CLAIMED?**<sup>302</sup>

13 A. No. To my knowledge, the other state commissions that have approved mergers subject  
14 to a similar condition have not found that this condition wastes their resources.  
15 Moreover, this Commission is fully able to address frivolous or wasteful complaints in  
16 this area, just as it would address any other frivolous or wasteful complaint. Given that a  
17 party bringing a frivolous or wasteful complaint risks those consequences, as well as  
18 expends time and money to raise an issue, the probability that a frivolous complaint

<sup>300</sup> Exhibit TG-9 at p. 12.

<sup>301</sup> Exhibit TG-9 at p. 12.

<sup>302</sup> Rebuttal Testimony of John Jones, Minnesota Docket No. P-421 et al./PA-10-456, September 13, 2010, at p. 26, lines 12-14 ("encourage frivolous or duplicative dispute resolution processes that potentially waste the resources of the companies or the Commission").

1 would be brought, and the Commission's ability to address it if brought, must be weighed  
2 against the merger-related harm that would occur if violations of merger-related  
3 conditions are occurring after the Merged Company has received the benefit of this  
4 Commission's approval of the merger, if approved. The Commission's ability to enforce  
5 its orders, and the public interest in preventing merger-related harm, outweighs the  
6 claimed risk of frivolous complaints.

7 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

8 **A.** Yes, it does.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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JOINT NOTICE AND APPLICATION OF	)	
QWEST CORPORATION, QWEST	)	
COMMUNICATIONS COMPANY, LLC,	)	
QWEST LD CORP., EMBARQ	)	Docket No. T-01051B-10-0194
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.	)	

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EXHIBIT TG-11

PUBLIC VERSION

Exhibit TG-11 is CenturyLink's Attachment Integra 22c.2,  
which CenturyLink has marked as confidential.



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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PROPOSED MERGER OF THEIR PARENT )	
CORPORATIONS QWEST )	
COMMUNICATIONS INTERNATIONAL INC.)	
AND CENTURYTEL, INC. )	

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EXHIBIT TG-12

**EXCERPT FROM QWEST PRE-ORDERING OVERVIEW PCAT**

"The CUS Code is assigned based upon the order activity associated with an account. The table below describes how CUS Codes may change during the bill posting process after a Completion Notice (CN) is issued. The changes to the CUS Code are based upon service order activity, product, and region as described in the table below.

You can determine what service order activity was assigned to your LSR by reviewing the number assigned to the order located on the FOC. The first character of this number denotes the service order activity referenced in the table below. For example, an order number beginning with "N" identifies a New Service connect request.

<b>Service Order Activity and Product</b>	<b>Region</b>	<b>How CUS Code is determined during bill posting process?</b>	<b>Exception(s)</b>
C order (Conversion) activity  All products	Eastern	Last 3 digits of the AN located on the CN, then incremented by 1.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 124.	If during the bill posting process a past due account is found with the same TN and CUS Code, the already incremented CUS Code will be incremented again by 1.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 125.
C order (Conversion) activity  All products	Central and Western	Last 3 digits of the AN located on the CN.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 123.	If during the bill posting process a past due account is found with the same TN and CUS Code, the CUS Code will be incremented by 100.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 223.
N order (New Service or Conversion) activity  All products, except Unbundled Loop	Eastern	Last 3 digits of the N order number located on the FOC notice.  Example: FOC shows N order number "N12345678"; CN shows AN as "xxx-xxx-xxxx-678; CSR CUS Code would be 678.	If during the bill posting process a past due account is found with the same TN and CUS Code, the CUS Code will be incremented by 1.  Example: CN shows AN as "xxx-xxx-xxxx-678; CSR CUS Code would be 679.
N order (New Service) activity  Unbundled Loop	Eastern	Last 3 digits of the AN located on the CN, then incremented by 1.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 124.	If during the bill posting process a past due account is found with the same TN and CUS Code, the already incremented CUS Code will be incremented again by 1.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 125.
N order (New Service or Conversion) activity	Western and Central	Last 3 digits of the AN located on the CN.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS	If during the bill posting process a past due account is found with the same TN and CUS Code, the CUS Code will be incremented by 100.

All products		Code would be 123.	Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 223.
T&F orders (To & From) activity  All products	Eastern	Last 3 digits of the AN located on the CN, then incremented by 1.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 124.	If during the bill posting process a past due account is found with the same TN and CUS Code, the already incremented CUS Code will be incremented again by 1.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 125.
T&F orders (To & From) activity  All products	Central	Last 3 digits of the AN located on the CN, then incremented by 100.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 223.	If during the bill posting process a past due account is found with the same TN and CUS Code, the already incremented CUS Code will be incremented again by 1.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 224.
T&F orders (To & From) activity  All products	Western	Last 3 digits of the AN located on the CN.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 123.	If the T order is delayed due to lack of facilities for two billing cycles beyond the posted F order, the T order must be changed to a N order. In this situation, the CUS Code changes to the last 3 digits of the N order.  Example: N order number is "N12345678"; CN shows AN as "xxx-xxx-xxxx-678; CSR CUS Code would be 678
C order  Main Account Telephone Number (Billing Telephone Number) Change  All products	Eastern	Last 3 digits of the AN located on the CN, then incremented by 1.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 124.	If during the bill posting process a past due account is found with the same TN and CUS Code, the already incremented CUS Code will be incremented again by 1.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 125.
C order  Main Account Telephone Number (Billing Telephone Number) Change  All products	Western/Central	Last 3 digits of the AN located on the CN.  Example: CN shows AN as "xxx-xxx-xxxx-123; CSR CUS Code would be 123.	Not applicable."

From: Qwest Pre-Ordering Overview PCAT, available at  
<http://www.qwest.com/wholesale/clecs/preordering.html>

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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PROPOSED MERGER OF THEIR PARENT )	
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COMMUNICATIONS INTERNATIONAL INC.)	
AND CENTURYTEL, INC. )	

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EXHIBIT TG-13

**CENTURYLINK-QWEST PROPOSED MERGER ISSUES MATRIX**

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
1	Discontinue Services	#1. Any wholesale service offered to competitive carriers at any time between the Merger Filing Date <sup>3</sup> up to and including the Closing Date <sup>4</sup> will be made available and will not be discontinued for at least the Defined Time Period, <sup>5</sup> except as approved by the Commission.	"CLECs propose several rate associated conditions that are improper and are not legitimate merger concerns. The time period is unreasonable." CLQ Att. 45, p. 20, Row 2.	The withdrawal of wholesale services would signal a move toward the Merged Company impeding competition, and in turn, result in a merger-related harm. Certainty and consistency for wholesale service availability is critical to offset the uncertainty resulting from the merger. A CLEC and its customers being served by that service would be harmed if they are forced off of a service previously available to them before the merger. Interestingly, CLQ refers to this as a "rate-associated" condition, even though this condition deals with <i>availability</i> of the service and separate conditions (e.g., condition #7) deal with rates. If CLQ views withdrawal of a service as a means to force CLECs into a higher-priced service, then that would make this a rate-associated condition in CLQ's view. In contrast, if the Merged Company has a

<sup>1</sup> The list of conditions is subject to change. Joint CLECs reserve their right to expand or modify the proposed conditions as needed. The conditions are grouped generally by subject matter. All of the conditions are important and no inference regarding priority should be made based on the numbering of the conditions, which is for ease of reference only.

<sup>2</sup> The CenturyLink/Qwest positions are quoted directly from Attachment DOC 45 to CenturyLink's and Qwest's Responses to the Minnesota Department of Commerce's Information Request Number 45 (September 14, 2010) [referred to as "CLQ Att. 45"]. If the information in a row of CLQ Att. 45 continues on to the next page, the next row on the continuation page is Row Number 1 for that page, for purposes of the citations provided.

<sup>3</sup> "Merger Filing Date," when used in the Joint CLEC list of conditions, refers to May 10, 2010, which is the date on which Qwest and CenturyLink made their merger filing with the FCC.

<sup>4</sup> "Closing Date," when used in the Joint CLEC list of conditions, refers to the closing date of the transaction for which the Applicants have sought approval from the Federal Communications Commission (FCC) and state commissions (the "transaction").

<sup>5</sup> "Defined Time Period," when used in the Joint CLEC list of conditions, refers to a time period of at least 5-7 years after the Closing Date or, alternatively, a time period that is a minimum of 42 months (*i.e.*, 3.5 years) and continues thereafter until the Applicants are granted Section 10 forbearance from the condition. With respect to agreements, the Defined Time Period applies whether or not the initial or current term of an agreement has expired ("evergreen" status). [Note that, in CLQ Att. 45, the Applicants paraphrase this definition to include only the first portion (at least 5-7 years), without acknowledging the alternative portion (minimum 3.5 years, until forbearance). See, e.g., CLQ Att. 45, p. 20, Row 2.]

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest (“CLQ”) Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
2	Transaction-related costs	#2. The Merged Company <sup>6</sup> 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.	“CLECs propose several rate associated conditions that are improper and are not legitimate merger concerns. The time period is unreasonable. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, pp. 20-21.	legitimate basis for discontinuing service, the condition as written allows the Merged Company to discontinue it with Commission approval. See QSI Ankum Direct, §VII(A), pp. 63-82.  Wholesale customers should not have to pay for any of the costs of the merger and CenturyLink merging the two companies. This is especially true as CenturyLink claims that it will save \$650 million associated with the merger. CLQ does not explain how a condition expressly related to transaction-related costs is not a “legitimate merger concern.” But for the merger, these costs would not occur. See QSI Ankum Direct, §VII(B), pp. 82-87.
3	Overall management costs	#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.	“CLECs propose several rate associated conditions that are improper and are not legitimate merger concerns. The time period is unreasonable. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, p. 21, Row 1.	When asked whether CenturyLink would seek to recover through wholesale rates or fees paid by CLECs “overall management costs,” CenturyLink said it would use forward-looking cost studies to develop UNE rates – rates that would include the Merged Company’s management cost structure post-merger. CenturyLink’s response ignores the principle recognized in numerous previous mergers that wholesale customers should not have to pay for any of the costs of the merger. As in Row 2 above, CLQ does not explain how a condition that expressly refers to costs that result from the transaction “are not a legitimate merger concern,” and but for the merger, these costs would not

<sup>6</sup> “Merged Company,” when used in the Joint CLEC list of conditions, refers to the post-merger company (CenturyLink and its Operating Companies, collectively, after the Closing Date).

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
4	Service Quality – Qwest ILEC Territory	<p>#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<sup>7</sup> 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.</p> <p>The state commission and/or the FCC may determine that additional remedies are required, if the remedies described in this condition do not result in the required wholesale service quality performance or if the Merged Company violates the merger conditions.</p>	<p>“The merged company complies with all applicable state and federal laws, and terms and conditions of current interconnection agreements and tariffs. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, p. 5, Row 2.</p>	<p>occur. See QSI Ankum Direct, §VII(B), pp. 82-87.</p> <p>There are many reasons to expect wholesale service quality performance in the legacy Qwest territory to deteriorate significantly as a result of the proposed transaction, such as pressure to achieve projected synergies; pressure to increase retail market share; an increased incentive and opportunity to degrade wholesale service due to an increased footprint; and a smaller number of benchmark incumbent LECs remaining post-transaction. Condition 4 is critical to helping ensure that wholesale service quality is not degraded post-merger as a result of these factors. Although CLQ’s Position states, in the present tense, that the “merged company complies,” the merged company does not yet exist. It has no track record of compliance.</p>
			<p>“The additional performance assurance plan (APAP) is not needed, inappropriate, and unreasonable. The MPAP is sufficient to provide performance monitoring post merger and will ensure that wholesale customers are not discriminated against in favor of retail customer. Such discrimination will be part of the existing MPAP and penalties will be applied consistent with the</p>	<p>The last sentence of condition #4 refers to additional remedies that may be imposed (<i>i.e.</i>, not only an Additional PAP, which is described in condition #4(a)). CLQ addresses only the Additional PAP and not additional remedies in its Position. CLQ does not appear, therefore, to dispute that regulators may determine additional remedies may be needed if the Merged Company violates the merger conditions.  See QSI Gates Direct (public), §VI(B),</p>

<sup>7</sup> “Commercial” agreements include but are not limited to wholesale metro Ethernet agreements, OCN (SONET) agreements, Local Services Platform (*e.g.*, QLSP) agreements, Dark Fiber agreements, Broadband for Resale agreements, and line sharing agreements.

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct]¹	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45]² current plan." CLQ Att. 45, p. 4-5.	Joint CLEC Position pp. 126-131.
4a	Service Quality – Qwest ILEC Territory – UNES (PID/PAP)	#4(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.	"The additional performance assurance plan (APAP) is not needed, inappropriate, and unreasonable. The MPAP is sufficient to provide performance monitoring post merger and will ensure that wholesale customers are not discriminated against in favor of retail customer. Such discrimination will be part of the existing MPAP and penalties will be applied consistent with the current plan." CLQ Att. 45, pp. 3-4.	Although CLQ indicates that the PAP is sufficient, CLQ does not actually commit to keeping the PAP in place for any specific period of time. The current PIDs and PAPs are the best available way to identify and root out wholesale service quality degradation – they rely on trusted statistical methods as well as business rules and data that were extensively tested during the 271 approval process. The five year time period corresponds with the Applicants' own synergy savings time horizon, which is the time during which the risk of merger-related wholesale service quality degradation is greatly amplified. The critical nature of maintaining wholesale service quality post-merger is also reflected in the requirement for the Merged Company to obtain approval for reducing or eliminating the PIDs or PAP.
	Additional PAP (APAP)	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	<i>Note:</i> In CLQ Att. 45, p. 5, Row 1, CenturyLink and Qwest paraphrase the Integra Direct Testimony of Mr. Denney (which can be found at p. 9, line 3 – p. 10, line 2). The Applicants list the identical language, quoted above, as their Position in response to Mr. Denney's testimony, as well as in response to the language of the condition itself (#4a).	To provide proper signals to the Merged Company and to discourage it from paying current PAP remedies as a cost of doing business, this condition would require the Merged Company to pay an additional remedy payment for merger-related service quality degradation (Additional PAP or APAP). The APAP does not replace the Minnesota PAP, but works in addition to the existing PAP. The purpose of the proposed APAP is to compare the current level of Qwest's wholesale performance to CLECs with a



#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup> 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”).	CenturyLink/Qwest (“CLQ”) Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
4b	Service Quality – Qwest ILEC Territory – Special Access	#4(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	“Conditions on special access are not appropriate for a merger proceeding. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, p. 28, Row 1.	past level of wholesale performance to CLECs, rather than compare wholesale and retail performance. A plan such as the APAP would help to assure that wholesale performance does not deteriorate post merger. The PAP, which was not developed to identify merger-related harm, would not capture deteriorating performance, if the merged company’s performance deteriorated for both wholesale and retail services simultaneously or if wholesale performance deteriorated, but remained above the minimum benchmarks. The APAP uses the same methodology but is tailored to the purpose of measuring merger-related performance issues.  See QSI Gates Direct (public), §VI(B), pp. 126-131; see also Integra Denney Direct, pp. 9-15 & Exhibit DD-1.  The FCC pointed to the lack of options for wholesale customers as a reason for denying Qwest’s forbearance petition. This market power not only extends to wholesale services such as UNEs, interconnection and collocation required of ILECs pursuant to Section 251(c) of the Act, but also to other wholesale services provided by the ILECs, such as special access, as evidenced by the supracompetitive rates ILECs are currently charging for special access in areas where they have received special access pricing flexibility. The fact is that ILECs and BOCs continue to be

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
5	Service Quality – CL ILEC Territory	<p>be determined by the state commission or FCC) on a per-month, per-metric basis to each affected CLEC.</p> <p>#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.</p>	<p>“The merged company complies with all applicable state and federal laws, and terms and conditions of current interconnection agreements and tariffs. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, p. 5, Row 2.</p>	<p>entrenched incumbents in their local territories and the competition in those spaces is fragile and depends largely on use of incumbent facilities for its very existence. See QSI Gates Direct (public), §VI(B), pp. 18 &amp; 126-131.</p> <p>The many reasons to expect wholesale service quality performance to deteriorate significantly as a result of the proposed transaction described in Row 4 above also apply in legacy CenturyLink territory. Condition 5 is needed to ensure that the Merged Company adheres to quality performance standards and submits reports on that performance throughout its footprint. This condition provides public interest benefits by tracking and identifying service quality issues and helping to prevent or eliminate discriminatory conduct in all areas of the Merged Company’s territory. See QSI Gates Direct (public), §VI(B), pp. 126-131.</p>
5a	Service Quality – CL ILEC Territory –	<p>#5(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</p>	<p>“CenturyLink complies with all reporting requirements that currently exist. However, CenturyLink will not agree to expanding the reporting</p>	<p>As indicated in Row 4(b) above, ILEC market power not only extends to other wholesale services but also to special access and, as indicated in Row 5, the many reasons to expect wholesale service</p>

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
	Special Access – Additional PAP (APAP)	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.	requirements for the Qwest operating companies to the CenturyLink operating companies. This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, pp. 28-29.	quality performance to deteriorate significantly as a result of the proposed transaction apply in legacy CenturyLink territory. Therefore, this condition would require the Merged Company to pay a remedy payment for merger-related service quality degradation (Additional PAP or APAP) in all areas of the Merged Company's territory. See QSI Gates Direct (public), §VI(B), pp. 126-131.
6	Wholesale Agreements – Assume, Without Document Execution	#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.	"This condition is unnecessary given the structure of this transaction. The transaction involves a complete acquisition of Qwest, including all of its existing obligations under law and contracts. The post merger Qwest affiliate will continue to be the provider of service to CLECs under the terms of their current contracts. CLQ Att. 45, p. 13, Row 1 & p. 18, Row 4.  The Defined Time Period is unreasonable. CLECs with existing ICAs have voluntarily negotiated and agreed to the terms, including the length, in those agreements. CLECs should not be allowed to unilaterally extend the agreement for a lengthy period of time." CLQ Att. 45, p. 13, Row 1.	Condition 6 (exclusive of subparts) requires the Merged Company to take assignment of the Assumed Agreements without requiring wholesale customers to execute any documents to effectuate the assumption. CLQ's Position states that the legacy Qwest entity "will continue to be the provider of service" but CenturyLink does not commit to any specified time period for this to continue. CenturyLink also does not commit to <i>not</i> requiring such document execution (regardless of whether the obligations are considered continuing or assumed). If it will impose no such requirement, then CenturyLink should have no objection to this condition. While it may appear self-evident that, if an obligation continues or is assumed, the ILEC will not request further document execution, that was not the result in the Verizon-Frontier case. Despite a merger condition that Frontier

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest (“CLQ”) Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
6a	Wholesale Agreements – Opt in & Not Terminate	#6(a). The Merged Company shall make available to requesting carriers and shall not terminate or change the rates, terms or conditions of any Assumed Agreements during the unexpired term of any Assumed Agreement or for at least the Defined Time Period, whichever occurs later, unless requested by the non-ILEC party, or required by a change of law.	<p>“This condition is unnecessary given the structure of this transaction. The transaction involves a complete acquisition of Qwest, including all of its existing obligations under law and contracts. The post merger Qwest affiliate will continue to be the provider of service to CLECs under the terms of their current contracts.</p> <p>The Defined Time Period is unreasonable. CLECs with existing ICAs have voluntarily negotiated and agreed to the terms, including the length, in those agreements. CLECs should not be allowed to unilaterally extend the agreement</p>	<p>assume wholesale agreements and not terminate or change their terms. Frontier sent a letter and Adoption Agreement which effectively attempted to impose amendment of the wholesale agreement to reflect certain Frontier processes. See Integra May 13, 2010 Ex Parte FCC WC Dkt. No. 09-95. Condition 6 will help avoid the uncertainty, delay, and disputes associated with such a situation.</p> <p>As the term “Defined Time Period” is used in condition 6(a) but not (6), see the next row for a discussion of the Defined Time Period.</p> <p>See QSI Ankum Direct, §VII(A), pp. 63-82.</p> <p>Wholesale customers need certainty with regard to the elements and services they purchase from Qwest (or the Merged Company) for business planning purposes, and based on the transaction as filed, there is no such certainty. CLECs cannot simply go elsewhere for the wholesale services they need from Qwest and CenturyLink both now and post-merger. Without the recommended conditions, Joint CLECs oppose the merger. While CLQ refers to alleged unilateral conduct with respect to extending wholesale agreements, it is CLQ that is “unilaterally” imposing upon its wholesale customers CLQ’s desire to merge to achieve synergies for itself. This is a change in circumstance that must</p>

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup> for a lengthy period of time." CLQ Att. 45, p. 13, Row 1.	Joint CLEC Position
				<p>be taken into account and evaluated for potential harm to CLECs, end user customers, and competition. CLECs have built their business plans significantly around the availability of the products provided under wholesale agreements and the specific terms set forth in those agreements. Retail customers in turn receive competitive services based on CLEC access to these wholesale services from Qwest under these agreements. Based on the post-merger risks and incentives discussed throughout Dr. Ankum's testimony, there is a great risk that, without Condition 6, CenturyLink (as the acquiring company) will not assume or will terminate the obligations of Qwest's agreements, including Commercial Agreements, or will materially change them in a way that would be detrimental to CLECs and competition. This would result in extensive disruption to CLECs and their customers who rely on those products. Condition 6 at least minimizes the uncertainty and risk associated with the merger for a defined time.</p> <p>The Defined Time Period is reasonable, as it reflects the time period during which the merged company, by its own projections, will be making changes that create synergies for itself while creating uncertainty for CLECs and their customers. Also, just as CenturyLink has substantially under-estimated the time for</p>

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
6b	Wholesale Agreements – Commercial – CL ILEC Territory	#6(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.	“This condition assumes that the cost of providing the underlying commercial services are the same in CenturyLink territories as in Qwest territories. This is an incorrect assumption and could place CenturyLink in the position of providing services below cost. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, pp. 16-17.	changes previously (QSI Gates Direct, pp. 79-80), CenturyLink may also be under-estimating the time period here.  See QSI Ankum Direct, §VII(A), pp. 63-82.  CenturyLink cannot reasonably claim significant cost savings (\$650 million) across the merged company while also claiming that its costs are and will remain higher. CenturyLink provides no evidence at all for its claim of providing services below cost. While it says that this “could” happen, CLQ has been otherwise critical of any discussion of what “could” happen post merger. See, e.g., Qwest Brigham Direct, p. 4, lines 5-10. CenturyLink does not currently make similar products to those of Qwest available under commercial agreements (e.g., dark fiber, line sharing), although it may offer them through grandparented <sup>8</sup> contracts that are not commercially available to other CLECs. CenturyLink is the acquiring company in this merger. The fact that CenturyLink does not currently make these products commercially available further increases the risk to CLECs and their customers that these products will be withdrawn or the terms of their availability materially changed as a result of the merger. See QSI Ankum Direct, §VII(A), pp. 63-82  Wholesale rates should, if anything,
7	Rate	#7. Rates charged by legacy CenturyLink	“CLECs propose several rate	

<sup>8</sup> The Qwest-Eschelon and Qwest-Integra Minnesota ICAs (as well as the ICAs listed in Exhibit BJJ-9) in Section 4.0 (Definitions) include the following definition: “‘Grandparent(ed)(ing)’ shall have the same meaning as ‘grandfather(ed)(ing)’ as used in FCC and Commission orders and Qwest and CLEC Tariffs.”

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
	<p>Stability –</p> <p>Tandem transit, special access, tariff, commercial, ICA/UNE</p>	<p>and rates charged by legacy Qwest (including those described in condition 6) for tandem transit service, any interstate special access tariffed or non-tariffed and Commercial offerings, any intrastate wholesale tariffed offering, and any service for which prices are set pursuant to Sections 252(c)(2) and Section 252(d) of the Communications Act shall not be increased for at least the Defined Time Period. The Merged Company will not create any new rate elements or charges for distinct facilities or functionalities that are already provided under rates as of the Closing Date.</p>	<p>associated conditions that are improper and are not legitimate merger concerns. The time period is unreasonable.” CLQ Att. 45, p. 21, Row 2.</p>	<p>decrease after the merger. Because the company’s overall cost structure should decrease to the extent synergy savings are achieved post-merger, wholesale rates – which would be based on the cost structure of the Merged Company – should decrease as well. However, at this point, CLECs are not seeking rate reductions, but instead taking the conservative position that these rates should not increase for at least the Defined Time Period. This provides a degree of protection for captive wholesale customers that the Merged Company will not seek to increase their rates (or create new rate elements) during the Merged Company’s pursuit of synergies and revenue enhancements. See QSI Ankum Direct, §VII(B), pp. 82-87.</p>
7a	<p>Rate</p> <p>Stability –</p> <p>Term and volume &amp; individual-ized pricing</p>	<p>#7(a). The Merged Company shall continue to offer any term and volume discount plans offered as of the Merger Announcement Date,<sup>9</sup> for at least the Defined Time Period, without any changes to the rates, terms, or conditions of such plans. The Merged Company will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term.</p>	<p>“CLECs propose several rate associated conditions that are improper and are not legitimate merger concerns. The time period is unreasonable.” CLQ Att. 45, p. 21, Row 2.</p>	<p>Regarding the time period, see row 6a above.</p> <p>Certainty and consistency for wholesale service rates is critical to offset the uncertainty resulting from the merger. The Joint Petitioners have stated (Petition, p. 11) that “[o]ne of the Transaction’s key benefits is the resulting financial condition of the combined company” and a “financially stronger company can... compete against cable telephony providers, wireless carriers, VoIP offerings, and CLECs...” It is most profitable for the Applicants to boost</p>

<sup>9</sup> “Merger Announcement Date,” when used in the Joint CLEC list of conditions, refers to April 21, 2010, which is the date on which Qwest and CenturyLink entered into their merger agreement.

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
7b	Rate Stability – Tandem transit, ICA/ UNE – CL ILEC Territory	#7(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.	"This condition assumes that the cost of providing of providing [sic] 251 services and tandem transit services are the same in CenturyLink territories as in Qwest territories. This is an incorrect assumption and could place CenturyLink in the position of providing services below cost in violation of the pricing provisions of the Telecom Act. This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, p. 24, Row 2.	revenues at the expense of their competitors. As the example on pages 85-86 of QSI Anikum Direct shows, Joint Petitioners have taken steps after the Merger Announcement Date and before the Closing Date to raise barriers to entry and enhance revenues at the expense of wholesale customers, either in terms of degraded services or higher rates. That is why it is important to provide protections for the time period between the Merger Announcement Date and Closing Date as well as for the Defined Time Period. See QSI Anikum Direct, §VII(B), pp. 82-87.  Regarding the time period, see row 6a above.
8	Wholesale Agreements	#8. The Merged Company will allow requesting carriers to extend existing	"This condition is unnecessary given the structure of this	CenturyLink cannot reasonably claim significant cost savings (\$650 million) across the merged company while also claiming that its costs are and will remain higher. CenturyLink provides no evidence at all for its claim of providing services below cost. While it says that this "could" happen, CLQ has been otherwise critical of any discussion of what "could" happen post merger. See, e.g., Qwest Brigham Direct, p. 4, lines 5-10. Wholesale rates should, if anything, decrease after the merger because the company's overall cost structure should decrease to the extent synergy savings are achieved post-merger. See QSI Anikum Direct, §VII(B), pp. 82-87  While many of the ICAs under which Qwest and CLECs have been operating



#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
	<p>– Extend ICAs</p>	<p>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.</p>	<p>transaction. The transaction involves a complete acquisition of Qwest, including all of its existing obligations under law and contracts. The post merger Qwest affiliate will continue to be the provider of service to CLECs under the terms of their current contracts. The Defined Time Period is unreasonable. CLECs with existing ICAs have voluntarily negotiated and agreed to the terms, including the length, in those agreements. CLECs should not be allowed to unilaterally extend the agreement for a lengthy period of time." CLQ Att. 45, p. 13, Row 2 (referring to the Position in <i>id.</i> p. 13, Row 1).</p>	<p>for years are in "evergreen" status, meaning generally that the ICAs are in effect but may be terminated upon notice, CenturyLink has made no commitment as to any time period for which it will retain and not terminate these ICAs. The experience of Integra and Eschelon with the lengthy negotiation and arbitration process, which is described by Mr. Denney (pp. 15-26), sheds light on the length of time protections from merger-related harm need to remain in place. The Qwest ICAs have been updated regularly over time through multiple contract amendments. Each carrier's respective network configuration (trunking, collocation arrangements, points of interconnection, traffic exchange, etc.) and operating processes are based on those terms and conditions. CenturyLink seeks to deprive competitors of the benefit of their investment in time and resources to develop and maintain ICAs and processes in compliance with those ICAs in the legacy Qwest region.</p> <p>See QSI Ankum Direct, §VII(A), pp. 63-82; see also Integra Denney Direct, pp. 15-26. Generally, and specifically regarding unilateral conduct and the time period, see row 6a above.</p>
9	<p>Wholesale Agreements  – Negotiation of ICAs</p>	<p>#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</p>	<p>"This condition is not needed, inappropriate and unreasonable. CenturyLink does not oppose amending a current ICA rather than negotiate a new agreement.</p>	<p>CLQ's Position ignores the fact that the Qwest ICAs have been updated regularly over time through multiple contract amendments, including amendments to reflect changes in law (e.g., TRO/TRRO).</p>

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
		<p>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.</p>	<p>However the current agreement should not include terms that are demonstrably out of date. Any renegotiation must consider changes of law, updating of processes and capabilities that make the relationship function more smoothly, and competitive industry issues and conditions that did not exist at the time the initial agreement was negotiated." CLQ Att. 45, pp. 14-15.</p>	<p>CLQ has pointed to no pre-existing Qwest ICA that does not contain provisions governing changes in law. To the contrary, all of the CLEC ICAs referenced in Exhibit BJJ-9 have change in law provisions. (See BJJ-4, §2.2, p. 125.) Qwest's SGATs were reviewed during the 271 approval process and some of these terms were incorporated into CLEC ICAs. In contrast, none of CenturyLink's ICA terms were reviewed under a 271 approval process, but instead, are currently in the process of being developed. Condition 9 addresses the document that will be used as the <i>basis for negotiation of a new agreement</i>. If a term in a pre-existing ICA is in fact "demonstrably" in need of change, the carrier seeking a change will be able to demonstrate <i>to the Commission</i> in a Section 252 arbitration that a change is needed. The ILEC should not be allowed to unilaterally make that determination. To the extent that the Merged Company suggests it may operate under existing ICAs for 12 months after the Closing Date, this plan offers little comfort to carriers, like Eschelon, that have spent years negotiating and arbitrating with the ILEC to obtain an ICA. Assuming the current pace of negotiations and arbitrations, one year is insufficient time to complete negotiations much less obtain an arbitrated resolution of remaining impasse issues. And, if the Merged Company insists upon negotiations based</p>

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
10	Wholesale Agreements - Opt-in of ICAs - CL ILEC Territory	#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	"Agreements are entered into between specific legal entities and such terms cannot be involuntarily imposed on a non-signatory third party legal entity. The CenturyLink and Qwest ICAs were negotiated with the consideration of the particular networks and facilities of each company. Even after the merger the Qwest and CenturyLink operating companies will continue [sic] to be operated as separate legal entities. This condition would allow CLECs to opt into interconnection agreements from states other than Minnesota that would not be subject to the Commission rules/guidelines for ICAs in Minnesota. This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, p. 15, Row 1.	on a new or revised template after the Closing Date, not only will the amount of time needed to obtain an effective ICA be extended but also literally years of effort and extensive use of resources will be lost. See QSI Ankum Direct, §VII(A), pp. 63-82; see also Integra Denney Direct, pp. 15-26.  The FCC previously adopted a similar condition in conjunction with the AT&T/BellSouth merger, which required AT&T/BellSouth to make available to any CLEC any ICA (negotiated or arbitrated) to which a AT&T/BellSouth ILEC is a party in any state within the AT&T 22-state footprint, subject to state-specific pricing and technical feasibility. Notably, the CLEC-proposed condition permits the state commission to modify the ICA before opt in if the Merged Company demonstrates technical infeasibility or if the TELRIC-based prices in the ICA are inconsistent with the TELRIC-based prices in the state in question. Therefore, if as CLQ claims in its Position, the particular network or facilities of an operating entity make a provision technically infeasible, the Merged Company will be able to obtain modification of the ICA in that respect. See QSI Ankum Direct, §VII(A), pp. 63-82.

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
10a	<p>Wholesale Agreements</p> <p>– Opt-in of ICAs NA to approved rural carrier</p>	<p>that the Merged Company has established that (1) it is not Technically Feasible<sup>10</sup> 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.</p> <p>#10(a). "CenturyLink ILEC territory," as used in this condition, excludes any CenturyLink ILEC for which a state commission has granted CenturyLink a rural exemption pursuant to Section 251(f) of the Federal Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. (the Communications Act") before the Merger Filing Date.</p>	<p>"Agreements are entered into between specific legal entities and such terms cannot be involuntarily imposed on a non-signatory third party legal entity. The CenturyLink and Qwest ICAs were negotiated with the consideration of the particular networks and facilities of each company. Even after the merger the Qwest and CenturyLink operating companies will continued</p>	<p>CLQ's Position does not comment upon Condition 10(a)'s clarification that CenturyLink ILEC territory, as used in Condition 10, excludes any CenturyLink ILEC for which a state commission has granted it a rural exemption. It appears, therefore, that CenturyLink does not object to subpart (a) of Condition 10. Regarding the remainder of CLQ's Position, see the previous row above. See QSI Ankum Direct, §VII(A), pp. 63-82.</p>

<sup>10</sup> "Technically Feasible," when used in the Joint CLEC list of conditions, has the meaning set forth here (which is the same as the definition in the Qwest ICA negotiations template). Interconnection, access to Unbundled Network Elements, Collocation, and other methods of achieving Interconnection or access to Unbundled Network Elements at a point in the network shall be deemed Technically Feasible absent technical or operational concerns that prevent the fulfillment of a request by a Telecommunications Carrier for such Interconnection, access, or methods. A determination of Technical Feasibility does not include consideration of economic, accounting, Billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is Technically Feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the Commission by clear and convincing evidence that such Interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
10 b	Wholesale Agreements – Opt-in of ICAs – Regulator may terminate rural status in future	#10(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.	[sic] to be operated as separate legal entities. This condition would allow CLECs to opt into interconnection agreements from states other than Minnesota that would not be subject to the Commission rules/guidelines for ICAs in Minnesota. This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, p. 15, Row 1. "The CenturyLink companies that are considered rural telephone companies should continue to have that designation post merger. The Act provides the appropriate process for any CLEC to seek to remove CenturyLink's rural exemption and a merger proceeding is not the appropriate forum to seek changes to the process." CLQ Att. 45, pp. 25-26.	CLQ's Position recognizes that the Act provides a process for removal of CenturyLink's rural exemption. Therefore, CLQ appears to agree that nothing precludes a regulatory body from determining that any operating company of the Merged Company which operates under a rural carrier must cease to do so. Without the rural exemption, Condition 10 would apply.
10 b fn	Rural Status (See #12)	Footnote to #10(b): Charter Fiberlink further proposes as a condition of approval of this transaction that any operating company affiliates of CenturyLink or Qwest that currently operate under a Section 251(f) exemption or waiver relinquish and surrender such legal rights upon the Closing Date.	"The CenturyLink companies that are considered rural telephone companies should continue to have that designation post merger. The Act provides the appropriate process for any CLEC to seek to remove CenturyLink's rural exemption and a merger proceeding is not the appropriate forum to seek changes to the process." CLQ Att. 45, pp. 25-26. <i>Note:</i> In CLQ Att. 45, p. 26, Row 2, CenturyLink and Qwest	Charter Position: This condition was recently applied in the Frontier-Verizon transfer. Despite controlling over 7 million access lines following its merger with Embarq, CenturyLink continues to assert the protections of a so-called "rural" telephone company in Minnesota. It does so by organizing itself into dozens of small operating companies. The size, resources and combined territory of the post-merger company should be recognized, as the company is poised to become the third largest ILEC in the nation. An ILEC with a national footprint

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
11	Wholesale Agreements - ICAs - Intervals	#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.	paraphrase the Charter Direct Testimony of Mr. Pruitt (which can be found at p. 35, lines 7-8). The Applicants list the following language as their Position in response to Mr. Pruitt's testimony:  "CenturyLink does not use the rural exemption to increase costs to CLECs. This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, p. 26, Row 2.  "CLEC provisioning intervals reflect retail provisioning intervals as federal law requires carriers to treat all customers the same. Legacy intervals are inherent in the legacy processes and systems." CLQ Att. 45, p. 1, Row 1.	that exceeds the line count of every other carrier in the nation (except for AT&T and Verizon) should not be permitted to continue to operate separate legal entities in each state as a means of protecting "rural" carrier status. The experience of Joint CLEC coalition members in Wisconsin, and several other mid-west states, demonstrates that CenturyLink uses its "rural" status to increase Charter's operational costs. See Charter Pruitt Direct, pp. 35-41.  CLQ's Position suggests that CenturyLink may lengthen a wholesale interval post-closing by lengthening its retail interval and then arguing the wholesale interval must be the same. This ILEC argument was rejected during the 271 proceedings. When Qwest previously tried to move from a 5-day to a 9-day loop interval by simultaneously lengthening the interval for its retail customers, the Minnesota Commission rejected Qwest's argument and found that the 5-day loop interval allowed competitors a meaningful opportunity to compete. The Minnesota Commission found that Qwest cannot make intervals "unreasonable by lengthening the intervals for provision of retail service." <sup>11</sup> CLQ refers to "legacy intervals" but makes no commitment not to lengthen them post-closing. Customers that CLECs are trying to win or maintain

<sup>11</sup> Findings of Fact, Conclusions of Law and Recommendations, *In the Matter of a Commission Investigation into Qwest's Compliance with Section 271(c)(2)(B) of the Telecommunications Act of 1996; Checklist Items 1, 2, 4, 5, 6, 11, 13, and 14*, Docket No. P-421/CI-01-1371 (Sept. 16, 2003) ("MN ALJ 271 Order"), ¶125.

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
12	Rural Status— Going Forward	#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		have no way of distinguishing whether the CLEC or its underlying wholesale provider is responsible for an untimely installation or repair. Especially during the turbulent post-merger transition period, therefore, not lengthening service intervals is essential. Qwest has opposed inclusion of service intervals in ICAs and has previously changed service intervals unilaterally in CMP over CLEC protest; neither ICAs nor CMP therefore assure continuance of current intervals post-merger. CLQ's need to realize \$650 million in synergies may prompt it to save money by lengthening intervals for both its own and CLEC customers. Lengthening intervals is not in the public interest. The longer the interval, the longer customers must wait to receive service and to take advantage of competitive options. In such a scenario, the adverse effect is more easily sustained by the historically dominant local provider—the ILEC—than by the CLEC trying to win over or retain customers. CLQ's See QSI Gates Direct (public), §VI(B), pp. 126-131.
			"CenturyLink and Qwest comply with ILEC obligations under the Act. This proceeding is not the proper forum to submit the required documentation and conduct the necessary reviews for a determination on rural exemption. This condition is not needed, inappropriate and unreasonable."	To a very large extent, most CLECs' business plans rest on continued meaningful access to ILECs' wholesale products and services. CenturyLink has expressly reserved its right in ICA proceedings to seek a rural exemption to many unbundling and interconnection obligations pursuant to 47 U.S.C. § 251(f). CLECs in the Applicants'

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup> 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.	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup> CLQ Att. 45, p. 25, Row 2.	Joint CLEC Position proposed combined service area cannot remain competitive in an environment of near-complete uncertainty regarding their continued access to essential wholesale products and services. If the proposed acquisition is approved, it must be conditioned so that it does not produce such an environment. CLQ's Position states that this docket is not the proper forum to submit a request for review of an exemption, but Condition 12 requires no such review in this docket. Condition 12 precludes CLQ from submitting a request for an exemption in any proceeding going forward. See QSI Ankum Direct, §VII(A), pp. 63-82.
13	BOC Status & 271 – Qwest ILEC Territory	#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.	"Qwest Corporation, as a successor to U S West, is a BOC and will remain a BOC. The legacy CenturyLink ILECs are not BOCs and will not become BOCs after the transaction closing." CLQ Att. 45, pp. 18-19.	Qwest has seven years experience doing business under the Act's obligations for a BOC; as a non-BOC, CenturyLink approaches the proposed merger without such BOC experience. CLECs in legacy Qwest territory should not suffer any erosion in Qwest's commitment to, or ability to implement, its BOC obligations because Qwest chose to be acquired by a non-BOC. CLQ's mere statements that the merger will take place on the parent level, or that Qwest will remain a BOC, do not answer this concern. The merger must be conditioned upon continuance of the post-merger entity in legacy Qwest territory as a BOC, subject to all BOC obligations, without backsliding in its compliance with 271 obligations. See QSI Gates Direct (public), §VI(D), pp. 148-188.



#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
14	UNE Stability – Wire Centers & Forbearance	#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.	“FCC rules provide the requirements for impaired/non-impaired designations. Non-impaired designations require petitions to the Commission, a Commission review, and Commission finding. This proceeding does nothing to change this process and CenturyLink and Qwest should not be required to forego their legal rights. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, p. 19, Row 1.	The Merged Company’s CLEC customers/competitors are likely to be affected every hour of every day as the Merged Company struggles to meld its systems and processes while wringing hundreds of millions of dollars of savings out of operations. During this transition period, the competitive status quo should be maintained where practicable. A temporary moratorium on wire center impairment proceedings and forbearance petitions will mitigate the destabilizing effect of the merger, and will also allow all parties to absorb the FCC’s new analytical methods and competitive philosophy expressed in its recent decision denying Qwest’s Phoenix forbearance petition. See QSI Ankum Direct, §VII(A), pp. 63-82.
15	Wholesale Support – Contacts, Escalations, Centers, Organizational Structure	#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.	“CenturyLink and Qwest provide and will provide carriers with up-to-date escalation information, contract lists and account manager information. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, p. 12, Row 1.	While many significant facts about the effects of the merger remain unknown as the Applicants have not provided that information, one thing the Applicants have made clear is that their wholesale customers (and, thus, CLECs’ end user customers) will experience change. The marked changes likely to occur post-merger will drive the need for swift, sure, and pinpointed communications between the companies. Because escalation procedures allow for escalation up through organizations, the organizational structure must be known to not delay escalation to the next level and to help ensure accountability. The projected merger synergies will result in part from

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
16	Wholesale Support – Data, Information, Assistance, Notice, Tools	#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.).	"The merger will not change any of the rights or obligations of any party. Qwest and CenturyLink comply with their OSS obligations and the CLECs will not be harmed. Serving wholesale customers is important to both companies and is crucial to the future of the merged company. This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, p. 6, Row 1.	headcount reductions ("reduced corporate overhead" and "elimination of duplicate functions" <sup>12</sup> ) resulting in the Merged Companies' liaisons being stretched further while taking on new roles and territories. The merger must be premised on a condition requiring specified notice conditions for changes to contact lists, account managers, organizational structure, and other critical information. See QSI Gates Direct (public), §VI(C), pp. 132-148.
				The Applicants have stated definitively that their CLEC customers will experience change as the Merged Company effects efficiencies, but have not revealed any detail regarding that change. Continued meaningful access to Qwest OSS systems, processes, databases, tools, and personnel is vital to the continued viability of CLECs in Qwest's legacy territory. Qwest's current OSS systems and manual processes are the product of repeated, stringent, military-type testing held in the context of Qwest's pursuit of its much-desired 271 long distance authorization. CLECs need at least the current level of access to these systems and tools. CLQ's Position states generically that "the merger will not change any of the rights or obligations of any party" and that "CLECs will not be harmed," but notably absent from these statements is any assurance specific to

<sup>12</sup> Applicants' FCC Joint Application, p. 21.

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
17	CMP (Change Management Process)	#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.	"This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, p. 10, Row 2.	OSS systems and processes post-merger. CLQ seems to be saying that CLECs' rights, such as a right to dispute harmful changes, will remain the same. A right to sue after the fact is little comfort when CLECs' customers, and thus CLECs' reputations, are adversely impacted by the merger and resultant customer-impacting outages and problems of the type experienced in the Fairpoint, Hawaiian Telecom, and Frontier situations. See QSI Gates Direct (public), §VI(C), pp. 88-106 & 132-148.  When the FCC reviewed Qwest's 271 application, the FCC relied on the state commissions to oversee Qwest's ongoing compliance with CMP going forward to ensure that local markets remain open. <sup>13</sup> CMP procedures thus are designed to foster availability and nondiscriminatory implementation of Section 251 rights that advance opening those markets and keeping them open. There is express recognition in the Qwest CMP Document (§5.45), which was developed as part of the 271 process, that product, process, and systems changes may impact CLECs, and in many cases the ILEC's changes have a "major effect on existing CLEC operating procedures." Although CMP as implemented by Qwest is not perfect, it is tested, documented, includes an escalation process, and provides a means for CLEC participation in Qwest's proposed CLEC-

<sup>13</sup> E.g., Memorandum Opinion and Order, *In the Matter of Application by Qwest Communications International Inc. for Authorization to Provide In-Region InterLATA Services in Arizona*, FCC WC Docket No. 03-194, Rel. Dec. 3, 2003 ["FCC Arizona 271 Order"], ¶¶3-4, 25, 58-60.

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
18	Wholesale Support – Staffing & Training	#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	"This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, p. 12, Row 2.	impacting system and process changes. In contrast, Embarg's CLEC Issue Resolution Process consists of a forum and CLEC/ILEC relations meeting that are twice-yearly and annual, respectively. CenturyLink has no CMP process, but uses instead a one-way notification process that may take place after a change has occurred. Particularly as CenturyLink has attempted to characterize its processes as sufficient to meet the CMP requirement, the merger creates a material risk of harm. See QSI Gates Direct (public), §VI(C), pp. 132-148.
				With regard to post-merger support of its wholesale customers, the Applicants have stated that unspecified changes will occur due to integration and that their pursuit of synergy savings will result in reductions in personnel. A reduction in experienced wholesale support personnel will invariably result in degradation to the Merged Company's vital support systems, and to less oversight over key customer data. Particularly in light of CLECs' recent experience with Qwest's inappropriate use of customer data and inappropriate practices (e.g., Exhibit BJJ-18), it is clear that the Merged Company must commit in writing to properly training and supporting dedicated wholesale support personnel, and to maintaining such employees at the levels maintained by the Joint Applicants as of the Merger Filing Date. See QSI Gates Direct (public), §VI(C), pp. 132-148.

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct]¹	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45]²	Joint CLEC Position
19	OSS	<p>contractors) employed by legacy Qwest and legacy CenturyLink as of the Merger Filing Date, unless the Merged Company obtains a ruling from the applicable regulatory body that wholesale order volumes materially decline or other circumstances warrant corresponding employee reductions.</p> <p>#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:</p>	<p>"The merger will not change any of the rights or obligations of any party. Qwest and CenturyLink comply with their OSS obligations and the CLECs will not be harmed. Serving wholesale customers is important to both companies and is crucial to the future of the merged company. Any changes to the current Qwest OSS remains subject to the CMP and CenturyLink reserves its rights to make changes per the terms of the Change Management Process (CMP) Document. This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, p. 6, Rows 2 &amp; 3 (same Position for both rows).</p>	<p>Recent CLQ discovery responses have confirmed that, despite CLQ's indications that it has not made post-merger OSS decisions, CenturyLink has decided that it will consolidate OSS, including but not limited to billing systems, and that it either will not retain or will modify Qwest IMA for Local Service Requests, as discussed in the surrebuttal of Mr. Gates. If the transaction is approved, systems integration is inevitable. Therefore, customers and competition need protections from harm resulting from those changes, such as the harm experienced in the Fairpoint, Hawaiian Telecom, and Frontier situations. The FCC has found that nondiscriminatory access to OSS is crucial to competition. Qwest has described its OSS as the lifeblood of Qwest's wholesale operation. The FCC largely premised its public interest findings in the 271 dockets on documented means to prevent backsliding from OSS standards. The Joint Applicants have stated that, while CLECs should expect change to the Merged Company's OSS, no decisions have been made regarding post-merger OSS</p>

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19a	OSS – Plan before replacing or integrating	#19(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	"The merger will not change any of the rights or obligations of any party. Qwest and CenturyLink comply with their OSS obligations and the CLECs will not be harmed. Serving wholesale customers is important to both companies and is crucial to the future of the merged company. CenturyLink complies with all applicable rules and laws regarding OSS. Any changes to the current Qwest OSS remains subject	systems, staffing, or location. The Joint Applicants state that it may operate both Companies' OSS systems for at least 12 months, but even if that is the case, 12 months is inadequate particularly with no plan in place and no promise of testing before replacing tested systems. Faced with a certain integration combined with the remaining profound uncertainties, CLECs must have a written commitment that the Merged Company will use and offer Qwest's OSS for at least three years, at the same level of quality as provided by Qwest prior to the merger, and that the Merged Company will not replace or integrate Qwest's systems without first complying with the subparts to Condition 19. Without those subparts, the three-year period would need to be substantially longer. With the subparts, a plan would be in place to help ensure a smooth transition when the inevitable integration takes place. See QSI Gates Direct (public), §VI(A), pp. 88-106 & 116-124.  In the Verizon-Frontier merger, the FCC's conditions include a provision that requires Frontier to prepare and submit a detailed OSS integration plan to the FCC and any affected state before certain systems transitions (FCC 10-87, Appendix C, pp. 32-33). As part of this process, Frontier must describe the system to be replaced, the surviving OSS, and why the change is being made; describe Frontier's previous experience with integrating OSS in other jurisdictions,

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct]¹	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45]²	Joint CLEC Position
		<p>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.</p>	<p>to the CMP and CenturyLink reserves its rights to make changes per the terms of the Change Management Process (CMP) Document. This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, pp. 7-8.</p>	<p>specify any problems that occurred in that process and what has been done to avert those problems in the planned transition for the affected states; and identify planned contingency actions in the event that the company encounters a difficulty. The plan must be prepared by information technology professionals with detailed experience and knowledge regarding the systems integration process and requirements. Frontier must submit the OSS integration plan to the regulators no less than 180 days prior to the proposed system transition date. All of these terms are reasonable and necessary to help avoid merger-related harm. See QSI Gates Direct (public), §VI(A), pp. 116-124.</p>
19 b	<p>OSS –  Third party testing before replacing</p>	<p>#19(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</p>	<p>"The merger will not change any of the rights or obligations of any party. Qwest and CenturyLink comply with their OSS obligations and the CLECs will not be harmed. Serving wholesale customers is important to both companies and is crucial to the future of the merged company. CenturyLink complies with all applicable rules and laws regarding OSS. Any changes to the current Qwest OSS remains subject to the CMP and CenturyLink reserves its rights to make changes per the terms of the Change Management Process (CMP)</p>	<p>In addition to the type of plan adopted in the Verizon-Frontier merger as discussed in the previous row above (FCC 10-87, Appendix C, pp. 32-33), protections are needed which recognize that Qwest is not only an ILEC but also a Bell Operating Company ("BOC") with additional, explicit Section 271 obligations. In the 271 proceeding, Qwest's OSS underwent three years of rigorous third-party testing, leading to the discovery and resolution of hundreds of problem areas, before it could be judged adequate. CenturyLink's OSS has never undergone third-party testing. Before any replacement or restructuring of Qwest's OSS can take place, the</p>

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
19c	OSS – Coordinated testing	#19(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.	"The merger will not change any of the rights or obligations of any party. Qwest and CenturyLink comply with their OSS obligations and the CLECs will not be harmed. Serving wholesale customers is important to both companies and is crucial to the future of the merged company. CenturyLink complies with all applicable rules and laws regarding OSS and will allow coordinated testing with CLECs." CLQ Att. 45, pp. 8-9.	planned system must undergo the same type of objective third-party testing. Anything less would mean a retrenchment from Qwest's current 271 obligations. See QSI Gates Direct (public), §VI(A), pp. 116-124. CLQ's Position asserts that CLQ values its wholesale customers and states that it will allow coordinated testing with CLECs. CLQ does not explain, however, why it will not therefore accommodate its valued customers by entering into an enforceable commitment to allow coordinated testing for a defined period of time to allow its customers much needed certainty. CLQ also does not explain why it does not commit to not charging wholesale customers for training and education that would not be needed but for the merger and resultant systems changes. During the lengthy third-party OSS testing conducted in Qwest's 271 proceeding, it became apparent that testing must be coordinated with the affected parties, CLECs, to ensure functionality in real-life, production volumes. Before any replacement or restructuring of Qwest's OSS can take place, the planned system must undergo the same level of coordinated testing. Further, CLECs must be trained, without charge, on any revised OSS system. See QSI Gates Direct (public), §VI(A), pp. 116-124.
20	OSS –	#20. In the legacy CenturyLink ILEC territory, as soon as reasonably possible,	"Post merger CenturyLink is committed to having industry	Qwest's OSS underwent three years of rigorous, transparent, third-party testing



#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
	CL ILEC territory	<p>the Merged Company will use the wholesale pre-ordering, quoting, ordering, provisioning, and maintenance and repair functionalities (including electronic bonding) of the legacy Qwest territory to provide interconnection, Unbundled Network Elements, and special access services in the legacy CenturyLink ILEC territory. Specifically, in the legacy CenturyLink ILEC territory, the Merged Company will use the legacy Qwest IMA (GUI and XML), CORA, DLIS, CEMR, MEDIAC, Q.pricer, and Qwest Control systems for those services and functionalities for which Qwest provides wholesale services through these systems as of the Merger Filing Date.</p>	<p>leading OSS. Whether CenturyLink chooses an existing OSS or selects a new system should be resolved through a refined analysis and the need to respond to marketplace conditions. A CLEC that serves primarily in a part of the country where Qwest does not offer ILEC service may prefer CenturyLink's OSS. This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, p. 9, Row 1.</p>	<p>including CLEC participation; CenturyLink's OSS has not undergone any third-party testing. A CLEC that has conducted business using both Qwest's and CenturyLink's OSS in their respective territories has testified that Qwest's OSS is superior to CenturyLink's OSS. No such CLEC has testified that, as CLQ suggests, it prefers CenturyLink's OSS to that of Qwest's OSS. In any event, it is not as though CLECs will be able to elect which system to use in which legacy territory, now that CenturyLink has confirmed that consolidation of OSS is inevitable (as discussed in row 19 above). If CLQ were going to consider the preferences of its wholesale customers, it would consider the expressed preference of all of the Joint CLECs for Qwest's OSS and commit to using Qwest's OSS for the long term. CenturyLink should commit to implementing Qwest's OSS throughout the footprint created by the merger as soon as practicable. Best practices will require the Merged Company's use of Qwest's tested and proven OSS systems throughout CLQ's legacy territories. See QSI Gates Direct (public), §VI(A), pp. 116-126.</p>
21	Compliance - Order processing	<p>#21. The Merged Company will process orders in compliance with federal and state law, as well as the terms of applicable interconnection agreements.</p>	<p>"The merged company complies with all applicable state and federal laws, and terms and conditions of current interconnection agreements. CLECS should not be permitted to add new obligations and unilaterally</p>	<p>The FCC adopted this as an enforceable condition in the Embarq-CenturyTel merger because of the potential for increased anti-competitive conduct of the combined company and the potential for problems spreading to CenturyTel's</p>

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
22	Compliance – Number portability	#22. The Merged Company will provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements.	"CenturyLink and Qwest currently comply with the FCC's Order on one day porting and will continue to do so post merger. CenturyLink has received a waiver until February 2011 consistent with the FCC's Order on one day porting. After the waiver expires, CenturyLink will provide one day porting consistent with the FCC Order." CLQ Att. 45, p. 11, Row 2.	newly-acquired territory. QSI Gates Direct (public) p. 159, lines 7-12. By its very terms, this condition is no more expansive than required by law. Since CenturyLink has promised to meet this condition (QSI Gates Direct (public) p. 156, lines 5-8), it is worrisome that CLQ now states in its Position that it is inappropriate and unreasonable. See QSI Gates Direct (public), § VI(D), pp. 148-188.
22a	Compliance – Number portability – E911 unlock	#22(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.	"CenturyLink and Qwest currently comply with the FCC's Order on one day porting and will continue to do so post merger. CenturyLink has received a waiver until February 2011 consistent with the FCC's Order on one day porting.	In discovery, CenturyLink said it will "provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements." QSI Gates Direct (public) 156, lines 5-8. A discovery response, however, is not an enforceable condition. The fact that CenturyLink attributed its recent waiver request of the one-day porting requirement to the ongoing integration efforts related to the Embarq merger shows that an enforceable condition is needed to ensure that the integration of the Qwest merger does not similarly impact the Merged Company's ability to meet number porting requirements. QSI Gates Direct (public) pp. 148-188.  CLECs expended the resources to raise and address the important issue of unlocking E-911 records with Qwest via CMP commencing nine years ago. Naturally, after reading the concerns raised by CLECs in the Embarq-CenturyTel merger on this issue, CLECs

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup> After the waiver expires, CenturyLink will provide one day porting consistent with the FCC Order." CLQ Att. 45, p. 11, Row 2.	Joint CLEC Position
22 b	Compliance - Number portability - Pass Code	#22(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		are concerned about going backward to pre-271 workshop days such that the record updating process and the accuracy of records will suffer as a result of this acquisition. Condition 22(a) is needed to address this concern and avoid backsliding. In discovery, CenturyLink asserted compliance with the law but also said it has not evaluated or reached any conclusions regarding the issues of when CenturyLink will unlock E911 records or address trouble reports related to unlocking E911 records. The uncertainty caused by CenturyLink's vacillation on this issue makes Condition 22 that much more important. The FCC adopted an identical condition in conjunction with the Embarq-CenturyTel merger, in response to the concerns identified by wholesale customers. The Merged Company should have no problem abiding by condition 22(a) given that CenturyLink said in discovery that "within legacy service areas E911 records are being unlocked at the time of porting in accordance with the FCC's merger condition." QSI Gates Direct (public) p. 156, lines 8-10. See QSI Gates Direct (public), §VI(D), pp. 148-188.  In ¶25 of the CenturyTel-Embarq Merger Order, the FCC summarized allegations that CenturyTel engaged in anti-competitive practices with regard to local number portability, including practices relating to use of a subscriber's Personal Identification Number (PIN) in a manner

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
		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)].	CLQ Att. 45, p. 10, Row 3.	that in effect forced many customers to contact CenturyTel to retrieve the PIN before being able to port their number to a new provider. This contact then gave CenturyTel personnel an opportunity to try to retain the customer. Given this background, Condition 22(b) is appropriate and reasonable to avoid merger-related harm. CenturyLink and Qwest have indicated that their current policies regarding pass codes/PINs would not be disrupted by this condition and that the number of ports that can be processed are not currently limited. QSI Gates Direct (public) p. 156, line 10, 157, lines 1-2. They also claim that they comply with "all state and federal regulations" governing this issue. This confirms that Condition 22(b) is reasonable and appropriate. See QSI Gates Direct (public), §VI(D), pp. 148-188.
22c	Compliance – Number portability – Number of ports	#22(c). The Merged Company shall not limit the number of ports that can be processed.	"CenturyLink and Qwest do not routinely limit the number of ports that can be processed, however, CLEC requests for a large number of port requests may be subject to a timeframe agreed to by the company and the CLEC. This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, pp. 11-12.	CenturyLink and Qwest already claim that they do not limit the number of ports that can be processed but in their Position state that a limit may be imposed if a "large number" of requests are made. Artificially limiting the number of ports that may be submitted in a particular time period is anticompetitive and disruptive to the competitive process. The porting process should be largely if not completely automated, so limits on the number of ports are not necessary. This condition, as adopted by the FCC in the CenturyTel-Embarq order, states that the companies will not limit the number of

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest (“CLQ”) Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
23	Compliance – DL & DA	#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.	“The merged company complies with all applicable state and federal laws, and terms and conditions of current interconnection agreements. The proposed condition may require the establishment of terms and conditions that are not covered by applicable law. CLECs should not be permitted to add new obligations and unilaterally impose conditions that are more expansive than those required by the law or contractual terms.” CLQ Att. 45, p. 25, Row 1.	ports that can be processed and does not contain any exception for a large number of port requests (see FCC 09-54, App. C, p. 28). QSI Gates Direct (public) p.157, lines 1-2, note 266 & pp. 148-188. CLQ identifies no aspect of Condition 23 that is “not covered” by the law, but its allegation of “new” or “more expansive” terms suggests that there is some aspect of Condition 23 which CLQ intends to challenge and with which it does not intend to comply. It is incumbent on CLQ to identify any such argument so that it can be addressed. In any event, Condition 23 expressly requires compliance with the law and therefore is not more expansive than the law. Indeed, the nondiscrimination principles set forth in Condition 23 are taken directly from Section 251 and applicable FCC orders. Condition 23 is necessary as an enforceable condition to this merger because CenturyLink refuses to ensure that competitor’s subscribers have the same access to DA and DL databases as CenturyLink provides to its own customers, as required by federal and state law. Directory services provided by competitors will be degraded if CenturyLink, or its vendor, fails to properly maintain these databases in a manner that ensures nondiscriminatory access. See QSI Gates Direct (public), §VI(D), p. 166, line 15- p.167, line 1 & pp. 162-167.
24	Rate	#24. After the Closing Date, the Merged	“These issues are associated with	Condition 24 is necessary to ensure

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest (“CLQ”) Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
	Stability – Surcharges	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:	prior and ongoing billing and/or interconnection agreement between Qwest/CenturyLink and CLECs. These are not legitimate merger concerns and are misplaced in this proceeding. In addition, these issues have been arbitrated in other state venues and the rates at issues [sic] are contained in the interconnection agreements approved by the MN Commission. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, p. 22, Row 1.	continuity of operations and wholesale rate stability for Joint CLECs currently competing with Qwest. If imposed, this condition would ensure that new subscriber acquisition surcharges are not assessed upon competitors operating in the Qwest service territories. Joint CLECs are not asking the Commission to revisit prior or ongoing billing or interconnection disputes. These surcharges are not contained in Qwest agreements approved by the Minnesota Commission. The prohibition of new subscriber acquisition surcharges is consistent with applicable law since the FCC has ruled that such charges are prohibited by federal law. Specifically, in a 2002 Number Portability Cost Reconsideration Order, the FCC ruled that ILECs may not recover any number portability costs through interconnection charges or add-ons to interconnection charges to their carrier “customers,” nor may they recover carrier-specific costs through interconnection charges to other carriers when no number portability functionality is provided. QSI Gates Direct (public) p. 170. The FCC’s directive clearly prohibits interconnection-based surcharges on number porting, like those imposed by CenturyLink. See QSI Gates Direct (public), §VI(D), pp. 167-172.
24a	Rate Stability –	#24(a). Service order charges assessed upon CLECs submitting local service requests (“LSRs”) for number porting;	“These issues are associated with prior and ongoing billing and/or interconnection agreement between	Condition 24(a) is necessary to ensure that new subscriber acquisition surcharges are not assessed upon

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
	Local Number Portability (LNP) order charges		<p>Qwest/CenturyLink and CLECs. These are not legitimate merger concerns and are misplaced in this proceeding. In addition, these issues have been arbitrated in other state venues and the rates at issues [sic] are contained in the interconnection agreements approved by the MN Commission. This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, p. 22, Row 1.</p> <p><i>Note:</i> In CLQ Att. 45, p. 22, Row 2, CenturyLink and Qwest attempt to paraphrase the Charter Direct Testimony of Mr. Pruitt (which Qwest claims can be found at p. 10). The Applicants list the following language as their Position in response to Mr. Pruitt's testimony, instead of the Position quoted above regarding the condition itself (#24a):</p> <p>"These issues have been arbitrated in other state venues and the rates at issues [sic] are contained in the interconnection agreements approved by the MN Commission. This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, pp 22-23.</p>	<p>competitors operating in the Qwest service territories in the form of service order charges assessed upon CLECs submitting LSRs for number porting. Joint CLECs are not asking the Commission to revisit prior or ongoing billing or interconnection disputes. These surcharges are not contained in Qwest agreements approved by the Minnesota Commission. The prohibition of new subscriber acquisition surcharges is also consistent with applicable law. In several orders implementing Section 251(e) (2) of the Act, the FCC held that carriers are required to recover their costs of implementing LNP through tariffed end-user charges. In these orders, the FCC determined that ILECs may recover through end-user charges their carrier-specific costs directly related to providing number portability. The FCC concluded that this framework for cost recovery (from end users rather than other carriers) best serves the statutory goal of competitive neutrality. The prohibition on such charges is codified at 47 C.F.R. § 52.33. The Commission needs to protect the public interest and prevent merger-related harm to competitors and thus competition by ensuring that the combined company abides by its obligations under the law. Such merger conditions are adopted to ensure that the combined company will not follow its</p>

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
24 b	Rate Stability – Access fees/ Network Interface Device (NID)	#24(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	"These issues are associated with prior and ongoing billing and/or interconnection agreement between Qwest/CenturyLink and CLECs. These are not legitimate merger concerns and are misplaced in this proceeding. In addition, these issues have been arbitrated in other state venues and the rates at issues [sic] are contained in the interconnection agreements approved by the MN Commission. This condition is not needed, inappropriate and unreasonable." CLQ Att. 45, p. 22, Row 1.	increased incentive to engage in anti-competitive conduct or spread existing worst practices throughout its larger service territory post-merger. QSI Gates Direct (public) pp. 150-155 & 167-172. Condition 24(b) is necessary to ensure continuity of operations and wholesale rate stability for Joint CLECs currently competing with Qwest. If imposed, this condition would ensure that new subscriber acquisition surcharges are not assessed upon competitors operating in the Qwest service territories in the form of fees assessed upon CLECs that connect a competitor's self-provisioned loop to the customer side of the Merged Company's NID enclosure or box. Joint CLECs are not asking the Commission to revisit prior or ongoing billing or interconnection disputes. These surcharges are not contained in Qwest agreements approved by the Minnesota Commission. Further, with respect to these surcharges, CenturyLink incurs no costs or technical obligations when a CLEC unplugs the short cross connect between the network side and the customer side of the NID enclosure. In addition, a CLEC's limited use of the customer side of the NID enclosure to connect its network to the customer's inside wire generally only arises in limited circumstances, usually when CenturyLink has installed an



#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest (“CLQ”) Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
24c	Rate Stability – Storage fees - DL	#24(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.	“These issues have been arbitrated in other state venues and the rates at issues [sic] are contained in the interconnection agreements approved by the MN Commission. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, p. 23, Row 1.	enclosure on the customer’s premises in a way that blocks any reasonable access to the customer’s inside wire. QSI Gates Direct (public) pp. 68-69 & pp. 148-188. Condition 24(c) is necessary to ensure continuity of operations and wholesale rate stability for Joint CLECs currently competing with Qwest. If imposed, this condition would ensure that new subscriber acquisition surcharges are not assessed upon competitors operating in the Qwest service territories in the for of fees 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. Joint CLECs are not asking the Commission to revisit prior or ongoing billing or interconnection disputes. These surcharges are not contained in Qwest agreements approved by the Minnesota Commission. Notably, Embarq has imposed fees that were contrary to its statutory obligation to provide nondiscriminatory access to directory listing functions as required by 47 U.S.C. § 251(b)(3); 47 C.F.R. § 51.217 (a) and (b). Embarq sought to impose the charge only on facilities-based competitors that utilize their own-last mile facilities as opposed to the unbundled loops and services of Embarq. The Washington Commission, for

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
25	Compliance – Routine Network Modifications	#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.	“The merged company complies with all applicable state and federal laws, and terms and conditions of current interconnection agreements. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, p. 1, Row 3.	example, found this practice to be unreasonable and contrary to federal law. [Arbitrator’s Report and Decision, Docket No. U-083025, January 13, 2009, at pp. 11-12]. QSI Gates Direct (public) p. 66, lines 4-23 & pp. 168-175.  In discovery, CenturyLink has said that, “in all service areas post merger, CenturyLink will continue to provide routine network modifications in compliance with federal and state laws and with applicable terms in interconnection agreements.” As CenturyLink agrees to do this, and it is required by law, the condition is appropriate and reasonable. It is worrisome that CenturyLink considers an obligation to comply with federal and state laws and interconnection agreements to be inappropriate and unreasonable. See QSI Gates Direct (public), §VI(D), pp. 172-176.
26	Compliance – Engineer & Maintain Network	#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.	“The merged company complies with all applicable state and federal laws, and terms and conditions of current interconnection agreements. The proposed condition may require the establishment of terms and conditions that are not covered by applicable law. CLECs should not be permitted to add new obligations and unilaterally impose conditions that are more expansive than those required by the law or contractual terms. This condition is not needed, inappropriate and unreasonable.”	CenturyLink has repeatedly represented that it will continue to invest in its network post-merger and that it is fully capable of allocating resources to both maintain current operations and to conduct merger-related activities post-merger. See, e.g., Minnesota Petition at p. 3 (“It will provide the combined company with greater financial resources and access to capital enabling it to invest in networks...”) and p. 13 (“CenturyLink has a demonstrated ability to acquire and successfully integrate companies, and to combine systems and practices, while

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
26a	Compliance – Disrupt or Degrade Loop Access	#26(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.	“The merged company complies with all applicable state and federal laws, and terms and conditions of current interconnection agreements. The proposed condition may require the establishment of terms and conditions that are not covered by applicable law. CLECs should not be permitted to add new obligations and unilaterally impose conditions that are more expansive than those required by the law or contractual terms. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, p. 2, Row 1.	continuing to provide high-quality service to customers”). Failure to maintain adequate investment and maintenance in the Merged Company network would degrade the network for the Merged Company, the PSTN and for CLECs, to the detriment of end user customers. This is a harm that should be avoided. A condition that requires legal compliance is a reasonable, even a minimal, way to attempt to avoid such harm. This condition is also needed to prevent inappropriate diversion of resources to merger-related activities that would normally be directed to the network. See QSI Gates Direct (public), §VI(D), pp.150-155 & 172-176.  Condition 26a is consistent with 47 C.F.R. § 51.319(A) (8) which states: “An incumbent LEC shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop.” QSI Gates Direct (public) p. 175, lines 11-15. QSI Gates Direct (public) p. 176, lines 3-8. See QSI Gates Direct (public), §VI(D), pp. 150-155 & 172-176.
26b	Copper Retirement	#26(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	“The merged company complies with all applicable state and federal laws, and terms and conditions of current interconnection agreements.” CLQ Att. 45, p. 2, Row 1.	In discovery, CenturyLink has represented that it will comply with all applicable state and federal laws and rules and ICAs in relation to copper retirement.

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup> by a change of law.	CenturyLink/Qwest (“CLQ”) Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
26c	Rate Stability – Engineer & Maintain Network	#26(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.	The proposed condition may require the establishment of terms and conditions that are not covered by applicable law. CLECs should not be permitted to add new obligations and unilaterally impose conditions that are more expansive than those required by the law or contractual terms. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, pp. 2-3. “The merged company complies with all applicable state and federal laws, and terms and conditions of current interconnection agreements. The proposed condition may require the establishment of terms and conditions that are not covered by applicable law. CLECs should not be permitted to add new obligations and unilaterally impose conditions that are more expansive than those required by the law or contractual terms. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, p. 2, Row 1.	By its terms this condition does not “add new obligations” or impose “more expansive” conditions than required by law or contract, as it expressly requires compliance with the law. It is of concern that CenturyLink considers complying with the law to be a new obligation that is unreasonable. See QSI Gates Direct (public), §VI(D), pp. 150-176.  CenturyLink cannot reasonably claim significant cost savings (\$650 million) across the merged company while also claiming that it may engineer its network in an inefficient manner or in a manner that results in higher rates for wholesale customers. Such inefficiencies and higher rates are not in the public interest and would constitute merger-related harm. The requirement to not engineer or maintain the network in a manner that results in inefficiencies is consistent with 47 C.F.R. § 51.319(A) (8)), which states: “An incumbent LEC shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop.” QSI Gates Direct (public) p. 175, lines 11-15 & pp. 150-176.
27	Compliance – Conditioned Copper Loops	#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	“The merged company complies with all applicable state and federal laws, and terms and conditions of current interconnection agreements. The proposed condition may require the establishment of terms and conditions that are not covered by applicable law. CLECs should not be permitted to add new obligations and unilaterally impose conditions that are more expansive than those required by the law or contractual terms. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, p. 2, Row 1.	In Condition 27, the first sentence simply requires compliance with the law. The second sentence reflects the definition of line conditioning in 47 C.F.R. §51.319(a)(1)(iii)(A). The third sentence

#	<b>Issue</b>  (xDSL)	<b>Joint CLEC Recommended Conditions</b> <b>[From Ex. 8 to QSI Mr. Gates Direct]¹</b>	<b>CenturyLink/Qwest (“CLQ”) Position [From CLQ Att. 45]²</b>	<b>Joint CLEC Position</b>
		<p>removal from a copper loop of any device that could diminish the capability of the loop to deliver xDSL. Such devices include bridge taps, load coils, low pass filters, and range extenders. Insofar as it is technically feasible, the Merged Company shall test and report troubles for all the features, functions and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only. If the Merged Company seeks to change rates approved by a state commission for conditioning, the Merged Company will provide conditioned copper loops in compliance with the relevant law at the current commission-approved rates unless and until a different rate is approved.</p>	<p>the establishment of terms and conditions that are not covered by applicable law. CLECs should not be permitted to add new obligations and unilaterally impose conditions that are more expansive than those required by the law or contractual terms. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, p. 3, Row 1.</p>	<p>reflects the requirements of 47 C.F.R. §51.319(a)(1)(iii)(C). The final sentence recognizes that, in each state in Qwest’s territory, the Commission has already established rates (either non-recurring charges or recovery via recurring charges) for line conditioning and therefore the Merged Company must either charge that rate or seek state commission approval to charge a different rate. That the condition so closely follows the language of the law shows that it does not add new obligations and it is not more expansive than the law. A review of the Legal Authority Compared to Qwest Position Matrix (Exhibit BJJ-2) demonstrates that there is substantial evidence warranting a concern that the ILEC is already improperly inhibiting CLECs’ provision of advanced services using conditioned copper loops throughout Qwest’s legacy territory. This result is directly contrary to the public interests reflected in the national broadband plan. Qwest is inhibiting CLECs’ ability to provide broadband services to small and medium sized customers. Due to the proposed merger, CenturyLink has an increased incentive and opportunity to adopt these practices due to an increased footprint and the desire to boost revenues at the expense of its competitors. The importance of using copper to provide advanced services is apparent, however, in the FCC’s conclusion that CLECs are impaired without access to unbundled xDSL-</p>

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest ("CLQ") Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
28	Inter-connection – Single Point of Inter-connection (POI)	#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.	"The FCC's decision in the Southwestern Bell 271 Order does not apply to non-RBOCs such as CenturyLink. The order does not require the transport of traffic between separate legal entities and noncontiguous service territories." CLQ Att. 45, p. 30, Rows 2 & 3 (pp. 30-31).	capable stand-alone copper loops. As explained by the FCC's SBC-Ameritech merger order (¶ 196), a merger of this sort will increase the Merged Company's incentive and ability to discriminate against its competitors with respect to the provision of advanced services. See QSI Gates Direct (public), §VI(D), p. 176-177, line 14 & pp. 152-182; see also Exhibits BJJ-1 through BJJ-16 to Integra Johnson Direct.
29	Most Favored State/Nation	#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	"Terms or conditions addressing a state's public interest concerns are a result of negotiations, considerations and tradeoffs unique to that state. Bringing in other terms	Section 251(c) of the Act requires all ILECs – not only BOCs – to provide interconnection "at any technically feasible point within the carrier's network" and "that is at least equal in quality to that provided by the local exchange carrier to itself or any subsidiary, affiliate, or any other party to which the carrier provides interconnection." So, the fact that CenturyLink is an ILEC and Qwest is both an ILEC and a BOC should have no bearing on whether CLECs should be permitted to interconnect with the Merged Company at a single POI per LATA. The goal of the Act was to open local markets to competition for all ILECs, not just the BOCs. QSI Gates Direct (public), p. 183, lines 9-18 & pp. 148-188; QSI Anklam Direct, §VII(A), pp. 63-82. CLQ does not identify a single state-specific condition or concern. CLQ also does not acknowledge that the conditions listed in Exhibit 8 to the QSI testimony of Mr. Gates have been submitted by QSI in

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest (“CLQ”) Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
		<p>settlements, that impose conditions or commitments related to the transaction. CenturyLink agrees that the state commission of any state may adopt any commitments or conditions from other states or the FCC that are adopted after the final order in that state.</p>	<p>under an MFN provision moots the prior negotiation and the context under which items were discussed. Trade-offs made by the Commission and the Company that result in satisfying the public interest should not be subsequently unraveled by importing a condition from a different state. Individual state conditions often flow from individual state specific facts, circumstances and regulations. As a result, there will almost always be uncertainty as to whether and how a condition of approval in one state will be applicable to another. State conditions typically are particularized to address a state specific need. Due to the differences in each state, a condition or commitment in one state may not translate easily or hardly at all into a condition for another state.” CLQ Att. 45, pp. 26-27.</p>	<p>at least 8 states in Qwest territory, without state-specific variation. These conditions are needed in every state to protect the public interest and prevent merger-related harm. Condition 29 will provide a degree of consistency and spread “best practices” across the Merged Company’s service territory, while at the same time likely lowering the Merged Company’s cost of post-merger compliance activities. A similar condition was adopted by the Oregon Commission in the Frontier-Verizon merger proceeding. By its terms, Condition 29 provides that a state commission must act to “adopt” conditions from another state or the FCC, and CLQ has provided no evidence that this Commission would act to adopt a condition that was inapplicable in this state. QSI Gates Direct (public), pp. 187-188.</p>
30	Dispute resolution	<p>#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.</p>	<p>“Every Minnesota interconnection agreement already contains language allowing a party to seek resolution of disputes before (be Commission at any time. This condition is not needed, inappropriate and unreasonable.” CLQ Att. 45, p. 19, Row 2.</p>	<p>Merger conditions were not in place at the time that existing agreements were entered into. Condition 30 addresses resolution of disputes relating to merger conditions. It is important that the CLECs have a way to quickly and efficiently resolve disputes related to merger condition compliance. Otherwise, the Merged Company could just drag out disputes until some of the conditions expire or could avoid compliance with</p>

#	Issue	Joint CLEC Recommended Conditions [From Ex. 8 to QSI Mr. Gates Direct] <sup>1</sup>	CenturyLink/Qwest (“CLQ”) Position [From CLQ Att. 45] <sup>2</sup>	Joint CLEC Position
				this Commission’s merger order for a long period of time, while imposing significant costs upon its competitors. See QSI Gates Direct (public), § VI(D), p. 188.



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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JOINT NOTICE AND APPLICATION OF	)	
QWEST CORPORATION, QWEST	)	
COMMUNICATIONS COMPANY, LLC,	)	
QWEST LD CORP., EMBARQ	)	Docket No. T-01051B-10-0194
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.	)	

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EXHIBIT TG-14

Federal Communications Commission

96-325

FCC 96-325

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of )  
)  
Implementation of the Local Competition ) CC Docket No. 96-98  
Provisions in the Telecommunications Act )  
of 1996 )  
)  
Interconnection between Local Exchange ) CC Docket No. 95-185  
Carriers and Commercial Mobile Radio )  
Service Providers )  
)

**FIRST REPORT AND ORDER**

Adopted: August 1, 1996

Released: August 8, 1996

By the Commission: Chairman Hundt and Commissioners Quello, Ness, and Chong issuing separate statements.

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place. Completion of the trilogy, coupled with the reduction in burdensome and inefficient regulation we have undertaken pursuant to other provisions of the 1996 Act, will unleash marketplace forces that will fuel economic growth. Until then, incumbents and new entrants must undergo a transition process toward fully competitive markets. We will, however, act quickly to complete the three essential rulemakings. We intend to issue a notice of proposed rulemaking in 1996 and to complete the access charge reform proceeding concurrently with the statutory deadline established for the section 254 rulemaking. This timetable will ensure that actions taken by the Joint Board in November and this Commission by not later than May 1997 in the universal service reform proceeding will be coordinated with the access reform docket.

### C. Economic Barriers

10. As we pointed out in our Notice of Proposed Rulemaking in this docket<sup>3</sup>, the removal of statutory and regulatory barriers to entry into the local exchange and exchange access markets, while a necessary precondition to competition, is not sufficient to ensure that competition will supplant monopolies. An incumbent LEC's existing infrastructure enables it to serve new customers at a much lower incremental cost than a facilities-based entrant that must install its own switches, trunking and loops to serve its customers.<sup>4</sup> Furthermore, absent interconnection between the incumbent LEC and the entrant, the customer of the entrant would be unable to complete calls to subscribers served by the incumbent LEC's network. Because an incumbent LEC currently serves virtually all subscribers in its local serving area,<sup>5</sup> an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market. An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to the incumbent LEC's subscribers.

11. Congress addressed these problems in the 1996 Act by mandating that the most significant economic impediments to efficient entry into the monopolized local market must be removed. The incumbent LECs have economies of density, connectivity, and scale; traditionally, these have been viewed as creating a natural monopoly. As we pointed out in our NPRM, the local competition provisions of the Act require that these economies be shared with entrants. We believe they should be shared in a way that permits the incumbent LECs to maintain operating efficiency to further fair competition, and to enable the entrants to share the economic benefits of that efficiency in the form of

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<sup>3</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182 (rel. Apr. 19, 1996), 61 Fed. Reg. 18311 (Apr. 25, 1996) (NPRM).

<sup>4</sup> See NPRM at para. 6.

<sup>5</sup> See NPRM at n.13.

cost-based prices.<sup>6</sup> Congress also recognized that the transition to competition presents special considerations in markets served by smaller telephone companies, especially in rural areas.<sup>7</sup> We are mindful of these considerations, and know that they will be taken into account by state commissions as well.

12. The Act contemplates three paths of entry into the local market -- the construction of new networks, the use of unbundled elements of the incumbent's network, and resale. The 1996 Act requires us to implement rules that eliminate statutory and regulatory barriers and remove economic impediments to each. We anticipate that some new entrants will follow multiple paths of entry as market conditions and access to capital permit. Some may enter by relying at first entirely on resale of the incumbent's services and then gradually deploying their own facilities. This strategy was employed successfully by MCI and Sprint in the interexchange market during the 1970's and 1980's. Others may use a combination of entry strategies simultaneously -- whether in the same geographic market or in different ones. Some competitors may use unbundled network elements in combination with their own facilities to serve densely populated sections of an incumbent LEC's service territory, while using resold services to reach customers in less densely populated areas. Still other new entrants may pursue a single entry strategy that does not vary by geographic region or over time. Section 251 neither explicitly nor implicitly expresses a preference for one particular entry strategy. Moreover, given the likelihood that entrants will combine or alter entry strategies over time, an attempt to indicate such a preference in our section 251 rules may have unintended and undesirable results. Rather, our obligation in this proceeding is to establish rules that will ensure that all pro-competitive entry strategies may be explored. As to success or failure, we look to the market, not to regulation, for the answer.

13. We note that an entrant, such as a cable company, that constructs its own network will not necessarily need the services or facilities of an incumbent LEC to enable its own subscribers to communicate with each other. A firm adopting this entry strategy, however, still will need an agreement with the incumbent LEC to enable the entrant's customers to place calls to and receive calls from the incumbent LEC's subscribers.<sup>8</sup> Sections 251(b)(5) and (c)(2) require incumbent LECs to enter into such agreements on just, reasonable, and nondiscriminatory terms and to transport and terminate traffic originating on another carrier's network under reciprocal compensation arrangements. In this item, we adopt rules for states to apply in implementing these mandates of section 251 in their arbitration of interconnection disputes, as well as their review of such arbitrated arrangements, or a BOC's statement of generally available terms. We believe that our rules will assist the states in carrying out their

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<sup>6</sup> See NPRM at paras. 10-12.

<sup>7</sup> 47 U.S.C. § 251(f).

<sup>8</sup> See *infra*, Section IV.A.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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JOINT NOTICE AND APPLICATION OF	)	
QWEST CORPORATION, QWEST	)	
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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.	)	

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EXHIBIT TG-15

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
Application by Qwest Communications )  
International, Inc. for Authorization To )  
Provide In-Region, InterLATA Services in the ) WC Docket No. 02 - 314  
States of Colorado, Idaho, Iowa, Montana, )  
Nebraska, North Dakota, Utah, Washington )  
and Wyoming )  
)

MEMORANDUM OPINION AND ORDER

Adopted: December 20, 2002

Released: December 23, 2002

By the Commission: Commissioner Copps issuing a statement; Commissioner Adelstein not participating.

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rebalancing should involve all LECs in Montana to address the alleged price squeeze.<sup>1593</sup> The Montana Consumer Counsel asserts that the Montana Commission is empowered by state law to regulate toll rates and access charge rates, and that commission should do so independent of a section 271 application review.<sup>1594</sup>

439. We find that the price squeeze allegation raised by the Montana Commission does not relate to the openness of the local telecommunications market to competition within the scope of section 271 of the Act. Therefore, we do not deny Qwest's section 271 application for failure to comply with the public interest on this basis. While we encourage states to establish cost-based intrastate access rates, we agree with Qwest and the Montana Consumer Counsel that their establishment is not a precondition to section 271 approval.<sup>1595</sup> We do not have jurisdiction to set intrastate intraLATA access charges or intrastate long distance toll rates, and our review of these rates in a section 271 application is limited to their role in any potential wholesale UNE rate/retail rate price squeeze.<sup>1596</sup> Jurisdiction to set intraLATA, intrastate toll rates and access charge rates rests solely with the Montana Commission. The price squeeze alleged by the Montana Commission is in the intrastate intraLATA toll market, where Qwest already is authorized to provide service. Denying Qwest's section 271 application would not address the alleged price squeeze in the intrastate intraLATA toll market. Accordingly, this alleged price squeeze, and any potential violation of state regulations by Qwest's failure to file a revenue requirements and rate design case, are within the Montana Commission's authority and ability to address, and are more appropriately addressed by that commission.

#### **B. Assurance of Future Compliance**

440. As set forth below, we find that the performance assurance plans (PAP) that will be in place in the nine states provide assurance that the local market will remain open after Qwest receives section 271 authorization in the nine application states. We find that these plans fall within a zone of reasonableness and are likely to provide incentives that are sufficient to foster post-entry checklist compliance. In prior orders, the Commission has explained that one factor it may consider as part of its public interest analysis is whether a BOC would have adequate incentives to continue to satisfy the requirements of section 271 after entering the long distance market.<sup>1597</sup> Although it is not a requirement for section 271 authority that a BOC be subject to such performance assurance mechanisms, the Commission previously has stated that the existence of a satisfactory performance monitoring and enforcement mechanism would be

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<sup>1593</sup> Qwest III Thompson/Freeberg Reply Decl. at paras. 19-20 (citing Commissioner Rowe's dissenting statement in the Montana Commission Qwest III Comments).

<sup>1594</sup> Montana Consumer Counsel Qwest III Reply at 2; Montana Consumer Counsel Qwest II Reply at 2-4.

<sup>1595</sup> See Qwest II Application at 191-92; Qwest Aug. 15 Pricing *Ex Parte* Letter at 18. See also Montana Consumer Counsel Qwest II Reply at 2-3.

<sup>1596</sup> See para. 436, *supra* (discussing our review of intrastate toll rates and access charges in the local market price squeeze analysis).

<sup>1597</sup> See, e.g., *Verizon Pennsylvania Order*, 16 FCC Rcd at 17487-88, para. 127.

probative evidence that the BOC will continue to meet its section 271 obligations after a grant of such authority.<sup>1598</sup> The nine state PAPs, in combination with the respective commission's active oversight of its PAP, and these commissions' stated intent to undertake comprehensive reviews to determine whether modifications are necessary, provide additional assurance the local market in the five application states will remain open.<sup>1599</sup>

441. In prior section 271 orders, the Commission has generally reviewed plans modeled after either the New York or the Texas plans.<sup>1600</sup> However, the Commission has also approved plans that are not modeled on either of those two plans.<sup>1601</sup> In this case, the Colorado PAP was designed principally by a Special Master for the Colorado Commission with input from Qwest and other parties.<sup>1602</sup> The Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming PAPs, on the other hand, were developed in a multi-state review

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<sup>1598</sup> *Ameritech Michigan Order*, 12 FCC Rcd at 20748-50, paras. 393-398. We note that in all of the previous applications that the Commission has granted to date, the applicant was subject to an enforcement plan administered by the relevant state commission to protect against backsliding after BOC entry into the long-distance market. These mechanisms are generally administered by state commissions and derive from authority the states have under state law or under the federal Act. As such, these mechanisms can serve as critical complements to the Commission's authority to preserve checklist compliance pursuant to section 271(d)(6).

<sup>1599</sup> The Wyoming Commission did not endorse the Wyoming PAP because of what it deemed to be several shortcomings in the PAP. As discussed later in this section, we find that the shortcomings identified by the Wyoming Commission do not diminish the assurances provided by the Wyoming PAP. Qwest II Application, App. E, Qwest Performance Assurance Plans, Tab 1, Montana Performance Assurance Plan at 22-25 (Montana PAP), Qwest II Application, App. E, Tab 2, Utah Performance Assurance Plan at 19-20 (Utah PAP), Qwest II Application, App. E, Tab 3, Washington Performance Assurance Plan at 19-20 (Washington PAP); Qwest II Application, App. E, Tab 4, Wyoming Performance Assurance Plan at 19-20 (Wyoming PAP); Qwest I Application, Appendix E, Qwest Performance Assurance Plans, Tab 1, Colorado Performance Assurance Plan at 22-25 (Colorado PAP); Qwest I Application, App. E, Qwest Performance Assurance Plans, Tab 2, Idaho Performance Assurance Plan at 14, 19-20 (Idaho PAP); Qwest I Application, App. E, Qwest Performance Assurance Plans, Tab 3, Iowa Performance Assurance Plan at 14, 19-20 (Iowa PAP); Qwest I Application, App. E, Qwest Performance Assurance Plans, Tab 4, Nebraska Performance Assurance Plan at 14, 19-20 (Nebraska PAP); Qwest I Application, App., Qwest Performance Assurance Plans, Vol 1 Tab 5, North Dakota Performance Assurance Plan at 15, 21-22 (North Dakota PAP); Colorado Commission Qwest I Comments at 59; Colorado Commission Qwest I Reply at 48; Idaho Commission Qwest I Comments a 13-14; Iowa Board Qwest I Comments at 70; Montana Commission Qwest II Comments at 52-53; Nebraska Commission Qwest I Comments at 5 (citing Nebraska Commission QPAP Decision (<http://www.nol.org/home/NPSC/C-1830APAP04-23-02.PDF>) at 15-16); North Dakota Commission Qwest I Comments, Appendix at 236-39; Washington Commission Qwest II Comments at 29-31; Wyoming Commission Qwest II Comments at 17.

<sup>1600</sup> See, e.g., *Verizon Connecticut Order*, 16 FCC Rcd at 14181, para. 76; *Verizon Massachusetts Order*, 16 FCC Rcd at 9120, para. 238; *SWBT Texas Order*, 15 FCC Rcd at 18560, para. 421; *Bell Atlantic New York Order*, 15 FCC Rcd at 4166-67, para. 433.

<sup>1601</sup> See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17488-89, paras. 128-129.

<sup>1602</sup> Qwest I Application App. A, Tab 35, Declaration of Mark S. Reynolds-Colorado (Qwest I Reynolds-Colorado Decl.) at paras. 2-4.



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN MAYES, Chairman  
GARY PIERCE, Commissioner  
SANDRA KENNEDY, Commissioner  
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JOINT NOTICE AND APPLICATION OF )	
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PROPOSED MERGER OF THEIR PARENT )	
CORPORATIONS QWEST )	
COMMUNICATIONS INTERNATIONAL INC.)	
AND CENTURYTEL, INC. )	

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EXHIBIT TG-16

**COMPARISON OF CENTURYLINK AND QWEST LOCAL SERVICE REQUEST OSS FUNCTIONALITY**

Functionality/Order Type	CenturyLink <sup>1</sup>			Qwest <sup>2</sup>		
	EASE-GUI LSR	EASE-EDI LSR	IMA-GUI LSR	IMA-GUI LSR	IMA-XML LSR	IMA-XML LSR
<b><i>Pre-Order Functions</i></b>						
Address validation	YES	YES	YES	YES	YES	YES
Channel Facility Assignment (CFA) Validation	NO	NO	YES	YES	YES	YES
Meet Point Query Validation	NO	NO	YES	YES	YES	YES
Network Channel (NC)/Network Channel Interface (NCI) Codes Validation	NO	NO	YES	YES	NO	NO
Raw Loop Data Validation (at least for pre-order functions, services and products that Qwest currently provides)	NO	NO	YES	YES	YES	YES
Billing Account Number (BAN) Validation	YES	YES	YES	YES	NO	NO
Customer Service Records (CSR)	YES	YES	YES	YES	YES	YES
Telephone Number(s) (TNs) Reservation	NO	NO	YES	YES	YES	YES
Provide Facility Availability	NO	NO	YES	YES	YES	YES
Provide Service Availability	NO	NO	YES	YES	YES	YES
Loop Qualification for Integrated Services Digital Network (ISDN)	NO	NO	YES	YES	YES	YES
Loop Qualification for Unbundled Asymmetric Digital Subscriber Line (ADSL)	NO	NO	YES	YES	YES	YES
Loop Qualification for Commercial Broadband Services	NO	NO	YES	YES	YES	YES
Appointment Scheduling	NO	NO	YES	YES	YES	YES
<b><i>Pre-Populate LSR</i></b>						
Does the system currently pre-populate information in the LSR?	NO	NO	YES	YES	N/A <sup>4</sup>	N/A <sup>4</sup>
<b><i>Order Types performed</i></b>						
a. Unbundled Loop	YES	YES	YES	YES	YES	YES
b. Unbundled Feeder Loop	Unknown <sup>5</sup>	Unknown	Unknown	Unknown	Unknown	Unknown

<sup>1</sup> The CenturyLink column is populated based on CenturyLink's responses to Integra's data requests. See Exhibit TG-17.  
<sup>2</sup> The Qwest column is populated based on information obtained on Qwest's external website. See <http://www.qwest.com/wholesale/>.  
<sup>3</sup> IMA-GUI offers a list of Billing Account Numbers (BANs) for each corporate identifier (known as RSID/ZCID). See IMA User Guide, p. 178 at [http://www.qwest.com/wholesale/downloads/2010/100802/IMAUG\\_280\\_080210.pdf](http://www.qwest.com/wholesale/downloads/2010/100802/IMAUG_280_080210.pdf)  
<sup>4</sup> Pre-population of the LSR is a GUI issue, not present in an application-to-application environment (EDI or XML).  
<sup>5</sup> CenturyLink's response for any service populated with Unknown is: "CenturyLink is unclear what service or product is being described in this question."

c. Unbundled Distribution Loop	Unknown	Unknown	Unknown	YES	YES
d. Local Number Portability	YES	YES	YES	YES	YES
e. Loop with Number Port	YES	YES	YES	YES	YES
f. Unbundled Distribution Loop with Number Portability	Unknown	Unknown	Unknown	YES	YES
g. Interim Number Portability	NO	NO <sup>6</sup>	NO	YES	YES
h. Loop with Interim Number Portability	NO	NO	NO	YES	YES
i. Unbundled Distribution Loop with Interim Number Portability	NO	NO	NO	YES	YES
j. Directory listing	YES	YES	YES	YES	YES
k. Resale Private Line	YES	YES	YES	YES	YES
l. Resale POTS	YES	YES	YES	YES	YES
m. Resale Public Access Line (PAL)	YES	YES	YES	YES	YES
n. Resale PBX	YES	YES	YES	YES	YES
o. Resale ISDN	YES	YES	YES	YES	YES
p. Resale Designed Trunks	Unknown	Unknown	Unknown	YES	YES
q. Resale Frame Relay	NO	NO	NO	YES	YES
r. Resale DID In Only Trunks	YES	YES	YES	YES	YES
s. Commercial DSL (Broadband for Resale)	YES	YES	YES	YES	YES
t. Unbundled Analog Line Side Switch Port	NO	NO	NO	YES	YES
u. Unbundled Analog Line Side Switch Port ISDN BRI Capable	NO	NO	NO	YES	YES
v. Unbundled Analog DID/PBX Trunk Port	NO	NO	NO	YES	YES
w. Unbundled DS1 DID/PBX Trunk or Trunk Port Facility	NO	NO	NO	YES	YES
x. UNEP ISDN BRI	NO	NO	NO	YES	YES
y. UNEP POTS	YES	YES	YES	YES	YES
z. UNEP Centrex	YES	YES	YES	YES	YES
aa. UNEP Centrex 21	Unknown	Unknown	Unknown	YES	YES
bb. UNE-P DSS Facility	Unknown	Unknown	Unknown	YES	YES
cc. UNE-P DSS Trunk	Unknown	Unknown	Unknown	YES	YES
dd. UNE-P PRI ISDN Facility	NO	NO	NO	YES	YES
ee. UNE-P PRI ISDN Trunk	NO	NO	NO	YES	YES
ff. UNE-P PBX DID-In only trunk	YES	YES	YES	YES	YES

<sup>6</sup> Embarq's website states: "Interim Number Portability Service Interim Number Portability (INP) is provided by EMBARQ only where Local Number Portability (LNP) has not yet been implemented." (See [http://embarq.centurylink.com/wholesale/docs/guides/une\\_guide.pdf](http://embarq.centurylink.com/wholesale/docs/guides/une_guide.pdf))

gg. UNE-P PBX Design Trunk	Unknown	Unknown	Unknown	YES	YES
hh. EEL/UNE Combination		YES	YES	YES	YES
ii. Resale Centrex		YES	YES	YES	YES
jj. Line Split UNEP POTS		NO	NO	YES	YES
kk. Line Split UNEP PBX Design Trunk		NO	NO	YES	YES
ll. Split UNEP Centrex 21		NO	NO	YES	YES
mm. Unbundled Loop Split		NO	NO	YES	YES

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

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

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<b>JOINT NOTICE AND APPLICATION OF</b>	)	
<b>QWEST CORPORATION, QWEST</b>	)	
<b>COMMUNICATIONS COMPANY, LLC,</b>	)	
<b>QWEST LD CORP., EMBARQ</b>	)	<b>Docket No. T-01051B-10-0194</b>
<b>COMMUNICATIONS, INC. D/B/A</b>	)	<b>Docket No. T-02811B-10-0194</b>
<b>CENTURYLINK COMMUNICATIONS,</b>	)	<b>Docket No. T-04190A-10-0194</b>
<b>EMBARQ PAYPHONE SERVICES, INC.</b>	)	<b>Docket No. T-20443A-10-0194</b>
<b>D/B/A CENTURYLINK, AND CENTURYTEL</b>	)	<b>Docket No. T-03555A-10-0194</b>
<b>SOLUTIONS, LLC FOR APPROVAL OF THE</b>	)	<b>Docket No. T-03902A-10-0194</b>
<b>PROPOSED MERGER OF THEIR PARENT</b>	)	
<b>CORPORATIONS QWEST</b>	)	
<b>COMMUNICATIONS INTERNATIONAL INC.)</b>	)	
<b>AND CENTURYTEL, INC.</b>	)	

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**EXHIBIT TG-17**

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2  
3 COMMISSIONERS

4 KRISTIN K. MAYES, Chairman  
5 GARY PIERCE  
6 PAUL NEWMAN  
7 SANDRA D. KENNEDY  
8 BOB STUMP

9 JOINT NOTICE AND APPLICATION OF  
10 QWEST CORPORATION, QWEST  
11 COMMUNICATIONS COMPANY, LLC,  
12 QWEST LD CORP., EMBARQ  
13 COMMUNICATIONS, INC., D/B/A  
14 CENTURYLINK COMMUNICATIONS,  
15 EMBARQ PAYPHONE SERVICES, INC.  
16 D/B/A CENTURYLINK, AND  
17 CENTURYTEL SOLUTIONS, LLC FOR  
18 THE APPROVAL OF THE PROPOSED  
19 MERGER OF THEIR PARENT  
20 CORPORATIONS QWEST  
21 COMMUNICATIONS INTERNATIONAL  
22 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

17 **RESPONSES OF CENTURYLINK TO INTEGRA TELECOM'S THIRD SET OF DATA**  
18 **REQUESTS**

19 CenturyLink hereby submits its Objections and Responses to Integra Telecom's Third Set  
20 of Data Requests in the above-captioned proceeding, served on CenturyLink on September 14,  
21 2010.

22 **INFORMATION REQUESTS**

23 1. Please identify each vendor (e.g., DSET, Synchronoss) and each service bureau  
24 (e.g., Neustar, Telcordia, Accenture) which you have had any communications regarding systems  
25 and/or integration plans regarding processing or potential processing of ASRs after the Closing  
Date and, for each such communication:

- 26 a. Provide all documents, including but not limited to all emails, that evidence, refer  
27 or relate to such communications;  
28 b. State the date of each such communications;

1           13. Which of the following pre-order functions does CenturyLink currently provide  
2 with EASE? For each subpart below, state whether the order type is available for ASRs, LSRs,  
3 or both and whether the interface is application to application, GUI, or both. To the extent you  
4 are unclear about the service or product being described, please see Qwest's PCAT and ICAs  
5 regarding these items:

- 6           a. Address validation
- 7           b. Channel Facility Assignment (CFA) Validation
- 8           c. Meet Point Query Validation
- 9           d. Network Channel (NC)/ Network Channel Interface (NCI) Codes Validation
- 10          e. Raw Loop Data Validation at least for service and products that Qwest provides
- 11          f. Billing Account Number (BAN) Validation
- 12          g. Customer Service Records (CSR)
- 13          h. Telephone Number(s) (TNs) Reservation
- 14          i. Provide Facility Availability
- 15          j. Provide Service Availability
- 16          k. Loop Qualification for Integrated Services Digital Network (ISDN)
- 17          l. Loop Qualification for Unbundled Asymmetric Digital Subscriber Line (ADSL)
- 18          m. Loop Qualification for Commercial Broadband Services
- 19          n. Appointment Scheduling

20        Objections: CenturyLink objects to this request because it is vague, ambiguous and imprecise  
21 in that it fails to provide a clear explanation of the services or products described.

22        Response: Subject to and without waiving its objections, CenturyLink provides the  
23 following response:

- 24           a. Address validation - Yes
- 25           b. Channel Facility Assignment (CFA) Validation - Yes
- 26           c. Meet Point Query Validation -- No, not at this time.
- 27           d. Network Channel (NC)/ Network Channel Interface (NCI) Codes  
28           Validation - Yes
- e. Raw Loop Data Validation at least for service and products that Qwest  
          provides -- No, not as part of the pre-order function. This function is  
          provided in pre-qualification as part of the LSR process within EASE.
- f. Billing Account Number (BAN) Validation - Yes
- g. Customer Service Records (CSR) - Yes

- 1 h. Telephone Number(s) (TNs) Reservation - No, not as part of the pre-  
2 order function. However this function is available in EASE.  
3 i. Provide Facility Availability - No. We validate if an address is valid in  
4 preorder. Availability is determined upon submission of a firm order.  
5 j. Provide Service Availability - Yes, not as part of the pre-order function.  
6 k. Loop Qualification for Integrated Services Digital Network (ISDN) -No,  
7 not as part of the pre-order function. This function is provided in pre-  
8 qualification as part of the LSR process within EASE.  
9 l. Loop Qualification for Unbundled Asymmetric Digital Subscriber Line  
10 (ADSL) - No, not as part of the pre-order function. This function is  
11 provided in pre-qualification as part of the LSR process within EASE.  
12 m. Loop Qualification for Commercial Broadband Services - No, not as part  
13 of the pre-order function. This function is provided in pre-qualification  
14 as part of the LSR process within EASE.  
15 n. Appointment Scheduling - No, not as part of the pre-order function. A  
16 firm order has to be submitted before an appointment can be scheduled.

11 **Prepared by:** Melissa Closz, Director Wholesale Operations, CenturyLink

12 14. Which of the following order types does CenturyLink provide using EASE? If an  
13 order type cannot be performed in EASE then please provide information regarding how a CLEC  
14 places that order type such as via facsimile or via e-mail. For each subpart below, state whether  
15 the order type is available for ASRs, LSRs, or both and whether the interface is application to  
16 application, GUI, or both. To the extent you are unclear about the service or product being  
17 described, please see Qwest's PCAT and ICAs regarding these items.

- 16 a. Unbundled Loop  
17 b. Unbundled Subloop:  
18 i. Unbundled Feeder Loop  
19 ii. Unbundled Distribution Loop  
20 d. Local Number Portability  
21 e. Loop with Number Port  
22 f. Unbundled Distribution Loop with Number Portability  
23 j. Directory listing  
24 k. Resale Private Line  
25 l. Resale POTS  
26 m. Resale Public Access Line (PAL)  
27 n. Resale PBX  
28



- 1 o. Resale ISDN
- 2 p. Resale Designed Trunks
- 3 q. Resale Frame Relay
- 4 r. Resale DID In Only Trunks
- 5 s. Commercial DSL (Broadband for Resale)
- 6 t. Unbundled Analog Line Side Switch Port
- 7 u. Unbundled Analog Line Side Switch Port ISDN BRI Capable
- 8 v. Unbundled Analog DID/PBX Trunk Port
- 9 w. Unbundled DS1 DID/PBX Trunk or Trunk Port Facility
- 10 x. UNEP ISDN BRI
- 11 y. UNEP POTS
- 12 z. UNEP Centrex
- 13 aa. UNEP Centrex 21
- 14 bb. UNE-P DSS Facility
- 15 cc. UNE-P DSS Trunk
- 16 dd. UNE-P PRI ISDN Facility
- 17 ee. UNE-P PRI ISDN Trunk
- 18 ff. UNE-P PBX DID In-Only Trunk
- 19 gg. UNE-P PBX Design Trunk
- 20
- 21 hh. EEL/UNE Combination
- 22

23 **Objections:** CenturyLink objects to this request because it is vague, ambiguous and  
24 imprecise in that it fails to provide a clear explanation of the services or  
products described.

25 **Response:** Subject to and without waiving its objections, CenturyLink provides the  
26 following response: EASE supports all wholesale order types that are in the  
27 CenturyLink portfolio. The guides to CenturyLink products and processes can  
28 be found at its website by following the instructions below:

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[www.centurylink.com](http://www.centurylink.com)

Click on Wholesale in the upper right

In the green box to the right, click on CLEC Services

Under Guides & Demos, Click on Products & Process

**Prepared by:** Melissa Closz, Director Wholesale Operations, CenturyLink

15. For any of the above for which CenturyLink's answer is that it does not have a current offering:

a. Does CenturyLink have any plans to offer the order type after the closing date?

b. Does the availability of the order type depend on the system that will be used after the consolidation of the systems?

**Objections:** CenturyLink objects to this request because it is vague, ambiguous and imprecise in that it fails to specifically identify what is referenced by the offerings "above."

**Response:** Subject to and without waiving its objections, CenturyLink assumes that Integra is referring to IR No. 14 and provides the following response: There will be no immediate changes to the available CenturyLink order types after the closing of the merger. No decisions have been made regarding the systems the combined company will use going forward.

**Prepared by:** Melissa Closz, Director Wholesale Operations, CenturyLink

16. Does CenturyLink or the system called EASE currently impose volume or other limitations that require a CLEC to submit a manual LSR via facsimile or via e-mail for an order type typically accepted by the EASE system? For example, the EASE System may normally process a Number Port order type but it may not allow the CLEC to submit a range of DIDs on a single order in EASE and therefore requires a CLEC to manually submit that Number Port order. If any orders are treated as a project, please describe the criteria for the project (e.g., number of numbers requiring project handling) and state whether orders treated as a project are submitted via EASE or manually. In either case, is any aspect of the processing of the order is manual?

**Objections:** CenturyLink objects to this request because it is vague, ambiguous, overbroad and imprecise.

**Response:** Subject to and without waiving its objections, CenturyLink provides the following response: CenturyLink does not impose a volume limit on the number of orders placed through the EASE system. Large orders of several hundred numbers are typically treated as a project. All projects can be submitted electronically through EASE. There are no requirements to submit a manual order for a project.

**Prepared by:** Melissa Closz, Director Wholesale Operations, CenturyLink

1 17. During LSR processing, when one or more errors occur, please describe the  
2 EASE validation process and specifically indicate whether, when multiple errors occur, does  
3 EASE present back to the CLEC user all identified errors at one time, or, if not, in what sequence  
and on what timing are the errors presented back to the CLEC user?

4 a. Is this information communicated to CLEC as an upfront edit before LSR  
5 acceptance? If not, please describe how it is processed and presented to CLEC?

6 **Objections:** CenturyLink objects to this request because it is vague, ambiguous, overly  
7 broad, unduly burdensome and excessively time consuming as written and, as  
8 such, is not relevant or likely to lead to the discovery of admissible evidence in  
this proceeding.

9 **Response:** Subject to and without waiving its objections, CenturyLink provides the  
10 following response: The user has the ability to validate the order in two  
11 different ways. First, the user may validate the entire order at any time during  
12 the order entry process. Second, the user can validate when the order is  
completed and submitted for processing, at which time the entire LSR will be  
validated and all errors identified. The user may also execute an address  
validation within the order, separate from the overall order validation.

13 The edits are processed and presented to the user prior to order acceptance.

14 **Prepared by:** Melissa Closz, Director Wholesale Operations, CenturyLink

15 18. Does the system called EASE as currently implemented by CenturyLink,  
16 prepopulate information in the LSR?

17 **Response:** This functionality is on the EASE/LSR development roadmap and is currently  
18 being evaluated.

19 **Prepared by:** Melissa Closz, Director Wholesale Operations, CenturyLink

20 19. If not, is this functionality currently being evaluated and, if so, identify any dates  
21 or timeframes being evaluated. Please provide any documents, including any EASE LSR  
development roadmaps referring to such evaluation of prepopulation of the LSR.

22 **Objections:** CenturyLink objects to this request because it is vague, ambiguous and  
23 imprecise in that it fails to identify what is referenced by "this functionality."

24 **Response:** Subject to and without waiving its objections, CenturyLink assumes that  
25 Integra intends to reference the functionality described in IR-18 and provides  
26 the following response: This functionality is on the EASE/LSR development  
roadmap and is currently being evaluated.

27 **Prepared by:** Melissa Closz, Director Wholesale Operations, CenturyLink

28

**MINNESOTA PUBLIC UTILITIES COMMISSION**  
**DOCKET NO. P-421 et al./PA-10-456**  
**INTEGRA'S THIRD SET OF INFORMATION REQUESTS**  
**CENTURYLINK'S RESPONSES**

13. Which of the following pre-order functions does CenturyLink currently provide with EASE? For each subpart below, state whether the order type is available for ASRs, LSRs, or both and whether the interface is application to application, GUI, or both. To the extent you are unclear about the service or product being described, please see Qwest's PCAT and ICAs regarding these items:

- a. Address validation
- b. Channel Facility Assignment (CFA) Validation
- c. Meet Point Query Validation
- d. Network Channel (NC)/ Network Channel Interface (NCI) Codes Validation
- e. Raw Loop Data Validation at least for service and products that Qwest provides
- f. Billing Account Number (BAN) Validation
- g. Customer Service Records (CSR)
- h. Telephone Number(s) (TNs) Reservation
- i. Provide Facility Availability
- j. Provide Service Availability
- k. Loop Qualification for Integrated Services Digital Network (ISDN)
- l. Loop Qualification for Unbundled Asymmetric Digital Subscriber Line (ADSL)
- m. Loop Qualification for Commercial Broadband Services
- n. Appointment Scheduling

**CenturyLink Objections:**

CenturyLink objects to this request because it is vague, ambiguous and imprecise in that it fails to provide a clear explanation of the services or products described.

**CenturyLink's Response:**

Subject to and without waiving its objections, CenturyLink provides the following response:

- a. Address validation - Yes
- b. Channel Facility Assignment (CFA) Validation - Yes
- c. Meet Point Query Validation - No, not at this time
- d. Network Channel (NC)/ Network Channel Interface (NCI) Codes Validation - Yes
- e. Raw Loop Data Validation at least for service and products that Qwest provides - No, not as part of the pre-order function. This function is provided in pre-qualification as part of the LSR process within EASE.
- f. Billing Account Number (BAN) Validation - Yes

**MINNESOTA PUBLIC UTILITIES COMMISSION**  
**DOCKET NO. P-421 et al./PA-10-456**  
**INTEGRA'S THIRD SET OF INFORMATION REQUESTS**  
**CENTURYLINK'S RESPONSES**

- g. Customer Service Records (CSR) - Yes
- h. Telephone Number(s) (TNs) Reservation – No, not as part of the pre-order function. However this function is available in EASE.
- i. Provide Facility Availability – No. We validate if an address is valid in preorder. Availability is determined upon submission of a firm order.
- j. Provide Service Availability – Yes, not as part of the pre-order function.
- k. Loop Qualification for Integrated Services Digital Network (ISDN) – No, not as part of the pre-order function. This function is provided in pre-qualification as part of the LSR process within EASE.
- l. Loop Qualification for Unbundled Asymmetric Digital Subscriber Line (ADSL) – No, not as part of the pre-order function. This function is provided in pre-qualification as part of the LSR process within EASE.
- m. Loop Qualification for Commercial Broadband Services – No, not as part of the pre-order function. This function is provided in pre-qualification as part of the LSR process within EASE.
- n. Appointment Scheduling – No, not as part of the pre-order function. A firm order has to be submitted before an appointment can be scheduled.

**CenturyLink Supplemental Response:**

For the following pre-order functions that CenturyLink provides with EASE, the following response provides whether the order type is available for ASRs and LSRs and whether the interface is application to application or GUI:

- a. Address validation – Available for both ASR and LSR and the interface is both GUI and application-to-application.
- b. Channel Facility Assignment (CFA) Validation – Available for ASR and is under development for LSR. GUI and application to application interfaces are available for ASRs and will be available for LSRs.
- d. Network Channel (NC)/ Network Channel Interface (NCI) Codes Validation – No. Codes may be validated via online reference tables outside of the process to populate an ASR or LSR.
- f. Billing Account Number (BAN) Validation – Available for both ASR and LSR and the interface is both GUI and application-to-application
- g. Customer Service Records (CSR) – Available for LSR and the interface is both GUI and application to application
- j. Provide Service Availability – No, not as part of the pre-order function, but is available as part of the order process.

Sponsor: Melissa Closz, Director Wholesale Operations

**BEFORE THE MONTANA PUBLIC SERVICE COMMISSION  
DOCKET NO. D2010-8.88  
CENTURYLINK RESPONSES TO  
INTEGRA'S FIRST SET OF INFORMATION REQUESTS  
NOS. 1 THROUGH 168**

162. Which of the following order types can be performed in EASE? If an order type cannot be performed in EASE than please provide information regarding how a CLBC places that order type such as via facsimile or via e-mail.
- a. Unbundled Loop
  - b. Unbundled Feeder Loop
  - c. Unbundled Distribution Loop
  - d. Local Number Portability
  - e. Loop with Number Port
  - f. Unbundled Distribution Loop with Number Portability
  - g. Interim Number Portability
  - h. Loop with Interim Number Portability
  - i. Unbundled Distribution Loop with Interim Number Portability
  - j. Directory listing
  - k. Resale Private Line
  - l. Resale POTS
  - m. Resale Public Access Line (PAL)
  - n. Resale PBX
  - o. Resale ISDN
  - p. Resale Designed Trunks
  - q. Resale Frame Relay
  - r. Resale DID In Only Trunks
  - s. Commercial DSL (Broadband for Resale)
  - t. Unbundled Analog Line Side Switch Port
  - u. Unbundled Analog Line Side Switch Port ISDN BRI Capable
  - v. Unbundled Analog DID/PBX Trunk Port
  - w. Unbundled DS1 DID/PBX Trunk or Trunk Port Facility
  - x. UNEP ISDN BRI
  - y. UNEP POTS
  - z. UNEP Centrex
  - aa. UNEP Centrex 21
  - bb. UNE-P DSS Facility
  - cc. UNE-P DSS Trunk
  - dd. UNE-P PRI ISDN Facility
  - ee. UNE-P PRI ISDN Trunk
  - ff. UNE-P PBX DID In-Only Trunk
  - gg. UNE-P PBX Design Trunk
  - hh. EEL/UNE Combination

**BEFORE THE MONTANA PUBLIC SERVICE COMMISSION  
DOCKET NO. D2010-5.66  
CENTURYLINK RESPONSES TO  
INTEGRA'S FIRST SET OF INFORMATION REQUESTS  
NOS. 1 THROUGH 168**

- ii. Resale Centrex
- jj. Line Split UNEP POTS
- kk. Line Split UNEP PBX Designed Trunk
- ll. Split UNEP Centrex 21
- mm. Unbundled Loop Split

**CenturyLink Response:**

- a. Unbundled Loop - Yes
- b. Unbundled Feeder Loop -- CenturyLink is unclear what service or product is being described in this question.
- c. Unbundled Distribution Loop - CenturyLink is unclear what service or product is being described in this question.
- d. Local Number Portability -- Yes
- e. Loop with Number Port -- Yes
- f. Unbundled Distribution Loop with Number Portability - CenturyLink is unclear what service or product is being described in this question.
- g. Interim Number Portability - No we do not allow Interim Number Portability-must be LNP.
- h. Loop with Interim Number Portability - No we do not allow Interim Number Portability-must be LNP.
- i. Unbundled Distribution Loop with Interim Number Portability - No, we do not allow Interim Number Portability-must be LNP.
- j. Directory listing - Yes
- k. Resale Private Line - Yes
- l. Resale POTS - Yes
- m. Resale Public Access Line (PAL) - Yes
- n. Resale PBX - Yes
- o. Resale ISDN - Yes
- p. Resale Designed Trunks - CenturyLink is unclear what service or product is being described in this question.
- q. Resale Frame Relay - Not a current offering.
- r. Resale DID In Only Trunks - Yes
- s. Commercial DSL (Broadband for Resale) - Yes
- t. Unbundled Analog Line Side Switch Port - No, not a current offering
- u. Unbundled Analog Line Side Switch Port ISDN HRI Capable - No, not a current offering.
- v. Unbundled Analog DID/FBX Trunk Port - No, not a current offering.
- w. Unbundled DS1 DID/PBX Trunk or Trunk Port Facility - No, not a current offering.

**BEFORE THE MONTANA PUBLIC SERVICE COMMISSION  
DOCKET NO. D2010-5.55  
CENTURYLINK RESPONSES TO  
INTEGRA'S FIRST SET OF INFORMATION REQUESTS  
NOS. 1 THROUGH 168**

- x. UNEP ISDN BRI - No, not an offering.
- y. UNEP POTS - Yes
- z. UNEP Centrex - Yes
- aa. UNEP Centrex 21 - CenturyLink is unclear what service or product is being described in this question.
- bb. UNE-P DSS Facility - CenturyLink is unclear what service or product is being described in this question.
- cc. UNE-P DSS Trunk - CenturyLink is unclear what service or product is being described in this question.
- dd. UNE-P PRI ISDN Facility - No, not an offering.
- ee. UNE-P PRI ISDN Trunk - No, not an offering.
- ff. UNE-P PBX DID In-Only Trunk - Yes
- gg. UNE-P PBX Design Trunk - CenturyLink is unclear what service or product is being described in this question.
- hh. BEL/UNE Combination - Yes
- ii. Resale Centrex - Yes
- jj. Line Split UNEP POTS - No, we do not offer Line Splitting.
- kk. Line Split UNEP PBX Designed Trunk - No, we do not offer Line Splitting.
- ll. Split UNEP Centrex 21 - No, we do not offer Line Splitting.
- mm. Unbundled Loop Split - No, we do not offer Line Splitting.

Sponsor: Melissa Closz, Director Wholesale Operations



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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<b>JOINT NOTICE AND APPLICATION OF</b>	)	
<b>QWEST CORPORATION, QWEST</b>	)	
<b>COMMUNICATIONS COMPANY, LLC,</b>	)	
<b>QWEST LD CORP., EMBARQ</b>	)	<b>Docket No. T-01051B-10-0194</b>
<b>COMMUNICATIONS, INC. D/B/A</b>	)	<b>Docket No. T-02811B-10-0194</b>
<b>CENTURYLINK COMMUNICATIONS,</b>	)	<b>Docket No. T-04190A-10-0194</b>
<b>EMBARQ PAYPHONE SERVICES, INC.</b>	)	<b>Docket No. T-20443A-10-0194</b>
<b>D/B/A CENTURYLINK, AND CENTURYTEL</b>	)	<b>Docket No. T-03555A-10-0194</b>
<b>SOLUTIONS, LLC FOR APPROVAL OF THE</b>	)	<b>Docket No. T-03902A-10-0194</b>
<b>PROPOSED MERGER OF THEIR PARENT</b>	)	
<b>CORPORATIONS QWEST</b>	)	
<b>COMMUNICATIONS INTERNATIONAL INC.)</b>	)	
<b>AND CENTURYTEL, INC.</b>	)	

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EXHIBIT TG-18

## FINAL MEETING MINUTES

### CLEC-Qwest Change Management Process Re-design Tuesday, August 14 and Thursday, August 16, 2001 Working Sessions

1005 17<sup>th</sup> Street, 1st Floor, Jr. Board Room, Denver, CO

Bridgeline: 1-877-847-0304, pass code 7101617#

**NOTE:** These FINAL meeting minutes were circulated to the CMP Re-design Core Team Members in attendance for their review and comments are noted in *italic* throughout the minutes.

#### INTRODUCTION

The Core Team (Team) and other participants met August 14<sup>th</sup> and 16<sup>th</sup> to continue the effort to improve Qwest's Change Management Process. *Following* is the write-up of the discussions, action items, and decisions made in the working sessions. The attachments to these meeting minutes are as follow-

#### ATTACHMENTS

- Attachment 1: Attendance Record
- Attachment 2: Agenda, August 14<sup>th</sup> and 16<sup>th</sup>
- Attachment 2a: Updated Agenda, August 16<sup>th</sup>
- Attachment 3: Core Team Issues and Action Items Log (updated)
- Attachment 4: Qwest's Naming Convention Spreadsheet (revised-Proposal)
- Attachment 5: Notification Process Plan (Proposal)
- Attachment 6: Sample Report (Proposal)
- Attachment 7: Voting Tally Form (Included in 7a)
- Attachment 7a: Procedures for Voting and the Impasse Resolution Process (Draft Proposal)
- Attachment 8: Core Team Members Expectations/Responsibilities (revised)
- Attachment 9: AT&T August 13, 2001 Memorandum
- Attachment 10: Qwest Severity Levels (Informational)
- Attachment 11: Schedule—CMP Re-design Working Sessions (revised)

#### MEETING MINUTES

The meeting on August 14 began with introductions of the meeting attendees—see Attachment 1 for the Attendance Record. Judy Lee advised attendees of the protocol to state name and company when making a statement. Lee reviewed the two-day agenda (refer to Attachment 2: August 14 and 16 Agenda) and asked for suggestions of changes or modifications. No suggestions were offered. Lee acknowledged the receipt of AT&T's memorandum expressing concern in five areas. Lee asked AT&T and other participants if this discussion can be added to the agenda under "Feedback on August 7-8 Meeting Minutes and Discussion Elements." AT&T and participants agreed. Copies of the meeting materials including AT&T's memorandum and agenda were made available for all attendees. Meeting materials were issued via e-mail to the Core Team and attendees on the conference bridge.

Lee facilitated the discussion on the following Issues and Action Items: (refer to Attachment 3 Issues and Action Items Log)

- Naming Convention
- Notification Process Plan
- Sample Report
- Voting Tally Form

Qwest advised that where a CLEC has a problem and there is no work-around this would be classified as a Severity 2. He further clarified Qwest's internal Severity Levels as:

- Severity 1 – System is down.
- Severity 2 – Significant impact to a functionality that is critical to business and there is no work around.
- Severity 3 - Significant impact to a functionality that is critical to business and a work around is available.
- Severity 4 – All others

Clauson-Eschelon wanted clarification on designation of systems and/or Product & Process. Should the Team address system changes for Product & Process as we address them for Systems? Lee advised that the intent of Change Management is to cover interfaces and functionality. Powers-Eschelon indicated that the Team needs to come back to backend system if we are only addressing interfaces. Thompson-Qwest stated that the Team needs to address functionality and Qwest can commit to making a change to functionality. Clauson-Eschelon stated that during discussion on Scope, it was agreed to that Systems directly or indirectly affects CLECs. Schultz-Qwest clarified that the Team didn't come to an agreement on what is included in "directly or indirectly" but agreed to address functions impacted. Clauson-Eschelon stated that the Team can't wait until later to define Types – the Team needs to address functions impacted now. Thompson-Qwest indicated that Qwest can only commit to interfaces, but the functionality issues are tied to interfaces. Powers-Eschelon, questioned whether we only tie types of Application Interfaces. Clauson-Eschelon suggested that the Team define "Application Interfaces" to include functions that directly or indirectly affecting CLECs. Thompson-Qwest agreed to identify functions. Clauson-Eschelon stated that the CLECs need validation of parity – a system release that gets modified by Retail impacts the CLEC. Thompson-Qwest agreed to name functions, but would not address the question on determination of parity. Clauson-Eschelon agreed that Eschelon does not want to name systems, or use parity. Eschelon stated that Verizon uses OSS and Qwest uses Application. Lee advised that an industry guideline for application means gateway to gateway and OSS is general interfaces. Thompson-Qwest agreed to Pre-Order, Ordering, Provisioning, Maintenance & Repair and Billing functions. Clauson-Eschelon felt functions may be appropriate. The Team agreed that a definition for interfaces is needed. CLECs requested a caucus during lunch to develop a definition on "interfaces."

After lunch, Osborne-Miller-AT&T reviewed the CLECs proposed definition of OSS Interfaces.

OSS interfaces include Gateways, connectivity, Qwest's Backend and Legacy system, and Qwest's Retail Systems that affect the Pre-Order, Order, provisioning, maintenance/repair and billing functions provided to CLECs.

Thompson-Qwest does not agree to the backend and legacy systems and Qwest Retail Systems. He could accept the functions provided by the systems in support of Pre-Order, Ordering/Provisioning, Maintenance/Repairs and Billing. Clauson-Eschelon wanted to use systems. Thompson-Qwest advised that system functions are acceptable, but not systems. Gindlesberger-Covad expressed concern if the reference to systems is eliminated. Clauson-Eschelon stated she was comfortable with system functions. Gindlesberger-Covad would accept "systems function" if all other CLECs were in agreement. Clauson-Eschelon requested that there is reference to retail offerings. Thompson-Qwest didn't want to accept this and felt the parity issue should be addressed outside the CMP discussions. Lee stated that the Change Management Process doesn't manage the parity issue, but manages changes to system functionality. Clauson-Eschelon stated that this is for the CLECs to decide. Qwest advised that the testing of parity is outside the CMP. Clauson-Eschelon indicated that there needs to be an automatic way to notice changes to Retail systems because this is a system change that affects CLECs. Thompson-Qwest stated that there are regulatory obligations, new products, etc. that have appropriate notifications. The CMP does not determine if there is parity or not. The CMP addresses a change that may have resulted from Retail functionality changes. Clauson-Eschelon stated that Eschelon doesn't disagree on the above, but believes that CLECs should get notifications on changes Qwest makes to Retail. Thompson-Qwest stated that CLECs will be notified on Retail driven

changes that impact CLEC interfaces. Clauson-Eschelon suggested adding, "as required by law" at the end. [Eschelon COMMENT: it states: "Clauson-Eschelon suggested adding, "as required by law" Actually, Jeff (Thompson) suggested language referring to statutes, etc., and the person on the phone expressed a concern about that language. So, I replied with this language in an attempt to address both of their suggestions]. Schultz-Qwest wanted to change, "includes" to "as defined."

Discussion pursued on language and the following definition was agreed to:

Throughout this document, OSS Interfaces are defined as gateways (including application-to-application and GUI), connectivity, and system functions that support, or affect the pre-order, order/provisioning, maintenance/repair and billing capabilities that are provided to CLECs.

Powers-Eschelon questioned whether a customer-originated change for regulatory changes is automatically placed on the list of changes or not. Thompson-Qwest responded that if it is determined to be a regulatory change, then yes.

#### Industry Guidelines

Clauson-Eschelon asked if there were any other Industry bodies besides ATIS. Thompson-Qwest advised that there is American National Standards Institute (ANSI). Schultz-Qwest asked Thompson-Qwest if Qwest implements changes before approved by an industry body. Thompson-Qwest advised that Qwest may implement changes before approval by an industry body. The Team agreed to go back individually and ascertain whether there are any additional governing bodies that need to be included.

#### Qwest Originated Changes

Clauson-Eschelon requested a change from "Interfaces" to "OSS Interfaces" and delete everything after that in the sentence.

#### CLEC Originated Changes

The Team agreed to change "Interfaces" to "OSS Interfaces" and delete everything after that in the sentence. Schultz-Qwest advised that manual and business process need to be addressed in the "Process" discussions at a later date.

#### Tracking Change Requests

Lee advised that this was covered in the redline document.

#### Change Request Initiation Process

Schultz-Qwest requested that in Customer Originated Request, 1<sup>st</sup> paragraph, and 1st sentence change "via e-mail" to "electronically." She introduced the new process that is being implemented on holding clarification meetings with the originator after receipt of a Change Request. Schultz-Qwest also started the development of flow charts and procedures for handling Change Request. It was agreed that this section will be tabled until the September 5 meeting and Qwest will issue draft procedures by August 28.

#### Change to Existing Interfaces

The Team agreed to change "Interfaces" in the Title to "Pre-Order and Order Application-to-Application." Thompson-Qwest clarified that an EDI change calls for a CLEC to make a change on their side of the application, therefore there is a need for Qwest to maintain two versions of software. On the other hand, a GUI change does not require a CLEC to make any interface changes; therefore there is not a need for Qwest to maintain two GUI versions. He wanted to limit it to application-to-application, pre-order and order. Thompson-Qwest to incorporate the SGAT language for versioning in the redlined CMP re-design document. Schultz-Qwest advised that a development view will be shared with the CLECs on a quarterly basis at the first monthly meeting. Clauson-Eschelon indicated that the presentation of the quarterly view allows for discussion. Schultz-Qwest asked the CLECs if they wanted a 12-month view. Thompson-Qwest

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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JOINT NOTICE AND APPLICATION OF	)	
QWEST CORPORATION, QWEST	)	
COMMUNICATIONS COMPANY, LLC,	)	
QWEST LD CORP., EMBARQ	)	Docket No. T-01051B-10-0194
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	)	
C O R P O R A T I O N S Q W E S T	)	
COMMUNICATIONS INTERNATIONAL INC.	)	
AND CENTURYTEL, INC.	)	

EXHIBIT TG-19

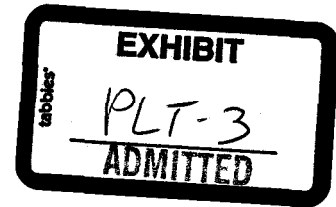
PUBLIC VERSION

Exhibit TG-19 is highly sensitive  
and confidential.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN MAYES, Chairman  
GARY PIERCE, Commissioner  
SANDRA KENNEDY, Commissioner  
PAUL NEWMAN, Commissioner  
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PROPOSED MERGER OF THEIR PARENT )	
CORPORATIONS QWEST )	
COMMUNICATIONS INTERNATIONAL INC.)	
AND CENTURYTEL, INC. )	

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TESTIMONY

OF

TIMOTHY J GATES

REGARDING THE SETTLEMENT AGREEMENT

ON BEHALF OF

tw telecom of arizona llc; Level 3 Communications, LLC; and  
McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services

December 8, 2010

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1 **I. INTRODUCTION AND PURPOSE**

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

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

5 **Q. ARE YOU THE SAME TIMOTHY GATES WHO FILED DIRECT TESTIMONY**  
6 **IN THIS PROCEEDING ON SEPTEMBER 27, 2010, AND SURREBUTTAL**  
7 **TESTIMONY ON NOVEMBER 10, 2010?**

8 A. Yes.

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

10 A. My testimony is being filed on behalf of a number of CLECs: tw telecom of arizona llc;  
11 Level 3 Communications, LLC; and McLeodUSA Telecommunications Services, Inc. d/b/a  
12 PAETEC Business Services (collectively referred to in this testimony as "Joint CLECs").

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

14 A. Qwest and CenturyLink (hereafter referred to collectively as "Joint Applicants") have  
15 reached a proposed settlement with the Utilities Division Staff ("Staff") and the Residential  
16 Utility Consumer Office ("RUCO") (hereafter referred to as the "proposed settlement").  
17 According to the proposed settlement, it addresses and resolves the outstanding issues  
18 among the settling parties related to CenturyLink's proposed acquisition of Qwest.  
19 Pursuant to Procedural Order dated November 23, 2010, the Administrative Law Judge  
20 directed settling parties to file testimony in support of the proposed settlement by  
21 December 1, 2010, and non-settling parties to file testimony addressing the proposed

1 settlement by December 8, 2010. On December 1, 2010, Staff submitted the testimony of  
2 Elijah Abinah and Joint Applicants submitted the testimony of James Campbell, Jeff  
3 Glover, Michael Hunsucker and Karen Stewart in support of the proposed settlement. The  
4 purpose of my testimony is to address the proposed settlement, as well as the Staff and  
5 Joint Applicants' testimony in support of the proposed settlement. My testimony will  
6 explain why the proposed settlement does not adequately address certain concerns critical  
7 to the Joint CLECs, concerns that will lead to merger-related harm to local competition and  
8 the public interest.

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

10 A. My testimony will focus on four particularly critical areas: (i) inadequate extension of  
11 Qwest Operations Support Systems ("OSS"); (ii) inadequate extension of wholesale  
12 agreements; (iii) failure to include an Additional Performance Assurance Plan ("APAP");  
13 and (iv) inadequate moratoriums on non-impairment filings and forbearance petitions. The  
14 Joint CLECs explained in detail in their prior testimony the merger-related public interest  
15 harms posed by the proposed transaction in relation to OSS integration, continued  
16 availability of wholesale products and services at current rates, and post-merger wholesale  
17 service quality deterioration. In my testimony below, I will explain why the proposed  
18 settlement does not adequately address these issues and how the conditions in the proposed  
19 settlement can be supplemented to rectify these shortcomings. The Commission should not  
20 approve the proposed transaction without the addition of a limited number of additional  
21 commitments/conditions addressing these concerns.

1 **Q. ARE YOU ADDRESSING ALL OF THE CONDITIONS IN THE PROPOSED**  
2 **SETTLEMENT?**

3 A. No. My testimony focuses on the conditions in the proposed settlement related to  
4 “Wholesale Operations” (proposed settlement conditions 19 through 31).

5 **Q. DO YOU HAVE ANY GENERAL COMMENTS ABOUT THE WHOLESALE**  
6 **CONDITIONS IN THE PROPOSED SETTLEMENT?**

7 A. Yes. I appreciate Staff’s acknowledgment that conditions related to Qwest’s wholesale  
8 operations are needed in order for the proposed transaction to be in the public interest, as  
9 well as Staff’s efforts in attempting to craft a settlement agreement to address concerns of  
10 Qwest’s wholesale customers. The wholesale conditions in the proposed settlement are not  
11 *bad* or contrary to the public interest as far as they go; the problem is that they fall short of  
12 addressing merger-related harms associated with the proposed transaction in a number of  
13 critical areas.

14 **Q. ARE YOU DISPUTING THAT THE SETTLEMENT PROVIDES BENEFITS?**

15 A. No. I am concerned about the sufficiency of the commitments in the proposed settlement.  
16 Staff and Joint Applicants repeatedly state that CLECs (including non-settling CLECs) will  
17 receive benefits from the commitments in the proposed settlement,<sup>1</sup> but this should not be  
18 the focus when evaluating the adequacy of the proposed settlement. Instead, the proper  
19 focus is whether the proposed settlement sufficiently addresses the risks of harm to the

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<sup>1</sup> Direct Testimony of Elijah Abinah on behalf of Arizona Corporation Commission Utilities Division, December 1, 2010 (“Abinah Testimony”) at p. 18-23; Testimony in Support of Settlement Agreement of James Campbell on behalf of Qwest, December 1, 2010 (“Campbell Testimony”) at p 4, lines 14-16; and Testimony in Support of Settlement Agreement of Michael Hunsucker on behalf of CenturyLink, December 1, 2010 (“Hunsucker Testimony”) at p. 7, lines 11-13.

1 public interest posed by the proposed transaction. I contend that it does not. As a result,  
2 the Commission should supplement the conditions in the proposed settlement to address the  
3 specific shortcomings identified in this testimony before finding that the proposed  
4 transaction is in the public interest. The most important conditions not addressed or  
5 addressed inadequately by the proposed settlement that should be added, include at a  
6 minimum:

- 7 1. The Merged Company will use and offer to wholesale customers the  
8 legacy Qwest OSS for at least three years (Joint CLEC condition 19).
- 9 2. Robust, transparent third party testing will be conducted for any  
10 replacement OSS that replaces a Qwest system that was subject to  
11 third party testing (Joint CLEC condition 19b).
- 12 3. The Applicable Time Periods for non-UNE commercial and wholesale  
13 agreements and tariffs should be the Defined Time Period initially  
14 proposed by Joint CLECs, or at a minimum, three years.
- 15 4. The extension of non-UNE commercial and wholesale agreements and  
16 tariffs, including term and volume discount plans, should apply to  
17 wholesale agreements in place as of the merger filing date, or at least  
18 in effect as of the end of 2010. As noted in (3) above, the minimum  
19 time period for these agreements should be three years.
- 20 5. The Additional PAP should apply in addition to the QPAP (Joint  
21 CLEC condition 4a).]
- 22 6. The moratorium on Qwest requests to reclassify as "non-impaired"  
23 wire centers and for forbearance should apply for the Defined Time  
24 Period initially proposed by Joint CLECs (Joint CLEC condition 14).

1 **II. PRIMARY SHORTCOMINGS OF THE PROPOSED SETTLEMENT**

2 *A. The proposed settlement is based largely on a settlement with one CLEC that*  
3 *reflects one CLEC's perspective and does not adequately protect other CLECs or*  
4 *competition in general.*

5 **Q. STAFF STATES THAT THE WHOLESALE CONDITIONS IN THE PROPOSED**  
6 **SETTLEMENT ARE BASED ON THE CONDITIONS IN THE SETTLEMENT**  
7 **AGREEMENT BETWEEN JOINT APPLICANTS AND INTEGRA.<sup>2</sup> DO THE**  
8 **CONDITIONS IN THE INTEGRA SETTLEMENT ADEQUATELY ADDRESS**  
9 **ALL MERGER-RELATED HARMS TO CLECS AND COMPETITION?**

10 A. No. It is important to put the settlement agreement between Joint Applicants and Integra in  
11 context. That agreement reflects the perspective and business needs of a single CLEC out  
12 of the numerous CLECs that have intervened in this proceeding and the other CLECs who  
13 did not intervene. Indeed, the Integra Settlement expressly states that it addresses  
14 "Integra's concerns" and reflects "Integra's perspective[.]"<sup>3</sup> The Integra Settlement  
15 reflects compromises that Integra believed were in its own business interests, presumably  
16 taking into account its strategy for competing in the market and its own systems or  
17 operations. None of the other Joint CLECs – each with a different business plan – was  
18 party to that settlement or a participant in its negotiation.

19

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<sup>2</sup> Abinah Testimony at p. 9, lines 1-8.

<sup>3</sup> Settlement Agreement between Qwest/CenturyLink and Integra ("Integra Settlement") at p. 1.

1 **Q. WHY IS A SINGLE PARTY SETTLEMENT NOT SUFFICIENT TO PROTECT**  
2 **THE PUBLIC INTEREST?**

3 A. Integra negotiated the settlement to meet its specific business needs. That does not mean  
4 that Integra was wrong to enter into the settlement, it just means that the settlement  
5 obviously was limited. The public interest in (and benefit from) competition depends on  
6 the availability of services from more providers than just the ILEC and one CLEC. Robust  
7 competition encompasses multiple CLEC options for consumers, each with different  
8 network approaches, target markets and business plans. It also anticipates and  
9 encompasses a marketplace that is sufficiently open to new competitors in the future.  
10 Hallmarks of effective competition are the existence of multiple alternatives (not just one  
11 or two), diversity among alternatives, and conditions conducive to efficient entry today and  
12 in the future. The Joint CLECs differ from Integra in a number of important ways, and as  
13 such, conditions designed to address “Integra’s concerns” – based substantially on Integra’s  
14 need for conditioned loops – does not ensure that the proposed transaction will not  
15 negatively impact other CLECs or competition in general.

16 **Q. PLEASE ELABORATE ON SOME OF THE DIFFERENCES BETWEEN**  
17 **INTEGRA AND OTHER CLECS THAT CAUSES THEIR CONCERNS AND**  
18 **PRIORITIES TO DIFFER.**

19 A. CLECs have different OSS capabilities and use different functions and interfaces of  
20 Qwest’s OSS, depending on whether they purchase UNEs and the development of their  
21 own systems and network. CLECs use different non-UNE commercial and wholesale  
22 agreements and tariffs and rely on them to varying degrees to provide different services to

1 end user customers, and CLEC agreements have differing expiration dates. As a result, the  
2 compromises made by Integra may not have been acceptable to other CLECs.

3 **Q. CAN YOU PROVIDE SOME EXAMPLES?**

4 A. Yes. For example, one of the concerns that is particularly important to Integra -- that was  
5 not so important to some other CLECs due to differing business plans -- is line  
6 conditioning for xDSL loops. The Integra Settlement contains condition 14 that discusses  
7 an extensive line conditioning amendment and related issues, and presumably Integra was  
8 willing to compromise on other issues to receive the line conditioning commitment. As  
9 such, the conditions in the Integra settlement were established, in part, due to the  
10 availability of the line conditioning commitment that is not overly important to some  
11 CLECs and which did not make it into the proposed settlement in any event. tw telecom  
12 does not offer xDSL service to Arizona customers and has no plans to do so. Therefore,  
13 the concerns that led Integra to pursue line conditioning concessions and make  
14 compromises to get this commitment are not shared by tw telecom because of its differing  
15 business plan.

16 Another example relates to the electronic bonding capabilities of Qwest's application-to-  
17 application OSS. As discussed by Mr. Haas, PAETEC has built internal interfaces and  
18 back office systems in order to electronically bond with Qwest's current OSS. PAETEC  
19 relies more heavily on Qwest's application-to-application OSS than does Integra.  
20 Therefore, while it may have been acceptable for Integra to accept a two year extension of  
21 Qwest's OSS as a compromise for the line conditioning commitment, for example, this two

1 year period is not acceptable for PAETEC who has built extensive internal systems based  
2 on Qwest's existing OSS – internal systems that would need to be modified or replaced  
3 when Qwest's OSS changes.

4 **Q. DO YOU AGREE WITH STAFF'S STATEMENT THAT INTEGRA'S**  
5 **AGREEMENT TO MANY OF THE CONDITIONS IN THE PROPOSED**  
6 **SETTLEMENT "SPEAKS VOLUMES REGARDING THE ADEQUACY OF THE**  
7 **CONDITIONS AND THEIR BENEFITS TO CLECS IN ARIZONA"<sup>4</sup>?**

8 A. No, I disagree although the disagreement may be a matter of degree. Again, because of  
9 differences between Integra and other CLECs in Arizona, what Integra may agree to or  
10 accept as a compromise may have little if any relevance to the adequacy of that same  
11 compromise for other CLECs such as Level 3, PAETEC or tw telecom.<sup>5</sup> The Joint CLECs  
12 are unable to compromise further on the remaining issues discussed in my testimony  
13 because they are critical to adequately and effectively address their concerns and the public  
14 interest harms posed by the proposed transaction.

15  

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<sup>4</sup> Abinah Testimony at p. 9, lines 19-22.

<sup>5</sup> Mr. Hunsucker states: "In fact, it should be noted that Integra was a member of the Joint CLEC interveners prior to Integra settling with the Joint Applicants." Hunsucker Testimony at p. 4, lines 4-5. While it is true that Integra was previously a member of the Joint CLECs in this proceeding, I strongly disagree with Mr. Hunsucker's suggestion that because one CLEC, from the numerous Joint CLECs, settled with Joint Applicants, that the settlement with that one CLEC comprehensively addresses all CLECs' concerns. Certain CLECs decided to pool their resources for participating in the merger review proceedings in order to intervene and express their concerns in the most cost-effective manner possible. This included jointly sponsoring my testimony as Joint CLECs. As I can testify to from first-hand knowledge, each of the numerous CLECs I represented in the merger review proceedings had certain unique concerns and priorities that differed from other CLECs in the coalition due to differing business plans and circumstances.



1 **Q. MR. HUNSUCKER STATES THAT “IT IS NOT REASONABLE TO EXPECT THE**  
2 **JOINT APPLICANTS TO SATISFY EVERY CLEC AND TO ADDRESS EVERY**  
3 **CLEC CONCERN AS PART OF THIS MERGER APPROVAL PROCEEDING.”<sup>6</sup>**  
4 **PLEASE RESPOND.**

5 A. Given the modest additions that the Joint CLECs are seeking to the proposed settlement, it  
6 is perfectly reasonable to expect the Joint Applicants to satisfy the Joint CLECs. This is  
7 particularly true in light of Joint Applicants’ statements about how they “value[] CLECs  
8 and recognize[] them as extremely important...”<sup>7</sup> If the Joint Applicants fail to address the  
9 concerns raised by Joint CLECs about the proposed settlement, the Commission should  
10 address these concerns by conditioning any merger approval on the additional conditions  
11 discussed in this testimony.

12 In addition, the Joint CLECs’ proposed conditions do not cover “every CLEC concern”  
13 about their wholesale relationship with Qwest as Mr. Hunsucker suggests, nor do they  
14 address “every CLEC concern” about the proposed transaction. The Joint CLECs’  
15 proposed conditions list which contains 30 conditions (Exhibit TG-8 to my direct  
16 testimony) represents a focused list of conditions to address the concerns of multiple  
17 CLECs that was carefully crafted to address the specific harms posed by CenturyLink’s  
18 proposed acquisition of Qwest. Indeed, about half of those initial conditions simply sought  
19 to maintain the status quo by asking the Merged Company to comply with state and federal  
20 law. Now, given the proposed settlement, the areas of disagreement have been narrowed to

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<sup>6</sup> Hunsucker Testimony at p. 7, lines 10-11.

<sup>7</sup> Rebuttal Testimony of Michael Williams on behalf of Qwest, October 27, 2010 (“Williams Rebuttal”) at p. 21, lines 16-17.

1 a more limited number of particularly important areas. Adopting the limited number of  
2 additional wholesale conditions would not address “every CLEC concern” and would  
3 certainly not constitute an “unconditional surrender” by the Joint Applicants as Mr.  
4 Hunsucker claims.<sup>8</sup> Rather, the CLECs are focusing on those issues that they believe are  
5 critical to their ability to effectively compete and their current list of conditions reflects a  
6 number of significant concessions.

7 ***B. Joint Applicants have not made adequate commitments regarding OSS.***

8 **Q. PLEASE EXPLAIN HOW THE OSS CONDITIONS IN THE PROPOSED**  
9 **SETTLEMENT ARE INADEQUATE.**

10 A. In the Qwest legacy territory, the Merged Company should use and offer to wholesale  
11 customers the legacy Qwest Operational Support Systems (“OSS”) for a minimum of *three*  
12 years following merger closing date (Joint CLEC Condition 19).<sup>9</sup> This is the absolute  
13 minimum time period associated with the three to five year integration/synergy timeframe.  
14 The proposed settlement states that the Merged Company will use and offer to wholesale  
15 customers the legacy Qwest OSS for at least *two* years or until July 1, 2013, whichever is  
16 later (proposed settlement condition 19). The timeframe in the proposed settlement is  
17 inadequate because it does not cover the minimum synergy timeframe, and as a result,  
18 CLECs would face significant risk of harm related to OSS post-merger (albeit for a shorter  
19 time period than would otherwise be the case absent the proposed settlement).

20  

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<sup>8</sup> Hunsucker Testimony at p. 22, line 5.

<sup>9</sup> The Joint CLEC proposed conditions list is attached to my direct testimony as Exhibit TG-8.

1 **Q. WHAT IS THE “SYNERGY TIMEFRAME” YOU REFER TO ABOVE?**

2 A. The “synergy timeframe” is the time period during which the Joint Applicants will be  
3 integrating the two companies and making merger-related changes to achieve synergy cost  
4 savings.<sup>10</sup> CenturyLink has stated that they anticipate total synergy savings of \$625 million  
5 to be “fully recognized over a three-to-five year period following closing.”<sup>11</sup> Therefore,  
6 the “synergy timeframe” associated with the proposed transaction is three to five years (and  
7 potentially longer if the Merged Company experiences integration problems<sup>12</sup>). Under the  
8 Joint Applicants’ “best case scenario” assumptions, three years is the absolute minimum  
9 synergy timeframe.

10 **Q. WHY IS IT IMPORTANT THAT THE TIME PERIOD FOR QWEST OSS**  
11 **AVAILABILITY BE FOR AT LEAST THREE YEARS?**

12 A. The ultimate question regarding appropriate time frames for merger conditions is what time  
13 period is necessary to protect the public interest.<sup>13</sup> Here, the need for protection is greater  
14 than in prior mergers. The Joint Applicants propose the purchase of a BOC by a non-BOC  
15 ILEC that has been acting in many cases as primarily a rural carrier claiming exemption  
16 from ILEC, much less BOC, obligations. Because the BOC has greater wholesale  
17 obligations and more complex systems than a non-BOC ILEC, and certainly more  
18 obligations and complex systems than an exempt (or, self-proclaimed exempt) rural ILEC,

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<sup>10</sup> Direct Testimony of Timothy Gates on behalf of Joint CLECs, September 27, 2010 (“Gates Direct”) at p. 113.

<sup>11</sup> Direct Testimony of Jeff Glover on behalf of CenturyLink, May 24, 2010 (“Glover Direct”) at p. 13, lines 11-16.

<sup>12</sup> Gates Direct at pp. 111-112.

<sup>13</sup> *In the Matter of Embarq Corporation and CenturyTel, Inc. Joint Application for Approval of Merger between the Two Companies and Their Regulated Subsidiaries*, Oregon Public Utility Commission Docket No. UM1416, Order No. 09-169, May 11, 2009 (“Oregon Embarq-CenturyTel Merger Order”), 2009 Ore. PUC LEXIS 152, \*11 (rejecting the Joint Applicants proposal to reduce various conditions from five years to three years, concluding that the longer five year period “serves to protect customers should a significant negative event occur with the new parent” and “is a more reasonable means to protect customers.”)

1 such ILECs lack a long history of fulfilling such commitments. Further, CenturyLink has  
2 never processed the number and types of wholesale orders that Qwest routinely processes.  
3 Wholesale customers therefore need protective conditions firmly in place throughout the  
4 time that merger-related changes are occurring and the time during which the results of  
5 those changes continue to affect customers and competition.

6 **Q. MR. HUNSUCKER SUGGESTS THAT THE JOINT CLEC OSS CONDITIONS**  
7 **CONTAIN “UNREASONABLE ARTIFICIAL TIME LIMITATIONS.”<sup>14</sup> IS THIS**  
8 **AN ACCURATE CHARACTERIZATION OF THE JOINT CLEC CONDITIONS?**

9 A. No. The time period in the Joint CLECs’ proposed OSS condition 19 – “at least three  
10 years” – is neither unreasonable nor artificial. Mr. Hunsucker does not explain how the  
11 Merged Company offering to wholesale customers the legacy Qwest OSS for about one  
12 year longer than provided for in the proposed settlement can be unreasonable. Given the  
13 enormous amount of time, money and effort that has been invested over the last decade to  
14 get Qwest’s OSS to where they are today and to build CLEC internal systems to interface  
15 with Qwest’s OSS, the Joint CLECs’ modest request for the Merged Company to make  
16 available Qwest’s OSS for one year longer than their current commitment is perfectly  
17 reasonable. It took more than three years just to test and evaluate Qwest’s OSS to  
18 determine if it was sufficient to meet the requirements of Section 271.<sup>15</sup> So, if the Merged  
19 Company decides to modify or replace Qwest’s OSS post-merger, it is reasonable to  
20 assume that it will take at least three years (i) to decide which OSS the Merged Company  
21 intends to use going forward, (ii) to make changes to Qwest’s OSS, (iii) to test and evaluate

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<sup>14</sup> Hunsucker Testimony at p. 11, line 19.

<sup>15</sup> Exhibit TG-2 at p. 2.

1 the new OSS to ensure that it can handle the commercial volumes in Qwest's territory and  
2 provide CLECs a meaningful opportunity to compete, (iv) to allow cooperative testing of  
3 the systems with the CLECs to ensure that they meet the CLEC needs; and (v) for CLECs  
4 to develop internal systems to interface with the new OSS systems.

5 **Q. DOES MR. HUNSUCKER'S CLAIM ABOUT THE THREE YEAR TIME PERIOD**  
6 **BEING "ARTIFICIAL" FARE ANY BETTER?**

7 A. No. This claim does not square with the facts. The three year period is tied to  
8 CenturyLink's own synergy timeframe. The time period in the proposed settlement  
9 condition 19 ("at least two years, or until July 1, 2013, whichever is later"), on the other  
10 hand, has no basis in the record and is not based on the facts associated with the proposed  
11 transaction. The Joint Applicants' own synergy timeframe indicates that the Merged  
12 Company's integration efforts will extend well beyond two years as well as July 1, 2013,  
13 which means that the time period is too short to adequately address merger-related harms to  
14 the public interest.

15 **Q. IS THE TWO-YEAR TIME PERIOD IN CONDITION 19 OF THE PROPOSED**  
16 **SETTLEMENT BASED ON THE INTEGRA SETTLEMENT?**

17 A. Yes, apparently so. Both the proposed settlement and the Integra Settlement requires the  
18 Merged Company to, in the Qwest ILEC service territory, use and offer to wholesale  
19 customers the legacy Qwest OSS "for at least two years, or until July 1, 2013, whichever is  
20 later..."

1 Q. IS IT SAFE TO ASSUME THAT A TIME PERIOD FOR QWEST OSS  
2 EXTENSION AGREED TO BY INTEGRA ADEQUATELY ADDRESSES  
3 MERGER-RELATED HARM TO OTHER CLECS, OR TO COMPETITION IN  
4 GENERAL?

5 A. No. The two year time period in the Integra Settlement is obviously a compromise from  
6 Integra's perspective,<sup>16</sup> but it cannot be taken as an appropriate compromise for other  
7 CLECs. As noted above, PAETEC has developed its own internal interfaces and back  
8 office systems for electronically bonding with Qwest's application-to-application OSS. I  
9 discussed some of the efficiencies and benefits brought about by PAETEC's effort to  
10 develop its own systems to interface with Qwest in my direct testimony.<sup>17</sup> As discussed by  
11 Mr. Haas, PAETEC relies more heavily on internally-developed interfaces and back office  
12 systems to interface with Qwest than does Integra. Therefore, while an approximate two-  
13 year extension of Qwest's OSS may be an acceptable compromise for Integra based on  
14 Integra's circumstances, it is not adequate for PAETEC who would need to revamp more  
15 of its own internal systems and databases in response to a change to Qwest's OSS and  
16 would face a greater challenge and potentially higher costs to adapt to such changes on a  
17 shorter timeframe.

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<sup>16</sup> Integra originally proposed to require the Merged Company to maintain legacy Qwest OSS for at least three years. Joint CLEC proposed condition 19.

<sup>17</sup> Gates Direct at pp. 52-54.

1 Q. MR. HUNSUCKER STATES THAT THE TWO YEAR OSS EXTENSION IS  
2 SUFFICIENT BECAUSE THERE WILL BE NO OVERLAP BETWEEN THE OSS  
3 INTEGRATION EFFORTS ASSOCIATED WITH THE PROPOSED  
4 TRANSACTION AND THE ONGOING INTEGRATION OF EMBARQ.<sup>18</sup> DOES  
5 THE LACK OF OVERLAP IN INTEGRATION ACTIVITIES WARRANT A  
6 SHORTER OSS EXTENSION?

7 A. No. Whether or not the integration of Embarq is ongoing at the time CenturyLink begins  
8 integrating Qwest, the undisputed facts in this case support an OSS extension no less than  
9 three years. The time period during which Qwest's existing OSS should continue to be  
10 available should be tied to the synergy timeframe because it is that time period that defines  
11 when CLECs are at the greatest risk of merger-related harm due to OSS integration.

12 This three to five year time period is indicative of the complexity involved in integrating  
13 Qwest – a BOC with complex systems and regulatory obligations with which CenturyLink  
14 has no experience. In other words, the more complex merger integration will be, the longer  
15 it takes to integrate the companies to produce synergy savings. By way of example, for the  
16 acquisition of Embarq, CenturyLink estimated that it would fully recognize its estimated  
17 synergy savings “within the first three years of operation.”<sup>19</sup> However, because integrating  
18 Qwest will be more complex than integrating Embarq, CenturyLink has estimated that it  
19 would fully recognize its estimated synergy savings from the proposed transaction over a

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<sup>18</sup> Hunsucker Testimony at p. 11.

<sup>19</sup> *In the Matter of Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, Memorandum Opinion and Order, WC Docket No. 08-239, FCC 09-54, June 25, 2009 (“FCC CenturyTel/Embarq Merger Order”), ¶ 7 and Declaration of R. Stewart Ewing, Jr. on behalf of CenturyTel, WC Docket No. 08-238, ¶ 2.

1 longer period: three-to-five years following the merger. While a time period shorter than  
2 three years may have been appropriate for conditions related to the CenturyTel/Embarq  
3 merger due to the shorter synergy timeframe for that merger, a time period of less than a  
4 minimum three years for OSS conditions associated with the proposed transaction is  
5 inadequate because of proposed transaction's longer synergy timeframe.

6 **Q. BESIDES THE DURATION OF QWEST'S OSS EXTENSION, ARE THERE**  
7 **OTHER SIGNIFICANT SHORTCOMINGS IN THE JOINT APPLICANTS'**  
8 **COMMITMENTS REGARDING OSS?**

9 A. Yes. Absent from the proposed settlement is any requirement for third-party OSS testing.  
10 This is a serious omission. The Merged Company should be required to conduct  
11 independent third-party testing similar to that used in the Regional Oversight Committee  
12 process during the Qwest 271 proceedings for any OSS that replaces a Qwest OSS that has  
13 undergone third-party testing.<sup>20</sup> As explained at pages 118-119 of my surrebuttal  
14 testimony, the FCC has determined that the most probative evidence that OSS are  
15 operationally ready is actual commercial usage. Since CenturyLink and Qwest use  
16 different OSS today, there is no commercial usage data indicating whether and to what  
17 extent CenturyLink's OSS could handle commercial volumes if integrated into Qwest's  
18 legacy territory. Absent actual commercial usage, the FCC said that the second best option  
19 is an independent, blind, third-party OSS test. Despite the importance of third-party  
20 testing, it is not a requirement of the proposed settlement and CenturyLink has clearly  
21 stated that it does not intend to conduct third-party testing of replacement OSS on its own

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<sup>20</sup> Gates Direct at pp. 121-123; Surrebuttal Testimony of Timothy Gates on behalf of Joint CLECs, November 10, 2010 ("Gates Surrebuttal") at pp. 117-122 and Exhibit TG-2.



1 volition.<sup>21</sup> This should be rectified by adopting the provisions of Joint CLEC Condition  
2 19(b).

3 **C. *Joint Applicants have not made adequate commitments regarding the continued***  
4 ***provision of non-UNE wholesale services.***

5 **Q. ARE QWEST'S WHOLESALE SERVICES ESSENTIAL TO THE ABILITY OF**  
6 **CLECS TO CONTINUE PROVIDING ARIZONA CONSUMERS WITH**  
7 **COMPETITIVE LOCAL SERVICE ALTERNATIVES?**

8 A. Yes. This is evident from the FCC's order denying Qwest's petition for forbearance in the  
9 Phoenix Arizona Metropolitan Statistical Area ("MSA"), which I discussed at pages 86-89  
10 of my surrebuttal testimony. In this order, issued less than six months ago, the FCC  
11 explains that "Qwest remains dominant" in "wholesale markets" and refers to Qwest as the  
12 "sole provider of wholesale facilities and services[.]"<sup>22</sup> The FCC also concluded that  
13 CLECs relied on Qwest's wholesale services to compete with Qwest for mass market and  
14 enterprise end user customers.<sup>23</sup>

<sup>21</sup> Hearing Transcript Vol. 2B (public), Minnesota Docket No. P421, et al./PA-10-456, October 6, 2010, at pp. 88-89.

<sup>22</sup> Gates Surrebuttal at pp. 86-87, quoting *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*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113, released June 22, 2010 ("Qwest Phoenix Forbearance Order") at ¶ 34.

<sup>23</sup> Qwest Phoenix Forbearance Order, ¶ 80 ("Although there are several other providers that serve some mass market customers in the Phoenix MSA, they are 'fringe' competitors that are able to compete only by relying extensively on UNEs and other Qwest wholesale services.") and ¶ 87 ("Based on the record evidence, we find competitors offering retail enterprise services in the Phoenix MSA primarily rely upon Qwest's wholesale services...")

1 **Q. IS THIS DEPENDENCE ON QWEST'S WHOLESALE SERVICES LIMITED TO**  
2 **UNBUNDLED NETWORK ELEMENTS ("UNES") PROVIDED UNDER SECTION**  
3 **251 OF THE ACT?**

4 A. No. Many CLECs rely significantly on non-UNEs purchased from Qwest under  
5 commercial and wholesale agreements and tariffs. These non-UNEs are typically the exact  
6 same facilities as their UNE counterparts – the only difference is in the terms and rates  
7 under which those facilities are provided.<sup>24</sup> Therefore, it is essential for protections against  
8 merger-related harm to cover the breadth and diversity of local competition as it relates to  
9 the availability of wholesale services on which CLECs rely to provide competitive local  
10 service.

11 **Q. PLEASE ELABORATE ON THE EXTENT TO WHICH CLECS IN ARIZONA**  
12 **RELY ON NON-UNES PURCHASED FROM QWEST UNDER COMMERCIAL**  
13 **OR WHOLESALE AGREEMENTS?**

14 A. CLECs continue to rely upon Qwest's Local Service Platform ("QLSP") products for  
15 provisioning of services in Arizona. These products are commercial offerings that are  
16 comparable to Qwest's retail products. For instance, PAETEC provides services to a  
17 significant number of its customers in Arizona over QLSP services, while it continues to

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<sup>24</sup> Accordingly, I disagree with Mr. Hunsucker's claim that "[c]omparing Section 251 ICA and non-Section 251 agreements is like comparing apples and oranges." Hunsucker Testimony at p. 14, lines 11-12. To the contrary, facilities provided under non-UNE (or non-Section 251) agreements are the very same facilities as provided under UNE (or Section 251) agreements, the only difference is the price paid by the CLEC for the facility. The non-UNE prices are significantly higher than UNE prices. Whether or not the facility is provided under a Section 251 agreement or non-Section 251 agreement, the availability of that facility at just and reasonable rates (and cost-based rates in the case of UNEs) is critical for CLECs to be able to compete in the local telecommunications market. Indeed, that is the underpinning of Section 271 of the Telecommunications Act, which requires BOCs like Qwest to continue to make available certain wholesale services even if those wholesale services are no longer required under Section 251 of the Act.

1 purchase UNEs. PAETEC's offerings are discussed in the testimony of Mr. Haas. CLECs  
2 also continue to rely extensively on Qwest special access services -- frequently through  
3 Qwest's Regional Commitment Program or "RCP" -- to gain access to customers. tw  
4 telecom's reliance upon special access under a RCP is described later in this testimony.

5 As noted in the FCC's Qwest Forbearance Order regarding the Phoenix MSA, "...there is  
6 no record evidence of significant competition for the wholesale products used to serve  
7 either mass market or enterprise customers."<sup>25</sup> The pricing and quality of wholesale  
8 services, such as QLSP, dark fiber, special access, etc. are critical to the CLECs'  
9 provisioning of services to consumers in Arizona. This continued dependence supports the  
10 Joint CLECs' need for an extension of the non-UNE commercial and wholesale agreements  
11 for at least three years.

12 **Q. WHAT CONCERNS DO YOU HAVE ABOUT THE PROPOSED SETTLEMENT'S**  
13 **CONDITION RELATING TO COMMERCIAL AND WHOLESALE**  
14 **AGREEMENTS AND TARIFFS?**

15 A. The biggest problem is the Applicable Time Periods associated with the non-UNE  
16 commercial and wholesale agreements and tariffs. The Applicable Time Period represents  
17 the length of time by which the wholesale agreement will be made available without  
18 termination/grandparenting, changes to terms and conditions, or increases in rates.<sup>26</sup> The

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<sup>25</sup> *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*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113, released June 22, 2010 ("Qwest Phoenix Forbearance Order") at ¶ 96.

<sup>26</sup> The proposed settlement defines the "Extended Time Period" as the unexpired term or for at least the Applicable Time Period, whichever occurs later. Proposed settlement condition 23.

1           Applicable Time Periods in the proposed settlement for the non-UNE offerings are as  
2 follows:

- 3           • Commercial Agreements: at least eighteen months (proposed settlement condition  
4           23b)
- 5           • Wholesale Agreements: at least eighteen months (proposed settlement condition  
6           23c)
- 7           • Tariffs: at least twelve months (proposed settlement condition 23d)

8           These time periods are significantly shorter than the minimum three-year synergy  
9 timeframe, and are also significantly shorter than the minimum three-year Applicable Time  
10 Period associated with interconnection agreement extensions (proposed settlement  
11 condition 23a). These shorter timeframes for non-UNE wholesale agreements place  
12 CLECs who rely on them at a competitive disadvantage relative to other CLECs who  
13 purchase wholesale services as UNEs, and therefore, receive a longer three-year period of  
14 service and rate stability. CLECs should not be discriminated against or penalized because  
15 of their mode of entry. Instead, the commitments related to wholesale service availability  
16 and rate stability should be consistent for all wholesale agreements, whether  
17 interconnection agreements, commercial agreements, wholesale agreements, or tariffed  
18 products.

19           The fact that Joint Applicants have not committed to leave in place commercial and  
20 wholesale agreements and tariffs as long as the agreed-upon three-year interconnection  
21 agreement extension shows that CenturyLink does not intend to provide the needed  
22 stability regarding these non-UNE wholesale services on its own post-merger. It also  
23 confirms that additional commitments are needed, as it signals intent by CenturyLink to

1 eliminate or raise prices for these wholesale services early in the three-to-five year synergy  
2 timeframe.

3 **Q. HOW CAN THE COMMISSION SUPPLEMENT THE CONDITIONS IN THE**  
4 **PROPOSED SETTLEMENT TO ENSURE STABILITY FOR THE NUMEROUS**  
5 **CLECS THAT RELY ON WHOLESALE INPUTS PROVIDED UNDER NON-UNE**  
6 **WHOLESALE COMMERCIAL AND WHOLESALE AGREEMENTS AND**  
7 **TARIFFS?**

8 A. The Commission should condition merger approval on an extension of those agreements  
9 and tariffs, at current prices, for a period that corresponds to the synergy timeframe (see,  
10 Exhibit TG-8, Joint CLEC Conditions 6(a), 7 and 7(a) and definition of “Defined Time  
11 Period”). At an absolute minimum, these agreements and tariffs should be extended for at  
12 least three years following merger closing to match the minimum three-year synergy  
13 timeframe as well as the three-year Applicable Time Period for interconnection  
14 agreements.

15 **Q. MS. STEWART ARGUES THAT DIFFERENT TIME PERIODS ARE**  
16 **REFLECTIVE OF THE RELATIVE AVAILABILITY OF THE UNDERLYING**  
17 **SERVICES, AND MORE COMPETITIVE WHOLESALE SERVICES WARRANT**  
18 **SHORTER EXTENSIONS.<sup>27</sup> IS SHE CORRECT?**

19 A. No. Ms. Stewart provides no support for her claims about the competition for Qwest’s  
20 wholesale services. Just as importantly, she fails to demonstrate how this purported

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<sup>27</sup> Testimony of Karen Stewart in Support of Settlement Agreement on behalf of Qwest, December 1, 2010 (“Stewart Testimony”) at pp. 11-12.

1 competition for non-UNE wholesale agreements warrants an extension only half (or, in the  
2 case of tariffs, one-third) as long as the extension for interconnection agreements. Her  
3 conclusions and assertions have no basis in fact or good public policy.

4 **Q. DID THE FCC REJECT THE SAME ARGUMENT?**

5 A. Yes. Ms. Stewart's argument was recently rejected by the FCC in its order denying  
6 Qwest's petition for forbearance in the Phoenix Arizona MSA. The FCC found: "the  
7 record reveals that no carrier besides Qwest provides meaningful wholesale services  
8 throughout the Phoenix marketplace, and that competitors offering business services  
9 largely must rely on inputs purchased from Qwest itself to provide service."<sup>28</sup> The FCC  
10 also stated: "there is no record evidence of significant competition for the wholesale  
11 products used to serve either mass market or enterprise customers."<sup>29</sup> The "wholesale  
12 services" and "wholesale products" referred to by the FCC include both UNE and non-  
13 UNE wholesale services and products.<sup>30</sup>

14 In addition, the FCC expressly rejected the notion that "incumbent LECs, even if not  
15 required to offer UNEs, would have an incentive 'to make attractive wholesale  
16 offerings.'"<sup>31</sup> In doing so, the FCC concluded that (i) Qwest was still dominant in  
17 wholesale markets and had the incentive and ability to discriminate against CLECs in retail  
18 markets, (ii) Qwest, as a profit-maximizing firm, had the incentive "to exploit its monopoly

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<sup>28</sup> Qwest Phoenix Forbearance Order, ¶ 2. See also, ¶ 49 ("Although Qwest maintains that 'there are numerous options for carriers to purchase 'last mile' wholesale services that allow them to bypass Qwest's network entirely,' we disagree and find instead that, however evaluated, the record in this proceeding reveals a lack of significant wholesale competitors to Qwest in the Phoenix MSA.")

<sup>29</sup> Qwest Phoenix Forbearance Order, ¶ 96.

<sup>30</sup> See, e.g., Qwest Phoenix Forbearance Order, ¶ 68 ("These competitors...rely predominantly upon Qwest facilities, including UNEs *and other wholesale services*, to provide their services.") (emphasis added)

<sup>31</sup> Qwest Phoenix Forbearance Order, ¶ 34.

1 position as a wholesaler and charge supracompetitive rates”; and (iii) there is little if any  
2 evidence that ILECs/BOCs have voluntarily offered wholesale services at competitive  
3 prices once regulatory requirements governing wholesale prices were eliminated.<sup>32</sup> Given  
4 this Qwest dominance as a wholesaler, including dominance over non-UNE wholesale  
5 services, market forces cannot be relied upon to provide the post-merger stability that  
6 CLECs need.

7 **Q. MR. HUNSUCKER STATES THAT NON-UNE AGREEMENTS “ARE SUBJECT**  
8 **TO PRICING BASED ON MARKET FORCES RATHER THAN THE**  
9 **REQUIREMENTS OF SECTION 251.”<sup>33</sup> DOES THIS WARRANT A SHORTER**  
10 **APPLICABLE TIME PERIOD FOR NON-UNE AGREEMENTS COMPARED TO**  
11 **INTERCONNECTION AGREEMENTS?**

12 A. No. As noted above, the FCC has found that market forces are insufficient to control  
13 Qwest’s incentive and ability to discriminate against CLECs. Further, this Commission has  
14 confirmed the FCC’s findings in its comments to the FCC in that same proceeding.<sup>34</sup> What  
15 Mr. Hunsucker is essentially arguing is that the Merged Company should be permitted to  
16 seek rate increases for non-UNE wholesale services before it can seek rate increases for  
17 UNE wholesale services because market forces are supposed to govern non-UNE  
18 wholesale services (as opposed to the FCC’s TELRIC pricing rules that govern UNE  
19 wholesale services). Mr. Hunsucker’s reasoning makes no sense. If market forces were  
20 actually disciplining Qwest’s ability to raise rates for non-UNE wholesale services, then

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<sup>32</sup> Qwest Phoenix Forbearance Order, ¶ 34.

<sup>33</sup> Hunsucker Testimony at p. 16, lines 4-5.

<sup>34</sup> See, LATE FILED REPLY COMMENTS OF THE ARIZONA CORPORATION COMMISSION, dated March 2, 2010, at pp. 9-11.

1 prices for these services would be driven *closer to* their underlying cost, and there would be  
2 no need for Qwest to seek increases in these rates which already greatly exceed underlying  
3 cost. Nothing in the Joint CLEC proposed conditions would prevent the Merged Company  
4 from seeking rate reductions for these non-UNE wholesale services in response to  
5 competitive pressures.<sup>35</sup> The fact that Joint Applicants have signaled a desire to raise rates  
6 for these non-UNE wholesale services after 18 months shows that market forces are not  
7 sufficiently disciplining these prices and that the conditions in the proposed settlement need  
8 supplemented to lengthen the Applicable Time Periods for non-UNE wholesale  
9 agreements.

10 **Q. MR. HUNSUCKER STATES THAT SERVICES PROVIDED UNDER NON-UNE**  
11 **AGREEMENTS “ARE CONSIDERED AVAILABLE FROM MULTIPLE**  
12 **SOURCES...”<sup>36</sup> DO YOU AGREE?**

13 A. No. Mr. Hunsucker apparently assumes that when a “non impairment” finding is made and  
14 a particular wholesale input is no longer required to be provided as an UNE pursuant to  
15 Section 251 of the Act, alternative sources for these wholesale inputs besides Qwest are  
16 reasonably available to CLECs. This is not the case. Non-impairment designations are  
17 based on *inferences of actual or potential* competition, not on a finding that CLECs

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<sup>35</sup> Mr. Hunsucker states that “...CLECs do have competitive alternatives in the market place, and as a result the post-merger company will need to be able to respond quickly to changes in the market place. These changes include competitive price changes, the types of services being purchased...and the need to respond more quickly to a new competitor in the market place.” Hunsucker Testimony at pp. 17-18. There is nothing in the Joint CLECs’ proposed conditions that would restrict the Merged Company’s ability to decrease prices or introduce new wholesale services in response to competition. The only conclusion that can be drawn from this is that the Joint Applicants opposition to the Joint CLECs’ proposed conditions stems from the limitations on increasing rates and eliminating wholesale services. However, increased competition should result in lower prices and more options, not higher prices and fewer options. As such, Mr. Hunsucker’s suggestion that the Joint CLECs’ proposed conditions would somehow harm Qwest’s ability to compete makes no sense.

<sup>36</sup> Hunsucker Testimony at p. 16, lines 2-3.



1 actually have adequate alternatives to Qwest for essential wholesale facilities.<sup>37</sup> By way of  
2 example, there are currently two wire centers in Phoenix in which DS3 loops have been  
3 deemed “non-impaired” since March 2005.<sup>38</sup> However, after conducting a thorough fact-  
4 finding analysis in the Phoenix Arizona MSA, the FCC concluded in June 2010 (more than  
5 five years after the DS3 loop non-impairment determination) that no other carrier besides  
6 Qwest provides meaningful wholesale services.

7 **Q. DO YOU HAVE OTHER CONCERNS ABOUT THE SHORTER APPLICABLE**  
8 **TIME PERIODS FOR NON-UNE OFFERINGS?**

9 A. Yes. I have concerns about impacts to CLECs who operate under a Regional Commitment  
10 Program (“RCP”). The RCP is an optional pricing plan that allows DS1 and/or DS3  
11 customers to receive discounted rates for committing to a minimum monthly recurring  
12 revenue on DS1 and/or DS3 circuits for a 48-month term. On June 1, 2010 (after the  
13 proposed transaction was announced), Qwest grandfathered its then-existing RCP  
14 (effective May 31, 2010) and introduced a new RCP that substantially reduced the  
15 discounts previously available under the RCP, and in turn, increased the cost for CLECs  
16 who purchase special access facilities under the RCP. Tw telecom currently purchases  
17 special access facilities from Qwest under a RCP Agreement, and has estimated that its

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<sup>37</sup> *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290, February 4, 2005 (“Triennial Review Remand Order”) at ¶¶ 41-45 and 88. As the FCC stated, non-impairment rests on the FCC’s “exercise of discretion to use *reasonable inferences* instead of fact-specific proceedings...” (Emphasis added).

<sup>38</sup> <http://www.qwest.com/wholesale/clecs/nta.html>

1 special access costs will increase 22% absent the extension of non-UNE wholesale  
2 agreements it is requesting as part of the Joint CLEC merger conditions.<sup>39</sup>

3 Under the proposed settlement, the Joint Applicants have agreed to extend RCP  
4 Agreements in effect on the merger closing date by 12 months beyond the expiration of the  
5 then existing term. This condition is apparently based on the identical condition 3(d)(i)  
6 from the Integra Settlement. The twelve month extension may provide sufficient price  
7 stability for a CLEC such as Integra and others that have RCP Agreements set to expire in  
8 2013 or later. That is, by extending their RCP Agreements by an additional year as  
9 provided in the Integra Settlement, those CLECs will effectively cap the rates they pay for  
10 their special access services for at least the minimum three-year synergy period. However,  
11 CLECs such as tw telecom with RCP Agreements that expire sooner,<sup>40</sup> will be at a  
12 disadvantage since they will be forced onto the higher effective RCP rates well before other  
13 CLECs. The result of the Joint Applicants' commitment is that some CLECs will receive  
14 less rate stability than others, and some CLECs will be forced to pay higher prices than  
15 others depending on when their RCP Agreements are due to expire. Such disparate  
16 treatment of CLECs by operation of the proposed settlement will harm the efficient  
17 operation of the market by systematically identifying winners and losers based on an  
18 expiration date in an agreement instead of on a company's ability to efficiently compete in  
19 the market.

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<sup>39</sup> Affidavit of Pamela Sherwood on behalf of tw telecom, Minnesota Docket No. P-421, et al./PA-10-456, November 24, 2010, p. 4.

<sup>40</sup> tw telecom has a RCP Agreement with Qwest that is set to expire in June 2011.

1 **Q. DO YOU HAVE OTHER CONCERNS ABOUT THE PROPOSED SETTLEMENT**  
2 **AS IT RELATES TO RCP AGREEMENTS?**

3 A. Yes. Proposed settlement condition 23(d)(i) states that term and volume discount plans  
4 “offered by Qwest as of the Closing Date” will be extended by twelve months beyond the  
5 expiration date of the then existing term (unless the CLEC opts out). The phrase “offered  
6 by Qwest as of the Closing Date” presents a problem for CLECs who rely on RCP  
7 Agreements. As explained above, Qwest grandfathered RCP in June 2010, and replaced it  
8 with a new RCP that would result in significantly higher costs for CLECs. Qwest is now  
9 arguing that the existing RCP Agreements with CLECs (which are based on the now-  
10 grandfathered RCP) are no longer “offered by Qwest as of the Closing Date,” so the  
11 CLECs’ current RCP Agreements are not eligible for extension.<sup>41</sup> Based on Qwest’s  
12 position, there would be absolutely no extension for CLECs’ existing RCP Agreements  
13 under the merger conditions of the proposed settlement.

14 Likewise, if a CLEC’s existing RCP Agreement expires before the Closing Date, the CLEC  
15 would be unable to extend its existing RCP Agreement with Qwest and be forced on to the  
16 new RCP that increases the CLEC’s costs and negatively impacts its ability to compete.  
17 Because tw telecom’s RCP Agreement with Qwest expires in June 2011, it would not be  
18 eligible for extension if the transaction closes after that date.

19 The bottom line is that Qwest should not be allowed to eliminate and raise prices for  
20 wholesales services while the proposed transaction is being reviewed, and then tie critical

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<sup>41</sup> Stewart Testimony at p. 12, lines 17-21. Ms. Stewart’s argument is flawed because so long as a CLEC’s existing RCP Agreement expires after the Closing Date, the now-grandfathered RCP would be “offered by Qwest as of the Closing Date” via existing RCP Agreements.

1 merger commitments to the merger closing date in order to lock in the higher prices and  
2 fewer services going-forward. Such an outcome undermines the effectiveness of the  
3 merger commitments as well as the public interest.

4 **Q. HOW CAN THE PROPOSED SETTLEMENT BE SUPPLEMENTED TO**  
5 **ADDRESS THE PROBLEM ABOUT EXTENDING RCP AGREEMENTS?**

6 A. In addition to extending them for a minimum period of three years, the extension should  
7 apply to the agreements in place as of the merger filing,<sup>42</sup> or at least the agreements in  
8 effect at the end of the current year to provide the price stability that CLECs need.

9 **Q. DO THE JOINT CLECS' PROPOSED ADDITIONAL CONDITIONS REQUIRE**  
10 **AN ARIZONA SPECIFIC BREAKOUT, MODIFICATIONS TO QWEST'S**  
11 **FEDERAL TARIFF TO MEET THE NEEDS OF A SPECIFIC CLEC, OR**  
12 **MODIFICATIONS TO THE CLEC'S EXISTING RCP PLANS, AS MS. STEWART**  
13 **SUGGESTS?<sup>43</sup>**

14 A. No. It simply requires the extension of a CLEC's existing RCP Agreement – an offering  
15 that was still tariffed when the merger was announced and will still be available (at least to  
16 some CLECs) on the merger closing date if approved.

17  

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<sup>42</sup> Joint CLEC proposed condition 1 states that “[a]ny 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.”

<sup>43</sup> Stewart Testimony at p. 13.

1 **Q. MS. STEWART STATES THAT ADDRESSING THE “GAP AGREEMENTS” – OR**  
2 **AGREEMENTS THAT WILL EXPIRE IN THE TIME PERIOD BEFORE**  
3 **MERGER CLOSING – IN THE PROPOSED SETTLEMENT IS**  
4 **INAPPROPRIATE.<sup>44</sup> PLEASE RESPOND.**

5 A. Ms. Stewart states that addressing so-called “gap agreements” would “leverage merger  
6 conditions – not forward onto the new owner – but backwards onto Qwest...” and “dictate  
7 the rates, terms and conditions that Qwest offers now, before the merger closes.”<sup>45</sup> Ms.  
8 Stewart also states that proposed merger has no relationship to the gap agreements because  
9 expiration and renewal of the wholesale agreements will occur independent of the  
10 merger.<sup>46</sup> Following Ms. Stewart’s argument to its logical conclusion, some CLECs are  
11 entitled to no protection (or less protection than other CLECs) from merger-related harm  
12 just depending on whether the arbitrary expiration date in the CLEC’s agreement with  
13 Qwest is before or after the arbitrary (and unknown) merger closing date. This is patently  
14 unfair, produces unreasonable results, significantly reduces the effectiveness of the  
15 commitments in the proposed settlement and provides competitive advantages to some  
16 CLECs over others. All CLECs should be entitled to the protections of merger  
17 commitments regardless of when they executed their wholesale services agreement with  
18 Qwest and regardless of the date on which the merger may close.

19 In addition, Ms. Stewart’s claim that addressing the so-called “gap agreements” would  
20 leverage merger conditions backwards onto Qwest is false and misleading. Qwest is

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<sup>44</sup> Stewart Testimony at pp. 9-10.

<sup>45</sup> Stewart Testimony at p. 10, lines 12-17.

<sup>46</sup> Stewart Testimony at p. 10, lines 3-10.

1 required to fulfill the obligations under these agreements today (or at least were when  
2 Qwest decided to merge with CenturyLink) and extending those agreements as a  
3 commitment of merger approval does not confer any new or different obligations on  
4 Qwest. Instead, this would extend those existing obligations to provide a degree of  
5 certainty and stability to wholesale customers while Qwest and CenturyLink are focused on  
6 combining their companies and achieving synergy savings. And contrary to Ms. Stewart's  
7 claim, none of the merger commitments apply to pre-merger Qwest or dictate the rates,  
8 terms and conditions Qwest offers before the merger closes. In fact, the merger  
9 commitments would not go into effect unless and until the merger is closed and Qwest is  
10 acquired by CenturyLink.<sup>47</sup>

11 To Ms. Stewart's point that "gap agreements" should not be addressed by the merger  
12 commitments because expiration and renewal of the wholesale agreements will occur  
13 independent of the merger, the same could be said for any other wholesale agreement  
14 between Qwest and a CLEC. The only difference is that the so-called "gap agreements"  
15 coincidentally expire during the window between the date the Joint Applicants decided to  
16 announce the proposed merger and the date the Joint Applicants decide to close the merger  
17 (assuming it is approved). CLECs have no control over these timeframes and should not be  
18 penalized for the unfortunate coincidence of their agreement expiring during this window  
19 of time.

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<sup>47</sup> Proposed settlement at p. 2 ("the conditions contained in Attachment 1 of the Agreement shall not become effective unless and until the transaction closes. If the transaction does not close, this Agreement is null and void.")

1 Q. PROPOSED SETTLEMENT CONDITIONS 23(b)(ii) AND 23(c)(ii) STATE THAT  
2 IF THE MERGED COMPANY WITHDRAWS A NON-UNE AGREEMENT  
3 AFTER THE 18 MONTH APPLICABLE TIME PERIOD, THE AGREEMENT  
4 WILL REMAIN AVAILABLE FOR AN ADDITIONAL 18 MONTH PERIOD ON A  
5 GRANDPARENTED BASIS TO SERVE EMBEDDED BASE CUSTOMERS  
6 CURRENTLY SERVED BY THE AGREEMENT AND SUBJECT TO RATE  
7 CHANGES. DOES THIS ADDITIONAL 18 MONTH TIME PERIOD PROVIDE  
8 ANY DEGREE OF CERTAINTY OR STABILITY?

9 A. No. These provisions are inadequate for numerous reasons. First, the lack of a price cap  
10 for the additional 18 month time period fails to provide any stability about the price CLECs  
11 will pay for these wholesale services. This renders the commitment essentially  
12 meaningless because Qwest could simply price the wholesale service at a level that makes  
13 using it uneconomic for CLECs. It is irrelevant that the wholesale service is “offered” if  
14 the Merged Company sets the price so high that CLECs cannot use it to serve retail  
15 customers as they do today. The FCC concluded in the *Qwest Phoenix Forbearance*  
16 *Order*: “there is little evidence, either in the record or of which we otherwise are aware,  
17 that the BOCs or incumbent LECs have voluntarily offered wholesale services at  
18 competitive prices once regulatory requirements governing wholesale prices are  
19 eliminated.”<sup>48</sup> Based on this conclusion, it is likely that the Merged Company will seek  
20 rate increases for these wholesale services immediately following the initial 18 month time  
21 frame as part of its merger integration efforts.

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<sup>48</sup> Qwest Phoenix Forbearance Order, ¶ 34.

1 Second, limiting the availability of wholesale services to a CLEC's embedded base being  
2 served by the agreement prevents CLECs from using the non-UNE wholesale services to  
3 expand their business and add new customers. This would have a chilling effect on the  
4 ability of CLECs to compete with Qwest using these wholesale services going forward.

5 Third, limiting the availability of wholesale services to a CLEC's embedded base being  
6 served by the agreement effectively eliminates these wholesale services as a replacement to  
7 UNEs if/when UNEs are no longer available due to non-impairment designations.

8 **Q. WOULD THE JOINT APPLICANTS BE HARMED BY EXTENDING THE**  
9 **COMMERCIAL AND WHOLESALE AGREEMENTS AND TARIFFS AT**  
10 **CURRENT RATES FOR THE TIME PERIOD PROPOSED BY THE JOINT**  
11 **CLECS?**

12 A. No. The rates under the non-UNE wholesale agreements are already substantially higher  
13 than the UNE rates set by the Commission for those same wholesale facilities. For  
14 instance, for dark fiber the commercial rate is generally 15 to 20 times higher than the UNE  
15 dark fiber rate set by the state commissions. Likewise, the most heavily discounted special  
16 access rate for a DS1 loop under Qwest's RCP is about 130% higher than the UNE price  
17 for the same facility. In addition, these wholesale rates were set by Qwest unilaterally  
18 without any negotiation or input from CLECs. The Joint Applicants have provided no  
19 reason why the rates for non-UNE wholesale services should be increased even higher  
20 above their underlying cost, particularly at the same time the Merged Company will be  
21 pursuing merger-related synergy savings.



1 **Q. PLEASE SUMMARIZE YOUR POSITION ON THE INADEQUACIES OF THE**  
2 **PROPOSED SETTLEMENT REGARDING NON-UNE COMMERCIAL AND**  
3 **WHOLESALE AGREEMENTS AND TARIFFS.**

4 A. To avoid the unreasonable and discriminatory effects described above, the proposed merger  
5 requires additional conditions under which the Joint Applicants are required to extend  
6 current commercial and wholesale agreements and tariffs, at current prices for the time  
7 period proposed in the Joint CLECs' proposed conditions (and under no circumstance less  
8 than at least three years following merger closing). To keep Qwest from watering down  
9 these commitments while the merger is being reviewed, the commitments should also make  
10 clear that the extension should apply to the agreements in place as of the merger filing (or  
11 at least the agreements in effect at the end of the current year).

12 *D. Joint Applicants have not made sufficient commitments to overcome concerns*  
13 *about merger-related harm to wholesale service quality.*

14 **Q. PROPOSED SETTLEMENT CONDITION 20 ADDRESSES WHOLESALE**  
15 **SERVICE QUALITY. DOES THIS CONDITION PROVIDE ADEQUATE**  
16 **INCENTIVES TO THE MERGED COMPANY TO MAINTAIN WHOLESALE**  
17 **SERVICE QUALITY POST-MERGER AND NOT ALLOW IT TO DEGRADE AS**  
18 **A RESULT OF INTEGRATION EFFORTS?**

19 A. No. The most important shortcoming in this regard is that the proposed settlement fails to  
20 include the Joint CLECs' proposed Condition 4(a) under which an "Additional PAP" or  
21 "APAP" would apply if the Merged Company failed to provide wholesale service quality at  
22 levels Qwest provided prior to the merger. The APAP is a minimum five year performance

1 assurance plan applicable to the legacy Qwest ILEC territory which would compare the  
2 Merged Company's monthly performance with the Qwest performance that existed in the  
3 twelve months prior to the merger filing date. This comparison would be made using the  
4 current Arizona Performance Indicators ("PIDs"), products and disaggregation, as well as  
5 the same statistical methodology that exists in the Qwest Arizona Performance Assurance  
6 ("QPAP") to determine whether a statistically significant deterioration in performance  
7 exists. Whereas the current QPAP compares wholesale service quality to retail service  
8 quality to determine whether Qwest is providing nondiscriminatory access, the APAP  
9 compares pre-merger wholesale service quality to post-merger wholesale service quality to  
10 determine whether there has been merger-related deterioration in wholesale service quality.  
11 The APAP is intended to provide the proper incentives to the Merged Company not to  
12 pursue synergy savings at the expense of its wholesale customers.

13 **Q. IS THE PURPOSE OF THE APAP TO INCREASE SERVICE QUALITY POST**  
14 **MERGER?**

15 A. No. The purpose of the APAP is to simply maintain the service quality that existed prior to  
16 the merger. In other words, the APAP exists only to provide the proper incentives for the  
17 merged company to not degrade service post merger – a function that the current QPAP  
18 does not provide. The fact that the Joint Applicant's are so adamantly opposed to the  
19 APAP signals their apparent belief that wholesale service quality will be degraded post  
20 merger. The Commission should create proper incentives regardless of the Merged  
21 Company's opposition to this reasonable approach.

1 **Q. THE PROPOSED SETTLEMENT WOULD PREVENT THE MERGED COMPANY**  
2 **FROM ELIMINATING OR WITHDRAWING THE QPAP FOR AT LEAST**  
3 **THREE YEARS AFTER THE MERGER CLOSING DATE.<sup>49</sup> WHY IS THIS**  
4 **INADEQUATE?**

5 A. The QPAP does not (and would not) identify or rectify merger-related harm to wholesale  
6 service quality. The QPAP was designed to capture discriminatory treatment, not merger-  
7 related service quality deterioration, and as such, the QPAP compares *wholesale* service  
8 quality to *retail* service quality. This comparison would not capture or address  
9 deterioration in wholesale service quality related to the merger, particularly if both retail  
10 and wholesale service quality deteriorated post-merger. To properly capture merger-  
11 related deterioration in wholesale service quality, pre-merger wholesale service quality  
12 must be compared to post-merger wholesale service quality, as the APAP does. Moreover,  
13 the APAP provides financial incentives in the form of APAP remedy payments for merger-  
14 related wholesale service quality deterioration. These remedies would provide the  
15 necessary incentives to the Merged Company to not pursue merger savings at the expense  
16 of wholesale service quality or pay current QPAP remedies as a cost of doing business.<sup>50</sup>  
17 These remedies would also provide incentives to the Merged Company to move quickly to  
18 resolve wholesale service quality problems if/when they occur during integration so as to  
19 limit the resulting harmful effects on CLECs and end user customers.

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<sup>49</sup> Proposed settlement condition 20a.

<sup>50</sup> Qwest has testified that its total QPAP remedy payment for Arizona in 2009 was about \$100,000. Williams Rebuttal at p. 20, lines 3-5. This amounts to 0.016% of the \$625 million in annual synergy savings anticipated by the Joint Applicants.

1 **Q. DOES THE PROPOSED SETTLEMENT CONTAIN SUFFICIENT PROVISIONS**  
2 **FOR IDENTIFYING MERGER-RELATED WHOLESALE SERVICE QUALITY**  
3 **DETERIORATION?**

4 A. No. Proposed settlement condition 20(a)(i) contains a provision that would track the  
5 Merged Company's post-merger wholesale service quality to CLECs. However, unlike  
6 Joint CLEC condition 4(b) that requires the Merged Company to maintain the average  
7 wholesale service quality provided by Qwest to CLEC for 12 months prior to the merger  
8 filing date, the proposed settlement agreement established the benchmark on a rolling  
9 average tied to the merger closing date. Due to the rolling average relied upon by the  
10 proposed settlement, over time the Merged Company will no longer be comparing pre-  
11 merger wholesale service quality to post-merger wholesale service quality (which is the  
12 relevant comparison for identifying merger-related harm to wholesale service quality). For  
13 example, after the first three months following merger closing date, each successive month  
14 of Qwest's *post-merger* performance will be added to the average performance, and  
15 beginning one year after the closing date Qwest's performance will be measured by a  
16 rolling twelve month average of Qwest's *post-merger* performance. Therefore, the only  
17 time period during which this commitment would compare Qwest's pre-merger wholesale  
18 service quality to Qwest's post-merger wholesale service quality is the first three months  
19 following the closing date.

20

1 **Q. DOES THE PROPOSED SETTLEMENT CONTAIN SUFFICIENT INCENTIVES**  
2 **FOR THE MERGED COMPANY TO QUICKLY AND EFFICIENTLY RESOLVE**  
3 **WHOLESALE SERVICE QUALITY DETERIORATION IF/WHEN IT OCCURS**  
4 **POST-MERGER?**

5 A. No. Proposed settlement condition 20(b) contains a provision that would require the  
6 Merged Company to perform a root cause analysis of a post-merger wholesale service  
7 quality deterioration and propose a plan for resolving each deficiency with thirty days.  
8 This condition also allows CLECs to invoke the root cause procedures and to seek  
9 resolution at the state commission if the problem is not resolved (subject to a potential  
10 opposition from the Merged Company). This is insufficient. Because deteriorating  
11 wholesale service quality post-merger will negatively impact CLECs and their end user  
12 customers, it is imperative that proper incentives be in place for the Merged Company not  
13 to allow this deterioration *before* the proposed transaction is approved so that the Merged  
14 Company is aware of its obligations as it begins to integrate the two companies and  
15 eliminate duplicative functions and systems. In addition, the incentives should be self-  
16 effectuating so that if/when post-merger wholesale service quality deterioration occurs, the  
17 Merged Company's incentives to resolve these problems are triggered immediately and  
18 without the need for additional litigation and disputes. The root cause provision that  
19 requires the Merged Company to determine why service quality problems are occurring  
20 and to develop a plan to rectify them is little comfort to CLECs and their end users who  
21 will be experiencing service-affecting problems and disruptions. And because the  
22 provision would give the Merged Company thirty days to develop a root cause analysis and  
23 would allow the Merged Company to oppose a CLEC request to resolve wholesale service

1 quality problems before the state commission, it will likely lead to future disputes between  
2 the Merged Company and CLECs, as well as extend the duration of wholesale service  
3 quality problems.

4 It is not in the public interest to approve the merger based on a commitment from the Joint  
5 Applicants to simply look into merger-related wholesale service quality problems as they  
6 occur and propose a plan to fix them; rather, the proposed transaction should not be  
7 approved unless there are sufficient assurances that wholesale service quality deterioration  
8 does not occur in the first place. The Joint Applicants' commitments in the proposed  
9 settlement are inadequate, and should be bolstered by adopting the APAP.

10 *E. Joint Applicants' have not made sufficient commitments regarding non-*  
11 *impairment and forbearance filings.*

12 **Q. IN PROPOSED SETTLEMENT CONDITION 30, THE JOINT APPLICANTS**  
13 **HAVE AGREED NOT TO SEEK TO RECLASSIFY AS "NON-IMPAIRED" ANY**  
14 **QWEST WIRE CENTERS AND NOT TO FILE NEW PETITIONS FOR**  
15 **FORBEARANCE FROM ANY SECTION 251 OR 271 OBLIGATION IN ANY**  
16 **QWEST WIRE CENTERS BEFORE JUNE 1, 2012. IS THE TIME PERIOD OF**  
17 **THIS COMMITMENT ADEQUATE?**

18 **A.** No. While the Joint CLECs agree with moratoriums on non-impairment filings and  
19 petitions for forbearance to address merger-related harm, the time period of proposed  
20 settlement condition 30 is too short and arbitrary. If the proposed transaction is ultimately  
21 approved in the first quarter of 2011 as the Joint Applicants are hoping, the June 1, 2012  
22 expiration date results in an effective moratorium of about 15 months. This falls far short

1 of the three-to-five year time period during which the Joint Applicants will be integrating  
2 the two companies and pursuing merger-related synergy savings. This also falls far short  
3 of the 42 month moratorium adopted by the FCC for the AT&T/BellSouth merger.<sup>51</sup> Also,  
4 to my knowledge, neither Staff nor Joint Applicants have explained any basis for the June  
5 1, 2012, expiration date.

6 Joint CLECs have proposed in Condition 14 that such moratoriums should remain in effect  
7 for the Defined Time Period that corresponds to the synergy timeframe. This time period is  
8 sufficient in length because it covers the synergy timeframe, and is objective because it is  
9 based on the Joint Applicants' own synergy plans.

10 **III. CONCLUSION**

11 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

12 A. The wholesale conditions in the proposed settlement are *inadequate* to address the merger-  
13 related harm posed by the proposed transaction to Joint CLECs, the competitive  
14 marketplace and the public interest. To address these harms, I recommend that the  
15 proposed transaction be denied unless approval is conditioned on each of the Joint CLECs'  
16 proposed conditions set forth in Exhibit TG-8 to my direct testimony. However, if the  
17 Commission is not inclined to require each and every condition proposed by Joint CLECs,  
18 it should, at the very least, require the Joint Applicants to supplement the conditions in the  
19 proposed settlement to resolve its primary shortcomings. Specifically, at a minimum, the

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<sup>51</sup> Exhibit TG-9 at footnote 31.

1 proposed merger should not be approved unless such approval is subject to the following  
2 additions to the proposed settlement:

- 3 1. The Merged Company will use and offer to wholesale customers  
4 the legacy Qwest OSS for at least three years (Joint CLEC  
5 condition 19).
- 6 2. Robust, transparent third party testing will be conducted for any  
7 replacement OSS that replaces a Qwest system that was subject to  
8 third party testing (Joint CLEC condition 19b).
- 9 3. The Applicable Time Periods for non-UNE commercial and  
10 wholesale agreements and tariffs should be the Defined Time  
11 Period initially proposed by Joint CLECs, or at a minimum, three  
12 years.
- 13 4. The extension of non-UNE commercial and wholesale agreements  
14 and tariffs, including term and volume discount plans, should  
15 apply to wholesale agreements in place as of the merger filing date,  
16 or at least in effect as of the end of 2010. As noted in (3) above,  
17 the minimum time period for these agreements should be three  
18 years.
- 19 5. The Additional PAP should apply in addition to the QPAP (Joint  
20 CLEC condition 4a).]
- 21 6. The moratorium on Qwest requests to reclassify as “non-impaired”  
22 wire centers and for forbearance should apply for the Defined  
23 Time Period initially proposed by Joint CLECs (Joint CLEC  
24 condition 14).

25 These remaining issues are merger-related, have not been sufficiently addressed in the  
26 proposed settlement (or the Integra Settlement on which it is based), and are not currently  
27 pending in separate litigation either in the courts or before the Commission.<sup>52</sup> The need for  
28 these additional commitments is supported by the record and critical to the public interest.

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<sup>52</sup> Mr. Campbell states: “At the end of the process, the only items remaining are issues specific to certain CLECs that are either non-merger related, are merger related but have been either (i) addressed in the Integra settlement as well as the Settlement or (ii) these are currently pending in separate litigation either in the courts or before the Commission.” Campbell Testimony at 5, lines 2-6. Mr. Campbell’s claim is not accurate as it relates to the remaining concerns of Joint CLECs.



1 Q. DOES THIS CONCLUDE YOUR TESTIMONY REGARDING THE PROPOSED  
2 SETTLEMENT?

3 A. Yes, it does.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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



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JOINT NOTICE AND APPLICATION OF )	
QWEST CORPORATION, QWEST )	
COMMUNICATIONS COMPANY, LLC, )	
QWEST LD CORP., EMBARQ )	Docket No. T-01051B-10-0194
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. )	

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DIRECT TESTIMONY

OF

DR. AUGUST H. ANKUM

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

September 27, 2010

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**Exhibits**

- Exhibit AA-1 – *Curriculum Vitae* of August H. Ankum, Ph.D.
- Exhibit AA-2 – The Promises vs. Realities of Recent ILEC Mergers and Acquisitions
- Exhibit AA-3 – Discovery Responses Demonstrating the Significant Uncertainty Resulting from the Proposed Transaction
- Exhibit AA-4 – Applicants Claims’ About Alleged Benefits Resulting From the Merger Compared to Their Discovery Responses
- Exhibit AA-5 – Re: Qwest Tariff F.C.C. No. 1 (interstate access tariff) – Qwest’s Product Notification and Integra’s correspondence with Qwest
- Exhibit AA-6 – Integra’s May 13, 2010 Ex Parte filing in FCC WC Dkt. No. 09-95

1       **I.       PROFESSIONAL QUALIFICATIONS**

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

3       A.       My name is August H. Ankum. My business address is QSI Consulting, 150  
4       Cambridge Street, Suite A603, Cambridge, Massachusetts, 02141.

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

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

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

16       A.       I received a Ph.D. in Economics from the University of Texas at Austin in 1992,  
17       an M.A. in Economics from the University of Texas at Austin in 1987, and a B.A.  
18       in Economics from Quincy College, Illinois, in 1982.

19       My professional background covers work experiences in private industry and at  
20       state regulatory agencies. As a consultant, I have worked with large companies,  
21       such as AT&T, AT&T Wireless, Bell Canada and MCI WorldCom ("MCIW"), as

1 well as with smaller carriers, including a variety of competitive local exchange  
2 carriers ("CLECs") and wireless carriers. I have worked on many of the  
3 arbitration proceedings between new entrants and incumbent local exchange  
4 carriers ("ILECs"). Specifically, I have been involved in arbitrations between  
5 new entrants and NYNEX, Bell Atlantic, USWEST, BellSouth, Ameritech, SBC,  
6 GTE and Puerto Rico Telephone. Prior to practicing as a telecommunications  
7 consultant, I worked for MCI Telecommunications Corporation ("MCI") as a  
8 senior economist. At MCI, I provided expert witness testimony and conducted  
9 economic analyses for internal purposes. Before I joined MCI in early 1995, I  
10 worked for Teleport Communications Group, Inc. ("TCG"), as a Manager in the  
11 Regulatory and External Affairs Division. In this capacity, I testified on behalf of  
12 TCG in proceedings concerning local exchange competition issues, such as  
13 Ameritech's Customer First proceeding in Illinois. From 1986 until early 1994, I  
14 was employed as an economist by the Public Utility Commission of Texas  
15 ("PUCT") where I worked on a variety of electric power and telecommunications  
16 issues. During my last year at the PUCT, I held the position of chief economist.  
17 Prior to joining the PUCT, I taught undergraduate courses in economics as an  
18 Assistant Instructor at the University of Texas from 1984 to 1986.

19 A list of proceedings in which I have filed testimony is attached hereto as Exhibit  
20 AA-1.

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

1 A. Yes. I have been involved in telecommunications since 1988, and over the course  
2 of my career, I have worked and testified on virtually all issues pertaining to the  
3 regulation of incumbent local exchange companies, including those governing  
4 their wholesale relationship with dependent competitors, such as competitive local  
5 exchange carriers (“CLECs”). I have also worked on numerous proceedings  
6 involving competitive and market dominance issues, including those pertaining to  
7 the FCC’s triennial review cases and merger analyses.

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

9 A. My testimony is being filed on behalf of a number of CLECs: Eschelon Telecom  
10 of Arizona, Inc., Electric Lightwave, LLC, Mountain Telecommunications of  
11 Arizona, Inc. d/b/a Integra Telecom; tw telecom of arizona llc; Level 3  
12 Communications, LLC; and McLeodUSA Telecommunications Services, Inc.  
13 d/b/a PAETEC Business Services (collectively referred to in my testimony as  
14 “Joint CLECs”).

15 **II. PURPOSE AND SUMMARY**

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

17 A. The purpose of my testimony is to evaluate whether the proposed merger between  
18 CenturyLink<sup>1</sup> and Qwest is in the public interest.

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<sup>1</sup> I will use CenturyLink (as opposed to CenturyTel) to refer to the company seeking to acquire Qwest, unless referring specifically to the legacy CenturyTel company that existed prior to the merger with Embarq. When referring to both CenturyLink and Qwest in the context of the proposed merger, I will use the term “the Companies” or “the Applicants.”

1 Having reviewed the companies' Arizona Joint Application,<sup>2</sup> supporting  
2 testimony and data request responses, I believe it is not. As I will demonstrate,  
3 the proposed transaction should either be rejected *in total* or in the alternative,  
4 approved only if and when the Commission has imposed firm, specific, and  
5 enforceable conditions on CenturyLink and Qwest (hereafter "the Joint  
6 Applicants" or "the Companies") in order to safeguard the state of competition  
7 and wholesale customers.

8 **Q. PLEASE SUMMARIZE YOUR FINDINGS AND RECOMMENDATIONS.**

9 A. As discussed herein, and in the testimony of my colleague Mr. Timothy Gates, the  
10 information provided by CenturyLink and Qwest is inadequate to demonstrate  
11 that the proposed transaction is in the public interest. Moreover, the information  
12 indicates that the proposed transaction would post a serious risk to wholesale  
13 customers, such as CLECs, when CenturyLink and Qwest seek to integrate their  
14 two companies post-merger. The proposed transaction will potentially jeopardize  
15 the viability of CLECs and will likely harm competition in Arizona.

16 Specifically, my testimony will discuss the following:

- 17
- The economic incentives underlying mergers.
  - A brief overview of past mergers in the telecommunications industry,  
18 demonstrating a troublesome history of mergers and the likelihood of failure.  
19

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<sup>2</sup> Arizona telephone operating subsidiaries of Qwest Communications International, Inc. ("QCII") Qwest Corporation ("QC"), Qwest Communications Company LLC ("QCC"), and Qwest LD Corp., ("QLDC") (collectively "Qwest") and the Arizona telephone operating subsidiaries of CenturyTel, Inc. ("CenturyLink"), Embarq Communications, Inc. d/b/a CenturyLink Communications, Embarq Payphone Services, Inc. d/b/a CenturyLink, and CenturyTel Solutions, LLC, (collectively "CenturyLink"), Joint Notice and Application for Expedited Approval of Proposed Merger, filed May 13, 2010 ("Arizona Joint Application").



- 1 • The potential harm and absence of any public benefit from the proposed  
2 transaction.
- 3 • The need for conditions and commitments to prevent or mitigate the risk of  
4 harm to competition resulting from the proposed transaction and ensure that  
5 the merger is in the public interest.
- 6 • Some specific conditions and commitments that should be required of  
7 CenturyLink and Qwest as prerequisites for approving the merger. (A  
8 complete list is provided by Mr. Gates.)

9 **Q. DO YOU HAVE SOME PRELIMINARY OBSERVATIONS REGARDING**  
10 **THE PROPOSED TRANSACTION?**

11 A. Yes. Mergers are often seen as a means of expeditiously growing a company, not  
12 organically (through competitive success and customer acquisitions with superior  
13 product offerings), but by means of a short cut: by buying another company and  
14 its products and customers. While proposed mergers are invariably touted by the  
15 merging companies as generating significant benefits, through potential synergies,  
16 increased economies of scale and scope, etc., in practice, it is very difficult to  
17 predict which mergers will be successful and which ones will not. An interesting,  
18 in retrospect ironic, example of supposed experts misjudging mergers is found in  
19 an issue of the *Harvard Business Review* dedicated to mergers and acquisitions,  
20 which published the minutes of a roundtable discussion on the resurgence of  
21 mergers and acquisitions in the late nineties as follows:<sup>3</sup>

22 **Moderator:** The announcement in January of the merger between  
23 *America Online* and *Time Warner* marked the convergence of the two  
24 most important business trends of the last five years: the rise of the  
25 internet and the resurgence of mergers and acquisitions. [...]  
26

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<sup>3</sup> Dennis Carey, "Lessons from Master Acquirers: A CEO Roundtable on Making Mergers Succeed," *Harvard Business Review on Mergers and Acquisitions*, 2001, at pp. 2-3.

1           **Moderator:** I'm sure some of you are familiar with the studies  
2 suggesting that most mergers and acquisitions do not pan out as well  
3 as expected. Has that been your experience...Are mergers and  
4 acquisitions worth it?  
5

6           **Participant:** I would take issue with the idea that most mergers end up  
7 being failures. I know there are studies from the 1970's and '80's that  
8 will tell you that. But when I look at many companies today – in  
9 particular new economy companies like *Cisco* and *WorldCom* – I have  
10 a hard time dismissing the strategic power of M&A.

11           Rather than illustrate the success of mergers, the examples cited in this discussion  
12 show the opposite. Of the three companies mentioned (AOL/Time Warner,  
13 Cisco, and WorldCom), two were brought down by failed mergers, while the  
14 third, Cisco, is still prospering after its mergers, putting the failure rate of mergers  
15 at two out of three, which is about where the academic literature puts it.<sup>4</sup>

16       **Q.    ARE YOU SAYING THAT MERGERS ARE UNDESIRABLE?**

17       **A.**    No. Mergers and acquisitions may spawn innovative and profitable companies.  
18           At issue in this case, however, is the merit of the *instant transaction*, and an  
19           examination of past mergers and their failures (discussed below) should alert the  
20           Commission to various pitfalls of mergers and underscore the importance of  
21           carefully examining the impact of the proposed merger on all affected parties,  
22           including competitive carriers and their end-user customers. As discussed below,

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<sup>4</sup> This observation is found in many publications. See for example: Richard Dobbs, Marc Goedhart, and Hannu Suonio, "Are Companies Getting Better at Mergers and Acquisitions," *McKinsey Quarterly*, December 2006, at p. 1: "McKinsey research shows that as many as two-thirds of all transactions failed to create value for the acquirers"; Cartwright, Sue and Cooper, Cary, *Managing Mergers, Acquisitions & Strategic Alliances*, Butterworth-Heinemann, reprinted 2001, Section 3, Mergers and Acquisition Performance – a Disappointing History, discusses a number of studies, in line with the McKinsey studies; Pritchett, Price, After the Merger, *The Authoritative Guide for Integration Success*, McGraw-Hill, 1997, Chapter 1, Section Statistics on Merger Success and Failure, sets the failure rate at between 50% and 60%.

1 this merger raises serious public interest concerns that need to be weighed  
2 carefully against the backdrop of general merger risks and past merger failures.

3 **Q. DO MERGERS OF ILECS RAISE UNIQUE ISSUES, NOT NECESSARILY**  
4 **RELEVANT TO MERGERS BETWEEN OTHER TYPES OF**  
5 **COMPANIES?**

6 A. Yes. A merger involving a large ILEC such as Qwest touches on many public  
7 interest issues, particularly the public's interest in local exchange competition. To  
8 appreciate the public interest stake in this merger, it is important to recall the  
9 starting points of the ILECs' network investments.

10 Until the early 1990s, ILECs had a government-sanctioned monopoly to provide  
11 local services to captive ratepayers. In exchange, ILECs operated in a rate-  
12 regulated environment. Rate regulation meant that if an ILEC had increased  
13 operating costs, or was required to invest new capital to build out local  
14 infrastructure (*e.g.*, middle-mile or last-mile loop facilities), the ILEC had the  
15 ability to pass along those increased capital or operating costs by securing a rate  
16 increase from the state regulators. Those regulated rates provided for a rate of  
17 return that the ILEC was permitted to earn. Of course, ILECs often earned more  
18 than their authorized rate of return, and sometimes they earned less (which meant  
19 the ILEC was entitled to pursue higher rates). Not only was the ILEC able to  
20 secure rate increases when it proved its case to regulators, its monopoly status  
21 then assured it that every business and residential customer in its local exchange  
22 market would pay those regulated rates to obtain local service. Some states

1 provided an alternative form of regulation, but the bottom line was that the ILEC  
2 had certainty that its Commission-approved rates would be paid by all its  
3 customers subscribing to local services. Thus, a material portion of the ILEC  
4 infrastructure in place today, especially the local loop infrastructure, was built  
5 when the ILEC was guaranteed that the cost of its investment would be paid for  
6 by captive customers through regulated rates that included an appropriate rate of  
7 return. That monopoly environment with its guarantees of an adequate rate of  
8 return is in stark contrast to the current competitive environment in which CLECs  
9 must compete for every customer. The Telecommunications Act of 1996 resulted  
10 in CLEC entry into local exchange markets under provisions allowing them to use  
11 portions of the ILECs' networks and services, generally at TELRIC rates. This  
12 mandate allowing CLEC access to ILEC networks has created competition where  
13 none existed prior to 1996. However, a merger, such as the one proposed in the  
14 instant proceeding, could upset the wholesale relationship between ILEC and  
15 CLECs, and harm competition in Arizona. Without reasonable, reliable and  
16 nondiscriminatory access to Qwest's and CenturyLink's networks, CLECs cannot  
17 get access to customers. As a result, an ILEC merger like the one between  
18 CenturyLink and Qwest in this case has unique and profound public interest  
19 implications not present in mergers in other industries or between two CLECs.

20 **Q. DO CLECS DIFFER FROM OTHER AT-RISK STAKEHOLDERS IN THE**  
21 **PROPOSED MERGER?**

22 A. Yes. An examination of past telecom mergers teaches us that the risks and gains  
23 of a merger are not evenly distributed among all stakeholders. (Indeed, seven

1 Qwest executives stand to gain personally more than \$110 million in cash and  
2 stock if the merger is consummated.)<sup>5</sup>

3 CenturyLink's and Qwest's shareholders, for example, can sell their shares if they  
4 anticipate that things will go awry, or, alternatively, hold on to their shares to reap  
5 whatever benefits they may anticipate: it is a risk-return tradeoff each shareholder  
6 is free to either assume or walk away from. However, this freedom of choice  
7 does not exist for other, captive stakeholders. Specifically, retail customers in  
8 captive segments of retail markets have little or no choice and neither do  
9 wholesale customers, such as CLECs, who critically depend on CenturyLink and  
10 Qwest for loops, transport, collocation and a variety of other wholesale network  
11 inputs. That is, captive retail and wholesale customers will not only reap *no gains*  
12 if the proposed transaction is successful, they may experience great harm when  
13 things go awry (as they have in so many of these ventures). This asymmetry in  
14 the risk-return profiles between various stakeholders is profound. Hence, the  
15 need for a regulatory review process to determine whether the proposed  
16 transaction is in the interest of *all* stakeholders.

17 **Q. IS THERE A DIVERGENCE BETWEEN A PUBLIC INTEREST**  
18 **ANALYSIS AND THE PRIVATE RISK-RETURN ANALYSIS GUIDING**  
19 **CENTURYLINK AND QWEST?**

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5 The Denver Post has reported that “[s]even top executives at Qwest stand to reap more than *\$110 million in cash and stock* from the Denver-based company's proposed merger with CenturyLink, according to a new regulatory filing.” See, “Windfall for Qwest Top Execs,” by Andy Vuong, *The DenverPost*, 7/18/2010, at [http://www.denverpost.com/search/ci\\_15536725](http://www.denverpost.com/search/ci_15536725) (emphasis added).

1 A. Yes. CenturyLink and Qwest need only consider their private risk-return trade-  
2 offs. In contrast, the Commission must consider the broader public interest,  
3 including the transaction's potential impact on other stakeholders who will likely  
4 not benefit from the proposed transaction, but may be harmed. Naturally, this is a  
5 broader analysis, and less likely to result in a finding that the proposed transaction  
6 should be permitted to move forward as proposed.

7 **Q. ARE THERE ASPECTS TO THIS MERGER THAT ARE**  
8 **PARTICULARLY TROUBLING?**

9 A. Yes. I have already noted that most mergers are not successful, even as measured  
10 by the ultimate impact of the merger on shareholders. Yet more troubling in this  
11 case is the fact that CenturyTel is seeking to acquire a much larger Bell Operating  
12 Company ("BOC") while it is still integrating the recently acquired Embarq, a  
13 company that was already about four times larger than the original CenturyTel. If  
14 the successful outcome of mergers is generally in question, the outcome of this  
15 one is particularly so.

16 What comes to mind is the experience of WorldCom, a one-time darling of Wall  
17 Street that in rapid succession acquired a number of firms of increasing size and  
18 complexity, culminating in the fateful acquisition of MCI and ultimately the  
19 financial collapse of WorldCom. While WorldCom was brought down by a  
20 number of missteps, some of them criminal, it is fair to say that its demise  
21 stemmed in significant part from the failure to successfully integrate the various  
22 acquired companies and the escalating challenges of ever-larger acquisitions.

1 CenturyTel's proposed acquisition of Qwest on the heels of its recent acquisition  
2 of Embarq presents some disturbing similarities to the experience of WorldCom  
3 and other failed acquisitions.

4 The table below gives the approximate line counts of CenturyTel (as it existed  
5 before its Embarq acquisition), Embarq and Qwest, and demonstrates explosive  
6 growth.

	<b>Year</b>	<b>Access Lines<sup>6</sup></b>	<b>% of Post-Merger Total</b>
CenturyTel	2009	1,300,000	8%
Embarq	2009	5,700,000	34%
Qwest	2010	10,000,000	59%
<b>Total</b>		<b>17,000,000</b>	<b>100%</b>

7  
8 This exponential growth path raises questions, specifically about the ability of  
9 CenturyLink's management to handle the challenges of post-merger integration.  
10 Again, organic growth through customer acquisition, as a result of superior  
11 product offerings, is different from growth through mergers and acquisitions.  
12 With respect to organic growth, management proves its abilities to manage  
13 growth on an ongoing basis and exponential growth is a sign that management is  
14 doing things right. By contrast, growth by means of acquisitions may signify that  
15 management is able to maneuver nimbly in financial markets, but little, if

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<sup>6</sup> Line counts are taken from CenturyLink's testimony. The line counts in CenturyLink's testimony appear to be approximate line counts. See Direct Testimony of Todd Schafer on behalf of Embarq Communications, Inc. d/b/a CenturyLink Communications Embarq Payphone Services, Inc. d/b/a CenturyLink, and CenturyTel Solutions, LLC, Arizona Corporation Commission Docket Nos. T-01051B-10-0194, et al., May 24, 2010 ("Schafer Arizona Direct"), at pp. 6-7 and Exhibit TS-1; and Direct Testimony of Jeff Glover on behalf of Embarq Communications, Inc. d/b/a CenturyLink Communications Embarq Payphone Services, Inc. d/b/a CenturyLink, and CenturyTel Solutions, LLC, Arizona Corporation Commission Docket Nos. T-01051B-10-0194, et al., May 24, 2010 ("Glover Arizona Direct") at p. 5.

1 anything, about management's ability to run a much larger organization. It is the  
2 latter, however, that the Commission is tasked, among other issues, to evaluate.

3 Further, while CenturyLink may have integrated smaller firms, the company's  
4 current attempt to swallow a BOC should give regulators pause. To be sure, the  
5 challenge of integrating and running Qwest, with its unique BOC obligations,  
6 comparatively enormous customer base, substantial wholesale responsibilities,  
7 and complex set of operational support systems, is particularly daunting and far  
8 beyond anything CenturyLink has faced to date. Indeed, CenturyLink has  
9 admitted in its latest SEC Form 10Q report that "The Qwest merger will change  
10 the profile of our local exchange markets to include more large urban areas, *with*  
11 *which we have limited operating experience.*"<sup>7</sup> Whatever may be CenturyLink's  
12 proven track record, integrating and managing a BOC is not a part of it.<sup>8</sup>

13 **Q. DOES THE FACT THAT SBC AND VERIZON WERE ABLE TO**  
14 **ACQUIRE AND INTEGRATE FELLOW BOCS SUGGEST THAT**  
15 **CENTURYLINK WILL BE ABLE TO DO THE SAME WITH QWEST?**

16 A. No. First, SBC and Verizon were large BOCs themselves. Given their common  
17 genealogy as Baby Bells, SBC's and Verizon's management knew what they were  
18 acquiring and how to run a BOC, with all the attendant regulations and

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<sup>7</sup> CenturyLink, Inc. Form 10Q, filed August 6, 2010, at p. 40 (emphasis added).

<sup>8</sup> Also, as has been suggested in the literature, the integration process is always different. As Cooper and Cartwright note: "Different acquisitions are likely to result in quite different cultural dynamics and potential organizational outcomes. Consequently, acquiring management cannot assume that because they were successful in assimilating one acquisition into their own culture, that same culture and approach to integration will work equally successfully with another acquisition." Garry L. Cooper and Sue Cartwright, *Managing Mergers, Acquisitions & Strategic Alliances*, Butterworth-Heinemann, 2<sup>nd</sup> Edition, reprinted 2001, at p. 25.



1 obligations to which it is subject. Further, the BOCs still had a common corporate  
2 culture and were mostly working with common engineering practices inherited  
3 from Ma Bell. Also, when, for example, SBC acquired Ameritech, SBC was  
4 larger than Ameritech – not, as is the case here, smaller by a factor of 10 (using  
5 CenturyTel as the base). Nevertheless, regulators imposed substantial conditions  
6 as prerequisites to approving those BOC mergers in spite of the advantages  
7 inherent in mergers between BOCs as compared to a non-BOC's acquisition of a  
8 BOC such as Qwest.

9 **Q. WHY SHOULD THE COMMISSION BE PARTICULARLY CONCERNED**  
10 **ABOUT POTENTIAL ADVERSE IMPACTS ON CLECS AND THEIR**  
11 **END USERS?**

12 A. Because CLECs depend on Qwest and CenturyLink for interconnection and  
13 critical wholesale network inputs that are essential to their ability to provide  
14 competitive local exchange services. CLECs are generally captive customers of  
15 Qwest and CenturyLink for these wholesale network inputs. Further, CLECs  
16 compete with CenturyLink and Qwest for business and residential customers,  
17 which creates a perverse incentive structure in which CenturyLink and Qwest  
18 may have disincentives to provide CLECs with quality, reasonably priced,  
19 nondiscriminatory wholesale services and network access. In light of this, and the  
20 fact that the economic health of CLECs is critical to local exchange competition,  
21 it is important for the Commission to ensure that CLECs' interests are considered  
22 and protected.

1       **Q.    WHAT IS YOUR RECOMMENDATION?**

2       A.    I recommend that the Commission reject the proposed transaction. As discussed  
3            herein and in the testimony of Mr. Gates, this proposed transaction poses serious  
4            risks to the public interest, including the public's interest in robust competition  
5            from the many wholesale CLEC customers of Qwest and CenturyLink.  
6            However, if the Commission nevertheless decides to approve the transaction, then  
7            it should recognize the potential hazards faced by captive CLECs and their end  
8            user customers, and impose on CenturyLink and Qwest a set of stringent  
9            conditions and commitments, discussed herein and by Mr. Gates, in order to  
10           safeguard wholesale customers and competition.

11       **III.   STANDARD FOR REVIEW**

12       **Q.    DOES THE COMMISSION HAVE THE AUTHORITY TO REVIEW**  
13       **CENTURYLINK'S AND QWEST'S PROPOSED REORGANIZATION?**

14       A.    Yes I believe that it does. I am not a lawyer and am not offering a legal opinion,  
15            but my understanding is that the Commission does have the legal authority to  
16            review the Companies' proposed reorganization, given its authority over public  
17            service corporations pursuant Article 15, Section 3 of the Arizona Constitution,  
18            Title 40 of the Arizona Revised Statutes (A.R.S.) and the Commission's Public  
19            Utility Holding Companies and Affiliated Interests Rules, A.A.C. R14-2-801  
20            through -806 ("Affiliated Interests Rules"). My understanding is that CenturyTel,  
21            Inc. and Qwest Communications International, Inc. are not public service  
22            corporations as defined in Article 15, Section 2 of the Arizona Constitution;

1           however, the telephone operating subsidiaries named in the Arizona Joint  
2           Application are public service corporations subject to the Commission's  
3           authority.<sup>9</sup>

4           **Q.   WHAT IS THE APPROPRIATE STANDARD FOR THE COMMISSION**  
5           **TO USE IN REVIEWING CENTURYLINK'S AND QWEST'S PROPOSED**  
6           **REORGANIZATION?**

7           A.   The Commission's Affiliated Interests Rules indicate that there are at least three  
8           factors the Commission should consider when reviewing the reorganization  
9           proposal at issue in this proceeding, as R14-2-803(C) states that:

10                           At the conclusion of any hearing on the organization or  
11                           reorganization of a utility holding company, the Commission may  
12                           reject the proposal if it determines that it would *impair the*  
13                           *financial status of the public utility*, otherwise *prevent it from*  
14                           *attracting capital at fair and reasonable terms*, or *impair the*  
15                           *ability of the public utility to provide safe, reasonable and*  
16                           *adequate service.*<sup>10</sup>

17           These three factors are clearly important for the Commission to take into account  
18           during its review. However, when reviewing previous proposals by public service  
19           corporations to reorganize or merge, the Commission typically has applied a  
20           general public interest standard as well as considering the three specific issues  
21           identified in that Rule. For example, in the Commission's January 2005 Order  
22           and Opinion denying the proposed merger of Unisource Energy Corporation with  
23           Saguaro Utility Group, L.P. (via Saguaro Acquisition Company), the Commission

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<sup>9</sup> See, Arizona Joint Application at p. 2, fn. 2.

<sup>10</sup> A.A.C. R14-2-803(C) (emphasis added).

1 concluded that “[p]ursuant to the Arizona Constitution and A.R.S. Title 40  
2 generally, the Commission is required to act in the ‘public interest’ and must  
3 consider all of the evidence available in determining the ‘public interest.’”<sup>11</sup> The  
4 Commission also concluded therein that “The public interest requires that the  
5 Commission apply the Affiliated Interest Rules in a manner that will maximize  
6 protection to ratepayers.”<sup>12</sup> The Commission has reiterated the latter finding, as  
7 well as invoked the general public interest standard, in other decisions concerning  
8 reorganizations affecting public service corporations, including its May 2009  
9 Order approving, with conditions, the reorganization of Global Water – Santa  
10 Cruz Water Company, *et al.*<sup>13</sup>

11 I conclude that the Commission should apply the same review standard in the  
12 instant proceeding, i.e. it should approve the proposed transaction only if it finds  
13 that the transaction is in the public interest, including but not limited to  
14 consideration of the factors specifically identified in R14-2-803(C).

15 **Q. DOES THE COMMISSION’S AUTHORITY EXTEND TO IMPOSING**  
16 **CONDITIONS ON THE PROPOSED TRANSACTION, SUCH AS THOSE**  
17 **RECOMMENDED BY MR. GATES AND YOU?**

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<sup>11</sup> *In the Matter of the Reorganization of Unisource Energy Corporation*, Docket No. E-0423-OA-03-0933, Opinion and Order, Decision No. 67454, January 4, 2005, at p. 49, Conclusion of Law No. 5.

<sup>12</sup> *Id.* at p. 49, Conclusion of Law No. 6.

<sup>13</sup> *In the Matter of the Joint Notice of Intent Under A.A.C. R14-2-803 for an Initial Public Offering and Restructuring of Global Water Resources, LLC by Global Water – Santa Cruz Water Company, et al.*, Docket Nos. W-20446A-08-0247 *et al.*, Order, Decision No. 70980, May 5, 2009, at pp. 10-11, Conclusions of Law Nos. 3, 6 and 7.

1       A.     Yes, that is my understanding. For example, in the Global Water case I just cited,  
2             the Commission determined that “Approval of the transaction proposed in the  
3             Application would serve the public interest only if conditions are imposed to  
4             provide adequate protection to ratepayers,”<sup>14</sup> and adopted twelve conditions on  
5             the transaction that were proposed by Staff. The Commission also determined  
6             that conditions were required to serve the public interest with respect to the  
7             proposed reorganization of Arizona-American Water Company, Inc. The  
8             Commission’s February 2007 Order and Opinion in that case similarly granted its  
9             approval after adopting several conditions on the transaction.<sup>15</sup>

10            Consequently, while I am not rendering a legal opinion, my understanding is that  
11            the Commission’s authority is sufficiently broad to enable it to impose conditions,  
12            such as those recommended by Mr. Gates and myself, in order to help ensure that  
13            the CenturyLink-Qwest transaction is in the public interest.

14       **Q.     IS IT UNUSUAL FOR STATE PUBLIC UTILITY COMMISSIONS TO**  
15       **IMPOSE CONDITIONS ON ILEC MERGER TRANSACTIONS?**

16       A.     No, not at all. In order to find that ILEC mergers are in the public interest, state  
17             commissions frequently impose conditions that minimize threats of harm to the

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<sup>14</sup> *Id.* at p. 11, Conclusion of Law No. 6.

<sup>15</sup> *In the Matter of Arizona-American Water Company, Inc., for a Finding of No Jurisdiction, or for a Waiver of the Affiliated Interests Rules Pursuant to A.A.C. R14-2-806, Or, in the Alternative, for Approval of an Affiliated Interests Transaction Pursuant to A.A.C. R14-2-801 Et Seq., Docket Nos. SW-01303A-06-027 et al, Opinion and Order, Decision No. 69344, February 20, 2007, at p. 9, Conclusion of Law No. 5.*

1 public interest,<sup>16</sup> including threats to competition.<sup>17</sup> Furthermore, from an  
2 economic perspective, these types of conditions are not only appropriate, but also  
3 they are required to satisfy the public interest standard.

4 **Q. CAN YOU GIVE AN EXAMPLE OF THE TYPES OF CONDITIONS**  
5 **THAT STATE COMMISSIONS HAVE ADOPTED TO HELP ENSURE**  
6 **THAT A PROPOSED ILEC MERGER OR ACQUISITION WILL**  
7 **SATISFY THE PUBLIC INTEREST STANDARD?**

8 A. Yes. For example, in the *Oregon PUC Frontier-Verizon Order*, the Public Utility  
9 Commission of Oregon ("Oregon PUC") imposed several additional conditions in  
10 order to "mitigate the risks of the transaction and help meet the 'no harm' public  
11 interest standard *required* for our approval."<sup>18</sup>

12 One condition was that Frontier commit to spending a total of \$25 million for  
13 broadband deployment and enhancement over the following three years.<sup>19</sup> The  
14 Oregon PUC properly imposed broadband conditions in the merger context in  
15 order to address concerns that Frontier would otherwise insufficiently fund and  
16 manage its provision of broadband services after the merger, leaving the public

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<sup>16</sup> See, e.g., *In the Matter of the Merger of the Parent Corporations of Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc., Phoenix Network, Inc. and US West Communications, Inc.*, Minnesota PUC Docket No. P-3009, 3052, 5096, 421, 3017/PA-99-1192 ("MN PUC U S West/Qwest Merger Docket"), Order Accepting Settlement Agreement and Approving Merger Subject to Conditions (June 28, 2000) ("Order Accepting Settlement"), at p. 5.

<sup>17</sup> *In the Matter of Verizon Communications Inc. and Frontier Communications Corporation*, Oregon PUC Docket UM 1431, Order No. 10-067, February 24, 2010 ("*Oregon PUC Frontier-Verizon Order*"), at p. 6.

<sup>18</sup> *Oregon PUC Frontier-Verizon Order*, at p. 1 (emphasis added).

<sup>19</sup> *Id.*, at pp. 1, 15-16, and Ex. B. pp. 9-11 (also listing requirements for periodic reports to the Commission, detailing in which wire centers the merged entities would deploy broadband services, and listing specific commitments to particular wire centers).

1 with less access to broadband services than if Frontier and Verizon remained  
2 separate entities.<sup>20</sup> The Oregon PUC's order also included conditions relating to  
3 FiOS video services "provided pursuant to local franchise agreements, rather than  
4 pursuant to Oregon PUC authority," stating that the "conditions help meet the  
5 required standard for approval of the transaction."<sup>21</sup>

6 Accordingly, without offering a legal opinion, it appears to me that this  
7 Commission could similarly use its authority to impose a broad range of merger  
8 conditions, such as those recommended by Mr. Gates and myself, on the  
9 Companies' proposed transaction in order to ensure that it is in the public interest.

10 **Q. ARE THERE OTHER STANDARDS TO CONSIDER IN REVIEWING**  
11 **THE ARIZONA JOINT APPLICATION?**

12 A. Yes. The mandates of the Telecommunications Act of 1996 are also critical in  
13 reviewing the proposed merger. Nevertheless, the Arizona Joint Application  
14 makes only a vague reference to "...the laws governing interconnection."<sup>22</sup> The  
15 Arizona Joint Application and testimony provide no analysis of the Act's  
16 requirements or how they will be met under the proposed merger.<sup>23</sup> This lack of  
17 information and commitment is a common theme in all of CenturyLink's and  
18 Qwest's applications and testimony I have reviewed in the various states in which

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<sup>20</sup> *Oregon PUC Frontier-Verizon Order*, at p. 15.

<sup>21</sup> *Id.* at p. 17.

<sup>22</sup> See, Arizona Joint Application at p. 14.

<sup>23</sup> See, for example, Direct Testimony of Kristen McMillan, May 24, 2010 ("McMillan Arizona Direct"), at p. 7 and p. 16.

1 the Companies are applying for regulatory approval, and should be a source of  
2 great concern for the Commission.

3 **IV. ECONOMICS AND REVIEW OF TELECOM**  
4 **MERGERS**

5 *A. Mergers Seek to Increase Private Shareholder Value which*  
6 *May Cause Them to Be at Odds with the Public Interest*

7 **Q. IN GENERAL TERMS, WHAT MAY CAUSE FIRMS TO MERGE OR**  
8 **ACQUIRE OTHER FIRMS?**

9 A. The incentives for mergers and acquisitions are manifold but center around the  
10 notion that shareholder value can potentially be increased by merging and  
11 streamlining the resources of the pre-merger firms. The benefits from the merger  
12 may stem from: the ability to lower costs, through increasing the post-merger  
13 firm's economies of scale (*e.g.*, allowing it to achieve lower per unit costs) and  
14 scope (*e.g.*, increasing the firm's efficiency by being able to offer a broader array  
15 of services at larger volumes); capturing synergies associated with merging and  
16 streamlining overhead and operational support systems; and/or improving the  
17 Merged Company's overall competitiveness and market share by broadening its  
18 product offerings and access to a larger customer base, or otherwise from  
19 capitalizing on joint talents and expertise. The notion is that bigger is better.

20 Of course, these are all stock, theoretical considerations raised in mergers, but it is  
21 always a question whether or not these benefits will actually materialize.  
22 Furthermore, even on a theoretical level, there are serious doubts about whether



1 such alleged benefits are likely to result from a merger between firms such as  
2 those in this transaction, or whether benefits could more likely be achieved by the  
3 firms individually, through contractual agreements or simply through endogenous  
4 growth.<sup>24</sup>

5 **Q. WHAT IS THE DIFFERENCE BETWEEN A HORIZONTAL AND A**  
6 **VERTICAL MERGER?**

7 A. A horizontal merger is a merger between two firms that offer a comparable set of  
8 services in comparable segments of a market or industry. The objective of a  
9 horizontal merger is typically to broaden the reach of the firm and to increase its  
10 overall market share.

11 A vertical merger, by contrast, seeks to integrate the operations of an upstream  
12 firm with those of a downstream firm to whom it provides, typically, critical  
13 inputs. Vertical integration may be motivated, for example, by a desire to leverage  
14 the market power the upstream firm has into downstream markets.

15 While these types of mergers differ conceptually, they both allow the acquiring  
16 firm to grow and potentially capture certain economies and synergies in addition  
17 to other potential benefits.

18 **Q. WHAT SHOULD BE THE ULTIMATE OBJECTIVE OF A MERGER**  
19 **FROM THE COMPANY'S PERSPECTIVE?**

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<sup>24</sup> For example, see Joseph Farrell and Carl Shapiro, "Scale Economies and Synergies in Horizontal Mergers," *Antitrust Law Journal*, Vol. 68, pages 67 – 710.

1 A. While a merger may be motivated by a variety of considerations and objectives,  
2 including management's personal ambitions,<sup>25</sup> the ultimate objective of a merger  
3 from the perspective of the firms' management should be to increase shareholder  
4 value – which is also how the management should evaluate its success or failure.<sup>26</sup>

5 **Q. DO MANAGEMENT'S OBJECTIVES TO INCREASE SHAREHOLDER**  
6 **VALUE POTENTIALLY CONFLICT WITH THE COMMISSION'S**  
7 **OBJECTIVE TO PROTECT THE PUBLIC INTEREST AND FURTHER**  
8 **COMPETITION IN ARIZONA?**

9 A. Yes. Even if we ignore for the moment the possibility that this merger, like many  
10 others, may go awry, an ILEC's pursuit of profit and increased shareholder value  
11 through the acquisition of another ILEC inherently conflicts in many ways with  
12 the Commission's mandate to promote the public interest and competition. For  
13 example, the public interest is best served by a vibrant and competitive market for  
14 telecommunications services; yet it is in the Companies' interests to strengthen  
15 their already dominant market positions in order to realize benefits that justify the  
16 merger. Given that CLECs rely on CenturyLink's and Qwest's wholesale  
17 services to compete with the Companies, private and public interests diverge. This  
18 is why, among other reasons, mergers between ILECs, such as CenturyLink and  
19 Qwest, should raise serious concerns about the companies' responsibilities in

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25 As I noted earlier in my testimony, seven top executives at Qwest stand to gain more than *\$110 million in cash and stock* if the merger is consummated.

26 While mergers are at times motivated by other considerations, such as strategic or personal ambitions of the CEO, ultimately, from the firm's perspective, the "numbers" have to work to increase shareholder value. See, for example, Robert G. Eccles, Kersten L. Lanes, and Thomas C. Wilson, "Are You Paying Too Much for that Acquisition," *Harvard Business Review on Mergers and Acquisitions*, 2001, pages 45 - 73.

1 wholesale markets and the continued viability of retail competition. Specific  
2 concerns about how this merger may harm the public interest are discussed in a  
3 separate section below.

4 **Q. DO THE FEDERAL TRADE COMMISSION (FTC) AND DEPARTMENT**  
5 **OF JUSTICE (DOJ) REVISED HORIZONTAL MERGER GUIDELINES**  
6 **(2010) (HMG) PROVIDE THE COMMISSION WITH GUIDANCE?**

7 A. Yes. While the focus of an FTC or DOJ antitrust review of the proposed merger  
8 differs from and is narrower than the Commission's public interest evaluation, the  
9 HMG provides useful guidance on how to assess various claims put forth by the  
10 merging companies regarding the alleged benefits of the proposed transaction.  
11 Specifically, the HMG stresses that "most merger analysis is necessarily  
12 predictive, requiring an assessment of what will likely happen if a merger  
13 proceeds as compared to what will likely happen if it does not."<sup>27</sup> The HMG then  
14 goes on to note that, in a merger analysis, there is no single uniform formula to be  
15 applied, but "rather, it is a fact-specific process through which the agencies,  
16 guided by their extensive experience, apply a range of analytical tools to the  
17 reasonably available and reliable evidence [...]"<sup>28</sup> These observations are  
18 important because, as discussed in the testimony of Mr. Gates and herein, the  
19 applicants have provided insufficient information to conduct a "fact-specific"  
20 investigation of the likely outcome of the proposed merger. (As part of the  
21 framework for the Commission's predictive analysis, I discuss below a number of

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<sup>27</sup> FTC and DOJ, *Horizontal Merger Guidelines* For Public Comment, Released on April 20, 2010, at p. 1.

<sup>28</sup> *Id.*

1 previous mergers that subsequently went awry and show that past applicants made  
2 claims similar to those made by Qwest and CenturyLink, demonstrating that the  
3 mere promise of benefits in no way ensures that benefits will in fact ensue.) For  
4 their part, the Companies' near-total absence of factual analysis is disconcerting,  
5 given the far reaching implications of the proposed transaction and its potential  
6 impact on a broad array of stakeholders, including CLECs, and the fact that the  
7 Commission must ultimately make its public interest judgment based on hard  
8 facts provided by the applicants.

9 **Q. WOULD THE APPROVAL OF CENTURYLINK'S AND QWEST'S**  
10 **SHAREHOLDERS SIGNIFY THAT THE MERGER IS IN THE PUBLIC**  
11 **INTEREST?**

12 A. No. Shareholders should consider only how shareholder value will be affected,  
13 which revolves mostly around the question of whether it will increase future  
14 earnings; obviously, shareholder value is but one component of a much broader  
15 and more complex evaluation necessary for a public interest finding. In short, the  
16 Commission should not succumb to the belief that the "invisible hand" of the  
17 market place will safeguard the public interest in this merger.

1           ***B.     A Cautionary Tale: Brief Review of Mergers that Went Awry***

2           **Q.     CAN ANYTHING BE LEARNED BY CONSIDERING THE OUTCOMES**  
3           **OF OTHER RECENT MERGERS AND ACQUISITIONS INVOLVING**  
4           **ILEC OPERATIONS?**

5           A.     Yes. The old adage that “those who do not heed the lessons of history are  
6           doomed to repeat them” readily applies to regulatory review of ILEC mergers and  
7           acquisitions. I believe it is crucial that the Commission consider the proposed  
8           Qwest-CenturyLink transaction in light of other, recent mergers and acquisitions.  
9           As I shall explain, there are several such cases in which the merging companies’  
10          initial high expectations and promised public benefits failed to materialize, in  
11          some cases instead leading to financial failure, including Chapter 11 bankruptcies.

12          **Q.     WHAT ARE POSSIBLY THE TWO MOST PROMINENT MERGERS**  
13          **AMONG TELECOMMUNICATIONS COMPANIES TO RESULT IN**  
14          **FAILURES?**

15          A.     There are two mergers that stand out: the acquisition of MCI by WorldCom in  
16          1998 and the acquisition of US WEST, a BOC, by Qwest in 2000.

17          **Q.     WHAT HAPPENED IN THE WORLDCOM-MCI MERGER AND WHAT**  
18          **WENT WRONG?**

1 WorldCom, which had its genesis in LDDS, experienced precipitous growth in  
2 the 1990s, fueled largely by a series of acquisitions,<sup>29</sup> culminating in the \$37  
3 billion acquisition of MCI in 1998. Following the acquisition, the company had  
4 to file for Chapter 11 bankruptcy protection in 2002, after having destroyed much  
5 of the shareholder value of both WorldCom and MCI. While the reasons for  
6 WorldCom's collapse are many, it can be explained in part by the failure to  
7 successfully integrate the operations of the acquired companies. As the  
8 Bankruptcy Court found:

9 Another challenge for WorldCom involved its integration of  
10 acquired assets, operations and related customer services. Rapid  
11 acquisitions can frustrate or stall integration efforts. Public reports,  
12 and our discussions with WorldCom employees, raise significant  
13 questions regarding the extent to which WorldCom effectively  
14 integrated acquired businesses and operations.<sup>30</sup>

15 **Q. WHAT HAPPENED IN THE US WEST-QWEST MERGER AND WHAT**  
16 **WENT WRONG?**

17 Qwest was founded in 1996 as a largely fiber-based company, installing facilities  
18 along lines of the Southern Pacific Railroad to offer mostly high-speed data  
19 services. Like WorldCom, Qwest Communications grew aggressively through a  
20 series of acquisitions,<sup>31</sup> positioning Qwest not only as a provider of high speed

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<sup>29</sup> Among the companies acquired were: Advanced Communications Corp. (1992), Metromedia Communication Corp. (1993), Resurgens Communications Group (1993), IDB Communications Group, Inc (1994), Williams Technology Group, Inc. (1995), and MFS Communications Company (1996).

<sup>30</sup> *Re: WORLDCOM, INC., et al. Debtors*, Chapter 11 Case No. 02-15533 (AJG) Jointly Administered, First Interim Report of Dick Thornburgh, Bankruptcy Court Examiner, November 4, at p. 12.

<sup>31</sup> Qwest acquired such companies as Internet service provider SuperNet in 1997, LCI, a long distance carrier in 1998, and Icon CMT, a web hosting provider, also in 1998.

1 data to corporate customers, but also as a rapidly-growing provider of residential  
2 and business long distance services.

3 In 2000, Qwest acquired US WEST. The total value of the transaction at the time  
4 was considered approximately \$40 billion.<sup>32</sup> About ten years after the merger,  
5 Qwest's market capitalization is now approximately \$10 billion.<sup>33</sup> This represents  
6 a stunning loss in shareholder value.<sup>34</sup>

7 **Q. WHAT LESSONS CAN BE LEARNED FROM THESE TWO MERGERS**  
8 **IN EVALUATING THE MERGER AT ISSUE IN THIS CASE?**

9 The lesson to be learned from the WorldCom/MCI and Qwest/US WEST mergers  
10 is, among others, that an applicant's ability to put together a merger, get Wall  
11 Street's approval and shepherd a proposed transaction through the various steps of  
12 an approval process in no way demonstrates an ability to successfully run the  
13 post-merger firm. Further, generic claims of "synergies," which, as I will discuss  
14 in more detail later in my testimony, invariably accompany all merger proposals,  
15 mean little or nothing unless they are adequately substantiated by fact-based  
16 analyses – and in the instant Application they surely are not.

17 **Q. ARE THERE MORE RECENT ILEC MERGERS THAT THE**  
18 **COMMISSION SHOULD PAY PARTICULAR ATTENTION TO WHEN**  
19 **CONSIDERING THE CENTURYLINK-QWEST APPLICATION?**

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<sup>32</sup> Qwest 2000 Annual Report, at p. 1.

<sup>33</sup> See Money.cnn.com, Ticker Q.

<sup>34</sup> In 2000, Qwest boasted: "Qwest Communications Reports Strong Third Quarter 2000 Financial Results While Successfully Integrating \$77 Billion Company." (Emphasis added.) See <http://news.qwest.com/index.php?s=43&item=1571>

1 A. Yes. There are three major ILEC transactions within the past five years that I  
2 think offer particularly sobering lessons to the Commission as it considers  
3 CenturyLink's proposed acquisition of Qwest. In particular, I am referring to:

- 4 • **Hawaiian Telcom:** The Carlyle Group's acquisition of Verizon  
5 Hawaii (renamed Hawaiian Telcom), followed by Hawaiian Telcom's  
6 filing for Chapter 11 bankruptcy protection in 2008;
- 7 • **FairPoint:** FairPoint's acquisition of Verizon's operations in northern  
8 New England (Maine, New Hampshire, and Vermont), followed by  
9 FairPoint's Chapter 11 bankruptcy filing in October 2009; and
- 10 • **Frontier:** Frontier Communication's July 2010 acquisition of  
11 approximately 4.8 million access lines from Verizon in rural portions  
12 of fourteen states, which is giving rise to cut-over problems with back-  
13 office and OSS systems reminiscent of the prior two transactions.<sup>35</sup>

14 As I will demonstrate, the track record of these types of mergers is not good. (Mr.  
15 Gates discusses a different set of problems associated with these mergers.)

16 **Q. HAVE YOU PREPARED AN EXHIBIT THAT SUMMARIZES THE**  
17 **PROMISED BENEFITS AND ACTUAL OUTCOMES OF THESE ILEC**  
18 **TRANSACTIONS?**

19 A. Yes. My Exhibit AA-2, "The Promises vs. Realities of Recent ILEC Mergers and  
20 Acquisitions," supplies a summary of the promised benefits and actual outcomes  
21 of the Carlyle-Hawaiian Telcom and FairPoint-Verizon transactions. In addition,  
22 the Exhibit summarizes the more recent Frontier-Verizon and CenturyTel-Embarq  
23 transactions in the same manner, to the extent possible, given that integration

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<sup>35</sup> Frontier Communications, Fact Sheet dated 5/19/2009, "Frontier Communications to Acquire Verizon Assets, Creating Nation's Largest Pure Rural Communications Services provider," downloaded from Frontier's Investor Relations webpage, <http://phx.corporate-ir.net/phoenix.zhtml?c=66508&p=irol-irhome>



1 activities pursuant to these transactions are still on-going, so that their full impacts  
2 and outcomes have yet to be realized.

3 In each case, at the time the transaction was first proposed, the companies  
4 involved made numerous claims and assurances concerning the anticipated  
5 benefits of their transactions, in their FCC applications, public press releases, and  
6 testimony to state PUCs. My Exhibit summarizes those claimed benefits and  
7 compares them to the actual outcomes realized to date, in the areas of (1)  
8 deployment of broadband and other new services, (2) service quality, both retail  
9 and wholesale, (3) job creation, and (4) the financial stability and performance of  
10 the company post-transaction.

11 **Q. WHAT DOES EXHIBIT AA-2 SHOW?**

12 A. Exhibit AA-2 shows the enormous gulf between the anticipated benefits claimed  
13 by company management in these types of ILEC transactions, and the ensuing  
14 realities. In all cases, company management claimed their proposed transactions  
15 would spur accelerated deployment of broadband and other new services, create  
16 jobs,<sup>36</sup> improve service quality and/or be seamless to customers, including CLECs  
17 relying on wholesale services obtained via Operations Support System (“OSS”),  
18 and improve the post-transaction company’s financial stability and performance.  
19 Unfortunately, as the Exhibit vividly shows, the reality has been far different,  
20 particularly for the two earlier transactions (Hawaiian Telcom and FairPoint).

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<sup>36</sup> In the instant proceeding, I am not aware of any claims of job creation made with respect to the CenturyTel-Embarq merger, and in fact as noted in the Exhibit, CenturyLink had cut approximately 1,000 jobs (out of a base of 20,000) by early 2010.

1 Their outcomes included:

2 • Little or no demonstrated progress in broadband deployment:

- 3 ➤ After its acquisition by Carlyle, Hawaiian Telcom added only 3,247 net  
4 retail broadband lines from 2006 through 3Q 2008,<sup>37</sup>  
5 ➤ FairPoint's Chapter 11 reorganization plan includes delays/cut-backs to its  
6 broadband deployment commitments, and eliminates a cap on DSL rates  
7 so that customers may face higher rates; one Commissioner in Maine  
8 charged that "FairPoint has used the bankruptcy proceeding as an  
9 opportunity to renege on its promises to Maine consumers especially in  
10 the area of broadband build out."<sup>38</sup>

11 • Severe declines in retail and wholesale service quality:

- 12 ➤ For Hawaiian Telephone, "very significant slow-downs in call answer and  
13 handling times in its customer contact centers and errors in its  
14 billing...";<sup>39</sup>  
15 ➤ For FairPoint, triggering the maximum payment under Vermont's Retail  
16 Service Quality Plan in 2009, and widespread disruptions to wholesale  
17 customers due to OSS systems failures, order fall-outs, and manual  
18 processing work-arounds;

19 • Net job losses rather than gains:

- 20 ➤ Hawaiian Telephone's employment level had fallen to approximately 1450  
21 by March 2010, a 15% decline from its pre-sale level of 1700  
22 employees;<sup>40</sup>  
23 ➤ FairPoint's Chapter 11 reorganization plan defers previously-negotiated  
24 raises in union contracts, and creates a task force to cut operating expenses  
25 by millions of dollars.<sup>41</sup>

26 • Financial weakness and instability:

- 27 ➤ Hawaiian Telcom: Chapter 11 bankruptcy filing, December 2008; reported  
28 annual rate of return as of June 2009: -29.3%;  
29 ➤ FairPoint: Chapter 11 bankruptcy filing, October 2009; VT Public Service  
30 Board, "FairPoint's actual performance throughout 2008 and 2009 turned

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<sup>37</sup> The 3,247 value is the difference between Hawaiian Telcom's total retail broadband lines, as of 9/30/2008, 93,567, and, as of 12/31/2006, 90,320 (source: Hawaiian Telcom, 3Q2008 Form 10-Q at p. 23 and 2007 Form 10-K, at p. 50), respectively.

<sup>38</sup> Dissent of Commissioner Viafades, MPUC Order 7/6/10.

<sup>39</sup> Hawaii PUC Annual Report 2008-2009, at p. 58.

<sup>40</sup> See Hawaiian Telcom Holdco, Inc. Form 10-A, filed 5/26/10, at p. 12 and *Honolulu Star-Bulletin*, "Hawaiian Telcom Gets CEO." 10/14/04.

<sup>41</sup> Nashua Telegraph 2/9/10.

1 out to be worse than the Board's most pessimistic assumptions.”<sup>42</sup>

2 **Q. WHAT KIND OF OUTCOMES DO THE FRONTIER-VERIZON AND**  
3 **CENTURYTEL-EMBARQ TRANSACTIONS APPEAR TO BE HAVING?**

4 A. The Frontier-Verizon and CenturyTel-Embarq outcomes are largely pending  
5 because those transactions are so recent, but the preliminary indications are also  
6 troubling. As noted in my Exhibit AA-2, Frontier’s integration of the former  
7 Verizon exchanges has been marred by recent wholesale OSS failures, ordering  
8 delays, under-staffed Access Order centers, and trouble report backlogs. These  
9 problems are documented in detail in the testimony of Mr. Gates. Already, they  
10 appear to belie Frontier’s pledge that “this transaction will be seamless for retail  
11 and wholesale customers.”<sup>43</sup>

12 For its part, CenturyLink portrays its ongoing integration of Embarq’s ILEC  
13 operations in 18 states as “highly successful”<sup>44</sup> and “on track”<sup>45</sup> or even “ahead of  
14 schedule”<sup>46</sup> relative to some systems integration activities, but here again there are  
15 signs of strain.

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<sup>42</sup> VT PSB Order 6/28/10 at p. 58.

<sup>43</sup> Frontier-Verizon FCC Application, Exhibit 1 (description of the Transaction and Public Interest Statement.), at p. 4.

<sup>44</sup> FCC WC Docket No. 10-110, Reply Comments of CenturyLink, Inc. and Qwest Communications International, Inc., filed July 27, 2010, at p. 10.

<sup>45</sup> *Id.*, at p. 9.

<sup>46</sup> FCC WC Docket No. 10-110, Reply Comments of CenturyLink, Inc. and Qwest Communications International, Inc., filed July 27, 2010, Exhibit (Declaration of William E. Cheek), at ¶ 2.

1 As Mr. Gates shows in his direct testimony, the CLECs tw telecom and Socket  
2 Telecom have been dealing with EASE (OSS) system failures in the legacy  
3 Embarq territories since late 2009.

4 **Q. ARE CENTURYLINK AND QWEST NOW MAKING THE SAME SORTS**  
5 **OF CLAIMS CONCERNING THE FUTURE BENEFITS FROM THE**  
6 **PROPOSED TRANSACTION AS THESE OTHER COMPANIES DID?**

7 A. Yes. When I consider the proposed CenturyLink-Qwest merger in this context,  
8 what is particularly troubling to me is that so many of the promises and  
9 assurances that CenturyLink and Qwest are making now to secure their merger  
10 are highly similar to those made to regulators by the prior companies, before their  
11 transactions' failures. Compare for example, the following claims:

12 • Claims of a strong track record of successful telecommunications acquisitions:

- 13 ➤ Carlyle Group: "Carlyle has a track record of successful  
14 telecommunications investments..."
- 15 ➤ FairPoint: "FairPoint has long-term experience in the telecommunications  
16 industry. In fact, FairPoint has been acquiring telecommunications  
17 companies since 1993..."<sup>47</sup>
- 18 ➤ Frontier: "Frontier has a strong record of successfully integrating  
19 acquisitions..."

20 **CenturyLink-Qwest:** "CenturyLink's management team has some of the  
21 longest and most successful tenure in the industry with a proven track  
22 record of successful mergers and acquisitions."<sup>48</sup>

23 • Claims that proposed transaction will accelerate broadband deployment:

<sup>47</sup> FairPoint-Verizon FCC Application, at p. 17.

<sup>48</sup> CenturyLink-Qwest's FCC Application, "Application For Consent To Transfer Control," filed May 10, 2010, at p. 10 ("CenturyLink-Qwest FCC Application").

1           ➤ Hawaiian Telcom: "In short order we will offer new services to our  
2 customers, including expanded broadband..."<sup>49</sup>

3           ➤ "FairPoint plans to increase broadband availability from current levels in  
4 Maine, New Hampshire, and Vermont within twelve months after the  
5 completion of the merger..."<sup>50</sup>

6           ➤ "Frontier believes that... it can dramatically accelerate broadband  
7 penetration in these new markets over time."<sup>51</sup>

8           **CenturyLink-Qwest:** *"the transaction will help to accelerate deployment*  
9 *of broadband services in unserved and underserved areas for both*  
10 *residential and business customers."*<sup>52</sup>

11           • Claims that transaction will be seamless and non-disruptive to customers:

12           ➤ FairPoint: "...will enhance service quality and promote competition..."<sup>53</sup>

13           ➤ Frontier: "this transaction will be seamless for retail and wholesale  
14 customers"<sup>54</sup>

15           **CenturyLink-Qwest:** *"The merger will not disrupt service to any retail or*  
16 *wholesale customers..."*<sup>55</sup>

17           • Claims that transaction will improve financial strength and stability:

18           ➤ FairPoint: "the proposed transaction will ... improv[e] its overall financial  
19 flexibility and stability"<sup>56</sup>

20           ➤ Frontier: "the transaction will transform Frontier by strengthening its  
21 balance sheet."<sup>57</sup>

22           **CenturyLink-Qwest:** *"the transaction will... create a service provider*  
23 *with improved financial strength and the financial flexibility to weather*

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<sup>49</sup> Carlyle Press Rel. 5/21/04

<sup>50</sup> FairPoint-Verizon FCC Application, at p. 18.

<sup>51</sup> Frontier-Verizon FCC Application, Exhibit 1 (Description of the Transaction and Public Interest Statement), at p. 3.

<sup>52</sup> CenturyLink-Qwest FCC Application, at p. 2.

<sup>53</sup> FairPoint-Verizon FCC Application, at p. 18.

<sup>54</sup> Frontier-Verizon FCC Application, Exhibit 1 (Description of the Transaction and Public Interest Statement), at p. 4.

<sup>55</sup> CenturyLink-Qwest FCC Application, at p. 37.

<sup>56</sup> FairPoint-Verizon FCC Application, at p. 19.

<sup>57</sup> Frontier-Verizon FCC Application, Exhibit 1 (Description of the Transaction and Public Interest Statement), at p. 4

1                    *the impacts of changing marketplace dynamics... ”<sup>58</sup>*

2            **Q.    CENTURYLINK PROJECTS THAT IT WILL REAP \$625 MILLION IN**  
3            **ANNUAL OPERATING EXPENSE AND CAPITAL COST SYNERGIES**  
4            **FROM 3-5 YEARS AFTER THE MERGER CLOSES. WERE HAWAIIAN**  
5            **TELCOM AND FAIRPOINT ABLE TO ACHIEVE THE SYNERGIES**  
6            **THEY ORIGINALLY PROJECTED IN CONNECTION WITH THEIR**  
7            **MERGER/ACQUISITION TRANSACTIONS?**

8            A.    No, they were not. In the Hawaiian Telcom case, I am not aware of any specific  
9            quantification of transaction synergies made by the parties at the time of their  
10           application for regulatory approvals. However, Carlyle did tell the Hawaii PUC  
11           that it expected to realize operational efficiencies by creating new back office  
12           systems located in Hawaii, to replace Verizon’s centralized, legacy systems. As  
13           the Hawaii PUC stated at the time the transaction was approved:

14                    In re-establishing these functions, Carlyle plans to replace  
15                    Verizon’s numerous legacy systems with updated and flexible  
16                    application systems. Carlyle specifically represents that it will  
17                    achieve increased economies of scale and improved operating  
18                    efficiencies from replacing multiple and duplicative systems with a  
19                    single application.<sup>59</sup>

20                    As Mr. Gates describes in depth in his direct testimony, the build-out of these new  
21                    systems went seriously awry, and contributed to the financial downfall of the  
22                    company. Instead of producing synergistic operating efficiencies and cost

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<sup>58</sup> CenturyLink-Qwest FCC Application, at p. 2.

<sup>59</sup> In the Matter of the Application of Paradise Mergersub, Inc., GTE Corporation, Verizon Hawaii Inc. Bell Atlantic Communications, Inc. and Verizon Select Services Inc. for Approval of a Merger Transaction and Related Matters, Hawaii PUC Docket No. 04-0140, Decision and Order No. 21696, March 16, 2005, at p. 48.

1 reductions, development delays and failures in the new systems caused Hawaiian  
2 Telcom to incur millions of dollars of additional, unanticipated operating  
3 expenses. The company's Form 10-Q SEC filing for the third quarter of 2006  
4 documents over \$33 million in such incremental expenses for just the first nine  
5 months of 2006, including \$22.3 million paid to Verizon to continue using its  
6 systems after the planned cutover date, and another \$11.3 million for "[t]hird-  
7 party provider services and other services required as a result of the lack of full  
8 functionality of back-office and IT systems."<sup>60</sup> The Form 10-Q filing explains  
9 that:

10 Because BearingPoint was unable to deliver the expected full  
11 system functionality by the April 1, 2006 cutover date and has  
12 continued to be unable to deliver full functionality, it has been  
13 necessary for us to incur significant incremental expenses to retain  
14 third-party service providers to provide call center services and  
15 other manual processing services in order to operate our business.  
16 To help remediate deficiencies we engaged the services of an  
17 international strategic partner with expertise in general computer  
18 controls and change management as well as specific expertise with  
19 information technology process controls. In addition to the costs of  
20 third-party service providers, we also incurred additional internal  
21 labor costs, in the form of diversion from other efforts as well as  
22 overtime pay.<sup>61</sup>

23 The filing goes on to say that the company expected to continue to incur  
24 significant incremental systems-related costs through the last quarter of 2006 and  
25 on into fiscal year 2007.<sup>62</sup>

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<sup>60</sup> Hawaiian Telcom Communications, Inc. Form 10-Q, filed November 14, 2006, at p. 26.

<sup>61</sup> *Id.*, at p. 26.

<sup>62</sup> *Id.* at p. 26. Note that the company's Form 10-K filing for year 2007 does not provide a similar quantification of systems-related incremental expenses, and the SEC's "EDGAR" filings database does not list a year 2008 Form 10-K for the company, presumably because of its Chapter 11 bankruptcy that year.

1       **Q.    DID FAIRPOINT MANAGE TO ACHIEVE ITS CLAIMED**  
2       **TRANSACTION SYNERGIES?**

3       A.    No. Like Hawaiian Telcom, FairPoint also fell far short of its initial synergy  
4       projections for the Verizon transaction, which were largely driven by expected  
5       efficiency improvements in back-office and OSS systems. In an April 2007 filing  
6       with the SEC, FairPoint stated that “FairPoint estimates that within six months  
7       following the end of this transition period, which is expected to occur in 2008, the  
8       combined company will realize net costs savings on an annual basis of between  
9       \$60 and \$75 million from internalizing these functions or obtaining these services  
10      from third-party providers.”<sup>63</sup> In reality, FairPoint experienced severe operational  
11      difficulties and cost over-runs during its post-transaction efforts to integrate the  
12      legacy Verizon exchanges into its back-office and OSS systems, as Mr. Gates  
13      documents in his direct testimony. By the time the company filed its Form 10-K  
14      for 2009, it was forced to admit that:

15                Because of these Cutover issues, during the year ended December  
16                31, 2009, we incurred \$28.8 million of incremental expenses in  
17                order to operate our business, including third-party contractor costs  
18                and internal labor costs in the form of overtime pay. The Cutover  
19                issues also required significant staff and senior management  
20                attention, diverting their focus from other efforts.<sup>64</sup>

21                Once again, as in the Hawaiian Telcom case, the fact that forecasted operating  
22                efficiencies and synergies failed to materialize, and instead were replaced by  
23                substantial, unanticipated expense increases, contributed heavily to FairPoint’s  
24                financial distress and subsequent filing for Chapter 11 bankruptcy protection.

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<sup>63</sup> FairPoint Communications, Inc., Form S-4, filed April 3, 2007, at p. 14.

<sup>64</sup> FairPoint Communications, Inc., Form 10-K, filed May 27, 2010, at p. 16.



1       **Q.    DOES FRONTIER APPEAR TO BE ON TRACK TO REALIZE THE**  
2       **SYNERGIES IT CLAIMED WILL BE PRODUCED BY ITS RECENT**  
3       **ACQUISITION OF VERIZON EXCHANGES?**

4       A.    No, it does not, judging from the most recently-available public information that I  
5       have been able to review. In their joint Application to the FCC, Frontier and  
6       Verizon stated “When fully implemented, Frontier expects to yield annual  
7       operating expense savings of \$500 million” from the transaction.<sup>65</sup> However,  
8       Frontier’s Form 10-Q filed May 16, 2010, already admits to a major unanticipated  
9       cost increase with respect to systems integration that detracts from those savings:

10               While we anticipate that certain expenses will be incurred, such  
11               expenses are difficult to estimate accurately, and may exceed current  
12               estimates. For example, our estimate of expected 2010 capital  
13               expenditures related to integration activities has recently increased  
14               from \$75 million to \$180 million, attributable in large part to costs to  
15               be incurred in connection with third-party software licenses necessary  
16               to operate the Spinco business after the closing of the merger.  
17               Accordingly, the benefits from the merger may be offset by costs  
18               incurred or delays in integrating the companies.<sup>66</sup>

19       **Q.    WHAT CONCLUSIONS DO YOU REACH BASED ON YOUR**  
20       **ASSESSMENT OF THESE PRIOR ILEC MERGER AND ACQUISITION**  
21       **EXPERIENCES?**

22       A.    Based on my overall assessment of the prior ILEC merger and acquisition  
23       experiences set forth above, my conclusions are as follows:

- 24               • Mergers and acquisitions involving the transfer and integration of ILEC local  
25               telephone operations carry a high degree of risk of failure, even when

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<sup>65</sup> Verizon Communications Inc. and Frontier Communications Corp., *Consolidated Application for Transfer of Control and Assignment of International and Domestic Section 214 Authority*, May 28, 2009, Exhibit 1 (Description of the Transaction and Public Interest Statement), at p. 3.

<sup>66</sup> Frontier Communications, Inc., Form 10-Q, filed May 16, 2010, at p. 56

1 implemented by highly-experienced management teams and well-financed  
2 companies;

- 3 • When pursuing these types of transactions, company management tends to  
4 overstate the anticipated benefits and understate the risks and uncertainties;
- 5 • The integration of a Bell Operating Company's ILEC operations, in particular,  
6 can prove to be extremely expensive and difficult, and integration failures can  
7 be so costly as to not only eliminate the forecasted transaction cost savings  
8 and other synergies, but to place the post-transaction company under severe  
9 financial pressure.

10 Taken as a whole, I believe that these experiences demonstrate that regulators  
11 must be extremely skeptical of management's pre-transaction claims and  
12 assurances, and cognizant that such transactions involve significant  
13 uncertainties and risks. From a public interest standpoint, those risks simply  
14 may not be worth accepting, particularly because, as discussed previously, the  
15 risks and gains are unevenly divided between shareholders and the broader  
16 public interest, including captive customers such as CLECs. The economic  
17 viability of CLECs may be threatened if things go awry, but unlike  
18 shareholders, CLECs stand to gain little, if anything, if the merger is successful  
19 from a shareholder standpoint. At a minimum, this asymmetric division of risks  
20 must be mitigated by establishing concrete conditions, with meaningful  
21 consequences for nonperformance, prior to the transaction's regulatory  
22 approval.

1 **V. A CENTURYLINK/QWEST MERGER IS LIKELY TO**  
2 **HARM THE PUBLIC INTEREST**

3 **A. Overview**

4 **Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF THE PROPOSED**  
5 **MERGER BETWEEN CENTURYLINK AND QWEST?**

6 A. In this proceeding, CenturyLink, formerly CenturyTel, seeks approval for the  
7 acquisition of Qwest Communications. The merger entails a stock swap of \$10.6  
8 billion. CenturyLink will also assume approximately \$12 billion in Qwest debt.  
9 The overall value of the merger is about \$22 billion. The Merged Company will  
10 operate in 37 states, and serve some 5 million broadband customers and 17  
11 million phone lines.

12 **Q. DOES THIS REPRESENT AN EXTRAORDINARY GROWTH FOR**  
13 **CENTURYTEL?**

14 A. Yes. If the proposed transaction is consummated, CenturyTel will have grown  
15 from a small rural company with about 1.3 million lines to a nationwide company  
16 of about 17 million lines – over the course of a mere three years. The table  
17 below, presented previously in the introduction, summarizes its growth:

	<b>Year</b>	<b>Access Lines<sup>67</sup></b>	<b>% of Post- Merger Total</b>
CenturyTel	2009	1,300,000	8%
Embarq	2009	5,700,000	34%
Qwest	2010	10,000,000	59%
<b>Total</b>		<b>17,000,000</b>	<b>100%</b>

<sup>67</sup> Line counts are taken from CenturyLink's testimony. The line counts in CenturyLink's testimony appear to be approximate line counts. See Schafer Arizona Direct, at pp. 6-7 and Exhibit TS-1; and Glover Arizona Direct, at p. 5.

1 As discussed previously, it is important to note that this growth is not the result of  
2 superior product offerings and customer growth, but rather achieved through  
3 putting together a number of companies that were struggling<sup>68</sup> to hold their own  
4 in rapidly changing telecom retail markets.<sup>69</sup>

5 **Q. DOES THE PROPOSED MERGER ENTAIL ANY SIGNIFICANT**  
6 **BENEFITS OF VERTICAL INTEGRATION?**

7 A. For the most part, this is a horizontal merger. As noted, the proposed merger  
8 seeks to integrate the operations of CenturyLink and Qwest. An evaluation of this  
9 merger is further complicated by CenturyLink's ongoing and, as of yet,  
10 incomplete efforts to integrate the recently acquired Embarq. Therefore,  
11 assessing the synergies claimed with respect to CenturyLink's acquisition of  
12 Qwest involves considerations of integrating the operations of three incumbent  
13 LECs. That is, in essence, this case concerns a predominantly *horizontal* merger  
14 across the geographically separate serving areas of three incumbent LECs,  
15 CenturyTel, Embarq and Qwest, all three of which are generally in the same line  
16 of business in different service areas.

17 **Q. DOES THE FACT THAT CENTURYLINK IS SEEKING TO PUT**  
18 **TOGETHER THE OPERATIONS OF THREE ILECS LIMIT THE**  
19 **EXTENT TO WHICH SYNERGIES CAN BE REALIZED?**

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<sup>68</sup> Both companies, for example, continue to experience access line losses. For CenturyLink see [http://ir.centurylink.com/phoenix.zhtml?c=112635&p=irol-newsArticle\\_Print&ID=1422603&highlight](http://ir.centurylink.com/phoenix.zhtml?c=112635&p=irol-newsArticle_Print&ID=1422603&highlight); for Qwest, see, 2010 Quarterly Earnings at <http://investor.qwest.com/qtrlyearnings>

<sup>69</sup> This does not mean that the companies are not dominant in wholesale markets and continue to control the wholesale relationship with CLECs that require access to the Join Applicant's network.

1       A.    Yes.  Because the proposed transaction would involve the integration of three  
2       ILECs operating in different service areas, the benefits from the potential merger  
3       are necessarily limited, which may explain why CenturyLink and Qwest refer to  
4       the alleged benefits in vague terms, like “capitalizing on,” “leveraging,”  
5       “extending,” and so forth.  Those vague assertions leave one wondering why,  
6       under the right management, such benefits could not be achieved by each of the  
7       firms individually.

8       While mergers often fail to enhance shareholder value, there are types of mergers  
9       and acquisitions that tend to expand a company’s abilities and service offerings.  
10      For example, when Microsoft acquired Forethought, which had developed a  
11      presentation program, it allowed Microsoft to expand its suite of software  
12      programs to include Microsoft PowerPoint, and to eventually market a powerful  
13      bundle of programs, Microsoft Office, to students and business users.  Similarly,  
14      Microsoft’s acquisition of Visio Corporation allowed it to further expand its  
15      product line by integrating Microsoft Visio.  I am not asserting that all of  
16      Microsoft’s dozens of acquisitions have been successes; rather, I am illustrating  
17      an essential difference between these acquisitions by Microsoft and  
18      CenturyLink’s acquisition of Qwest.  While the Microsoft acquisitions are a clear  
19      example of how an acquisition can add to a company skills and products that were  
20      not previously present, the CenturyLink-Qwest merger is an example, for the  
21      most part, of adding more of the same in the hope that something better will  
22      emerge, under the motto “Bigger is Better.”

1 It is unclear how putting together three ILECs, with a shrinking landline base, is  
2 going to result in a sustained turnaround, let alone substantial merger benefits.  
3 CenturyLink's claims of merger benefits notwithstanding, there is little inherently  
4 new or novel in the proposed combination of these ILECs, with largely  
5 overlapping business models.

6 **Q. DOES THE MERGER APPEAR TO ENHANCE THE FINANCIAL**  
7 **POSITION OF THE FIRMS?**

8 A. No, not really. Looking at how financial markets seem to be responding to the  
9 proposed merger, there hardly seems to be a flurry of excitement; in fact, rating  
10 agencies have recognized the increased riskiness of the post-merger firm.<sup>70</sup> Also,  
11 using a traditional measure of the weighted average cost of capital ("WACC"), it  
12 is not clear how the Merged Company is better positioned to attract capital.<sup>71</sup> In  
13 fact, given that the Merged Company would be no less risky and that CenturyLink  
14 would be assuming Qwest's massive debt load, there is reason to conclude that  
15 financial markets will be less (rather than more) forthcoming in financing  
16 CenturyLink's future network expansions.

17 **B. Vertical Effects**

18 **Q. YOU NOTED THAT THE PROPOSED MERGER DOES NOT, ON ITS**  
19 **FACE, REVEAL COMPLEMENTARY SKILLS AND PRODUCTS. DOES**

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<sup>70</sup> See the April 2010 ratings reports for CenturyLink issued by Morgan Stanley, Moody's, and Standard and Poor's, which were reproduced as the three exhibits to Mr. Glover's Direct Testimony, Exhibits JG-2, JG-3, and JG-4, respectively.

<sup>71</sup> See CenturyLink's and Qwest's Response to Staff Data Request No. 3, Oregon Docket No. UM 1484, showing an increase in the post-merger weighted average cost of capital.

1           **THIS SUGGEST THAT THE DRIVE TO ACHIEVE MERGER BENEFITS**  
2           **AND SYNERGIES WOULD INVARIABLY PIT CENTURLINK**  
3           **AGAINST ITS WHOLESALE CLIENTS, SUCH AS CLECS?**

4           A.    Yes. To justify the merger and the associated costs of integration, CenturyLink is  
5           promising regulators and shareholders merger benefits estimated at about \$625  
6           million over a period of three to five years.<sup>72</sup> As noted, the premerger companies  
7           are struggling to hold their own in changing telecom retail markets and it is not  
8           clear that the merger will soon, if ever, generate revenues and profits to recoup the  
9           upfront costs of integration. This raises concerns about cost cutting measures that  
10          may negatively impact wholesale services.

11          Trimming wholesale costs not only saves money on services that are not subject  
12          to significant competition, it does so without the likelihood of revenue  
13          repercussions: *i.e.*, the cost savings directly improve the bottom line. That is,  
14          there are added incentives to cut costs in segments of the companies' operations  
15          that are not subject to competitive pressures: most notably, the wholesale business  
16          charged with meeting the Section 251 and Section 271 obligations under the  
17          Telecommunications Act of 1996. In sum, this dynamic places post-merger  
18          CenturyLink at odds with captive CLEC wholesale customers.

19          **Q.    SHOULD THE COMMISSION CONSIDER THE IMPACT OF THE**  
20          **MERGER ON CLECS AND COMPETITION?**

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<sup>72</sup> See Glover Arizona Direct, at p. 6.

1 A. Yes. As discussed previously, a public interest review requires consideration of  
2 how the merger is likely to impact competition and CLECs, and in turn, CLEC  
3 end user customers . In fact, the Commission has recognized this as a key  
4 consideration. The public interest would be harmed if the competitive landscape  
5 becomes distorted by significant cost cutting that causes a deterioration in  
6 wholesale service provisioning. Showing that these concerns are not idle, Mr.  
7 Gates discusses in more detail the potentially harmful impact of the merger on the  
8 Merged Company's provisioning and how it could seriously impair – *as mergers*  
9 *have elsewhere* – the viability of competitors.

10 **Q. HAS THE FCC NOTED THE IMPORTANCE OF CONSIDERING THE**  
11 **IMPACT ON WHOLESALE SERVICES AND COMPETITORS?**

12 A. Yes. Part of the FCC's analytical framework in reviewing mergers is to look not  
13 only at the horizontal effects of a merger but also the vertical effects, related to  
14 the post-merger impact on wholesale markets. Recognizing the potential harm a  
15 merger may cause to competitors and competition itself, the FCC notes:

16 [w]e need to consider the vertical effects of the merger –  
17 specifically, whether the merged entity will have an *increased*  
18 *incentive* or *ability* to injure competitors by raising the cost of, or  
19 discriminating in the provision of, inputs sold to competitors.<sup>73</sup>  
20 (Emphasis added.)

21 As discussed above, it appears that CenturyLink may have an increased incentive  
22 as well as an increased ability to negatively impact its competitors due to the  
23 larger scope of its operations.

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<sup>73</sup> In the Matter of A&T Inc. and BellSouth Corporation Application for Transfer of Control, Memorandum Opinion and Order, WC Docket No. 06-74, at ¶ 23.



1       **Q.    DOES THIS RAISE CONCERNS NOT JUST WITH RESPECT TO UNES**  
2       **BUT ALSO SPECIAL ACCESS SERVICES?**

3       A.    Yes. Local competition remains critically dependent on the availability of UNEs,  
4       interconnection and special access services at reasonable rates and terms. The  
5       proposed merger may negatively impact the provision of special access services,  
6       which are already being provisioned at unreasonably high rates and on terms and  
7       conditions that are hampering competitors.<sup>74</sup> In fact, in view of these concerns,  
8       the FCC has recently decided to revisit its regulations of special access services.<sup>75</sup>  
9       This merger may further unsettle special access markets.

10       **Q.    ARE THESE CONCERNS ESPECIALLY IMPORTANT GIVEN THE**  
11       **SUBSTANTIAL AMOUNT OF DEBT CENTURYLINK WILL BE**  
12       **ASSUMING BY ABSORBING QWEST?**

13       A.    Yes. CenturyLink is taking on an enormous amount of debt and other risks, so  
14       much so, that it is negatively impacting its credit rating<sup>76</sup> This draws into question  
15       the claim that the Merged Company would be a financially stronger entity.

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<sup>74</sup> See for example, United States Government Accountability Office, Report to the Chairman, Committee on Government Reform, House of Representatives, *Telecommunications: FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, November 2006. (“GAO Report”).

<sup>75</sup> *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593. The FCC conducted a workshop on revising special access pricing on July 19, 2010.

<sup>76</sup> See the April 2010 ratings reports for CenturyLink published by Morgan Stanley, Moody’s, and Standard and Poor’s, which were reproduced as the three exhibits to Mr. Glover’s Direct Testimony, Exhibits JG-2, JG-3, and JG-4, respectively. As Moody’s notes in its report (p. 1):

The negative rating outlook for CenturyTel reflects the considerable execution risks in integrating a sizeable company so soon after another large acquisition (Embarq in July 2009) while confronting the challenges of a secular decline in the wireline industry. The negative outlook also considers the possibility that the Company may not realize planned synergies in a timely manner, especially if competitive intensity increases.

1           Moreover, to deal with this debt, and to placate shareholders and financial  
2           markets, CenturyLink has stated that it will use its free cash flow to pay down this  
3           debt.<sup>77</sup> Given the dearth of information CenturyLink and Qwest have provided to  
4           support the alleged merger savings, CenturyLink's stated intentions to pay off its  
5           debt raises still more questions about its ability to provide and maintain quality  
6           wholesale services and OSS to CLECs, not just for its own pre-merger operations  
7           but especially for Qwest's, which are subject to Section 271 obligations. Again,  
8           when asked to provide details supporting its projected merger savings,  
9           CenturyLink and Qwest respond that those savings have not been calculated at a  
10          detailed level or have not yet been developed.<sup>78</sup> Circular answers like "[t]he  
11          combined companies regulated entities will benefit from synergies post merger in  
12          the form of lower costs to the extent synergies are achieved,"<sup>79</sup> are not reassuring,  
13          much less credible evidence on which the Commission can base findings that the  
14          transaction is in the public interest. The absence of, and refusal to provide,  
15          anything approaching a detailed analysis of the Companies' projected merger  
16          savings leaves unaddressed the required comparison with the profound risks  
17          posed by this transaction.

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<sup>77</sup> See, for example, Glover Arizona Direct, at p. 20.

<sup>78</sup> See my Exhibit AA-4 at p. 7; see also, *e.g.*, CenturyLink's Response to Integra's Second Set of Data Requests, #53 ("CenturyLink has not estimated synergy savings or one-time merger costs by state"), and Qwest's Response to Integra's Second Set of Data Requests, #53 (referring back to CenturyLink's response); and Iowa Utilities Board Docket No. SPU-2010-0006, CenturyLink's June 16, 2010 Response to OCA Set 1, #13F ("Synergies were estimated at the total enterprise level only and not by entity or by state"); and June 29, 2010 Updated Response to OCA Set 1, #13F ("No estimate of synergies by Post Merger entity has been conducted.").

<sup>79</sup> CenturyLink's Response to Integra's Second Set of Data Requests, #141.

1 In sum, a major concern is that, under the pressure of its debt load, the promises  
2 of merger savings to shareholders and regulators, and significant integration costs,  
3 CenturyLink will be forced to cut costs when integrating the two companies,  
4 leading to a degradation of services to wholesale customers and harm to  
5 competition. Worse, of course, is the possibility that this merger could fail as so  
6 many have, causing upheaval in wholesale markets and impairing retail  
7 competition just when consumers need the benefits of competition most.

8 **Q. DOES MR. GATES DISCUSS A NUMBER OF MERGER CONDITIONS**  
9 **THAT COULD SERVE TO ADDRESS CONCERNS ABOUT VERTICAL**  
10 **EFFECTS?**

11 A. Yes. As the FCC noted in previous mergers, economically efficient access by  
12 CLECs to the ILECs' network elements serves to constrain the ILECs' ability to  
13 exploit market power in wholesale markets to the detriment of competition in  
14 downstream, retail markets.<sup>80</sup> In view of this, it is of paramount importance that  
15 the Commission take action to ensure reliable, nondiscriminatory access to the  
16 post-merger ILEC's wholesale network elements and services, including action  
17 that safeguards the wholesale ordering and provisioning processes currently in  
18 place. Mr. Gates discusses conditions that serve this important purpose.

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<sup>80</sup> For example, see *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, December 31, 2006, at ¶ 60.

1           ***C. Horizontal Effects***

2           **Q. IN ADDITION TO THE POTENTIAL HARM FROM VERTICAL**  
3           **EFFECTS, IS THE MERGER LIKELY TO CAUSE HARM DUE TO**  
4           **HORIZONTAL EFFECTS?**

5           A. Yes. Considered across their regional service territories, a merger of CenturyLink  
6           and Qwest reduces competition in areas and for services in which the companies  
7           compete. While, for the most part, the companies operate in their own separate  
8           service areas, there are some instances in which they do compete. Clearly, a  
9           merger would eliminate this competition, and in doing so harm the public interest.

10           CenturyLink has a subsidiary, CenturyTel Solutions LLC, which is authorized to  
11           provide resold long distance services and competitive local exchange services in  
12           Arizona.<sup>81</sup> However, it does not currently have any ILEC operations in the  
13           state.<sup>82</sup> In other states such as Colorado, for example, the Companies serve large  
14           numbers of exchanges that are adjacent. As is increasingly common, ILECs often  
15           set up CLEC subsidiaries through which they compete in adjacent exchanges. For  
16           example, CenturyLink operates as a CLEC in Minneapolis in competition with  
17           Qwest.<sup>83</sup> CenturyLink also provides Ethernet services to certain customers  
18           (presumably business and/or government customers) in the Olympia, Tumwater

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<sup>81</sup> Arizona Joint Application at p. 7.

<sup>82</sup> McMillan Arizona Direct at p. 5, lines 6-9.

<sup>83</sup> [Http://www.centurylink.com/Pages/AboutUs/CompanyInformation/Regulatory/tariffLibrary.js; sessionid=055C224C462B5CB0FDF05EF67BB97A646E4E4AE78F.dotcomprd19](http://www.centurylink.com/Pages/AboutUs/CompanyInformation/Regulatory/tariffLibrary.js; sessionid=055C224C462B5CB0FDF05EF67BB97A646E4E4AE78F.dotcomprd19)

1 and Spokane markets in Qwest's Washington state territory.<sup>84</sup> The merger will  
2 eliminate any incentives for this type of competition between the two companies.  
3 The harm may, in fact, be larger than meets the eye in the sense that it eliminates  
4 not just actual instances of such competition but also *potential* ones.

5 **Q. IS THE ELIMINATION OF SUCH COMPETITION AND POTENTIAL**  
6 **COMPETITION IN LOCAL MARKETS TROUBLING IN LIGHT OF**  
7 **THE FACT THAT LARGE SEGMENTS OF LOCAL EXCHANGE**  
8 **MARKETS STILL LACK SIGNIFICANT COMPETITION?**

9 A. Yes. The areas in which CenturyLink and Qwest are potential competitors are  
10 often largely rural and populated by captive ratepayers with few alternative  
11 providers of local exchange service. Elimination of potential competition in those  
12 areas is therefore especially troubling.

13 **D. *Uncertainty and Harm Will Result If the Merger Is Approved***  
14 ***As Filed***

15 **Q. HAS CENTURYLINK SUBSTANTIATED ITS CLAIMS ABOUT THE**  
16 **TRANSACTION CAUSING NO HARM?**

17 A. No. The basis for CenturyLink's claim that the proposed transaction will do no  
18 harm is its repeated statements that there will be no "immediate" changes made  
19 following the merger. For instance, CenturyLink states:

20 ***Immediately*** upon completion of the Transaction, end-user and  
21 wholesale customers will continue to receive service from the

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<sup>84</sup> See Washington UTC Docket No. UT-100820, CenturyLink's Response to Integra's First Set of Information Requests, #10.

1 same carrier, at the same rates, terms and conditions and under the  
2 same tariffs, price plans, interconnection agreements, and other  
3 regulatory obligations as *immediately* prior to the Transaction; as  
4 such, the Transaction will be seamless to the customers.”<sup>85</sup>

5 What is important is what this statement does *not* include. Specifically, it does  
6 not state how long customers will continue to receive service under the same  
7 rates, terms and conditions. Indeed, the footnote that follows the above statement  
8 is very disconcerting:

9 In view of the current rapidly changing communications market,  
10 any provider, including post-Transaction CenturyLink, must  
11 constantly review its pricing strategy and product mix to respond  
12 to marketplace and consumer demands. While rates, terms and  
13 conditions will be the same immediately after the Transaction as  
14 immediately before the Transaction, *prices and product mixes*  
15 *necessarily will change over time as marketplace, technology,*  
16 *and business demands dictate.* The affected entities will make  
17 such changes only following full compliance with all applicable  
18 rules and laws. (Emphasis added.)

19 A fair reading of the Arizona Joint Application and the Companies’ supporting  
20 testimony indicates that changes will indeed take place and yet there are no  
21 specifics about what those changes might be or how and when they might be  
22 made.

23 **Q. DO THE COMPANIES’ REPRESENTATIONS REGARDING**  
24 **TRANSPARENCY SATISFY THE PUBLIC INTEREST STANDARD?**

25 A. No. The companies’ vague and limited representations are meaningless, and  
26 certainly fail to demonstrate that the public interest will be protected. Obviously,  
27 CenturyLink could implement changes within months, weeks, or even days after

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<sup>85</sup> Arizona Joint Application, at p. 5, lines 1-5 (emphasis added). See also, Schafer Arizona Direct, at p. 7, lines 11-14.

1 closing the transaction and still purport to have made no “immediate” changes.  
2 For example, shortly after the transaction closes, the Merged Company could  
3 implement layoffs<sup>86</sup> or require that CLECs re-negotiate all “evergreen” ICAs  
4 using CenturyLink’s template ICA or attempt to change Qwest’s OSS. As I  
5 discussed earlier in my testimony, the Commission reviews public service  
6 corporation mergers and other reorganizations to ensure that they are in the public  
7 interest. This important authority certainly does not contemplate approval of a  
8 merger based on the vague, limited assurances offered by the Companies. The  
9 bottom line (and the reason why the proposed transaction is of such concern to  
10 CLECs) is that the proposed merger provides absolutely no certainty for  
11 wholesale (or retail) customers and the Companies have provided no meaningful  
12 assurance that the transaction will not harm wholesale customers in the Qwest or  
13 CenturyLink territories.

14 **Q. GIVEN CENTURYLINK’S CLAIM OF *BUSINESS AS USUAL***  
15 **“IMMEDIATELY” FOLLOWING THE TRANSACTION, WHY DO YOU**  
16 **BELIEVE THAT CHANGES WILL BE MADE?**

17 **A.** Because CenturyLink has stated that changes are coming. In its August 13, 2010  
18 response to a Staff discovery request, CenturyLink stated that:

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<sup>86</sup> According to the Associated Press, Qwest already made significant job cuts last year on a territory-wide basis, “decreasing its work force by 8.5 percent last year, or roughly 2,800 positions.” See “Qwest Q4 profit falls 39 percent”, February 16, 2010 at [http://www.oregonlive.com/business/index.ssf/2010/02/qwest\\_q4\\_profit\\_falls\\_39\\_perce.html](http://www.oregonlive.com/business/index.ssf/2010/02/qwest_q4_profit_falls_39_perce.html); also, according to Timothy Donovan, president of Local 7200 of the Communications Workers of America, based in Minneapolis, about 6,000 workers are likely to lose their jobs. See, “CenturyTel-Qwest deal is a rural double-down,” *Star Tribune*, April 22, 2010 at <http://www.startribune.com/business/91876019.html>.

1 CenturyLink anticipates improved wholesale customer service over  
2 time *through the consolidation of OSS and billing systems and*  
3 *sales and account management teams.*<sup>87</sup>

4 In an earlier response to discovery, CenturyLink stated:

5 Upon merger closing, there will be no immediate changes to  
6 Qwest's or CenturyLink's Provisioning Systems. CenturyLink has  
7 not evaluated its processes and compared them to Qwest's  
8 processes at this time. Integration planning is in the early stages  
9 and decisions have not been made at this time. However, because  
10 the transaction results in the entirety of Qwest, including  
11 operations and systems, merging into and operating as a subsidiary  
12 of CenturyLink, it will allow a disciplined approach to systems and  
13 practices and allow integration decisions to proceed in an orderly  
14 manner. The merger is intended to bring about improved  
15 efficiencies and practices in all parts of the combined company, *so*  
16 *changes could be expected over time.* To the extent any changes  
17 are made, CenturyLink will comply with all applicable state and  
18 federal laws and rules, as well as the provisions of any applicable  
19 interconnection agreements and tariffs, in the same manners as  
20 they would apply notwithstanding the merger. In addition, any  
21 changes will occur only after a thorough and *methodical review of*  
22 *both companies' systems and processes to determine the best*  
23 *system to be used* on a go-forward basis from *both a combined*  
24 *company and a wholesale customer perspective.*<sup>88</sup>

25 Though CenturyLink has put CLECs on notice to expect changes, CenturyLink  
26 has provided no detail about what will change, when it will change or how  
27 CenturyLink will determine which is the "best system"<sup>89</sup> to use. This is

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<sup>87</sup> CenturyLink's Response to Staff's Seventh Set of Data Requests, #15 (redacted version, emphasis added).

<sup>88</sup> CenturyLink's Response to Integra's Second Set of Data Requests, #35(h) (emphasis added). See also, CenturyLink SEC Form S-4/A, filed July 16, 2010, at p. 16 ("There are a large number of systems that must be integrated, including, billing, management information, purchasing, accounting and finance, sales, payroll and benefits, fixed asset, lease administration and regulatory compliance.")

<sup>89</sup> To my knowledge, CenturyLink has not provided any substantive details about the "methodical review" or what it means to perform the review from "both a combined company and a wholesale customer perspective." In the instant case, CenturyLink objected to discovery seeking such information, see CenturyLink's Response to Integra's Second Set of Data Requests, #49. In response to similar discovery in Montana, CenturyLink supplied responses that provided little additional detail, other than to say that "[i]t has not been determined whether third-party testing will be included in the



1 particularly problematic when it comes to OSS because only Qwest's existing  
2 systems (*i.e.*, not CenturyLink's existing OSS) have been tested under a Section  
3 271 review.

4 **Q. CENTURLINK GOES EVEN FURTHER AND CLAIMS THAT THERE**  
5 **ARE NO "POTENTIAL HARMS THAT COULD RESULT FROM THE**  
6 **MERGER."<sup>90</sup> IS THIS TRUE?**

7 A. No. As discussed previously, this merger poses a substantial risk of harm to  
8 CLECs and competition based on (1) the nature and history of mergers such as  
9 this; (2) the prospect of cuts aimed at achieving the enormous synergies claimed  
10 by the Companies; and (3) the inherent competitive disincentive to providing  
11 quality wholesale services to carriers with whom the Merged Company will  
12 compete. The potential for substantial harm is further illustrated by the  
13 bankruptcies and system meltdowns that have transpired in the wake of recent  
14 mergers. Contrary to CenturyLink's claim, there *are* unquestionably "potential  
15 harms that could result from the merger."

16 For instance, despite CenturyLink's best efforts, if it attempts to integrate any  
17 OSS or other systems from the CenturyLink region to Qwest's region and such an  
18 attempt fails (as in the case of FairPoint), CLECs would likely suffer substantial

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assessment process." Montana PSC Docket No. D2010.5.55, CenturyLink's Response to Integra's First Set of Information Requests, #49(a). In a nutshell, CenturyLink's response in Montana is that it will evaluate the different systems and processes, take input from interested CLECs, and then base its decision on "operational efficiencies for the Company [CenturyLink], in general." *Id.*, #49(b). If CenturyLink is truly concerned about the "wholesale customer perspective," then CenturyLink will not replace Qwest's existing OSS post-transaction. As evidenced by the Joint CLECs' proposed conditions, it is clearly the CLECs' perspective that Qwest's existing OSS is preferable to existing CenturyLink OSS.

<sup>90</sup> Schafer Arizona Direct, at p. 16, lines 4-6 (emphasis added).

1 harm. As another example, the Companies' projected synergies and one-time  
2 integration costs pose a serious threat to the public interest in at least two respects.  
3 First, the pressure to achieve their estimated \$625 million in synergies may drive  
4 cuts or inattention to the provision of quality wholesale services, including OSS  
5 used to support those services. Second, failure to achieve its estimated synergies  
6 or higher than expected integration costs could seriously impede the Merged  
7 Company's ability to pay down its debt, attract capital and make the investments  
8 necessary to ensure adequate service. The free cash flow that CenturyLink claims  
9 it will use to reduce debt and invest in its network is based on its estimated \$625  
10 million in operating and capital synergies, along with its estimated \$650-\$800  
11 million in one-time operating costs and \$150-\$200 million in one-time capital  
12 costs.<sup>91</sup> However, if CenturyLink fails to achieve those synergies or if its  
13 integration costs significantly exceed the estimates (despite CenturyLink's best  
14 efforts to achieve these targets), its ability to pay down debt will be diminished,  
15 thereby leaving the merged company highly leveraged and potentially unable to  
16 make the needed investments to maintain service quality or the dividends to  
17 satisfy shareholders.

18 **Q. HAS CENTURYLINK ACKNOWLEDGED THE POTENTIAL FOR**  
19 **HARM RELATED TO FAILING TO ACHIEVE ESTIMATED SYNERGY**  
20 **SAVINGS?**

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<sup>91</sup> See *e.g.*, Glover Arizona Direct, at p. 6 and fn. 8 therein.

1 A. Yes. CenturyLink made this very point to the SEC and its shareholders when it  
2 stated that the inability to successfully integrate Qwest and CenturyLink could  
3 prevent CenturyLink from:

4 achiev[ing] the cost savings anticipated to result from the merger,  
5 which would result in the anticipated benefits of the merger not being  
6 realized in the time frame currently anticipated or at all.<sup>92</sup>  
7

8 While the Joint Applicants' prefiled testimony in the instant case sidesteps the  
9 issue, in other states they have acknowledged the potential harms or "integration-  
10 related risks" associated with beginning the integration of Qwest before the  
11 integration of Embarq is complete.<sup>93</sup>

12 **Q. HAS THE FCC PREVIOUSLY REJECTED CLAIMS THAT THERE ARE**  
13 **NO POTENTIAL HARMS RESULTING FROM A MERGER OF THIS**  
14 **TYPE?**

15 A. Yes. When evaluating the SBC/Ameritech merger – a merger involving two  
16 ILECs – the FCC found harm resulting from the transaction in three areas:

- 17 • It removes one of the most significant potential participants in each of the  
18 applicant's local markets, for mass market and enterprise customers

<sup>92</sup> CenturyLink SEC Form S-4A, filed July 16, 2010, at p. 17.

<sup>93</sup> See, e.g., Washington Utilities and Transportation Commission Docket No. UT-100820, Direct Testimony of G. Clay Bailey (CenturyLink), filed May 21, 2010, at p. 18 ("Q. Does the merger with Qwest include incremental financial risks because the Embarq transaction was only consummated at the end of June, 2009? A. CenturyLink believes that the integration-related risks are manageable for several reasons. ..."). See also, the "Risk Factors" discussion found in CenturyLink's SEC Form S-4A, filed July 16, 2010, identifying, among others, the following as merger-related risks: (1) "substantial expenses in connection with completing the merger and integrating the business, operations, networks, systems, technologies, policies and procedures of Qwest with those of CenturyLink"; (2) "CenturyLink expects to commence these integration initiatives before it has completed a similar integration of its business with the business of Embarq, acquires in 2009, which could cause both of these integration initiatives to be delayed or rendered more costly or disruptive than would otherwise be the case"; (3) "the inability to successfully combine the businesses of CenturyLink and Qwest in a manner that permits the combined company to achieve the cost savings anticipated to result from the merger, which would result in the anticipated benefits of the merger not being realized in the time frame currently anticipated or at all." S-4A, at pp. 16-17.

- 1           • It substantially reduces the ability of regulators to implement and oversee the  
2           market-opening provisions of the 1996 Act because the ability to compare the  
3           practices of BOCs and ILECs is diminished, which increases the incumbent's  
4           market power
- 5           • It increases the incentive and ability of the Merged Company to discriminate  
6           against its competitors, particularly with respect to the provision of advanced  
7           services.

8           The FCC found that these harms would have been fatal to the merger application  
9           but for the extensive list of conditions that were placed on the merger to offset the  
10          harm.<sup>94</sup> The harms identified by the FCC apply to the proposed transaction.

11          **Q.    ARE THERE OTHER REASONS TO TAKE ISSUE WITH**  
12          **CENTURYLINK'S AND QWEST'S CLAIM OF "NO HARM"?**

13          A.    Yes. The uncertainty surrounding the potential merger and what may take place  
14          afterward is causing significant uncertainty for CLECs, which, in and of itself,  
15          causes harm. CLECs need certainty to plan their businesses and make prudent  
16          investments, and the proposed transaction results in uncertainty in virtually every  
17          aspect of the CLECs' relationship with the Merged Company.

18          ***E.    Harm Due to a Lack of Certainty (Business Planning)***

19          **Q.    IS THERE A GENERAL NEED FOR CERTAINTY IN BUSINESS**  
20          **RELATIONSHIPS?**

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<sup>94</sup> *In re Applications of AMERITECH CORP., Transferor, and SBC COMMUNICATIONS INC., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, CC Docket No. 98-141, Memorandum Opinion and Order, ¶¶ 348-349.*

1       A.     Yes.    In a general sense, when a business relies upon another business for  
2           services or parts, it is critical to have a contract in place that is specific and  
3           unambiguous.  For instance, if Ford is purchasing tires for its vehicles from  
4           Firestone, it is very important for Ford to know and understand what type, size,  
5           quality and quantity of tires will be delivered to each manufacturing plant and  
6           when.  Not surprisingly, the cost of the tires is also important for Ford in setting  
7           the prices for vehicles.  If Firestone announced that it was being acquired by  
8           Tires, Inc. (a fictional company) on December 31, 2010, Ford would likely ask  
9           Firestone a litany of questions about what Ford could expect in 2011 – *e.g.*,  
10          whether Firestone will deliver the same type and size of tires Ford needs, whether  
11          the quality of the tires will be the same, whether the tires will be delivered to the  
12          manufacturing plant in a timely manner, etc.  If Firestone came back to Ford and  
13          said “we don’t know and won’t know until 2011”, Ford would (a) start looking to  
14          another tire supplier that can provide more certainty, (b) ask Firestone to provide  
15          commitments that can be relied upon in 2011, or (c) both.  The point is that Ford  
16          would demand certainty so that it could continue to produce vehicles and deliver  
17          them to the showroom.  Likewise, CLECs – who rely on ILEC-provided services  
18          – need certainty in order to deliver their services to the local market place.

19       **Q.    DO CLECS HAVE THE SAME OPTIONS WITH REGARD TO**  
20       **SUPPLIERS AS FORD DID IN YOUR PREVIOUS ANALOGY?**

21       A.     No.  Unlike Ford, the CLECs cannot shop elsewhere for the critical wholesale  
22       services they purchase from the ILECs in the Companies’ territories.  That means

1 that certainty in relation to the services CLECs purchase from ILECs is even more  
2 important.

3 **Q. HAS CENTURYLINK ACKNOWLEDGED THE HARM THAT RESULTS**  
4 **FROM UNCERTAINTY RELATING TO THE PROPOSED**  
5 **TRANSACTION?**

6 A. Yes. In its Form S-4A filing (at page 16) CenturyLink states:

7 In connection with the pending merger, some customers or vendors  
8 of each of CenturyLink and Qwest may delay or defer decisions,  
9 which could negatively impact the revenues, earnings, cash flows  
10 and expenses of CenturyLink and Qwest, regardless of whether the  
11 merger is completed.

12 CLECs are wholesale customers of Qwest and CenturyLink, and CenturyLink is  
13 correct that the pending merger can result in delayed or deferred decisions from  
14 these wholesale customers. And while CenturyLink focuses on the potential  
15 negative impacts on revenues, earnings, cash flows and expenses of Qwest and  
16 CenturyLink resulting from this uncertainty, CenturyLink ignores that this  
17 uncertainty also could cause negative impacts on CLEC revenues, earnings, cash  
18 flows and expenses. Likewise, in its recent Reply Comments to the FCC,  
19 CenturyLink states that, “the transaction will bring much-needed stability to the  
20 incumbent local exchange carrier (‘ILEC’) sector”,<sup>95</sup> but ignores that CLECs also  
21 need stability and that the proposed transaction causes severe *uncertainty* for  
22 CLECs. Because the Merged Company will be pursuing merger-related synergy  
23 savings for a three-to-five year period after the merger, the uncertainty for the

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<sup>95</sup> FCC WC Docket No. 10-110, Reply Comments of CenturyLink, Inc. and Qwest Communications International, Inc., filed July 27, 2010, at p. 9.

1 Merged Company's CLEC wholesale customers will continue well beyond the  
2 date of merger approval.

3 **Q. HAS THE COMMISSION SEEN REPRESENTATIONS SIMILAR TO**  
4 **THE COMPANIES' THAT CERTAIN DECISIONS WILL NOT BE MADE**  
5 **UNTIL AFTER THE MERGER CLOSES BEFORE?**

6 A. Yes. In regard to dozens of issues in this proceeding, the Companies have stated  
7 in initial testimony and in discovery that the relevant decisions have not been  
8 made yet and will not be made until after the merger. That has been the  
9 Companies' response on almost everything – from which OSS will be used in  
10 Arizona to the staffing levels and potential headcount reductions that may occur  
11 post-merger in the wholesale services support centers for Arizona and other  
12 legacy Qwest territories.

13 **Q. HAVE YOU PREPARED AN EXHIBIT TO DEMONSTRATE THE**  
14 **SIGNIFICANT UNCERTAINTY FACING CLECS DUE TO THE**  
15 **PROPOSED MERGER?**

16 A. Yes. Attached as Exhibit AA-3 is a table which lists many of the important and  
17 customer-impacting issues that should be examined in determining whether the  
18 proposed transaction will cause “no harm” (e.g., systems integration, operations  
19 integration, performance assurance plans, wholesale rates, etc.) and matches that  
20 list to what the Companies have said about those issues in discovery responses.  
21 This exhibit shows complete uncertainty post-transaction for important issues  
22 such as OSS integration, billing systems integration, E911 systems, provisioning

1 intervals, wholesale customer service, change management process, network  
2 investment, just to name a few. In each area, the Companies were unable or  
3 unwilling to provide any plans or describe any changes that will take place – other  
4 than to say, *we'll let you know after the merger has been approved.*  
5 Unfortunately, that is too late. The Companies must demonstrate now that the  
6 proposed transaction will do “no harm” and they have failed to demonstrate that,  
7 as evidenced by this exhibit.

8 **VI. FAILURE TO PROVE BENEFITS RESULTING FROM**  
9 **MERGER**

10 **Q. CAN THE COMMISSION VALIDATE CENTURYLINK'S CLAIMS OF**  
11 **BENEFITS RESULTING FROM THE MERGER?**

12 A. No. Although CenturyLink has identified numerous alleged benefits from the  
13 proposed transaction, it has substantiated none of them. In discovery in Arizona  
14 and other states undertaking merger reviews, various parties including CLECs,  
15 commission staffs and consumer advocates asked the Companies about their plans  
16 regarding the alleged benefits, and in every instance, the Companies have stated  
17 that they have no plans and/or that plans cannot be developed until after the  
18 transaction is approved. Again, *we'll let you know after the merger has been*  
19 *approved.* To demonstrate this point, I developed Exhibit AA-4 which is a table  
20 that lists the alleged benefits resulting from the merger claimed by the Companies  
21 and matches that list to what the Companies have said about those alleged  
22 benefits in discovery responses. In each instance, there is no substance supporting



1 the alleged benefit. By way of example, despite repeated claims about benefits  
2 related to broadband and IP-based advanced services deployments as a result of  
3 the merger,<sup>96</sup> when asked about its post-merger plans, CenturyLink was unable to  
4 provide any details (*i.e.*, no plans for rollout, no projection, no timeline) and, in  
5 fact, CenturyLink explained that it does not even know whether the Qwest  
6 network is currently capable of supporting the advanced services deployment that  
7 CenturyLink has identified as a benefit of the merger.<sup>97</sup> Obviously, if the Qwest  
8 network is not capable of providing the advanced services that CenturyLink touts,  
9 then the alleged benefit of IPTV/advanced services deployment will not be  
10 realized post-transaction (or will be delayed indefinitely while the necessary  
11 upgrades can be made – a likely scenario given that the Merged Company will be  
12 focused on integration efforts and debt reduction post-merger). My Exhibit AA-4  
13 shows the same results for other alleged benefits, including network investment,  
14 free cash flow, debt repayment, synergies, improved access to capital,  
15 implementation of CenturyLink’s go-to-market model, and others. I was unable  
16 to locate a single alleged benefit that CenturyLink could substantiate with facts.

17 **Q. WHAT WOULD THE COMPANIES NEED TO SHOW TO**  
18 **SUBSTANTIATE THESE BENEFITS?**

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<sup>96</sup> See, *e.g.*, Arizona Joint Application at pp. 2, 3, 11, 14, and 20; see also p. 6 touting CenturyLink’s “nationwide core fiber network that is a key enabler for IPTV and other data traffic.”

<sup>97</sup> See my Exhibit AA-4 at pp. 1-4, and CenturyLink Response to OR UTC Staff Data Request #33, CenturyLink Response to IA OCA Data Request #004A, and CenturyLink response to WA UTC Staff Data Request #52 (“Once the transaction closes, a review of the marketplace will be done to determine needs of the [Oregon, Iowa, Washington] market. This process also includes an assessment of the capabilities of existing Qwest infrastructure necessary to support advanced communications, data, and potentially entertainment services the combined company may chose to rollout in the future...”).

- 1 A. The FCC has applied the following criteria for determining whether a claimed  
2 benefit is cognizable:
- 3 1. “the claimed benefit must be transaction or merger specific (i.e., the claimed  
4 benefit ‘must be likely to be accomplished as a result of the merger but  
5 unlikely to be realized by other means that entail fewer anticompetitive  
6 effects’).”
  - 7 2. “the claimed benefit must be verifiable,” which requires Applicants to  
8 “provide sufficient evidence supporting each claimed benefit...” and allows  
9 discounting of “benefits that are to occur only in the distant  
10 future...because...predictions about the more distant future are inherently  
11 more speculative than predictions about events that are expected to occur  
12 closer to the present” and
  - 13 3. “marginal cost reductions [are more cognizable] than reductions in fixed cost”  
14 because “reductions in marginal cost are more likely to result in lower prices  
15 for consumers.”<sup>98</sup>

16 **Q. DO THE COMPANIES’ ALLEGED BENEFITS MEET THESE**  
17 **CRITERIA?**

18 A. No. None of the alleged benefits is “verifiable” because no evidence was  
19 provided to support the benefits; rather, the Companies make unsupported  
20 predictions about what may transpire in the distant future. To the contrary, the  
21 available evidence casts doubt on whether the alleged benefits will actually be  
22 realized. The alleged benefits also fail to satisfy the FCC’s three-part criteria for  
23 other reasons. For example, the alleged benefit of broadband deployment does  
24 not meet the first prong (merger specific). Legacy Qwest has deployed broadband  
25 to 86% of its customers.<sup>99</sup> To expand this deployment, Qwest filed an application  
26 in March, 2010, for a federal stimulus grant from the Broadband Initiatives

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<sup>98</sup> *In the Matter of Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238, Memorandum Opinion and Order, released June 25, 2009 (“*CenturyTel/Embarq Merger Order*”), at ¶ 35.

<sup>99</sup> *Integra, et al., Comments*, WC Docket No. 10-110, at p. 67, citing Joint Applicants’ FCC Application at 13.

1 Program (BIP) “to extend broadband at speeds of 12 to 40 Mbps to rural  
2 communities throughout its local service region.” Qwest has stated that “[t]he  
3 Transaction will not have any impact on this request.”<sup>100</sup> What this means is that  
4 advanced deployment in Qwest’s legacy territory is not merger-specific: Qwest is  
5 pursuing it independent of the merger. The Communications Workers for  
6 America (CWA) agreed with this assessment in their comments to the FCC on the  
7 proposed transaction:

8 Although the Applicants claim that the proposed merger will result  
9 in accelerated broadband deployment and increased bandwidth,  
10 they provide no concrete, verifiable broadband commitments. The  
11 Applicants do not indicate the number of new households, small  
12 businesses, or anchor institutions that will have access to  
13 broadband; the upgraded capacity that will be delivered; nor the  
14 new markets that will be served with IPTV expansion.<sup>101</sup>

15 When CenturyLink was asked specifically about the third prong – *i.e.*, to identify  
16 the marginal cost reductions resulting from the merger, CenturyLink responded:  
17 “Those cost savings are not broken out between fixed or marginal cost.”<sup>102</sup> As  
18 such, it is impossible to tell what portion, if any, of the estimated synergies would  
19 result in lower prices for consumers, and in turn, impossible for the Companies to  
20 substantiate benefits under the third prong. If the Companies cannot provide

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<sup>100</sup> See, e.g., Direct Testimony of Mark S. Reynolds, Exhibit MSR-1T, Washington UTC Docket No. UT-100820, May 21, 2010, at p. 10. Qwest described its grant application in more detail in response to Montana Consumer Counsel Data Request #58 in Montana PSC Docket No. D2010.5.55: “Qwest Corporation’s project proposes deployment of High Speed Access within its current 14-state ILEC footprint. Over 500,000 living units (LUs) in [the 14 states] will be served with speeds ranging up to 40 Mbps downstream. About 90% of the LUs proposed for new or upgraded broadband service are in rural areas...And, if funded, the project’s \$467 M investment will create more than 23,000 jobs for local economies in the 14 states...” Again, this project is being pursued independently of the proposed transaction.

<sup>101</sup> Comments of Communications Workers of America, FCC WC Docket No. 10-110, July 12, 2010, at p. 13.

<sup>102</sup> CenturyLink Response to Integra’s Second Set of Data Requests, #55(a).

1 reasonable verification that their alleged benefits satisfy the FCC's test, the  
2 merger should not be approved.

3 **Q. HAVE THE COMPANIES IDENTIFIED ANY BENEFITS THAT WOULD**  
4 **ACCRUE TO CLECS FROM THE MERGER?**

5 A. No. CenturyLink has not identified a single direct benefit that would accrue to  
6 CLECs. The Arizona Joint Application makes a sweeping statement that it is  
7 seeking expedited approval so that "consumer, business, and wholesale customers  
8 and shareholders" will all benefit sooner from "the combined firm['s] greater  
9 financial strength and flexibility to compete" and "significant economies of scale  
10 and scope" it claims the transaction would create – but in no sense does it explain  
11 how CLECs would benefit from these alleged changes.<sup>103</sup> To my knowledge, the  
12 only place in the instant proceeding where a CenturyLink or Qwest witness  
13 discusses benefits to wholesale customers is in the following Q&A from Qwest's  
14 witness Mr. Campbell:

15 **Q[.] PLEASE SUMMARIZE HOW WHOLESALE CUSTOMERS**  
16 **WILL BENEFIT FROM THE MERGER TRANSACTION[.]**

17 A. The additional financial resources, combined network capacity and  
18 geographic reach afforded by the merger will allow the combined  
19 company to continue to serve the wholesale market as valued  
20 customers. For example, as the demand for broadband wireless  
21 services has mushroomed, the need for additional fiber capacity to  
22 serve cellular tower sites (often referred to as wireless backhaul)  
23 has increased dramatically. As noted above, Qwest is already  
24 committing significant resources to serve the increased demand

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<sup>103</sup> Arizona Joint Application at p. 19, lines 15-20.

1 from wireless carriers in its region, and the combined entity will  
2 possess the resources to continue this investment.<sup>104</sup>

3 The first sentence of the answer does not identify any benefit. First, it simply  
4 says that the Merged Company will “continue to serve the wholesale market” –  
5 something that would occur independently of the proposed transaction. Second,  
6 the reference to the size of the Merged Company’s footprint (“geographic  
7 reach”) does not translate to benefits to wholesale customers unless the  
8 efficiencies that come along with that larger footprint are realized by the local  
9 market as well – such as lower transaction costs across the footprint. The  
10 remainder of the answer applies to fiber to cell towers – a claim that, even if  
11 substantiated, relates to benefits that would accrue largely, if not solely, to the  
12 Merged Company, and not to CLECs.

13 **Q. HAVE CLECS RECEIVED ASSURANCE THAT THEY WILL SHARE IN**  
14 **ANY MERGER RELATED SAVINGS?**

15 A. No. Take the larger footprint discussed above as an example. Due to this larger  
16 footprint, and associated alleged economies, the Merged Company is expecting  
17 \$575 million in annual operating cost savings (from such sources as corporate  
18 overhead, network and operational efficiencies, IT support, increased purchasing  
19 power) and \$50 million in annual capital expenditure savings.<sup>105</sup> As a result of  
20 these synergies (the realization of which is speculative) the cost-structure of the

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<sup>104</sup> Direct Testimony of James Campbell on behalf of Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp., Arizona Docket Nos. T-01051B-10-0194, May 24, 2010 (“Campbell Arizona Direct”), at p. 23, lines 2-11. The Arizona Joint Application also makes a passing reference to “deploy additional fiber-to-the-cell capabilities...” at p. 11, lines 4-5.

<sup>105</sup> Glover Arizona Direct, at p. 13, Campbell Arizona Direct, at p. 13.

1 combined company would decline. This should, in turn, result in lower rates for  
2 network elements and interconnection leased by CLECs because these cost-based  
3 rates should reflect the reductions in forward-looking costs resulting from the  
4 merger-related synergy savings. However, when asked if the Merged Company  
5 would adjust its cost-based wholesale rates to reflect these cost savings,  
6 CenturyLink replied: "CenturyLink has not evaluated or reached any conclusions  
7 concerning this issue at this time..."<sup>106</sup> And without a concrete commitment that  
8 allows CLECs to rightfully share in the cost-savings the combined company  
9 achieves, this will undoubtedly be very low on CenturyLink's priority list post-  
10 transaction. The end result is that the Merged Company will enjoy a cost  
11 advantage over its competitors, which is the antithesis of the federal pricing  
12 standards for network elements and interconnection.

13 Another example is transaction costs. As the Merged Company integrates its  
14 business across its 37 state serving territory, transaction costs for the Merged  
15 Company should decrease as its service offerings, practices, systems, etc. become  
16 increasingly uniform. By way of example, whereas before the transaction both  
17 Qwest and CenturyLink would have negotiated (and potentially arbitrated)  
18 interconnection agreements with a CLEC like tw telecom separately, after the  
19 transaction, the combined company could negotiate with the CLEC in a unified  
20 fashion (similar to how CenturyLink currently negotiates and arbitrates  
21 agreements for its separate rural and non-rural affiliates). This lowers the  
22 combined company's wholesale transaction costs, and unless this benefit is shared

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<sup>106</sup> CenturyLink's Response to Integra's Second Set of Data Requests, #55(b).

1 by CLECs, it will create a competitive advantage for the combined company  
2 which already enjoys more bargaining power than the CLEC in ICA negotiations.

## 3 **VII. RECOMMENDATIONS AND CONDITIONS**

### 4 **Q. WHAT IS YOUR RECOMMENDATION WITH RESPECT TO THE** 5 **PROPOSED TRANSACTION?**

6 A. I recommend that the Commission deny the merger as proposed. The Companies  
7 have not met the public interest standard under Arizona law and have failed to  
8 materially substantiate the alleged benefits from the merger. However, if the  
9 Commission nevertheless approves the merger, it should do so only if the  
10 transaction is subject to robust, enforceable conditions to ensure that the proposed  
11 transaction ultimately serves the public interest.

12 In addition to the conditions discussed by Mr. Gates, I recommend that the  
13 Commission impose the conditions discussed below. (A full set of the Joint  
14 CLECs' proposed conditions is provided as Exhibit Joint CLECs 2.8 to Mr. Gates  
15 testimony.)

### 16 **Q. SOME OF THE JOINT CLECS' PROPOSED CONDITIONS APPLY TO** 17 **LEGACY CENTURYLINK ILEC TERRITORIES. DOES** 18 **CENTURYLINK HAVE LEGACY ILEC TERRITORIES IN ARIZONA?**

19 A. No, not according to CenturyLink.<sup>107</sup>

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<sup>107</sup> McMillan Arizona Direct at p. 5, lines 6-9.

1       **Q.    IF CENTURYLINK HAS NO LEGACY ILEC TERRITORIES IN**  
2       **ARIZONA, PLEASE EXPLAIN INCLUSION OF CONDITIONS THAT**  
3       **APPLY TO LEGACY CENTURYLINK ILEC TERRITORIES ON THE**  
4       **JOINT CLEC LIST OF RECOMMENDED CONDITIONS IN THIS**  
5       **MATTER.**

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

15      A.    *Wholesale Service Availability*

16      **Q.    PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO**  
17      **WHOLESALE SERVICE AVAILABILITY.**

18      A.    There are nine conditions in this category – conditions 1, 6, 8, 9, 10, 12, 14 and 28  
19      (the numbers correspond to the full list of conditions found in Exhibit Joint  
20      CLECs 2.8):

- 21      • Condition 1 provides that the Merged Company will make available and not  
22      discontinue for the Defined Time Period any wholesale service offered to a



1 CLEC at any time between the merger filing date and the closing date (except  
2 as approved by the Commission).

- 3 • Condition 6 provides that the Merged Company will assume or take  
4 assignment of all obligations under Qwest's "Assumed Agreements"<sup>108</sup>  
5 (which includes Qwest's interconnection agreements, Commercial  
6 agreements<sup>109</sup> and tariffs) and AFOR plans without requiring the wholesale  
7 customer to execute any documents to effectuate the assumption or  
8 assignment. Further, this condition also states that the Merged Company shall  
9 offer and not terminate or change the rates, terms and conditions under the  
10 Assumed Agreements for at least the Defined Time Period (or until the  
11 expiration date, whichever is longer) unless requested by the wholesale  
12 customer or required by change of law. Finally, this condition also states that  
13 the Merged Company will offer Commercial Agreements in CenturyLink  
14 legacy ILEC territory at prices no higher and time periods no shorter than  
15 those offered in the legacy Qwest territory.
- 16 • Condition 8 states that the Merged Company will allow extensions of existing  
17 interconnection agreements for at least the Defined Time Period (or expiration  
18 date whichever is later).
- 19 • Condition 9 states that the Merged Company will allow requesting carriers to  
20 use its pre-existing ICA as basis for negotiating a new ICA. For ongoing  
21 negotiations, this condition states that the existing negotiations draft will  
22 continue to be used for negotiations and that CenturyLink will not substitute  
23 negotiations proposals made prior to the closing date with CenturyLink's  
24 negotiations template interconnection agreement.
- 25 • Condition 10 states that in the CenturyLink ILEC territory, the Merged  
26 Company will allow a requesting carrier to opt into any ICA to which Qwest  
27 is a party in the same state. In situations in which there is no Qwest ILEC in  
28 the state, the condition allows the carrier to opt into any ICA to which Qwest  
29 is a party in any state in which it is an ILEC. This condition permits the state  
30 Commission to modify the ICA if the Merged Company demonstrates  
31 technical infeasibility or that the prices are inconsistent with the TELRIC-  
32 based prices in the state in question. This condition also carves out  
33 CenturyLink territories that currently operate under a rural exemption, but  
34 does not preclude a regulatory body from finding that the rural exemption  
35 should cease to exist, and in those instances, the merger condition would  
36 apply to those areas.

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<sup>108</sup> 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").

<sup>109</sup> "Commercial" agreements include but are not limited to wholesale metro Ethernet agreements, OCN (SONET) agreements, Local Services Platform (e.g., QLSP) agreements, Dark Fiber agreements, Broadband for Resale agreements, and line sharing agreements.

- 1           • Condition 12 states that the Merged Company will not seek to avoid  
2           obligations under Assumed Agreements on the grounds that it is not an ILEC.  
3           This condition also states that the Merged Company will waive its right to  
4           seek rural exemptions.
- 5           • Condition 14 states that for the Defined Time Period the Merged Company  
6           will not seek to reclassify wire centers or file new forbearance petitions in  
7           relation to its obligations under Sections 251 or 271 of the Act.
- 8           • Condition 28 states that, at the CLEC's option, the Merged Company will  
9           interconnect with CLEC at a single point of interconnection per LATA,  
10          regardless of whether the merged entity operates in that LATA via multiple  
11          operating affiliate companies or a single operating company.

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

13          A.    The concern underlying these conditions is that the availability of wholesale  
14          services should be stable over the foreseeable future to offset the substantial  
15          uncertainty and risks of degraded wholesale services associated with the proposed  
16          merger, including the risks that stem from the Merged Company's efforts to  
17          achieve synergy savings post-merger. These conditions help ensure that the  
18          Merged Company does not direct its integration efforts to the detriment of  
19          wholesale customers by withdrawing services or significantly changing the  
20          offerings Qwest currently makes available.

21          These conditions also recognize that the Merged Company will be a larger carrier  
22          with a bigger footprint, possibly resulting in economies and efficiencies, as the  
23          Companies claim. To serve the public interest, any such economies and  
24          efficiencies should accrue in part to the benefit of captive wholesale customers  
25          and the general public as well as the merged company; otherwise, the Merged  
26          Company will enjoy an unreasonable cost advantage over its captive  
27          customers/competitors. As a result, if the Companies' claims of merger savings

1 are accurate, those savings should decrease the costs associated with providing  
2 wholesale services and interconnection to CLECs. Allowing the Merged  
3 Company to be the sole beneficiary of the economies and efficiencies resulting  
4 from the merger would have an anti-competitive and discriminatory impact on the  
5 merged company's captive wholesale customers, who depend on wholesale  
6 services from, and interconnection with, the ILEC to compete. Such a result  
7 would be inconsistent with the pro-competitive mandate of the Act, FCC orders,  
8 and state law, and contrary to the public interest.

9 **Q. THESE CONDITIONS INVOLVE THE MERGED COMPANY**  
10 **CONTINUING TO MAKE AVAILABLE WHOLESALE SERVICES THAT**  
11 **QWEST CURRENTLY PROVIDES FOR THE DEFINED TIME PERIOD.**  
12 **WHY IS THIS WARRANTED?**

13 A. Again, wholesale customers need certainty with regard to the elements and  
14 services they purchase from Qwest (or the Merged Company) for business  
15 planning purposes, and based on the transaction as filed, there is no such  
16 certainty. CLECs cannot simply go elsewhere for the wholesale services they  
17 need from Qwest and CenturyLink both now and post-merger, so certainty in this  
18 area is absolutely essential.

19 **Q. REGARDING CONDITION 1, WHY IS IT IMPORTANT THAT THE**  
20 **MERGED COMPANY CONTINUE TO PROVIDE WHOLESALE**

1           **SERVICES THAT IT PROVIDED ANYTIME BETWEEN THE MERGER**  
2           **FILING DATE AND CLOSING DATE?**<sup>110</sup>

3           A.    The withdrawal of wholesale services after the Filing Date would signal a move  
4           toward the Merged Company impeding competition, and in turn, result in a  
5           merger-related harm. Even if a condition requires the Merged Company to  
6           maintain the wholesale services available at the Closing Date for a period of time,  
7           it would not cover the wholesale services that were eliminated between the Filing  
8           Date and Closing Date. This concern is based on past experience. One historical  
9           example is when Qwest (f/k/a US WEST) attempted to withdraw Centrex (also  
10          known as CENTRON in Minnesota) almost simultaneously with the passage of  
11          the Telecommunications Act of 1996. The Act was signed into law on February  
12          8, 1996. On February 5, 1996, Qwest filed a notice to grandparent and ultimately  
13          terminate CENTRON services. After the Minnesota Commission rejected that  
14          termination request; Qwest then followed up with a second request to terminate  
15          CENTRON on April 30, 1996.<sup>111</sup> Qwest made these filings to withdraw  
16          CENTRON despite that Commission's previous finding that "resale of  
17          CENTRON under certain conditions is in the public interest..."<sup>112</sup> Yet, in the  
18          relatively brief time between passage of the Act in February 2006 and issuance of

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<sup>110</sup> "Merger Filing Date" when used in the list of conditions, "refers to May 10, 2010, which is the date on which Qwest and CenturyLink made their merger filing with the FCC." "Closing Date" when used in the list of conditions, "refers to the closing date of the transaction for which the Applicants have sought approval from the Federal Communications Commission (FCC) and state commissions (the 'transaction')."

<sup>111</sup> *In the Matter of the Request of US WEST Communications, Inc. to Grandparent CENTRON Services With Future Discontinuance of CENTRON, CENTREX and Group Use Exchange Services*, Order Denying Petition, Minnesota PUC Docket No. P-421/EM-96-471, February 20, 1997 ("Minnesota CENTRON Order"), at pp. 1-2.

<sup>112</sup> Minnesota CENTRON Order at p. 8.

1 the FCC's Local Competition Order to implement the local competition  
2 provisions of the Act in August 8, 1996, Qwest attempted to withdraw a  
3 wholesale service that was found to be in the public interest. Though Qwest was  
4 ultimately unsuccessful in Minnesota,<sup>113</sup> competitors were still required to expend  
5 substantial time and money combating Qwest's anti-competitive conduct.

6 **Q. WHAT ARE THE KEY COMPONENTS OF CONDITION 6?**

7 A. There are two important aspects that I will discuss. First, Condition 6 (exclusive  
8 of its subparts) commits the Merged Company to take assignment of the Assumed  
9 Agreements, without requiring wholesale customers to execute any documents to  
10 effectuate the assumption. Second, subpart A. of this Condition requires the  
11 Merged Company to continue offering the terms and conditions of any Assumed  
12 Agreement, including any assumed commercial agreements, for a reasonable  
13 period of time after the merger, which should be at least as long as the period of  
14 synergy savings projected by the Joint Applicants.

15 **Q. WHY SHOULD THE MERGED COMPANY BE PROHIBITED FROM**  
16 **REQUIRING WHOLESALE CUSTOMERS TO EXECUTE ANY**  
17 **DOCUMENTS IN ORDER FOR THE MERGED COMPANY TO TAKE**  
18 **RESPONSIBILITY FOR QWEST'S EXISTING ICAS, TARIFFS AND**  
19 **AFOR PLANS (CONDITION 6)?**

20 A. First, when asked whether CenturyLink would assume or take assignment of  
21 Qwest's obligations under ICAs, tariffs, etc., CenturyLink replied:

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<sup>113</sup> Minnesota CENTRON Order at p. 13.

1 Qwest Corporation does not cease to exist as a result of the parent-  
2 level Transaction but remains an ILEC, subject to the same terms  
3 and obligations of its interconnection agreements, tariffs,  
4 commercial agreements, line sharing agreements, and other  
5 existing arrangements with wholesale customers immediately after  
6 the merger as immediately prior to the merger.<sup>114</sup>

7 Since Qwest does not cease to exist as a result of the transaction, there should be  
8 no reason for wholesale customers to have to execute additional documents in  
9 order for the Merged Company to assume the obligations under the existing  
10 wholesale agreements (*e.g.*, ICAs) and tariffs. Second, the transfer of control  
11 should be as smooth and seamless as possible, and requiring wholesale customers  
12 to receive, review, negotiate and execute documents for this purpose could result  
13 in disruption or delay during the transfer of control. And that disruption and  
14 delay would be exacerbated if wholesale customers disagree with the terms  
15 included in the documents the Merged Company wants wholesale customers to  
16 execute, resulting in parties seeking resolution of those disputes before this  
17 Commission.<sup>115</sup>

18 **Q. CAN YOU PROVIDE A REAL-WORLD EXAMPLE OF WHY**  
19 **CONDITION 6 IS A NECESSARY PROTECTION IF THE MERGER IS**  
20 **APPROVED?**

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114 CenturyLink's Response to Integra's Second Set of Data Requests, #113(a).

115 This is not a theoretical concern. For example, in Iowa, the Companies and PAETEC had difficulty agreeing to the terms of the proprietary agreement that would govern the access and use of confidential information in the merger case in that state. Although PAETEC suggested that the parties use a proprietary agreement that had previously been used between Qwest and PAETEC, the Companies insisted on different terms. This caused significant delay in accessing the proprietary information associated with the Companies' discovery responses in Iowa. This delay was particularly burdensome in this instance because the Companies have requested expedited approval of the merger.

1 A. Yes. While it may appear self-evident that, if an obligation continues or is  
2 assumed, the ILEC will not request further document execution, that was not the  
3 result in the case of the Frontier's acquisition of Verizon Northwest. Despite a  
4 merger condition that Frontier assume wholesale agreements and not terminate or  
5 change their terms,<sup>116</sup> on January 21, 2010, Frontier and Verizon sent a joint letter  
6 and Adoption Agreement which effectively attempted to impose amendment of  
7 the wholesale agreement to reflect certain Frontier processes.<sup>117</sup>

8 Condition 6 will help avoid such a situation with respect to the CenturyLink-  
9 Qwest merger and eliminate any associated uncertainty, delays and litigation. I  
10 see no legitimate reason why the Companies would not voluntarily submit to this  
11 condition.

12 **Q. WHY SHOULD THE MERGED COMPANY BE REQUIRED, AS IT**  
13 **WOULD BE BY CONDITION 6, SUBPART A, TO CONTINUE MAKING**  
14 **QWEST'S COMMERCIAL AGREEMENTS AVAILABLE FOR THE**  
15 **DEFINED TIME PERIOD FOLLOWING THE MERGER?**

16 A. As discussed above, this aspect of Condition 6 is essential to provides certainty  
17 and protection for wholesale customers and competition in the face of the

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<sup>116</sup> In Washington, for example, this was Condition 5 of the Multiparty Settlement between Frontier, Verizon, and multiple CLECs, including Integra. That Settlement was incorporated into the Commission's Order approving the Frontier-Verizon merger, see *Frontier-Verizon Merger Order*, at ¶ 242 and Appendix C. Note that Condition 5 therein made no suggestion that the post-merger company would require wholesale customers to execute further documents to effectuate the assumption or assignment of existing obligations, but it did not expressly prohibit it, as Joint CLEC Condition 6 would do.

<sup>117</sup> See Integra's May 13, 2010 Ex Parte filing in FCC WC Dkt. No. 09-95, provided in my Exhibit AA-6. The Frontier-Verizon letter is discussed at p. 2 therein and reproduced in Attachment A.

1           uncertainty and risks associated with this proposed merger. Many CLECs have  
2           existing Commercial Agreements with Qwest, including agreements for the  
3           provision of dark fiber, line sharing or the combined switch platform that used to  
4           be known as UNE-P. Those CLECs have built their business plans significantly  
5           around the availability of the products provided under those commercial  
6           agreements and the specific terms set forth in those agreements. Retail customers  
7           in turn receive competitive services based on CLEC access to these wholesale  
8           services from Qwest under these commercial agreements. Importantly, these  
9           CLECs generally have no alternative to Qwest for the products or services, such  
10          as dark fiber or line sharing, provided under these commercial agreements.  
11          Condition 6 would provide an assurance to the retail and wholesale customers  
12          currently relying on services provided under these commercial agreements that  
13          those services will remain available following the merger.

14          CenturyLink does not currently make similar products available under  
15          commercial agreements (*e.g.*, dark fiber, line sharing), although it may offer them  
16          through grandparented contracts that are not commercially available to other  
17          CLECs. CenturyLink is the acquiring company in this merger. The fact that  
18          CenturyLink does not currently make these products commercially available  
19          further increases the risk to CLECs that these products will be withdrawn or the  
20          terms of their availability materially changed as a result of the merger. Based on  
21          the post-merger risks and incentives discussed throughout my testimony, I believe  
22          there is a great risk that, without Condition 6, CenturyLink (as the acquiring  
23          company) will not assume the obligations of Qwest's Commercial Agreements or



1 will materially change them in a way that would be detrimental to CLECs and  
2 competition. This would result in extensive disruption to CLECs who rely on  
3 those products. Those CLECs would, in turn, lose their existing customers who  
4 purchase the CLEC services that rely on these wholesale products purchased from  
5 Qwest. Condition 6 at least minimizes the uncertainty and risk associated with  
6 the merger for a defined period.

7 **Q. WILL CONDITION 6 RESULT IN OTHER PUBLIC INTEREST**  
8 **BENEFITS?**

9 A. Yes. Condition 6 would result in the Merged Company offering the same  
10 commercial agreements at the same rates in CenturyLink's legacy territory as  
11 Qwest provides in its legacy territory. The Companies have boasted of the  
12 national breadth<sup>118</sup> and local depth of the Merged Company<sup>119</sup> as "key" benefits  
13 of the proposed merger. These benefits (or economies) should not accrue only to  
14 the Merged Company, however, or else the transaction will further entrench the  
15 Merged Company's monopoly position. One way to allow those economies to  
16 accrue to the benefit of competition is for the Merged Company to offer the same  
17 commercial agreements in legacy CenturyLink territory as it does in legacy Qwest  
18 territory.

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<sup>118</sup> Arizona Joint Application at p. 12, lines 12-13 ("national telecommunications company"); Campbell Arizona Direct at pp. 14 and 22.

<sup>119</sup> Schafer Arizona Direct, at p. 10, lines 7-9 ("A key benefit will come from leveraging each company's operational and network strengths, resulting in a company with an impressive national presence and local depth.").

1 CenturyLink's service territory includes 10 of the 14 states in which Qwest  
2 operates as a BOC, with more than two hundred adjacent exchanges<sup>120</sup> and more  
3 exchanges in close proximity. Once the companies merge, all of these exchanges  
4 will be under a single umbrella and there is no reason why commercial  
5 agreements from the Merged Company in one exchange should not also be  
6 available in the adjacent or neighboring exchange. This would provide  
7 consistency across the Merged Company's territory for those carriers who  
8 currently operate in both Qwest and CenturyLink territories and may encourage  
9 new competitors to enter the legacy territories of CenturyLink or Qwest.

10 **Q. CONDITION 8 WOULD EXTEND EXISTING INTERCONNECTION**  
11 **AGREEMENTS (INCLUDING ICAS IN "EVERGREEN" STATUS) FOR**  
12 **AT LEAST THE DEFINED TIME PERIOD (OR DATE OF EXPIRATION**  
13 **WHICHEVER IS LATER). HAVE OTHER ILECS AGREED TO A**  
14 **SIMILAR COMMITMENT TO SECURE MERGER APPROVAL?**

15 A. Yes. A similar provision was offered as a voluntary commitment to the FCC by  
16 AT&T and BellSouth.<sup>121</sup> Likewise, a similar condition was adopted by the Illinois  
17 Commerce Commission,<sup>122</sup> Public Utilities Commission of Ohio,<sup>123</sup> and Oregon  
18 PUC<sup>124</sup> as a condition of the Frontier/Verizon merger. While the time period for

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<sup>120</sup> CenturyLink's and Qwest's FCC Application, Exhibit 5, cited at Comments of Joint Commenters, WC Docket No. 10-110, July 12, 2010, at p. 18.

<sup>121</sup> AT&T/BellSouth FCC merger order, Appendix F, "UNEs" commitment #4.

<sup>122</sup> ICC Order No. 09-0268, Conditions Appendix, Condition 5.

<sup>123</sup> 2010 Ohio PUC Lexis 142, \*17.

<sup>124</sup> 2010 Ore. PUC LEXIS 64, \*141.

1 extension in previous decisions has ranged between 2.5 years and 3 years, the  
2 Defined Time Period is tied to the facts of this case.<sup>125</sup>

3 **Q. WHY IS IT IMPORTANT TO REFERENCE “EVERGREEN” ICAS IN**  
4 **THIS CONDITION?**

5 A. The reference to “evergreen” ICAs (or ICAs that continue in renewal status past  
6 their expiration date) is particularly important in this instance because Qwest  
7 currently operates under evergreen ICAs with numerous carriers and has for  
8 several years. For example, PAETEC operates under evergreen ICAs with Qwest  
9 in all 14 Qwest BOC states. The Qwest/PAETEC ICAs in Minnesota and Iowa  
10 have been in place since the 1997-1998 timeframe, and ICAs in other states have  
11 been in place since the 1999-2002 timeframe.<sup>126</sup> This means that terms and  
12 conditions under these “evergreen” ICAs have been acceptable to both companies  
13 for an extended period, and each carrier’s respective network configuration  
14 (trunking, collocation arrangements, points of interconnection, traffic exchange,  
15 etc.) are based on those terms and conditions. Requesting carriers should not be  
16 required to endure the disruption and expense to renegotiate and (potentially)  
17 arbitrate the terms under which they have operated with Qwest for, in some cases,  
18 more than a decade – particularly given that the Merged Company will have its

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<sup>125</sup> Mr. Gates discusses the “Defined Time Period” in his Direct Testimony.

<sup>126</sup> See also, Opening Comments of Leap Wireless International, Inc., WC Docket No. 10-110, July 12, 2010, at p. 5 (“Leap’s agreements with Qwest have been in this ‘evergreen’ status for several years, which reflects both parties’ satisfaction with the existing ICAs.”). My understanding is that these ICAs have typically been amended on multiple occasions over the years (e.g., to reflect changes in law).

1 hands full post-merger as it tries to deliver on its synergy savings estimates and  
2 integrate the two companies.

3 **Q. WHAT IS THE CONCERN BEING ADDRESSED BY CONDITION 9?**

4 A. First, a number of CLECs are in the process of negotiating a replacement ICA  
5 with Qwest, and have expended considerable time and effort doing so. Those  
6 ongoing negotiations should not be disrupted mid-stream with new ILEC  
7 proposals from the Merged Company that replace those previously offered by  
8 Qwest in negotiations. Accordingly, the Merged Company should continue to  
9 honor Qwest's negotiations draft in these ongoing negotiations and not replace it  
10 with CenturyLink's new positions. Otherwise, the proposed transaction will  
11 directly result in increased costs to CLECs as they may have to negotiate new  
12 issues or re-negotiate issues currently closed.

13 Condition 9 also states that the Merged Company will allow a requesting carrier  
14 to use its pre-existing ICA, including ICAs entered into with Qwest, as the basis  
15 for negotiating a replacement ICA. The existing ICAs between CLECs and  
16 Qwest have been approved by state commissions as compliant with federal and  
17 state law, sometimes after lengthy and contentious arbitration cases in which  
18 considerable amounts of scarce CLEC resources are expended. The CLECs  
19 should not have to start this process all over again by negotiating agreements from  
20 scratch, particularly because doing so would signal a reluctance on the Merged  
21 Company's part to make available the same wholesale offerings Qwest has  
22 provided for years. Further, the negotiations template proposal that CenturyLink

1 may introduce is a complete mystery at this point,<sup>127</sup> and CLECs should not be  
2 forced to negotiate from scratch all over again based on what CenturyLink may  
3 come up with as its new ICA, going-in negotiations proposal. The same condition  
4 was adopted by the Oregon PUC as a condition of the Frontier/Verizon merger.<sup>128</sup>

5 **Q. IS THERE ANOTHER REASON WHY CLECS SHOULD BE ABLE TO**  
6 **USE THEIR PRE-EXISTING ICAS WITH QWEST FOR THE BASIS OF**  
7 **NEGOTIATING A REPLACEMENT ICA?**

8 A. Yes. As Mr. Gates explains, Qwest's Statement of Generally Available Terms  
9 (SGATS) was reviewed during the 271 approval process.<sup>129</sup> These "generally  
10 available terms" were incorporated into CLEC ICAs, many of which are part of  
11 currently-effective ICAs. For example, the framework, general numbering  
12 scheme, and many sections of the current Qwest-Integra interconnection  
13 agreement in Minnesota are substantially similar to Qwest's Minnesota SGAT

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<sup>127</sup> In discovery, Integra asked CenturyLink to "[p]rovide a copy of CenturyLink's "Template Agreement" referenced on CenturyLink's wholesale website" and supplied a link to the website. In Arizona, CenturyLink responded that "CenturyLink is not an ILEC in Arizona and does not utilize a 'Template Agreement.'" CenturyLink's Response to Integra's Second Set of Data Requests, #114. In other states, CenturyLink has stated in response to the identical question that "[c]urrently, CenturyLink has separate template agreements for legacy CenturyTel and legacy Embarq companies but is in the process of finalizing a single CenturyLink template for interconnection agreements." See, e.g., Colorado PUC Docket No. 10A-350T, CenturyLink's Response to Integra's First Set of Information Requests, #114, and Washington UTC Docket No. UT-10080, CenturyLink's Response to Integra's First Set of Information Requests, #114. Thus at this point, there is no indication as to what CenturyLink's template agreement may look like once it is finalized, and whether or not CenturyLink would apply it to CLECs' interconnection negotiations with respect to legacy Qwest operations in Arizona after the merger.

<sup>128</sup> 2010 Ore. PUC LEXIS 64, 124.

<sup>129</sup> See, e.g., Colorado PUC Evaluation at 26 ("This retelling of bringing Qwest's SGAT into compliance with the 14-point competitive checklist only begins to touch on the volume and breath of issues that arose in Colorado's six SGAT workshops.... After evaluating these six staff workshop reports and the enormous record behind these reports, the [Colorado PUC] concluded Qwest's SGAT complies with the 14-point checklist."); see also Idaho PUC Consultation, Exhibit A, at 3 ("The checklist items were addressed in the context of Qwest's SGAT, and so the focus of the workshops was the SGAT terms required to comply with the checklist items. Qwest accordingly has filed the SGAT with the reports showing the terms as they were developed through the workshops and subsequent reports.").

1 terms.<sup>130</sup> In addition, CLECs have used Qwest's SGAT "as a key source to help  
2 frame interconnection agreement ('ICA') negotiation positions"; "as a resource  
3 for attempting to resolve disputes with Qwest such as in billing, carrier relations,  
4 and Change Management Process ('CMP') contexts"; and "as an internal  
5 resource" to, among other things, confirm state commission-approved terms and  
6 filed requirements.<sup>131</sup> By contrast, CenturyLink's interconnection agreement  
7 terms were not reviewed under a 271 approval process, but instead, are currently  
8 in the process of being developed.<sup>132</sup>

9 **Q. CONDITION 10 ALLOWS CARRIERS IN CENTURYLINK'S LEGACY**  
10 **TERRITORY TO OPT INTO QWEST ICAS IN THE SAME STATE.<sup>133</sup>**  
11 **WHAT IS THE RATIONALE FOR THIS CONDITION?**

12 A. The same rationale that applies for Condition 6 applies here. The FCC previously  
13 adopted a similar condition in conjunction with the AT&T/BellSouth merger,

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<sup>130</sup> Compare Arbitrated Agreement for Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services Provided by Qwest Corp. for Eschelon Telecom of Minnesota, Inc. in the State of Minnesota, Minnesota PUC Docket No. IC-06-768 (10/6/08) with Minnesota SGAT Third Revision, Section 12 (3/17/03).

<sup>131</sup> Joint CLEC responses to Staff's First Set of Data Requests, ACC Docket No. T-01051B-08-0613, at 2 (2/18/09).

<sup>132</sup> PAETEC has proposed a condition to the FCC requiring the Merged Company to offer a multistate ICA that extends the Qwest terms and conditions into the CenturyLink ILEC region. See, Comments of Joint Commenters, WC Docket No. 10-110, July 12, 2010, at p. 56. PAETEC made this recommendation to the FCC to reduce the transaction costs associated with Section 252 ICAs with the Merged Company, similar to how the FCC addressed this issue in the GTE/Bell Atlantic Merger. See, *In re Application of GTE Corporation and Bell Atlantic Corporation For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, CC Docket No. 98-184, FCC-00-221, June 16, 2000 ("FCC GTE/Bell Atlantic Merger Order"), Condition X. This issue is of particular concern regarding the proposed transaction because of the way the Qwest multistate ICA has evolved and the fact that legacy CenturyLink's multistate ICA is still in development (and likely will continue to be under development during the integration process).

<sup>133</sup> CenturyLink's service territory overlaps 10 of the 14 states in which Qwest operates as an ILEC. Under this condition, if there is no Qwest ILEC in the state, the carrier may opt into any ICA in which Qwest is an ILEC in any state.

1 which required AT&T/BellSouth to make available to any CLEC any ICA  
2 (negotiated or arbitrated) to which a AT&T/BellSouth ILEC is a party in any state  
3 within the AT&T 22-state footprint, subject to state-specific pricing and technical  
4 feasibility. Notably, the CLEC-proposed condition permits the state commission  
5 to modify the ICA before opt in if the Merged Company demonstrates technical  
6 infeasibility or if the TELRIC-based prices in the ICA are inconsistent with the  
7 TELRIC-based prices in the state in question.

8 **Q. WOULD THIS OPT-IN CONDITION ALLOW CARRIERS TO**  
9 **“CHERRY-PICK THE BEST ICA TERMS”<sup>134</sup>?**

10 A. No. This condition does not allow a carrier to pick-and-choose ICA terms.

11 **Q. PLEASE EXPLAIN THE BUSINESS NEED FOR CONDITION 12.**

12 A. There is a material risk that the Merged Company will seek to avoid its  
13 obligations as an incumbent LEC under Section 251(c) of the Act post-merger.  
14 While CenturyLink has entered into interconnection agreements with requesting  
15 carriers, CenturyLink has also expressly reserved the right to invoke the  
16 protections of Sections 251 (f)(1) and 251(f)(2) of the Act and thereby avoid its  
17 obligations as an incumbent LEC under Section 251(c). For example, in a recent  
18 Order approving two CenturyLink interconnection agreements, the Idaho Public  
19 Utilities Commission summarized CenturyLink's position as follows:

20 [CenturyLink's] Application states that CenturyLink is a "rural  
21 telephone company," as that term is defined in the Act, 47 U.S.C. §  
22 153. CenturyLink goes on to state that, pursuant to Section  
23 251(f)(1) of the Act, it is exempt from Section 251(c) of the Act.

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<sup>134</sup> CenturyLink's and Qwest's Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 32.

1 Notwithstanding that exemption, the companies have agreed and  
2 entered into this Agreement for purposes of exchanging local  
3 traffic. The Company also states that "execution of the Agreement  
4 does not in any way constitute a waiver of limitation of  
5 CenturyLink's rights under Section 251(f)(1) or 251 (f)(2) of the  
6 Act." The Company "expressly reserves the right to assert its right  
7 to an exemption or waiver and modification of Section 251 (c) of  
8 the Act, in response to other requests for interconnection by CLEC  
9 or any other carriers."<sup>135</sup>

10 Condition 12 will ensure that the Merged Company does not pull the rug out from  
11 underneath wholesale customers in their relationships with the Merged Company.

12 **Q. PLEASE EXPLAIN THE BUSINESS NEED FOR CONDITION 14.**

13 A. Condition 14 states that the Merged Company will not reclassify as "non-  
14 impaired" any wire centers or file any new forbearance petitions related to  
15 obligations under sections 251 or 271 of the Act for the Defined Time Period.  
16 This condition is needed to provide critical certainty for wholesale customers  
17 related to the bottleneck inputs they purchase from the Merged Company, while  
18 the Merged Company integrates the two companies and pursues synergy  
19 savings.<sup>136</sup> As discussed above, this merger poses a substantial risk to CLECs as  
20 the post-merger ILEC's effort to achieve enormous projected synergy savings  
21 intersects with the ILEC's inherent disincentive to provide competing CLECs  
22 with reliable, reasonably priced access to wholesale services. Further, to the

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<sup>135</sup> *In re Application of CenturyTel of Idaho, Inc. d/b/a CenturyLink for Approval of its Interconnection Agreement with Bullseye Telecom, Inc. Pursuant to 47 U.S. C. § 252(e), Order No. 31095, Idaho PUC Case Nos. CEN-T-10-01 & CGS-T-10-01, paragraph 1 (adopted May 28, 2010).*

<sup>136</sup> Qwest recently withdrew its four pending forbearance petitions relating to the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas, see *In the Matter of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas -- WC Docket 07-97*, Letter from Hirisha J. Bastiampillai, Senior Attorney, Qwest Corporation, to Marlene H. Dortch, Secretary, FCC, August 18, 2010. While this is a step in the right direction, it does not in itself eliminate the need for Condition 14.



1 extent the merger results in any cost savings through economies of scope and  
2 scale, those benefits will accrue to the merging companies and not their captive  
3 CLEC customers. The proposed temporary moratorium on non-impairment  
4 reclassifications and forbearance will help mitigate the risk this merger poses to  
5 the public's interest in competition and provide some measure of public interest  
6 benefit to captive wholesale customers and competition. To adequately protect  
7 the public's interest in competition, it is essential to provide CLECs with a period  
8 of certainty during which the terms and conditions of access to the wholesale  
9 inputs they need to provide competitive local exchange services continue.

10 **Q. DOES THE FCC'S RECENT DECISION REJECTING QWEST'S**  
11 **FORBEARANCE PETITION IN THE PHOENIX MSA SHOW WHY**  
12 **CONDITION 14 IS NEEDED?**

13 A. Yes, in three distinct respects. First, the FCC's June 2010 decision on Qwest's  
14 forbearance petition in the Phoenix, Arizona MSA applies a new analytical  
15 framework for the evaluation of BOC forbearance petitions, which replaces the  
16 approach that the FCC developed in its 2005 decision granting Qwest forbearance  
17 in the Omaha MSA, and has applied in subsequent reviews of BOC petitions  
18 seeking similar relief.<sup>137</sup> While that new framework appears to be a substantial  
19 improvement, its introduction alone will tend to heighten the uncertainty  
20 surrounding future forbearance petitions to the FCC, given that the BOCs  
21 vigorously pursued previous FCC rejections of their forbearance decisions in the

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<sup>137</sup> *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*, WC Docket No. 09-135, Memorandum Opinion and Order, FCC 10-113, (rel. June 22, 2010) ("*Phoenix Forbearance Order*"), at ¶¶ 16-24.

1 courts,<sup>138</sup> and may well test the new framework in the same way. Adopting  
2 Condition 14 for the Defined Time Period would avoid the uncertainty created by  
3 these events during that interim period.

4 Second, in the *Phoenix Forbearance Order*, the FCC explains the anti-  
5 competitive opportunities that would be created for a dominant ILEC – such as  
6 the Merged Company – if Sections 251 and/or 271 obligations were to be  
7 eliminated prematurely:

8 ...the Commission has long recognized that a vertically integrated  
9 firm with market power in one market – here upstream wholesale  
10 markets where...Qwest remains dominant – may have the  
11 incentive and ability to discriminate against rivals in downstream  
12 retail markets or raise rivals' costs...assuming that Qwest is profit-  
13 maximizing, we would expect it to exploit its monopoly position as  
14 a wholesaler and charge supracompetitive rates, especially given  
15 that (absent regulation) Qwest may have the incentive to foreclose  
16 competitors from the market altogether.<sup>139</sup>

17 Given that the merger will enhance the Merged Company's incentive and ability  
18 to discriminate against rivals in downstream retail markets and/or raise rivals'  
19 costs, Condition 14 is needed to ensure that the Merged Company does not act on  
20 these anti-competitive incentives, and to avoid the uncertainty (and costs)  
21 imposed on wholesale customers when a petition for forbearance is filed.

22 And third, the justification invoked by the FCC for moving to its new analytical  
23 framework shows why Condition 14's temporary moratorium on forbearance  
24 petitions is essential to preserve competition during the post-merger transition

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<sup>138</sup> See, e.g., *Id.*, ¶ 19, describing the D.C. Circuit Court's remands of the FCC's *Verizon 6 MSA Forbearance Order* and *Qwest 4 MSA Forbearance Order* in 2009.

<sup>139</sup> *Phoenix Forbearance Order*, ¶ 34.

1 period. In the *Phoenix Forbearance Order*, the FCC all but declares that the grant  
2 of forbearance to Qwest in the Omaha MSA was a mistake, finding that in the  
3 *Omaha Forbearance Order* “the Commission eliminated all unbundled loop and  
4 transport obligations based largely on predictive judgments...” that were not  
5 borne out in the marketplace.<sup>140</sup> In hindsight, the Commission found that the  
6 analytical framework applied in the *Omaha Forbearance Order* was seriously  
7 flawed in that it was “not supported by current economic theory,”<sup>141</sup>  
8 “inappropriately assumed that a duopoly always constitutes effective  
9 competition,”<sup>142</sup> and “appears inconsistent with Congress’ imposition of  
10 unbundling obligations as a tool to open local telephone markets to competition in  
11 the 1996 Act.”<sup>143</sup> The FCC ultimately concluded that the outcome of that  
12 forbearance has been a substantial reduction in competitive activity in the Omaha  
13 MSA, as “the record indicates that McLeodUSA has removed most of its  
14 employees from the Omaha marketplace, has limited its operations primarily to  
15 serving its existing customer base, and has ceased sales of residential and nearly  
16 all business services in Omaha;” while Integra abandoned its plans to enter the  
17 Omaha market after the Commission released the *Omaha Forbearance Order*.<sup>144</sup>

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<sup>140</sup> *Id.*, ¶ 26.

<sup>141</sup> *Id.*, ¶ 28.

<sup>142</sup> *Id.*, ¶ 29.

<sup>143</sup> *Id.*, ¶ 32.

<sup>144</sup> *Id.*, ¶ 34.

1       **Q.   HAVE CLECS SOUGHT TO REVERSE THE FCC'S GRANT OF**  
2       **FORBEARANCE IN THE OMAHA MSA IN THE CONTEXT OF THE**  
3       **FCC'S CENTURYLINK-QWEST MERGER REVIEW PROCEEDING?**

4       A.   Yes. For example, a group of CLECs including Access Point, Inc., Covad  
5       Communications Company, and McLeodUSA Telecommunications Services Inc.  
6       (among others) has proposed the following condition in their initial comments in  
7       the FCC's on-going proceeding to review the CenturyLink-Qwest merger  
8       transaction, which were filed jointly with several other CLECs:

9                 Applicants shall voluntarily stipulate that McLeodUSA's Petition  
10                for Modification be granted and thereby, relinquish forbearance  
11                relief obtained in Omaha in WC Docket No. 04-223 and comply  
12                with Section 251(c)(3) UNE obligations throughout the Omaha  
13                MSA.<sup>145</sup>

14               Taking this step as a voluntary commitment would be the most efficient way to  
15               redress the Omaha situation. While the Commission need not take any action  
16               with respect to those CLECs' proposal to the FCC, adoption of Condition 14 by  
17               the Commission in the instant case would be compatible with and complementary  
18               to that proposal.

19       **Q.   PLEASE EXPLAIN THE BUSINESS NEED FOR CONDITION 28.**

20       A.   As Mr. Gates explains, increased efficiencies can be gained by establishing a  
21       single POI per LATA with the Merged Company. Because those efficiencies will  
22       be enjoyed by the Merged Company in part because of its network footprint, the  
23       same benefits should flow through to CLECs interconnecting with the Merged

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<sup>145</sup> Access Point, Inc., Covad Communications Company *et al.*, Comments of Joint Commenters, July 12, 2010, WC Docket No. 10-110, at p. 67.

1 Company. Just as the purported financial benefits of the merger should be shared  
2 by captive CLECs, as discussed above, any operational benefits of accruing to the  
3 Companies should also flow to the CLECs. This would also lower barriers to  
4 entry for competitors who would be permitted to capitalize on the increased scale  
5 and efficiencies of the Merged Company

6 ***B. Wholesale Rate Stability***

7 **Q. PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO**  
8 **WHOLESALE RATE STABILITY.**

9 A. There are three conditions in this category – conditions 2, 3, and 7:

- 10 • Condition 2 states that the Merged Company will not recover or seek to  
11 recover through fees paid by CLECs (and hold CLECs harmless from) one-  
12 time transfer, branding, or any other transaction-related costs.
- 13 • Condition 3 states that the Merged Company will not recover or seek to  
14 recover through fees paid by CLECs (and hold CLECs harmless from) any  
15 increases in overall management costs that result from the transaction.
- 16 • Condition 7 states that the Merged Company shall not increase prices for  
17 wholesale services above the level at merger announcement, or create new  
18 rate elements for functions that are currently recovered in existing rates, for  
19 the Defined Term Period. This condition also states that the Merged  
20 Company will continue to offer any term and volume discount plan offered at  
21 merger announcement (without change) for at least the Defined Time Period,  
22 and will honor existing contracts on individualized term pricing plan  
23 arrangements for the duration of the term. This condition also states that in  
24 the legacy CenturyLink territory the Merged Company will comply with its  
25 obligation to provide transit in ICAs and at rates no higher than the cost-based  
26 rates approved for Qwest (or the current tandem transit rate, whichever is  
27 lower).

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

29 A. Just as certainty and consistency for wholesale service availability is critical to  
30 offset the uncertainty resulting from the merger, so is stability for wholesale

1 service rates. Wholesale rates should, if anything, decrease after the merger.  
2 Because the Merged Company's overall cost structure should decrease to the  
3 extent synergy savings are achieved post-merger, wholesale rates – which would  
4 be based on the cost structure of the Merged Company – should decrease as well.  
5 However, at this point, CLECs are not seeking rate reductions, but instead taking  
6 the conservative position that rates should not increase for at least the Defined  
7 Time Period (Condition 7). This provides a degree of protection for captive  
8 wholesale customers that the Merged Company will not seek to increase their  
9 rates (or create new rate elements) during the Merged Company's pursuit of  
10 synergies and revenue enhancements.

11 These conditions would also hold wholesale rates harmless from the one-time  
12 transaction related costs associated with marrying the two companies – costs that  
13 have traditionally not been recovered through wholesale rates. Finally, Condition  
14 24 is necessary to prevent the Merged Company from adopting as a “best  
15 practice” in Qwest's territory anti-competitive charges assessed in legacy  
16 CenturyLink ILEC territory, which are discussed in detail in Mr. Gates'  
17 testimony.

18 **Q. REGARDING CONDITIONS 2 AND 3, HAS CENTURYLINK AGREED**  
19 **TO HOLD WHOLESALE CUSTOMERS HARMLESS FROM ONE-TIME**  
20 **MERGER RELATED COSTS AND INCREASES IN OVERALL**  
21 **MANAGEMENT COSTS RESULTING FROM THE MERGER?**

1       A.     No. When asked whether CenturyLink would seek to recover through wholesale  
2       rates or fees paid by CLECs “any one-time transfer, branding or any other  
3       merger-related costs” or “overall management costs,” CenturyLink did not  
4       provide a straightforward answer. Instead, CenturyLink stated that it would  
5       record costs according to FCC Part 32 and would use forward-looking cost studies  
6       to develop UNE rates – rates that would include the Merged Company’s  
7       management cost structure post-merger.<sup>146</sup> CenturyLink’s response ignores the  
8       issue – *i.e.*, that wholesale customers should not have to pay for any of the costs  
9       of the merger and CenturyLink’s merging of the two companies. This is  
10      especially true since CenturyLink claims there will be almost \$700 million in  
11      savings associated with the merger. These principles have been recognized in  
12      numerous previous mergers<sup>147</sup> and the same principle has been applied to retail  
13      service rates.<sup>148</sup>

14      **Q.     CONDITION 7(A) STATES THAT THE MERGED COMPANY WILL**  
15      **CONTINUE TO OFFER ANY TERM AND VOLUME DISCOUNT PLANS**  
16      **OFFERED AS OF THE MERGER ANNOUNCEMENT DATE FOR AT**

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<sup>146</sup> CenturyLink Responses to Integra Minnesota Data Request Set 2, #97 and #98. To make matters worse, there is uncertainty surrounding what cost models the Merged Company will use post-merger. This, too, is concerning because (a) the market participants in Qwest’s region (including my firm QSI Consulting and my CLEC clients) have spent many hours reviewing and understanding Qwest’s cost models for wholesale services (which are mostly consistent across Qwest’s 14-state region) – work that would be undermined by a decision of the Merged Company to import legacy CenturyLink cost models into Qwest’ region post-merger; and (b) I personally reviewed some of CenturyLink legacy cost studies in my prior work for cable CLECs and can say with first-hand knowledge that the sophistication, transparency and auditability of CenturyLink’s cost studies is inferior to Qwest’s legacy cost studies.

<sup>147</sup> Conditions substantially similar to proposed conditions 2 and 3 were adopted by the Oregon PUC in the Verizon/Frontier merger proceeding.

<sup>148</sup> See, ICC order in Verizon/Frontier merger, and Oregon PUC order in Embarq/CenturyTel merger.

1           **LEAST THE DEFINED TIME PERIOD. IS THERE AN EXAMPLE**  
2           **DEMONSTRATING THE NEED FOR THIS CONDITION?**

3           A.    Yes. On April 30, 2010 (after the Merger Announcement Date<sup>149</sup>), Qwest filed a  
4           “Product Notification”<sup>150</sup> (with an effective date of June 1, 2010) “to change its  
5           Regional Commitment Program (RCP) from a unit based plan to a revenue based  
6           plan and raise the commitment level from 90% to 95% of the total Company-  
7           provided in-service DS1 and DS3 Revenue.”<sup>151</sup> This change was made to the  
8           entire 14-state Qwest ILEC territories covered by its Tariff F.C.C. No. 1  
9           (interstate access tariff). A RCP is a pricing plan that allows DS1 and/or DS3  
10          customers to receive price reductions for committing to a minimum volume on  
11          DS1 and/or DS3 circuits for a certain period of time.<sup>152</sup> As of May 31, 2010 (the  
12          day before the effective date of Qwest’s Product Notification), the former RCP  
13          provisions were no longer available to wholesale customers, and the new, less  
14          favorable terms are required going forward.<sup>153</sup> As Integra informed Qwest, these  
15          RCP changes “greatly diminish the value of the RCP” by “increasing the risk  
16          associated with the plan” and were put in place shortly before “some of these  
17          plans are about to expire.”<sup>154</sup> I have attached Qwest’s Product Notification and  
18          Integra’s correspondence with Qwest on this issue as Exhibit AA-5. The point

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<sup>149</sup> The Merger Announcement Date, when used in this list of conditions, refers to April 21, 2010, which is the date on which Qwest and CenturyLink entered into their merger agreement.

<sup>150</sup> PROD.RESL.04.30.10.F.07809.DS1\_DS3\_Services

<sup>151</sup> Product Notification: PROD.RESL.04.30.10.F.07809.DS1\_DS3\_Services, filed April 30, 2010.

<sup>152</sup> Qwest Corporation, Tariff F.C.C. No. 1, 3<sup>rd</sup> revised page 7-100.

<sup>153</sup> Qwest Corporation, Tariff F.C.C. No. 1, 3<sup>rd</sup> revised page 7-100.

<sup>154</sup> See Exhibit AA-5. It is my understanding that Integra’s current RCP expires in the fall 2011. At that time, the new, less favorable RCP terms put in place by Qwest after the Merger Announcement Date will be the only RCP terms available.



1 here is that Qwest is taking steps after the Merger Announcement Date and before  
2 the Closing Date to raise barriers to entry and enhance its revenues at the expense  
3 of wholesale customers, either in terms of degraded services or higher rates.  
4 While this is one example, there can be no question that the Companies are geared  
5 towards improving the combined company's financial condition, and because it is  
6 most profitable for them to boost revenues at the expense of their competitors,  
7 there are (and/or will be) likely other similar examples. CenturyLink has stated  
8 that "[o]ne of the Transaction's key benefits is the resulting financial condition of  
9 the combined company" and a "financially stronger company can...compete  
10 against cable telephony providers, wireless carriers, VoIP offerings, and  
11 CLECs..."<sup>155</sup> I do not object to robust competition with the Merged Company so  
12 long as the competition is fair, but what I do object to in this instance (and what  
13 this example shows) is the Companies' attempting to hinder the CLECs' ability to  
14 compete with the Merged Company before the proposed transaction is even  
15 approved. That is why it is important to provide protections for the time period  
16 between the Merger Announcement Date and Closing Date as well as for the  
17 Defined Time Period.

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<sup>155</sup> Arizona Joint Application at p. 14, lines 12-15; for similar statements from Qwest, see Campbell Arizona Direct, at p. 18.

1 **VIII. ADDITIONAL CONSIDERATIONS**

2 **A. *If the Merger Leads to Lower Costs, Wholesale Prices Should***  
3 ***Come Down Commensurably with Costs***

4 **Q. IF THE MERGER IS APPROVED, SHOULD WHOLESALE**  
5 **CUSTOMERS SHARE THE BENEFITS?**

6 A. Yes. As discussed, mergers are driven by the objective to increase shareholder  
7 value, which, if it actually happens, is a good thing, since it balances for  
8 shareholders the potential risks and rewards for owning the company. In the  
9 telecommunications industry, however, retail competition relies critically on  
10 access to the ILECs' wholesale services, as provided for in the  
11 Telecommunications Act of 1996. This means that in the telecommunications  
12 industry there are other significant stakeholders likely to be impacted by the  
13 merger: CLECs and their customers. Given that in this merger CLECs are being  
14 subjected to significant risks, standard economic theory suggests that they  
15 likewise should be allowed to reap potential benefits. Specifically, to the extent  
16 that the merger may generate benefits in terms of lower overall network and  
17 overhead costs (due to realized efficiencies), cost reductions should flow through  
18 to CLECs in the form of, for example, lower transaction costs in relation to  
19 dealing with the Merged Company.

20 **Q. ARE ANY ADDITIONAL SAFEGUARDS APPROPRIATE TO ENSURE**  
21 **THAT MERGER-DRIVEN COST REDUCTIONS WOULD FLOW**  
22 **THROUGH ON A NON-DISCRIMINATORY BASIS TO ALL**

1           **WHOLESALE CUSTOMERS, RATHER THAN JUST AFFILIATES OF**  
2           **THE MERGED COMPANY?**

3           A.    Yes. To the extent that UNEs and interconnection are required to be priced at  
4           TELRIC, forward-looking cost savings should be reflected in lower UNE and  
5           interconnection rates as a matter of law. Similarly, with respect to the pricing of  
6           other wholesale products, such as special access services, the Merged Companies  
7           should be expected to pass through merger-related cost savings at least in part to  
8           their wholesale customers in a nondiscriminatory manner.

9           ***B.    A Post-Merger CenturyLink Should Waive Future Claims of***  
10           ***Rural Exemptions***

11          **Q.    WHAT IS THE RURAL EXEMPTION?**

12          A.    The Federal Telecommunications Act of 1996 generally requires all ILECs to  
13          interconnect their networks and exchange traffic with other telecommunications  
14          carriers (Section 251, Section 252). Section 251(f), however, provisionally  
15          exempts rural ILECs from the obligations under Section 251(c) until they receive  
16          a bona fide request for interconnection from a telecommunications carrier. Once  
17          such a request is made, the exemption may be terminated by a state commission,  
18          if the commission finds that certain conditions are satisfied. Specifically, Section  
19          251(f)(1) generally states that the state commission shall terminate the rural  
20          exemption from the 251(c) obligations if the request: (1) is not unduly  
21          burdensome; (2) is technically feasible; and (3) is consistent with universal

1 service policies detailed in section 254 (other than subsections (b)(7) and  
2 (c)(1)(D).)

3 Many rural carriers have been hiding behind the rural exemption to avoid  
4 competition at the expense of rate payers and the public interest at large. In fact,  
5 the FCC has taken note and stated that it will clarify the rural exemption so as to  
6 prevent abuse:

7 There is evidence that some rural incumbent carriers are resisting  
8 interconnection with competitive telecommunications carriers,  
9 claiming that they have no basic obligation to negotiate  
10 interconnection agreements. [...] Without interconnection for  
11 voice service, a broadband provider, which may partner with a  
12 competitive telecommunications carrier to offer a voice-video-  
13 Internet bundle, is unable to capture voice revenues that may be  
14 necessary to make broadband entry economically viable.  
15 Accordingly, to prevent the spread of this anticompetitive  
16 interpretation of the Act and eliminate a barrier to broadband  
17 deployment, the FCC should clarify rights and obligations  
18 regarding interconnection to remove any regulatory uncertainty. In  
19 particular, the FCC should confirm that all telecommunications  
20 carriers, including rural carriers, have a duty to interconnect their  
21 networks.<sup>156</sup>

22 **Q. SHOULD THE MERGED COMPANY WAIVE ITS RIGHT TO SEEK**  
23 **ANY FURTHER RURAL EXEMPTIONS UNDER SECTION 251(F)(1) OR**  
24 **SUSPENSIONS AND MODIFICATIONS UNDER SECTION 251(F)(2)?**

25 **A.** Yes. The rural exemption is intended for small rural carriers whose economic  
26 viability may be threatened if they were obligated to incur costs to implement all  
27 the unbundling and resale provisions of the Telecommunications Act of 1996,  
28 such as the costs associated with the development of sophisticated OSS. These

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<sup>156</sup> FCC's *Connecting America, the National Broadband Plan*, at p. 49 (<http://www.broadband.gov/download-plan/>).

1 considerations are not relevant with respect to a post-merger CenturyLink because  
2 it will provide service (through its affiliates) in 37 states, thus becoming the third  
3 largest ILEC in the country, behind AT&T and Verizon. Surely Congress did not  
4 intend to exempt the largest incumbent service providers in the nation from their  
5 statutory obligations under Section 251. Hence, I recommend that the Merged  
6 Company commit to waive its right to seek the exemption for rural telephone  
7 companies under Section 251(f)(1) and its right to seek suspensions and  
8 modifications for rural carriers under Section 251(f)(2) of the Communications  
9 Act.

10 **Q. THE STATUTE ESTABLISHES A SEPARATE PROCESS FOR STATE**  
11 **COMMISSIONS TO TERMINATE A RURAL EXEMPTION. DOES**  
12 **YOUR RECOMMENDATION INTERFERE WITH THAT PROCESS?**

13 A. No. The imposition of a condition to waive the rural exemption would not  
14 interfere with the existing statutory process for terminating an exemption. That  
15 process would remain available for competitors to utilize in individual cases. But  
16 note that those cases can substantially increase competitors' cost of obtaining  
17 interconnection with companies like CenturyLink. Given the circumstances of  
18 this transaction, and the fact that CenturyLink will become the third largest ILEC  
19 in the nation, it is appropriate to predicate approval of the transaction on  
20 Condition 12.

1       **Q.    ARE YOU AWARE OF ANY CIRCUMSTANCES IN WHICH A**  
2       **COMPANY HAS WAIVED ITS RURAL EXEMPTION, AS YOU HAVE**  
3       **RECOMMENDED?**

4       A.    Yes.  In fact, CenturyLink has recently waived, at least partially, certain  
5       protections from the rural exemption in Oregon in order to negotiate a formal  
6       interconnection agreement with another carrier.  The Oregon PUC determined  
7       that federal law, including the statutory process for terminating an exemption,  
8       does not preclude a carrier's ability to waive the rural exemption.<sup>157</sup>  The Oregon  
9       PUC cited state commission decisions in Washington and North Carolina as  
10      support for its findings.<sup>158</sup>  Notably, the Oregon PUC also cited as support for its  
11      conclusion that waivers are permissible the fact that transaction costs associated  
12      with a rural exemption termination proceeding can be quite burdensome on the  
13      parties, and the state commission.  The order explains: "The administrative  
14      burden on a state commission and the parties involved in a section 251(f)(1)(B)  
15      proceeding relieved by a voluntary waiver is significant and should not be  
16      ignored."<sup>159</sup>

17      **IX.  SUMMARY AND CONCLUSION**

18      **Q.  PLEASE SUMMARIZE YOUR TESTIMONY AND STATE YOUR**  
19      **CONCLUSIONS.**

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<sup>157</sup> See *In the Matter of Western Radio Services Company Request for Interconnection Agreement of CenturyTel of Eastern Oregon, Inc.*, Order Answering Certified Questions, ARB 864, 2009 Ore. PUC LEXIS 421 at \*\*18-23, (Ore. PUC Dec. 14, 2009).

<sup>158</sup> *Id.* at 19.

<sup>159</sup> *Id.* at 19-20.

1       A.    In this testimony, I have discussed the troublesome history of mergers and  
2           demonstrated that the Commission should prepare for the possibility that this  
3           merger, like many others, could fail or otherwise create havoc for the industry.  
4           Based upon the serious risks to the public interest inherent in this merger  
5           proposal, I recommend that the Commission reject the proposed transaction. In  
6           the event that the Commission nevertheless decides to approve it, I recommend  
7           that the Commission require the Companies to agree to certain conditions and  
8           commitments necessary to protect CLECs and the competitive process. To that  
9           purpose, I have identified and discussed specific conditions and commitments that  
10          should be required of CenturyLink and Qwest as prerequisites for the merger  
11          approval. (A complete list is provided by Mr. Gates in his testimony.)

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

13       A.    Yes, it does.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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JOINT NOTICE AND APPLICATION OF )	
QWEST CORPORATION, QWEST )	
COMMUNICATIONS COMPANY, LLC, )	
QWEST LD CORP., EMBARQ )	Docket No. T-01051B-10-0194
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. )	

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EXHIBIT AA-1

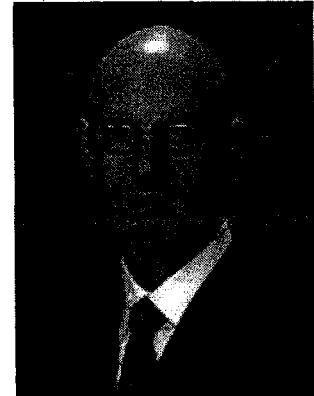




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## **August H. Ankum, Ph.D.**

**Senior Vice President  
Founding Partner  
QSI Consulting, Inc.**  
gankum@qsiconsulting.com



### **Biography**

Dr. Ankum is a founding partner of QSI, serves as Senior Vice President, and is the firm's Chief Economist. Dr. Ankum is an economist and consultant specializing in both domestic and international telecommunications issues. Before co-founding QSI, Dr. Ankum worked directly with a number of the country's largest communications firms in his own practice. Prior to that, in 1996, he served as Senior Economist for MCI Telecommunications Corporation's Public Policy Division, and before that, in 1995, as a Manager in the Regulatory and External Affairs Division of Teleport Communications Group, Inc. (subsequently purchased by AT&T). While at MCI and TCG, Dr. Ankum provided advice and expert testimony regarding the economics of telecommunications and public policy before the FCC and in contested proceedings before state public utility commissions. Over the course of his career, Dr. Ankum has worked on virtually all issues pertaining to the introduction of competition in telecommunications markets. Dr. Ankum began his career in telecommunications with the Texas Public Utility Commission, where he served as the Commission Staff's Chief Telecommunications Economist before leaving in 1994.

### **Educational Background**

Ph.D., Economics <i>University of Texas, Austin, Texas</i>	1992
Master of Arts, Economics <i>University of Texas, Austin, Texas</i>	1987
Bachelor of Arts, Economics <i>Quincy College, Quincy, Illinois</i>	1982



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## **Professional Experience**

<b>QSI Consulting</b> (1999 to Current)	Founding Partner and Senior Vice President
<b>Ankum &amp; Associates</b> (1996 - 1999)	Founding partner and President
<b>MCI</b> (1995 - 1996)	Senior Economist
<b>TCG</b> (1994 - 1995)	Manager
<b>Texas Office of Public Utility Commission</b> (1987 - 1994)	Chief Economist, and Economist.

## **PROCEEDINGS BEFORE STATE PUBLIC UTILITY COMMISSIONS IN WHICH DR. ANKUM HAS FILED EXPERT WITNESS TESTIMONY:**

### **Before the California Public Utilities Commission Consolidated Docket**

*Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050*  
On behalf of ATT and MCI

### **Before the Public Utilities Commission of the State of Colorado Docket No. 08F-259T**

*Qwest Communications Company, LLC, (Complainant), v. MCIMetro, XO Communications Services, Time Warner Telecom, Granite Telecommunications, Eschelon Telecom, Arizona DialTone, CAN Communications, Bullseye Telecom, Inc., ComTel Telecom Assets, LP, Earnest Communications, Inc., Level3 Communications, LLC, and Liberty Bell Telecom, LLC.*  
(Respondents)  
On behalf of Eschelon Telecom, Inc., XO Communications Services, Inc., Granite Telecommunications, LLC, and ACN Communication Services, Inc. ("Joint CLECs.")



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**Before the Public Utilities Commission of the State of Colorado**  
**Docket No. 07A-211T**

*In the Matter of Qwest Corporation's Application, Pursuant to Decision Nos. C06-1280 and C07-0423, Requesting that the Commission Consider Testimony and Evidence to Set Costing and Pricing of Certain Network Elements Qwest Is Required to Provide Pursuant to 47 U.S.C. §§ 251(B) and (C) On Behalf of CBeyond Communications, Comcast Phone of Colorado, LLC, DIECA Communications, Inc. d/b/a Covad Communications Company, Integra Telecom, Inc., McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services, XO Communications Services, Inc.*

**Before the Connecticut Department of Public Utility Control**  
**Docket No. 02-05-17**

*DPUC Investigation of Intrastate Carrier Access Charges*  
On behalf of AT&T and MCI

**Before the Connecticut Department of Public Utility Control**

Docket Nos. 09-04-21, 08-12-04

*DPUC Investigation into the Southern New England Telephone Company's Cost of Service Re: Reciprocal Compensation and Transit Services*  
On Behalf of the Connecticut Department of Utility Control

**Before the Delaware Public Service Commission**

**PSC Docket No. 00-025**

*Petition of Focal Communications Corporation of Pennsylvania For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic - Delaware, Inc.*

On behalf of Focal Communications Corporation of Pennsylvania

**Public Service Commission of the District of Columbia**

**Formal Case No. 1040**

*In the Matter of the Investigation into Verizon Washington, D.C. Inc.'s Universal Emergency Number 911 Services Rates in the District of Columbia.*

Advisor to the Public Service Commission of the District of Columbia

**Before the Federal Communications Commission**

**CC Docket No. 01-92**

*In the Matter of Developing a Unified Intercarrier Compensation Regime*  
On behalf of NuVox Communications, Inc.



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**Before the Florida Public Utilities Commission**

**Docket No. 990649B-TP**

*Investigation into Pricing of Unbundled Network Elements*

On behalf of AT&T Communications of the Southern States, Inc. MCI metro Access  
Transmission Services, LLC & MCI WorldCom Communications, Inc., Florida Digital Network,  
Inc. (collectively called the "ALEC Coalition").

**Before the Florida Public Utilities Commission**

**Docket No. 030829-TP**

*In the Matter of Complaint of FDN Communications for Resolution of Certain Billing Disputes and  
Enforcement of UNE Orders and Interconnection Agreements with BellSouth Telecommunications,  
Inc.*

On behalf of Florida Digital Network, Inc. d/b/a FDN Communications

**Before the Georgia Public Service Commission**

**Docket No. 6352-U.**

*AT&T Petition for the Commission to Establish Resale Rules, Rates and terms and Conditions and  
the Initial Unbundling of Services*

On behalf of MCI Telecommunications Corporation

**Before the Illinois Commerce Commission**

**Docket No. 94-0048**

*Adoption of Rules on Line-Side Interconnection and Reciprocal Interconnection*

On behalf of Teleport Communications Group, Inc.

**Before the Illinois Commerce Commission**

**Docket No. 94-0096**

*Proposed Introduction of a Trial of Ameritech's Customer First Plan in Illinois*

On behalf of Teleport Communications Group, Inc.

**Before the Illinois Commerce Commission**

**Docket No. 94-0117**

*Addendum to Proposed Introduction of a Trial of Ameritech's Customer First Plan in Illinois*

On behalf of Teleport Communications Group, Inc.

**Before the Illinois Commerce Commission**

**Docket No. 94-0146**

*AT&T's Petition for an Investigation and Order Establishing Conditions Necessary to Permit  
Effective Exchange Competition to the Extent Feasible in Areas Served by Illinois Bell Telephone  
Company*

On behalf of Teleport Communications Group, Inc.



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**Before the Illinois Commerce Commission**

**Docket No. 95-0315**

*Proposed Reclassification of Bands B and C Business Usage and Business Operator Assistance/Credit Surcharges to Competitive Status*  
On behalf of MCI Telecommunications Corporation.

**Before the Illinois Commerce Commission**

**Docket 94-480**

*Investigation Into Amending the Physical Collocation Requirements of 83 Ill. Adm. Code 790*  
On behalf of MCI Telecommunications Corporation.

**Before the Illinois Commerce Commission**

**Docket No. 95-0458**

*Petition for a Total Local Exchange Wholesale Tariff from Illinois Bell Telephone Company d/b/a Ameritech Illinois and Central Telephone Company Pursuant to Section 13-505.5 of the Illinois Public Utilities Act*  
On behalf of MCI Telecommunications Corporation.

**Before the Illinois Commerce Commission**

**Docket No. 95-0296**

*Citation to Investigate Illinois Bell Telephone Company's Rates, Rules and regulations For its Unbundled Network Component Elements, Local Transport Facilities, and End office Integration Services*  
On behalf of MCI Telecommunications Corporation.

**Before the Illinois Commerce Commission**

**Docket No. 96-AB-006**

*In the Matter of MCI Telecommunications Corporation Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*  
On behalf of MCI Telecommunications Corporation.

**Before the Illinois Commerce Commission**

**Docket No. 96-AB-007**

*In the Matter of MCI Telecommunications Corporation Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Central Telephone Company of Illinois ("Sprint")*  
On behalf of MCI Telecommunications Corporation.



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**Before the Illinois Commerce Commission**

**Docket No. 96-0486**

*Investigation into forward looking cost studies and rates of Ameritech Illinois for interconnection, network elements, transport and termination of traffic.*

On behalf of MCI Telecommunications Corporation.

**Before the Illinois Commerce Commission**

**Docket No. 98-0396.**

*Phase II of Ameritech Illinois TELRIC proceeding*

On behalf of MCIWorldCom.

**Before the Illinois Commerce Commission**

**Docket No. 00-0700**

*Illinois Commerce Commission On its Motion vs Illinois Bell Telephone Company Investigation into Tariff Providing Unbundled Local Switching with Shared Transport*

On behalf of AT&T Communications of Illinois, Inc., and WorldCom, Inc.

**Before the Illinois Commerce Commission**

**Docket No. 02-0864**

*In the Matter of: Illinois Bell Telephone Company, Filing to Increase Unbundled Loop and Nonrecurring Rates (Tariffs Filed December 24, 2002)*

On Behalf of WorldCom, Inc., McLeodUSA Telecommunications Services, Inc., Covad Communications Company, TDS Metrocom, LLC, Allegiance Telecom of Illinois, Inc., RCN Telecom Services of Illinois, LLC., Globalcom, Inc., Z-Tel Communications, Inc., XO Illinois, Inc., Forte Communications, Inc., CIMCO Communications, Inc.

**Before the Indiana Regulatory Commission**

**Cause No. 39948**

*In the matter of the Petition of MCI Telecommunications Corporation for the Commission to Modify its Existing Certificate of Public Convenience and Necessity and to Authorize the Petitioner to Provide certain Centrex-like Intra-Exchange Services in the Indianapolis LATA Pursuant to I.C. 8-1-2-88, and to Decline the Exercise in Part of its Jurisdiction over Petitioner's Provision of such Service, Pursuant to I.C. 8-1-2.6.*

On behalf of MCI Telecommunications Corporation

**Before the Indiana Regulatory Commission**

**Cause No. 40178**

*In the matter of the Petition of Indiana Bell Telephone company, Inc. For Authorization to Apply a Customer Specific Offering Tariff to Provide the Business Exchange Services Portion of Centrex and PBX Trunking Services and for the Commission to Decline to Exercise in Part Jurisdiction over the Petitioner's Provision of such Services, Pursuant to I.C. 8-1-2.6*

On behalf of MCI Telecommunications Corporation.



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**Before the Indiana Regulatory Commission**

**Cause No. 40603-INT-01**

*MCI Telecommunications Corporation Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Indiana Bell Telephone Company d/b/a Ameritech Indiana*

On behalf of MCI Telecommunications Corporation.

**Before the Indiana Regulatory Commission**

**Cause No. 40611**

*In the matter of the Commission Investigation and Generic Proceeding on Ameritech Indiana's Rates for Interconnection Service, Unbundled Elements and Transport and Termination under the Telecommunications Act of 1996 and Related Indiana Statutes*

On behalf of MCI Telecommunications Corporation.

**Before the Indiana Regulatory Commission**

**Cause No. 40618**

*In the Matter of the Commission Investigation and Generic Proceeding on GTE's Rates for Interconnection, Service, Unbundled Elements, and Transport under the FTA 96 and related Indiana Statutes*

On behalf of MCI Telecommunication Corporation.

**Before the Indiana Regulatory Commission**

**Cause No. 40611-S1**

*In the matter of the Commission Investigation and Generic proceeding on the Ameritech Indiana's rates for Interconnection, Unbundled Elements, and Transport and Termination Under the Telecommunications Act of 1996 and Related Indiana Statutes*

On behalf of WorldCom, Inc., AT&T Communications of Indiana, G.P.

**Before the Indiana Utility Regulatory Commission**

**Cause No. 42393**

*In the Matter of the Commission Investigation and Generic Proceeding of Rates and Unbundled Network Elements and Collocation for Indiana Bell Telephone Company, Incorporated D/B/A SBC Indiana Pursuant to the Telecommunications Act of 1996 and Related Indiana Statutes.*

On Behalf of WorldCom, Inc. ("MCI") McLeodUSA Telecommunications Services, Inc., Covad Communications Company, Z-Tel Communications, Inc.



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**Before the Iowa Department of Commerce Utilities Board**

**Docket No: RPU – 00 – 01**

*US West Communications, Inc.,*  
On behalf of McLeodUSA.

**Before the State of Maine Public Utilities Commission**

**Dockets Nos. 2007-611, 2008-214 through 2008-218, 2009-41-44.**

*CRC Communications of Maine, Inc., Investigation Pursuant to 47 U.S.C. § 251(f)(1) Regarding CRC Communications of Maine's Request of Lincolnville, Telephone Company, UniTel, Inc., Oxford Telephone Company, Oxford West Telephone Company, Tidewater Telecom, Inc.*

On Behalf of CRC Communications, Inc. an Time Warner Cable

**Before the Maryland Public Utilities Commission**

**Case No. 8988**

*In The matter, The Implementation Of The Federal Communications Commission's Triennial Review Order.*

On Behalf of Cavalier Telephone, LLC

**Before the Massachusetts Department of Energy and Transportation**

**D.P.U. 96-83**

*NYNEX/MCI Arbitration*

On behalf of MCI Telecommunications Corporation.

**Before the Massachusetts Department of Energy and Transportation**

**Docket 01-20**

*Investigation into Pricing based on TELRIC for Unbundled Network Elements and Combinations of Unbundled Networks Elements and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services.*

On behalf Allegiance, Network Plus, Inc., El Paso Networks, LLC, and Covad Communications Company.

**Before the Massachusetts Department of Energy and Transportation**

**Docket 01-03**

*Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts*

On behalf of Network Plus, Inc.





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**Before the Massachusetts Department of Telecommunications and Energy**

**D.T.E. 03-60**

*Proceeding by the Department on its own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order Regarding Switching for Mass market Customers*

On Behalf of Conversent Communications of Massachusetts, LLC

**Before the Massachusetts Department of Telecommunications and Cable**

**D.T.E. 06-61**

*Investigation by the department on its own Motion as to the Propriety of the rates and Charges Set Forth in the following tariff: M.D.T.E. No. 14, filed with the Department on June 16, 2006, to become Effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Massachusetts*

On Behalf of Broadview networks, Inc.; DSCI Corporation; Eureka Telecom, Inc. d/b/a InfoHighway Communications; Metropolitan Telecommunications of Massachusetts, Inc., a/k/a MetTel; New Horizon Communications; and One Communications  
9/2006

**Before the Massachusetts Department of Telecommunications and Cable**

**D.T.E. 07-9**

*Department Investigation into the Intrastate Access Rates of Competitive Local Exchange Carriers*  
On behalf of One Communications, PAETEC Communications, Inc., RNK Communications, and XO Communications Services, Inc.

**Before the Michigan Public Service Commission**

**Case No. U-10647**

*In the Matter of the Application of City Signal, Inc. for an Order Establishing and Approving Interconnection Arrangements with Michigan Bell Telephone Company*

On behalf of Teleport Communications Group, Inc.

**Before the Michigan Public Service Commission**

**Case No. U-10860**

*In the Matter, on the Commission's Own Motion, to Establish Permanent Interconnection Arrangements Between Basic Local Exchange Providers*

On behalf of MCI Telecommunications Corporation.

**Before the Michigan Public Service Commission**

**Case No. U-11280**

*In the Matter, on the Commission's Own Motion, to consider the total service long run incremental costs and to determine the prices for unbundled network elements, interconnection services, resold services, and basic local exchange services for Ameritech Michigan*

On behalf of MCI Telecommunications Corporation.



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**Before the Michigan Public Service Commission**

**Case No. U-11366**

*In the matter of the application under Section 310(2) and 204, and the complaint under Section 205(2) and 203, of MCI Telecommunications Corporation against AMERITECH requesting a reduction in intrastate switched access charges*

On behalf of MCI Telecommunications Corporation.

**Before the Michigan Public Service Commission**

**Case No. U-13531**

*In the matter, on the Commission's own motion, to review the costs of telecommunications services provided by SBC Michigan*

On behalf of AT&T, Worldcom, Inc., McLeodUSA and TDS Metrocom.

**Before the Michigan Public Service Commission**

**Case No. U-11831**

*In the Matter of the Commission's own motion, to consider the total service long run incremental costs for all access, toll, and local exchange services provided by Ameritech Michigan*

On behalf of MCIWorldCom, Inc.

**Before the Michigan Public Service Commission**

**Case No. U-11830**

*In the matter of Ameritech Michigan's Submission on Performance Measures, Reporting, and Benchmarks, Pursuant to the October 2, 1998 Order in Case No. U-11654*

On behalf of Covad Communications, McLeodUSA Telecommunications Services, Inc., LDMI Telecommunications Inc., Talk America Inc., and XO Communications Services, Inc.

**Before the Michigan Public Service Commission**

**MPSC Case No. U-14952**

*In the matter of the formal complaint of TDS Metrocom, LLC, LDMI, Telecommunications, Inc and XO Communications Services, Inc against Michigan Bell Telephone Company, d/b/a AT&T Michigan, or in the alternative, an application.*

On Behalf of TDS Metrocom, LLC, LDMI, Telecommunications, Inc and XO Communications Services, Inc.

**Before the Minnesota Public Utilities Commission**

**PUC Docket No. P-442, 421, 3012 /M-01-1916**

*In Re Commission Investigation Of Qwest's Pricing Of Certain Unbundled Network Elements,*

On behalf of Otter Tail Telecom, Val-Ed Joint Venture D/B/A 702 Communications,

McLeodUSA, Eschelon Telecommunications, USLink.



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**Before the Minnesota Public Utilities Commission**

**PUC Docket No. P-421/AM-06-713**

**OAH Docket No. 3-2500-17511-2**

*In the Matter of Qwest Corporation's Application for Commission Review of TELRIC rates Pursuant to 47 U.S.C. § 251*

On Behalf of Integra Telecom of Minnesota, Inc.; McLeodUSA Telecommunications Services, Inc.; POPP.com, Inc.; DIECA Communications, Inc., d/b/a Covad Communications Company; TDS Metrocom; and XO Communications of Minnesota, Inc.

**Before the Minnesota Public Utilities Commission**

**PUC Docket #P-421/CI-05-1996**

**OAH Docket No. 12-2500-17246-2**

*In the Matter of a Potential Proceeding to Investigate the Wholesale Rate Charged by Qwest*

On behalf of Integra Telecom of Minnesota, Inc., McLeodUSA Telecommunications Service, Inc., POPP.com, Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, TDS Metrocom, and XO Communications of Minnesota, Inc.

**Before the New Jersey Board of Public Utilities**

*Petition of Focal Communications Corporation of New Jersey For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic*

On behalf of Focal Communications Corporation of New Jersey.

**Before the New Jersey Board of Public Utilities**

**Docket No. TO00060356**

*I/M/O the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc.*

On behalf of WorldCom, Inc.

**Before the New Jersey Board of Public Utilities**

**Docket No. TO03090705**

*In The Matter, The Implementation Of the Federal Communications Commission's Triennial Review Order*

On Behalf of Conversent Communications of New Jersey, LLC

**Before the New Jersey Board of Public Utilities**

**Docket No. TX08090830**

*In the Matter of the Board's Investigation and review of Local Exchange Carrier Intrastate Access Rates*

On behalf of One Communications, PAETEC Communications, Inc., US LEC of Pennsylvania, LLC, Level3 Communications, LLC, and XO Communications Services, Inc.



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**Before The New Mexico State Corporation Commission  
Docket No. 96-307-TC**

*Brooks Fiber Communications of New Mexico, Inc. Petition for Arbitration*  
On behalf of Brooks Fiber Communications of New Mexico, Inc.

**Before The New Mexico State Corporation Commission  
Utility Case No. 3495, Phase B**

*In the matter of the consideration of costing and pricing rules for OSS, collocation, shared transport, non-recurring charges, spot frames, combination of network elements and switching.*  
On behalf of the Commission Staff.

**Before the New York Public Service Commission  
Case Nos. 95-C-0657, 94-C-0095, 91-C-1174**

*Commission Investigation into Resale, Universal Service and Link and Port Pricing*  
On behalf of MCI Telecommunications Corporation.

**Before the New York Public Service Commission  
Case 99-C-0529**

*In the Matter of Proceeding on Motion of the Commission To Reexamine Reciprocal Compensation*  
On Behalf Of Cablevision LightPath, Inc.

**Before the New York Public Service Commission  
Case 98-C-1357**

*Proceeding on the Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*  
On behalf of Corecomm New York, Inc.

**Before the New York Public Service Commission  
Case 98-C-1357**

*Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*  
On behalf of MCIWorldCom.

**Before the State Of New York Public Service Commission  
CASE 02-C-1425**

*In The Matter, Proceeding on Motion of the Commission to Examine the Processes, and Related Costs of Performing Loop Migrations on a More Streamlined (e.g., Bulk) Basic*  
On Behalf of Conversent Communications of New York, LLC



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**Before the Public Utilities Commission of Ohio**

**Case No. 96-888-TP-ARB**

*In the Matter of MCI Telecommunications Corporation Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Ameritech Ohio*

On behalf of MCI Telecommunications Corporation.

**Before the Public Utilities Commission of Ohio**

**Case No. 96-922-TP-UNC.**

*In the Matter of the Review of Ameritech Ohio's Economic Costs for Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic*

On behalf of MCI Telecommunications Corporation.

**Before the Public Utilities Commission of Ohio**

**Case No. 00-1368-TP-ATA**

*In the Matter of the Review of Ameritech Ohio's Economic Costs for Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic. Case No. 96-922-TP-UNC and In the Matter of the Application of Ameritech Ohio for Approval of Carrier to Carrier Tariff*

On behalf of MCIWorldCom and ATT of the Central Region.

**Before the Public Utilities Commission of Ohio**

**Case No. 97-152-TP-ARB**

*In the Matter of the Petition of MCI Telecommunications Corporation for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*

On behalf of the MCI Telecommunications Corporation

**Before the Public Utility Commission of Ohio**

**Case No. 02-1280-TP-UNC**

*In the Matter of the Review of SBC Ohio's TELRIC Costs for Unbundled Network Elements*

On Behalf of MCImetro Access Transmission Services, LLC, McLeodUSA Telecommunications Services, Inc., Covad Communications Company, XO Ohio, Inc., NuVox Communications of Ohio, Inc.

**Before the Public Utility Commission of Ohio**

**Case No. 08-45-TP-ARB**

*In the Matter of the Petition of Communication Options, Inc. for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq Pursuant to Section 252(b) of The Telecommunications Act of 1996*

On Behalf of Communications Options, Inc.



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**Before the Pennsylvania Public Utility Commission**

**Docket No. I-00940035**

*In Re: Formal Investigation to Examine Updated Universal Service Principles and Policies for telecommunications Services in the Commonwealth Interlocutory order, Initiation of Oral Hearing Phase*

On behalf of MCI Telecommunications Corporation.

**Before the Pennsylvania Public Utility Commission**

**Docket No. M-0001352**

*Structural Separation of Verizon*

On behalf of MCI WorldCom.

**Before the Puerto Rico Telecommunications Regulatory Board**

**Docket No. 97-0034-AR**

*Petition for Arbitration Pursuant to 47 U.S.C. & (b) and the Puerto Rico Telecommunications Act of 1996, regarding Interconnection Rates Terms and Conditions with Puerto Rico Telephone Company*

On behalf of Cellular Communications of Puerto Rico, Inc.

**Before the Public Service Commission of South Carolina**

**Dockets Nos. 2008-325-C, 2008-326-C, 2008-327-C, 2008-328-C, and 2008-329-C**

*In Re: Docket No. 2008-325-C - Application of Time Warner Cable Information Services (South Carolina), LLC d/b/a Time Warner Cable to Amend its Certificate of Public Convenience and Necessity to Provide Telephone Services in the Service Area of Farmers Telephone Cooperative, Inc. and for Alternative Regulation.*

On Behalf of Time Warner Cable

**Before the Public Utility Commission of South Dakota**

**Docket TC07-117**

*In the Matter of the Petition of Midcontinent Communications for the Approval of its Intrastate Switched Access Tariff and for an Exemption from Developing Company-Specific Cost-Based Switched Access Rates*

On Behalf of Midcontinent Communications, Inc.

**Before the State of Rhode Island and Providence Plantations Public Utilities Commission**

**Docket No. 2252**

*Comprehensive Review of Intrastate Telecommunications Competition*

On behalf of MCI Telecommunications Corporation.



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**Before the State of Rhode Island and Providence Plantations Public Utilities Commission  
Docket Nos. 3550 and 2861**

*In The Matter, Implementation of the Requirements of the FCC's Triennial Review Order ("TRO")*  
On behalf of Conversent Communications of Rhode Island, LLC

**Before the Tennessee Public Service Commission**

**Docket No. 96-00067**

*Avoidable Costs of Providing Bundled Services for Resale by Local Exchange Telephone Companies*  
On behalf of MCI Telecommunications Corporation.

**Before the Public Utility Commission of Texas**

**Docket No. 7790**

*Petition of the General Counsel for an Evidentiary Proceeding to Determine Market Dominance*  
On behalf of the Public Utility Commission of Texas.

**Before the Public Utility Commission of Texas**

**Docket No. 8665**

*Application of Southwestern Bell Telephone Company for Revisions to the Customer Specific Pricing Plan Tariff*  
On behalf of the Public Utility Commission of Texas.

**Before the Public Utility Commission of Texas**

**Docket No. 8478**

*Application of Southwestern Bell Telephone Company to Amend its Existing Customer Specific Pricing Plan Tariff: As it Relates to Local Exchange Access through Integrated Voice/Data Multiplexers*  
On behalf of the Public Utility Commission of Texas.

**Before the Public Utility Commission of Texas**

**Docket No. 8672**

*Application of Southwestern Bell Telephone Company to Provide Custom Service to Specific Customers*  
On behalf of the Public Utility Commission of Texas.

**Before the Public Utility Commission of Texas**

**Docket No. 8585**

*Inquiry of the General Counsel into the Reasonableness of the Rates and Services of Southwestern Bell Telephone Company*  
On behalf of the Public Utility Commission of Texas.



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**Before the Public Utility Commission of Texas**

**Docket No. 9301**

*Southwestern Bell Telephone Company Application to Declare the Service Market for CO LAN Service to be Subject to Significant Competition*  
On behalf of the Public Utility Commission of Texas.

**Before the Public Utility Commission of Texas**

**Docket No. 10382**

*Petition of Southwestern Bell Telephone Company for Authority to Change Rates*  
On behalf of the Public Utility Commission of Texas.

**Before the Public Utility Commission of Texas**

**Docket No. 14658**

*Application of Southwestern Bell Telephone Company, GTE Southwest, Inc., and Contel of Texas, Inc. For Approval of Flat-rated Local Exchange Resale Tariffs Pursuant to PURA 1995 Section 3.2532*  
On behalf of Office of Public Utility Counsel of Texas.

**Before the Public Utility Commission of Texas**

**Docket No. 14658**

*Application of Southwestern Bell Telephone Company, GTE Southwest, Inc., and Contel of Texas, Inc. For Interim Number Portability Pursuant to Section 3.455 of the Public Utility Regulatory Act*  
On behalf of Office of Public Utility Counsel of Texas.

**Before the Public Utility Commission of Texas**

**Docket Nos. 16226 and 16285**

*Application of AT&T Communications for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and Southwestern Bell Telephone Company, and Petition of MCI for Arbitration under the FTA96*  
On behalf of AT&T and MCI.

**Before the Public Utility Commission of Texas**

**Docket No. 21982**

*Proceeding to examine reciprocal compensation pursuant to section 252 of the Federal Telecommunications of 1996*  
On behalf of Taylor Communications.

**Before the Public Utility Commission of Texas**

**Docket No. 25834**

*Proceeding on Cost Issues Severed from PUC Docket 24542*  
On behalf of AT&T and MCIMetro.





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**Before the Public Utility Commission of Texas  
PUC Docket No. 31831**

*Staff's Petition to Determine whether Markets of Incumbent Local Exchange Carriers (ILECs) Should Remain Regulated*  
On Behalf of the Office of Public Utility Counsel

**Before the Public Utility Commission of Texas  
PUC Docket No. 34723**

*Petition for Review of Monthly Per-Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to PURA § 56.031 and P.U.C. Subst. R. 26.403*  
On Behalf of the Office of Public Utility Counsel

**Before the Public Utility Commission of Texas  
Docket No. 33323**

*Petition of UTEX Communications Corporation for Post-Interconnection Dispute resolution with AT&T Texas and petition of AT&T Texas for Post Interconnection Dispute Resolution with UTEX Communications Corporation,*  
On Behalf of UTEX Communications Corporation  
10, 2007

**Before the Public Utility Commission of Texas  
SOAH Docket No. 473-07-1365  
PUC Docket No. 33545**

*Application of McLeodUSA Telecommunications Services, Inc. for Approval of Intrastate Switched Access rates Pursuant to PURA Section 52.155 and PUC Subst. R. 26.223*  
On behalf of McLeodUSA Telecommunications Services

**Before the Utah public Service Commission  
Docket No. 01-049-85**

*In the Matter of the Determination of the Costs Investigation of the Unbundled Loop of Qwest Corporation, Inc.*  
On behalf of AT&T and WorldCom.

**Before the Public Service Commission of Utah  
Docket No. 09-049-37**

*In the Matter of the Complaint of Qwest Corporation against McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services.*  
On Behalf of McLeodUSA Telecommunications Services, Inc.



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**Before the Vermont Public Service Board**

**Docket No. 5713**

*Investigation into NET's tariff filing re: Open Network Architecture, including the Unbundling of NET's Network, Expanded Interconnection, and Intelligent Networks*

On behalf of MCI Telecommunications Corporation.

**Before the Washington Utilities and Transportation Commission**

**Docket No. UT-090892**

*Qwest Corporation (Complainant) v. McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services ( Respondent).*

On Behalf of McLeodUSA Telecommunications Services, Inc.

**Before the Public Service Commission of Wisconsin**

**Cause No. 05-TI-138**

*Investigation of the Appropriate Standards to Promote Effective Competition in the Local Exchange Telecommunications Market in Wisconsin*

On behalf of MCI Telecommunications Corporation.

**Before the Public Service Commission of Wisconsin**

**Docket 670-TI-120**

*Matters relating to the satisfaction of conditions for offering interLATA services (Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin)*

On behalf of MCI Telecommunications Corporation.

**Before the Public Service Commission of Wisconsin**

**Docket Nos. 6720-MA-104 and 3258-MA-101**

*In the Matter of MCI Telecommunications Corporation Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin*

On behalf of MCI Telecommunications Corporation.

**Before the Public Service Commission of Wisconsin**

**Docket No. 05-TI-349**

*Investigation Into The Establishment of Cost-Related Zones For Unbundled Network Elements,*

On behalf of AT&T Communications of Wisconsin, McLeodUSA Telecommunications Services, Inc., TDS MetroCom, Inc., and Time Warner Telecom.

**Before the Public Service Commission of Wisconsin**

**Docket No. 6720-TI-161**

*Investigation into Ameritech Wisconsin's Unbundled Network Elements*

On Behalf Of AT&T Communications of Wisconsin, Inc., WorldCom, Inc., Rhythms Links, Inc., KMC Telecom, Inc., and McLeodUSA ("CLEC Coalition")



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**AFFIDAVITS AND DECLARATIONS SUBMITTED TO THE FEDERAL COMMUNICATIONS COMMISSION**

**Before the Federal Communications Commission**

**File No. EB-04-MD-006.**

*EarthLink, Inc. (Complainant) v. SBC Communications Inc., SBC  
Advanced Solutions, Inc. (Defendants)*

On Behalf of Earthlink, Inc.

**Before the Federal Communications Commission**

**CC Docket No. 04-223**

*In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c)  
in the Omaha Metropolitan Statistical Area*

Declaration on Behalf of McLeodUSA, Inc.

**Before the Federal Communications Commission**

**CC Docket No. 01-92**

*In the Matter of Developing a Unified Intercarrier Compensation Regime*

Declaration on behalf of NuVox Communications

**Before the Federal Communications Commission**

**CC Docket No. 01-92**

*In the Matter of Developing a Unified Intercarrier Compensation Regime*

On Behalf of Cavalier Telephone, Inc.

**Before the Federal Communications Commission**

**WC Docket No. 05-337 CC Docket No. 96-45 WC Docket No. 03-109 WC Docket No. 06-  
122 CC Docket No. 99-200 CC Docket No. 96-98 CC Docket No. 01-92 CC Docket No. 99-68  
WC Docket No. 04-36**

*In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal  
Service Lifeline and Link Up Universal Service Contribution Methodology, Numbering Resource  
Optimization Implementation of the Local Competition Provisions in the Telecommunications  
Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier  
Compensation for ISP-Bound Traffic IP-Enabled Services*

On behalf of PAETEC



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**Before the Federal Communications Commission**

**WC Docket No. 07-97**

*In the Matter of Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*  
On Behalf of PAETEC

**Before the Federal Communications Commission**

**WC Docket No. 09-223**

*In the Matter of: Cbeyond, Inc. Petition for Expedited Rulemaking to Require Unbundling of Hybrid, FTTH, and FTTC Loops Network Elements Pursuant to 47 U.S.C. §251(c)(3) Of the Act*  
On behalf of Covad Communications, Inc.

**Before the Federal Communications Commission**

**GN Docket Nos. 09-47, 09-51, 09-137**

*Comments Sought on Broadband Study Conducted by the Berkman Center for Internet and Society, NBP Public Notice #13*  
On Behalf of Covad Communications Company

**MISCELLANEOUS**

**U.S. District Court, Northern District of Illinois  
Eastern Division**

**Case No. 05-C-6250**

*Cingular Wireless, LLC, a Delaware Limited Liability Company V Omar Ahmad*  
On behalf of Omar Ahmad.

**Ingham County Circuit Court**

**Case No. 04-689-CK**

*T&S Distributors, LLC Custom Software, Inc., Arq, Inc., Absolute Internet, Inc., CAC Medianet, Inc., ACD Telecom, Inc., and Telnet Worldwide, Inc. V. Michigan Bell Telephone Company, d/b/a SBC Michigan.*

On Behalf of ACD Telecom, Inc. and Telnet Worldwide, Inc.

**Before the Michigan House Committee on Energy and Technology**

*Presentation on House Bills 4257, August 2009*

On Behalf of Michigan Internet and Telecommunications Alliance

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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JOINT NOTICE AND APPLICATION OF )	
QWEST CORPORATION, QWEST )	
COMMUNICATIONS COMPANY, LLC, )	
QWEST LD CORP., EMBARQ )	Docket No. T-01051B-10-0194
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. )	

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EXHIBIT AA-2

**THE PROMISES VS. REALITIES OF RECENT ILEC MERGERS AND ACQUISITIONS**

Transaction	Broadband / New Services Deployments		Service Quality	
	Pre-Merger Claims	Post-Merger Reality	Pre-Merger Claims	Post-Merger Reality
Carlyle Group's Acquisition of Verizon-Hawaii (aka Hawaiian Telecom)	"In short order we will offer new services to our customers, including expanded broadband..." Carlyle Press Release 5/21/04	From 2006 through 3Q 2008, added only 3,247 net retail broadband lines Hawaiian Telecom 2007 Form 10-K and 3Q2008 10-Q	"Applicants also allude to improved customer service that will be achieved through investment in state-of-the-art back office systems." HI PUC Order No. 21696, at 20	"Largely because of impacts from this cutover, Hawaiian Telecom also experienced very significant slow-downs in call answer and handling times in its customer contact centers and errors in its billing during this time [7/06-9/07]" HI PUC Annual Report 2008-2009, at 58.
FairPoint's Acquisition of Verizon operations in ME, NH, and VT	Will invest to expand offering of LD, DSL, web-hosting, and hosted e-mail services in region. FCC Application. at 17  "FairPoint plans to increase broadband availability from current levels in Maine, New Hampshire, and Vermont within twelve months after the completion of the merger..." FCC Application at 18	Reorganization Plan includes delays/cut-backs to broadband deployment commitments, foregoes cap on DSL rates  "I am concerned that FairPoint has used the bankruptcy proceeding as an opportunity to renege on its promises to Maine consumers especially in the area of broadband build out." Dissent of Commissioner Viafades, MPUC Order 7/6/10	"...will enhance service quality and promote competition... FCC Application at 18	Retail -- Severe service quality declines, 2009 trigger of maximum payment under Retail SQ Plan. VT PSB Order 6/28/10 at 10  Wholesale -- OSS failures, order fall-out and manual handling. <i>Id.</i> at 68-69

Transaction	Broadband / New Services Deployments			Service Quality	
	Closing Date	Pre-Merger Claims	Post-Merger Reality	Pre-Merger Claims	Post-Merger Reality
Frontier's Acquisition of Verizon operations in 14 states	July 2010	"Frontier believes that... it can dramatically accelerate broadband penetration in these new markets over time." FCC Application at 3	Too early to assess	"this transaction will be seamless for retail and wholesale customers" FCC Application at 4	Wholesale OSS failures, ordering delays, understaffed Access Order centers, trouble report backlogs
CenturyTel-Embarq Merger	July 2009	"... consumers will also benefit from more rapid deployment of advanced services, including IPTV and next-generation broadband-based services" FCC Application at 4	Separately, CT and Embarq added 185,000 broadband lines in 2008; in 2009, the merged company added 191,000 - just 6,000 lines more. CT and Embarq Form 10-Ks for 2008, 2009	"the proposed transaction will not disrupt services to customers of CenturyTel and Embarq" FCC Application at 7	CenturyLink seeks waiver of FCC's 1 bus.-day number porting req't. CL Petition filed 6/7/10  tw telecom and Socket Telecom experience EASE system failures beginning in late 2009. 7/12/10 Comments to FCC at 29-30

Transaction	Job Creation			Financial Stability/Performance	
	Closing Date	Pre-Merger Claims	Post-Merger Reality	Pre-Merger Claims	Post-Merger Reality
Carlyle Group's Acquisition of Verizon-Hawaii (aka Hawaiian Telecom)	May 2005	"... we expect to add many new jobs after the acquisition." Carlyle Press Rel. 5/21/04	March 2010, approx. 1450 employees -- 15% decline from pre-sale level Form 10-A 5/16/10 and Honolulu Starbulletin, 10/14/04	"Carlyle has a track record of successful telecommunications investments..." Carlyle Press Rel. 5/21/04	Dec 2008, Chapter 11 Bankruptcy Filing  Annual RoR as of June 2009: <u>-29.3%</u>

Transaction	Job Creation			Financial Stability/Performance	
	Closing Date	Pre-Merger Claims	Post-Merger Reality	Pre-Merger Claims	Post-Merger Reality
FairPoint's Acquisition of Verizon operations in ME, NH, and VT	March 2008	"Preserve 3000 In-region jobs, Add 600 New Jobs, Add 3 New In-region Local Service Centers"	Chapter 11 Reorganization Plan defers raises, creates task force to cut operating expenses by \$-millions. Nashua Telegraph 2/9/10	"the proposed transaction will further enhance FairPoint's ability to serve customers in these states by improving its overall financial flexibility and stability" FCC Appln. at 19	Oct 2009, Chapter 11 Bankruptcy Filing  "FairPoint's actual performance throughout 2008 and 2009 turned out to be worse than the Board's most pessimistic assumptions." VT PSB Order 6/28/10 at 58
Frontier's Acquisition of Verizon operations in 14 states	July 2010	"Frontier will operate a regional operations headquarters in Charleston, West Virginia, creating and preserving jobs..." FCC Appln., Public Interest Stmt. at 22	Pending, too early to assess	"the transaction will transform Frontier by strengthening its balance sheet. Once the transaction closes, Frontier expects that its ratio of debt to EBITDA will decrease from 3.8 to 2.6..."	"Our net debt to adjusted EBITDA ratio at quarter end was 3.9x, comparable to Q4 2009." Frontier 1Q2010 Earnings Call Transcript 5/6/10 (Seeking Alpha.com)
CenturyTel-Embarq Merger	July 2009	No commitments made	CL "management has cut about 1,000 from its 20,000 employee base." <i>CenturyLink lays off another 600 Embarq workers</i> , Fierce Telecom 1/11/10	"the merger will ... help ensure the future financial stability of the combined enterprise." FCC Appln. at 4	"The negative rating outlook ... reflects the considerable execution risks in integrating a sizeable company so soon after another large acquisition (Embarq in July 2009)" Moody's, Rating Action 4/22/10



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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

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EXHIBIT AA-3

**DISCOVERY RESPONSES DEMONSTRATING THE SIGNIFICANT UNCERTAINTY  
RESULTING FROM THE PROPOSED TRANSACTION**

<b>EXCERPTS FROM THE APPLICANTS' RESPONSES TO DATA REQUESTS  IN THE RELEVANT STATE COMMISSION REVIEW PROCEEDINGS</b>				
<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
<b>Systems Integration</b>	<p>“Specific integration initiatives and associated expenditures will not be fully developed until the transaction is complete, and the necessary decisions have been made on how to best integrate the two companies. It is anticipated the combined company will incur integration costs related to system and customer conversions (including hardware and software costs) and certain employee-related severance costs.”</p>	Ken Buchan	<p>July 20, 2010 (AZ)  July 19, 2010 (CO)  July 23, 2010 (IA)  July 14, 2010 (OR)  July 20, 2010 (UT)  July 16, 2010 (WA)</p>	<p>Integra AZ DR #47  Integra CO DR #47  PAETEC IA DR # 47  Joint CLECs OR DR #51  Integra UT DR # 47  Integra WA DR # 47</p>
	<p>“Upon merger closing, CenturyLink does not anticipate any immediate changes to the Qwest CLEC OSS systems. Integration planning is in the early stages and decisions have not been made at this time... Wholesale customers will be provided advance notification of any systems changes that occur post close.”</p>	<p>Mark Harper (AZ, IA)  Ted Hankins (CO)  Ann Prockish (UT)  John Felz (WA)</p>	<p>July 20, 2010 (AZ)  July 19, 2010 (CO)  July 23, 2010 (IA)  July 14, 2010 (OR)  July 20, 2010 (UT)  July 16, 2010 (WA)</p>	<p>Integra AZ DR # 23  Integra CO DR # 23  PAETEC IA DR # 23  Joint CLECs OR DR #27  Integra UT DR # 23  Integra WA DR # 23</p>
	<p>“Until the Transaction is complete, and the necessary decisions have been made on how to best integrate the two companies, plans for specific changes to the Qwest or CenturyLink Operations Support Systems (OSS) have not been fully developed.”</p>	Mike Hunsucker	June 25, 2010	Washington UTC Staff DR # 84

**DISCOVERY RESPONSES DEMONSTRATING THE SIGNIFICANT UNCERTAINTY  
RESULTING FROM THE PROPOSED TRANSACTION**

<b>EXCERPTS FROM THE APPLICANTS' RESPONSES TO DATA REQUESTS  IN THE RELEVANT STATE COMMISSION REVIEW PROCEEDINGS</b>				
<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
<b>Systems Integration</b>	<p>“CenturyLink has not yet conducted the detailed analysis necessary to compare and contrast Qwest’s and CenturyLink’s OSS systems.”</p> <p>“Integration planning is in the early stages and decisions on wholesale OSS systems have not been made at this time.”</p>	John Felz	July 13, 2010	Montana Consumer Counsel DR # 61
	<p>“Until the Transaction is complete, and the necessary decisions have been made on how to best integrate the two companies, plans for specific changes to any processes or systems that CLECs currently utilize in purchasing wholesale services from Qwest have not been developed.”</p>	Mike Hunsucker	July 2, 2010	Oregon PUC Staff DR # 60
	<p>“No decisions on integration can reasonably be made until after the transaction is closed. At this time, system integration plans for the proposed transaction with Qwest, including plans for billing system integration, have not been fully developed.”</p>	Mike Hunsucker	June 25, 2010	Washington UTC Staff Data Request #s 85, 87
	<p>“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest billing platform. A detailed comparison of CenturyLink’s and Qwest’s Billing Support Systems has not been conducted at this time... The merger is intended to bring about improved efficiencies and practices in all parts of the combined company, so changes could be expected over time.”</p>	John Felz	June 25, 2010	Washington UTC Staff DR # 90
		<p>“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest billing platform. A detailed comparison of CenturyLink’s and Qwest’s Billing Support Systems has not been conducted at this time... The merger is intended to bring about improved efficiencies and practices in all parts of the combined company, so changes could be expected over time.”</p>	Melissa Closz	July 20, 2010 (AZ) July 19, 2010 (CO) July 23, 2010 (IA) July 14, 2010 (OR) July 20, 2010 (UT) July 16, 2010 (WA)

**DISCOVERY RESPONSES DEMONSTRATING THE SIGNIFICANT UNCERTAINTY  
RESULTING FROM THE PROPOSED TRANSACTION**

<b>EXCERPTS FROM THE APPLICANTS' RESPONSES TO DATA REQUESTS  IN THE RELEVANT STATE COMMISSION REVIEW PROCEEDINGS</b>				
<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	
<b>Systems Integration</b>	<p>“Upon merger closing, there will be no immediate changes to Qwest’s or CenturyLink’s Provisioning Systems. CenturyLink has not evaluated its processes and compared them to Qwest’s processes at this time. Integration planning is in the early stages and decisions have not been made at this time... The merger is intended to bring about improved efficiencies and practices in all parts of the combined company, so changes could be expected over time.”</p> <p>“A detailed comparison of CenturyLink’s and Qwest’s repair processes has not been conducted at this time. System integration plans for the proposed transaction with Qwest have not been fully developed.”</p> <p>“A detailed comparison of CenturyLink’s and Qwest’s trouble ticket initiation processes has not been conducted at this time. System integration plans for the proposed transaction with Qwest have not been fully developed. In fact, complete integration</p>	<p>Mark Harper (AZ, IA)  Ted Hankins (CO)  Ann Prockish (MN, UT)  John Felz (OR, WA)</p>	<p>July 20, 2010 (AZ)  July 19, 2010 (CO)  July 23, 2010 (IA)  July 8, 2010 (MN)  July 14, 2010 (OR)  July 20, 2010 (UT)  July 16, 2010 (WA)</p>	<p>Integra AZ DR # 35h  Integra CO DR # 35h  PAETEC IA DR # 35h  Integra MN DR # 2-35h  Joint CLECs OR DR #39(h)  Integra UT DR # 35(h)  Integra WA DR # 35h</p>
		<p>Mark Akason &amp;  Mike Jewell</p>	<p>July 23, 2020 (IA)  July 8, 2010 (MN)  July 14, 2010 (OR)  July 20, 2010 (UT)  July 16, 2010 (WA)</p>	<p>PAETEC IA DR # 31  Integra MN DR # 31  Joint CLECs OR DR #35  Integra UT DR # 31  Integra WA DR # 31</p>
		<p>Mark Akason &amp;  Mike Jewell</p>	<p>July 23, 2010 (IA)  July 8, 2010 (MN)</p>	<p>PAETEC IA DR # 30  Integra MN DR # 30  Joint CLECs OR DR #34</p>

**DISCOVERY RESPONSES DEMONSTRATING THE SIGNIFICANT UNCERTAINTY  
RESULTING FROM THE PROPOSED TRANSACTION**

<b>EXCERPTS FROM THE APPLICANTS' RESPONSES TO DATA REQUESTS  IN THE RELEVANT STATE COMMISSION REVIEW PROCEEDINGS</b>				
<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
	plans cannot be developed until the merger is concluded."		July 20, 2010 (OR) July 20, 2010 (UT) July 16, 2010 (WA)	Integra UT DR # 30 Integra WA DR # 30
<b>Systems Integration</b>	"Upon merger closing, CenturyLink does not anticipate immediate changes to the Qwest CLEC trouble reporting system. A detailed comparison of CenturyLink's and Qwest's trouble reporting systems has not been conducted at this time."	Mark Harper (AZ, IA) Ted Hankins (CO) Ann Prockish (UT) John Felz (OR, WA)	July 20, 2010 (AZ) July 19, 2010 (CO) July 23, 2010 (IA) July 14, 2010 (OR) July 20, 2010 (UT) July 16, 2010 (WA)	Integra AZ DR # 32 Integra CO DR # 32 PAETEC IA DR # 32 Joint CLECs OR DR #36 Integra UT DR # 32 Integra WA DR # 32
	"Until the Transaction is complete, and the necessary decisions have been made on how to best integrate the two companies and their respective call databases, plans for specific changes to the Qwest and CenturyLink Call Management Services Data Base, Local Number Portability, and Line Information Data Base, if any, have not been fully developed."	John Felz	June 25, 2010	Washington UTC Staff DR # 82

**DISCOVERY RESPONSES DEMONSTRATING THE SIGNIFICANT UNCERTAINTY  
RESULTING FROM THE PROPOSED TRANSACTION**

<b>EXCERPTS FROM THE APPLICANTS' RESPONSES TO DATA REQUESTS  IN THE RELEVANT STATE COMMISSION REVIEW PROCEEDINGS</b>				
<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
<b>Systems Integration</b>	<p>“Until the Transaction is complete, and the necessary decisions have been made on how to best integrate the two companies, plans for specific changes to the Qwest E911 systems, if any, have not been developed.”</p>	Mark Harper (AZ, IA)	July 20, 2010 (AZ)	Washington UTC Staff DR # 83
		Ted Hankins (CO)	July 23, 2010 (CO)	
		Ann Prockish (UT)	July 16, 2010 (IA)	
		John Felz (WA)	July 20, 2010 (UT)	
			July 16, 2010 (WA)	
	<p>“At this time decisions regarding the systems or platforms that will be used post-merger have not been made.”</p>	Mark Harper (AZ, IA)	July 20, 2010 (AZ)	Integra AZ DR # 4
		Ted Hankins (CO)	July 19, 2010 (CO)	PAETEC IA DR # 4
		Ann Prockish (UT)	July 23, 2010 (IA)	Integra CO DR # 4
		John Felz (OR, WA)	July 14, 2010 (OR)	Joint CLECs OR DR #8
			July 20, 2010 (UT)	Integra UT DR # 4
<p>“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest preorder gateway. A detailed comparison of CenturyLink’s and Qwest’s processes has not been conducted at this time.”</p>	Mark Harper (AZ, IA)	July 16, 2010 (WA)	Integra WA DR # 4	
	Ted Hankins (CO)	July 20, 2010 (AZ)	Integra AZ DR # 43	
	Ann Prockish (UT)	July 19, 2010 (CO)	Integra CO DR # 43	
		July 23, 2010 (IA)	PAETEC IA DR # 43	
		July 14, 2010 (OR)	Joint CLECs OR DR #47	

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<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
		John Felz (OR, WA)	July 20, 2010 (UT) July 16, 2010 (WA)	Integra UT DR # 43 Integra WA DR # 43
<b>Systems Integration</b>	“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest CLEC order entry system. A detailed comparison of CenturyLink’s and Qwest’s processes has not been conducted at this time.”	Mark Harper (AZ, IA) Ted Hankins (CO) Ann Prockish (UT) John Felz (OR, WA)	July 20, 2010 (AZ) July 19, 2010 (CO) July 23, 2010 (IA) July 14, 2010 (OR) July 20, 2010 (UT) July 16, 2010 (WA)	Integra AZ DR # 44 Integra CO DR # 44 PAETEC IA DR # 44 Joint CLECs OR DR #48 Integra UT DR # 44 Integra WA DR # 44
<b>Operations Integration</b>	“A detailed integration planning statement indicating specific dates and events has not been developed. Detailed planning processes will begin on or about the close of the merger and will involve the review of existing systems and practices.”  “Identification of ‘best practices’ associated with the integration of CenturyLink and Qwest operations will be completed as part of the detailed integration planning efforts. Until the integration teams are formed, and the detailed data gathering process can be completed, an analysis regarding the identification and/or adoption of ‘best practices’ is not available.”	CenturyLink response  Mark Gast	June 16, 2010  July 20, 2010 (AZ) July 19, 2010 (CO) July 23, 2010 (IA) July 8, 2010 (MN)	Iowa Office of Consumer Advocate DR # 1-012A  Integra AZ DR # 52(g) Integra CO DR # 52(g) PAETEC IA DR # 52(g) Integra MN DR # 52(g)

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<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
<b>Operations Integration</b>			July 14, 2010 (OR) July 20, 2010 (UT) July 16, 2010 (WA)	Joint CLECs OR DR #56(g)  Integra UT DR # 52(g)  Integra WA DR # 52(g)
		John Felz	July 13, 2010	Montana Consumer Counsel DR # 62
	“Until the transaction is complete, and the necessary decisions have been made on how to best to coordinate and/or integrate the Qwest and CenturyLink operating entities, specific plans related to the wholesale operations of CenturyLink and Qwest cannot be developed.”		John Felz	July 1, 2010
	“No decisions on integration can reasonably be made until after the transaction is closed. Before the company can make a determination on any changes in Network Operations Centers (NOC), the company needs more time and data to assess the work being performed at various NOCs, the appropriate location for centers in order to best serve the needs of customers and the scope of those centers.”	Jeff Glover	June 4, 2010	Arizona Corporation Commission Staff DR # 1-001
	“Until the transaction has been completed and the necessary decisions have been made, specific details regarding the implementation (who? what? where? when? why? how?) of these planning assumptions will not be available.”			



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<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
	<p>“Integration planning is in the early stages and decisions on [wholesale] personnel, location of [wholesale] personnel, etc. have not been made at this time . . . .”</p>	Mike Hunsucker	July 2, 2010	Oregon PUC Staff DR # 54
<b>Operations Integration</b>	<p>“ . . . upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest wholesale operations. A detailed comparison of CenturyLink’s and Qwest’s processes has not been conducted at this time. However, because the transaction results in the entirety of Qwest, including operations and systems, merging into and operating as a subsidiary of CenturyLink, it will allow a disciplined approach to reviewing systems and practices and will allow integration decisions to proceed in an orderly manner.”</p>	<p>Mark Harper (AZ, IA)  Ted Hankins (CO)  Ann Prockish (UT)  John Felz (OR, WA)</p>	<p>July 20, 2010 (AZ)  July 19, 2010 (CO)  July 23, 2010 (IA)  July 14, 2010 (OR)  July 20, 2010 (UT)  July 16, 2010 (WA)</p>	<p>Integra AZ DR # 46  Integra CO DR # 46  PAETEC IA DR # 46  Joint CLECs OR DR #50  Integra UT DR # 46  Integra WA DR # 46</p>
	<p>“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest Firm Order Commitment dates. A detailed comparison of CenturyLink’s and Qwest’s processes has not been conducted at this time. System integration plans for the proposed transaction with Qwest have not been fully developed.”</p>	<p>Mark Harper (AZ, IA)  Ted Hankins (CO)  Ann Prockish (UT)  John Felz (OR, WA)</p>	<p>July 20, 2010 (AZ)  July 19, 2010 (CO)  July 23, 2010 (IA)  July 14, 2010 (OR)  July 20, 2010 (UT)  July 16, 2010 (WA)</p>	<p>Integra AZ DR # 64  Integra CO DR # 64  PAETEC IA DR # 64  Joint CLECs OR DR #68  Integra UT DR # 64  Integra WA DR # 64</p>

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<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
	<p>“A detailed comparison of CenturyLink’s and Qwest’s repair processes has not been conducted at this time. System integration plans for the proposed transaction with Qwest have not been fully developed.”</p>	<p>Mark Akason &amp; Mike Jewell</p>	<p>July 20, 2010 (AZ) July 19, 2010 (CO) July 23, 2010 (IA) July 14, 2010 (OR) July 20, 2010 (UT)</p>	<p>Integra AZ DR # 31 Integra CO DR # 31 PAETEC IA DR # 31 Joint CLECs OR DR #35 Integra UT DR # 31</p>
<b>Operations Integration</b>	<p>“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest CLEC ASR and LSR processes. Integration planning is in the early stages and decisions have not been made at this time.”</p>	<p>Mark Harper (AZ, IA) Ted Hankins (CO) Ann Prockish (UT) John Felz (OR, WA)</p>	<p>July 20, 2010 (AZ) July 19, 2010 (CO) July 23, 2010 (IA) July 14, 2010 (OR) July 20, 2010 (UT) July 16, 2010 (WA)</p>	<p>Integra AZ DR # 26 Integra CO DR # 26 PAETEC IA DR # 26 Joint CLECs OR DR #30 Integra UT DR # 26 Integra WA DR # 26</p>

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<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
<b>Operations Integration</b>	<p>“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest Standard Interval Guide. A detailed comparison of CenturyLink’s and Qwest’s processes has not been conducted at this time.”</p>	Mark Harper (AZ, IA)	July 20, 2010 (AZ)	Integra AZ DR # 82
		Ann Prockish (MN, UT)	July 23, 2010 (IA)	PAETEC IA DR # 82
		John Felz (OR, WA)	July 8, 2010 (MN)	Integra MN DR # 82
			July 14, 2010 (OR)	Joint CLECs OR DR #86
			July 20, 2010 (UT)	Integra UT DR # 82
			July 16, 2010 (WA)	Integra WA DR # 82
	<p>“Decisions regarding the locations of the remaining regional headquarters have not been made.”</p>	Ted Hankins (CO)	July 19, 2010 (CO)	Integra CO DR # 147
		Mark Harper (IA)	July 23, 2010 (IA)	PAETEC IA DR # 145
		Ann Prockish (MN, UT)	July 8, 2010 (MN)	Integra MN DR # 147
		John Felz (OR, WA)	July 14, 2010 (OR)	Joint CLECs OR DR #151
<p>“Upon merger closing CenturyLink does not anticipate any changes to the Qwest local number portability process. A detailed comparison of CenturyLink’s and Qwest’s processes has not been conducted at this time.”</p>	Melissa Closz	July 20, 2010 (AZ)	Integra AZ DR # 155	
		July 19, 2010 (CO)	Integra CO DR # 155	

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<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
			July 23, 2010 (IA)	PAETEC IA DR # 153
			July 14, 2010 (OR)	Joint CLECs OR DR #159
			July 20, 2010 (UT)	Integra UT DR # 155
			July 16, 2010 (WA)	Integra WA DR # 155
<b>Operations Integration</b>	“Until the transaction is complete and necessary decisions have been made on how to best integrate the two companies, CenturyLink cannot project the timing or nature of changes, if any, to employees...”	John Felz	July 13, 2010	Montana Consumer Counsel DR # 66
	“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest CLEC trouble reporting processing. A detailed comparison of CenturyLink’s and Qwest’s locations and hours of operation has not been conducted at this time.”	Mark Harper (AZ, IA) Ted Hankins (CO) Ann Prockish (UT) John Felz (OR, WA)	July 20, 2010 (AZ) July 19, 2010 (CO) July 23, 2010 (IA) July 14, 2010 (OR) July 20, 2010 (UT) July 16, 2010 (WA)	Integra AZ DR # 33 Integra CO DR # 33 PAETEC IA DR # 33 Joint CLECs OR DR #37 Integra UT DR # 33 Integra WA DR # 33

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<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
<b>Operations Integration</b>	“A more detailed management organization table for the post-merger business is not available at this time.”	CenturyLink response	June 16, 2010	Iowa Office of Consumer Advocate DR # 1-001
	“Until the Transaction is complete, and the necessary decisions have been made on how to best integrate the two companies, plans for 911 ordering and provisioning processes to be used have not been developed.”	John Felz	July 1, 2010	Washington UTC Staff DR # 106
<b>Change Management Process</b>	“Upon merger closing, there will be no immediate changes to Qwest’s or CenturyLink’s Change Management Processes (CMP) or CMD [sic] documents. Integration plans for the proposed transaction with Qwest have not been fully developed. The merger is intended to bring about improved efficiencies and practices in all parts of the combined company, so changes could be expected over time.”	Melissa Ciosz	July 20, 2010 (AZ); July 19, 2010 (CO); July 23, 2010 (IA); July 8, 2010 (MN); July 14, 2010 (OR); July 20, 2010 (UT); July 16, 2010 (WA)	Integra AZ DR # 118 Integra CO DR # 118 PAETEC IA DR # 118 Integra MN DR # 118 Joint CLECs OR DR #122 Integra UT DR # 118 Integra WA DR # 118

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<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
<b>Change Management Process</b>	<p>“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest Product Catalogs. A detailed comparison of CenturyLink’s and Qwest’s processes has not been conducted at this time.”</p>	<p>Mark Harper (AZ, IA) Ted Hankins (CO) Ann Prockish (UT) John Felz (OR, WA)</p>	<p>July 20, 2010 (AZ) July 19, 2010 (CO) July 23, 2010 (IA) July 14, 2010 (OR) July 20, 2010 (UT) July 16, 2010 (WA)</p>	<p>Integra AZ DR # 91 Integra CO DR # 91 PAETEC IA DR # 91 Joint CLECs OR DR #95 Integra UT DR # 91 Integra WA DR # 91</p>
		<p>Mark Harper (AZ, IA) Ted Hankins (CO) Ann Prockish (UT) John Felz (OR, WA)</p>	<p>July 20, 2010 (AZ) July 19, 2010 (CO) July 23, 2010 (IA) July 14, 2010 (OR) July 20, 2010 (UT) July 16, 2010 (WA)</p>	<p>Integra AZ DR # 107 Integra CO DR # 107 PAETEC IA DR # 107 Joint CLECs OR DR #111 Integra UT DR # 107 Integra WA DR # 107</p>
	<p>“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest Technical Publications. A detailed comparison of CenturyLink’s and Qwest’s processes has not been conducted at this time.”</p>			

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<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
<b>Performance Assurance Plan</b>	<p>“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest performance plans. A detailed comparison of CenturyLink’s and Qwest’s processes has not been conducted at this time.”</p>	<p>Mark Harper (AZ, IA)  Ted Hankins (CO)  Ann Prockish (MN, UT)  John Felz (OR, WA)</p>	<p>July 20, 2010 (AZ)  July 19, 2010 (CO)  July 23, 2010 (IA)  July 8, 2010 (MN)  July 14, 2010 (OR)  July 20, 2010 (UT)  July 16, 2010 (WA)</p>	<p>Integra AZ DR # 61  Integra CO DR # 61  PAETEC IA DR # 61  Integra MN DR # 61  Joint CLECs OR DR #65  Integra UT DR # 61  Integra WA DR # 61</p>
<b>Wholesale Rates</b>	<p>“CenturyLink has not evaluated or reached any conclusions regarding this issue [whether CenturyLink will seek modification to any wholesale rates post-merger] at this time.”</p>	<p>Ted Hankins (CO)  Mark Harper (IA)  Ann Prockish (MN, UT)  John Felz (OR, WA)</p>	<p>July 19, 2010 (CO)  July 23, 2010 (IA)  July 8, 2010 (MN)  July 14, 2010 (OR)  July 20, 2010 (UT)  July 16, 2010 (WA)</p>	<p>Integra CO DR # 86  PAETEC IA DR # 86  Integra MN DR # 86  Joint CLECs OR DR #90  Integra UT DR # 86  Integra WA DR # 86</p>

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<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	
<b>Wholesale Rates</b>	<p>“The impact if any on wholesale rates cannot be determined until the transaction is complete and the necessary decisions have been made on how to best integrate the two companies.”</p> <p>“Upon merger closing there will be no immediate changes to Qwest’s or CenturyLink’s term and volume discount plans. CenturyLink has not evaluated or reached any conclusions concerning this issue at this time.”</p>	<p>Mark Harper (AZ) Ann Prockish (UT) John Felz (OR, WA)</p>	<p>July 19, 2010 (CO)</p>	<p>Integra CO DR # 52(I)</p>
			<p>July 23, 2010 (IA)</p>	<p>PAETEC IA DR # 52(I)</p>
			<p>July 8, 2010 (MN)</p>	<p>Integra MN DR # 52(I)</p>
			<p>July 14, 2010 (OR)</p>	<p>Joint CLECs OR DR #56(I)</p>
			<p>July 20, 2010 (UT)</p>	<p>Integra UT DR # 52(I)</p>
			<p>July 16, 2010 (WA)</p>	<p>Integra WA DR # 52(I)</p>



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<b>Wholesale Rates</b>	<p>“CenturyLink has not evaluated or reached any conclusions concerning this issue [whether CenturyLink will seek reductions in cost-based wholesale rates due to reported synergy cost savings] at this time.”</p> <p>“Upon merger closing there will be no immediate changes to Qwest’s or CenturyLink’s rates for wholesale services. CenturyLink has not evaluated or reached any conclusions regarding this issue [whether CenturyLink will seek wholesale rate modifications within 3 years of the merger] at this time.”</p> <p>“The cost models to be utilized after the merger is complete have not been determined.”</p>	<p>Ken Buchan</p>	July 20, 2010 (AZ)	Integra AZ DR # 55(b)
			July 19, 2010 (CO)	Integra CO DR # 55(b)
			July 23, 2010 (IA)	PAETEC IA DR # 55(b)
			July 8, 2010 (MN)	Integra MN DR # 55(b)
			July 14, 2010 (OR)	Joint CLECs OR DR #59(b)
			July 20, 2010 (UT)	Integra UT DR # 55(b)
			July 16, 2010 (WA)	Integra WA DR # 55(b)
			July 20, 2010 (AZ)	Integra AZ DR # 86
			July 19, 2010 (CO)	Integra CO DR # 86
			July 23, 2010 (IA)	PAETEC IA DR # 86
July 14, 2010 (OR)	Joint CLECs OR DR #90			
July 20, 2010 (UT)	Integra UT DR # 86			
			July 20, 2010 (AZ)	Integra AZ DR # 94
		Christy Londerholm	July 19, 2010 (CO)	Integra CO DR # 94
			July 23, 2010	PAETEC IA DR # 94

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<b>Wholesale Rates</b>	"Upon merger closing there will be no immediate changes to Qwest's rates for wholesale services. CenturyLink has not evaluated or reached any conclusions concerning future changes to Qwest's UNE rates at this time."	Mike Hunsucker	July 14, 2010 (IA)	Joint CLECs OR DR #98
			July 20, 2010 (OR)	Integra UT DR # 94
			July 16, 2010 (UT)	Integra WA DR # 94
<b>Wholesale Services</b>	"CenturyLink has not evaluated or reached any conclusions regarding this issue [whether CenturyLink plans to discontinue any wholesale services post-merger] at this time."	Mark Harper (AZ, IA) Ted Hankins (CO) Ann Prockish (MN, UT) John Felz (OR, WA)	July 20, 2010 (AZ)	Integra AZ DR # 96
			July 19, 2010 (CO)	Integra CO DR # 96
			July 23, 2010 (IA)	PAETEC IA DR # 96
			July 8, 2010 (MN)	Integra MN DR # 96
			July 14, 2010 (OR)	Joint CLECs OR DR #100
			July 20, 2010 (UT)	Integra UT DR # 96
			July 16, 2010 (WA)	Integra WA DR # 96

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<b>Wholesale Services</b>	<p>“There will be no immediate changes to Qwest’s current template interconnection agreements [...] The merger is intended to bring about improved efficiencies and practices in all parts of the combined company, so changes could be expected over time.”</p>	Diane Roth	July 20, 2010 (AZ) July 19, 2010 (CO) July 23, 2010 (IA) July 14, 2010 (OR)	Integra AZ DR #115 Integra CO DR # 115 PAETEC IA DR # 115 Joint CLECs OR DR #119		
		<p>“CenturyLink has not evaluated or reached any conclusions concerning this issue [the numerous “evergreen” ICAs with Qwest and CenturyLink’s plans regarding those ICAs post-merger] at this time.”</p>	Ted Hankins (CO) Ann Prockish (MN, UT) Mark Harper (IA) John Felz (OR, WA)	July 19, 2010 (CO) July 23, 2010 (IA) July 8, 2010 (MN) July 14, 2010 (OR) July 20, 2010 (UT) July 16, 2010 (WA)	Integra CO DR # 117 PAETEC IA DR # 117 Integra MN DR # 117 Joint CLECs OR DR #121 Integra UT DR # 117 Integra WA DR # 117	
			<p>“There will be no immediate changes to Qwest’s current template interconnection agreements. As the companies integrate operations post-merger, it is expected that the merged company will naturally gravitate toward consistent terms in a state...”</p>	Diane Roth	July 14, 2010 (OR) July 20, 2010 (UT) July 16, 2010 (WA)	Joint CLECs OR DR #119 Integra UT DR # 115 Integra WA DR # 115
				<p>“Upon merger closing there will be no immediate changes to Qwest’s agreements [...] The merger is intended to bring about improved efficiencies and practices in all parts of the combined</p>	Mark Harper (AZ, IA) Ted Hankins	July 20, 2010 (AZ) July 19, 2010

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	company, so changes could be expected over time.”	(CO) Ann Prockish (UT)	July 23, 2010 (CO) July 20, 2010 (IA) (UT)	PAETEC IA DR # 117  Integra UT DR # 117
<b>Wholesale Services</b>	“CenturyLink has not evaluated or reached any conclusions regarding this issue [any subsequent service, term or price changes] at this time.”	Mark Harper (AZ, IA) Ted Hankins (CO) Ann Prockish (UT) John Felz (OR, WA)	July 20, 2010 (AZ) July 19, 2010 (CO) July 23, 2010 (IA) July 14, 2010 (OR) July 20, 2010 (UT) July 16, 2010 (WA)	Integra AZ DR # 95 Integra CO DR # 95 PAETEC IA DR # 95 Joint CLECs OR DR #99 Integra UT DR # 95 Integra WA DR # 95

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<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
<b>Wholesale Services</b>	<p>“CenturyLink states that it has not made any determination on this issue [plans to retire copper] at this time.”</p>	<p>Mark Harper (AZ, IA)  Ted Hankins (CO)  Ann Prockish (UT)  John Felz (OR, WA)</p>	<p>July 20, 2010 (AZ)  July 19, 2010 (CO)  July 23, 2010 (IA)  July 14, 2010 (OR)  July 20, 2010 (UT)  July 16, 2010 (WA)</p>	<p>Integra AZ DR # 104  Integra CO DR # 104  PAETEC IA DR # 104  Joint CLECs OR DR #108  Integra UT DR # 104  Integra WA DR # 104</p>
	<p>“Upon merger closing there will be no immediate changes to Qwest’s or CenturyLink’s intrastate or interstate tariffs. As far as future changes, CenturyLink has not evaluated or reached any conclusions regarding the issue at this time.”</p>	<p>Mark Harper (AZ, IA)  Ted Hankins (CO)  John Felz (OR)  Ann Prockish (UT)</p>	<p>July 20, 2010 (AZ)  July 19, 2010 (CO)  July 23, 2010 (IA)  July 14, 2010 (OR)  July 20, 2010 (UT)</p>	<p>Integra AZ DR # 89  Integra CO DR # 89  PAETEC IA DR # 89  Joint CLECs OR DR #93  Integra UT DR # 90</p>

**DISCOVERY RESPONSES DEMONSTRATING THE SIGNIFICANT UNCERTAINTY  
RESULTING FROM THE PROPOSED TRANSACTION**

<b>EXCERPTS FROM THE APPLICANTS' RESPONSES TO DATA REQUESTS  IN THE RELEVANT STATE COMMISSION REVIEW PROCEEDINGS</b>				
<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
<b>Wholesale Services</b>	<p>“CenturyLink has not evaluated or reached any conclusions regarding the issue [whether CenturyLink intends to adopt Qwest’s intrastate and/or interstate access tariffs post-merger] at this time.”</p>	<p>Ted Hankins (CO) Ann Prockish (MN) Mark Harper (IA) John Felz (OR, WA)</p>	<p>July 19, 2010 (CO) July 23, 2010 (IA) July 8, 2010 (MN) July 14, 2010 (OR) July 16, 2010 (WA)</p>	<p>Integra CO DR # 89 PAETEC IA DR # 89 Integra MN DR # 89 Joint CLECs OR DR #93 Integra WA DR # 89</p>
	<p>“CenturyLink has not evaluated or reached any conclusions regarding this issue [whether CenturyLink anticipates seeking modifications to its access terms, conditions or rates post-merger] at this time.”</p>	<p>Ted Hankins (CO) Ann Prockish (MN, UT) Mark Harper (IA) John Felz (OR, WA)</p>	<p>July 19, 2010 (CO) July 23, 2010 (IA) July 8, 2010 (MN) July 14, 2010 (OR) July 20, 2010 (UT) July 16, 2010 (WA)</p>	<p>Integra CO DR # 90 PAETEC IA DR # 90 Integra MN DR # 90 Joint CLECs OR DR #94 Integra UT DR # 90 Integra WA DR # 90</p>

**DISCOVERY RESPONSES DEMONSTRATING THE SIGNIFICANT UNCERTAINTY  
RESULTING FROM THE PROPOSED TRANSACTION**

<b>EXCERPTS FROM THE APPLICANTS' RESPONSES TO DATA REQUESTS  IN THE RELEVANT STATE COMMISSION REVIEW PROCEEDINGS</b>				
<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
<b>Wholesale Services</b>	<p>“CenturyLink states that it has not made any determination on this issue [whether CenturyLink will seek forbearance from its obligations under section 251 of the Act] at this time.”</p>	<p>Mark Harper (AZ)</p>	<p>July 20, 2010 (AZ)</p>	<p>Integra AZ DR # 99</p>
		<p>Ted Hankins (CO)</p>	<p>July 19, 2010 (CO)</p>	<p>Integra CO DR # 99</p>
		<p>Mark Harper (IA)</p>	<p>July 23, 2010 (IA)</p>	<p>PAETEC IA DR # 99</p>
		<p>Ann Prockish (UT)</p>	<p>July 14, 2010 (OR)</p>	<p>Joint CLECs OR DR #103</p>
		<p>John Felz (OR, WA)</p>	<p>July 20, 2010 (UT)</p>	<p>Integra UT DR # 99</p>
			<p>July 16, 2010 (WA)</p>	<p>Integra WA DR # 99</p>
		<p>Ted Hankins (CO)</p>	<p>July 20, 2010 (AZ)</p>	<p>Integra AZ DR # 108</p>
		<p>Mark Harper (AZ, IA)</p>	<p>July 19, 2010 (CO)</p>	<p>Integra CO DR # 108</p>
		<p>Ann Prockish (UT)</p>	<p>July 23, 2010 (IA)</p>	<p>PAETEC IA DR # 108</p>
		<p>John Felz (OR, WA)</p>	<p>July 14, 2010 (OR)</p>	<p>Joint CLECs OR DR #112</p>
			<p>July 20, 2010 (UT)</p>	<p>Integra UT DR # 108</p>
			<p>July 16, 2010 (WA)</p>	<p>Integra WA DR # 108</p>
	<p>“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest collocations procedures. A detailed comparison of CenturyLink’s and Qwest’s processes has not been conducted at this time.”</p>			

**DISCOVERY RESPONSES DEMONSTRATING THE SIGNIFICANT UNCERTAINTY  
RESULTING FROM THE PROPOSED TRANSACTION**

<b>EXCERPTS FROM THE APPLICANTS' RESPONSES TO DATA REQUESTS  IN THE RELEVANT STATE COMMISSION REVIEW PROCEEDINGS</b>				
<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
<b>Wholesale Services</b>	"Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest hot loop cut process. A detailed comparison of CenturyLink's and Qwest's processes has not been conducted at this time."	Mark Harper (AZ, IA)	July 20, 2010 (AZ)	Integra AZ DR # 112
		Ted Hankins (CO)	July 19, 2010 (CO)	Integra CO DR # 112
<b>Wholesale Customer Service</b>	"CenturyLink has not made any determination on this issue [whether CenturyLink plans to make changes to CLEC account and service manager assignments post-merger] at this time."	Ann Prockish (UT)	July 23, 2010 (IA)	PAETEC IA DR # 112
		John Felz (OR, WA)	July 14, 2010 (OR)	Joint CLECs OR DR #116
			July 20, 2010 (UT)	Integra UT DR # 112
			July 16, 2010 (WA)	Integra WA DR # 112
			July 20, 2010 (AZ)	Integra AZ DR # 93
			July 19, 2010 (CO)	Integra CO DR # 93
			July 23, 2010 (IA)	PAETEC IA DR # 93
			July 8, 2010 (MN)	Integra MN DR # 93
			July 14, 2010 (OR)	Joint CLECs OR DR #97
			July 20, 2010 (UT)	Integra UT DR # 93
		July 16, 2010 (WA)	Integra WA DR # 93	



**DISCOVERY RESPONSES DEMONSTRATING THE SIGNIFICANT UNCERTAINTY  
RESULTING FROM THE PROPOSED TRANSACTION**

<b>EXCERPTS FROM THE APPLICANTS' RESPONSES TO DATA REQUESTS  IN THE RELEVANT STATE COMMISSION REVIEW PROCEEDINGS</b>				
<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
<b>Wholesale Customer Service</b>	<p>“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest Wholesale and CLEC support centers. At this time, a detailed comparison of CenturyLink’s and Qwest’s processes has not been conducted.”</p>	<p>Mark Harper (AZ, IA)  Ted Hankins (CO)  Ann Prockish (UT)  John Felz (OR, WA)</p>	<p>July 20, 2010 (AZ)  July 19, 2010 (CO)  July 23, 2010 (IA)  July 14, 2010 (OR)  July 20, 2010 (UT)  July 16, 2010 (WA)</p>	<p>Integra AZ DR # 67  Integra CO DR # 67  PAETEC IA DR # 67  Joint CLECs OR DR #71  Integra UT DR # 67  Integra WA DR # 67</p>
<b>Network Investment</b>	<p>“Until the transaction is complete, and the necessary decisions have been made on how to best integrate the two companies, plans regarding network investment and appropriate balance sheet improvement (debt reduction) have not been developed. The analysis and decisions regarding how CenturyLink plans to best utilize its free cash flow will be completed as part of the detailed integration planning efforts.”</p>	<p>Mark Gast</p>	<p>July 20, 2010 (AZ)  July 19, 2010 (CO)  July 23, 2010 (IA)  July 8, 2010 (MN)  July 14, 2010 (OR)  July 20, 2010 (UT)  July 16, 2010 (WA)</p>	<p>Integra AZ DR # 133  Integra CO DR # 133  PAETEC IA DR # 133  Integra MN DR # 133  Joint CLECs OR DR #137  Integra UT DR # 133  Integra WA DR # 133</p>

**DISCOVERY RESPONSES DEMONSTRATING THE SIGNIFICANT UNCERTAINTY  
RESULTING FROM THE PROPOSED TRANSACTION**

<b>EXCERPTS FROM THE APPLICANTS' RESPONSES TO DATA REQUESTS  IN THE RELEVANT STATE COMMISSION REVIEW PROCEEDINGS</b>				
<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	
			<b>Data Request Information</b>	
<b>Network Investment</b>	"CenturyLink currently does not have any specific plans for investments in Qwest's service areas post-merger."	Mark Harper (AZ, IA)	July 20, 2010 (AZ)	Integra AZ DR # 103b
		Ted Hankins (CO)	July 19, 2010 (CO)	Integra CO DR # 103b
<b>Broadband Deployment</b>	"At this time, CenturyLink has not yet established any specific plans regarding Washington post-transaction broadband deployment." "Until the Transaction is complete and the necessary decisions have been made on how to best integrate the two companies, specific [DSL] product and pricing plans cannot be evaluated and finalized." "Projections for post-merger broadband deployment have not been developed." "At this time, CenturyLink has not undertaken an analysis at a wire center level to identify impediments to reaching 100% DSL service availability..."	Ann Prockish (UT)	July 23, 2010 (IA)	PAETEC IA DR # 103(b)
		John Felz (OR, WA)	July 14, 2010 (OR)	Joint CLECs OR DR #107(b)
		John Felz	July 20, 2010 (UT)	Integra UT DR # 103b
		John Felz	July 16, 2010 (WA)	Integra WA DR # 103
		John Felz	June 23, 2010	Washington UTC Staff DR # 55
		John Felz	June 23, 2010	Washington UTC Staff DR # 60
		John Felz	June 23, 2010	Oregon PUC Staff DR # 15
		John Felz	July 13, 2010	Montana Consumer Counsel DR # 54.

**DISCOVERY RESPONSES DEMONSTRATING THE SIGNIFICANT UNCERTAINTY  
RESULTING FROM THE PROPOSED TRANSACTION**

<b>EXCERPTS FROM THE APPLICANTS' RESPONSES TO DATA REQUESTS  IN THE RELEVANT STATE COMMISSION REVIEW PROCEEDINGS</b>				
<b>Issue</b>	<b>Response</b>	<b>CenturyLink Respondent Name</b>	<b>Response Date(s)</b>	<b>Data Request Information</b>
<b>IPTV Deployment</b>	“Plans for the introduction of specific new services such as IPTV in [Oregon, Washington] have not been fully developed at this point. Until the Transaction is complete and the necessary decisions have been made on how to best integrate the two companies, specific product and service plans cannot be evaluated and finalized.”	John Felz	June 23, 2010	Oregon PUC Staff DR # 33  Washington UTC Staff DR # 52

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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JOINT NOTICE AND APPLICATION OF )	
QWEST CORPORATION, QWEST )	
COMMUNICATIONS COMPANY, LLC, )	
QWEST LD CORP., EMBARQ )	Docket No. T-01051B-10-0194
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. )	

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EXHIBIT AA-4

**JOINT APPLICANTS' CLAIMS ABOUT ALLEGED BENEFITS  
RESULTING FROM THE MERGER COMPARED TO THEIR DISCOVERY RESPONSES**

Alleged Benefit	CenturyLink's Claim About Alleged Benefit	Discovery Response
<p><b>Advanced Services Deployment</b></p>	<p>"...as we develop expanded broadband services, innovative IP products such as IPTV and other video choices, VoIP services, enhanced fiber-to-the-cell tower connectivity and other high bandwidth services."<sup>1</sup></p> <p>"We need to have the national breadth and local depth to provide more new and innovative IP products such as IPTV and other video services, VoIP services, enhanced fiber-to-the-cell tower connectivity and other high bandwidth services."<sup>2</sup></p> <p>"CenturyLink will be able to capitalize on its investments in and experience with Internet Protocol television to extend new competitive video offerings in former Qwest markets...[t]here is no reason to doubt that the companies will seek to capitalize on that investment."<sup>3</sup></p> <p>"It creates a truly nationwide platform for high-speed internet deployment by merging Qwest's long-haul fiber network with CenturyLink's complementary long-haul fiber network and its core metropolitan rings...The combined network will...heighten the ability to advance the deployment of high speed Internet services as well as for the customer-desired 'triple play' of broadband, voice and video."<sup>4</sup></p> <p>"The merger of these complementary and</p>	<p>"Plans for the introduction of specific new services such as IPTV in [Oregon, Iowa, Washington] have not been fully developed at this point. Until the Transaction is complete and the necessary decisions have been made on how to best integrate the two companies, specific product and service plans cannot be evaluated and finalized. Once the transaction closes, a review of the marketplace will be done to determine needs of the [Oregon, Iowa, Washington] market. This process also includes an assessment of the capabilities of existing Qwest infrastructure necessary to support advanced communications, data, and potentially entertainment services the combined company may chose to rollout in the future..."<sup>8</sup></p> <p>"An estimated timeline for the deployment of IPTV in Arizona has not been completed."<sup>9</sup></p> <p>"Projections for post-merger broadband deployment have not been developed."<sup>10</sup></p> <p>"At this time, CenturyLink has not yet established any specific plans regarding Washington broadband investment..."<sup>11</sup></p> <p>"Once the transaction closes, CenturyLink's operations and engineering team will be able to better assess the broadband capabilities of the existing Qwest infrastructure."<sup>12</sup></p> <p>"CenturyLink will <i>continue</i> its current practice of evaluating the most appropriate technology, including use of FTTN..."<sup>13</sup></p> <p>"At this time, CenturyLink has not yet established any specific plans for Montana broadband investment after completion of the merger. Once the merger is finalized, and the new local operating model has been implemented, individuals from the legacy Qwest and CenturyLink companies will assess the network infrastructure in Montana..."<sup>14</sup></p> <p>"At this time, CenturyLink has not undertaken an analysis at a wire center level to identify impediments to reaching 100% DSL service availability...Once the merger is finalized, and the new local operating model has been implemented, individuals from the legacy Qwest and CenturyLink companies will assess the network infrastructure in</p>

**JOINT APPLICANTS' CLAIMS ABOUT ALLEGED BENEFITS  
 RESULTING FROM THE MERGER COMPARED TO THEIR DISCOVERY RESPONSES**

<b>Alleged Benefit</b>	<b>CenturyLink's Claim About Alleged Benefit</b>	<b>Discovery Response</b>
<p><b>Advanced Services Deployment</b></p>	<p>additive strengths, will increase the likelihood of bringing to market more advanced services and compelling choices for customers at an accelerated pace."<sup>5</sup></p> <p>"the combined company's national footprint and healthy financial position will support the deployment of broadband and accelerated availability of advanced services throughout the expanded territory."<sup>6</sup></p> <p>"Current CenturyLink customers will benefit from Qwest's experience in building out its FTTH network."<sup>7</sup></p>	<p>Montana, including identification of any impediments to broadband deployment..."<sup>15</sup></p> <p>"Broadband investment information is not separately tracked and therefore is not available."<sup>16</sup></p> <p>"CenturyLink's review of the condition of Qwest's outside plant did not include any areas in Montana."<sup>17</sup></p> <p>"CenturyLink personnel performed a field visit of Qwest facilities in Arizona. However, CenturyLink did not prepare a report regarding the condition or maintenance of the outside plant in the Qwest legacy service areas...As a result of the field visits, CenturyLink personnel did observe a greater proportion of aerial outside plant in rural areas but that it was well maintained with no major issues or concerns."<sup>18</sup></p> <p>"CenturyLink did not complete any inspections of Qwest outside plant in Utah during the due diligence process."<sup>19</sup></p> <p>"CenturyLink did not prepare any reports concerning the condition or maintenance of Qwest outside plant in [Oregon/Washington]."<sup>20</sup></p> <p>"CenturyLink has not developed any business cases regarding deployment of alternative broadband technologies such as Fixed Wireless in Washington."<sup>21</sup></p> <p>"CenturyLink states that currently [sic] does not have any specific plans for investments in Qwest's service areas post-merger."<sup>24</sup></p>
<p><b>Network Investment</b></p>	<p>"From a financial standpoint, CenturyLink will have the scale and stability to make necessary, ongoing infrastructure investments needed to serve the next generation of consumers..."<sup>22</sup></p> <p>"the resulting cost savings will be a significant advantage that will facilitate the combined company's ability to build out and improve its network..."<sup>23</sup></p>	<p>"At this time, CenturyLink has not yet established any specific plans regarding [Iowa, Washington] investment. Once the merger is finalized, and the new local operating model has been implemented, individuals from the legacy Qwest and CenturyLink companies will assess the network infrastructure in [Iowa, Washington] and make any recommendations related to changes in investment in order to better serve [Iowa, Washington] consumers."<sup>25</sup></p>

**JOINT APPLICANTS' CLAIMS ABOUT ALLEGED BENEFITS  
RESULTING FROM THE MERGER COMPARED TO THEIR DISCOVERY RESPONSES**

Alleged Benefit	CenturyLink's Claim About Alleged Benefit	Discovery Response
<p><b>Network Investment</b></p>		<p>“At this time, CenturyLink has not yet established any specific plans regarding Arizona capital expenditures. Once the merger is finalized, and the new operating model has been implemented, individuals from the legacy Qwest and CenturyLink companies will assess the network infrastructure in Arizona and make any recommendations related to changes in capital expenditures in order to better serve Arizona consumers.”<sup>26</sup></p> <p>“CenturyTel has not projected its wireline capital investment for Oregon for the years requested [2011, 2012, 2013, 2014, 2015].”<sup>27</sup></p> <p>In response to “2010 pro forma” CenturyLink Oregon wireline capital investments, CenturyLink responds: “Not Available.”<sup>28</sup></p> <p>“CenturyLink did not complete any inspections of Qwest outside plant in Utah during the due diligence process.”<sup>29</sup></p> <p>“CenturyLink did not prepare any reports concerning the condition or maintenance of Qwest outside plant [sic] in Washington.”<sup>30</sup></p>

**JOINT APPLICANTS' CLAIMS ABOUT ALLEGED BENEFITS  
 RESULTING FROM THE MERGER COMPARED TO THEIR DISCOVERY RESPONSES**

<b>Alleged Benefit</b>	<b>CenturyLink's Claim About Alleged Benefit</b>	<b>Discovery Response</b>
<p><b>“Go-To-Market” Local Operating Model</b></p>	<p>“A key benefit [to customers] will come from leveraging each company’s operational and network strengths, resulting in a company with an impressive national presence and local depth. CenturyLink has proven the effectiveness of its region-based local market focus...”<sup>31</sup></p> <p>“CenturyLink’s region-based, local operating model will reinforce this shared philosophy and will likely be the most [direct and] noticeable positive change for Qwest customers... this approach will likely be implemented to ensure that the customer is at the center of everything the company does.”<sup>32</sup></p> <p>“The Company believes the improvement [in access line losses and high-speed customer growth] is tangible evidence of the impact of the customer benefits of the Company’s local operating model that moves accountability and decision-making closer to the customer.”<sup>33</sup></p> <p>“The transaction will help bring this same locally-focused approach to rural customers in Qwest’s legacy region.”<sup>34</sup></p>	<p>“Detailed planning regarding the integration of Qwest areas into CenturyLink’s local operating model has not begun.”<sup>35</sup></p> <p>“CenturyLink’s local operating model provides the framework for investment decisions across its operating territory... Upon completion of the merger, it is anticipated that CenturyLink will implement its local operating model in the Qwest operating territories.”<sup>36</sup></p> <p>“While CenturyLink does anticipate its local operating model will be incorporated into the areas of Qwest’s operational structure upon the completion of the Transaction, the detailed analysis and planning associated with identifying specific region headquarters has not taken place.”<sup>37</sup></p> <p>“Identification of ‘best practices’ associated with the integration of CenturyLink and Qwest operations will be completed as part of the detailed integration planning efforts. Until the integration teams are formed, and the detailed data gathering process can be completed, an analysis regarding the identification and/or adoption of ‘best practices’ is not available.”<sup>38</sup></p>



**JOINT APPLICANTS' CLAIMS ABOUT ALLEGED BENEFITS  
RESULTING FROM THE MERGER COMPARED TO THEIR DISCOVERY RESPONSES**

<b>Alleged Benefit</b>	<b>CenturyLink's Claim About Alleged Benefit</b>	<b>Discovery Response</b>
<p><b>Free Cash Flow for Debt Repayment and Network Investment</b></p>	<p>"The combined company... is expected to produce sufficient operating cash flows to fund a stronger and more competitive business."<sup>39</sup></p> <p>"The combined company will be committed to network investment and appropriate balance sheet improvement (debt reduction)."<sup>40</sup></p>	<p>"Until the Transaction is complete, and the necessary decisions have been made on how to best integrate the two companies, plans regarding network investment and appropriate balance sheet improvement (debt reduction) has[ve] not been developed. The analysis and decisions regarding how CenturyLink plans to best utilize its free cash flow will be completed as part of the detailed integration planning efforts."<sup>41</sup></p> <p>"Post-merger pro-forma financial statements for the years 2011 through 2015 have not been developed."<sup>42</sup></p> <p>In response to a request for the Company's financial model showing that it can fulfill its broadband deployment build-out while servicing debt, CenturyLink responded: "The requested model does not exist for Montana."<sup>43</sup></p> <p>"CenturyLink currently does not have any specific plans for investments in Qwest's service areas post-merger."<sup>44</sup></p> <p>"CenturyTel has not projected its wireline capital investment for Oregon for the years requested [2011, 2012, 2013, 2014, 2015]."<sup>45</sup></p> <p>"Synergies were estimated at the total enterprise level only and not by entity or by state."<sup>49</sup></p>
<p><b>Synergies</b></p>	<p>"The merged company is projected in three-to-five years to have an estimated \$625 million in annual run-rate operating and capital synergies."<sup>46</sup></p> <p>"Improved operating and capital efficiency through reductions in corporate overhead and the elimination of duplicative functions and systems."<sup>47</sup></p> <p>"And more generally, the savings the merged company will enjoy will make it a more efficient, stable, and nimble competitor in all realms, to the benefit of all its customers."<sup>48</sup></p>	<p>"The synergy analysis for the transaction was prepared on a company-wide basis only. A Washington specific analysis does not exist."<sup>50</sup></p> <p>"CenturyLink has not estimated synergy savings or one-time merger costs by state."<sup>51</sup></p> <p>"CenturyLink's assessment of synergies as a result of the proposed merger was prepared on a company-wide basis. No such assessment exists on a state-by-state basis, including Arizona."<sup>52</sup></p> <p>"The estimated integration operating cost range of \$650-\$800 million was not calculated at a detailed level."<sup>53</sup></p>

**JOINT APPLICANTS' CLAIMS ABOUT ALLEGED BENEFITS  
 RESULTING FROM THE MERGER COMPARED TO THEIR DISCOVERY RESPONSES**

<b>Alleged Benefit</b>	<b>CenturyLink's Claim About Alleged Benefit</b>	<b>Discovery Response</b>
<b>Synergies</b>		<p>"Also, estimated integration cost ranges were not calculated at a detailed level."<sup>54</sup></p> <p>"Specific integration initiatives and associated expenditures will not be fully developed until the transaction is complete, and the necessary decisions have been made on how to best integrate the two companies."<sup>55</sup></p> <p>"Post-merger pro-forma financial statements for the years 2011 through 2015 have not been developed."<sup>56</sup></p> <p>"Integration planning is in the early stages and decisions on personnel, location of personnel, etc. have not been made at this time."<sup>57</sup></p> <p>"A more detailed management organization table for the post-merger business is not available at this time."<sup>58</sup></p> <p>"CenturyLink states that identification of key employees...and developing strategies to retain critical resources of all kinds, is part of the integration process."<sup>59</sup></p> <p>"Identification of key employees...and developing strategies to retain critical resources of all kinds, is part of the integration process."<sup>60</sup></p> <p>"Decisions regarding the locations of the remaining regional headquarters have not been made."<sup>61</sup></p> <p>"Until the transaction is complete and necessary decisions have been made on how to best integrate the two companies, we cannot project the timing or nature of changes, if any, to operations and employees in [Arizona, Iowa, Utah, Colorado, Minnesota, Oregon, Washington]."<sup>62</sup></p> <p>"Identification of 'best practices' associated with the integration of CenturyLink and Qwest operations will be completed as part of the detailed integration planning efforts. Until the integration teams are formed, and the detailed data gathering process can be</p>

**JOINT APPLICANTS' CLAIMS ABOUT ALLEGED BENEFITS  
 RESULTING FROM THE MERGER COMPARED TO THEIR DISCOVERY RESPONSES**

<b>Alleged Benefit</b>	<b>CenturyLink's Claim About Alleged Benefit</b>	<b>Discovery Response</b>
		<p>completed, an analysis regarding the identification and/or adoption of 'best practices' is not available."<sup>63</sup></p> <p>When asked whether merger related cost savings would be flowed through to cost-based wholesale rates, CenturyLink replied: "CenturyLink has not evaluated or reached any conclusions concerning this issue."<sup>64</sup></p> <p>"Plans for the introduction of specific new services in [Iowa, Arizona] have not been fully developed at this point. Until the Transaction is complete and the necessary decisions have been made on how to best integrate the two companies specific product and service plans cannot be evaluated and finalized."<sup>68</sup></p> <p>"Immediately after the Transaction, customers will continue to receive the same full range of high quality products and services at the same rates, terms and under the same conditions as they did immediately before the close of the Transaction... Until the Transaction is complete and the necessary decisions have been made on how to best integrate the two companies, specific product and pricing plans cannot be evaluated and finalized."<sup>69</sup></p> <p>"CenturyLink has not evaluated or reached any conclusions regarding this issue [subsequent service, term, or price change] at this time."<sup>70</sup></p> <p>Regarding CenturyLink's claim that the merger will have positive impacts on the state of competition, CenturyLink has provided information in discovery responses showing hundreds of CenturyLink exchanges that are adjacent to Qwest exchanges.<sup>71</sup></p>
<b>Competitive Choice</b>	<p>"the Transaction will also have a positive impact on providing competitive choice and responding to customer demands."<sup>65</sup></p> <p>"the Transaction will also have a positive impact on the state of competition."<sup>66</sup></p> <p>"the increased scale and scope of the combined company will greatly enhance its ability to compete across the full range of services that consumers demand today."<sup>67</sup></p>	

**JOINT APPLICANTS' CLAIMS ABOUT ALLEGED BENEFITS  
RESULTING FROM THE MERGER COMPARED TO THEIR DISCOVERY RESPONSES**

<b>Alleged Benefit</b>	<b>CenturyLink's Claim About Alleged Benefit</b>	<b>Discovery Response</b>
<p><b>Broader Array of Services to Enterprise Customers</b></p>	<p>"The transaction will enable post-merger CenturyLink to [leverage / build on] Qwest's strength in providing complex communications services to large businesses and government entities on a national and global scale to provide a broader array of services to enterprise customers in CenturyLink territories."<sup>72</sup></p> <p>"It will also allow for more diverse routing options, provide redundant routing for [network reliability / backup] purposes, and offer communications and information services that are attractive to businesses in the financial sector, government entities, and other customers who require solutions for highly sensitive data operations."<sup>73</sup></p> <p>"The company also will be able to leverage Qwest's more extensive enterprise service expertise to offer new and enhanced business services in CenturyLink's markets."<sup>74</sup></p>	<p>"Plans for the introduction of specific new services in [Iowa, Arizona] have not been fully developed at this point. Until the Transaction is complete and the necessary decisions have been made on how to best integrate the two companies specific product and service plans cannot be evaluated and finalized."<sup>75</sup></p> <p>"Legacy CenturyTel companies in [Colorado, Iowa] are rural carriers."<sup>76</sup></p> <p>"[Minnesota, Oregon, Washington] is a rural state for the legacy CenturyTel companies..."<sup>77</sup></p>

**JOINT APPLICANTS' CLAIMS ABOUT ALLEGED BENEFITS  
RESULTING FROM THE MERGER COMPARED TO THEIR DISCOVERY RESPONSES**

<b>Alleged Benefit</b>	<b>CenturyLink's Claim About Alleged Benefit</b>	<b>Discovery Response</b>
<p align="center"><b>Added Stability</b></p>	<p>"the merged company [should / is expected to] have improved access to capital on reasonable terms."<sup>78</sup></p> <p>"... will bring added stability and reliability to the telecommunications industry in [Oregon, Colorado, Minnesota, Iowa, Washington] and also position the company to better meet current and future customer demands."<sup>79</sup></p> <p>"... the merged company is expected to have one of the strongest balance sheets in the U.S. telecommunications industry."<sup>80</sup></p> <p>"The company will be better situated, both financially and operationally, with more flexibility to meet the challenges of a rapidly changing and intensely competitive communications environment."<sup>81</sup></p> <p>"The proposed transaction will diversify and therefore reduce the financial risk of the merged company. The effect... is to lower the potential impact of operating and financial risk for the consolidated merged company by reducing its exposure to any single risk."<sup>82</sup></p>	<p>"Post-merger pro-forma financial statements for the years 2011 through 2015 have not been developed."<sup>83</sup></p> <p>CenturyLink has calculated its pre-merger cost of capital at 9.23% and Qwest has calculated its pre-merger cost of capital at 10.4% (pre-tax WACC). CenturyLink calculates its pro-forma (post-merger) cost of capital at 10.67%.<sup>84</sup></p> <p>"Post-merger pro-forma financial statements for the years 2011 through 2015 have not been developed."<sup>85</sup></p> <p>The Joint Applicants repeatedly refer to the Form S4 in response to financial questions. The Form S4 discusses numerous financial risks, including: (1) "Much of CenturyLink's and Qwest's revenues are, and following the merger will remain, dependent upon laws and regulations which, if changed, could result in material revenue reductions" (p. 21); (2) "As a result of assuming Qwest's indebtedness in connection with the merger, CenturyLink will become more leveraged. This could have material adverse consequences for CenturyLink, including (i) reducing CenturyLink's credit ratings and thereby raising its borrowing costs, (ii) hindering CenturyLink's ability to adjust to changing market, industry or economic conditions, (iii) limiting CenturyLink's ability to access the capital markets to refinance maturing debt or to fund acquisitions or emerging businesses, (iv) limiting the amount of free cash flow available for future operations, acquisitions, dividends, stock repurchases or other uses, (v) making CenturyLink more vulnerable to economic or industry downturns, including interest rate increases, and (vi) placing CenturyLink at a competitive disadvantage compared to less leveraged competitors." (p. 23)</p>

**JOINT APPLICANTS' CLAIMS ABOUT ALLEGED BENEFITS  
RESULTING FROM THE MERGER COMPARED TO THEIR DISCOVERY RESPONSES**

**ENDNOTES:**

- <sup>1</sup> Direct Testimony of John Jones, Colorado PUC Docket No. 10A-350T, May 27, 2010 (“Jones CO Direct”), at p. 9; Direct Testimony of John Jones, Iowa Board Docket No. SPU-2010-0006, May 24, 2010 (“Jones IA Direct”), at p. 8; Direct Testimony of John Jones, Minnesota PUC Docket No. PA-10-456, June 14, 2010 (“Jones MN Direct”), at p. 6; Direct Testimony of John Jones, Oregon PUC Docket No. UM 1484, May 21, 2010 (“Jones OR Direct”), at p. 10; Direct Testimony of John Jones, Washington UTC Docket No. UT-100820, May 21, 2010 (“Jones WA Direct”), at p. 8.
- <sup>2</sup> Direct Testimony of Kristen McMillan, Arizona Corporation Commission, Docket T-01051B-10-0194, May 24, 2010 (“McMillan AZ Direct”), at p. 9; Direct Testimony of Jeremy Ferkin, Montana PSC Docket D2010.5.55, May 28, 2010 (“Ferkin MT Direct”), at p. 7; Direct Testimony of Jeremy Ferkin, Utah PSC Docket No. 10-049-16, May 27, 2010 (“Ferkin UT Direct”), at p. 7.
- <sup>3</sup> Reply Comments of CenturyLink, Inc. and Qwest Communications International, Inc., WC Docket No. 10-110, July 27, 2010 (“Joint Applicants’ FCC Reply Comments”), at pp. i and 4-5.
- <sup>4</sup> Jones CO Direct at p. 9; Jones IA Direct at p. 9; Jones MN Direct at p. 7; Jones OR Direct at pp. 11-12; Jones WA Direct at pp. 8-9. See also, McMillan AZ Direct at p. 10; Ferkin MT Direct at p. 8; Ferkin UT Direct at p. 8 (“It creates a truly nationwide platform for high-speed internet deployment by merging Qwest’s long-haul fiber network with CenturyLink’s complementary long-haul fiber network and its core metropolitan rings...heighten the ability to *compete for broadband* Internet services as well as for the customer-desired ‘triple play’ of broadband, voice and video.” Bold/italics text shows the difference between CenturyLink’s Arizona testimony and Oregon testimony).
- <sup>5</sup> McMillan AZ Direct at p. 10; Jones CO Direct at p. 10; Jones IA Direct at p. 10; Jones MN Direct at p. 9; Jones MT Direct at p. 8; Jones OR Direct at p. 12; Ferkin UT Direct at p. 8; Jones WA Direct at p. 9.
- <sup>6</sup> Joint Applicants’ FCC Reply Comments at p. 2.
- <sup>7</sup> Direct Testimony of James Campbell, Arizona Corporation Commission Docket T-01051B-10-0194, May 24, 2010 (“Campbell AZ Direct”) at p. 22; Direct Testimony of Charles Ward, Colorado PUC Docket No. 10A-350T, May 27, 2010 (“Ward CO Direct”) at p. 24; Direct Testimony of Max Phillips, Iowa Board Docket No. SPU-2010-0006, May 24, 2010 (“Phillips IA Direct”) at p. 25; Direct Testimony of John Stanoch, Minnesota PUC Docket No. PA-10-456, June 14, 2010 (“Stanoch MN Direct”) at p. 28; Direct Testimony of David Gibson, Montana PSC Docket D2010.5.55, May 28, 2010 (“Gibson MT Direct”) at p. 16; Direct Testimony of Jerry Fenn, Utah PSC Docket No. 10-049-16, May 27, 2010 (“Fenn UT Direct”) at p. 22; Direct Testimony of Mark Reynolds, Washington UTC Docket No. UT-100820, May 21, 2010 (“Reynolds WA Direct”) at p. 24.
- <sup>8</sup> CenturyLink (“CL”) response to Oregon Public Utility Commission (“ORPUC”) Staff Data Request (“DR”) #33; CL response to Iowa Office of Consumer Advocate (“IAOCA”) DR #004A; and CL response to Washington Utilities and Transportation Commission (“WUTC”) Staff DR #4.4.
- <sup>9</sup> CL response to Arizona Corporation Commission (“ACC”) Staff DR #4.4.
- <sup>10</sup> CL response to ORPUC Staff DR #15.
- <sup>11</sup> CL response to WAUTC Staff DR #50; CL response to WAUTC Staff DR #55.
- <sup>12</sup> CL response to ACC Staff DR #2.34.
- <sup>13</sup> CL response to Montana Consumer Counsel (“MCC”) DR #38c. (emphasis added)
- <sup>14</sup> CL response to MCC DR #38.
- <sup>15</sup> CL response to MCC DR #54.

**JOINT APPLICANTS' CLAIMS ABOUT ALLEGED BENEFITS  
RESULTING FROM THE MERGER COMPARED TO THEIR DISCOVERY RESPONSES**

- <sup>16</sup> CL response to ORPUC Staff DR #13.  
<sup>17</sup> CL Response to MCC DR #72.  
<sup>18</sup> CL Response to Integra AZ DR #128.  
<sup>19</sup> CL response to Integra UT DR #128.  
<sup>20</sup> CL Response to Joint CLECs OR DR #132; CL response to Integra WA DR #128.  
<sup>21</sup> CL Response to WAUTC Staff DR #58.  
<sup>22</sup> McMillan AZ Direct at p. 4; Jones CO Direct at p. 4; Jones IA Direct at p. 4; Jones MN Direct at p. 3; Ferkin MT Direct at p. 4; Jones OR Direct at p. 5; Jones WA Direct at p. 3.  
<sup>23</sup> Joint Applicants' FCC Reply Comments at p. 7.  
<sup>24</sup> CL Response to Joint CLECs OR DR #107; CL response to PAETEC IA DR #103; CL response to Integra CO DR #103, CL response to Integra MN DR #103; CL response to Integra WA DR #103. See *also*, CL response to Integra AZ DR #103(b); CL response to Integra UT DR #103(b).  
<sup>25</sup> CL response to IAOCA DR #005C; CL Response to WAUTC Staff DR #51.  
<sup>26</sup> CL response to ACC Staff DR #2.10.  
<sup>27</sup> CL response to ORPUC Staff DR #27.  
<sup>28</sup> CL response to ORPUC Staff DR #25.  
<sup>29</sup> CL response to Integra UT DR #128.  
<sup>30</sup> CL response to Integra WA DR #128.  
<sup>31</sup> McMillan AZ Direct at p. 10; Jones CO Direct at p. 10; Jones IA Direct at p. 9; Jones MN Direct at p. 7; Ferkin MT Direct at p. 8; Ferkin UT Direct at p. 8; Jones WA Direct at p. 9.  
<sup>32</sup> McMillan AZ Direct at p. 15; Jones IA Direct at p. 14; Jones MN Direct at p. 14; Jones MN Direct at p. 11; Ferkin MT Direct at p. 12; Jones OR Direct at p. 18; Ferkin UT Direct at p. 18; Jones WA Direct at p. 14.  
<sup>33</sup> Direct Testimony of G. Clay Bailey, Colorado Docket No. 10A-350T, May 27, 2010 ("Bailey CO Direct"), at p. 15; Direct Testimony of G. Clay Bailey, Montana Docket No. D2010.5.55, May 28, 2010 ("Bailey MT Direct"), at pp. 14-15; Direct Testimony of G. Clay Bailey, Oregon Docket No. UM1484, May 21, 2010 ("Bailey Oregon Direct"), at pp. 17-18; Direct Testimony of G. Clay Bailey, Washington UTC Docket No. UT-100820 ("Bailey WA Direct"), at p. 15.  
<sup>34</sup> Joint Applicants' FCC Reply Comments at p. 8.  
<sup>35</sup> CL response to IAOCA DR #1-008C.  
<sup>36</sup> CL response to WAUTC Staff DR #92.  
<sup>37</sup> CL response to WAUTC Staff DR #80.  
<sup>38</sup> CL response to WAUTC Staff DR #93; CL Response to Joint CLECs OR DR #56(g); CL response to PAETEC IA DR #52; CL response to Integra AZ DR #52(g); CL response to Integra UT DR #52(g); CL response to Integra CO DR #52(g); CL response to Integra MN DR #52(g); CL response to Integra WA DR #52(g).  
<sup>39</sup> Direct Testimony of Jeff Glover, Arizona Corporation Commission Docket T-01051B-10-0194, May 24, 2010 ("Glover AZ Direct"), at p. 6; Bailey CO Direct, at p. 5; Direct Testimony of Jeff Glover, Iowa Board Docket No. SPU-2010-0006, May 24, 2010 ("Glover IA Direct"), at p. 5; Direct Testimony of Mark Gast, Minnesota PUC Docket No. PA-10-456, June 14, 2010 ("Gast MN Direct"), at p. 6; Bailey MT Direct at p. 5; Bailey OR Direct at p. 6; Direct Testimony of Jeff Glover, Utah PSC Docket No. 10-049-16, May 27, 2010 ("Glover UT Direct"), at p. 5; Bailey WA Direct at p. 5.  
<sup>40</sup> Glover AZ Direct at p. 6; Bailey CO Direct at p. 5; Glover IA Direct at p. 5; Glover MN Direct at p. 6; Bailey MT Direct at p. 4; Bailey OR Direct at p. 6; Glover UT Direct at p. 5;

**JOINT APPLICANTS' CLAIMS ABOUT ALLEGED BENEFITS  
RESULTING FROM THE MERGER COMPARED TO THEIR DISCOVERY RESPONSES**

Bailey WA Direct at p. 5. (The word "appropriate" appears in CenturyLink testimony in some states but not others).

- 41 CL Response to Joint CLECs OR DR #137; CL response to Integra MN DR #133; CL response to PAETEC IA DR #133; CL response to Integra AZ DR #133; CL response to Integra UT DR #133; CL response to Integra CO DR #133; CL response to Integra WA DR #133.
- 42 CL response to ORPUC Staff DR #6.
- 43 CL response to MCC DR #38e.
- 44 CL Response to Joint CLECs OR DR #107; CL response to Integra AZ DR #103(b); CL response to Integra UT DR #103(b); CL response to Integra CO DR #103(b).
- 45 CL response to ORPUC Staff DR #27.
- 46 Glover AZ Direct at p. 6; Bailey CO Direct at p. 5; Glover IA Direct at p. 5; Gast MN Direct at p. 6; Bailey MT Direct at p. 4; Bailey OR Direct at pp. 6 and 14; Glover UT Direct at p. 5; Bailey WA Direct at pp. 4-5.
- 47 Glover AZ Direct at p. 12; Bailey CO Direct at p. 11; Glover IA Direct at p. 11; Glover MN Direct at p. 9; MT Direct at p. 11; Bailey OR Direct at p. 13; Glover UT Direct at p. 10; Bailey WA Direct at p. 11.
- 48 Joint Applicants' FCC Reply Comments at p. 5.
- 49 CL response to IAOCA DR #1-013F; CL response to Minnesota Department of Commerce ("MNDOC") DR #3.
- 50 CL response to WAUTC Staff DR #24.
- 51 CL Response to Joint CLECs OR DR #57; CL response to Integra MN DR #53; CL response to PAETEC IA DR #53; CL response to Integra AZ DR #53; CL response to Integra UT DR #53; CL response to Integra CO DR #53; CL response to Integra WA DR #53.
- 52 CL response to AZ Staff DR #2.12.
- 53 CL response to MNDOC DR #12.
- 54 CL response to Integra MN DR #52.
- 55 CL Response to Joint CLECs OR DR #51; CL response to Integra MN DR #47; CL response to PAETEC IA DR #47; CL response to Integra AZ DR #47; CL response to Integra UT DR #47; CL response to Integra CO DR #47; CL response to Integra WA DR #47.
- 56 CL response to ORPUC Staff DR #6.
- 57 CL response to ORPUC Staff DR #54.
- 58 CL response to IAOCA DR #001.
- 59 CL Response to Joint CLECs OR DR #78; CL response to Integra MN DR #74; CL response to Integra WA DR #74.
- 60 CL response to Integra MN DR #74; CL response to Integra WA DR #74.
- 61 CL Response to Joint CLECs OR DR #151; CL response to Integra MN DR #147; CL response to PAETEC IA DR #145; CL response to Integra UT DR #147; CL response to Integra CO DR #147; CL response to Integra WA DR #147.
- 62 CL Response to Joint CLECs OR DR #140; CL response to AZ Staff DR #2.38; CL response to PAETEC IA DR #136; CL response to Integra AZ DR #136; CL response to Integra UT DR #136; CL response to Integra CO DR #136; CL response to Integra MN DR #136; CL response to Integra WA DR #136.
- 63 CL Response to Joint CLECs OR DR #56(g); CL response to WAUTC Staff DR #93; CL response to PAETEC IA DR #52; CL response to Integra AZ DR #52(g); CL response to Integra UT DR #52(g); CL response to Integra CO DR #52(g); CL response to Integra MN DR #52(g); CL response to Integra WA DR #52(g).
- 64 CL Response to Joint CLECs OR DR #59(b); CL response to Integra Colorado DR #55(b).



**JOINT APPLICANTS' CLAIMS ABOUT ALLEGED BENEFITS  
RESULTING FROM THE MERGER COMPARED TO THEIR DISCOVERY RESPONSES**

<sup>65</sup> Jones CO Direct at p. 15; Jones IA Direct at p. 14; Jones MN Direct at p. 12; Jones OR Direct at p. 18; Jones WA Direct at p. 14.

<sup>66</sup> McMillan AZ Direct at p. 15; Ferkin MT Direct at p. 12; Ferkin UT Direct at p. 12.

<sup>67</sup> Joint Applicants' FCC Reply Comments at p. 2.

<sup>68</sup> CL response to IAOCA DR #1-004; CL response to AZ Staff DR #2.30.

<sup>69</sup> CL response to WAUTC Staff DR #60.

<sup>70</sup> CL Response to Joint CLECs OR DR #99; CL response to PAETEC IA DR #95; CL response to Integra AZ DR #95; CL response to Integra UT DR #95; CL response to Integra CO DR #95; CL response to Integra MN DR #95; CL response to Integra WA DR #95.

<sup>71</sup> See, e.g., CenturyLink response to Integra Colorado DR #15, Attachment, showing about 93% of CenturyLink's exchanges in Colorado as being either directly adjacent to a Qwest exchange or adjacent to another CenturyLink exchange that is adjacent to a Qwest exchange. See also, CenturyLink response to Washington UTC Staff DR #65 ("CenturyLink provides certain Ethernet services to a small number of customers (less than 20) in the Olympia, Tumwater and Spokane markets in Qwest territory.")

<sup>72</sup> McMillan AZ Direct at p. 11; Jones CO Direct at p. 11; Jones IA Direct at p. 10; Jones MN Direct at p. 8; Ferkin MT Direct at p. 13; Jones WA Direct at p. 10.

<sup>73</sup> McMillan AZ Direct at p. 12; Jones CO Direct at p. 11; Jones IA Direct at p. 10; Jones MN Direct at p. 9; Ferkin MT Direct at p. 9; Jones OR Direct at p. 14; Ferkin UT Direct at p. 9; Jones WA Direct at pp. 10-11.

<sup>74</sup> Joint Applicants' FCC Reply Comments at p. 4.

<sup>75</sup> CL response to IAOCA DR #1-004; CL response to AZ Staff DR #2.30.

<sup>76</sup> CL response to Integra Colorado DR #114; CL response to Integra Iowa DR #114.

<sup>77</sup> CL Response to Integra Colorado DR #118; CL response to Integra Minnesota DR #114; CL response to Integra Washington DR #114.

<sup>78</sup> Glover AZ Direct at p. 8; Bailey CO Direct at p. 6; Gast MN Direct at p. 14; Bailey MT Direct at p. 6; Bailey OR Direct at p. 8; Glover UT Direct at p. 6; Bailey WA Direct at p. 6.

<sup>79</sup> Jones CO Direct at p. 8; Jones IA Direct at p. 8; Jones MN Direct at p. 6; Jones OR Direct at p. 6; Jones WA Direct at pp. 7-8.

<sup>80</sup> Glover AZ Direct at p. 6; Bailey CO Direct at p. 5; Glover IA Direct at p. 5; Gast MN Direct at p. 6; Bailey MT Direct at p. 4; Bailey OR Direct at p. 6; Glover UT Direct at pp. 4-5; Bailey WA Direct at p. 4.

<sup>81</sup> McMillan AZ Direct at p. 10; Jones CO Direct at p. 10; Jones IA Direct at p. 10; Jones MN Direct at p. 8; Ferkin MT Direct at p. 8; Jones OR Direct at p. 13; Ferkin UT Direct at p. 8; Jones WA Direct at pp. 9-10.

<sup>82</sup> Bailey CO Direct at p. 15; Gast MN Direct at p. 10; Bailey MT Direct at p. 15; Bailey OR Direct at p. 18; Bailey WA Direct at p. 15.

<sup>83</sup> CL response to ORPUC Staff DR #6.

<sup>84</sup> CL response to ORPUC Staff DR #3 and Qwest response to ORPUC Staff DR #3 Attachment A.

<sup>85</sup> CL response to ORPUC Staff DR #6.

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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JOINT NOTICE AND APPLICATION OF )	
QWEST CORPORATION, QWEST )	
COMMUNICATIONS COMPANY, LLC, )	
QWEST LD CORP., EMBARQ )	Docket No. T-01051B-10-0194
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. )	

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EXHIBIT AA-5



April 30, 2010

Kim Isaacs  
OneEighty Communications Inc  
6160 Golden Hills Drive  
Golden Valley, MN 55416  
kdisaacs@integratelecom.com

TO:Kim Isaacs

<b>Announcement Date:</b>	<b>April 30, 2010</b>
<b>Effective Date:</b>	<b>June 1, 2010</b>
<b>Document Number:</b>	<b>PROD.RESL.04.30.10.F.07809.DS1_DS3_Services</b>
<b>Notification Category:</b>	<b>Product Notification</b>
<b>Target Audience:</b>	<b>CLECs, Resellers and ISP-GET</b>
<b>Subject:</b>	<b>DS1/DS3 Services</b>

This is to advise you of changes to a Qwest retail service offering. Please be advised that retail offers that are subject to Commission approval may change. Resellers should monitor filings since Qwest will not provide notification of changes.

**Tariff/catalog/price list reference:** Qwest Tariff F.C.C. No. 1.

**State(s):** All 14 Qwest States covered by Tariff F.C.C. No. 1.

**Product Description:** Qwest Corporation (Qwest) plans to change its Regional Commitment Program (RCP) from a unit based plan to a revenue based plan and raise the commitment level from 90% to 95% of the total Company-provided in-service DS1 and DS3 Revenue. The effective date of this restructure will be June 1, 2010.

If you have any questions or would like to discuss this notice please contact your Qwest Service Manager, Maryann Wiborg on (612) 359-5107 or at [MaryAnn.Wiborg@qwest.com](mailto:MaryAnn.Wiborg@qwest.com) or Rita Urevig on (218) 723-5801 or at [Rita.Urevig@qwest.com](mailto:Rita.Urevig@qwest.com). Qwest appreciates your business and we look forward to our continued relationship.

Sincerely,

Qwest Corporation

If you would like to subscribe, unsubscribe or change your current profile to Qwest Wholesale mailouts please go to the 'Subscribe/Unsubscribe' web site and follow the subscription instructions. The site is located at:

<http://www.qwest.com/wholesale/notices/cnla/maillist.html>

cc: Maryann Wiborg or Rita Urevig  
Stephanie Smith

Qwest Communications, 120 Lenora St, 11th Floor, Seattle WA 98121

**From:** Johnson, Bonnie J.  
**Sent:** Friday, June 04, 2010 10:44 AM  
**To:** 'Schipper, Scott'  
**Cc:** Johnson, Bonnie J.  
**Subject:** Meeting follow-up/RCP

Hi Scott,  
Thanks again for meeting with me. I am still working on pulling together contacts for AQCB requests (including QMOE), but I did follow up with Doug Denney regarding the RCP agreements.

Integra recently had discussions about the fact that some of these plans are about to expire. Integra is disappointed in the changes Qwest recently announced with respect to the RCP. They made two changes that greatly diminish the value of the RCP. Changing from a circuit based commitment to a *revenue based commitment*, limits our ability to groom our network to the greatest ability. In addition, Qwest is changing the commitment level from 90 to 95%. Both of these substantially decrease the value of the RCP by increasing the risk associated with the plan.

You indicated that you have little leverage regarding RCP, however, I wanted you to know the impact of the changes Qwest made.

Thanks again,

Bonnie



**Bonnie J. Johnson** | Director Carrier Relations  
| direct 763.745.8464 | fax 763.745.8459 |  
6160 Golden Hills Drive  
Golden Valley, MN 55416-1020  
[bjjohnson@integratelecom.com](mailto:bjjohnson@integratelecom.com)

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

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JOINT NOTICE AND APPLICATION OF )	
QWEST CORPORATION, QWEST )	
COMMUNICATIONS COMPANY, LLC, )	
QWEST LD CORP., EMBARQ )	Docket No. T-01051B-10-0194
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. )	

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EXHIBIT AA-6

# WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.  
Washington, DC 20006-1238

Tel: 202 303 1000  
Fax: 202 303 2000

May 13, 2010

**VIA ECFS**

***EX PARTE***

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

**Re: *Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control, WC Dkt. No. 09-95***

Dear Ms. Dortch:

Yesterday, Jeff Oxley, Executive Vice President and General Counsel, and Russ Merbeth, Federal Counsel, Law & Policy, for Integra Telecom, Inc. ("Integra"), and the undersigned, representing Integra, tw telecom inc., Cbeyond, Inc., and One Communications Corp. (the "Joint Commenters"), met with Nick Alexander, Alex Johns, Steve Rosenberg, Carol Simpson, Don Stockdale, and Matt Warner of the Wireline Competition Bureau, and Zac Katz of the Office of Strategic Planning and Policy Analysis, to discuss the above-referenced proceeding. In addition, Dennis Ahlers, Associate General Counsel, and Kim Isaacs, ILEC Relations Process Specialist, for Integra participated in the meeting via phone.

During the meeting, Mr. Oxley and Ms. Isaacs discussed some of the problems that Integra<sup>1</sup> has experienced with the systems that Verizon recently replicated and that will be used by Frontier to fulfill orders for unbundled network elements and other wholesale services in the 13 affected states post-transaction (the "Replicated Systems"). As Mr. Oxley and Ms. Isaacs explained, since the transition from Verizon's systems for its West region to the Replicated Systems for Verizon's new North Central Region, Integra has experienced the following problems with Verizon's wholesale ordering and provisioning functions during the last two weeks of April and throughout May. *First*, Verizon's Access Service Request ("ASR") response times have increased, resulting in either missed due dates or orders that need to be escalated or expedited in order to meet the due dates expected by Integra's end-user customers. *Second*, coding errors in Verizon's Access Ordering system have

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<sup>1</sup> Integra is a competitive local exchange carrier that offers service in two of the states affected by the proposed transaction, Oregon and Washington. As of April 2009, Integra had 17,537 access lines in Oregon and 12,604 access lines in Washington.

Marlene H. Dortch  
May 13, 2010

increased, thereby delaying Integra's ability to submit ASRs. *Third*, Verizon has not been providing Integra with timely completion notices for Local Service Requests ("LSRs"). *Fourth*, Verizon's designated center for wholesale customers to report system errors, the Partner Solutions Customer Care center, has developed a backlog of trouble tickets. It is Integra's understanding based on statements made by Verizon employees that there is currently only one Verizon employee assigned to resolve these trouble tickets for Verizon's entire North Central region. *Fifth*, when Integra employees have called Verizon's Access Ordering centers to report problems with the processing of ASRs, Integra employees have experienced hold times of 30 minutes or more. It is Integra's understanding based on statements made by Verizon employees that Verizon's Access Ordering staff for the North Central region was initially reduced from 50 employees to 12 employees and has been further reduced from 12 employees to only 6 employees. *Sixth*, when Integra employees have called Verizon's National Market Center to report problems with the processing of LSRs, Integra employees have experienced hold times of 30 minutes or more. *Seventh*, when Integra has submitted supplemental LSRs for coordinated conversions, Verizon's coordinated conversion process has increasingly failed, ultimately resulting in service outages for customers migrating from Verizon to Integra. Finally, Verizon has increasingly missed so-called "meets" (coordinated dispatches) with Integra and its vendors. All of these problems have resulted in delays in the provisioning of retail service to Integra's end-user customers.

At the meeting, Mr. Oxley also stated that, on January 21, 2010, Verizon and Frontier sent a letter and Adoption Agreement to Integra (attached hereto as "Attachment A") effectively asking Integra to agree to an amendment of its Wholesale Advantage Services Agreement with Verizon. Mr. Oxley explained that Verizon and Frontier's request was inconsistent with the stipulations entered into by the parties (which were approved by the Oregon and Washington state commissions) in which Frontier agreed to assume Verizon's existing wholesale agreements. Mr. Oxley distributed a copy of Integra's May 10, 2010 response to that effect (*see* "Attachment B" hereto, at 2) at the meeting.

During the meeting, the undersigned distributed a document (attached hereto as "Attachment C") quoting the commitments that Frontier has made in its Application and Reply Comments in this proceeding regarding the assumption of interconnection agreements and other wholesale arrangements, wholesale rates and volume/term agreements, and the status of the Merged Firm as a Bell Operating Company ("BOC"). We explained that these commitments must be supplemented as necessary to address deficiencies, and that they must be made binding conditions of the Commission's approval of the proposed transaction. Specifically, the Commission should adopt condition numbers 5, 8, and 9 proposed by the Joint Commenters in this proceeding (*see* "Attachment D" hereto)<sup>2</sup> for the following reasons:

- The Commission should adopt Joint Commenters' Condition # 5 because, among other reasons, unlike Frontier's voluntary commitment in its Reply Comments, Condition # 5 requires

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<sup>2</sup> The proposed conditions listed in Attachment D hereto are the same proposed conditions submitted by the Joint Commenters in their January 28, 2010 ex parte filing in this proceeding. *See* Letter from Thomas Jones, Counsel for One Communications Corp. et al., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 09-95, Attachment A (filed Jan. 28, 2010) ("Joint Commenters' January 28th Ex Parte Filing").



Marlene H. Dortch  
May 13, 2010

Frontier to assume not only Verizon's current interconnection agreements, but Verizon's current interstate special access tariffs, commercial agreements, line sharing agreements, and other existing arrangements with wholesale customers. In addition, Condition # 5 prohibits Frontier from changing the rates, terms or conditions in the assumed agreements. See Attachment D, Condition # 5.

- The Commission should adopt Joint Commenters' Condition # 8 in part because, unlike Frontier's voluntary commitment in its Reply Comments, Condition # 8 prohibits Frontier from increasing rates not only for unbundled network elements, but for tandem transit service, any interstate special access tariffed offerings, reciprocal compensation, interconnection, collocation, Ethernet service, or any other wholesale services. See Attachment D, Condition # 8.
- The Commission should adopt Joint Commenters' Condition # 9 to address any ambiguities in Frontier's commitment in its Reply Comments and make clear that post-merger Frontier will be classified as a BOC in the portions of West Virginia currently served by Verizon. See Attachment D, Condition # 9. This would be consistent with the Commission's holding in the *FairPoint-Verizon Merger Order*.<sup>3</sup>

We explained further that, in addition to the conditions listed above, it is critical that the Commission impose Joint Commenters' condition numbers 1, 2, 10, 19, 21, 23, and 25 for the following reasons:<sup>4</sup>

- Conditions # 1 and 2 address merger-specific concerns and are very similar to conditions already agreed to by the Applicants in some of the state commission proceedings. See Attachment D, Conditions # 1-2.
- Condition # 10 is needed to ensure that Frontier will not seek to avoid its wholesale obligations under Section 251(c) by invoking the protections of Section 251(f)(1) or (f)(2).<sup>5</sup> Frontier has stated in its response to the Commission's initial data request that "Frontier has no intention of asserting the rural exemption [under Section 251(f)(1)] in the transaction market areas."<sup>6</sup>

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<sup>3</sup> See *In re Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd. 514, ¶¶ 33-35 (2008) ("*FairPoint-Verizon Merger Order*").

<sup>4</sup> See also generally Joint Commenters' January 28th Ex Parte Filing; Petition to Deny of tw telecom inc. et al, WC Dkt. No. 09-95 (filed Sept. 21, 2009) ("Joint Commenters' Petition to Deny").

<sup>5</sup> See Joint Commenters' January 28th Ex Parte Filing at 14-16.

<sup>6</sup> See Response of Frontier Communications Corp. to the Commission's February 12, 2010 Information and Document Request, WC Dkt. No. 09-95, at 42 (filed Feb. 26, 2010) (responding to Request # 22 as revised by the FCC Staff).

Marlene H. Dortch  
May 13, 2010

Accordingly, there is no reason that Frontier should be opposed to a binding merger condition to that effect.

- As discussed in the Joint Commenters' January 28th Ex Parte Filing,<sup>7</sup> Conditions # 19 and 21 are needed to ensure that Frontier does not perpetuate Verizon's anticompetitive conduct with respect to access to remote terminals and DS1 UNE loop facilities. *See Attachment D, Conditions # 19 & 21.*
- As discussed in the Joint Commenters' Petition to Deny,<sup>8</sup> when customers such as tw telecom order DS1 special access circuits under Verizon's Term Volume Plan, Verizon is able to automatically bill the transport component of each DS1 special access circuit as a "MetroLAN" rate element when MetroLAN is the least expensive option available to the customer. The Commission should adopt Condition # 23 to ensure that Frontier's systems retain this billing capability. Importantly, even though Verizon's existing OSS for the 13 affected states have been replicated and the Replicated Systems will be transferred to Frontier, it is not at all clear that Frontier's *billing* systems will have the same capability as Verizon to automatically bill qualifying customers for MetroLAN when it is the least-cost option.
- The Commission should also adopt Condition # 25. The monetary penalties proposed in Condition # 25 were designed to supplement other enforcement mechanisms needed to ensure compliance with the conditions proposed by the Joint Commenters. If the FCC were to adopt its own performance reporting and service quality requirements, however, a separate regime of self-executing penalties would be needed to ensure compliance with such requirements. For example, the Commission could impose an automatic penalty of a certain percentage of Frontier's wholesale revenues for each failure to meet the established benchmark or standard. Alternatively, the Commission could establish two kinds of failures for the relevant performance metrics. "Ordinary" failures would be failures on a measure for one month or two consecutive months. "Chronic" failures would be failures on a measure for three consecutive months. Under this regime, Frontier would pay a fixed dollar amount for each ordinary failure in excess of the established benchmark or standard and five times that dollar amount for each chronic failure in excess of the established benchmark or standard.

Finally, the wholesale performance metrics and benchmark proposed by Frontier in Voluntary Commitment # 12 of its May 10, 2010 letter in this proceeding<sup>9</sup> are insufficient. To begin with, for each of the metrics proposed by Frontier in Voluntary Commitment # 12, the Commission should require Frontier to meet or exceed Verizon's average monthly performance for the first six months of

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<sup>7</sup> *See* Joint Commenters' January 28th Ex Parte Filing at 12-14.

<sup>8</sup> *See* Joint Commenters' Petition to Deny at 26 & n.86.

<sup>9</sup> *See* Attachment A to Letter from Kathleen Q. Abernathy, Chief Legal Officer, Frontier Communications Corp., to Julius Genachowski, Chairman, FCC et al., WC Dkt. No. 09-95 (filed May 10, 2010) (listing "Further Commitments by Frontier Communications Corp.").

Marlene H. Dortch  
May 13, 2010

2008 rather than Verizon's performance for 2009. This is because Verizon consolidated its Verizon West order processing centers from Coeur d'Alene, Idaho to Chesapeake, Virginia in June 2008, and in Integra's experience, Verizon's wholesale performance deteriorated significantly following this workforce realignment. These problems lasted through much of 2009. As a result, reliance on Verizon's performance in 2009 would set the bar for OSS performance at an unreasonably low level. In addition, the Commission should add to the list of metrics in Frontier's Voluntary Commitment # 12 the following metrics that Verizon is currently required to report to wholesale customers in certain states under the Joint Partial Settlement Agreement ("JPSA").<sup>10</sup>

#### Ordering Performance

- OR-1 FOC/LSC Notice Timeliness (Order Confirmation Timeliness)
- OR-4-18 Completion Notice Interval

#### Provisioning Performance—Installation Quality

- PR 6-01 % Troubles in 30 Days for Special Services Orders
- PR-6-02 % Troubles in 7 Days for Non-Special Orders
- PR-6-04 Provisioning Trouble Reports
- PR-6-05 Average Time to Restore Provisioning Troubles

#### Provisioning Performance—Jeopardy Reports

- PR-7-01 % Orders Jeopardized
- PR-7-02 Jeopardy Notices Returned by Required Interval

#### Maintenance Performance

- MR-5-01 % Repeat Reports within 30 Days

#### Billing Performance

- BI-3-01 Bill Accuracy

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<sup>10</sup> The Joint Partial Settlement Agreement is available at [http://www22.verizon.com/wholesale/attachments/east-perf\\_meas/CA\\_FL\\_IN\\_NC\\_OH\\_JPSA\\_BLACKLINE.doc](http://www22.verizon.com/wholesale/attachments/east-perf_meas/CA_FL_IN_NC_OH_JPSA_BLACKLINE.doc) (last visited May 13, 2010).

Marlene H. Dortch  
May 13, 2010

Again, for each of these metrics, Frontier should be required to meet or exceed Verizon's average monthly performance for the first six months of 2008. In addition, this requirement should apply in all 14 affected states.

Respectfully submitted,

/s/ Thomas Jones  
Thomas Jones  
Nirali Patel

*Counsel for Integra Telecom, Inc., tw telecom inc.,  
Cbeyond, Inc., and One Communications Corp.*

Attachments

cc (via e-mail):  
Nick Alexander  
Alex Johns  
Steve Rosenberg  
Carol Simpson  
Don Stockdale  
Matt Warner  
Zac Katz  
Angela Kronenberg  
Christine Kurth  
Jennifer Schneider  
Christi Shewman

# ATTACHMENT A



Carrier Sales and Service  
180 S. Clinton Ave.  
Rochester, NY 14623



Verizon Partner Solutions  
600 Hidden Ridge  
HQEWMNOTICES  
P.O. Box 152092  
Irving, TX 75038

January 21, 2010

J. Jeffery Oxley, EVP, General Counsel  
Integra Telecom Holdings, Inc., Integra Telecom of Oregon, Inc. and Integra Telecom of Washington, Inc.,  
Eschelon Telecom of Washington, Inc., Eschelon Telecom of Oregon, Inc., Advanced Telcom, Inc., and  
Advanced Telcom Group, Inc., Oregon Telecom, Inc.,  
1201 NE Lloyd Boulevard, Suite 500  
Portland, OR 97232

Subject: Wholesale Advantage Services Agreement between Verizon Services Corp. and Integra  
Telecom Holdings, Inc., Integra Telecom of Oregon, Inc. and Integra Telecom of  
Washington, Inc., Eschelon Telecom of Washington, Inc., Eschelon Telecom of Oregon,  
Inc., Advanced Telcom, Inc., and Advanced Telcom Group, Inc., Oregon Telecom, Inc.,  
dated August 31, 2009 (the "Agreement")

On May 13, 2009, Verizon Communications Inc. ("Verizon") entered into a merger agreement (the  
"Merger Agreement") with Frontier Communications Corporation ("Frontier") whereby Verizon agreed that  
through a series of internal transfers, it would transfer control of certain assets, liabilities and contracts in  
Arizona, Nevada, Idaho, Oregon, Washington, Ohio, Illinois, Michigan, Indiana, Wisconsin, West Virginia,  
North Carolina, South Carolina and certain wire centers in California<sup>31</sup> (the "Transferred Service  
Territories") to a newly created Verizon affiliate, New Communications ILEC Holdings Inc. ("ILEC  
Holdings") Verizon has further agreed to merge New Communications Holdings Inc., the parent of ILEC  
Holdings, with Frontier pursuant to the Merger Agreement (the "Transaction"), with Frontier being the  
surviving entity.

Verizon and Frontier have petitioned regulatory bodies in the Transferred Service Territories for approval  
of the Transaction and upon closing to withdraw Verizon's authority as a local exchange carrier in the  
Transferred Service Territories. When these petitions are approved and the Transaction closes, Frontier  
will be the authorized local exchange carrier in the Transferred Service Territories.

Under the Agreement Verizon or its affiliate agreed to provide certain services in at least one state  
comprising the Transferred Service Territories as well as in at least one other state not involved in the  
Transaction.

In connection with the Transaction, pursuant to the terms of the Agreement, Verizon is hereby providing  
notice that it will terminate the Agreement only in the Transferred Service Territories as of the closing of  
the Transaction. Verizon will continue to provide the services set forth in the Agreement in other states,  
as applicable, after the closing of the Transaction.

Frontier has prepared an agreement mirroring the Agreement in the Transferred Service Territories  
pursuant to which Frontier will continue providing the services previously provided under the Agreement  
in the Transferred Service Territories. An agreement for this purpose is attached hereto (the "Adoption  
Agreement").

Please note that this joint letter is being sent for administrative convenience. No obligations of either  
Verizon or Frontier arise from this letter. Rather, all obligations of Verizon or Frontier described herein  
are set forth in the Agreement and the Adoption Agreement.

<sup>31</sup> California wire centers: Blythe, Palo Verde (PALSVDE), Alpine, Coleville, Earp, Havasu

Subject to regulatory approval, the closing of the Transaction is currently expected to occur in the second quarter 2010. Our desire and expectation is that your organization will execute the Adoption Agreement with Frontier well before that date. This agreement would only become effective upon closing of the Transaction. We would appreciate your execution and return of this document no later than 45 days from the date of this letter, so all will proceed smoothly at closing.

Please have all originals (four included; sign where marked) executed by an authorized representative and returned to Frontier at the following address:

Lucy Buhmaster  
Frontier Communications Corporation  
137 Harrison Street  
Gloversville, NY 12078-4815

Once Frontier receives these documents we will execute them and return one fully executed original to you for your records.

Should you wish to discuss this letter with Verizon please contact your account team. For questions on the Frontier Adoption Agreement, please contact Lucy Buhmaster at 518-773-6162.

Sincerely,

VERIZON PARTNER SOLUTIONS



David J. Goldhirsch  
Director-Contract Management

FRONTIER COMMUNICATIONS CORPORATION



Stephen LeVan  
SVP Carrier Sales and Service

Enclosures (4)

VIA FedEx 2-Day Delivery

**AGREEMENT WITH ADOPTION OF TERMS**

This Agreement with Adoption of Terms (this "Adoption Agreement") is between Frontier Communications Corporation, on behalf of itself and its subsidiaries, with offices at 180 South Clinton Avenue, Rochester, NY 14546 ("Frontier") and Integra Telecom Holdings, Inc., Integra Telecom of Oregon, Inc. and Integra Telecom of Washington, Inc., Eschelon Telecom of Washington, Inc., Eschelon Telecom of Oregon, Inc., Advanced Telcom, Inc., and Advanced Telcom Group, Inc., Oregon Telecom, Inc., with offices at 1201 NE Lloyd Boulevard, Suite 500, Portland, OR 97232 ("Customer") (hereinafter together "the Parties").

WHEREAS, Verizon Communications Inc. ("Verizon"), New Communications Holdings Inc. ("NewCo") and Frontier have entered into an agreement whereby Verizon shall through a series of internal transfers, transfer control certain operations in Arizona, Nevada, Idaho, Oregon, Washington, Ohio, Illinois, Michigan, Indiana, Wisconsin, West Virginia, North Carolina, South Carolina and certain wire centers in California<sup>1</sup> ("Transferred Service Territories") to a newly created Verizon affiliate, New Communications ILEC Holdings Inc. ("ILEC Holdings") and following Verizon's transfer of control of such operations to ILEC Holdings, NewCo, the parent of ILEC Holdings, shall merge with and into Frontier pursuant to an Agreement and Plan of Merger dated as of May 13, 2009 (the "Transaction"), with Frontier being the surviving entity; and

WHEREAS, prior to the Transaction, a subsidiary or subsidiaries of Verizon and Customer entered into an agreement entitled Wholesale Advantage Services Agreement between Customer and The Verizon Telephone Operating Companies and dated as of August 31, 2009, (as such agreement is in effect immediately prior to the Transaction, the "Agreement"), such Agreement providing for the provision of services in a service area that includes, but is not exclusive to, the pre-Transaction Verizon operating territories in the Transferred Service Territories; and

WHEREAS, the Parties desire that Frontier or an acquired subsidiary of Frontier continue providing the services previously provided under the Agreement in the Transferred Service Territories following the Transaction upon the same terms and conditions as provided in the Agreement.

NOW THEREFORE, the Parties agree as follows:

1. On and after the closing date of the Transaction (the "Transaction Closing Date"), the Customer and Frontier, by and through its subsidiary acquired in the Transaction, agree to be bound by the Agreement, except as otherwise expressly set forth in this Adoption Agreement, at the same rates, terms and conditions set forth in the Agreement and applicable Frontier tariffs in the former Verizon operating territories in the Transferred Service Territories. Customer agrees that it shall look exclusively to Frontier and its subsidiary acquired in the Transaction, as holder of all rights and obligations

<sup>1</sup> California wire centers: Blythe, Palo Verde (PALSVD), Alpine, Coleville, Earp, Havasu



previously held by Verizon or its affiliates under the Agreement and not to Verizon or any Verizon affiliate or subsidiary for enforcement of any rights or performance of any obligation under the Agreement in the Transferred Service Territories after the Transaction Closing Date.

2. Notice to Frontier or its subsidiary acquired in the Transaction as may be required or permitted under the Agreement, in the Transferred Service Territories shall be provided as follows:

Frontier Communications Corporation  
ATTN: Kim Czak  
180 South Clinton Avenue  
Rochester, NY 14546

With a copy to:

Frontier Communications Corporation  
ATTN: General Counsel  
180 South Clinton Avenue  
Rochester, NY 14546

3. Notwithstanding anything in the Agreement to the contrary, the Parties agree that the term of the Agreement as hereby adopted in the Transferred Service Territories shall expire on the later of (a) twelve (12) months following the Transaction Closing Date or (b) the termination date contained in the Agreement unless otherwise agreed to by the Parties in writing.

4. Notwithstanding anything in the Agreement to the contrary, the Parties agree that any and all references in the Agreement to specific and general tariffs of Verizon and its affiliates are inapplicable to Frontier's or its acquired subsidiary's provision of services in the Transferred Service Territories under the Agreement as hereby adopted and for purposes of Frontier's or its acquired subsidiary's delivery of services under this Adoption Agreement and for all other contract matters any such tariff references are deemed to and shall refer to Frontier's or its acquired operating subsidiary's applicable tariffs.

5. Notwithstanding anything in the Agreement to the contrary, the Parties agree that any and all references in the Agreement to specific and general policies, procedures, product guides, handbooks or other collateral material of Verizon or any Verizon subsidiary are deemed to and shall refer to Frontier's or its acquired operating subsidiary's applicable policies, procedures, product guides, handbooks or other Frontier collateral material.

6. Notwithstanding anything in the Agreement to the contrary, the Parties agree that all references to Verizon state operating territories other than references to the Transferred Service Territories and listings of Verizon state or regional operating entities,

subsidiaries or affiliates are inapplicable to Frontier's or its acquired subsidiary's provision of service under the Agreement as adopted hereby and this Adoption Agreement and are excluded from the Agreement as adopted by this Adoption Agreement.

7. The Parties agree that any and all references in the Agreement to rate listings other than those applicable to the Transferred Service Territories are inapplicable to Frontier's or its acquired subsidiary's provision of services under the Agreement as hereby adopted and are hereby revised and amended to exclude those rates set forth in the Agreement that are applicable exclusively outside the Transferred Service Territories.

8. The Parties agree that effective immediately upon the closing of the Transaction, Frontier shall assign and transfer the Agreement as hereby adopted to the appropriate acquired operating subsidiary and shall cause such acquired operating subsidiary to assume all of the obligations thereof.

9. This Adoption Agreement shall become effective only as of the Transaction Closing Date and may only be amended by written agreement of the Parties.

The Parties hereby execute this Agreement effective as of the last to execute below.

**Frontier Communications Corporation**

**Integra Telecom Holdings, Inc., Integra  
Telecom of Oregon, Inc. and Integra  
Telecom of Washington, Inc., Eschelon  
Telecom of Washington, Inc., Eschelon  
Telecom of Oregon, Inc., Advanced Telcom,  
Inc., and Advanced Telcom Group, Inc.,  
Oregon Telecom, Inc.,**

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTACHMENT B



May 10, 2010

Integra Telecom  
6180 Golden Hills Drive  
Golden Valley, MN 55416  
www.integratelecom.com

David J. Goldhirsch  
Verizon Partner Solutions  
600 Hidden Ridge  
HQEWMNOTICES  
P.O. Box 152092  
Irving, TX 75038

Stephen LeVan  
SVP Carrier Sales and Service  
Frontier Communications Corporation  
180 South Clinton Avenue  
Rochester, NY 14623

Re: Wholesale Advantage Services Agreement between Verizon Services Corp. and Integra Telecom Holdings, Inc, Integra Telecom of Oregon, Inc. and Integra Telecom of Washington, Inc., Eschelon Telecom of Washington, Inc., Eschelon Telecom of Oregon, Inc., Advanced TelCom, Inc., and Advanced TelCom Group, Inc., and Oregon Telecom, Inc., dated August 31, 2009.

Dear Messers. Goldhirsch and LeVan:

Integra Telecom (Integra) has received a letter from Verizon Communications Inc. (Verizon) and Frontier Communications Corporation (Frontier), dated January 21, 2010, referring to the above-referenced Wholesale Advantage Services Agreement (WASA) and the transfer of certain contracts from Verizon to Frontier. First, it should be noted that the description of the Agreement in the letter is not accurate. The WASA in question has recently been amended to include United Communications, Inc. d/b/a UNICOM ("UNICOM") and Electric Lightwave, LLC ("ELI").

More importantly, the letter and attached "Adoption Agreement" are premature and do not reflect the commitments made to and ordered by state and federal regulatory agencies. They are premature because all of the regulatory agencies have not yet completed their review of the transfer. They also do not fully reflect the orders issued by the regulatory commissions and the agreements made by Verizon and Frontier. For example, in Oregon, Verizon and Frontier agreed and the Commission approved the following condition of approval of the transaction:

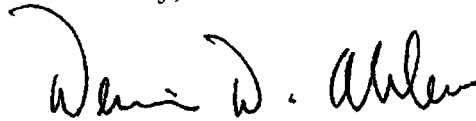
David J. Goldhirsch  
Stephen LeVan  
May 10, 2010  
Page 2

"All VNW existing agreements with wholesale customers, retail customers, and utility operators and licensees for services provided in Oregon including, but not limited to interconnection agreements, commercial agreements, line sharing commercial agreements, and special access discount and/or term plan agreements will be assigned to or assumed by Frontier or its subsidiary and will be honored by the Company for the term of the agreement."

Similar language was agreed to and adopted by the Washington Commission. However, the proposed "Adoption Agreement" purports to change the terms of the Wholesale Agreement by changing all references to "specific and general policies, procedures, product guides, handbooks or other collateral material of Verizon" to refer to Frontier's "policies, procedures, product guides, handbooks or other Frontier collateral material." This is not the same as an assumption of the Verizon agreement by Frontier, but is instead an amendment and modification of the Verizon Wholesale Agreement, is contrary to the stipulation entered into by the parties in the Oregon and Washington proceedings before the state commissions, and inconsistent with the Oregon Commission's Order.

It would seem, in light of the agreements and Commission Order, the more appropriate course of action would be to have a simple and straight-forward assumption of the Verizon WASA by Frontier.

Sincerely,



Dennis D. Ahlers  
Associate General Counsel  
763-745-8460 (Direct/Voice)  
763-745-8459 (Department Fax)  
ddahlers@integratelecom.com

cc: J. Jeffery Oxley  
Mark Trincherro

# ATTACHMENT C

**FRONTIER'S COMMITMENTS IN ITS APPLICATION AND REPLY COMMENTS**  
**WC Dkt. No. 09-95**

**A. Assumption of Interconnection Agreements and Other Wholesale Arrangements**

Frontier has stated in its Reply Comments (at 44-45) that:

“Wholesale arrangements will remain the same as a result of this transaction. Frontier will assume those interconnection agreements between Verizon and other carriers that relate to service wholly within the new Frontier areas. . . . In [the case of Verizon interconnection agreements relating in part to service outside of those states], Frontier stands ready to put in place new interconnection agreements on substantially the same terms and conditions, so as not to disrupt existing arrangements.”

*See also* Application at 19-20.

**B. Wholesale Rates and Volume/Term Agreements**

Frontier has stated in its Reply Comments (at 45) that:

“With respect to concerns raised regarding whether Frontier will alter rates for Unbundled Network Elements, Frontier plans to continue to adhere to Verizon’s Statement of Rates for Unbundled Network Elements as part of its commitment to honor Verizon’s obligations under interconnection agreements and other wholesale arrangements.”

The Applicants have also stated in their Application (at 20) that:

“For both retail enterprise and wholesale customers with volume and term agreements, following the transaction the parties will adjust all revenue commitments and volume thresholds so that customers that maintain the volumes they currently purchase in acquired states and Verizon’s remaining states, respectively, will continue to qualify for the same volume discounts in the respective areas. Frontier will reduce pro rata the volume commitments provided for in agreements to be assigned to or entered into by Frontier or tariffs to be concurred in and then adopted by Frontier, without any change in rates and charges or other terms and conditions, so that such volume pricing terms will in effect exclude volume requirements from states outside of the affected states. Verizon will do the same with respect to service it will continue providing outside of those regions. Both parties will amend their tariffs or satisfy other filing requirements and amend other customer agreements as may be necessary to restate the applicable volume commitments. As a result, retail and wholesale customers will receive the same benefits in the aggregate following the transaction as those provided pursuant to the existing Verizon volume discount arrangement.”

**C. Status of the Merged Firm as a “Bell Operating Company”**

Frontier has stated in its Reply Comments (at 45) that:

“This transaction also does not alter the applicability of Section 271 or any other Bell Company-specific requirement to Verizon West Virginia. Frontier will abide by all the Section 271 requirements applicable to Verizon West Virginia (the successor or assignor of the former Chesapeake and Potomac Telephone Company of West Virginia property). This includes continued compliance with those parts of the competitive checklist that have not been the subject of forbearance, as well as being subject to Section 271’s complaint procedures . . . .”



# ATTACHMENT D

## PROPOSED CONDITIONS

For purposes of the conditions proposed herein, the following definitions apply:

“Transaction” means the proposed acquisition of the incumbent LEC assets of Verizon Communications Inc. by Frontier Communications Corporation that is the subject of the applications for FCC approval in WC Docket No. 09-95.

“Closing Date” means the date on which the Transaction is consummated.

“Verizon” means Verizon Communications Inc. and its subsidiaries.

“Frontier” means Frontier Communications Corporation and its subsidiaries after the consummation of the Transaction.

“Legacy Frontier” means Frontier Communications Corporation and its subsidiaries prior to the consummation of the Transaction.

“14 Affected States” means Arizona, California, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia, and Wisconsin.

All of the conditions proposed herein apply for 36 months from the Closing Date of the Transaction, except as otherwise indicated. All of the conditions proposed herein apply throughout the entirety of Frontier’s service territory in the 14 Affected States, excepted as otherwise indicated. Any failure to comply with the conditions proposed herein shall be subject to an enforcement action by the FCC or a private party. The procedures governing such enforcement action shall be the same as those that would apply if the conditions set forth below were requirements of Title II of the Communications Act.

1. Frontier will not discontinue, withdraw or stop providing, or seek to discontinue, withdraw or stop providing, any Verizon wholesale service offered to CLECs as of the Closing Date for one year after the Closing Date except as approved by the FCC.

*[Relevance Of State-Level Conditions: This proposed condition is similar to OR/WA CLEC Settlement Condition 1, Comcast 4-State Settlement Condition a, and Comcast West Virginia Settlement Condition a, and should be applied to all 14 Affected States.]*

2. Frontier will not seek to recover, directly or indirectly, through wholesale service rates or other fees paid by CLECs any Transaction-related costs including but not limited to one-time transfer, branding or transaction costs, management costs, or OSS transition costs.

*[Relevance Of State-Level Conditions: This proposed condition is similar to OR/WA CLEC Settlement Conditions 2 & 3, Comcast 4-State Settlement Conditions b & c, Comcast West Virginia Settlement Conditions b & c, and West Virginia CLEC Settlement Condition 16, and should be applied to all 14 Affected States.]*

3. Frontier will (1) comply with all wholesale performance reporting requirements and associated penalty regimes currently applicable to Verizon, including but not limited to those applicable under Performance Assurance Plans and Carrier-to-Carrier Guidelines; (2) continue to provide the performance reports that Verizon currently provides to wholesale customers under the Joint Partial Settlement Agreement, effective March 2008, for California, Florida, Indiana, North Carolina, Ohio, Oregon, and Washington (“Joint Partial Settlement Agreement”);<sup>1</sup> (3) provide the performance reports that Verizon currently provides to existing wholesale customers to any new entrants in the legacy Verizon territory in the 14 Affected States; (4) add the wholesale service that Frontier provides to wholesale customers in Michigan to the performance reporting required under the Joint Partial Settlement Agreement; (5) meet or exceed Verizon’s average monthly performance for 2008 for each metric contained in the reports provided under the Joint Partial Settlement Agreement; and (6) not seek any changes to any of the wholesale performance reporting requirements and associated penalty regimes currently applicable to Verizon.

*[Relevance Of State-Level Conditions: This condition covers the same subject matter as Comcast 4-State Settlement Condition d, Comcast West Virginia Settlement Condition d, OR/WA CLEC Settlement Condition 4, and West Virginia CLEC Settlement 4, but it addresses the flaws in those conditions. Those conditions are insufficient because they do not require Frontier to (1) provide the performance reports to new entrants in the legacy Verizon territory, (2) provide performance reporting to wholesale customers in Michigan, (3) meet or exceed Verizon’s average monthly performance for 2008, or (4) not seek any changes to the performance reporting requirements and associated penalty regimes.]*

4. Frontier will retain, at its sole expense, an independent third-party consultant to conduct an analysis of the level of service provided to wholesale customers in the legacy Verizon territory in the 14 Affected States before and after the Transaction. This analysis will begin 18 months following the Closing Date and will be completed within 90 days. Frontier will provide each CLEC with CLEC-specific results of the analysis and Frontier will provide the public with aggregate results of the analysis.

*[Relevance Of State-Level Conditions: This proposed condition is not addressed by the various state-level settlement agreements.]*

5. Frontier will assume or take assignment of all obligations under Verizon’s current interconnection agreements, interstate special access tariffs, commercial agreements, line sharing agreements, and other existing arrangements with wholesale customers (“Assumed Agreements”). Frontier shall not terminate or change the rates, terms or conditions of any effective Assumed Agreements during the unexpired term of any Assumed Agreement or for a period of 36 months from the Closing Date, whichever

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<sup>1</sup> The Joint Partial Settlement Agreement is available at [http://www22.verizon.com/wholesale/attachments/east-perf\\_meas/CA\\_FL\\_IN\\_NC\\_OH\\_JPSA\\_BLACKLINE.doc](http://www22.verizon.com/wholesale/attachments/east-perf_meas/CA_FL_IN_NC_OH_JPSA_BLACKLINE.doc) (last visited Jan. 28, 2010).

occurs later unless requested by the wholesale customer, or required by a change of law.

*[Relevance Of State-Level Conditions: This proposed condition is modeled after OR/WA CLEC Settlement Condition 5, Comcast 4-State Settlement Condition e, and Comcast West Virginia Settlement Condition f, and addresses issues that are also covered in West Virginia CLEC Settlement Condition 2. Like West Virginia CLEC Settlement Condition 2, this proposed condition applies for 36 months.]*

6. Frontier will allow requesting carriers to extend existing interconnection agreements with Legacy Frontier, whether or not the initial or current term has expired, until at least 36 months from the Closing Date, or the date of expiration, whichever is later.

*[Relevance Of State-Level Conditions: This proposed condition is modeled after OR/WA CLEC Settlement Condition 6, Comcast 4-State Settlement Condition f, and Comcast West Virginia Settlement Condition g and addresses issues that are also covered in West Virginia CLEC Settlement Condition 3. Like West Virginia CLEC Settlement Condition 3, this proposed condition applies for 36 months.]*

7. Frontier shall allow a requesting carrier to use its pre-existing interconnection agreement, including agreements entered into with Verizon, as the basis for negotiating a new replacement interconnection agreement. Such new replacement interconnection agreement shall apply throughout the state in question.

*[Relevance Of State-Level Conditions: This proposed condition is similar to OR/WA CLEC Settlement Condition 7, Comcast 4-State Settlement Condition g, Comcast West Virginia Settlement Condition h, and West Virginia CLEC Settlement Condition 3, except that it requires the new replacement interconnection agreement to apply throughout the state in question.]*

8. For at least 36 months from the Closing Date, Frontier shall not increase rates for tandem transit service, any interstate special access tariffed offerings, reciprocal compensation, interconnection, collocation, unbundled network elements, Ethernet service, or any other wholesale services. For at least 36 months from the Closing Date, Frontier will not create any new rate elements or charges for distinct facilities or functionalities that are currently already provided under existing rates. Frontier shall continue to offer any currently offered Term and Volume Discount plans until at least 36 months from the Closing Date. Frontier will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term. Frontier will reduce pro rata the volume commitments provided for in agreements to be assigned to or entered into by Frontier or tariffs to be concurred in and then adopted by Frontier without any change in rates and charges or other terms and conditions, so that such volume pricing terms will in effect exclude volume requirements from states not affected by the proposed Transaction.

*[Relevance Of State-Level Conditions: This proposed condition is modeled after OR/WA CLEC Settlement Condition 8, Comcast 4-State Settlement Condition h, and Comcast West Virginia Settlement Condition i, and it also addresses issues that are covered by West Virginia CLEC Settlement Condition 2. Like West Virginia CLEC Settlement*

*Condition 2, this proposed condition applies for 36 months. However, West Virginia CLEC Settlement Condition 2 does not address volume-term agreements.]*

9. In the portions of West Virginia served by Verizon prior to the Closing Date, Frontier shall be classified as a Bell Operating Company ("BOC"), pursuant to Section 3(4)(A)-(B) of the Communications Act of 1934 ("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 nondiscrimination requirements of Section 272(e) of the Communications Act.

*[Relevance Of State-Level Conditions: This proposed condition covers the same subject matter as West Virginia CLEC Settlement Condition 8 and Comcast West Virginia Settlement Condition j, but it addresses the flaws in those conditions. West Virginia CLEC Settlement Condition 8 is insufficient because it merely states that "Frontier WV will comply with statutory obligations under Section 271 of the Act." Comcast West Virginia Settlement Condition j is insufficient because it merely prevents Frontier from avoiding any of its obligations under the Assumed Agreements on the grounds that Frontier is not subject to Section 271.]*

10. Frontier will not seek to avoid any of its obligations under the Assumed Agreements on the grounds that Frontier is not an incumbent local exchange carrier ("ILEC") under the Communications Act. Frontier will waive, in perpetuity, 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.

*[Relevance Of State-Level Conditions: This condition covers the same subject matter as OR/WA CLEC Settlement Condition 9, Comcast 4-State Settlement Condition i, Comcast West Virginia Settlement Condition j, and West Virginia CLEC Settlement Condition 8, but it addresses the flaw in those conditions. Those conditions merely prevent Frontier from invoking the protections of Section 251(f)(1) and (2) for purposes of avoiding any of its obligations under the Assumed Agreements for three years.]*

11. For one year following the Closing Date, Frontier will not seek to reclassify as "non-impaired" any wire centers for purposes of Section 251 of the Communications Act. For one year following the Closing Date, Frontier will not file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 obligation, dominant carrier regulation, or *Computer Inquiry* requirements.

*[Relevance Of State-Level Conditions: This proposed condition is similar to OR/WA CLEC Settlement Condition 10, Comcast 4-State Settlement Condition j, Comcast West Virginia Settlement Condition k, and West Virginia CLEC Settlement Condition 15, except that it also covers the Computer Inquiry requirements.]*

12. Frontier shall provide and maintain on a going-forward basis updated escalation procedures, contact lists, and account manager information at least 30 days prior to the Closing Date. The updated contact list shall, for each CLEC, identify and assign a single point of contact with the authority to address the CLEC's ordering, provisioning, billing,

maintenance, and OSS systems transition and integration issues.

*[Relevance Of State-Level Conditions: This proposed condition is similar to OR/WA CLEC Settlement Condition 11, Comcast 4-State Settlement Condition k, Comcast West Virginia Settlement Condition l, and West Virginia CLEC Settlement Condition 9, except that it also covers "OSS systems transition and integration issues."]*

13. Frontier will continue to make available to each CLEC the types of information that Verizon currently makes available to CLECs concerning wholesale operations support systems and wholesale business practices via its website, the CLEC Manual, industry letters, and the Change Management Process ("CMP"). In addition, Frontier will establish a CLEC User Forum process similar to the CLEC User Forum that Verizon currently offers and Frontier will maintain quarterly CLEC User Forum meetings. Frontier will provide CLECs with training and education on any wholesale OSS implemented by Frontier without charge to the CLECs. Frontier will maintain a CMP similar to Verizon's current CMP process. For the first 12 months following the Closing Date, Frontier shall hold monthly CMP meetings. Thereafter, the frequency of the CMP meetings will be agreed upon by the parties. Frontier will also commit to at least two OSS releases per year and commit to deploying at least two CLEC-initiated Change Requests per OSS release. Pending CLEC Change Requests will be completed in a commercially reasonable timeframe.

*[Relevance Of State-Level Conditions: This proposed condition is similar to OR/WA CLEC Settlement Conditions 12 & 13, Comcast 4-State Settlement Conditions l & m, Comcast West Virginia Settlement Conditions m & n, and West Virginia CLEC Settlement Conditions 11 & 12, except that it also requires Frontier to "commit to deploying at least two CLEC-initiated Change Requests per OSS release."]*

14. Frontier shall ensure that its wholesale and CLEC support centers are sufficiently staffed by adequately trained personnel dedicated exclusively to wholesale operations so as to provide a level of service that is comparable to that which was provided by Verizon prior to the Closing Date and to ensure the protection of CLEC information from being used for Frontier's retail operations.

*[Relevance Of State-Level Conditions: This proposed condition is similar OR/WA CLEC Settlement Condition 14, Comcast 4-State Settlement Condition n, Comcast West Virginia Settlement Condition o, and West Virginia CLEC Settlement 17, and it should be applied to all 14 Affected States.]*

15. At least 90 days prior to the Closing Date, Frontier will retain, at its sole expense, an independent third-party consultant ("Consultant") acceptable to the Chief of the FCC's Wireline Competition Bureau ("WCB Chief") to assess the readiness of Frontier's wholesale OSS in West Virginia. The Consultant will review Verizon and Frontier's cutover plan. CLECs will also be permitted to review the cutover plan and to provide their feedback on the cutover plan to the Consultant. The Consultant will propose readiness criteria, permit interested parties to comment on the proposed readiness criteria, and finalize the readiness criteria based on the comments received. The Consultant will

use the readiness criteria to conduct a pre-cutover assessment, including testing and a mock cutover, of Frontier's wholesale OSS in West Virginia, to determine the readiness of those systems for cutover. At least 30 days before the Closing Date, CLECs will be permitted to test Frontier's systems, including Frontier's wholesale gateway, and report their results to the Consultant. CLECs will be permitted to submit test orders, including pre-ordering and ordering for new facilities, submit sample repair tickets, and view sample bills electronically. In the event that the Consultant's assessment or CLECs' testing identifies problems or errors in Frontier's systems, Frontier will have the opportunity to correct such problems and errors in a commercially reasonable period of time. Based on the results of its own assessment and CLECs' testing, the Consultant will provide a publicly available report to the WCB Chief regarding Frontier's readiness for cutover. After notice and comment by interested parties, the WCB Chief will not permit the cutover to take place unless the Consultant has notified the WCB Chief of the Consultant's determination that Frontier's wholesale OSS operate, at a minimum, at the same level of service quality as Verizon prior to the Transaction. For 45 days following the cutover to Frontier's wholesale OSS, Verizon will not turn down its wholesale OSS for West Virginia and if substantial systems problems arise, as determined by the Consultant, CLECs will be allowed to place orders via Verizon's wholesale OSS for West Virginia until the end of the 45-day period.

*[Relevance Of State-Level Conditions: This proposed condition covers the same subject matter as West Virginia CLEC Settlement Condition 10 and Comcast West Virginia Settlement Condition 1, but it addresses the flaws in those conditions. Among other things, those conditions do not require independent third-party oversight of the cutover process or independent third-party testing of Frontier's systems, and they allow Frontier, rather than the FCC, to decide whether Frontier's systems are ready for cutover.]*

16. At least 120 days prior to the Closing Date, Frontier will retain, at its sole expense, an independent third-party consultant ("Consultant") acceptable to the WCB Chief, to assess the readiness of Frontier's replicated systems ("Replicated Systems") for the 14 Affected States excluding West Virginia ("the 13 Affected States") for closing. The Consultant will review any documents describing Verizon and Frontier's OSS replication, transition and/or integration plans, including but not limited to the Merger Agreement and system maintenance agreement. CLECs will also be permitted to review these documents and to provide their feedback to the Consultant on Verizon and Frontier's OSS replication, transition and/or integration plans for the 13 Affected States. The Consultant will propose readiness criteria, permit interested parties to comment on the proposed readiness criteria, and finalize the readiness criteria based on the comments received. The Consultant will use the readiness criteria to conduct a pre-closing assessment, including testing, to determine, at a minimum: (1) whether Verizon has properly replicated its OSS and separated the Replicated Systems from its legacy OSS; (2) whether the Replicated Systems were properly transferred to Frontier; and (3) the extent to which the Replicated Systems will be fully operational at closing. At least 30 days before the Replicated Systems are operated by Verizon in full production mode, CLECs will be permitted to test the Replicated Systems and report the results of their testing to the Consultant. In the event that the Consultant's assessment or CLECs' testing identifies problems or errors in

the Replicated Systems, Verizon and/or Frontier will have the opportunity to correct such problems and errors in a commercially reasonable period of time. Based on the results of its own assessment and CLECs' testing, the Consultant will provide a publicly available report to the WCB Chief regarding Frontier's readiness for closing. After notice and comment by interested parties, the WCB Chief will not permit the closing to take place unless the Consultant has notified the WCB Chief of the Consultant's determination that the Replicated Systems operate, at a minimum, at the same level of service quality as Verizon prior to the Transaction.

*[Relevance Of State-Level Conditions: This proposed condition covers the same subject matter as OR/WA CLEC Settlement Condition 15.a. and Comcast 4-State Settlement Condition 1, but it addresses the flaws in those conditions. OR/WA CLEC Settlement Condition 15.a. does not require independent third-party oversight of the replication process, independent third-party testing of the replicated systems, or CLEC testing of the replicated systems, and it allows Frontier, rather than the FCC, to determine whether the systems are ready for closing. While Comcast 4-State Settlement Condition 1 contains robust testing conditions, it does not require independent third-party oversight of the replication process or independent third-party testing of the replicated systems, and it also allows Frontier, rather than the FCC, to determine whether the systems are ready for closing.]*

17. Frontier will use the Replicated Systems for the 13 Affected States for at least one year after the Closing Date and Frontier will not replace those systems during the first three years after close of the Transaction without providing 180 days' notice to the FCC and the CLECs. At least 180 days before transition of the Replicated Systems to any other wholesale operations support systems ("New Systems"), Frontier will retain, at its sole expense, an independent third-party consultant ("Consultant") acceptable to the WCB Chief, to assess Frontier's readiness for cutover to the New Systems. The Consultant will review Frontier's cutover plan. CLECs will also be permitted to review the cutover plan and to provide their feedback on the cutover plan to the Consultant. The Consultant will propose readiness criteria, permit interested parties to comment on the proposed readiness criteria, and finalize readiness criteria based on the comments received. The Consultant will use the readiness criteria to conduct a pre-cutover assessment, including testing and a mock cutover, of Frontier's New Systems. CLECs will also be permitted to submit test orders and test Frontier's systems and report their results to the Consultant. In the event that the Consultant's assessment or CLECs' testing identifies problems or errors in Frontier's New Systems, Frontier will have the opportunity to correct all such problems and errors in a commercially reasonable period of time. Based on the results of its own assessment and CLECs' testing, the Consultant will provide a publicly available report to the WCB Chief regarding Frontier's readiness for cutover. After notice and comment by interested parties, the WCB Chief will not permit the cutover to take place unless the Consultant has notified the WCB Chief of the Consultant's determination that Frontier's New Systems operate, at a minimum, at the same level of service quality as Verizon prior to the Transaction.

*[Relevance Of State-Level Conditions: This proposed condition covers the same subject*



*matter as OR/WA CLEC Settlement Condition 15.b. and Comcast 4-State Settlement Condition 1, but it addresses the flaws in those conditions. Those conditions do not require independent third-party oversight and testing, CLEC testing, and FCC approval before cutover.]*

18. Frontier will process simple port requests within four business days pursuant to Section 52.26 of the FCC's rules and within one business day pursuant to Section 52.35 of the FCC's rules, once Section 52.35 has taken effect.

*[Relevance Of State-Level Conditions: This proposed condition is similar to Comcast 4-State Settlement Condition d, but it is not addressed in the OR/WA CLEC Settlement or the West Virginia CLEC Settlement, and it should be applied to all 14 Affected States.]*

19. Frontier will complete provisioning of a requested physical collocation arrangement, including any collocations in remote terminals, within 90 days pursuant to Section 51.323(l)(2) of the FCC's rules. Frontier will also make readily available to requesting carriers a current list of remote terminals, including the physical address and CLLI Code of the remote terminal, and the addresses of all business lines served by each remote terminal.

*[Relevance Of State-Level Conditions: This condition covers the same subject matter as West Virginia CLEC Settlement Condition 14, but it addresses the flaws in that condition. West Virginia CLEC Settlement Condition 14 does not require compliance with Section 51.323(l)(2) of the Commission's rules and it does not require the addresses of all business lines served by each remote terminal to be included in the lists provided to requesting carriers.]*

20. Frontier will process pole attachment applications within 45 days pursuant to Section 1.1403(b) of the FCC's rules. Frontier must provide bi-monthly reports to the FCC's Wireline Competition Bureau on its compliance with Section 1.1403(b) of the FCC's rules, including the number of pole attachment applications it has received and the number of such applications it has processed within 45 days. Frontier will also process within 60 days of the Closing Date all pending pole attachment applications that have not been processed within 45 days pursuant to Section 1.1403(b) of the FCC's rules. If Frontier fails to meet either the 45-day interval for any pole attachment application submitted after the Closing Date or the 60-day interval for processing pole attachment applications that had not been processed within 45 days prior to the Closing Date, Frontier shall provide the party seeking the attachment with a credit on wholesale charges or a payment in an amount equal to \$1,000 per application for each 10-day delay past the applicable deadline (e.g., a delay of 20 days past the 45-day deadline for an application submitted after the Closing Date would result in a \$2,000 fine). Frontier shall provide attaching CLECs with at least four certified engineers to bid on and compete for the service contract for the make-ready work to be performed by the attaching CLEC. Frontier shall not charge a new attachers to remedy other attachers' preexisting violations of pole attachment requirements.

*[Relevance Of State-Level Conditions: This proposed condition covers the same subject*

*matter as West Virginia CLEC Settlement Condition 13 but it addresses the flaws in that condition. West Virginia CLEC Settlement Condition 13 merely requires that the backlog of pending pole attachment applications be resolved within 180 days and that Frontier work with CLECs to “develop process [sic] within 90 days of Closing to meet the contracted intervals on new requests.”]*

21. Frontier shall not be permitted to reject a DS1 UNE loop order on the basis that no facilities are available where any Frontier facilities assignment database shows that the loop in question is available to be provisioned by Frontier to a Frontier retail customer. For any DS1 UNE loop order rejected on the basis that no facilities are available, Frontier shall provide the requesting carrier with the status of the loop in question in any Frontier facilities assignment database.

*[Relevance Of State-Level Conditions: This proposed condition is similar to West Virginia CLEC Settlement Condition 21 but it is not addressed in the OR/WA CLEC Settlement or the Comcast 4-State Settlement, and it should be applied in all 14 Affected States.]*

22. Frontier will provision DS1 interstate special access loops within a maximum of 6 business days, 80 percent of the time.

*[Relevance Of State-Level Conditions: This proposed condition is not addressed by the various state-level settlement agreements.]*

23. Frontier’s OSS will have the capability to automatically provision and bill the transport element of each DS1 special access circuit ordered by a wholesale customer as a “MetroLAN” rate element where MetroLAN is the least expensive rate element available to the customer.

*[Relevance Of State-Level Conditions: This proposed condition is not addressed by the various state-level settlement agreements.]*

24. Frontier will hold regular customer summits similar to those Verizon holds in order to solicit feedback from large wholesale customers.

*[Relevance Of State-Level Conditions: This proposed condition is not addressed by the various state-level settlement agreements.]*

25. Every six months following the Closing Date, for each of the conditions proposed herein, Frontier will require an officer of the corporation with authority over compliance with that condition to sign and file in WC Dkt. No. 09-95 an affidavit stating, under penalty of perjury, that Frontier is in compliance with the condition. If a Frontier officer is unable to sign such an affidavit for each condition, Frontier will be subject to an automatic penalty, payable to the U.S. Treasury, in the amount of \$100,000 per condition per six-month period. If Frontier files an affidavit stating that it is in compliance with any of the conditions proposed herein and the FCC subsequently determines that Frontier was not in compliance with the condition at the time the affidavit was signed, Frontier will be

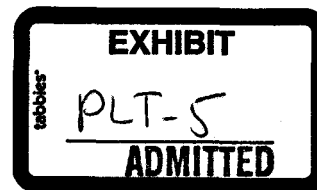
subject to a penalty, payable to the U.S. Treasury, in the amount of \$500,000 per condition per six-month period. These automatic penalties shall be in addition to any other remedies awarded by the FCC, including any monetary damages payable to parties harmed by Frontier's failure to comply with a condition proposed herein.

*[Relevance Of State-Level Conditions: This proposed condition is not addressed by the various state-level settlement agreements.]*

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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



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

SURREBUTTAL TESTIMONY

OF

DR. AUGUST H. ANKUM

ON BEHALF OF

tw telecom of arizona llc; Level 3 Communications, LLC; and  
McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services

November 10, 2010

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1       **I.     PURPOSE AND SUMMARY**

2       **Q.     ARE YOU THE SAME DR. AUGUST H. ANKUM WHO PROVIDED**  
3       **PREFILED DIRECT TESTIMONY IN THIS PROCEEDING?**

4       A.     Yes, I am.

5       **Q.     WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

6       A.     The purpose of my surrebuttal testimony is to respond to certain portions of the  
7       Rebuttal Testimony offered by CenturyLink and Qwest (collectively, the ‘Joint  
8       Applicants’ or ‘the Companies’), and to respond to the Direct Testimony offered  
9       by the ACC Staff. Specifically, I address portions of the Rebuttal Testimony of  
10      the following CenturyLink’s witnesses who offered rebuttal to my September 27,  
11      2010, Direct Testimony: Michael Hunsucker,<sup>1</sup> Jeff Glover,<sup>2</sup> Kristin McMillan,<sup>3</sup>  
12      and Todd Schafer,<sup>4</sup> and Qwest’s witnesses Robert Brigham<sup>5</sup> and Karen Stewart.<sup>6</sup>  
13      Mr. Gates is also submitting Surrebuttal Testimony to respond to other aspects of  
14      the Joint Applicants’ Rebuttal Testimony. I also respond to the Direct Testimony

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<sup>1</sup> Rebuttal Testimony of Michael Hunsucker on behalf of CenturyLink, Inc., ACC Docket No. T-01051B-10-0194 et al, October 27, 2010 (“Hunsucker Rebuttal”).

<sup>2</sup> Rebuttal Testimony of Jeff Glover on behalf of CenturyLink, Inc., ACC Docket No. T-01051B-10-0194 et al, October 27, 2010 (“Glover Rebuttal”).

<sup>3</sup> Rebuttal Testimony of Kristin McMillan on behalf of CenturyLink, Inc., ACC Docket No. T-01051B-10-0194 et al, October 27, 2010 (“McMillan Rebuttal”).

<sup>4</sup> Rebuttal Testimony of Todd Schafer on behalf of CenturyLink, Inc., ACC Docket No. T-01051B-10-0194 et al, October 27, 2010 (“Schafer Rebuttal”).

<sup>5</sup> Rebuttal Testimony of Robert Brigham on behalf of Qwest Corp., ACC Docket No. T-01051B-10-0194 et al, October 27, 2010 (“Brigham Rebuttal”).

<sup>6</sup> Rebuttal Testimony of Karen Stewart on behalf of Qwest Corp., ACC Docket No. T-01051B-10-0194 et al, October 27, 2010 (“Stewart Rebuttal”).

1 offered by ACC Staff witness Armando Fimbres<sup>7</sup> focusing on the wholesale-  
2 related conditions that he recommends the Commission should adopt prior to any  
3 approval of the proposed CenturyLink-Qwest merger.

4 **Q. BEFORE SUMMARIZING YOUR TESTIMONY, DO YOU HAVE SOME**  
5 **PRELIMINARY OBSERVATIONS?**

6 A. Yes. Notwithstanding the Joint Applicants' incorrect testimony claiming that the  
7 Joint CLECs have not demonstrated that the proposed transaction may result in  
8 harmful effects and warrants the imposition of merger conditions, the Joint  
9 Applicants themselves testify here and elsewhere to the following:

- 10 • They admit that there are few if any detailed plans on how to merge the  
11 companies' operations.<sup>8</sup>
- 12 • They admit that after the first twelve months, the post-merger firm may,  
13 and is in fact likely to, modify or change its operations support systems  
14 (OSS).<sup>9</sup>
- 15 • They admit that modifications of or changes to its OSS are likely to result  
16 in errors and/or service disruptions.<sup>10</sup>
- 17 • They fail to recognize the difference between CenturyLink's Section 251  
18 OSS obligations and Qwest's Section 271 OSS obligations.<sup>11</sup>
- 19 • They fail to acknowledge that the post-merger firm's competitive interests  
20 do not coincide with those of its wholesale CLEC customers.<sup>12</sup>

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<sup>7</sup> Direct Testimony of Armando Fimbres, Public Utilities Analyst V, on behalf of Utilities Division, Arizona Corporation Commission, ACC Docket No. T-01051B-10-0194 et al, October 12, 2010 ("Fimbres Direct").

<sup>8</sup> Hunsucker Rebuttal at p. 19 and Schafer Rebuttal at pp. 5-6.

<sup>9</sup> Hunsucker Rebuttal at pp. 13 and 57; see also Schafer Rebuttal at p. 9 (explaining why "it is necessary to integrate the CenturyLink and Embarq systems") and CenturyLink Response to Arizona Corporation Commission Staff Data Request STF 7.15 ("CenturyLink anticipates...the consolidation of OSS and billing systems and sales and account management teams.").

<sup>10</sup> Schafer Rebuttal at p. 7, lines 17-18 and p. 8, lines 22-23; see also, *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, Before the Minnesota Public Utility Commission, Docket No. P-421, et al./PA-10-456, Rebuttal Testimony of Duane Ring, CenturyLink Inc., September 13, 2010, at pp. 1-3.

<sup>11</sup> Hunsucker Rebuttal at p. 15.

1 In view of the above, it is clear that the Joint CLECs' proposed merger conditions  
2 are justified and necessary to protect the interests of CLECs, their end users and  
3 the public interest in promoting competition.

4 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

5 A. I respond to the Joint Applicants' specific rebuttals to my Direct Testimony  
6 concerning merger-driven uncertainty and lack of disclosed plans, as well as the  
7 merger's potential benefits and risks. I demonstrate that the Joint Applicants'  
8 witnesses:

- 9 • Continue to fail to supply sufficient post-merger planning details to  
10 support the kind of fact-based evaluation that the Commission should  
11 make;
- 12 • Misconstrue and fail to rebut my testimony addressing merger outcomes  
13 and risks; and
- 14 • Disregard the fact that the concerns that they characterize as "CLEC  
15 speculations" are grounded in comprehensive and in-depth analysis.

16 I respond next to the general claims advanced by Mr. Brigham and Ms. Stewart  
17 that the Joint CLECs' proposed conditions are unrelated to the merger or  
18 otherwise unnecessary. I demonstrate that, contrary to their claims, Qwest's  
19 continued domination of wholesale markets within its service territory compels  
20 adoption of the Joint CLECs' proposed conditions to protect the public interest in  
21 promoting competition in Arizona's telecommunications service markets.

22 I then turn to the claims of the Joint Applicants' witnesses concerning the specific  
23 Joint CLEC conditions supported within my Direct Testimony, and explain that:

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<sup>12</sup> Brigham Rebuttal at pp. 10-11.



- 1           • Contrary to Ms. Stewart's suggestion, the Commission cannot rely upon  
2           its existing rate-setting and complaint procedures to ensure that the  
3           safeguards contemplated in Wholesale Rate Stability Conditions 2, 3, and  
4           7 are actually achieved;
- 5           • Mr. Hunsucker fails to acknowledge my Direct Testimony that explained  
6           why Conditions 2, 3, and 7 are necessary in the context of the merger and  
7           are not attempts to circumvent existing law and rules; and
- 8           • Their rebuttals to the proposed Wholesale Service Availability Conditions,  
9           Numbers 1, 6, 8, 9, 10, 12, 14 and 28, are similarly erroneous and do not  
10          undermine my Direct Testimony, which explains why the conditions are  
11          essential protections for the Commission to adopt if it approves the  
12          merger.

13           Finally, I address several of the merger conditions proposed by the ACC Staff  
14           witness Mr. Fimbres, specifically those relating to the goals of wholesale services  
15           availability and rate stability as set forth in my Direct Testimony, and I explain  
16           why Staff's proposals in many cases provide support for, or complement, the  
17           more comprehensive conditions proposed by the Joint CLECs.

18          **Q.    HAS THE REBUTTAL TESTIMONY OF THE JOINT APPLICANTS OR**  
19          **STAFF'S DIRECT TESTIMONY CAUSED YOU TO CHANGE YOUR**  
20          **TESTIMONY OR RECOMMENDATIONS?**

21          A.    No. Neither the Companies' Rebuttal Testimony nor Staff's Direct Testimony  
22          concerning the Joint CLECs' proposed merger conditions causes me to alter my  
23          prior analysis or recommendations. I continue to recommend that, if the  
24          Commission approves the proposed merger, it should impose all of the Joint  
25          CLEC conditions that I have recommended, as well as those supported by Mr.  
26          Gates.

1 **II. RESPONSE TO JOINT APPLICANTS' TESTIMONY**  
2 **CONCERNING MERGER-DRIVEN UNCERTAINTY,**  
3 **POTENTIAL BENEFITS AND RISKS, AND THE**  
4 **COMMISSION'S STANDARD OF REVIEW.**

5 *A. The Joint Applicants' witnesses acknowledge that merger-*  
6 *driven uncertainty is harmful to the public interest.*

7 **Q. DOES THE JOINT APPLICANTS' REBUTTAL TESTIMONY RELIEVE**  
8 **ANY OF YOUR CONCERNS REGARDING THE UNCERTAINTY**  
9 **CREATED BY THE PROPOSED MERGER AND THE RESULTING**  
10 **HARM TO CLECS?**

11 **A.** No, unfortunately it does not. My Direct Testimony and accompanying Exhibit  
12 AA-3 have demonstrated how the proposed merger has created substantial  
13 uncertainty for CLECs with respect to:

- 14 • Systems and operations integration
- 15 • Change Management Process;
- 16 • Performance Assurance Plan;
- 17 • Wholesale rates and services;
- 18 • Wholesale customer service; and
- 19 • Network investment.

20 As I explained in my Direct Testimony,<sup>13</sup> these are all critical, customer-  
21 impacting areas which this Commission should carefully evaluate before  
22 determining whether the proposed transaction will cause "no harm." The Joint  
23 Applicants' Rebuttal Testimony provides virtually no additional facts to define

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<sup>13</sup> Ankum Direct at pp. 59-60.

1 the merger's impact in these areas.<sup>14</sup> Instead, the Joint Applicants' witnesses  
2 simply continue to assert that "changes could be expected over time" but "[w]hat  
3 those changes are have not been determined."<sup>15</sup> That position is inconsistent with  
4 the long-standing approach taken by this Commission and other regulators with  
5 similar approval authority, under which regulators look at a proposed merger's  
6 potentially harmful impacts and impose conditions as necessary to address those  
7 potential impacts. As my Exhibit AA-3 demonstrates, the information supplied to  
8 date by the Joint Applicants concerning those key issues is woefully incomplete,  
9 and clearly insufficient to support the kind of fact-based evaluation that the  
10 Commission should make.

11 **Q. HOW CAN THE COMMISSION APPROVE THE MERGER WITHOUT**  
12 **PROTRACTED DELAY, YET ALSO MITIGATE THE HARMS CAUSED**  
13 **BY UNCERTAINTY IF MORE DEFINITE POST-MERGER PLANS ARE**  
14 **NOT FORTHCOMING?**

15 A. For the reasons I discussed in my Direct Testimony,<sup>16</sup> I recommend that the  
16 Commission deny the merger as proposed. In the alternative, the Commission  
17 could approve the transaction with conditions designed to substantially reduce the  
18 harmful uncertainties and other potential harmful impacts of the merger on  
19 competition, CLECs, and CLEC end users. The Joint CLECs' proposed  
20 conditions, which are set forth in Mr. Gates' Exhibit TJG-8 and explained in the

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<sup>14</sup> Mr. Hunsucker discusses some recent staffing decisions with respect to post-merger wholesale operations, at pp. 8-9 of his Rebuttal Testimony, but that information sheds little light on what changes will occur post-merger in the six customer-impacting areas I have identified.

<sup>15</sup> Hunsucker Rebuttal at p. 57, lines 5-6; see also Schafer Rebuttal at p. 5.

<sup>16</sup> Ankum Direct at pp. 65-66.

1 Direct Testimony that Mr. Gates and I have provided, remain the best means to do  
2 this, and I continue to recommend their adoption. Thus, adoption of those  
3 conditions would allow the Commission to act in a timely manner, yet also  
4 mitigate those harms.

5 **Q. SHOULD THE COMMISSION SIMPLY APPROVE THE MERGER AS**  
6 **PROPOSED, WITHOUT CONDITIONS, AND ADDRESS FUTURE**  
7 **MERGER-RELATED CHANGES AND DISPUTES AS THEY ARISE, AS**  
8 **RECOMMENDED BY THE JOINT APPLICANTS?**

9 A. No. There are many reasons to reject that approach. First, such a “wait-and-see”  
10 approach would indefinitely prolong the uncertainty that CLECs will experience.  
11 Applying conditions to any approval would avoid an extended period of  
12 uncertainty and also limit the Merged Company’s opportunities for abusive  
13 practices aimed at handicapping CLECs, by more clearly delineating its post-  
14 merger wholesale service and interconnection obligations that CLECs depend on.  
15 Second, this proceeding is the opportune time (and possibly the only time) for the  
16 Commission to consider the merger’s impact on competitors in a systematic and  
17 comprehensive fashion. If the Commission refrains from adopting the Joint  
18 CLECs’ proposed conditions now, it may have to address many (perhaps all) of  
19 the same issues later, in piecemeal fashion, consuming even more resources of the  
20 Commission and the parties involved. This is particularly likely with respect to  
21 the proposed conditions addressing interconnection agreements: unilateral actions  
22 by the Merged Company that contravene the intent of the relevant conditions

1 could result in disputes in multiple ICA negotiations that the Commission would  
2 then be compelled to arbitrate, possibly *in seriatim*.

3 Third, Commission action to address these issues after the merger through  
4 complaint proceedings would fail to provide a timely remedy for merger harm.  
5 Of course wholesale customers can file complaints with the Commission, but the  
6 delay associated with resolving such complaints could allow harms to wholesale  
7 customers and competition to go unchecked. Indeed, the Commission's approval  
8 authority is a pre-merger authority: companies are required to obtain Commission  
9 approval *before* consummating mergers or acquisitions. The point of this  
10 authority is to ensure that the public interest is protected before the merger takes  
11 effect.

12 Finally, it is in no one's interest, including the Joint Applicants, to have the  
13 merger approved on the basis of a cursory, incomplete review, and then later  
14 bogged down by a succession of Commission investigations to resolve those key  
15 issues that were not addressed earlier. Clearly, the best way forward is to address  
16 the key issues now, and establish sufficient conditions and protections to avoid  
17 uncertainty and protracted disputes and investigations in the future.

18 ***B. The Joint Applicants' witnesses misconstrue and fail to rebut***  
19 ***my testimony addressing merger outcomes and risks, and***  
20 ***concerning the Commission's appropriate standard of review.***

21 **Q. MR. GLOVER ASSERTS THAT YOU "TESTIF[Y] VAGUELY THAT**  
22 **'MOST MERGERS ARE NOT SUCCESSFUL'" AND THAT YOUR**

1           **“TESTIMONY PROVIDES NO DATA OR REFERENCES TO VERIFY**  
2           **THE STATEMENT ABOUT ‘MOST MERGERS.’”<sup>17</sup> IS THIS CORRECT?**

3           A.    No, it is not. The line of my Direct Testimony to which he refers (page 10, line 9)  
4           actually reads “*I have already noted that* most mergers are not successful”  
5           (emphasis added). Inexplicably, Mr. Glover has overlooked the discussion of  
6           merger success and failure supplied at pages 5-6 of my Direct Testimony, which  
7           provides a detailed citation to the academic literature on the subject,<sup>18</sup> in support  
8           of the general observation that about two out of three mergers are not successful.<sup>19</sup>  
9           This observation was offered not to object to this particular merger, but rather as a  
10          word of caution and further reason for careful scrutiny of the proposed  
11          transaction. Moreover, this record of merger failure, well documented in my  
12          testimony and unrebutted by the Companies’ witnesses, underscores the need for  
13          and importance of merger conditions to protect the Companies’ wholesale  
14          customers and the public interest in competition.

15          **Q.    MR. BRIGHAM CLAIMS<sup>20</sup> THAT YOUR ANALYSIS OF THE**  
16          **PROPOSED TRANSACTION’S RISKS AND BENEFITS IS FLAWED,**  
17          **AND THAT “IT IS WRONG TO CONCLUDE THAT A MERGER**

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<sup>17</sup> Glover Rebuttal at p. 32, fn. 56.

<sup>18</sup> See Ankum Direct at page 6, fn. 4.

<sup>19</sup> Mr. Glover commits a similar error later in footnote 56, where he complains that I did not cite evidence that Frontier has been experiencing systems cut-over problems. In fact, if Mr. Glover had read beyond the introductory bullet point on p. 28 he references and reviewed the body of my Direct Testimony, he would have found the following at p. 31: “As noted in my Exhibit AA-2, Frontier’s integration of the former Verizon exchanges has been marred by recent wholesale OSS failures, ordering delays, understaffed Access Order centers, and trouble report backlogs. These problems are documented in detail in the testimony of Mr. Gates.” Mr. Gates has provided a detailed discussion of Frontier’s cut-over problems at pp. 101-107 of his Direct Testimony.

1           **PRESENTS LESS RISK TO STOCKHOLDERS THAN TO OTHER**  
2           **STAKEHOLDERS.”<sup>21</sup> IS HE CORRECT?**

3           A.    No. Mr. Brigham entirely overlooks the point made in my Direct Testimony that  
4           shareholders of the Companies, both pre- and post-merger, are stakeholders  
5           *entirely at their own volition:*

6                     [They] can sell their shares if they anticipate that things will go  
7                     awry, or, alternatively, hold on to their shares to reap whatever  
8                     benefits they may anticipate: it is a risk-return tradeoff each  
9                     shareholder is free to either assume or walk away from.<sup>22</sup>

10           The circumstance that Mr. Brigham cites, that certain stockholders “lost their  
11           entire investment” when the Worldcom-MCI combination went bankrupt,<sup>23</sup>  
12           simply reflects those stockholders’ willingness to stay in the game and accept the  
13           risk of potential losses, as well as potential rewards.<sup>24</sup> If they ultimately incurred  
14           large financial losses, that is attributable to their poor judgment (as revealed in  
15           hindsight), not to an *involuntary imposition* of risks.

16           As I then explained further, that freedom of choice (i.e., to accept the merger’s  
17           risks or to exit) does not exist for other, captive stakeholders, most notably  
18           CLECs, who depend on the Companies for critical wholesale inputs.<sup>25</sup> I explain  
19           this dependence in more detail below (see Section III.B).

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<sup>20</sup> Brigham Rebuttal at pp. 31-32.

<sup>21</sup> *Id.* at p. 32, lines 15-16.

<sup>22</sup> Ankum Direct at p. 9, lines 3-6.

<sup>23</sup> Brigham Rebuttal at p. 32, lines 11-13.

<sup>24</sup> For other stakeholders that are set to reap significant returns, see, “Windfall for Qwest Top Execs,” by Andy Vuong, *The Denver Post*, 7/18/2010. [http://www.denverpost.com/search/ci\\_15536725](http://www.denverpost.com/search/ci_15536725). The article notes the following: “Seven top executives at Qwest stand to reap more than **\$110 million in cash and stock** from the Denver-based company’s proposed merger with CenturyLink, according to a new regulatory filing.” (Emphasis added.)

<sup>25</sup> Ankum Direct at pp. 8-9; see also p. 13.

1       **Q.    DOES THIS LACK OF CHOICE EXTEND TO CERTAIN RETAIL**  
2       **CUSTOMERS OF THE COMPANIES, AS WELL AS CLECS?**

3       A.    Yes. My Direct Testimony generally focuses on the circumstances confronted by  
4       CLECs operating in the Companies' territory, but I also refer to the fact that there  
5       are "retail customers in *captive segments* of retail markets [that] have little or no  
6       choice."<sup>26</sup> While Mr. Brigham appears to deny the existence of any captive retail  
7       customers,<sup>27</sup> the latest FCC report on local telephone competition<sup>28</sup> indicates that  
8       there are still areas in Arizona where there are no alternative landline providers.<sup>29</sup>  
9       But even in areas in which alternative landline providers do operate, not all  
10      customers, particularly residential customers, are likely to have access to the  
11      alternative provider(s). Thus, the FCC report demonstrates that a significant  
12      fraction of Arizona retail landline consumers remain captive customers of their  
13      ILEC.

14      In any event, whether considering captive wholesale customers (CLECs) or retail  
15      customers (those without alternatives to the Companies' wireline services), it is  
16      the distinction between voluntary and involuntary participation in the proposed  
17      merger's risks that is central to the analysis of various stakeholder groups' risk-

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<sup>26</sup> *Id.* at p. 9, lines 7-8 (emphasis added).

<sup>27</sup> Brigham Rebuttal at pp. 11-12. Mr. Brigham falsely implies that I have claimed that CenturyLink has captive retail customers in Arizona (*id.*, at p. 12, lines 9-12), whereas in reality I have explicitly noted that CenturyLink has no local exchange operations in the state (see Ankum Direct at p. 48, lines 12-13); thus my point is focused on *Qwest's* captive retail customers in Arizona.

<sup>28</sup> See, FCC Wireline Competition Bureau, Industry Analysis and Technology Division, Local Telephone Competition: Status as of June 30, 2009, released September 2010 (FCC Local Competition Report).

<sup>29</sup> *Id.*, at Table 20 (showing that 7% of zip codes in Arizona have no alternative wireline or VOIP service provider). The FCC methodology is highly conservative, in that it counts a zip code as having an alternative supplier if at least one residential or business end user in the zip code is served by a CLEC, and does not consider the geographic reach of the provider within the zip code area. *Id.* at p. 1, fn. 3.



1 return profiles, the point which Mr. Brigham entirely misses. Thus, contrary to  
2 Mr. Brigham's erroneous claim, my analysis of the asymmetry in the risk-return  
3 profiles between various stakeholders is sound.

4 **Q. ON THE SUBJECT OF RISKS, MR. GLOVER OBSERVES THAT YOU**  
5 **AND OTHER INTERVENORS HAVE CITED TO THE "RISK FACTORS"**  
6 **DISCUSSION CONTAINED IN CENTURYLINK'S SEC FORM 4-A**  
7 **FILED JULY 16, 2010. MR. FERKIN CONTENDS THAT "...THE**  
8 **DISCLOSURES ARE NOT INTENDED TO SUGGEST THAT THE RISKS**  
9 **ARE LIKELY OUTCOMES."<sup>30</sup> DOES THIS MEAN THAT THE**  
10 **COMMISSION CAN SIMPLY DISCOUNT OR IGNORE THOSE**  
11 **IDENTIFIED RISKS?**

12 **A.** No. In its Form S-4A filing, CenturyLink identified specific, concrete risks that  
13 are associated with the proposed merger,<sup>31</sup> even if it did not assign probabilities of  
14 occurrence to them. The fact remains that the "Risk Factors" discussion directly  
15 contradicts CenturyLink's claims before this Commission that there are *no*  
16 potential harms that could result from the merger.<sup>32</sup> Surely, if it is important to

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<sup>30</sup> Glover Rebuttal at p. 26, lines 9-10.

<sup>31</sup> See my Direct Testimony at p. 55, where I list some of the specific risks that CenturyLink described in the Form S-4A filing.

<sup>32</sup> See McMillan Direct at p. 16; see also, Arizona telephone operating subsidiaries of Qwest Communications International, Inc. ("QCII") Qwest Corporation ("QC"), Qwest Communications Company LLC ("QCC"), and Qwest LD Corp., ("QLDC") (collectively "Qwest") and the Arizona telephone operating subsidiaries of CenturyTel, Inc. ("CenturyLink"), Embarq Communications, Inc. d/b/a CenturyLink Communications, Embarq Payphone Services, Inc. d/b/a CenturyLink, and CenturyTel Solutions, LLC, (collectively "CenturyLink"), Joint Notice and Application for Expedited Approval of Proposed Merger, filed May 13, 2010 ("Arizona Joint Application"), at p. 10, lines 8-9 ("The Transaction...will provide benefits to consumers of the combined company without *any countervailing harms.*" -- emphasis added).

1 forewarn the financial community of potential harms, it is important to forewarn  
2 the Commission.

3 Moreover, the Commission should bear in mind that some of these types of  
4 identified risks did in fact come to pass in the cases of the Carlyle-Hawaiian  
5 Telcom and FairPoint-Verizon transactions discussed in my Direct Testimony  
6 (pages 25-38), and that of Mr. Gates. For example, FairPoint's Form S-4A before  
7 the shareholder vote on the FairPoint-Verizon transaction included the following  
8 discussion of "Risk Factors":

9 The integration of FairPoint's and Spinco's businesses may not be  
10 successful. The acquisition of the Spinco [Verizon] business is the  
11 largest and most significant acquisition FairPoint has undertaken.  
12 FairPoint's management will be required to devote a significant  
13 amount of time and attention to the process of integrating the  
14 operations of FairPoint's business and Spinco's business, which  
15 will decrease the time they will have to service existing customers,  
16 attract new customers and develop new services or strategies. Due  
17 to, among other things, the size and complexity of the Northern  
18 New England business and the activities required to separate  
19 Spinco's operations from Verizon's, FairPoint may be unable to  
20 integrate the Spinco business into its operations in an efficient,  
21 timely and effective manner. FairPoint's inability to complete this  
22 integration successfully could have a material adverse effect on the  
23 combined company's business, financial condition and results of  
24 operations.<sup>33</sup>

25 The integration of FairPoint's and Spinco's businesses may present  
26 significant systems integration risks, including risks associated  
27 with the ability to integrate Spinco's customer sales, service and  
28 support operations into FairPoint's customer care, service delivery  
29 and network monitoring and maintenance platforms.<sup>34</sup>

30

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<sup>33</sup> FairPoint Communications SEC Form S-4A, filed July 10, 2007, at p. 25 (emphasis removed).

<sup>34</sup> *Id.*, at p. 26 (emphasis removed).

1 The Direct Testimony offered by Mr. Gates and myself explains the parallels  
2 between the FairPoint-Verizon transaction and the proposed CenturyLink-Qwest  
3 merger, and describes the harms to consumers and CLECs that resulted as these  
4 previously-identified (albeit not quantified) risks did in fact become an  
5 unfortunate reality.<sup>35</sup> Accordingly, as I have recommended,<sup>36</sup> the Commission  
6 should heed the lessons of the Carlyle-Hawaiian Telcom and FairPoint-Verizon  
7 experiences and ensure that appropriate safeguards are adopted in the instant  
8 proceeding to ensure that similar harms will not occur in Arizona.

9 **Q. MR. HUNSUCKER (PAGE 5) AND MR. BRIGHAM (PAGE 2) CLAIM**  
10 **THAT CLECS WILL BENEFIT FROM A FINANCIALLY STRONGER**  
11 **MERGED COMPANY. DO YOU AGREE?**

12 A. No, I have seen no evidence from the Companies to support this claim – only  
13 unsupported assertions. I do acknowledge that CLECs *could* benefit from a  
14 financially stronger Merged Company, *but only if* the greater financial strength  
15 were directed to, among other things, improving wholesale services and  
16 associated wholesale customer support. However, there is no evidence that the  
17 post-merger company, contrary to most merger outcomes, will in fact be stronger.  
18 Furthermore, neither witness has offered any explanation of how a financially  
19 stronger Merged Company in this instance would confer specific benefits on  
20 CLECs. Indeed, the information provided by the Joint Applicants in this  
21 proceeding suggests that just the opposite is true. For example, the Joint

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<sup>35</sup> See, e.g., my Direct Testimony at pp. 25-36 and Gates Direct at pp. 87-100.

<sup>36</sup> Ankum Direct at pp. 37-38.

1 Application states that “[a] financially stronger company can...compete  
2 against...CLECs...”<sup>37</sup> Again, I do not object to robust competition between the  
3 Merged Company and CLECs as long as the competition is fair.<sup>38</sup> However, I  
4 cannot see how that purported financial strength benefits CLECs – especially  
5 given that, as Mr. Gates explains, the Joint Applicants have not agreed to reflect  
6 the Merged Company’s increased efficiencies in its relationships with its  
7 wholesale customers or even to maintain the products, services or rates that  
8 CLECs purchase from Qwest today.

9 **Q. MR. HUNSUCKER CLAIMS<sup>39</sup> THAT CLECS WOULD ALSO BENEFIT**  
10 **FROM THE MERGED COMPANY’S GAINS IN INTERNAL**  
11 **OPERATING EFFICIENCIES ASSOCIATED WITH WHOLESALE**  
12 **SERVICES. IS THAT NECESSARILY TRUE?**

13 A. No. Mr. Hunsucker is once again making a vague assurance without any factual  
14 support. Because the Joint Applicants have supplied no plans or commitments  
15 with respect to the going-forward treatment of CLEC-oriented wholesale services  
16 and associated OSS systems, there is no way for the Commission or anyone else  
17 to know what wholesale services operating efficiencies the Merged Company may  
18 realize, if any. Indeed, the enormous work that it will require to harmonize and  
19 integrate the myriad OSS systems of CenturyLink and Qwest could distract from  
20 and defer (or even entirely eliminate) efficiency gains from more straightforward

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<sup>37</sup> Arizona Joint Application at p. 14, lines 13-15.

<sup>38</sup> See Ankum Direct at p. 93.

<sup>39</sup> Hunsucker Rebuttal at pp. 61-62.

1 evolutionary improvements to those separate systems that might have been  
2 undertaken without the merger transaction.

3 Clearly, the extent to which CLECs could benefit from such internal operating  
4 efficiencies of the Merged Company would vary greatly depending upon the  
5 specific process or system affected. Some efficiency improvements in the  
6 Companies' OSS systems would clearly have no benefit to the wholesale service  
7 performance experienced by the CLECs. For example, if the Merged Company  
8 found a much cheaper way to store and access its loop plant records than the  
9 status quo, that could reduce its costs and improve its operating efficiencies, but  
10 without any effect on, or benefit to, the wholesale services as experienced by the  
11 CLECs. On the other hand, CLECs could be harmed if the Merged Company  
12 should find it more "efficient" and less costly to cut back on the staffing of its  
13 wholesale services support centers, slowing responses and increasing CLEC  
14 customers' waiting times for customer queries and trouble resolutions. The latter  
15 is exactly the kind of wholesale service change that the CLECs are concerned  
16 about, and which is addressed by Condition 18 of the Joint CLECs' proposed  
17 conditions.

18 ***C. The Joint Applicants' witnesses ignore the fact that the***  
19 ***concerns that they characterize as "CLEC speculations" are***  
20 ***grounded in comprehensive and in-depth analysis.***

21 **Q. HOW HAVE THE JOINT PETIONERS' WITNESSES CHARACTERIZED**  
22 **YOUR ANALYSIS OF THE POTENTIAL HARMS TO CLECS AND THE**

1           **PUBLIC INTEREST THAT MAY ARISE FROM THE PROPOSED**  
2           **MERGER?**

3           A.     In their Rebuttal Testimony, Mr. Hunsucker on behalf of CenturyLink, and Mr.  
4           Brigham on behalf of Qwest, characterize my analysis of potential merger harms  
5           as “speculative” and “unsupported.”<sup>40</sup> Mr. Brigham declares that he is “struck by  
6           the highly-speculative and unsupported nature of Dr. Ankum's and Mr. Gates'  
7           testimony regarding how this merger will impact the competitive landscape in  
8           Arizona.”<sup>41</sup> He opines that Mr. Gates and I “speculate that the proposed  
9           transaction will harm competition, but this speculation is not supported by any  
10          evidence.”<sup>42</sup>

11          **Q.     HOW DO YOU RESPOND TO THESE CHARACTERIZATIONS OF**  
12          **YOUR TESTIMONY?**

13          A.     As the Commission can see by reviewing my 200+ pages of Direct Testimony and  
14          Exhibits in this proceeding, my conclusions concerning the proposed merger's  
15          potential harms to CLECs and the public interest are based upon a comprehensive  
16          and in-depth analysis. The review and analysis in my direct testimony includes:

- 17                 • Review of the economic literature concerning merger motivations and  
18                 success/failure rates;
- 19                 • Analysis of the unique aspects of telecommunications and ILEC merger  
20                 transactions;
- 21                 • Review and assessment of prior telecommunications and ILEC mergers  
22                 and why they succeeded/failed;

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<sup>40</sup> *Id.* at pp. 11-12, Brigham Rebuttal at pp. 4-5.

<sup>41</sup> Brigham Rebuttal at p. 4, lines 6-8.

<sup>42</sup> *Id.* at p. 4, lines 14-15.

- 1           • Evaluation of the specifics of the Joint Applicants' proposed transaction,  
2           as much as they have been revealed in the Companies' Joint Petition,  
3           prefiled testimony, and discovery responses in Arizona and elsewhere;
- 4           • Assessment of the Joint Applicants' incentives and abilities to  
5           discriminate against the CLECs with which they compete;<sup>43</sup> and
- 6           • Review of the Direct Testimony of Mr. Gates, in particular the well-  
7           documented evidence it contains concerning past anti-competitive conduct  
8           by the Joint Applicants, and how OSS integration failures in the context of  
9           prior ILEC mergers demonstrate further potential harms from the Joint  
10          Applicants' proposed transaction.

11           A careful review of my Direct Testimony shows that my conclusions regarding  
12          the potential harm to wholesale customers and competition are well-founded and  
13          not speculative or unsupported, as suggested by Mr. Hunsucker and Mr. Brigham.  
14          To the extent there is uncertainty regarding the impact of this merger, that  
15          uncertainty results largely from the Joint Applicants' failure to provide their  
16          specific post-merger plans and associated information

17           Indeed, it is important to remember that the Joint CLECs' merger conditions have  
18          been proposed precisely because of the uncertainties associated with the merger  
19          and to prevent or mitigate potential harm from the merger to the extent reasonably  
20          possible.

21           Given the breadth, depth, and detailed nature of the analysis I have presented, the  
22          characterization of my testimony by Messrs. Brigham and Hunsucker is clearly  
23          unfounded.

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<sup>43</sup> See Ankum Direct at page 13 and Section V.B, Vertical Effects, pages 42-47.

1 **III. RESPONSE TO JOINT APPLICANTS' TESTIMONY**  
2 **CONCERNING GENERAL NEED FOR CONDITIONS**

3 *A. Contrary to the allegations of Mr. Hunsucker and Ms.*  
4 *Stewart, the Joint CLECs' proposed merger conditions are*  
5 *specifically targeted safeguards intended to mitigate potential*  
6 *harms to competition arising from the merger.*

7 **Q. DO YOU AGREE WITH MR. HUNSUCKER'S SWEEPING**  
8 **CHARACTERIZATION OF THE MERGER CONDITIONS PROPOSED**  
9 **BY THE CLECS AND ACC STAFF AS "UNNECESSARY"?<sup>44</sup>**

10 A. No, certainly not. Nor do I agree with Ms. Stewart when she dismisses certain  
11 specific conditions proposed by the Joint CLECs as "unnecessary."<sup>45</sup> As  
12 demonstrated in my Direct Testimony, where I explain the need for the proposed  
13 conditions relating to Wholesale Services Availability (Section VII.A) and Rate  
14 Stability (Section VII.B), each of the Joint CLECs' proposed merger conditions  
15 addresses a specific potential harm of the merger and offers a targeted means to  
16 mitigate that harm. Later in my Surrebuttal Testimony (at pages 31-32), I provide  
17 further explanation of how specific conditions similarly criticized by Mr.  
18 Hunsucker as not being "legitimate merger-related concerns" do in fact target  
19 merger-related potential harms. The fact that many different conditions are  
20 needed does not mean that the Joint CLECs view the instant proceeding as an  
21 opportunity to address old, unrelated issues, but instead reflects the fact that the

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<sup>44</sup> Hunsucker Rebuttal at p. 4, lines 11-12.

<sup>45</sup> Stewart Rebuttal at pp. 19, 21, and 29.



1 merger has the potential to affect virtually every aspect of the Joint Applicants'  
2 business relationship with their CLEC wholesale customers.<sup>46</sup>

3 **Q. HAS THE ACC STAFF ALSO FOUND THAT CONDITIONS ARE**  
4 **NECESSARY PRIOR TO ANY COMMISSION APPROVAL OF THE**  
5 **MERGER?**

6 A. Yes. Mr. Fimbres has stated that "Staff recommends that the Application be  
7 denied unless all of Staff's conditions are adopted."<sup>47</sup> Contrary to the Joint  
8 Applicants' position that no merger conditions are needed, Staff has proposed a  
9 set of 47 conditions that it believes the Commission should adopt in order to find  
10 the CenturyLink-Qwest merger in the public interest.<sup>48</sup> Staff's proposed  
11 conditions fall into six categories: Merger Costs, Regulatory, Retail Operations,  
12 Wholesale Operations, Financial, and Reporting. The categories of Merger Costs,  
13 Regulatory, and Wholesale Operations contain the conditions that would most  
14 directly impact Qwest's wholesale services and operations. Mr. Fimbres offers  
15 the following justifications for adoption of the conditions in those three  
16 categories:

17 The conditions with respect to 'merger costs' are designed to prevent  
18 merger and one time transactional costs from being passed onto Arizona  
19 ratepayers or Qwest's wholesale customers.<sup>49</sup>

20  
21 The regulatory conditions are designed to ensure that the Merged  
22 Company will continue to comply with Section 271 obligations in Arizona

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<sup>46</sup> See the list of wholesale customer-impacting areas that I provided on p. 5 of my Surrebuttal Testimony.

<sup>47</sup> Fimbres Direct at p. 26, lines 6-7.

<sup>48</sup> See *id.* at pp. 26-27; Staff's proposed conditions are set forth in Attachment 1 to Mr. Fimbres' testimony.

<sup>49</sup> Fimbres Direct at p. 26, lines 14-16.

1 and also put in place additional regulatory requirements to ensure that the  
2 Commission's overall jurisdiction will not be impacted by the proposed  
3 merger.<sup>50</sup>  
4

5 Staff is also proposing a significant number of conditions relating  
6 to Qwest's wholesale operations. These conditions are designed in  
7 part to ensure that the merger will have no adverse impact upon  
8 competition in Arizona.<sup>51</sup>

9 This testimony confirms that Staff recognizes the risks the merger would create  
10 for competition in Arizona, and understands that having the Commission impose  
11 conditions prior to merger approval is the best way to reduce the identified risks.  
12 As I shall discuss later in my testimony, Staff has proposed many conditions that  
13 are similar in design and intent to those offered by the Joint CLECs, as well as  
14 others that are complementary to the Joint CLECs' proposal

15 ***B. Mr. Brigham confuses the status of competition in retail vs.***  
16 ***wholesale markets and fails to acknowledge that Qwest***  
17 ***continues to dominate wholesale markets throughout its***  
18 ***service territory.***

19 **Q. DR. ANKUM, DO YOU AGREE WITH MR. BRIGHAM'S ASSERTIONS**  
20 **THAT THE "POST-MERGER COMPANY CANNOT AFFORD, AND HAS**  
21 **NO INCENTIVE, TO DEGRADE OSS OR OFFER INFERIOR SERVICE**  
22 **QUALITY BECAUSE CUSTOMERS—INCLUDING CLECS—HAVE**  
23 **COMPETITIVE OPTIONS"?**<sup>52</sup>

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<sup>50</sup> *Id.* at p. 26, lines 16-19.

<sup>51</sup> *Id.* at p. 26, lines 23-26.

<sup>52</sup> Brigham Rebuttal at p. 7, lines 15-17.

1 A. No. In support of that assertion, Mr. Brigham cites to “competitive options from  
2 other facilities-based providers such as cable and wireless companies,”<sup>53</sup> but of  
3 course those inter-modal options relate only to *retail service markets* (and only in  
4 limited circumstances), and do not in any way represent “competitive options”  
5 available in the *wholesale service markets* upon which CLECs depend. Mr.  
6 Brigham is simply obfuscating the issue by confusing these two distinct markets.  
7 Indeed, this Commission has recently reached conclusions diametrically opposed  
8 to those of Mr. Brigham concerning the presence of competitive options in the  
9 Arizona wholesale market and the Arizona retail market for business/enterprise  
10 services. In March, 2010, the Commission filed comments in the FCC’s  
11 proceeding addressing Qwest’s request for forbearance in the Phoenix MSA.<sup>54</sup>  
12 Based on data collected by its Staff, the Commission concluded that viable  
13 wholesale alternatives were not yet available in the Phoenix MSA, stating that:

14 **Viable Wholesale Alternatives are Not Available Yet.**

15 The FCC found in its *Qwest 4 MSA Order* that “[t]he record does  
16 not reflect any significant alternative sources of wholesale inputs  
17 for carriers in the four MSAs [including the Phoenix MSA].” The  
18 data collected by the ACC Staff indicates that nothing has changed  
19 in this regard.<sup>55</sup>

20 With respect to the retail business/enterprise market in Arizona, the Commission  
21 concluded that “[t]he data collected by the ACC indicates that Qwest is by far the

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<sup>53</sup> *Id.* at p. 7, lines 10-11. While I also reject the view of Mr. Brigham that wireless service is a full “competitive option” to ILEC wireline service, that debate pertains to the retail marketplace only and has nothing to do with the wholesale services market for CLEC inputs.

<sup>54</sup> *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 USC § 160(c) in the Phoenix Metropolitan Statistical Area*, WC Docket No. 09-135, Late-Filed Reply Comments of the Arizona Corporation Commission, March 2, 2010.

<sup>55</sup> *Id.* at p. 23 (footnote deleted, emphasis in original).

1 dominant facilities-based carrier yet in the business or enterprise market.”<sup>56</sup> The  
2 Commission specifically rebutted Qwest’s claims with respect to availability of  
3 alternative last-mile connections, finding that:

- 4 • “[t]he extensive intramodal non-Qwest facilities competition that Qwest  
5 cites to in its Petition for the business market is not borne out by the data  
6 collected by the ACC;”
- 7 • “[N]o carrier other than Qwest has deployed significant last mile  
8 connectivity to multi-tenant complexes where many of the business  
9 customers are located;” and that
- 10 • “No amount of rhetoric can replace the fact that alternative last mile  
11 facility providers are not an option yet for much of the Phoenix MSA  
12 business community.”<sup>57</sup>

13 If Qwest cannot make the case for significant alternative sources of supply for  
14 last-mile connectivity to business/enterprise customers in the largest urbanized  
15 area in Arizona (the Phoenix MSA), then it can hardly support such claims for the  
16 entirety of the state.

17 Other state regulatory commissions have also concluded within the past year that  
18 Qwest remains the dominant supplier of wholesale services in its territory. The  
19 Minnesota Public Utilities Commission observed in its December 23, 2009, Order  
20 adopting a new AFOR for Qwest that:

21 While the 1996 Act has succeeded in introducing a measure of  
22 competition into the retail market, *Qwest remains the dominant*  
23 *provider of wholesale services*. And regardless of the state of  
24 competition, each telephone company continues to exercise a  
25 monopoly over routing calls over the public switched

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<sup>56</sup> *Id.* at p. 21.

<sup>57</sup> *Id.* at pp. 21-22.

1 telecommunications network to its own retail customers - that is,  
2 over switched access service.<sup>58</sup>

3 The continuing reality of Qwest's wholesale services dominance completely  
4 undercuts Mr. Brigham's assertion that the Post Merger Company would have no  
5 incentive to diminish its wholesale service quality to CLECs. To the contrary, as  
6 I have already explained,<sup>59</sup> the very fact that CLECs operating in the Qwest  
7 region are highly dependent upon Qwest's wholesale services to access their  
8 customers creates strong disincentives to provide CLECs with quality, reasonably  
9 priced, nondiscriminatory wholesale services and network access. In the absence  
10 of significant alternative sources of supply for those inputs, CLECs cannot simply  
11 migrate away from Qwest's network, as Mr. Brigham suggests, and instead will  
12 suffer harms to the extent that there is any decline in the scope, quality or terms of  
13 the post-merger wholesale services provided by the merged company.

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<sup>58</sup> Minnesota PUC Docket No. P-421/AR-09-790, Order Approving Qwest's Alternative Regulation Plan as Modified (December 23, 2009), at p. 5 (emphasis supplied).

<sup>59</sup> Ankum Direct at p. 13.

1           **C.    *The U.S. Department of Justice's termination of its review of***  
2           ***the Companies' merger transaction does not lessen the need***  
3           ***for a thorough Commission review of the merger's impacts on***  
4           ***CLECs and other affected stakeholders.***

5           **Q.    MR. BRIGHAM OBSERVES THAT THE DEPARTMENT OF JUSTICE**  
6           **(DOJ) AND FEDERAL TRADE COMMISSION (FTC) HAVE CLEARED**  
7           **THE CENTURLINK-QWEST MERGER FROM AN ANTITRUST**  
8           **PERSPECTIVE.<sup>60</sup>    WHAT SPECIFIC ACTIONS DID THE DOJ**  
9           **UNDERTAKE IN THAT REGARD?**

10          A.    At the Joint Applicants' request, the DOJ terminated the waiting period for review  
11               of the merger under the Hart Scott Rodino Act. While I am not an attorney  
12               offering a legal opinion, my understanding is that the early termination of a  
13               merger review is made pursuant to 16 C.F.R. Section 803.11, which requires in  
14               totality the following findings by the DOJ: that all required notifications have  
15               been filed; no additional information or documentary material will be requested;  
16               and a determination by the DOJ that it does not intend to take any further action  
17               within the waiting period. Thus Mr. Brigham's conclusion that the termination  
18               meant that the DOJ "...determined there will not be a significant erosion of  
19               competition resulting from the merger"<sup>61</sup> is an overstatement.

20          **Q.    DOES THAT CLEARANCE MEAN THIS COMMISSION HAS NO NEED**  
21               **TO EVALUATE THE PROPOSED MERGER'S POTENTIAL IMPACTS**  
22               **ON CLECS IN ARIZONA?**

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<sup>60</sup> Brigham Rebuttal at p. 25.

<sup>61</sup> *Id.* at p. 25, lines 8-9.

1       A.    No. As I pointed out in my Direct Testimony,<sup>62</sup> the DOJ's antitrust review differs  
2       from and is narrower than the Commission's public interest evaluation. The  
3       DOJ's role in merger proceedings is to investigate a proposed merger to the point  
4       that the Assistant Attorney General in charge of the DOJ's Antitrust Division can  
5       determine if the evidence warrants prosecution of an antitrust case against the  
6       merging entities.<sup>63</sup> My understanding is that nothing in the statutes granting this  
7       prosecutorial authority to the DOJ either states, or indicates, that the DOJ's  
8       decision should supplant or even guide a regulatory body's public interest  
9       determination regarding the proposed merger.

10       As a general matter, despite the fact that the CenturyLink-Qwest transaction is  
11       being scrutinized by multiple government agencies, this Commission should not  
12       lose sight of the fact that it is the only government authority specifically tasked  
13       with determining whether the proposed merger is in the public interest under  
14       Arizona law, and thus with due consideration of Arizona-specific circumstances.  
15       This Commission should not simply defer to other agencies, as Mr. Brigham  
16       seems to imply, but instead should exercise its independent judgment and  
17       authority with respect to the Joint Petition, as it always has in merger proceedings  
18       such as this.

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<sup>62</sup> Ankum Direct at p. 23.

<sup>63</sup> 15 U.S.C. Sections 18, 18a.

1 **IV. RESPONSE TO JOINT APPLICANTS' TESTIMONY**  
2 **CONCERNING SPECIFIC CONDITIONS PROPOSED**  
3 **BY THE JOINT CLECS**

4 *A. The specific Joint CLEC proposed conditions explained in my*  
5 *Direct Testimony remain essential protections and are not*  
6 *undermined by the rebuttal testimony offered by the Joint*  
7 *Applicants' witnesses.*

8 **Q. DR. ANKUM, HAVE YOU REVIEWED THE REBUTTAL TESTIMONY**  
9 **OFFERED BY THE CENTURYLINK AND QWEST WITNESSES**  
10 **CONCERNING THE SPECIFIC MERGER CONDITIONS THAT YOU**  
11 **ARE RECOMMENDING?**

12 **A.** Yes, I have. Section VII of my Direct Testimony (pages 67-93) explained the  
13 basis for the Joint CLECs' proposed conditions relating to wholesale rate stability  
14 (Conditions number 2, 3, and 7 as numbered in Mr. Gates' Exhibit TG-8) and the  
15 availability of wholesale services (Conditions number 1, 6, 8, 9, 10, 12, 14 and  
16 28). Mr. Hunsucker, on behalf of CenturyLink, and Ms. Stewart, on behalf of  
17 Qwest, have addressed some of those particular conditions in their respective  
18 Rebuttal Testimony.<sup>64</sup>

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<sup>64</sup> See Hunsucker Rebuttal at pp. 37-40 (addressing Conditions 6 and 8), pp. 40-46 (addressing Conditions 9 and 10), pp. 47-48 (addressing Conditions 12 and 14), pp. 54-55 (addressing Condition 28), and pp. 64-66 (addressing Conditions 1, 2, 3, and 7); Stewart Rebuttal at pp. 9-12 (addressing Conditions 2, 3, and 7) and pp. 16-18 (addressing Condition 14).



1       **Q.    DOES THEIR TESTIMONY CHANGE YOUR OPINION THAT THOSE**  
2       **MERGER   CONDITIONS   SHOULD   BE   ADOPTED   BY   THE**  
3       **COMMISSION IF IT DECIDES TO APPROVE THE MERGER?**

4       A.    No.  None of the Joint Applicants' Rebuttal Testimony causes me to alter my  
5       prior recommendations.  I continue to recommend that, if the Commission  
6       approves the proposed merger, it should impose all of the Joint CLEC conditions  
7       that I have recommended, as well as those supported by Mr. Gates.

8       ***B.    Conditions 2, 3, and 7.***

9       **Q.    WHAT IS YOUR RESPONSE TO MS. STEWART'S ARGUMENT<sup>65</sup> THAT**  
10       **THERE IS NO NEED FOR THE WHOLESALE RATE STABILITY**  
11       **CONDITIONS (NUMBERS 2, 3, AND 7) BECAUSE THE COMMISSION**  
12       **ALREADY HAS IN PLACE A PROCESS FOR DETERMINING RATES**  
13       **FOR SECTION 251-RELATED SERVICES?**

14       A.    As I discussed in my Direct Testimony,<sup>66</sup> there is a serious risk that the Merged  
15       Company will attempt to recover merger costs through increases in wholesale  
16       rates.  To preclude this sort of recovery, a merger commitment that caps rates for  
17       a meaningful period following the merger is essential for several reasons.  First,  
18       recovering merger costs through wholesale rate increases would be inappropriate  
19       for the reasons stated in my Direct Testimony.  Indeed, regulators have  
20       historically rejected any such recovery.<sup>67</sup>  Second, post-hearing wholesale

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<sup>65</sup> Stewart Rebuttal at p. 11.

<sup>66</sup> Ankum Direct at pp. 44-45 and 89-90.

<sup>67</sup> *Id.* at p. 91; see especially footnotes 147 and 148 which refer to the following decisions by the Illinois Commerce Commission and Oregon PUC: *In the Matter of Verizon Communications Inc. and*

1 rate/UNE cost proceedings would be an expensive, time-consuming, and  
2 uncertain way of attempting to prevent the Joint Applicants from improperly  
3 recovering merger costs from wholesale customers/competitors. Indeed, those  
4 merger-related costs could be buried in complex cost-models that allow them to  
5 find their way into wholesale rates undetected. Contrary to Ms. Stewart's view,  
6 the Commission cannot simply rely upon its existing rate-setting and complaint  
7 procedures to ensure that the safeguards contemplated in Conditions 2, 3, and 7  
8 are actually achieved. By refusing to make an up-front commitment to refrain  
9 from recovery of merger transaction-related costs from wholesale rates and  
10 CLECs, the Joint Applicants would be shifting the burden to the Commission, its  
11 Utilities Division Staff, and CLEC intervenors in such proceedings to identify and  
12 root out those costs, which as I explained in my Direct Testimony, regulators  
13 should not and traditionally have not included in merging ILECs' wholesale or  
14 retail rates as a matter of principle. Now is the time for the Commission to  
15 implement this principle by adopting Conditions 2 and 3, not in a future rate  
16 proceeding where it can be lost in the myriad of other costing and rate-setting  
17 issues.

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*Frontier Communications COT. Joint Application for an Order Declining to Assert Jurisdiction, or, in the alternative, to Approve the Indirect Transfer of Control of Verizon Northwest Inc., Order Granting Joint Application with Conditions, Oregon PUC Docket No. UM 1431, Order No. 10-067, February 24, 2010 ("Oregon PUC Frontier-Verizon Order"); Frontier Communications Corporation, Verizon Communications, Inc. et al. Joint Application for the Approval of a Reorganization Pursuant to Section 7-204 of the Public Utilities Act, Order, ICC Docket No. 09-0268, April 21, 2010 ("Illinois CC Frontier-Verizon Order"); In the Matter of Embarq Cop and CenturyTel, Inc. Joint Application for Approval of Merger between the two companies and their regulated subsidiaries, Order Granting Joint Application with Conditions, Oregon PUC Docket No. UM 1416, Order No. 09-169, May 22, 2009 ("Oregon PUC CenturyTel-Embarq Order").*

1       **Q.   HAS STAFF ALSO CONCLUDED THAT SPECIFIC MERGER**  
2       **CONDITIONS SHOULD BE IMPOSED TO PREVENT THE RECOVERY**  
3       **OF MERGER-RELATED COSTS THROUGH THE MERGED**  
4       **COMPANY'S RATES?**

5       A.   Yes. As I observed earlier in my testimony, Staff's proposed "Merger Costs"  
6       Conditions 1-3 are "designed to prevent merger and one time transactional costs  
7       from being passed onto Arizona ratepayers or Qwest's wholesale customers."<sup>68</sup>  
8       Staff's proposed Condition 1 is very similar to Joint CLECs' proposed Condition  
9       2, as both conditions are designed to ensure that the Merged Company does not  
10      recover one-time transfer, re-branding and other transaction-related costs from  
11      wholesale customers. In fact, Staff's proposed condition is broader in scope in  
12      that it extends that prohibition to Arizona end-user retail rates as well. On the  
13      other hand, the Joint CLECs' proposed Condition 3 extends this protection in  
14      another way, by prohibiting recovery through rates of management cost increases  
15      attributable to the merger. In any event, Staff's independent determination that  
16      such safeguards are essential repudiates CenturyLink's claims that wholesale rate  
17      stability conditions are unnecessary.

18      **Q.   ARE QWEST SERVICES AND RATES OUTSIDE OF THE SECTION 251**  
19      **RATE-SETTING PROCESS ALSO AT RISK UNLESS SPECIFIC**  
20      **MERGER CONDITIONS ARE IMPOSED?**

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<sup>68</sup> Fimbres Direct at p. 26, lines 14-16.

1 A. Yes, there is a risk that the Merged Company may seek to recover merger-  
2 transaction related costs or impose other unwarranted wholesale rate increases or  
3 changes in terms outside of the Section 251 rate-setting process referred to by Ms.  
4 Stewart. Perhaps the best demonstration that this concern is well-founded is  
5 Qwest's recent unilateral change to volume and term discounts for DS1 and DS3  
6 circuits in its Regional Commitment Program (RCP), that resulted in terms less  
7 favorable to CLECs. None of the Companies' witnesses have responded to (or  
8 even acknowledged) my Direct Testimony concerning this change to a non-  
9 Section 251 wholesale services agreement.<sup>69</sup> Clearly, however, constraining this  
10 type of conduct must go beyond the Commission's existing Section 251-related  
11 procedures.

12 **Q. HOW DO YOU RESPOND TO MR. HUNSUCKER'S ASSERTIONS**  
13 **THAT "THE CLECS DO NOT ATTEMPT TO PORTRAY THESE**  
14 **CONDITIONS [CONDITIONS 2, 3 AND 7] AS LEGITIMATE MERGER**  
15 **CONCERNS" AND THAT THEY ARE REALLY "ATTEMPTS...TO**  
16 **INCREASE CLEC PROFITABILITY"?**<sup>70</sup>

17 A. Those assertions are erroneous. Contrary to Mr. Hunsucker's claim that  
18 Conditions 2 and 3 were not presented in my Direct Testimony as "legitimate  
19 merger concerns," my testimony explains clearly that those conditions specifically  
20 target the issue of the Merged Company's recovery of *merger transaction-related*

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<sup>69</sup> Ankum Direct at pp. 91-93.

<sup>70</sup> Hunsucker Rebuttal at p. 65, lines 11-12 and p. 65, lines 15-16.

1 *costs.*<sup>71</sup> Similarly, pages 89-93 of my Direct Testimony specifically explain why  
2 Conditions 2, 3, and 7 are necessary *in the context of the merger.*<sup>72</sup> Mr.  
3 Hunsucker has failed to acknowledge that testimony.

4 Mr. Hunsucker also mischaracterizes the intent of Conditions 2, 3, and 7 by  
5 alleging that “[t]hese proposed conditions appear to be attempts to circumvent  
6 applicable law and rules to increase CLEC profitability through terms CLECs are  
7 unlikely to gain under the current regulatory reviews and processes.”<sup>73</sup> In similar  
8 fashion, Ms. Stewart alleges that Condition 7 is an “attempt to change the rate  
9 making processes that are currently in place for these products and services.”<sup>74</sup>

10 To the contrary, as I explained in my Direct Testimony, these conditions are  
11 intended to establish *wholesale rate stability during the merger transition period,*  
12 and are not seeking any wholesale rate decreases or any new, favorable wholesale  
13 services terms or conditions. As stated in my Direct Testimony:

14 Wholesale rates should, if anything, decrease after the merger.  
15 Because the company’s overall cost structure should decrease to  
16 the extent synergy savings are achieved post-merger, wholesale  
17 rates – which would be based on the cost structure of the Merged  
18 Company – should decrease as well. ***However, at this point,***  
19 ***CLECs are not seeking rate reductions, but instead taking the***  
20 ***conservative position that rates should not increase for at least***  
21 ***the Defined Time Period (Condition 7).***<sup>75</sup>

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<sup>71</sup> Ankum Direct at p. 89.

<sup>72</sup> For example, at p. 90, lines 7-10 of my Direct Testimony, I conclude that Condition 7 “provides a degree of protection for captive wholesale customers that the Merged Company will not seek to increase their rates (or create new rate elements) during the Merged Company’s pursuit of synergies and revenue enhancements.”

<sup>73</sup> Hunsucker Rebuttal at p. 38, lines 1-3.

<sup>74</sup> Stewart Rebuttal at p. 12, lines 6-7.

<sup>75</sup> Ankum Direct at p. 90, lines 2-7 (emphasis added).

1       **Q.    IS THERE EVIDENCE THAT SUGGESTS CENTURYLINK MAY SEEK**  
2       **RATE INCREASES FOR WHOLESALE SERVICES AFTER THE**  
3       **MERGER HAS CLOSED?**

4       A.    Yes. In his Surrebuttal Testimony, Mr. Gates documents how CenturyLink has  
5       previously raised rates for other ILEC operations that it had acquired, namely in  
6       1998 when CenturyLink unilaterally raised the rates for local and access services  
7       in nineteen Wisconsin exchanges after acquiring them from Ameritech.<sup>76</sup> Far  
8       from being some sort of ploy to “increase CLEC profitability” as Mr. Hunsucker  
9       alleges, Condition 7 is specifically targeted to prevent precisely this sort of  
10      conduct post-merger with respect to the wholesale services upon which CLECs  
11      depend.

12      The same is true for the term and volume discount plans specifically addressed in  
13      Condition 7, subpart a. This subpart seeks their continuation “without any  
14      changes to the rates, terms, or conditions of such plans”<sup>77</sup> – and does not grant  
15      CLECs any new, more favorable terms or conditions, as Mr. Hunsucker implies.  
16      The thrust of Condition 7 and its subparts is to maintain the status quo  
17      competitive balance between the Joint Applicants and the CLECs they serve  
18      throughout the merger transition period. This general goal applies with equal  
19      force to the Wholesale Service Availability conditions that I am recommending,  
20      as I shall now explain.

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<sup>76</sup> Gate Surrebuttal Testimony, at pp. 33-34.

<sup>77</sup> Exhibit TG-8 at p.5.

1           **C.    Conditions 1, 6, 8, 9, 10, 12, 14 and 28**

2           **Q.    DID YOUR DIRECT TESTIMONY SET FORTH THE JOINT CLECS'**  
3           **PROPOSED CONDITIONS RELATING TO WHOLESALE SERVICE**  
4           **AVAILABILITY AND EXPLAIN WHY THEY SHOULD BE ADOPTED**  
5           **BY THE COMMISSION, IF IT APPROVES THE CENTURYLINK-**  
6           **QWEST MERGER?**

7           A.    Yes. The Wholesale Services Availability conditions (Conditions number 1, 6, 8,  
8           9, 10, 12, 14 and 28) were set forth and explained in Section VII-A of my Direct  
9           Testimony.<sup>78</sup> As observed therein, these conditions would ensure that the Merged  
10           Company will continue to make available the wholesale services that Qwest  
11           currently provides during the merger transition period (as measured by the  
12           Defined Time Period set forth in Exhibit TG-8).

13           **Q.    HAVE THE JOINT APPLICANTS' WITNESSES OFFERED ANY**  
14           **RELEVANT REBUTTAL TO CONDITION 1?**

15           A.    No. Mr. Hunsucker mistakenly categorized Condition 1, which concerns the  
16           continued availability of wholesale services, with the Wholesale Rate Stability  
17           conditions.<sup>79</sup> Thus, Mr. Hunsucker's criticism of Condition 1 as a rate-related  
18           condition is misplaced and should be disregarded.<sup>80</sup> No other Joint Applicant  
19           witnesses address Condition 1.

20           **Q.    HAS STAFF PROPOSED A CONDITION SIMILAR TO CONDITION 1?**

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<sup>78</sup> See Ankum Direct, at pp. 68-89.

<sup>79</sup> Hunsucker Rebuttal at p. 64.

<sup>80</sup> *Id.* at p. 64. I have already rebutted Mr. Hunsucker's claims concerning rate-related conditions in my testimony above.

1       A.    Yes. Staff's proposed Condition 26 states that "no Qwest wholesale intrastate  
2            service offered to competitive carriers as of the merger filing date will be  
3            discontinued for two years after closing of the merger, unless approved by the  
4            Commission." The primary difference is that Staff would apply a fixed duration  
5            of two years, whereas the Joint CLECs' Condition 1 applies the Defined Time  
6            Period to be commensurate with the duration of the merger transition period (see  
7            my testimony above). Nevertheless, Staff's inclusion of Condition 26 as a  
8            necessary condition for merger approval confirms that ensuring continued  
9            availability of wholesale services post-merger is a key public interest  
10          consideration.

11       **Q.    WHAT REBUTTAL HAVE THE JOINT APPLICANTS PROFFERED IN**  
12            **RESPONSE TO CONDITION 6, WHICH INVOLVES COMMITMENTS**  
13            **THAT THE MERGED COMPANY WILL ASSUME OR TAKE**  
14            **ASSIGNMENT OF QWEST'S EXISTING OBLIGATIONS UNDER**  
15            **INTERCONNECTION AGREEMENTS (ICAs), TARIFFS,**  
16            **COMMERCIAL AGREEMENTS, ETC.?**

17       A.    Mr. Hunsucker asserts that Condition 6 is unnecessary because of the structure of  
18            the Joint Applicants' proposed transaction, in which the entire Qwest corporate  
19            entity is being acquired.<sup>81</sup>

20       **Q.    DOES THE STRUCTURE OF THE TRANSACTION NEGATE THE**  
21            **NEED FOR CONDITION 6?**

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<sup>81</sup> *Id.* at p. 37.



1 A. No, it does not. As Mr. Gates and I have already explained in our Direct  
2 Testimony, while Qwest will continue to exist and operate as a separate entity as  
3 of the day the transaction is consummated, there is no certainty as to the Merged  
4 Company's corporate organization beyond that date.<sup>82</sup> The Joint Applicants have  
5 stated that the legacy Qwest entity "will continue to be the only provider of  
6 service to the CLECs in Arizona"<sup>83</sup> but CenturyLink does not commit to any  
7 specified time period for this to continue.

8 In addition, Condition 6 (exclusive of its subparts) requires the Merged Company  
9 to take on the obligations of the Assumed Agreements without requiring  
10 wholesale customers to execute any documents to effectuate the assumption.  
11 CenturyLink does not commit to *not* requiring such document execution  
12 (regardless of whether the obligations are considered continuing or assumed).<sup>84</sup> I  
13 explained in my Direct Testimony that this is a real-world concern, as Frontier  
14 and Verizon attempted to compel CLECs to accept amendment of their wholesale  
15 agreements to reflect certain Frontier processes.<sup>85</sup> Consequently, Condition 6 is  
16 essential to ensure that CLECs' existing ICAs and other contractual and  
17 commercial agreements with Qwest are not disrupted by any future, unilateral  
18 changes in the Merged Company's corporate organization.

19 **Q. DOES STAFF APPEAR TO RECOGNIZE THE PROBLEM THAT**  
20 **CONDITION 6 IS INTENDED TO ADDRESS?**

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<sup>82</sup> Mr. Gates further elaborates on this point in his Surrebuttal Testimony.

<sup>83</sup> Hunsucker Rebuttal, at p. 37, lines 11-13.

<sup>84</sup> *Id.* at p. 37.

<sup>85</sup> See Ankum Direct at pp. 74-75 and Exhibit AA-6 referenced therein.

1 A. Yes. In fact, Staff has proposed its own version of this condition, Staff proposed  
2 Condition 25, which would require (in part) that “the Merged Company shall  
3 continue to honor all obligations under Qwest’s current interconnection  
4 agreements, tariffs, and other existing contractual arrangements with CLECs.”  
5 While there are some language differences between the two, the fact that Staff has  
6 proposed a highly similar condition reinforces the importance of Condition 6 as a  
7 competitive safe guard.

8 **Q. DO YOU AGREE WITH MR. HUNSUCKER’S CONCLUSION THAT**  
9 **CONDITIONS 6 AND 8 HAVE THE EFFECT OF ALLOWING CLECS TO**  
10 **UNILATERALLY CHANGE THEIR EXISTING CONTRACT TERMS TO**  
11 **EXTEND ICAS, INCLUDING THOSE IN “EVERGREEN” STATUS?<sup>86</sup>**

12 A. No. Mr. Gates’ Surrebuttal Testimony explains how Mr. Hunsucker  
13 mischaracterizes the Defined Time Period and how it remains the appropriate  
14 time period to apply in Conditions 6 and 8 as elsewhere. Moreover, with respect  
15 to Condition 8, Mr. Hunsucker ignores the fact that the terms and conditions  
16 under the numerous “evergreen” ICAs between Qwest and CLECs have been  
17 acceptable to the signatory companies for extended periods; the fact that Qwest  
18 chooses to merge with CenturyLink should not suddenly result in harm to Qwest  
19 from their continuance through the merger transition period (the Defined Time  
20 Period).<sup>87</sup> This type of condition is not only reasonable, it has been adopted (with  
21 slight variations) by the Illinois Commerce Commission, the Public Utilities

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<sup>86</sup> Hunsucker Rebuttal, at pp. 38-40.

<sup>87</sup> Ankum Direct at pp. 79-80.

1 Commission of Ohio, and the Oregon Public Utilities Commission as a condition  
2 of the Frontier/Verizon merger. Moreover, Mr. Gates explains how Mr.  
3 Hunsucker mischaracterizes the Defined Time Period and how it remains the  
4 appropriate time period to apply in Condition 8 as elsewhere.

5 **Q. IS MR. HUNSUCKER CORRECT THAT CONDITION 9, WHICH**  
6 **COMMITS THE MERGED COMPANY TO ALLOWING CLECS TO USE**  
7 **A PRE-EXISTING ICA AS A BASIS FOR NEGOTIATING A NEW ICA, IS**  
8 **UNNECESSARY?**<sup>88</sup>

9 A. No. Mr. Hunsucker's own testimony underscores why Condition 9 is important.  
10 Mr. Hunsucker states that: "CenturyLink, however, has the right to propose its  
11 suggested structure as well and should not be constrained before the fact from  
12 doing so."<sup>89</sup> This testimony is troubling as it overlooks the multiple, longstanding  
13 negotiations being conducted between CLECs and Qwest, which should not be  
14 derailed by the proposed transaction

15 As discussed in my Direct Testimony, while relatively few CLECs have had  
16 cause to invest much time and effort to negotiate an ICA with CenturyLink,  
17 CLECs are likely to have invested significant time and financial resources in  
18 ICAs and negotiations with Qwest. The proposed transaction should not cause  
19 these resources to be wasted, potentially forcing negotiations to start from scratch,  
20 perhaps based on an entirely new CenturyLink ICA negotiations proposal. A  
21 more complete discussion of the reason that Condition 9 is justified is found in

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<sup>88</sup> Hunsucker Rebuttal at p. 40.

<sup>89</sup> *Id.* at p. 40, lines 10-12.

1 my Direct Testimony,<sup>90</sup> which also notes that the Oregon PUC applied this  
2 condition to the Frontier-Verizon merger.<sup>91</sup> It is also important to recognize that  
3 Staff has proposed a similar condition, namely its proposed Condition 30, which  
4 states that “the Merged Company shall allow a requesting competitive carrier to  
5 use any approved Interconnection Agreement (‘ICA’) in Arizona, as the basis for  
6 negotiating a replacement ICA.”

7 **Q. HOW DO YOU RESPOND TO MR. HUNSUCKER’S TESTIMONY IN**  
8 **OPPOSITION TO CONDITION 10, WHICH WOULD PERMIT CLECS**  
9 **TO OPT INTO ANY OTHER QWEST ICA IN THE SAME STATE?<sup>92</sup>**

10 A. It is simply not correct, as Mr. Hunsucker claims, that Condition 10 would allow  
11 CLECs to “cherry pick” ICA terms.<sup>93</sup> In fact, my Direct Testimony notes that  
12 “[t]his condition does not allow a carrier to pick-and-choose ICA terms.”<sup>94</sup>

13 Likewise, Mr. Hunsucker’s claim that Condition 10 ignores such issues as  
14 differences in technical feasibility, network design and costs between  
15 CenturyLink and Qwest<sup>95</sup> is refuted by the explicit language of the condition:

16 The state commission may require modification of the agreement  
17 to the extent that the commission determines that the Merged  
18 Company has established that (1) it is not Technically Feasible for  
19 the Merged Company to comply with one or more provisions of  
20 the agreement or (2) the price(s) set forth in the agreement are  
21 inconsistent with TELRIC-based prices in the state in question.<sup>96</sup>

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<sup>90</sup> Ankum Direct at pp. 80-82.

<sup>91</sup> *Oregon PUC Frontier-Verizon Order*, at Attachment 1 (Settlement Conditions), Condition 7.

<sup>92</sup> Hunsucker Rebuttal at pp. 42-46.

<sup>93</sup> *Id.* at p. 43.

<sup>94</sup> Ankum Direct at p. 83, lines 8-10.

<sup>95</sup> Hunsucker Rebuttal at p. 43.

<sup>96</sup> Exhibit TG-8 at p. 6.

1  
2 Condition 10 simply builds on the Companies' own claims that, in a post-merger  
3 environment, CenturyLink and Qwest will be operating as an integrated entity,  
4 capitalizing on the synergies of their combined networks and operations.<sup>97</sup>  
5 Condition 10, like the other conditions proposed by the Joint CLECs, is consistent  
6 with the Joint Applicant's stated intent to operate post-merger as an integrated  
7 entity.<sup>98</sup>

8 As noted in my Direct Testimony, the FCC previously adopted a similar condition  
9 in conjunction with the AT&T/BellSouth merger, which required  
10 AT&T/BellSouth to make available to any CLEC any ICA (negotiated or  
11 arbitrated) to which a AT&T/BellSouth ILEC is a party in any state within the  
12 AT&T 22-state footprint, subject to state-specific pricing and technical  
13 feasibility.<sup>99</sup>

14 **Q. MR. HUNSUCKER ASSERTS THAT ADOPTING CONDITIONS 12 AND**  
15 **14, RELATING TO WAIVER OF THE RIGHT TO SEEK RURAL**  
16 **EXEMPTIONS AND RECLASSIFICATION OF WIRE CENTERS,**  
17 **WOULD AMOUNT TO "TAKING SHORT CUTS" WITH THE LAW.<sup>100</sup>**  
18 **DO YOU AGREE?**

19 **A.** No, and I note that neither the FCC nor the Oregon Public Utilities Commission  
20 reached that conclusion when adopting similar conditions on other ILEC

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<sup>97</sup> McMillan Direct at p. 9-12.

<sup>98</sup> See, e.g., Joint Application at pp. 6 and 15-16.

<sup>99</sup> Ankum Direct at pp. 82-83.

<sup>100</sup> Hunsucker Rebuttal at p. 48, lines 6-7.

1 mergers.<sup>101</sup> To the contrary, in its decision approving the Frontier-Verizon  
2 merger, the Oregon PUC determined that “the conditions agreed to by the  
3 Applicants in the various stipulations filed in this docket,” – including the two  
4 analogous to Conditions 12 and 14 – “...combined with additional conditions we  
5 impose in this order, sufficiently mitigate the risks of the transaction and help  
6 meet the ‘no harm’ public interest standard required for our approval.”<sup>102</sup> The  
7 Oregon PUC reached essentially the same conclusion as I did in my Direct  
8 Testimony as to why conditions such as numbers 12 and 14 are necessary.<sup>103</sup>

9 **Q. MR. HUNSUCKER ASSERTS THAT CONDITION 28 IS**  
10 **UNREASONABLE AND UNNECESSARY BECAUSE “THIS MERGER**  
11 **CREATES NO INTERCONNECTION COST TO THE CLECS THAT THE**  
12 **CLECS DO NOT ALREADY HAVE TODAY.” DO YOU AGREE WITH**  
13 **HIS ASSESSMENT?**<sup>104</sup>

14 A. No. As Mr. Gates and I have already explained in our prior testimony, CLECs  
15 should have the option of interconnecting at a single point of interconnection  
16 (“POI”) per LATA with the Merged Company throughout its expanded footprint,  
17 including Arizona. Mr. Gates has also explained how the Joint Applicants have  
18 touted the economic benefits that will result from the merger’s combination of the  
19 two Companies’ networks.<sup>105</sup> Now when it comes to allowing CLECs to share in

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<sup>101</sup> See Gates Exhibit TJG-9 at p. 6 (citing to the FCC’s *Verizon-Frontier Merger Order* with respect to Condition 12, the FCC’s AT&T/BellSouth Order with respect to Condition 14, and the *Oregon PUC Frontier-Verizon Order* with respect to both Conditions 12 and 14)..

<sup>102</sup> *Oregon PUC Frontier-Verizon Order*, at p. 1.

<sup>103</sup> Ankum Direct at p. 4.

<sup>104</sup> Hunsucker Rebuttal at p. 55, lines 3-4.

<sup>105</sup> Gates Direct at pp. 181-182.

1 some of those increased efficiencies, as a single POI per LATA interconnection  
2 would afford, the Joint Applicants object. By forcing CLECs to maintain multiple  
3 POIs per LATA, even as the Merged Company begins exploiting increased  
4 efficiencies of their combined networks, the Joint Applicants could use the merger  
5 to unfairly tilt the competitive balance in their favor. If the Commission  
6 determines that the merger should be approved, adopting Condition 28 can play  
7 an important role in ensuring that the merger does not result in that harm to  
8 CLECs and the competitive marketplace.

## 9 VI. CONCLUSION

10 **Q. HAVING REVIEWED THE REBUTTAL TESTIMONY OFFERED BY**  
11 **THE JOINT APPLICANTS AND THE DIRECT TESTIMONY OFFERED**  
12 **BY STAFF, WHAT IS YOUR CONCLUSION?**

13 A. The Joint Applicants' Rebuttal Testimony fails to demonstrate that the merger of  
14 CenturyLink and Qwest will meet the Commission's public interest standard of  
15 review unless appropriate conditions are imposed to mitigate potential merger  
16 harms. Staff has also concluded that conditions are essential to any Commission  
17 approval of the merger, and has proposed conditions that in many cases are  
18 similar or complementary to those proposed by the Joint CLECs. Therefore, I  
19 continue to recommend that, if the Commission approves the proposed merger, it  
20 should impose all of the Joint CLEC conditions that I supported in my Direct  
21 Testimony, as well as those supported by Mr. Gates.

22 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

1        A.    Yes.



# Service Quality Report

Period Covered: July 1, 2009 - June 30, 2010

REPORTING COMPANY	ANSWERTIMES				TROUBLE REPORTS, SERVICE ORDERS, AND CUSTOMER APPOINTMENTS						
	Operator "0"	Directory Assistance	Business Office	Repair Service	Initial Customer Trouble Reports	Repeat Customer Trouble Reports	Out-of-Service Troubles Cleared within 24 Hours	Regular Service Orders Completed within 5 Working Days	New Service Installation Appointments Not Met for Company Reasons	New Service Held Orders Not Completed within 30 Days	
@ Communications, Inc.	N/A	N/A	✓	✓	N/A	N/A	N/A	N/A	N/A	N/A	
Absolute Home Phones, Inc.	N/A	N/A	<12	<12	N/A	N/A	N/A	N/A	N/A	N/A	
Access Point, Inc.	DNR	DNR	DNR	DNR	N/A	N/A	N/A	N/A	N/A	N/A	
Affordable Phones Services, Inc.	N/A	N/A	✓	✓	N/A	N/A	N/A	N/A	N/A	N/A	
Alternative Phone, Inc.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
American Fiber Network, Inc.	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Barnardsville Telephone Company	<12	<12	<12	<12	N/A	N/A	N/A	N/A	N/A	N/A	
BLC Management, LLC	N/A	N/A	DNR	DNR	DNR	DNR	DNR	DNR	DNR	DNR	
Budget PrePay, Inc.	DNR	DNR	DNR	DNR	<12	<12	<12	<12	<12	<12	
BullsEye Telecom, Inc.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Business Telecom, Inc.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Carolina Telephone and Telegraph Co.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Central Telephone Company	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Charter Fiberlink NC - CCO, LLC	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Citizens Telephone Company	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
ComTech21, LLC	N/A	N/A	DNR	DNR	✓	✓	✓	✓	✓	✓	
Covista, Inc.	✓	✓	DNR	DNR	✓	✓	✓	✓	✓	✓	
DeltaCom, Inc.	✓	✓	✓	✓	N/A	N/A	N/A	N/A	N/A	N/A	
Dialog Telecommunications, Inc.	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Ellerbe Telephone Company	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Ernest Communications, Inc.	<12	<12	DNR	DNR	✓	✓	✓	✓	✓	✓	
EveryCall Communications, Inc.	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Fidelity Communication Svcs III, Inc.	N/A	N/A	<12	<12	<12	<12	<12	<12	<12	<12	
Flatel, Inc.	N/A	N/A	✓	✓	N/A	N/A	N/A	N/A	N/A	N/A	



KEY TO SYMBOLS USED IN THIS TABLE
✓ The company's average statewide performance met the objective during the report period.
✗ The company's average statewide performance failed to meet the objective during the report period.
N/A The company reported that the results for this objective were not within its control. This typically means that another company provided the associated service.

<12 Results were reported for fewer than 12 months; however, no waiver was requested from the Commission.
DNR The reported data for this objective for one or more months were inconsistent with Rule R9-8 and Commission orders in Docket No. P-100, Sub 99, rendering the data unusable.

# Service Quality Report

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France Telecom Corp. Solutions L.L.C.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Frontier Comm. of the Carolinas Inc.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Global Connection, Inc. of America	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Global Crossing Local Services, Inc.	N/A	N/A	X	X	✓	✓	✓	✓	✓	✓	
Global Crossing Telemanagement, Inc.	N/A	N/A	X	X	✓	✓	✓	✓	✓	✓	
Interlink Telecommunications, Inc.	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Lifecomm Telecom, LLC	<12	<12	<12	<12	N/A	N/A	N/A	N/A	N/A	N/A	
Lightyear Network Solutions, LLC	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
LTS of Rocky Mount, LLC	N/A	N/A	✓	✓	N/A	N/A	N/A	N/A	N/A	N/A	
Madison River Communications, LLC	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
MCImetro Access Trans. Services, LLC	✓	✓	X	✓	N/A	N/A	N/A	N/A	N/A	N/A	
MEBTEL, Inc.	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Metropolitan Telecom. of N. C., Inc.	N/A	N/A	✓	✓	N/A	N/A	N/A	N/A	N/A	N/A	
Mitel NetSolutions, Inc.	N/A	N/A	DNR	DNR	✓	✓	✓	✓	✓	✓	
Navigator Telecommunications, LLC	N/A	N/A	✓	✓	N/A	N/A	N/A	N/A	N/A	N/A	
North State Comm. Adv. Svcs, LLC	<12	<12	<12	<12	<12	<12	<12	<12	<12	<12	
North State Telephone Company	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
NOS Communications, Inc.	✓	✓	DNR	DNR	✓	✓	✓	✓	✓	✓	
One Voice Communications, Inc.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
OneTone Telecom, Inc.	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Piedmont Comm. Services, Inc.	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Pineville Telephone Company	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
PNG Telecommunications, Inc.	✓	✓	DNR	DNR	✓	✓	✓	✓	✓	✓	
Quality Telephone, Inc.	N/A	N/A	X	X	✓	✓	✓	✓	✓	✓	

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Qwest Communications Company, LLC	N/A	N/A	X	X	N/A	N/A	N/A	N/A	N/A	N/A	
Randolph Telephone Company	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Saluda Mountain Telephone Company	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Service Telephone Company	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Shentel Converged Services, Inc.	N/A	N/A	X	X	✓	✓	✓	✓	✓	✓	
SkyBest Communications, Inc.	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
South Carolina Net, Inc.	N/A	N/A	DNR	✓	✓	✓	N/A	✓	✓	✓	
Spectrotel, Inc.	N/A	N/A	DNR	DNR	✓	✓	✓	✓	✓	✓	
Springboard Telecom, LLC	N/A	N/A	✓	✓	✓	✓	X	✓	✓	✓	
Talk America, Inc.	N/A	N/A	✓	✓	DNR	DNR	N/A	N/A	N/A	N/A	
Tennessee Telephone Services, LLC	<12	<12	<12	<12	N/A	N/A	N/A	N/A	N/A	N/A	
The Other Phone Company	N/A	N/A	✓	✓	DNR	DNR	N/A	N/A	N/A	N/A	
Town of Pineville	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
UNICOM Communications, LLC	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
US LEC of North Carolina, Inc.	N/A	N/A	✓	X	✓	✓	✓	✓	✓	N/A	
Wilkes Communications, Inc.	N/A	N/A	DNR	DNR	✓	✓	✓	✓	✓	✓	
Windstream Communications, Inc.	✓	✓	N/A	✓	✓	✓	✓	✓	✓	✓	
Windstream Concord Telephone, Inc.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Windstream Lexcom Comm., Inc.	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	
Windstream North Carolina, Inc.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
XO Communications Services, Inc.	N/A	N/A	X	X	✓	✓	X	N/A	N/A	N/A	
Yadkin Valley Telecom, Inc.	N/A	N/A	✓	✓	✓	✓	✓	✓	✓	✓	

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DNR The reported data for this objective for one or more months were inconsistent with Rule R9-8 and Commission orders in Docket No. P-100, Sub 99, rendering the data unusable.

**The following companies filed letters stating that they either did not provide service in North Carolina or did not provide basic local residential and/or business exchange service to customers in North Carolina during the period covered by this report.**

360networks (USA) Inc.	Global Capacity Group, Inc.	PaeTec Communications, Inc.
Abovenet Communications, Inc.	Global NAPs North Carolina, Inc.	Peerless Network of North Carolina, LLC
ALEC, Inc.	Hotwire Communications, Ltd.	Preferred Long Distance, Inc.
All American Telecom, Inc.	Hypercube Telecom, LLC	Randolph Telephone Telecommunications, Inc.
ATC Outdoor DAS, LLC	IDT America, Corp.	Reliance Globalcom Services, Inc.
BalsamWest FiberNET, LLC	iNETWORKS Group, Inc.	Sage Telecom, Inc.
Bandwidth.com CLEC, LLC	Infotelecom, LLC	SBC Long Distance, LLC
BellSouth Long Distance, Inc.	IntelePeer, Inc.	SCANA Communications, Inc.
Broadplex, LLC	Inteltrace, Inc.	School Link, Inc.
Broadvox-CLEC, LLC	Intellcall Operator Services, Inc.	Sprint Communications Company, L.P.
Brydels Communications, LLC	Intellifiber Networks, Inc.	Star Wireless, Inc.
BT Communications Sales LLC	Intrado Communications, Inc.	Sunesys, LLC
Buggs Island Telephone Cooperative	IPC Network Services, Inc.	SunGard NetWork Solutions, Inc.
Cbeyond Communications, LLC	KBSL Telecom, Inc.	TDPC, Inc.
Cebridge Telecom NC, LLC	Kentucky Data Link, Inc.	The New Telephone Company, Inc.
CND Acquisition Corporation	Legacy Long Distance International, Inc.	Time Warner Cable Information Services (N. C.), LLC
CommPartners, LLC	Level 3 Communications, L.L.C.	T-NETIX, Inc.
Computer Central of Wilson, Inc.	Linkup Telecom, Inc.	Touchtone Communications Inc.
ComScope Communications, Inc.	LMK Communications, LLC	tw telecom of north carolina l.p.
Custom Teleconnect, Inc.	Managed Services, Inc.	UCN, Inc.
DIECA Communications, Inc.	Network Innovations, Inc.	Velocity.Net Communications, Inc.
DSLnet Communications, LLC	Network Telephone Corporation	Verizon Select Services, Inc.
DukeNet Communications, LLC	Neutral Tandem - North Carolina, LLC	Victory Communications, Inc.
Embarq Communications, Inc.	New Edge Network, Inc.	Wave Telecom, Inc.
Fast Phones, Inc.	New Horizons Communications Corp	Wholesale Carrier Services, Inc.
FeatureTel, LLC	NextG Networks of NY, Inc.	Ymax Communications Corp.
Fiber Technologies Networks, L.L.C.	Nexus Communications, Inc.	Zaida Communications Corporation
Fiberlincs, LLC	Norlight Telecommunications, Inc.	Zayo Fiber Solutions, LLC
FRC, LLC	Norlight, Inc.	
Global Capacity Direct, LLC	Pac-West Telecomm, Inc.	

**The data reported by the following companies for each objective for one or more months were inconsistent with Rule R9-8 and Commission orders in Docket No. P-100, Sub 99, rendering the data unusable.**

ACN Communications Services, Inc.	dPI-Teleconnect, L.L.C.	New East Telephony, Inc.
Airespring, Inc.	Granite Telecommunications, LLC	QuantumShift Communications, Inc.
Aspire Telecom, Inc.	Image Access, Inc.	Ready Telecom, Inc.
BCN Telecom, Inc.	Matrix Telecom, Inc.	TelCove Operations, Inc.
Birch Communications, Inc.	Metrostat Communications, Inc.	Trans National Communications International, Inc.
Birch Telecom of the South, Inc.	Midwestern Telecommunications, Inc.	Windstream NuVox, Inc.
Connect Communications, LLC	Momentum Telecom, Inc.	

**The following companies have not filed a service quality report.**

Access Fiber Group, Inc.	ExteNet Systems, Inc.	RidgeLink, LLC
BetterWorld Telcom, LLC	MCC Telephony of the South, LLC	Safari Communications, Inc.
Broadview Networks, Inc.	McGraw Communications, Inc.	Talkspan Inc.
Cincinnati Bell Any Distance, Inc.	NET TALK.COM, INC.	Tele Circuit Network Corporation
Cox North Carolina Telecom, L.L.C.	New Dimension Communications, Inc.	Teledias Communications, Inc.
Cypress Communications Operating Company, LLC	NextGen Communications, Inc.	Velocity The Greatest Phone Company Ever, Inc.
Entelegent Solutions, Inc.	Port City Multimedia, Inc.	

**The following companies have opted into Section H regulation.**

AT&T Communications of the Southern States, LLC  
BellSouth Telecommunications, Inc.  
TCG of the Carolinas, Inc.  
Verizon South, Inc.