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BEFORE THE ARIZONA CORPORATIO... COMMISSION

COMMISSIONERS
GARY PIERCE- CHAIRMAN
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

IN THE MATTER OF THE JOINT NOTICE AND APPLICATION OF QWEST CORPORATION, QWEST COMMUNICATIONS COMPANY, LLC, QWEST LD CORP., EMBARQ COMMUNICATIONS, INC. D/B/A CENTURY LINK COMMUNICATIONS, EMBARQ PAYPHONE SERVICES, INC. D/B/A CENTURYLINK, AND CENTURYTEL SOLUTIONS, LLC FOR APPROVAL OF THE PROPOSED MERGER OF THEIR PARENT CORPORATIONS QWEST COMMUNICATIONS INTERNATIONAL INC. AND CENTURYTEL, INC.	DOCKET NOS. T-01051B-10-0194 T-02811B-10-0194 T-04190A-10-0194 T-20443A-10-0194 T-03555A-10-0194 T-03902A-10-0194

POST HEARING BRIEF OF

MCLEODUSA TELECOMMUNICATIONS SERVICES INC.

D/B/A PAETEC BUSINESS SERVICES

JANUARY 18, 2011

(PUBLIC VERSION)

TABLE OF CONTENTS

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McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services, hereby files its Post-Hearing Brief in the above-captioned docket.

INTRODUCTION

McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services ("PAETEC") respectfully submits its post-hearing brief regarding the Joint Application of Qwest Communications International, Inc. and CenturyLink, Inc. (collectively, the "Joint Applicants") for approval of a proposed merger under which CenturyLink will assume control of the Qwest operating companies.

All mergers create uncertainty and carry with them the risk of failure and harm to not only shareholders, but also customers. The documented problems and failures of recent similar mergers between ILECs demonstrate the particular risks associated with mergers of the kind being considered here. In response to the concerns that the CLECs have expressed about the risks of the transaction and the potential for harm to competition, CenturyLink points to what it calls its "track record" of previous acquisitions. The evidence shows, however, that CenturyLink's past acquisitions have not been free from problems and certainly cannot be taken as any sort of guarantee of success here. To the contrary, the evidence shows, for example that CenturyLink has experienced significant integration problems particularly relating to systems conversions in connection with its acquisition of a much larger company, Embarq, only a year ago. That evidence further shows that CenturyLink has not yet completed its integration efforts relating to the Embarq acquisition and that such efforts are likely to continue well into 2011. Finally, the evidence shows that this transaction, in terms of its scale and scope, is not like any transaction that CenturyLink has completed previously. CenturyLink's lack of experience with anything close to Qwest's much larger wholesale service volumes and unique BOC responsibilities means that this transaction, to a very great extent, represents uncharted territory for CenturyLink.

The risks of the transaction are particularly unique for CLECs. CLECs will continue to depend on Qwest for essential wholesale services and facilities that CLECs need to provide

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competitive local service to the vast majority of their respective end users, while Qwest remains the dominant competitor of CLECs in the retail market for business customers. As the Commission Staff aptly observed, the proposed merger presents the potential for irreparable harm to the competitive environment.[1] The stakes are undeniably high and require that the merger be approved, if at all, subject to substantial conditions designed to effectively mitigate the risks of harm to competition and the public interest.

On November 24, the Joint Applicants entered into a settlement agreement with the Commission Staff and the Residential Utility Consumer Office ("Staff Settlement"). The Staff Settlement was largely modeled on a settlement that had previously been entered into between the Joint Applicants and one of the CLEC intervenors, Integra Telecom ("Integra Settlement"), although the Staff Settlement also included certain modifications to the Integra Settlement that were designed to provide some additional protections. The commitments reflected in those settlements address a number of the concerns that PAETEC has about the proposed merger and PAETEC agrees that those commitments are necessary to protect the public interest. Accordingly, PAETEC urges the Commission to adopt the commitments set forth in the Integra Settlement and the Staff Settlement as conditions to approval of the Proposed Merger.

However, in at least one important area – regarding Operations Support Systems ("OSS") – those commitments fall short. In particular, the Integra Settlement and the Staff Settlement permit the merged company, subject to certain restrictions, to replace Qwest's OSS, upon which PAETEC and other CLECs rely to provide service to their end user customers, after only 24 months following the closing of the transaction. This time period is less than the three to five year period over which the company expects to cut costs in order to realize an anticipated $575 million in operating synergies. And it is insufficient to protect CLECs against deterioration of access to, and

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[1] Ex. S-2 (Fimbres Direct) at page 16, lines 7-10 ("Staff sees the wholesale and regulatory conditions (see Attachment 1) as precautions to limit the harm that could result to the competitive environment which, once damaged, would be impossible to repair given the pace at which telecommunications technology is evolving and the industry is moving.")

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functionality of, Qwest's OSS, thus exposing CLECs, as well as competition, to substantial risk of harm. Further, although the Staff Settlement contains additional language that is not found in the Integra Settlement that requires the merged company to provide OSS that is "functionally equivalent" to that currently used by Qwest, that language does not provide sufficient clarity or assurance that PAETEC will continue to receive the degree of electronic "flow through" that it enjoys today when using Qwest's systems. Finally, the Staff Settlement does not require that any replacement of the Qwest OSS be subject to third party testing to assure that such replacement does not adversely impact CLECs or their ability to effectively compete.

In order to assure that competition is adequately protected from at least an OSS perspective, PAETEC urges the Commission to condition approval of the proposed merger on the following additional or clarified commitments regarding OSS:

(1) a commitment to maintain Qwest's existing OSS for at least three years to match the Joint Applicants' 3-5 year synergy period;

(2) a commitment that any change in OSS will not adversely impact the operations of CLECs' back office systems;

(3) a commitment to, in connection with changes to Qwest OSS, to conduct third party testing to assure that specific components of wholesale OSS service quality, including support, data, billing, functionality, performance, electronic flow through and electronic bonding, are not degraded; and

(4) a commitment that any costs resulting from the modification or replacement of the Qwest OSS, including the costs of making the OSS functionally equivalent to the existing Qwest OSS, will be considered costs of the transaction and will not be charged to CLECs.

Indeed, it appears that the Joint Applicants and Staff believe that second proposed condition above is covered by the "functionally equivalent" in Condition 19 of the Settlement Agreement. However, even if that is the case, it would be administratively efficient for the Commission to clarify that condition as PAETEC proposes in this proceeding in order to avoid unnecessary disputes in the future.

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SUMMARY REGARDING ISSUES IDENTIFIED BY JUDGE MARTIN

In its Brief, PAETEC has addressed critical wholesale issues, including those issues raised by Judge Martin that are pertinent to CLECs. Below is a summary of the portions of the brief that address Judge Martin's issues. However, as set forth in its brief, PAETEC believes there are other key issues that the Commission must consider in assessing the proposed merger.

1. Should the Commission be concerned about financial risk factors identified by investment rating agencies, including the fact that this transaction comes so soon after CenturyLink's acquisition of Embarq?

Although the Joint Applicants have argued that the transaction is in the public interest because the post-merger company will be financially stronger,[2] investment rating agencies analyzing the proposed merger shortly after it was announced expressed a number of concerns. In light of those concerns, although the ratings agencies upgraded their ratings of Qwest, those agencies also downgraded their ratings of the CenturyLink companies.[3] In support of its decision to change its ratings of CenturyLink companies from "stable" to "negative," Moody's stated:

> The negative rating outlook for CenturyLink 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.[4]

Another ratings agency, Standard and Poor's observed that, although the transaction would result in a lower leverage for the combined company, "the pro forma leverage is probably not supportive of an investment-grade credit profile, despite prospects for potential deleveraging."[5] Standard and Poor's also noted that the transaction "increase the company's exposure to higher density markets,

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[2] See, e.g., Transcript, Vol. 1, page 18, lines 5-9 (Glover).
[3] Ex. CLT-1 (Glover Direct), Ex. JG-3, JG-4.
[4] Ex. CLT-1 (Glover Direct), Ex. JG-3.
[5] Ex. CLT-1 (Glover Direct), Ex. JG-4.

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which have significant competition from the cable providers."[6] Rather than a "knee-jerk reaction," as suggested by the RUCO Staff witness,[7] there is nothing to suggest that these analyses are anything other than what they appear to be: a reasoned and reasonable evaluation of the risks presented by the transaction. The risks discussed by the ratings agencies are similar to the risks identified in testimony provided on behalf of the CLECs. See, infra, pages 17-18. The Commission certainly must consider these risks as part of any complete evaluation of the public interest.

2. Should the Commission be concerned about CenturyLink's capability to integrate with Qwest in a technically sound manner, in light of testimony regarding CenturyLink's lack of experience as a BOC operating in major urban areas?

Notwithstanding CenturyLink's assertion that all of its previous integration efforts have been successful,[8] the evidence shows CenturyLink has experienced numerous and significant problems in its efforts to integrate Embarq. These problems have caused CenturyLink to fail to meet service quality measures and have had an adverse impact on wholesale customers. See, infra, pages 13-22. These problems call into serious question CenturyLink's technical capabilities to manage the even greater challenges associated with integrating a much larger company, Qwest.

3. Should the Commission be concerned about the lack of post-merger integration plans?

CenturyLink argues that it possesses particular skill and experience in integrating companies that alleviate any risk associated with the transaction.[9] At least in the critical area of OSS, there is no evidence that any of the integration planning efforts that CenturyLink has touted as its standard process have taken place. Further, CenturyLink's claims about its track history of

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[6] Ex. CLT-1 (Glover Direct), Ex. JG-4.
[7] Transcript, Vol. 2, page 497, lines 1-5.
[8] Ex. CTL-4 (Schafer Direct) at page 5, lines 25-27.
[9] Transcript, Vol. 1, page 172, lines 3-5 (Glover).

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acquisitions wholly ignore the fact that this transaction, in terms of its scale and scope, is unlike any transaction that CenturyLink has been involved in previously. See, infra, pages 18-22, 31-33. Vague assurances cannot substitute for conditions that will effectively protect the public interest.

4. Is it appropriate to rely almost entirely on a settlement entered into by one CLEC (Integra) as the basis for wholesale conditions to protect all CLECs?

Different CLECs operate differently, and the conditions that one CLEC, Integra, finds acceptable will not necessarily provide adequate protection for all CLECs. PAETEC, in particular, has presented evidence that its systems use a greater degree of automation and rely more heavily on e-bonding with Qwest's OSS than is true for Integra. Integra's reliance on manual processes means that future changes to Qwest's OSS, should those changes degrade the functionality, access and robustness of the e-bonding capabilities, will not impact Integra to the degree that such changes could impact the automated processes used by PAETEC. See, infra, page 36. Integra's willingness to accept CenturyLink's commitment to not retire or modify Qwest's OSS for two years after closing does not provide sufficient protection for PAETEC.

5. Should third party testing be required?

Nondiscriminatory access to ILEC OSS that is efficient, reliable and accurate is critical to the ability of CLECs to effectively compete. Qwest's OSS went through strenuous third party testing in connection with Qwest obtaining authorization to provide interLATA service. In the absence of commercial volumes of wholesale orders, such third party testing is the best indicator that the ILEC OSS are operationally ready. CenturyLink has not previously handled anything approaching the volumes of orders handled on a regular basis by Qwest and, absent third party testing, there is no way to be sure that any OSS that CenturyLink might introduce to replace Qwest OSS will provide the same levels of functionality and reliability. See, infra, pages 39-40.

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DISCUSSION

I. STANDARD OF REVIEW: THE PROPOSED MERGER MAY BE APPROVED ONLY SUBJECT TO SUCH CONDITIONS NECESSARY TO PROTECT THE PUBLIC INTEREST

Under clear precedent, the Commission must consider whether the proposed reorganization in this docket meets the requires of Rule 803.C of the Commission's Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R14-2-801 through -806 ("Affiliated Interests Rules") ***and*** whether the proposed reorganization is in the public interest.

The Commission has the legal authority to review the Companies' proposed reorganization, given its authority over public service corporations pursuant Article 15, Section 3 of the Arizona Constitution, Title 40 of the Arizona Revised Statutes (A.R.S.) and its Affiliated Interests Rules. Although CenturyTel, Inc. and Qwest Communications International, Inc. are not public service corporations as defined in Article 15, Section 2 of the Arizona Constitution, the telephone operating subsidiaries named in the Arizona Joint Application are public service corporations subject to the Commission's authority and its Affiliated Interests Rules.[10]

Under the Commission's Affiliated Interests Rules, the proposed reorganization must satisfy Rule 803.C, which states:

> At the conclusion of any hearing on the organization or reorganization of a utility holding company, the Commission may reject the proposal if it determines that it would ***impair the financial status of the public utility***, otherwise ***prevent it from attracting capital at fair and reasonable terms***, or ***impair the ability of the public utility to provide safe, reasonable and adequate service***.[11]

These three factors are clearly important for the Commission to take into account during its review.

However, Rule 803.C is merely one aspect of inquiry required of the Commission in response to a proposed merger or acquisition. The Commission also must consider the *public*

[10] See, Ex. JA-1 (Joint Application) at p. 2, fn. 2.
[11] A.A.C. R14-2-803.C (emphasis added).

interest. In Decision No. 67454 (January 4, 2005), which denied the proposed merger of Unisource Energy Corporation with Saguaro Utility Group, L.P., the Commission expressly addressed the standard of review for a proposed merger, acquisition or reorganization under the Affiliated Interests Rules.[12] The Commission noted that Rule 803.C set only a minimum standard for consideration of transactions under the Affiliated Interest Rules.[13] The Commission found that it also "must act in the public interest," that the inquiry into the public interest was "broad" and that it should "examine all the evidence available in determining what is in the public interest."[14] The Commission also concluded that "The public interest requires that the Commission apply the Affiliated Interest Rules in a manner that will maximize protection to ratepayers."[15]

The Commission has reiterated this requirement in other decisions concerning reorganizations affecting public service corporations and has typically imposed conditions in order to ensure that approval of a proposed reorganization will serve the public interest.[16] In approving proposed reorganizations, the Commission has expressly stated in the context of a proposed reorganization that "Approval of the transaction proposed in the Application would serve the public interest only if conditions are imposed to provide adequate protection to ratepayers,"[17] and has adopted conditions as part of its approval of a proposed transaction.[18]

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[12] *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.
[13] *Id.* at p. 28.
[14] *Id.* at p. 49, Conclusion of Law No. 5.
[15] *Id.* at p. 49, Conclusion of Law No. 6.
[16] *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.
[17] *Id.* at p. 11, Conclusion of Law No. 6.
[18] *See, e.g., id.; 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.

Finally, the Commission has recognized that "the individual circumstances of each case influence the scope and breadth of the 'public interest' inquiry."[19] In this case, it is important to consider that the Commission has repeatedly supported and facilitated telecommunications competition. For example, the Commission has opposed Qwest's forbearance petitions at the FCC due to concerns about the adverse impact on available wholesale services and the detrimental impact on competition. A critical aspect of the public interest in the proposed merger/acquisition in this docket is the potential impact on Qwest's obligations under the 1996 Telecommunications Act and on wholesale service – which could severely harm competition unless appropriate safeguards and conditions are imposed.

II. RECENT HISTORY DEMONSTRATES THAT ILEC MERGERS SUCH AS THE PROPOSED MERGER IN THIS CASE POSE SUBSTANTIAL RISKS OF FAILURE AND HARM TO CUSTOMERS.

Mergers and acquisitions are inherently risky and unpredictable.[20] As Dr. August Ankum, an expert economist testifying on behalf of PAETEC and other CLECs, explained, most mergers fail to successfully achieve their expected benefits and many result in, or are followed by, serious problems that harm both shareholders and customers.[21] Indeed, the majority of mergers (two out of three) fail, according to both the testimony of Dr. Ankum and the academic literature.[22] Mergers between ILECs in the telecommunications industry have proven to be particularly risky, as illustrated by three recent ILEC mergers similar to the Proposed Merger in this case: (1) Hawaiian Telecom's acquisition of Hawaii's BOC, Verizon Hawaii; (2) FairPoint's acquisition of Verizon operations in northern New England; and (3) Frontier's acquisition of 4.8 million Verizon lines in 14 states. Dr. Ankum's testimony documents substantial post-merger problems with these

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[19] *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. 29.
[20] Ex. PLT-4 (Ankum Direct) at page 5, lines 14-17.
[21] Ex. PLT-4 (Ankum Direct) at page 5, line 17 – page 6, line 15.
[22] Ex. PLT-4 (Ankum Direct) at page 5, line 17 – page 6, line 15, fn. 4.

transactions and an "enormous gulf between the anticipated benefits claimed by company management and . . . ensuing realities."[23]

Rather than achieving the benefits projected by management, these mergers resulted in an array of serious problems, including severe service quality declines and OSS failures.[24] Hawaiian Telecom, for example, experienced significant slow-downs in call answer and handling times in its customer service centers as well as (a) billing errors; (b) missed deadlines for special access circuit orders; (c) delays porting telephone numbers; and (d) lack of a functioning electronic interface for wholesale customers to submit and monitor trouble tickets following its merger.[25] In December 2008, Hawaiian Telecom filed for Chapter 11 bankruptcy protection, listing $1.4 billion in assets and $1.3 billion in debts.[26]

Similar to the Hawaiian Telecom transaction, FairPoint experienced "widespread disruptions to wholesale customers due to OSS system failures, order fall-outs, and manual processing work-arounds" following its acquisition of Verizon exchanges.[27] In addition, FairPoint's retail service declined to a point that triggered maximum payments under Vermont's retail service quality plan.[28] Prior to securing regulatory approval of its transaction, Fairpoint offered a long list of expectations, assurances and commitments related to expected synergies, integration costs, cash flow and services.[29] A little over two years following closure of the FairPoint transaction, the Vermont Public Service Board stated that: "it is abundantly clear that FairPoint failed to realize any of [its] forecasts."[30] The New Hampshire Public Utilities Commission concluded similarly that:

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[23] Ex. PLT-4 (Ankum Direct) at page 29, lines 12 – page 31, line 1, Ex. AA-2.
[24] Ex. PLT-4 (Ankum Direct) at page 29, line 12 – page 31, line 1, Ex. AA-2.
[25] Ex. PLT-4 (Ankum Direct) at page 30, lines 12-14; Ex. PLT-1 (Gates Direct) at page 91, lines 1-9.
[26] Ex. PLT-1 (Gates Direct) at page 91, lines 10-13.
[27] Ex. PLT-4 (Ankum Direct) at page 30, lines 15-18.
[28] Ex. PLT-4 (Ankum Direct) at page 30, lines 15-16.
[29] Ex. PLT-1 (Gates Direct) at page 92, line 9 - page 93, line 22.
[30] Ex. PLT-1 (Gates Direct) at page 93, lines 24-28.

> Fairpoint has failed to meet the obligations it made in 2008 to the states of New Hampshire, Maine and Vermont and their citizens. Among other things, FairPoint made promises about service quality, relations with wholesale competitors and broadband build-out, and committed itself to performance superior to Verizon . . . . Due to FairPoint's widespread operational shortcomings arising from its systems cutover, however, residential and business customers, as well as wholesale customers and competitors who rely on FairPoint services, endured even poorer service quality than was the case under Verizon.[31]

Like Hawaiian Telecom and FairPoint, Frontier has also experienced "wholesale OSS failures, ordering delays, understaffed access order centers [and] trouble report backlogs" following its acquisition of Verizon exchanges.[32]

These examples provide compelling illustrations of the risks and uncertainties associated with ILEC mergers such as the one in this case. They also demonstrate that claims of synergy savings are notoriously unreliable and are often overtaken by operational problems and unexpectedly high integration costs. For example, FairPoint expected to realize $60-75 million in annual net cost savings through efficiency improvements in back-office and OSS systems. Contrary to the company's pre-merger claims, those synergies never materialized. Instead, FairPoint experienced severe operational difficulties and cost over-runs during its post-transaction efforts to integrate the legacy Verizon exchanges.[33] As disclosed in FairPoint's 10-K Report three years after its merger, rather than achieve its anticipated $60-75 million dollars in annual synergy savings, FairPoint incurred nearly $30 million in cost over-runs while experiencing operational problems that "required significant staff and senior management attention diverting their focus from other efforts."[34]

Similarly, Hawaiian Telecom expected to realize operational efficiencies by creating new back office systems to replace Verizon's legacy systems just as CenturyLink is likely to do following its acquisition of Qwest.[35] Far from achieving its anticipated synergies, Hawaiian

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[31] Ex. PLT-1 (Gates Direct) at page 98, lines 11-22.
[32] Ex. PLT-4 (Ankum Direct) at Ex. Joint CLECs AA-2, page 2.
[33] Ex. PLT-4 (Ankum Direct) at page 36, lines 1-13; Ex. PLT-1 (Gates Direct), page 91, line 14 - page 97, line 3.
[34] Ex. PLT-4 (Ankum Direct) at page 36, lines 13-20.
[35] Ex. PLT-4 (Ankum Direct) at page 34, lines 10-12.

Telecom's deployment of those new systems produced over $33 million in cost-overruns. As Dr. Ankum observed, Hawaiian Telecom's deployment of its new systems, rather than produce efficiencies, actually "contributed to the financial downfall of the company."[36] The Hawaiian Telecom example not only illustrates the common failure of merged companies to achieve expected merger benefits, but also demonstrates the extent to which mergers can harm the companies they were expected to benefit. Even in the short time since closing on its acquisition of Verizon exchanges, Frontier is experiencing some of the same problems as FairPoint and Hawaiian Telecom, indicating that Frontier does not appear to be on track to realize its projected 500 million dollars in annual operating expect savings.[37]

Ultimately, post merger problems and failures drove both Hawaiian Telecom and FairPoint to file Chapter 11 bankruptcy petitions.[38] Hawaiian Telecom's Chapter 11 filing reported a negative 29.3% rate of return.[39] Facing similar financial distress, FairPoint's Chapter 11 reorganization plan included cut-backs to its broadband commitments and the elimination of a cap on DSL rates that FairPoint had agreed to as part of its merger.[40] In both instances, the mergers were preceded by claims of expected efficiencies and synergies. Yet those synergies never materialized and were, instead, eclipsed by operational problems and high integration costs that ultimately led both merged companies to file Chapter 11 petitions.

Like the Hawaiian Telecom and FairPoint mergers, the proposed merger in this case involves a smaller ILEC purchasing a much larger one based on lofty but vague claims of expected synergies, efficiencies and other benefits. However, the documented failure and experiences of these two recent mergers serves as a warning with respect to the public interest implications of the

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[36] Ex. PLT-4 (Ankum Direct) at page 34, line 20 - page 35, line 25.
[37] Ex. PLT-4 (Ankum Direct) at page 37, lines 5-18.
[38] Ex. PLT-4 (Ankum Direct) at page 28, lines 4-9.
[39] Ex. PLT-4 (Ankum Direct) at page 30, lines 27-28.
[40] Ex. PLT-4 (Ankum Direct) at page 30, lines 5-10.

proposed merger in this case. Those two mergers illustrate plainly that the risks of the proposed merger are not theoretical and pose a serious threat to Arizona consumers and local competition.

III. CENTURYLINK'S RECENT ACQUISITION OF EMBARQ FURTHER DEMONSTRATES AND INCREASES THE RISKS ASSOCIATED WITH ITS ACQUISITION OF QWEST.

CenturyLink touts its alleged track record of acquisitions, asserting that "In each instance, the integration has been successful. Billing, financial, and customer care system conversions have been executed smoothly and in accordance with established timeframes."[41] The evidence, however, tells a different story. In fact, CenturyLink has already demonstrated a record of post-merger integration problems in the short time following its acquisition of Embarq.

First, the challenges of integrating Embarq led CenturyLink, soon after the completion of the Embarq merger, to request a waiver of the FCC's one business day number porting requirement on the ground that compliance would disrupt the ongoing systems changes related to the CenturyTel/Embarq merger. Competitive carriers are highly dependent on the ILEC's ability to "port" a customer (i.e., switch a customer, with that customer's existing telephone number from the ILEC, to a new carrier). The porting interval – the amount of time that it takes the ILEC to switch the customer to a new service provider – is critically important to CLECs' ability to effectively compete.[42] In support of its request for waiver of the one day porting requirement, CenturyLink asserted that complying with the porting requirement would require integration efforts to be suspended, resulting in service disruptions, delays and errors causing – according to CenturyLink – "incalculable additional costs."[43] CenturyLink's confessed inability to meet the FCC's porting requirements provides reason for concern about the priority CenturyLink places on its competitive obligations and about CenturyLink's ability to timely and accurately handle large volumes of porting requests.[44]

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[41] Ex. CTL-4 (Schafer Direct) at page 5, lines 25-27.
[42] Ex. Cox-1 (Howell Direct) at page 4, line 24-page 5, line 2.
[43] Ex. PLT-1 (Gates Direct) at page 76, lines 8-14.
[44] Ex. Cox-1 (Howell Direct) at page 5, lines 9-14.

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CenturyLink has also experienced serious post-merger problems with its Embarq systems integration in North Carolina. As reported by the Communications Workers of America ("CWA"), the Embarq transaction resulted in a number of serious operational, service-affecting problems in North Carolina. Some of the problems that the CWA described in its testimony include:

- "workers...being dispatched to incorrect locations for service"[45]
- "workers reported being dispatched for service with insufficient or incorrect information"[46]
- longer out of service periods and longer delays in initiating service[47]
- differing and confusing software that dispatches/assigns technicians[48]
- "the systems do not appear to be interconnected or coordinated"[49]
- negative impacts on work flow[50]
- "inefficiencies in the new systems"[51]
- "insufficient training and resources"[52] and
- consumer frustration about installation and service appointments not being met and long hold times.[53]

CenturyLink does not dispute the testimony provided by the CWA witness. Rather, CenturyLink's witness, Mr. Schafer, acknowledged, at least to some extent, the problems that

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[45] Gurganus Direct Testimony at page 5, lines 3-4; filed in Docket Control on September 27, 2010.
[46] Gurganus Direct Testimony at page 5, lines 13-14; filed in Docket Control on September 27, 2010.
[47] Gurganus Direct Testimony at page 5, lines 7-10; filed in Docket Control on September 27, 2010.
[48] Gurganus Direct Testimony at pages 5-6; filed in Docket Control on September 27, 2010.
[49] Gurganus Direct Testimony at page 6, lines 16-17; filed in Docket Control on September 27, 2010.
[50] Gurganus Direct Testimony at pages 7-8; filed in Docket Control on September 27, 2010.
[51] Gurganus Direct Testimony at page 8, line 8. *See also,* Gurganus Direct Testimony 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."); filed in Docket Control on September 27, 2010.
[52] Gurganus Direct Testimony at page 4, line 14; filed in Docket Control on September 27, 2010.
[53] Gurganus Direct Testimony at page 10; filed in Docket Control on September 27, 2010.

arose in connection with the conversion of legacy Embarq systems in North Carolina.[54] Specifically, CenturyLink admits that certain electronic records failed to load correctly on approximately 2,000 of a total of 11,500 "devices"[55] (i.e., a point where outside plant facilities are aggregated).[56] This problem, which first arose in May, was a very labor intensive and time-consuming one to fix,[57] and was not fully remedied until late November or early December.[58] CenturyLink acknowledges that the problems encountered in North Carolina resulted in lower service level metrics,[59] an admission that is further supported by service quality reports obtained from the North Carolina Public Utilities Commission website. That evidence reflects failure by CenturyLink companies in North Carolina – Carolina Telephone and Telegraph and Central Telephone -- to meet service quality objectives in the areas of "business office answer times," "repair service answer times," and "out-of-service troubles cleared within 24 hours."[60] Although CenturyLink *has attempted to downplay the impact* of the conversion on service quality,[61] Mr. Schafer also noted that a third CenturyLink company in North Carolina, MEBTEL, did not experience the same service quality issues.[62] When asked about any reasons for this difference between MEBTEL, on the one hand, and North Carolina Telephone and Telegraph and Central Telephone, on the other, Mr. Schafer stated that the difference was that MEBTEL did not experience a systems conversion.[63] What this shows is that the conversion was not just one of many factors contributing to service quality issues, the conversion was the *key* factor.

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[54] Hearing Ex. CTL-5 (Schafer Rebuttal Testimony) at page 7, line 7-page 8, line 15; filed in Docket Control on September 27, 2010.
[55] Ex. CTL-5 (Schafer Rebuttal) at page 8. lines 7-13.
[56] Transcript, Vol. 1, p. 124, lines 2-7 (Schafer).
[57] Transcript, Vol. 1, p. 124, lines 9-12. (Schafer)
[58] Transcript, Vol. 1, p. 128, lines 5-8, p. 129, lines 10-14 (Schafer).
[59] Ex. CTL-5 (Schafer Rebuttal) at page 10, lines 16-18.
[60] See Ex. PLT-6; see also Transcript Vol. 1, page 132 line 16-page 133, line 19 (Schafer).
[61] See. e.g., Ex. CLT-5 (Schafer Rebuttal) at page 10, line 16-page 11, line 2.
[62] See Ex. PLT-6.
[63] Transcript, Vol. 1, page 139, lines 15-24 (Schafer).

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Nor does the evidence support CenturyLink's claim that its previous integration efforts have been executed "in accordance with established timeframes."[64] Prior attempts by CenturyLink to integrate systems were neither on-time nor on-budget. CenturyTel stated in its 2001 10-K that "The Company is in the process of developing an integrated billing and customer care system" and completion … is expected to occur in early 2003." However, only two years later, an industry publication reported that CenturyTel's billing system integration efforts had required "substantially more time and money to develop than originally anticipated" and estimated a cost overrun of between $50 million and $60 million.[65] This same publication stated:

> [T]here 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.[66]

In its 2003 10K, CenturyTel acknowledged that "the system remains in the development stage and has required substantially more time and money to develop than originally anticipated. The Company currently expects to complete all phases of the new system no later than mid-2005. In addition, the Company expects to incur additional costs related to completion of the project, including (i) approximately $15 million of customer service related and data conversion costs." Therefore CenturyTel's integrated billing and customer care system implementation was delivered over two years later than planned and additional operational costs were incurred as a result.[67]

Cox Telecom, which has firsthand experience with CenturyLink's efforts to integrate Embarq in Nevada, has provided testimony that further contradicts the rosy picture painted by that CenturyLink attempts to paint. As Kim Howell of Cox Telecom states:

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[64] Ex. CTL-4 (Schafer Direct) at page 5, lines 25-27.
[65] Ex. PTL-1 (Gates Direct) at page 78, lines 6-8, *citing Financial Watch: Integration Costs Loop Over OSS Deployments,* Billing and OSS World, October 1, 2003.
[66] Ex. PTL-1 (Gates Direct) at page 78, lines 8-14, *citing Financial Watch: Integration Costs Loop Over OSS Deployments,* Billing and OSS World, October 1, 2003.
[67] Ex. PTL-1 (Gates Direct) at page 78, line 15-page 79. line 3.

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> The integration of Embarq and the transition to CenturyLink EASE OSS has been and continues to be problematic. Today in Nevada, the EASE system has negatively affected our response time for customer orders to switch phone service from CenturyLink to Cox. At times of high volume, our submitted orders will sometimes time-out, crash or experience other problems. We are frequently on the phone with CenturyLink representatives trying to recover orders that are lost in translation. We continue to be frustrated with the inability to meet our customer's requests on a timely basis and be competitive with CenturyLink when our orders are lost in their operating system. We have found in many cases we are having to call our customers back and push the installation date out as a result of the points of failure in the CenturyLink system.[68]

Cox also observes that CenturyLink is very slow to address OSS problems and that the number of issues has not materially decreased over time.[69] Along these same lines, Mr. Gates attaches to his testimony comments submit to the FCC by tw telecom and Socket Telecom recounting problems they experienced in 2009 – including system outages that prevented the submission of LSRs, inability to complete pre-ordering, and slow response times – during CenturyLink's transition of wholesale customers in legacy Embarq territory from one ordering system to another.[70]

Even more troubling is the fact that the Qwest acquisition comes immediately after the Embarq transaction and *before* the Embarq integration has been completed. CenturyLink's acquisition of Qwest immediately following its acquisition of Embarq is the largest in a rapid series of ever-larger CenturyLink acquisitions. As Dr. Ankum testified, this "presents disturbing similarities to the experience of WorldCom and other failed acquisitions."[71] Indeed, Moody's Rating Service gave CenturyLink a negative rating outlook based on the risks associated with CenturyLink's effort to acquire Qwest immediately following its acquisition of Embarq, stating:

> The negative rating outlook . . . reflects the considerable execution risks in integrating a sizeable company so soon after another large acquisition [Embarq in July 2009].[72]

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[68] Ex. Cox-2 (Howell Surrebuttal) at page 12, lines 10-20.
[69] Ex. Cox-2 (Howell Surrebuttal) at page 13, lines 9-18.
[70] Ex. PLT-1 (Gates Direct) at page 77, line 17-page 78, line 2; Exhibit TG-5.
[71] Ex. PLT-4 (Ankum Direct) at page 11, lines 1-3.
[72] Ex. PLT-4 (Ankum Direct) at page 45, fn. 76.

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Similarly, another ratings agency, Standard & Poor's 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 2001."[73] CenturyLink recognized these risks associated with the Embarq transaction in its own S-4 filing with the SEC, stating:

> [CenturyLink/Qwest] integration initiatives are expected to be initiated before CenturyLink has completed a similar integration of its business with the business of Embarq, acquired in 2009, which could cause both of these integration initiatives to be delayed or rendered more costly or disruptive than would otherwise be the case.[74]

Therefore, the Embarq transaction not only serves an example of problems CenturyLink is likely to have with the proposed merger; it also increases the risk of problems with the proposed merger given the short time between the two transactions.

IV. THE PROPOSED MERGER'S RISKS ARE FURTHER ACCENTUATED BY CENTURYLINK'S LACK OF WHOLESALE EXPERIENCE AT VOLUMES COMPARABLE TO QWEST'S AND THE ABSENCE OF ANY EXPERIENCE WITH QWEST'S BOC OBLIGATIONS.

The challenges associated with Embarq acquisition pale in comparison to the challenges associated with CenturyLink's acquisition of Qwest, which is over twice the size of Embarq[75] and subject to unique additional BOC responsibilities CenturyLink and Embarq have never had.[76] As Dr. Ankum observed:

> To be sure, the challenge of integrating and running Qwest, with its unique BOC obligations, comparatively enormous customer based, substantial wholesale responsibilities, and complex set of operational support systems, is particularly daunting and far beyond anything CenturyLink has faced to date.[77]

[73] Ex. CLT-1 (Glover Direct), Ex. JG-4.
[74] Ex. PLT-1 (Gates Direct) at page 77, lines 7-13, quoting CenturyLink Form S-4 at page 16.
[75] Ex. PLT-4 (Ankum Direct) at page 11, lines 14-17.
[76] Ex. PLT-1 (Gates Direct) at page 23, line 8 - page 24, line 7.
[77] Ex. PLT-4 (Ankum Direct) at page 12, lines 4-8.

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The merger risks noted above are further accentuated by the fact that CenturyLink lacks anything close to Qwest's experience in providing wholesale services to CLECs -- either at Qwest's wholesale volumes or under Qwest's special BOC obligations. As Dr. Ankum testified:

> I have already noted that most mergers are not successful, even as measured by the ultimate impact of the merger on shareholders. Yet more troubling in this case is the fact that CenturyTel is seeking to acquire a much larger Bell Operating Company ("BOC") while it is still integrating the recently acquire Embarq, a company that was already about four times larger than the original CenturyTel. If the successful outcome of mergers is generally in question, the outcome of this one is particularly so.[78]

A Commission Staff witness, Mr. Fimbres, echoes the concerns expressed by Dr. Ankum:

> Until recently with the acquisition of Embarq, CenturyLink's operations have been focused on rural areas. Qwest is a large ILEC serving many large metropolitan areas in its 14 state region. Qwest is also a BOC and subject to § 271 obligations. CenturyLink has no experience with § 271 obligations. For this reason, conditions regarding Qwest's obligations are critical to ensure that it continues to meet its obligations in this regard.[79]

PAETEC shares these concerns. CenturyLink's traditional focus of operations on less densely populated areas[80] means that it has not faced the level of competition and wholesale service demand that ILECs such as Qwest have faced operating in larger metropolitan areas.[81] Collectively, this lack of experience and exposure to the operational needs of wholesale customers with high volume of transactions raises profound doubts about the company's ability to meet the demands of wholesale customers operating in more densely populated urban and suburban areas served by Qwest. CenturyLink's acquisition of a much larger ILEC and lack of experience with Qwest's wholesale volumes and responsibilities magnify the risks otherwise inherent in ILEC mergers such as this one.

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[78] Ex. PLT-4 (Ankum Direct) at page 10, lines 9-15.

[79] Ex. S-2 (Fimbres Direct) at page. 10, lines 18-22.

[80] Ex. PLT-1 (Gates Direct) at page 23, line 15 – page 24, line 7.

[81] See, e.g., Ex. CLT-1 (Glover Direct), Ex. JG-4 (Qwest acquisition "increases the company's exposure to higher density markets, which have significant competition from cable providers").

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CenturyLink and Qwest cannot process number porting requests quickly, and efficiently, following the merger, competitors and competition will suffer.

Most competitors also rely upon the incumbent for wholesale facilities, including unbundled network elements and other wholesale products, that enable them to reach end-user customers. Without these facilities, competitors cannot offer competitive services. Unfortunately, CenturyLink also lacks experience provisioning these facilities. Mr. Gates testified that CLECs purchase a total of ***BEGIN HIGHLY CONFIDENTIAL [redacted] END HIGHLY CONFIDENTIAL*** UNE loops from CenturyLink in Arizona,[87] and ***BEGIN HIGHLY CONFIDENTIAL [redacted] END HIGHLY CONFIDENTIAL*** from CenturyLink nationally.[88] In contrast, CLECs purchase ***BEGIN HIGHLY CONFIDENTIAL [redacted] END HIGHLY CONFIDENTIAL*** UNE loops from Qwest in Arizona alone.[89]

Similar data also shows that CenturyLink processes far fewer requests for enhanced extended links (EELs)[90] and collocation[91] than Qwest. Collectively, these data show that CenturyLink does not currently process anything close to the same volume of orders from wholesale customers or competitors that Qwest currently processes. As such, CenturyLink will soon be controlling an exponentially larger wholesale operation than it has operated to date.

Further, CenturyLink will be acquiring Arizona's BOC, which has wholesale responsibilities and obligations with which CenturyLink has no experience. In particular, BOCs are held to additional duties under Sections 271 and 272 of the Act which underlie their legal right to operate in the interLATA market. The obligations under sections 271 and 272 include a number of provisions that support competition, and which cannot be ignored if this transaction is approved. However, that is precisely what may happen.

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[87] Ex. PLT-1CF (Gates Direct) (Highly Confidential) at page 24, line 16 - page 25, line 1.
[88] Ex. PLT-1CF (Gates Direct) (Highly Confidential) at page 25, lines 8-9.
[89] Ex. PLT-1CF (Gates Direct) (Highly Confidential) at page 25, lines 9-11.
[90] Ex. PLT-1CF (Gates Direct) (Highly Confidential) at page 25, line 13 – page 26, line 3.
[91] Ex. PLT-1CF (Gates Direct) (Highly Confidential) at page 26, lines 4-12.

CenturyLink's lack of experience and exposure to wholesale customers at anything close to the levels experienced by Qwest is well established and beyond genuine dispute. As Joint CLEC witness, Mr. Gates, explained, the Joint Applicants' own data shows that by a number of different measures, CenturyLink's wholesale experience is significantly less than Qwest's. For example, CenturyLink processed a total of ***BEGIN HIGHLY CONFIDENTIAL [redacted] END HIGHLY CONFIDENTIAL*** number porting requests from competitors in Arizona in 2009[82] and ***BEGIN HIGHLY CONFIDENTIAL [redacted] END HIGHLY CONFIDENTIAL*** number porting requests from competitors company-wide (i.e., legacy Embarq plus legacy CenturyTel) during 2009.[83] In contrast, Qwest processed ***BEGIN HIGHLY CONFIDENTIAL [redacted] END HIGHLY CONFIDENTIAL*** number porting requests from competitors in Arizona BEGIN HIGHLY CONFIDENTIAL [redacted] END HIGHLY CONFIDENTIAL ports company-wide *in the first half of 2010 alone.*[84]

In other words, Qwest processes, on average, ***BEGIN HIGHLY CONFIDENTIAL [redacted] END HIGHLY CONFIDENTIAL*** times more number porting requests in Arizona alone than CenturyLink does throughout its entire territory nationwide.[85] On a company-wide basis, Qwest processes BEGIN HIGHLY CONFIDENTIAL [redacted] END HIGHLY CONFIDENTIAL number ports than does CenturyLink.[86] As the Commission knows, number porting is essential for competition because consumers expect to retain their telephone numbers when they switch from the ILEC to a competitive provider. If consumers cannot retain their phone number or ensure that their telephone numbers will transfer immediately and seamlessly when changing providers, then consumers will be reluctant to change providers. Therefore, if

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82 Ex. PLT-1CF (Gates Direct) (Highly Confidential) at page 24, lines 12-14.
83 Ex. PLT-1CF (Gates Direct) (Highly Confidential) at page 24, lines 14-16.
84 Ex. PLT-1CF (Gates Direct) (Highly Confidential) at page 24, line 14 – page 25, line1.
85 Ex. PLT-1CF (Gates Direct) (Highly Confidential) at page 25, lines 1-3.
86 Ex. PLT-1CF (Gates Direct) (Highly Confidential) at page 25, lines 3-5.

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As Mr. Gates testified, in large part because of its duties as a BOC, Qwest has operated for many years in a manner that satisfies its state-approved performance assurance plans (or otherwise pay penalties for failing to do so) and allows it to continue providing interLATA services pursuant to authority granted under section 271.[92] In contrast, CenturyLink has ***never*** had to perform to those standards.

V. THE PROPOSED MERGER'S RISKS FALL PRIMARILY ON QWEST'S WHOLESALE CUSTOMERS AND COMPETITION.

Any merger has, as its ultimate objective, the goal of increasing shareholder value.[93] However, private shareholder interests do not necessarily align with the public interest that the Commission is obligated to protect in its review of telecommunications mergers. To the contrary, as Dr. Ankum observed, "an ILEC's pursuit of profit and increased shareholder value through the acquisition of another ILEC inherently conflicts in many ways with the Commission's mandate to promote the public interest and competition."[94] As Dr. Ankum explains, "[T]he risks and gains of a merger are not evenly distributed among all stakeholders,"[95] rather, a merger's risks fall disproportionately on captive customers, such as CLECs, that have no alternatives for essential facilities they need to compete:

> CenturyLink's and Qwest's shareholders, for example, can sell their shares if they anticipate that things will go awry, or alternatively hold on to their shares to recoup whatever benefits they may anticipate: It is a risk-return tradeoff each shareholder is free to either assume or walk away from. However, this freedom of choice does not exist for other captive stakeholders. Specifically, retail customers in captive segments of retail markets have little or no choice and neither do wholesale customers, such as CLECs, who critically depend on the Joint Petitioners for interconnection, loops, transport, collocation and a variety of other wholesale network inputs. That is, captive retail and wholesale customers will not

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[92] See, e.g., Ex. PLT-1 (Gates Direct) at page 23, lines 10-12; page 31, lines 3-14; page 44, line 1 – page 45, line 20.
[93] Ex. PLT-4 (Ankum Direct) at page 22, lines 1-4.
[94] Ex. PLT-4 (Ankum Direct) at page 22, lines 10-12.
[95] Ex. PLT-4 (Ankum Direct) at page 8, lines 22-23.

only reap no gains if the proposed transaction is successful, they may experience great harm when things go awry (as they have in so many of these ventures).[96]

As Mr. Gates explained, Qwest's "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 supracompetitive rates ILECs are currently charging for special access in areas where they have received special access pricing flexibility."[97]

In this case, the merged company's pursuit of over $600 million in synergies, at the same time it faces substantial post-merger integration costs and inevitable merger-related operational problems, creates a substantial risk to the public interest -- particularly to wholesale customers and local competition. All businesses strive to minimize their costs, increase their market share and maximize their revenues. However, the merged company's pursuit of an aggressive synergy target in the face of substantial integration costs will place enormous additional pressure on the merger company to achieve these ends. Further, the merged company will have a strong incentive to realize these synergies through cuts in the wholesale services that the company provides to the CLECs, with whom the merged company will compete. To that end, the FCC noted in its *Local Competition Order*, "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."[98] With respect to the operation of these incentives on the post-merger company, Dr. Ankum has observed:

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[96] Ex. PLT-4 (Ankum Direct) at page 9, lines 3-13; see also Ex. PLT-1 (Gates Direct) at page 16, lines 10-14 ("In rejecting Qwest's recent petition for forbearance in the Minneapolis, Denver, Seattle, and Phoenix metropolitan statistical areas ('MSAs'), the FCC concluded that '[t]he record does not reflect any significant alternative sources of wholesale inputs for carriers in the four MSAs.'").

[97] Ex. PLT-1 (Gates Direct) at page 17, lines 4-9.

[98] *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")* at ¶ 10; *see also* Transcript Vol. 1, p. 201, lines 2-11 (retail service more possible than wholesale service)(testimony of M. Williams).

> Trimming wholesale costs not only saves money on services that are not subject to significant competition, it does so without the likelihood of revenue repercussions: *i.e.*, the cost savings directly improve the bottom line. That is, there are added incentives to cut costs in segments of the companies' operations that are not subject to competitive pressures: most notably, the wholesale business charged with meeting the Section 251 and Section 271 obligations under the Telecommunications Act of 1996. In sum, this dynamic places post-merger CenturyLink at odds with captive CLEC wholesale customers.[99]

As an ILEC and as Arizona's BOC, Qwest owns and controls the vast majority of the State's core telecommunications infrastructure, which is ubiquitously deployed and ultimately connected to every residence and business throughout Qwest's broad service area. That infrastructure not only provides the platform for Qwest's service to its own retail customers, but also serves as the network platform on which competitive providers -- i.e., CLECs -- depend for access to their end-user retail customers.

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VI. ADDITIONAL CONDITIONS ARE NEEDED TO PROTECT AGAINST DETERIORATION OF CLEC ACCESS TO, AND FUNCTIONALITY OF, QWEST'S OPERATIONS SUPPORT SYSTEMS ("OSS").

A. High Quality OSS Is Critical To The Ability Of CLECs To Provide Competitive Local Services.

The FCC defines OSS to include five functions: (1) pre-ordering, (2) ordering, (3) provisioning, (4) maintenance and repair, and (5) billing.[100] OSS includes all of the computer systems, databases and personnel that an ILEC uses to perform internal functions necessary for these five functions.[101] The ability of a CLEC to access the ILEC systems and databases on a nondiscriminatory basis to review customer information and submit and review orders is absolutely vital to the efficient operation of the industry. The systems must be efficient, reliable and accurate. Inefficient systems that require extensive manual intervention, for instance, would

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[99] Ex. PLT-4 (Ankum Direct) at page 42, line 19 – page 43, line 6.

[100] *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, Released December 23, 2002 ("*Qwest 9 State 271 Order*") at ¶ 33.

[101] Ex. PLT-1 (Gates Direct) at page 32, line 17 – page 33, line 2.

make doing business with the ILEC difficult, more costly, and more prone to error because of the increased manual nature of the work.[102]

The FCC has determined OSS to be a "network element."[103] Consequently, a CLEC must be permitted nondiscriminatory access to an ILEC's OSS functions in order to provide pre-order information to potential customers, sign up customers, place orders for services or facilities, track the progress of its orders to completion, obtain relevant billing information from the ILEC, and obtain prompt repair and maintenance services for its customers.[104] Further, OSS was one of the first issues that the FCC had to address in Section 271 proceedings. Specifically, the FCC concluded that it:

> [G]enerally must determine whether the access to OSS functions provided by the RBOC to competing carriers sufficiently supports each of the three modes of competitive entry strategies established by the Act: interconnection, unbundled network elements, and services offered for resale.[105]

The FCC found that CLECs would be "severely disadvantaged, if not precluded altogether, from fairly competing," if they did not have nondiscriminatory access to OSS.[106] As the Commission Staff witness observed:

> The number one issue is the change in access to critical wholesale services and the decline in competitiveness that would result from changes to OSS services that could impact CLECs disproportionately compare to Qwest's retail organizations. The OSSs are essential, for example, in the ordering, installation and repair of unbundled network elements ("UNEs") , one of which is the last mile loop essential to many CLECs using wholesale services.[107]

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[102] Ex. PLT-1 (Gates Direct) at page 33, lines 2-4.
[103] *Local Competition Order* at ¶ 516.
[104] Ex. PLT-1 (Gates Direct) at page 31, line 18 – page 32, line 2.
[105] *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.
[106] *Local Competition Order* at ¶518.
[107] Ex. S-2 (Fimbres Direct) at page 11, lines 7-12.

Qwest itself has described its existing OSS as playing "a crucial role in the transactions between Qwest and all CLECs"[108] and "the lifeblood of...Qwest's wholesale operation..."[109]

B. The Record Establishes A High Risk Of OSS Degradation Following The Merger.

Joint Applicants have provided no concrete detail regarding their plans with respect to the integration of the CenturyLink and Qwest systems.[110] They admittedly have no integration plan; rather they can only point to a process that they intend to use to determine how to integrate. At this point, the uncertainty about what will happen to the OSS after the merger is remarkable, particularly given the critical import of OSS for fair and effective competition in Arizona.

The evidence that has been provided on this issue provides the Commission ample reason for concern that the merger will have an adverse impact on the OSS functionalities and capabilities available to CLECs who currently use Qwest's systems. The evidence shows that the Joint Applicants expect to reduce expenses by $575 million in operating costs synergies to be realized over a period of three to five years following the merger.[111] Further, it is undisputed that the company intends to realize cost savings as a result of eliminating duplicate OSS as it moves to a "single system."[112] **[***HIGHLY CONFIDENTIAL BEGINS** [redacted]

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[108] Ex. PLT-1 (Gates Direct) at page 32, lines 12-14, citing Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.

[109] Ex. PLT-1 (Gates Direct) at page 32, lines 12-14, citing Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at p. 39.

[110] Ex. PLT-1 (Gates Direct) at page 36, line 6 - page 38, line 23.

[111] Ex. PLT-1 (Gates Direct) at page 27, line 14 – page 28, line 2.

[112] Transcript, Vol. 1, page 142, line 17-page 143, line 2 (Schafer) ("long-run" plan to have a single set of systems); see also Transcript, Vol. 2, page 303, lines 16-23 (Hunsucker) ("goal of the company, is to create efficiencies by trying to get to one single system."); Vol. 2 page 304, line 23-page 305, line 8 (cost is one of the factors motivating company's desire to go to a single OSS platform).

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[redacted] **HIGHLY CONFIDENTIAL ENDS***]**

The elimination of duplicative functions (or headcount) and systems will impact wholesale operations. **[***HIGHLY CONFIDENTIAL BEGINS** [redacted] **HIGHLY CONFIDENTIAL ENDS***]**[115]

The evidence further shows that to replace Qwest OSS with CenturyLink OSS would cause substantial harm to CLECs' ability to effectively compete. First, only Qwest's OSS has a track record of handling the commercial volumes in Qwest's legacy territory. Significantly, Qwest, unlike CenturyLink, went through the Section 271 approval process and, as part of that process, Qwest's OSS, CMP and supporting processes and data, were thoroughly tested to ensure that they provided the nondiscriminatory access.[116] According to Qwest, the collaborative OSS test "was

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[113] Ex. PLT-2CF (Gates Surrebuttal) (Highly Confidential) at page 17, line 15 – page 18, line 1.
[114] Ex. PLT-1CF (Gates Direct) (Highly Confidential) at page 28, lines 3-11, citing CenturyLink Response to Integra Arizona Data Request #52(a), Highly Confidential Attachment 52a.
[115] Ex. PLT-2CF (Gates Surrebuttal) (Highly Confidential) at page 29, line 12 – page 30, line 8.
[116] Ex. PLT-1 (Gates Direct), at page 42, line 13 – page 45, line 20 (describing in detail third party testing of Qwest's OSS); Ex. S-2 (Fimbres Direct), page 11, lines 14-16 ("Qwest's OSS were subject to in-depth review during the Arizona § 271 proceeding. This was a lengthy proceeding which spanned several years and was designed to ensure that Qwest met is obligations under §§ 271 and 272 of the 1996 Act.")

the most comprehensive and collaborative of all of the OSS tests conducted to date."[117] CenturyLink's OSS comes with nothing approaching the degree of scrutiny that Qwest's OSS has had.

The overwhelming weight of the evidence shows that Qwest's OSS provide CLECs with greater functionality than is available through CenturyLink's OSS. As the Commission Staff witness states, "Qwest's OSS appear to be superior to both the Embarq and CenturyLink systems. It would be unacceptable, given the substantial time invested by the Commission and others in the Qwest 14 state region during the § 271 process, for CenturyLink to adopt changes to Qwest's support systems that are inferior to what is now available."[118] Similarly, Cox's witness, Mr. Howell, states:

> It is Cox's experience that Qwest's OSS is in many respects superior to the Embarq system CenturyLink is in the process of integrating, so it is troubling that the Joint Applicants have, to my knowledge, been unwilling to firmly commit to using the Qwest OSS in Qwest's legacy territories for a substantial post-merger time period, and to commit that at no point will the service levels made possible by the Qwest OSS be degraded even if the entity eventually goes to a unified OSS throughout its territories.[119]

A chart comparing the capabilities of the Qwest and CenturyLink OSS accompanies Mr. Haas' testimony[120] at Exhibit WAH-2. Unlike Qwest's OSS, which provides real-time processing, EASE offers only "batch" order processing.[121] Qwest's OSS – called IMA -- uses drop down menus that expedite address validation for pre-ordering, unlike CenturyLink's OSS, which requires that the customer's address be input exactly as it appears in EASE.[122] Additionally,

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[117] Ex. PLT-1 (Gates Direct) at page 42, line 17 – page 43, line 1, citing Brief of Qwest Corp., WC Docket No. 02-148, June 13, 2002, at page 111.
[118] Ex. S-2 (Fimbres Direct) at page 15, lines 8-11; see also PLT-1 (Gates Direct), page 35, lines 2-4 ("[T]he existing Qwest OSS and its functionality are more well-documented, and preferred by carriers such as Charter that use both of the merging companies' systems, than the existing CenturyLink OSS.")
[119] Cox -1 (Howell Direct) at page 4, lines 14-19.
[120] Ex. PAETEC-1 (Haas Settlement Testimony).
[121] Ex. PAETEC-1 (Haas Settlement Testimony) at page 5, lines 24-25.
[122] Ex. PAETEC-1 (Haas Settlement Testimony) at page 5, line 25-page 6, line1.

Qwest's IMA, unlike CenturyLink's EASE, saves the validated address so that it can be used to automatically populate the LSR.[123] IMA, unlike EASE, allows customer service record information to be downloaded to PAETEC's back office systems for use in sales, order preparation, and establishing a customer's account in various systems.[124] IMA, unlike EASE, enables a CLEC to confirm on a pre-order basis the availability of specific products and services at a prospective customer's address. EASE permits service availability to be determined only after the CLEC has submitted an actual order, which forces the CLEC to incur the time and expense of submitting an order only to learn that the requested service is not available at the customer's location.[125]

One very significant difference between Qwest's OSS and CenturyLink's OSS that affects a wide variety of CLEC operations is the difference to which those systems accommodate "e-bonding" that allows the automated, real-time transfer of information between the CLEC and ILEC systems. Qwest's OSS uses an e-bonding system for Local Service Requests ("LSRs") used to order unbundled loops that allows faster and more accurate exchange of information and forms than CenturyLink's systems.[126] This e-bonding functionality reduces costs and delays by eliminating manual process errors and the re-processing that such errors require.[127]

PAETEC's internal system, for example, routes Qwest line loss data received through the XML interface directly into PAETEC's billing system, which results in the termination of billing for end users for whom the line loss data has been received via the interface without manual intervention. The interconnectivity of systems has effectively eliminated the "billing after downgrade" issues that plagued CLECs and end users that existed for a number of years. A

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[123] Ex. PAETEC-1 (Haas Settlement Testimony) at page 6, lines 3-5.
[124] Ex. PAETEC-1 (Haas Settlement Testimony) at page 6, lines 6-10.
[125] Ex. PAETEC-1 (Haas Settlement Testimony) at page 6, lines 10-16.
[126] Ex. Cox -1 (Howell Direct), page 5, lines 15-17; see also Ex. Cox-1 (Howell Direct), page 5, lines 18-22 ("Qwest allows electronic submission of LSRs and ASRs through e-bonding and a web-based portal, respectively. CenturyLink, even in the Embarq territories, does not have e-bonding for most LSRs, and uses a more manual, non-interactive internet ordering processes for ASRs for interconnection trunks.")
[127] Ex. Cox -1 (Howell Direct) at page 5, lines 17-18.

similar linkage is made by PAETEC between Qwest's OSS interfaces and the PAETEC's own systems for directory listings to ensure accurate directory listings for the CLECs' customers.[128]

Trouble ticket reporting is another example. PAETEC, for example, has established electronic bonding capability with Qwest that allows automated escalation of the trouble ticket, and automated resolution or closing of the trouble ticket and notification to the customer. In other words, by establishing the electronic bonding with Qwest, a CLEC trouble ticket can go from "open" to "closed" with little or no intervention by the CLEC's technicians. These automated capabilities are possible because PAETEC undertook a substantial effort to develop its own back end systems and processes and then code, test and link those systems and processes to Qwest's systems and interfaces. These CLEC back end systems would be subject to change if the merged company changed Qwest's legacy OSS post-transaction, and could require CLECs to revert to significantly less efficient manual processes if the modified OSS offered by the merged company does not afford CLECs access to the same degree of the merged company's back end systems and data via the electronic interface.[129]

A decrease in functionality available from Qwest's systems would have a profoundly adverse impact on CLECs. Not only would CLECs have to expend significant time and money testing the CenturyLink replacement systems, but they would also have to materially modify their own systems. For instance, the CLECs have built their own interfaces to electronically bond directly to the existing Qwest systems. These CLEC systems would need to be modified, at significant expense, by the CLEC to work with the new replacement system.[130] PAETEC, in particular, has invested significant amounts in its own systems to automate a large number of pre-order, order, billing and trouble ticket management functions over the course of several years.[131] The automation of these functions has allowed PAETEC to reallocate a significant number of

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[128] Ex. PLT-1 (Gates Direct) at page 53, line 18 – page 54, line 9.
[129] Ex. PLT-1 (Gates Direct) at page 55, line 18 – page 56, line 11.
[130] Ex. PLT-1 (Gates Direct) at page 52, lines 11-15.
[131] Ex. PAETEC-1CF (Haas Settlement Testimony) (Confidential) at page 3, lines 19-page 4, line 15.

employees to other assignments and function and to provide more timely ordering, provisioning, repairs and other services for its customers.[132] Any change to Qwest's OSS that reduces degrades the e-bonding functionality of those systems will force PAETEC to incur substantial costs to assign employees to manually perform tasks that are completed in an automated fashion today.[133]

During the third-party testing of Qwest's OSS, a "pseudo-CLEC" (Hewlett Packard or "HP") was hired to act as a CLEC (or "to live the CLEC experience"[134]). HP was charged with establishing electronic bonding with Qwest, ensuring that Qwest provided the necessary information and tools to electronically interface with Qwest's OSS, and determine whether Qwest's systems were operationally ready to handle the volumes and types of orders CLECs would submit through the business-to-business electronic interfaces. Likewise, KPMG Consulting tested Qwest's testing environments. If CenturyLink attempted to modify the CLEC-facing OSS interfaces in Qwest's territory, all of the work done by the third-party testers during the third-party test, and the work done by CLECs to establish these business–to-business interfaces would be undermined. This work would need to be performed all over again to ensure that the replacement system provides the same functionality and at the same quality as Qwest's system.[135]

C. Uncertainty Has Been Exacerbated By The Lack Of Information Regarding Post-Merger OSS Integration Plans.

The Staff witness regarding OSS issues expresses concern that "CenturyLink and Qwest have presented very little information explaining how the post-merger company would change its operations without impacting its wholesale obligations."[136] In Arizona as well as other states, the Joint Applicants have been asked about their post-merger OSS integration plans and in each instance the Joint Applicants have provided a boilerplate response that "integration planning is in

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[132] Ex. PAETEC-1 (Haas Settlement Testimony) at page 4, lines 18-22.
[133] Ex. PAETEC-1 (Haas Settlement Testimony) at page 8, line 16-page 9, line 3.
[134] Draft Final Report of KPMG Consulting, Qwest Communications OSS Evaluation, Version 1.1, April 26, 2002 ("KPMG 4/26/02 OSS Report") at page 10.
[135] Ex. PLT-1 (Gates Direct) at page 54, line 10 – page 55, line 2.
[136] S-2 (Fimbres Direct) at page 14, lines 6-7.

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the early stages" and "decisions have not been made at this time."[137] The strategic value of such a nonresponse to these questions is obvious: A decision cannot be criticized if it has not been made. But it also puts the Commission in the untenable position of having to take "on faith" the Joint Applicants' assurances that the transaction will not result in harm.

The central element of CenturyLink's excuse for its failure to provide any detail regarding its integration plans is its claim that "having done this several times before, we have what we call a standard playbook in terms of integration."[138] In order to encourage confidence in that "standard playbook," the Joint Applicants offered two documents that it claimed provided "pretty detailed information about how CenturyLink goes about doing integration planning."[139] The problem with this claim is that, even now, the record contains no information about how this supposed "standard playbook" applies to the OSS integration challenges presented by this proposed merger. This is because the key OSS witness for the Joint Applicants – indeed, the only OSS witness for the Joint Applicants[140] – was all but completely unfamiliar with these documents, having only seen them for the first time in connection with preparing to testify at the hearing.[141]

Although these documents identify specific integration-related tasks and set forth a timeline for accomplishing those tasks, CenturyLink's OSS witness was unable to testify whether any of the identified tasks had been completed, or even started, or whether the specified timelines were being met.[142] CenturyLink's OSS witness stated that he had not seen a comparison of CenturyLink's OSS and Qwest's OSS and was unaware of whether such a comparison even exists.[143] Although the capacity of systems to provide electronic flow through is a crucial

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[137] See Hearing Ex. PLT-1 (Gates Direct) at page 36, line 6-page 38, line 23.
[138] Transcript, Vol. 1, page 172, lines 3-5 (Glover).
[139] Transcript, Vol. 1, page 168, lines 1-23; Ex. CTL-10CF.
[140] Transcript, Vol. 1, page 185, lines 12-17; page 188, lines 1-5 (Glover); Transcript, Vol. 2, page 301, lines 12-23 (Hunsucker).
[141] Transcript, Vol. 2, page 309, lines 14-23; page 317, lines 13-21 (Hunsucker).
[142] Transcript, Vol. 2, page 310, lines 9-13, page 312, line 8-page 314, line 14; page 316, line19-page 317, line 4; page 324, line 18-page 325, line13 (Hunsucker).
[143] Transcript, Vol. 2, page 320, lines 4-18 (Hunsucker).

consideration in evaluating OSS, CenturyLink's OSS witness had no knowledge of how Qwest's and CenturyLink's systems compare with respect to flow through.[144] Nor could CenturyLink's OSS witness explain why, in the description of the current evaluation status of Qwest's major systems, as reflected in the alleged "playbook," there was no mention of Qwest OSS.[145]

In short, CenturyLink's self-described "standard playbook" can provide no confidence regarding integration of OSS, in light of the lack of any evidence that CenturyLink has, in fact, been following that playbook in its integration planning. Moreover, since it is indisputable that this transaction is unlike any prior transaction undertaken by CenturyLink, especially with regard to absorbing an RBOC with statutory obligations to provide nondiscriminatory access to OSS, relying on the CenturyLink "standard playbook" is a meaningless assurance since acquiring an RBOC is not a "play" that CenturyLink has ever run before.

D. Additional Conditions are Necessary.

Condition 19 of the Staff Settlement addresses OSS issues. That Condition, although providing valuable protection for CLECs and, more importantly, for competition, does not go far enough. In order to assure that CLECs' current ability to access Qwest's OSS is not adversely impacted by the merger, PAETEC recommends that Condition 19 be modified to provide as follows:

> 19. In Qwest ILEC service territory, after the Closing Date, the Merged Company will use and offer to wholesale customers the legacy Qwest Operational Support Systems ("OSS") <u>for at least three years, or until July 1, 2014, whichever is later,</u> and thereafter provide a level of wholesale service quality that is not less than that provided by Qwest prior to the closing Date, with functionally equivalent support, data, functionality <u>(including functionality affecting the operations of CLEC back office functionality as of the Closing Date),</u> performance, electronic flow through and electric bonding. After the period noted above, the Merged company will not replace or integrate Qwest systems without first establishing a detailed transition plan and complying with the following procedures:

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[144] Transcript, Vol. 2, page 312, lines 13-22 (Hunsucker).

[145] Transcript, Vol. 2, page 325, lines14-22; see also Ex. CTL-10CF.

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Besides protecting competition in Arizona – and the Arizona customers that have benefitted from that competition -- the one additional year for retaining the Qwest OSS does not unduly delay any "integration" of the systems, particularly given the lack of a specific integration plan. CenturyLink's statement that it is under no time pressure for OSS integration and the expressed 3-5 year "synergy" period. Moreover, the proposed parenthetical simply clarifies the intent of the "functionally equivalent" phrase of the Condition and appears to comport with CenturyLink's basic interpretation of that phrase.[146] Such clarification will minimize future disputes on this critical issue.

In addition, to assure that CLECs are not adversely impacted by changes that the merged company may make to Qwest's OSS, the Commission should require third party testing of any replacement OSS that the company seeks to implement.

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1. Continuance of Qwest OSS for at least three years.

First, the Commission should direct the merged company to add at least a year to the time period in the Staff Settlement for which the merged company will continue to use and offer the Qwest OSS, such that the OSS will be used and offered for at least three years. Mr. Gates explained that because CenturyLink has estimated synergy savings to be achieved over a three-to-five year period, evidence in the record shows that the greatest risk to CLECs of CenturyLink degrading access to OSS is during that three-to-five year window.[147] Recognizing that Qwest has referred to OSS as the "lifeblood" of its wholesale operations,[148] modifying or degrading Qwest's wholesale OSS is one way in which the merged company may attempt to find synergy savings. If CenturyLink failed to maintain and invest in Qwest's OSS, or deliberately degraded certain aspects of those systems, CenturyLink could save money (increase synergies) and disadvantage its

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[146] Transcript, Vol. 2, page 331, lines 1-21 (Hunsucker).

[147] Ex. PLT-3 (Gates Settlement Testimony) at page 10, line 8 – page 12, line 5.

[148] Ex. PLT-1 (Gates Direct) at page 35, lines 12-14, citing Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at page 39.

competitors that rely upon these critical systems. Of course, this would also result in harm to competition as well as the public's interest in a competitive local telecommunications market. Adding a year to the period of time for which the company agrees to continue using the Qwest OSS will provide CLECs with time necessary to do their own planning and systems development work that will be necessitated by any significant changes.[149]

As the record demonstrates, if CLEC access to OSS is degraded due to integration failures or attempts to find synergy savings, competitors will be disadvantaged in attempting to compete with CenturyLink. Indeed, the systems integration problems experienced following recent mergers is evidence of the problems that OSS integration failures can have on competitors, and ultimately end user customers.[150] A commitment to continue operating the Qwest OSS for *less than* three years – or less than the time period during which CenturyLink will be aggressively pursuing synergy cost savings – significantly increases the potential that the merged company target OSS systems, processes, and support relied upon by CLECs for elimination.

It took more than three years just to test and evaluate Qwest's OSS to determine if it was sufficient to meet the requirements of Section 271.[151] So, if the merged company decides to modify or replace Qwest's OSS, it is reasonable to assume that it will take at least three years (i) to decide which OSS the merged company intends to use going forward, (ii) to make changes to Qwest's OSS, (iii) to test and evaluate the new OSS to ensure that it can handle the commercial volumes in Qwest's territory and provide CLECs a meaningful opportunity to compete, (iv) to allow cooperative testing of the systems with the CLECs to ensure that they meet the CLEC needs; and (v) for CLECs to develop internal systems to interface with the new OSS systems.[152]

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[149] Transcript, p. 89, line 6-page 90, line 19 (Gates).
[150] Ex. PLT-4 (Ankum Direct) at pages 26-37 and Ex. PLT-1 (Gates Direct) at pages 86-106.
[151] Ex. PLT-1 (Gates Direct), Ex. TG-2 at page 2.
[152] Ex. PLT-3 (Gates Settlement Testimony) at page 12, line 18-page 13, line 4.

Significantly, Commission Staff had previously also urged the Commission to adopt such a three year commitment.[153] In testifying in support of the Staff Settlement, which reduced the commitment to two years, Mr. Abinah described the CLEC request for a three year commitment as "reasonable,"[154] but stated that the Staff Settlement represented a "compromise."[155] Staff has not, however, identified any corresponding benefit that it believes it gained through this compromise.[156]

Nor does the fact that a two year OSS commitment was acceptable to one CLEC – Integra – provide any assurance that a two year commitment will appropriately protect the interests of all CLECs. In entering into its settlement agreement, Integra represented only its own interests, not those of other CLECs.[157] No other CLECs were involved in the negotiations that culminated in that agreement.[158] Obviously there are differences among CLECs such that what will be acceptable to one CLEC will not necessarily be adequate for all CLECs. For example, PAETEC has implemented much more extensive back office automation than has Integra, which relies more on manual processes to complete various tasks that PAETEC has automated.[159] Integra's reliance on manual processes means that future changes to Qwest's OSS, should those changes degrade the functionality, access and robustness of the e-bonding capabilities, will not impact Integra to the degree that such changes could impact the automated processes used by PAETEC.[160]

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[153] See Ex. S-2 (Fimbres Direct) at page 30, lines 8-11; Ex. S-3 (Fimbres Surrebuttal) at page 16, lines 22-page 17, line 15.
[154] Transcript, Vol. 3, p. 562, line 16 (Abinah).
[155] Transcript, Vol. 3, p. 562, lines 1-21 (Abinah).
[156] To the extent that it might be contended that the broadband investment commitment (see Staff Settlement, Condition 17) provides such a benefit, such a claim is not supported by the record. There is no evidence that this investment commitment provides anything beyond what the company would have invested anyway, absent such a commitment. Unlike investment commitments entered into by the Joint Applicants in other states (for example, Minnesota), the Staff Settlement does not require the company to invest in broadband in unserved or underserved areas. See Transcript, Vol. 3, page 559, lines 3-18 (Abinah).
[157] Transcript, Vol. 2, page 432, line 24-page 433, line 6 (Denney).
[158] Transcript, Vol. 2, page 437, lines 9-17 (Denney).
[159] Ex. PAETEC-1 (Haas Settlement Testimony) at page 7, lines 8-13.
[160] Ex. PAETEC-1 (Haas Settlement Testimony) at page 7, lines 13-17.

Finally, the Joint Applicants cannot reasonably contend that the addition of one more year to the OSS commitment will be burdensome. CenturyLink has repeatedly asserted that it is under no time pressure to complete systems integration – indeed, CenturyLink has touted this as one of the advantages of the transaction.[161] Further, CenturyLink has apparently not even begun the work necessary to determine what, if any changes, it would make to the Qwest OSS;[162] thus, there is no basis for it to claim that it has any particular need to make such changes within three years of the closing. Moreover, to the extent that it is the case, as CenturyLink has claimed, that its synergy estimates do not include any cost savings associated with systems integration,[163] adding a year to the OSS commitment will not adversely impact the company's ability to meet its synergy projections.

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2. Clarification of commitment to provide "functionally equivalent" access.

Second, the Commission should include the additional language proposed by PAETEC to assure that changes made to Qwest's OSS to not diminish the ability of CLECs to use those systems, including any diminishment of functionality that adversely affects CLEC back office systems. The Staff Settlement provision regarding OSS requires the merged company provide "functionally equivalent support, data, functionality, performance, electronic flow through and electronic bonding."[164] This requirement, although an improvement over the Integra Settlement Agreement, does not go far enough in assuring that CLECs will not experience a diminishment in their ability to use automated systems such as those that PAETEC has implemented. This is because it has become apparent that CenturyLink takes the position that its OSS is functionally

[161] Transcript, Vol. 1, page 44, line 23-page 45, line 1 (Glover) ("We are not trying to rush into this. The benefit is Qwest today is a stand-alone entity with stand-alone OSS, stand-alone retail billing systems. And so it is not like we have to be in a rush to convert systems and so forth.")

[162] Transcript, Vol. 2, page 289, lines 11-17 (Hunsucker); see also Transcript, Vol. 2, page 310, lines 9-13, page 312, line 8-page 314, line 14; page 316, line19-page 317, line 4; page 324, line 18-page 325, line13; page 346, lines 15-19. (Hunsucker).

[163] Transcript, Vol. 1, page 183, lines 13-16 (Glover).

[164] Ex. S-1 (Abinah Settlement Testimony) at Condition 19.

equivalent to Qwest's OSS, notwithstanding the numerous deficiencies discussed above.[165] Particularly in light of CenturyLink's advocacy to the FCC, there is plainly a need for clarity regarding the scope of the merged company's obligation to maintain "functionally equivalent" systems, particularly as it relates protecting against any adverse impact that OSS changes may have on CLEC back office systems.

The clarification proposed by PAETEC appears to be consistent with what both the Joint Applicants and the Staff have described as their intent. Thus, Mr. Hunsucker, on behalf of the Joint Applicants stated:

> [W]hat the settlement agreement does, we will provide a level of service that is not less than, and we will provide the same, functionally equivalent support data flow-through, et cetera. So we will be required to provide functionally equivalent electronic flow –through.[166]

Similarly, Mr. Abinah testified for Staff that:

> [F]unctionally equivalent means the same at least, but if there is room for improvement, it should have the ability to do that after consultation with the CLEC. So it just means the same but have the room for improvement.[167]

No party has contended that the post-merger company should have the ability to implement changes to Qwest's OSS that adversely affect CLECs' ability to use their back office systems, including the same degree of automated functionality that they have today.

The clarification that PAETEC proposes is a modest one – the addition of the following language to further describe the merged company's obligation to provide "functionally equivalent" OSS: "including functionality affecting the operations of CLEC back office functionality as of the Closing Date." Although this proposed change is modest, it is also very important, in light of the concerns outlined above regarding the impact that OSS changes may have on CLEC systems. To

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[165] Ex. PAETEC-1 (Haas Settlement Testimony) at page 10. lines 9-22.
[166] Transcript, Vol. 2, page 331, lines 7-12 (Hunsucker).
[167] Transcript, Vol. 3, page 558, lines 17-21 (Abinah).

the extent that the Joint Applicants continue to object to this language, this should be a red flag regarding CenturyLink's intentions.

3. Third party testing.

A degradation of the levels of service provided under the Qwest OSS today would represent a significant step backwards. Qwest's OSS was subjected to an extensive third-party test conducted over a three-year period for the express purpose of determining whether Qwest's OSS satisfied the nondiscriminatory access requirement under Section 271 of Act.[168] That third party testing revealed hundreds of problems that were addressed, and later resolved, through OSS improvements and re-testing. Millions of dollars of investment and countless person hours went into this process.[169] Ultimately, because of those investments and the continued review and oversight of state commissions like this one, Qwest ultimately received 271 authority to provide in-region interLATA services.

The FCC has previously concluded that the most probative evidence that OSS functions are operationally ready is actual commercial usage. To that end, the FCC said:

> The most probative evidence that OSS functions are operationally ready is actual commercial usage. Absent sufficient and reliable data on commercial usage, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS. Although the Commission does not require OSS testing, a persuasive test will provide us with an objective means by which to evaluate a BOC's OSS readiness where there is little to no evidence of commercial usage, or may otherwise strengthen an application where the BOC's evidence of actual commercial usage is weak or is otherwise challenged by competitors. ***The persuasiveness of a third-party review, however, is dependent upon the qualifications, experience and independence of the third party and the conditions and scope of the review itself. If the review is limited in scope or depth or is not independent and blind, the Commission will give it minimal weight.***[170]

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[168] Ex. PLT-1 (Gates Direct) at page 122, lines 3-6, and Exhibit TG-2.
[169] Ex. PLT-1 (Gates Direct) at page 122, lines 6-11.
[170] Qwest 9 State 271 Order, Appendix K "Statutory Requirements" at page K-16 (emphasis added).

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Internal OSS testing that is not independent and blind is inferior to a truly independent third-party test in determining a BOC's OSS commercial readiness. Though CenturyLink claims that it extensively tests its own OSS, this testing does not involve third-party testing.[171] This means that CenturyLink's OSS testing is not independent or blind, and would therefore, be a step backwards for Qwest OSS that has undergone years of extensive and verifiable third-party testing. CenturyLink has specifically said that it does not intend to engage in third-party testing post-merger for any replacement OSS that replaces an existing Qwest OSS.[172]

In contrast, CenturyLink's OSS has not been third-party tested,[173] nor has it handled actual commercial volumes in Qwest's region. Replacing Qwest's legacy OSS with CenturyLink's legacy (or new) OSS would lead to backsliding on Qwest's 271 obligations because Qwest would no longer be providing the nondiscriminatory access to OSS that was a quid pro quo for 271 approval. As discussed above, the evidence shows that when CenturyLink's existing OSS are compared to Qwest's existing OSS, CenturyLink's OSS: have inferior functionality, do not support as many services, have not been third-party tested, and have never processed the commercial volumes experienced in Qwest's legacy territory.

4. Costs of Unifying Joint Applicants' OSS.

In addition to adding these additional protections to the OSS conditions, an equally important principle needs to be clarified by the Commission should it approve the proposed transaction – any costs Joint Applicants incur to modify its OSS should be considered costs of the transaction and thereby, prohibited from charging CLECs additional fees or charges related to OSS. As noted by PAETEC witness Haas, the settlement agreements with Integra and Staff are silent with respect to OSS related costs. Thus, while Joints Applicants claim they have committed

[171] Ex. PLT -1 (Gates Direct) at page 122, line 17-page 123, line 4.

[172] 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))

[173] Ex. PLT-1 (Gates Direct) at page 122, line 17, citing CenturyLink Response to Integra Arizona Data Request #18.

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to meet the needs of PAETEC by retaining the same level of existing functionality in any modified OSS, the Joint Applicant's have made no commitment that it will not seek to have CLECs bear the costs of fulfilling its obligation. The commitment that a future unified OSS will be "functionally equivalent" to the Qwest OSS rings hollow if the Joint Applicants are permitted to impose new costs or charges on CLECs to access the modified unified system. Given that the EASE system provides significantly less functionality than already exists in the Qwest OSS, it is likely that the Joint Applicants will be required to enhance EASE to become functionally equivalent. Since moving to EASE would be a choice made by Joint Applicants, they, and they alone, should bear the cost of making such enhancements. Thus, the Commission should make it crystal clear that Joint Applicants will not be allowed to impose new or additional costs on CLECs for accessing the Joint Applicants OSS and supporting databases to meet its obligation to provide an OSS that is functionally equivalent to the Qwest OSS.

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CONCLUSION

In order to the meet the "Public Interest" standard for approving the proposed merger, the Commission must impose conditions to ensure continuing viable competition in Arizona and to mitigate potential harm to the competitive providers and their customers. Although the Settlement Agreement contains certain conditions to address these concerns, the Settlement Agreement still lacks conditions that are critical to minimize adverse impacts to effective competition. In order to ensure that Arizona consumers continue to benefit from competition, PAETEC requests that the Commission include three additional commitments – or clarifications to Settlement Agreement conditions -- as conditions to approval of the proposed merger:

1. a commitment to maintain Qwest's existing OSS for at least three years to match the Joint Applicants' 3-5 year synergy period;

2. a commitment that any change in OSS will not adversely impact the operations of CLECs' back office systems; and

3 commitment to, in connection with changes to Qwest OSS, to conduct third party testing to assure that specific components of wholesale OSS service quality,

including support, data, billing, functionality, performance, electronic flow through and electronic bonding, are not degraded.

4 a commitment that any costs resulting from the modification or replacement of the Qwest OSS, including the costs of making the OSS functionally equivalent to the existing Qwest OSS, will be considered costs of the transaction and will not be charged to CLECs.

These commitments will not create an undue burden on the Joint Applicants, require them to modify the terms of their merger or interfere with their presently undetermined integration plans . However, without these conditions, competition in Arizona will be harmed and the merger will not be in the public interest.

RESPECTFULLY SUBMITTED this 18th day of January 2011.

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