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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE, Chairman  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP  
BRENDA BURNS

2011 JAN 18 P 4:30

ALL BIRTH DOCUMENTS  
DOCKET CONTAIN

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

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

Arizona Corporation Commission

**DOCKETED**

JAN 18 2011

DOCKETED BY

**POST HEARING BRIEF OF THE JOINT APPLICANTS**

**JANUARY 18, 2011**

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1 I. INTRODUCTION.

2 The Arizona telephone operating subsidiaries of Qwest Communications International,  
3 Inc. ("QCII") and CenturyLink, Inc. ("CTL") (collectively, the "Joint Applicants") filed an  
4 application ("Joint Application") jointly requesting the approval of the proposed merger, which  
5 will indirectly transfer control of QCII's telephone operating subsidiaries, including the  
6 incumbent local exchange carrier ("ILEC") Qwest Corporation ("QC") to CTL. The evidence  
7 presented in this case clearly demonstrates that this merger meets the requirements of Arizona  
8 law and will result in a combined company with greater network and financial resources to  
9 provide high quality voice, broadband data, and other advanced communications services to  
10 Arizona customers. The combination will result in a company that will have the national  
11 breadth and local depth to provide a compelling array of products and services to its customers.

12 The evidence satisfies any applicable standard for approval; specifically, the regulated  
13 telephone operating companies' financial status will not be impaired, they will not be prevented  
14 from attracting capital at fair and reasonable terms, their ability to provide safe, reasonable and  
15 adequate service will not be impaired by reason of the merger, and the transaction is in the  
16 public interest.

17 The evidence supports approval without additional conditions or commitments. Even so,  
18 in the interest of resolving disputes, a number of settlement agreements have been entered into  
19 between the Joint Applicants and intervenors in this docket. In addition to giving the Arizona  
20 Corporation Commission ("Commission") assurance that the merger review standards are well-  
21 satisfied, the settlement agreements provide substantial additional benefits to the public above  
22 and beyond those outlined in the Joint Application. The Joint Applicants respectfully ask that  
23 the merger be approved based upon the merits of the transaction as well as the commitments  
24 contained in the various settlement agreements.

25 The Joint Applicants have entered into settlement agreements with the Utilities Division  
26 Staff of the Commission ("Staff") and the Residential Utility Consumer Office ("RUCO") (the  
27 "Settlement Agreement"); Integra Telecom, Inc. ("Integra") (the "Integra Settlement");  
28 360networks (USA), inc. ("360networks"); the Communications Workers of America ("CWA");

1 the Department of Defense and all Federal Executive Agencies; Cox Communications, Inc.; and  
2 Westel, Inc. Each of those intervenors supports (or does not oppose) the merger. Their actions  
3 and declarations provide strong evidence that the Commission should approve this Joint  
4 Application. Moreover, the Settlement Agreement contains a set of comprehensive protections  
5 for retail consumers and wholesale competitors, including regulatory and reporting requirements  
6 that will provide the Commission information to assure compliance with those protections. By  
7 approving the merger with the conditions provided in the Settlement Agreement, the  
8 Commission can assure that approval of the merger promotes the public interest.

9 The Settlement Agreement also includes a commitment to invest not less than \$70  
10 million in broadband infrastructure in Arizona over a five year period. Consumers and  
11 businesses continue to require increased broadband speeds and affordable communication  
12 packages from reliable, service-focused providers. The merger will address these demands and  
13 bring key benefits to Arizona. In today's challenging economy, Arizona will benefit from a  
14 reliable, stable service provider and one that is well-positioned for long-term strategic  
15 investment within the communities it serves.

16 Many other states have already approved the transaction. Notably, of the nine states that  
17 require approval in the 14-state Qwest ILEC region, Iowa, Nebraska, Montana, Colorado and  
18 Utah have approved the Transaction,<sup>1</sup> and a recommended order of approval is pending in  
19 Minnesota.<sup>2</sup> A complete list of the 18 states in the country which have approved the Transaction  
20 to date is attached hereto as Attachment 1. None of these approval orders, including the  
21 Minnesota recommended order, adopted any of the additional conditions proposed by the Non-  
22 Settling CLECs (as hereinafter defined) in Arizona. In addition, the Transaction has been  
23 cleared by a Department of Justice review under the Pre-Merger Notification Act.

24 \_\_\_\_\_  
25 <sup>1</sup> In Qwest Corporation's 14-state region, merger approval has been applied for in the following states: Arizona,  
26 Colorado, Iowa, Minnesota, Montana, Nebraska, Oregon, Utah, and Washington. Of those states, approval is still  
27 pending in Arizona, Minnesota, Washington, and Oregon.

28 <sup>2</sup> Findings of Fact, Conclusions of Law, and Recommendation, *In the Matter of the Joint Petition for Approval of  
Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, State of Minnesota Office of  
Administrative Hearings for the Minnesota Public Service Commission, PUC Dkt No. P-421, *et al.* /PA-10-456  
(Jan. 10, 2011) (the "Minnesota ALJ Recommended Decision").

[https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={8263  
A845-84A7-4944-9E03-08690B9A7A8E}&documentTitle=20111-58374-02](https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={8263A845-84A7-4944-9E03-08690B9A7A8E}&documentTitle=20111-58374-02)

1           There are 69 companies listed on the Commission's website as Competitive Local  
2 Exchange Carriers ("CLECs").<sup>3</sup> At the outset of this proceeding, twelve of those CLEC  
3 competitors were sufficiently interested in the Transaction to intervene.<sup>4</sup> Of those twelve, six  
4 allied together in a coalition self-designated as the "Joint CLECs." The Joint CLECs demanded  
5 that Commission approval of the merger must incorporate thirty conditions,<sup>5</sup> some of which had  
6 multiple subparts containing additional conditions. Based upon the Integra Settlement, three of  
7 the Joint CLECs concluded that the merger is consistent with the public interest.<sup>6</sup> After all  
8 settlements, only PAETEC, tw telecom, Level 3, and Pac-West (the "Non-Settling CLECs")  
9 claim that the merger should not be approved.

10           However, despite the fact that the Staff, RUCO, and Integra Settlement Agreements  
11 squarely address every reasonable and legally cognizable concern that a CLEC could raise in  
12 this merger proceeding, the Non-Settling CLECs demand more. Consistent themes run through  
13 their arguments and requested additional conditions. First, the CLECs cite to transactions or  
14 mergers that bear no relation to the structure and financial benefits of the CenturyLink/Qwest  
15 merger, and do not address, let alone rebut, the financial strength of the merged company  
16 resulting from this Transaction. Second, the CLECs obscure the fact that control of the  
17 corporate entity QC, with all of its assets, systems, and personnel, is transferred intact, and the  
18 merger allows the merged company to have the benefit of all Qwest assets, facilities,  
19 employees, and expertise to combine with CenturyLink's assets, without time constraint. Third,  
20 the CLECs' arguments falsely assume that none of the existing regulatory protections, such as  
21 the Change Management Process or the Performance Assurance Plan, or any of the wide-  
22 ranging set of rules and regulations that govern ILEC and CLEC relations under federal law,  
23 will continue past the merger's closing. Fourth, they ignore the enormous concessions and  
24 benefits granted the CLECs through the Staff and Integra settlements, such as notices,

25 <sup>3</sup> See [http://www.cc.state.az.us/Divisions/Utilities/Utility\\_List/clec\\_list.pdf](http://www.cc.state.az.us/Divisions/Utilities/Utility_List/clec_list.pdf).

26 <sup>4</sup> The CLEC intervenors were Covad Communications Company, Cox Arizona Telecom, Integra Telecom  
27 (comprised of Eschelon, Mountain Telecommunications, and Electric Lightwave), Level 3 Communications, Pac-  
28 West Telecomm, Westel, Inc., McLeodUSA Telecommunications d/b/a PAETEC, tw telecom, XO  
Communications, and 360 Networks.

<sup>5</sup> Hearing Exhibit PLT-1, Gate Direct, Exhibit TG-8.

<sup>6</sup> The Integra Settlement was filed November 10, 2010.

1 cooperation, and opportunities for CLEC testing and input that will apply to any OSS transition.  
2 Fifth, the CLECs insist upon conditions that go far beyond any cognizable legal interest, such as  
3 demanding that commercial agreements, which neither CenturyLink nor Qwest have any legal  
4 obligation to provide, must be frozen beyond the time periods already agreed upon in the Integra  
5 settlement. Sixth, many of the CLECs' additional conditions have no relationship to the merger;  
6 rather, such conditions reflect an intent to leverage the CLECs' intervention into this merger  
7 docket to obtain a result that should be resolved through separate proceedings. In every  
8 instance, the CLECs fail to prove the reasons they say support their conditions, or fail to  
9 logically connect why their proposed conditions resolve their alleged concern.

10 **II. THE TRANSACTION.**

11 Under the April 21, 2010 Agreement and Plan of Merger ("Merger Agreement"),<sup>7</sup> QCII  
12 will become a wholly-owned, first-tier subsidiary of CTL, with no change in the corporate  
13 structure of the Qwest regulated operating companies. Exhibit A attached to the Joint  
14 Application depicts the pre- and post-Transaction corporate structure. No assets or separate  
15 local exchanges are being sold to a new provider. Further, there is no overlap between the  
16 services or the customer bases between the Qwest and CenturyLink operations, and no employee  
17 redundancies within the state. The continuity of the QC corporate entity and its operations in  
18 Arizona will not change upon closing.<sup>8</sup>

19 **III. LEGAL STANDARD OF REVIEW.**

20 This Transaction is subject to review under the Commission's so-called "Affiliated  
21 Interest Rules" relating to organizations and reorganizations of public utility holding companies  
22 as set forth in A.A.C. R14-2-803 ("Rule 803"). The transaction may be rejected only upon a  
23 determination that it would "impair the financial status of the public utility, otherwise prevent it  
24 from attracting capital at fair and reasonable terms, or impair the ability of the public utility to  
25 provide safe, reasonable and adequate service."<sup>9</sup>

26  
27 <sup>7</sup> A copy of the Merger Agreement is available at <http://www.centurylinkqwestmerger.com/downloads/sec-filings/Qwest-8K%204-22-10.pdf>, and was incorporated in the Application.

28 <sup>8</sup> Hearing Exhibit CTL-6, McMillan Direct at page 5, line 18 to page 6, line 4.

<sup>9</sup> A.A.C. R14-2-803(C).

1 Because the merging companies, QCII and CenturyTel, Inc., are not public service  
2 corporations, the approval requirements of A.R.S. § 40-285 do not apply to the Transaction.  
3 However, if the Commission determines that the statute does apply, the “public interest” test  
4 controls. Regardless of whether standards of Rule 803 or the “public interest” test control, the  
5 record clearly demonstrates that the Joint Applicants have met all applicable requirements for  
6 approval.

7 IV. **ARGUMENT.**

8 A. **The Transaction Substantially Improves the Financial Status of Qwest, its**  
9 **Ability to Attract Capital, and Does Not Impair Its Ability to Provide Safe,**  
10 **Reasonable and Adequate Service, and Provides Substantial Benefits for**  
11 **Arizona.**

12 1. **The Merger Will Not Alter Qwest Corporation’s Regulatory**  
13 **Obligations and Commitments.**

14 Because the Transaction involves a parent-level transfer of control of QCII only, the  
15 ILEC and Bell Operating Company (“BOC”) entity QC will continue to operate as a separate  
16 carrier and will continue to provide services to its customers under the same regulatory regime  
17 that now exists. Although there may be a change in the names of the companies and retail  
18 billing operations may be combined, the Transaction will be transparent to customers.<sup>10</sup>  
19 Specifically, the resulting entity will abide by all applicable regulatory obligations, including the  
20 QC Price Cap Plan, Service Quality Plan, and existing tariffs.<sup>11</sup>

21 2. **The Merger Improves Qwest’s Financial Status.**

22 The Joint Applicants presented unrefuted testimony that the Transaction will  
23 significantly enhance the financial strength of the Qwest entities in Arizona, including most  
24 importantly, QC, the entity that provides local exchange telephone services and is classified as  
25 an ILEC and BOC in this state.

26 The testimony of CenturyLink witness Jeff Glover details the financial strength of the  
27 merged company. As Mr. Glover states, “the proposed transaction will create a carrier with  
28 major scope and scale, and the financial resources and flexibility to provide high-quality,

<sup>10</sup> Campbell Direct Testimony at 9, lines 1-8.

<sup>11</sup> *Id.* at page 9, line 10, to page 10, line 6.

1 communications services to customers and communities across the country.”<sup>12</sup> Mr. Glover’s  
2 testimony depicts the *pro forma* profile of the post-merger company, including 17 million access  
3 lines, approximately 5 million broadband subscribers, and more than one million enterprise  
4 customers.<sup>13</sup> According to Mr. Glover, the *pro forma* financial profile of the company, as of  
5 year-end 2009, would include *pro forma* revenues of \$19.8 million, EBITDA of approximately  
6 \$8.2 billion and free cash flow, excluding any estimated synergies, of \$3.4 billion.<sup>14</sup>

7 Based on these financials, Mr. Glover believes that “the merged company is expected to  
8 have one of the strongest balance sheets in the U.S. telecommunications industry.”<sup>15</sup> Mr. Glover  
9 explains that the anticipated synergies of \$625 million in annual operating expenses and capital  
10 expenditures are conservative, representing in total only 8% of Qwest’s 2009 cash operating  
11 costs. Mr. Glover demonstrates that this is realistic when compared to other merger-related  
12 ILEC-transaction synergies that generally have been 20%+ of the target company’s cash  
13 operating expenses in recent years.<sup>16</sup> Mr. Glover also explains that, *even without the synergies*,  
14 the merged company is expected to realize \$1.7 billion in remaining cash flow that could be  
15 used for additional investment, debt repayment, integration expense, or other appropriate uses.<sup>17</sup>  
16 Clearly, the merged company will be financially capable of continuing to provide reliable, high  
17 quality services to its Arizona customers. The anticipated financial strength of the merged  
18 company was not refuted by any intervenor.

19 At the hearing, Mr. Glover was questioned about his testimony regarding Moody’s and  
20 S&P’s indications upon the merger announcement that CenturyLink’s investment grade credit  
21 rating outlook was on notice for potential downgrade. However, the testimony shows that such  
22 an event is only a possibility, and that in any case, CenturyLink’s record of consistently  
23 strengthening its balance sheet is clear.<sup>18</sup>

24  
25 \_\_\_\_\_  
<sup>12</sup> Glover Direct at 6.

26 <sup>13</sup> *Id.*, at 5, lines 10-12.

27 <sup>14</sup> *Id.*, at lines 12-17.

<sup>15</sup> *Id.*, at 6.

<sup>16</sup> *Id.*, at 14-15.

28 <sup>17</sup> *Id.*, at 13. This free cash flow figure represents the amount after dividend commitments are met.

<sup>18</sup> Glover Direct at 22.

1 RUCO witness William Rigsby analyzed the Moody's and S&P rating downgrade  
2 possibility. He characterized the notice of possible downgrade (issued upon the announcement  
3 of the merger) as "a knee-jerk reaction."<sup>19</sup> Mr. Rigsby testified to his determination that *the*  
4 *merger would result in a financially stronger merged entity.*<sup>20</sup> Based upon his study of an array  
5 of published analyses of the Transaction and his own analysis based upon an independent data  
6 source, he concluded that "a stronger entity will emerge financially" from the merger.<sup>21</sup> Mr.  
7 Rigsby added that there has not been any subsequent news, developments or reasons published  
8 to support a possible increase of risk for investment in CTL, and that the increase in share prices  
9 for CTL indicates positive evaluation rather than negative.<sup>22</sup>

10 3. **The Ability of the ILEC QC to Access Capital at Fair and Reasonable**  
11 **Terms Will Undoubtedly Be Improved By the Merger.**

12 Regardless of the impact the merger may or may not have on CTL, the record is very  
13 clear that the merger will have a positive effect on the financial strength of the Qwest  
14 companies. Importantly for Arizona, the ILEC QC will have greater ability to attract capital  
15 upon fair and reasonable terms. The effect of the merger on QC's financial integrity is properly  
16 the most important focus. Rule 803 requires that the merger analysis examine the effect on the  
17 *public utility under the jurisdiction of the Commission*, which in this case is QC.

18 Mr. Glover testified that the merged company should have improved access to capital on  
19 reasonable terms. "More specifically, the merged company will have a stronger balance sheet,  
20 improved credit quality and higher levels of free cash flow *than those of pre-merger Qwest.*"<sup>23</sup>  
21 The *pro forma* net debt-to-EBITDA ratio for the merged company (2009) is 2.4 times *before*  
22 *synergies*, which compares favorably to Qwest's standalone 2009 ratio of 2.7.<sup>24</sup> Clearly the  
23 combined company will be stronger than Qwest has been before the merger. Further, the same  
24 investment rating agencies discussed above indicate in their outlooks a positive watch on  
25 Qwest's ratings. As Mr. Glover states, "The possible improved credit rating for the state's

26 <sup>19</sup> Transcript Vol. II at page 496, line 3 to page 497, line 5.

27 <sup>20</sup> Rigsby Settlement Testimony at 6.

28 <sup>21</sup> Transcript Vol. II at 496, lines 7-19.

<sup>22</sup> *Id.*, at page 504, line 3 to page 506, line 1.

<sup>23</sup> Glover Direct at 11-12.

<sup>24</sup> *Id.*, at 19, lines 8-16 (emphasis added).

1 largest telecommunications carrier immediately after the close of the Transaction is clearly a  
2 significant net benefit to Arizona customers.”<sup>25</sup> Staff’s financial analyst Pedro Chavez reached a  
3 similar conclusion: “Arizona subsidiaries of QCII would benefit from having a parent company  
4 that has a financially prudent capital structure as opposed to QCII’s existing capital structure  
5 with negative equity.”<sup>26</sup>

6 The evidence is clear and overwhelming that the merged company, and the Qwest ILEC  
7 in Arizona, will have the financial fitness and capability to continue to provide reliable, quality  
8 telecommunications services in the state.

9 4. **The Merger Results in a Company with Excellent Technical,**  
10 **Operational, and Managerial Fitness.**

11 The Joint Applicants’ witnesses also describe in detail the strength of the technical,  
12 operational, and managerial resources available to the merged company as the result of this  
13 combination of two industry leading telecommunications companies.<sup>27</sup> Ms. McMillan describes  
14 the deep managerial experience and quality of the management team that has already been  
15 named for the post-merger company, including Chief Executive Officer Glen F. Post III, Chief  
16 Financial Officer R. Stewart Ewing, and Chief Operating Officer Karen A. Puckett. The CEO,  
17 CFO and COO bring a combined total of over 88-years experience in the telecommunications  
18 industry, including significant experience in successfully managing mergers and acquisitions.<sup>28</sup>  
19 CenturyLink has named several other executives, drawing from the expertise of both  
20 CenturyLink and Qwest, all with significant experience and proven track records in the  
21 telecommunications industry.<sup>29</sup>

22 CenturyLink will also benefit from the strong employee base for both companies. As  
23 Staff Analyst Pamela Genung testified, “[CenturyLink] should have a highly talented and  
24 experienced pool of employees available between the combined Qwest and CenturyLink  
25 companies to fulfill its obligations of the merger between the two companies.”<sup>30</sup> Mr. Glover

26 <sup>25</sup> Glover Rebuttal at page 49, line 17 to page 50, line 2.

27 <sup>26</sup> Chavez Direct at 6, lines 8-12.

28 <sup>27</sup> McMillan Direct at 12-14.

<sup>28</sup> *Id.*

<sup>29</sup> McMillan Rebuttal at 10, lines 7-23.

<sup>30</sup> Genung Direct, Executive Summary and page 27, lines 19-22.

1 testified that the operation of the acquired entities will be smooth because CenturyLink is  
2 acquiring the entire Qwest family of companies, which means that the pool of available  
3 employees remains in place.<sup>31</sup> The vast majority of technician employees who are directly  
4 involved in providing services will remain.<sup>32</sup> “On day one the combined company is going to  
5 have the expertise that Qwest brings to the table as far as supporting large business and strategic  
6 business customers as well as government education service customers such as school districts,  
7 state governments and so forth.”<sup>33</sup>

8 In addition, through its settlement with the CWA, CenturyLink has made explicit  
9 commitments to retain experienced, front-line workers. These commitments satisfy CWA’s  
10 concerns and result in CWA’s support for a finding that the Transaction will be in the public  
11 interest in Arizona.<sup>34</sup>

12 CenturyLink witness Todd Schafer discusses the operational strengths that CenturyLink  
13 brings to the merged company, including CenturyLink’s substantial and successful experience  
14 with the integration of past mergers.<sup>35</sup> These past mergers include, most recently, the Embarq-  
15 CenturyLink merger, which closed in July 2009. The Embarq merger was an acquisition of a  
16 provider much larger than the pre-existing CenturyLink, and resulted in a combined company  
17 with 7 million access lines, 2.2 million broadband customers, and 535,000 video customers in 33  
18 states.<sup>36</sup> As Mr. Schafer explains, this integration is well underway, with all of the human  
19 resources and financial systems successfully integrated shortly after closing. At the time that  
20 testimony was prepared, 25% of the access lines served by former Embarq systems had  
21 converted to CenturyLink’s integrated retail customer service and billing system, and all will be  
22 converted by third quarter 2011.<sup>37</sup>

23 As further evidence of CenturyLink’s capability in handling successful integrations, Mr.  
24 Schafer testified that CenturyLink has doubled and redoubled its size several times through a

25 <sup>31</sup> Transcript Vol. I at 47, lines 4-9.

26 <sup>32</sup> *Id.*, at 161, lines 20-25.

27 <sup>33</sup> *Id.*, at 235, line 24.

28 <sup>34</sup> CWA Notice of Withdrawal and Notice of Filing Settlement Agreement, p. 5 (filed with the Commission on October 21, 2010).

<sup>35</sup> Schafer Direct at 4-8.

<sup>36</sup> *Id.*, at page 6, line 24 to page 7, line 2.

<sup>37</sup> *Id.* at 7.

1 series of acquisitions, each time successfully integrating the acquisition and improving its  
2 financial strength.<sup>38</sup> Through this experience, CenturyLink has developed a methodology for  
3 integration that is designed to maximize efficiency, minimize difficulties and above all ensure  
4 that the Transaction benefits, rather than harms, customers.<sup>39</sup> Confidential Hearing Exhibit  
5 CTL-10 depicts CenturyLink's detailed integration process, which describes the integration  
6 efforts the company is undertaking to prepare for the Qwest merger.<sup>40</sup>

7 Mr. Schafer also describes the operational characteristics that have made CenturyLink a  
8 leading telecommunications company, including CenturyLink's regional operating model and  
9 local "go-to-market" strategies.<sup>41</sup> CenturyLink has successfully employed these practices in the  
10 Embarq markets and intends to bring the same benefits to the Qwest markets after the merger.<sup>42</sup>  
11 CenturyLink's operational and marketing strategies will be deployed in urban markets as well as  
12 the rural markets that have been CenturyLink's traditional focus. The evidence shows that  
13 CenturyLink's operational and marketing strategies bring important benefits to all Arizona  
14 customers.<sup>43</sup>

15 In addition, the Transaction will allow the combined company to draw on the network  
16 and operational strengths of both Qwest and CenturyLink, which Ms. McMillan cites as a key  
17 benefit of the Transaction.<sup>44</sup> No witness contradicted these claims. The evidence  
18 overwhelmingly shows that the merged company will have more than sufficient technical,  
19 operational and managerial resources to continue to provide reliable and quality services to  
20 Arizona consumers after the merger.

21 5. **The Merger Makes QC a Stronger, More Competitive Company.**

22 In light of the state and national trends associated with access line loss, wireless and  
23 cable competition and due to the demand of customers for increased broadband capacity and  
24

25 \_\_\_\_\_  
<sup>38</sup> Schafer Direct at 4-6.

26 <sup>39</sup> Transcript Vol. I at page 143, line 5 to page 144, line 3.

27 <sup>40</sup> Transcript Vol. I at 170-181.

28 <sup>41</sup> Schafer Direct at 8-11.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> McMillan Direct at 9-12.

1 higher bandwidth content, this merger provides substantial benefits for Arizona.<sup>45</sup> Because the  
2 Transaction will create a financially strong and stable ILEC for the reasons described above, the  
3 merged company will have an enhanced ability to invest in local and national networks, deploy  
4 broadband and other advanced services, and provide market-leading service quality to its  
5 customers. The combined company will be positioned to compete effectively for customers in  
6 the increasingly competitive telecommunications market, in Arizona and nationally.<sup>46</sup>

7 CenturyLink witness Kristin McMillan and Qwest witness James Campbell testified that  
8 the merger was an appropriate response to the industry trends seen nationwide as well as in  
9 Arizona.<sup>47</sup> Furthermore, Messrs. Glover and Campbell explained the benefits of this  
10 Transaction in bringing more competition to the national market for offering service to large  
11 customers.<sup>48</sup> Even before the Settlement Agreement, Staff witness Armando Fimbres testified  
12 that the merger should better position the combined company to compete against key facilities-  
13 based CLECs such as Cox, and that Arizona customers could benefit from the increased  
14 financial strength of the combined company, which would be able to more aggressively pursue  
15 new infrastructure and service initiatives.<sup>49</sup>

16 The Transaction combines two leading communications companies with customer-  
17 focused, industry-leading capabilities, together with complementary networks and operating  
18 footprints. The combination creates a robust, national 180,000-mile fiber network that will  
19 allow CenturyLink to deliver strategic and customized product solutions to residential, business,  
20 wholesale, and government customers throughout the nation by combining Qwest's significant  
21 national fiber-optic network and data centers and CenturyLink's core fiber network.<sup>50</sup>

22 \_\_\_\_\_  
23 <sup>45</sup> *Id.* at 16 *et seq.* As stated in Mr. Campbell's testimony, Qwest faces increasingly intense competitive pressures in  
24 Arizona. From 2001 to 2009, the number of Qwest residential and business access lines declined over 48%, while  
the population of Arizona grew 24%. Declining access lines in the context of a growing marketplace demonstrates  
that Qwest faces increasing competition from cable telephony, wireless, VoIP and CLECs.

25 <sup>46</sup> Campbell Direct at page 14, line 21 to page 15, line 11, and page 18, line 11 to page 19, line 6; Glover Direct  
beginning at page 12, line 10. Mr. Glover testified that the merger will result in enhanced service and product  
capabilities based on a national 180,000 mile fiber network, a strong product portfolio, increased scale, and  
26 expanded competitive offerings, including high-speed Internet, video, data hosting and managed services, as well as  
fiber -to-cell connectivity and other high-bandwidth services.

27 <sup>47</sup> *E.g.*, Campbell Direct at 11-14; McMillan Direct at 9-12; McMillan Rebuttal at 7-9.

28 <sup>48</sup> Campbell Direct at 14-15; Glover Direct at 6.

<sup>49</sup> Fimbres Direct at 10.

<sup>50</sup> McMillan Direct at 9-11.

1 In short, the record in this proceeding compels the conclusion that this Transaction will  
2 provide substantial, tangible benefits to Arizonans.

3 B. **The Settlement Agreement with Staff and RUCO Assures that the Merger**  
4 **Serves the Public Interest.**

5 The Settlement Agreement<sup>51</sup> entered into among the Joint Applicants, Staff and RUCO  
6 further ensures that this Transaction serves the public interest. Staff testified that the Settlement  
7 Agreement “reflects the negotiated resolution of all contested issues in this Docket” and  
8 “reflects a careful balancing of the interests of the various Parties involved.”<sup>52</sup> This includes the  
9 interests of the Non-Settling CLECs. RUCO testified that the Settlement Agreement  
10 “guarantees that RUCO will get what it believes is most important—a merger of two  
11 telecommunications companies which results in a financially stronger entity that meets the  
12 public interest standard.”<sup>53</sup> The Settlement Agreement also includes a commitment from  
13 CenturyLink that the merged entity will invest not less than \$70 million in broadband  
14 infrastructure in Arizona over a five-year period. The testimony of Staff and RUCO witnesses  
15 reaffirm the declarations made in the Settlement Agreement, that it “meet[s] the requirements of  
16 A.A.C. R14-2-803 and promote[s] the public interest.”<sup>54</sup> As the settling parties state in the  
17 Settlement Agreement, “[W]ith this Agreement . . . the Joint Application . . . for approval of the  
18 proposed merger . . . should be approved and authorized by the Commission.”<sup>55</sup>

19 RUCO notes that this is a “best in class” settlement agreement that provides benefits as  
20 good, if not better, than benefits included in settlement agreements reached in other  
21 jurisdictions. Further, the language strengthens and clarifies the Staff’s original conditions for  
22 approval that were important to both the CLECs and RUCO.<sup>56</sup> RUCO cites four reasons for  
23 supporting the Settlement Agreement in its entirety:

24 First, the Proposed Settlement Agreement maintains the existing competitive  
25 telecommunications environment in Arizona. Second, it protects consumers who  
will be served by a financially stronger entity that is poised to offer a number of

26 <sup>51</sup> Settlement Agreement (Hearing Exhibit JA-2).

27 <sup>52</sup> Abinah Settlement Testimony at 7, lines 10-13.

28 <sup>53</sup> Rigsby Settlement Testimony at 3, lines 17-20.

<sup>54</sup> Settlement Agreement at 1.

<sup>55</sup> *Id.*, at 2.

<sup>56</sup> Rigsby Settlement Testimony at 4, lines 12-17.

1 advanced telecommunications products. Third, it commits the Joint Applicants to  
2 making a minimum \$70 million investment in broadband infrastructure. Fourth, it  
3 addresses RUCO's initial concern that the costs of the merger not be passed on to  
ratepayers."<sup>57</sup>

4 Mr. Abinah testified on behalf of Staff that the Settlement Agreement produces the  
5 following benefits, among others:

6 1. Maintains competition in that the merger of the Joint Applicants will not  
7 lead to a reduction in the number of providers of competitive telecommunications  
services in Arizona.

8 2. Merged Company provides financial stability as a result of the  
9 combination. This will provide the Merged Company the ability to make  
10 necessary investments to its network in order to provide advanced products and  
services.

11 3. Maintains stable local exchange rates through the extension of  
interconnection agreements, wholesale agreements, commercial agreements and  
12 tariffs for the benefit of CLECs and their respective customers.

13 4. Requires the Joint Applicants to evaluate existing litigation involving the  
Commission and make a good faith effort to resolve the issues without further  
14 litigation thus preserving Staff resources, and

15 5. Commits the Joint Applicants to investment in broadband infrastructure in  
16 an amount no less than \$70 million within the State of Arizona over a five year  
period beginning January 1, 2011.<sup>58</sup>

17 The Settlement Agreement is comprehensive, containing conditions benefitting both  
18 retail and wholesale customers, including the remaining non-signing CLECs who will have an  
19 equal opportunity to take advantage of the settlement benefits negotiated by Staff and RUCO.<sup>59</sup>  
20 Attachment 1 to the Settlement Agreement contains 41 separate conditions that will benefit  
21 wholesale carriers and retail carriers.

22  
23  
24  
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<sup>57</sup> *Id.*, at 4-5.

28 <sup>58</sup> Abinah Settlement Testimony at page 7, line 15 to page 8, line 3.

<sup>59</sup> Glover Settlement Testimony at 7, lines 3-6.

1 C. **The Non-Settling CLECs' Remaining Objections Are Based on Inapt**  
2 **Comparisons, and the Conditions Proposed Are Flawed, Extreme,**  
3 **Unnecessary, and in Every Instance Based on Speculation and Conjecture.**

4 1. **Comparisons to Other Mergers Are Inapt; Dire Predictions of**  
5 **Financial Stress Represent Baseless Conjecture.**

6 The Non-Settling CLECs object to approval of the merger without the imposition of six  
7 additional wholesale conditions.<sup>60</sup> As explained in Section IV.C.2.b below, the Joint Applicants  
8 have addressed the majority of concerns reflected in Non-Settling CLECs' original 30  
9 conditions. Indeed, the Joint Applicants have already addressed the Non-Settling CLECs'  
10 concerns embodied in three of their remaining six conditions. The Settlement Agreement  
11 maintains the Qwest OSS for 24 months and it extends all forms of wholesale service  
12 agreements and tariffs. However, the Non-Settling CLECs contend that the merger is not in the  
13 public interest unless the Qwest OSS is maintained for 36 months and all forms of wholesale  
14 service agreements and tariffs are extended for the same length of time. These demands are in  
15 stark contrast to the findings of five Qwest-region state commissions that have already approved  
16 the merger,<sup>61</sup> and also in contrast to the utility commission and/or public counsel Staffs of eight  
17 Qwest-region state utility commissions<sup>62</sup> and major CLECs like Integra and Cox that have  
18 entered into Settlement Agreements with the Joint Applicants (not to mention the numerous  
19 CLECs and wireless carriers that did not intervene to oppose the merger). The Non-Settling  
20 CLECs are unreasonable, as demonstrated by how far they are from the mainstream of state  
21 approvals.

22 In support of their remaining six conditions, the Non-Settling CLECs rely primarily on  
23 two arguments, both founded on the alleged "risk" associated with the merger: (1) a history of  
24 "failures" in other telecom mergers,<sup>63</sup> and (2) concerns about CenturyLink's ability to integrate

25 \_\_\_\_\_  
26 <sup>60</sup> Throughout this subsection IV.C, references to the "Non-Settling CLECs" is a reference to PAETEC, tw telecom,  
27 and Level 3 only, and does not include Pac-West. The Non-Settling CLECs' six issues or conditions that are  
28 referred to throughout are the six issues that are set forth in Mr. Gates' settlement testimony at page 4.

<sup>61</sup> These commissions are Colorado, Utah, Iowa, Montana, Nebraska, and quite potentially, Minnesota (*see* footnote  
4 *supra*).

<sup>62</sup> These commissions are Colorado, Utah, Iowa, Montana, Minnesota, Oregon, Washington and Arizona.

<sup>63</sup> Ankum Direct at 25-38.

1 Qwest, particularly in light of alleged pressure to achieve estimated synergy savings.<sup>64</sup> The  
2 Joint Applicants' testimony demonstrates that neither of these arguments is valid.

3 a. **Comparisons to Other Mergers Are Inapt.**

4 The Non-Settling CLECs presented the prefiled testimony of Dr. August Ankum, who  
5 points to two specific mergers that resulted in significant operational problems and financial  
6 distress for the post-merger telecommunications companies.<sup>65</sup> Specifically, the Non-Settling  
7 CLECs rely on the difficulties experienced by Hawaiian Telecommunications, Inc. ("Hawaiian  
8 Telcom") after it was acquired by the Carlyle Group ("Carlyle"), and FairPoint  
9 Communications, Inc. ("FairPoint") after it acquired the wireline operations of Verizon  
10 Communications in Maine, New Hampshire, and Vermont.

11 The Hawaiian Telcom and FairPoint transactions are fundamentally distinguishable from  
12 the present Transaction in significant ways. To begin with, neither Carlyle nor FairPoint had the  
13 kind of experience that CenturyLink has in successfully acquiring and integrating other  
14 telecommunications companies.<sup>66</sup> CenturyLink has a history of successful acquisitions and  
15 integrations over the last 13 years.<sup>67</sup> The most recent transaction, CenturyTel's acquisition of  
16 Embarq, is on track for successful completion of all systems integration by third quarter 2011,<sup>68</sup>  
17 and the transaction has been successful by a number of measures, most notably: a reduction in  
18 access line losses,<sup>69</sup> continued growth in high-speed Internet subscribers,<sup>70</sup> and a significant  
19 increase in CenturyLink's stock price<sup>71</sup> (and thus, also increasing value for prior holders of  
20 Embarq shares).

21 <sup>64</sup> See, e.g., Gates Direct at 27-30.

22 <sup>65</sup> Ankum Direct at 28-36.

23 <sup>66</sup> McMillan Rebuttal at page 11, line 22 to page 12, line 5; Hearing Transcript Vol. II at page 275, line 22 to page  
24 276, line 5. Similarly, Frontier Communications, another ILEC Dr. Ankum refers to in his direct testimony, does  
25 not have the kind of history of successful mergers that CenturyLink has. Dr. Ankum alleges that Frontier has had  
26 difficulties with its acquisition of portions of Verizon's ILEC operations—just as FairPoint purchased only portions  
27 of Verizon's ILEC operations in certain states, in contrast to CenturyLink's acquisition of all of Qwest. The other  
28 transactions Dr. Ankum referred to—Worldcom's acquisition of MCI and Qwest's acquisition of U.S. West—are  
also inapt comparisons. In both instances, the post-merger company suffered from well-documented mis-  
management, including actual fraud in the case of Worldcom.

<sup>67</sup> Schafer Direct at page 5, line 2 to page 6, line 11, and Hearing Exhibit TS-1 (providing a timeline of CenturyLink  
acquisitions since 1997). See also Section IV.A.4 above.

<sup>68</sup> Transcript Vol. I at page 155, line 20 to page 156, line 1.

<sup>69</sup> Glover Direct at 16, lines 2-9.

<sup>70</sup> Glover Direct at 16, lines 10-11.

<sup>71</sup> Transcript Vol. I at page 67, line 22 to page 68, line 13.

1           Moreover, the “failures” of the Hawaiian Telcom and FairPoint transactions can be  
2 directly attributed to the fact that the acquiring companies were required to create entirely new  
3 OSS and then to cut over the acquired carrier’s services to those newly-created OSS either  
4 immediately upon closing or within a set time period.<sup>72</sup> The Non-Settling CLECs’ two principle  
5 witnesses, Both Dr. Ankum and Mr. Gates, both acknowledge that the state commissions that  
6 reviewed those two transactions—in Hawaii, Vermont, Maine, and New Hampshire—trace the  
7 financial and service problems to specific OSS challenges, which then led to financial distress.<sup>73</sup>  
8 In contrast, the current Transaction will involve the phased-in integration of systems with no  
9 externally-imposed timeline or mandate for conversion of systems. Although the ultimate  
10 objective is a single integrated platform for each major system (*e.g.*, billing, ordering, etc.),<sup>74</sup> the  
11 Qwest and CenturyLink systems can run in parallel for as long as necessary.<sup>75</sup> Most  
12 importantly, this merger results in a *combination* of systems, employees, and expertise, *not a*  
13 *transfer* from one entity to an entirely different provider. All of the positive attributes of  
14 Qwest’s wholesale provisioning will remain in place, allowing the merged company to select its  
15 integrated systems carefully, mindful of QC’s continuing regulatory obligations.

16           The Non-Settling CLECs ignore the large number of successful transactions that have  
17 combined ILEC-to-ILEC operations over the last decade and even before that time.<sup>76</sup> AT&T is  
18 comprised of former BOCs Ameritech, Pacific Bell, SBC and BellSouth, and of course only  
19 became “AT&T” when SBC acquired legacy AT&T. Verizon is comprised of former BOCs  
20 Bell Atlantic and NYNEX, and also large portions of the former GTE. No one would argue  
21 today that the AT&T and Verizon ILEC mergers were not successful. Aside from possibly one  
22 of the two remaining BOCs, arguably no telecommunications company *other than CenturyLink*  
23 has the demonstrated financial and technical capability to acquire and operate Qwest.

24  
25  
26 <sup>72</sup> McMillan Rebuttal at 12, lines 7-15.

27 <sup>73</sup> *See, e.g.*, Ankum Direct Testimony at 34-36; Gates Direct at page 89, line 10 through page 91, and pages 94-96.

28 <sup>74</sup> Schafer Rebuttal at 9, lines 9-14.

<sup>75</sup> Transcript Vol. 1 at 180, lines 2-7 and lines 16-24.

<sup>76</sup> McMillan Rebuttal at page 11, line 22 to page 12, line 1.



1 In addition, only 2% of the estimated operating synergy savings is attributable to  
2 wholesale operations.<sup>83</sup> That translates into only \$13 million out of \$575 million. Moreover,  
3 none of those specific estimated synergy savings are derived from the OSS systems.<sup>84</sup> Further,  
4 the overall financial benefits of this Transaction argue against any undue pressure to achieve  
5 synergy savings at the expense of wholesale customers. Finally, *pro forma* financials show \$1.7  
6 billion in annual free cash flow, even without synergy savings, reduced debt structure, and one  
7 of the strongest balance sheets in the industry, thus eliminating the existence of any undue  
8 pressure to achieve synergy savings at the expense of any stakeholder.<sup>85</sup> The Non-Settling  
9 CLECs' argument that they need to be protected from any risk associated with the Joint  
10 Applicant's estimated synergy savings has no merit.

11 The Non-Settling CLECs speculate that isolated operational issues with the  
12 Embarq/CenturyLink billing system conversion in North Carolina portend future troubles with  
13 the integration of the Qwest systems.<sup>86</sup> In fact, these issues were minor in the context of the  
14 total scope of the conversions from the Embarq systems. As Mr. Schaefer pointed out, while it  
15 is not reasonable to expect that there will never be any issues when there are major system  
16 cutovers (including those made by the CLECs and other service providers),<sup>87</sup> in North Carolina  
17 CenturyLink took the necessary steps to address these issues, minimize any impacts to  
18 customers and to ensure the issues were understood and resolved prior to any future  
19 conversions.<sup>88</sup> Importantly, this problem with transitioning of records was not repeated in the  
20

21 <sup>83</sup> *Id.* at 30, lines 2-3; Transcript Vol. I at 25, lines 18-21.

22 <sup>84</sup> Transcript Vol. I at 26, lines 6-9.

23 <sup>85</sup> See Section IV.A.2 above.

24 <sup>86</sup> Gates Direct at 63.

25 <sup>87</sup> Transcript Vol. I at 159, lines 7-13.

26 <sup>88</sup> Schafer Rebuttal at 8, lines 4-18. As Mr. Schaefer explained in his Rebuttal Testimony, during the OSS  
27 conversion of the North Carolina market in 2010 to the new CenturyLink billing and operational systems, some of  
28 the facilities records were loaded incorrectly, due to the way in which facilities records were constructed differed  
between the legacy CenturyTel and Embarq areas. As a result, some records initially did not load correctly in the  
conversion. CenturyLink immediately researched the problem and learned that approximately one-sixth of the  
records did not load correctly. In response, CenturyLink took the necessary steps to address the issues and  
minimize any impacts to customers. As a result, the majority of facility records were correctly loaded by  
September 2010 and the customer service quality levels recovered by September and continue to be at levels  
produced before conversion. Transcript Vol. I at 124, lines 16-23. Perhaps more importantly, customer complaints  
in North Carolina actually decreased by 25% from the same period in 2009. Transcript Vol. I at 124, line 24 to 125,  
line 23.

1 latest phase of the Embarq integration, which involved the conversion of over 1 million access  
2 lines, including the conversion of CenturyLink's most urban market of Las Vegas.<sup>89</sup>

3 In an attempt to seize on the only possible hiccup in the Embarq integration they could  
4 find, the Non-Settling CLECs have resorted to exaggerating the impacts of the North Carolina  
5 records conversion issue, even declaring that as a result customers were "completely out of  
6 service"<sup>90</sup> although, as Mr. Schafer testified, that is simply wrong.<sup>91</sup> Mr. Schafer also  
7 emphasized that when viewed in context, the conversion has been successful: since the  
8 conversion was completed there have been over 9 million bills issued, 1.1 million service orders  
9 processed, and over 400,000 jobs dispatched to technicians completed using the new system.<sup>92</sup>

10 The Non-Settling CLECs' insinuation of conversion-related retail service quality problems is  
11 effectively rebutted by Mr. Schafer's testimony that there was a 25% decrease in North Carolina  
12 customer complaints during the conversion process, as compared to the same period in 2009.<sup>93</sup>

13 The record demonstrates that CenturyLink has significant experience with successful  
14 integrations, yet the Non-Settling CLECs tell a fictitious story of massive customer impact.

15 The groundless nature of the Non-Settling CLECs' concerns is illustrated by the  
16 numerous errors and misstatements in the testimony of Mr. Gates that was offered in support of  
17 their conditions. For example, at the December 13, 2010 hearing, Mr. Gates incorrectly accused  
18 CenturyLink of taking "less principled" positions than Qwest, simply because Mr. Gates  
19 happens to disagree with those positions, especially regarding "charges" that he believes are  
20 unwarranted. However, with regard to certain charges that CenturyLink has sought to impose in

21 \_\_\_\_\_  
22 <sup>89</sup> Transcript Vol. I at page 122, line 25 to page 123, line 14.

23 <sup>90</sup> Transcript Vol. I at 90, lines 8-9.

24 <sup>91</sup> Transcript Vol. I at page 125, line 24 to page 126, line 2.

25 <sup>92</sup> Transcript Vol. I at 121, lines 5-21.

26 <sup>93</sup> Transcript Vol. I at page 124, line 24 to page 125, line 23. Regarding retail service quality generally, Staff  
27 witness Genung initially concludes in her Direct Testimony that based upon complaint data she gathered  
28 independently from eleven current CenturyLink ILEC states, her analysis "produced more favorable results for  
CenturyLink when compared to Qwest in Arizona on an annualized basis." She also concludes that "Staff has no  
significant concerns about CenturyLink's ability to meet the standards in the Qwest Service Quality Tariff." She  
questions some of the "more extensive" information supplied by CenturyLink in discovery which she states "cannot  
be compared explicitly" due to differences in the size of markets being compared. Genung Direct at 10-11.  
Ultimately, Staff, RUCO and the Joint Applicants were able to agree that the post-merger company would not seek  
to make changes to Qwest's Service Quality Tariff for two years after the merger close (Hearing Exhibit JA-2,  
Condition 11), and that the post-merger company shall maintain or improve its pre-merger complaint status in the  
Qwest Arizona service areas (Hearing Exhibit JA-2, Condition 13).

1 other states (which Mr. Gates insinuated makes CenturyLink "less principled"), it is important to  
2 note that some state commissions have authorized CenturyLink's imposition of these charges  
3 and some have not.<sup>94</sup> In any case, Mr. Hunsucker explained that it is CenturyLink's policy to  
4 seek these charges through the Section 251 process of negotiation and, if necessary,  
5 arbitration.<sup>95</sup> There is nothing unprincipled about this process.

6 During the hearing, Mr. Gates also made much ado of CenturyLink's request for a  
7 temporary (six months, until February 2, 2011) waiver of the FCC's deadline for implementing  
8 one-day number porting.<sup>96</sup> Mr. Gates exclaimed: "[B]ecause of the ongoing integration efforts  
9 between CenturyTel and Embarq, CenturyLink asked for a waiver of the one-day porting  
10 process. My goodness. Porting is something we have been doing for years and years and years.  
11 For a carrier to come to the FCC and say we can't do one-day porting is remarkable to me."<sup>97</sup>

12 However, while addressing the ALJ, Mr. Gates failed to mention that CenturyLink's  
13 request was for a *temporary* waiver, and both his live and prefiled testimony failed to provide  
14 the actual context surrounding this delay in implementing one-day number porting.<sup>98</sup> The  
15

16 <sup>94</sup> Transcript Vol. II at 300, lines 14-19. For example, in an interconnection arbitration before the Public Utility  
17 Commission of Texas, CenturyLink prevailed on its position that charges are appropriate for CLEC access to the  
18 Network Interface Device ("NID") and for processing orders for number ports—both charges that Mr. Gates and  
19 the Non-Settling CLECs oppose (*see* Joint CLEC Condition 24, Gates Surrebuttal at 133). Mr. Gates was a witness  
20 for Charter Cable in this Texas arbitration. *Petition of Charter Fiberlink TX-CCO, LLC for Arbitration of an*  
21 *Interconnection Agreement with CenturyTel of Lake Dallas, Inc.*, Texas Public Utility Commission of Texas Docket  
22 No. 35869, Arbitration Award, Decision Matrix, pp. 26-27 (July 22, 2009).  
23 [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/35869\\_95\\_621396.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/35869_95_621396.PDF).

24 Similarly, Embarq prevailed in an Indiana interconnection arbitration on the issue of whether it could charge a fee  
25 for directory listing storage and database maintenance, another charge Mr. Gates believes is "unprincipled" and that  
26 would be barred by Joint CLEC Condition 24. Cause No. 43372 INT 01, *Petition of MCIMetro Verizon Access*  
27 *Transmission Services LLC D/B/A Verizon Access Transmission Services for Arbitration of an Interconnection*  
28 *Agreement with United Telephone Company of Indiana, Inc. D/B/A Embarq Under Section 252(b) of the*  
*Telecommunications Act of 1996*, Order of the Indiana Utility Regulatory Commission, p. 19 (March 12, 2008).  
[http://www.in.gov/iurc/portal/Modules/Ecms/Cases/Docketed\\_Cases/ViewDocument.aspx?DocID=0900b631800eb680](http://www.in.gov/iurc/portal/Modules/Ecms/Cases/Docketed_Cases/ViewDocument.aspx?DocID=0900b631800eb680)

The only example that Mr. Gates provided of CenturyLink unilaterally increasing rates occurred in 1998, in Wisconsin, after the former CenturyTel of the Midwest acquired certain Ameritech exchanges and began charging CenturyTel's switched access rates in those acquired exchanges. *See* Gates Surrebuttal at 37, and linked Wisconsin Order.

<sup>95</sup> Transcript Vol. II at page 299, line 10 to page 300, line 9.

<sup>96</sup> *See Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability*, WC Docket No. 07-244, CC Docket No. 95-116, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6084, ¶ 1 (2009) (the "Porting Interval Order").

<sup>97</sup> Transcript Vol. I at 104, lines 6-11.

<sup>98</sup> *See* Hunsucker Rebuttal at page 62, line 11 to page 63, line 3.

1 request was entirely reasonable and appropriate, as confirmed by the FCC, which ruled as  
2 follows:

3 We conclude that CenturyLink has demonstrated that there are special  
4 circumstances warranting a limited waiver in this instance, and that such a waiver  
5 will serve the public interest. *When the Commission adopted the one-business*  
6 *day porting requirement, it recognized that some providers might find it unduly*  
7 *burdensome to implement a one-business day porting interval.* To demonstrate  
8 the good cause required by the Commission's waiver rule, the Commission  
9 indicated that a provider must show with particularity that it would be unduly  
10 economically burdensome for it to implement the reduced porting interval.  
11 *CenturyLink has demonstrated that requiring it to now modify two legacy*  
12 *operational support systems to perform one-business day porting, when those*  
13 *systems will be replaced through merger integration a few months later, would*  
14 *be unduly burdensome. We do not believe that such a requirement serves the*  
15 *public interest. We are also concerned that CenturyLink's efforts to comply with*  
16 *the August 2 porting deadline will impede its compliance with the October 1*  
17 *systems integration requirement of the CenturyTel/Embarq Merger Order.*  
18 Furthermore, requiring CenturyLink to make interim changes to its provisioning  
19 and billing systems to support one-day porting now, and then make permanent  
20 changes again in the near future, when each set of systems is integrated between  
21 the merged companies, could result in more porting errors, which would not  
22 serve the goals of our *Porting Interval Order*.<sup>99</sup> (emphasis added)

23 While a limited waiver may delay some consumers from receiving the benefits of  
24 the one-business day porting requirement immediately following the August 2,  
25 2010 deadline, we are convinced that, on balance, the public interest benefits  
26 described above outweigh any potential public interest harms.<sup>100</sup>

27 Although the FCC granted CenturyLink's waiver request on August 2, 2010, Mr. Gates  
28 failed in both his surrebuttal testimony (which was filed three months later) and his live  
testimony (which was provided four months later) to acknowledge that the FCC's *Porting*  
*Interval Order* explicitly recognized that some carriers may need to request a waiver of the  
August 2, 2010 deadline. He didn't acknowledge that CenturyLink requested the temporary  
waiver, in part, because compliance with the one-day reporting requirement would have  
jeopardized CenturyLink's compliance with the requirement of the *CenturyTel/Embarq Merger*  
*Order* to integrate the CenturyTel wholesale OSS to the more advanced Embarq wholesale OSS  
by October 1, 2010—a merger requirement that benefits CLECs in legacy CenturyTel areas.

<sup>99</sup> CenturyLink Petition for Waiver of Deadline, Order CC Docket No. 95-1 16, WC Docket No. 07-244, ¶ 8 (Rel. Aug. 2, 2010) (emphasis added, internal citations omitted).

[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-10-1439A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-10-1439A1.doc)

<sup>100</sup> *Id.* at ¶ 9

1 Mr. Gates clearly failed to acknowledge that the FCC ultimately found it to be in the public  
2 interest to grant CenturyLink's temporary waiver request rather than require expensive  
3 modification of CenturyLink systems that were scheduled to be replaced. Yet at the hearing Mr.  
4 Gates cited this temporary waiver request as a basis for his lack of confidence over  
5 CenturyLink's ability to manage the kind of order volumes currently handled by the Qwest  
6 wholesale OSS.<sup>101</sup> Mr. Gates' rhetoric drew a nonsensical connection between that waiver  
7 request and CenturyLink's ability to handle large wholesale order volumes.

8 Mr. Gates also erred when he was asked by the ALJ if there were any conditions in the  
9 Staff/RUCO Settlement Agreement that give him comfort about the level of testing that would  
10 occur before CenturyLink would make any changes to the Qwest OSS.<sup>102</sup> Mr. Gate's declared  
11 that he was "shocked" that Qwest had notified carriers on November 30, 2010 that it would  
12 begin imposing directory listing charges, as if those were new charges.<sup>103</sup> Mr. Gates suggested  
13 that right before the merger closes Qwest might "dump a dozen of these things on the stated  
14 conditions and now impose all of these charges we thought were negotiated away and prevented.  
15 . . . [We] just don't want [CenturyLink] to impose these charges in the Qwest region *where*  
16 *Qwest has never imposed these charges.*"<sup>104</sup>

17 In fact, these charges are not new, but rather are nonrecurring charges for premium white  
18 pages listings stated in existing Qwest ICAs in Arizona.<sup>105</sup> Any Arizona CLEC whose ICA  
19 contains premium directory listing provisions includes these nonrecurring charges. However,  
20 even though these nonrecurring charges are authorized by existing ICAs, they had previously  
21 not been billed by Qwest on facilities-based CLECs due IT system limitations. Qwest's billing  
22 for these services reflects the collection of previously-authorized charges that to date the CLECs  
23 have not had to pay, not some trend of imposing new charges.

24  
25 \_\_\_\_\_  
<sup>101</sup> Transcript Vol. I at page 103, line 18 to page 104, line 13.

<sup>102</sup> See Transcript Vol. I beginning at page 83, line 12.

<sup>103</sup> Transcript Vol. 1 at page 85, line 16 to page 86, line 14.

<sup>104</sup> *Id.* (emphasis added). Mr. Gates made this argument in connection with the Joint CLECs' original proposed condition to have the terms of Condition 23 in the Settlement Agreement—relating to extensions of wholesale service arrangements—apply to the extension timeframes for any wholesale service agreements.

<sup>105</sup> Transcript Vol. II at page 366, line 13 to page 369, line 10. See also Hearing Exhibit Q-9.

1 Finally, in his prefiled and live testimony on the Settlement Agreement, Mr. Gates  
2 clearly mischaracterizes the applicability of the FCC's Phoenix Forbearance Order ("PFO").<sup>106</sup>  
3 Qwest witness Brigham explained in detail at the December 13, 2010 hearing that Mr. Gates, in  
4 an attempt to support the Non-Settling CLECs' position that non-Section 251 wholesale service  
5 arrangements should be extended 36 months, erroneously argues that the PFO found that Qwest  
6 was the sole provider of those non-Section 251 (non-Unbundled Network Element or "non-  
7 UNE") services.<sup>107</sup> In numerous places Mr. Gates' testimony mischaracterizes the scope of the  
8 findings in the PFO and conflates the loop and transport unbundled network elements ("UNEs")  
9 that were at issue with (apparently) all wholesale services used by CLECs. As Mr. Brigham  
10 explained at hearing, Qwest filed a petition at the FCC specifically seeking relief from the  
11 unbundling obligations of Section 251(c)(3) of the federal Telecommunications Act of 1996 (the  
12 "Act"), under Section 160(c) of the Act, which permits the FCC to forbear from imposing any  
13 regulation or provision of the Act.<sup>108</sup>

14 However, Mr. Gates' testimony uses loose and imprecise language to assert that the PFO  
15 somehow addressed the competitive landscape in Phoenix for the entire range of wholesale  
16 services relied on by CLECs, such as "QLSP, dark fiber, special access, etc."<sup>109</sup> This kind of  
17 extrapolation by Mr. Gates, in support of the Non-Settling CLECs' demand for a 36-month  
18 extension for all non-Section 251 wholesale service arrangements, is wrong. Although the PFO  
19 makes passing references to other carriers' reliance on Qwest's wholesale services,<sup>110</sup> these  
20 references are legally *dicta* and are irrelevant for the purposes of this proceeding because the  
21 analysis and findings in the PFO are limited to the issue of whether there is sufficient actual or

22  
23 <sup>106</sup> *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113 (Released June 22, 2010) (Hearing Exhibit Q-8).

24 <sup>107</sup> Transcript Vol. I at page 201, line 2 to page 202, line 9.

25 <sup>108</sup> *Id.* at page 202, lines 12-16.

26 <sup>109</sup> Gates Settlement Testimony at 19, lines 7-9. QLSP is Qwest's commercial product combining switching and  
27 loop facilities. As Mr. Brigham explained at the December 13, 2010 hearing, Mr. Gates used selective language  
28 from ¶ 96 of the PFO that found "a lack of significant competition [in the Phoenix MSA] for the wholesale products  
used to serve either mass market or enterprise customers," and then Mr. Gates immediately states in testimony that  
"wholesale services, such as QLSP, dark fiber, special access, etc. are critical to the CLECs' provisioning of  
services to consumers in Arizona." However, nowhere does he explain that ¶ 96 only dealt with Qwest's request  
for relief from Section 251(c)(3) *loop and transport* unbundling.

<sup>110</sup> *E.g.*, PFO ¶¶ 68 and 87.

1 potential competition in the Phoenix MSA to grant Qwest forbearance from *Section 251(c)(3)*  
2 *loop and transport unbundling obligations*. The PFO contains no analysis of *the degree* to  
3 which CLECs rely on *non-Section 251 wholesale services*, nor any analysis of the potential  
4 affect on competition if access to *non-Section 251 wholesale services* were limited, reduced or  
5 eliminated. Quite simply the PFO does not provide support for the Non-Settling CLECs'  
6 argument for an extension of 36 months for all non-Section 251 wholesale service arrangements.

7 2. **The Settlement Agreement Contains Wholesale Conditions that Are**  
8 **in the Public Interest and that Adequately Address the Non-Settling**  
9 **CLECs' Concerns.**

9 The three Non-Settling CLECs have acknowledged that the Settlement Agreement  
10 contains numerous wholesale conditions that address many of their original concerns. This is  
11 reflected in the live testimony of Mr. Gates at the December 13, 2010 hearing, where he stated  
12 that his Non-Settling CLEC clients had moved to a new "reduced, condensed position" where  
13 they were only seeking "minor amendments" to the Settlement Agreement.<sup>111</sup> Mr. Gates'  
14 Settlement Testimony now states that the Commission should not approve the Settlement  
15 Agreement without the addition of six proposed conditions,<sup>112</sup> although during the December 13,  
16 2010 hearing Mr. Gates only proposed four conditions.<sup>113</sup> Mr. Haas' Settlement Testimony  
17 seeks the modification of certain language in Settlement Agreement Condition 19.<sup>114</sup>

18 In light of the Non-Settling CLECs' new posture, there is no need for the Commission to  
19 address any of the original 30 conditions<sup>115</sup> proposed by the Joint CLECs, except to the extent  
20 that they overlap with the conditions proposed by Mr. Gates and Mr. Haas in their Settlement  
21 Testimony. The Commission should find that the wholesale conditions in the Settlement  
22 Agreement are in the public interest and satisfy the requirements of the Commission's Affiliate  
23 Interest Rule, and that the Non-Settling CLECs' remaining proposed conditions are unnecessary  
24 and are not in the public interest.

25 <sup>111</sup> Transcript Vol. I at page 77, line 23 to page 78, line 7.

26 <sup>112</sup> Gates Settlement Testimony at page 2, lines 19-21, and page 4, lines 7-24.

27 <sup>113</sup> Transcript Vol. I at 74-75.

28 <sup>114</sup> Haas Settlement Testimony at page 9, line 20 to page 10, line 1.

<sup>115</sup> In reality not all 30 of the proposed conditions would be applicable in Arizona, as some of the conditions only applied to CenturyLink's operations as an ILEC separate and apart from Qwest, and CenturyLink has no ILEC operations in Arizona.

1 a. The Settlement Agreement's Wholesale Conditions Are in the  
2 Public Interest.

3 The Settlement Agreement contains numerous wholesale conditions that balance the  
4 CLEC interveners' uniform request for post-merger certainty and stability with the merged  
5 company's need for flexibility to manage its wholesale operations in a manner that is efficient  
6 and will bring value to all stakeholders. The Settlement Agreement provides protections  
7 regarding numerous wholesale issues, including Operational Support Systems ("OSS"),  
8 interconnection agreement ("ICA") negotiations, ICA extensions and opt-ins, rates and tariff  
9 changes, the continuation of the Qwest Performance Assurance Plan ("PAP" or "QPAP") and  
10 the Change Management Process ("CMP"), rate and service stability, the continued applicability  
11 of FCC obligations and Qwest's status as a BOC.

12 Specifically, following is a summary of some of the key provisions of the Settlement  
13 Agreement that address wholesale issues, including most of the conditions originally proposed  
14 by the Joint CLECs:

15 • OSS—The Merged Company has agreed to retain the Qwest wholesale  
16 OSS in the Qwest service territory for *two years* from the date of merger close, or  
17 until *July 1, 2013*, whichever is later, and thereafter provide wholesale customers  
18 with OSS wholesale service quality that is not less than, and is functionally  
19 equivalent to, the OSS wholesale service quality provided by Qwest prior to the  
20 merger close. Further, the Settlement Agreement provides numerous protections  
21 for CLECs and CMRS carriers in the event the Merged Company does decide to  
22 replace or integrate the Qwest wholesale OSS, including a *270-day notice period*,  
the submission of a detailed plan, and continued applicability of the Qwest  
Change Management Process. If any Qwest OSS interface is retired or replaced,  
CLEC and CMRS carriers are assured of *joint testing* for operational acceptance  
of any new interface, and detailed provisions governing this joint testing and  
acceptance process are set forth in the Settlement Agreement. (Ex. JA 2,  
Condition 19).

23 • Contractual agreements—The Merged Company has agreed to not  
24 terminate any existing Qwest ICAs for *three years*, ensuring a non-changing  
25 operational relationship between Qwest Corporation and all CLECs and CMRS  
26 carriers in Arizona for that time period with respect to interconnection and the  
27 mutual exchange of traffic. The Merged Company has made a similar guarantee  
28 for a period of *18 months* for Qwest Wholesale and Commercial agreements, and  
*12 months* for Qwest intrastate wholesale tariffs. Further, CLECs or CMRS  
carriers may use their existing Arizona ICA, or the Arizona ICA of their affiliate,  
as the basis for negotiating the initial successor ICA. This condition also allows a  
CLEC or CMRS carrier to adopt any existing Arizona Qwest ICA whose initial

1 term has expired and is in “extended” status, and also assures any CLEC or  
2 CMRS carrier that is currently negotiating an ICA that the Merged Company will  
not seek to restart negotiations based on a new template ICA. (*Id.*, Condition 23).

3 • **Rate and service stability**—The Merged Company has agreed to not  
4 increase the rates in the Qwest ICAs for a *three-year period* and to not assess fees  
5 for certain functions that are not currently assessed in the Qwest ILEC service  
territory without Commission approval. (*Id.*, Condition 27).

6 • **Wholesale service quality**—In the legacy Qwest ILEC service territory,  
7 the Merged Company has agreed to comply with all wholesale performance  
8 requirements and associated remedy or penalty regimes for all wholesale services.  
9 The Merged Company also agrees to maintain the Qwest Performance Assurance  
10 Plan (“QPAP”) and Performance Indicator Definition (“PID”) without reduction  
11 or modification for *18 months*, and will not seek to eliminate or withdraw the  
12 QPAP for at least *three years*. In addition, the Merged Company will provide  
13 measurement standards to compare pre- and post-merger performance, and will  
14 conduct root cause analysis on service performance deficiencies and develop  
15 proposals to remedy such deficiencies. The Merged Company has also  
committed to continue to provide monthly wholesale performance reports to Staff,  
and to provide the Staff with comparison data for both the legacy Qwest ILEC  
service territory and the legacy Embarq ILEC service territory. In addition, the  
Merged Company has agreed to maintain the Qwest Change Management Process  
 (“CMP”) for *three years* after the merger close, subject to the Merged Company’s  
right to modify the CMP consistent with the provisions of the CMP Document.  
(*Id.*, Conditions 5, 20, 22).

16 **Other Wholesale-Related Conditions:**

17 • **Merger costs**—the Merged Company will not seek to recover through  
18 wholesale service rates or other fees paid by CLECs the costs associated with the  
merger (*Id.*, Condition 1).

19 • **Service provisioning intervals**—the Merged Company agrees to maintain  
20 service provisioning intervals in the Qwest ILEC service territory (*Id.*, Condition  
21 28).

22 • **Sections 251/252 and rural exemptions**—all ILEC affiliates of the Merged  
Company will comply with the requirements of Sections 251 and 252, and in the  
23 legacy Qwest ILEC service territory, the Merged Company will not seek to avoid  
24 any obligations based on rural exemption provisions (*Id.*, Condition 29).

25 • **BOC status and §§ 271/272**—Qwest will continue to be classified as a  
26 BOC and be subject to BOC requirements, including Sections 271 and 272 (*Id.*,  
27 Condition 4).

28 • **Escalation and contact information**—the Merged Company will make  
available to each wholesale carrier in the legacy Qwest ILEC service territory the  
types and level of data, information, and assistance that Qwest currently makes  
available concerning Qwest’s wholesale OSS functions and wholesale business  
practices and procedures (*Id.*, Condition 25).

- 1 • Wholesale resources—the Merged Company will ensure that wholesale  
2 and CLEC operations are sufficiently staffed and supported by employees who  
3 are trained on Qwest and CenturyLink systems and processes (*Id.*, Condition 24).
- 4 • Non-impairment—Qwest will not seek to reclassify as “non-impaired”  
5 any Qwest wire centers until June 1, 2012 (*Id.*, Condition 30).

6 Numerous witnesses testified as to the open and comprehensive nature of the multi-party  
7 negotiation process that led to the Settlement Agreement.<sup>116</sup> Every condition in the Settlement  
8 Agreement, including all wholesale conditions, was open to negotiation and debate. As  
9 Assistant Utilities Division Direct Abinah testified, the wholesale conditions reflect a  
10 compromise,<sup>117</sup> and there is ample testimony from Staff and the Joint Applicants that the  
11 Settlement Agreement’s wholesale conditions are in the public interest.<sup>118</sup>

12 b. **The Settlement Agreement Addresses the Majority of the Non-**  
13 **Settling CLECs’ Concerns.**

14 By now proposing only six conditions,<sup>119</sup> the Non-Settling CLECs have implicitly  
15 recognized that many of their original 30 proposed conditions have been addressed by the  
16 Settlement Agreement. The Settlement Agreement addresses some of the concerns reflected in  
17 the conditions the Non-Settling CLECs are still pursuing, however, the Settlement Agreement  
18 does not grant the Non-Settling CLECs their preferred timeframes. Attachment 2 to this Brief is  
19 a comprehensive matrix that identifies the original Joint CLECs’ 30 proposed conditions  
20 (including sub-parts), and includes a corresponding column for each of those 30 conditions that  
21 explains the degree to which the Settlement Agreement addresses the Joint CLEC’s condition  
22 (*e.g.*, completely, substantially, partially, not addressed) and the corresponding wholesale  
23 condition. As can be seen in Attachment 2, when all sub-parts are considered, there are 49  
24 original Joint CLEC conditions. The Settlement Agreement completely satisfies 15 of the  
25 conditions,<sup>120</sup> substantially satisfies an additional 18 conditions, partially satisfies five

25 <sup>116</sup> Transcript Vol. II at 273, lines 20-25; Hunsucker Settlement Testimony at 6, lines 17-22; Glover Settlement  
26 Testimony at page 7, line 14 to page 8, line 4; Abinah Settlement Testimony at page 3, line 1 to page 6, line 21.

26 <sup>117</sup> Abinah Settlement Testimony at page 3, line 1 to page 6, line 21; Transcript Vol. III at 562.

27 <sup>118</sup> *See, e.g.*, Abinah Settlement Testimony at 9, lines 19-24; Hunsucker Settlement Testimony at page 20, line 11 to  
28 page 21, line 7.

27 <sup>119</sup> Plus Mr. Haas' proposed edits to Condition 19.

28 <sup>120</sup> A number of the Joint CLECs' conditions essentially seek compliance with certain federal laws or regulations, or  
with requirements in ICAs. In those circumstances, the Joint Applicants believe that the conditions in the

1 conditions, and does not address only three conditions.<sup>121</sup> In addition, there are 8 of the original  
2 Joint CLEC conditions that are inapplicable to Arizona because CenturyLink does not currently  
3 have ILEC operations here. Below is a summary of some significant wholesale conditions  
4 originally proposed by the Joint CLECs that are addressed by the wholesale conditions in the  
5 Settlement Agreement:<sup>122</sup>

- 6 • Commits to a minimum of 24 months to retain Qwest's current OSS (CLEC  
7 Condition 12).
- 8 • Commits to not eliminate or withdraw the current Qwest PAP for at least three  
9 years after the merger closing date (CLEC Condition 3).
- 10 • Prevents the Merging Companies from recovering one-time transaction costs in  
11 wholesale rates (CLEC Conditions 2 and 3).
- 12 • Keeps in place existing wholesale service standards and reports (CLEC Condition  
13 4).
- 14 • Extends a number of wholesale agreements, including interconnection  
15 agreements, commercial agreements over which the Merging Companies contend  
16 the Commission does not have jurisdiction, other wholesale agreements, and term  
17 and volume discount plans contained in existing tariffs and individual case basis  
18 contracts (CLEC Conditions 1, 6, 10, and 21).
- 19 • Maintains rates in interconnection agreements and prohibits adding additional  
20 rates associated with the customer acquisition and migration process without  
21 Commission approval (CLEC Conditions 7 and 24).
- 22 • Addresses intervals for provisioning of products, even where a contract is silent  
23 on the issue (CLEC Condition 11).
- 24 • Addresses exemption petitions under Sections 251(f)(1) and (f)(2) of the  
25 Communications Act. (CLEC Conditions 12, 21, and 22).
- 26 • Ensures that Qwest Corporation will continue to be classified as a BOC (CLEC  
27 Condition 13).
- 28 • Prohibits Qwest from seeking reclassification of wire centers as non-impaired  
before June 1, 2012 (CLEC Condition 14).
- Requires the Merged Company to provide updated contact and organizational  
information (CLEC Condition 15).
- Requires the Merged Company to make Operational Support Systems ("OSS")  
information available to CLECs (CLEC Condition 16).

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Settlement Agreement that require compliance with the existing obligations of a BOC, or compliance with the requirements of an ICA, completely satisfy the Joint CLECs' conditions.

<sup>121</sup> Arguably, it can be said that these three conditions do not belong in a merger proceeding, or are addressed by other laws, rules, or in other proceedings. In any event, none of the three conditions were addressed in the Non-Settling CLECs' settlement testimony and therefore no longer appear to be important to them.

<sup>122</sup> This section is intended to give only a general description of the agreement, and does not modify the terms of the settlement agreement in any way.

- 1           • Ensures sufficient wholesale staffing (CLEC Condition 18).  
2           • Provides detailed requirements regarding any future transition to a new wholesale  
3           OSS system (CLEC Condition 19).

4           This summary and Attachment 2 demonstrate both that the wholesale conditions in the  
5           Settlement Agreement are in the public interest and that the Settlement Agreement addresses a  
6           significant number of the Non-Settling CLECs' original concerns.

7           c.       **There Is No Basis for Imposing Additional Wholesale**  
8                   **Conditions on the Merger.**

9           Each of the Non-Settling CLECs' remaining proposed conditions will be addressed in  
10          more detail below. However, it is noteworthy that the Joint Applicants have managed to reach a  
11          settlement with either the state utility commission Staff or relevant consumer counsel (or both,  
12          where applicable), in every Qwest-region state that is reviewing this merger,<sup>123</sup> and in no state  
13          have any of the Non-Settling CLECs' six proposed additional conditions been included in those  
14          settlement agreements.<sup>124</sup>

15          There is simply no basis for additional conditions. The Non-Settling CLECs' continued  
16          push for more conditions is not reasonable and evidences nothing more than an attempt to  
17          extract unreasonable additional benefits that have no place in this merger docket. However, the  
18          Commission should say that enough is enough, as other commissions have essentially done. For  
19          example, both the Colorado and the Utah Commissions rejected the Non-Settling CLECs' pleas  
20          for more conditions.<sup>125</sup> The Colorado commission stated:

21               76. We find that the Integra settlement agreement is in the public interest and we  
22               will approve it in this docket. We find that the agreement provides a reasonable  
23               level of protections to the CLECs beyond what was initially offered by the Joint  
24               Applicants. We decline to adopt the additional recommendations offered by the  
25               non-settling CLECs.<sup>126</sup>

26               <sup>123</sup> With the exception of Nebraska, where the merger review process could be characterized as involving more of a  
27               "legislative" hearing process. In any event, as noted in Section I, and below, the Nebraska Commission approved the merger on January 4, 2011, and without any of the conditions requested in this case by the Non-Settling CLECs.

28               <sup>124</sup> See also Transcript Vol. I at page 80, line 5 to page 81, line 5 (cross examination by Staff Counsel Scott).

<sup>125</sup> Although Level 3 did not file specific and separate testimony on the Settlement Agreement on December 8th, Level 3 had previously filed testimony apart from the prefiled testimony of the Joint CLECs, in which it raised numerous additional proposed conditions. These conditions related to intercarrier compensation issues such as Virtual NXX ("VNXX") traffic, interconnection configuration issues, affiliate contracts, billing disputes, and 8YY homing issues. However, none of these issues belong in a merger approval proceeding.

<sup>126</sup> Initial Commission Decision Granting Approval of Indirect Transfer Of Control, *In the Matter of the Joint Application of Qwest Communications International, Inc., and CenturyLink, Inc., for Approval of Indirect Transfer*

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Likewise, the Utah Commission stated:

Based on the evidence submitted to the Commission, and based on the proposed settlements - especially the Division and Integra settlements, the Commission finds the merger is in the public interest. The Commission declines to impose any of the conditions recommended by McLeodUSA [PAETEC] and Level 3 for reasons explained below. While McLeodUSA and Level 3 understandably defend their interests, they minimize many of the concessions made by the Joint Applicants, and also the significant benefits gained by the individual settlements for various stakeholders. *The Commission's duty is to protect all the public interest, and "the ultimate criterion against which all relevant factors are to be evaluated is the 'public good and convenience' not the existing carriers' convenience and necessity."* [Citations omitted.] The Commission finds the settlement agreements strike an appropriate balance between the interests of the Joint Applicants, the interests of their wholesale customers (CLECs), and the interests of retail customers in Utah. Therefore, no other conditions other than those contained in the individual settlements will be imposed. (emphasis added)

\* \* \* \*

The Commission declines to impose McLeodUSA's and Level 3's requested conditions. The settlements submitted to the Commission give sufficient certainty to the CLECs during the merger, but also allow the Joint Applicants to adjust to the ever-changing competitive landscape in the telecommunication industry.

\* \* \* \*

The Commission declines to impose McLeodUSA's conditions either. McLeodUSA argued that its proposed conditions are needed to ensure it and other CLECs' ability to compete would not be harmed by the merger of the Joint Applicants' respective OSS. It contends its proposed conditions will protect it from what it terms OSS degradation, especially during the three to five year period when the Joint Applicants expect to realize their synergy savings – and even after that time period. Requiring the Joint Applicants to use Qwest OSS for three instead of two years, however, will not ensure that the OSS degradation – if it does occur, will be less likely to happen after three years than after two. In contrast, however, the proposed settlements strike an appropriate balance between the CLECs' desire to maintain high-quality OSS and the Joint Applicants' interest in fully realizing synergy savings, while still maintaining a framework to preserve healthy competition in Utah.<sup>127</sup>

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*of Control of Qwest Corporation, El Paso County Telephone Company, Qwest Communications Company, LLC, and Qwest LD Corp.*, Colorado PUC, Docket NO. 10A-350T, Adopted Date: December 15, 2010; Mailed Date: January 3, 2011, pp. 26-27, ¶¶ 74-76.

<sup>127</sup> Report and Order, *In the Matter of the Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC and Qwest LD Corporation*, Utah PSC, Docket No. 10-049-16, January 4, 2011, pp. 3-4, 9-10.

1 Finally, the Joint Applicants have also obtained approval of the Transaction from the  
2 Iowa Utilities Board and the Nebraska and Montana Commissions, and a recommended decision  
3 of approval from the Minnesota ALJ, and none of those rulings adopted any conditions such as  
4 those proposed by the Non-Settling CLECs.<sup>128</sup>

5 The following discussion addresses the specific additional conditions that the Non-  
6 Settling CLECs seek, as set forth in the Settlement Testimony of Messrs. Gates and Haas.

7 d. **The OSS Commitments, Including the Two-Year Period, Are**  
8 **Sufficient.**

9 The Non-Settling CLECs make many allegations of potential post-merger harms to OSS;  
10 however, the major premise underlying those allegations is the unsupported assertion that  
11 CenturyLink plans to promptly uproot Qwest's OSS in Qwest territories and replace it with a  
12 CenturyLink OSS. Accordingly, the Non-Settling CLECs continue to argue that the Qwest OSS  
13 must be maintained for three years after the merger close, in contrast to the two years that the  
14 Settlement Agreement calls for. What the Non-Settling CLECs consistently overlook is that, in  
15 addition to maintaining Qwest OSS for two years following the merger close or July 1, 2013  
16 (whichever is later), the Joint Applicants have committed to a rigorous process of notice and  
17 testing that is subject to the Qwest Change Management Process ("CMP").<sup>129</sup> In addition, the  
18 CLECs' ICAs contain significant protections and identification of the OSS functionality that the  
19 combined company is required to provide. Further, beyond these contractual commitments,  
20 CenturyLink has repeatedly stated that: (1) it has made no decisions on what OSS it will employ  
21 in the long term, and (2) it will make a careful, structured examination of both companies'

22 <sup>128</sup> See e.g., Order Approving Settlement Agreements, Granting Motions to Withdraw, and Allowing Proposed  
23 Reorganization; Order, *In Re: Qwest Communications International, Inc., and Centurytel, Inc.*; Iowa Utilities  
24 Board, Docket SPU 2010-0006, entered November 19, 2010; Final Order Approving Application Seeking Approval  
25 Of Transfer, *In the Matter of the Joint Application of Qwest Communications International, Inc. and CenturyLink,*  
26 *Inc., for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC,*  
27 *and Qwest LD Corp.*, Montana PSC, Order No. 7096e, Docket No. D2010.5.55; *In the Matter of the Joint*  
28 *Application of Qwest Communications International, Inc., and CenturyLink, Inc. for Approval of Indirect Transfer*  
*of Control of Qwest Corporation and Qwest Communications Company, LLC, and Qwest LD Corp.*, Nebraska PSC,  
Application No. C-4280, entered January 4, 2011. See also footnote 4 above regarding the Minnesota ALJ  
Recommended Decision.

<sup>129</sup> Settlement Agreement, Condition 19. As Mr. Gates acknowledged, "at least there is a CMP, change  
management process, in place so that further changes can be made, and if there are problems, *they can be*  
*addressed.*" Transcript Vol. I at 88, lines 1-4 (emphasis added).

1 systems and features and draw on the best of both companies' capabilities in order to employ  
2 industry leading OSS for the long term.<sup>130</sup>

3 The Non-Settling CLECs' conjecture about potential OSS degradation in Arizona also  
4 ignores the key fact that CenturyLink is not simply acquiring access lines from Qwest, but  
5 rather, is acquiring the *entire company*.<sup>131</sup> Because it is acquiring Qwest's existing systems,  
6 personnel, documented policies, experiences, and processes, CenturyLink will have no  
7 immediate need (or be under any time or financial pressure) to make any alterations to Qwest's  
8 OSS.<sup>132</sup> In addition, Qwest's OSS experience and knowledge will reside in the post-merger  
9 company, especially given that the merged company has appointed a Qwest employee as Vice  
10 President of Wholesale Operations, which is a key position over OSS matters.<sup>133</sup> CenturyLink  
11 has also repeatedly acknowledged that Qwest's OSS will continue to be subject to Section 251,  
12 Section 271, and ICA obligations applicable in Qwest territories.<sup>134</sup> Furthermore, even if the  
13 merged company were to adopt all or portions of CenturyLink's OSS at some later date, there is  
14 nothing in the record demonstrating that the quality of service would be degraded. In fact,  
15 contrary to the CLECs' assertions, CenturyLink's OSS is a robust, well-tested system that serves  
16 both rural and urban areas. As noted by Mr. Hunsucker, CenturyLink processed approximately  
17 one-million LSRs and ASRs in 2010, compared to Qwest's 1.8 million.<sup>135</sup> PAETEC's attempt  
18 to impugn the capabilities of CenturyLink's EASE system by reference to Ex Parte filings it has  
19 made in the FCC's merger review proceeding is misleading.<sup>136</sup> As demonstrated by  
20 CenturyLink's Ex Parte filed with the FCC on January 10, 2011, a copy of which is attached  
21  
22

23 <sup>130</sup> Hunsucker Settlement Testimony at 11, lines 15-18.

24 <sup>131</sup> Hunsucker Rebuttal at 16, lines 4-9.

25 <sup>132</sup> See the discussion above in Section IV.C.1.a., which explains that the Non-Settling CLECs' attempt to compare  
26 this transaction to the troubled Hawaiian Telcom and FairPoint transaction fails because CenturyLink is not  
27 required to develop new OSS systems. Furthermore, that section addresses the Non-Settling CLECs' flawed  
28 attempt to link the Joint Applicants' stated timeframe for synergy savings to some alleged risk to the CLECs'  
operations.

<sup>133</sup> Hunsucker Rebuttal at page 8, line 14 to page 9, line 3.

<sup>134</sup> *Id.*, at 16, lines 9-18. And, in fact, CenturyLink has specifically made this commitment in the Settlement  
Agreement in Conditions 4 and 5.

<sup>135</sup> Transcript Vol. II at page 294, line 19 to page 295, line 10.

<sup>136</sup> See the December 20, 2010 errata filing regarding Attachment WAH 1 to the Haas Settlement Testimony.

1 hereto as Attachment 3,<sup>137</sup> PAETEC has completely failed to acknowledge the existence of, and  
2 the capabilities of, CenturyLink's state-of-the-art Universal Ordering Module ("UOM")  
3 interface. The record simply does not support the Non-Settling CLECs' speculation about  
4 degradation of OSS.

5 The Non-Settling CLECs argument that the merged company should retain the existing  
6 Qwest OSS for at least three years, compared to the minimum two years agreed to in the  
7 Settlement Agreement, is simply not reasonable nor based on any valid demonstration of harm  
8 to their interests, and goes far beyond what those CLECs with vested commercial interests  
9 (Integra, Cox and 360networks), and those with the duty to protect the public interest (like  
10 Staff), have found to be sufficient and reasonable. As noted, all of the commissions that have  
11 addressed this additional proposed condition have rejected it.

12 e. **Third Party Testing Should Not Be Required for Any Future**  
13 **Replacement of Qwest's OSS.**

14 In connection with any future replacement of Qwest's OSS, the Non-Settling CLECs  
15 argue that third-party testing of the new OSS must be required as a condition of approving the  
16 merger.<sup>138</sup> This is surprising because even Mr. Gates admits that the FCC itself has stated the  
17 most probative evidence that an OSS is operationally ready is actual commercial usage.<sup>139</sup>  
18 Given that fact, if, hypothetically, CenturyLink were to eventually adopt its EASE OSS for use  
19 in the Qwest region, CenturyLink already has commercial usage volumes through its EASE  
20 system that are reasonably comparable to Qwest's wholesale order volumes, demonstrating that  
21 the system is operationally ready.<sup>140</sup> Moreover, as the FCC stated in its order granting Qwest  
22 relief under Section 271 (which is quoted by Mr. Gates<sup>141</sup>):

23 The most probative evidence that OSS functions are operationally ready is actual  
24 commercial usage. Absent sufficient and reliable data on commercial usage, the  
25 Commission will consider the results of *carrier-to-carrier testing, independent*

26 <sup>137</sup> *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a/ CenturyLink for*  
27 *Consent to Transfer of Control*, FCC, WC Docket No. 10-110, Ex Parte Reply Letter By CenturyLink Inc. and  
28 Qwest Communications to Dec. 10, 2010 Letter of PAETEC (Jan. 10, 2011).  
<http://fjallfoss.fcc.gov/ecfs/document/view?id=7021025456>

<sup>138</sup> Gates Settlement Testimony at 16, line 9.

<sup>139</sup> *Id.*, at lines 14-15.

<sup>140</sup> Transcript Vol. II at 294, line 19 to 295 line 6. (Mr. Hunsucker explaining that CenturyLink currently processes approximately 1 million orders annually, compared to Qwest's approximately 1.8 million orders.)

<sup>141</sup> Gates Surrebuttal at 118, lines 11-25.

1           *third party testing, and internal testing*, in assessing the commercial readiness of  
2           a BOC's OSS. . . . [T]he Commission does not require OSS testing . . . .<sup>142</sup>

3           Third party testing is simply not required. Importantly, the Joint Applicants have  
4           committed to a wholesale condition that requires joint acceptance testing with CLECs to ensure  
5           that any new OSS is acceptable per jointly adopted criteria—this testing will ensure that the new  
6           OSS provides the level of wholesale service quality provided by Qwest prior to the merger  
7           close.<sup>143</sup> This testing is subject to the CMP. Once the acceptance testing is completed and the  
8           acceptance criteria are met, the merged company will also allow coordinated testing with  
9           CLECs to permit CLECs to stress test the new OSS in coordination with their own back office  
10          systems before transitioning to the new OSS.<sup>144</sup> In any event, the merged company will submit  
11          a detailed plan that will provide the parameters of the acceptance testing and the coordinated  
12          testing.<sup>145</sup>

13          It is also important to note that the original Qwest OSS interface that was third-party  
14          tested for purposes of granting Qwest in-region interLATA service authority under Section 271  
15          has since been replaced by a new OSS interface that was not third-party tested.<sup>146</sup> Finally, as  
16          Mr. Abinah plainly put it, Staff does not believe third-party testing is necessary; it was  
17          appropriate during the initial Section 271 approval process, when there may not have been  
18          sufficient CLEC order volumes and CLEC expertise about OSS, but now there is a mature  
19          CLEC industry and CLECs should rely on their own experts to evaluate any new OSS.<sup>147</sup>  
20          However, if there is to be third-party testing, Staff believes that the CLECs should pay for it,<sup>148</sup>  
21          and the Joint Applicants support Staff's position.

22  
23  
24          <sup>142</sup> *In the Matter of Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, WC Docket No. 02-314, Memorandum Opinion and Order, 17 FCC Red 26303 (2002), Appendix K "Statutory Requirements" at page K-16 (emphasis added).

25          <sup>143</sup> Hearing Exhibit JA-2, Condition 19.c.i.

26          <sup>144</sup> *Id.*, Condition 19.c.ii. It is not out of the question that these two testing phases could overlap or run in parallel, at least for some CLECs. Transcript Vol. II at 350, lines 1-2.

27          <sup>145</sup> Transcript Vol. II at 338, lines 2-7.

28          <sup>146</sup> Stewart Rebuttal Testimony at page 24, line 9 to page 25, line 4.

<sup>147</sup> Transcript Vol. III at page 542, line 13 to page 543, line 9.

<sup>148</sup> Transcript Vol. III at 543, lines 10-20.

1 f. The Commitments for Non-Section 251 Agreements and  
2 Tariffs Are Sufficient.

3 The Non-Settling CLECs also have sought conditions to ensure that Qwest's current  
4 ICAs, as well as other wholesale and commercial agreements, continue in place for longer  
5 periods than those provided for in the settlements. This condition is reflected in the Joint  
6 CLECs' original Conditions 6, 8 and 9. Although the language of the Settlement Agreement  
7 does not mirror the Non-Settling CLECs' proposed conditions verbatim, the terms of Condition  
8 23 show that the Joint Applicants made substantial concessions to address CLEC concerns.

9 First, the Joint Applicants have agreed to extend the term of all Qwest ICAs for a period  
10 of 36 months. Second, the Joint Applicants have agreed to extend the terms for all Qwest  
11 wholesale and commercial agreements (which involve services that are not subject to Section  
12 251 of the Act) for 18 months. And, finally, the merged company agrees not to change the terms  
13 of Qwest's wholesale tariffs for at least 12 months. In making these commitments, the Joint  
14 Applicants have agreed to forego substantial rights that remain in place notwithstanding the  
15 merger. Nothing more should be required.

16 The Non-Settling CLECs argue that the Merging Companies' commitment to not make  
17 changes to applicable commercial and wholesale agreements for 18 months does not go far  
18 enough, especially based on their "business models." Thus, they advocate a three-year  
19 extension for commercial and wholesale agreements and for wholesale tariff terms, including  
20 interstate tariffs, and argue that not providing the same 36-month extension that is provided for  
21 ICAs is somehow "discriminatory."<sup>149</sup> However, the Non-Settling CLECs' arguments are  
22 without merit and there is no credible evidence to support additional extensions.

23 Once again, the Non-Settling CLECs' primary argument is based on the alleged risk the  
24 CLECs face during the timeframe during which the merged company expects to achieve synergy  
25 savings.<sup>150</sup> As already noted, this "risk" argument is contradicted by the unrefuted evidence  
26 about the healthy financial aspects of this Transaction. The argument is also contradicted by Mr.  
27 Gates himself. During the hearing he acknowledged that synergy savings are expected to come

28 <sup>149</sup> Gates Settlement Testimony at 33, line 4.

<sup>150</sup> *Id.*, at 21, lines 8-14.

1 from IT systems, marketing, overhead systems, etc., and therefore he asserted that the extension  
2 of wholesale service arrangements would not impact the merged company's ability to achieve  
3 synergies.<sup>151</sup> If synergy savings are not expected to be realized through some impact on  
4 wholesale service arrangements, as Mr. Gates asserts, then it is baseless and illogical to tie the  
5 extension of wholesale and commercial agreements and tariffs to the timeframe for achieving  
6 synergies.

7 The Joint Applicants' commitment regarding non-Section 251 commercial agreements in  
8 the Settlement Agreement is very reasonable, particularly given that the provision of elements in  
9 these agreements is not required under Section 251 of the Act and are without exception not  
10 within the Commission's jurisdiction.<sup>152</sup> The FCC determined that when CLECs are not  
11 impaired without access to a UNE, it need not be provided based on Section 251 at Total  
12 Element Long Run Incremental Cost ("TELRIC")-based rates pursuant to an ICA. By  
13 determining that CLECs are not impaired without access to an element, the FCC determined that  
14 lack of access under Section 251 does not create an uneconomic barrier to entry.<sup>153</sup> By  
15 definition, a finding of "non-impairment" means that a CLEC has an operationally and  
16 economically reasonable alternative to obtaining the element from the ILEC, even if that  
17 alternative is self-provisioning by the CLEC. The FCC granted ILECs the discretion to offer  
18 non-Section 251 services through commercial agreements without Section 251 obligations.  
19 Thus, under the law, CLECs' reliance on Qwest commercial agreements and tariffs is a matter of  
20 choice,<sup>154</sup> and any "discrimination" argument necessarily fails. In short, although the Non-  
21 Settling CLECs may assert that the conditions in the Settlement Agreement may "not go far  
22 enough," the conditions extending wholesale service arrangements represent a more than  
23 reasonable compromise. The Colorado and Utah Commissions, and the Minnesota ALJ, agree.  
24 The Staff also obviously agrees, noting that the Commission has no jurisdiction over  
25 commercial agreements (nor, the Joint Applicants would also note, does the Commission have

26 <sup>151</sup> Transcript Vol. I at 91, lines 18-25.

27 <sup>152</sup> Many (if not most) commercial agreements are not even legally required under Section 271 of the  
28 Telecommunications Act. They are certainly not required under Sections 251 or 252; otherwise, they would be  
interconnection agreements subject to those sections. *See, e.g.*, Transcript Vol. II at 297, lines 16-23.

<sup>153</sup> *See, e.g.*, PFO ¶ 11.

<sup>154</sup> Transcript Vol. II at page 296, line 22 to page 298, line 8.

1 jurisdiction over interstate services like the special access services that are the subject of  
2 Qwest's Regional Commitment Plan ("RCP")). Mr. Abinah went so far as to say that even if the  
3 extensions for wholesale agreements, commercial agreements, and tariffs were not in the  
4 Settlement Agreement, Staff would still believe the Settlement Agreement is in the public  
5 interest.<sup>155</sup>

6 g. **The Extension of All Non-UNE Commercial and Wholesale**  
7 **Agreements and Tariffs Should Apply Only to Agreements**  
8 **and Tariffs in Effect as of the Merger Close Date.**

9 The Non-Settling CLECs proposes that extensions should be granted for all non-UNE  
10 commercial and wholesale agreements and tariffs in effect as of the filing date of the Joint  
11 Application, not the merger closing date, or for at least those agreements and tariffs in effect as  
12 of the end of 2010.<sup>156</sup> A fair reading of Mr. Gates' settlement testimony makes clear that the  
13 only real issue here is tw telecom's transparent attempt to lock in rates for an interstate special  
14 access volume and term discount plan, the Qwest RCP, which is no longer available.<sup>157</sup> In fact,  
15 Mr. Haas admitted that PAETEC relies primarily on UNEs,<sup>158</sup> and UNEs are provided through  
16 Section 251 ICAs. Further, Mr. Gates has simply misread the settlement testimony of Ms.  
17 Stewart. Where she states that an extension is no longer available under the current RCP  
18 tariff,<sup>159</sup> what she is saying is that the RCP tariff terms are no longer available, which is not the  
19 same as saying that an RCP agreement in place as of the merger close date would not be  
20 extended. Indeed, as Ms. Stewart clarified at the hearing, as long a CLEC's RCP plan does not  
21 terminate before the merger close date that RCP plan will be extended pursuant to the terms of  
22 Condition 23.d.i of the Settlement Agreement.<sup>160</sup>

23 Consequently, tw telecom's concerns are misplaced, assuming the merger close date  
24 occurs before tw telecom's RCP expires on June 1, 2011. Because the Joint Applicants consider

<sup>155</sup> Transcript Vol. III at page 545, line 16 to page 546, line 4.

<sup>156</sup> Gates Settlement Testimony at 28, lines 6-8.

<sup>157</sup> *Id.*, at 25, line 16. As Ms. Stewart explained at the December 20, 2010 hearing, it is not the case that a 22% discount under an RCP is no longer available to tw telecom, but the RCP has changed the volume and term discount provisions applicable to that 22% discount and tw telecom may simply prefer the old over the new RCP's volume and term requirements. Transcript Vol. II at 374, lines 5-17.

<sup>158</sup> Transcript Vol. II at 465, lines 6-9.

<sup>159</sup> *Id.* at 12, line 21.

<sup>160</sup> Transcript Vol. II at 393, lines 1-18.

1 it likely that the merger will close before June 1, 2011, and tw telecom's specific concern seems  
2 to be the true basis for this proposed condition, that condition is moot. Nevertheless, and not to  
3 leave any doubt, the Non-Settling CLEC's general proposal to apply the extension provisions of  
4 Condition 23 to all non-Section 251 wholesale and commercial agreements and tariffs in effect  
5 *prior to the closing date, and going back to either the date of the Joint Application or the end of*  
6 *2010*, should be rejected. They overreach for a benefit that has nothing to do with their  
7 purported rationale for their conditions, which is that CLECs need to be protected from harms  
8 that may occur as a result of CenturyLink's management of Qwest *after the close of the*  
9 *merger*.<sup>161</sup> Until the merger is closed Qwest by law must, and will, do business as usual, and  
10 any wholesale service arrangements, including tariffs that expire prior to the merger close are  
11 not subject to CenturyLink's management. It is logical, and customary, to draw the line for the  
12 applicability of merger conditions at the date the merger closes.

13 h. **The Non-Settling CLECs' Request for an Additional**  
14 **Performance Assurance Plan Must Be Rejected.**

15 The Non-Settling CLECs request for an Additional Performance Assurance Plan  
16 ("APAP") on top of the existing Commission-approved Qwest Performance Assurance Plan  
17 ("QPAP")<sup>162</sup> must be rejected because the APAP design is flawed, does not tie payments to  
18 merger-related conduct, and will result in excessive, windfall payments to the CLECs. The  
19 Non-Settling CLECs' concerns are already addressed by the QPAP, which was implemented to  
20 satisfy the objectives of the Act. Further, the Settlement Agreement provides additional  
21 protection,<sup>163</sup> by comparing post closing performance to the performance during the 12 months  
22 preceding closing. The Joint Applicants agree that they will "meet or exceed the average  
23 wholesale performance provide by Qwest to CLEC" for at least three years after the closing  
24 date. If the post closing performance levels do not measure up under the methodology specified,  
25 then the merged company must conduct a root cause analysis and develop a proposal to remedy

27 <sup>161</sup> Stewart Settlement Testimony at 10, lines 21-22.

28 <sup>162</sup> The QPAP became effective through a Commission order in Decision No. 64888.

<sup>163</sup> Settlement Agreement, Conditions 20(a) and (b).

1 each deficiency, for CLEC review and comment. Unresolved performance deficiencies may be  
2 brought before the state commission for resolution.

3 Rather than the non-discrimination standard that the Telecom Act requires and that is the  
4 basis of the QPAP,<sup>164</sup> the Non-Settling CLECs demand the imposition of a new wholesale  
5 standard—to measure “performance degradation” or “deterioration” in wholesale service, to  
6 prevent merger-related harm.<sup>165</sup> Reduced to its essentials, the APAP proposes to compare every  
7 post-closing measurement, every month, to the average performance for a year preceding  
8 closing. Mr. Williams testified that this scheme will not assure that post closing wholesale  
9 performance does not degrade, to the detriment of CLECs, due to effects of the merger. It is  
10 flawed logic to assume that every monthly variation in the performance levels is merger related.  
11 There are innumerable factors—including many that are not caused by the ILEC—that can cause  
12 the performance levels in a given month, post-merger, to be different from the proposed APAP’s  
13 comparisons with annual average levels of pre-merger Qwest performance.<sup>166</sup> Furthermore, it is  
14 fallacious to assume that any monthly Performance Indicator Definition (“PID”) result that is  
15 lower than the baseline average proves that the CLECs have been harmed. It would be  
16 fundamentally unfair to inflict a monetary penalty upon the ILEC, against its will, by a self-  
17 executing mechanism that is based on flawed premises concerning the legal duty of the ILEC,  
18 illogical assumptions regarding the statistical variations, and presumptive rather than proven  
19 harms.

20 The APAP’s flaws will potentially create huge windfalls of penalty revenue to the  
21 CLECs. Mr. Williams’ testimony, which was not contested by any rebuttal, shows a real-world  
22 example of how the APAP could result in the assessment of extraordinarily high penalties even  
23 though the very same level of service was provided during the comparison periods. Using actual  
24 12 month performance data (which resulted in an actual penalty of \$100,000 under the QPAP,

25 <sup>164</sup> Transcript Vol. I at 100, lines 12-21.

26 <sup>165</sup> However, whether the level of service quality has degraded over time is not a recognized performance standard  
27 under the Act or a recognized means of assuring compliance under Section 271. The QPAP is based on the ILECs’  
28 legal duty of nondiscrimination—to provide service to CLECs at the same level that it provides to itself and its  
affiliates for its own retail customers.

<sup>166</sup> Williams Rebuttal at 32, lines 5-9; *see also* page 29, line 11: Non-Qwest-caused factors could include such  
things as weather-related impacts, changes in CLECs’ underlying customer bases, and changes in CLEC operating  
practices.”

1 Mr. Williams showed that the if the same 12 months were repeated post closing, under the  
2 APAP an *additional* \$660,000 penalty would be incurred, even thought the pre and post period  
3 performance was exactly the same.<sup>167</sup> The Minnesota ALJ held:

4 The Joint Petitioners provided convincing evidence that the APAP has serious  
5 flaws and should not be adopted. Most significantly, they demonstrated that  
6 substantial payments would be due under the proposed APAP even if service  
levels remained exactly the same, resulting in a windfall to CLECs.”<sup>168</sup>

7 The Non-Settling CLECs have not proved a compelling need for more protection. They  
8 ask for the APAP because of perceived risk that the merged company will pursue synergy  
9 savings at the expense of its wholesale customers.<sup>169</sup> However, the clear preponderance of  
10 testimony shows that the merger will result in a telecommunications provider serving Arizona  
11 that is financially much stronger than Qwest is now. (*See* Section IV.A above). Furthermore,  
12 the Arizona telecommunications market is very competitive today. As shown by the testimony  
13 of Qwest witness Michael Williams, the company is damaged by the loss of retail or wholesale  
14 business, and in the final analysis the company has a very large incentive to provide the high  
15 quality services that will keep as many customers on the network as possible.<sup>170</sup> In this  
16 environment, a mechanism such as the APAP is clearly unjustified.

17 The existing QPAP provides sufficient post-merger performance monitoring, because it  
18 detects trends in performance, by the production of monthly “indications” of performance levels.  
19 Any party can use QPAP data to identify trends in wholesale service quality performance.<sup>171</sup>  
20 Furthermore, the Settlement Agreement provides for the continuation of post-merger service  
21 quality, by specifying the process for identifying deficiencies, and clearly provides for  
22 Commission resolution if deficiencies are not resolved.<sup>172</sup> These are substantive, important  
23 protections providing further reasons to reject the APAP proposal, just as the Minnesota ALJ  
24 did:

25  
26 <sup>167</sup> Williams Direct at 33, line 10 to page 34, line 11, and Exhibit MGW-2.

27 <sup>168</sup> Minnesota ALJ Recommended Decision, ¶ 271.

28 <sup>169</sup> Gates Settlement Testimony at 34, lines 11-12.

<sup>170</sup> Transcript Vol. II at 411, line 16 to page 412, line 8.

<sup>171</sup> Williams Direct at page 35, line 12 to page 37, line 4.

<sup>172</sup> Settlement Agreement, Condition 20(a) and (b).

1 “The Administrative Law Judge also finds that the Integra Settlement Agreement  
2 provides an adequate mechanism to discourage any decline in wholesale service  
3 quality and is consistent with the public interest. The Integra Settlement provides  
4 for a comparison of service quality before and after the Transaction; requires the  
5 Merged Company to meet or exceed the average wholesale performance provided  
6 by Qwest to the CLEC for at least three years after the transaction closing date;  
7 and requires the Merged Company to conduct a root cause analysis if service  
8 deteriorates and develop proposals to remedy deficiencies within thirty days. A  
9 CLEC may also invoke the root cause procedure if the CLEC determines that the  
10 performance it received for a PID, product, or disaggregation is materially  
11 different post-merger.”<sup>173</sup>

12 Forcing an additional penalty plan upon the merged companies, against their will, raises  
13 serious issues about whether such action exceeds the Commission’s lawful authority, as has  
14 been expressed by the Minnesota ALJ:

15 [I]f the Commission were to condition its approval of the merger upon the  
16 adoption of the proposed APAP, its action arguably would amount to requiring  
17 the Joint Petitioners to make self executing payments to their competitors and  
18 thus exceed the Commission’s authority.” (*citing In Re Qwest’s Wholesale Service  
19 Quality Standards*, 702 N.W.2d 246, Minn. 2005).<sup>174</sup>

20 Further, such an action by the Commission amounts to an amendment of the existing QPAP,  
21 which was put into effect by an order of the Commission. Under A.R.S. §40-252, an existing  
22 order may only be amended “upon notice to the corporation affected, and after opportunity to be  
23 heard as upon a complaint.” This proceeding has not met those fundamental procedural  
24 requirements. Last, the QPAP order, Decision No. 64888, provides its own periodic review  
25 mechanism that any CLEC could use to request changes, if desired.<sup>175</sup>

26 i. **The Settlement Agreement’s Moratorium on Non-Impairment  
27 Filings and Forbearance Petitions Is Reasonable and Provides  
28 Sufficient Stability for CLECs.**

29 The Settlement Agreement prohibits the merged company from seeking to reclassify as  
30 “non-impaired” any Qwest Arizona wire center for purposes of Section 251, and from filing any  
31 petition seeking forbearance from Section 251 obligations under Section 160(c) of the Act or  
32 dominant carrier regulation in any Qwest Arizona wire center before June 1, 2012. The Non-  
33 Settling CLECs’ argue that this moratorium should be in place for 36 months from the date of

34 <sup>173</sup> Minnesota ALJ Recommended Decision, ¶ 272.

35 <sup>174</sup> Minnesota ALJ Recommended Decision, ¶ 271.

36 <sup>175</sup> Williams Rebuttal at page 36, lines 5-14.

1 the merger close.<sup>176</sup> Again, the only rationale provided by the Non-Settling CLECs for their  
2 proposed term of the moratorium is that the moratorium should coincide with the period that  
3 CenturyLink has stated it expects to realize its estimated synergy savings.<sup>177</sup>

4 As noted in numerous places throughout this Brief, the argument that the timeframe for  
5 post-merger conditions should be tied to the estimated timeframe for achieving synergy savings  
6 is flawed. Furthermore, it is not sound public policy and not in the public interest to tie the  
7 hands of the merged company and limit its ability to seek regulatory treatment authorized by the  
8 FCC if the merged company can demonstrate that competitive conditions merit relief from  
9 certain Section 251 or Section 271 obligations per federal law. A moratorium until June 1, 2012  
10 provides a period of certainty and stability on this issue for CLECs, and is sufficient as a  
11 compromise that is in the public interest.<sup>178</sup>

12 j. **PAETEC's Attempt to Modify the Settlement Agreement's**  
13 **Language Regarding OSS Functionality Should Be Rejected.**

14 In the Settlement Testimony of PAETEC witness Mr. Haas, PAETEC proposes that  
15 additional language be added to Condition 19 of the Settlement Agreement in order to address  
16 PAETEC's concerns about possible changes to its back office systems.<sup>179</sup> Condition 19 states  
17 that, after transition away from the current Qwest OSS, "the Merged Company will provide a  
18 level of wholesale service quality that is not less than that provided by Qwest prior to the  
19 Closing Date, with functionally equivalent support, data, functionality...."—at that point  
20 PAETEC wants to insert a parenthetical that says "including functionality affecting the  
21 operations of CLEC back office functionality as of the Closing Date."  
22

23 <sup>176</sup> Gates Settlement Testimony at page 38, line 18 to page 39, line 9.

24 <sup>177</sup> *Id.*

25 <sup>178</sup> Transcript Vol. II at page 298, line 16 to page 299, line 3.

26 <sup>179</sup> Haas Settlement Testimony at page 9, line 20 to page 10, line 4. PAETEC also proposes modifying the language  
27 of Condition 19 to require that CenturyLink maintain the Qwest OSS for three years or until July 1, 2014,  
28 whichever is later. PAETEC's proposal to require the Qwest OSS to be maintained for three years does not vary  
from the same proposal as presented by Mr. Gates on behalf of the Non-Settling CLECs. That argument has  
already been addressed elsewhere in this brief and does not need to be addressed again here, except to note  
PAETEC's attempt to support its position by relying on a flawed analysis of CenturyLink's EASE system that was  
included as an attachment to Mr. Haas' testimony as part of an Ex Parte that PAETEC submitted to the FCC. As  
discussed above in Section IV.C.2.d, PAETEC's Ex Parte submissions to the FCC are flawed and misleading  
because they do not acknowledge the availabilities and capabilities of CenturyLink's UOM OSS interface.

1           At the end of the open and extensive settlement process among all the parties, the Staff,  
2 RUCO and the Joint Applicants had negotiated to their satisfaction the language in Condition 19  
3 (which is very similar to the language in ¶ B.12 of the Integra Settlement Agreement and the  
4 Cox Settlement Agreement, although those agreements use the term “materially less” and not  
5 “functionally equivalent”), which appears to be very close to acceptable to PAETEC. However,  
6 PAETEC seems to want absolute assurance that there can be no post-merger change to the  
7 Qwest OSS that would impact the functionality of PAETEC’s back office systems in any  
8 manner. That is unreasonable and is inconsistent with Qwest’s current ability to make changes  
9 to its OSS via the CMP. Qwest has made hundreds, if not thousands, of changes to its OSS over  
10 the years, including the replacement of the original OSS interface, and all of these changes have  
11 been managed through the current CMP.<sup>180</sup> While the Joint Applicants have committed to  
12 maintaining “functionally equivalent” support, data, functionality, etc., as Mr. Hunsucker noted  
13 the merged company will have no real insight into a CLEC’s back office operations or the  
14 potential impact of an OSS change on those back office systems, except through the CMP  
15 process.<sup>181</sup>

16           It would be unreasonable and not in the public interest to impose a condition on this  
17 merger that would deny CenturyLink's ability to make future changes to Qwest’s OSS (changes  
18 that might undeniably benefit all CLECs) simply because those changes might require a CLEC  
19 to incur some costs to modify and update its back office systems. It is the nature of computer  
20 based systems (for both Qwest OSS and CLEC back office systems) that periodic changes and  
21 system upgrades are required to keep a system maintained and to improve performance with  
22 new advancements in technology and programming. While a single CLEC might wish to avoid  
23 incurring *any* maintenance or update costs and might be satisfied to simply continue using the  
24 old OSS, PAETEC's proposed condition could stand in the way of much needed, or indeed  
25 necessary, and valuable upgrades that other CLECs and Qwest require. PAETEC's proposed  
26 condition could require an outdated OSS to be maintained indefinitely and prevent CenturyLink

27  
28 <sup>180</sup> Stewart Rebuttal at page 24, line 9 to page 25, line 4.

<sup>181</sup> Transcript Vol. II at 330, lines 17-25.

1 from implementing changes that are required to maintain automated functionality or that are  
2 more efficient for its own wholesale operations, and, even if the changes were more efficient or  
3 necessary for other CLECs' automated operations. Essentially, PAETEC would like to hold veto  
4 power over any OSS changes which is not in the public interest. This is not how the current  
5 CMP works, or should work. The CMP properly permits Qwest to terminate some OSS systems  
6 and move to new systems.<sup>182</sup>

7 Ironically, acceptance of PAETEC's proposed condition would preclude changes that  
8 PAETEC might want or need to make in response to future developments. It is reasonable to  
9 expect PAETEC, and all CLECs, to accept some responsibility to modify their systems to  
10 accommodate changes that might be made to Qwest's OSS in the future.<sup>183</sup> The Settlement  
11 Agreement states that changes to the Qwest OSS will be improvements that the majority of  
12 CLECs will agree with, just like the change in 2006 from the original Qwest OSS IMA-EDI  
13 interface to the IMA-XML interface.<sup>184</sup> There is no suggestion in the record of moving  
14 backwards in functionality; for example, regressing from e-bonding to a manual process,<sup>185</sup>  
15 which would clearly not be permitted by Settlement Agreement Condition 19. However,  
16 beneficial changes that are intended to produce long-term efficiencies and cost savings often  
17 require both the ILEC and the CLEC to incur one-time implementation costs.<sup>186</sup>

18 Determining whether future OSS changes will be beneficial, and whether it will be  
19 reasonable for CLECs to modify their systems to accommodate those changes, are hypothetical  
20 questions whose answers depend on too many variables and as such are not susceptible to a  
21 bright line standard in a Settlement Agreement. The CMP process serves to assess and address  
22 the real world effects of any OSS changes. Condition 19 assures CLECs of a continued level of  
23 wholesale service quality and functionally equivalent support, data, functionality, performance,  
24 electronic flow through and electronic bonding. Mr. Hunsucker testified that CenturyLink will  
25 work with CLECs to try to minimize the impacts of any future OSS changes on the CLECs'

26 <sup>182</sup> Transcript Vol. II at 362, lines 12-17.

27 <sup>183</sup> Transcript Vol. II at 332, lines 4-17.

28 <sup>184</sup> Stewart Rebuttal at page 24, line 9 to page 25, line 4.

<sup>185</sup> Transcript Vol. II at 347, lines 10-20.

<sup>186</sup> Transcript Vol. II at page 359, line 19 to page 360, line 24.

1 systems,<sup>187</sup> but Condition 19 does not guarantee that a CLEC's back office systems will never  
2 have to be modified, nor should such a guarantee be imposed as a condition on this merger.

3 k. **Level 3 and Pac-West Should Not Be Allowed to Use This**  
4 **Merger Review Docket to Resolve an Unrelated Intercarrier**  
5 **Compensation Dispute Over VNXX.**

6 Level 3 and Pac-West seek to leverage the merger review process to secure a favorable  
7 resolution to certain long-standing, complicated intercarrier compensation issues. Specifically,  
8 those CLECs want to be paid by ILECs for a call routing scheme that the industry has labeled  
9 "VNXX" traffic. How VNXX traffic should be characterized and how carriers should be  
10 compensated on an ongoing basis in the context of VNXX has been addressed by the  
11 Commission previously in an arbitration of the ICA between Qwest and Level 3.<sup>188</sup> The  
12 Commission should refrain from calls to resolve individual complaints or to revisit the previous  
13 Level 3/Qwest arbitration decision that it made regarding VNXX as part of this merger review.  
14 The recent ruling by the Colorado PUC is instructive:

15 We decline to adopt the recommendations presented by the non-settling CLECs.  
16 For example, the additional conditions requested by Level 3 are ICA-related terms  
17 and conditions that previously have been the subject of disputes between the  
18 CLECs and Qwest. We find that Level 3 may be attempting to use the merger  
19 docket to overturn previous Commission decisions in CLEC ICA arbitration  
20 cases. We therefore deny the requests made by Level 3.<sup>189</sup>

21 Furthermore, the old Level 3 and Pac-West complaints regarding VNXX are already  
22 before the Commission in consolidated Docket No. T-03693A-05-0495 and T-03654A-05-0415.  
23 In that consolidated proceeding, the Commission can consider the matter specifically, giving the  
24 complicated issues the attention they require, without making the hurried, uninformed decision  
25 based on an incomplete evidentiary record that the CLECs press for in this merger. It would be  
26 a serious break in due process to wrest the resolution of VNXX out of the ongoing dockets.  
27 Those complaints are included in the litigation that the Joint Applicants have committed to  
28 evaluate and to make a good faith effort to resolve without further litigation under Condition 41

<sup>187</sup> Transcript Vol. II at 332, lines 16-17.

<sup>188</sup> Decision Nos. 68817 and 69176.

<sup>189</sup> Initial Commission Decision Granting Approval of Indirect Transfer of Control, *In the Matter of the Joint Application of Qwest Communications International, Inc., and CenturyLink, Inc., For Approval of Indirect Transfer of Control of Qwest Corporation*, Colo., Colorado PUC Decision No. C11-0001 at ¶ 74, December 15, 2010.

1 of the Settlement Agreement. The Commission should not deprive the parties from the  
2 opportunity to explore voluntary resolution.

3 V. Responses to Questions to be Briefed as Requested by the ALJ.<sup>190</sup>

4 A. Should the Commission be concerned about the Transaction based upon  
5 (i) the fact that the merger is coming soon on the heels of the Embarq  
6 acquisition; or (ii) the risk factors mentioned by the rating agencies? From  
7 a financial perspective, is the Transaction in the public interest?

8 1. CenturyLink Can Successfully Complete the Transaction Just As It  
9 Is Successfully Completing the Embarq Acquisition.

10 The evidence in this case shows that CenturyLink has a demonstrated track record of  
11 successfully integrating the operations and systems of the companies it has acquired.<sup>191</sup> Since  
12 the 1990s, CenturyLink has grown by millions of access lines through the acquisition of Pacific  
13 Telecom and Embarq Corporation and through transactions with GTE, Ameritech and  
14 Verizon.<sup>192</sup> Most recently, CenturyLink acquired Embarq with its 5.4 million access lines.  
15 Although this acquisition is fairly recent, closing in July 2009, Mr. Schafer testified that the  
16 integration is well underway, with "[b]illing, financial and customer care system conversions ...  
17 executed smoothly and in accordance with established time frames."<sup>193</sup> As discussed above, at  
18 the time Mr. Schafer's direct testimony was prepared in May 2010, 25% of the access lines  
19 served by former Embarq systems had converted to CenturyLink's integrated retail customer  
20 service and billing system, and all will be converted by third quarter 2011.<sup>194</sup> Thus, while the  
21 Transaction does follow relatively soon after the Embarq transaction, CenturyLink has  
22 demonstrated that it has the capability of successfully managing the acquisition.

23 At the hearing, Mr. Schafer discussed five important points which should give the  
24 Commission comfort regarding the Transaction:

25 First, there are no existing Embarq or CenturyLink properties in Arizona.  
26 Therefore, the conversion of legacy Embarq systems is not a factor in Arizona.

27 <sup>190</sup> The ALJ listed a number of questions to be addressed by the parties in briefing, which are set forth at Transcript  
28 Vol. III at 576-579.

<sup>191</sup> See Schafer Direct at 4-8 (including Exhibit TS-1).

<sup>192</sup> *Id.*

<sup>193</sup> *Id.* at 5, lines 25-26.

<sup>194</sup> *Id.* at 7.

1 Second, the decisions regarding systems for the combined CenturyLink and  
2 Qwest entity have not been made. As a result, we don't know that the system  
3 conversions would take place in Arizona after CenturyLink and Qwest merge,  
4 even if the decision was later made that would result in the change of the system  
5 serving Arizona customers. CenturyLink has demonstrated significant successful  
6 experience in making conversions.

7 Third, because CenturyLink is acquiring the entire company of Qwest with its  
8 systems and people, it allows the combined company the ability to operate using  
9 dual systems for as long as management believes is prudent. This further allows  
10 more flexibility in the conversion process to convert management pieces of the  
11 combined company at any one time rather than having to make a massive single  
12 conversion.

13 Fourth, it is noted in my testimony and the testimony of other joint applicant  
14 witnesses, there were some issues with the Embarq systems conversion for the  
15 approximately 950,000 access lines in North Carolina. Whenever converting  
16 millions of pieces of data from various systems to other systems, there will be  
17 issues. CenturyLink's approach to converting manageable pieces of systems as  
18 well as significant experience in conversion allows for mitigation of issues and  
19 timely resolution. Putting it in perspective, the conversions that took place in  
20 Ohio and North Carolina, it is important to note that there have now been over 9  
21 million bills issued and over 1.1 million service orders processed and over  
22 400,000 jobs dispatched to technicians completed using the new systems just in  
23 these states. In other words, the conversions have been successful.

24 Fifth, the states of Nevada, which includes [the] Las Vegas operations, New  
25 Jersey, Tennessee and Virginia, accumulating over approximately 1.1 million  
26 lines, made the conversion from legacy Embarq systems in early October [2009].  
27 The records issues experienced in North Carolina conversions did not recur. The  
28 conversions in these states were successful.<sup>195</sup>

In addition to these important points, the Settlement Agreement should provide  
additional comfort to the Commission in the form of Condition 14 (requiring the merged  
company to submit semiannual reports to Staff and RUCO for a period of three years after  
closing showing "integration plans describing the scheduling and scoping of major systems  
conversions that may impact Arizona customers including business office and trouble reporting  
call centers, maintenance systems that monitor central office and transport equipment,  
engineering systems, outside plant record systems, billing systems, and wholesale OSS"),  
Condition 16 (requiring the merged company, for a period of three years from the closing, to  
give Staff and RUCO "at least 90 days notice of any plans to integrate portions of Qwest's retail

<sup>195</sup> Transcript Vol. I at page 120, line 10 to page 122, line 3.

1 support systems with portions of the CenturyLink and/or Embarq systems," and stating what  
2 support systems will be replaced and what support systems will survive, discussing any  
3 problems that occurred with similar integrations in other jurisdictions and how such problems  
4 will be mitigated in Arizona), and perhaps most importantly, Condition 19 (addressing the  
5 integration or replacement of Qwest's OSS).

6 The evidence in this case demonstrates that CTL can successfully complete the proposed  
7 merger as it has in prior transactions, including the Embarq acquisition. The reporting and  
8 notice conditions of the Settlement Agreement provide additional safeguards to ensure that the  
9 merger will be a success.

10 2. **The Risks Identified by Rating Agencies Moody's and S&P Are**  
11 **Manageable and Do Not Outweigh the Many Demonstrated Public**  
12 **Interest Benefits of the Transaction.**

13 At the time the merger was announced, rating agencies Moody's and S&P indicated that  
14 CTL's investment grade credit rating outlook was on notice for potential downgrade due to  
15 (i) the execution risks of acquiring a sizeable company so soon after the acquisition of Embarq  
16 while confronting the challenges of access line decline in the wireline industry, (ii) the  
17 possibility that the merged company may not realize the planned synergies in a timely manner,  
18 especially if competitive intensity increases, (iii) increased exposure to higher density markets  
19 which have significant competition from cable providers, and (iv) integration costs constraining  
20 the merged company's initial net free cash flow generation. However, the evidence in this case  
21 demonstrates that the public interest benefits of the Transaction clearly outweigh any risks.

22 At the outset, it should be noted as stated by Mr. Glover in his direct testimony and at the  
23 hearing that the rating agencies will not rate the merged company until *after* the transaction  
24 closes.<sup>196</sup> He further testified that "[i]n the time period before consummation of the merger,  
25 both companies are reducing debt and improving their respective balance sheets."<sup>197</sup> Toward  
26 that end, Mr. Glover testified that:

27  
28 <sup>196</sup> Transcript Vol. I at 37, lines 7-8; Glover Direct at 21, line 14.

<sup>197</sup> Glover Direct at 21, lines 16-18.

1 Qwest has previously stated that it has embarked upon an aggressive debt  
2 reduction program, and that debt reduction program is moving quite well.  
CenturyLink as well had a \$500 million debt maturity this fall that we paid off.

3 So when you look at it with the transaction closing at the first part of 2011, that at  
4 that point in time the rating agencies are going to look at the financial dynamics  
5 of the combined company. They are going to look at our balance sheet and see  
6 how much debt we have. They are going to look at our combined profitability  
7 and our combined free cash flow generation, and then they are going to look at  
our coverage ratios. And so basically once they do all of the math, they will rate  
the company.<sup>198</sup>

8 The *pro forma* balance sheet, debt, profitability, cash flow generation and coverage ratios  
9 of the combined company have been fully addressed in Section IV.A.2 above, and they show a  
10 combined company that will be financially stronger than the pre-merger companies on a stand-  
11 alone basis. RUCO witness Rigsby conducted his own financial analysis of the proposed  
12 merger, and recommended approval, stating:

13 [B]ased on my belief that the Proposed Merger should result in a combined entity  
14 which will be financially stronger, be able to mitigate the effects of land-line  
15 losses, and be able to provide additional and improved telecommunications  
16 products and services to Qwest's Arizona ratepayers. As discussed in further  
17 detail, I find the Proposed Merger results in the merged company having a better  
balanced capital structure and an improved cash flow. Furthermore, the CEO and  
CFO of CenturyLink have established track records of conservative financial  
policies.<sup>199</sup>

18 Mr. Rigsby added, importantly, that there has not been any subsequent news,  
19 developments or reasons published to support a possible increase of risk for investment in CTL,  
20 and that the increase in share prices for CTL indicates positive evaluation rather than  
21 negative.<sup>200</sup> Staff came to similar conclusions regarding the proposed merger. Staff witness  
22 Abinah testified as follows:

23 [The] Merged Company provides financial stability as a result of the combination  
24 that may result in the upgrade of Qwest Corporation's debt to investment grade  
25 through creation of a combined company that is stronger financially than either  
26 company would be standing alone. This will provide the Merged Company the  
ability to make necessary investments to its network in order to provide advanced  
products and services.<sup>201</sup>

27 <sup>198</sup> Transcript Vol. I at page 37, line 11 to page 38, line 1.

<sup>199</sup> Rigsby Direct at 5, lines 1-9.

<sup>200</sup> Transcript Vol. II at page 504, line 3 to page 506, line 1.

<sup>201</sup> Abinah Settlement Testimony at 7, lines 18-23.

1 Beyond the unquestionable financial benefits of the proposed merger, the evidence  
2 shows that the risks identified by Moody's and S&P are manageable and that the Joint  
3 Applicants' estimates in this case are conservative. The execution risk associated with following  
4 the relatively recent Embarq acquisition has been addressed in Section V.A.1 above, and will not  
5 be repeated here. With regard to the risk of access line loss, Mr. Glover testified that in prior  
6 acquisitions and mergers, CenturyLink has been able to improve the range of services offered  
7 which has slowed the loss of access lines.<sup>202</sup> As set forth above, Staff witness Abinah and  
8 RUCO witness Rigsby testified that the combined company will be able to provide additional,  
9 improved and advanced telecommunications products and services which will help mitigate the  
10 effect of land line losses. In fact, CenturyLink has demonstrated success in reducing access line  
11 losses, as described by Mr. Glover:

12 CenturyLink reported in its 2010 first quarter earnings release that access-line  
13 losses had improved by 14% compared with the losses in the fourth quarter of  
14 2009 and by 26% compared to pro forma first quarter 2009 (assuming the Embarq  
15 transaction had closed at the beginning of 2009).<sup>203</sup>

16 Regarding the realization and timing of synergy savings, the Joint Applicants have  
17 presented evidence that their estimates are conservative and achievable within the timeframes  
18 stated. Synergy savings are addressed in Section IV.C.1.b above and will not be repeated here.

19 While competition from cable providers presents a risk, the evidence demonstrates that  
20 the merger will better position the combined company to compete against such competition.  
21 The Transaction will create a combined company with the financial, managerial and operational  
22 strength to offer more customers the full array of broadband products and video entertainment,  
23 which in turn will enable the combined company to compete against cable companies and  
24 technology substitution within its local regions.

25 Finally, in response to the alleged risk that integration costs may constrain the merged  
26 company's initial net free cash flow generation, the evidence in this case compels a different  
27 outcome. According to CenturyLink witness Mr. Glover, the *pro forma* financial profile of the  
28 company, as of year-end 2009, would include *pro forma* revenues of \$19.8 million, EBITDA of

<sup>202</sup> Glover Direct at 16, lines 2-4.

<sup>203</sup> *Id.*, at lines 5-8 (citation omitted).

1 approximately \$8.2 billion and free cash flow, excluding any estimated synergies, of \$3.4  
2 billion.<sup>204</sup> Based on these financials, Mr. Glover testified that “the merged company is expected  
3 to have one of the strongest balance sheets in the U.S. telecommunications industry.”<sup>205</sup>

4 While risks are attendant in any transaction, the risks identified by rating agencies  
5 Moody's and S&P are manageable and largely mitigated by the conservative assumptions  
6 employed by the Joint Applicants in the Transaction. The evidence demonstrates that the many  
7 public interest benefits of the proposed merger clearly outweigh any risks attendant in the  
8 Transaction.

9 3. **From a Financial Perspective, the Transaction Is in the Public**  
10 **Interest.**

11 From a financial perspective, the public interest benefits of the Transaction are clear, and  
12 are discussed at length in Section IV.A above, which are summarized as follows:

- 13 • The merger makes QC a stronger, more competitive company.
- 14 • The merger improves Qwest's financial status.
- 15 • The merger improves the ability of the ILEC QC to access capital at fair and  
16 reasonable terms.
- 17 • The merger will result in a company with excellent technical, operational and  
18 managerial fitness.
- 19 • The merger will help the combine company to mitigate the impact of access line  
20 losses.

21 B. **Does CTL Have the Technical Capability to Acquire and Absorb a BOC**  
22 **Operating in Major Urban Areas?**

23 Based upon the evidence in the record, the answer to this question is clearly yes. Mr.  
24 Schafer testified that "CenturyLink's senior executive management team has one of the longest  
25 tenures in the industry, and is recognized by the financial community as one of the most  
26 successful and experienced in managing mergers and acquisitions."<sup>206</sup> Past mergers include,  
27 most recently, the Embarq merger which closed in July 2009, and which included service in  
28 urban areas such as Las Vegas, Nevada. The Embarq merger was an acquisition of a provider  
much larger than the pre-existing CenturyLink, and resulted in a provider with 7 million access

<sup>204</sup> Glover Direct at 5, lines 12-17.

<sup>205</sup> *Id.*, at 6, lines 2-3.

<sup>206</sup> Schafer Direct at 6, lines 6-8.

1 lines, 2.2 million broadband customers, and 535,000 video customers in 33 states.<sup>207</sup> Beyond  
2 this merger, CenturyLink has a well-documented track record of numerous other successful  
3 acquisitions.<sup>208</sup> Without a doubt, CenturyLink has a wealth of technical expertise in operating  
4 and integrating telecommunications systems.

5 It is also critical to point out that CenturyLink will be acquiring Qwest *in its entirety*.  
6 CenturyLink witness McMillan explained the significance of this fact:

7 [T]he Arizona ILEC, Qwest, will continue operations as a BOC. Qwest's assets,  
8 personnel and systems will be absorbed in full. That is, on the day after the  
9 closing of the Transaction, the Qwest systems and personnel that currently  
10 manage BOC operations will continue to meet any and all obligations to  
11 customers and regulators. Qwest has operated as a BOC, even as management at  
12 Qwest has transitioned over time, and will continue to operate as a BOC with the  
13 retained ability to meet BOC obligations.<sup>209</sup>

14 Mr. Schafer aptly summarized the complimentary aspects of the two merging companies:

15 This transaction brings together two leading communication companies with  
16 complimentary networks and operating footprints by building on each company's  
17 operational and network strengths. The combined company will have an  
18 impressive national presence with local depth that will allow it to better service its  
19 customers.<sup>210</sup>

20 Staff witness Genung similarly noted that "[w]hile CenturyLink continues to be busy  
21 integrating Embarq's systems, it should have a highly talented and experienced pool of  
22 employees available between the combined Qwest and CenturyLink companies to fulfill its  
23 obligations of the merger between the two companies."<sup>211</sup> Certainly, the record shows that  
24 CenturyLink can acquire and absorb Qwest.

25  
26  
27  
28  
**C. What is CTL's Plan for Integrating Operations?**

At the hearing, Mr. Schafer testified that "CenturyLink has a long history of making  
successful conversions and integrations over many years and for many different companies."<sup>212</sup>  
Moreover, the fact that CenturyLink will acquire Qwest in its entirety provides important

<sup>207</sup> *Id.*, at page 6, line 24 to page 7, line 2.

<sup>208</sup> *Id.*, at 4-8.

<sup>209</sup> McMillan Direct at 25, lines 15-21.

<sup>210</sup> Transcript Vol. I at 122, lines 7-13.

<sup>211</sup> Genung Direct, Executive Summary, and page 27, lines 19-22.

<sup>212</sup> Transcript Vol. I at 119, lines 16-18.

1 flexibility in planning and executing the integration of the two companies. CenturyLink witness  
2 Hunsucker testified as follows:

3 Because the immediate plan is to maintain both companies' separate OSS and  
4 continue operations as usual, there was no need for CenturyLink and Qwest to  
5 rush to decide OSS integration issues early in the process. Wholesale customers  
6 in CenturyLink areas and in Qwest areas will not face immediate changes in their  
7 existing systems interfaces and existing OSS arrangements will not be disrupted.  
8 This stands in stark contrast to the Fairpoint and Hawaiian Telcom transactions  
9 cited by the CLECs, both of which required the creation of entirely new OSS.  
10 The ILECs involved in those other acquisitions had to quickly develop integration  
11 plans because they had to operate under new systems and processes. Unlike those  
12 ILECs, CenturyLink will have legacy systems, processes and experienced  
13 personnel in place post-merger so CenturyLink can undertake a highly disciplined  
14 process to convert systems and processes as necessary for smooth integration.<sup>213</sup>

15 In describing that highly disciplined process planning for a smooth integration, Mr.  
16 Hunsucker explained in his pre-filed testimony as follows:

17 CenturyLink is leveraging key learnings from its Embarq systems evaluation,  
18 selection and implementation, as well as 20-plus years of successful integration  
19 experience with other acquisitions. An in-depth analysis will be conducted on  
20 systems capabilities, skill sets required for operation, and overall business  
21 processes before any decisions are made. Senior level management will then  
22 review and approve all core system selections and implementation plans. The  
23 critical systems migration criteria CenturyLink is using include:

- 24 • Minimal impact to customers,
- 25 • Systems scalability,
- 26 • Ease of operation,
- 27 • Overall support of key business needs, including functionality, efficiency,  
28 dependability, and quality of service.
- IT systems infrastructure simplification where possible,
- Meeting legal and contractual obligations, and
- Meeting all State and Federal notification requirements.<sup>214</sup>

At the hearing, Mr. Glover testified that the integration planning process is ongoing  
today, and provided a lengthy and detailed discussion of CenturyLink's integration process.<sup>215</sup>

<sup>213</sup> Hunsucker Rebuttal at 17, lines 11-21

<sup>214</sup> *Id.*, at 19, lines 6-20.

1 Further, Confidential Hearing Exhibit CTL-10 depicts CenturyLink's detailed integration  
2 process, which describes the integration efforts the company is undertaking to prepare for the  
3 Qwest merger.<sup>216</sup>

4 D. **What Protections and Benefits Do the Settlement Agreement and**  
5 **Transaction Have for Both Union and Non-Union Employees of Qwest?**

6 The ALJ asked the parties to discuss how the Transaction affects employees of Qwest,  
7 both union and non-union. Certainly, some synergies the merged companies expect to gain will  
8 be derived from elimination of duplicative and overlapping roles performed by the employees  
9 nationwide. However, the impact on Arizona will be largely mitigated by the fact that  
10 CenturyLink and Qwest do not have overlapping operations in this state. Further, the settlement  
11 agreement with the CWA provides bargained-for employees substantial protections regarding  
12 the field work force.<sup>217</sup> With that settlement, the CWA declared that the Transaction is in the  
13 public interest.

14 The CWA recognized in its agreement that the merger will create opportunities to  
15 expand and grow over the long term, but that appropriate levels of employment must match the  
16 business needs and economic realities. The CWA also recognized that it is impossible for the  
17 merging companies to make commitments regarding the number of jobs that will be maintained  
18 or created as a result of the merger.<sup>218</sup> However, the CWA agreement established certain  
19 obligations the merged company must meet. A non-exhaustive list includes the following:

- 20 ● For thirty months following closing, the percentage of the total workforce composed of  
21 union-represented employees will not decrease by more than one percentage point from  
22 the level at Transaction closing.<sup>219</sup>
- 23 ● The merged companies agree to work proactively with the union leaders to jointly  
24 address the impact of technological changes to the benefit of employees, customers, and  
25 shareholders, including attempts to drive new technologies into the bargaining units.<sup>220</sup>
- 26 ● The merged companies commit not to close any Qwest call center comprised of union  
27 represented employees until May 15, 2012.<sup>221</sup>

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28 <sup>215</sup> See Transcript Vol. I at pages 172-180.

<sup>216</sup> Transcript Vol. I at 170-181

<sup>217</sup> CWA Settlement Agreement (filed with Docket Control on October 21, 2010).

<sup>218</sup> *Id.*, at 1.

<sup>219</sup> *Id.*, at 2.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

- 1       • Certain enhancements to severance and other benefits available to call center employees  
2       are committed to in the agreement, including increased severance payments and an  
3       additional month of company-subsidized COBRA benefits coverage.<sup>222</sup>  
4       • Increased relocation benefits.<sup>223</sup>  
5       • Extension of recall rights, and priority placement for relocated jobs and lateral and lower  
6       rated positions.<sup>224</sup>

7       The CWA filing of its settlement agreement notes the findings of its consultant that  
8       substantial reductions are not anticipated in the field work force.<sup>225</sup> Mr. Campbell makes the  
9       same point, stating that “[O]ut in the field there would be very little likelihood of layoffs  
10      because there is not synergies or overlaps out there.”<sup>226</sup>

11      It is important to note that the non-union employees are in many different levels of the  
12      business.<sup>227</sup> The non-union, non-upper management levels of employees perform many  
13      functions critical to the functioning of the company. The engineering groups and managers  
14      across the entire organization actually manage the operations of the company. Those functions  
15      are indispensable, and again, the fact that there is no overlap of CenturyLink and Qwest  
16      operations in Arizona will tend to have a mitigating impact on the post merger employment  
17      levels among those ranks as well.

18      Perhaps the greatest benefit of the merger to all employees is the fact that the merger will  
19      result in a company that is stronger. A stronger company will be better able to invest and  
20      compete, and that company will need personnel to achieve its desired ends.<sup>228</sup>

21      The prospect of job reductions in Arizona is further mitigated by the fact that  
22      CenturyLink has already decided that Phoenix will be the headquarters city of its Southwest  
23      Operating Region.<sup>229</sup> The Regional Vice President will be located in Arizona with, in all  
24      likelihood, the regional managers and associated staff. The management will consist of a blend  
25      of former CenturyLink and current Qwest employees.<sup>230</sup> To the extent that layoffs of

25      <sup>222</sup> *Id.*, at 3.

26      <sup>223</sup> *Id.*

27      <sup>224</sup> *Id.*

28      <sup>225</sup> CWA Notice of Filing at 3, lines 15-18.

<sup>226</sup> Transcript Vol. I at 247, lines 17-20.

<sup>227</sup> *Id.*, at 242, lines 12-13.

<sup>228</sup> *Id.*, at page 240, line 18 to page 241, line 19.

<sup>229</sup> Transcript Vol. 1 at 23, lines 1-2.

<sup>230</sup> *Id.* at page 61, lines 15-21.

1 management employees do occur, Mr. Glover testified that outplacement services would be  
2 provided to them.<sup>231</sup>

3 E. **How does the Settlement Agreement Protect and Benefit Retail Customers,**  
4 **and How Is the Settlement Agreement in the Public Interest for Retail**  
5 **Customers?**<sup>232</sup>

6 Although much of the hearing involved the beneficial impact the merger and Settlement  
7 Agreement will have for wholesale customers, the merger, together with the commitments made  
8 in the Settlement Agreement will provide significant benefits to retail customers as well.  
9 Primarily, the benefit comes by virtue of the greatly enhanced financial strength of the company  
10 discussed in Section IV.A.2 above. For the reasons discussed there, the merged entity will have  
11 a much stronger balance sheet than stand-alone Qwest, and the *pro forma* cash flow projected  
12 will be among the best among major telecom companies, enabling the merged company to  
13 provide advanced services such as broadband, to a greater extent than would have been  
14 necessary if the merger had not occurred.

15 That benefit is made manifest in the broadband commitment made by the Joint  
16 Applicants to invest no less than \$70 million in broadband infrastructure with the State of  
17 Arizona over a five year period beginning January 1, 2011.<sup>233</sup> The issue of post merger  
18 broadband deployment is very important to the residential consumers in Arizona. RUCO in  
19 particular strenuously negotiated this issue and is pleased with the result.<sup>234</sup> Furthermore,  
20 CenturyLink will bring a new local market model whereby operating decisions are pushed closer  
21 to the customer, increasing responsiveness to customer' needs, and promoting improved  
22 marketing flexibility and targeting of investment.<sup>235</sup>

23 In addition, the Settlement Agreement and merger together provide assurances to retail  
24 customers for the provision of important protections. The acquisition costs will not be recovered  
25 through rates.<sup>236</sup> The QC Service Quality Tariff will not be changed for 2 years.<sup>237</sup> The pre-

26 <sup>231</sup> *Id.*, at 62, lines 20-25.

27 <sup>232</sup> Transcript Vol. III at 577, lines 16-21.

28 <sup>233</sup> Hearing Exhibit JA-2, ¶ 1, page 2.

<sup>234</sup> Rigsby Settlement Testimony at 11, lines 5-7.

<sup>235</sup> *Id.*, ¶ 7,(d), page 3.

<sup>236</sup> Settlement Agreement, Attachment 1, Condition 1.

<sup>237</sup> Settlement Agreement, Attachment 1, Condition 11.

1 merger level of complaints will be maintained or improved.<sup>238</sup> Commitments have been made  
2 regarding adequate staffing of retail support centers, and maintaining service levels equivalent to  
3 levels provided prior to the merger, as shown through specific reporting processes;<sup>239</sup> no service  
4 will be discontinued for one year after the closing;<sup>240</sup> and the merged company will notify the  
5 Commission of its IPTV deployment plans.<sup>241</sup>

6 The RUCO witness William Rigsby, along with the Staff, concluded that the broad  
7 public interest is well satisfied.<sup>242</sup> “In sum, the Proposed Settlement Agreement is a good deal  
8 for Arizona ratepayers.”<sup>243</sup>

9 F. **Why or Why Shouldn't the Commission Adopt APAP?**

10 The Commission should not impose the Additional Performance Assurance Plan sought  
11 by the Non-Settling CLECs. The APAP is not necessary because the existing QPAP,  
12 particularly in light of the additional protections provided by the Settlement Agreement,  
13 provides the post-closing assurances the CLECs say they need. Further, the unrebutted evidence  
14 shows that the APAP is seriously flawed in concept and design, and would result in excessive  
15 penalties and a windfall for CLECs, (*See* Section IV.C.2.h above).

16 G. **Why Is a Settlement Agreement With Wholesale Conditions Based Almost**  
17 **Entirely on a Settlement Agreement With One Specific CLEC Addressing**  
18 **That Specific CLEC's Issues in the Best Interest of All CLECs?**

19 The wholesale conditions in the Settlement Agreement are in the *public interest*, that is,  
20 the wholesale conditions address a range of concerns that were originally expressed by all of the  
21 major CLECs that intervened in this proceeding, and those conditions are *not* based on what is  
22 simply best for one CLEC (in this case, Integra). The Non-Settling CLECs initially joined with  
23 Integra in proposing a set of 30 conditions that did not distinguish between the needs, desires, or  
24 “business models” of the “Joint CLECs.” The Joint CLECs shared witnesses, spoke with one  
25 voice, and up to the point that Integra settled with the Joint Applicants, the original Joint CLECs  
26 never made any attempt to distinguish themselves from each other, and they never submitted any

26 <sup>238</sup> Settlement Agreement, Attachment 1, Condition 13.

27 <sup>239</sup> Settlement Agreement, Attachment 1, Condition 14

28 <sup>240</sup> Settlement Agreement, Attachment 1, Condition 15.

<sup>241</sup> Settlement Agreement, Attachment 1, Condition 18.

<sup>242</sup> Rigsby Settlement Testimony at 13, lines 10-14.

<sup>243</sup> *Id.*, at 12, lines 1-2.

1 evidence to that effect. The Non-Settling CLECs' Settlement Testimony points to very few  
2 differences between them and Integra: apparently tw telecom does not offer xDSL and therefore  
3 is not interested in the line conditioning provisions in the Integra Settlement that may have  
4 influenced Integra (it is unclear whether or not PAETEC is similarly situated to Integra in that  
5 regard), tw telecom apparently relies on the Qwest *interstate* special access RCP more than any  
6 other CLEC intervener, and PAETEC allegedly has a more robust back office OSS than  
7 Integra.<sup>244</sup> However, apparently PAETEC relies primarily on UNEs,<sup>245</sup> as does Integra, so in  
8 that regard PAETEC and Integra seem to be very similarly situated.<sup>246</sup> Overall, the Non-Settling  
9 CLECs offer very slim distinctions between themselves and Integra in order to justify the  
10 conditions they want to impose on the merged company that are *in addition to the numerous*  
11 *wholesale conditions* already contained in the Settlement Agreement.

12 The wholesale conditions in the Settlement Agreement are largely based on the  
13 wholesale conditions in the Integra Settlement, however, the conditions in the Integra Settlement  
14 track many of the conditions stated in the original Joint CLECs list of conditions; indeed, many  
15 are word for word the same. Second, the Integra settlement goes even further, such as  
16 acceptance testing and voting, and the conditions are generically phrased to apply to all CLECs.  
17 Third, the Non-Settling CLECs do not ask to change the substance of any of the terms in the  
18 Settlement Agreement, rather they also ask that they be extended or added to – showing that the  
19 Integra Settlement terms benefit them as well. And, the language of the Integra Settlement is  
20 phrased such that it applies to all CLECs. Section IV.C.2.b above thoroughly discusses how the  
21 final set of wholesale conditions in the Settlement Agreement address the Joint CLEC's original  
22 30 conditions. In sum, the settlement with one CLEC in fact tracks and benefits the interests of  
23 all CLECs.

24 Finally, on perhaps the most crucial issue for all the CLECs, stability and reliability of  
25 the post-merger OSS, Condition 19 of the Settlement Agreement contains extensive protections  
26 whose significance simply cannot be minimized. Cox and Integra are two large, sophisticated

27 <sup>244</sup> Gates Settlement Testimony at page 4 and page 19, lines 3-4.

28 <sup>245</sup> Transcript Vol. II at 465, lines 6-9.

<sup>246</sup> *Id.*, at 441, lines 9-11 (Mr. Denney for Integra testifying that he believes Integra is the largest purchaser of UNEs from Qwest in Arizona).

1 CLECs. Cox and Integra have settled with the Joint Applicants, and Cox and Integra's  
2 respective witnesses both pointed to the procedures applicable to any future OSS replacement or  
3 integration as being critical to satisfying their concerns.<sup>247</sup> Those procedures, which are only  
4 summarized here, are significant protections for the interests of *all* CLECs. Before any  
5 replacement or integration of the Qwest OSS, the merged company commits to: (a) provide  
6 detailed notification 270 days in advance of replacing or integrating any OSS Systems; (b)  
7 follow the Qwest Change Management Process in connection with any such change; (c) provide  
8 notification, joint testing, and training before replacing an OSS interface; and (d) ensure that any  
9 changes to billing systems comply with ICAs and are compliant with Ordering and Billing  
10 Forum requirements.

11 Beyond the key points discussed above, the Joint Applicants have otherwise  
12 demonstrated in the record and in this Brief that the Non-Settling CLEC's arguments for  
13 additional conditions are without merit. No party to the Settlement Agreement, or the Integra  
14 Settlement, or the Cox Settlement, obtained everything it wanted out of this case. Even though  
15 the Settlement Agreement does not provide the remaining Non-Settling CLECs everything they  
16 want, they have obtained significant benefits as a result of the Settlement Agreement. Given  
17 that the Settlement Agreement is a *compromise* that avoids litigation on a host of disputed  
18 wholesale (as well as other) conditions that are now in place for the benefit of all, the wholesale  
19 benefits that it does provide are manifestly in the best interest of all CLECs even if those  
20 benefits do not fully satisfy the interests of any one particular CLEC.

21 H. **Are the Different Timeframes in Condition 23 of the Settlement Agreement**  
22 **Discriminatory Under Federal Regulations and in Violation of the Qwest**  
23 **Phoenix Forbearance Order?**

24 As discussed in detail in Section IV.C.2.f above, the different timeframes for extensions  
25 of *different* types of wholesale service arrangements is not discriminatory. CLECs develop their  
26 own business plans and choose their manner of entry into the market. CLECs choose whether  
27 their business plan includes UNEs provided under Section 251, or non-Section 251 elements and

28 <sup>247</sup> Transcript Vol. I at page 223, lines 3-9; page 229, lines 3-6 (examination of Doug Garrett for Cox); Transcript  
Vol. II at page 424, line 16 to page 425, line 6 (examination of Doug Denney for Integra).

1 services provided under a wholesale or commercial agreement, or services provided under an  
2 interstate tariff. Each of those particular wholesale arrangements already comes with potentially  
3 different timeframes and different levels of stability and certainty for the CLEC.

4 As an initial matter, the PFO is simply not relevant. As discussed in Section IV.C.1.b  
5 above, the PFO only addresses whether there is sufficient actual or potential competition to  
6 justify granting Qwest relief from Section 251(c)(3) unbundling requirements for loop and  
7 transport. The PFO's analysis of market conditions and available alternatives to Qwest's loops  
8 and transport elements does not even remotely bear upon the question of whether different  
9 timeframes for different wholesale service arrangements (*e.g.*, Section 251 ICAs, non-Section  
10 251 commercial and wholesale agreements, and tariffed services) might somehow be  
11 discriminatory. Undoubtedly the Non-Settling CLECs will continue the flawed theme in Mr.  
12 Gates' Settlement Testimony that the PFO somehow made some findings that negate the  
13 distinctions between Section 251 UNEs and non-Section 251 elements and services. Clearly,  
14 however, there are distinctions: CLECs are "impaired" without access to Section 251 UNEs; for  
15 non-Section 251 elements and services, CLECs are by definition not "impaired" without access  
16 at TELRIC rates, and the PFO makes no findings about whether CLECs would be impaired  
17 without access to these non-Section 251 elements and services from Qwest. More importantly,  
18 the PFO did not alter the existing FCC rulings that CLECs are not impaired without access to  
19 non-251 elements, and CLECs can seek alternative sources, including self-provisioning. As Mr.  
20 Gates admitted, his assertion that the different timeframe extensions in Settlement Agreement  
21 Condition 23 are "discriminatory" is not based on any legal concept of discrimination.<sup>248</sup>

22 The relevant inquiry under "federal regulations" turns on the application of Section  
23 202(a) of the Act, which provides "[i]t shall be unlawful for any common carrier to make any  
24 unjust or unreasonable discrimination in charges ... for ... like communication service."<sup>249</sup> A  
25 significant number of pages could be devoted to examining in detail the jurisprudence of Section

26 <sup>248</sup> Transcript Vol. I at 92, lines 2-8.

27 <sup>249</sup> 47 U.S.C. § 202(a). Section 201 may also appear to be implicated, because it requires a telecommunications  
28 carrier to only employ just and reasonable charges, practices, classifications and regulations in connection with its  
communications services. However, Section 202 specifically deals with discrimination, and is therefore most  
relevant to the ALJ's question.

1 202. However, no party has invoked *any* specific federal law arguments in connection with the  
2 issue of the Settlement Agreement's different extension timeframes for different types of  
3 wholesale service arrangements. And, Section 202 does not prohibit discrimination or disparate  
4 treatment; Section 202 prohibits only discrimination that is unjust or unreasonable among  
5 *similarly situated* persons purchasing "like" products.<sup>250</sup>

6 Ironically, the settlement testimony of the Non-Settling CLECs asserts that they do not  
7 consider themselves similarly situated to Integra (which relies primarily on UNEs provided  
8 under ICAs), nor do they consider themselves similarly situated to each other.<sup>251</sup> Insofar as the  
9 Settlement Agreement is concerned, CLECs that use the same type of wholesale service  
10 arrangement are treated alike and get the same extension, and there is no discrimination.  
11 Moreover, the Non-Settling CLECs have not demonstrated that all of the wholesale service  
12 arrangements at issue involve "like" products. Also, they have not demonstrated that a UNE  
13 provided under an ICA is like a QLSP bundle provided under commercial agreement or that a  
14 QLSP bundle is like a special access channel termination provided under an interstate tariff.  
15 Indeed, these things are all different products, are obtained through different commercial and  
16 legal channels, and are all subject to different pricing and regulatory requirements. Accordingly,  
17 CLECs who do not use the same wholesale service arrangements do not purchase the same or  
18 "like" products and are not similarly situated, and no violation of Section 202 can be shown.

19  
20 <sup>250</sup> See, e.g., *Orloff v. FCC*, 352 F.3d 415, 418 (D.C. Cir. 2003 (noting "similarly situated" component); *Union Telephone v. Qwest*, 495 F.3d 1187, 1195 (noting test under Section 202(a) requires complainant to prove products or services at issue are "like"). Claims under Section 202(a) typically involve allegations of price discrimination between similarly situated purchasers of "like" services. "Similarly situated" is often used to describe the situation where the complainant purchases a service "like" the service purchased by other customers at a different price, *i.e.*, persons are generally *not* similarly situated if they are not purchasing like services. However, there are circumstances where different pricing is permitted for persons purchasing the same product, e.g., different volume and term discounts may generally be offered to all persons buying the same product, but the differing volume and term commitments result in the purchasers not being "similarly situated." There is significant case law on what constitutes "like" services. The fact that the differences in pricing and practices for Section 251 and non-Section 251 products have been in effect for perhaps over 10 years and there have been no successful Section 202(a) challenges to those differences, seems to conclusively establish that Section 251 UNEs and non-Section 251 products are not "like" products or services under Section 202(a).

21  
22  
23  
24  
25  
26 <sup>251</sup> See Gates Settlement Testimony at 5-7. Mr. Gates' states that CLECs have different "network approaches, target markets, and business plans." "CLECs use different non-UNE commercial and wholesale agreements and tariffs and rely on them to varying degrees to provide different services to end user customers." Again, the testimony of Mr. Haas for PAETEC also indicates that it relies primarily on UNEs. Therefore, PAETEC can take advantage of the 36-month extension for ICAs to the same extent that Integra can—those two CLECs are similarly situated and there is clearly no discrimination.

1           Assuming for the sake of argument that CLECs that purchase different products under  
2 different wholesale service arrangements subject to different regulatory requirements are  
3 somehow similarly situated to each other, the Settlement Agreement's different extension  
4 timeframes for different wholesale service arrangements are not unjust and unreasonable. The  
5 differences in the regulatory and market conditions governing the different products and  
6 arrangements justify the different extension timeframes. As discussed above in Section  
7 IV.C.2.f, under the Act, Section 251 UNEs are presumptively more critical to competition than  
8 are non-Section 251 elements and services, and the different extension timeframes in the  
9 Settlement Agreement recognize that fact. In conclusion, one of the Non-Settling CLECs, tw  
10 telecom, would simply like a longer extension of its current wholesale service arrangement, but  
11 it is inappropriate for tw telecom to try to leverage this Arizona merger approval process for the  
12 purpose of gaining a commercial advantage in its purchase of an *interstate* special access  
13 service. The Joint Applicants have demonstrated a rational basis for different extension  
14 timeframes, and neither tw telecom nor any of the other Non-Settling CLECs will incur  
15 discrimination.

16           I.       **Why Should or Should Not Third Party Testing Be Required?**

17           This issue is extensively addressed above in Section IV.C.2.e above. Third party testing  
18 of a replacement OSS should not be a condition imposed on this merger because there is no legal  
19 requirement to use third-party testing and the CLEC industry has matured to the point that  
20 CLECs are, or should be, capable of evaluating a new OSS. Both Qwest and CenturyLink have  
21 experience handling significant commercial volumes of orders, and that expertise will be carried  
22 forward in the merged company. Unlike 10 to 15 years ago when competition was just  
23 emerging, today CLECs generate sufficient order volumes to allow the commercial readiness of  
24 a new OSS to be evaluated through "stable testing environments that mirror production, jointly  
25 established test cases, and, when applicable, controlled production testing,"<sup>252</sup> such that testing  
26  
27

28           <sup>252</sup> Settlement Agreement, Attachment 1, Condition 19.c.ii.

1 by a third party is unnecessary. However, as stated by Mr. Abinah, if a CLEC wants third party  
2 testing of any new OSS, the CLEC should be required to pay for it.<sup>253</sup>

3 J. **Why Shouldn't There Be a Specific Allocation of the \$70M Broadband**  
4 **Commitment to the Unserved and Underserved Areas in Arizona?**

5 Section 1 of the Settlement Agreement commits the merged company to invest no less  
6 than \$70 million in broadband infrastructure within the State of Arizona over a five year period  
7 beginning January 1, 2011. Pursuant to Condition 18 of Attachment 1 to the Settlement  
8 Agreement, for a period of three years following the merger close, the merged company will  
9 meet with Staff and RUCO within 60 days of the anniversary date of the merger to review (1)  
10 broadband deployment plans in Arizona including deployment in the previous year and  
11 deployment plans for the upcoming year; (2) compliance with the broadband commitment  
12 including the status of wireline broadband service in unserved and underserved areas; and (3)  
13 the status of the offering of pure broadband and extended DSL service in the Arizona Qwest  
14 ILEC service area. The Settlement Agreement defines "unserved" as an area that has no  
15 wireline broadband service and "underserved" as an area with wireline broadband service but  
16 only at download speeds of 1.5 Mbps or less.

17 The broadband commitment does not allocate a specific portion of the \$70 million  
18 investment to unserved or underserved areas because maximum flexibility in the deployment of  
19 that investment will ensure that the benefits to Arizona customers are maximized. Both Staff  
20 and RUCO recognize the wisdom of allowing company management to make deployment  
21 decisions, with important annual reporting and accountability to Staff and RUCO regarding  
22 deployment in unserved and underserved areas. As stated by RUCO witness Bill Rigsby:

23 Mainly we believe that the company is in the better position to identify areas that  
24 need broadband here in the state. We would like to see the \$70 million used to its  
25 maximum effect, and we think the company is in a better position to know that  
26 because it knows its service territory.

27 And, of course, there is a five-year deployment with annual reporting. And so if  
28 the company is not deploying broadband in a way that satisfies the Commission,  
then the Commission can always react at that time.

<sup>253</sup> Transcript Vol. III at 543, lines 10-20.

1           Lastly, we think that if the Commission is the entity which makes the decision as  
2           to which cities and towns get broadband, then essentially the Commission is  
3           picking and choosing winners and losers. And it becomes pretty much a – the  
4           process becomes politicized as opposed to just being a prudent business decision.

5           So for those reasons, we just think that we shouldn't put too many restrictions on  
6           the company as to where they are going to deploy this and how. We would rather  
7           let them go ahead and make that decision so that we get a maximum benefit from  
8           the \$70 million commitment.<sup>254</sup>

9           Staff agreed with RUCO that the decision where to deploy broadband is a management  
10          decision for the company, but Mr. Abinah went further, stating that "this Commission has no  
11          jurisdiction about broadband."<sup>255</sup>

12          CTL is an expert in providing telecommunications services in rural areas, and the  
13          merged company will be in the best position to know how achieve the maximum benefits to  
14          Arizona consumers from the deployment of the broadband investment. The requirement that the  
15          merged company meet annually with Staff and RUCO to review past broadband deployment and  
16          future deployment plans will ensure that unserved and underserved areas of the state are given  
17          careful attention and focus.

18           K.        **Is there Language in the Settlement Agreement Which Is Vague and Which**  
19                    **May Lead to Complaints and Litigation, and if so, How Does Such Language**  
20                    **Support the Commission's Overall Goal of Conservation of Commission**  
21                    **Resources?**

22          The Settlement Agreement's language was crafted carefully after extensive negotiation  
23          to both express the parties' intents and expectations and set standards for future and  
24          unanticipated events. Much of the Settlement Agreement's language also is the result of  
25          conditions proposed by the Staff, RUCO, Integra, and other CLECs in their respective  
26          testimonies. Thus, the language reflects the parties' best efforts to express their understanding  
27          of the agreement, avoid litigation, and conserve Commission resources.

28          A specific example of wording the ALJ had in mind involves the commitment the  
                merged companies make to being "sufficiently staffed." In responding to how Integra would  
                quantify that, Mr. Denney stated that an exact number is not possible and would be unwise,

<sup>254</sup> Transcript Vol. II at 501, line 25, to page 502, line 22.

<sup>255</sup> Transcript Vol. III at 560, lines 10-11.

1 because of changing needs of the businesses on both the CLEC and ILEC side, to be  
2 mathematically precise: “[T]here is not a detailed, you know, number . . . of people you need to  
3 have in this center.”<sup>256</sup> CenturyLink witness Michael Hunsucker testified that the parties had a  
4 good understanding of those specific terms: “I don’t believe they will create problems. I mean  
5 we have had numerous discussions with various parties in this proceeding and in other states  
6 trying to understand what was meant by sufficiently staffed and supported.”<sup>257</sup> Mr. Hunsucker  
7 also noted that the QPAP would measure service quality, including the performance of the  
8 service centers, and if staffing was a problem the companies would be exposed to penalties  
9 under operation of the QPAP, all without Commission intervention.<sup>258</sup>

10 Whether any given condition or commitment made in the settlements has or has not  
11 occurred or been accomplished, must be determined by each party to the transaction, and will  
12 likely involve discussions between the parties.<sup>259</sup> Parts of the Settlement Agreement rely upon  
13 pre-determined processes such as the CMP. With regard to concern about potential vagueness in  
14 the term “functionally equivalent” in the context of OSS, condition 19 provides extensive and  
15 elaborate process before changes may be made: “In addition, we must develop a detailed  
16 implementation plan that provides 270 days’ notice to the Commission and the CLECs, provides  
17 for the continuation of the Qwest change management process, provides for user acceptance  
18 testing, a voting process prior to implementation of the changes, a 120-day window for  
19 coordinating testing between CenturyLink and the CLECs, and it also requires training and  
20 education on any wholesale OSS that we implement. So it is a very robust process that we must  
21 adhere to before we can make the changes.”<sup>260</sup> This process will ensure that areas of contention  
22 and disagreement are fully aired, without invoking any involvement by the regulatory  
23 commissions.

24 The parties “try to make things as detailed as possible and as, you know, rigid and  
25 clear.”<sup>261</sup> Where that is not achievable, “[I]n those cases you try to get the concepts down that

26 <sup>256</sup> Transcript Vol. II at 447, lines 15-17.

27 <sup>257</sup> Transcript Vol. II at 354, lines 20-24.

28 <sup>258</sup> *Id.*, at page 354, line 25 to page 355, line 12.

<sup>259</sup> *Id.*, at 450.

<sup>260</sup> *Id.*, at 291, lines 2-12.

<sup>261</sup> *Id.*, at 451, lines 10-12.

1 you are expecting on how things are going work going forward, and that's where the companies  
2 work[.]”<sup>262</sup> “[I]t is a necessity in some cases to have something there . . . for it to interpret and  
3 look at the situation as it comes. We are not trying to make it harder on people but easier in that  
4 sense.”<sup>263</sup>

5 The clear expectation is that the parties will work in good faith to implement the  
6 Settlement Agreement, including working out any differences of opinion on the meaning of the  
7 language employed. “I hope the CLEC and Qwest can work together so they don't have to come  
8 back to the Commission.”<sup>264</sup> There is ample reason for the Commission to believe that it will  
9 not be called upon unduly to interpret the Settlement Agreement. As the Commission's records  
10 reflect, hundreds of ICAs have been filed between QC and the CLECs doing business in  
11 Arizona, consisting of literally hundreds of thousands of pages of text, much of which is  
12 couched in terms much like those employed in the Settlement Agreement. Certainly, Qwest and  
13 CLECs from time-to-time call upon the Commission to resolve disputes arising out of those  
14 agreements, but the occurrence of such litigation is truly rare in proportion to the amount of  
15 contracts executed.

16 Ultimately, the answer to Judge Martin's question is that the language is as precise as the  
17 parties negotiating the settlements could agree upon. As such, the words selected form the basis  
18 for the “meeting of the minds” that is essential for a contract to exist. The entities entering these  
19 agreements are sophisticated entities, and the agreements have been negotiated by highly  
20 qualified subject matter experts, employees, and attorneys. It is more than reasonable to  
21 conclude that the Joint Applicants, the CLECs, and the Staff, are apprised of, and understand,  
22 the language employed and how that shapes the commitments made.

23 **VI. CONCLUSION.**

24 The record clearly demonstrates that approval of the Joint Application, with the  
25 conditions contained in the Settlement Agreement entered into between the Joint Applicants,  
26 Staff and RUCO, is in the public interest. Therefore, the Joint Applicants request that the

27 <sup>262</sup> *Id.*, at 451, lines 19-22.

28 <sup>263</sup> *Id.*, at 452, lines 3-7.

<sup>264</sup> Transcript Vol. III at 569, lines 16-19.

1 Commission expeditiously issue an order approving the Transaction as described in the Joint  
2 Application and the record in this case pursuant to A.A.C. R14-2-803, and if applicable, A.R.S.  
3 § 40-285.

4 RESPECTFULLY submitted this 18th day of January, 2011.

5 BROWNSTEIN HYATT FARBER SCHRECK,  
6 LLP

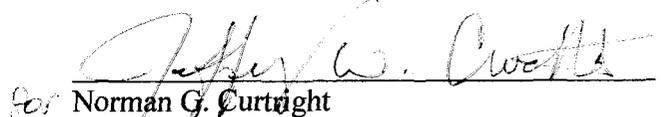
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24 ORIGINAL and thirteen (13) copies filed  
25 this 18th day of January, 2011, with:

26 Docket Control  
27 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
28 Phoenix, Arizona 85007

1 Copy of the foregoing hand-delivered  
2 this 18th day of January, 2011, to:

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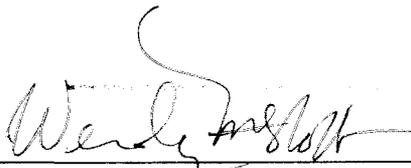
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# ATTACHMENT "1"

**INDEX OF STATE DECISIONS  
APPROVING THE QWEST/CENTURYLINK MERGER**

**California** – Advice Letter 172, June 24, 2010.

**Colorado** – Docket No. 10A-350 T, Decision No. C11-0001, January 3, 2011:  
[https://www.dora.state.co.us/pls/efi/efi\\_p2\\_v2\\_demo.show\\_document?p\\_dms\\_document\\_id=93645&p\\_session\\_id=](https://www.dora.state.co.us/pls/efi/efi_p2_v2_demo.show_document?p_dms_document_id=93645&p_session_id=)

**Colorado** – Errata, Docket No. 10A-350 T, Decision No. C11-0001-E, January 5, 2011:  
[https://www.dora.state.co.us/pls/efi/efi\\_p2\\_v2\\_demo.show\\_document?p\\_dms\\_document\\_id=93855&p\\_session\\_id=](https://www.dora.state.co.us/pls/efi/efi_p2_v2_demo.show_document?p_dms_document_id=93855&p_session_id=)

**District of Columbia** – Docket No. FC892-T-4033. Order Not Applicable:  
[http://www.dcpsc.org/edocket/docketsheets.asp?chkTelco=on&cboftype=FC&CaseNumber=892&ItemNumber=4033&orderno=&PartyFiling=&FilingType=&yr\\_filing=&Keywords=&FromDate=&ToDate=&toggle\\_text=Full+Text&show\\_result=Y&hdn\\_orderNumber=&hdn\\_chk\\_whole\\_search=&hdn\\_AssesmentType=](http://www.dcpsc.org/edocket/docketsheets.asp?chkTelco=on&cboftype=FC&CaseNumber=892&ItemNumber=4033&orderno=&PartyFiling=&FilingType=&yr_filing=&Keywords=&FromDate=&ToDate=&toggle_text=Full+Text&show_result=Y&hdn_orderNumber=&hdn_chk_whole_search=&hdn_AssesmentType=)

**Georgia** - Docket Numbers 6543, 10664, 5043, and 6094: No further action, order not required: <ftp://www.psc.state.ga.us/Dockets/6543/130041.doc>

**Hawaii** – Docket No. 2010-0110, Decision Issued June 15, 2010:  
[http://dms.puc.hawaii.gov/dms/OpenDocServlet?RT=&document\\_id=91+3+ICM4+LSD+B15+PC\\_DocketReport59+26+A1001001A10F16B02348B5840018+A10F16B02348B584001+14+1960](http://dms.puc.hawaii.gov/dms/OpenDocServlet?RT=&document_id=91+3+ICM4+LSD+B15+PC_DocketReport59+26+A1001001A10F16B02348B5840018+A10F16B02348B584001+14+1960)

**Iowa** – Docket No. SPU-2010-0006, November 19, 2010:  
<http://efs.iowa.gov/efiling/groups/external/documents/docket/054758.pdf>

**Louisiana** – Docket No. U-31379, Order No. U-31379, September 17, 2010:  
<http://lpscstar.louisiana.gov/star/ViewFile.aspx?Id=804cb80a-488c-4b3b-80f3-9d87f33d0ac3>

**Maryland** – Maillog # 123575, July 7, 2010:  
<http://webapp.psc.state.md.us/Intranet/Content.cfm?ServerFilePath=\\Coldfusion\LetterOrder%5CPosted%5C4902.doc>

**Mississippi** – Docket No. 2010-UA-218, September 14, 2010:  
[http://www.insite.psc.state.ms.us/publicinsiteweb/cts\\_wv/VUDocViewFS.aspx?VU\\_ViewDef=CTSVIEW&VU\\_SearchDef=CTS\\_ARCHIVEQ](http://www.insite.psc.state.ms.us/publicinsiteweb/cts_wv/VUDocViewFS.aspx?VU_ViewDef=CTSVIEW&VU_SearchDef=CTS_ARCHIVEQ)

**Montana** – Docket No. D2010.5.55, Order No. 7096e, December 14, 2010:  
[http://www.psc.mt.gov/eDocs/eDocuments/pdfFiles/D2010-5-55\\_7096e.pdf](http://www.psc.mt.gov/eDocs/eDocuments/pdfFiles/D2010-5-55_7096e.pdf)

**Nebraska** – Application No. C-4280, January 4, 2011:  
<http://www.psc.state.ne.us/home/NPSC/communication/orders/Misc/C4280110104.pdf>

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**New Jersey** – BPU Docket No. TM10050343, December 16, 2010.

**New York** – Docket No. 10-C-0345, August 24, 2010

<http://documents.dps.state.ny.us/public/Common/ViewDoc.aspx?DocRefId={1263CA4D-C79C-4CDA-ACBC-FD15B6F26B20}>

**Ohio** – Case No. 10-0717-TP-ACO, Approved by Operation of Law, June 29, 2010:

<http://dis.puc.state.oh.us/TiffToPDF/A1001001A10G01A84432B67150.pdf>

**Pennsylvania** - Docket Number A-2010-2176733, October 14, 2010

<http://www.puc.state.pa.us//pcdocs/1097935.docx>

**Utah** – Docket No. 10-049-16, January 4, 2011:

<http://psc.utah.gov/utilities/telecom/telecomindx/2010/documents/703411004916RO.pdf>

**Virginia** – Case No. PUC-2010-00023, September 24, 2010:

[http://docket.scc.state.va.us/CyberDocs/Libraries/Default\\_Library/Common/frameviewdsp.asp?doc=105304&lib=CASEWEBP%5FLIB&mimetype=application%2Fpdf&rendition=native](http://docket.scc.state.va.us/CyberDocs/Libraries/Default_Library/Common/frameviewdsp.asp?doc=105304&lib=CASEWEBP%5FLIB&mimetype=application%2Fpdf&rendition=native)

**West Virginia** – Case No. 10-0825-T-PC, August 3, 2010:

<http://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=301698>

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ATTACHMENT "2"

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## JOINT CLEC CONDITIONS/SETTLEMENT COMPARISONS SUMMARY

Joint CLEC Proposed Condition	Staff/RUCO Settlement Agreement Condition	Extent to Which the Staff/RUCO Settlement Agreement Condition Satisfies the Joint CLEC Condition
#1 Any wholesale service offered to competitive carriers at any time between the Merger Filing Date up to and including the Closing Date will be made available and will not be discontinued for at least the Defined Time Period, except as approved by the Commission.	Staff/RUCO Settlement Agreement Condition No. 23	Substantial
#2 The Merged Company will not recover, or seek to recover, through wholesale service rates or other fees paid by CLECs, and will hold wholesale customers harmless for, one-time transfer, branding, or any other transaction-related costs. For purposes of this condition, "transaction related costs" shall be construed broadly and, for example, shall not be limited in time to costs incurred only through the Closing Date.	Staff/RUCO Settlement Agreement Condition No. 1	Complete
#3 The Merged Company will not recover, or seek to recover, through wholesale service rates or other fees paid by CLECs, and will hold wholesale customers harmless for, any increases in overall management costs that result from the transaction, including those incurred by the Operating Companies.	Staff/RUCO Settlement Agreement Condition No. 1	Complete
#4 In the legacy Qwest ILEC territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy Qwest as of the Merger Filing Date. The Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy Qwest made available, or was required to make available, to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to state commission staff or the FCC, when requested. The state commission and/or the FCC may determine that additional remedies are required, if the remedies described in this condition do not result in the required wholesale service quality performance or if the Merged Company violates the merger conditions.	Staff/RUCO Settlement Agreement Condition No. 20	Substantial
4.a No Qwest Performance Indicator Definition (PID) or Performance Assurance Plan (PAP) that is offered, or provided via contract or Commission approved plan, as of the Merger Filing Date ("Current PAP") will be reduced, eliminated, or withdrawn for at least five years after the Closing Date and will be available to all requesting CLECs until the Merged Company obtains approval from the	Staff/RUCO Settlement Agreement Condition No. 20.a	Substantial

## JOINT CLEC CONDITIONS/SETTLEMENT COMPARISONS SUMMARY

Joint CLEC Proposed Condition	Staff/RUCO Settlement Agreement Condition	Extent to Which the Staff/RUCO Settlement Agreement Condition Satisfies the Joint CLEC Condition
<p>applicable state commission, after the minimum 5-year period, to reduce, eliminate, or withdraw it.</p> <p>For at least the Defined Time Period, in the legacy Qwest ILEC territory, the Merged Company shall meet or exceed the average wholesale performance provided by Qwest to each CLEC for one year prior to the Merger Filing Date for each PID, product, and disaggregation. If the Merged Company fails to provide wholesale performance as described in the preceding sentence, the Merged Company will also make remedy payments to each affected CLEC in an amount as would be calculated using the methodology (e.g., modified Z test, critical Z values, and escalation payments) in the Current PAP, for each missed occurrence when comparing performance post- and pre- Closing Date (“Additional PAP”).</p> <p>4.b In the legacy Qwest ILEC territory, for at least the Defined Time Period, the Merged Company will meet or exceed the average monthly performance provided by Qwest to each CLEC for one year prior to the Merger Filing Date for each metric contained in the CLEC-specific monthly special access performance reports that Qwest provides, or was required to provide, to CLECs as of the Merger Filing Date. For each month that the Merged Company fails to meet Qwest’s average monthly performance for any of these metrics, the Merged Company will make remedy payments (calculated on a basis to be determined by the state commission or FCC) on a per-month, per-metric basis to each affected CLEC.</p>	<p>Staff/RUCO Settlement Agreement Condition No. 20.a.i</p> <p>Staff/RUCO Settlement Agreement Condition No. 20.a.i,</p>	<p>Partial</p> <p>Partial</p>
<p>#5 For at least the Defined Time Period, in the legacy CenturyLink ILEC territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy CenturyLink as of the Merger Filing Date. The Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy CenturyLink made available, or was required to make available, to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to state commission staff or the FCC, when requested. The state commission and/or the FCC may determine that additional remedies are required, if the remedies described in this condition do not result in the</p>	<p>NA</p>	<p>Irrelevant</p>

**JOINT CLEC CONDITIONS/SETTLEMENT COMPARISONS SUMMARY**

<b>Joint CLEC Proposed Condition</b>	<b>Staff/RUCO Settlement Agreement Condition</b>	<b>Extent to Which the Staff/RUCO Settlement Agreement Condition Satisfies the Joint CLEC Condition</b>
<p>required wholesale service quality performance or if the Merged Company violates the merger conditions.</p> <p>5.a The Merged Company shall provide to CLECs the reports of wholesale special access performance metrics that Qwest provides, or was required to provide, to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to the Commission staff, when requested. Beginning 12 months after the Closing Date, the requirements set forth in condition 4(b) shall apply to the Merged Company in the legacy CenturyLink ILEC territory, thereby requiring the Merged Company's average monthly performance in providing special access services in the legacy CenturyLink ILEC territory to meet or exceed the Merged Company's average monthly performance for each CLEC in the legacy Qwest ILEC territory for one year prior to the Merger Filing Date.</p>	<p>Staff/RUCO Settlement Agreement Condition No. 6</p>	<p>Substantial</p>
<p>#6 As of the Closing Date, the Merged Company will assume or take assignment of all obligations under Qwest's interconnection agreements, interstate tariffs (including the Annual Incentive contract tariff), and intrastate tariffs, Commercial agreements, and other existing arrangements with wholesale customers ("Assumed Agreements"). The Merged Company will assume or take assignment of all obligations under Qwest alternative form of regulation plans. The Merged Company shall not require wholesale customers to execute any documents(s) to effectuate the Merged Company's assumption or taking assignment of these obligations.</p> <p>6.a. The Merged Company shall make available to requesting CLECs and shall not terminate or change the rates, terms or conditions of any Assumed Agreements during the unexpired term of any Assumed Agreement or for at least the Defined Time Period, whichever occurs later, unless requested by CLEC, or required by a change of law.</p>	<p>Staff/RUCO Settlement Agreement Condition No. 23</p> <p>Staff/RUCO Settlement Agreement Condition No. 23</p>	<p>Substantial</p> <p>Substantial</p>
<p>6.b. In the legacy CenturyLink ILEC territory, the Merged Company will offer Commercial agreements (including those offered pursuant to condition 7), at prices no higher, and for time periods no shorter, than those offered in the legacy Qwest ILEC territory.</p>	<p>NA</p>	<p>Irrelevant</p>

## JOINT CLEC CONDITIONS/SETTLEMENT COMPARISONS SUMMARY

Joint CLEC Proposed Condition	Staff/RUCO Settlement Agreement Condition	Extent to Which the Staff/RUCO Settlement Agreement Condition Satisfies the Joint CLEC Condition
<p>#7 Rates charged by legacy CenturyLink and rates charged by legacy Qwest (including those described in condition 6) for tandem transit service, any interstate special access tariffed or non-tariffed and commercial offerings, any intrastate wholesale tariffed offering, and any service for which prices are set pursuant to Sections 252(c)(2) and Section 252(d) of the Communications Act shall not be increased for at least the Defined Time Period. The Merged Company will not create any new rate elements or charges for distinct facilities or functionalities that are already provided under rates as of the Closing Date.</p>	Staff/RUCO Settlement Agreement Condition No 27	Substantial
<p>7.a. The Merged Company shall continue to offer any term and volume discount plans offered as of the Merger Announcement Date, for at least the Defined Time Period, without any changes to the rates, terms, or conditions of such plans. The Merged Company will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term.</p>	Staff/RUCO Settlement Agreement Conditions No. 23 and 23.a-d	Partial
<p>7.b. In the legacy CenturyLink territory, the Merged Company will comply with its statutory obligations pursuant to Section 251(c), and will provide tandem transit services to CLECs in interconnection agreements established pursuant to Sections 251 and 252, at rates no greater than any cost-based rate approved by the state commission for the Qwest ILEC territories, or current tandem transit rate, whichever is lower.</p>	NA	Irrelevant
<p>#8 The Merged Company will allow requesting carriers to extend existing interconnection agreements, whether or not the initial or current term has expired or is in "evergreen" status, for at least the Defined Time Period or the date of expiration in the agreement, whichever is later.</p>	Staff/RUCO Settlement Agreement Condition No. 23.a	Substantial
<p>#9 The Merged Company shall allow a requesting competitive carrier to use its pre-existing interconnection agreement, including agreements entered into with Qwest, as the basis for negotiating a new replacement interconnection agreement. If Qwest and a requesting competitive carrier are in negotiations for a replacement interconnection agreement before the Closing Date, the Merged Company will allow the requesting carrier to continue to use the negotiations draft upon which negotiations prior to the Closing Date have been conducted as the basis for negotiating a replacement interconnection agreement. In the latter situation (ongoing negotiations),</p>	Staff/RUCO Settlement Agreement Condition No. 23.a.i and 23.a.ii	Complete

## JOINT CLEC CONDITIONS/SETTLEMENT COMPARISONS SUMMARY

Joint CLEC Proposed Condition	Staff/RUCO Settlement Agreement Condition	Extent to Which the Staff/RUCO Settlement Agreement Condition Satisfies the Joint CLEC Condition
after the Closing Date, the Merged Company will not substitute a negotiations template interconnection agreement proposal of any legacy CenturyLink operating company for the negotiations proposals made before the Closing Date by legacy Qwest.		
#10 In the legacy CenturyLink ILEC territory, the Merged Company will permit a requesting carrier to opt into any interconnection agreement to which Qwest is a party in the same state, including agreements in evergreen status. If there is no Qwest ILEC in a state, the Merged Company will permit a requesting carrier to opt into any interconnection agreement to which Qwest is a party in any state in which Qwest is an ILEC. Agreements subject to the opt-in rights described in this condition will apply in full, without modification and subject to the other conditions set forth herein. To the extent that the Merged Company seeks to modify agreements subject to the opt-in rights described in this condition, the Merged Company will permit the opt-in and the agreement shall become effective, subject to the Merged Company's right to subsequently seek from the applicable state commission an order modifying the agreement. The state commission may require modification of the agreement to the extent that the commission determines that the Merged Company has established that (1) it is not Technically Feasible for the Merged Company to comply with one or more provisions of the agreement or (2) the price(s) set forth in the agreement are inconsistent with TELRIC-based prices in the state in question. More consistency in interconnection agreement offerings will provide more consistency for wholesale customers dealing with CenturyLink in multiple states, and will enable the industry to rely on interconnection agreement terms from the pre-closing entity that both has been through Section 271 approval proceedings and has the greater volume of CLEC wholesale business.	NA	Irrelevant
10. a. "CenturyLink ILEC territory," as used in this condition, excludes any CenturyLink ILEC for which a state commission has granted CenturyLink a rural exemption pursuant to Section 251(f) of the Federal Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. (the Communications Act") before the Merger Filing Date.	NA	Irrelevant
10.b. Nothing in this condition precludes a regulatory body from determining that any operating company of the Merged Company, which as of the Merger Closing Date	NA	Irrelevant

## JOINT CLEC CONDITIONS/SETTLEMENT COMPARISONS SUMMARY

Joint CLEC Proposed Condition	Staff/RUCO Settlement Agreement Condition	Extent to Which the Staff/RUCO Settlement Agreement Condition Satisfies the Joint CLEC Condition
operates under a Section 251(f) exemption or a 251(f)(2) suspension or modification, must cease to do so. In the event that such a ruling is made, this condition would then apply to the applicable operating company as well.		
#11 To the extent that an interconnection agreement is silent as to an interval for the provision of a product, service or functionality or refers to Qwest's website or Service Interval Guide (SIG), the applicable interval, after the Closing Date, shall be no longer than the interval in Qwest's SIG as of the Merger Filing Date.	Staff/RUCO Settlement Agreement Condition No. 28	Substantial
#12 The Merged Company will not seek to avoid any of the obligations of CenturyLink under the Assumed Agreements on the grounds that CenturyLink is not an incumbent local exchange carrier ("ILEC") under the Communications Act. The Merged Company will waive its right to seek the exemption for rural telephone companies under Section 251(f)(1) and its right to seek suspensions and modifications for rural carriers under Section 251(f)(2) of the Communications Act.	NA	Irrelevant
#13 In the legacy Qwest ILEC territory, the Merged Company shall be classified as a Bell Operating Company ("BOC"), pursuant to Section 3(4)(A)-(B) of the Communications Act and shall be subject to all requirements applicable to BOCs, including but not limited to the "competitive checklist" set forth in Section 271(c)(2)(B) and the obligation to ensure there is no backsliding, and the nondiscrimination requirements of Section 272(e) of the Communications Act.	Staff/RUCO Settlement Agreement Condition No. 4	Complete
#14 For at least the Defined Time Period, the Merged Company will not seek to reclassify as "non-impaired" any wire centers for purposes of Section 251 of the Communications Act, nor will the Merged Company file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 or 271 obligation or dominant carrier regulation in any wire center.	Staff/RUCO Settlement Agreement Condition No. 30	Substantial
#15 The Merged Company shall provide to wholesale carriers, and maintain and make available to wholesale carriers on a going-forward basis, up-to-date escalation information, contact lists, and account manager information at least 30 days prior to the Closing Date. For changes to support center location, organizational structure, or contact	Staff/RUCO Settlement Agreement Condition No. 25	Substantial

## JOINT CLEC CONDITIONS/SETTLEMENT COMPARISONS SUMMARY

Joint CLEC Proposed Condition	Staff/RUCO Settlement Agreement Condition	Extent to Which the Staff/RUCO Settlement Agreement Condition Satisfies the Joint CLEC Condition
information, the Merged Company will provide at least 30 days advance written notice to wholesale carriers. For other changes, the Merged Company will provide reasonable advanced notice of the changes. The information and notice provided shall be consistent with the terms of applicable interconnection agreements.		
#16 The Merged Company will make available to each wholesale carrier the types and level of data, information, and assistance that Qwest made available as of the Merger Filing Date concerning wholesale Operational Support Systems functions and wholesale business practices and procedures, including information provided via the wholesale web site (which Qwest sometimes refers to as its Product Catalog or "PCAT"), notices, industry letters, the change management process, and databases/tools (loop qualification tools, loop make-up tool, raw loop data tool, ICONN database, etc.).	Staff/RUCO Settlement Agreement Condition No. 26	Substantial
#17 After the Closing Date, the Merged Company will maintain the Qwest Change Management Process ("CMP"), utilizing the terms and conditions set forth in the CMP Document, including those terms and conditions governing changes to the CMP Document. The Merged Company will dedicate the resources needed to complete pending CLEC change requests in a commercially reasonable time frame.	Staff/RUCO Settlement Agreement Condition No. 19.b	Substantial
#18 The Merged Company shall ensure that the legacy Qwest Wholesale and CLEC support centers are sufficiently staffed, relative to wholesale order volumes, by adequately trained personnel dedicated exclusively to wholesale operations so as to provide a level of service that is equal to or superior to that which was provided by Qwest prior to the Merger Filing Date and to ensure the protection of CLEC information from being used for the Merged Company's retail operations or marketing purposes of any kind. The Merged Company will employ people who are dedicated to the task of meeting the needs of CLECs and other wholesale customers. The total number of the Merged Company's employees dedicated to supporting wholesale services for CLEC customers will be no fewer than the number of such employees (including agents and contractors) employed by legacy Qwest and legacy CenturyLink as of the Merger Filing Date, unless the Merged Company obtains a ruling from the applicable regulatory body that wholesale order volumes materially decline or other circumstances warrant corresponding employee reductions.	Staff/RUCO Settlement Agreement Condition No. 24	Substantial

**JOINT CLEC CONDITIONS/SETTLEMENT COMPARISONS SUMMARY**

<b>Joint CLEC Proposed Condition</b>	<b>Staff/RUCO Settlement Agreement Condition</b>	<b>Extent to Which the Staff/RUCO Settlement Agreement Condition Satisfies the Joint CLEC Condition</b>
<p>#19 In legacy Qwest ILEC territory, after the Closing Date, the Merged Company will use and offer to wholesale customers the legacy Qwest Operational Support Systems (OSS) for at least three years and provide at least the same level of wholesale service quality, including support, data, functionality, performance, and electronic bonding, provided by Qwest prior to the Merger Filing Date. After the minimum three-year period, the Merged Company will not replace or integrate Qwest systems without first complying with the following procedures:</p>	<p>Staff/RUCO Settlement Agreement Condition No. 19</p>	<p>Substantial</p>
<p>19.a. The Merged Company will prepare and submit a detailed plan to the Wireline Competition Bureau of the FCC and the state commission of any affected state before replacing or integrating Qwest system(s). The Merged Company's plan will describe the system to be replaced or integrated, the surviving system, and why the change is being made. The plan will describe steps to be taken to ensure data integrity is maintained. The plan will describe CenturyLink's previous experience with replacing or integrating systems in other jurisdictions, specifying any problems that occurred during that process and what has been done to prevent those problems in the planned transition for the affected states. The Merged Company's plan will also identify planned contingency actions in the event that the Merged Company encounters any significant problems with the planned transition. The plan submitted by the Merged Company will be prepared by information technology professionals, retained at the Merged Company's expense, with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. Interested carriers will have the opportunity to comment on the Merged Company's plan.</p>	<p>Staff/RUCO Settlement Agreement Condition No. 19.a</p>	<p>Substantial</p>
<p>19.b. For any Qwest system that was subject to third party testing (e.g., as part of a Section 271 process), robust, transparent third party testing will be conducted for the replacement system to ensure that it provides the needed functionality and can appropriately handle existing and continuing wholesale services in commercial volumes. The types and extent of testing conducted during the Qwest Section 271 proceedings will provide guidance as to the types and extent of testing needed for the replacement systems. The Merged Company will not limit CLEC use of, or retire, the existing system until after third party testing has been successfully completed for the replacement</p>	<p>Staff/RUCO Settlement Agreement Condition No. 19.c.i.</p>	<p>Partial</p>

## JOINT CLEC CONDITIONS/SETTLEMENT COMPARISONS SUMMARY

Joint CLEC Proposed Condition	Staff/RUCO Settlement Agreement Condition	Extent to Which the Staff/RUCO Settlement Agreement Condition Satisfies the Joint CLEC Condition
<p>system.</p> <p>19.c. Before implementation of any replacement or to be integrated system, the Merged Company will allow for coordinated testing with CLECs, including a stable testing environment that mirrors production and, when applicable, controlled production testing. The Merged Company will provide the wholesale carriers training and education on any wholesale OSS implemented by the Merged Company without charge to the wholesale carrier.</p>	<p>Staff/RUCO Settlement Agreement Condition No. 19.c.ii. and 19.c.iii.</p>	<p>Substantial</p>
<p>#20 In the legacy CenturyLink ILEC territory, as soon as reasonably possible, the Merged Company will use the wholesale pre-ordering, quoting, ordering, provisioning, and maintenance and repair functionalities (including electronic bonding) of the legacy Qwest territory to provide interconnection, Unbundled Network Elements, and special access services in the legacy CenturyLink ILEC territory. Specifically, in the legacy CenturyLink ILEC territory, the Merged Company will use the legacy Qwest IMA (GUI and XML), CORA, DLIS, CEMR, MEDIAC, Q. pricer, and Qwest Control systems for those services and functionalities for which Qwest provides wholesale services through these systems as of the Merger Filing Date.</p>	<p>NA</p>	<p>Irrelevant</p>
<p>#21 The Merged Company will process orders in compliance with federal and state law, as well as the terms of applicable interconnection agreements.</p>	<p>Staff/RUCO Settlement Agreement Condition Nos. 4-6 and 23.</p>	<p>Complete</p>
<p>#22 The Merged Company will provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements.</p> <p>22.a. When a number is ported from the Merged Company, E-911 records will be unlocked at the time of porting. Trouble reports involving locked E-911 records will be addressed within 24 hours.</p> <p>22.b. The Merged Company will not assign any pass code, password or Personal Identification Number (PIN) to retail customer accounts in a manner that will prevent or delay a change in local service providers. The Merged Company will require only pass codes that an end user customer requests for the purpose of limiting or preventing activity and changes to their account. The Merged Company will not require that a new local service provider provide, on a service request, a password</p>	<p>Staff/RUCO Settlement Agreement Condition Nos. 4-6 and 23.</p> <p>Staff/RUCO Settlement Agreement Condition Nos. 4-6 and 23.</p> <p>Staff/RUCO Settlement Agreement Condition Nos. 4-6 and 23.</p>	<p>Complete</p> <p>Complete</p> <p>Complete</p>

## JOINT CLEC CONDITIONS/SETTLEMENT COMPARISONS SUMMARY

Joint CLEC Proposed Condition	Staff/RUCO Settlement Agreement Condition	Extent to Which the Staff/RUCO Settlement Agreement Condition Satisfies the Joint CLEC Condition
<p>or PIN that the end user customer uses or used to access its account information on-line [including Customer Proprietary Network Information (CPNI)].</p> <p>22.c. The Merged Company shall not limit the number of ports that can be processed.</p>	<p>Staff/RUCO Settlement Agreement Condition Nos. 4-6 and 23.</p>	<p>Complete</p>
<p>#23 The Merged Company will provide nondiscriminatory access to directory listings and directory assistance in compliance with federal and state law. Specifically, the Merged Company will be responsible for ensuring that all directory listings submitted by CLECs for inclusion in directory assistance or listings databases are properly incorporated into such databases (whether such databases are maintained by the Merged Company or a third party vendor). Further the Merged Company will ensure that CLECs' subscriber listings are accessible to any requesting person on the same terms and conditions that the Merged Company's subscriber listings are available to any requesting person.</p>	<p>Staff/RUCO Settlement Agreement Condition Nos. 4-6 and 23.</p>	<p>Partial</p>
<p>#24 After the Closing Date, the Merged Company shall not assess any fees, charges, surcharges or other assessments upon CLECs for activities that arise during the subscriber acquisition and migration process other than any fees, charges, surcharges or other assessments that were approved by the applicable commission and charged by Qwest in the legacy Qwest ILEC territory before the Closing Date. This condition prohibits the Merged Company from charging fees, charges, surcharges or other assessments, including:</p> <p>a. Service order charges assessed upon CLECs submitting local service requests ("LSRs") for number porting;</p> <p>b. Access or "use" fees or charges assessed upon CLECs that connect a competitor's own self-provisioned loop, or last mile facility, to the customer side of the Merged Company's network interface device ("NID") enclosure or box; and</p> <p>c. "Storage" or other related fees, rents or service order charges assessed upon a CLECs' subscriber directory listings information submitted to the Merged Company for publication in a directory listing or inclusion in a directory assistance database.</p>	<p>Staff/RUCO Settlement Agreement Condition No. 27.b.</p>	<p>Complete</p>

## JOINT CLEC CONDITIONS/SETTLEMENT COMPARISONS SUMMARY

Joint CLEC Proposed Condition	Staff/RUCO Settlement Agreement Condition	Extent to Which the Staff/RUCO Settlement Agreement Condition Satisfies the Joint CLEC Condition
#25 The Merged Company will provide routine network modifications in compliance with federal and state law, as well as the terms of applicable interconnection agreements.	Staff/RUCO Settlement Agreement Condition Nos. 4-6.	Complete
#26 After the Closing Date, the Merged Company will engineer and maintain its network in compliance with federal and state law, as well as the terms of applicable interconnection agreements. Resources will not be diverted to merger-related activities at the expense of maintaining the Merged Company's network.	Staff/RUCO Settlement Agreement Condition No. 31	Substantial
26.a. The Merged Company shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop.	Staff/RUCO Settlement Agreement Condition No. 31.a	Complete
26.b. The Merged Company will retire copper in compliance with federal and state law, as well as the terms of applicable interconnection agreements and as required by a change of law.	Staff/RUCO Settlement Agreement Condition No. 31.b	Complete
26.c. The Merged Company will not engineer or maintain the network (including routing of traffic) in a manner that results in the application of higher rates for traffic or inefficiencies for wholesale customers.	Not Addressed	None
# 27 The Merged Company will provide conditioned copper loops in compliance with federal and state law and at rates approved by the applicable state Commission. Line conditioning is the removal from a copper loop of any device that could diminish the capability of the loop to deliver xDSL. Such devices include bridge taps, load coils, low pass filters, and range extenders. Insofar as it is technically feasible, the Merged Company shall test and report troubles for all the features, functions and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only. If the Merged Company seeks to change rates approved by a state Commission for conditioning, the Merged Company will provide conditioned copper loops in compliance with the relevant law at the current Commission approved rates unless and until a different rate is approved.	Staff/RUCO Settlement Agreement Condition Nos. 4-6. and Integra No. 14.	Complete

**JOINT CLEC CONDITIONS/SETTLEMENT COMPARISONS SUMMARY**

<b>Joint CLEC Proposed Condition</b>	<b>Staff/RUCO Settlement Agreement Condition</b>	<b>Extent to Which the Staff/RUCO Settlement Agreement Condition Satisfies the Joint CLEC Condition</b>
#28 At CLEC's option, the Merged Company will interconnect with CLEC at a single point of interconnection per LATA, regardless of whether the Merged Company provides service in such LATA via multiple operating company affiliates or a single operating company.	Not Addressed	None. However, this condition is contrary to existing laws governing rural ILEC interconnection requirements.
#29 All Conditions herein may be expanded or modified as a result of regulatory decisions concerning the proposed transaction in other states, including decisions based upon settlements, that impose conditions or commitments related to the transaction. CenturyLink agrees that the state commission of any state may adopt any commitments or conditions from other states or the FCC that are adopted after the final order in that state.	Not Addressed	None
#30 In the event a dispute arises between the parties with respect to any of the pre-closing and post-closing conditions herein, either party may seek resolution of the dispute by filing a petition with the state commission at any time. Alternative dispute resolution provisions in an interconnection agreement shall not prevent any party from filing a petition with the state commission at any time.	Not Addressed	Complete via A.A.C. R14-3-106 L

# ATTACHMENT "3"

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## LATHAM & WATKINS LLP

January 10, 2011

### EX PARTE VIA ECFS

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

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Re: *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a/ CenturyLink for Consent to Transfer of Control*, WC Docket No. 10-110

Dear Ms. Dortch:

On December 10, 2010, PAETEC filed a letter in the above-captioned docket. PAETEC's letter and its attachments contain numerous inaccuracies, and raise no meaningful issues.

First, the asserted purpose of PAETEC's filing is to compare Qwest's e-bonded capabilities with the e-bonded capabilities that PAETEC attributes to CenturyLink. But PAETEC claims that it has information about CenturyLink's e-bonded capabilities because "PAETEC uses a third party provider which is e-bonded with EASE to submit orders ... on behalf of PAETEC."<sup>1</sup> That is false. The third party that PAETEC references, Neustar, is *not* e-bonded with CenturyLink. Rather, Neustar sends to CenturyLink batch orders via an FTP interface. This is an entirely different mechanism from CenturyLink's e-bonded, system-to-system interface. Moreover, the FTP process used by PAETEC's third party to submit orders employs a transmission capability that was developed to support a predecessor application that CenturyLink retired in March 2010. CenturyLink maintains this batch functionality to minimize the impact of transition to EASE for legacy users of the FTP process. As a result, *all* of the evaluation answers that PAETEC lists in its column titled "EASE - Electronic Data Interface (EDI) LSR" are answers that (1) are based on an outdated system and (2) do not reflect CenturyLink's actual e-bonded capabilities.<sup>2</sup>

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<sup>1</sup> PAETEC Dec. 10, 2010 Ex Parte, WC Docket No. 10-110 at 2-3.

<sup>2</sup> PAETEC implies that its third party, Neustar, is an objective evaluator of CenturyLink's capabilities. Neustar in fact is a direct competitor to the software developer that created the infrastructure used in CenturyLink's EASE system. Neustar bid on the work to develop EASE, and did not win the bid proceeding.

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Second, PAETEC's evaluation matrix misleads the reader by marking multiple evaluation questions "No\*" ("no" with an asterisk). However, the footnotes buried at the end of the matrix state that "No\*" actually means that PAETEC lacked information to conclude whether or not the EASE system performed the function. Thus, "No\*" actually means "unknown." If PAETEC actually had the information necessary to perform a complete and objective comparison, it would have discovered that most of the "No\*" entries in fact should be "Yes."

Third, PAETEC has chosen not to include any information about enhancements that are in development or part of CenturyLink's development roadmap. For example, PAETEC states that EASE does not "Auto-fill or Pre-Populate" the LSR with pre-order information. This functionality is currently under development and targeted for implementation within 90 days.

Finally, PAETEC's evaluation matrix includes multiple entries that simply are wrong. In particular, PAETEC's chart refers only to two types of EASE interfaces (GUI and EDI), but does not discuss at all the capabilities that currently are available through CenturyLink's more robust, state-of-the-art UOM interface. This omission results in multiple errors throughout the chart. A few examples of the errors in the chart should suffice:

- Electronic Access Availability - EASE has an advanced industry standard real time E-Bonding capability based on UOM industry standards. The evaluation erroneously states that CenturyLink's only interface is a batch interface.
- Validate Street Address in Pre-Order - EASE has a location inquiry pre-order and provides alternate suggestions via GUI or UOM interface when an incorrect address is provided. The evaluation states erroneously that the address must be input exactly as in the system to get a match.
- Validate by Telephone in Pre-Order - Both the GUI and UOM Customer Service Request ("CSR") will provide an address based on entry of telephone number. The evaluation states erroneously that CenturyLink does not have the capability to look up an address based on a telephone number.
- Partial or Full CSRs in Pre-Order - These are available in the GUI and via UOM retrievable by TN or ECCKT. The evaluation states erroneously that CenturyLink does not have this capability.
- DLRs (Directory Listing Requests) in Pre-Order - These are available via the GUI and the UOM interface. The evaluation states erroneously that CenturyLink has this capability only via the GUI.
- Order Status (Acknowledge, Order Confirmation and Completion) - These are available in the GUI and UOM interfaces. The evaluation states erroneously that they are available only in the batch interface.

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- All orders can be pre-edited prior to order submission in the GUI - The evaluation states erroneously that this capability is not available.

These are representative examples that highlight the numerous inaccuracies in PAETEC's filing. The Commission consequently should give it no weight.

Very truly yours,

/s/

Karen Brinkmann  
Alexander Maltas  
LATHAM & WATKINS LLP

cc: Zac Katz  
Sharon Gillett  
Alex Johns  
Bill Dever