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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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

PAETEC'S EXCEPTIONS TO THE RECOMMENDED OPINION AND ORDER

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McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services
("PAETEC") submits its Exceptions to the Recommended Opinion and Order ("ROO") of the
Administrative Law Judge ("ALJ") in this docket. These exceptions focus on the potential adverse
impact of the proposed merger on the Operations Support Systems ("OSS") that Competitive
Local Exchange Carriers ("CLECs"), such as PAETEC, rely upon to order, provision and repair
key services and facilities from Qwest. The OSS is critical to facilitating telecommunications
competition in Arizona and ensuring that Arizona consumers enjoy the full benefits of such
competition. In order to ensure that the post-merger OSS used in Arizona will not harm
competition, the Commission should amend the ROO to require three simple - but important --
additional conditions to the approval of the proposed merger. PAETEC has provided proposed
amendment language in Attachment A.

1 **INTRODUCTION**

2 The proposed merger presents significant risk to competition and, therefore, the public  
3 interest, particularly relating to the continued availability of efficient, reliable, accurate OSS that  
4 CLECs use to obtain elements and services from Qwest. In order to mitigate that risk, PAETEC  
5 urges the Commission to adopt conditions, in addition to those reflected in the Settlement  
6 Agreement entered into between the Joint Applicants and Commission Staff (“Staff Settlement  
7 Agreement”), to assure that CLEC access to OSS is not degraded as a result of the merger. The  
8 FCC found that CLECs would be “severely disadvantaged, if not precluded altogether, from fairly  
9 competing,” if they did not have nondiscriminatory access to OSS.<sup>1</sup> As the Commission Staff  
10 witness observed:

11 The number one issue is the change in access to critical wholesale services and the  
12 decline in competitiveness that would result from changes to OSS services that  
13 could impact CLECs disproportionately compared to Qwest’s retail organizations.  
14 The OSSs are essential, for example, in the ordering, installation and repair of  
15 unbundled network elements (“UNEs”), one of which is the last mile loop  
16 essential to many CLECs using wholesale services.<sup>2</sup>

17 Qwest itself has described its existing OSS as playing “a crucial role in the transactions between  
18 Qwest and all CLECs”<sup>3</sup> and “the lifeblood of...Qwest’s wholesale operation...”<sup>4</sup>

19 It is critical to understand that Qwest owns and controls much of the legacy  
20 telecommunications network used to access consumers in Arizona by virtue of its (and its  
21 predecessors) historical role as the monopoly provider in Arizona. CLECs are dependent on using  
22 portions of that network and on Qwest’s related cooperation in providing such use. However,  
23 Qwest is also a key competitor of the CLECs. As a result, any interference in the process for  
24 ordering, provisioning and repairs related to the legacy network – which requires access to a robust

25 <sup>1</sup> *Local Competition Order* at ¶518.

26 <sup>2</sup> Ex. S-2 (Fimbres Direct) at page 11, lines 7-12.

27 <sup>3</sup> Ex. PLT-1 (Gates Direct) at page 32, lines 12-14, citing Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.

<sup>4</sup> Ex. PLT-1 (Gates Direct) at page 32, lines 12-14, citing Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at p. 39.

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1 OSS that provides nondiscriminatory access to the critical network elements and services – will  
2 give Qwest a competitive advantage.

3 In order to protect against the harm to competition and the public interest that would  
4 potentially result from replacement of the existing Qwest OSS with functionally inferior OSS  
5 following the merger, PAETEC requests that the Commission condition its approval of the merger  
6 on the following additional or clarified commitments regarding OSS contained in Condition No.  
7 19 of the Staff Settlement Agreement:

- 8 (1) a commitment to maintain Qwest's existing OSS for at least three years to match  
9 the Joint Applicants' 3-5 year synergy period;
- 10 (2) a commitment that any change in OSS will not adversely impact the operations of  
11 CLECs' back office systems; and
- 12 (3) a commitment to, in connection with changes to Qwest OSS, conduct third party  
13 testing to assure that specific components of wholesale OSS service quality,  
14 including support, data, billing, functionality, performance, electronic flow through  
15 and electronic bonding, are not degraded.

16 Accordingly, PAETEC requests that the Commission amend the ROO's Findings of Fact,  
17 Paragraphs 152, 155, and 161, and add a related Ordering Paragraph beginning at page 57, line 23,  
18 in the manner set forth in the accompanying proposed amendments (Attachment A).

## 19 DISCUSSION

### 20 **I. The Record Establishes That The Proposed Merger Presents Substantial Risk To 21 Competition And The Public Interest.**

22 The record shows that two out of three mergers fail.<sup>5</sup> Further, the evidence showed that  
23 mergers between ILECs in the telecommunications industry have been particularly risky, resulting  
24 in service failures and delays for consumers and competitors and bankruptcy for the post-merger  
25 companies.<sup>6</sup> Indeed, the Commission's Staff observed that the proposed merger presents the

26 <sup>5</sup> Ex. PLT-4 (Ankum Direct) at page 5, line 17 – page 6, line 15.

27 <sup>6</sup> EX. PLT-4 (Ankum Direct) at page 29, line 12 – page 31, line 1, Ex. AA-2; Ex. PLT-1 (Gates Direct) at  
page 91, line 10 – page 98, line 22; ROO ¶ 71.

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potential for irreparable harm to competition.<sup>7</sup>

CenturyLink's consistent response to this evidence has been to point to what it describes as a "track record" of successful acquisitions.<sup>8</sup> This response, however, fails to take into account a number of critical facts that show that the Commission cannot assume, based on CenturyLink's recounting of its claimed past successes, that this transaction is free from risk. First, CenturyLink ignores the fact that, as the ALJ correctly noted, "the Embarq integration has not been without its difficulties."<sup>9</sup> Indeed, characterizing the integration of Embarq as not being free from "difficulties" is an understatement. Testimony provided by the Commercial Workers of America describes a number of serious operational, service-affecting problems stemming from efforts to integrate the Embarq business in North Carolina.<sup>10</sup> Second, CenturyLink's response ignores the fact that integration of its largest acquisition to date, Embarq, has not yet been completed.<sup>11</sup> Indeed, the integration of Embarq will likely still be ongoing at the consummation of the proposed merger and may affect the resources available to ensure that the Qwest integration will not harm competition or consumers in Arizona.

Finally, what this response ignores is that this transaction is not like any transaction in which CenturyLink has previously been involved. Qwest is much larger than any company that CenturyLink has previously acquired and has a substantially more urban, more densely-populated footprint.<sup>12</sup> CenturyLink's traditional focus of operations on less densely populated areas means that it has not faced the level of competition and wholesale service demand that Qwest has faced in

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

<sup>8</sup> See, e.g., Ex. CTL-4 (Schafer Direct) at page 5, lines 25-27; see also ROO ¶¶ 75, 96.

<sup>9</sup> ROO, ¶ 76.

<sup>10</sup> Gurganus Direct Testimony at pages 4-8; filed in Docket Control on September 27, 2010.

<sup>11</sup> ROO, ¶ 68.

<sup>12</sup> ROO, ¶ 69.

1 operating in the larger metropolitan areas.<sup>13</sup> These challenges of the transaction have led bond  
2 ratings agencies to pessimistic predictions of future success. Thus, Moody's Investor Service, in  
3 changing the company's outlook to negative, observed that, "The negative rating outlook for  
4 CenturyTel reflects the considerable execution risks in integrating a sizable company so soon after  
5 another acquisition (Embarq in July 2009) while confronting the challenges of a secular decline in  
6 the wireline industry. The negative outlook also considers the possibility that the Company may  
7 not realize planned synergies in a timely manner, especially as competitive intensely increases."<sup>14</sup>

8 CenturyLink points to its experience operating in Las Vegas, as a result of its acquisition of  
9 Embarq, as demonstrating its ability to effectively serve urban areas.<sup>15</sup> Both CenturyLink and the  
10 ROO, however, ignore the evidence of significant problems that have arisen as CenturyLink has  
11 implemented its EASE OSS in Embarq's Nevada territory. To that end, Kim Howell of Cox  
12 Telecom testified:

13 The integration of Embarq and the transition to CenturyLink EASE OSS has been  
14 and continues to be problematic. Today in Nevada, the EASE system has  
15 negatively affected our response time for customer orders to switch phone service  
16 from CenturyLink to Cox. At times of high volume, our submitted orders will  
17 sometimes time-out, crash or experience other problems. We are frequently on  
18 the phone with CenturyLink representatives trying to recover orders that are lost  
19 in translation. We continue to be frustrated with the inability to meet our  
20 customer's requests on a timely basis and be competitive with CenturyLink when  
21 our orders are lost in their operating system. We have found in many cases we are  
22 having to call our customers back and push the installation date out as a result of  
23 the points of failure in the CenturyLink system.<sup>16</sup>

24 Cox also observes that CenturyLink is very slow to address OSS problems and that the number of  
25 issues has not materially decreased over time.<sup>17</sup> Along these same lines, Mr. Gates attaches to his

26 <sup>13</sup> See, e.g., Ex. CLT-1 (Glover Direct), Ex. JG-4 (Qwest acquisition "increases the company's exposure to  
27 higher density markets, which have significant competition from cable providers.")

28 <sup>14</sup> Ex. CLT-1 (Glover Direct), Ex. J6-3; see also Ex. CLT-1 (Glover Direct), Ex. j6-4 ("While estimated  
29 operating cost synergies of about \$575 million, which represent about 3% of total revenue, appear  
30 achievable, integration efforts will be difficult given the size of the combined company and CenturyTel's  
31 integration of previously acquired Embarq will likely not be complete until the end of 2011."); see also  
32 ROO at ¶¶ 91-92.

33 <sup>15</sup> See ROO ¶ 74.

34 <sup>16</sup> Ex. Cox-2 (Howell Surrebuttal) at page 12, lines 10-20.

35 <sup>17</sup> Ex. Cox-2 (Howell Surrebuttal) at page 13, lines 9-18.

1 testimony comments submit to the FCC by tw telecom and Socket Telecom recounting problems  
2 they experienced in 2009 – including system outages that prevented the submission of LSRs,  
3 inability to complete pre-ordering, and slow response times – during CenturyLink’s transition of  
4 wholesale customers in legacy Embarq territory from one ordering system to another.<sup>18</sup>

5 Furthermore, CenturyLink lacks anything approaching Qwest’s experience in providing  
6 wholesale service. As Joint CLEC witness, Mr. Gates, explained, the Joint Applicants’ own data  
7 shows that by a number of different measures, CenturyLink’s wholesale business is *significantly*  
8 *less* than Qwest’s for such things as processing porting requests.<sup>19</sup> As the Commission knows,  
9 number porting is essential for competition because consumers expect to retain their telephone  
10 numbers when they switch from the ILEC to a competitive provider. If consumers cannot retain  
11 their phone number or ensure that their telephone numbers will transfer immediately and  
12 seamlessly when changing providers, then consumers will be reluctant to change providers.  
13 Therefore, if CenturyLink and Qwest cannot process number porting requests quickly, and  
14 efficiently, following the merger, competitors and competition will suffer. Other comparisons of  
15 Qwest’s and CenturyLink’s wholesale service volumes are similarly lop-sided.<sup>20</sup>

16 Finally, and most importantly for purposes of PAETEC’s Exceptions, Qwest is Arizona’s  
17 Regional Bell Operating Company (“BOC”), with specific wholesale obligations and  
18 responsibilities under Sections 271 and 272 of the 1996 Telecommunications Act to open markets  
19 to competition. CenturyLink, in contrast, has never operated as a BOC and has never been  
20 required to perform to the legal standards that apply to a BOC.<sup>21</sup> Most significantly, CenturyLink  
21 did not go through the Section 271 process, including rigorous independent testing of its OSS, that  
22 Qwest had to go through in order to enter the interLATA market.<sup>22</sup>

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24 <sup>18</sup> Ex. PLT-1 (Gates Direct) at page 77, line 17-page 78, line 2; Exhibit TG-5.

25 <sup>19</sup> Ex. PLT-1CF (Gates Direct) (Highly Confidential) at page 25, lines 3-5.

26 <sup>20</sup> Ex. PLT-1CF (Gates Direct) (Highly Confidential) at page 24, line 16-page 26, line 12.

27 <sup>21</sup> ROO, ¶ 56.

<sup>22</sup> Ex. PLT-1 (Gates Direct) at page 23, lines 8-page 24, line 7; PLT-4 (Ankum Direct) at page 10, lines 9-15, page 12, lines 4-8; Ex. S-2 (Fimbres Direct) at page 10, lines 18-22.

1 **II. The Commission Should Condition Its Approval Of The Merger On The Merged**  
2 **Company's Commitment To Continue Using Qwest's Existing OSS For At Least**  
3 **Three Years.**

4 Recognizing the importance of OSS to the continued vitality of competition in local  
5 telecommunications markets, Commission Staff initially urged the Commission to adopt a  
6 requirement that the Merged Company continue to use Qwest's existing OSS for a period of at  
7 least three years after the merger.<sup>23</sup> Later, although describing the CLEC request for a three year  
8 OSS commitment as "reasonable," Staff nonetheless entered into a settlement providing for only a  
9 two year commitment as a "compromise."<sup>24</sup> The record does not support a conclusion that the  
10 Staff's compromise adequately furthers the public interest in protecting competition.

11 There is no dispute regarding the critical importance of OSS to the ability of CLECs to  
12 compete. Moreover, the Joint Applicants acknowledge their plan to ultimately transition to a single  
13 OSS platform and that, by doing so, they expect to realize expense saving.<sup>25</sup> Further, the  
14 overwhelming weight of the evidence shows that Qwest's OSS provides CLECs with greater  
15 functionality than is available through CenturyLink's OSS. Indeed, as Mr. Fimbres of Commission  
16 Staff testified, "Qwest's OSS appear to be superior to both the Embarq and CenturyLink systems.  
17 It could be unacceptable, given the substantial time invested by the Commission and others in the  
18 Qwest 14 state region during the § 271 process to adopt changes to Qwest's support systems that  
19 are inferior to what is now available."<sup>26</sup>

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21 <sup>23</sup> Ex. S-2 (Fimbres Direct) at page 30, lines 8-11; Ex. S-3 (Fimbres Surrebuttal) at page 16, line 22-page  
22 17, line 15.

23 <sup>24</sup> Transcript Vol. 3, page 563, 1 lines 1-21 (Abinah).

24 <sup>25</sup> Transcript, Vol. 1, page 142, line 17-page 143, line 2 (Schafer) ("long-run" plan to have a single set of  
25 systems); see also Transcript, Vol. 2, page 303, lines 16-23 (Hunsucker) ("goal of the company, is to  
26 create efficiencies by trying to get to one single system"); Vol. 2 page 304, line 23-page 305, line 8 (cost is  
27 one of the factors motivating company's desire to go to a single OSS platform).

<sup>26</sup> Ex. S-2 (Fimbres Direct) at page 15, lines 8-11; see also PLT-1 (Gates Direct), page 35, lines 2-4  
("["T]he existing Qwest OSS and its functionality are more well-documented, and preferred by carriers such  
as Charter that use both of the merging companies' systems, than the existing CenturyLink OSS."); Cox -1  
(Howell Direct) at page 4, lines 14-19 ("It is Cox's experience that Qwest's OSS is in many respects  
superior to the Embarq system CenturyLink is in the process of integrating . . . .")

1 One very significant difference between Qwest's OSS and CenturyLink's OSS that affects  
2 a wide variety of CLEC operations is the difference to which those systems accommodate "e-  
3 bonding" that allows the automated, real-time transfer of information between the CLEC and ILEC  
4 systems. Qwest's OSS uses an e-bonding system that allows faster and more accurate exchange of  
5 information and forms than CenturyLink's systems.<sup>27</sup> This e-bonding functionality enables  
6 PAETEC to make greater use of automated systems that reduce costs and delays by eliminating  
7 manual process errors and the re-processing that such errors require.<sup>28</sup> These automated  
8 capabilities are possible because the CLEC undertook a substantial effort to develop its own back  
9 end systems and processes and then code, test and link those systems and processes to Qwest's  
10 systems and interfaces. These CLEC back end systems would be potentially impacted if the  
11 merged company changed Qwest's legacy OSS post-transaction and such change could require  
12 CLECs to revert to significantly less efficient manual processes if the modified OSS offered by the  
13 merged company does not afford CLECs access to the same degree of the merged company's back  
14 end systems and data via the electronic interface.<sup>29</sup>

15 A three year moratorium on changes to the Qwest OSS is reasonable because it is tied to  
16 the three to five year period over which the Joint Applicants project that merger synergies will be  
17 realized.<sup>30</sup> It took more than three years just to test and evaluate Qwest's OSS to determine if it  
18 was sufficient to meet the requirements of Section 271.<sup>31</sup> If the merged company decides to  
19 modify or replace Qwest's OSS, it is reasonable to assume that it will take at least three years (i) to  
20 decide which OSS the merged company intends to use going forward, (ii) to make changes to  
21 Qwest's OSS, (iii) to test and evaluate the new OSS to ensure that it can handle the commercial

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23 <sup>27</sup> Ex. Cox -1 (Howell Direct), page 5, lines 15-17; see also Ex. Cox-1 (Howell Direct), page 5, lines 18-22  
24 ("Qwest allows electronic submission of LSRs and ASRs through e-bonding and a web-based portal, and  
25 uses a more manual, non-interactive internet ordering processes for ASRs for interconnection trunks.")

26 <sup>28</sup> Ex. Cox -1 (Howell Direct) at page 5, lines 17-18.

27 <sup>29</sup> Ex. PLT-1 (Gates Direct) at page 55, line 18 – page 56, line 11.

<sup>30</sup> See Ex. PLT-3 (Gates Settlement Testimony) at page 10, line 8 – page 12, line 5.

<sup>31</sup> Ex. PLT-1 (Gates Direct), Ex. TG-2 at page 2.



1 volumes in Qwest's territory and provide CLECs a meaningful opportunity to compete, (iv) to  
2 allow cooperative testing of the systems with the CLECs to ensure that they meet the CLEC needs;  
3 and (v) for CLECs to develop internal systems to interface with the new OSS systems.<sup>32</sup>

4 The two year period provided for under the Staff Settlement, in contrast, finds no basis in  
5 the record, beyond the fact that this was a period of time that another CLEC—Integra—found  
6 acceptable. In entering into its settlement agreement, Integra represented only its own interests, not  
7 those of other CLECs.<sup>33</sup> No other CLECs were involved in the negotiations that culminated in that  
8 agreement.<sup>34</sup> Obviously there are differences among CLECs such that what will be acceptable to  
9 one CLEC will not necessarily be adequate for all CLECs. For example, PAETEC has  
10 implemented much more extensive back office automation than has Integra, which relies more on  
11 manual processes to complete various tasks that PAETEC has automated.<sup>35</sup> Integra's reliance on  
12 manual processes means that future changes to Qwest's OSS, should those changes degrade the  
13 functionality, access and robustness of the e-bonding capabilities, will not impact Integra to the  
14 degree that such changes could impact the automated processes used by PAETEC.<sup>36</sup>

15 Requiring the merged company to retain the Qwest OSS for an additional year beyond the  
16 two year commitment agreed to in the Staff Settlement will not unreasonably burden the merged  
17 company. First, CenturyLink asserts that, although it expects to realize cost savings by  
18 transitioning to a single OSS platform, such savings have not been included in any of the synergy  
19 projections.<sup>37</sup> Thus, adding a year to the OSS commitment should not interfere with the  
20 company's ability to meet its synergy targets. Further, CenturyLink asserts that it has made no  
21 plans regarding what changes it intends to make to Qwest's OSS or, indeed, whether there will be

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24 <sup>32</sup> Ex. PLT-3 (Gates Settlement Testimony) at page 12, line 18-page 13, line 4.

25 <sup>33</sup> Transcript, Vol. 2, page 432, line 24-page 433, line 6 (Denney).

26 <sup>34</sup> Transcript, Vol. 2, page 437, lines 9-17 (Denney).

27 <sup>35</sup> Ex. PAETEC-1 (Haas Settlement Testimony) at page 7, lines 8-13.

<sup>36</sup> Ex. PAETEC-1 (Haas Settlement Testimony) at page 7, lines 13-17.

<sup>37</sup> Transcript, Vol. 1, page 183, lines 13-16 (Glover).

1 any changes.<sup>38</sup> In fact, CenturyLink has repeatedly said that it is under no time pressure to do any  
2 OSS conversion and that any such conversion will take place only after a thorough deliberative  
3 process.<sup>39</sup> There is, accordingly, no evidence that the merged company has any business need to  
4 replace the Qwest OSS within three years of the merger closing.

5 Although no other state commissions have yet required a three year commitment, the  
6 Washington, Oregon, and Minnesota commissions have yet to make a decision. In Minnesota, in  
7 particular, where commission deliberations were held on February 10, 2011, the commissioners  
8 voted to defer a decision, with the commission now scheduled to take the issue up again on March  
9 3. In the course of the Minnesota commission's deliberations, it appeared that there was  
10 significant support on the part of several commissioners for additional conditions, including a  
11 commitment to not change Qwest OSS for at least three years after the merger and to require third  
12 party testing of any replacement OSS.<sup>40</sup>

13 **III. The Commission Should Condition Approval Of The Merger On The Merged**  
14 **Company's Commitment That Changes To Qwest OSS Will Not Degrade the**  
15 **Functionality Of CLEC Back Office Systems.**

16 Condition 19 of the Staff Settlement provides that any changes to Qwest's OSS will  
17 provide a level of service quality that is not less than Qwest currently provides, with "functionally  
18 equivalent support, data, functionality, performance electronic flow through and electronic  
19 bonding." PAETEC is concerned that the references to "electronic flow through" and "electronic  
20 bonding" are too vague to provide an effectively enforceable commitment. In particular, PAETEC

21 \_\_\_\_\_  
22 <sup>38</sup> Transcript, Vol. 2, page 289, lines 11-17 (Hunsucker); see also Transcript, Vol. 2, page 310, lines 9-13,  
23 page 312, line 8-page 314, line 14; page 316, line 19-page 317, line 4; page 324, line 18-page 325, line 13;  
page 346, lines 15-19. (Hunsucker).

24 <sup>39</sup> See, e.g., Transcript, Vol. 1, page 44, line 23-page 45, line 1 (Glover) ("We are not trying to rush into  
25 this. The benefit is Qwest today is a stand-alone entity with stand-alone OSS, stand-alone retail billing  
26 systems. And so it is not like we have to be in a rush to convert systems and so forth.")

27 <sup>40</sup> See *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating  
Companies to Century Link*, MPUC Docket No. P421, et. al/PA-10-456, Transcript of PUC Deliberations,  
February 10, 2011. See, e.g., page 91, line 22-page 93, line 12. A copy of the transcript of the  
deliberations of the Minnesota Commission is being filed with these Exceptions at Attachment B.

1 is concerned that the merged company might later urge a more narrow interpretation of this  
2 provision that would permit it to implement OSS changes that would reduce electronic flow-  
3 through in the CLECs' back office systems. That is, without further clarification, one could  
4 interpret "flow through" to be limited to providing functionally equivalent "flow through" *within*  
5 the ILEC OSS itself, while ignoring an equally important function that the current Qwest OSS  
6 enables information/data to flow through into a CLEC's back office system. In order to provide  
7 sufficient protection for CLECs like PAETEC that make extensive use of the e-bonding  
8 capabilities that are currently available through Qwest's OSS in order to automate the CLEC's  
9 back office systems, PAETEC asks that this condition be revised to make clear that any OSS  
10 changes must be "functionally equivalent" with respect to the functionality of CLEC back office  
11 systems.

12           Based upon testimony provided by Staff and the Joint Applicants, this amendment does not  
13 expand, but only clarifies, the merged company's obligations under Condition 19. When  
14 examined at the hearing on this issue, Mr. Hunsucker, on behalf of the Joint Applicants, testified  
15 that, pursuant to the Staff Settlement Agreement, the Merged Company would "provide the same  
16 functionally equivalent support[,] data flow-through, et. cetera. So we will be required to provide  
17 functionally equivalent electronic flow-through."<sup>41</sup> Similarly, Mr. Abinah, testifying for the staff  
18 that, "[F]unctionally equivalent means the same at least, but if there is room for improvement, it  
19 should have the ability to do that after consolidation with the CLEC."<sup>42</sup>

20           No party has yet contended that CenturyLink could, consistent with the Staff Settlement  
21 Agreement, implement changes to Qwest's OSS that have the effect of diminishing the flow  
22 through functionality directly into a CLECs' back office systems. Nor could such a change be seen  
23 as consistent with the public interest. The clarification proposed by PAETEC is, therefore, a  
24 modest one that does not change the substance of the Settlement Agreement but provides needed  
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26 <sup>41</sup> Transcript, Vol. 2, page 331, lines 7-21.

27 <sup>42</sup> Transcript, Vol. 3, page 558, lines 17-21.

1 clarity on issue that is particularly important to PAETEC as well as other CLECs that, like  
2 PAETEC, have made substantial investments necessary to automate their systems. This  
3 clarification also will help reduce future disputes over Condition No. 19.

4 **IV. The Commission Should Condition Its Approval Of The Merger On Third Party**  
5 **Testing Of Any OSS Used By The Merged Company To Replace Qwest's Current**  
6 **OSS.**

7 The record establishes the following facts: (1) CenturyLink will, if the proposed  
8 transaction is approved, inherit an exponentially larger wholesale operation than it has operated to  
9 date;<sup>43</sup> (2) CenturyLink intends to transition to a single OSS platform for both CenturyLink and  
10 Qwest legacy companies in order to cut costs,<sup>44</sup> but has provided little detail regarding its OSS  
11 plans;<sup>45</sup> (3) CenturyLink's OSS does not offer CLECs the same level of functionality as Qwest's  
12 current OSS;<sup>46</sup> (4) CenturyLink's OSS has not been third-party tested to determine whether it  
13 meets the requirements of Section 271 of the Act;<sup>47</sup> (5) the FCC has concluded that actual  
14 commercial usage is most probative evidence that OSS functions are operationally ready;<sup>48</sup> and (6)  
15 the FCC has favored the use of third-party testing to evaluate the adequacy of OSS systems in the  
16 absence of actual commercial usage.<sup>49</sup>

17 Qwest's OSS was subjected to an extensive third-party test conducted over a three-year  
18 period for the express purpose of determining whether Qwest's OSS satisfied the  
19 nondiscriminatory access requirement under Section 271 of Act. That third party testing revealed  
20 hundreds of problems that were addressed, and later resolved, through OSS improvements and re-

21 <sup>43</sup> Ex. PLT-1CF (Gates Direct) (Highly Confidential) at page 24, line 12-page 26, line 12.  
22 <sup>44</sup> Transcript, Vol. 1, page 142, line 17-page 143, line 2 (Schafer); see also Transcript, Vol. 2, page 303,  
23 lines 16-page 304, line 23 (Hunsucker).  
24 <sup>45</sup> S-2 (Fimbres Direct) at page 14, lines 6-7.  
25 <sup>46</sup> Ex. PAETEC-1 (Haas Settlement Testimony), p. 5, line 24-page 6, line 16, Exhibit WAH-2; Ex. S-2  
26 (Fimbres Direct) at page 15, lines 8-11; Ex. PLT-1 (Gates Direct), page 35, lines 2-4.  
27 <sup>47</sup> Ex. PLT-1 (Gates Direct) at page 122, line 17-page 123, line 4.  
<sup>48</sup> *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide  
In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota,  
Utah, Washington, and Wyoming*, Memorandum Opinion and Order, WC Docket No. 02-314, FCC 02-332,  
Released December 23, 2002 , Appendix K at page K-16.  
<sup>49</sup> *Id.*

1 testing. Part of the third party testing involved load testing the OSS to make sure that the systems  
2 and supporting processes were capable of handling order volume spikes as well as the standard  
3 level of order volumes. The load testing exposed systems and processes that were overly manual  
4 that could cause CLEC orders to stack up and delay service or repairs. Countless person hours and  
5 significant investment by both Qwest and CLECs went into this testing process to make sure the  
6 Qwest OSS truly satisfied its obligation to provide nondiscriminatory access to systems and  
7 processes to ensure that competition would not be harmed by system and process failures that were  
8 under Qwest's sole control. Ultimately, because of those investments and the continued review  
9 and oversight of state commissions like this one, Qwest ultimately received 271 authority to  
10 provide in-region interLATA services.

11 In contrast, CenturyLink's OSS has not been third-party tested, nor has it handled the  
12 actual commercial volumes it will experience in Qwest's region. Replacing Qwest's legacy OSS  
13 with CenturyLink's legacy (or new) OSS will likely lead to backsliding on Qwest's 271  
14 obligations because there would be no assurance that Qwest would be providing the  
15 nondiscriminatory access to OSS that was a quid pro quo for 271 approval. It is of little comfort to  
16 CLECs to be told that "if there is a problem, the dissatisfied CLEC can come before the  
17 Commission."<sup>50</sup> Not only would having to bring a complaint to the Commission divert CLEC  
18 resources that would be better spent competing for and serving customers, there is little chance  
19 that a complaint before the Commission would produce a quick enough result to be an effective  
20 remedy for substantial OSS problems. Moreover, without testing data, there would be little or no  
21 objective data available to show whether the modified OSS was providing nondiscriminatory  
22 access to CLECs, and as complainant, the CLEC would have the burden of proving the modified  
23 system was not working. Indeed, as Commission Staff recognized, "the pace at which  
24 telecommunications technology is evolving and the industry is moving" makes it impossible to  
25 repair potential harm to competition, thus necessitating conditions that prevent such harm from

26 \_\_\_\_\_  
27 <sup>50</sup> ROO, ¶ 160, citing testimony of Mr. Abinah.

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1 occurring in the first place.<sup>51</sup> If CLECs are unable to efficiently use Qwest's OSS to place orders  
2 for elements and services, competition in Arizona may be irreparably harmed before the  
3 Commission is able to resolve the problem, especially since it could take a lengthy period of time  
4 before the necessary OSS modifications can be developed and implemented.

5 **CONCLUSION**

6 PAETEC requests that the Commission condition its approval of the merger on the  
7 following additional or clarified commitments regarding OSS contained in Condition No. 19 of the  
8 Staff Settlement Agreement:

- 9 (4) a commitment to maintain Qwest's existing OSS for at least three years to match  
10 the Joint Applicants' 3-5 year synergy period;
- 11 (5) a commitment that any change in OSS will not adversely impact the operations of  
12 CLECs' back office systems; and
- 13 (6) a commitment to, in connection with changes to Qwest OSS, conduct third party  
14 testing to assure that specific components of wholesale OSS service quality,  
15 including support, data, billing, functionality, performance, electronic flow through  
16 and electronic bonding, are not degraded.

17 In order to implement these proposed conditions, PAETEC requests that the Commission  
18 amend the ROO's Findings of Fact, Paragraphs 152, 155, and 161, and add a related Ordering  
19 Paragraph beginning at page 57, line 23, in the manner set forth in the proposed amendments set  
20 forth in Attachment A.

21 RESPECTFULLY SUBMITTED this 24th day of February 2011.

22 McLeodUSA Telecommunications Services, Inc. dba  
23 PAETEC Business Services

24 By 

25 Michael W. Patten  
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<sup>51</sup> See Ex. S-2 (Fimbres Direct) at page 16, lines 7-10.

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Original and 13 copies of the foregoing  
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# ATTACHMENT

"A"

**Proposed Amendment Language**

Amendment 1

(3 Year Qwest OSS Moratorium)

**REPLACE** Finding of Fact No. 152 with:

“152. We agree with PAETEC and find that a three-year moratorium on OSS changes is appropriate. This moratorium is better aligned with CenturyLink’s stated three to five year synergy period and will provide adequate protection for the companies in the competitive Arizona telecommunications market that are dependent of the Qwest OSS system.”

Proposed Amendment Language

Amendment 2

(Clarification of Condition No. 19 re Functionality)

**REPLACE** Finding of Fact No. 155 with:

“155. We agree with PAETEC’s request to clarify the definition of “functionally equivalent” in Condition No. 19 to include the phrase “including functionality affecting the operations of CLEC back office functionality as of the closing date.” This clarification will provide additional guidance to the parties regarding any proposed changes to Qwest’s OSS and could reduce future disputes. Without this clarification, CenturyLink could adopt changes that adversely affect portions of the CLECs back office functions, which would provide CenturyLink with an improper competitive advantage.”

Proposed Amendment Language

Amendment 3

(Third Party Testing)

**REPLACE** Finding of Fact No. 161 with:

“161. We agree with PAETEC that Condition No. 19 should include third-party testing. CenturyLink has not provided any information in this record about which OSS it will ultimately use. The existing CenturyLink EASE OSS has not been subject to the large volumes of pre-ordering, ordering, provisioning, maintenance and repair and billing as the Qwest OSS has experienced. If CenturyLink chooses to use the EASE OSS (instead of the Qwest OSS), then third party testing is critical to ensure that EASE OSS can handle anticipated transactions from CLECs without interfering with CLEC operations or adversely affecting consumers who are dependent on such transactions to receive the full benefits of competition.”

Proposed Amendment Language

Amendment 4

(Ordering Paragraph)

At page 57, line 23, **INSERT:**

“IT IS FURTHER ORDERED that Condition No. 19 be modified as provided in Findings of Fact Nos. 152, 155 and 161, that a modified Condition No. 19 be submitted to Commission Staff for review and approval and that a revised list of Settlement Agreement conditions be docketed that includes the modified Condition No. 19.”

# ATTACHMENT

"B"

Page 1

PUC DELIBERATIONS - FEBRUARY 10, 2011  
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION  
OF THE STATE OF MINNESOTA

In the Matter of the Joint Petition for Approval of  
Indirect Transfer of Control of Qwest Operating Companies  
to CenturyLink

PUC DOCKET NO: P421,et.al./PA-10-456  
OAH DOCKET NO: 11-2500-21391-2

February 10, 2011

CD TRANSCRIBED BY: Janet Shaddix Elling,  
Registered Professional Reporter

Page 2

1 CHAIR BOYD: Good morning, everyone.  
2 Welcome back to the Commission today, February 10th,  
3 2011.  
4 Mr. Oberlander, opening comments?  
5 MR. OBERLANDER: Good morning,  
6 Commissioners.  
7 Commissioners, as the Chair has noted, we  
8 are here this morning primarily for Commission  
9 deliberations regarding docket 10-456 and its  
10 companion docket, 10-1012.  
11 Dr. O'Grady has a few minor items to  
12 bring to the Commission's attention this morning.  
13 CHAIR BOYD: Dr. O'Grady, good morning.  
14 DR. O'GRADY: Good morning,  
15 Commissioners, yes, just a few points.  
16 The first being that near the end of the  
17 day yesterday, the Joint CLECs filed a brief letter  
18 with some clarifications about their OSS position.  
19 And I set that on your desks, I have more copies  
20 here if you need more. And staff doesn't have any  
21 insights or recommendations regarding that letter,  
22 we haven't really had a chance to look at it.  
23 Secondly, I would note that on Tuesday we  
24 talked briefly about an option 2-A, which Mr. Ahern  
25 suggested, and I have put language in front of you

Page 3

1 regarding that, and it would be simply a  
2 modification of 2.  
3 Thirdly, I'd suggest, as far as  
4 proceeding today, that even though Mr. Ahern has  
5 suggested and prefers 2-A, I would suggest at least  
6 procedurally, for procedural purposes, that 2 might  
7 be a better option, and then you could proceed  
8 through the other issues, 2 through 20, which the  
9 ALJ had discussed. And you may find that you agree  
10 with Mr. Ahern all the way through, and in such case  
11 there would be no additional conditions put on.  
12 Then issues 21 through 25 have arisen  
13 from exceptions raised by Qwest and they deal with  
14 minor, or at least minor in terms of volume,  
15 language changes to the ALJ report.  
16 And, finally, the second to the last  
17 issue, there's a staff recommendation regarding  
18 paragraph 195. But all in all, in the end you need  
19 to come down to number 27, which is to say that the  
20 merger is or is not in the public interest, given  
21 the conditions imposed above.  
22 CHAIR BOYD: Thank you.  
23 Questions for Dr. O'Grady?  
24 Then let's move on to questions  
25 Commissioners may have before we move on to

Page 4

1 deliberation.  
2 COMMISSIONER WERGIN: Mr. Chair.  
3 CHAIR BOYD: Commissioner Wergin.  
4 COMMISSIONER WERGIN: I have some  
5 questions about -- well, actually, it would be issue  
6 number 4, which is the OSS and the third-party  
7 testing that I would like to ask, if that's  
8 possible.  
9 CHAIR BOYD: Please. Who would you like  
10 to ask?  
11 COMMISSIONER WERGIN: Actually, I think I  
12 need all the parties.  
13 CHAIR BOYD: All right. Let me ask the  
14 parties to come forward.  
15 COMMISSIONER WERGIN: Do you want  
16 introductions before we do that or doesn't it  
17 matter?  
18 CHAIR BOYD: I suppose it wouldn't hurt  
19 if we run the line for introductions for efficiency  
20 sake.  
21 Ms. Masterton will start us out.  
22 MS. MASTERTON: Thank you, Mr. Chair.  
23 Susan Masterton, representing CenturyLink.  
24 MR. AHERN: Mike Ahern, representing  
25 CenturyLink.

1 MR. TOPP: Jason Topp, from Qwest.  
 2 MS. ANDERSON: Julia Anderson, for the  
 3 Minnesota Department of Commerce.  
 4 MR. LIPSCHULTZ: Dan Lipschultz on behalf  
 5 of the CLEC Coalition, participating as part of the  
 6 Joint CLECs.  
 7 MR. HALM: K.C. Halm on behalf of Charter  
 8 Fiberlink, a member of the Joint CLECs.  
 9 MR. MERZ: Good morning, Mr. Chair,  
 10 Commissioners. Greg Merz, representing Velocity  
 11 Telephone.  
 12 MR. BAILEY: Good morning. Tom Bailey,  
 13 representing Sprint and T-Mobile, also referred to  
 14 as the Joint Wireless Carriers.  
 15 CHAIR BOYD: Good morning to all of you,  
 16 thank you for being here again.  
 17 Commissioner Wergin.  
 18 COMMISSIONER WERGIN: Good morning.  
 19 Thank you.  
 20 I have been really struggling with this  
 21 issue. In this particular docket the ALJ has come  
 22 down very square and very clear, there are no ifs,  
 23 ands or buts to the ALJ decision. In other words,  
 24 there's nothing that says, well, this is okay, but  
 25 maybe this is okay, too, which we do have in some

1 detailed plan with the regulators, I think that's  
 2 very reasonable, and C, allows coordinated testing  
 3 with the CLECs.  
 4 Okay. Now, after reading that, then I  
 5 want you to go to the CLECs' initial brief, all  
 6 right? And if you look at the CLECs' initial brief  
 7 on page 66. And that also is the section entitled,  
 8 the Commission should utilize benchmarks to ensure  
 9 that the Qwest OSS is not degraded after the  
 10 three-year period. And then if you go down just a  
 11 few lines, the line that begins, specifically the  
 12 Commission. And it reads, Specifically the  
 13 Commission should order benchmarking for current  
 14 Qwest OSS functionality related to support, data,  
 15 functionality, performance, electronic flow-through  
 16 and electronic bonding. And then drop down, and it  
 17 says establishing a benchmark in this way will  
 18 provide a set of specific verifiable criteria by  
 19 which future performance can be measured against  
 20 current performance standards.  
 21 And here's where I'm coming from. I'd  
 22 like to see -- or like to hear or see if we can come  
 23 up with a resolution to this issue by looking  
 24 specifically at the fact that the CLECs are  
 25 requesting a detailed plan filed with the

1 dockets. Instead, the ALJ has been very clear in  
 2 the decision that they made.  
 3 But some of the things that we talked  
 4 about in oral arguments raise some questions for me.  
 5 And that's -- the biggest one, it seemed like one of  
 6 the biggest points of contention was the OSS and the  
 7 third-party testing. It seemed like that was a big  
 8 deal with everyone at the table.  
 9 And so I went back to some of the -- in  
 10 an effort to solve that issue, I went back to some  
 11 of the testimony, that being the direct testimony of  
 12 Timothy Gates, if you have it, and the Joint CLEC  
 13 initial brief to review this particular issue.  
 14 And I noticed that in the Timothy Gates'  
 15 testimony, it would be the question that begins --  
 16 well, on page 123, the question that begins on line  
 17 13, Do the CLEC conditions lock in CenturyLink to  
 18 using Qwest Legacy OSS forever? No. And then it  
 19 goes on to explain that the company has the  
 20 opportunity to make changes so long as the merged  
 21 company, A, files a detailed plan with the  
 22 regulators; B, conducts third-party testing; and C,  
 23 allows for coordinating testing with the CLECs.  
 24 It seems to me that we need to work with  
 25 this issue and take a look at A, which says files a

1 regulators, and C, allows for coordinated testing  
 2 with the CLECs. I'm leaving out B intentionally,  
 3 you can tell that.  
 4 But then we also have some criteria in  
 5 the CLECs' initial testimony. And so I'd like to  
 6 hear from you if we can work with the two, the A and  
 7 C, along with the specific benchmarking, and find  
 8 something short of third-party testing that would  
 9 work for the parties.  
 10 Now, if everybody is totally confused and  
 11 I have to clarify it, I'm in trouble, but that's the  
 12 way I see it, unless I really missed something.  
 13 CHAIR BOYD: Mr. Topp.  
 14 MR. TOPP: Chair Boyd, Commissioner  
 15 Wergin, it's our view that the Integra settlement  
 16 does exactly that. If you look at the ALJ's  
 17 findings with respect to the Integra settlement  
 18 agreement --  
 19 COMMISSIONER WERGIN: Could you point to  
 20 which issue that is, please?  
 21 MR. TOPP: It starts on -- it's quoted  
 22 starting on page 33 of the staff briefing papers.  
 23 COMMISSIONER WERGIN: Do you have the --  
 24 okay.  
 25 MR. TOPP: Paragraph 110 --



1 COMMISSIONER WERGIN: Okay.  
 2 MR. TOPP: -- summarizes the commitments.  
 3 It requires that we provide notice at least 270 days  
 4 before replacing or integrating OSS. It says, Upon  
 5 request, describe the system to replace -- or to be  
 6 replaced or integrated, the surviving system, and  
 7 the steps taken to ensure data integrity is  
 8 maintained. It requires us to identify the plan  
 9 contingency actions in the event of any significant  
 10 problems with the plan transition. It requires us  
 11 to provide CLECs the opportunity to comment on the  
 12 merged company's plan in a form in which it is  
 13 filed, as well as in the Qwest change management  
 14 process. It requires us to provide sufficient  
 15 acceptance of the replacement interface by CLECs to  
 16 help assure the replacement interface provides the  
 17 level of wholesale service quality provided by Qwest  
 18 prior to the closing date. Sufficient acceptance is  
 19 determined by a majority vote of the CMP  
 20 participants in testing. It requires us to work  
 21 with the parties to develop acceptance criteria. It  
 22 requires us to allow coordinated testing with CLECs,  
 23 including a stable testing environment that mirrors  
 24 production, jointly established test cases, and when  
 25 applicable, controlled production testing unless

1 or other state commissions in order to have those  
 2 concerns addressed.  
 3 And, therefore, we would submit that the  
 4 Integra settlement is a very thorough, a very  
 5 difficult standard, that provides significant  
 6 protections to CLECs to make sure that any  
 7 transition to OSS will be an effective transition,  
 8 which is in our interest as well as the CLECs'  
 9 interest.  
 10 If we have an OSS that has problems,  
 11 that's going to cause as many costs for us, either  
 12 litigating before you, just from a business  
 13 perspective in fixing the issues, in manually  
 14 handling orders, in resolving disputes, it's going  
 15 to cause significant problems for us just like it  
 16 would for the CLECs, and so we have a strong  
 17 interest in making any replacement work.  
 18 The additional layer of protection that  
 19 is unique about this case, which wasn't necessarily  
 20 the case in some of the other transactions that were  
 21 raised in the evidence and put before the ALJ, is  
 22 that at the time that this new system is being  
 23 implemented, the -- the system that's being replaced  
 24 will still be there, and so in a last-ditch  
 25 situation it would be possible to continue to use

1 otherwise agreed to by the parties. It requires us  
 2 to allow testing associated with merger-related  
 3 system replacement or integration for the time  
 4 periods in the CMP document or for 120 days,  
 5 whichever is longer, unless otherwise mutually  
 6 agreed to by the parties. And it requires us to  
 7 provide the wholesale carriers with training and  
 8 education on any wholesale OSS implemented by the  
 9 merged company without charge to the wholesale  
 10 carrier.  
 11 This was a heavily negotiated process  
 12 with Integra. Integra is extremely active in -- in  
 13 the change management process, extremely interested  
 14 in making sure that it is a sound process. The  
 15 testimony of Mr. Gates was filed on behalf of  
 16 Integra, as well as other parties. I think that the  
 17 Integra settlement provides the type of notice that  
 18 you're looking for. It provides for a flexible yet  
 19 negotiated process that Qwest alone does not control  
 20 for determining the criteria, whether those criteria  
 21 have been met, and having plans for dealing with  
 22 potential problems that may arise.  
 23 There is a notice time frame, which gives  
 24 parties that have concerns about the processes being  
 25 used the opportunity to come before this Commission

1 that old system.  
 2 So, we think that there are a lot of  
 3 protections in place, we think that this -- we think  
 4 that the ALJ's recommendation reflects the extent of  
 5 discussions about this issue, and that her judgment  
 6 on this issue, which was very clear and very firm,  
 7 should be affirmed because it's the right answer.  
 8 COMMISSIONER WERGIN: Okay. Mr. Chair,  
 9 the joint intervenors, then, I don't need a repeat  
 10 of the testimony, but -- and I do understand that  
 11 the voting is a problem for you, I understand that  
 12 you're feeling as though -- well, I'm going to put  
 13 it very bluntly in language that I understand.  
 14 You're sort of feeling as though if one CLEC is  
 15 picked off, then the next one will be picked off.  
 16 And I think they're a more savvy group that would  
 17 probably stick together. But hearing that and  
 18 hearing the degree to which the Integra settlement  
 19 goes, other than that voting, I guess I'm uncertain,  
 20 I'm not convinced that third-party testing is any  
 21 better. And, again, I'm not -- I'm not asking for a  
 22 complete rerun.  
 23 I think what I'm asking is, in addition  
 24 to the Integra settlement, if you were going to do  
 25 something other than third-party testing, what's

1 missing? I'm missing it.  
2 MR. LIPSCHULTZ: Mr. Chair, Commissioner  
3 Wergin, I'll skip some responses to Mr. Topp because  
4 I think you really want me to get right to your  
5 question.

6 And what Mr. Topp described for you just  
7 now was lots of process and lots of notice. It  
8 falls short on two things. It falls short on  
9 standards, criteria, what are they. And, secondly,  
10 it falls short on the sort of testing we believe you  
11 need to make sure that whatever standards you have  
12 are actually implemented appropriately and tested to  
13 make sure they work, namely third-party testing.

14 So your question, all right, put  
15 third-party testing aside. When we're talking about  
16 standards and criteria, what are we talking about  
17 and in what way is the Integra settlement deficient,  
18 at least minimally deficient. And I think if you  
19 look at what we filed at the end of the day  
20 yesterday, it was really in response, Commissioner  
21 Wergin, to your questions, because I think you were  
22 really trying to get at it. And number two in our  
23 list of three, I think, addresses the concern and  
24 the question that you're asking now.

25 The problem you have, and the ALJ

1 functionality, performance, flexibility, electronic  
2 flow-through, electronic bonding and access to  
3 underlying databases. That's really critical.  
4 Because you want to make sure, I think from a public  
5 interest perspective, that any new OSS that comes  
6 down the pike can support not only one or two CLECs,  
7 but any other CLECs who might want to have a more  
8 e-bonded electronically-based flow-through process.  
9 That's an efficient process, that's good for the  
10 marketplace, it's good for the industry. There's at  
11 least one CLEC on the record, PAETEC, that has that  
12 kind of an interface with Qwest and the Qwest OSS  
13 allows that to happen. The CenturyLink OSS, based  
14 on the evidence in the record, would not.

15 So, the key here for us, when we're  
16 talking, as you read in our brief about  
17 benchmarking, what we want is to benchmark any  
18 testing, whether it's third-party or not, to a clear  
19 standard that says the new OSS is going to provide  
20 these functionalities at least at the same level as  
21 the current OSS. And anything short of that is very  
22 troubling because you could end up with a far  
23 inferior system, and at the very least you'll end up  
24 probably with a lot of litigation trying to figure  
25 out how much less it can be than it is today.

1 actually identified it in paragraph 231 of her  
2 report, is you have a standard in the Integra  
3 settlement that says service quality under the new  
4 OSS, whatever that happens to be, shall not be  
5 materially less. And the ALJ went on to say that  
6 that standard, materially less, will likely require  
7 resort to dispute resolution. And I'd add not only  
8 will it likely resort to dispute resolution and a  
9 lot of litigation, but the standard itself by its  
10 terms allows it to be less. And who knows what  
11 materially is. It puts CLECs in a very difficult  
12 position of trying to prove whether it's materially  
13 less or not.

14 And so what we are suggesting in what I  
15 filed yesterday, number two, is that we have a clear  
16 standard that says if you're going to have a new  
17 OSS, which we don't think is a good idea based on  
18 what we know about CenturyLink's systems, if you're  
19 going to do it, have a standard that clearly says  
20 the service quality under the new OSS has to be at  
21 least equal. Not less or materially less, at least  
22 at the same level with all the functionalities as it  
23 is today.

24 And to be clear, as we've set out here,  
25 make sure that includes the same or equivalent

1 So, you know, we would still say,  
2 Commissioner Wergin, that you need third-party  
3 testing to make sure that happens and that it  
4 happens objectively with an independent tester  
5 making sure that it does. But you've got to at  
6 least have that clear standard.

7 And I'll add, by the way, that what we've  
8 proposed here is nearly identical to language that  
9 the Joint Petitioners have already agreed to with  
10 the Arizona staff.

11 I hope that answers your question.

12 COMMISSIONER WERGIN: Mr. Chair.  
13 Mr. Lipschultz, it goes a long way, but one of the  
14 things you said is a bit of a problem. You said you  
15 want something that all of the CLECs can agree to.  
16 It almost was like saying something everybody here  
17 can agree to and everybody that comes later can  
18 agree to all of the time, and that's a perfect world  
19 that doesn't exist, and so I want to base it in the  
20 reality of the world we live in.

21 And so what I'm looking for is some  
22 language that does what you're saying. And if it  
23 indeed is something that the Arizona staff put in,  
24 it shouldn't be too tough to get with the Joint  
25 Petitioners, figure out what that language is and

1 put it in here so that we don't go to third-party  
 2 testing.  
 3 MR. LIPSCHULTZ: Mr. Chair, Commissioner  
 4 Wergin, I'm not looking for something that every  
 5 CLEC in the country or in Minnesota would say yea  
 6 to. What I'm looking for is a clear standard that  
 7 makes sure what CLECs have today will be available  
 8 tomorrow or the next day if and when the new  
 9 company, CenturyLink, changes the OSS from what  
 10 exists today. That's all I'm looking for.  
 11 And my point about the e-bonding and the  
 12 electronic flow-through is that that is something  
 13 that is available today under the Qwest OSS. It's a  
 14 good thing not only for the CLECs that have it, but  
 15 for the CLECs that might want to use it so that  
 16 their operations can be more efficient, so that they  
 17 can compete more effectively, and so that consumer  
 18 prices can go down in an industry where everything  
 19 is becoming more efficient. And so that's why that  
 20 is so critical.  
 21 But, no, we're not looking for a vote by  
 22 every CLEC on every specific functionality, we just  
 23 want to keep what we have today in the face of a  
 24 company that's purchasing Qwest and that doesn't  
 25 have anything close to the same experience with

1 of Joint CLECs that belief that the conditions  
 2 should be more exhaustive, but the language that  
 3 Mr. Lipschultz has referred to and that I have here  
 4 is language that has been agreed to in a settlement  
 5 agreement between staff and the Joint Petitioners.  
 6 CHAIR BOYD: At least where things stand  
 7 today? It's not done?  
 8 MR. MERZ: The case is done, we're  
 9 awaiting the ALJ's decision in that case.  
 10 CHAIR BOYD: Mr. Topp.  
 11 MR. TOPP: Yeah, I do not have the  
 12 Arizona language in front of me, but I'll certainly  
 13 be happy to take a look and try and decipher whether  
 14 what Mr. Lipschultz is proposing is the same thing  
 15 as was agreed to in Arizona or not. I'll simply  
 16 have to take a look and get back to you.  
 17 CHAIR BOYD: That's fine, that's all I  
 18 was trying to get to.  
 19 And with that, Commissioner Wergin,  
 20 you're okay for now?  
 21 COMMISSIONER WERGIN: I'm okay, yeah.  
 22 CHAIR BOYD: Commissioner Pugh.  
 23 COMMISSIONER PUGH: Thank you. If I  
 24 could just follow up on that same line with one  
 25 question for perhaps Mr. Lipschultz.

1 wholesale operations or the levels of wholesale  
 2 service orders or the same OSS functionalities, so  
 3 on and so forth. That's really all we're looking  
 4 for. The third-party testing we think is critical,  
 5 but I understand the premise of your question and I  
 6 wanted to be direct, and what's really important is  
 7 that number 2 that I just referred to.  
 8 COMMISSIONER WERGIN: Thank you.  
 9 Mr. Chair, I'm going to drop it there and let them  
 10 have some time to think and let the other  
 11 Commissioners ask the questions they have.  
 12 CHAIR BOYD: Did you -- I'm curious about  
 13 this language staff has proposed in Arizona. Can  
 14 you enlighten me a little bit on that? I know it's  
 15 probably an in-process, in-motion matter, but --  
 16 MR. MERZ: Mr. Chair, actually, I  
 17 represented clients in Arizona and have the language  
 18 that was not proposed but agreed to in Arizona.  
 19 CHAIR BOYD: What I want to know is the  
 20 status. Is this something being disputed as part of  
 21 the Arizona proceeding? Is it something that's been  
 22 agreed to?  
 23 MR. MERZ: It's agreed to between the  
 24 Arizona staff and the Joint Petitioners. That case  
 25 is still going on because, as here, there's a group

1 The ALJ seems pretty firm on her findings  
 2 in 230, anyway, that the Integra agreement offers  
 3 adequate protection. Could you spell out why in  
 4 your opinion Integra shouldn't stand as a proxy for  
 5 all CLECs? The strength for funding would be the  
 6 condition that Integra is identical to all CLECs who  
 7 may be affected by the OSS provisions. Could you  
 8 let me know if there are, in fact, differences  
 9 between some of your clients and Integra, which  
 10 would then get at the -- kind of shake the  
 11 foundation of the ALJ's finding?  
 12 MR. LIPSCHULTZ: Mr. Chair, Commissioner  
 13 Pugh, several things. First of all, and I'll just  
 14 start generally, Integra reached a settlement on  
 15 OSS, among other things, and that settlement is  
 16 based on Integra's judgment. Well, there are seven  
 17 CLECs before you today who are saying they disagree  
 18 with that one CLEC's judgment as to OSS. I think  
 19 that counts for something and matters. We don't  
 20 just litigate for the heck of it, it costs my  
 21 clients a lot of money, they're here because this is  
 22 important. And we've tried to narrow the issues, as  
 23 you've noticed, throughout this process. We're  
 24 here, seven CLECs, because we believe Integra's  
 25 judgment was wrong on this or fell short of what

1 needs to be done.  
 2 Secondly, when you reach a settlement, as  
 3 Integra did, you make compromises. Not every CLEC  
 4 has the same set of priorities and, in fact, Integra  
 5 obviously had other business priorities that were a  
 6 factor in its negotiations. For example, as you  
 7 noted in the Integra settlement, the xDSL issue and  
 8 the xDSL amendment was clearly a major issue as  
 9 evidenced by the very detailed nature of that part  
 10 of the settlement which included a very detailed  
 11 interconnection agreement amendment.  
 12 I can tell you that only two of the seven  
 13 CLECs here before you today find that xDSL amendment  
 14 to be important, and I'll tell you that those two,  
 15 which are my clients, don't find it to be as  
 16 important as I believe Integra considers it to be.  
 17 So you have one CLEC's judgment and you have that  
 18 CLEC's judgment based on a set of its own internal  
 19 business priorities that were obviously subject to  
 20 negotiation with a lot of give and take.  
 21 The third thing, and I think the record  
 22 shows this clearly, is that there are differences  
 23 among CLECs as to OSS and, in particular, and the  
 24 ALJ noted this, PAETEC has a very different and  
 25 far -- let me put it this way, PAETEC is far more

1 a hammer, we got to this yesterday, don't assume  
 2 there isn't a problem because others aren't here,  
 3 but how many are there?  
 4 MR. LIPSCHULTZ: Mr. Chair, I mean,  
 5 that's a really good question. And the short answer  
 6 is I don't know how many other CLECs are out there.  
 7 And I think Commissioner Pugh phrased his question  
 8 as whether we can view or whether you can view  
 9 Integra as a proxy for everybody, not only everybody  
 10 here, but everybody out there. And I think a better  
 11 proxy would be the seven CLECs who are before you,  
 12 you only have those who are before you who are  
 13 telling you what we need, a little something more.  
 14 And as I said, the CLECs I represent are  
 15 not as concerned about that xDSL issue, I think the  
 16 CLECs I'm representing are more focused perhaps than  
 17 Integra, slightly so, on OSS. But, again, how many  
 18 other CLECs are out there, I don't know.  
 19 But it brings me back to this electronic  
 20 flow-through which I think is so important. However  
 21 many CLECs are out there, in addition to the seven  
 22 CLECs before you today, for all of them I would  
 23 think from a public interest perspective it would be  
 24 really important to make sure that that electronic  
 25 flow-through functionality, where you have to

1 electronically bonded to the current Qwest OSS than  
 2 Integra is. And that has allowed PAETEC to automate  
 3 its order processing and its repair processing far  
 4 more than Integra. That has allowed PAETEC to  
 5 operate more efficiently. And if the OSS system  
 6 that comes down the pike doesn't have the additional  
 7 protections to make sure that current functionality  
 8 remains post-merger, PAETEC will lose that. And not  
 9 only will PAETEC lose that, but other CLECs will  
 10 lose the opportunity to have that.  
 11 Now, Integra, in its calculus, decided  
 12 that maybe that wasn't important enough to insist  
 13 upon at the end of the day, but for PAETEC and the  
 14 other six CLECs before you today, it is.  
 15 I hope that answers your question.  
 16 COMMISSIONER PUGH: It's helpful, thank  
 17 you.  
 18 CHAIR BOYD: Let me follow that one more  
 19 time. This kind of goes back to what I was asking  
 20 yesterday about -- about kind of pleasing everyone,  
 21 it goes to Commissioner Wergin's point. And it's an  
 22 observation, it's not a criticism. But Integra is  
 23 one CLEC, you're representing seven, how many others  
 24 are behind the scenes and participate in CMP that  
 25 are not speaking? And I'm not trying to use this as

1 download information from the Qwest system and then  
 2 use it in your own to automate, I would think that  
 3 from a public interest perspective that's very  
 4 important. Very important to make sure that it's at  
 5 least available not only to the CLECs here today,  
 6 but to any new CLECs who come into the market  
 7 tomorrow.  
 8 And so in answer to your question, I  
 9 think the nature of the issue sort of defines its  
 10 importance, because it's not just important to one  
 11 CLEC, I think it's important to all CLECs.  
 12 CHAIR BOYD: Okay. And --  
 13 COMMISSIONER REHA: Go ahead, finish.  
 14 CHAIR BOYD: -- are you going somewhere  
 15 new?  
 16 COMMISSIONER REHA: Yeah.  
 17 CHAIR BOYD: Okay. Mr. Topp.  
 18 MR. TOPP: Thank you, Chair Boyd and  
 19 Commissioners.  
 20 The concerns that Mr. Lipschultz raises  
 21 on behalf of PAETEC are specifically discussed in  
 22 the merger settlement agreement. As I read before,  
 23 the standard, which we have said is not materially  
 24 less, and I realize that there's some follow-up with  
 25 respect to that, but it's then provided by Qwest

1 prior to the closing date, including support, data,  
 2 functionality, performance, electronic flow-through  
 3 and electronic bonding. Those specific concerns  
 4 that PAETEC has are a part of the explicit criteria  
 5 that are to be looked at as a part of the process  
 6 that has been negotiated with Integra.  
 7 So I would suggest that the interests  
 8 have been addressed in the Integra settlement  
 9 agreement, despite the purported difference in  
 10 interest. Which is also another point that I would  
 11 strongly dispute. This Commission has been involved  
 12 in proceeding after proceeding over issues in which  
 13 Integra and Qwest have had disputes related to the  
 14 performance of Qwest's OSS system. They have a very  
 15 strong interest in making sure that that's a robust  
 16 and adequate system and the standards that they've  
 17 set forth include the specific criteria that PAETEC  
 18 is concerned about.  
 19 The -- as the ALJ notes in paragraph 230,  
 20 pursuant to the agreement testing will continue  
 21 until acceptance criteria are met and sufficient  
 22 acceptance of a replacement will be determined by  
 23 majority vote. So this is a standard in which CLECs  
 24 will be actively participating and making decisions  
 25 on pursuant to the Integra agreement.

1 testing and it would really have zero cost to the  
 2 applicants.  
 3 Is that a correct understanding that I  
 4 have?  
 5 MR. TOPP: Certainly the -- well, there  
 6 are significant costs associated with maintaining,  
 7 continuing to --  
 8 COMMISSIONER REHA: Right, but I'm  
 9 talking about the cost of the third-party testing,  
 10 which I asked about on Tuesday, which I went back  
 11 through the record to try to find the issue related  
 12 to costs, and from what I understand that 190  
 13 million, which would be the cost of the third-party  
 14 testing, did not come out of this record, but came  
 15 out to the Washington docket; is that correct?  
 16 MR. TOPP: That is correct.  
 17 COMMISSIONER REHA: Okay. And that 190  
 18 million is all the costs region-wide for third-party  
 19 testing; is that also correct?  
 20 MR. TOPP: That is correct. One thing  
 21 I'd point out is 70 million of that was the  
 22 Arizona-specific OSS test. There was a region-wide  
 23 test which was 120 million, there was a 70 --  
 24 Arizona chose to have its own separate OSS test and  
 25 that's a \$70 million test. And I think that, you

1 And certainly while third-party testing,  
 2 you know, to the extent that is being considered as  
 3 a part of this, we discussed the costs yesterday.  
 4 And, finally, the CenturyLink system is a system  
 5 that is relied upon by a number of CLECs across a  
 6 number of states, many of the same CLECs that  
 7 operate here in Minnesota. And so the FCC has said  
 8 that the most probative evidence is commercial  
 9 volumes, and right now we know that there are  
 10 significant volumes handled by the CenturyLink  
 11 system. Two years from now that could be even more  
 12 the case, we don't know sitting here today what that  
 13 situation is.  
 14 CHAIR BOYD: All right. Let's move on.  
 15 Commissioner Reha.  
 16 COMMISSIONER REHA: Yeah, I'm still on  
 17 the same issue, Mr. Chair, but just not on that  
 18 minute point. And I'm looking at the ultimate  
 19 issues in the case, which is the impact on  
 20 competition with respect to the OSS extension and  
 21 third-party testing.  
 22 As I understand it, the OSS system is a  
 23 UNE, that's correct. And it's my understanding also  
 24 that if the Qwest OSS system is maintained, that  
 25 it -- that it would -- we would not be requiring

1 know, these systems are, you know, they're not  
 2 state-specific systems.  
 3 COMMISSIONER REHA: Sure.  
 4 MR. TOPP: And so while the testing that  
 5 would be associated with this might not be  
 6 identical, it does provide some guidance as the  
 7 magnitude of the costs that are being addressed.  
 8 In my view, the issue with the  
 9 third-party testing is -- to me, it's an effort to  
 10 make any change so uneconomical that it would  
 11 basically be almost an impossible economic decision  
 12 for the company to make because of the  
 13 unreasonableness of these costs and that's why we  
 14 strongly oppose --  
 15 COMMISSIONER REHA: Sure.  
 16 MR. TOPP: -- this sort of condition.  
 17 And if you think of it for the combined company as a  
 18 whole, you know, in some states the CenturyLink  
 19 system predominates, in others the Qwest system  
 20 predominates. If you're going to go to one system,  
 21 there's going to have to be, you know, there's going  
 22 to have to be this sort of transition somewhere.  
 23 And, you know, we honestly have not made a decision  
 24 as to which is the best direction to go on that, but  
 25 we do want the ability to make that sort of

1 decision, to do it in a responsible manner that's in  
2 the interests of everybody involved.  
3 COMMISSIONER REHA: And I'm looking at  
4 not putting competitors, because of the merger, and  
5 this is a public policy issue, in a worse position  
6 than they would have been had the merger not  
7 occurred.

8 Now, as I understand the OSS system,  
9 there's a per transaction charge for the CLECs. How  
10 do you -- it's paid on a per transaction charge  
11 basis. Are the CLECs -- when they want to interface  
12 with the OSS system, is it on a per transaction  
13 charge?

14 MR. TOPP: Actually, the way that OSS  
15 costs are generally recovered is as a part of the  
16 TELRIC -- for UNEs is a part of the TELRIC pricing  
17 scheme, and that is one of the components that is  
18 taken into account in developing those rates.  
19 That's not based on actual costs, it's based on a  
20 hypothetical, forward-looking, most efficient OSS,  
21 something that potentially could be impeded if a  
22 condition is put in place that prevents us from  
23 adopting that.

24 COMMISSIONER REHA: Okay. Now, the  
25 Integra agreement, as discussed by the ALJ in

1 OSS systems currently, what I understand is that  
2 the -- the primary difference between the Qwest OSS  
3 system and the CenturyLink OSS system is that  
4 there's more electronic interface with the Qwest  
5 system and more manual interface and less electronic  
6 interface with the CenturyLink system. Is that a  
7 correct understanding, Mr. Topp?

8 MR. TOPP: That was a highly disputed  
9 item during the course of the proceeding. Our  
10 position is that the CenturyLink system is certainly  
11 capable of many of the functionalities of which the  
12 CLECs are concerned about. CLECs haven't requested  
13 those functionalities, Mr. Hunsucker testifies about  
14 that, and so they haven't been turned up. And so,  
15 you know, as it has developed at this point, there  
16 may not be those functionalities, but that doesn't  
17 mean that the system is not capable of doing them.

18 COMMISSIONER REHA: Okay. And so that's  
19 what you're talking about, why you've agreed to this  
20 transition period of time in the Integra agreement,  
21 to kind of bring those functionalities to increase  
22 the electronic interface abilities of the  
23 CenturyLink system if there are some significant  
24 differences?

25 MR. TOPP: I think that we've agreed to

1 finding 230, does require the CLECs to actively  
2 participate in trying to learn the new system and  
3 participate in the changes that are going to be  
4 transitioned from the Qwest system to the  
5 CenturyLink system. That's -- I mean, that's clear  
6 from the Integra agreement.

7 Would that offer, and maybe I should  
8 direct this to the CLECs, create significant costs  
9 for the CLECs in terms of that transition from the  
10 Qwest OSS system to the CenturyLink system? And  
11 maybe that's a better question and you can respond,  
12 but to start with the CLECs on that.

13 MR. LIPSCHULTZ: Mr. Chair, Commissioner  
14 Reha, yes, it would. Any transition to a new system  
15 is going to impose costs on CLECs as part of the  
16 participation in that process, the testing by CLECs,  
17 so on and so forth.

18 COMMISSIONER REHA: Have there been any  
19 estimates in this proceeding as to what those types  
20 of costs would be for CLECs to do that transition?

21 MR. LIPSCHULTZ: Mr. Chair, Commission  
22 Reha, I'm not aware of any testimony in that regard  
23 on this record.

24 COMMISSIONER REHA: Okay. And I also  
25 understand from the record, when you look at the two

1 this -- we don't know what the CenturyLink system  
2 will look like at the time of transition if that  
3 indeed occurs. So, but regardless of what it looks  
4 like at that time, we see this settlement agreement  
5 as a responsible way to ensure that this transition  
6 can occur without -- you know, and making sure that  
7 it's robust and works well.

8 One other point I would like to make  
9 regarding CLEC impact is, I mean, there are costs to  
10 CLECs even associated with maintaining an existing  
11 OSS. There are --

12 COMMISSIONER REHA: Sure.

13 MR. TOPP: There are constant updates and  
14 disputes about those updates and just training and  
15 efforts associated with that. And so, you know,  
16 that's --

17 COMMISSIONER REHA: And that's going to  
18 be fairly expensive to do that, I would assume.

19 MR. TOPP: Would be what?

20 COMMISSIONER REHA: Fairly expensive to  
21 do that, for both the company and the CLECs.

22 MR. TOPP: Absolutely. Absolutely.

23 COMMISSIONER REHA: Okay. And, I mean, I  
24 was around way back in 2001 when we would go to ROC  
25 and there would be this testing process that went

1 on, and it was quite lengthy and it was quite  
 2 expensive, it was also quite -- there was a lot of  
 3 ups and downs in that process, let's put it that  
 4 way. And it really was quite complex.  
 5 And I'm just curious, we've come a long  
 6 way since then, and you've got a system that's up  
 7 and going now, as you say, in other states. But I'm  
 8 just wondering whether that -- if we ordered  
 9 independent third-party testing, it would seem to me  
 10 that we've learned a lot over the ten years or so  
 11 that we've done testing of OSS systems, and I'm just  
 12 wondering whether the third-party testing would be  
 13 more streamlined, more efficient than it was back in  
 14 2000, 2001. You know, I'm concerned about the cost  
 15 issue again.  
 16 MR. TOPP: Theoretically, that could be  
 17 the case, but the answer is we don't know.  
 18 COMMISSIONER REHA: Okay.  
 19 MR. TOPP: And it's our position that  
 20 it's better to have the businesses that are actually  
 21 going to be using the systems making the decisions  
 22 regarding the appropriate criteria and how to  
 23 measure them as opposed to an outside third-party.  
 24 COMMISSIONER REHA: Okay. And so it's an  
 25 issue of whether we have -- who does the testing,

1 costs of those ups and downs during that  
 2 self-testing, if you will? The bumps along the road  
 3 with the volumes and so forth, who bears the risk  
 4 and who bears the risk of those costs, is a question  
 5 that I have.  
 6 MR. AHERN: Well, the company will bear  
 7 the costs of any changes in the OSS -- the ongoing  
 8 maintenance and upkeep and change through the change  
 9 management is going to be the company's  
 10 responsibility, and should there be some decision  
 11 going forward about a new system or a transition to  
 12 a system, that will be the company's responsibility.  
 13 COMMISSIONER REHA: Okay. All right,  
 14 thank you.  
 15 CHAIR BOYD: Mr. Lipschultz.  
 16 MR. LIPSCHULTZ: Mr. Chair, I just wanted  
 17 to respond.  
 18 First of all, there were commercial  
 19 volumes back in 2001, competition didn't just start  
 20 and CLECs didn't just enter the market in 2000,  
 21 2001. Remember, the Act was passed in 1996, and I  
 22 recall a number of CLECs, when I was representing  
 23 the Commission and the AG's office, who were already  
 24 in business in 1997, '98, '99.  
 25 Second thing, and this is more important.

1 really, as we transition from one OSS system to  
 2 another --  
 3 MR. TOPP: Yes.  
 4 COMMISSIONER REHA: -- and who bears the  
 5 cost of that?  
 6 MR. TOPP: That's a critical issue from  
 7 our perspective.  
 8 COMMISSIONER REHA: Okay. Thank you,  
 9 Mr. Chair.  
 10 MR. AHERN: Mr. Chair.  
 11 CHAIR BOYD: Mr. Ahern.  
 12 MR. AHERN: Commissioner Reha, and I  
 13 believe, to go back to 2001 and why third-party  
 14 testing was -- was the solution then, was because  
 15 there were no commercial volumes by which to figure  
 16 out how the system's going to work.  
 17 The FCC has been very clear that the  
 18 preferable method of dealing with systems going  
 19 forward is, if you've got commercial volumes, that  
 20 is the best test if the system's going to work.  
 21 Rather than going back to hiring somebody else who's  
 22 going to make recommendations and then go back to  
 23 dealing with the folks who are actually going to  
 24 have to implement it.  
 25 COMMISSIONER REHA: And who bears the

1 The FCC uses the term actual commercial volumes.  
 2 It's not just whether you have commercial volumes or  
 3 don't have them, the question for OSS is whether you  
 4 can actually have -- whether you match the OSS to  
 5 actual commercial volumes, they're going to have to  
 6 be met by that OSS system. And as the ALJ found,  
 7 the difference between these two wholesale systems,  
 8 as far as order volumes are concerned, is  
 9 exponential. And that was an ALJ finding. The  
 10 Qwest wholesale operations and wholesale volumes are  
 11 exponentially larger than CenturyLink, so there  
 12 isn't a match between these two as to actual  
 13 commercial volumes, which is really why we believe  
 14 third-party testing is important.  
 15 And then I'll come back just to conclude  
 16 quickly to Commissioner Wergin's question that a key  
 17 for all of this, including the testing, is having  
 18 the right standard. I just heard Mr. Topp refer  
 19 earlier in some of his responses to your questions  
 20 about criteria to be looked at, and after he listed  
 21 all these criteria discussed in the Integra  
 22 settlement. Well, we want a standard, a clear  
 23 standard and the right standard from which those  
 24 criteria flow, which was the point of the number 2  
 25 in our filing last night. And then on top of that,

1 we think it's essential that you have third-party  
 2 testing to make sure that you are testing because  
 3 you don't have actual commercial volumes, just make  
 4 sure that you're going to have a system that is  
 5 verified by a third-party as adequate to support the  
 6 volumes that are actually in play in the OSS -- in  
 7 the Qwest markets as opposed to the CenturyLink.  
 8 CHAIR BOYD: Commissioner Wergin.  
 9 COMMISSIONER WERGIN: Mr. Chair, a  
 10 question for staff. I'm actually really interested  
 11 in the question that you asked, how many CLECs are  
 12 not -- well, how many CLECs are there in total,  
 13 maybe that's a better way to put it, in Minnesota.  
 14 An approximate will do.  
 15 MR. FOURNIER: Mr. Chair, Commissioner  
 16 Wergin, I would say somewhere between one and two  
 17 hundred, closer to one hundred. I may be  
 18 overstating it, but I think somewhere in that  
 19 vicinity.  
 20 COMMISSIONER WERGIN: So we probably have  
 21 one hundred that are not at the table.  
 22 MR. FOURNIER: Mr. Chair, Commissioner  
 23 Wergin, I think there are a significant number that  
 24 are not at the table.  
 25 COMMISSIONER WERGIN: Thank you.

1 from availability from Qwest or other wireline  
 2 providers. So that is a significant benefit to the  
 3 state, those are investments that, as the ALJ found,  
 4 would not otherwise be made and therefore that's a  
 5 very significant component of this.  
 6 CHAIR BOYD: So the investment pattern  
 7 that was alluded to on Tuesday, the DOC agreement  
 8 obligates the Joint Petitioners to spend on top of  
 9 those previous obligations, but it's also targeted a  
 10 little differently in terms of unserved and  
 11 underserved?  
 12 MR. TOPP: The AFOR obligation is not  
 13 tied to a dollar amount. It requires investments  
 14 for a variety of purposes. And one of the things  
 15 that was discussed at the hearing was how the  
 16 marketplace has -- you know, how those investment  
 17 objectives change over time. You know, back in 2000  
 18 it was getting DSL out to where it could be gotten  
 19 to efficiently.  
 20 There has been a lot of investment in the  
 21 last few years to increase speeds to those customers  
 22 that already have DSL available to them. And, in  
 23 particular, a fiber to the node buildout has been  
 24 our strategy, is to build fiber to, you know, sort  
 25 of to the neighborhood but not to the actual houses.

1 CHAIR BOYD: Other questions?  
 2 I have one for, I guess for Mr. Topp.  
 3 There was a section of the ALJ report around  
 4 paragraph 317 where there was additional testimony  
 5 offered by Mr. Stanoch in response to the  
 6 question -- really the question from Commissioner  
 7 O'Brien was on Tuesday, about the relationship  
 8 between the DOC settlement and extra investment  
 9 relative to the AFOR plan. And I wondered if you  
 10 would expand, take a minute and tell me how the  
 11 obligations of the AFOR plan for infrastructure  
 12 development relate to the agreement with the  
 13 Department of Commerce?  
 14 MR. TOPP: The obligations in the AFOR  
 15 plan will continue to exist and are unaffected by  
 16 the obligations with respect to the Department of  
 17 Commerce settlement.  
 18 And I think significant components of  
 19 that settlement are, you know, the total number,  
 20 which is directed towards increasing broadband  
 21 availability at broadband speeds, and then a third  
 22 of that amount, which is designated towards  
 23 providing broadband to unserved or underserved  
 24 areas. If you look at statistics -- and that's  
 25 measured not just by availability from Qwest, that's

1 And so those historical investments  
 2 certainly are consistent with the AFOR's obligations  
 3 and the goals of the AFOR's obligations, but, you  
 4 know, the marketplace and the demand of consumers  
 5 will continue to evolve, but a lot of that fiber to  
 6 the node buildout has already been completed.  
 7 CHAIR BOYD: So that one ought not -- the  
 8 broadband buildout is a component of the AFOR  
 9 obligation, but at any point in any year in the AFOR  
 10 Qwest could have invested zero in broadband  
 11 development and put the money into other areas of  
 12 technology?  
 13 MR. TOPP: I think that's one of the --  
 14 broadband development is one of the -- the goals,  
 15 and so I wouldn't say that zero is --  
 16 CHAIR BOYD: Theoretically.  
 17 MR. TOPP: -- consistent with it. And,  
 18 you know, I think what it does, the AFOR does is  
 19 gives the company the flexibility to make  
 20 responsible investments to improve service quality  
 21 and enhance product availability for Minnesota  
 22 customers. And I think that that's an approach that  
 23 has worked really well.  
 24 CHAIR BOYD: So it would be best to say  
 25 that the Department's agreement obligates Qwest to



1 spend more than they were obligated to spend in the  
2 AFOR and it does target a certain number of dollars  
3 into broadband?

4 MR. TOPP: I would say that it targets a  
5 certain number into broadband and it targets a  
6 certain percentage of that to unserved and  
7 underserved customers.

8 CHAIR BOYD: Commissioner O'Brien.

9 COMMISSIONER O'BRIEN: Mr. Topp, a wise  
10 person once observed that you have to make sure you  
11 get the emphasis on the right syllable. A predicate  
12 that I asked Mr. Ahern was whether he would agree  
13 that looking to the immediate future is a decent  
14 way to predict -- or, excuse me, immediate past is a  
15 good way to predict the immediate future. And I  
16 think most people would say, yeah, that's at least  
17 one way to look at it.

18 And then we establish as a matter of  
19 fact, Mr. Ahern agreed, that 50 million over five  
20 years is \$10 million a year, and that enhancement  
21 was a reduction. That's still not a -- that isn't a  
22 question of emphasis or misunderstanding. You can  
23 certainly say, and I get that argument, that, well,  
24 but there's no assurance that what we were doing in  
25 the immediate past would be what we were doing in

1 So in no way does this mean that necessarily there's  
2 going to be a reduction, there's going to be  
3 business obligations, significant pressures to make  
4 right investments for dealing with the economy, you  
5 know, for the marketplace that evolves. Broadband  
6 customers are the lifeblood and the key to survival  
7 of any wireline company. And so that, you know,  
8 should be kept in mind as well. So to suggest that  
9 this would result in a reduction in investment is  
10 simply wrong.

11 CHAIR BOYD: All right. New topics?  
12 Commissioner O'Brien.

13 COMMISSIONER O'BRIEN: I'm ready to begin  
14 deliberation, if the Commission is.

15 CHAIR BOYD: All right. We'll see if  
16 your colleagues are equally ready.

17 COMMISSIONER WERGIN: Mr. Chair -- I'm  
18 sorry.

19 CHAIR BOYD: Commissioner Wergin.

20 COMMISSIONER O'BRIEN: May I begin?

21 CHAIR BOYD: Are you asking a question or  
22 are you deliberating? We haven't moved to  
23 deliberation yet.

24 COMMISSIONER O'BRIEN: Oh.

25 CHAIR BOYD: Commissioner Wergin.

1 the future and that we are committing to this, or we  
2 could have done nothing, is an enhancement. Good,  
3 that's a -- that's an emphasis on the right  
4 syllable, but in terms of fact, 10 million is less  
5 than what you were doing. Mr. Ahern agreed with  
6 that.

7 Are you now withdrawing that?

8 MR. TOPP: I guess I would respond in  
9 this fashion. The -- what this does is, in a  
10 changing environment assures that a certain amount  
11 is going to be invested in broadband. As to whether  
12 the past can predict the future, I would agree that  
13 that's one way to look at it, but you also have to  
14 look at the actual marketplace and what has taken  
15 place. And the record in this case establishes that  
16 the expense associated with buildout on fiber to the  
17 node has been largely completed, and that's  
18 something that Mr. Stanoch testified to before the  
19 ALJ.

20 CHAIR BOYD: All right. Other questions  
21 on this topic, or new topics?

22 MR. TOPP: If I may?

23 CHAIR BOYD: Mr. Topp.

24 MR. TOPP: I mean, one other thing I do  
25 want to emphasize is this is a minimum commitment.

1 COMMISSIONER WERGIN: I'm asking a  
2 question.

3 Mr. Chair, the only question I have is  
4 whether there is any interest, and there is on my  
5 part, in having the petitioners and the intervenors  
6 take a look at the particular language they were  
7 talking about associated with Arizona, if that's  
8 amenable to all the parties. That's the only thing  
9 I have.

10 CHAIR BOYD: All right.

11 COMMISSIONER WERGIN: And going to  
12 deliberation is okay as long as we allow that to be  
13 part of it.

14 CHAIR BOYD: You probably ought to finish  
15 that topic before we move on.

16 Commissioner Pugh.

17 COMMISSIONER PUGH: Mr. Chair, I had the  
18 same thought in mind, that perhaps we could get  
19 resolution of that. And I was thinking before we  
20 start deliberations, maybe take a short break and  
21 let Mr. Topp contact Arizona counsel, or whoever it  
22 takes to do that. Though we could do it on the run  
23 if you want to do that as well.

24 CHAIR BOYD: Well, I think it would be  
25 cleaner to have this issue addressed and settled

1 before we move to the deliberation.  
 2 COMMISSIONER PUGH: That would be the  
 3 only kind of question mark before we'd get started,  
 4 in my mind.  
 5 CHAIR BOYD: All right. Let's take 15  
 6 minutes. If that's not enough, we'll take a little  
 7 more. But let's aim for 15 minutes.  
 8 (Break taken.)  
 9 CHAIR BOYD: All right. Let's come back  
 10 to order.  
 11 What did you all do for 45 minutes?  
 12 Mr. Topp.  
 13 MR. TOPP: We did have some discussions,  
 14 we didn't reach resolution. I think that the offer  
 15 that we are willing to make is there is an opening  
 16 paragraph that we agreed to in Arizona that contains  
 17 language that we think addresses the standard issue  
 18 that has been there and that Mr. Lipschultz offered  
 19 as a model for the language that they had submitted  
 20 last night. And so if the Commission were to not  
 21 order third-party OSS testing and included this  
 22 clause verbatim in its order, that is something that  
 23 we would agree to. And I can pass -- I'm sorry for  
 24 the scratchings on here, but I can pass out that  
 25 language so that you have it.

1 similar language to what we've seen in Arizona has  
 2 also been adopted by the staff of the Oregon PUC and  
 3 the Washington UTC. So the language which the Joint  
 4 Petitioners have agreed to in those three states and  
 5 possibly others is in play today and ought to be  
 6 adopted by this Commission because Minnesota should  
 7 not have a standard less than other states.  
 8 MR. MERZ: And, Mr. Chair, just on that  
 9 point, unlike the other CLECs at the table, Velocity  
 10 only does business in Minnesota, so it's not as if  
 11 we could get enforcement of the Arizona language in  
 12 Arizona, we could only come to this Commission.  
 13 That's why we believe the standard that the Joint  
 14 Petitioners have agreed to, not less than, ought to  
 15 be the standard in Minnesota as well as it is in  
 16 Arizona.  
 17 CHAIR BOYD: Mr. Topp, to the extent that  
 18 there have been agreements -- and I won't assume  
 19 that there have been agreements, I'm not aware of  
 20 the proceedings in the other states -- but if there  
 21 were agreements in other states what would be the  
 22 position to adopting the same language in Minnesota?  
 23 MR. TOPP: Well, that is what we have  
 24 offered right here. This language is the language  
 25 that we agreed to.

1 CHAIR BOYD: All right. Thank you.  
 2 Mr. Lipschultz, anything to add? Or  
 3 others among you?  
 4 MR. LIPSCHULTZ: Mr. Chair, we're not  
 5 looking at -- we don't view this standard language  
 6 as mutually exclusive with respect to third-party  
 7 testing. So putting third-party testing aside for a  
 8 moment, we'd be willing to go with the Arizona  
 9 language with one addition to it, which we have in  
 10 our proposal, which my clients believe is very  
 11 important. And that is access to underlying  
 12 databases, because we think that's a critical and  
 13 actually an essential component to having the same  
 14 level of e-bonding and flow-through that you have  
 15 today under the Qwest OSS. That access to  
 16 underlying databases is what makes electronic  
 17 flow-through work, and to nail that down precisely  
 18 we believe is very important.  
 19 With that addition to the Arizona  
 20 language, we would be fine and believe that that  
 21 would provide an appropriate standard and certainly  
 22 a vast improvement over the Integra settlement.  
 23 MR. HALM: Mr. Chair, if I could?  
 24 CHAIR BOYD: Mr. Halm.  
 25 MR. HALM: I'd just like to add that

1 CHAIR BOYD: This paragraph?  
 2 MR. TOPP: In Arizona, yes.  
 3 CHAIR BOYD: But the implication is  
 4 there's more --  
 5 MR. TOPP: I think what Mr. Lipschultz is  
 6 suggesting is that there be modification to the  
 7 Arizona language to include a reference to  
 8 underlying databases. And this is heavily  
 9 negotiated language with puts and takes in both  
 10 directions, and determining whether that's a  
 11 significant addition or not is something that, you  
 12 know, in this sort of immediate time frame I don't  
 13 think we could do. I think it would take a long  
 14 time and would create the same sorts of  
 15 inconsistencies, potentially, that have been  
 16 expressed --  
 17 CHAIR BOYD: But this is in play in  
 18 Arizona, Washington and Oregon, this exact --  
 19 MR. TOPP: I have not gone to look at --  
 20 CHAIR BOYD: As best we know?  
 21 MR. TOPP: I haven't gone to look at  
 22 Oregon and Washington agreements to see if there are  
 23 some minor language differences. I do know that  
 24 this language is agreed to and that was the language  
 25 that Mr. Lipschultz identified, so that's what I

1 focused on during this time frame.  
 2 CHAIR BOYD: Commissioner Pugh.  
 3 COMMISSIONER PUGH: Thank you, Mr. Chair.  
 4 One thing I guess that concerns me a bit is does  
 5 anyone know the timing of the final hearings in  
 6 Washington, Oregon and Arizona? Is that scheduled  
 7 at this point?  
 8 MR. MERZ: Well, we're expecting the  
 9 ALJ's report in Arizona -- I was not involved in  
 10 either Oregon or Washington -- we're expecting the  
 11 ALJ's report in Arizona, I believe it's within a  
 12 week or two. They have a similar process to our  
 13 own, in that there will be an opportunity for  
 14 parties to take exceptions and the Commission will  
 15 hear it. I don't know that it's realistic to think  
 16 that the Arizona proceeding will be finished any  
 17 time before, you know, the end of March, but that's  
 18 kind of the general time frame that I think is in  
 19 play in Arizona.  
 20 MR. HALM: And Mr. Chair and Commissioner  
 21 Pugh, in Oregon and Washington it's generally the  
 22 same time frame that we just heard about in Arizona.  
 23 The parties have submitted their briefs and they're  
 24 now waiting for ALJ reports in both jurisdictions.  
 25 And I believe the same process will then play out

1 the approximate dollar amount of this transaction?  
 2 Just refresh my memory on that.  
 3 MR. TOPP: I don't have that figure, I  
 4 know it's in the tens of billions .  
 5 COMMISSIONER O'BRIEN: Tens of billions?  
 6 MR. TOPP: Yep.  
 7 CHAIR BOYD: Other questions about this  
 8 language?  
 9 Okay. Commissioner Reha, I know you had  
 10 one other issue.  
 11 COMMISSIONER REHA: I just had a  
 12 clarifying question, and it's similar to what we've  
 13 just been referring to, and that is on issue 1.  
 14 And I just wanted a clarification whether  
 15 the provisions contained in each of the five  
 16 settlement agreements will be made to all CLECs or  
 17 wholesale customers? And the reason I'm asking for  
 18 a clarification is I recall the other day, I can't  
 19 recall if it was you, Mr. Topp, or one of the other  
 20 counsel, said that it would be made available to  
 21 similarly situated CLECs, and I didn't know what  
 22 that meant. And I was wondering if you could  
 23 clarify that for me.  
 24 MR. TOPP: Yeah. By similarly situated  
 25 we mean that, you know, CLECs that are in the same

1 after that, the full Commission will review the ALJ  
 2 report and make their decision. So I think  
 3 generally the same timeline you just heard for  
 4 Arizona will apply in Oregon and Washington as well.  
 5 CHAIR BOYD: Mr. Topp.  
 6 MR. TOPP: Mr. Chair, Commissioners,  
 7 there is an important distinction between Arizona,  
 8 Oregon and Washington as opposed to Minnesota. And  
 9 that is the ALJ report becomes the order of the  
 10 Commission without the step that we are going  
 11 through today. And so when that order comes out,  
 12 that'll be the step equivalent to the order that you  
 13 issue after we're done with this hearing.  
 14 And so our read is we expect, you know,  
 15 an ALJ recommendation in Arizona in mid-February and  
 16 then a Commission decision in early March. In  
 17 Oregon, post hearing briefs are filed January 25th  
 18 and February 1st, and an order is expected within 30  
 19 days of that February 1st date. And in Washington,  
 20 post hearing briefs are filed January 21st and all  
 21 parties requested an order before the end of  
 22 February.  
 23 CHAIR BOYD: Thank you.  
 24 Commissioner O'Brien.  
 25 COMMISSIONER O'BRIEN: Mr. Topp, what is

1 position, you know, whether it be contract-wise or  
 2 whatever else. But essentially the idea is that if  
 3 the CLEC, you know, if it's appropriate for that  
 4 CLEC to, you know, if it's -- if it's applicable and  
 5 they're in the same position as the company we  
 6 initially entered into the agreement with we would  
 7 make this available to them.  
 8 COMMISSIONER REHA: Okay. Would you have  
 9 an objection to putting -- or adding a provision in  
 10 Commission option 1 stating that the provisions  
 11 contained in each of these settlement agreements  
 12 will be made to all wholesale customers, which is  
 13 very similar to what you have in that wholesale  
 14 operations provision that we just finished speaking  
 15 about?  
 16 MR. TOPP: We would want that similarly  
 17 situated language to be included. If the customer  
 18 has a contract that they have signed and agreed to  
 19 that is inconsistent with, you know, what this order  
 20 might direct, we would consider that CLEC to be in a  
 21 different situation than those with which the  
 22 agreement --  
 23 COMMISSIONER REHA: Can you give me an  
 24 example of a situation like what would occur there?  
 25 I'm still struggling to understand when a wholesale

1 customer, a CLEC, would not be similarly situated  
2 here in Minnesota.

3 MR. TOPP: If a customer has entered into  
4 a new commercial agreement --

5 COMMISSIONER REHA: Yeah.

6 MR. TOPP: -- and has signed and agreed  
7 to that, but the agreement contemplates a situation  
8 where that customer has not signed a new commercial  
9 agreement, that would be a situation where we would  
10 consider there to be a difference.

11 COMMISSIONER REHA: Okay. I guess I will  
12 ask -- if I might, Mr. Chair?

13 CHAIR BOYD: Please.

14 COMMISSIONER REHA: Ask the CLECs to  
15 respond to that.

16 CHAIR BOYD: Mr. Bailey.

17 MR. BAILEY: I was just going to say, my  
18 understanding was that -- what I had understood was  
19 that wholesale customers, these settlement  
20 agreements would apply to wholesale customers in the  
21 same position, I specifically understood that all  
22 the ICA provisions would apply to wireless carriers  
23 who, by definition, are not CLECs, and my  
24 understanding, I thought, from the presentation, was  
25 that Joint Petitioners understood that all the ICA

1 understanding, certainly Integra's understanding and  
2 the other party as well in the settlement, that it  
3 would be available to all wholesale customers.

4 COMMISSIONER REHA: Any response?

5 CHAIR BOYD: Mr. Topp.

6 MR. TOPP: The terms of the agreements,  
7 each talk about availability, and we certainly are  
8 going to abide by those terms of those agreements.  
9 And generally that does mean that we'll make them  
10 available to other customers. And there's language  
11 in the Integra agreement that Mr. Lipschultz just  
12 referred to and we would agree to that. As to the  
13 specifics as to availability of CLEC terms to  
14 nonCLECs, such as wireless carriers, I can't comment  
15 on that. I would have to rely on the agreements of  
16 the settlements themselves because it's by no means  
17 clear that, you know, a specific agreement with a  
18 CLEC would necessarily be correct with respect to a  
19 wireless carrier. I simply don't know one way or  
20 the other what the ramifications of that are. But  
21 we -- this is carefully negotiated language that we  
22 would abide by in making these terms available to  
23 others.

24 MR. BAILEY: Can I ask for a  
25 clarification?

1 provisions would apply to my clients.

2 COMMISSIONER REHA: Wholesale customers.

3 MR. BAILEY: Right.

4 COMMISSIONER REHA: Generically.

5 MR. BAILEY: Right. Or you could say  
6 telecommunication carriers. I like also customers.  
7 And, again, I don't -- this is a shift. I guess  
8 staff -- I'm wondering if staff is surprised by this  
9 as well.

10 MR. LIPSCHULTZ: Mr. Chair, Commissioner  
11 Reha, I'm looking at page 11, paragraph 15 of the  
12 Integra settlement, which says after a fully  
13 executed, filed and, where necessary, approved by a  
14 Commission, this agreement -- and they're referring  
15 to their settlement agreement -- will be made  
16 available to any requesting carrier. I mean, I  
17 think the intent, as I understood it, is that those  
18 agreements would be available to all, any and all  
19 wholesale customers.

20 Now, if by its terms it wouldn't apply to  
21 a CLEC, a particular CLEC, then of course it just  
22 wouldn't apply. But you have certain provisions and  
23 conditions, commitments, in all these settlements  
24 that if by their terms they apply to a wholesale  
25 customer, then I would think, and it was our

1 CHAIR BOYD: Mr. Bailey.

2 MR. BAILEY: Mr. Topp, do you have the --  
3 your filing of the settlement agreement with Integra  
4 in front of you? I just want to ask for some  
5 language, because I'm not sure -- I thought you were  
6 saying that paragraph 15 on 11 meant that this  
7 agreement would apply to all carriers with respect  
8 to the ICA terms, and then I just heard you say, oh,  
9 but if there's an ICA with a CLEC, that doesn't  
10 apply, it might not apply at all to a wireless  
11 carrier. So I'm referring to page 11, paragraph 15.  
12 After fully executed, filed with and, where  
13 necessary, approved by a commission, this agreement  
14 will be made available to any requesting carrier,  
15 joint -- a wireless carrier, anybody who is looking  
16 for interconnection is a requesting carrier. And  
17 then you talk about if there is some sort of  
18 amendment to the settlement or some amendment of the  
19 ICA in question, that that would also be provided to  
20 other carriers in the state upon request.

21 I think this language is clear and I have  
22 no quibbling with it. What I'm trying to understand  
23 is what I think is some limitation about similarly  
24 situated carriers somehow having --

25 CHAIR BOYD: Mr. Topp.

1 MR. TOPP: We'll abide by the language in  
2 the Integra settlement, if that's a concern. I  
3 mean, I didn't negotiate this specific language and  
4 this wasn't a nuance that I had focused on in  
5 connection with this. So, you know, I would defer  
6 the language, if the language is clear, as  
7 Mr. Bailey suggests, and I don't think he should  
8 have a concern, but I simply can't take a position  
9 one way or another on that sitting here today.

10 MR. BAILEY: Well, that's not  
11 particularly reassuring, if the company that's  
12 agreeing to the language doesn't think it's clear,  
13 clear enough to even talk to this Commission about.  
14 But I guess I don't understand the reservation  
15 that's being put into the record here, so... And  
16 whether my client should be concerned, because for  
17 some reason it's not clear to Qwest that my clients,  
18 who are wireless carriers, are covered by this  
19 provision. If they can't say that on the record  
20 now, then that's a concern.

21 CHAIR BOYD: Mr. Topp, is Sprint a  
22 carrier?

23 MS. MASTERTON: Mr. Chairman, I mean, if  
24 I could just jump in. I think maybe we got off on  
25 the wrong track here. I mean, I think it was

1 Mr. Topp a question for clarification?

2 CHAIR BOYD: Please.

3 MR. FOURNIER: Would somebody's wholesale  
4 or commercial agreement that expired after the date  
5 of the merger announcement up until whenever, would  
6 they be precluded from opting into this agreement  
7 because they are not defined as similarly situated?

8 MR. TOPP: Well, the TW Telecom  
9 situation, in particular, addresses a situation  
10 where there was at least the potential that a  
11 wholesale agreement could expire. And the entire  
12 purpose of that agreement is to protect against --  
13 or to prevent that event from -- from causing the  
14 problems that they were concerned about in the  
15 proceeding, and that's why TW Telecom has settled.  
16 If there are other CLECs in the same situation, we  
17 would certainly abide by that, that agreement as  
18 well for them.

19 MR. FOURNIER: What if they sign another  
20 commercial agreement on July 1st of 2010, would they  
21 be precluded from them opting in even if the terms  
22 were adverse to them and the terms of this agreement  
23 would have been better?

24 MR. TOPP: My understanding of the  
25 TW Telecom agreement is that in that situation we

1 generally the Joint Petitioners' understanding that  
2 these agreements would be available to other  
3 wholesale carriers.

4 COMMISSIONER REHA: Okay. So we could  
5 put a provision in issue number 1 that would say  
6 that the provisions contained in each of these five  
7 settlement agreements shall be made available to all  
8 wholesale carriers?

9 MS. MASTERTON: Mr. Chairman,  
10 Commissioner, I just want to make sure you  
11 understood that the CWA agreement probably doesn't  
12 apply to wholesale carriers, so when you say all  
13 five agreements, I think the CWA probably is an  
14 exception to that.

15 COMMISSIONER REHA: All right. So I'm  
16 just trying to find some language that will capture  
17 that as an assurance to the -- all the parties to  
18 this proceeding.

19 MS. MASTERTON: I mean, I would just say  
20 that the wholesale settlement agreements, I think  
21 that would probably cover it.

22 COMMISSIONER REHA: The wholesale  
23 settlement agreements. Okay, thank you.

24 CHAIR BOYD: Mr. Fournier.

25 MR. FOURNIER: Mr. Chair, if I could ask

1 would not be going back and changing the new  
2 contracts that CLECs have already -- or whoever the  
3 party is, have already agreed to.

4 MR. FOURNIER: Thank you, Mr. Topp.

5 CHAIR BOYD: All right. Further  
6 questions?

7 Commissioner Pugh.

8 COMMISSIONER PUGH: I just have one  
9 follow-up back on the language that was -- if you  
10 read the last few phrases of this paragraph, the  
11 last sentence says that the merged company won't  
12 replace or integrate the Qwest systems without first  
13 establishing a detailed transition plan and  
14 complying with the following procedures, colon:  
15 Blank? Is that the agreement?

16 MR. TOPP: The remaining -- the remaining  
17 provisions in that settlement agreement largely  
18 track the Integra settlement, I don't know that  
19 they're identical, but the concept is that this  
20 would be something that would, you know, apply on  
21 top of the provisions in the Integra settlement.

22 COMMISSIONER PUGH: Thank you.

23 CHAIR BOYD: So to incorporate this would  
24 we put a period after the word plan or would you  
25 propose a phrase that comes back to incorporating

1 the terms of the other settlements?  
 2 MR. TOPP: I guess you could say  
 3 complying with the procedures set forth in the  
 4 Integra settlement agreement.  
 5 CHAIR BOYD: One more. Where is this  
 6 going to go inside our whole process? Where was  
 7 this proposed to be inserted?  
 8 COMMISSIONER WERGIN: Mr. Chair.  
 9 CHAIR BOYD: Commissioner Wergin.  
 10 COMMISSIONER WERGIN: Mr. Chair, my  
 11 understanding is it fits in with issue number 4.  
 12 Essentially -- essentially, if we're going to  
 13 incorporate this, you would use number 2, saying  
 14 notwithstanding the determinations above, and then  
 15 incorporate this language instead of what is in our  
 16 briefing paper. Is that correct?  
 17 CHAIR BOYD: Mr. Topp, Mr. Lipschultz?  
 18 MR. TOPP: I think that that is accurate.  
 19 Or you could do option 1, make no modification --  
 20 well, you are modifying the ALJ's report, so I guess  
 21 you could do --  
 22 CHAIR BOYD: 3.  
 23 MR. TOPP: Yeah, do 3, take other action.  
 24 That probably makes sense.  
 25 CHAIR BOYD: I'm sorry, Commissioner

1 adhered to, so that modification makes sense to me.  
 2 CHAIR BOYD: Mr. Topp.  
 3 MR. TOPP: I would suggest that the  
 4 modification really makes no change to the meaning  
 5 of the sentence. The sentence says the standard, I  
 6 think if you put it in, it does no harm, but I don't  
 7 think it adds anything either. Because it says  
 8 provide a level of wholesale service quality that is  
 9 not less than that provided by Qwest prior to the  
 10 closing date with functionally equivalent support,  
 11 data, functionality, performance, you know,  
 12 et cetera. And so if that added clause is not  
 13 intended to change the meaning, I mean, that's  
 14 exactly what we intend to do, and we don't have  
 15 objection to it. I would be more comfortable if we  
 16 kept the language identical to eliminate any  
 17 potential for confusion.  
 18 CHAIR BOYD: Commissioner O'Brien.  
 19 COMMISSIONER O'BRIEN: How about putting  
 20 a period after the word systems? You truly have  
 21 something in mind, you're going to make change. And  
 22 you can't say, hey, your language doesn't do  
 23 anything, we still want the right to make changes,  
 24 and I say, well, then, let's make sure whatever  
 25 changes meet the standards. Well, we don't need

1 O'Brien.  
 2 COMMISSIONER O'BRIEN: I wonder if after  
 3 the colon and the word procedures, this would be  
 4 helpful or not. Add this clause, that at a minimum  
 5 meets the standards articulated above. And it seems  
 6 to me the answer to that question will speak volumes  
 7 about what we're getting into. And I suspect the  
 8 answer will be, no, we can't possibly agree to that.  
 9 COMMISSIONER WERGIN: Mr. Chair,  
 10 Commissioner O'Brien, would you repeat the sentence  
 11 that you had?  
 12 COMMISSIONER O'BRIEN: That at a minimum  
 13 meets the standards articulated above.  
 14 CHAIR BOYD: Where is above? You're  
 15 referring to --  
 16 COMMISSIONER O'BRIEN: It would be the  
 17 sentence that precedes it. Those are standards,  
 18 that's what we want, they can get new, but they  
 19 can't vary from those standards. Let's find out  
 20 what they're going to do.  
 21 CHAIR BOYD: Mr. Lipschultz.  
 22 MR. LIPSCHULTZ: Mr. Chair, I believe  
 23 that really does get at the nub of this. We're  
 24 looking for a standard and the procedures need to  
 25 follow from and make sure that those standards are

1 that. Well, then, let's -- what do we need a  
 2 detailed transition plan for? We need the detailed  
 3 transition plan because you're going to make  
 4 changes. This is not rocket science.  
 5 CHAIR BOYD: Commissioner Wergin.  
 6 COMMISSIONER WERGIN: Mr. Chair, my  
 7 question, Commissioner O'Brien, would that then  
 8 eliminate any changes, even if they're good? That's  
 9 the way I would read it.  
 10 COMMISSIONER O'BRIEN: Well, what I  
 11 believe is that functionally equivalent support,  
 12 data, functionality, performance, electronic  
 13 flow-through and electronic bonding are standards  
 14 that are important to us that are going to be  
 15 changed in this transaction at some point. I'm  
 16 going to make that as a prediction. I suspect  
 17 that's what's going to happen.  
 18 MS. MASTERTON: Mr. Chairman,  
 19 Commissioner, I just want to understand, because I  
 20 think the original language that you proposed was  
 21 what Mr. Topp I think was saying we were fine with.  
 22 And that was to take that last sentence and say  
 23 after the period noted above, the merged company  
 24 will not replace or integrate Qwest systems without  
 25 first establishing that they meet the standards --

1 that at a minimum they meet the standards  
 2 articulated above. Is that what you -- I mean, I  
 3 think that was something that we felt --  
 4 COMMISSIONER O'BRIEN: What I did was to,  
 5 after the word procedures, strike colon, and  
 6 insert -- or insert between procedures and colon  
 7 that at a minimum meets the standards articulated  
 8 above. Then colon.  
 9 MS. MASTERTON: I mean, the only problem  
 10 I have is the standards are actually -- I mean, the  
 11 procedures are actually things about the majority  
 12 vote and that kind of thing, and you're sort of  
 13 saying that they -- I mean, the procedures meeting  
 14 the standards, I think they don't -- they don't  
 15 really follow together .  
 16 COMMISSIONER O'BRIEN: My focus was on  
 17 transition plan. You need -- you need the second  
 18 sentence because you're going to have a transition  
 19 plan that will or might affect functionally  
 20 equivalent -- functionally equivalent support, data,  
 21 functionality, performance, electronic flow-through  
 22 and electronic bonding. So I'm not so worried about  
 23 procedures as I am transition plan. And so that  
 24 articulates standards for what you're going to do,  
 25 and I'm trying to see whether what I am afraid might

1 before the word and, in the second to last line.  
 2 CHAIR BOYD: Why don't you read the last  
 3 sentence, then.  
 4 COMMISSIONER O'BRIEN: After the period  
 5 noted above, the merged company will not replace or  
 6 integrate Qwest systems without establishing --  
 7 without first establishing a detailed transition  
 8 plan that at a minimum meets the standards  
 9 articulated above and complying with the following  
 10 procedures.  
 11 COMMISSIONER WERGIN: Mr. Chair.  
 12 CHAIR BOYD: Commissioner Wergin.  
 13 COMMISSIONER WERGIN: Then we still are  
 14 back to what following procedures?  
 15 COMMISSIONER O'BRIEN: Yes, I haven't put  
 16 any language in to what the procedures are, but the  
 17 procedures can't change standards.  
 18 CHAIR BOYD: Ms. Masterton.  
 19 MS. MASTERTON: Mr. Chairman,  
 20 Commissioner, the procedures, actually, this is like  
 21 the first paragraph of the Integra settlement  
 22 agreement, and so the procedures actually are  
 23 listed. I wonder -- and I understand what your  
 24 concern is, I wonder if you couldn't just say  
 25 something like the procedures outlined in the

1 happen is, in fact, being suggested as you answer  
 2 these questions.  
 3 MS. MASTERTON: Mr. Chairman,  
 4 Commissioner, I mean, I think we're agreeing that we  
 5 think that any system needs to meet those standards  
 6 and I think that's what you're saying. I think I  
 7 was confused about trying to say the procedures meet  
 8 those standards because I don't think those are the  
 9 same thing. And so maybe just striking the last  
 10 sentence --  
 11 COMMISSIONER O'BRIEN: Transition plan,  
 12 I'm not too concerned about procedure.  
 13 CHAIR BOYD: You're worried about the  
 14 transition plan, not the procedures.  
 15 COMMISSIONER O'BRIEN: Of course.  
 16 Without establishing a detailed transition plan that  
 17 at a minimum meets the standards articulated above.  
 18 MS. MASTERTON: Okay. I mean, that might  
 19 work, if you'd strike everything and then after  
 20 transition plan --  
 21 COMMISSIONER O'BRIEN: Right.  
 22 MS. MASTERTON: -- I think that would  
 23 work. For us.  
 24 COMMISSIONER O'BRIEN: So it would be to  
 25 add the clause I suggested after the word plan

1 Integra settlement agreement, would that be  
 2 appropriate?  
 3 MR. LIPSCHULTZ: And, Mr. Chair, we'd  
 4 be --  
 5 CHAIR BOYD: Procedures are --  
 6 Mr. Lipschultz.  
 7 MR. LIPSCHULTZ: Mr. Chair, I mean, we'd  
 8 be fine if that referred to the procedures as set  
 9 forth in the Integra settlement at the end, we'd be  
 10 okay with that.  
 11 COMMISSIONER O'BRIEN: So we don't need  
 12 to have following, you can just strike following and  
 13 say --  
 14 COMMISSIONER REHA: Right.  
 15 MR. LIPSCHULTZ: Mr. Chair, Commissioner  
 16 O'Brien, I believe so.  
 17 CHAIR BOYD: Commissioner Pugh.  
 18 COMMISSIONER PUGH: And, Mr. Chair, just  
 19 to follow up. Mr. Lipschultz, you'd be fine with  
 20 that, except there'd be a dispute on whether to  
 21 include a phrase about electronic -- whatever is  
 22 scratched out on the side there, I can't read it.  
 23 MR. LIPSCHULTZ: Mr. Chair, Commissioner  
 24 Pugh, that's correct. The one thing we see missing  
 25 from this that we consider to be important is that

1 one phrase that, you're right, was scratched out in  
2 the margin here. And because, again, that's the  
3 linchpin of true e-bonding and electronic  
4 flow-through, is getting the same access to the  
5 underlying databases, or the equivalent access to  
6 the underlying databases. So we just think that's  
7 really important to make sure that there's no doubt.

8 I mean, if nothing else, what you see in  
9 here is how uncertain this is and how difficult this  
10 is and how challenging this has been for us and why  
11 we want clarity and why we want certainty and why we  
12 want things nailed down as much as they can possibly  
13 be nailed down. Because in this short time frame I  
14 think you have a window into our world here, and  
15 that's why that one phrase we think is important and  
16 that's why all the others we've been talking about  
17 we think are important.

18 COMMISSIONER PUGH: And, Mr. Chair, just  
19 to follow on that. Assuming that Qwest and  
20 CenturyLink don't agree to that, and apparently they  
21 don't, if, in fact, the standard is that there be  
22 electronic flow-through and electronic bonding, they  
23 then try to migrate to a different system, which  
24 cannot facilitate that because of the -- whatever  
25 you have through access in the scratched-out area,

1 then before we went to a break to talk between the  
2 parties I thought I heard Mr. Lipschultz say that  
3 the Arizona wording was okay. And now -- now we're  
4 back to is e-bonding in or out and is the Arizona  
5 wording what we want or not.

6 MR. LIPSCHULTZ: Mr. Chair, Commissioner  
7 Wergin, I apologize for the confusion. I mean, I  
8 said that the Arizona language is fine except for  
9 the omission of that reference to access to  
10 underlying databases. So we're okay with the  
11 Arizona language with the addition of that phrase  
12 referring to underlying databases.

13 Now, to Commissioner Pugh's point, you  
14 ought to get there anyway without that specific  
15 reference to underlying databases. Our concern is  
16 that without it you've got at least one potential  
17 point of confusion in litigation that we might have  
18 to bring back before you. But I hope I was clear,  
19 and I apologize if I wasn't from the beginning,  
20 we're okay with the Arizona language, but for the  
21 omission of wording that we would like to have  
22 inserted into it referring to the underlying  
23 databases.

24 COMMISSIONER WERGIN: Mr. Chair. I'm not  
25 a lawyer. Somebody at that table tell me if

1 they would have failed to meet the standard, would  
2 you not be back before us and we could hash out  
3 whether or not it works at that time? And I realize  
4 there's a cost to that, perhaps, but --

5 MR. LIPSCHULTZ: Mr. Chair, Commissioner  
6 Pugh, you're right. I mean, I think if you need  
7 access to underlying databases to get the electronic  
8 flow-through and e-bonding that would be guaranteed  
9 under this provision, then you would think you'd get  
10 the necessary access to the databases. And if we  
11 don't get it, yes, we'd be back here and, yes, we  
12 would spend money and have to litigate it. And  
13 we're just trying to button this down as much as  
14 possible to minimize the litigation and to make it  
15 as clear as possible, and I think what you're  
16 witnessing here today is sort of a reminder of how  
17 important it is. But analytically, Commissioner,  
18 you're right.

19 COMMISSIONER PUGH: Thank you.

20 COMMISSIONER WERGIN: Mr. Chair.

21 CHAIR BOYD: Commissioner Wergin.

22 COMMISSIONER WERGIN: Mr. Chair, I'm  
23 hearing some probably conflicting statements. I  
24 thought I heard Mr. Topp say that the e-bonding is  
25 already addressed in the Integra settlement, and

1 e-bonding is actually spelled out in the Integra  
2 contract or not. I see it in there, but maybe I'm  
3 missing something.

4 CHAIR BOYD: Mr. Topp.

5 MR. TOPP: Yes, I believe it is.

6 CHAIR BOYD: Mr. Lipschultz.

7 MR. LIPSCHULTZ: Mr. Chair, Commissioner  
8 Wergin, I believe it is. The difference between the  
9 Arizona settlement and this Arizona language, and  
10 it's the critical language I was talking about  
11 earlier, is the Integra settlement uses the phrase  
12 not materially less, and this Arizona language, like  
13 ours, essentially says it can't be less. It doesn't  
14 have a qualifying term materially. It says it can't  
15 be less and then it goes on to say it has to provide  
16 the functional equivalent of, and it specifically  
17 identifies the points we're concerned about. So  
18 that was the concern we had primarily with the  
19 Integra settlement, is that phrase not materially  
20 less, which the ALJ acknowledged is probably going  
21 to be the source of a lot of litigation. And I  
22 think this language is better than the Integra  
23 settlement because it reduces the chances of that  
24 litigation and it makes sure we get post-merger what  
25 we're accustomed to getting now, or at least makes



1 sure of that as best as possible.  
 2 COMMISSIONER WERGIN: Mr. Chair.  
 3 Mr. Lipschultz, forgive me if I sound short, but I  
 4 just heard you say that it's addressed in the  
 5 Integra contract and the words are specifically  
 6 included here. There's nothing missing.  
 7 MR. LIPSCHULTZ: Mr. Chair, Commissioner  
 8 Wergin, the one -- yeah, the word e-bonding is in  
 9 both the Integra settlement and the Arizona language  
 10 here. That's correct. What's missing from the  
 11 Integra settlement is a clear statement that you  
 12 cannot have less OSS quality post-merger than you  
 13 have currently. The Integra settlement uses the  
 14 term materially less, which the ALJ said is fraught  
 15 with possibility and the likelihood of litigation.  
 16 So I guess to be clear, yes, e-bonding is in both.  
 17 But what's not in both is a clear  
 18 statement that you can't provide service quality  
 19 less than we get today. The Arizona language takes  
 20 care of that. The Integra settlement did not.  
 21 COMMISSIONER WERGIN: Well, Mr. Chair,  
 22 then, Mr. Lipschultz, if we include the Arizona  
 23 language, we have taken care of e-bonding. Because  
 24 the part that refers back to the Integra settlement  
 25 deals with -- well, standards, yes, but also the

1 reference, to access to underlying databases.  
 2 Otherwise, we don't disagree.  
 3 COMMISSIONER WERGIN: Mr. Chair, am I  
 4 wrong in that this is the first time I've heard  
 5 underlying databases?  
 6 CHAIR BOYD: In two days.  
 7 COMMISSIONER WERGIN: Yes. Okay. Thank  
 8 you.  
 9 CHAIR BOYD: And, Mr. Topp, maybe you  
 10 want to help us understand why explicit reference to  
 11 the databases is a bad thing?  
 12 MR. TOPP: We're concerned -- the  
 13 language, which was heavily negotiated, talks about  
 14 access to data. Adding a reference to access to  
 15 underlying databases, it has been unclear to us what  
 16 exactly that means and whether that in some way  
 17 alters the obligation. We think that their concerns  
 18 are taken care of by this language. We'd like to  
 19 have the language the same from state to state and  
 20 therefore we could not agree to this change.  
 21 CHAIR BOYD: Mr. Lipschultz.  
 22 MR. LIPSCHULTZ: Mr. Chair, I'm going to  
 23 take a risk here because I'm not in a position to  
 24 get ahold of all my clients.  
 25 We will agree to drop our insistence on

1 procedures in the Integra agreement. But you have  
 2 the sentence above that it refers -- that at a  
 3 minimum, which is exactly what Commissioner  
 4 O'Brien -- I would think that the sentence that  
 5 Commissioner O'Brien added would address those  
 6 concerns because it says that at a minimum meets the  
 7 standards articulated above and complies with the  
 8 procedures in the Integra settlement. And so the  
 9 standards, including the electronic bonding, that  
 10 standard is above.  
 11 MR. LIPSCHULTZ: Mr. Chair, Commissioner  
 12 Wergin, I don't think we're disagreeing. I'm just  
 13 telling you my clients want the added assurance of  
 14 having language that says we'll get the same access  
 15 to underlying databases. But as I said in response  
 16 to Commissioner Pugh, I think both you and  
 17 Commissioner Pugh are correct analytically, that  
 18 this language should be enough and that we should  
 19 get the access we need to underlying databases,  
 20 presuming we get the e-bonding and flow-through that  
 21 are provided for in this language.  
 22 So analytically I think you and  
 23 Commissioner Pugh are correct, I'm just telling you  
 24 my clients have told me they want that added  
 25 assurance that they're going to get, with a specific

1 adding that reference to underlying databases with  
 2 the understanding that I think has been made crystal  
 3 clear here through the questioning of Commissioners  
 4 Pugh and Wergin that what this language does would  
 5 give us the same level of access to flow-through and  
 6 e-bonding. And with that understanding, I don't  
 7 want to hold this thing up over language that I  
 8 think at the end of the day we ought to be able to  
 9 agree to.  
 10 CHAIR BOYD: All right. Okay. Anything  
 11 else? No? Last call.  
 12 All right. Let's move on to deliberate,  
 13 then.  
 14 Commissioner O'Brien.  
 15 COMMISSIONER O'BRIEN: Mr. Chair, Members  
 16 of the Commission. The reason I did not  
 17 particularly participate in fine-tuning this  
 18 agreement is that I'm stuck further up the upstream.  
 19 As Vice President Biden said to President Obama on  
 20 the eve of health care legislation, this is a really  
 21 big deal. Now, he used some modifiers that I'll  
 22 avoid.  
 23 But this is a big deal. This is tens of  
 24 billions of dollars. And by statute and law we are  
 25 charged with the obligation to approve or disapprove

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1 based on public interest. And I'm going to be  
 2 coming back to public interest a lot in these  
 3 comments. But the first contextual observation is a  
 4 lot of money, a big deal.  
 5 The first contextual observation, and I'm  
 6 going to have some contextual observations but I'm  
 7 going to bring them back into this docket. The  
 8 first contextual observation is that 30, 40 years  
 9 ago a federal judge busted up Ma Bell. Congress and  
 10 the FCC have kind of fine-tuned it, but it was that  
 11 large it was considered to be in violation of the  
 12 antitrust laws.  
 13 Now, I know that this merger has passed  
 14 Department of Justice scrutiny, but we should not  
 15 assume that because it's big, it's good. In this  
 16 industry we have a record of big leading to higher  
 17 prices, average service, and lack of innovation.  
 18 Can anybody doubt that in the last couple of decades  
 19 we've had a revolution because of the competition in  
 20 the marketplace? Prices have come down, we have a  
 21 lot better quality, a lot more service options. So  
 22 let's not say because this is a big deal and because  
 23 we're going to create a third largest CLEC, that's  
 24 something to embrace. It isn't.  
 25 So now what does that mean on this

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1 record? Well, big will prevail. That's the nature  
 2 of big. They have a lot of muscle. We heard and  
 3 have been -- we spent the last hour, 45 minutes, on  
 4 the operating system, critical to this enterprise  
 5 going forward with the competitors. We need to keep  
 6 in mind that the national policy was to allow these  
 7 CLECs to grow and thrive and compete. When you  
 8 bring a very large player into this market, that is  
 9 a real threat. Access charges for Sprint are of the  
 10 same nature and notice. So let's just keep that in  
 11 mind.  
 12 A second observation is social compact.  
 13 Minnesota is a northern liberal state. I know that  
 14 we have newspaper stories about a \$6 billion budget  
 15 gap, but, in fact, we are spending almost \$18  
 16 billion in this fiscal year. 75 percent of that  
 17 goes to education and health care. That is a big  
 18 investment.  
 19 We have to have a wage structure to  
 20 support that investment because we have high taxes.  
 21 Qwest had about 29,000 employees, of which 14,000  
 22 were union members. CenturyLink has about 20,000  
 23 employees, of which 3,700 are union members. They  
 24 are in a culture that allows for limited investment  
 25 in public education and health care, that has lower

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1 wages, and with those two advantages they get more  
 2 access to capital. Access to capital allows them to  
 3 be the acquirer rather than being acquired. It's a  
 4 fact.  
 5 Again, let's put it in context. We are  
 6 about to begin the 150th anniversary of the Civil  
 7 War. Some of the South viewed that as a War of  
 8 Northern Aggression. Other commentators view that  
 9 as a class of culture. I know slavery was a big  
 10 issue, but slavery doesn't encompass all of that  
 11 conflict, it was culture as well.  
 12 In the recent few years, Northern legacy  
 13 industries have been moving from Minnesota to the  
 14 South. Northwest Airlines is now headquartered in  
 15 Delta -- in Dallas. Or excuse me, Georgia, Delta.  
 16 Ford Motor is soon closing a plant while the South  
 17 is building car plants. And now Qwest is going to  
 18 Louisiana. Again, that's not a reason to approve or  
 19 disapprove, but it's context. And we have seen  
 20 cultural sparks that are -- that we are not used to.  
 21 The first would be the dust-up we had a  
 22 couple of days ago on trade secret. Platitudes on  
 23 mergers that you can find in any book are elevated  
 24 to the status of trade secret. Now, they have the  
 25 right to do that, but we should not lose sight of

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1 the fact that we are dealing with hyperaggressive  
 2 perspective. Investment reduction is advertised as  
 3 enhancement. Again, they have the right to do that,  
 4 it's a question of emphasis, but we're on notice of  
 5 a culture clash.  
 6 The most troubling contextual observation  
 7 that precedes my views on this is the lack of a  
 8 record with respect to public interest. Ordinarily,  
 9 of something this big, this important, we'd have  
 10 public agencies, the Department of Commerce,  
 11 attorney general, weighing in, putting on facts and  
 12 records, challenging the assertion of public  
 13 interest. That is missing from this record.  
 14 What we have is what other states have  
 15 done. Not all, but others. The ALJ said it's okay,  
 16 but, again, it wasn't a litigated fact. There  
 17 wasn't a contrary view of public record -- or public  
 18 interest. And the Department of Commerce says it's  
 19 okay.  
 20 Well, I don't know. Here's the problem  
 21 the Communication Workers were put into. Unions  
 22 represent less than 7 percent of the American work  
 23 force. I've been a labor relations lawyer for more  
 24 than 40 years. They are struggling to maintain  
 25 relevance. They had an offer pre-approval, and I

1 suspect they were afraid of what a post-approval  
 2 position would be so they made a -- I suspect, I  
 3 don't know this, a tactical decision to try to steer  
 4 the bus rather than to challenge public interest.  
 5 In any event, unions don't represent the  
 6 public interest in the full scope of what we have to  
 7 do, they have an important part of it. The  
 8 intervening CLECs do not represent the public  
 9 interest, they have a business perspective they're  
 10 trying to hold onto. But there is no organized  
 11 institutional challenge to this significant merger  
 12 and that's troubling to me.

13 Well, are there some public policy  
 14 reasons to oppose this? Sure. Reduced investment  
 15 in broadband, both as to the fact, but more  
 16 importantly how it was presented. Lower credit  
 17 ratings. Again, that's in the record, we have lower  
 18 credit ratings in this new merged entity. Two of  
 19 the three have failed, we're on notice, there may be  
 20 failure. We have a legacy industry that is going to  
 21 bear the burden of the \$600 million of synergy.

22 In the 1930s, Willie Sutton was robbing  
 23 banks. He was asked why he was robbing banks and he  
 24 replied, That's where the money is. That's where  
 25 the savings are. They're here. And we're going to

1 that are compelling, move at a deliberate pace and  
 2 the speed of pace and the urgency is not something  
 3 that comforts me, it is a red flag.

4 I believe we have three options. Reject  
 5 it, the public policy is conclusionary, is not  
 6 supported in the record and we should not allow it  
 7 to go forward on this big of a transaction. A  
 8 second option, we could use our prior precedent, we  
 9 could bring in experts. We could give the parties  
 10 the opportunity to cross-examine our experts and  
 11 present their own experts and develop a public  
 12 policy record. A third option would be to table  
 13 this for a while and allow at least the new  
 14 commissioner to take a look.

15 I think that when we are about to lose a  
 16 legacy industry, we should at least have some  
 17 minimal public record to support that beyond other  
 18 states have done it and Department of Commerce says  
 19 it's okay and the other parties that have intervened  
 20 have cut their deals with the exception of a few  
 21 CLECs.

22 That is not public policy, that's not how  
 23 it should be formed, and I have substantial  
 24 reservations as to the wisdom of this transaction.  
 25 Thank you.

1 see those synergies in increased cost and reduced  
 2 service. But, mostly, we don't have a sufficient  
 3 record.

4 Now, I'd like to talk about the elephant  
 5 in the living room, something that hasn't been  
 6 articulated. We have a challenged business model.  
 7 Qwest is losing 10 percent of landlines a year. And  
 8 so they hire investment bank or bankers, probably  
 9 more than one, to get out and see what they can  
 10 find. We haven't looked at all the deals they  
 11 looked at, we've looked at the first one. And  
 12 they're going to merge with a company that's got the  
 13 same phenomenon, losing business lines, and somehow  
 14 that is going to create economies of scale.  
 15 Economies of scale don't address the root cause of  
 16 this problem. They don't. They simply postpone it.

17 The elephant in the living room is a  
 18 suspicion that we have to do this deal 'cause  
 19 something bad will happen if we don't. Well, where  
 20 is the record evidence on this? There isn't any.  
 21 We operate as if there is urgency to this, we gotta  
 22 get it done, we have to do it, it's time sensitive,  
 23 we're going to be hyperaggressive on every issue.  
 24 With what record?

25 In my view, deals that are inexorable,

1 CHAIR BOYD: Comments?

2 Commissioner O'Brien, do you want to  
 3 offer a motion based on your feelings or would you  
 4 rather wait?

5 COMMISSIONER O'BRIEN: Well, you know, as  
 6 I sat here this morning I saw people jumping into  
 7 the deal without really -- I mean, it's kind of fun  
 8 to put together the finishing touches on a 19, 20  
 9 billion dollar deal. And I couldn't get into that  
 10 'cause I wanted to make sure that we had the right  
 11 public interest in mind.

12 So I am always trying to find consensus,  
 13 and I suspect that -- that we haven't had a lot of  
 14 questions or -- or interest in public -- in looking  
 15 critically at public interest. I think that others  
 16 have reached different conclusions and I want to be  
 17 respectful of those conclusions, so I prefer to wait  
 18 and see whether I can find some other support for my  
 19 thoughts.

20 CHAIR BOYD: All right. Appreciate that.  
 21 Commissioner Pugh.

22 COMMISSIONER PUGH: Mr. Chair, I'll  
 23 address the concern actually that I had.

24 In questioning on Tuesday I was -- the  
 25 representative from the Department of Commerce,

1 their attorney, indicated that she was not aware  
2 whether or not the new commissioner had, in fact,  
3 reviewed this matter and was aware of the position  
4 that the Department was, in essence, advocating for  
5 approval before us. That was of some concern. And  
6 I almost asked on Tuesday to see if they could get a  
7 letter saying he was okay with it, coming back  
8 today.

9 But today there was further information  
10 and that is with the development of the OSS issue,  
11 which I find to be very important, and how that is  
12 shaping in -- it appears to be shaping in the best  
13 way possible for CLECs in the states that act latest  
14 on the issue.

15 Now, granted, many of the states that  
16 have approved this are CenturyLink states that  
17 didn't have a Qwest presence previously, in any  
18 event, but Arizona, Washington, Oregon and Minnesota  
19 have shared certain commonalities with issues facing  
20 Qwest. I know several years ago Qwest sought  
21 forbearance on certain issues before the FCC, and  
22 Minnesota posed that request along with Arizona,  
23 Washington and Colorado, I believe, not Oregon. So  
24 we did have common interest in certain issues.

25 Arizona is going to conclude their ALJ

1 way or any agency or any entity that has said do not  
2 let this merger go forward. The ALJ didn't go  
3 there, the FCC didn't go there, the Department of  
4 Justice didn't go there, numerous states didn't go  
5 there, albeit there are differences between states,  
6 so I don't -- I don't weigh our judgment on what  
7 another state does. I weigh it on what's good in  
8 Minnesota, and I think that goes to the ALJ's  
9 record.

10 And I -- I see the public interest having  
11 been discussed throughout the record with the ALJ.  
12 As you look at each point that the ALJ makes a  
13 recommendation or a conclusion, she addresses the  
14 public interest in nearly every one. And so while I  
15 have concerns, there is no doubt about that, I will  
16 freely and quickly say I have concerns, I don't  
17 think that they are concerns that would warrant not  
18 moving ahead. I think with some of the things that  
19 we've done this morning and perhaps a couple of  
20 suggestions as we go through the issues, I do see us  
21 having as complete a record as we probably could  
22 get. So that's where I'm coming from.

23 CHAIR BOYD: Commissioner O'Brien.

24 COMMISSIONER O'BRIEN: Before CWA  
25 withdrew they entered evidence in the record that

1 report in a couple of weeks, so in terms of waiting  
2 for something to develop, I don't know that we have  
3 a deadline of February 10th in which to act. I  
4 might be open to setting our decision back awaiting  
5 further comment from the new Commissioner of  
6 Commerce and perhaps watching to see the exact  
7 language that develops in at least Arizona, but  
8 perhaps Arizona, Washington and Oregon, in that  
9 they're all kind of going to happen in March, well  
10 before the June closing.

11 So with respect to that issue, I might  
12 share some interest in what Commissioner O'Brien  
13 is -- has presented. And I'll reserve comments on  
14 anything else until we see what the rest of the  
15 panel feels like on that issue.

16 CHAIR BOYD: Thank you. Others?

17 COMMISSIONER WERGIN: Mr. Chair, I'm  
18 really not there on delaying and there are actually  
19 several reasons. While it might seem as though it's  
20 been a hurried decision, there has been -- there is,  
21 in fact, a very large record associated with this  
22 docket. Many hearings, of course all the briefs and  
23 rebuttals and surrebuttals and objections and all  
24 the other words that come in there. And there has  
25 been -- there really hasn't been anyone along the

1 the CenturyLink acquisition of Embarq resulted in a  
2 number of serious operational, service-affecting  
3 problems in North Carolina. Including workers being  
4 dispatched to incorrect locations for service,  
5 workers being dispatched for service with  
6 insufficient or incorrect information, longer out of  
7 service periods, longer delays of initiating  
8 service, differing and confusing software that  
9 dispatches and assigns technicians, systems do not  
10 appear to be interconnected or coordinated, negative  
11 impacts on work flow, inefficiencies in the new  
12 systems, consumer frustration about installation,  
13 and service appointments not being met and long hold  
14 times.

15 The challenge of integrating and running  
16 Qwest with its unique obligations comparatively,  
17 enormous customer base, wholesale responsibilities  
18 and complex OSS is particularly daunting and far  
19 beyond anything CenturyLink has faced to date. And  
20 when we get the complaints, when they come in, we  
21 can't say we relied for our public policy  
22 determination on what the other states did, we can't  
23 say we relied on the ALJ, we relied on the  
24 Department of Commerce. They all concluded without  
25 telling us the factual basis for those conclusions.

1 That's where I'm getting at. We don't know the  
2 factual basis. There is no evidence in the record  
3 testing public interest. They are conclusions of  
4 the public interest. And I think that's an  
5 important point.

6 COMMISSIONER WERGIN: Mr. Chair,  
7 Commissioner O'Brien, when I read the part about the  
8 service that you just quoted to us, that gave me a  
9 great deal of pause reading that there were service  
10 issues, there were interconnection issues, there  
11 were mistaken dispatches, there were significant  
12 issues. And I was -- I spent quite a bit of time  
13 thinking about that because this is huge and those  
14 are things that you don't want to see happen.

15 The difficulty that I found myself up  
16 against with that particular piece is that any time  
17 there's a merger, there are hiccups. And I'm not  
18 dismissing how important those service issues are by  
19 saying hiccups, I'm just saying no matter what  
20 merger you would look at you would find things that  
21 happen that are unpleasant in the merger. And one  
22 of the best examples I can give of that is that I  
23 serve on a board of directors where we have taken  
24 individual locations within the same corporation and  
25 implemented one database, one system of record

1 the ALJ, and they didn't have much public interest  
2 test on it, but we just kind of trusted them.

3 Not on this deal, not for me, too big, I  
4 don't believe in the trust me standard.

5 CHAIR BOYD: Commissioner Reha.

6 COMMISSIONER REHA: Mr. Chair, I  
7 appreciate the comments of the Commissioners and  
8 this is a difficult case. But I look at the  
9 statutory factors that this Commission has to look  
10 at. And they're on page 4 of the briefing papers.  
11 And I think the record supports the finding that the  
12 post-merger company will have the financial,  
13 technical, and managerial resources to enable the  
14 Qwest and CenturyLink operating companies to  
15 continue providing reliable, quality  
16 telecommunications services in Minnesota. I think  
17 the record supports that conclusion.

18 And the third one, I'll skip to C, what  
19 impact the transaction will have on Commission  
20 authority, and I think there's a consensus that it  
21 really will not have it.

22 The one issue is what impact the  
23 transaction will have on Minnesota customers and on  
24 competition in the local telecommunications market,  
25 and that item concerns me, as I think I've expressed

1 accountability, and the number of hiccups, glitches,  
2 incidents, have been significant, and that was with  
3 one entity meshing its own systems.

4 And so in a -- I would prefer that we had  
5 no system errors, no dispatch errors, anything like  
6 that, but I don't know that in any merger, whether  
7 it be two smaller CLECs, I don't know that we  
8 wouldn't see any of that. What sort of nullified  
9 that for me or sort of comforted me with that is  
10 that the CWA did ultimately settle. And my -- I  
11 would suspect that as part of the discussion with  
12 that settlement, those issues that they indicated  
13 are very important were, at the very least, strongly  
14 discussed.

15 COMMISSIONER O'BRIEN: Yes, of course.  
16 Mr. Chair, of course, this was their position and  
17 their case was settled so we can't rely on these  
18 facts, I get that. But we're on notice. The bell  
19 has been rung, it's hard to unring the bell. And  
20 there wasn't a bell rung by the Department of  
21 Commerce.

22 And, remember, the record is that two out  
23 of three of these types of big deals have failed,  
24 and in failure will it really be sufficient to say,  
25 you know, geez, we relied on Commerce, we relied on

1 previously.

2 I -- we have to determine what's in the  
3 public interest. And as it stands with just the  
4 ALJ's recommendations, it's my view that it's not in  
5 the public interest now, but I think it's fixable.  
6 I think it's fixable by putting in the assurances  
7 that the CLECs have -- many, not all, but some of  
8 the assurances and the CLECs and the intervening  
9 parties have proposed here. The most important one  
10 has to do with the OSS and the OSS testing, as we've  
11 discussed.

12 And in my view, I think that with the  
13 synergies that are supposed to be recouped here by  
14 the new applicants, that I don't think it'll be  
15 harmful to their operations to have third-party  
16 testing, which will provide the assurances that the  
17 intervenors have proposed here today, and the  
18 extension of the existing Qwest systems for the  
19 period of time that the extensions are recommended.

20 There are others, like the -- that, you  
21 know, I really feel that should be made, which we  
22 didn't really specifically talk about today, but,  
23 you know, having one -- one point of  
24 interconnection, I think that that, in my view,  
25 that's a no-brainer. I think the parties -- the

1 applicant could easily provide that. And they are  
2 going to be merging the two systems together and  
3 they could certainly merge that, and I didn't really  
4 hear very strong evidence that that should not be  
5 completed. And there are others in here, I mean, we  
6 could go one by one and I could talk about that.

7 But, so I think that the -- this  
8 approval, while in my view right now it is not in  
9 the public interest, it could be fixed and that we  
10 should attempt to fix it by stating that these  
11 factors need to be included before this Commission  
12 approves it.

13 I don't know what really can be gained by  
14 a delay. I think we have a very robust record here,  
15 I think the briefing papers are excellent, I think  
16 the parties' briefs are thorough. I agree with you,  
17 Commissioner O'Brien, it would have been nice to  
18 have the Department more involved in this matter,  
19 and rather than having settled quickly and then not  
20 providing the challenges and the discussion and the  
21 witnesses and all of that. I mean, that probably  
22 would have been a better record. But this is the  
23 record we have and I think it would stand up on  
24 appeal with respect to most of these items.

25 And the issue of the new commissioner.

1 COMMISSIONER REHA: Right.  
2 COMMISSIONER PUGH: -- it wouldn't meet  
3 the public interest test --

4 COMMISSIONER REHA: Correct.  
5 COMMISSIONER PUGH: -- do you see any --  
6 do you have any interest in waiting to see what  
7 Arizona, Washington and Oregon do, in terms of  
8 additional considerations or conditions that might  
9 aid in our determination as to our public interest?

10 COMMISSIONER REHA: Well, I -- we  
11 could -- we could wait forever for those kinds of  
12 things. There's always going to be something that  
13 comes up. We've got to decide it on the basis of  
14 what's important for Minnesota. So I think, you  
15 know, it's interesting what other states are doing.  
16 You know, I think we could probably borrow some of  
17 the ideas, whether or not there's a final commission  
18 action in Arizona or wherever. It's our case, it's  
19 Minnesota, and the -- I think the issue is the items  
20 A, B and C relate to Minnesota. And so I don't  
21 think we have to wait.

22 COMMISSIONER PUGH: Mr. Chair, my only  
23 response would be the timing of the hearing was  
24 essentially at the request of the petitioning  
25 parties, not --

1 Well, you know, we can't delay everything every time  
2 there's a change in administration or a change in  
3 commissioners or a change in attorneys or a change  
4 in anything, and I think if there were some strong  
5 objections by now we would have heard something.  
6 And we haven't. Silence is deafening. So, and the  
7 new commissioner has been in place for some time  
8 now. So I don't think we should delay it on that  
9 basis.

10 We have the attorney for the Department  
11 sitting here at the desk and -- and she said that  
12 she hadn't heard any intention to interfere with the  
13 process as it's been going on, so I think that  
14 that's something that we shouldn't go there, in my  
15 opinion.

16 So I think it's fixable, and I think that  
17 we have enough information to do that today. So,  
18 that's my opinion, my read.

19 CHAIR BOYD: Commissioner Pugh.

20 COMMISSIONER PUGH: One follow-up to  
21 Commissioner Reha. Since your opinion is that as it  
22 is without further conditions --

23 COMMISSIONER REHA: Yes.

24 COMMISSIONER PUGH: -- beyond the  
25 settlements --

1 COMMISSIONER REHA: Yeah. Nothing's  
2 perfect.

3 COMMISSIONER PUGH: -- the closure of  
4 negotiations, negotiations by all parties on what is  
5 a nationwide transaction, it's not really a  
6 Minnesota transaction. It seems as though the  
7 bargaining becomes -- the bargaining positions  
8 become stronger as the closing date becomes closer,  
9 and that would be my only observation. I don't  
10 intend, I guess, to push on it. I suspect we'd have  
11 the availability to move for reconsideration if, in  
12 fact, there was some incredible breakthrough in some  
13 other state at a later time. I maybe look to staff  
14 to assure me that that would be, so long as a party  
15 votes correctly, a Commissioner votes correctly,  
16 we'd be able to move for reconsideration to amend  
17 the --

18 CHAIR BOYD: The Commission always has  
19 that authority on their own.

20 COMMISSIONER PUGH: So, just to be sure.

21 CHAIR BOYD: I understand Commissioner  
22 O'Brien's frustration and I share it in part. At  
23 the end of the day, I think this is a very  
24 substantial record. We've yet to find a perfect  
25 record in any proceeding, I think it's adequate to

1 move forward. I share Commissioner Reha's comments  
2 about waiting on the new Commissioner of Commerce.  
3 We have a number of important proceedings that move  
4 forward and move forward and move forward, and while  
5 I respect his opinion, I might be curious what he  
6 thinks about this, I don't know that that's grounds  
7 onto itself for any delay.

8 I suspect, Commissioner Pugh, if there  
9 was to date any significant nugget in those other  
10 states, those western states, we would have heard  
11 about them. And I think you're correct, if some  
12 breakthrough comes along we may have a chance to  
13 revisit any decision of ours, perhaps. I'm not  
14 going to predict the future on what breakthroughs  
15 will come along, because I happen to agree with you,  
16 as you get closer to zero hour negotiations change.

17 My sense would be that we move ahead and  
18 take action today one way or another. And if the  
19 decision is to make a motion to find the merger not  
20 in the public interest, we certainly could entertain  
21 that. Commissioner Reha has indicated that she has  
22 a position that some of the -- some or all, I don't  
23 know, of these conditions would be required to help  
24 her meet that determination. I'd be open to that  
25 discussion. But I think if there's a threshold

1 three fail, it's got reduced bond ratings, I think  
2 the elephant in the living room, which is the best  
3 deal we're ever going to look at, there's no record  
4 evidence to support that.

5 But, in any event, I don't see the need  
6 for urgency, other than we want to get it done, if  
7 we're going to do it, so that they can close on June  
8 1st. Why February 10th as opposed to March 1 is  
9 compelling, I don't see, given this record.

10 CHAIR BOYD: I'll entertain any kind of  
11 motion about delaying the record, rejecting the  
12 merger, and if I don't hear that we'll move on,  
13 assuming we're going to work through the conditions.

14 Commissioner O'Brien.

15 COMMISSIONER O'BRIEN: I'll try it.

16 I'll move to table this until our first  
17 meeting in March, to allow the -- our staff and the  
18 intervenors and the petitioners to work out the  
19 agreements that Commissioner Reha has in mind and to  
20 give the new commissioner an opportunity to advise  
21 us with whether he wants to comment on this or not.

22 CHAIR BOYD: Discussion of the motion?

23 COMMISSIONER WERGIN: Mr. Chair, I'd love  
24 to, but there's no discussing.

25 CHAIR BOYD: But there are other pieces

1 question of whether this is in the public interest  
2 or not, straight up, straight down, that that's an  
3 issue we should address or move on.

4 COMMISSIONER O'BRIEN: Mr. Chairman.

5 CHAIR BOYD: Commissioner O'Brien.

6 COMMISSIONER O'BRIEN: As we struggle  
7 with this public interest conundrum, we can say that  
8 the views of the new commissioner aren't  
9 particularly relevant to the docket at hand, and I'd  
10 be inclined to maybe join in that perspective if I  
11 knew why the former commissioner approved the deal.  
12 If there was a record, if there was evidence, there  
13 was some weighing and some discussion. But we don't  
14 have that. And so now if two people say, yeah, it's  
15 okay, at least that we have a firewall.

16 And what I'm trying to do is maintain the  
17 integrity of our finding of public interest. It's a  
18 nationwide deal, other states have done it. We went  
19 along, but we had two commissioners that said, yeah,  
20 go ahead and do that. Right now we have one -- and  
21 if, God forbid, the thing goes south, I can tell you  
22 the new commissioner is not going to say I signed  
23 off on that, nobody asked me. So just think about  
24 that.

25 I mean, this -- we are on notice, two or

1 in here about suggesting -- I understand that, but  
2 there are other pieces in here about staff and  
3 parties working out agreements, and as of the moment  
4 we don't know what Commissioner Reha's thoughts are.  
5 That seems a little problematic .

6 COMMISSIONER O'BRIEN: I'm just trying to  
7 be respectful to Commissioner Reha to allow her to  
8 have some time to develop that.

9 CHAIR BOYD: All right. Since I  
10 discussed something that's not discussable --

11 COMMISSIONER PUGH: You just restated the  
12 motion.

13 CHAIR BOYD: Yeah. We'll go to a vote.

14 Commissioner Wergin, do you want to help  
15 me on process?

16 COMMISSIONER WERGIN: Let me work on the  
17 motion.

18 CHAIR BOYD: All right. Take your time.

19 COMMISSIONER WERGIN: Commissioner  
20 O'Brien, for clarification.

21 CHAIR BOYD: Not discussion.

22 COMMISSIONER WERGIN: Right.

23 When you say the motion is for the  
24 parties and the staff to work with Commissioner Reha  
25 on agreements, that says to me that your motion

1 anticipates that we could have a better product if  
 2 we table this and allow some agreements to take  
 3 place. Is that correct?  
 4 COMMISSIONER O'BRIEN: Yeah, Commissioner  
 5 Wergin, here's where I'm at. If Commissioner Reha  
 6 says the parties have worked out a deal, I've looked  
 7 at it, it's fine with me, and the new commissioner  
 8 says I've looked at it, it's fine with me, I'll be  
 9 voting in support of it. All I'm asking is that we  
 10 put the collection, have those two pieces. If that  
 11 clarifies my motion.  
 12 COMMISSIONER WERGIN: Mr. Chair, and your  
 13 motion was until the first meeting in March; is that  
 14 correct?  
 15 COMMISSIONER O'BRIEN: Yes.  
 16 CHAIR BOYD: You might want to make that  
 17 the first meeting in March where we can have five  
 18 Commissioners present.  
 19 COMMISSIONER O'BRIEN: Yes.  
 20 CHAIR BOYD: And there's a commission  
 21 slot.  
 22 COMMISSIONER O'BRIEN: And it's the first  
 23 duly constituted meeting of the Commission, I don't  
 24 know that I have to --  
 25 MR. OBERLANDER: And with the additional

1 how to contact the Commissioner of the Department of  
 2 Commerce, but how do you intend to proceed going  
 3 forward? Commissioner -- Mr. Oberlander.  
 4 MR. OBERLANDER: Commissioners, given the  
 5 unusual nature of this motion and the significant  
 6 issues that need to be considered, I think that  
 7 staff will have to go back and discuss it  
 8 internally, basically, to formulate an appropriate  
 9 way to move forward. We've never done anything  
 10 quite like this before.  
 11 CHAIR BOYD: All right. Commissioner  
 12 Pugh.  
 13 COMMISSIONER PUGH: Mr. Chair, perhaps  
 14 back to like courtroom days, I'd suspect that  
 15 counsel for the commissioner will relay to the  
 16 commissioner that we -- that this order will be  
 17 forthcoming and we'll be looking for input.  
 18 CHAIR BOYD: I'm not worried about that  
 19 part.  
 20 COMMISSIONER PUGH: That part should be  
 21 solved.  
 22 CHAIR BOYD: It's the other half I'm  
 23 worried about.  
 24 COMMISSIONER PUGH: Sometimes the part  
 25 you don't worry about becomes a problem too. But --

1 caveat that other cases move as needed to  
 2 accommodate that scheduling.  
 3 CHAIR BOYD: That'll create an  
 4 interesting discussion in the back room.  
 5 COMMISSIONER PUGH: Glad you're the  
 6 Chair.  
 7 CHAIR BOYD: All right. Does that help?  
 8 Ready to vote?  
 9 All those in favor of Commissioner  
 10 O'Brien's motion, signify by saying aye.  
 11 COMMISSIONER O'BRIEN: Aye.  
 12 COMMISSIONER WERGIN: Aye.  
 13 COMMISSIONER PUGH: Aye.  
 14 CHAIR BOYD: Opposed, same sign.  
 15 COMMISSIONER REHA: No.  
 16 CHAIR BOYD: Aye. Motion carries,  
 17 three-two, Commissioner Reha and I voting no.  
 18 With that, I don't think we have much  
 19 more to do today. We will keep you all informed. I  
 20 think scheduling will be a significant challenge.  
 21 But in the meantime, staff, how will this action of  
 22 the -- our action be carried forward? How will you  
 23 proceed from here? How -- how are you going to  
 24 tackle this task of getting with the parties and  
 25 working on conditions? I think the easier part is

1 CHAIR BOYD: Well, that's true.  
 2 COMMISSIONER REHA: If I might comment.  
 3 I think the motion, it's incumbent, and from what I  
 4 read from the motion, that the parties get together.  
 5 That the applicants and the intervenors and the  
 6 Department and everybody else needs to have a  
 7 conference to see whether any additional issues can  
 8 be resolved. And then also, I suppose, we can ask  
 9 counsel for the Department to -- to consult with the  
 10 commissioner and see whether the commissioner wishes  
 11 to jump into the fray, and then have these parties  
 12 report back to us in writing. And then once we have  
 13 that we can reconvene and also maybe get an update  
 14 from the parties as to what's going on in the other  
 15 jurisdictions.  
 16 I think that that's a process that's  
 17 doable, and then this matter comes before us again  
 18 in March and we'll see where we go and where we are.  
 19 And if we need supplemental briefing papers, we'll  
 20 hopefully have them.  
 21 CHAIR BOYD: I don't have anything to  
 22 add. It's the best we'll be able to do.  
 23 All right. With that, we are adjourned.  
 24 (Matter concluded.)  
 25



1 STATE OF MINNESOTA)  
2 ) ss.  
3 COUNTY OF HENNEPIN)  
4

5 REPORTER'S CERTIFICATE  
6  
7

8 I, Janet Shaddix Elling, do hereby  
9 certify that the above and foregoing transcript of the  
10 digitally-recorded proceeding, consisting of the  
11 preceding 104 pages, is a full, true and complete  
12 transcript of the digitally-recorded proceeding to the  
13 best of my ability.

14 Dated February 18, 2011.  
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18

19 JANET SHADDIX ELLING  
20 Registered Professional Reporter  
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