EXHIBIT ____MRH-1RT

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of, Joint Application of Qwest Communications International Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company LLC, and Qwest LD Corp.	Docket No. UT-100820

REBUTTAL TESTIMONY OF

MICHAEL R. HUNSUCKER

ON BEHALF OF

CENTURYLINK, INC.

NOVEMBER 1, 2010

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Michael R. Hunsucker. My business address is 5454 W. 110th Street, Overland Park, Kansas 66211.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?

A. I am currently employed by CenturyLink, Inc. ("CenturyLink" or the "Company") as Director-CLEC Management. I was named to the position in April 2008 in legacy Embarq and have continued in the same capacity after the CenturyTel/Embarq merger.

Q. WHAT ARE YOUR RESPONSIBILITIES AS DIRECTOR-CLEC MANAGEMENT?

A. I and my team manage CenturyLink's Section 251/252 interconnection agreement (ICA) negotiations, the implementation of ICAs, and all account management relations with our CLEC customers. My group is also responsible for managing revenue assurance, reciprocal compensation/access expense, wholesale service performance reporting and dispute resolution.

Q. WHAT POSITION DID YOU HOLD BEFORE BECOMING DIRECTOR-CLEC MANAGEMENT?

A. I was Embarq's State Executive for Texas from 2002 and Tennessee from 2007 until I accepted my current position. As State Executive, I managed Embarq's relationship with public utility commissions and state legislatures. I also managed Embarq's public affairs activities in the two states. Prior to being named to that position, I was Director-Policy for

Sprint Corporation from 1992 until 2002. As Director-Policy, I developed regulatory and legislative policy for the corporation and provided written and oral testimony before state regulatory commissions for Sprint and its operating subsidiaries including its incumbent local exchange carriers (ILECs), and interexchange/competitive local exchange carrier (CLEC). Prior to being named Director-Policy, I held a variety of management positions with Sprint and its predecessor companies, primarily dealing with regulatory matters. I began my telecommunications career in 1979.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE ANY STATE AGENCY?

A. Yes. I have testified before regulatory agencies in Florida, North Carolina, South Carolina, Tennessee, Virginia, Pennsylvania, Ohio, Illinois, Maryland, Nebraska, Georgia, Texas and Nevada.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is three-fold. First, I will complement and reinforce the rebuttal testimony of Mr. John Jones that CenturyLink's acquisition of Qwest meets the "no harm" standard of review as it relates to the provision of wholesale services by CenturyLink to interconnected carriers and that the CLEC testimony does not accurately reflect current or post-merger operations of CenturyLink and Qwest and demands numerous self-serving conditions. Second, my testimony explains the positions of CenturyLink and Qwest regarding the proposed OSS condition and related assertions made in the testimony of Staff. Finally, by my comprehensive treatment of the wholesale and interconnection-related issues that have been raised by the CLECs, my testimony

demonstrates that where such issues are concerned, the acquisition of Qwest by CenturyLink (the "Transaction") meets the "no harm" standard of review that is appropriate for this Transaction as explained further by CenturyLink witness John Jones. I am not an attorney, but I will reference applicable law in my testimony to the best of my ability, and explain my understanding of the law based on my experiences with implementing and interpreting it from a business perspective on a daily basis.

Q. DO YOU INTEND TO ADDRESS EVERY ASSERTION OR CRITICISM IN THE DIRECT TESTIMONIES OF INTERVENER WITNESSES?

A. No. The Rebuttal Testimony from myself and from the Joint Applicants' other rebuttal witnesses will discuss in considerable detail why CenturyLink and Qwest believe the Application should be granted and will attempt to respond to a number of the positions of the intervener witnesses. However, it is simply not necessary nor reasonable to respond to each and every statement in the CLECs' and Staff's Direct testimony. To the extent particular statements in the Direct testimony are not addressed in our Rebuttal Testimony, this does not necessarily mean that the Joint Applicants agree with or acquiesce in those statements. We have attempted to focus on the major points addressed in the Direct testimony and to organize the Rebuttal Testimony around those points.

I. PUBLIC INTEREST AND PRE-/POST-MERGER OPERATIONS

Q. THE TESTIMONY SUBMITTED BY THE CLECs ASSERTS THAT THE COMMISSION SHOULD PLACE SEVERAL CONDITIONS ON ITS APPROVAL OF THIS TRANSACTION SO IT "DOES NOT HARM THE INDUSTRY."[1] DO YOU AGREE WITH THIS ASSERTION?

A. No. There are several reasons why the conditions proposed are unnecessary to protect the CLEC industry. First, the existing Qwest ILEC operating entity, including wholesale operations, will stay in place post-merger, so the relationships between Qwest and the CLECs will remain status quo and there will be none of the impacts that CLECs might encounter with completely new incumbent entities and completely new Operations Support Systems ("OSS"). Next, CLECs have significant legal protections in place today that remain in place post-merger. These protections include the provisions and obligations of the federal Telecommunications Act ("FTA" or "Telecom Act"), federal and State orders, interconnection agreements ("ICAs"), tariffs, and Qwest's § 271 protections, Performance Assurance Plans ("QPAP"), and Change Management Process ("CMP") commitments. Additionally, the Commission retains its jurisdiction, provided under the Telecom Act, including review of interconnection agreement terms and its ability to resolve disputes related to such interconnection agreements.

[1] Gates Direct at 112.

Furthermore, I believe CLECs will benefit from the merger without imposition of their requested conditions. A financially stronger company promotes stability and thus furthers the goal of continuing to have a solid and resilient provider of quality wholesale services to CLECs and other carriers. CenturyLink already has a very robust and experienced Wholesale Operations team in place today. Likewise, Qwest has a very robust and experienced Wholesale Operations team in place and this merger will result in the combination of two quality teams and companies. The combining of these two quality teams and companies ensures that the post-merger organization will be able to draw upon the best wholesale and interconnection practices, capabilities and personnel of each entity, thereby continuing to provide quality service to interconnecting carriers. Thus, the premise that this Transaction would cause harm to the industry is speculative, unsubstantiated, and, in my opinion, false.

Q. CAN YOU PLEASE DESCRIBE THE CENTURYLINK WHOLESALE OPERATIONS ORGANIZATION AS IT EXISTS TODAY?

A. Yes. A description of the CenturyLink Wholesale Operations Organization, and the planned structure for the Organization going forward, should allay concerns about the post-merger company's abilities and commitment to quality wholesale service.

CenturyLink recognizes the value of its wholesale customers to its business operations and created the current organizational structure to ensure high quality services for its customers.

The Wholesale Operations Organization is a separate business unit within CenturyLink that is led by Bill Cheek, President - Wholesale Operations, who will retain this position in the merged company. Mr. Cheek reports directly to Glen Post, the CEO of CenturyLink. Prior to Mr. Cheek's current position, he served in the same capacity for the legacy Embarq company and its predecessors for more than ten years. Wholesale Operations is organized around five functional areas; 1) product management and marketing, 2) wholesale operations, 3) national public access, 4) wholesale sales and account management and 5) CLEC management and service reporting.

The product management and marketing group develops and implements all wholesale products including CLEC services such as resale, unbundled network elements, collocation, and also our commercial wholesale offerings such as Local Wholesale Service (an unbundled network element – platform, which is the product that performs the functionality of CenturyLink's former "UNE-P" product).

The wholesale operations group is responsible for the company's wholesale operating support systems ("OSS") system and has four regional operation centers (Wentzville, Mo; Leesburg FL, Decatur, IN and La Crosse, WI), each of which has dedicated teams handling specific wholesale functions. These functions include order administration, project management and quality assurance.

The national public access group handles public payphones and payphone services provided to state, county and local correctional facilities across the country.

The wholesale sales and account management group is the direct sales channel for CenturyLink's data and special access products, sales engineering and account management to non-CLEC wholesale customers. This includes both in-territory sales and out-of-territory sales on the 17,500 route mile fiber optic facilities owned by corporate affiliates.

The CLEC management and service reporting group manages the ICA negotiations process, the implementation of the ICAs, account management and in-territory sales to CLEC wholesale customers. This group is essentially responsible for all aspects of the company's interactions with CLECs pursuant to applicable law across the current thirty-three state territory.

Q. HAS THE COMPANY MADE ANY RECENT STAFFING DECISIONS IN REGARDS TO POST-MERGER WHOLESALE OPERATIONS AND IF SO, PLEASE DESCRIBE THE DECISIONS AND THE IMPACT ON CLECs?

A. Yes, there was an internal announcement on Monday, September 20, 2010, regarding the Tier 2 leaders, including Wholesale Operations, effective with the close of the merger Transaction. Specifically, in regards to Wholesale Operations, Bill Cheek, President-Wholesale Operations announced the wholesale structure and Tier 2 leaders as follows:

> Eric Bozich, Vice President-Product and Marketing who is currently Vice President-Product Management for Qwest.
>
> Paul Cooper, Director-National Public Access who is currently Director-Public Access for CenturyLink.

Craig Davis, Vice President-Sales and Account Management who is currently Vice President-Wholesale Sales and Account Management for CenturyLink.

Mike Hunsucker, Vice President-Wholesale Services and Support who is currently Director-CLEC Management and Service for CenturyLink.

Warren Mickens, Vice President-Wholesale Operations who is currently Vice President-Customer Service Operations for Qwest.

This leadership team represents leaders from both CenturyLink and Qwest and represents experienced employees (in excess of 100 years of experience in the telecom industry) who are not only well-equipped to provide quality service but also committed to continuing to provide quality service to wholesale customers. As I stated earlier in my testimony, the provision of quality service to wholesale customers is a priority and will remain so after the merger closing. The CLECs have expressed concerns regarding the leadership of the wholesale organization,[2] but this recent announcement demonstrates that CenturyLink understands the need to have experienced personnel from both CenturyLink and Qwest. In fact, in the Wholesale Operations organization, CenturyLink will be retaining the same Qwest executives in the areas of wholesale operations, including OSS, and product development that are currently responsible for the Qwest systems and products that the CLECs appear to be most concerned with.

Q. IS CENTURYLINK COMMITED TO PROVIDING QUALITY WHOLESALE SERVICES TO CLECs?

[2] See Gates Direct at 24 for example.

A. Yes. CenturyLink has a long-standing history of and commitment to providing quality wholesale services. The provision of quality service to wholesale customers is a priority at CenturyLink, and will remain so after the merger closing.

Specifically in the Wholesale Operations area, CenturyLink has recently completed the migration of legacy CenturyTel's CLEC customers to the legacy Embarq EASE wholesale OSS system ahead of the timeframe required by the Federal Communications Commission's ("FCC's") Order in the CenturyTel/Embarq merger. CenturyLink agreed to this migration to ensure that CLEC customers had an automated system for order processing. This attention to providing quality customer service to CLECs is an integral part of CenturyLink's commitment to the wholesale market and will be maintained post-merger closing.

The CLECs assert that CenturyLink has incentives to discriminate against them in favor of CenturyLink's retail operations. While CenturyLink certainly will compete for customers on a retail basis, CenturyLink also has a strong interest in ensuring that our network is utilized by CLECs on a wholesale basis. The CLECs ignore the existence of other competitors in the market such as cable telephony providers, wireless providers and other voice over internet protocol ("VOIP") providers who do not necessarily utilize CenturyLink's network in the provision of retail end user services. CenturyLink and Qwest have invested billions of dollars in their networks and it should be self-evident that it is in CenturyLink's best interest to provide high quality wholesale services to CLECs

that utilize those investments to provide retail services versus the worst possible outcome of losing customers to providers who do not use CenturyLink's investment at all.

Q. HOW HAS CENTURYLINK LEVERAGED ITS PREVIOUS ACQUISITION EXPERIENCE TO BENEFIT ITS WHOLESALE CUSTOMERS?

A. CenturyLink in recent years has completed significant upgrades to its billing, wholesale, financial, and human resources systems in order to successfully accommodate its growth and future growth opportunities. To date much of the systems integration that CenturyLink planned as part of its integration of Embarq has been completed on or ahead of schedule. This real-world experience puts CenturyLink in the best position to assess and address impacts to its wholesale customers that may result from this transaction.

Q. YOU PREVIOUSLY STATED THAT THE CLECs' TESTIMONY DOES NOT ACCURATELY REFLECT CURRENT OR POST-MERGER OPERATIONS. CAN YOU PROVIDE EXAMPLES?

A. Yes. A significant portion of the CLECs' Direct testimony consists of general comments about industry issues that do *not* relate to CenturyLink or Qwest but are offered merely to imply that these issues *could* apply to the Joint Applicants. This Commission should not base its decision on speculation, but rather on its reasonable judgment based on the facts presented as a part of the record. Moreover, the CLECs offer no convincing evidence to suggest their concerns are reasonable and well-founded as applied to this transaction.

A statement made by Mr. Gates shows the CLECs' mindset and purpose that is inconsistent with that which CenturyLink has. Mr. Gates noted that CLECs and the Joint Applicants "are rivals, and … their economic incentive (as profit-maximizing firms) is to undermine – not help – the other provider's ability to compete for end user customers…"[3] While I reject Mr. Gates' cynical view of the Joint Applicants' wholesale business practices, I believe his statement reveals the true objective of the CLEC parties. The CLECs are hoping to achieve by their proposed conditions a series of competitive advantages that existing interconnection agreements, Commission-approved processes and other accepted practices do not currently provide or apparently not to the degree desired by the CLECs.

Q. MR. GATES IS CONCERNED THAT BECAUSE "CENTURYLINK HAS TRADITIONALLY OPERATED IN RURAL AREAS EXEMPT FROM FULL COMPETITION, IT HAS NOT BEEN REQUIRED TO HANDLE THE SAME QUANTITIES OF WHOLESALE CUSTOMERS AND WHOLESALE ORDERS AS QWEST IS ACCUSTOMED TO HANDLING."[4] DO YOU AGREE?

A. No, I do not. This statement does not appropriately reflect the realities of the CenturyLink Wholesale Operations as compared to Qwest's Wholesale Operations on a national basis and lacks merit. First, the premise is wrong, because it assumes that

[3] Gates Direct at 13.

[4] Gates Direct at 25-26.

Qwest's "experience" and systems somehow vanish as a result of the merger. As discussed above, the combined company will retain key Qwest executives in wholesale functions, including Wholesale Operations. This merger transaction continues the corporate identity, systems, and human and other resources for both Qwest and CenturyLink. Qwest's "experience" and systems will not be lost, but rather will be integrated with CenturyLink to create better experiences for retail and wholesale customers alike. The structure of this transaction allows CenturyLink to use and benefit from the Qwest experience, while also using and benefiting from the ample experience CenturyLink brings to the table.

Second, CenturyLink is an experienced and effective wholesale provider. CenturyLink has almost two thousand active CLEC agreements on a national basis and in excess of five hundred agreements with wireless carriers across its 33-state region. Based on May 2010 YTD order volumes, CenturyLink is on pace to process almost one million ASRs and LSRs in 2010. The facts are that CenturyLink has more interconnection agreements than Qwest and the volume of orders processed are not dwarfed by the Qwest volumes at all. In addition, CenturyLink has experience with a CLEC performance plan in Nevada that is substantially similar to Qwest's Washington Performance Assurance Plan. CenturyLink also provides non-obligated services including line sharing and local wholesale solutions, which is the successor to the unbundled network element – platform ("UNE-P) product. The appropriate and relevant comparison of the CenturyLink and Qwest wholesale operations is on a national basis, not a state-specific basis, as systems,

services and staffing requirements are based on national operations and commercial volumes, not state-specific requirements. And, as demonstrated above, CenturyLink compares quite well.

In addition, it should be noted that on a national basis, less than 15% of CenturyLink's ILEC retail access lines are in companies that are covered under the Telecom Act's "rural exemption." The inverse is that approximately 85% of CenturyLink's retail access lines are not operating under the "rural exemption" and thus have been and will continue to be subject to the same §§ 251/252 obligations of the Telecom Act as Qwest. This fact serves as the foundation for the number of interconnection agreements and order volumes discussed previously. The fact is that CenturyLink is more similar to Qwest in serving wholesale customers (CLECs and other carriers) than suggested and acknowledged by Mr. Gates and the CLECs.

Q. MR. GATES ADDRESSES OSS SYSTEMS. DOES HE FAIRLY ACCOUNT FOR THE OSS CAPABILITIES OF THE POST-MERGER COMPANY?

A. No. A considerable portion of Mr. Gates' testimony is related to intermittent discussion of OSS issues. Mr. Gates begins this discussion with a reference to Qwest's § 271 compliance requirement and circles back to that topic several more times. In Mr. Gates' opinion, because CenturyLink's OSS systems have not been subject to review under §

271 he believes CenturyLink has no experience with § 271 obligations.[5] To Mr. Gates, it follows that the post-merger systems may not remain § 271 compliant.[6] Mr. Gates is misconstruing § 271. Under § 251 of the Telecommunications Act, under which CenturyLink has been performing for years, the obligations to provide OSS are the same as they are under § 271. Qwest did undergo testing of its systems as part of the process to obtain approval to provide long-distance services, while CenturyLink did not need to undergo that process because it was never restricted from providing inter-LATA services, but there is no evidence that its systems do not meet the requirements of the Telecom Act. Qwest witness Chris Viveros will address § 271 issues in greater detail in his rebuttal testimony.

Mr. Gates' speculation regarding post-merger OSS degradation is also unfounded. As stated previously, CenturyLink is not merely acquiring territory from Qwest, but instead is acquiring the entire company with its existing systems, personnel and documented policies and processes. The Qwest experience and OSS knowledge will still reside in the post-merger company, and Mr. Gates' speculation that § 271 compliant systems might just "disappear" is nonsense.

As regards the future OSS to be used by the merged company, CenturyLink and Qwest have publicly stated that they are each dedicated to having strong OSS for wholesale

[5] Gates Direct at 24-25.
[6] Gates Direct at 33 and 40.

operations, that they have met their obligations to wholesale customers in the past and will continue to do so. The merged company will have the option to retain Qwest's existing § 271 compliant systems or to choose an OSS that better addresses the provision of service to the merged company's entire customer base. Having said that, nothing about the Transaction will excuse the merged company from its important ICA and §251 obligations, as well at the obligations under § 271 where those apply.

Q. A COMMON THEME IN THE CLEC TESTIMONY IS THE ALLEGED LACK OF DETAILED CENTURYLINK DOCUMENTATION OF ITS FUTURE PLANS AND INTENT. HOW DO YOU RESPOND?

A. As Mr. Jones testifies, it is unreasonable to believe that CenturyLink and Qwest should have conducted a thorough operating capabilities and operating expense review of the legacy systems and practices by this point in time. It is also incorrect to assume that decisions regarding which systems and practices will be used post-merger have been made.

This Transaction is not like other acquisitions that were cited in CLEC testimony. Because the immediate plan is to maintain both companies' separate OSS and continue operations as usual, there was no need for CenturyLink and Qwest to rush to decide OSS integration issues early in the process. Wholesale customers in CenturyLink areas and in Qwest areas will not face immediate changes in their existing systems interfaces and existing OSS arrangements will not be disrupted. This stands in stark contrast to the

FairPoint and Hawaiian Telcom transactions cited by the CLECs, both of which required the creation of entirely new OSS. The ILECs involved in those other acquisitions had to quickly develop integration plans because they had to operate under new systems and processes. Unlike those ILECs, CenturyLink will have legacy systems, processes and experienced personnel in place post-merger so CenturyLink can undertake a highly disciplined process to convert systems and processes as necessary for smooth integration. Accordingly, CenturyLink will take a deliberate and thorough approach to considering how it will operate in the future. CenturyLink wants to ensure that it makes its operational decisions based on a) sound quality of service and fiscal responsibility principles; that also b) meets the needs of its entire customer base. The CLECs should want no less.

CenturyLink and Qwest recognize that any future changes to OSS will require significant advance planning by wholesale customers, and CenturyLink pledges to give its CLEC customers ample and adequate notice of any future changes as set forth and in compliance with all rules and terms of the interconnection agreements, the Qwest Change Management Process, and accepted business practices. Additionally, CenturyLink acknowledges that any future CenturyLink changes must comply with state and federal laws and rules and with other formal obligations, and that Qwest's Performance Indicator Definitions and Performance Assurance Plans apply.[7] As Mr. Jones states in his rebuttal

[7] Qwest witness Michael Williams will provide greater insight into the provisions of the Performance Indicator Definitions and Performance Assurance Plans.

testimony, it is to the benefit of all of CenturyLink's and Qwest's retail and wholesale customers for CenturyLink to conduct a thorough review of the legacy systems and to make decisions regarding the systems and practices to be used post-merger in a timely manner. Having said that, CenturyLink should not be required to provide business plan information that affords the CLECs advantages in the marketplace and to which CLECs are not entitled under applicable law.

Q. CAN YOU PROVIDE THE COMMISSION WITH SOME INSIGHT INTO THE INTEGRATION ACTIVITIES THE COMPANY IS CONDUCTING?

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

- Minimal impact to customers,
- Systems scalability,
- Ease of operation,
- Overall support of key business needs, including functionality, efficiency, dependability, and quality of service.
- IT systems infrastructure simplification where possible,
- Meeting legal and contractual obligations, and

- Meeting all State and Federal notification requirements.

As I previously stated, CLECs will continue to operate with Qwest and CenturyLink as they do today and, when the necessary determinations have been made that would cause a change in that operation, CenturyLink will provide appropriate notice and the required information and training.

II. DISCUSSION OF STAFF CONDITIONS

Q. STAFF WITNESSES WILLIAMSON HAS INCLUDED SUGGESTED WHOLESALE OSS MERGER CONDITIONS IN HIS DIRECT TESTIMONY.[8] ARE THESE SUGGESTED CONDITIONS REQUIRED FOR THE MERGER TO MEET THE STANDARD FOR APPROVAL?

A. No. As discussed in Mr. Jones rebuttal testimony, the Washington standard for approval of this Transaction takes into consideration whether the proposed Transaction would result in harm to customers.[9] As I have previously discussed, given CenturyLink's and Qwest's acknowledgement of the value they place upon their wholesale customers and the protections the CLECs already have under applicable law, ICA terms and other existing commitments, Staff's suggested OSS conditions are not required to meet the standard for approval in Washington. Equally important, beyond the legal standard that

[8] Williamson Direct at 18-21..
[9] Vasconi Direct at 9.

may apply, the Staff does not demonstrate a real or practical need for the proposed conditions. To illustrate this point, of the twenty-one states and the District of Columbia requiring applications or review of this merger, to date, twelve have concurred that this Transaction is very much in the public interest.[10]

Q. MR. WILLIAMSON WANTS THE QWEST LEGACY OSS TO REMAIN INTACT FOR THREE YEARS. HE WOULD FURTHER OBLIGATE THE POST-MERGER COMPANY TO A NOTICING REQUIREMENT FOR FUTURE OSS CHANGES. ARE THESE CONDITIONS NECESSARY?

A. No, they are not. Mr. Williamson's primary concern seems to be the issue of integrating the Qwest OSS while the Embarq OSS integration is underway.[11] In fact, the Embarq OSS integration will be winding up before the Qwest OSS integration begins. This fact should alleviate Staff's concern. Further, Staff offers no evidence that this merger will negatively impact OSS but relies on speculation; such as the fear that § 271 compliance may not be maintained. Mr. Williamson acknowledges that the past CenturyLink integration efforts have been successful and that the current Embarq integration cannot be classified as unsuccessful to this point.[12] His suggested OSS condition is therefore based upon "what could happen" rather than CenturyLink's integration history. As Mr. Jones states in his rebuttal testimony "*The proposed Transaction results in all Qwest systems, including the OSS, and all personnel being conveyed to CenturyLink as part of the*

[10] The merger also has cleared regulatory review from the United States Department of Justice and Federal Trade Commission. http://www.centurylinkqwestmerger.com/index.php?page=approval-progress
[11] Williamson Direct at 16.
[12] Williamson Direct at 20 and 21.

merger.." This factor clearly eliminates any speculative risk described by Staff and the CLECs. In stark contrast to the FairPoint and Hawaii Telecom transactions, this Transaction conveys the entirety of the Qwest systems and personnel and allows for both systems to be continued pending a thorough and methodical review of the systems and integration aimed at ensuring the continued provision of quality service to wholesale customers. Mr. Williamson acknowledges this to be true in his testimony.[13]

Mr. Cheek stated to the FCC in an affidavit that "CenturyLink recognizes the importance of having industry leading OSS, and acknowledges the value of OSS for wholesale operations."[14] In addition, Mr. Cheek stated that CenturyLink plans to operate both the CenturyLink and the Qwest OSS systems for 12 months, in the very least. CenturyLink is willing to commit to this 12-month time period but is unwilling to extend this time period for the Staff suggested three years. Three years is unreasonably long if changing the Qwest OSS system is in the best interest of the Company and its customers, as determined by thorough review, and if such change is undertaken in compliance with ICAs and applicable requirements, including notice.

Both CenturyLink and Qwest have processes and procedures in place to ensure a smooth transition in regards to changes in OSS systems. Qwest and the CLECs have included a detailed process in their negotiated interconnection agreements which have been

[13] Williamson Direct at 16-17.
[14] *In the Matter of Applications Filed by Qwest Communications International, Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer of Control*, WC Docket No. 10-110.*See,* Reply Comments of CenturyLink, Inc. and Qwest Communications International, Inc. (July 27, 2010), Ex. A1 – Declaration of William Cheek.

subsequently approved by the Commission. This is the change management process ("CMP") which is reflected in the CMP document. This process will remain in place and will be the controlling document for changes, if made, to the Qwest OSS systems, just like it is today. Nothing in this Transaction eliminates or changes the CMP process as it relates to Qwest, and CenturyLink should not be required to give up its rights to seek changes to OSS or the CMP documents itself as a part of this merger proceeding. The obligations and the rights of both the CLECs and Qwest should remain unchanged in this proceeding.

Q. SUGGESTED CONDITION 36 WOULD REQUIRE MAINTAINING OSS PERFORMANCE AT LEVELS AT LEAST EQUAL TO THAT PRE-TRANSACTION. IS THIS SUGGESTED CONDITION NECESSARY?

A. No. I have already addressed CenturyLink's post-merger commitment to service quality and that we have met our obligations to wholesale customers in the past and will continue to do so in the future. This is not a wholesale service quality docket, nor has a need been shown to investigate or establish performance levels in this case. Further, as the testimony of Mr. Williams shows, even if those obstacles were overcome, and even if performance were to stay the same, the CLECs would still impose punitive payments.

III. DISCUSSION OF CLEC CONDITIONS

Q. DO YOU HAVE ANY INITIAL COMMENTS THAT YOU WOULD LIKE TO MAKE REGARDING THE LISTED CLEC CONDITIONS?

A. Yes. Both CenturyLink and Qwest take very seriously their wholesale provisioning obligations and opportunities. Serving their wholesale customers is important to each company, and is important to the future financial success of the combined company. Merger commitments that address speculative issues or constrain existing rights are not necessary to confirm CenturyLink's and Qwest's treatment of wholesale customers. As I discussed when addressing Staff's suggested OSS condition, considering the combination of CenturyLink's and Qwest's recognition of the value of their wholesale customer base and the protections the CLECs already have under applicable law, ICA terms and other existing commitments, the proposed conditions are not necessary to show that the Transaction should be approved by the Commission in Washington.

To put the CLECs' proposed conditions into the correct context, let us take this merger out of the equation. The CLECs and their ILEC competitors have rights and obligations granted under applicable law and set forth in ICAs and regulatory requirements. None of the CLECs' existing rights and obligations will change whether this merger takes place or not. None of Qwest's or CenturyLink's existing rights and obligations will change whether or not this merger takes place. The CLECs are not "faced with complete uncertainty and potential severe disruption and harm in every aspect of [its] wholesale

relationship" as Mr. Gates asserts,[15] but rather already have "the much-needed certainty that CLECs need to continue to operate their businesses and make prudent decisions."[16]

The Commission should not permit CLECs to use this proceeding to attempt to change the status quo by obtaining concessions that substantially modify the existing, lawful ICA terms the CLECs agreed to or arbitrated, and that have been approved as consistent with the public interest by the Commission. The Commission should also not allow the CLECs to bypass the good faith negotiations called for by §§ 251 and 252 for further agreements. To the extent that the CLECs believe they have legitimate disputes over the quality or availability of wholesale services, CenturyLink and Qwest will continue to work with these wholesale customers to expeditiously resolve those disputes and the appropriate process for dealing with intercarrier disputes are contained in the interconnection agreements.

Q. THE CLECs BELIEVE CENTURYLINK SHOULD HAVE NO PROBLEM ADOPTING THEIR PROPOSED CONDITIONS BECAUSE CENTURYLINK REPRESENTED THAT THERE WOULD BE "NO IMMEDIATE CHANGES POST-MERGER AND NO HARM TO EXISTING WHOLESALE PROCESSES, SYSTEMS AND SERVICE QUALITY POST-MERGER."[17] CAN YOU RESPOND TO THIS CLAIM?

[15] Gates Direct at 111-112.
[16] Gates Direct at 112.
[17] Gates Direct at110.

A. The CLECs' mischaracterization of the Transaction only serves to demonstrate that their proposed conditions are unnecessary. If there are no immediate changes post-merger and no harm to existing processes, systems and service quality, then everything is status quo for the CLECs and for the CLECs' competitive and financial outlook. Even if changes are made in the future, there are appropriate safeguards in place. The Transaction is not contrary to the public interest, it does not result in net harms, and no conditions are needed to protect the public interest.

Q. TO AID THE COMMISSION'S UNDERSTANDING, IS IT POSSIBLE TO ASSOCIATE THE CLEC'S PROPOSED CONDITIONS INTO RELATED GROUPS?

A. Yes. I will first begin with the proposed conditions that are interconnection related. I would also note that Level 3 and Pac-West submitted their own separate list of proposed conditions. To the extent those proposed conditions overlap those of the other CLECs, my testimony is meant to address the similar Level 3 proposed conditions as well. I will separately address any unique Level 3 or Pac-West proposed conditions later in this testimony.

To assist the Commission, I have reproduced the CLEC's jointly proposed conditions in Exhibit MRH-2 to this testimony.

Q. IS THERE A GENERAL THEME IN THE INTERCONNECTION CONTRACT RELATED CONDITIONS?

A. Yes. The CLECs' proposed conditions alter the status quo of established terms and conditions negotiated by the contracting parties and approved by this Commission under §§ 251 and 252 of the FTA. They therefore deny CenturyLink's right to negotiate new terms and to operate under existing approved terms pursuant to that law. In other words, granting the proposed conditions would unilaterally extract new interconnection terms that are above and beyond the ILEC obligations required by the FTA or otherwise negotiated in good faith. The existing, lawful ICA terms the CLECs agreed to or arbitrated have been approved by this Commission as reasonable, just and nondiscriminatory, and consistent with the public interest by the Commission. Section 252 of the Telecom Act requires interconnection agreements to be "binding" so it is not appropriate for the CLECs to use a merger process to unilaterally obtain self-serving changes to the negotiated and approved terms.

Once again, Mr. Gates' own words explain the CLECs' world view that is the motivation for their demands: the CLECs "are [CenturyLink's and Qwest's] rivals, and … their economic incentive (as profit-maximizing firms) is to undermine – not help – the other provider's ability to compete for end user customers…"[18] The CLECs' proposed conditions would undermine CenturyLink's ability to compete fairly and may not be terms the CLECs would obtain in the negotiation and arbitration process contemplated

[18] Gates Direct at 13.

under applicable law.[19] Further, the proposed interconnection-related conditions are not required to protect the public interest from any alleged harm arising from the Transaction, or have already been addressed through existing laws or contracts, thus this proceeding is not the proper forum to explore and adjudicate any of these issues.

Q. THE CLECs ARE CONCERNED ABOUT THE "LARGE SUMS OF MONEY" THEY HAVE SPENT TO GET INTERCONNECTION TERMS FROM INCUMBENT LOCAL EXCHANGE CARRIERS ("ILECS") SUCH AS CENTURYLINK AND QWEST.[20] WOULD THIS CHARACTERIZATION BE EQUALLY APPLICABLE TO CENTURYLINK?

A. Yes as we likewise spend considerable resources of time and money on the interconnection process, but I take exception to Mr. Gates' assertion that CLECs must spend "enormous amounts of time and money attempting to ensure that the BOCs comply (and continue to comply) with the obligations set forth in approved ICAs and §§ 251 and 271 of the FTA."[21] CenturyLink takes its obligations very seriously and there is no evidence to the contrary. To imply that we comply only because the CLECs spend "enormous amounts of time and money" to force our compliance is wrong.

---

[19] As an example, Mr. Falvey improperly seeks to impose Pac-West's terms for ISP-bound compensation, including VNXX, as a merger condition when the issue between Pac-West and Qwest is currently the subject of a federal court proceeding. ISP-bound compensation between Pac-West and CenturyLink is subject to other regulatory and court decisions not acknowledged in Mr. Falvey's testimony. Falvey Direct at 10-21.
[20] Gates Direct at 19-20.
[21] Gates Direct at 20.

Q. IN CONDITION 6, THE CLECs WANT THE MERGED COMPANY TO ASSUME OR TAKE ASSIGNMENT OF OBLIGATIONS UNDER QWEST'S INTERCONNECTION AGREEMENTS, TARIFFS, COMMERCIAL AGREEMENTS AND ARRANGEMENTS AND ALTERNATIVE FORM OF REGULATION PLANS WITHOUT REQUIRING WHOLESALE CUSTOMERS TO EXECUTE ANY DOCUMENT(S) TO EFFECTUATE THE MERGED COMPANY'S ASSUMPTION. IS THIS CONDITION NECESSARY?

A. No. This condition is unnecessary given the structure of this Transaction – a complete acquisition of a corporate entity and all of its existing obligations under law and contracts. The post-merger Qwest affiliate will continue to be the provider of service to the CLECs under the terms of their current contracts; the post-merger CenturyLink companies will not become parties to those contracts or become the providers of the services. Thus, this proposed condition would change and add to the named parties to the contracts for the CenturyLink entities, impermissibly changing the interconnection agreements the parties agreed to or the Commission arbitrated.

Q. THE CLECs ALSO SUGGEST THAT AGREEMENTS SHOULD NOT BE TERMINATED OR CHANGED DURING THE UNEXPIRED TERM OF ANY ASSUMED AGREEMENT OR UP TO A MAXIMUM "DEFINED TIME PERIOD," WHICH MAY BE UP TO SEVEN YEARS. IS THIS REASONABLE?

A. No. The CLECs' Defined Time Period of up to seven years under which they argue that certain merger conditions should last, is unreasonable and unprecedented. CLECs have

voluntarily negotiated and consented to the terms contained within existing ICAs. It is not appropriate for competitors to use the merger process to unilaterally seek to enforce a lengthy extension. Furthermore, the CLECs have not offered any evidence that such a unilateral condition would even *be* appropriate under federal law, let alone necessary to satisfy the not contrary to the public interest standard.[22] A unilateral ability for CLECs to extend an ICA is an outcome not contemplated within the context of the bilateral negotiations ordered by Congress. It is contrary to the FTA and should be rejected.

Accordingly, as regards the rest of the concessions demanded in Condition 6, such as CenturyLink's post-merger Qwest affiliate offering commercial agreements at prices no higher, and for time periods no shorter, than those currently offered in the legacy Qwest ILEC territory, the existing negotiated and approved contract terms govern, and CenturyLink will abide by those contractual terms. CLECs willingly negotiated and agreed to those same contractual conditions. CLECs must abide by those contracts, including the stated term, just as CenturyLink must abide by them.

CLEC Condition 8, extending existing interconnection agreements in "evergreen" status, for at least the Defined Time Period, falls into the same category as CLEC Condition 6. Agreements may continue in "evergreen" status only as permitted by the term and termination clauses that the CLECs negotiated and willingly agreed to. Any artificial

[22] Mr. Falvey falsely asserts a post-merger affiliate could unilaterally terminate an ICA as his basis for giving the CLECs a unilateral extension of the ICAs. (Falvey Direct at 8.) An ICA can only be terminated pursuant to its written terms as approved by the Commission.

extension of an ICA fails to account for the status of specific interconnection contracts that may be or become outdated, incorrectly presumes that there will be no changes to regulations, and also fails to consider new technologies that must be addressed, marketplace changes, and changes to costs. There are very good reasons all ICAs have a designated term. Agreements become outdated within a short span of time. And changes to the industry and marketplace fuel more and more disputes over what is and is not covered in the ICAs, and how existing terms should be interpreted in new situations that have arisen since the terms were negotiated.[23] I know from personal experience that disputes can be exponentially more costly and time intensive as compared to normal negotiations. Further, the FTA places an emphasis upon company to company negotiations to promote agreements that address the business concerns of both parties. It is simply unwise to unilaterally impose artificial time extensions on the terms of contracts and an effective ban upon contract negotiations. Existing laws that require bilateral negotiations, change-of-law provisions, and term provisions are proven vehicles for keeping a contractual relationship current and balanced – arbitrary unilaterally imposed extensions of contract terms are not and may have unintended and unanticipated consequences.

For all the reasons already stated, CLECs should not be allowed to unilaterally change the contract terms to extend existing ICAs.

---

[23] For example, many LECs, including CenturyLink, are currently engaged in interpretation disputes over the application of existing ICA terms to new IP-based services. Amendment negotiations have not borne fruit in many of these disputes. CLECs moving to or adding a wholesale business model under existing ICA terms is another example of an interpretation issue that is so comprehensive, it does not lend itself to an ICA amendment.

Q. IN CLEC CONDITION 9, THE CLECs WANT TO USE PRE-EXISTING INTERCONNECTION AGREEMENTS AS THE BASIS FOR NEGOTIATING NEW REPLACEMENT INTERCONNECTION AGREEMENTS. IS THIS CONDITION NECESSARY?

A. No. Both parties to an interconnection negotiation, ILECs as well as CLECs, have the right to propose the terms they think are most appropriate for an interconnection agreement. If CLECs want to propose an existing ICA as the starting point they are free to do so. CenturyLink, however, has the right to propose its suggested structure as well, and should not be constrained before the fact from doing so.

Notwithstanding the above, if the question is whether the combined company will consider the use of existing terms and operations in a renegotiation process, the answer is "of course." The existing terms came about for a reason, whether due to legal obligations or as a result of bilateral negotiations. However, any renegotiation must consider changes of law, updating of processes and capabilities that make the relationship function more smoothly, and competitive industry issues and conditions that did not exist at the time of the first negotiation. It would be inappropriate, for example, for the Commission to in effect pre-approve agreements that may have been negotiated or arbitrated ten or more years ago as complying with the FTA in 2010 or beyond. Again, ICA negotiations are governed by and encouraged under §§ 251 and 252; it is inconsistent with applicable law and underlying policies to impose restraints upon the negotiation process.

Further, while it is not entirely clear what the Joint CLECs intend to accomplish by this condition, nothing can permit CLECs to "pick and choose" provisions from existing agreements. The FCC has adopted the "all or nothing" rule, which necessarily means that CLECs may not select only those parts of existing agreements they want to adopt.

Q. MR. DENNEY BELIEVES IT IS ACCEPTABLE TO USE EXISTING ICAs AS THE STARTING POINT FOR REPLACEMENT ICA NEGOTIATIONS BECAUSE THE MERGED COMPANY WILL BE PROTECTED BY INCORPORATED CHANGE OF LAW PROVISIONS.[24] IS THIS TRUE?

A. Only to a point. Change of law provisions only cover changes of law. Such provisions do not address interpretation deficiencies within an existing ICA that were only discovered *after* ICA implementation or that arose pursuant to technology or other changes within the industry. In my experience, most ICA disputes are caused by the parties asserting differing interpretations of specific or interrelated ICA terms. It is to both parties' benefit to minimize disputes by negotiating terms that do not lend themselves to more than one interpretation.

Q. DOES PROPOSED CLEC CONDITION 9 ALSO ADDRESS ATTEMPTS TO INSERT A NEW TEMPLATE INTO ICA NEGOTIATIONS THAT ARE ALREADY UNDERWAY?

[24] Denney Direct at 26.

A. Yes. Regarding negotiations for a replacement ICA that are in progress before the Closing Date, I have already stated that CenturyLink has no plans to terminate and restart negotiations with a different template. In any event, no condition or restriction on this issue is needed because CenturyLink cannot unilaterally impose new provisions or terms on CLECs. CLECs retain the right to arbitrate if they disagree with any proposal made during the negotiation process, and the Commission will retain the jurisdiction to determine the appropriate resolution of any such disagreement through the existing § 252 arbitration process and applicable legal standards. Because the CLECs have the protection of applicable law, no condition is needed.

Q. CLEC CONDITION 10 WOULD PERMIT CLECs TO OPT INTO A QWEST AGREEMENT IN NON-QWEST LEGACY AREAS. IS THIS CONSISTENT WITH THE EXPECTATONS OF THE PARTIES THAT NEGOTIATED THE QWEST AGREEMENT OR THAT NEGOTIATED THE AGREEMENTS IN NON-QWEST LEGACY AREAS?

A. No, and that proposed condition is neither necessary nor appropriate for this Transaction. As an initial matter, I will note that agreements are entered into between specific legal entities and such terms cannot be involuntarily imposed on a non-signatory third party legal entity. The CLECs are asking for the right to unilaterally terminate contracts that they voluntarily negotiated and signed with CenturyLink, and to cherry-pick the best ICA terms from the Qwest agreements for themselves outside of the standard negotiation process. The CLECs attempt to get terms they may perceive as more accommodating,

without having to negotiate and arbitrate whether the other terms are even appropriate for the ILEC at issue or whether the contract on balance is one both parties would agree upon. As such, the CLECs do not seek to preserve the status quo or protect the public interest, but rather seek self-interested competitive advantages through the merger process with proposed conditions such as this.

CenturyLink's and Qwest's ICAs were negotiated with the particular network and facilities in mind, and it would be contrary to the parties' expectations that an ICA could be involuntarily and arbitrarily imposed upon another entities' network and facilities. It would also be contrary to the review and approval process conducted by the Commission; in other words, that the Commission reviewed and approved Qwest ICA terms as only applicable to Qwest and its network, systems, processes and costs, and not to CenturyLink and its network, systems, processes, and costs. Finally, referring back to my initial answer to the question, post-merger, the Qwest and legacy CenturyLink ILECs will be operated as separate legal entity affiliates. So this proposed condition is really an attempt to circumvent contractual obligations and the requirements of federal law and bind a third party legal entity to a contract it did not negotiate and may not be able to accommodate.

Q. PROPOSED CLEC CONDITION 10 AND LEVEL 3 SUGGESTED CONDITION 1.b[25] WOULD ALSO ALLOW CLECs TO ADOPT ANY EXISTING ICA, EVEN IF THAT ICA EXISTS IN ANOTHER STATE. DO THESE SUGGESTED CONDITIONS COMPORT WITH THE CIRCUMSTANCES UNDER WHICH THE ICAs WERE NEGOTIATED AND APPROVED?

A. No, and that condition is neither necessary nor appropriate for this Transaction. Not all negotiated terms can technically and logically be applied to all companies and in all jurisdictions, or to Washington specifically. All sorts of questions abound about how state-specific terms for one legal entity ILEC would apply in Washington. For example, other state commissions have made differing substantive rulings to address competitive conditions and state laws specific to those states. Importing terms from another state could allow the CLECs to effectively ignore or inappropriately modify Washington rulings on specific issues. Accordingly this proposal ignores prior Commission decisions in this area.

Mr. Falvey, for example, believes a CLEC should be permitted to port any ICA and if the ILEC has any issue with compliance, the ILEC can petition *after the effective date,* for an order to modify the ICA terms.[26] Mr. Falvey's approach is not consistent with 47 CFR § 51.809 wherein it states that *the ILEC shall make available* an ICA to which it is a party and *the obligation shall not apply* where the ILEC can prove the costs of provision are

[25] Thayer Direct at 3.
[26] Falvey Direct at 6-7.

greater or provision is technically infeasible. Applicable law states the ILEC shall provide, not the CLEC shall choose without the ILEC's knowledge. The law states the ICA must be one under which the ILEC is a party; a legacy CenturyLink affiliate is not a party to a Qwest ICA and vice versa. And the law gives the ILEC the right to prove the cost or technical impact before the obligation is effective, not after. Further, under Mr. Falvey's approach, there will be a potential increase of disputes that the Commission will have to address because a CLEC can invoke ILEC obligations before the cost and technical issues are reviewed and resolved.

The CLECs fail to show any reason why a review of the proposed merger should include taking the terms directed to operations from another state, and from another legal entity, and impose them on the post-merger CenturyLink affiliate operations in Washington. Further, it is not rational, reasonable, or consistent with §251 for the Commission to order CenturyLink and Qwest to allow competitors to cherry-pick the best ICA terms for themselves outside of the standard negotiation process, merely because CenturyLink and Qwest are engaging in a merger. Even if one can get past some of the logistical and practical questions of which conditions could theoretically be applied to CenturyLink's ILECs in Washington, there still remains the fundamental problem of the lack of fairness in simply imposing such a broad condition under the facts of this particular Transaction and under the statutory standard of review.

Q. SEVERAL OF THE CLEC CONDITIONS, SPECIFICALLY 21, 23, 26, AND 27, SPEAK TO REQUIRING CENTURYLINK TO COMPLY WITH APPLICABLE LAW AND AGREEMENT TERMS. MR. DENNEY THINKS THE MERGED COMPANY SHOULD NOT HAVE ANY ISSUE WITH AGREEING TO THIS TYPE OF CONDITION.[27] WHY IS AGREEING TO THESE PROPOSED CONDITIONS AN ISSUE?

A. If the conditions requested stopped at compliance with applicable law and agreement terms, then the conditions would be acceptable for CenturyLink. Of course, if the conditions merely required compliance with the law it really is a non-issue that would not require any Commission order since we must comply with the law regardless. What the CLECs request, however, is much more than compliance with applicable law and agreement terms. These specific proposed conditions do not stand in isolation. The CLECs have proposed other interrelated conditions and add descriptive language beyond the simple "comply with the law" condition, in an effort to achieve their slant on what they believe the law should be. In short, the CLECs are trying to establish substantive terms and conditions that are not required by applicable law and can be or have been subject to negotiation or arbitration. See for example the interrelated proposed conditions 22 and 24. The CLEC issues -- 911, LNP, network construction and maintenance and the provision of copper loops -- all have specific requirements in 47 CFR § 51 and are also covered within the ICAs that the CLECs have voluntarily negotiated and signed, or that have already been arbitrated and approved by the Commission. Once again, the

[27] Denney Direct at 30-31.

Commission should not permit the CLECs to add new obligations, and cannot unilaterally impose conditions that are more expansive than those required by the law or contractual terms.[28]

Q. CLEC CONDITIONS 12 AND 14 WOULD COMPEL CENTURYLINK TO WAIVE ALL SECTION 251(f) RURAL EXEMPTIONS AND FORGO THE RIGHT TO DECLARE NONIMPAIRED SECTION 251 STATUS TO ANY IMPAIRED CENTRAL OFFICES. DO THESE TOPICS INDIVIDUALLY REQUIRE A THOROUGH COMMISSION REVIEW AND SUBSEQUENT FINDING OUTSIDE OF A MERGER PROCEEDING?

A. Yes, but the CLECs seek to undermine the review that is required. As an initial matter, CenturyLink and Qwest have legal rights granted by the FTA and the FCC rules, and the CLECs' proposed condition would thwart the important public policies underlying those rules.[29] Further, the rural exemption and central office impairment issues require petitions to the Commission, a Commission review of all pertinent facts and mitigating factors, and a subsequent finding. Those legal processes should not be circumvented or closed down. This proceeding is not the proper forum to submit the documentation required by law and to conduct the necessary reviews necessary for the required

[28] PACIFIC BELL, a California corporation, Plaintiff-Appellant, and UNITED STATES OF AMERICA, Intervenor, v. PAC-WEST TELECOMM, INC.; PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA; et sec, Defendants-Appellees. No. 01-17161, No. 01-17166, No. 01-17181, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, December 12, 2002, Submitted, April 7, 2003, Filed.

[29] Examples include the policy of not imposing below cost rates on ILECs when CLECs have viable alternatives and the FCC policies aimed at encouraging facilities-based carriers.

Commission determinations. The CLECs should not be permitted to tell the Commission it should change the law or take short cuts. The CLECs proposals have little in common with the evaluation of Transaction, and nothing in common with the public interest in the rule of law.

Q. ALSO BROUGHT UP IN THE CONTEXT OF THE LEGACY RURAL STATUS OF SOME CENTURYLINK AFFILIATES, ON PAGES 15 AND 16 OF HIS ANSWER TESTIMONY, MR. THAYER DISCUSSES TRAFFIC PUMPING. WHAT RELEVANCE IS THIS TESTIMONY TO THE MERGER PROCEEDING?

A. None. CenturyLink does not engage in such practices and Mr. Thayer admits this is the case.[30] Furthermore, it is my understanding Qwest continues its pursuit of cases against traffic pumping CLECs in Minnesota, Iowa, and South Dakota, and is vigorously contesting before the FCC any and all forms of traffic pumping, independent of the proposed merger.[31] This testimony is unfounded speculation that is meant to impose an unnecessary condition when the facts show to the contrary that no condition is needed.

[30] Thayer Answer Testimony at 16.
[31] See In the Matter of the Complaint by Qwest Communications Company, LLC against Tekstar Communications, Inc. regarding Traffic Pumping, MPUC Docket No. P-5096, 5542/C-09-265; Qwest Communications Company LLC v. Tekstar Communications, Inc., Free Conferencing Corp. and Audiocom, LLC, USDC Case No. 10-cv-490-MJD-SRN; and Qwest Communications Corporation v. Superior Telephone Cooperative, et al., IUB Docket No. FCU-07-2.

Q. CLEC CONDITION 24 APPEARS TO DENY CENTURYLINK THE ABILITY TO CHARGE FOR PROVIDING CERTAIN SERVICES TO THE CLECs. IS THIS APPROPRIATE?

A. No. As an initial matter, setting charges for services provided to CLECs is an extremely complex and fact-intensive process; it has nothing to do with mergers and is raised merely to be a distraction, and a way for CLECs to get something they are otherwise not entitled. Second, independent of the proposed merger, these very issues have already been arbitrated in other state venues, and the rates at issue as contained in interconnection agreements have been approved by state commissions, including Washington, as non-discriminatory, compliant with the Telecom Act, and in the public interest.[32] To the extent the arbitrating CLECs lost the issues in those venues, what they seek here is to circumvent the arbitration process under applicable law and have their proposed outcome imposed upon CenturyLink in an unrelated proceeding.[33] This is not an arbitration proceeding; it is a merger Transaction approval proceeding, and not the proper forum for raising these issues.

---

[32] See for example, AAA Case No. 51 494 Y 00524-07; Petition of Charter Fiberlink TX-CCO, LLC for Arbitration of an Interconnection Agreement with CenturyTel of Lake Dallas, Inc., Texas Public Utility Commission Docket 35869; In the Matter of a Petition for Arbitration by Sprint Communications Company LP vs. CenturyTel of Mountain Home, Inc., Arkansas Public Service Commission Docket 08-031-U; In the Matter of Sprint Communications Company LP.'s Petition for Arbitration with CenturyTel of Eagle, Inc, Colorado Public Utilities Commission Docket C08-1059; and In the Matter of Sprint Communications Company LP Petition For Arbitration of an Interconnection Agreement with CenturyTel of Colorado, Inc,, Colorado Public Utility Commission ARB 830.

[33] For example, on page 40-41 of his Direct testimony, Mr. Pruitt admits that Charter made the single POI per LATA argument an arbitration issue in Wisconsin. Charter lost that issue when the Wisconsin Commission declared Charter must establish a POI within the network of each legal entity CenturyLink affiliate and that doing so would provide no barrier to Charter's ability to complete. Charter Fiberlink, LLC Petition For Arbitration Of Interconnection Rates, Terms, Conditions, And Related Arrangements With The CenturyTel Non-Rural / Rural Telephone Companies Of Wisconsin Pursuant To 47 U.S.C. § 252(B); Dockets 5 MA-148 and 5 MA-149 at page 90

Mr. Pruitt's testimony demonstrates the inappropriateness of this tactic. Mr. Pruitt devotes a significant percentage of his testimony[34] to repeating arguments that Charter has made in arbitrations in other states. This is not an arbitration proceeding; it is a merger transaction approval proceeding, and not the proper forum for raising these issues.

Q. ARE THE CLECs ATTEMPTING TO IMPOSE CONDITIONS THAT ARE CONTRARY TO APPLICABLE LAW?

A. Based on the facts as I understand them, yes. The crux of the NID rate issue, for example, is whether a CLEC can unilaterally use CenturyLink's NIDs for free, or whether a CLEC must submit an order to CenturyLink and compensate CenturyLink for the use of its unbundled NID element to house all or a portion of the interconnection with a customer who elects to obtain telephone service from a CLEC rather than from CenturyLink. I will not provide a complete discussion of this issue such as would be made in an ICA arbitration setting but, in brief, CenturyLink does not dispute a CLEC's right to access the customer access side of the NID for the purpose of disconnecting the customer's inside wire from CenturyLink's local loop. Further, CenturyLink does not seek any compensation from a CLEC with regard to such access or disconnection activity. However, if a CLEC places its facilities in CenturyLink's NID and thus uses the CenturyLink NID as an unbundled network element, compensation is properly payable to CenturyLink.

[34] Pruitt Direct at 10-43.

Q. WHAT IS THE BENEFIT TO A CLEC OF ATTACHING ITS FACILITIES TO THE PREMISE INSIDE WIRING WITHIN THE CENTURYLINK NID?

A. By using CenturyLink's property, the CLEC avoids the cost of purchasing and installing its own NID.

Q. DOES A CLEC HAVE ANY OTHER CONNECTION OPTIONS BESIDES INSTALLING ITS OWN NID OR USING CENTURYLINK'S NID UNE?

A. Yes. Except for very unusual wiring installations, a CLEC can connect to the inside wiring at any location within the premises; such as the jack nearest the placement of the cable modem for most cable CLECs.

Q. IS THERE ANY APPLICABLE RULE THAT ADDRESSES THIS POINT?

A. Yes. For example, 47 CFR § 51.319(c), addresses the NID as a UNE:

> …an incumbent LEC also shall provide nondiscriminatory access to the network interface device ***on an unbundled basis***, in accordance with section 251(c)(3) of the Act and this part. The ***network interface device element is a stand-alone network element*** and is defined as any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a cross-connect device used for that purpose. An incumbent LEC shall permit a requesting telecommunications carrier ***to connect its own loop facilities to on-premises wiring*** **through** ***the incumbent LEC's network interface device***, or at any other technically feasible point. [Emphasis added]

§ 51.307(c) indicates that any use of a UNE whatsoever is included in the UNE definition:

> . . . access to an unbundled network element, along with ***all of the unbundled network element's features, functions, and capabilities,*** in a manner that allows

> the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element. [Emphasis added]

And finally, § 51.509(h) indicates that there is a price for the stand alone NID UNE:

> An incumbent LEC must establish a ***price*** for the network interface device when that unbundled network element is purchased on a stand-alone basis pursuant to Sec. 51.319(c). [Emphasis added]

Q. CLEC CONDITION 24 WOULD PREVENT LEGACY CENTURYLINK FROM ASSESSING A SERVICE ORDER CHARGE FOR ORDERS SUBMITTED FOR NUMBER PORTING PURPOSES. IS THAT CONDITION REASONABLE?

A. No, for two reasons. First, any setting of rate elements by the Commission should be thoroughly examined in the context of a cost docket. Second, it is consistent with the cost recovery provisions of the FTA for one party to recover the administrative costs of service order activity from the other party when that party requests the processing of a number port or any other service ordered and performed pursuant to the terms of the Agreement. As the FCC[35] and several other state agencies[36] have held, the administrative processing costs that are the subject of this issue are an incidental consequence of number portability, and are not costs directly related to providing number portability. This administrative service order charge is therefore not a charge to recover local number

[35]In the Matter of Telephone Number Portability and BellSouth Corporation Petition for Declaratory Ruling and/or Waiver, released April 13, 2004 in CC Docket No. 95-116.

[36] See for example, Petition of Charter Fiberlink TX-CCO, LLC for Arbitration of an Interconnection Agreement with CenturyTel of Lake Dallas, Inc., Texas Public Utility Commission Docket 35869; In the Matter of a Petition for Arbitration by Sprint Communications Company LP vs. CenturyTel of Mountain Home, Inc., Arkansas Public Service Commission Docket 08-031-U; In the Matter of Sprint Communications Company LP.'s Petition for Arbitration with CenturyTel of Eagle, Inc, Colorado Public Utilities Commission Docket C08-1059; and In the Matter of Sprint Communications Company LP Petition For Arbitration of an Interconnection Agreement with CenturyTel of Colorado, Inc. Colorado Public Utility Commission ARB 830.

portability costs that should otherwise be recovered from an ILEC's end users as Mr. Gates claims.[37] Recovery of these costs is competitively neutral in that they apply to both carriers when either makes a request of the other. The CLECs only make this charge an issue because they assume they will be sending more porting orders than CenturyLink, and as the greater cost-causer, they seek to avoid paying CenturyLink for services performed at the CLEC's request.

Q. MR. PRUITT ASSERTS THAT CHARTER MUST SPEND SIGNIFICANT TIME AND EXPENSE TO IDENTIFY AND DISPUTE THESE SERVICE ORDER CHARGES.[38] IS THIS REALLY AN ISSUE?

A. No. Where this charge is contained in an ICA, it has been either agreed upon or approved by the reviewing regulatory agency as consistent with the public interest. The Commission can see therefore, that this is not a "surcharge" practice as Charter claims it is.[39] The assessment of service order charges is not an appropriate issue to resolve in a merger proceeding but rather one best left to ICA negotiations.

Q. IN THEIR PROPOSED CONDITIONS, THE CLECs ALSO REFERENCE ELIMINATING DIRECTORY LISTING CHARGES. ISN'T THIS ISSUE

[37] Gates Direct at 73.
[38] Pruitt Direct at 13-14.
[39] Pruitt Direct at 12.

SIMILAR TO THE OTHER SERVICE ORDER CHARGES THAT THE CLECs SEEK TO AVOID?

A. Yes, and as with the administrative service order charge, the directory listing fees are independent of and irrelevant to this matter. It is instructive to know, however, that while the CLECs seek to use CenturyLink's services without cost, they already have an option in the legacy CenturyLink areas in other states to submit directory listings directly to the same third party directory publishers and DA providers that are used by CenturyLink, with no involvement of CenturyLink in the process, and therefore no charges assessed by CenturyLink.

The bottom line regarding all of the CLEC proposed conditions relating to charges imposed by CenturyLink is where a charge is contained in an ICA, it has been either agreed upon or approved by the reviewing regulatory agency as consistent with the public interest. Further, this is not the appropriate place to negotiate the terms of future interconnection agreements The Commission can see therefore, that these are not the "anticompetitive practices" that Mr. Gates and Mr. Pruitt claim they are.[40] And, all of the rate issues for specific services are best left to the § 251 negotiations and arbitration process that is specifically established in the FTA for just such an obligation and through which the issues can be fully developed and explored.

[40] Gates Direct at 171. Pruitt direct at 16.

Q. IS A SINGLE POINT OF INTERCONNECTION ("POI") PER LATA FOR TRAFFIC EXCHANGE WITH ALL CENTURYLINK AFFILIATES IN THAT LATA (CLEC CONDITION 28) A REASONABLE REQUEST?

A. No. This is a relatively complex issue that has a lengthy and complicated body of decisions, but the existing interconnection arrangements between CLECs and Qwest, will remain as required by ICA terms. [41] Further, this merger creates no interconnection cost to the CLECs that the CLECs do not already have today. No merger condition is needed or applicable for Washington.

Q. IS CLEC CONDITION 15, ASKING FOR CONTACT INFORMATION, A SIMPLE AND STRAIGHTFORWARD REQUEST?

A. No. Providing and updating the contact information is not an issue. As I testified in regards to Staff's suggested conditions, this already occurs today under CenturyLink's and Qwest's existing wholesale processes. Once again, however, the CLECs attempt to go beyond a simple assurance of an existing requirement, and seek to impose new requirements. In this condition, the CLECs want imposed timeframes. The subjects of contact information provisions and notice are already covered in ICA terms and those terms will govern any required timeframes. The CLECs should not be permitted to impose new conditions that modify negotiated agreements that are already in place, and to do so without clear and compelling evidence that this protects the public interest from

[41] This is not a §251 issue as Mr. Pruitt characterizes but a §271 interpretation issue. Pruitt Direct at 40. Additionally, Mr. Pruitt is factually incorrect in stating CenturyLink has seventeen (17) operating companies in Wisconsin. CenturyLink has nine rural and three non-rural operating companies in Wisconsin; CenturyLink has four operating companies in Washington.

a probable and real harm. Additionally, no conditions should be imposed that do not take into account unforeseen circumstances that may prevent adherence. For example, should a designated contact employee leave the company suddenly, or a support center be temporarily closed due to an Act of God, advance notice to the CLECs is not possible. For these reasons, this condition is not necessary.

Q. WHAT IS THE NEXT GROUP OF PROPOSED CLEC CONDITIONS THAT YOU WILL ADDRESS?

A. I will address the CLECs' proposed OSS conditions, which are 16, 19, and 20. I have already touched upon OSS earlier in my testimony but I will now explore this topic in more detail.

Q. IN CLEC CONDITIONS 16, 19, and 20 THE CLECs SEEK TO BIND THE POST-MERGER COMPANY TO A LITANY OF OSS OBLIGATIONS. ARE THESE REASONABLE REQUESTS?

A. No. The Transaction itself will not change any of the rights or obligations of any party, and CenturyLink and Qwest will abide by their OSS obligations. As I previously stated, no harm to CLECs will result from the Transaction, and it is unreasonable to impose an arbitrary moratorium upon potential integration practices that could otherwise provide compliant services to CLECs and result in efficiencies for the combined company.

As an initial matter, both CenturyLink and Qwest take very seriously their wholesale provisioning obligations and opportunities. Wholesale provisioning is governed by a

comprehensive array of existing regulations, laws, and contracts, and the Commission should not impose conditions that change the legal obligations or voluntary agreements that the parties have previously entered into. Beyond legal obligations, however, serving wholesale customers is important to each company and is crucial to the future of the combined company. CenturyLink and Qwest are each dedicated to having strong OSS for wholesale operations, and they have long satisfied their various legal obligations. There is no reason to assume that they will suddenly abandon their responsibilities following the close of this Transaction.

The merger is intended to bring about improved efficiencies and practices in all parts of the combined company, so changes could be expected over time.[42] What those changes are have not been determined, and it is pure, unsupported speculation on the part of the CLECs to allege that harm will result from these changes. Further, any changes will occur only after a thorough and methodical review of both companies' systems and processes to determine the best system to be used on a going-forward basis from both a combined company and a wholesale customer perspective. And, importantly, any changes will comply with the companies' respective legal obligations, including the obligation in Qwest territory to coordinate such changes in advance through the CMP.

[42] For example, upgrades to the existing OSS based on the new industry standard Unified Ordering Model (UOM). An upgrade to a new industry standard, however, is not a disruptive change to OSS or a replacement of existing OSS as Mr. Gates implies on pages 40-42 of his Direct. Further, UOM is the replacement for Electronic Data Interface (EDI). CenturyLink's implementation of UOM brings its OSS to the latest standard and is not "inferior access."

In the FCC's merger review proceeding, CenturyLink and Qwest have provided a sworn statement that CenturyLink plans to continue operating both CenturyLink and Qwest existing OSS uninterrupted for the immediate future until it completes its evaluation of the best options for all stakeholders. This is expected to take 12 months at the very least. It is reasonable and appropriate from a regulatory, business, and operational perspective for CenturyLink and Qwest to evaluate the strengths and weaknesses of Qwest's and CenturyLink's respective OSS, to consider the desires of the broad, multi-state base of CLEC customers, and to analyze the logistical and economic factors that bear on whether or how to migrate to a single OSS platform for all states. Wholesale customers in CenturyLink areas and in Qwest areas will not face immediate changes in their existing systems interfaces and existing OSS arrangements will not be disrupted. The post-merger entities will continue to comply with existing requirements of the Telecom Act and any reporting and testing obligations under law.

The CLECs allege that the CenturyLink OSS is inferior to the Qwest OSS, but do not support their claim. Likewise, the CLECs imply CenturyLink does not have equal OSS experience to that of Qwest. As CenturyLink and Qwest explained in their Reply Comments in the FCC proceeding,[43] allegations about performance "differences" between the Qwest and CenturyLink OSS are false, and the alleged limitations of the CenturyLink OSS do not exist. Once again, the CLECs' testimony reveals that their

[43] In the Matter of Application Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer of Control; WC Docket No. 10-110

proposed conditions are not directed toward protecting against some verifiable potential public interest harm in Washington. The proposed Transaction will not change any operations in the near term or obligations of any of the CLECs or of CenturyLink and Qwest, so there is no new and likely harm which merits such a condition.

In the longer term, post-merger CenturyLink is dedicated to having industry-leading OSS. Whether post-Transaction CenturyLink ultimately chooses an existing OSS or selects new systems should be left to be resolved through a refined analysis and the need to respond to marketplace conditions, governed and controlled by existing laws and contracts. For example, the geographic location of the CLEC may have an impact on which system a particular CLEC desires. If a CLEC provides service in only the southeastern part of the country (where Qwest does not operate), it might prefer the CenturyLink OSS system. Likewise a CLEC in the southwest that provides service in only Qwest's territory may want to continue to use the Qwest system. Moreover, if each state commission approving the merger imposes a condition regarding the future OSS system, there could be conflicting, state-specific mandates which will impede proper selections of the most efficient and productive systems. These are just some of the numerous factors that must be considered when making a decision on the future of any OSS system. Accordingly, CenturyLink and Qwest recognize that any future changes to OSS, if and when they occur, will require significant advance planning with wholesale customers, and CenturyLink pledges to give its CLEC customers ample and adequate

notice of any future changes, consistent with its legal obligations and accepted business practices.

Further, CenturyLink contends that it is wrong for CLECs to require onerous reporting requirements, including those above and beyond anything required by current law or regulation, and it is wrong to require new and special reviews by the FCC and this Commission. In a competitive world, CenturyLink's competitors should not control what systems and functionalities are acceptable for CenturyLink operations. The ultimate decision is whether the system CenturyLink decides upon complies with all legal requirements. Undue deference to the CLECs' wishes might simply delay system and process upgrades that would provide a benefit to the entire post-merger CenturyLink customer base, without addressing any true merger-related harm. Accordingly, the CLECs' OSS proposed conditions are not reasonable or pragmatic under all the facts and circumstances.

Q. IS CENTURYLINK'S EASE OSS THE SAME OSS THAT WAS USED BY FAIRPOINT COMMUNICATIONS IN ITS OSS CUTOVER IN NORTHERN NEW ENGLAND AND BY FRONTIER COMMUNICATIONS IN ITS RECENT OSS CUTOVER IN WEST VIRGINIA AS MR. GATES IMPLIES?[44]

[44] Gates Direct at 60.

A. No. EASE is a proprietary system that has never been used in New England or West Virginia. The only commonality is that EASE leverages an ordering software framework provided by the same vendor used by Frontier, but business rules, messaging infrastructure, operating infrastructure and back office interfaces and applications were developed by Embarq.

Q. THE CLECs SEEM CONCERNED THAT THE MERGED COMPANY MAY NOT MAINTAIN CURRENT WHOLESALE SERVICE QUALITY; THAT WHOLESALE SERVICE QUALITY MAY BE A LOW PRIORITY; AND THAT THERE MAY BE CUTBACKS.[45] CAN YOU EXPLAIN WHY THIS IS NOT AN ISSUE?

A. The CLECs engage in baseless speculation that the merged company may integrate systems with less functionality than now exists and will discontinue services or provide inferior access.[46] None of these assertions explains how CenturyLink might chart such a path in defiance of applicable law and binding contractual terms.

Further, the operating efficiencies for both CenturyLink and the CLECs are not mutually exclusive. CenturyLink is committed to maximizing its internal efficiencies associated with providing quality service to CLECs which also means that the CLECs benefit from

[45] Gates Direct at 28-29.
[46] Gates Direct at 32.

this efficiency. Thus the benefits of these efficiencies inure to the benefit of both CenturyLink and the CLECs.

Q. MR. GATES TIES CENTURYLINK'S APPLICATION FOR A WAIVER OF THE ONE DAY PORTING INTERVAL TO A CLAIM THAT CENTURYLINK WANTS TO BEGIN THE QWEST OSS INTEGRATION EFFORT BEFORE THE EMBARQ OSS INTEGRATION IS COMPLETED,[47] WHAT IS THE REAL REASON BEHIND THE ONE DAY PORTING INTERVAL WAIVER?

A. CenturyLink is engaged in a rolling cutover to the Embarq OSS in order to assure continuing billing quality for its end users. Meeting the one-day interval date proposed in the FCC's order would cause the company to implement changes to a system that is being discontinued. The FCC offered a waiver process for just such a situation. CenturyLink applied for and was granted a waiver under that process. The waiver is only for a specific time period and will expire in February 2011. CenturyLink will be processing porting orders within a one day interval long before any OSS integration activities take place in regards to the Qwest OSS; hence the need for addressing the capability in its current OSS.

Q. IS THERE ANY OTHER CATEGORY UNDER WHICH YOU CAN GROUP PROPOSED CLEC CONDITIONS?

---

[47] Gates Direct at 58.

A. Yes. Several of the proposed CLEC conditions appear to be related to products and services. These are proposed conditions 1, 2, 3, and 7.

Q. OTHER THAN THE BEING RELATED TO THE PRODUCTS AND SERVICES USED BY CLECs, IS THERE ANY OTHER COMMONALITY TO THIS SET OF CONDITIONS?

A. Yes. Within this set of proposed product and service conditions, the CLECs include several rate-associated conditions that are improper and are plainly designed to give them competitive advantages rather than to address any legitimate merger-related concerns. First, each of the rates associated with services provided to CLECs should be carefully determined in independent proceedings and are inappropriate for resolution here.[48] As far as I am aware, the Washington Commission has not imposed wholesale rate changes as a part of any merger review. Next, the CLECs once again argue that certain merger conditions should last an unprecedented seven years. The term is unreasonable, and the effect would be irresponsible in a competitive market. The combined company will continue to face substantial competition, including from much larger carriers, which will discipline its pricing and market conduct. To hobble a company's ability to make important financial business decisions for seven years would not preserve or promote

[48] The Iowa Utilities Board, for example, recently made this same determination in the Windstream / Iowa Telecom merger. Order Granting Motion To Strike, In Part, Denying Motion To Strike, In Part, And Requesting Additional Information , *In Re: Windstream Corporation And Minnesota Telecommunications Services, Inc., D/B/A Iowa Telecom* , Docket No. SPU-2009-00010, p. 10 (2010) (" . . . the Board has consistently declined to decide rate-related issues in the context of a reorganization proceeding.")

competition, but is more likely to hamper competition substantially by placing an unnecessary anticompetitive burden on one of the market players.

All of these product and service conditions, including the proposed rate-related conditions, are unnecessary. The CLECs do not attempt to portray these conditions as legitimate merger concerns and, in any event, rate setting procedures, including proper review and oversight, are already well established in applicable law and Commission rules, and thus no conditions related to rates are necessary. These proposed conditions appear to be attempts to circumvent applicable law and rules to increase CLEC profitability through terms CLECs are unlikely to gain under the current regulatory reviews and processes.

Q. WOULD YOU PLEASE SUMMARIZE FOR THE COMMISSION YOUR CONCLUSIONS ABOUT THE TERMS SOUGHT BY CENTURYLINK'S COMPETITORS IN THIS PROCEEDING?

A. Yes. Each of the pricing issues raised by the CLECs can be reduced to a common theme. Each and every condition places a cost on CenturyLink. If the CLECs request work to be performed or want to use CenturyLink property to avoid purchasing their own property, the FTA compels compensation for what is requested or used. If the CLECs believe that there are any legitimate concerns regarding the charges to be levied, the proper forum for investigating them is through negotiations and arbitration of ICA terms, not in the context of a merger approval proceeding.

Q CLEC CONDITION 11 SEEKS TO SET PROVISIONING INTERVALS. CAN YOU COMMENT ON THIS DEMAND?

A. CLEC provisioning intervals reflect retail provisioning intervals for the same or like services because federal law requires a carrier to treat all customers at parity. The CLECs want priority for their needs over those of CenturyLink's end user subscribers and wholesale customers.

I previously discussed how the legacy OSS and other processes will remain in place for a period of time post-merger. The legacy intervals are inherent in the legacy processes and systems. The Company cannot change existing provisioning intervals for its separate operating subsidiaries without significant process or systems improvements. Most basically, I note that the CLECs have demonstrated no harm to Washington or Washington customers resulting from the continuation of the existing provisioning intervals.

Q. CAN THE MERGED COMPANY BE CLASSIFIED AS A BOC AS THE CLECs DEMAND IN CONDITION 13?

A. No. The definition of "BOC" is a matter of federal law and a state agency like the Commission is not able to alter that definition. As CenturyLink witness Mr. Jones explains in his rebuttal testimony, the merged company will not be a BOC. Qwest Corporation is a BOC as the successor to US West, and it remains a BOC, but the legacy

CenturyLink ILECs in other states are not BOCs and will not become BOCs after this Transaction.

Q. IN CONDITIONS 17 AND 18, THE CLECs SEEK TO DICTATE THE NUMBER OF WHOLESALE EMPLOYEES ON THE CENTURYLINK PAYROLL AND ALSO, IN 17, DICTATE CERTAIN PROCESSES. SHOULD THEY BE ALLOWED TO DO THAT?

A. No. After arguing for the greatest and best automation of processes, the CLECs now suggest the Company cannot be allowed to reduce its costs through attrition of employees whose functions have been automated or are redundant, and must retain some legacy processes rather than determine if the processes can be automated or improved to benefit both the company and the CLECs. Moreover, the proposed condition appears to improperly permit the CLECs to step in to the shoes of CenturyLink management and make staffing and resource allocation decisions. The terms "sufficiently staffed" and "adequately trained" are so vague that they would invite disputes and create tremendous inefficiencies if CenturyLink's staffing decisions had to be litigated before the Commission. Such a condition would actually be counterproductive to carrying out CenturyLink's priorities in providing quality wholesale services discussed above.

Qwest witness Robert Brigham also notes that Qwest has been reducing its headcount in wholesale operations even as the Company has grown more effective, and as the Qwest penalty payments on its QPAP have generally declined in Washington over the years.

There is no rationale for this demand other than not allowing the merged company the opportunity to control its costs appropriately and therefore ensure the company has a more difficult time competing financially.

Q. CLEC CONDITION 29 SEEMS TO BE A "MOST FAVORED NATION" ("MFN") CATCHALL. IS AN MFN CONDITION ACCEPTABLE TO THE COMPANY?

A. No. An MFN condition is neither necessary nor appropriate for this Transaction. Voluntary FCC conditions, if any, that are *generally* applicable to the post-merger CenturyLink operations will automatically apply to CenturyLink's operations in Washington even in the absence of an MFN clause in this Commission's Order. However, not all possible FCC conditions will automatically apply to all jurisdictions, as not all conditions can logically or legally be applied to all jurisdictions, or to Washington specifically. This limitation on a condition's universal applicability is equally true for conditions that may be imposed by another state.

For example, another commission that is reviewing this merger may have a totally different legal standard and a totally different set of facts to consider (e.g., level of competition, service quality performance, pricing regulations, CLECs with different issues, etc.). Again, the merger review before this Commission is conducted under the standard of review in Washington, under Washington law, so it is unreasonable to take conditions imposed on CenturyLink operations in another state, under other standards, and impose them on operations in Washington.

Second, conditions imposed, or negotiated and agreed to, in other states result from a myriad of different circumstances and considerations. And, if another state imposed a condition that may have been practical under its circumstances, but impractical in another, an MFN clause could result in the imposition of a condition that makes no sense for the State of Washington.

Even if one can get past some of the legal, logistical and practical questions of which conditions could theoretically be applied to CenturyLink's ILECs in Washington; there still remains the fundamental problem of the lack of fairness in simply imposing such a broad condition under the facts of this particular Transaction and the Washington statutory standard of review.

Finally, an MFN condition restricts the incentive for both parties to negotiate state-specific terms in Washington and elsewhere, because the resulting terms may be imposed in states where the conditions are impractical, overly costly, or unnecessary. So, to the extent parties seek to negotiate terms that acknowledge state-specific needs, issues and conditions, such negotiations would be stymied by such an MFN provision.

Q. PLEASE COMMENT ON CLEC CONDITION 30 – THE CLEC PROPOSAL FOR ALLOWING DISPUTES TO BE BROUGHT BEFORE THE COMMISSION.

A. This condition is unnecessary. Every Washington interconnection agreement already contains language addressing resolution of interconnection disputes, including the role of the Commission in regards to such disputes. This proposed condition improperly seeks to override those existing and approved agreement terms.

Q. THE CLECs ASSERT THAT CENTURYLINK AND QWEST WANT TO DELIBERATELY DRIVE UP THE TRANSACTION-RELATED COSTS FOR THE CLECs. MR. GATES CITES CENTURYLINK AND QWEST' REFUSAL TO AGREE TO A STREAMLINED DISCOVERY PROCESS AS AN EXAMPLE.[49] CAN YOU COMMENT?

A. Yes. First, I believe it makes no sense to equate litigation discovery disputes to the actual operation of a business and there were legitimate reasons to disagree with this request as the reply letter from CenturyLink and Qwest attorneys explained. But importantly, the actual question asked of Mr. Gates that resulted in his testimony on the streamlined discovery process was: "Do you have another example that suggests that ***integration*** could harm CLECs?" [emphasis added] The pre-merger approval discovery process has nothing to do with any speculative ***harm*** that could be caused by the integration of CenturyLink's and Qwest's operations.

[49] Gates Direct at 73-78.

Q. ARE THERE ANY SPECIFIC LEVEL 3 PROPOSED CONDITIONS THAT HAVE NOT BEEN SUFFICIENTLY COVERED IN THE DISCUSSION OF THE OTHER PROPOSED MERGER CONDITIONS?

A. Yes. Level 3 seeks to impose an obligation for the merged company to pay a reciprocal compensation rate for all ISP-bound traffic inclusive of Virtual NXX ("VNXX"). This is a topic better addressed in a comprehensive arbitration proceeding.

Further, Mr. Thayer incorrectly states that CenturyLink has agreed to pay reciprocal compensation for ***all*** ISP-bound traffic.[50] The legacy CenturyTel affiliates do not pay reciprocal compensation to Level 3 for ISP-bound traffic (inclusive of VNXX traffic) pursuant to ICA terms that were negotiated between the parties.

What Mr. Thayer neglected to mention in his testimony regarding the legacy Embarq ICA terms is that Embarq agreed to this payment because Level 3 agreed to POI terms that favored Embarq, agreed to a lower rate than that set in the FCC's Remand Order, and also agreed to use the lower rate in *all* of Embarq's states; including those where Embarq had opted in to the higher Remand Order rate. In other words, the parties negotiated an entire agreement with holistic terms that reflected a give-and-take balancing of interests, just as Congress intended with the FTA.

[50] Thayer Direct at 12.

The separate CenturyLink affiliates and Level 3 already have existing ICAs that cover any compensation obligations for such traffic. The Commission should not change individual terms of these ICAs just because Level 3 seeks a better deal than it agreed to in negotiations or received in arbitrations.

Q. LEVEL 3 CLAIMS LEGACY EMBARQ ENGAGES IN 8YY ACCESS ARBITRAGE.[51] IS THIS TRUE?

A. No. First, there are no rules that require a carrier to use the closest tandem, without consideration of tandem ownership, for required 8YY database dips. The genesis of this issue dates back to when Embarq was not a standalone ILEC but was a division of Sprint Corporation. When a Sprint wireless subscriber made a call to an 800 number, Sprint's management wanted the call to be dipped in the database owned by Sprint's Local entities. Some limited transport charges do apply to this transited traffic, but Mr. Thayer is incorrect in asserting Embarq charges for "all the transport from the point of picking up the call…and back…"[52] This is traffic that is sent to Embarq for handling and, like all carriers, Embarq does charge for its services. Level 3 seeks to use Embarq to collect this traffic, but then have Embarq "pass it on" to a lower cost provider for further handling so that Level 3 can optimize its costs. As I stated, this is not required by any law or industry rules. Given that this issue predates the CenturyTel acquisition of Embarq, if this is valid concern for Level 3, it is instructive to note that Level 3 never raised the

[51] Thayer Direct at 21-23.
[52] Thayer Direct at 22.

issue in that prior merger. And again, this dispute has nothing to do with the merger and whether the merger is not contrary to the public interest in Washington, but is a separate, pre-existing, and independent dispute Level 3 improperly asks the Commission to resolve in the merger proceeding.

Q. MR. THAYER GETS INTO A DISCUSSION OF BILLING DISPUTE ISSUES TO JUSTIFY A LEVEL 3 PROPOSED MERGER CONDITION.[53] IS THERE ANY CREDENCE TO HIS TESTIMONY?

A. No. Mr. Thayer's testimony on billing disputes, which involves a fear that CenturyLink could leverage existing billing disputes with one ILEC affiliate to threaten nationwide disconnection of a CLEC's services, falls into the same category that we have seen with other CLEC testimony; that is Mr. Thayer speculates what *might* happen instead of relating any specific facts. Mr. Thayer also fails to state how the merged company would engage in this speculative behavior in defiance of ICA terms that legally dictate the operating relationship between Level 3 and a single legal entity CenturyLink affiliate.

Further, Mr. Thayer testifies to his support for proposed conditions that would bind the post-merger CenturyLink and Qwest affiliates as a single entity,[54] such as the porting of affiliate agreements and a single POI per LATA, but for this alleged issue he offers

[53] Thayer Direct at 23-24.
[54] Thayer Direct at 3-4.

contradictory testimony by expressing a concern over a hypothetical issue that would occur only if the affiliates were bound as one company.

Q. DO YOU HAVE ANY FINAL THOUGHTS TO BRING TO THE COMMISSION'S ATTENTION?

A. Yes. The CLECs are attempting to use this merger approval proceeding to impose new and specialized interconnection obligations upon CenturyLink and Qwest, obligations which are not authorized by law, and which have not been obtained through good faith negotiations or arbitrations contemplated under §§ 251 and 252 of the FTA. The CLECs are also attempting to use this merger proceeding to resolve non-merger disputes that have been or should be resolved in other proceedings or forums. The Commission should not permit CLECs to dictate terms different than those already negotiated and approved by the Commission, and to circumvent other established procedures for dealing with such issues. For the foregoing reasons, and for the reasons stated in the Application, the Commission should promptly approve the proposed transfer of control without any conditions.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes