EXHIBIT ___ RHB-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

ROBERT H. BRIGHAM

ON BEHALF OF

QWEST COMMUNICATIONS INTERNATIONAL, INC.

NOVEMBER 1, 2010

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH QWEST.

A. My name is Robert H. Brigham. My business address is 1801 California Street, Denver, Colorado, and I am currently employed by Qwest Corporation ("QC") as a Staff Director in the Public Policy department. I am testifying on behalf of Qwest Communications International, Inc. ("QCII").

Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?

A. No.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND EMPLOYMENT EXPERIENCE.

A. In 1983, I received a Master of Business Administration (MBA) degree from the University of Colorado in Denver, Colorado. My area of emphasis was financial analysis. I received a Bachelor of Arts degree in 1974 from Stetson University.

I began my employment with Qwest (formerly Mountain Bell and U S WEST) in 1976. Between 1976 and 1980, I held various positions in the Mountain Bell Commercial (marketing) department. In 1980, I accepted the position of Analyst in the Cost, Rates and Regulatory Matters department, working primarily on the development of embedded cost data. In June 1987, I accepted the position of Manager in the U S WEST Service Cost organization, with responsibility for economic analysis and the development of incremental costing methodologies. In September 1992, I accepted the position of Director- Product Cost Specialist, and assumed responsibility for developing and supporting U S WEST cost studies in formal regulatory proceedings, and representing U S WEST in costing and pricing workshops sponsored by various regulatory commissions in the U S WEST region. Between May 1994 and June 1997, I served as Director- Product and Market Issues. In that position, I managed competitive and local interconnection issues, supporting U S WEST's interconnection negotiation and arbitration efforts. In June, 1997, I rejoined the U S WEST cost organization as Director- Service Costs, where I was responsible for managing cost issues, developing cost methods and representing Qwest in proceedings before regulatory commissions. I held this position until April 2004, when I assumed my present responsibilities. In my current role, I represent Qwest on issues concerning pricing, competition and regulatory issues.

Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE WASHINGTON COMMISSION?

A. No.

Q. HAVE YOU TESTIFIED BEFORE OTHER STATE REGULATORY COMMISSIONS?

A. Yes. I have presented testimony before commissions in Arizona, Colorado, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah and Wyoming.

II. <u>PURPOSE OF TESTIMONY</u>

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to address certain aspects of the testimonies of Dr. August Ankum and Mr. Timothy Gates filed on behalf of the *Joint CLECs*,[1] the testimony of Mr. James Appleby filed on behalf of Sprint/Nextel, and the testimony of Mr. Charles King filed on behalf of the Department of Defense ("DOD"). My testimony, which complements the testimonies of Mr. John Jones, Mr. Michael Hunsucker, Mr. Clay Bailey and Mr. Todd Schafer filed on behalf of CenturyLink and the testimonies of Mr. Mark Reynolds, Mr. Mike Williams and Mr. Christopher Viveros filed on behalf Qwest, demonstrates that the Washington telecommunications market is extremely competitive, and that the merger between CenturyLink and Qwest (the "Transaction") will cause no competitive harm in the state. In fact, the Transaction will enhance competition and will provide many benefits to Washington consumers and businesses. Therefore, the Transaction is in the public interest and should be approved.

III. <u>COMPETITIVE IMPACT OF THE MERGER</u>

A. <u>Intervenor Claims of Competitive "Harm"</u>

Q. MR. GATES AND DR. ANKUM CLAIM THAT THERE ARE NUMEROUS COMPETITIVE "HARMS" THAT "COULD" RESULT FROM THE MERGER. PLEASE COMMENT.

A. I am struck by the highly-speculative and unsupported nature of Dr. Ankum's and Mr. Gates' testimony regarding how this merger will impact the competitive landscape in Washington. Throughout their testimonies, they refer to the "harms"

[1] Integra Telecom of Washington, Inc., Electric Lightwave, Inc., Advanced TelCom, Inc., and United Communications, Inc. d/b/a Unicom (collectively "Integra"); tw telecom of washington, llc; Covad Communications Company; Level 3 Communications, LLC; McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services; Charter Fiberlink WA-CCVII, LLC; and Cbeyond Communications LLC (collectively referred to in my testimony as "Joint CLECs")

that "could" occur if the merger is approved (without onerous conditions), and the alleged "incentives" of the combined company to thwart competition, act in a discriminatory non-competitive manner, or otherwise harm CLECs. Yet these witnesses provide no evidence suggesting that these claims are likely to become a reality in Washington as a result of this transaction. As described below, Mr. Gates, Dr. Ankum and Mr. Appleby speculate that the proposed transaction will harm competition, but this speculation is not supported by any evidence.

Q. CAN YOU PROVIDE AN EXAMPLE OF THIS LACK OF EVIDENCE?

A. Yes. Both Mr. Gates and Dr. Ankum (and Mr. King) provide a lengthy discussion of previous mergers and acquisitions.[2] Mr. Gates and Dr. Ankum repeatedly present these mergers as "lessons" of the awful things that "could" happen in this transaction. For example, Mr. Gates allegedly puts the Transaction in "context" by identifying the "significant problems that have occurred" following allegedly "similar" mergers, including the recent FairPoint acquisition of Verizon properties in New England and the investment firm Carlyle Group's acquisition of Verizon properties in Hawaii.[3] He states that "[s]ignificant problems have been experienced after recent mergers – problems that could occur after the proposed transaction if it is approved as filed."[4] However, as described in Mr. Jones' rebuttal testimony, the FairPoint transaction, as well as other recent transactions (including the Hawaiian Telecom transaction), bear little resemblance to the proposed merger of

[2] In this discussion, Mr. Gates and Dr. Ankum focus solely on a couple of less-successful transactions, while fully ignoring many other more-successful transactions. Mr. Jones' rebuttal testimony discusses this further.

[3] Direct Testimony of Timothy Gates ("Gates Direct"), p. 6.

[4] Gates Direct, p. 90.

CenturyLink and Qwest.[5] There is no reason to assume that the problems experienced during these very different transactions would somehow translate into harmful consequences for the competitive telecommunications market in Washington after approval of this merger. The Commission should not place any reliance on references to these non-comparable transactions, as they provide no evidentiary basis to reject this transaction or impose significant onerous conditions.

B. Merger Synergies and Competition

Q. ACCORDING TO DR. ANKUM, HOW WILL THE MERGER IMPACT CLECs AND COMPETITION IN WASHINGTON?

A. Dr. Ankum testifies that the Transaction represents a predominantly *horizontal* merger of companies that are generally in the same line of business in different geographic service areas.[6] While touting the possible benefits of *vertical* mergers,[7] he argues that the horizontal combination of these allegedly "struggling" companies with a "shrinking landline base" is unlikely to provide substantial merger benefits,[8] and will instead yield a riskier company that may never even recoup the upfront costs of integration.[9] According to Dr. Ankum, "a major concern is that, under the

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[5] As Mr. Jones explains, FairPoint and Hawaiian Telcom experienced financial distress that can be traced directly to their inability to create functioning Operational Support Systems ("OSS") "from scratch." However, in ILEC transactions where there has not been the need to create new OSS—as is the case with the proposed Transaction—there is a long track record of successful integrations resulting in improved combined operations, including numerous transactions involving CenturyLink.

[6] Direct Testimony of August H. Ankum, Ph.D. ("Ankum Direct"), pp. 38-39.

[7] A *horizontal* merger is a merger between companies producing similar goods or offering similar services. A *vertical* merger is a merger between two companies producing different goods or services for one specific finished product. In this instance, a company may purchase a supplier or customer to obtain upstream and downstream market benefits.

[8] Ankum Direct, pp. 38, 40.

[9] *Id*., p. 41

pressure of its debt load, the promises of merger savings to shareholders and regulators, and significant integration costs, CenturyLink will be forced to cut costs when integrating the two companies, leading to a degradation of services to wholesale customers and harm to competition."[10] He claims that the post-merger company will have the "incentive" to decrease wholesale service quality in order to reduce costs, and to improve its competitive positioning in the retail market against CLECs.[11]

Q. DO MR. GATES AND MR. APPLEBY MAKE SIMILAR CLAIMS?

A. Yes. Mr. Gates claims that "[o]ut of the many ways that the Merged Company could integrate the two companies to the detriment of competition, degrading the quality or access to OSS [Operational Support Systems] would be the most effective."[12] Mr. Appleby claims that the merged company will achieve synergies "by raising costs to competitors like Sprint by reducing wholesale staff . . . and cutting corners on OSS integration which makes customer choice more expensive."[13]

Q. IS THERE ANY BASIS FOR THESE CLAIMS?

A. No. These witnesses list various negative competitive impacts that "could" occur based on the merger, but they provide no evidence that their asserted scenarios will

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[10] *Id.*, p. 45.

[11] Ankum Direct, p. 14, stating: "Further, CLECs compete with CenturyLink and Qwest for business and residential customers, which creates a perverse incentive structure in which CenturyLink and Qwest may have disincentives to provide CLECs with quality, reasonably priced, nondiscriminatory wholesale services and network access."

[12] Gates Direct, p. 36.

[13] Direct Testimony of Mr. James Appleby ("Appleby Direct"), p. 22

occur or that the merger is likely to have any negative impact on competition. It is true that the post-merger company seeks to take advantage of synergies that the merger will provide, and to capitalize on the strengths of each company, as described in the testimonies of Mr. Jones and Mr. Bailey. However, there is no basis to assume that the combined company will cut costs in a manner that harms CLECs—who will remain major customers of the post-merger company. As competitive options from other facilities-based providers such as cable and wireless companies (who may serve customers without use of the Qwest or CenturyLink facilities) continue to grow, the post-merger company will have every incentive to meet CLECs' needs with high-quality service and OSS in order to keep wholesale providers—and their retail customers—on the combined company's network. The post-merger company cannot afford, and has no incentive, to degrade OSS or offer inferior service quality because customers—including CLECs—have competitive options. Importantly, the synergies realized by the merger will reduce costs by eliminating duplicative functions and increasing economies of scale and scope. However, the actual functions needed to provide outstanding service will *not* be eliminated or compromised. As described in the testimonies of Mr. Hunsucker and Mr. Williams, the combined company will offer high-quality wholesale service and OSS after the Transaction is completed, just as Qwest and CenturyLink do today.

Furthermore, the arguments of Dr. Ankum, Mr. Gates and Mr. Appleby regarding OSS and service quality are red herrings because, even after the merger, wholesale services that the Qwest subsidiary provides will remain subject to current Interconnection Agreements ("ICAs"), tariffs and/or other existing contractual obligations. For example, the provision of Unbundled Network Elements ("UNEs") will still be regulated under Section 251 of the Telecommunications Act, and the Commission will retain the authority to approve or deny changes to interconnection agreements that provide for CLEC access to UNEs. In addition, the Performance Assurance Plan ("PAP") that applies today to Qwest is reflected in the vast majority of ICAs, and as such, will still apply after the merger is completed, as described by Mr. Williams. Every contractual and legal protection available to CLECs today will still be available after the merger is completed.

Q. DO YOU AGREE WITH DR. ANKUM'S CHARACTERIZATION OF THE TRANSACTION AS A DESPERATE MERGER OF "STRUGGLING" COMPANIES?

A. No. Qwest and CenturyLink are clearly experiencing competitive pressures from CLECs, cable providers, VoIP providers and wireless carriers, and like all companies, are navigating through a difficult economic environment. However, it is not fair to say that Qwest and CenturyLink are "struggling" today, and that this is a merger of desperate companies. In fact, it is interesting that Dr. Ankum characterizes the companies as "struggling," while at the same time arguing that the companies are able to dominate the market and exercise "market power" to thwart competition. Dr. Ankum is unable to reconcile this contradiction. In reality, despite a challenging competitive and economic environment, Qwest and CenturyLink have maintained high-quality service and continued to invest in their networks, while effectively managing costs and earning a profit. The key point is that the merger will result in a company that is better able to meet future challenges than each company would be on its own.

Q. HAS QWEST PROVIDED OUTSTANDING WHOLESALE SERVICE QUALITY OVER THE PAST SEVERAL YEARS IN WASHINGTON?

A. Yes. Qwest has been providing outstanding service quality to CLECs over the past several years, even as it has been carefully monitoring and reducing its costs and improving its balance sheet. On the wholesale side, Qwest payments based on the QPAP have generally declined in Washington over the years, as described by Mr. Williams. This high level of service quality has occurred at the same time that Qwest's total headcount has declined from approximately 41,000 in December 2004 to approximately 30,000 in December 2009.[14] The bottom line is that pressures to reduce costs and operate efficiently are not new phenomena resulting from the merger; like every company, Qwest has always been under pressure to keep costs as low as possible. Even so, Qwest has continued to improve wholesale service quality while pursuing all available efficiencies. Given past performance and the legal and contractual protections that CLECs already possess, the intervenors' claims that any synergies realized by the combined company and any potential future headcount reductions will harm wholesale service quality are unfounded and represent nothing more than speculation.

C. The Competitive Environment in Washington

Q. ACCORDING TO MR. GATES, DR. ANKUM AND MR. APPLEBY, IS THE WASHINGTON TELECOMMUNICATIONS MARKET SUFFICIENTLY COMPETITIVE TODAY?

[14] See Qwest Quarterly Earnings reports, Fourth Quarter 2004 and Fourth Quarter 2009, at http://investor.qwest.com/earningsarchive.

A. No. Mr. Gates, Dr. Ankum and Mr. Appleby argue that the Washington telecommunications market is not sufficiently competitive, and that Qwest and CenturyLink possess a level of market power that allows them to dominate the wholesale and retail telecommunications market in the state today. According to these witnesses, the merger will harm competition by conferring the merged company with additional market power, which would allegedly allow the company to act in an anti-competitive manner to the detriment of retail and wholesale customers and the public interest in Washington. According to Dr. Ankum "[i]t is in the Joint Applicants' interests to strengthen their already dominant market positions in order to realize benefits that justify the merger."[15] These "interests" would allegedly lead to anti-competitive actions by the merged company.

Q. DO YOU AGREE WITH THIS ASSESSMENT?

A. No. As described below, and in Mr. Reynolds' direct testimony, the Washington telecommunications market is extremely competitive today. Because of this high level of competition, and the ability for customers to take advantage of competitive alternatives, Qwest and CenturyLink do not have "already dominant positions" that would allow the merged company to take advantage of undue "market power" in the Washington retail and wholesale markets. While the Transaction should result in a post-merger company that is stronger and more competitive than the two companies standing alone (as described by Mr. Jones and Mr. Bailey) there is no basis for Dr. Ankum's assumption that the merged company will take advantage of synergies and increased financial strength to threaten the "viability of

[15] Ankum Direct, p. 21.

competition."[16] The "market power" claims of these parties are based entirely on speculation, are not fact-based, and ignore the realities of the market.

1. The Retail Market

Q. DO MR. GATES AND DR. ANKUM CLAIM THAT ILECs DOMINATE THE RETAIL LOCAL EXCHANGE MARKET IN WASHINGTON?

A. Yes. Mr. Gates states that "ILECs' share of total end-user switched access lines and VoIP subscriptions in Washington was 69 percent as of the FCC's most recent Local Telephone Competition Report."[17] Based on this "share," he claims that ILECs, including Qwest and CenturyLink, dominate the Washington retail telecommunications market. Dr. Ankum claims that freedom of choice does not exist for "captive" retail customers, who he claims are totally dependent on Qwest and CenturyLink.[18] According to Mr. Gates, Dr. Ankum and Mr. Appleby, since Qwest and CenturyLink allegedly have a large share of the "wireline" telecommunications market, they possess significant retail market power and an incentive—and the ability—to act in an anti-competitive manner, to the detriment of consumers and businesses. They argue that this situation will only be exacerbated by the merger.

Q. IS THIS A PROPER CHARACTERIZATION OF THE WASHINGTON RETAIL TELECOMMUNICATIONS MARKET TODAY?

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[16] Ankum Direct, p. 21.

[17] Gates Direct, p. 16.

[18] Ankum Direct, p. 10: "Specifically, retail customers in captive segments of retail markets have little or no choice . . . ."

A. No. As Mr. Reynolds describes in his direct testimony, the Washington retail telecommunications market is very competitive today.[19] Qwest faces significant competition in Washington from:

- Cable companies including Comcast (who Qwest estimates serves at least 450,000 voice customers in the state), Charter and many smaller providers;
- CLECs (including Integra, PAETEC/McLeod, XO, Level 3 and many others);
- VoIP providers (including Google, Vonage, MagicJack and many others), and:
- Wireless carriers (including AT&T, Verizon, Sprint and T-Mobile).

Washington consumers and businesses have numerous alternatives to meet their local voice calling and broadband needs. The market is becoming more competitive every day, and there is no reason to conclude that this explosion of competitive alternatives will subside as new technologies are developed and customer preferences evolve. Just as Qwest's and CenturyLink's "market power" is constrained by competition today, the market power of the combined company will be constrained by increasing competition in the future.

Q. ARE THERE SPECIFIC FLAWS IN MR. GATES' "MARKET SHARE" ANALYSIS?

[19] Direct Testimony of Mark Reynolds ("Reynolds Direct"), pp. 17-23

A. Yes. Mr. Gates' competitive "market share" analysis is flawed in large part because he ignores *wireless* competition and relies on measures of historical market share that do not account for market trends. The 69% ILEC share of "total end-user switched access lines and VoIP subscriptions" identified in Table 8 of the FCC's *Local Competition Report* does not account for wireless competition from companies such as AT&T, Verizon, Sprint and T-Mobile. Mr. Gates ignores wireless service, even though it is clear that many Washingtonians are substituting wireless service for wireline service today, and that wireless serves as a price-constraining substitute for wireline services. As described in Mr. Reynolds' direct testimony, 25% of Americans had already "cut the cord" in the second half of 2009 and no longer had a wireline phone, while another 15% had a landline yet received all or almost all calls on wireless telephones.[20] According to the latest FCC data, ILEC wirelines represent *only 25%* of all switched wireline, VoIP and wireless connections in Washington, and combined ILEC/CLEC wirelines account for only 36% of all switched wireline, VoIP and wireless connections in the state.[21] The impact of wireless services on the local exchange market in Washington cannot be ignored in any reasonable competitive analysis.

Q. SHOULD THE COMMISSION RELY ON HISTORICAL MARKET SHARE MEASURES TO DRAW INFERENCES REGARDING A FIRM'S MARKET POWER?

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[20] Centers for Disease Control and Prevention, National Center for Health Statistics, Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2009, released May 12. 2010, p. 1.

[21] *Local Telephone Competition: Status as of June 30, 2009*; Industry Analysis and Technology Division, Wireline Competition Bureau, September 2010, Tables 8 and 17. For Washington, this report shows 2.211 million ILEC lines,1.013 million non-ILEC lines, and 5.671 million wireless connections.

A. No. The Commission should not rely exclusively or predominantly on historical local exchange market share measures to draw inferences regarding market power, for several reasons.[22] First, the relationship between "market share" and "market power" is likely to be particularly misleading in a regulated environment where rates have been set by regulators to meet policy objectives (such as, for example, universal service) rather than by market forces. Second, any measure of market share is necessarily static, based on some historical time period. In that sense, market share does not provide an indicator of where the market is headed, or what competitive alternatives are available to customers. That is particularly true when one provider, such as Qwest or CenturyLink, started out with 100% of the market in its ILEC territory, but is now subject to competition from many directions, and is experiencing declining subscribership. Third, it is important to understand that competitive *capacity* provides a better indicator of market power than market share. If competitive *capacity* exists, a high historical market share is not determinative that the firm has a high level of market power. For example, if a cable company enters an ILEC voice service market (with ubiquitous facilities), it may appear initially that the ILEC has a dominant market share since the cable company has not *yet* gained a significant number of customers. However, the significant factor is that the cable service is *available* to the ILEC customers, and thus the share of *capacity* is closer to 50% for each provider.[23]

[22] See, for example: *Principles of Competition and Regulation for The Design of Telecommunications Policy*, Dennis Weisman and Timothy Tardiff, filed with Qwest's Reply Comments (Exhibit 1s) in FCC Docket WC Docket No. 09-135, *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, October 21, 2009, pp. 21-26.

[23] Dr. Dennis Weisman and Dr. Timothy Tardiff provide an example: "Consider, for example, a particular market in which the ILEC and a cable company compete. Suppose the cable company quickly garners 5 percent of the customers and the ILEC files for deregulation. There may be a tendency to conclude that the ILEC continues to maintain market power since it has 95 percent of the customers. And yet, if capacity is truly the relevant measure of market share, and both the ILEC and the cable company are

For these reasons, the Commission should not rely on historical market share in isolation as a measure of the level of Qwest or CenturyLink market power—before or after the merger. Even so, the fact that ILECs now have only 25% of the combined wireline and wireless connections in Washington (based on the aforementioned FCC data) demonstrates the lack of market power these firms possess.[24] And importantly, Qwest's access lines continue to decline as customers move to CLEC, cable telephony, wireless and VoIP alternatives that are available throughout its Washington serving area.

Q. DOES MR. KING AGREE THAT COMPETITION IS FIERCE IN THE RESIDENTIAL RETAIL SERVICES MARKET?

A. Yes. Mr. King acknowledges that the residential voice market in Washington is very competitive, and that Qwest today and the post-merger company in the future, face increasing competition that constrains prices. He states: "In light of the fierce competition for these services, it is unlikely that Qwest could sustain significant rate increases either for its residential wireline service or its residential multi-service bundles."[25]

able to address 100 percent of the customers, the ILEC's market share is actually only 48.72 percent (95/(95 + 100))" See: *Principles Of Competition And Regulation For The Design Of Telecommunications Policy*, Dennis Weisman and Timothy Tardiff, filed with Qwest's Reply Comments (Exhibit 1s) in FCC Docket WC Docket No. 09-135, *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, October 21, 2009, pp. 23-24.

[24] Since Qwest operates in the most competitive areas of the state, the Qwest share may be less than the total ILEC share in Washington.

[25] Direct Testimony of Charles W. King ("King Direct"), p. 15.

Q. DO YOU AGREE WITH MR. KING'S ASSESSMENT OF THE RESIDENTIAL RETAIL MARKET?

A. Yes. I agree with Mr King that there is a significant level of competition in the Washington residential voice market, and that this competition constrains Qwest's retail pricing.

Q. HOW DOES MR. KING CHARACTERIZE THE MARKET FOR BUSINESS TELECOMMUNICATIONS SERVICES IN WASHINGTON?

A. Mr. King claims that businesses in Washington (especially small businesses) are "heavily dependent on the conventional telephone."[26] He argues that cable TV companies are "somewhat less of a competitive threat" in the business market than in the residence market,[27] and that CLEC competition in the business market is "small and declining."[28] To support this conclusion, Mr. King alleges that according to the FCC's *Local Competition Report,* "[i]n 2009, CLECs served only 14.7 percent of the access lines in Washington, down from 15.8 percent in the previous year"[29]

Q. DO YOU AGREE WITH MR. KING'S ASSESSMENT OF THE BUSINESS TELECOMMUNICATIONS MARKET IN WASHINGTON?

A. No. Mr. King has not accurately characterized the level of competition from CLECs and other providers in the Washington business market today, and he has

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[26] *Id*.

[27] *Id*.

[28] *Id*.

[29] *Id*.

misapplied the FCC's *Local Competition Report* data by not counting VoIP connections. Table 8 of the FCC's *Local Competition Report* identifies "Total End-User Switched Access Lines and VoIP Subscriptions by State as of June 30, 2009" for ILECs and non-ILECs. Mr. King' analysis incorporates 380,000 Washington non-ILEC switched access lines as listed in Table 8 of the FCC report, but fails to consider the 632,000 non-ILEC lines listed in the report that utilize VoIP technology.[30] Thus, while Mr. King claims that the CLEC share of the wireline market is 14.7%, the FCC's *Local Competition Report* specifically states that the Washington non-ILEC share of end-user switched access lines and VoIP connections as of June 2009 was 31%, not 14.7%.[31] [32] The non-ILECs' 31% share of the Washington wireline market certainly cannot be characterized as "small."[33] Furthermore, the non-ILEC percentage is likely to be higher in the Qwest-served portion of the state, which includes the Seattle-Tacoma areas where non-ILECs are most prevalent.

The reality is that in Qwest's Washington serving area, there are numerous CLECs, including Integra, Level 3, XO, PAETEC, AT&T, Verizon, Granite and others that

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[30] *Local Telephone Competition: Status as of June 30, 2009*; Industry Analysis and Technology Division, Wireline Competition Bureau, June 2010, Table 8.

[31] *Id*., Tables 8 and 11. It may be argued that the non-ILEC share of wirelines increased from 16% in June 2008 to 31% in June 2009. However, it is difficult to compare June 2008 data with June 2009 data because the FCC *Local Competition Report* did not begin to count all VoIP connections until the release of December 2008 data.

[32] Mr. King does not address the fact that the *Local Competition Report* also provides separate wireline share data for *business and residence* access lines and VoIP connections. Table 10 of the report shows that the ILEC share of end user switched access lines and VoIP connections as of June 30, 2009 was 33%-- slightly higher than the 31% share for all end users. However, whether the *total* or *business-only* non-ILEC percentages are used, the percentage of non-ILEC access lines and VoIP connections is over 30%.

[33] As described earlier, historical market share measures do not provide an indicator of market power, as they do not capture the dynamic nature of the market or the availability of alternatives.

are focused *solely* on marketing services to small, medium and enterprise business customers. The competitive presence of these providers has increased over the past several years, and it likely to increase in the future. Further, cable companies such as Comcast are now focused on providing services to business customers. On its "Comcast Business Class" web site, Comcast specifically markets services to the small, medium and large business segments.[34] Comcast has significantly increased its capital expenditures for business services, stating in its second quarter 2010 earnings release that "Capital Expenditures for the second quarter of 2010 increased 1.5% to $1.1 billion, or 11.9% of total revenue, reflecting *increased investments in Comcast Business Services* and product enhancement initiatives."[35] Comcast states that its investment in Business Services supports "growth in SMB and expansion in Metro-E [Ethernet] and cell backhaul."[36]

Q. DOES MR. KING PROPOSE A CAP ON BUSINESS RATES FOR THE POST-MERGER COMPANY?

A. Yes. Due to the allegedly declining competition from CLECs, Mr. King concludes that the post-merger company "will probably seek additional revenues from the small business market." He states that "additional revenue is likely to take the form of unilateral rate increases,"[37] and would be "motivated by the need to raise revenue

[34] See: http://business.comcast.com/index.aspx?navid=HeaderHome

[35] See: http://files.shareholder.com/downloads/CMCSA/1033797624x0x390362/49bc4416-c5b1-4191-b0e9-2446d0639502/Comcast_Q2Release_7.27.10.pdf. According to the Comcast earnings release, business services capital expenditures increased from $231 million in 2008, to $351 in 2009 and to $205 million for just the *first half* of 2010. See: http://files.shareholder.com/downloads/CMCSA/1033797624x0x390363/792b6060-5a51-4e93-9729-975e5ca558fd/Comcast_TrendingPDF_7.27.10.pdf.

[36] See: http://files.shareholder.com/downloads/CMCSA/1033797624x0x390531/10b68903-98e0-4f3f-b5e6-709ad046f020/Comcast_Q2Slides_7.27.10.pdf.

[37] King Direct, p. 16.

to implement the merger."[38] In order to address this "problem" Mr. King recommends that the Commission impose a three year price cap for most business services, including single and multiple line rates, PBX, Centrex and Special Access services.[39]

Q. IS THERE ANY BASIS FOR A CAP ON BUSINESS RATES AS PROPOSED BY MR. KING?

A. No. The proposed business rate cap as proposed by Mr. King is similar to the three year business exchange service rate cap proposed by the Commission Staff in its Condition #30. As Mr. Reynolds describes in his rebuttal testimony, there is no basis for imposing this condition on the post-merger Qwest or CenturyLink subsidiaries. Since CenturyLink's business rates are tariffed, any rate increase would require Commission approval. Mr. Reynolds also notes that Qwest's business rates are effectively classified as competitive and are not subject to tariffs, based on the recognition that the business market in Washington is highly competitive, with CLECs, cable companies and VoIP providers all marketing services to business customers. This competitive market pressure will constrain the post-merger company's business service prices, just as it constrains Qwest's and CenturyLink's business service prices today. Thus, there is no justification for a merger condition that would place a cap on the post-merger company's business rates.

Q. MR. APPLEBY EXPRESSES CONCERN THAT THE LARGER COMPANY WILL HAVE A "GREATLY ENHANCED ABILITY TO WIELD MARKET

[38] *Id*.

[39] *Id*., p. 17.

POWER TO THE DETRIMENT OF CONSUMERS AND COMPETITORS."[40] PLEASE COMMENT.

A. Like Mr. Gates and Dr. Ankum, Mr. Appleby states that the combined company will have the ability to wield increased market power. However, he provides no evidence that even comes close to proving that the post-merger company will have a "lopsided competitive advantage . . . over competing carriers."[41] Mr. Appleby simply assumes that the merged firm will have "more potential to engage in anticompetitive behavior within its expanded footprint" than the legacy Qwest or CenturyLink had before the merger.[42] He speculates that "telecommunications service choices and prices in the market could be adversely impacted," but does not provide any meaningful evidence as to how this adverse impact would occur in Washington.[43] Mr. Appleby claims that (1) allegedly inflated switched access charges will harm competitors and (2) the combined company will have a huge advantage because it will allegedly avoid switched access rates that Qwest and CenturyLink currently pay each other. However, Mr. Jones' testimony effectively debunks Mr. Appleby's theory regarding this alleged competitive advantage. Mr. Jones points out that after the merger, the company will continue to charge the tariffed rates to *all* long distance providers—including its own affiliates—just as the companies do currently.

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[40] Appleby Direct, p. 5.

[41] *Id.*, p. 19.

[42] *Id.*

[43] *Id.*

Q. MR. APPLEBY CLAIMS THAT "THE MERGED FIRM WILL INCREASE ITS MARKET CONCENTRATION IN THE LONG DISTANCE, ENTERPRISE AND BROADBAND MARKETS."[44] PLEASE COMMENT.

A. First, it is rather absurd to claim that the merged company will gain additional market concentration and gain competitive advantage in the long distance market due to the merger. The long distance market in Washington and the U.S. is extremely competitive today, and Qwest and CenturyLink's share of this market is miniscule (less than 10% combined), especially compared to AT&T and Verizon (more than 70% combined).[45] In addition, the distinction of the "long distance" and "local" markets is quickly disappearing, as customers adopt the pricing plans of wireless providers that offer long distance at no additional charge. The telecommunications market is becoming an "all-distance" market, and thus it is clear that the merged company will not be able to wield market power in the highly-competitive "long distance" market. In its 2009 10K report filed with the SEC Sprint itself says: "The traditional dividing lines among long distance, local, wireless, video and Internet services are increasingly becoming blurred."[46] Further, in the recent merger hearing in Minnesota, Mr. Appleby admitted that the telecommunications voice market is moving to an "all-distance" market:

> I'm talking about the telecommunications market and all the services that can be provisioned to customers today, okay. So it's not just a matter of

[44] *Id.*, p. 2.

[45] According to a recent study by Atlantic/ACM, the AT&T and Verizon combined share of the long distance market is more than 70% in the U.S., with the Qwest and CenturyLink share less than 10% combined. *Wireless Wins, Wireline Wanes: U.S. Telecom Wired and Wireless Sizing and Share 2010-2015*, Atlantic/ACM, 2010.

[46] Sprint 2009 10K Report, filed February 26, 2010, p. 18. See: http://investors.sprint.com/phoenix.zhtml?c=127149&p=irol-sec.

> looking at the local telephone lines, it's a matter of looking at the all-distance bundled services that you can provide to customers.[47]

Second, the intervenor witnesses cannot reasonably argue that the combined company will be able to harm competition by increasing concentration in the enterprise market. As Mr. Reynolds describes in his direct testimony and Mr. Jones describes in his rebuttal testimony, Qwest and CenturyLink's presence in the enterprise business today is dwarfed by other national providers, including AT&T and Verizon. Mr. Reynolds noted that "[f]or total year 2009, Qwest *total* Business Markets Group revenues were $4.09 billion, compared to business revenues of $14.74 billion for AT&T and $14.99 billion for Verizon."[48] He continues that "[i]n terms of business revenues for 10 of its top competitors,[49] Qwest's share of that business market is less than 10%, compared to 33% each for AT&T and Verizon."[50] Of particular interest is that *Sprint's wireline revenues—which are predominantly business-related—were $5.6 billion in 2009—more than Qwest's Enterprise revenues* for the year.[51] Mr. Appleby's claim of competitive harm to the enterprise market as a result of the merger of CenturyLink and Qwest is simply not credible.

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[47] In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink, Minnesota PUC Docket No. P421,et.al./PA-10-456; OAH Docket No: 11-2500-21391-2, Transcript, Volume 3, p. P. 173.

[48] Reynolds Direct, p. 15. *See* e.g., 2009 10K reports for Qwest at http://qwest.investorroom.com/qcii-sec-filings, Verizon at http://investor.verizon.com/sec/index.aspx and AT&T at http://phx.corporate-ir.net/phoenix.zhtml?c=113088&p=irol-sec&control_selectgroup=Show%20All. The revenues provided represent total company business revenues from corporate reports, and are not limited to Washington.

[49] Includes AT&T, Verizon, Sprint, Cbeyond, Cogent, Global Crossing, Level 3, PAETEC, tw telecom and XO Communications.

[50] Reynolds Direct, p. 15.

[51] See Sprint 2009 10K Report, filed February 26, 2010, p. 44. Regarding wireline services, Sprint states on page 4 of its 10K:

> We provide a broad suite of wireline voice and data communications services to other communications companies and targeted business subscribers. In addition, we provide voice, data and IP communication services to our Wireless segment and IP and other services to cable Multiple System Operators (MSOs) that resell our local and long distance service and use our back

Third, Mr. Appleby's claim that the merger will cause harmful concentration in the broadband market is not supported by the evidence. In Washington today, based on the FCC's latest *Internet Access Services Report*, DSL broadband connections—like those offered by Qwest—represent less than 22% of the total broadband connections in the state.[52] The number of cable modem and wireless broadband connections both far exceeds the number of ADSL connections in Washington; thus the combined company will hardly "dominate" the broadband market in the state. Instead, the merger will provide the combined company with the financial and operational resources to invest in broadband networks, and to better compete against cable modem and wireless broadband options. This is clearly in the public interest, and will benefit Washington consumers, businesses and wholesale customers.

Q. DOES DR. ANKUM CLAIM THAT THE MERGER WILL SIGNIFICANTLY IMPACT COMPETITION, TO THE DETRIMENT OF THE PUBLIC INTEREST?

A. Yes. Dr. Ankum argues that:

> A merger of CenturyLink and Qwest reduces competition in areas and for services in which the companies compete. While, for the most part, the companies operate in their own separate service areas, there are

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> office systems and network assets in support of their telephone service provided over cable facilities primarily to residential end-user subscribers.

While there may be some retail residential service revenue included in Sprint's $5.6 billion "wireline" revenues, it is likely to be very small.

[52] *Internet Access Services Status as of June 30, 2009*, Industry Analysis and Technology Division, Wireline Competition Bureau, September 2010, Table 14. As of June 30, 2009, the FCC reported 596,000 ADSL connections, 1,110,000 cable modem connections and 904,000 mobile broadband connections out of a total of 2.7 million (at least 200 kbps in one direction) in Washington.

> significant instances in which they do compete. Clearly, a merger would eliminate this competition, and in doing so harm the public interest.[53]

Dr. Ankum also claims that Qwest and CenturyLink serve "large numbers of exchanges that are adjacent," and that "the merger will eliminate any incentive" for competition between the two companies.[54] Thus, according to Dr. Ankum, the merger would present significant competitive harms.

Q. ARE THESE LEGITIMATE CONCERNS?

A. No. As Mr. Reynolds describes in his direct testimony, the Qwest and CenturyLink local exchange serving areas in Washington are complementary. Qwest serves the larger urban areas in the state including Seattle, Tacoma and Spokane areas, along with many other cities and towns along the I-5 corridor. CenturyLink, on the other hand, serves many rural areas and smaller communities in the state. Thus, the local exchange serving areas of the two companies do not overlap and are complementary. While Qwest serves several exchanges in Washington that are adjacent to CenturyLink exchanges, it is hard to see how the combination of the companies would somehow have a negative impact on competition via the elimination of one of the companies as a "potential" competitor.

Q. AFTER THE TRANSACTION IS COMPLETED, WILL THE WASHINGTON TELECOMMUNICATIONS MARKET STILL BE ROBUSTLY COMPETITIVE?

A. Yes. After the Transaction is completed, all of the same providers that compete against Qwest and CenturyLink today—as described above and in Mr. Reynolds'

[53] Ankum Direct, p. 46.

[54] *Id.*, pp. 46-47.

direct testimony—will still be competing with the combined company in Washington. In fact, it is likely that the impact of competition will continue to grow as alternative providers continue to attract new customers and invest in additional network capacity. There is no basis to conclude, as Dr. Ankum and Mr. Gates do, that the merger will somehow harm competition in the state.

Q. HAS THE U. S. DEPARTMENT OF JUSTICE ("DOJ") AND THE FEDERAL TRADE COMMISSION ("FTC") DETERMINED THAT THE MERGER IS NOT A RISK FROM AN ANTITRUST PERSPECTIVE?

A. Yes. On July 15, 2010, Qwest and CenturyLink received notification from the DOJ and the FTC that their merger reviews received "early termination" under the Hart-Scott-Rodino Act. Thus, the proposed merger of Qwest and CenturyLink has received clearance from an antitrust perspective,[55] as the DOJ and FTC have determined that there will not be a significant erosion of competition resulting from the merger. There are very few overlapping areas served by the two companies in the U.S., and the DOJ expressed little concern regarding the existence of adjacent Qwest-CenturyLink exchanges in Washington or any other state. Significantly, the DOJ specifically evaluated overlaps and adjacencies in all states and determined that these overlaps and adjacencies do not pose concerns that would warrant further review.

[55] See Form 425 filed with SEC on July 22, 2010, available at http://investor.qwest.com/qcii-sec-filings.

2. The Wholesale Market

Q. DOES DR. ANKUM CLAIM THAT THE MERGER WILL "UPSET THE WHOLESALE RELATIONSHIP BETWEEN ILECs AND CLECs AND HARM COMPETITION IN WASHINGTON."[56]

A. Yes. Dr. Ankum claims that "without reasonable, reliable and nondiscriminatory access to Qwest's and CenturyLink's networks, CLECs cannot get access to customers."[57] Thus, he implies that the merger will somehow eliminate Qwest's requirement to provide CLEC access to its network, and that downstream retail residence and business customers will be harmed.

Q. IS THIS A LEGITIMATE CLAIM?

A. No. After the merger transaction is consummated, the Qwest subsidiary (QC) will still be subject to Sections 251, 252 and 271 of the Telecommunications Act, just as Qwest is today. UNE loops will be available to CLECs at TELRIC-based prices[58] in all wire centers except those that this Commission has declared "non-impaired" based on the FCC's Triennial Review Remand Order ("TRRO") criteria.[59] In Washington, only one wire center—Seattle Main—has been declared non-impaired

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[56] Ankum Direct, p. 9.

[57] *Id*.

[58] TELRIC (Total Element Long Run Incremental Cost) assumes the long-run incremental forward-looking costs of providing an element based on the least-cost most efficient technologies that could be deployed. These costs represent the theoretical costs that would be incurred to replace the network using least-cost technologies. TELRIC pricing is required per 47 C.F.R. Section 51.

[59] See *In the Matter of Unbundled Access to Network Elements and Review of Section 251 Unbundling Obligations*, Order on Remand, 20 FCC Rcd 2533 (2005). In determining that a CLEC is not impaired without access to a UNE, the FCC has specifically found that CLECs are no longer impaired without access to that element, and that cost-based TELRIC rates are no longer necessary. With regard to DS1 and DS3 services, when the FCC determined in the *TRRO* that either DS1/DS3 loops or transport in a particular wire center are non-impaired, it specifically determined that market conditions are such that a CLEC is highly likely to have alternatives to Qwest DS1 and DS3 services.

for DS1 and/or DS3 loops.[60] Thus, CLECs may purchase DS1 and DS3 unbundled loops at TELRIC-based prices in every wire center in Washington except Seattle Main,[61] where they can purchase DS1 and DS3 loops at just, reasonable and not unduly discriminatory (non-TELRIC-based) rates per Section 271 of the Telecommunications Act,[62] and where, by definition, other competitive alternatives exist. The merger poses no risk that "last mile" facilities will not be available in Washington at reasonable rates post-merger. This fact demonstrates that the CLECs' claims of the merger's "competitive harm" are without merit and should be given no weight in this proceeding.

It is also interesting that Dr. Ankum refers to the "market power" that Qwest and CenturyLink allegedly enjoy, while at the same time admitting that regulatory constraints will prevent the post-merger company from exercising such power in the wholesale market.[63] As described above, Qwest today is required by law to provide access to its network based on Sections 251 and 271, and the Qwest subsidiary will be required to do the same after the merger, which constrains Qwest's and the post-merger company's market power.

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[60] See Qwest Wholesale web site at http://www.qwest.com/wholesale/downloads/2010/100111/Non_Impaired_Wire_Center_12_23_09.xls.

[61] Per the *TRRO*, other wire centers have been determined to be "Tier 1" or "Tier 2." In Tier 1 wire centers, CLECs are not impaired without access to DS1 and DS3 transport (interoffice) facilities, and in Tier 2 wire centers, CLECs are not impaired without access to DS3 transport.

[62] Rates for elements subject to Section 271 must be just, reasonable and not unreasonably discriminatory. See *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order, 17 FCC Rcd 16978 (2003); ¶¶ 656, 659.

[63] Dr. Ankum admits that "economically efficient access by CLECs to the ILECs' network elements serves to constrain the ILECs' ability to exploit market power in wholesale markets to the detriment of competition in downstream, retail markets." Ankum Direct, pp. 45-46.

Q. MR. GATES CLAIMS QWEST HAS A "MONOPOLY OVER WHOLESALE INPUTS RELIED UPON BY CLECs," AND THAT THERE ARE NO ALTERNATIVE SOURCES OTHER THAN QWEST FOR WHOLESALE INPUTS.[64] PLEASE COMMENT.

A. First, as noted above, certain wire centers in Washington have been declared to be "non-impaired" for unbundled loops and/or transport, based on the FCC's *TRRO* non-impairment criteria. When a wire center is determined to be non-impaired, *it means that CLECs have competitive wholesale options and are clearly not "captive customers" of Qwest.*[65] Mr. Gates cannot reasonably claim that CLECs do not have competitive alternatives in areas where it has been determined that CLECs are not "impaired" without access to a network element.[66] Second, even in areas where non-impairment has not been declared, CLECs often have competitive alternatives to Qwest service, including the option of self-provisioning. Companies with fiber networks in Washington include Integra, Level 3, PAETEC, tw telecom, XO, AT&T, Verizon, Cox, AboveNet, Zayo Group and 360networks.[67] Some fiber providers operating in Washington specifically market services to carriers as an alternative to Qwest. For example, AboveNet and Zayo Group market fiber and

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[64] Gates Direct, p. 16.

[65] According to the FCC: This Order [*TRRO*] imposes unbundling obligations only in those situations where we find that carriers genuinely are impaired without access to particular network elements and where unbundling does not frustrate sustainable, facilities-based competition. This approach satisfies the guidance of courts to weigh the costs of unbundling, and ensures that our rules provide the right incentives for both incumbent and competitive LECs to invest rationally in the telecommunications market in the way that best allows for innovation and sustainable competition. *In the Matter of Unbundled Access to Network Elements and Review of Section 251 Unbundling Obligations,* Order on Remand, 20 FCC Rcd 2533 (2005), ¶ 2. (Footnotes omitted.)

[66] The FCC has spent more than a decade addressing Section 251 issues and has issued several rulings specifically addressing the issue of non-impairment, as noted above. If the CLECs have concerns over the FCC's criteria for non-impairment, these concerns must be addressed in an appropriate FCC UNE proceeding.

[67] Based on GeoTel data.

bandwidth services to CLECs and other carriers utilizing their fiber networks in the state.[68] In addition, Comcast is now actively marketing services such as wireless backhaul and wholesale Ethernet services to carriers.[69] CLECs also have the option to obtain access from *fixed wireless* providers.

Q. WHAT DO YOU CONCLUDE?

A. The CLECs argue, incorrectly, that the Transaction will harm the competitive telecommunications environment in Washington. These arguments do nothing to detract from the Joint Applicants' position that the proposed merger of CenturyLink and Qwest is in the public interest under the Commission's "no harm" standard. As described above, and in the testimonies of Mr. Hunsucker and Mr. Viveros, existing wholesale obligations will continue to be in place after the merger is completed. The post-merger QC entity will still be subject to Sections 251, 252, and 271 of the Telecommunications Act, and will provide unbundled DS1 and DS3 loops at regulated TELRIC-based rates in every Qwest wire center in Washington except Seattle Main. In geographic areas where CLECs "rely" on Qwest, they will continue to be able to do so after the merger is consummated utilizing the same rates, terms, and conditions contained in the existing tariffs and interconnection agreements. Since nothing about the merger changes these obligations, there is no basis to assume that the merger will negatively impact the competitive market or harm the interests of Washington consumers, businesses or CLECs.

[68] See: http://www.abovenet.com/. AboveNet, Inc. provides high bandwidth connectivity solutions for business and carriers, and has an extensive network in the Seattle area. See also: http://zayo.com/. Zayo offers a wide variety of carrier services using its Washington network. Zayo has a fiber ring in the Seattle and Bellevue areas.

[69] See: http://business.comcast.com/large/carrier.aspx

3. Summary of Competitive Impact

Q. IN SUM, IS THERE ANY BASIS FOR THE CLAIMS BY MR. GATES AND DR. ANKUM THAT THE MERGER WILL HARM COMPETITION AND WILL NOT SERVE THE PUBLIC INTEREST?

A. No. Dr. Ankum states that the Commission should not succumb to the belief that the "invisible hand" of the marketplace will safeguard the public interest in this merger."[70] While CenturyLink and Qwest have demonstrated the significant benefits of this merger, in fact, the competitive nature of the market, along with the continued regulation of retail and wholesale services, *will* protect customers and the public interest once the merger is completed. In this environment, the post-merger company has every incentive to provide high-quality innovative services to retail and wholesale customers.

D. Merger Benefits

Q. SOME WITNESSES ARGUE THAT THE BENEFITS OF THE MERGER WILL ONLY ACCRUE TO SHAREHOLDERS AND THAT OTHER "STAKEHOLDERS" WILL NOT BENEFIT. PLEASE COMMENT.

A. Dr. Ankum argues that the Commission should balance the benefits of the merger to shareholders with the harmful effects that will allegedly be borne by other stakeholders, such as customers.[71] He implies that shareholders will benefit at the expense of consumers, businesses, and wholesale customers.

[70] Ankum Direct, p. 23.

[71] Ankum Direct, p. 9.

This advocacy is misplaced because the merger is likely to benefit shareholders *and* other stakeholders. The Transaction will create a financially-strong and stable provider that has an enhanced ability to invest in local and national networks, deploy broadband and other advanced services, and provide outstanding service quality to its customers, large and small, as Mr. Jones further describes. The combined CenturyLink-Qwest entity will be stronger and more stable from a financial perspective than either company would be on its own. As a result, the combined company will have access to the necessary capital to invest in a network capable of providing enhanced products and services. Rather than harming customers/stakeholders, this transaction will provide benefits to customers and will serve the public interest. In this and any other industry, in order to provide benefits to shareholders, a company must also serve and benefit its customers.

Mr. Appleby argues that the merger is problematic because it has the potential to reward or "enrich" shareholders, as if this is a negative aspect of the Transaction.[72] However, Mr. Appleby ignores the fact that in order for a company to have the resources to invest, it must attract debt and equity capital, as described by Mr. Bailey. Shareholders, who bear the risk of the Transaction, should reap the benefits of their investment, since it is shareholders, not CLECs, who are risking capital.[73] If shareholders do not believe they can earn an adequate return, they will not invest in a company, and the company will have fewer resources to invest in its network and operations. In sum, a healthy competitive post-merger company will benefit shareholders and other stakeholders—this is not a zero sum transaction.

[72] Appleby Direct, p. 25

[73] Of course, as noted elsewhere in my testimony, the CLECs *will* benefit from a healthy post-merger company that will have the resources to provide top-level services to its CLEC customers.

Q. MR. APPLEBY CLAIMS THAT CENTURYLINK HAS NOT IDENTIFIED A SINGLE BENEFIT THAT WOULD ACCRUE TO CLECS AS A RESULT OF THE MERGER. PLEASE COMMENT.

A. Mr. Appleby claims that Mr. Reynolds' direct testimony failed to show how CLECs would benefit from the synergies generated by the Transaction, and he claims that Qwest's Fiber-to-the-Cell-Tower (FTTCT) initiative provides an example of this alleged failure. Specifically, Mr. Appleby claims that:

> Qwest's ability to generate more revenues in the wireless backhaul market it dominates within its ILEC service territory doesn't guarantee any benefits to wireless carriers. If the services provided to wireless carriers are priced like current special access services, far above the actual cost of the services, wireless carriers receive little or no benefit from CenturyLink's investment in fiber to the cell sites.[74]

However, Mr. Appleby fails to note the intense competition among carriers to offer wireless backhaul that exists today, or the fact that wireless carriers will benefit from a post-merger company with the additional resources to deploy fiber to cell sites. Mr. Appleby also miscomprehends the manner in which FTTCT is offered. In reality, Qwest negotiates commercial agreements with wireless providers to build fiber backhaul facilities. As described in Mr. Reynolds' direct testimony, there are approximately 18,000 cell sites in the 14-state Qwest region, and Qwest has already contracted to provide fiber to 4,000 locations.[75] In each case, the provision of the facilities is based on freely-negotiated contracts—not based on special access or other tariffs. Clearly, if the Qwest provision of FTTCT facilities provided no

[74] Appleby Direct, pp. 23-24.

[75] Reynolds Direct, pp. 22-23. See e.g., http://investor.qwest.com/analyst-meeting.

benefit to wireless carriers, they would not have negotiated these contracts with Qwest, and instead would have chosen another provider or foregone the purchase of these fiber facilities. Qwest must risk capital to deploy these facilities, and the additional financial strength of the combined company will provide the resources for additional fiber builds to meet burgeoning wireless broadband demand. The negotiation of FTTCT contracts provides a vivid example of how competitive markets are supposed to work.

In addition, the CLECs will derive general benefits from the merger since the combined company will have the resources needed to invest in its network and systems to serve its CLEC customers, as described more fully in the testimonies of Mr. Jones and Mr. Hunsucker.

Q. DR. ANKUM ARGUES THAT THE MERGER INVOLVES SIGNIFICANT "UNCERTAINTIES" AND "RISKS," AND THAT THESE "RISKS AND GAINS ARE UNEVENLY DIVIDED BETWEEN SHAREHOLDERS AND THE BROADER PUBLIC INTEREST, INCLUDING CAPTIVE CUSTOMERS, SUCH AS CLECs."[76] PLEASE COMMENT.

A. Essentially, Dr. Ankum and Mr. Gates argue that the merger has a risk of failure, and therefore, the Commission should deny the merger or impose onerous conditions. Of course, as Mr. Jones describes in his testimony, Dr. Ankum and Mr. Gates overstate the risk of this transaction by comparing it with several previous transactions that have experienced problems, such as the FairPoint purchase of access lines from Verizon or the Carlyle Group's purchase of Verizon properties in

[76] Ankum Direct, pp. 36-37.

Hawaii. Based on an apples-to-oranges discussion of a select group of less-successful transactions that are not even remotely comparable with this transaction in most respects, they imply that the risk of this transaction is simply too great. Dr. Ankum then argues that stakeholders (customers) are much more "at risk" from the merger transaction than shareholders, and that this is a reason to deny the merger or impose onerous conditions.

This CLEC testimony represents a flawed assignment of risk. If the merger were to fail—which is highly unlikely—the losses to shareholders would be substantial and would likely exceed any negative impact on other stakeholders, especially since shareholders could potentially lose all of their investment. To give but one example, when WorldCom—which had purchased MCI—went bankrupt, shareholders lost their entire investment. Conversely, customer services were generally not interrupted or degraded, and the surviving company was ultimately acquired by Verizon. It is wrong to conclude that a merger presents less risk to shareholders than to other stakeholders.

IV. CONCLUSION

Q. WHAT ACTION SHOULD THE COMMISSION TAKE IN THIS PROCEEDING?

A. The Commission should approve the Transaction, without the onerous, unreasonable and unnecessary conditions proposed by other parties. As described above, the Washington telecommunications market is very competitive, and the merger of CenturyLink and Qwest will cause no competitive harm in the state. Contrary to the claims of the CLECs in this proceeding, the Transaction will provide many benefits to Washington consumers and businesses, as described in Mr. Reynolds' direct and rebuttal testimony, as well as in the direct and rebuttal testimonies of Mr. Jones. In addition, as Mr. Jones and Mr. Hunsucker describe in their rebuttal testimonies, CLECs will not be harmed by the Transaction.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.