

**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

CHRISTOPHER VIVEROS

ON BEHALF OF

QWEST COMMUNICATIONS INTERNATIONAL, INC.

November 1, 2010

TABLE OF CONTENTS

I. IDENTIFICATION OF WITNESS 1

II. INTRODUCTION 3

III. CURRENT CLEC SAFEGUARDS..... 5

IV. PROPOSED MERGER CONDITIONS 10

V. CONCLUSION..... 45

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

I. IDENTIFICATION OF WITNESS

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

A. My name is Christopher (Chris) Viveros. My business address is 1350 Treat Boulevard, Suite 200, Walnut Creek, CA 94597. I am employed by Qwest Corporation (“Qwest”) as a Director – Legal Issues in the Law Department. In this position, I am responsible for leading and directing a team of docket managers and witnesses as well as preparing testimony and testifying on Qwest’s behalf in a variety of regulatory proceedings, predominantly about Qwest’s wholesale services.

Q. PLEASE DESCRIBE YOUR EXPERIENCE.

A. I have over 31 years experience in the telecommunications industry with an emphasis in regulatory and wholesale services. I began my career with AT&T Inc. (formerly Pacific Telephone, Pacific Bell and Southwestern Bell (“SBC”)) in 1979. Between 1979 and 1996, I held a variety of positions, primarily in the wholesale department, including assignments on the methods and procedures staff, systems support, industry guideline development and product management. In April 1996, I moved to a newly-created organization responsible for implementation and oversight of compliance with the requirements of the Telecommunications Act of 1996 (the “Act”).¹ In June 1998, I also assumed responsibilities associated with SBC’s acquisitions, including Southern New England Telephone (“SNET”) in the third quarter of 1998 and

¹ In April 1997, my responsibilities were moved to the wholesale department as a result of the merger between Pacific Bell’s parent, Pacific Telesis Group and SBC; shortly thereafter my position was expanded to include both the Pacific and Southwestern Regions.

1 Ameritech in the fourth quarter of 1999, from both a regulatory approval and post-
2 merger integration perspective across SBC's then-13 Incumbent Local Exchange
3 Carrier ("ILEC") states.

4 In January 2000, I accepted a position with US WEST in the Policy and Law
5 organization focused on compliance with the Act and the various state and federal
6 proceedings on the company's Section 271 application; these functions evolved into
7 Qwest's Regulatory Compliance organization in 2003. In March 2006, I remained in
8 Qwest's Regulatory Compliance organization, narrowing my focus specifically to
9 Qwest's wholesale service quality, including the Performance Indicator Definition
10 ("PID") results and the associated Performance Assurance Plans ("PAPs"), in
11 Qwest's ILEC states. In November 2008, I moved to the Qwest Law Department as a
12 cost witness and my job expanded to its current responsibilities in 2010.

13 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THIS**
14 **COMMISSION?**

15 A. Yes. I have previously testified and appeared in proceedings related to Qwest's
16 Section 271 checklist compliance and Qwest's Performance Assurance Plan. I also
17 participated in multiple workshops conducted by the Regional Oversight Committee
18 ("ROC") in its third-party test of Qwest's Operations Support Systems ("OSS") on
19 behalf of 13 state utility commissions in Qwest's ILEC territory, including
20 Washington.

1 **Q. HAVE YOU TESTIFIED BEFORE OTHER STATE REGULATORY**
2 **COMMISSIONS?**

3 A. Yes. I have submitted testimony in proceedings before commissions in Arizona,
4 California, Colorado, Connecticut, Idaho, Illinois, Iowa, Minnesota, Montana,
5 Nebraska, Nevada, New Mexico, Ohio, Oregon, Texas, Utah and Wyoming.

6 **II. INTRODUCTION**

7 **Q. ON WHICH PARTY'S BEHALF ARE YOU FILING TESTIMONY IN THIS**
8 **PROCEEDING?**

9 A. My rebuttal testimony is prepared on behalf of Qwest Communications International
10 Inc. ("QCII") in support of the Joint Application for Approval of Indirect Transfer of
11 Control of Qwest Corporation ("Qwest"), Qwest Communications Company LLC
12 ("QCC"), and Qwest LD Corp ("QLDC") filed by QCII and CenturyLink, Inc.

13 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**
14 **PROCEEDING?**

15 A. No.

16 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

17 A. The purpose of my rebuttal testimony is to respond to the testimony and various
18 conditions² proposed in the Responsive Testimony of Mr. Timothy J. Gates, filed on

² Responsive Testimony of Timothy J. Gates ("Gates Response"), at Exhibit TJG-9.

1 behalf of the *Joint CLECs*,³ the Responsive Testimonies of Mr. Douglas Denney and
2 Ms. Bonnie J. Johnson, on behalf of Integra Telecom (“Integra”) as it relates to the
3 conditions being advocated by the Joint CLECs, the testimony and numerous
4 proposed conditions identified in the Responsive Testimony of Mr. Richard E.
5 Thayer, on behalf of Level 3 Communications, LLC (“Level 3”)⁴ and the proposed
6 conditions in the Responsive Testimony of Mr. James C. Falvey, on behalf of Pac-
7 West Telecomm, Inc. (“Pac-West”). To the extent that Mr. Thayer’s or Mr. Falvey’s
8 proposed conditions overlap those of the Joint CLECs, my testimony is meant to
9 address the similar Level 3 proposed conditions as well. I separately address any
10 unique Level 3 or Pac-West proposed conditions later in my testimony.

11 My rebuttal testimony demonstrates to the Commission that a number of these
12 conditions pertain to issues that have nothing to do with this merger review
13 proceeding and thus are not appropriate here, and that such issues can be addressed in
14 interconnection agreements (“ICAs”), interconnection enforcement complaints, or
15 other Commission proceedings.

16 **Q. ARE OTHER WITNESSES OFFERING TESTIMONY ON THE PROPOSED**
17 **WHOLESALE CONDITIONS?**

³ The *Joint CLECs* include 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.

⁴ Responsive Testimony of Richard Thayer (“Thayer Response”), pp. 2-4.

1 A. Yes. CenturyLink witnesses, Mr. John Jones and Mr. Michael R. Hunsucker, provide
2 testimony in response to many of the proposed wholesale-related conditions and
3 demonstrate that the post-merger company will have the expertise and ability to
4 manage any on-going wholesale obligations. In addition, the testimony of Qwest
5 witnesses, Mr. Michael G. Williams and Mr. Robert Brigham, respond to various
6 proposed conditions. Mr. Williams will address the proposed conditions specific to
7 wholesale service quality and the Qwest Performance Assurance Plan, including
8 Integra's proposal of an "Additional" Performance Assurance Plan ("APAP"). Mr.
9 Brigham addresses competition and some of the more egregious claims of
10 competitive harm from the transaction.

11 **III. CURRENT CLEC SAFEGUARDS**

12 **Q. WHAT IS THE BASIS FOR QWEST'S WHOLESALE OBLIGATIONS?**

13 A. Because Qwest Corporation is an ILEC in Washington, the majority of the wholesale
14 obligations that are of interest to this Commission are a result of the
15 Telecommunications Act of 1996 ("the Telecom Act" or "the Act") and the Federal
16 Communications Commission's ("FCC's") implementing orders and decisions that
17 apply to Qwest. Qwest's wholesale obligations also include various obligations
18 applicable to Bell Operating Companies ("BOCs") such as Qwest, as a result of
19 Section 271 of the Act which were put in place to open up the local markets to
20 competition.

1 **Q. PRIOR TO ADDRESSING ANY SPECIFIC CONDITIONS, DO YOU HAVE**
2 **ANY GENERAL STATEMENTS REGARDING THE SAFEGUARDS THAT**
3 **ARE CURRENTLY IN PLACE FOR COMPETITIVE LOCAL EXCHANGE**
4 **CARRIERS (“CLECs”)?**

5 A. Yes. The CLECs known as “the Joint CLECs” have expressed purported concerns
6 regarding the potential future conduct of the Qwest entity and CenturyLink post-
7 merger. It is almost as if the CLECs are assuming the merger would result in
8 complete deregulation of both companies, and that neither would be required to
9 comply with any current rules, laws, regulations or interconnection agreements
10 (“ICAs”). Nothing could be further from the truth. The merged company’s operating
11 companies, including Qwest, will continue to be subject to all of the Commission
12 rules and regulations to which the specific pre-merger operating company is subject,
13 and will continue to meet all of the applicable rules, laws, regulations and their
14 numerous contractual obligations.

15 The merger will have no impact on the combined company’s obligations under the
16 Act. The Act ensures that the local telecommunications market is open to
17 competition. For example, the Act requires that post-merger Qwest will continue to
18 negotiate ICAs with CLECs in good faith and that this Commission will continue to
19 have oversight over those agreements in Washington. Therefore, all of the
20 obligations placed upon Qwest under the Act will remain, and this merger will not
21 impact or impair any of the substantive or procedural protections afforded CLECs.

1 **Q. BEFORE YOU RESPOND TO THE SPECIFICS OF INTERVENOR**
2 **TESTIMONY, PLEASE DESCRIBE THE QWEST CHANGE**
3 **MANAGEMENT PROCESS (“CMP”) THAT MR. GATES HAS TESTIFIED**
4 **ABOUT?**

5 A. Mr. Gates in his testimony made several references to the Qwest Change
6 Management Process (or “CMP”). It is important, however, to understand the
7 significance of this formal process in addressing purported concerns that CLECs may
8 have about changes that may impact them.

9 The CMP is a business-relation process that is intended to facilitate a discussion
10 between CLECs and Qwest about product, process or Operations Support Systems
11 (“OSS”) Interface release changes, release life cycles, release notifications and
12 communication through regularly-scheduled meetings. Team members of the CMP
13 include CLEC and Qwest representatives, who gather to review Change Requests
14 (“CRs”) initiated by CLECs and/or Qwest and to discuss Qwest notifications.

15 Since 1999, Qwest and CLECs have jointly participated in a CMP forum for
16 managing changes related to Qwest’s products, processes, and systems that support
17 the five categories of OSS functionality (pre-ordering, ordering, provisioning,
18 maintenance and repair, and billing). This process is used to communicate to CLECs
19 any changes to Qwest’s OSS interfaces and to products and processes that are within
20 the scope of CMP. The CMP also provides CLECs with the opportunity to have input
21 into Qwest-proposed changes and to propose changes of their own. CLECs and

1 Qwest meet collaboratively at least once per month to consider these CRs. Minutes
2 from these meetings are posted on Qwest's CMP website,⁵ and are distributed to
3 participating CLECs regularly.

4 **Q. ARE THE CHANGE MANAGEMENT REQUIREMENTS DEFINED IN THE**
5 **ACT?**

6 A. No. As the FCC evaluated Section 271 applications for a BOC's entry into the
7 interLATA toll market in the early part of the decade, it recognized that OSS are not
8 static and would change over time. As a result, the FCC amplified its requirements in
9 recognition that, once it granted a BOC Section 271 relief, a mechanism was needed
10 to manage OSS changes. That mechanism was a change management process (or
11 CMP) that met specific FCC requirements.

12 **Q. DO QWEST'S INTERCONNECTION AGREEMENTS TYPICALLY**
13 **IDENTIFY AND INCLUDE THE CMP PROCESS?**

14 A. Yes. CMP is described and included in Qwest's interconnection agreements. The
15 Qwest negotiation template ICA identifies the CMP process at Section 12.2.6.
16 Specific language varies from agreement to agreement, but the Qwest negotiation
17 template provides an accurate description of CMP:

18 12.2.6 Change Management. Qwest agrees to maintain a change
19 management process, known as (CMP), that is consistent with or exceeds
20 industry guidelines, standards and practices to address Qwest's OSS, products
21 and processes. The CMP shall include, but not be limited to, utilization of the

⁵ Qwest's CMP website can be found at <http://www.qwest.com/wholesale/cmp>. Minutes of CMP team meetings are available at <http://www.qwest.com/wholesale/cmp/teammeetings.html>.

1 following: (i) a forum for CLEC and Qwest to discuss CLEC and Qwest
2 change requests (CR), CMP notifications, systems release life cycles, and
3 communications; (ii) provide a forum for CLECs and Qwest to discuss and
4 prioritize CRs, where applicable pursuant to the CMP Document; (iii) a
5 mechanism to track and monitor CRs and CMP notifications; (iv) established
6 intervals where appropriate in the process; (v) processes by which CLEC
7 impacts that result from changes to Qwest's OSS, products or processes can
8 be promptly and effectively resolved; (vi) processes that are effective in
9 maintaining the shortest timeline practicable for the receipt, development and
10 implementation of all CRs; (vii) sufficient dedicated Qwest processes to
11 address and resolve in a timely manner CRs and other issues that come before
12 the CMP body; (viii) processes for OSS Interface testing; (ix) information that
13 is clearly organized and readily accessible to CLECs, including the
14 availability of web-based tools; (x) documentation provided by Qwest that is
15 effective in enabling CLECs to build an electronic gateway; and (xi) a process
16 for changing CMP that calls for collaboration among CLECs and Qwest and
17 requires agreement by the CMP participants. Pursuant to the scope and
18 procedures set forth in the CMP Document, Qwest will submit to CLECs
19 through the CMP, among other things, modifications to existing products and
20 technical documentation available to CLECs, introduction of new products
21 available to CLECs, discontinuance of products available to CLECs,
22 modifications to pre-ordering, ordering/provisioning, maintenance/repair or
23 billing processes, introduction of pre-ordering, ordering/provisioning,
24 maintenance/repair or billing processes, discontinuance of pre-ordering,
25 ordering/provisioning, maintenance/repair or billing processes, modifications
26 to existing OSS interfaces, introduction of new OSS interfaces, and retirement
27 of existing OSS interfaces. Qwest will maintain as part of CMP an escalation
28 process so that CMP issues can be escalated to a Qwest representative
29 authorized to make a final decision and a process for the timely resolution of
30 disputes. The governing document for CMP, known as the "Change
31 Management Process" Document is the subject of ongoing negotiations
32 between Qwest and CLECs in the ongoing CMP. The CMP Document will
33 continue to be changed through those discussions. The CMP Document
34 reflects the commitments Qwest has made regarding maintaining its CMP and
35 Qwest commits to implement agreements made in the CMP process as soon as
36 practicable after they are made. The CMP Document will be subject to
37 change through the CMP, as set forth in the CMP Document. Qwest will
38 maintain the most current version of the CMP Document on its wholesale web
39 site.
40

41 12.2.6.1 In the course of establishing operational ready system
42 interfaces between Qwest and CLEC to support local service delivery,
43 CLEC and Qwest may need to define and implement system interface
44 specifications that are supplemental to existing standards. CLEC and

1 Qwest will submit such specifications to the appropriate standards
2 committee and will work towards their acceptance as standards.
3

4 12.2.6.2 Release updates will be implemented pursuant to the CMP.

5
6 **Q. GIVEN THAT CMP IS IN CLECS' ICAS, WILL CMP CONTINUE TO BE IN-**
7 **PLACE POST-MERGER?**

8 A. Yes. Because CMP is part of virtually all Qwest ICAs, and this Commission has
9 approved all ICAs in Washington, CMP will be in place post-merger to govern the
10 processes for changes to Qwest wholesale-related products, processes or OSS in the
11 future until the parties agree or the Commission orders otherwise. Mr. Hunsucker's
12 rebuttal testimony confirms the CMP's continued existence:

13 "Qwest and the CLECs have included a detailed process in their negotiated
14 interconnection agreements which have been subsequently approved by the
15 Commission. This is the change management process ("CMP") which is
16 reflected in the CMP document. This process will remain in place and will be
17 the controlling document for changes, if made, to the Qwest OSS systems, just
18 like it is today. Nothing in this Transaction eliminates or changes the CMP
19 process as it relates to Qwest,..."⁶

20 **IV. PROPOSED MERGER CONDITIONS**

21 **Q. CAN YOU PLEASE IDENTITY THE PROPOSED MERGER CONDITIONS**
22 **YOU WILL ADDRESS IN YOUR TESTIMONY?**

6 Rebuttal Testimony of Michael R. Hunsucker ("Hunsucker Rebuttal"), p. 21.

1 A. Yes. I provide rebuttal testimony on Conditions 2, 3, 7, 11, 14, 15, 17, 19b and 19c,
2 25, 26, and 27 as identified in Exhibit TJG-9 attached to Mr. Gates' testimony.

3 **Q. PLEASE IDENTITY THE FIRST GROUP OF CLEC CONDITIONS YOU**
4 **WILL ADDRESS.**

5 A. Yes. Below are the Joint CLECs' proposed merger conditions that all appear to be
6 rate-related.

7 2. The Merged Company will not recover, or seek to recover, through
8 wholesale service rates or other fees paid by CLECs, and will hold wholesale
9 customers harmless for, one-time transfer, branding, or any other transaction-
10 related costs. For purposes of this condition, "transaction related costs" shall
11 be construed broadly and, for example, shall not be limited in time to costs
12 incurred only through the Closing Date.

13 3. The Merged Company will not recover, or seek to recover, through
14 wholesale service rates or other fees paid by CLECs, and will hold wholesale
15 customers harmless for, any increases in overall management costs that result
16 from the transaction, including those incurred by the Operating Companies.

17 7. Rates charged by legacy CenturyLink and rates charged by legacy
18 Qwest (including those described in condition 6) for tandem transit service,
19 any interstate special access tariffed or non-tariffed and commercial offerings,
20 any intrastate wholesale tariffed offering, and any service for which prices are
21 set pursuant to Sections 252(c)(2) and Section 252(d) of the Communications
22 Act shall not be increased for at least the Defined Time Period. The Merged
23 Company will not create any new rate elements or charges for distinct
24 facilities or functionalities that are already provided under rates as of the
25 Closing Date.

26 a. The Merged Company shall continue to offer any term and volume
27 discount plans offered as of the Merger Announcement Date, for at least
28 the Defined Time Period, without any changes to the rates, terms, or
29 conditions of such plans. The Merged Company will honor any existing
30 contracts for services on an individualized term pricing plan arrangement
31 for the duration of the contracted term.

32

1 **Q. DOES THE COMMISSION ALREADY HAVE A PROCESS IN PLACE TO**
2 **ADDRESS RATES FOR SECTION 251-RELATED SERVICES, AS**
3 **IDENTIFIED IN THE PROPOSED CONDITIONS?**

4 A. Yes. The Commission typically conducts cost dockets and interconnection
5 arbitrations to establish rates for services that ILECs provide to CLECs pursuant to
6 Section 251 of the Act. Most rates for products and services subject to Section 251
7 must be priced at Total Element Long Run Incremental Cost (“TELRIC”). Qwest
8 cannot unilaterally alter existing TELRIC-established rates. Changing of rates or a
9 rate structure would require ICA amendment negotiations or Commission approval
10 through a wholesale cost docket. Any CLEC concerns can be addressed through the
11 opportunity to participate in Commission cost proceedings, or through amendment
12 negotiations. Thus, no unique merger conditions are necessary to address these
13 theoretical rate issues.

14 **Q. BASED ON THE FACT THAT THE COMMISSION GENERALLY**
15 **APPROVES SECTION 251 RATES, AND THAT A CLEC CAN REQUEST**
16 **THAT COMMISSION-APPROVED RATES BE ESTABLISHED, IS THERE**
17 **ANY NEED FOR MERGER CONDITIONS THAT SPEAK TO HOW RATES**
18 **WILL BE ESTABLISHED POST-MERGER?**

19 A. No. To the extent that CLECs have any concerns regarding Section 251-related rates
20 which are subject to Commission approval, there are ample safeguards for CLECs to
21 express any future cost model concerns in the appropriate cost proceeding.

1 **Q. SHOULD THE COMMISSION AGREE TO RATE FREEZES ON THE**
2 **VARIOUS NON-SECTION 251 PRODUCTS AND SERVICES IN JOINT**
3 **CLECS' PROPOSED CONDITION 7?**

4 A. No. The Joint CLECs are asking for broad and sweeping rate freezes for a variety of
5 services (including interstate services under the FCC's jurisdiction) and this
6 Commission should reject this attempt to change the rate making processes that are
7 currently in place for these products and services. It is not appropriate for Joint
8 CLECs to attempt to leverage the merger proceeding as a way to make changes to the
9 rate setting mechanisms for a broad range of products and services – especially those
10 outside this Commission's jurisdiction. The rebuttal testimony of Mr. Hunsucker
11 provides additional testimony on the inappropriateness of adopting this proposed
12 condition as part of the merger proceeding.⁷

13 **Q. PLEASE IDENTITY THE NEXT PROPOSED CONDITION YOU ARE**
14 **ADDRESSING.**

15 A. The next proposed condition I will address is Joint CLECs' proposed Condition 11:

16 11. To the extent that an interconnection agreement is silent as to an
17 interval for the provision of a product, service or functionality or refers to
18 Qwest's website or Service Interval Guide (SIG), the applicable interval, after
19 the Closing Date, shall be no longer than the interval in Qwest's SIG as of the
20 Merger Filing Date.

21
22 **Q. PROPOSED CONDITION 11 REQUESTS THAT THE COMMISSION**
23 **ESTABLISH LIMITATIONS ON INSTALLATION INTERVALS FOR**

⁷ Hunsucker Rebuttal, pp. 53-55.

1 **POTENTIALLY ALL QWEST WHOLESALE PRODUCTS, SERVICES AND**
2 **“FUNCTIONALITY.”⁸ IS THIS APPROPRIATE?**

3 A. No. The issue of installation intervals involves a number of very complicated legal,
4 factual and practical issues. The proposed condition would impose a broad-brush
5 restriction on installation intervals without any factual support. Qwest’s installation
6 intervals are established based on a variety of reasons, including underlying
7 technology, which can be subject to change over time. In addition, “functionality” is
8 not clearly defined, so Qwest would not even know which wholesale products or
9 services this installation interval limitation is intended to apply. Qwest has developed
10 and implemented separate and distinct procedures and provisioning intervals for
11 Unbundled Network Elements (“UNEs”), combinations of UNEs, commercial
12 products and services, retail local exchange services, and tariffed private line services,
13 to name a few. These installation intervals should not be artificially limited due to the
14 same CLECs’ desires to control this key component of the Qwest provisioning
15 process for all its products and services.

16 **Q. ARE INSTALLATION INTERVALS FOR UNES THAT CLECS USE TO**
17 **COMPETE WITH QWEST IN THE LOCAL EXCHANGE MARKET**
18 **INCLUDED IN CURRENT QWEST ICAS?**

19 A. While service installation intervals are included in many CLECs’ ICAs, more
20 recently, numerous CLECs have agreed with Qwest to make reference to the Qwest
21 Service Interval Guide (“SIG”).

⁸ Gates Response, pp. 134-135.

1 **Q. IF QWEST MAKES A CHANGE IN THE INSTALLATION INTERVAL OF A**
2 **PRODUCT OR SERVICE, IS THERE A MECHANISM IN PLACE TO**
3 **NOTIFY CLECS IN ADVANCE, AND THUS GIVE THEM AMPLE TIME TO**
4 **PREPARE FOR ANY CHANGE IN AN INTERVAL?**

5 A. Yes. Qwest follows the CMP notification intervals to provide advance notice of SIG
6 changes, and specific reseller notices are issued, when appropriate, to advise resellers
7 of changes in applicable retail intervals. Clearly, there are safeguards in place to keep
8 CLECs informed regarding any interval changes in Qwest's retail and wholesale
9 products and services, and thus there is no need for the Commission to establish any
10 artificial limitations that would only serve to restrict the merged company from
11 having the flexibility to manage its operations in response to changes in the
12 marketplace.

13 **Q. BEYOND NOTIFYING CLECS THROUGH CMP, ARE THERE OTHER**
14 **SAFEGUARDS TO PREVENT QWEST FROM LENGTHENING**
15 **WHOLESALE INTERVALS?**

16 A. Yes. Existing requirements to provide CLECs with non-discriminatory access to
17 provisioning would prevent Qwest from changing wholesale intervals absent a change
18 in the interval for the retail analogue. Where no retail analogue exists, the inherent
19 limitations to interval changes created by wholesale service quality obligations⁹ are

⁹ Such as the Installation Interval performance measure, PID OP-4, which contains defined average intervals that must be met for nearly every UNE that impact CLEC customers directly; for the remainder of UNEs and LIS trunks the installation interval must be in parity with defined retail analogues. If these average installation intervals are not met, Qwest is subject to penalties under the PAP. Mr. Williams discusses the PAP in more detail in his testimony.

1 more than sufficient to prevent Qwest from changing an interval simply to
2 disadvantage CLECs. For the foregoing reasons, and those contained in Mr.
3 Hunsucker's rebuttal testimony, the Commission should reject the CLECs' proposed
4 Condition 11.

5 **Q. PLEASE IDENTIFY THE NEXT PROPOSED CONDITION THAT YOU**
6 **WILL ADDRESS.**

7 A. Below is the Joint CLECs' proposed Condition 14:

8 14. For at least the Defined Time Period, the Merged Company will not
9 seek to reclassify as "non-impaired" any wire centers for purposes of Section
10 251 of the Communications Act, nor will the Merged Company file any new
11 petition under Section 10 of the Communications Act seeking forbearance
12 from any Section 251 or 271 obligation or dominant carrier regulation in any
13 wire center.

14 **Q. IS PROPOSED CONDITION 14 (WHICH PROPOSES LIMITATIONS ON**
15 **QWEST'S ABILITY TO SEEK "NON-IMPAIRED" STATUS FOR NEW**
16 **WIRE CENTERS) CONSISTENT WITH STATE AND FEDERAL ORDERS?**

17 A. No, it is not. First, CLECs have no legal basis to require Qwest to waive any rights it
18 has under federal law, nor does the Commission have authority to do so. Further, my
19 understanding is that the rules and guidelines that the FCC established in the
20 *Triennial Review Remand Order* ("TRRO") are not subject to change simply
21 because of an ILEC merger proceeding, and I am not aware that any state utility
22 commission has ever required an ILEC to waive rights it has under federal law to
23 seek non-impairment status of its wire centers. Moreover, filings for non-
24 impaired status are based on the competitive marketplace and the alternatives that

1 CLECs have in that marketplace to buy (or self-provision) network elements that
2 they need to compete. The legal guidelines for resolving such applications are
3 the result of significant legislative effort and complex proceedings before the
4 FCC, this Commission,¹⁰ other commissions, and the courts. The CLEC proposal
5 to shortcut these laws and rights is not necessary or appropriate to protect the
6 public interest.

7 In addition, this proposed condition ignores the extensive work that Qwest and a
8 representative body of CLECs (many of which are intervenors in this docket)
9 have already done to establish clear and consistent procedures for future wire
10 center reclassification petitions.¹¹ The CLECs' proposed condition ignores their
11 own agreement regarding the process that would be used for addressing
12 reclassification petitions.

¹⁰ See Order No. 04 (October 5, 2006) in Docket UT-053025 (*In the Matter of the Investigation Concerning the Status of Competition and Impact of the FCC's Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State*) adopting interpretive statement documenting the Commission's interpretation of the FCC's Triennial Review Remand Order and accompanying rules governing wire center designation.

¹¹ See Order No. 05 (March 21, 2008) in Docket UT-073035 (*In the Matter of the Petition of Qwest Corporation, For Investigation Concerning the Status of Competition and Impact of the FCC's Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State*) ALJ Initial Order accepting, subject to conditions, multi-party settlement regarding wire center designations and related issues. No party filed a petition for review and that order became final, by operation of law, on April 11, 2008. On April 17, 2008, the Commission entered a Notice of Finality.

1 Specifically, several of the Joint CLECs and Qwest worked cooperatively in 2006 and
2 2007 to develop and stipulate to the process and procedures to be used when Qwest
3 would request that future wire centers be added to the non-impaired wire center list.¹²

4 **Q. DOES THE MERGER TRANSACTION AT ISSUE IN THIS PROCEEDING**
5 **IMPACT THE LEGAL STANDARD OR THE FACTUAL ANALYSIS**
6 **ASSOCIATED WITH WIRE CENTER RECLASSIFICATIONS?**

7 A. No. This is simply another of the CLECs' numerous attempts to extract or leverage a
8 legal or operational concession from CenturyLink and Qwest for their own self-
9 interest, despite that there is no connection between the merger approval process and
10 this issue. Thus, the Commission should reject this inappropriate proposal.

11 **Q. DO YOU HAVE ANY COMMENTS REGARDING JOINT CLECS'**
12 **PROPOSED CONDITION 15?**

13 A. Yes. The Joint CLECs' proposed Condition 15 reads as follows:

14 15. The Merged Company shall provide to wholesale carriers, and
15 maintain and make available to wholesale carriers on a going-forward basis,
16 up-to-date escalation information, contact lists, and account manager
17 information at least 30 days prior to the Closing Date. For changes to support
18 center location, organizational structure, or contact information, the Merged
19 Company will provide at least 30 days advance written notice to wholesale
20 carriers. For other changes, the Merged Company will provide reasonable
21 advanced notice of the changes. The information and notice provided shall be
22 consistent with the terms of applicable interconnection agreements.
23

¹² Qwest followed this process in requesting the 2007 additions to the non-impaired wire center list. See Order No. 10 (July 30, 2008) in Docket UT-073033 (*In the Matter of the Petition of Qwest Corporation, For Commission Approval of 2007 Additions to Non-Impaired Wire Center List*) ¶ 25: "The Commission has reviewed Qwest's petition for approval of 2007 additions to the non-impaired wire center list based on the methodology approved in Order 05 in Docket UT-073035, and determined that the petition should be granted."

1 This proposed condition is not necessary; in fact the proposed condition
2 acknowledges it is redundant. The proposed condition is also contradictory to the
3 notice requirements of the CMP.

4 **Q. WHY IS PROPOSED CONDITION 15 REDUNDANT?**

5 A. The last sentence of the condition acknowledges that the information to be provided
6 and the notice are to be consistent with the terms of ICAs. It is my opinion that the
7 sentence was included because the Joint CLECs realize that ICAs already define the
8 information to be provided and the notice requirements. There is simply no benefit
9 derived from the proposed condition other than to create potentially conflicting
10 requirements through the inclusion of specific timeframes that contradict some CMP
11 and/or ICA notice periods.

12 **Q. HOW IS PROPOSED CONDITION 15 CONTRADICTORY TO SOME**
13 **NOTICE REQUIREMENTS OF CMP?**

14 A. CMP requires Qwest to notify CLECs of any changes that the CMP has determined
15 may impact CLECs. The CMP guidelines define various levels of Qwest-originated
16 product/process changes, and these guidelines are what Qwest has consistently
17 followed to originate and implement changes that may impact CLECs. Here are two
18 examples of changes that may impact CLECs and for which the CMP requires certain
19 notice by Qwest:

- 20 • Changes in escalation information, such as a change to a telephone
21 number or fax number, is considered a Level 2 CMP change and has a
22 standard notice interval of 21 days.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

- A change to published hours of operation for a center is a Level 3 CMP change, which typically requires 45 days notice be given to CLECs.

The Joint CLECs propose a condition whereby the notice period for each of these events would be 30 days, potentially creating confusion.

Q. ARE THERE OTHER FLAWS IN PROPOSED CONDITION 15?

A. Yes. The proposal as written is fatally flawed by virtue of its requirement on the “merged company” to meet a deadline 30 days prior to there being a merged company. I understand the intent is to have information in advance of merger close which is reasonable if there was reason to believe that these procedures or existing contact information were likely to change. However, that is not the case. The Joint Applicants have repeatedly stated that this transaction does not require changes on day 1 post merger close. There is no reason to require a notice of existing procedures or existing contacts and to require that unnecessary notice 30 days before the merger can be consummated is unreasonable by any standard. This proposed condition should not be adopted.

Q. IS PROPOSED CONDITION 17 ABOUT RETAINING THE QWEST CMP ACCEPTABLE?

A. No. The proposed condition as written goes beyond the existing requirements of Qwest’s CMP. The proposed condition, if adopted, would create a conflict with the documented process requirements, which Qwest has committed to following through incorporation of ICA terms addressing CMP as I discussed previously in my

1 testimony.¹³ Moreover, it would subject the legacy CenturyLink operating entities to
2 the requirements of the Qwest CMP – a process neither CenturyLink entities nor its
3 wholesale customers had input. It is unreasonable to simply expect other CLECs that
4 operate in CenturyLink territory to have this process unilaterally imposed.

5 In addition to requiring the continuance of Qwest’s CMP, proposed condition 17
6 would also require that “The Merged Company will dedicate the resources needed to
7 complete pending CLEC Change Requests in a commercially reasonable time frame.”
8 However, the CMP has explicit procedures for prioritizing changes for inclusion in
9 scheduled releases. If a change is initiated through CMP, but is not highly prioritized
10 by CLECs, the change can remain pending for an extended period of time. This
11 proposed condition is not needed for the CMP to continue to serve its intended
12 purpose of providing an established, documented mechanism to manage change –
13 whether the change is CLEC-initiated or Qwest-initiated. In fact, the proposed
14 condition could be interpreted to require Qwest to add resources in order to
15 implement changes that CLECs do not value simply based on when the request was
16 initiated. Abiding by the CMP is a contractual obligation of Qwest’s that is not
17 altered by this transaction. At best, this condition is duplicative and unnecessary.
18 But when interpreted literally, the condition undermines the existing CMP process
19 despite the Joint CLECs’ claim that “...the importance of Condition 17 to maintain

¹³ See *supra*, pp. 8-10.

1 Qwest's CMP post-merger".¹⁴ For the foregoing reasons as well as the reasons in Mr.
2 Hunsucker's rebuttal, proposed condition 17 should be rejected.

3 **Q. WILL YOU BE ADDRESSING ALL OF THE JOINT CLECS' PROPOSED**
4 **CONDITION NUMBER 19?**

5 A. No. Mr. Hunsucker's testimony addresses proposed Condition 19 overall, and I will
6 be addressing proposed Condition 19b, which would require expensive and
7 unnecessary third-party testing of any new proposed OSS, and proposed Condition
8 19c, which is unnecessary because Qwest ICAs already include terms for CLEC
9 testing as well as CLEC training and support for OSS.

10 19b. For any Qwest system that was subject to third party testing (e.g., as part
11 of a Section 271 process), robust, transparent third party testing will be
12 conducted for the replacement system to ensure that it provides the needed
13 functionality and can appropriately handle existing and continuing wholesale
14 services in commercial volumes. The types and extent of testing conducted
15 during the Qwest Section 271 proceedings will provide guidance as to the
16 types and extent of testing needed for the replacement systems. The Merged
17 Company will not limit CLEC use of, or retire, the existing system until after
18 third party testing has been successfully completed for the replacement
19 system.

20 19c. Before implementation of any replacement or to be integrated system, the
21 Merged Company will allow for coordinated testing with CLECs, including a
22 stable testing environment that mirrors production and, when applicable,
23 controlled production testing. The Merged Company will provide the
24 wholesale carriers training and education on any wholesale OSS implemented
25 by the Merged Company without charge to the wholesale carrier.

26 **Q. ACCORDING TO MR. GATES, SECTION 271 OF THE ACT REQUIRES**
27 **NON-DISCRIMINATORY ACCESS TO OSS.¹⁵ DO YOU AGREE?**

¹⁴ Gates Response, p 145.

1 A. Mr. Gates' testimony alludes to a separate and distinct Section 271 checklist
2 requirement specifically for OSS. However, there is no such requirement. The 14-
3 point competitive checklist found in Section 271(c)(2)(B) requires, in pertinent part:

4 (ii) Non-discriminatory access to network elements in accordance with the
5 requirements of *sections 251(c)(3) and 252(d)(1)*, and

6
7 (xiv) Telecommunications services are available for resale in accordance with
8 the requirements of *sections 251(c)(4) and 252(d)(3)*. (Emphasis added.)

9
10 Section 271 requires non-discriminatory access to *all* Section 251 UNEs, of which
11 OSS is but one. There is a requirement in Sections 251 and 252 and the
12 accompanying regulations to provide non-discriminatory access to UNEs and the
13 resale of telecommunication services, including OSS. But these requirements apply
14 to all ILECs, not just BOCs. Access to OSS is not unique to Qwest as a BOC that
15 sought interLATA long distance authority (i.e., Section 271 approval), but rather, is
16 required of *all ILECs*.

17 **Q. DOES THE ACT REQUIRE THAT A BOC'S OSS UNDERGO THIRD-**
18 **PARTY TESTING?**

19 A. No. Code of Federal Regulations ("CFR") § 51.319(g), which defines OSS
20 obligations, does not require third-party testing:

21 (g) Operations support systems. An incumbent LEC shall provide a
22 requesting telecommunications carrier with nondiscriminatory access to
23 operations support systems on an unbundled basis, in accordance with section
24 251(c)(3) of the Act and this part. Operations support system functions

¹⁵ Gates Response, p. 35.

1 consist of pre-ordering, ordering, provisioning, maintenance and repair, and
2 billing functions supported by an incumbent LEC's databases and
3 information. An incumbent LEC, as part of its duty to provide access to the
4 pre-ordering function, shall provide the requesting telecommunications carrier
5 with nondiscriminatory access to the same detailed information about the loop
6 that is available to the incumbent LEC.

7
8 **Q. BEYOND THE OSS UNE DEFINITION, DOES SECTION 271 REQUIRE**
9 **THAT A BOC'S OSS UNDERGO THIRD-PARTY TESTING TO BE**
10 **"SECTION 271 COMPLIANT"?**

11 A. No. There is nothing in Section 271 that obligates a BOC to conduct third-party
12 testing in order to satisfy the Section 271 competitive checklist. The competitive
13 checklist merely requires a BOC to provide non-discriminatory access to UNEs,
14 including OSS as defined in CFR § 51.319(g). Third-party testing is simply not a
15 requirement for any ILEC, including a BOC. And it most assuredly is not a
16 requirement of Section 271, as Mr. Gates seems to imply.

17 **Q. MR. GATES CONTENDS THAT ABSENT THIRD-PARTY TESTING, ANY**
18 **REPLACEMENT SYSTEM WILL CAUSE HARM. DO YOU AGREE?**

19 A. No. Mr. Gates provides no evidence, but merely speculation, that an existing
20 interface that is handling commercial volumes, such as CenturyLink's OSS does
21 today,¹⁶ cannot be modified and adapted to function as well as (or better than) an
22 existing interface.

¹⁶ CenturyLink's OSS is estimated to handle approximately 1 million orders in 2010. See Hunsucker Rebuttal, p. 12.

1 **Q. IS THERE EVIDENCE THAT CONTRADICTS MR. GATES' TESTING**
2 **DEMAND?**

3 A. Yes. The Qwest systems and processes that were third-party tested more than eight
4 years ago during the Section 271 approval process are *not the same systems and*
5 *processes* that Qwest utilizes in its territory today. Since the conclusion of the third-
6 party tests, there have been hundreds, if not thousands, of changes implemented to
7 Qwest's OSS. These changes include the retirement of the third-party tested
8 Interconnect Mediated Access – Electronic Data Interchange (“IMA-EDI”) interface,
9 and the introduction of a replacement interface, Interconnect Mediated Access –
10 Extensible Mark-up Language (“IMA-XML”).¹⁷

11 **Q. WERE THESE ALL QWEST-INITIATED CHANGES?**

12 A. No. Some of these changes were Qwest-initiated, while others were CLEC-initiated,
13 including the migration to the IMA-XML interface. Importantly, all of these changes
14 were managed successfully through the Qwest CMP, without third-party testing.

15 **Q. DO QWEST ICAs COMMIT TO IMPLEMENTING OSS CHANGES VIA THE**
16 **CMP?**

¹⁷ The IMA-XML interface was first made available in October 2006, with the first CLEC migrations occurring in April 2007.

1 A. Yes. Multiple Washington ICAs contain section 12.1.1, which commits Qwest to use
2 the CMP for OSS system improvements.¹⁸ Moreover, the Qwest template also
3 includes this commitment, making it available for all new ICAs:

4 12.1.1 Qwest has developed and shall continue to provide Operational
5 Support System (OSS) interfaces using electronic gateways and manual
6 processes. These gateways act as a mediation or control point between
7 CLEC's and Qwest's OSS. These gateways provide security for the interfaces,
8 protecting the integrity of the Qwest OSS and databases. Qwest's OSS
9 interfaces have been developed to support Pre-ordering, Ordering and
10 Provisioning, Maintenance and Repair and Billing. This section describes the
11 interfaces and manual processes that Qwest has developed and shall provide
12 to CLEC. Additional technical information and details shall be provided by
13 Qwest in training sessions and documentation and support, such as the
14 "Interconnect Mediated Access User's Guide." Qwest will continue to make
15 improvements to the electronic interfaces as technology evolves, Qwest's
16 legacy systems improve, or CLEC needs require. Qwest shall provide
17 notification to CLEC consistent with the provisions of the Change
18 Management Process (CMP) set forth in Section 12.2.6.

19
20 The use of the CMP provides a forum for Qwest or CLECs to explain any proposed
21 system changes and a formalized process for CMP participants to voice any concerns
22 they may have about any proposed change.

23 **Q. SHOULD THE COMMISSION ADOPT THE JOINT CLECs' PROPOSED**
24 **CONDITIONS 19b?**

25 A. No. The Joint CLECs have failed to identify any legitimate reason to subject the
26 merged company to costs for third party testing that was never required. The FCC
27 repeatedly affirmed in Section 271 approvals that actual commercial use was the most

¹⁸ See e.g., the approved Washington ICAs of: Level 3, effective August 6, 2007; Pac-West, effective December 3, 2009; XO Communications Services, Inc., effective August 26, 2008; Royal Communications, LLC, effective February 25, 2010 and Eschelon Telecom of Washington, Inc., effective April 2, 2009 (sections 12.1.1 and 12.1.1.1).

1 persuasive evidence of satisfactory OSS.¹⁹ That, coupled with Qwest's contractual
2 obligation, both pre- and post-merger, to manage OSS changes according to the CMP,
3 calls for rejection of proposed condition 19b.

4 **Q. PART OF PROPOSED CONDITION 19C REQUIRES THAT CLECs HAVE**
5 **AN OPPORTUNITY TO PERFORM COORDINATED TESTING WITH ANY**
6 **REPLACEMENT SYSTEM IN A PRODUCTION-MIRRORED TEST**
7 **ENVIRONMENT, AS WELL AS CONTROLLED PRODUCTION TESTING**
8 **WHERE APPLICABLE. DO QWEST ICAs ALSO DISCUSS EXTENSIVE**
9 **TESTING OPTIONS THAT QWEST WILL PROVIDE FOR CLECs WHEN**
10 **THERE ARE OSS CHANGES AND UPDATES?**

11 A. Yes. Beginning at Section 12.2.9.3 of Qwest's standard ICA, Qwest make several
12 pages of OSS testing commitments to CLECs:

13 12.2.9.3 Qwest will provide CLEC with access to a stable testing
14 environment that mirrors production to certify that its OSS will be capable of
15 interacting smoothly and efficiently with Qwest's OSS. Qwest has
16 established the following test processes to assure the implementation of a
17 solid interface between Qwest and CLEC:

18 Subsections 12.2.9.3.1, 12.2.9.3.2, 12.2.9.3.3, and 12.2.9.3.4 of the ICA specify
19 various processes, including Connectivity Testing, Stand-Alone Testing Environment

¹⁹ See e.g., MEMORANDUM OPINION AND ORDER, In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, FCC Release No. 99-404, ¶ 89 (December 21, 1999).

1 (“SATE”) regression testing, SATE progression testing, and Controlled Production.²⁰
2 Additionally, the redundant testing conditions included in Joint CLECs’ proposed
3 condition 15 fail to limit or specify the requirements apply to application to
4 application interfaces. The mirrored production environment and various types of
5 testing are not requirements for Qwest’s GUI offerings nor should they be required
6 should the merged company replace the GUI.

7 **Q. THE REMAINDER OF PROPOSED CONDITION 19c OBLIGATES THE**
8 **MERGED COMPANY TO PROVIDE TRAINING AND EDUCATION ON**
9 **ANY WHOLESALE OSS IMPLEMENTED BY THE MERGED COMPANY**
10 **WITHOUT CHARGE. DO QWEST ICAs ALREADY ADDRESS TRAINING**
11 **AND EDUCATION ON OSS?**

12 A. Yes. The standard Qwest ICA commits to training CLECs on its OSS, and
13 introductory training on systems at no charge to the CLEC. Specifically, Sections
14 12.1.3.2.1 and 12.1.3.2.2 of the standard Qwest ICA contain the OSS training and
15 education obligations:

16 12.1.3.2.1 Qwest shall provide assistance for CLEC to understand how to
17 implement and use all of the available OSS functions. Qwest shall provide
18 CLEC sufficient electronic and manual interfaces to allow CLEC equivalent
19 access to all of the necessary OSS functions. Through its web site, training,
20 disclosure documentation and development assistance, as available, Qwest
21 shall disclose to CLEC any internal business rules, specifications, test cases,
22 mapping examples and other formatting information necessary to ensure that
23 CLEC’s requests and orders are processed efficiently and necessary to enable

²⁰ Interestingly, the Joint CLEC’s proposed condition 19c doesn’t include any of the CLEC requirements or obligations commonly found in Section 12.2.9.3 for CLECs choosing to develop its own application to application interface.

1 CLEC to design its own systems. Qwest will provide information to CLEC in
2 writing. Qwest will post such information, including business rules regarding
3 out-of-hours Provisioning, on Qwest's web site. If Qwest fails to provide
4 such information or provides inaccurate information, Qwest will remedy the
5 situation within Qwest systems. Qwest shall provide training to enable CLEC
6 to devise its own course work for its own employees. Through its
7 documentation available to CLEC, Qwest will identify how its interface
8 differs from national guidelines or standards.
9

10 12.1.3.2.2 Additional technical information and details about Qwest's OSS
11 shall be provided by Qwest to CLEC in training sessions and documentation
12 and support, such as Qwest's "Interconnect Mediated Access User's Guide."
13 Qwest shall maintain its Interconnect Mediated Access User's Guide on
14 Qwest's wholesale web site. Qwest shall offer introductory training on
15 procedures that CLEC must use to access Qwest's OSS at no cost to CLEC. If
16 CLEC asks Qwest personnel to travel to CLEC's location to deliver training,
17 CLEC will pay Qwest's reasonable travel related expenses unless the Parties
18 agree otherwise.
19

20 There are differences between the existing obligations and the proposed condition
21 specifics (or lack thereof) including: no specificity on the type of training the
22 condition would require Qwest to provide, no acknowledgement that when a CLEC
23 requests on-site training at its location, the CLEC should pay reasonable, travel-
24 related expenses to Qwest, and no recognition that Qwest's application to application
25 training is to allow the CLEC to develop its own employee training.

26 **Q. SHOULD THE COMMISSION ADOPT THE JOINT CLECs' PROPOSED**
27 **CONDITION 19c?**

28 A. No. All of the components of proposed Condition 19c are already addressed in
29 contractual obligations that will remain intact post-merger. The specificity contained
30 in Qwest's ICA terms is reasonable, was the subject of negotiation and has been
31 repeatedly approved by the Commission. There is nothing in this indirect transfer of

1 control that justifies imposing more expansive obligations than those already
2 contained in CLEC ICAs.

3 **Q. PLEASE IDENTIFY THE NEXT PROPOSED CONDITIONS YOU WILL**
4 **ADDRESS.**

5 A. Below are identified the CLECs' proposed Conditions 25, 26 and 27:

6 25. The Merged Company will provide routine network modifications in
7 compliance with federal and state law, as well as the terms of applicable
8 interconnection agreements.

9
10 26. After the Closing Date, the Merged Company will engineer and
11 maintain its network in compliance with federal and state law, as well as the
12 terms of applicable interconnection agreements. Resources will not be
13 diverted to merger-related activities at the expense of maintaining the Merged
14 Company's network.

15
16 a. The Merged Company shall not engineer the transmission capabilities
17 of its network in a manner, or engage in any policy, practice, or procedure,
18 that disrupts or degrades access to the local loop.

19
20 b. The Merged Company will retire copper in compliance with federal and
21 state law, as well as the terms of applicable interconnection agreements
22 and as required by a change of law.

23
24 c. The Merged Company will not engineer or maintain the network
25 (including routing of traffic) in a manner that results in the application of
26 higher rates for traffic or inefficiencies for wholesale customers.

27
28 27. The Merged Company will provide conditioned copper loops in
29 compliance with federal and state law and at rates approved by the applicable
30 state Commission. Line conditioning is the removal from a copper loop of any
31 device that could diminish the capability of the loop to deliver xDSL. Such
32 devices include bridge taps, load coils, low pass filters, and range extenders.
33 Insofar as it is technically feasible, the Merged Company shall test and report
34 troubles for all the features, functions and capabilities of conditioned copper
35 lines, and may not restrict its testing to voice transmission only. If the Merged
36 Company seeks to change rates approved by a state Commission for
37 conditioning, the Merged Company will provide conditioned copper loops in

1 compliance with the relevant law at the current Commission approved rates
2 unless and until a different rate is approved.
3

4 **Q. SEVERAL CLECs PROVIDE TESTIMONY REGARDING PROPOSED**
5 **CONDITIONS 25, 26 AND 27. DO YOU HAVE ANY GENERAL**
6 **COMMENTS TO THIS TESTIMONY?**

7 A. Yes. Each of these conditions begins with a statement that the merged company will
8 comply with the law on the identified topics. As such, the conditions are redundant
9 and unnecessary. However, the conditions, particularly condition 26, contain
10 additional language containing particular CLEC slants or views of what they believe
11 the law should be. Despite CLEC claims to the contrary,²¹ such additional language
12 does not attempt to simply require the merged company to comply with the law, but
13 seeks to override the terms and conditions already contained in Commission approved
14 ICAs and attempts to litigate issues in this merger approval proceeding that can be
15 addressed in other, more appropriate and focused Commission proceedings.

16 **Q. DO YOU BELIEVE IT IS APPROPRIATE TO ADDRESS PROPOSED**
17 **CONDITIONS THAT CAN BE ADDRESSED IN OTHER MORE**
18 **APPROPRIATE AND FOCUSED PROCEEDINGS?**

19 A. No, I do not. These are very complex issues and disputes that have no place in this
20 merger approval docket. To ask this Commission to take a position on these
21 proposed conditions, potentially setting some precedent for issues which are complex

²¹ Responsive Testimony of Douglas Denney (“Denney Response”), pp. 29-30, Responsive Testimony of Bonnie J. Johnson (“Johnson Response”), pp. 6-7.

1 telecommunications industry issues and which may be, and should be, considered in
2 other proceedings, is inappropriate.

3 **Q. MR. DENNEY IMPLIES THAT PROPOSED CONDITION 27 IS**
4 **NECESSARY TO INSURE THAT THE CLEC DESIRED OUTCOME OF THE**
5 **DISPUTED ISSUE IN THE MINNESOTA COMMISSION DOCKET NO. P-**
6 **421/CI-09-1066 EXTEND TO THE CENTURYLINK PRE-MERGER**
7 **ENTITIES.²² IS THIS APPROPRIATE?**

8 A. No. Minnesota Commission Docket No. P-421/CI-09-1066 is specific to Qwest
9 product offerings, ICAs and interconnection obligations in Minnesota. While I am
10 not an attorney, and Qwest will cover this issue in its post-hearing briefs, it does not
11 make sense that the outcome of a Minnesota docket, such as Docket No. P-421/CI-
12 09-1066, would extend to Qwest in Washington, much less extend to CenturyLink
13 when it has a different product offerings that are provided under different terms and
14 conditions defined in ICAs between a CLEC and a CenturyLink ILEC.

15 **Q. DOES MR. DENNEY AGREE WITH YOU THAT THE RESULTS OF A**
16 **MINNESOTA DOCKET SHOULD BE NOT BE BINDING IN WASHINGTON**
17 **OR ON CENTURYLINK'S ENTITIES?**

18 A. Yes, Mr. Denney states:

²² Denney Response, pp. 32-33.

1 However, a decision by the Minnesota Commission will be state-specific, as
2 well as entity-specific. A Minnesota decision will not be binding on Qwest in
3 any other state or on the other operating entities in any other state.²³

4 **Q. WHAT WOULD BE THE APPROPRIATE PROCESS IF INTEGRA HAS A**
5 **CONCERN REGARDING THE PRODUCTS AND/OR TERMS AND**
6 **CONDITIONS OF ITS WASHINGTON ICA?**

7 A. If Integra has a concern regarding any Qwest product, term or condition in its
8 Washington ICA, it should either seek to amend the Washington ICA or use the
9 dispute resolution process spelled out in its ICA to resolve any issues or concerns,
10 and not expect this Commission to rule on proposed conditions in this proceeding.

11 **Q. MR. DENNEY STATES THAT CENTURYLINK AND QWEST SHOULD**
12 **HAVE NO ISSUE WITH THESE PROPOSED MERGER CONDITIONS,**
13 **BECAUSE THE PROPOSED CONDITIONS ARE INTENDED TO GO NO**
14 **FURTHER THAN THE CURRENT LAW.²⁴ WHAT IS YOUR RESPONSE TO**
15 **THESE STATEMENTS?**

16 A. If that was the sole intent of the CLECs, these issues would be moot, as the ICAs
17 already obligate Qwest to be compliant with existing law.²⁵ However, as discussed in
18 more detail in Mr. Hunsucker's rebuttal testimony, these proposed conditions demand
19 much more than compliance with existing law, which CenturyLink and Qwest are
20 already obligated to follow, and which they do follow. In fact, both companies make

²³ Denney Response, p. 31.

²⁴ Denney Response, pp. 30-31.

²⁵ Moreover, Qwest and CenturyLink are required to comply with applicable laws, rules, and regulations in any event whether Section 251 ICAs have explicit terms attesting to this requirement or not.

1 clear in their ICAs that their contractual obligations are based on current federal and
2 state law. Examples of such requirements in the existing, Commission-approved,
3 Qwest-Eschelon ICA²⁶ include:

- 4 • Section 2.2 The provisions in this Agreement are intended to be in
5 compliance with and based on the existing state of the law, rules,
6 regulations and interpretations thereof, including but not limited to state
7 rules, regulations, and laws, as of March 11, 2005 (the Existing Rules). . .
8 .To the extent that the Existing Rules are vacated, dismissed, stayed or
9 materially changed or modified, then this Agreement shall be amended to
10 reflect such legally binding modification or change of the Existing Rules.
11 Where the Parties fail to agree upon such an amendment within sixty (60)
12 Days after notification from a Party seeking amendment due to a
13 modification or change of the Existing Rules or if any time during such
14 sixty (60) Day period the Parties shall have ceased to negotiate such new
15 terms for a continuous period of fifteen (15) Days, it shall be resolved in
16 accordance with the Dispute resolution provision of this Agreement.
17
- 18 • Section 5.19.1 This Agreement is offered by Qwest and accepted by CLEC
19 in accordance with applicable federal law and the state law of Washington.
20 It shall be interpreted solely in accordance with applicable federal law and
21 the state law of Washington.

22 Specifically, as to the issue of retirement and replacement of copper loops (proposed
23 Condition 26), there is an extensive section in the ICA (Section 9.2.1.2.3) that
24 addresses that issue.

25 In summary, there is absolutely no reason to adopt these proposed conditions,
26 especially since the current ICAs ensure the intent and contractual obligation of
27 Qwest, today and in the future, to be compliant with current state and federal laws.

28 Moreover, the ICAs, unlike the Joint CLECs' proposed conditions, provide the

²⁶ Approved by the Washington Commission in Docket No. UT-063061 Order No. 20, effective April 2, 2009.

1 specific terms and conditions that have been negotiated or arbitrated and approved by
2 the Commission as satisfying the requirements of Washington and federal law.

3 **Q. ARE THERE ANY SPECIFIC LEVEL 3-PROPOSED CONDITIONS THAT**
4 **YOU WOULD LIKE TO ADDRESS?**

5 A. Yes. In this testimony, I address Level 3's proposed Conditions 1c, 2, 8 and 9.

6 **Q. DO YOU AGREE WITH LEVEL 3'S PROPOSED CONDITION 1C THAT**
7 **THE COMMISSION REQUIRE QWEST TO HAVE A STATEMENT OF**
8 **GENERALLY AVAILABLE TERMS & CONDITIONS ("SGAT") ON FILE**
9 **WITH THE COMMISSION FOR FIVE YEARS?**

10 A. No. At the time that Qwest began its effort to obtain Section 271 relief, it elected to
11 obtain state approval using a collaborative workshop process to explore and resolve
12 the literally hundreds of issues relating to specific provisions of Qwest's Section 251-
13 related obligations. In the Section 271 collaborative workshop process, Qwest,
14 CLECs, and Commission Staff members worked through proposed contract language
15 that would serve to implement the Section 251 requirements as they were developed.
16 At the time, the SGAT was the document that provided a single, common vehicle for
17 these collaborative workshops with CLECs and state commissions to assure that
18 Qwest's Section 251 products, services, elements including their attendant terms and
19 conditions were a key indicator of satisfying the Section 271 14-point checklist
20 requirements.

1 Despite the SGAT's utility as a reference for the provisions incorporated during the
2 collaborative workshop phase of the Section 271 process, the SGAT itself was not the
3 basis for Qwest's successful multi-state Section 271 application to the FCC. The Act
4 provides two paths by which BOCs could seek approval to enter new markets:

- 5 • 271(c)(1)(A) provides that "A Bell operating company meets the
6 requirements of this subparagraph if it has entered into one or more binding
7 agreements that have been approved under section 252 specifying the terms
8 and conditions under which the Bell operating company is providing access
9 and interconnection to its network facilities for the network facilities of one
10 or more unaffiliated competing providers of telephone exchange
11 service...."
- 12 • 271(c)(1)(B) provides that "A Bell operating company meets the
13 requirements of this subparagraph if, after 10 months after the date of
14 enactment of the Telecommunications Act of 1996, no such provider has
15 requested the access and interconnection described in subparagraph
16 (A)...and a statement of the terms and conditions that the company
17 generally offers to provide such access and interconnection has been
18 approved or permitted to take effect by the State commission under section
19 252(f)."

20
21
22 The path provided under subsection 271(c)(1)(A) is known as "Track A," while the
23 path provided under subsection 271(c)(1)(B) is referred to as "Track B." In
24 requesting relief under Section 271 for Washington, Qwest followed the Track A
25 path, relying on the binding agreements it had with CLECs that the Washington
26 Commission had approved under Section 252 of the Act. Qwest did not rely on its
27 SGAT, or pursue the Track B alternative.

28 **Q. DID THIS COMMISSION FIND THAT QWEST SATISFIED THE**
29 **REQUIREMENTS FOR TRACK A?**

1 A. Yes. The Initial Order on Track A in Docket Nos. UT-003022 and UT-003040,
2 found:

3 Qwest has provided sufficient evidence to meet the requirements of section
4 271(C)(1)(A). Qwest has established that it has entered into one or more
5 binding interconnection agreements approved under section 252, and that it is
6 providing access and interconnection to its network facilities for the network
7 facilities of one or more unaffiliated competing providers of telephone
8 exchange service. The responses to Qwest's data requests indicate that the
9 competing providers are providing telephone exchange service to residential
10 and business subscribers; and that they provide service either exclusively over
11 their own telephone exchange service facilities or predominantly over their
12 own telephone exchange service facilities in combination with the resale of
13 the telecommunications services of another carrier.²⁷

14 The Commission agreed as demonstrated by its decision affirming the ALJ's decision
15 on Qwest meeting the Track A requirements.²⁸

16 **Q. DOES THE TELECOM ACT REQUIRE THAT AN SGAT BE MAINTAINED?**

17 A. No. There is no provision in the Act that requires an SGAT be in place or be
18 maintained. For example, in Maine, several CLECs attempted to argue that the lack
19 of an SGAT or tariff precluded a finding that Verizon was meeting its Section 251

²⁷ TWENTIETH SUPPLEMENTAL ORDER; INITIAL ORDER (WORKSHOP FOUR): CHECKLIST ITEM NO. 4; EMERGING SERVICES, GENERAL TERMS AND CONDITIONS, PUBLIC INTEREST, TRACK A, AND SECTION 272, *In The Matter Of The Investigation Into U S West Communications, Inc.'s Compliance With Section 271 of the Telecommunications Act of 1996*, Docket No. UT-003022 and *In The Matter Of The Investigation Into U S West Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Docket No. UT-003040, ¶ 490 (November 14, 2001).

²⁸ TWENTY-EIGHTH SUPPLEMENTAL ORDER; COMMISSION ORDER ADDRESSING WORKSHOP FOUR ISSUES: CHECKLIST ITEM NO. 4 (LOOPS), EMERGING SERVICES, GENERAL TERMS AND CONDITIONS, PUBLIC INTEREST, TRACK A, AND SECTION 272, *In The Matter Of The Investigation Into U S West Communications, Inc.'s Compliance With Section 271 of the Telecommunications Act of 1996*, Docket No. UT-003022 and *In The Matter Of The Investigation Into U S West Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Docket No. UT-003040, ¶ 1 (March 12, 2002).

1 obligations. The FCC, however, looked at the multiple interconnection agreements
2 that Verizon had entered into with Maine CLECs, and the ability of other CLECs to
3 opt into agreements, as evidence of continuing Section 251 compliance.²⁹ The FCC
4 paid particular emphasis to the fact that Section 252(f)(1) states that a BOC “may”
5 file a SGAT, and not that it must file one.³⁰

6 Furthermore, Qwest is not required to continue to make the SGAT available simply
7 because it was the basis of previously-approved interconnection agreements. The fact
8 that Qwest maintains multiple interconnection agreements in Washington
9 demonstrates that Qwest continues to meet its Section 251 requirements.

10 To facilitate the process of entering into an ICA, Qwest makes available a “template”
11 interconnection agreement (“Template Agreement”). The Template Agreement
12 serves as Qwest’s initial ICA offer to CLECs, and it can be adopted as their ICA. As
13 Qwest’s initial contract offer, if the Template Agreement does not meet all of a
14 CLEC’s business needs, it serves as a starting point for subsequent negotiations and,
15 if necessary, arbitration of the CLEC’s ICA that ultimately would be submitted to the
16 state commission for approval.

17 In addition, CLECs may “opt in” to existing agreements between Qwest and other
18 carriers that have been recently negotiated (or arbitrated) and approved by the

²⁹ *In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services In Maine*, CC Docket No. 02-61, 17 FCC Rcd 11659, 11687-11688 (June 19, 2002).

³⁰ *Id.* at 11688, n. 185.

1 Commission under its Section 252 authority. Therefore, the absence of a SGAT in no
2 way diminishes the Commission's role in overseeing and approving the terms and
3 conditions of Section 252 agreements. Qwest submits every agreement containing
4 Section 251 terms (including rates associated with those products and services) to the
5 Commission for review and approval pursuant to the requirements of Section 252.

6 As a final safeguard, the Commission maintains its authority under Section 252 to
7 serve as the arbitrator, and thus to render the final decisions on disputed
8 interconnection agreement terms and conditions between Qwest and CLECs. The
9 Commission also maintains its authority to reject any agreement or amendment if: a)
10 it is found to discriminate against a telecommunications carrier not a party to the
11 agreement; b) the implementation of such agreement or portion is not consistent with
12 the public interest, convenience and necessity; or, c) the agreement does not meet the
13 requirements of Section 251.

14 In Idaho, for example, Qwest petitioned to the Idaho Commission specifically to
15 withdraw its outdated SGAT, and the Commission noted in its order approving the
16 withdrawal:

17 It is equally undisputed that the Act does not mandate that an SGAT be
18 maintained, nor has this Commission ordered Qwest to file and maintain an
19 SGAT. Thus, although the Intervenors discuss numerous advantages to an
20 SGAT, they do not identify a legal requirement in this state that an SGAT
21 remain in effect. On this record, the Commission grants Qwest's motion to
22 allow it to withdraw its SGAT in Idaho.³¹

³¹ In the Matter of the Petition of Qwest Corporation Requesting Authorization to Withdraw its Statement of Generally Available Terms and Conditions, Case No. QWE- 08-T-08-04, Order No. 30750, Idaho PUC (March 17, 2009).

1
2 Moreover, it is not an inconvenience to CLECs if an SGAT is withdrawn. Given the
3 numerous changes of law, arbitrations and wholesale updates since the SGAT process
4 was concluded, it is an outdated document that would not make a reasonable starting
5 document for negotiating a new interconnection agreement. Nor is it reasonable to
6 require, on a going-forward basis, that an SGAT be filed and kept current. Many
7 CLECs will often seek to review and consider adopting an agreement that has been
8 tailored to meet their needs, and not a generic SGAT document.

9 **Q. PLEASE IDENTIFY THE NEXT PROPOSED LEVEL 3 CONDITIONS YOU**
10 **WILL ADDRESS.**

11 A. Level 3 proposed the following conditions:

12 2 a. The Combined Entity shall compensate terminating carriers at the
13 appropriate rate for ISP-bound traffic and that ISP-bound traffic shall include
14 traffic provisioned using virtual NXX codes; and

15
16 2 b. The Combined Entity shall treat all locally-dialed ISP-bound traffic
17 including virtual NXX traffic, as telecommunications traffic in the calculation
18 of relative use factors for purposes of 51 C.F.R. §703(b).

19 **Q. ARE THERE ANY ASPECTS OF LEVEL 3'S PROPOSED CONDITION 2**
20 **THAT YOU WOULD LIKE TO ADDRESS?**

21 A. Yes. In Condition 2a, Level 3 seeks to impose an obligation for the merged company
22 to pay a reciprocal compensation rate for all Internet Service Provider ("ISP")-bound
23 traffic inclusive of Virtual NXX ("VNXX") calls. In Condition 2b, Level 3 proposes
24 that all locally-dialed ISP-bound traffic would be utilized in the calculation of
25 Relative Use Factors ("RUFs"). These are both extremely complicated issues that

1 have been extensively litigated throughout many states. This merger proceeding is
2 certainly not the proper forum for re-litigating these issues.

3 **Q. IN HIS TESTIMONY, MR. THAYER MENTIONS SEVERAL FEDERAL**
4 **DOCKETS TO SUPPORT PROPOSED CONDITION 2A. DO YOU AGREE**
5 **WITH HIS INTERPRETATIONS OF FINDINGS IN THESE DOCKETS?**

6 A. No. Mr. Thayer takes the position that all ISP traffic is subject to reciprocal
7 compensation pursuant to FCC and Court decisions.³² This interpretation is incorrect.
8 While I am not an attorney, and cannot specifically address the inaccurate legal
9 interpretations that Mr. Thayer has made, I do know that the orders that he cites did
10 not find that calls to ISPs' Virtual NXX numbers are calls that would require a local
11 exchange carrier ("LEC") like Qwest to pay reciprocal compensation. Again,
12 however, these legal issues surrounding intercarrier compensation are not
13 appropriately addressed in a merger proceeding, but in interconnection agreement
14 arbitrations or complaint proceedings.

15 **Q. DOES THE CURRENT QWEST AND LEVEL 3 COMMISSION-APPROVED**
16 **ICA IN WASHINGTON ADDRESS RECIPROCAL COMPENSATION FOR**
17 **ISP-BOUND TRAFFIC?**

18 A. Yes. Section 7.3.6, "ISP-Bound Traffic," specifically addresses reciprocal
19 compensation for ISP bound traffic.

³² Thayer Response, p. 11.

1 **Q. IF LEVEL 3 IS CONCERNED THAT QWEST IS NOT PAYING**
2 **COMPENSATION CONSISTENT WITH FCC ORDERS, DOES IT HAVE**
3 **ANY RECOURSE FOR THAT CONCERN?**

4 A. Absolutely. Level 3 can invoke Section 5.18 of its ICA that addresses dispute
5 resolution. Thereafter, if Level 3 has exhausted that provision, it can proceed with a
6 complaint with the Commission, or an action in court. Indeed, Level 3 has availed
7 itself of that process in other states, including previous interconnection enforcement
8 complaints and federal court petitions for judicial review, on issues such as
9 compensation for VNXX traffic.

10 **Q. ARE YOU AWARE IF THIS COMMISSION HAS ALREADY RULED ON**
11 **THE ISSUES IN PROPOSED CONDITIONS 2A AND 2B?**

12 A. Yes, my understanding is that this Commission specifically addressed the treatment
13 of VNXX traffic in Order 10 in Docket UT-63038.³³ Specifically, the Commission
14 determined that VNXX traffic should be exchanged on a bill and keep basis in
15 Washington and that VNXX routing is permissible so long as the CLEC bears the
16 cost of transporting VNXX calls.³⁴

17 Since the Commission has already clearly ruled on these issues, the Commission
18 should reject Level 3's attempt to use proposed Conditions 2a and 2b in a merger
19 proceeding to back door a different decision from this Commission.

³³ Order 10, *Qwest Corporation v. Level 3 Communications, LLC, et al.*, Docket UT-63038 (July 16, 2008).

³⁴ *Id.*, at ¶¶ 327-337.

1 **Q. DOES PAC-WEST MAKE A SIMILAR PROPOSAL FOR A VNXX RELATED**
2 **MERGER CONDITION?**

3 A. Yes.³⁵ However, as Mr. Falvey points out, the dispute is currently being litigated.
4 This issue is not merger related. Despite Mr. Flavey's claims, the appropriate venue
5 to resolve this issue is the current litigation not this proceeding.

6 **Q. IS THERE ANOTHER PAC-WEST PROPOSED MERGER CONDITION**
7 **YOU ARE ADDRESSING?**

8 A. Yes. Pac-West suggests that the merger proceeding be used to force an agreement in
9 current ICA amendment negotiations, regarding VOIP termination, between the
10 parties. After misrepresenting Qwest's position and the differing circumstances in
11 Arizona, Mr. Falvey clearly acknowledges the ongoing negotiations and expresses
12 that he is hopeful that the parties will reach agreement.³⁶ This admission is telling.
13 The sole purpose of the Pac-West condition is to give it an advantage in its attempts
14 to negotiate a lower rate for terminating its voice traffic (i.e., VOIP) than it receives
15 from Qwest for voice traffic termination. The current ICA amendment negotiation,
16 including arbitration if necessary, is the appropriate place to resolve this. The
17 Commission should reject Pac-West's proposed merger condition.

18 **Q. LEVEL 3'S PROPOSED CONDITION 8 IMPLIES THAT QWEST HAS**
19 **UNLAWFUL BILLING DISPUTE PROCESSES. DO YOU AGREE?**

³⁵ Responsive Testimony of James C. Falvey ("Falvey Response"), pp. 16-17.

³⁶ Falvey Response, p. 19.

1 A. No. Qwest follows its established billing processes, and to the extent that specific
2 billing terms and conditions are identified in ICAs, tariffs or other agreements, Qwest
3 honors the identified conditions. To the extent that Level 3 is concerned about its
4 specific billing terms and conditions, Qwest will address those directly with Level 3.
5 It is inappropriate to use this merger docket to address Level 3's specific issues and
6 disputes that are not relevant to the Commission's determination whether this merger
7 is in the public interest and thus should be approved. The Commission should
8 therefore reject Level 3's proposed Condition 8.

9 **Q. LEVEL 3'S PROPOSED CONDITION 9 IMPLIES THAT QWEST DOES NOT**
10 **FOLLOW ITS INTERSTATE AND INTRASTATE TARIFFS AS TO THE**
11 **BILLING OF RATE ELEMENTS. IS THIS ACCURATE?**

12 A. No. Qwest follows its established rates, terms and conditions as identified in its
13 tariffs. Specifically, Qwest does not inappropriately borrow rates from its interstate
14 tariffs to establish intrastate rates, as this condition implies. Mr. Thayer's testimony
15 was general and not specific enough to address the testimony factually. Moreover,
16 Mr. Thayer's testimony appears to imply that Qwest is not using an interstate rate in
17 error, but rather, Mr. Thayer appears to object to the fact that the tariffed intrastate
18 rate structure does not match the interstate expanded interconnection rate structure.
19 To the extent that Level 3 has any concerns with the billing of its tariffed services,
20 Qwest has and will continue to address those concerns directly with Level 3. It is not
21 appropriate, however, for Level 3 to attempt to use proposed merger conditions as
22 leverage against Qwest to address specific non-merger issues between the two

1 carriers. Level 3's dispute is not affected in any manner by this merger, and it is not
2 relevant to this merger proceeding. The Commission should therefore reject Level
3 3's proposed Condition 9.

4 **V. CONCLUSION**

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 **A. Yes.**