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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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4 ADVANCED TELECOM, INC. d/b/a INTEGRA;) Docket UT-111254

ELECTRIC LIGHTWAVE, LLC d/b/a INTEGRA;) Pages 1-52

5 ESCHELON TELECOM OF WASHINGTON, INC)

d/b/a INTEGRA TELECOM; OREGON TELECOM)

6 INC. d/b/a WASHINGTON TELECOM d/b/a)

INTEGRA; UNICOM f/k/a UNITED)

7 COMMUNICATIONS, INC. d/b/a INTEGRA;)

MCLEODUSA TELECOMMUNICATIONS SERVICES)

8 L.L.C. d/b/a PAETEC BUSINESS SERVICES;)

AND TW TELECOM OF WASHINGTON LLC,)

9)

Complainants,)

10)

vs.)

11)

QWEST CORPORATION AND CENTURYLINK,)

12 INC.,)

Respondents.)

13

14

PREHEARING CONFERENCE, VOLUME I

15

Pages 1-52

ADMINISTRATIVE LAW JUDGE MARGUERITE E. FRIEDLANDER

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1:30 P.M.

AUGUST 25, 2011

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Washington Utilities and Transportation Commission

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A P P E A R A N C E S

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OLYMPIA, WASHINGTON, AUGUST 25, 2011

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1:30 P.M.

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P R O C E E D I N G S

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JUDGE FRIEDLANDER: Good afternoon. Let's be on the record.

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This is Docket UT-111254, and I am Marguerite Friedlander, Administrative Law Judge, presiding over this matter. We are here today before the Washington Utilities and Transportation Commission on Thursday, August 25, 2011, for a prehearing conference in the Joint CLECs complaint against Qwest Corporation and CenturyLink, Inc., regarding alleged violations of the Commission's order in Docket UT-100820, and various settlement agreements respondents entered into in that docket relating to the replacement of Qwest's Legacy OSS.

We will also be taking up the issue of Joint CLECs' motion for temporary relief in the prehearing conference.

So let's begin by taking appearances, and we'll start with Integra and PAETEC.

MR. MERZ: Thank you, Your Honor. Greg Merz.

JUDGE FRIEDLANDER: I think your mic might not be on. If the red light's on, that's the indication that the mic is working.

MR. MERZ: It's not on, and it doesn't seem to turn

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1 on.

2 MS. GILES: Oh, it's not plugged in.

3 MR MERZ: Oh, yeah. There you go.

4 MALE SPEAKER: I'm the engineer. Let me handle it.

5 JUDGE FRIEDLANDER: Would you provide technical
6 assistance? Thank you. What are we going to do without Bob
7 when he retires?

8 MS. ANDERL: A wireless mic?

9 JUDGE FRIEDLANDER: Yeah, there you go. Exactly.

10 MR. MERZ: Excellent. Thank you.

11 JUDGE FRIEDLANDER: Good deal. Thank you.

12 MR. MERZ: Thank you, Your Honor.

13 MALE SPEAKER: That's why we need engineers.

14 JUDGE FRIEDLANDER: Yeah.

15 MR. MERZ: Greg Merz, with the Gray Plant Mooty law
16 firm in Minneapolis, representing Integra Telecom and PAETEC
17 Business Services.

18 JUDGE FRIEDLANDER: Okay. And I should say that
19 since this is our first appearance, I would like a full
20 description -- your business address, contact information -- the
21 typical spiel.

22 MR. MERZ: Okay. Gray, Plant, Mooty, Mooty & Bennett
23 is located at 500 IDS Center, 80 South Eighth Street in
24 Minneapolis, 55402. The phone number is 612.632.3000. My
25 e-mail address is gregory -- g-r-e-g-o-r-y -- dot merz --

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1 m-e-r-z -- @gpmlaw.com.

2 JUDGE FRIEDLANDER: Great. And then I think that's
3 all the information that we needed. Thank you.

4 And appearing today on behalf of tw telecom of
5 washington llc?

6 MS. GILES: Yes. I'm Lauren Giles of the law firm of
7 Davis Wright Tremaine in Seattle. Our business address is 1201
8 Third Avenue, Suite 2200, Seattle, Washington 98101. My phone
9 number is 206.757.8259, and my e-mail is laurengiles -- that's
10 l-a-u-r-e-n-g-i-l-e-s -- at dwt.com.

11 JUDGE FRIEDLANDER: Great. Thank you.

12 And appearing today on behalf of Qwest/CenturyLink?

13 MS. ANDERL: Thank you, Your Honor. Lisa Anderl,
14 in-house attorney, on behalf of Qwest Corporation and
15 CenturyLink. My business address is 1600 Seventh Avenue, Room
16 1506, Seattle, Washington 98191. My e-mail is
17 Lisa.Anderl@CenturyLink.Com, and my phone is 206.345-1574.

18 JUDGE FRIEDLANDER: Great. Thank you.

19 And appearing today on behalf of Staff?

20 MS. CAMERON-RULKOWSKI: On behalf of Staff, Jennifer
21 Cameron-Rulkowski, Assistant Attorney General. My address is
22 1400 South Evergreen Park Drive Southwest, Olympia, Washington
23 98504. The telephone number is 360.664.1186. Fax number is
24 360.586.5522. E-mail is jcameron@utc.wa.gov.

25 JUDGE FRIEDLANDER: Great. Thank you.

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1 And it's my understanding that Public Counsel will
2 not be participating in these proceedings, so we'll move on
3 to --

4 Pardon?

5 MS. ANDERL: Mr. Butler?

6 JUDGE FRIEDLANDER: Yeah. We'll move on to
7 Mr. Butler with Cbeyond Communications.

8 MR. BUTLER: This is Arthur A. Butler of the law firm
9 of Ater Wynne, LLP, appearing on behalf of Cbeyond
10 Communications, LLC. My address is 601 Union Street, Suite
11 1501, Seattle, Washington 98101-3981. Telephone number is
12 206.623.4711, fax is 206.467.8406, and my e-mail address is
13 aab@aterwynne.com. Ater Wynne is spelled A-t-e-r, W-y-n-n-e.

14 JUDGE FRIEDLANDER: Thank you.

15 And is there anyone who wishes to put in an
16 appearance at this time?

17 Let the record reflect that no one is coming forward
18 in the conference room, nor on the bridge line.

19 So let's go ahead and take up the petition request at
20 this time. Cbeyond has filed a petition to intervene.

21 Are there any objections to Cbeyond's participation
22 in the case?

23 MS. CAMERON-RULKOWSKI: None from Staff, Your Honor.

24 JUDGE FRIEDLANDER: Thank you.

25 MR. MERZ: No objections, Your Honor.

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1 JUDGE FRIEDLANDER: Okay.

2 MS. ANDERL: No, Your Honor. Based on the
3 representations in the petition for intervention, we do not
4 object.

5 JUDGE FRIEDLANDER: Okay. Thank you. So the
6 petition for intervention is granted.

7 And are there any other requests to intervene at this
8 time?

9 Since no one has put in an appearance nor requested
10 intervention status, we'll move on to the motion for injunctive
11 relief.

12 At this time I'll let the parties know that I would
13 like to limit the oral arguments in this matter to approximately
14 ten minutes. If the Joint CLECs wish to reserve some of that
15 ten minutes for rebuttal, that's fine.

16 And the motion for injunctive relief I'm referring to
17 is the Joint CLECs motion for injunctive relief and request for
18 oral argument that was filed earlier in this matter.

19 So, Mr. Merz, if you would like to go forward.

20 MR. MERZ: Thank you, Your Honor, and I would
21 appreciate it if I could reserve at least a couple of minutes
22 for rebuttal.

23 JUDGE FRIEDLANDER: Two minutes suffice or three?

24 MR. MERZ: Yeah, two.

25 JUDGE FRIEDLANDER: Two? Two is fine?

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1 MR. MERZ: Two would be fine.

2 JUDGE FRIEDLANDER: Okay. Thank you.

3 MR. MERZ: And before I begin, I have just Paragraph
4 12 in the Integra settlement, which is really the focus of our
5 motion. And with Your Honor's permission, I would just hand
6 that out so we can have it in front of us as we're talking.

7 JUDGE FRIEDLANDER: Does anyone have an objection?

8 Okay. Hearing nothing, that's fine with me. Thank
9 you.

10 MR. MERZ: What I wanted to do today, Your Honor, was
11 really just focus on the key arguments that Qwest and -- Qwest
12 and CenturyLink had made in opposition to the motion.

13 As Your Honor knows, the focus is the Integra
14 settlement agreement and whether Qwest's announced plan to
15 implement a new repair operational support system, OSS, called
16 "MTG" in December of this year violates the settlement
17 agreement.

18 There are three specific provisions of Paragraph 12
19 in the Integra settlement agreement that we believe are violated
20 by the plan that Qwest and CenturyLink has announced.

21 First, in Paragraph 12, the very first sentence
22 describes an obligation on behalf of the Merged Company to
23 continue to use and offer to wholesale customers the Legacy
24 Qwest OSS. The plan, as it's been described to us, is that
25 Qwest presently uses MEDIACC for its own purposes and that it

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1 will, in December of 2011, begin to use MTG instead of MEDIACC.
2 In other words, it's going to replace for itself MEDIACC with
3 MTG.

4 Now, that's been kind of an issue of controversy. In
5 Colorado, they admitted that's the case. In Washington, they
6 have backed away from that admission. It's really, I think at
7 this point, unclear because of the various statements that Qwest
8 has made exactly what they will be doing with MTG in December of
9 2000 [sic].

10 Really what we think is going on here is rather than
11 changing its plan, it's just changing the way it's defining the
12 word "use." But the bottom line here is if it's the case that
13 Qwest does not intend to begin using December of two thousand --
14 begin using MTG in December of 2011, it shouldn't have any
15 objection. In fact, it should just agree that it won't do that.
16 That's a key concern on my clients' part because they're
17 concerned that if Qwest begins to use MTG for itself, then it
18 will have much less incentive to maintain the existing OSS.

19 But that's not the only provision we rely on, and I
20 want to make sure that that's clear, because you also see also
21 in Paragraph 12 -- and I'm looking now at the last sentence
22 before the subheading, "a," the obligation that the Merged
23 Company will not replace or integrate Qwest systems without
24 first establishing a detailed transition plan and complying with
25 the following principles.

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1 It talks about both replacing and integrating, both
2 of those things, and so it's not just -- not just that they
3 can't replace it, but they can't integrate it with Qwest
4 systems.

5 And there's no question here that MTG is going to be
6 integrated with Qwest systems. They agree with that. Whatever
7 confusion there might be about the word "use," there's no
8 question about the fact that they're going to integrate, and
9 they're going to integrate without complying with these various
10 requirements. The requirements all relate to processes by which
11 CLECs want the opportunity to provide input into the development
12 of new OSS. And so that's the second -- second provision that
13 we believe is violated here.

14 And then, finally, the third provision you'll find on
15 the next page, "c," small letter, "i," the replacement or
16 retirement of Qwest OSS may not occur without sufficient
17 acceptance of the replacement OSS.

18 Again, it uses both the words "replacement" or
19 "retirement." Qwest is taking the position that because they
20 have now decided to push back the retirement of MEDIACC until
21 sometime in 2013, that this provision is satisfied.

22 But MTG -- there's no dispute about it -- is the
23 replacement OSS for MEDIACC, and so the fact that they have
24 decided to push out the retirement doesn't mean that they comply
25 with this provision. If they are implementing a replacement

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1 interface, these obligations that are in the Integra settlement
2 are triggered.

3 Now, what's Qwest say -- well, let me say first that,
4 you know, just two weeks ago, the Minnesota Commission met to
5 deal with this issue. In that case, we didn't -- hadn't yet
6 brought a motion like we had here. The Commission on its own
7 motion found that the CLEC interpretation of the settlement
8 agreement was the one that the Commission had in mind at the
9 time they approved the Qwest merger. They rejected the very
10 same arguments that Qwest and CenturyLink are making here, and
11 they also directed that Qwest and CenturyLink immediately cease
12 their planned implementation of MTG during the 30-month
13 moratorium period.

14 And so that's the Minnesota Commission. We have not
15 yet gotten a written order from them, but that's what they
16 decided two weeks ago.

17 Now, I think there may be two or maybe three main
18 arguments that Qwest and CenturyLink are making about this. One
19 is that it's important to develop MTG now because MEDIACC is
20 old. Well, MEDIACC was old when the parties entered into the
21 Integra settlement. MEDIACC was old when the Commission
22 approved the merger.

23 The issue of vendor support for MEDIACC is not in any
24 sense a new issue. It was June of 2000 that the vendor of the
25 database that's used by MEDIACC strongly recommended upgrading

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1 to a new version of that database. In June of 2003, the MEDIACC
2 operating system was the end of vendor support, and so this is
3 not a new issue.

4 And so the question that one has to ask is if Qwest
5 knew when they were getting their merger approved that they had
6 this problem with this system, why didn't they raise it with the
7 Commission, and why are we, the CLECs -- why is the Commission
8 being put in a position now of having to deal with a system
9 that, I think, Qwest has caused concern about?

10 We have heard variously that the system's unstable,
11 that it's at risk of catastrophic failure, but we've also heard
12 that it's stable and even very stable. We've heard that the
13 system is likely to -- there's problems, that failure is
14 unlikely, and that Qwest can't predict the likelihood of
15 failure. We've just heard so many different explanations about
16 what's going on that it's -- it's a serious concern.

17 And so it's not as if we're saying that these
18 conditions exist for their own sake, or that we're insisting
19 that it be complied with for their own sake. The conditions
20 exist to make sure that CLECs are on the same level playing
21 field with Qwest, and to make sure that CLECs have an
22 opportunity to offer input into the systems that they use. And
23 that's what the harm is here; that that opportunity is being
24 taken away.

25 Another argument that Qwest makes is that if it

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1 implements now and does the merger procedure later, then that's
2 going to be good enough. That's going to comply with the
3 settlement agreement. It's unrealistic to think that CLECs will
4 have the same ability after this system is up running to have
5 meaningful input as they would have before this system has been
6 implemented. There's going to be a powerful amount of inertia
7 involved here.

8 The other problem is that, as I have said, Qwest is
9 moving itself to MTG and leaving CLECs with what they've
10 described -- what Qwest has described as an obsolete system.

11 So CLECs have the choice of either choosing to
12 abandon their rights under the settlement agreement, and their
13 right is to insist there not be a new replacement interface for
14 30 months, or they can accept the likelihood or possibility that
15 the existing system can fail.

16 That was not the bargain that the CLECs entered into.
17 That was not what this Commission approved. And what happens if
18 a CLEC does take Qwest up on its option, its offer, to implement
19 this new system in 2001 [sic]? What if there are changes later?

20 As Qwest says, there might very well be. Then the
21 CLEC is in a position of having to participate in this process
22 twice, now -- and by the way, the process is going on right now.
23 They're having technical conferences. There was a technical
24 conference yesterday. There are comments due tomorrow on the
25 specifications.

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1 And so the process is going on now, and CLECs are
2 going to be in a position of having to participate now and
3 later. Again, that wasn't the bargain that the CLECs entered
4 into. It wasn't what the Commission approved.

5 And then the last argument that I'll touch on briefly
6 is the argument that there's no need for preliminary injunction
7 because MEDIACC is not going to be retired until 2013.

8 The easiest answer to that is that the merger
9 conditions prohibit the implementation of replacement interface
10 for at least 30 months after the closing.

11 If Qwest and CenturyLink proceed on the schedule that
12 they have announced, they're going to implement that new
13 interface in -- in December of this year. The train's on the
14 tracks. The train is rolling forward. This Commission has
15 authority to protect the integrity of its prior order to say
16 that we need an opportunity to investigate these facts, the
17 CLECs have raised serious concerns here, and we need to maintain
18 the status quo.

19 And so that's what we're asking you to do, is to
20 maintain the status quo. We're not saying you have to decide
21 now that they can't implement for 30 months.

22 What we're asking is that you say now, Qwest, you
23 stop what you're doing. You suspend your activity. You
24 maintain the status quo until all of this can get sorted out.

25 And, oh, by the way, there are discussions going on

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1 between the parties, the CLECs and Qwest, to try to work out a
2 way to resolve this issue. But if Qwest is allowed to proceed
3 as it's proceeding now, there's no incentive on their part to
4 discuss anything with us.

5 And so we're asking again that you maintain the
6 status quo, and thank you very much.

7 JUDGE FRIEDLANDER: All right. Thank you.

8 And, Ms. Giles, did you intend to give an opening --
9 or an oral argument as well?

10 MS. GILES: No, Your Honor. tw joins in Mr. Merz's
11 argument.

12 JUDGE FRIEDLANDER: Okay. Thank you.

13 Ms. Anderl?

14 MS. ANDERL: Thank you, Your Honor. Let me begin
15 where Mr. Merz left off, and that is what the standard is for
16 granting an injunction and whether the Commission has authority
17 to issue emergency relief, which is really what the CLECs are
18 asking for here.

19 We decided in our -- in our pleadings and our papers,
20 and we believe that we have heard no contrary authority, but the
21 Commission does have some degree of injunctive authority, but it
22 is very limited to situations where there is an immediate danger
23 to the public health, safety, or welfare. The Commission has
24 used this power very sparingly in the past. I seem to recall
25 specifically some pipeline cases where there was a tangible and

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1 immediate risk. People could be injured. People could be --
2 lives could be lost.

3 While I do not mean to mitigate the seriousness of
4 the CLEC issues in this case, that is simply not what is going
5 on here. This is a case where the CLECs, indeed, really have
6 shown no harm whatsoever. We have discussed in our papers that
7 the CLEC discussion of the harm is so brief as to be almost
8 nonexistent in their request for an injection. They do not
9 point to anything that they are going to have to do now, any
10 expenses that they are going to have to incur, any way, indeed,
11 that they will be prejudiced at all because the optional
12 implementation of MTG simply does not affect them.

13 The MEDIACC system is going to stay in place through
14 the period of time dictated by the merger conditions, and the
15 CLECs will not be prejudiced by that December 2011
16 implementation.

17 Ms. Albersheim's sworn affidavit establishes that the
18 CLECs are not required to expend resources during the initial
19 development, and, in fact, will not be prejudiced by the initial
20 development and implementation because the design of the MTG
21 system will not be locked in in December of 2011; that they will
22 have the full opportunity in the 2013 time frame to participate
23 and suggest and have changes made if those are accepted as
24 changes that should be made through the normal development and
25 testing process.

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1 And that's in Ms. Albersheim's affidavit at page 4,
2 so -- it's Section -- Roman numeral III, Paragraphs 3 and 4.

3 The Joint CLECs have not established that there is
4 any other basis upon which emergency or injunctive relief could
5 be issued. They have not shown again that they're -- not shown
6 that they are likely to prevail on the merits. They have not
7 shown that there is an immediate danger of any sort of
8 irreparable harm, nor have they offered to post any sort of a
9 bond that might protect Qwest and its other end-user customers
10 against any injury or damage if, in fact, injunctive relief were
11 to be granted and the implementation -- development and
12 implementation of the MTG system were not allowed to go forward.

13 Qwest is not -- and CenturyLink are not threatening
14 catastrophic failure of MEDIACC, but -- it is true that the
15 system is old, it is true that it was old a year ago, and it's
16 also true that a year from now it's going to be another year
17 older, and at some point, the risk of failure does become more
18 and more likely. We're not saying that that's going to happen,
19 but we're saying that prudent business does plan for that and
20 does have a backup system in place.

21 If MEDIACC fails and MTG has not been developed and
22 implemented, there will be no way other than by manual phone
23 calls to submit trouble tickets. And with the volume of tickets
24 that -- and the volume of customers that the CLECs have, that's
25 simply not realistic.

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1 So we are not trying to force the CLECs into
2 anything, but we absolutely do not believe that this development
3 and implementation is in any way prohibited by the settlement
4 agreements -- and I'll talk about the language of that, those
5 settlement agreements in just a minute -- and it's certainly
6 something that is dictated by good business management.

7 The CLECs point to three provisions in the settlement
8 agreements that -- in the settlement agreement that they believe
9 we are violating with the CEMR MTG proposal. And CEMR, which is
10 C-E-M-R, that's off the table now, and I think that everybody --
11 nobody's talking about that.

12 Looking at the Integra settlement, the CLECs point to
13 the first sentence of Paragraph 12, and they say that the Merged
14 Company is required to use and offer to wholesale customers the
15 Legacy Qwest OSS for at least two years. That's exactly what we
16 are doing. We are continuing to use and offer to the CLECs the
17 MEDIACC system. That is Legacy Qwest OSS.

18 Mr. Merz referenced and alleges in his argument that
19 Qwest uses MEDIACC for its own purposes. Qwest does not.
20 Again, Ms. Albersheim's sworn affidavit shows that we do not use
21 MEDIACC. MEDIACC is a gateway. It's business-to-business
22 interface that lets CLECs access Qwest's actual OSS -- the
23 repair OSS where the actual trouble tickets are processed and
24 repair orders dispatched.

25 Our Qwest Legacy OSS in that regard go by the

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1 acronyms of LMOs, L-M-O-S, which is Loop Maintenance Operations
2 System, and WFA/C, so it's W-F-A-C, and it's Work Force
3 Administration/Control.

4 CEMR and MEDIACC are gateways to those repair OSS.
5 Qwest doesn't need a gateway to its own OSS because it has
6 direct access to its back-office systems.

7 So these gateways are used by the CLECs. CEMR is, in
8 fact, used by several large retail customers. MEDIACC is not
9 used by any retail customers. It's not used by anybody but
10 wholesale customers.

11 And so because that is not currently now planned to
12 be phased out for CLEC use until 2013, Qwest is meeting the
13 obligations in the merger settlement that it will use and offer
14 to wholesale customers the Legacy Qwest OSS for at least --
15 well, two years is what it says here. It's now been changed to
16 30 months.

17 The Joint CLECs next point to the last sentence in
18 that first paragraph in Section 12 that states that "After the
19 period noted above, the Merged Company will not replace or
20 integrate Qwest systems," and they're claiming that we are
21 violating that by replacing or integrating Qwest systems.

22 But as established by Ms. Albersheim's affidavit, and
23 then not seriously contested really by the Joint CLECs, we're
24 not replacing MEDIACC. It's going to be there until 2013, nor
25 are we -- and maybe we have a dispute over what the word

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1 "integrate" means, but we don't think we're integrating it.
2 We're leaving it separate. MTG will be added as an optional
3 interface to use, but there is no integration.

4 Furthermore, if you kind of step back and look at the
5 context of the settlement agreement, and if you look at the
6 discussion even in the Commission's order, you will see that
7 integrate in this case really means integrate Legacy Qwest OSS
8 into a CenturyLink OSS.

9 I think I cited Paragraph 96 of the Commission's
10 order in my answer to the motion for temporary relief, and that
11 explains that what the Commission's concerned about is Qwest has
12 OSS that's been kind of vetted through the 271 process and used
13 to the general satisfaction of CLECs, but CenturyLink did not
14 have the degree of CLEC customers, had not gone through the 271
15 process, and, therefore, didn't have OSS that had been subject
16 to the rigors of that process. And the concern was that once
17 the companies merged, there would be a desire to integrate
18 Legacy Qwest OSS into CenturyLink systems.

19 So that's what we think that integrate means when you
20 take the context of the settlement agreement and step back from
21 just those words and look at what the parties were worried
22 about. That's why we don't think we're violating that provision
23 because that's not what's happening. MTG is a Qwest-developed
24 OSS that was, as the CLECs have pointed out, you know, in
25 development for some time even prior to the merger occurring.

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1 The next provision that's relevant is in Subsection
2 "a" where it talks about a detailed plan, and this requires the
3 Merged Company to provide notice at least 270 days before
4 replacing or integrating Qwest OSS systems.

5 The Joint CLECs seem to be interpreting that to say
6 no more than 270 days. There's absolutely no provision that
7 prohibits us from giving more than 270 days' notice, and that's
8 essentially what they have now, is they have 2 1/2 years' notice
9 that we will desire to retire MEDIACC. But under the other
10 terms of settlement agreement, we can't retire it until we have
11 CLEC acceptance testing and a vote that it's appropriate to do
12 that and replace it with MTG. So the CLECs really have the
13 ultimate key here.

14 Finally, the last provision that the CLECs allege
15 that we are violating is in Subsection "c" on the next page, and
16 they claim that we are violating the provision that says the
17 replacement or retirement of a Qwest OSS interface may not occur
18 without sufficient acceptance, et cetera. That's the provision
19 that I was just talking about. We're not replacing anything,
20 and we're not retiring anything right now. In 2011, all that's
21 going to happen is there's going to be an optional additional
22 interface, MTG, that would be available.

23 If that had been prohibited, the language in the
24 settlement agreement would have said the replacement or
25 retirement or addition of a Qwest OSS may not occur. That's not

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1 what the settlement says. And because MTG will not be required
2 to be used and because MEDIACC, which is the current system in
3 place, will continue to be available, there is no replacement
4 and there is no retirement.

5 We, therefore, think that there is really no
6 likelihood that the CLECs will be able to prove that there is a
7 violation of the settlement agreement because we don't -- there
8 is simply no facts showing that any of these provisions run
9 contrary to the planned or already implemented activity, and we,
10 therefore, ask you to deny the motion for temporary relief, and
11 then, of course, we'll litigate the merits in the schedule that
12 we will establish.

13 JUDGE FRIEDLANDER: Thank you.

14 Ms. Cameron-Rulkowski, did you have oral arguments
15 prepared?

16 MS. CAMERON-RULKOWSKI: Your Honor, Staff had not
17 taken a position on the motion for temporary relief. I would
18 simply like to comment that Staff looks forward to participating
19 in discovery because at this point in time, Staff simply doesn't
20 have enough information to know -- to know whether this --
21 whether Staff would consider the actions by CenturyLink to be a
22 violation of the settlement agreement that Staff entered into.

23 And the Staff settlement agreement, which it also
24 implicated in the complaint, is organized a little bit
25 differently from the Integra agreement and includes a retail, as

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1 well as a wholesale OSS portion.

2 And so Staff will certainly be engaging in discovery
3 to gather information to analyze whether its agreement is being
4 complied with. Thank you.

5 JUDGE FRIEDLANDER: Thank you. So the way I
6 understand Staff's position is there's -- you feel that you
7 don't have enough information of a technical nature at this
8 point to really help the Commission make a determination on the
9 motion.

10 What about the legal analysis, as far as the legal
11 argument that has been raised by Qwest, that the Commission does
12 not have the authority to grant such a motion?

13 MS. CAMERON-RULKOWSKI: Your Honor, if it turns out
14 that the -- the actions that Qwest is planning would be a
15 violation of the settlement agreement, then, of course, the
16 Commission would have the authority to stop Qwest from taking
17 those actions, and it -- the Commission certainly has the
18 authority to require compliance with its order.

19 JUDGE FRIEDLANDER: Okay. Thank you.

20 Mr. Butler, did you have any oral arguments planned
21 for today?

22 MR. BUTLER: No, Your Honor.

23 JUDGE FRIEDLANDER: Okay. Thank you.

24 I do have some questions for both Qwest and the Joint
25 CLECs. Just one second.

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1 I'm going to start with you, Mr. Merz, and if
2 Ms. Giles would like to answer the questions, please feel free
3 to do so.

4 The first question I have does relate to the legal
5 standard on which you're basing the motion for temporary relief.

6 Can you point me to anything within our statute or
7 code that would give the Commission the authority to act on this
8 motion in the way that you've suggested?

9 MR. MERZ: I think that I can, Your Honor. The
10 Washington Courts have held that the Commission has not just
11 that authority that's been expressly granted, but also that it
12 is necessarily implied by its statutory authority.

13 The Commission has broad enforcement authority, and
14 the cases, by the way, that talk about the authority that is
15 necessarily implied, those cases are actually cited in Qwest's
16 brief. I would refer, Your Honor, to In re: Electric
17 Lightwave, which is at 869 P.2d 530, and also Petition of
18 Little, which is at 627 P.2d 543.

19 Washington revised code 80.04.470 talks about the
20 Commission's broad authority. Washington revised code 80.04.380
21 says that the Commission's orders have the force of law. We
22 believe those two provisions, the fact that they're orders, have
23 the force of law and their ability to enforce their own orders
24 gives this Commission, obviously, authority to enforce the
25 obligations that it imposed in approving the merger.

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1 The Commission also has the statutory authority under
2 Washington revised code 80.12.020 to review mergers and to
3 determine whether those mergers are in the public interest.

4 Now, the Commission said, We're going to approve this
5 merger, but here's some conditions that we believe are necessary
6 to satisfy the public interest.

7 And the conditions that we're talking about now are
8 among those that the Commission found necessary to satisfy the
9 public interest. The problem that we find ourselves in is if
10 the Commission now believes that what Qwest is doing violates or
11 is likely to violate its order, it shouldn't have to wait until
12 the case is all the way done to put a stop to that violative
13 behavior.

14 And so the statute does not specifically talk about
15 the Commission's authority to order preliminary injunctive
16 relief. We do believe that the preliminary injunctive standard
17 at least provides Your Honor with kind of a good template for
18 how to analyze the request and how to analyze the evidence. But
19 at the end of the day, what we're saying is the Commission has
20 to have authority to enforce its order and if it's going to
21 enforce its order when the case is done, if the violation is
22 allowed to essentially be completed before that, its authority
23 will be rendered really without -- without meaning or purpose.

24 And so really the bottom line is what if when we get
25 to the end of this case the Commission says, Yep, CLECs. You're

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1 right. They can't implement MTG, but it's already been
2 implemented?

3 There's got to be a way for the Commission to put the
4 brakes on that. We believe that that's necessarily implied by
5 the other authority that the Washington legislature has granted
6 to the Commission.

7 JUDGE FRIEDLANDER: Can you point me again to the
8 specific cases that you're referencing as giving the Commission
9 broad enforcement powers?

10 MR. MERZ: The cases actually concern the authority
11 that is implied by the statutory grant of express authority, and
12 those cases are In re: Electric Lightwave at 869 P.2d 530.
13 It's a 1994 Washington Supreme Court case. And Petition of
14 Little, which is at 627 P.2d 543. That's a 1981 Washington
15 Supreme Court case. The Commission's broad enforcement
16 authority is actually a matter of statute, and that's at
17 80.04.470.

18 JUDGE FRIEDLANDER: But what you're saying, though,
19 is that there's no specific statute that we can point to, or no
20 specific code provision that says this is permissible for the
21 Commission to do?

22 MR. MERZ: What we're saying is the statutes that are
23 in place necessarily imply the ability to grant the kind of
24 relief that we are asking for. We're not saying that there's a
25 statute that says the Commission has authority to grant

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1 preliminary injunctive relief expressly. What we're saying is
2 that that authority is necessarily implied by the other
3 enforcement authority that the Commission already has.

4 JUDGE FRIEDLANDER: Okay. And you mentioned that if
5 the Commission were to deny or not act on the motion and
6 Qwest/CenturyLink were to integrate -- and I put that in quotes,
7 for a lack of a better term, the MTG system in replacement as
8 you allege of the MEDIACC system -- that it would be basically
9 giving the Commission's order and the concerns the Commission
10 had in the merger order little effect.

11 But is there an -- can you point to a direct harm
12 that the CLECs would face if the Commission were to deny the
13 motion?

14 MR. MERZ: I can. The CLECs are now, right now,
15 being put in a position of having to either get involved in this
16 MTG implementation because it's going to happen.

17 And, now, just to kind of set the groundwork a little
18 bit, my client, PAETEC, uses MEDIACC, and MEDIACC is an
19 interface that allows two different systems to talk to one
20 another. And so for PAETEC to use MTG, it's going to have to
21 develop its own system on its side of the process.

22 So in order for MTG to be a backup for MEDIACC, it's
23 going to have -- a backup for MEDIACC for PAETEC, PAETEC's going
24 to have to incur the cost and effort right now to get ready to
25 do that in December of 2011. That's costs that PAETEC didn't

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1 budget for because it was costs that under the settlement
2 agreement it wasn't supposed to have to incur for 30 months.

3 JUDGE FRIEDLANDER: But my understanding from what --
4 so maybe this is a factual dispute as opposed to a legal dispute
5 because what I'm hearing you say is that you understand Qwest to
6 be transitioning the OSS for the CLECs over to the MTG system.
7 They -- Qwest/CenturyLink is saying they are not. They are
8 using it for their own internal purposes.

9 MR. MERZ: And I'm not saying that they're going to
10 force PAETEC into transitioning in December of 2011. They've
11 said that they're not going to do that, and I take them at their
12 word on that. But if MTG is to be a backup for PAETEC, they
13 have to do the work now.

14 And so when they say, We need to have MTG as a backup
15 in case MEDIACC fails, that does PAETEC no good unless PAETEC's
16 willing to do the work now, which, when it entered into the
17 settlement agreement, it believed it wouldn't have to do it
18 because it believed that at least for 30 months, it wouldn't
19 have to deal with a brand-new system, which is what we're having
20 to deal with now.

21 JUDGE FRIEDLANDER: So what would happen if MEDIACC
22 were to fail and there were no MTG backup? How would the CLECs
23 proceed at that point?

24 MR. MERZ: CLECs would either have to use CEMR, which
25 is an existing system, or they'd have to manually, you know,

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1 call the Qwest repair desk. And that's why I'm saying that
2 we're not insisting on these conditions for their own sake. We
3 recognize that Qwest has raised this issue.

4 Now, I think that we remain to be convinced about the
5 degree of peril that MEDIACC is in. We've heard a lot of
6 different stories about that, but we understand that it's
7 something that has to be addressed. But we think it's something
8 that ought to be addressed as the settlement agreement provides
9 in a cooperative way. And if Qwest is allowed to just proceed
10 with MTG in a unilateral way as they are now, then we are left
11 out in the cold. We really need an order that keeps the status
12 quo in place that gives the parties some incentive to try to
13 resolve this issue cooperatively.

14 Remember that the conditions are the result of an
15 agreement between the parties, and if there's going to be -- if
16 what Qwest is saying is true -- and, again, we are not prepared
17 to concede that it is. But if it is, then there's going to have
18 to be some modification of the Commission's order. It can't
19 just be Qwest saying, We don't want to do this anymore. The
20 parties are going to have to come together to recommend some
21 action to the Commission. Qwest shouldn't be doing that
22 unilaterally.

23 JUDGE FRIEDLANDER: Okay. So assuming arguendo that
24 the Commission does have authority to make this kind of a ruling
25 and we were to go forward with -- assuming that the Commission

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1 has the authority to make such a ruling, what is the standard
2 that the Commission should look to for reviewing the motion? In
3 general we'll look to public interest, standard, or just
4 reasonable -- I mean, what is the standard that -- since we
5 don't have a statute in place that specifically speaks to this,
6 what standard do the Joint CLECs wish that the Commission uses?

7 MR. MERZ: Well, I think it is appropriate to look at
8 the preliminary injunction standard as a templet. And so you've
9 got to figure out, you know, is there likely a violation here,
10 and is that violation likely to cause harm if it's not stopped
11 pending some final determination of the merits.

12 We believe that both of those things are demonstrated
13 by the record that you have in front of you. You know, we know
14 what Qwest is saying it's going to do, we know what the
15 Commission's conditions say it's not allowed to do, and we know
16 the impact that that's going to have on CLECs.

17 JUDGE FRIEDLANDER: Okay. And I believe that is all
18 the questions that I have for the Joint CLECs, but I did,
19 however, run right over your rebuttal.

20 So if you would like to form a rebuttal, please go
21 ahead and do so.

22 MR. MERZ: And, thankfully, Your Honor, your
23 questions actually hit at least most --

24 JUDGE FRIEDLANDER: Wonderful.

25 MR. MERZ: -- of the points that I would have talked

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1 about.

2 JUDGE FRIEDLANDER: I feel better now.

3 MR. MERZ: I want to talk about this integration
4 point because I think it's very important.

5 Qwest asserts that really what -- what we are worried
6 about when we entered into the settlement agreement with
7 integration of Qwest and CenturyLink systems, two things to say
8 about that: First of all, that's not what the agreement says.
9 It just talks about integrating Qwest systems, and the FCC
10 agreement goes even further. It says you can't integrate with
11 any systems. And so it's not just integrating with CenturyLink
12 systems that the settlement agreement speaks to.

13 Now, I will say that the focus at the -- in the
14 merger proceedings was on the integration of Qwest and
15 CenturyLink systems. Why was that? Because CenturyLink
16 asserted multiple times, We don't have an intent to implement
17 any new systems, but that's exactly what they're doing here.

18 Now, the agreement, again, is drafted broadly enough
19 to deal with integration of a new system with Qwest systems. We
20 believe the reason that there was more focus in the merger
21 proceeding upon Qwest and CenturyLink integration is that's what
22 CenturyLink told us. If there's going to be any problem, that's
23 what it is.

24 But, again, the language is broader. The MTG system
25 is going to use Qwest data. There's no question about that, and

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1 that's integration. This system isn't just going to be standing
2 out there somewhere. It's going to work with the existing Qwest
3 systems. That's what integration means under any reasonable
4 understanding of that term.

5 The question that I have, as I listen to Qwest talk
6 about all this, is what do they think they need to do on
7 December of 2011?

8 And we thought we had a pretty clear understanding of
9 who was using this system. We believed that because that's what
10 Qwest told us. But now I hear that only wholesale customers use
11 it, and at least the wholesale customers that I represent are
12 saying don't do this.

13 Now they have represented that there have been other
14 customers that are asking for a new protocol. They have made
15 those representations. But at the end of the day, what a
16 customer wants can't trump what this Commission ordered when
17 it -- when it approved the merger.

18 And so even if it is the case that some customer,
19 some wholesale customer might want it, that doesn't mean that
20 they should go ahead and do it.

21 If Qwest isn't using it for its own purposes, I don't
22 know what they're fighting about, frankly, and I don't know why
23 they're saying that they're so determined to implement this in
24 December of 2011, rather than working with us to come to a
25 reasonable solution.

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1 The reason we are here today, as opposed to, you
2 know, when we finally have the evidentiary proceeding in front
3 of you, is what if we're right? What if, you know, we have this
4 hearing in January, and the Commission decides, Yep. The CLECs
5 were right? Then where does that leave us? Everything that the
6 order says they can't do will have already happened. There has
7 to be a mechanism for the Commission to step in. We believe
8 that the legislature has at least implied that the Commission
9 has that degree of authority.

10 JUDGE FRIEDLANDER: Okay. Thank you.

11 And I do have some questions for Qwest as well.

12 So is it fair to say, then, that Qwest is moving to
13 MTG on or around December of 2011? And when I say "move," I
14 guess I need you to define what "move" means, because I would
15 agree that there's a bit of discrepancy over what is actually
16 going to be happening here as of December of 2011. So if you
17 could just kind of expand on that?

18 MS. ANDERL: Sure. I will, Your Honor, and I'm not
19 the technical expert. Sitting next to me is Renee Albersheim,
20 who filed the declaration. I may have to tap her for a little
21 bit of information, but it is my understanding that right now we
22 are in the process of issuing technical specifications for the
23 new interface, the MTG interface, getting comments back on
24 those, and engaged in development process, so kind of creating
25 the operational support system that will be MTG. It will be

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1 online in December. I think the IT department does scheduled
2 releases of...

3 Software?

4 MS. ALBERSHEIM: Yeah.

5 MS. ANDERL: Yeah, scheduled software releases. And
6 the last one of the year is around mid-December, and that's what
7 it is targeted for. It will then be up and running and
8 available for any customer who wants to use it, who has the --
9 who has built the interface on their side, and who has a
10 sufficient volume of trouble tickets that would justify having a
11 business-to-business interface rather than, say, just, you know,
12 calling the business office to say they had a problem.

13 We provided in Ms. Albersheim's affidavit --
14 affidavits confidential attachments. G and H are some
15 correspondence, admittedly somewhat informal correspondence, but
16 expressions of desire by two large customers who can be
17 identified by looking at those documents -- but they are
18 confidential, the identities of the carriers are confidential --
19 but they are two large carriers who have expressed an interest
20 in this who are not -- at least not in their role as CLECs, but
21 rather in their role as large interexchange carriers. And so
22 the interface would be available for them if they want to use
23 it.

24 Again, you know -- so we wouldn't be using it, but we
25 would be making it available for use. And if a CLEC wanted to

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1 use it, they could do that, too.

2 JUDGE FRIEDLANDER: Okay. So the way I visualize it,
3 I guess, being a nonengineer, is to think of this as almost
4 central offices. And I don't use that in a telecommunications
5 term. I use that more of in a business term where Qwest has
6 two -- would have two central offices, one MEDIACC and CEMR, and
7 the other MTG, assuming it rolls out December 2011.

8 And your wholesale customers -- Qwest's wholesale
9 customers, would be able to use either central office to run
10 maintenance and repair tickets through depending on whichever
11 system that wholesale customer had; is that correct?

12 MS. ANDERL: Let me check.

13 JUDGE FRIEDLANDER: Okay.

14 (Ms. Anderl confers with Ms. Albersheim.)

15 MS. ANDERL: Okay. Yours is a better example than
16 mine.

17 JUDGE FRIEDLANDER: Oh, okay. That's fine.

18 So if the -- and I guess I should say that then the
19 MTG central office would not only be available to customers who
20 wanted to use it -- customers of Qwest who wanted to use it, but
21 it would also be available in the event that MEDIACC or CEMR
22 were to become unstable; is that correct?

23 (Ms. Anderl confers with Ms. Albersheim.)

24 MS. ANDERL: That's correct. It would be available,
25 and so CEMR would be affected if MEDIACC failed.

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1 JUDGE FRIEDLANDER: Okay.

2 MS. ANDERL: But -- so it would be available as a
3 backup.

4 JUDGE FRIEDLANDER: I see. Okay.

5 MS. ANDERL: And, yeah. If it were necessary to use
6 it as a backup, there might be work that would have to be done
7 on both sides to be able to use it, but it would be better than,
8 you know, the abacus method.

9 JUDGE FRIEDLANDER: Right.

10 MS. ANDERL: You know, the more primitive method of
11 calling in tickets.

12 JUDGE FRIEDLANDER: I see. So when would Qwest
13 anticipate getting the Joint CLECs involved if they might be
14 using this as a backup?

15 MS. ANDERL: Well, I -- I think as soon as it is
16 developed and implemented it would be available as a backup.
17 Whether anybody wanted to take any -- any steps, you know, to --
18 to be ready -- I mean, whether the CLECs wanted to take any
19 steps to be ready to use it as a backup would be kind of their
20 option.

21 And they are involved now. I mean, Mr. Merz was kind
22 of complaining about it, but -- because they have to look at
23 technical specifications and provide comments, but -- they are
24 involved now, but there will also be the 270-day process that is
25 contemplated in the settlement agreement, as well as the

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1 transition plan and acceptance testing and a vote.

2 So if we assume that MEDIACC stays stable for the
3 next 30 months, then it will only be retired after the CLECs
4 have voted to accept the new replacement system.

5 JUDGE FRIEDLANDER: Okay. And I think that's where
6 my confusion comes in --

7 MS. ANDERL: Yeah, and --

8 JUDGE FRIEDLANDER: -- because I understand that the
9 Joint CLECs, under the settlement agreement, would be involved
10 in and voting on any replacement -- and, again, I say that in
11 quotes -- any replacement OSS system 30 months from the date of
12 closure of the merger; however, now we're also talking about
13 this interim MTG system, proposed interim MTG system.

14 And it's my understanding -- and correct me if I'm
15 wrong -- the Joint CLECs are also involved in the CMP process --

16 MS. ANDERL: Yes.

17 JUDGE FRIEDLANDER: -- or stakeholder group?

18 MS. ANDERL: Yes.

19 JUDGE FRIEDLANDER: Does the CMP also? Is that what
20 you're talking about as far as filing comments and --

21 MS. ANDERL: Yes.

22 JUDGE FRIEDLANDER: Okay. I see. So Joint CLECs, in
23 a way, are having some kind of interaction?

24 MS. ANDERL: Yes.

25 JUDGE FRIEDLANDER: And, Mr. Merz, you can comment on

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1 that as well if you would like to, but that's my understanding
2 of what is being discussed here.

3 MR. MERZ: There is -- the CMP process is going on
4 now, and they're dealing with MTG in CMP. The important thing
5 to remember, though, is that the settlement agreement says that
6 you get CMP, but you also get these other procedures. There's
7 not going to be a vote in CMP about whether to implement. They're
8 going to implement --

9 JUDGE FRIEDLANDER: I see.

10 MR. MERZ: -- in December 2011.

11 JUDGE FRIEDLANDER: I see. Okay. Okay. Thank you.

12 MS. ANDERL: But there will be a vote as to whether
13 or not MTG is the replacement system for MEDIACC in 2013.

14 JUDGE FRIEDLANDER: And that's the -- in fulfillment,
15 I would guess, or anticipation of fulfillment of the conditions
16 within the settlement agreement?

17 MS. ANDERL: Right.

18 JUDGE FRIEDLANDER: Okay.

19 MS. ANDERL: And, you know, Your Honor -- I mean, we
20 are really in a difficult position because we do not want to be
21 in a position where we're taking actions, you know, months after
22 the merger closed that prompts State Commission complaints that
23 we're violating merger conditions. I mean, we have been
24 appearing before this Commission for a long time, and this is
25 not the way -- you know, this is not an intended consequence,

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1 but we're faced with the situation where we knew technically
2 that there were risks and you, at that point, have two choices.
3 You can either decide to do nothing, or you can decide to do
4 something.

5 And if the CLECs were to say, Yes, deciding to do
6 nothing is more compliant with the merger conditions: (A) I
7 wouldn't agree with that; and (B) I would just say that from a
8 business standpoint deciding to do nothing, I am told by, you
9 know, the people who manage the business, the people who manage
10 the systems, the people who are responsible for knowing what the
11 risks of failure are, whether or not the systems or vendor
12 support it any longer and can be updated -- you know, I'm told,
13 and I believe that this is -- the prudent course is to be
14 developing something now rather than waiting until 2012.

15 JUDGE FRIEDLANDER: Okay. Thank you. And I believe
16 there was some confusion as to whether MEDIACC and CEMR are
17 stable.

18 Can Qwest confirm -- Qwest/CenturyLink confirm that
19 those two systems are stable at this time, and what is, I guess,
20 the projection of future health of those systems?

21 MS. ANDERL: Well, I think there was -- there were
22 earlier discussions back in the April-May time frame, perhaps
23 even earlier than that, about instability and outdated hardware.
24 I believe that both of the systems have been brought on to new
25 hardware?

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1 MS. ALBERSHEIM: No.

2 MS. ANDERL: No.

3 MS. ALBERSHEIM: CEMR.

4 MS. ANDERL: CEMR was brought on to new hardware, and
5 both of the systems are stable. We -- and so we are not -- as I
6 said earlier, I think in my argument, we are not predicting a
7 failure because we don't know. But it's just like a car. You
8 know, some run for 20 years without any problems, and some start
9 to have problems at an earlier point in time.

10 One of the issues with MEDIACC -- MEDIACC and CEMR
11 both, I think -- is that there is limited vendor support for
12 those systems. But that doesn't mean -- and, again, that
13 doesn't mean that they're going to fail. It just means that
14 it's time to start thinking about getting something else.

15 JUDGE FRIEDLANDER: Okay. Thank you.

16 And does anyone else wish to comment at this time on
17 the joint motion -- or, I should say, this motion of the Joint
18 CLECs?

19 Okay. I am going to hold this motion and consider it
20 and hold it in abeyance for the time being because I do want to
21 review the cases that have been mentioned today.

22 And we can continue with the rest -- the more mundane
23 details of a prehearing conference at this time. I understand
24 that the parties have been talking about a proposed schedule but
25 would like to have some additional time.

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1 So perhaps while you all are working on that, I can
2 go pull some cases and do a little of the research.

3 So how long will you guys need to talk?

4 MS. ANDERL: Oh, I think maybe 10 or 15 minutes --

5 MR. MERZ: Yeah.

6 MR. ANDERL: -- to just hammer some dates. We're
7 halfway home.

8 JUDGE FRIEDLANDER: Okay.

9 MS. CAMERON-RULKOWSKI: Maybe 15, just to...

10 MS. ANDERL: Yeah, just to give you...

11 MS. CAMERON-RULKOWSKI: So you don't have to run up
12 here.

13 JUDGE FRIEDLANDER: Sure. Sure. Sounds good.

14 Okay. We will be off the record until approximately
15 a quarter to three. Thank you.

16 (Discussion off the record.)

17 JUDGE FRIEDLANDER: We'll be on the record.

18 Before we recessed, the parties were going to take a
19 bit of time to discuss a proposed procedural schedule and see if
20 they could reach an agreement.

21 Have the parties done so?

22 MS. ANDERL: Yes.

23 JUDGE FRIEDLANDER: Okay. And who would like to be
24 the spokesperson to let me know what the schedule will be?

25 MR. MERZ: I can do that.

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1 JUDGE FRIEDLANDER: Okay. Thank you.

2 MR. MERZ: We have -- would propose a technical
3 conference that would occur on September 15. Now, the only
4 caveat there is one of my clients, who would be important to
5 participate in that, I just can't determine if they're
6 available, but I believe Counsel indicated they've got some
7 flexibility, so we can -- we're hoping for that date but if
8 there's some change, we'll certainly let you know.

9 Qwest and the Joint CLECs would file simultaneous
10 direct testimony on October 14th. There would be a settlement
11 conference that would take place on October 26th. Staff -- and,
12 really, I've got the same issue on October 26th, whether or not
13 PAETEC -- someone from PAETEC is available, but assuming that
14 that works, then that would be the date.

15 Staff and Cbeyond would file testimony on November
16 10th. Qwest and the CLECs would file simultaneous reply
17 testimony on December 19.

18 MS. ANDERL: The 9th.

19 MR. MERZ: I'm sorry. The 9th. Thank you,
20 Ms. Anderl.

21 And then subject, of course, Your Honor, to your
22 availability, we were hoping to start the hearing on January
23 17th.

24 MS. CAMERON-RULKOWSKI: And I would just add that
25 Cbeyond --

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1 MS. ANDERL: The 18th.

2 MR. MERZ: The 18th.

3 MS. CAMERON-RULKOWSKI: -- would be able to respond
4 to Staff testimony also on December 9th.

5 MR. MERZ: And maybe it was the 18th that we were...

6 MS. CAMERON-RULKOWSKI: That Wednesday.

7 JUDGE FRIEDLANDER: So just for clarification,
8 it's -- the dates you have proposed are September 15th for the
9 technical conference with a little bit of flexibility given the
10 technical experts' schedules. October 14th would be the
11 simultaneous direct filed by Qwest and the Joint CLECs. October
12 26th would be the direct -- I'm sorry -- would be the settlement
13 conference. November 10th would be the testimony of Staff and
14 Cbeyond; is that correct, the direct testimony?

15 MR. MERZ: Yes.

16 MS. CAMERON-RULKOWSKI: Yes.

17 JUDGE FRIEDLANDER: And then December 9th would be
18 responsive testimony from everyone; is that correct?

19 MS. ANDERL: Yes.

20 JUDGE FRIEDLANDER: Okay.

21 MS. ANDERL: Although...

22 MS. CAMERON-RULKOWSKI: No. That would be -- that
23 would be Cbeyond, the Joint CLECs, and Qwest responding to
24 Staff.

25 MR. MERZ: Right.

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1 MS. ANDERL: That's right. Oh, that's right.

2 Everyone except Staff.

3 JUDGE FRIEDLANDER: So Staff will not be responding
4 to Cbeyond or...

5 MS. CAMERON-RULKOWSKI: Staff's direct will also be
6 responding.

7 JUDGE FRIEDLANDER: Okay. Okay. Okay. That's fine.

8 And then you have a January -- a proposed January
9 hearing date?

10 MR. MERZ: Yeah. We were looking at January 18th. I
11 believe I misspoke and said the 17th, but the 18th was the date
12 where we start the hearing.

13 JUDGE FRIEDLANDER: Okay. Let me double-check.

14 My schedule looks clear for that date.

15 I did have a question, though, because Joint CLECs
16 had asked for expedited treatment.

17 Is this schedule sufficient for expedited concerns?

18 MR. MERZ: Well, it's not, but we understood that
19 that was when you were first available.

20 JUDGE FRIEDLANDER: It actually isn't. I am
21 available in November as well.

22 MR. MERZ: And, actually, Ms. Anderl talked about
23 that, and realistically because we already have a hearing in
24 Colorado that's set for the week of November 14th, I don't know
25 that we could realistically do it --

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1 JUDGE FRIEDLANDER: I see.

2 MR. MERZ: -- before that.

3 JUDGE FRIEDLANDER: Okay. So --

4 MR. MERZ: So -- I mean, we -- obviously we want to
5 do it as quickly as we can. We were hoping for December but
6 understand that you're not available in December, and so it's my
7 understanding it's the next available date for you.

8 JUDGE FRIEDLANDER: Yes. I am preparing for the
9 Avista general rate case during December, and with all of the
10 holidays, I don't think that it would be possible to hold a
11 hearing -- two hearings in one month.

12 So given that, if January 18th does work for
13 everyone, I'm amenable to that date as well.

14 MS. CAMERON-RULKOWSKI: And then we may want to hold
15 a second date just in case it runs over.

16 JUDGE FRIEDLANDER: That's fine. So this may take no
17 longer than two days? So the 18th and 19th?

18 MR. MERZ: I could imagine it taking three. I mean,
19 I don't know.

20 MS. ANDERL: I'd hold the week.

21 MR. MERZ: We've scheduled five in Colorado.

22 JUDGE FRIEDLANDER: That's fine.

23 MS. ANDERL: Yeah. I mean, I'd hold those three
24 days.

25 JUDGE FRIEDLANDER: Yeah. Okay. Okay. So the 18th,

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1 19th, and 20th.

2 MS. CAMERON-RULKOWSKI: And then, Your Honor, there
3 was one other issue as well. The parties have agreed to
4 expedited discovery responses --

5 JUDGE FRIEDLANDER: Okay.

6 MS. CAMERON-RULKOWSKI: -- that are issued between
7 September 15th and through October 14th, and the turnaround time
8 would be seven business days as opposed to ten.

9 JUDGE FRIEDLANDER: And give me those dates again?

10 MS. CAMERON-RULKOWSKI: September 15 through October
11 14.

12 JUDGE FRIEDLANDER: Great. Okay. And is there a
13 discovery cutoff of October 14th, or are we continuing?

14 MS. ANDERL: No. We would just go back to the
15 normal.

16 JUDGE FRIEDLANDER: Gotcha. The ten days?

17 MS. ANDERL: Yeah.

18 JUDGE FRIEDLANDER: The standard ten days. Okay.

19 So if there are no objections to that schedule, I
20 will most likely grant that schedule, given that the parties
21 have reached consensus on it, and it's hard to find days in the
22 latter part of the year.

23 So now I guess we can turn to discovery, and I'll let
24 you know that pursuant to WAC 480-07-400, the Commission's
25 discovery rules are made available to the parties with the

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1 understanding that there will be the expedited discovery
2 responses of seven days for that month of September 14 --
3 September 15th through October 14th.

4 And do the parties perceive a need for a standard
5 protective order or a highly confidential protective order?

6 MR. MERZ: We had discussed, Your Honor, a standard
7 protective order. Qwest has indicated that they would reserve
8 their right to seek a higher level protection but don't
9 anticipate that at this time.

10 JUDGE FRIEDLANDER: That's fine.

11 MS. ANDERL: That's correct.

12 JUDGE FRIEDLANDER: Okay. And I will go ahead and
13 issue that as soon as possible.

14 And I believe that as far as filing requirements, we
15 will need an original and seven in this docket. And the
16 standard electronic filing rules apply, so by three -- an
17 electronic copy by three p.m. the date that it's due, and then
18 by noon the next day we need to have a hard copy.

19 So is there anything further before we adjourn?

20 MR. MERZ: Nothing from us, Your Honor.

21 JUDGE FRIEDLANDER: Okay. Thank you.

22 MS. ANDERL: I was just going to ask, Your Honor, if
23 we had an anticipated date for when you might rule on the motion
24 for temporary relief? I'm not trying to pin you down at this
25 point.

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1 JUDGE FRIEDLANDER: No, no. That's fine. I
2 understand.

3 I am going to take the motion and the oral arguments
4 received into the record today under advisement, and I would
5 anticipate an order within, say, the next seven days.

6 MS. ANDERL: Thank you.

7 JUDGE FRIEDLANDER: So we'll have our prehearing
8 conference order most likely before then, and we'll go from
9 there with the Joint CLECs motion.

10 MS. ANDERL: One other thing, Your Honor?

11 JUDGE FRIEDLANDER: Yes.

12 MS. ANDERL: We at Qwest/CenturyLink have offered to
13 host the technical conference in Seattle.

14 JUDGE FRIEDLANDER: Okay.

15 MS. ANDERL: And -- so there would be no need for a
16 room at the Commission, and I've assumed that Your Honor was not
17 going to attend? That's not usually what happens?

18 JUDGE FRIEDLANDER: Exactly, I won't be.

19 MS. ANDERL: Okay. And Staff has agreed to come up,
20 and most everyone else is in Seattle, so --

21 JUDGE FRIEDLANDER: Okay.

22 MS. ANDERL: -- that's the way we're going to do
23 that --

24 JUDGE FRIEDLANDER: Okay.

25 MS. ANDERL: -- just in case it matters.

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1 JUDGE FRIEDLANDER: Okay. Super. Thank you.

2 Ms. Cameron-Rulkowski?

3 MS. CAMERON-RULKOWSKI: Regarding briefing, the
4 parties have discussed that they would like to reserve their
5 right to brief, but we have not provided dates at this time, and
6 that's the reason.

7 JUDGE FRIEDLANDER: Okay. And that raises a bit of a
8 concern for me only because I believe that complaints have a
9 statutory effective date. I thought our rules provide that for
10 a -- a ruling within -- and I am remiss in remembering what that
11 is, but I believe it's nine months, nine or ten months.

12 MS. ANDERL: I think you're right, Your Honor, but --
13 and -- well, I mean, I think we were anticipating something like
14 briefs within four weeks after the hearing or something, not --

15 JUDGE FRIEDLANDER: Okay.

16 MS. ANDERL: -- you know, not too terribly long. We
17 just hadn't gotten that far --

18 JUDGE FRIEDLANDER: Gotcha. Okay.

19 MS. ANDERL: And I would also, I think, observe that
20 there is no penalty for not hitting the statutory deadline.

21 JUDGE FRIEDLANDER: No, it just makes us look bad, so
22 I kind of want to stay within those boundaries.

23 But, yes, that's fine, and I suppose if we do start
24 approaching that statutory effective -- it's not really a
25 statutory effective date, it's a deadline with which to issue an

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1 order. I could have the parties waive that. If they -- if you
2 all are set on providing briefs to the Commission, then I don't
3 think you'd have a problem waiving that.

4 MR. MERZ: Yeah. I mean, I don't think it's going to
5 be an issue. I think briefing is going to be important to you
6 to --

7 JUDGE FRIEDLANDER: Sure.

8 MR. MERZ: -- be able to reach the kind of decision
9 you want to, so...

10 JUDGE FRIEDLANDER: Sure. Okay.

11 MS. ANDERL: But if we have to expedite the
12 transcript to compress the briefing date, I'm sure the parties
13 will be able to reach some sort of an agreement about that.

14 JUDGE FRIEDLANDER: Okay. I appreciate that, yeah.

15 Okay. Is there anything further before we adjourn?

16 Okay. Thank you. We are adjourned.

17 MR. MERZ: Thank you.

18 MS. ANDERL: Thank you, Your Honor.

19 JUDGE FRIEDLANDER: Thank you.

20 MS. GILES: Thank you.

21 (Proceeding concluded at 3:06 p.m.)

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C E R T I F I C A T E

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3 STATE OF WASHINGTON)
4 COUNTY OF KING) ss

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6 I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter
7 and Notary Public in and for the State of Washington, do hereby
8 certify that the foregoing transcript is true and accurate to
9 the best of my knowledge, skill and ability.

10 IN WITNESS WHEREOF, I have hereunto set my hand and seal
11 this 1st day of September, 2011.

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SHELBY KAY K. FUKUSHIMA, CCR

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17 My commission expires:
18 June 29, 2013

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