

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of the

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

TESTIMONY IN SUPPORT OF SETTLEMENT AGREEMENT

BY

**CENTURYLINK, INC.
QWEST CORPORATION
COMMISSION STAFF
PUBLIC COUNSEL**

December 29, 2010

1 **I. INTRODUCTION**

2 **Q. Who is sponsoring this testimony?**

3 A. This testimony is jointly sponsored by CenturyLink, Inc. (“CenturyLink”) and Qwest
4 Corporation (“Qwest”) (CenturyLink and Qwest, collectively, the “Joint Applicants”),
5 Commission Staff (“Staff”), and the Office of Public Counsel (“Public Counsel”)
6 (collectively “the Parties”) and is offered in support of the Settlement Agreement entered
7 into between Joint Applicants, Staff and Public Counsel.

8
9 **Q. Please state your names.**

10 A. Our names are: John Jones (CenturyLink), Mark Reynolds (Qwest), Mark Vasconi
11 (Staff), and Stephanie Johnson (Public Counsel).

12
13 **Q. Please describe your backgrounds and qualifications.**

14 A. John Jones, Mark Reynolds, and Mark Vasconi have all filed direct or response testimony
15 in this docket, and those testimonies contain that information. For Ms. Johnson’s
16 information, please see Section V of this testimony.

17
18 **Q. What is the purpose of your testimony?**

19 A. Our testimony describes and supports all provisions of the Settlement Agreement and
20 attached conditions agreed upon by the Joint Applicants, Staff, and Public Counsel on

1 December 23, 2010, and filed with the Commission on December 23, 2010 (“Settlement
2 Agreement”).

3 As explained in greater detail below, under the Settlement Agreement, the Parties
4 acknowledge that the Joint Applicants’ Application will satisfy the “in the public interest,
5 no harm” standard described in previous Washington proceedings that considered
6 mergers and changes of control, and should be approved with the conditions set forth in
7 the Settlement Agreement. The Parties request that the Commission issue an order
8 approving the Settlement Agreement and providing the approvals requested by the Joint
9 Applicants.

10
11 **II. BACKGROUND**

12
13 **Q. Please briefly describe the history of the proceeding.**

14 A. On May 13, 2010, CenturyLink and Qwest filed an Application and on May 21, 2010
15 filed supporting testimony seeking Commission approval of the indirect transfer of
16 control of Qwest Corporation, Qwest Communications Company LLC, and Qwest LD
17 Corp. to CenturyLink. The Joint Applicants requested approval under Chapter 80.12
18 RCW and Chapter 480-143 WAC, and any other applicable law or rule the Commission
19 deems necessary to review the Transaction.

20

1 On September 27, 2010 the Staff and the intervenors (including DOD/FEA, Integra
2 Telecom, tw telecom of Washington, Advanced Telecom, Electric Lightwave, Eschelon,
3 Covad, Level 3, Cbeyond, Pac-West Telecomm, Charter Fiberlink, and Sprint) filed reply
4 testimony. CenturyLink and Qwest and certain intervenors filed rebuttal testimony on
5 November 1, 2010. CenturyLink and Qwest filed supplemental rebuttal testimony on
6 November 15, 2010. Collectively, the Parties have filed thousands of pages of testimony
7 and exhibits. In addition, the Joint Applicants have responded to more than 500
8 discovery requests.

9
10 The Joint Applicants and other parties and other intervenors in this proceeding including
11 the CLECs, Staff, DOD/FEA, and Public Counsel, have engaged in numerous formal and
12 informal settlement discussions and technical workshops, beginning in July 2010 and
13 continuing through December 2010. These discussions resulted in the Settlement
14 Agreement that is now before the Commission. The Settlement Agreement was filed
15 with the Commission on December 23, 2010.

16
17 **Q. Please describe the proposed settlement agreement.**

18 A. This Settlement Agreement provides that the Joint Applicants have satisfied the “public
19 interest, no harm” standard as described in WAC 480-143-170¹. The Settlement

¹ “If, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the same, the commission finds the proposed transaction is not consistent with the public interest, it shall deny the application.”

1 Agreement includes 29 enumerated and agreed-upon conditions, some of which have
2 additional sub-conditions.

- 3 • Conditions 1-2, 4-8, and 10-13 address CenturyLink’s financial obligations,
4 including financial reporting, after the close of the Transaction. These eleven
5 conditions include CenturyLink’s commitment to notify Staff regarding the
6 leverage resulting from the Transaction, assurances that Washington assets will
7 not be encumbered without seeking Commission approval, and a commitment that
8 customers will not be obligated to pay for any acquisition premium;
- 9 • Condition 3 addresses the requirements for extending the existing Qwest
10 Alternative Form of Regulation (“AFOR”) and filing new plans of AFOR for all
11 of the regulated companies;
- 12 • Condition 9 addresses Affiliated Interests, which assures the Commission that
13 CenturyLink will comply with all applicable affiliated interest reporting
14 requirements.
- 15 • Conditions 14 and 15 contain broadband commitments by CenturyLink, which
16 include investment levels, timing, and reporting criteria for Washington
17 broadband deployment;
- 18 • Conditions 16-19 address service quality standards, including CenturyLink’s
19 commitments related to certain Commission reporting requirements in the areas of
20 service quality metrics, the provision of certain customer remedies, and the
21 retention of Washington-based complaint staff for customer complaints;

- 1 • Condition 20 contains commitments regarding rate stability for residential and
2 business customers;
- 3 • Condition 21 pertains to long distance service and it preserves rights that
4 consumers have with regard to notification of long distance carrier changes and
5 provides a period of time for waiver of change charges.
- 6 • Conditions 22-25 address retail and wholesale Operating Support Systems
7 (“OSS”), including commitments by CenturyLink regarding the transition of retail
8 and wholesale operating systems, and specific sharing of information with Staff
9 regarding the software and systems transitions.
- 10 • Condition 26 addresses WTAP reporting and communication commitments to
11 ensure the preservation of the exchange of data. In addition, the condition
12 requires that a WTAP service performance monitoring program be created, and
13 provides for payment of customer remedies under certain circumstances;
- 14 • Condition 27 affirms CenturyLink’s assumption of Qwest’s contractual
15 obligations related to 911 service;
- 16 • Condition 28 addresses rate center consolidations to be performed post-
17 Transaction;
- 18 • Condition 29 contains CenturyLink’s commitment to work with Staff and Public
19 Counsel to provide customer notice post-Transaction.
- 20

1 **III. JOINT APPLICANTS' TESTIMONY REGARDING CONDITIONS AND**
2 **IMPLICATIONS FOR THE PUBLIC INTEREST**

3
4 **Q. In general, what are the Joint Applicants' views of the Transaction and the necessity**
5 **for conditions to its approval?**

6 A. Joint Applicants' position with regard to this question is set forth in the Application and
7 direct testimony filed on May 13 and 21, 2010. Nevertheless, in order to expeditiously
8 settle all the issues in this proceeding, CenturyLink and Qwest have agreed to the terms
9 set forth in the Settlement Agreement.

10
11 *Financial Conditions*

12 **Q. What protections are provided to Washington customers in Conditions 1-2, 4-8, and**
13 **10-13 in the Settlement Agreement?**

14 A. The Joint Applicants believe that the conditions pertaining to reporting requirements
15 provide the Commission with sufficient access to the books of account, all documents
16 and data regarding the Transaction, and information regarding material changes, in order
17 to allow the Commission to effectively monitor the performance and financial condition
18 of CenturyLink. This set of conditions also provides that CenturyLink will not advocate
19 for a higher cost of capital in rates as a result of the Transaction; and that no retail or
20 wholesale rates will include any Transaction related costs. Finally, CenturyLink has
21 agreed to track and periodically report on merger synergies and costs. The Joint

1 Applicants believe that this set of conditions will provide adequate assurances to the
2 Commission that Washington customers will not be harmed by Transaction-related rate
3 or service impacts, and that the Commission will have the information necessary to
4 properly monitor and regulate CenturyLink after the Transaction is completed.
5

6 **Q. Can the Joint Applicants describe the specific financial conditions to which**
7 **CenturyLink has agreed as a result of the Settlement Agreement?**

8 A. Yes. CenturyLink has agreed not to encumber the assets of its Washington operating
9 companies without seeking the approval of the Commission. CenturyLink will file semi-
10 annually with the Commission certain financial reports and information until the AFOR
11 proceedings contemplated in Condition 3 are concluded so the Commission can review
12 the financial health of the company. CenturyLink will also provide post-merger
13 EBITDA, and the price per share of both companies immediately prior to the closing date
14 and the number of shares issued to Qwest's shareholders to complete the Transaction.
15 Finally, CenturyLink will not seek recovery of any acquisition premium in Washington
16 intrastate regulated rates, nor will the company include in wholesale or retail rates any
17 Transaction related costs. As with certain previously described conditions, this financial
18 condition serves to provide further assurances to the Commission that Washington
19 customers will not be impacted by costs of the Transaction in any relevant rate
20 proceedings.
21

1 **Q. Are the financial conditions as proposed sufficient to provide adequate assurance to**
2 **the Commission that the public interest will be served?**

3 A. Yes, they are substantial. When viewed in light of the comprehensive nature of all of the
4 commitments in the Settlement Agreement, there should be more than adequate assurance
5 that the Transaction meets the public interest, no harm standard.

6
7 **Q. As part of the Settlement Agreement, has CenturyLink agreed to comply with all**
8 **applicable statutes and regulations regarding affiliated interest transactions?**

9 A. Yes, this agreement is in Condition 9. The Joint Applicants believe that these affiliated
10 interest commitments will provide the Commission adequate ability to monitor intra-
11 company transactions among CenturyLink's Washington ILECs and its other operations.

12
13 *AFOR-Related Conditions*

14 **Q. What terms have the Parties agreed to regarding Qwest's AFOR and the AFORs**
15 **required of the CenturyLink ILECs?**

16 A. In Condition 3, the Parties agreed that the Joint Applicants will petition the Commission
17 to extend Qwest's current AFOR, and to eliminate the conditions in the
18 CenturyTel/Embarq merger that require CenturyLink to file results of operations within
19 three years and plans of AFOR within five years.

20
21 **Q. Are there other AFOR-related terms as well?**

1 A. Yes, Condition 3 contains additional requirements that detail what will happen in
2 connection with AFOR filings for Qwest and the CenturyLink ILECs. Those filings will
3 be due no sooner than three years, and no later than four years after the Transaction
4 closes. This condition contains detailed requirements with regard to the information that
5 must be submitted in the initial filing, and preserves the rights of the Commission to
6 require additional information, and for the Parties to request additional information.

7

8 **Q. What concerns do the AFOR-related terms address?**

9 A. Condition 3 addresses concerns about the timing and structure of upcoming AFOR
10 proceedings involving Qwest and the CenturyLink ILECs. Review of the Qwest AFOR
11 is scheduled to begin in two months. Extending the Qwest AFOR three to four years
12 fosters regulatory efficiency by allowing time for a more complete picture of the post-
13 Transaction Qwest entity to develop. It is also efficient to synchronize the results of
14 operations and AFOR filings of the CenturyLink ILECs with the Qwest AFOR review.
15 Concurrent Qwest and CenturyLink AFOR filings would allow the Commission to
16 conduct a comprehensive review of all of the post-Transaction CenturyLink operating
17 companies together. Furthermore, by scheduling these AFORs three to four years after
18 the Transaction closes, the Commission would be able to take into account any synergy
19 savings Century Link may realize from the Transaction, which likely will not be available
20 until after the first few years. The AFOR-related terms ensure that the issue of merger
21 synergies, as well as other important issues that may be best addressed across the post-

1 Transaction CenturyLink operating companies, will be incorporated into these AFOR
2 proceedings.

3

4 *Broadband Commitments*

5 **Q. Please address the specific broadband commitments made by CenturyLink under**
6 **the Settlement Agreement.**

7 A. These commitments are addressed in Conditions 14 and 15. To demonstrate
8 CenturyLink's commitment to the ongoing provision of broadband services and to
9 maintenance of its network, CenturyLink agrees to expend \$80 million in broadband
10 deployment in CenturyLink and Qwest areas in Washington over a five (5) year period
11 beginning January 1, 2011 and ending December 31, 2015. CenturyLink will commit to
12 expend at least thirty-three percent (33%) of the \$80 million broadband investment in
13 unserved or underserved areas. In addition, five central offices will be enabled with DSL
14 in addition to the thirty-three percent commitment. These central offices are Clearwater,
15 Glenwood, Eureka, Nespelem, and Willard. The investment in these central offices will
16 provide service to unserved areas, and will be counted in satisfaction of the \$80 million
17 commitment, but will be in addition to the 33% committed to unserved and underserved
18 areas.²

19

² With this deployment, every Qwest and CenturyLink wire center will have broadband capability for some or all of its customers, with the exception of the Columbia wire center which is entirely contained within the Hanford Reservation and which has no residential subscribers.

1 CenturyLink will submit a plan for broadband deployment to Staff and Public Counsel
2 annually, to begin within 60 days of the anniversary date of the closing of the Transaction
3 and thereafter submitted on the anniversary of the Transaction's closing date, including
4 the number of living units to be enabled or upgraded as to speed. CenturyLink will also
5 meet with Staff and Public Counsel to review the annual broadband plan and the annual
6 deployment report. In addition, within 180 days of the Transaction's close, CenturyLink
7 will provide Staff a separate confidential filing identifying the initial wire centers targeted
8 under the commitment as well as the estimated living units that will be enabled or
9 upgraded. Company representatives will meet with Commission engineering staff and
10 Public Counsel to review this report.

11
12 For a period of five (5) years, or until all capital commitments have been expended under
13 this condition, CenturyLink will file with the Commission annually on the anniversary of
14 the Transaction's close a confidential written report on the broadband deployment by
15 wire center accomplished in the previous year, including the number of living units
16 enabled or upgraded.

17
18 The Joint Applicants believe that CenturyLink's broadband commitment under the
19 Settlement Agreement provides the Commission with a high degree of certainty that
20 CenturyLink will commit sufficient capital to maintain and enhance its Washington

1 network, and thereby alleviates any previously-raised concerns with regard to broadband
2 deployment or capital investment.

3

4 *Service Quality-Related Conditions*

5 **Q. How do the service quality conditions in the Settlement Agreement address service**
6 **quality issues?**

7 A. Qwest and the CenturyLink ILECs will provide monthly service quality reports after the
8 close of the Transaction. Thus, the Commission's ability to monitor and enforce the
9 service quality required of the combined company will not be diminished as a result of
10 the Transaction. Additionally, CenturyLink will provide to the Commission within one
11 year of closing a status report on its switching infrastructure including any switch
12 replacements, upgrades or retirements made in the previous year plus any known changes
13 for the next year. CenturyLink will also provide to the Commission a confidential report
14 for the previous calendar year detailing Washington regulated capital expenditures as a
15 percentage of total system expenditures and a comparison of the amount of regulated
16 capital expenditures per Washington access line with the amount of regulated capital
17 expenditures per CenturyLink system-wide access line. This will enable the Commission
18 to gain more insight into CenturyLink's investments in Washington relative to its capital
19 commitments in the broader CenturyLink system. In addition, CenturyLink has agreed to
20 extend the service quality commitments from the CenturyTel/Embarq merger until the
21 close of the next AFOR proceeding, and has agreed to increase the CenturyLink ILECs'

1 residential credit from \$15 to \$25. Finally, CenturyLink has agreed to add an out of
2 service credit as an additional customer remedy, and has agreed to a delayed installation
3 remedy to be triggered if service falls below a certain level as described in the
4 Agreement. As such, the Settlement Agreement provides the Commission and Staff with
5 specific and significant service quality provisions and with capital expenditure reporting.
6

7 *Retail Rate Stability*

8 **Q. Have the Parties agreed to any conditions affecting retail rates?**

9 A. Yes, Condition 20 addresses retail rate stability. The CenturyLink ILECs will not file tariff
10 revisions to increase the rates for stand-alone business or residential lines until the
11 conclusion of the AFOR described in Condition 3. There is an exception for “Exogenous
12 Events”, but in effect these tariffed rates will be capped. Further, for the Qwest stand-alone
13 business service, which is no longer tariffed, the rate will be capped for three years at no
14 more than \$30 (the current rate is \$29). In addition, rate stabilization plans will continue to
15 be offered for the Qwest business services for which they are currently available, and
16 “price for life”-type commitments will continue to be honored. These conditions provide a
17 material benefit to Washington consumers by offering certainty with regard to rate levels.
18

19 *Long-Distance Conditions*

20 **Q. What conditions in the Settlement Agreement apply to long-distance services and**
21 **how do the proposed conditions positively impact Washington consumers?**

1 A. If CenturyLink changes the carriers its uses to provide intrastate long distance service to
2 customers in either the pre-merger CenturyLink or the pre-merger Qwest areas, the
3 company will notify each of the affected Washington intrastate long distance customers
4 at least 30 days in advance of the change. For 90 days following the customer transfers,
5 CenturyLink will waive any primary interexchange carrier (PIC) change charges for
6 customers choosing to change carriers.

7

8 *OSS-Related Conditions*

9 **Q. What are the conditions in the Settlement Agreement to address concerns raised**
10 **regarding changes to the existing OSS?**

11 A. With regard to retail OSS, CenturyLink has committed to submit to Staff and Public
12 Counsel semi-annual integration status reports that include a summary of integration-
13 related activity completed since the last filed report and key milestones, deliverables and
14 implementation timelines for upcoming substantial integration activities. CenturyLink
15 has also committed to provide notice to the Commission 180 days in advance of the
16 conversion of major Qwest or CenturyLink retail OSS that impact Washington
17 operations. The notification will consist of a description of the systems involved, the
18 action to be taken, the timelines associated with the system conversion and a description
19 of customer impacts. As this Transaction is an acquisition of Qwest in total, CenturyLink
20 is not forced to integrate systems by a date certain. This commitment provides the ability
21 for the Commission to monitor CenturyLink's measured and careful approach to

1 integration of systems, thereby providing the Commission greater confidence that
2 customer impacts will be minimal.

3
4 With respect to wholesale OSS, the Applicants have agreed to retain the Qwest wholesale
5 OSS in the Qwest service territory for two years from the date of the Transaction's close,
6 or until July 1, 2013, whichever is later and thereafter provide wholesale customers with
7 OSS wholesale service quality that is not less than, and is functionally equivalent to, the
8 OSS wholesale service quality provided by Qwest prior to the Transaction's close.

9 Further, the Settlement Agreement provides numerous protections for CLECs and in the
10 event the Merged Company³ does decide to replace or integrate the Qwest wholesale
11 OSS including a 270-day notice period, the submission of a detailed plan, and continued
12 applicability of the Qwest Change Management Process. If any Qwest OSS interface is
13 retired or replaced, CLECs are assured of joint testing for operational acceptance of any
14 new interface, and detailed provisions governing this joint testing and acceptance process
15 are set forth in the Settlement Agreement.

16
17 CenturyLink has also agreed to file notification with the Commission upon the
18 completion of any retail or wholesale OSS system conversion or integration for which
19 advance notification was provided as described above.

20

³ The term "Merged Company" refers to the post-merger company (CenturyLink and its operating companies, collectively, after the Closing Date).

1 **Q. What information has CenturyLink agreed to provide associated with changes to**
2 **major network components?**

3 A. In Condition 24, CenturyLink has agreed to provide the Staff and Public Counsel with 90
4 days' advance notice of rearrangements to major network components, which are defined
5 as customer call centers, customer repair centers, E911 systems, maintenance systems
6 that monitor central office and transport systems, engineering systems and outside plant
7 record systems.

8

9 *WTAP-Related Conditions*

10 **Q. What has CenturyLink pledged in terms of the Washington Telephone Assistance**
11 **Program (“WTAP”), Lifeline, and Link-Up programs?**

12 A. The Settlement Agreement addresses WTAP reporting and communication commitments.
13 In addition, the condition requires that a WTAP service performance monitoring program
14 be created, and provides for payment of customer remedies under certain circumstances.
15 After the Transaction closes, the CenturyLink ILECs and Qwest will meet and work
16 collaboratively with Staff, Public Counsel and DSHS to evaluate the current WTAP
17 outreach program in order to enhance customer awareness and increase participation in
18 the program.

19

20 Within 60 days after the Transaction closes, the CenturyLink ILECs and Qwest will
21 institute a program with the executive complaint handlers for the treatment of consumer

1 upheld WTAP complaints, to include a root cause analysis that indicates the cause of the
2 problem leading to the customer complaint and the issuance of a three-month service
3 credit to the affected customer at the current applicable WTAP, Lifeline or Link-up rate,
4 plus any additional credits that may be due the customer.

5
6 CenturyLink also agrees to notify WTAP, Lifeline and tribal agencies of a name change
7 if and when it occurs.

8

9 *Other Conditions in the Settlement Agreement*

10 **Q. Are there other conditions that are part of the Settlement Agreement?**

11 A. Yes. In Condition 27, CenturyLink makes commitments to honor Qwest's contracts
12 concerning 911 service; in Condition 28, the Parties have agreed how to handle the Staff
13 request for certain rate center consolidations; and, in Condition 29 the Parties have agreed
14 to an additional customer notice after the Transaction closes.

15

16 **IV. STAFF TESTIMONY**

17

18 **Q. Does Staff support the Settlement Agreement entered into by the Parties and filed**
19 **December 23, 2010?**

20 A. Yes it does.

21

1 **Q. What is Staff's recommendation with respect to this Transaction?**

2 A. Staff believes that, with the twenty-nine conditions in the Settlement Agreement, the
3 Transaction is consistent with the public interest. Accordingly, Staff recommends that
4 the Commission approve the Transaction subject to these conditions.

5

6 **Q. Please explain your conclusion that the Transaction is consistent with the public
7 interest.**

8 A. In prefiled direct testimony filed on September 27, 2010, Staff presented a number of
9 concerns connected to the Transaction and recommended that the Commission deny the
10 application unless the Commission imposed certain conditions to mitigate the potential
11 harm resulting from the Transaction. Staff organized its proposal for mitigating potential
12 harms of the Transaction into forty-five conditions.

13 The Settlement Agreement contains twenty-nine conditions, which together fully address
14 Staff's concerns with the Transaction. The smaller number of conditions largely reflects
15 the fact that some conditions proposed by Staff in prefiled direct testimony were
16 combined conceptually into fewer conditions in the Settlement Agreement. Staff believes
17 that the substance of the twenty-nine conditions in the Settlement Agreement mitigates
18 the risk of harm resulting from the Transaction and thereby protects Washington
19 customers.

20

1 **Q. Could you specify Staff's major concerns that the forty-five conditions were**
2 **designed to address?**

3 A. Yes. In its prefiled direct testimony the forty-five conditions proposed by Staff addressed
4 the following issues:

5 *Financial Issues*

- 6 • Complete financial reporting of synergies and capital investments;
- 7 • The possibility that assets of both Qwest and CenturyLink ILECs could be
8 encumbered;
- 9 • Possible increases in retail or wholesale rates due to the need to recover
10 transaction costs such as increased management costs, investment banking,
11 severance costs, OSS conversions, etc.;
- 12 • The possibility that Washington customers would incur higher rates due to higher
13 capital costs as a result of lower credit ratings stemming from the Transaction;
- 14 • Properly capturing synergy effects in upcoming AFORs and that any resulting
15 change in rates or rate design properly reflect the operations of entities that are
16 effectively combined after the transaction is completed;
- 17 • Adherence to affiliated transaction rules;
- 18 • Properly maintaining books and records so that Washington-specific operations
19 will be reported to the Commission;
- 20 • Monitoring the age of network infrastructure and any plans CenturyLink may
21 have regarding deployment of new technologies;

- 1 • The ability to monitor capital investment in Washington and the continuation of
2 investment and maintenance expenditures in Washington at pre-transaction levels.

3 *Broadband*

- 4 • The possibility that broadband investment in unserved or underserved areas of
5 Washington would be diverted to Washington’s urbanized locations;
6 • Availability of stand-alone DSL.

7 *Service Quality*

- 8 • The possibility that CenturyLink may neglect service quality due to its efforts to
9 achieve synergies and that in a post-merger environment service metrics may
10 degrade.

11 *Retail Pricing*

- 12 • Potential rate increases in basic residential and business services.

13 *Operational Support Systems*

- 14 • That migrations of Operational Support System functions that support retail or
15 wholesale customer segments might affect customers adversely.

16

17

18 *Network Integration*

- 19 • Receiving notice of rearrangements to and integration of major network
20 components or systems.

21 *WTAP*

- 1 • Continuing to adhere to WTAP requirements and providing WTAP benefits in a
2 timely manner to those customers who qualify for WTAP benefits.

3 *911*

- 4 • Adherence to contractual arrangements held by Qwest in the provision of 911
5 service.

6 *Rate Center Consolidation*

- 7 • Completion and expansion of rate center consolidations as a means of conserving
8 numbering resources.

9

10 **Q. Does the Settlement Agreement resolve the concerns listed above?**

11 A. Yes. Staff believes that, when taken as package, the conditions in the Settlement
12 Agreement address Staff's concerns and enable the Transaction to meet the no-harm test.

13

14 **Q. Please explain how the conditions in the Settlement Agreement resolve each issue**
15 **listed above.**

16 A. Conditions 1 through 13 in the Settlement Agreement address the Financial issues cited
17 above. First, CenturyLink has agreed to reporting requirements advocated by Staff.
18 Second, CenturyLink has agreed not to recover in retail or wholesale rates any increases
19 in management costs related to the Transaction or costs related to the merger such as
20 transition, integration or branding costs. Third, the Joint Applicants have agreed to file
21 their respective earnings reviews and AFORs no sooner than three years and no later than

1 four years after the close of the transaction. This allows sufficient time for synergies to be
2 properly captured and recorded so that integration effects can be considered in the AFOR
3 proceeding. Further, the AFOR proceeding will address rate design and rate rebalancing
4 and whether and to what extent the rate design of residential or business services, and
5 intrastate access charges, should be modified to achieve consistent rate structures among
6 the companies. With these agreements, coupled with the commitment discussed below
7 regarding broadband deployment, Staff is satisfied that CenturyLink will inform Staff of
8 its financial condition, Washington customers will be protected from transaction and
9 integration costs, and that CenturyLink will continue to invest in Washington and deploy
10 advanced services required by customers in the state.

11
12 Conditions 14 and 15 in the Settlement Agreement address the Broadband issues of
13 deployment and availability of standalone DSL. First, CenturyLink has agreed to spend at
14 least \$80,000,000 (eighty million dollars) in deploying retail broadband infrastructure in
15 Washington over a five-year period beginning January 1, 2010. Second, of this
16 expenditure, a minimum of thirty-three percent (33%) or \$26,400,000 will be directed to
17 unserved and underserved areas of Washington. Third, CenturyLink will deploy DSL
18 service to the five CenturyLink ILEC central offices of Clearwater, Glenwood, Willard,
19 Nespelem and Eureka, where DSL currently is not available. Fourth, Staff will be able to
20 review and advise on CenturyLink's plans for meeting its broadband commitment. Last,
21 access to stand-alone DSL, or DSL priced as stand-alone, has been assured in that

1 CenturyLink also has agreed to continue offering, through the conclusion of the AFOR
2 proceeding, stand-alone DSL currently provided within Qwest's service territory and,
3 within CenturyLink's ILEC areas, will continue to offer a basic broadband service that is
4 coupled with restricted voice service and 911 service. The total amount of investment
5 directed to broadband exceeds that found in any other agreement between CenturyLink
6 and those state commissions where agreements have been approved to-date. Moreover,
7 with the targeted deployment in the five central offices referenced above, DSL will be
8 deployed in every wire center in Washington served by CenturyLink ILECs or Qwest
9 where there are residential customers. These commitments provide Staff with the
10 assurance that CenturyLink will continue broadband investment in the state, that as a
11 result of the Settlement Agreement a significant portion of this investment will be
12 appropriately targeted to unserved and underserved areas, and that broadband service in
13 rural Washington will be expanded.

14
15 Conditions 16 through 19 in the Settlement Agreement address Service Quality and
16 Customer Complaint handling issues raised by Staff. These commitments give Staff
17 assurance that CenturyLink will strive to maintain service quality at pre-Transaction
18 levels as there are incentives to avoid any deterioration in service quality metrics.

19
20 Conditions 20 and 21 in the Settlement Agreement address Staff's Retail Pricing issues.
21 The rate caps and other rate stabilization commitments provide Staff assurance that

1 CenturyLink will not raise basic retail rates to the degree that Washington customers are
2 harmed by the Transaction.

3
4 Conditions 22 through 25 in the Settlement Agreement address OSS and Network
5 Integration issues raised by Staff. In Condition 22 for retail OSS, CenturyLink commits
6 for four years to reporting on integration twice a year and to providing advance notice of
7 any conversion of retail OSS that impact Washington operations. Condition 23 provides
8 protections for wholesale customers from a sudden transition off of the legacy Qwest
9 OSS and commitments by CenturyLink to maintain wholesale service quality and engage
10 in detailed transition planning. Condition 24 specifies that CenturyLink will provide Staff
11 and Public Counsel with ninety days advance notice of the rearrangement of major
12 network components. Finally, Condition 25 specifies that CenturyLink will file a notice
13 with the Commission indicating completion of any OSS conversion or integration
14 required under either the Retail or Wholesale OSS conditions. These conditions, when
15 taken together, provide Staff with confidence that OSS conversions can proceed without
16 harming Washington customers.

17
18 Condition 26 provides Staff with assurances that WTAP requirements will be met and
19 that outreach to Washington residents who qualify for WTAP benefits will be expanded.

20

1 Condition 27 of the Settlement Agreement addresses potential disruption to the 911
2 system by ensuring that CenturyLink will honor all contractual agreements held by Qwest
3 associated with 911 service.

4
5 Condition 28 of the Settlement Agreement obligates CenturyLink to complete new Rate
6 Center Consolidations or to finalize ones that had been started, ensuring that rate center
7 consolidations will be completed in eleven areas by June 30, 2012.

8

9 **Q. Does this conclude Staff's discussion of the Settlement Agreement?**

10 A. Yes it does.

11

12 **V. PUBLIC COUNSEL TESTIMONY**

13

14 **Q: Ms. Johnson, please provide information pertaining to your educational**
15 **background and professional experience.**

16 A. My name is Stefanie Johnson and my business address is 800 Fifth Avenue, Suite 2000,
17 Seattle, Washington, 98104. I am employed as a Regulatory Analyst with the Public
18 Counsel Section of the Washington Attorney General's Office.

19 I received a B.A. in Political Studies and History from Whitworth University in 2002. In
20 2005, I received a Master of Public Administration degree from the Evans School of
21 Public Affairs at the University of Washington. Since joining Public Counsel in

1 December 2005, I have worked on a wide range of energy and telecommunication issues
2 and cases, including several mergers and acquisitions. Specifically, I was involved in the
3 proceedings related to the acquisition of Puget Sound Energy by Puget Holdings (Docket
4 No. U-072375), the CenturyTel/Embarq Merger (Docket No. UT-082119), and the
5 transfer of control of Verizon Northwest to Frontier Communications (Docket No. UT-
6 090842).

7 I testified before the Commission as part of settlement panel in support of the Settlement
8 Agreement in the CenturyTel/Embarq merger (Docket No. UT-082119) and Avista
9 Utilities' 2010 General Rate Case (Docket Nos. UE-100467 and UG-100468).
10 Additionally, I filed two declarations and served as Public Counsel's witness in support
11 of the Settlement Agreement in the proceeding related to PSE's Report Identifying Puget
12 Sound Energy's Ten-Year Potential and Biennial Target (Docket No. UE-100177). I have
13 also presented before this Commission at Open Meetings on various issues.

14

15 **Q: Please explain Public Counsel's involvement in this case.**

16 A: Public Counsel actively participated in this case, reviewing testimony, issuing our own
17 data requests, reviewing discovery by Staff and other parties, communicating with other
18 parties about issues, monitoring proceedings in other states, developing recommended
19 conditions, and participating in settlement discussions.

20

1 **Q: What were some of the key issues and concerns Public Counsel considered in the**
2 **review of the proposed transaction?**

3 As with other telecommunications mergers, Public Counsel was concerned with issues of
4 financial and managerial soundness, service quality, calculation and sharing of synergies,
5 broadband deployment and the impact of the merger on customer rates and service. An
6 additional risk factor posed by this merger is created by the scale of the transaction, in
7 which a smaller company with a more rural service territory is acquiring Washington's
8 Regional Bell Operating Company, the largest telecommunications provider in the state,
9 serving the largest urban areas and business customers.

10

11 **Q: Why does Public Counsel support the Settlement Agreement?**

12 A: As discussed below in my testimony, the Settlement Agreement provides a number of
13 conditions that, when taken together, preserve the public interest and mitigate harm. The
14 conditions serve to offset the risks associated with the proposed transaction, to share its
15 benefits with Qwest and CenturyLink customers, and to preserve effective Commission
16 oversight of the post-merger company.

17

18 **Q: How does the Settlement Agreement protect customers from potential harm related**
19 **to the proposed transaction?**

20 A: The Settlement Agreement has several important components that are designed to protect
21 customers from the risks associated with the proposed transaction. Condition 2 (Cost of

1 Capital) protects customers from an increases cost of capital that could occur as a result
2 of the transaction. Condition 5 (Management Costs) and Condition 6 (Merger Costs) are
3 specifically designed to protect ratepayers from incurring the cost of an acquisition
4 premium or any other costs that will result from the proposed transaction. These will
5 instead be paid by shareholders. This condition protects customers from harm that would
6 not exist absent the transaction. It is also important to Public Counsel that these
7 commitments are not limited in duration.

8 Condition 20 (Retail Rate Cap) provides customers with an added assurance that
9 consumers are not harmed by the transaction, providing rate protections until the time
10 that the Commission conducts a thorough rate review as set out in Condition 3 of the
11 Settlement Agreement (discussed below). This commitment provides stability and
12 prevents harm to customers who have entered into long term contracts for rates and
13 services which might have been terminated as a result of the merger.

14 The commitments included in Condition 15 (Stand-alone DSL) will maintain Qwest's
15 stand-alone DSL offering (currently a part of its AFOR) and an equivalent of
16 CenturyLink's "pure broadband." Stand-alone DSL provides customers with more
17 options for telecommunications services and facilitates competition. Its importance has
18 been recognized on several occasions by the Commission. Most recently, in the Final
19 Order in the Verizon/Frontier transaction, the Commission stated: "stand-alone DSL may
20 provide a meaningful alternative and value to consumers who do not want or need
21 traditional voice services and that there is no reason to require consumers to be tied to

1 voice offerings they do not need in order to purchase DSL.”⁴ Public Counsel agrees and
2 believes CenturyLink’s agreement to maintain a form of stand-alone DSL throughout the
3 merged service territory following the transaction is in keeping with well-established
4 Commission precedent on this matter and an important component of this Settlement
5 Agreement.

6 Service quality performance is a concern that arises due to the integration that will occur
7 as a result of this merger, especially in light of the disparity in size between the merging
8 companies. Condition 16 (Service Performance Guarantee) extends the provisions of
9 Qwest’s Service Performance Guarantee to CenturyLink customers who are currently not
10 eligible for the same sort of customer credits available to Qwest customers. This
11 condition provides that all customers of the combined company, regardless of which of
12 the CenturyLink-owned operating companies provides their service, will receive the same
13 remedy for out of service conditions and missed appointments. Service quality reporting
14 in Condition 17 will provide an early indication if problems arise and creates a
15 performance benchmark to trigger the pursuit of more stringent provisions if necessary.

16
17 **Q: Are there other noteworthy components of the Settlement Agreement that Public**
18 **Counsel would like to highlight?**

19 **A:** Yes, the Settlement Agreement contains important provisions regarding broadband
20 deployment and conditions which provide for an effective financial and regulatory

⁴ Verizon/Frontier Merger, Docket No. UT-090842, Order 06, ¶207

1 framework review as part of the planned future AFOR proceeding. The settlement also
2 has important provisions related to synergies.

3

4 **Q: Please discuss the broadband commitment.**

5 A: Condition 14 ensures that CenturyLink will invest no less than \$80 million dollars in
6 retail broadband infrastructure over the next five years, with a minimum
7 of 33 percent of that amount devoted to unserved and underserved areas, as well as an
8 additional commitment to enable broadband in the only five central offices that currently
9 remain unserved. With this commitment, based on information from Joint Applicants, it
10 is Public Counsel's understanding that essentially all of the merged companies wire
11 centers will have broadband deployed. While this is an important milestone, there will
12 still be customers within wire centers who do not have access to broadband service. For
13 that reason, Public Counsel believes that the Company's commitment to look closely at
14 all wire centers that have 85 percent availability or less in its initial evaluation and
15 planning process is a key provision of Condition 14. Furthermore, the Company will
16 provide the Commission, Staff and Public Counsel with annual reports that will monitor
17 both the Company's plans and performance related to broadband deployment will help
18 ensure that the commitments are met.

19

20 **Q: Please discuss the aspects of the future AFOR filing procedures that are attractive**
21 **to Public Counsel.**

1 A: Under Condition 3, in three to four years, the CenturyLink operating companies will be
2 required to undergo a thorough earnings review that will allow the Commission to
3 examine the combined company's performance. The Commission order in the
4 CenturyTel/Embarq transaction found that this level of review would be necessary in the
5 consideration of an AFOR for CenturyLink, stating: "[T]he 'public interest' requires that
6 the Commission be vigilant in the review of the finances of the new CenturyTel
7 companies before they are relieved on any substantial rate oversight."⁵ The need for a
8 thorough earnings review, consistent with that required in a general rate case, is equally if
9 not more applicable here. After the proposed merger closes, CenturyLink will be, once
10 again, an entirely new company from a financial perspective. Condition 3 provides for a
11 full review akin to a general rate case, with proforma results of operation and a cost of
12 capital determination. Such review will give the Commission the necessary tools to
13 evaluate post-merger financial health, reasonableness of rates, and the appropriate type of
14 regulation in the future, whether AFOR or continued rate of return regulation. The terms
15 of Condition 3 also allow the Commission and parties to account for and consider the
16 synergies associated with this transaction.

17

18 **Q: Please discuss why synergy analysis is an important issue for Public Counsel.**

19 The Commission has established that in order for the public interest to be satisfied, the
20 synergy savings associated with mergers and acquisitions must result in benefits to

⁵ CenturyTel/Embarq Merger, Docket No. UT-082119, Order 05, ¶ 48

1 customers.⁶ Joint Applicants have stated publicly that the merger is expected to produce
2 approximately \$625 million in synergies nationally on an annual basis. The Settlement
3 Agreement includes several components which provide a means by which synergy
4 benefits can be appropriately shared with customers. For example, the broadband
5 commitment (Condition 14) is one means by which some merger synergies from the
6 proposed transaction can be shared.

7
8 This Settlement Agreement preserves and builds on the synergy reporting provisions of
9 the CenturyTel/Embarq merger. In that case, synergy savings and expense reporting
10 requirements were established “in order to ensure that Staff and Public Counsel have the
11 requisite information to determine whether and when such synergy savings may be
12 available to the ratepayers.”⁷ The reporting requirements for detailing synergy savings
13 and merger costs laid out in Condition 4 of this Settlement Agreement are based on the
14 requirements ordered by the Commission in the CenturyTel/Embarq transaction, and
15 serve the same important function for this transaction. These reports will allow the
16 Commission and other parties to monitor and track synergy savings related to this
17 transaction for consideration in a future rate review. This will provide a means by which
18 synergies related to the transaction can benefit Washington ratepayers and serving the
19 public interest. This condition also preserves the synergy reporting specifically related to
20 the CenturyTel/Embarq transaction, a particularly important component, since the

⁶ *Id.*, ¶ 52

⁷ *Id.*, ¶ 53

1 integration of CenturyTel and Embarq is not yet complete, and further synergies are
2 anticipated and should be considered in the future rate review.

3

4 **Q: Do you want to highlight any other conditions?**

5 A: Public Counsel believes that the reporting requirements associated with Service Quality
6 (Condition 17), Network Integration (Condition 24), Capital Expenditures (Condition
7 13), Finances (Condition 1), as well as the reporting requirements associated with
8 broadband deployment and synergies, mentioned above, will provide valuable
9 information to enable the Commission, Staff, and Public Counsel to monitor the
10 integration of the two companies and compliance with the merger conditions. These
11 reports will also provide a useful base of information for the AFOR proceeding that is
12 outlined in Condition 3.

13 In addition, the Lifeline (WTAP) protections in Condition 26 are necessary to ensure a
14 smooth transition for WTAP customers during the merger. Public Counsel also supports
15 the Long Distance requirements in Condition 21 which provide customers with notice of
16 any change in their provider and with a waiver of the PIC charge.

17 Finally, Public Counsel also believes that Condition 29 (Customer Notice) is important
18 because it ensures that customers will receive notification when the merger has been
19 approved and closed. While it is not anticipated that the individual operating companies
20 will immediately undergo a name change or a combination at the operating company
21 level, customers should nevertheless be informed as soon as the Transaction has taken

1 place and be directed to resources for further information. A further notice would be
2 provided in the event of a name change.

3

4 **Q: Does this conclude your testimony on behalf of Public Counsel?**

5 A: Yes.

6

7 **VI. CONCLUSION**

8

9 **Q. What is the Parties' overall recommendation in this case?**

10 A. The Parties request that the Commission issue an order approving the Settlement
11 Agreement and providing the approvals requested by the Joint Applicants.