

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the matter of,

Joint Application of Qwest Communications  
International Inc. and CenturyTel, Inc. for  
Approval of Indirect Transfer of Control of  
Qwest Corporation, Qwest Communications  
Company LLC, and Qwest LD Corp.

Docket No. UT-100820

**SUPPLEMENTAL TESTIMONY ON PROPOSED SETTLEMENTS**

**OF**

**TIMOTHY J GATES**

tw telecom of washington llc; Covad Communications Company; Level 3 Communications, LLC;  
McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services; Charter  
Fiberlink WA-CCVII, LLC; and Cbeyond Communications LLC

**PUBLIC VERSION  
CONFIDENTIAL DATA HAS BEEN REDACTED**

January 3, 2011

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1 **I. INTRODUCTION AND PURPOSE**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Timothy J Gates. My business address is QSI Consulting, 10451 Gooseberry  
4 Court, Trinity, Florida 34655.

5 **Q. ARE YOU THE SAME TIMOTHY GATES WHO FILED RESPONSIVE**  
6 **TESTIMONY IN THIS PROCEEDING ON SEPTEMBER 27, 2010, AND CROSS-**  
7 **ANSWERING AND SUPPLEMENTAL RESPONSIVE TESTIMONY ON**  
8 **NOVEMBER 1, 2010?**

9 A. Yes.

10 **Q. ON WHOSE BEHALF ARE YOU FILING THIS TESTIMONY?**

11 A. My testimony is being filed on behalf of a number of competitive local exchange carriers  
12 (“CLECs”): tw telecom of washington, llc, Covad Communications Company, Level 3  
13 Communications, LLC, McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC  
14 Business Services, Charter Fiberlink WA-CCVII, LLC, and Cbeyond Communications  
15 LLC (referred to in my testimony collectively as “Joint CLECs”).

16 **Q. PLEASE EXPLAIN THE PURPOSE OF YOUR TESTIMONY.**

17 A. Pursuant to the agreement reached by the parties last week in this proceeding, the Joint  
18 CLECs are providing this testimony on two proposed settlements in Washington: (1) the  
19 settlement between Joint Applicants and Staff of the Washington Utilities and

1 Transportation Commission (“Staff”) and the Office of Public Counsel (“OPC”)<sup>1</sup> (“Staff  
2 Settlement”), and (2) the settlement between Joint Applicants and Integra Telecom  
3 (“Integra Settlement”). The testimony focuses on wholesale conditions and is essentially  
4 the same as that filed recently in Oregon on December 14, 2010 (Oregon Docket No. UM  
5 1484).

6 **Q. WAS IT YOUR INTENTION TO KEEP THIS TESTIMONY CONSISTENT**  
7 **WITH THE TESTIMONY YOU FILED IN OREGON ON DECEMBER 14, 2010?**

8 A. Yes. Consistent with the agreement reached by the parties and approved by ALJ  
9 Friedlander, this testimony is not to expand arguments beyond what was included in the  
10 testimony on the stipulation in Oregon. The only substantial differences between this  
11 testimony and that filed in Oregon are those relating to the differences between the facts  
12 in Oregon and Washington.

13 **Q. PLEASE CONTINUE WITH YOUR DESCRIPTION OF THE PURPOSE OF**  
14 **THIS TESTIMONY.**

15 A. The Staff Settlement was filed with the Commission on December 23, 2010, and  
16 testimony in support of the Staff Settlement was filed on December 29, 2010.

17 **Q. THE APPLICANTS ALSO EXECUTED A SETTLEMENT AGREEMENT WITH**  
18 **THE OREGON COMMISSION STAFF IN THE PROCEEDING BEFORE THAT**  
19 **COMMISSION. ARE THE APPLICANTS’ SETTLEMENT AGREEMENTS**  
20 **WITH THE STAFFS IN OREGON AND WASHINGTON IDENTICAL?**

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<sup>1</sup> Joint Applicants, Staff and OPC are referred to in my testimony as “settling parties.”

1 A. No. In fact, they are quite different. In Oregon, the Applicants and the Staff included  
2 extensive wholesale conditions (Conditions 27 – 41) in their proposed settlement,<sup>2</sup> but in  
3 Washington the Staff and Public Counsel have focused almost exclusively on retail  
4 conditions. I can only assume that the Staff and Public Counsel are relying on the Integra  
5 Settlement<sup>3</sup> to address wholesale issues from a public interest perspective.

6 **Q. IF YOUR ASSUMPTION IS CORRECT, ARE THE STAFF SETTLEMENT AND**  
7 **INTEGRA SETTLEMENT TAKEN TOGETHER SUFFICIENT TO PROTECT**  
8 **THE PUBLIC INTEREST SHOULD THE PROPOSED MERGED BE**  
9 **APPROVED SUBJECT TO THE PROPOSED CONDITIONS?**

10 A. No. Unfortunately, additional conditions and/or amendments to the proposed conditions  
11 are required to ensure that the merger does not harm wholesale customers/competitors  
12 and the public interest. The purpose of my testimony is to address the Staff Settlement  
13 and Integra Settlement, as well as the settling parties' testimony in support of the Staff  
14 Settlement. My testimony will explain why the settlement conditions do not adequately  
15 address certain concerns critical to the Joint CLECs – concerns that will lead to merger-  
16 related harm to local competition and the public interest.

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<sup>2</sup> Stipulation between CenturyLink, Inc., Qwest Communications International, Inc., the Staff of the Public Utility Commission of Oregon and the Citizens' Utility Board of Oregon, Oregon Docket UM 1484, filed December 2, 2010, as revised on December 3, 2010. The settlement conditions are in Attachment 1 to the Stipulation.

<sup>3</sup> See, PETITION FOR CONSIDERATION AND APPROVAL OF SETTLEMENT AND NARRATIVE IN SUPPORT OF SETTLEMENT PURSUANT TO WAC 480-07-740, Docket No. UT-100829, Dated November 10, 2010. ("Integra Settlement").

1 **Q. YOUR TESTIMONY IS FOCUSED ON THE STAFF SETTLEMENT AND**  
2 **INTEGRA SETTLEMENT. WHY ARE YOU NOT ADDRESSING OTHER**  
3 **SETTLEMENTS?**

4 A. Consistent with the agreement between the parties, this testimony is to be essentially  
5 identical to the testimony filed on December 14, 2010, in Oregon. The Oregon testimony  
6 did not address other settlements and I am not addressing other settlements in this  
7 testimony for that reason.

8 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

9 A. My testimony will focus on four particularly critical areas: (i) inadequate extension of  
10 Qwest Operations Support Systems (“OSS”); (ii) inadequate extension of wholesale  
11 agreements; (iii) failure to include an Additional Performance Assurance Plan (“APAP”);  
12 and (iv) inadequate moratoriums on non-impairment filings and forbearance petitions. I  
13 will also briefly comment on the need for a Most Favored State condition.<sup>4</sup>

14 **Q. WILL THERE BE OTHER CLEC WITNESSES ADDRESSING THE**  
15 **SETTLEMENTS AS WELL?**

16 A. Yes. Consistent with the agreement between the parties, I understand that Charter  
17 Fiberlink witness, Mr. Pruitt, will file testimony on several additional significant issues of  
18 concern to the Joint CLECs including, cross-state adoptions (or “porting”) of  
19 interconnection agreements, prohibitions on the continued reliance on the rural

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<sup>4</sup> A “Most Favored State” condition would allow the Commission to adopt commitments or conditions from other states that are adopted after the final order in UT-100820.

1 exemption, affirming rights to a single point of interconnection, and certain directory  
2 issues. Mr. Haas, on behalf of PAETEC will also be filing testimony on OSS issues.

3 **Q. IS THE TESTIMONY OF MR. PRUITT AND MR. HAAS BASED ON PRIOR**  
4 **TESTIMONY SUBMITTED IN OREGON AS WELL?**

5 A. The testimony of Mr. Pruitt will be based on his recent testimony in Oregon, while the  
6 testimony of Mr. Haas will be based on his recent testimony in Arizona.

7 In their prior testimony, the Joint CLECs explained in detail the merger-related public  
8 interest harms posed by the proposed transaction in relation to the remaining critical  
9 issues addressed in my testimony – OSS integration, continued availability of wholesale  
10 products and services at current rates, and post-merger wholesale service quality  
11 deterioration – and those critical issues addressed by Charter Fiberlink witness Mr. Pruitt  
12 and PAETEC witness Mr. Haas. I will explain why the settlement conditions do not  
13 adequately address these issues and how they should be supplemented to rectify the  
14 shortcomings. The Commission should not approve the proposed transaction without the  
15 addition of a limited number of additional commitments/conditions proposed in my  
16 testimony and in the testimony of Messrs. Pruitt and Haas.

17 **Q. ARE YOU ADDRESSING ALL OF THE SETTLEMENT CONDITIONS IN THE**  
18 **WASHINGTON SETTLEMENTS?**

19 A. No. My testimony focuses only on the settlement conditions related to wholesale  
20 operations to the extent that they do not go far enough to protect the public interest in

1 preserving local competition. The Staff Settlement and the Integra Settlement are  
2 deficient individually – and as taken together – with respect to wholesale conditions.

3 **Q. DO YOU HAVE ANY GENERAL COMMENTS ABOUT THE WHOLESALE**  
4 **CONDITIONS IN THE STAFF SETTLEMENT AND INTEGRA SETTLEMENT?**

5 A. Yes. The primary problem with the conditions is that they fall short of addressing  
6 merger-related harms associated with the proposed transaction in a number of critical  
7 areas. In addition to those items identified by Messrs. Pruitt and Haas, the Commission  
8 should modify the Staff Settlement and Integra Settlement to include the following  
9 additional terms:

- 10 1. The Merged Company will use and offer to wholesale customers the  
11 legacy Qwest OSS for at least three years.
- 12 2. Robust, transparent third party testing will be conducted for any  
13 replacement OSS that replaces a Qwest system that was subject to  
14 third party testing; and the replacement OSS should be required to  
15 perform at current performance levels (which will be benchmarked  
16 to measure future performance).
- 17 3. The Applicable Time Periods for non-UNE commercial and  
18 wholesale agreements and tariffs should be the Defined Time Period<sup>5</sup>  
19 initially proposed by Joint CLECs, or at a minimum, three years.
- 20 4. The extension of non-UNE commercial and wholesale agreements  
21 and tariffs, including term and volume discount plans, should apply  
22 to wholesale agreements in place as of the merger filing date. As  
23 noted in (3) above, the minimum time period for these agreements  
24 should be three years.
- 25 5. The Additional PAP should apply in addition to the QPAP.

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<sup>5</sup> “Defined Time Period” is defined in Exhibit TJG\_9 as follows: “refers to a time period of at least 5-7 years after the Closing Date or, alternatively, a time period that is a minimum of 42 months (*i.e.*, 3.5 years) and continues thereafter until the Applicants are granted Section 10 forbearance from the condition. With respect to agreements, the Defined Time Period applies whether or not the initial or current term of an agreement has expired (‘evergreen’ status).” (footnotes omitted)

- 1           6. The moratorium on Qwest requests to reclassify wire centers as  
2           “non-impaired” and requests for forbearance should apply for the  
3           Defined Time Period initially proposed by Joint CLECs.  
4           7. A Most Favored State condition should be adopted.

5   **II.   PRIMARY SHORTCOMINGS OF THE PROPOSED SETTLEMENTS**

6           A.   *The Integra Settlement is based largely on a settlement with one CLEC that*  
7           *reflects one CLEC’s perspective and does not adequately protect other CLECs*  
8           *or competition in general.*

9   **Q.    ARE THE WHOLESALE CONDITIONS IN THE INTEGRA SETTLEMENT**  
10       **BASED ON THE CONDITIONS IN SETTLEMENTS BETWEEN**  
11       **CENTURYLINK/QWEST AND INTEGRA FILED IN OTHER STATES?**

12   A.    Yes.    According to the Integra Settlement, it settles all issues between  
13       CenturyLink/Qwest and Integra related to the proposed transaction in all state  
14       proceedings, including in Washington, and before the FCC.

15   **Q.    IN OREGON, CERTAIN PARTIES STATED THAT THE STIPULATION**  
16       **BETWEEN THE APPLICANTS AND INTEGRA “ALLOWS CONFIDENCE**  
17       **THAT THE CONCERNS OF COMPETITIVE CARRIERS WERE**  
18       **ADEQUATELY ADDRESSED BY CENTURYLINK.”<sup>6</sup> DID THE APPLICANTS,**  
19       **STAFF AND PUBLIC COUNSEL MAKE THAT STATEMENT IN**  
20       **WASHINGTON WITH RESPECT TO THE STAFF SETTLEMENT?**

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<sup>6</sup> Errata Joint Testimony of Staff, Citizens Utility Board, CenturyLink and Qwest, December 10, 2010, at p. 24, lines 13-15.

1 A. No. As I mentioned above, the Staff Settlement in Washington appears to focus almost  
2 exclusively on retail issues.

3 **Q. DO THE CONDITIONS IN THE INTEGRA SETTLEMENT ADEQUATELY**  
4 **ADDRESS ALL MERGER-RELATED HARMS TO CLECS AND**  
5 **COMPETITION?**

6 A. No. It is important to put the Integra Settlement into context. The Integra Settlement  
7 reflects the perspective and business needs of a single CLEC out of the numerous CLECs  
8 that have intervened in this proceeding, and other CLECs who did not intervene. Indeed,  
9 the Integra Settlement expressly states that it addresses “Integra’s concerns” and reflects  
10 “Integra’s perspective[.]”<sup>7</sup> The Integra Settlement reflects compromises that Integra  
11 believed were in its own business interests, presumably taking into account its strategy  
12 for competing in the market and its own systems or operations. None of the other Joint  
13 CLECs – each with a different business plan – was party to that settlement or a  
14 participant in its negotiation.

15 **Q. WHY IS A SINGLE PARTY SETTLEMENT NOT SUFFICIENT TO PROTECT**  
16 **THE PUBLIC INTEREST?**

17 A. Integra negotiated the settlement to meet its specific business needs. The Integra  
18 Settlement was limited to the issues of greatest concern to Integra. The public interest in  
19 (and benefit from) competition depends on the availability of services from more  
20 providers than the ILEC and only one CLEC. Robust competition encompasses multiple

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<sup>7</sup> Integra Settlement at p. 1.

1 CLEC options for consumers, each with different network approaches, target markets and  
2 business plans. It also anticipates and encompasses a marketplace that is sufficiently  
3 open to new competitors in the future. Hallmarks of effective competition are the  
4 existence of multiple alternatives (not just one or two), diversity among alternatives, and  
5 conditions conducive to efficient entry today and in the future. The Joint CLECs differ  
6 from Integra in a number of important ways, and as such, conditions designed to address  
7 “Integra’s concerns” – based substantially on Integra’s need for conditioned loops – does  
8 *not* ensure that the proposed transaction will *not* negatively impact other CLECs or  
9 competition in general.

10 **Q. PLEASE ELABORATE ON SOME OF THE DIFFERENCES BETWEEN**  
11 **INTEGRA AND OTHER CLECS THAT CAUSES THEIR CONCERNS AND**  
12 **PRIORITIES TO DIFFER.**

13 A. CLECs have different OSS capabilities and use different functions and interfaces of  
14 Qwest’s OSS, depending on the development of their own systems and network. CLECs  
15 use different UNE services and different non-UNE commercial and wholesale  
16 agreements and tariffs in order to provide divergent services to their end user customers,  
17 all in competition with the ILEC. CLECs also have different networks and business  
18 models, which dictate the differences in the ways in which CLECs rely upon Section 251,  
19 271 and other wholesale inputs provided by Qwest. In addition, not all CLEC  
20 agreements have the same expiration date, which means that Integra may have been  
21 willing to compromise on the length of extensions for commercial and/or wholesale  
22 agreements, including tariffed offerings, in order to obtain other conditions that were

1 more important to it. As a result, the compromises made by Integra are not acceptable to  
2 the Joint CLECs.

3 **Q. CAN YOU PROVIDE SOME EXAMPLES?**

4 A. Yes. For example, one of the concerns that is particularly important to Integra – that is  
5 not so important to other CLECs due to differing business plans – is line conditioning for  
6 xDSL loops. The Integra Settlement contains Condition 14 that discusses an extensive  
7 line conditioning amendment and related issues, and presumably Integra was willing to  
8 compromise on other issues to receive the line conditioning commitment. As such, the  
9 conditions in the Integra Settlement were established, in part, due to the availability of the  
10 line conditioning commitment that is less important to the Joint CLECs. Charter and tw  
11 telecom, for example, do not offer xDSL service to Washington customers and have no  
12 plans to do so. Therefore, the concerns that led Integra to pursue line conditioning  
13 concessions and make compromises to get this commitment are not shared by these  
14 CLECs because of their differing business plans.

15 Another key difference between CLECs is the extent to which they rely on Qwest's non-  
16 UNE wholesale offerings as opposed to UNEs provided pursuant to Section 251 of the  
17 Act, as well as the expiration dates of the non-UNE wholesale agreements CLECs have  
18 with Qwest. As discussed below, the Integra Settlement does not adequately protect the  
19 interests of a CLEC like tw telecom who purchases special access services from a tariff  
20 that is not subject to extension under the Integra Settlement, and who has a non-UNE  
21 wholesale agreement with an expiration date that could pre-date the merger closing

1 (because any wholesale agreement that expires prior to the merger closing date is not  
2 eligible for extension under the Integra Settlement).

3 **Q. ARE THERE OTHER EXAMPLES?**

4 A. Yes. An additional example relates to OSS. CLECs use different systems and  
5 functionalities of Qwest's OSS. And, importantly, some CLECs have developed their  
6 own internal interfaces and back-office systems for the purposes of electronically  
7 bonding and exchanging information with Qwest's existing application-to-application  
8 OSS. Some CLECs, like Integra, currently use Qwest's Graphical User Interface  
9 ("GUI") OSS to submit orders; other CLECs, like tw telecom and PAETEC,<sup>8</sup> use  
10 Qwest's application-to-application (XML) OSS; and other CLECs, like Charter, use both  
11 XML and GUI OSS depending on the function required. CLECs that have developed  
12 more internal OSS interfaces, systems and software will naturally need more time to  
13 adjust to post-merger changes to Qwest's existing OSS than other CLECs who have not  
14 developed as many internal interfaces and systems. This is a significant concern in  
15 Washington due to the extent to which CLECs rely on Qwest's application-to-application  
16 OSS. As discussed in my responsive testimony,<sup>9</sup> [\*\*\*BEGIN CONFIDENTIAL

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] **END CONFIDENTIAL\*\*\*].** Because CLECs need

<sup>8</sup> One CLEC that has developed sophisticated internal interfaces and back office systems to electronically bond with Qwest's application-to-application OSS is PAETEC. This is discussed in the testimony of Mr. William Haas.

<sup>9</sup> Exhibit TJG\_1 CT at pp. 51-52 (confidential).

1 to develop their own internal interfaces and systems to electronically bond with Qwest's  
2 application-to-application OSS, this data shows that [\*\*\*BEGIN CONFIDENTIAL  
3 [REDACTED]  
4 [REDACTED]  
5 END CONFIDENTIAL\*\*\*]. While it may have been acceptable for Integra to accept a  
6 two year extension of Qwest's OSS as a compromise for the line conditioning  
7 commitment, for example, this two-year period is not acceptable for other CLECs who  
8 have built more extensive internal systems and software based on Qwest's existing OSS –  
9 internal systems that would need to be modified or replaced when Qwest's OSS changes.

10 ***B. Joint Applicants have not made adequate commitments regarding OSS.***

11 **Q. PLEASE EXPLAIN HOW THE OSS CONDITIONS IN THE STAFF  
12 SETTLEMENT ARE INADEQUATE.**

13 **A.** In the Qwest legacy territory, the Merged Company should use and offer to wholesale  
14 customers the legacy Qwest Operational Support Systems (“OSS”) for a minimum of  
15 *three* years following merger closing date (Joint CLEC Condition 19).<sup>10</sup> This is the  
16 absolute minimum time period associated with the three to five year integration/synergy  
17 timeframe CenturyLink has repeatedly forecasted.<sup>11</sup> Both the Staff Settlement and the

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<sup>10</sup> The Joint CLEC proposed conditions list is attached to my direct testimony as Gates Exhibit TJG\_9.

<sup>11</sup> In the Arizona hearings related to the proposed merger between Qwest and CenturyLink held on December 13, 2010, CenturyLink witness Jeff Glover stated in his oral summary that the synergy period was “two to five years.” On cross-examination, however, Mr. Glover admitted that a “two to five year” period was not found in any previous testimony, Application or other materials submitted by CenturyLink. This was an apparent late attempt on CenturyLink’s part to justify the two-year period in the settlement conditions. Importantly, the record evidence in the Washington merger proceeding, as well as the record evidence in all merger review

1 Integra Settlement include conditions that require the Merged Company to use and offer  
2 to wholesale customers the legacy Qwest OSS for at least *two* years or until July 1, 2013,  
3 whichever is later (Staff Settlement Condition 23). The timeframe in both the Staff  
4 Settlement and the Integra Settlement is inadequate because it does not cover the  
5 minimum synergy timeframe, and as a result, CLECs would face significant risk of harm  
6 related to OSS post-merger (albeit for a shorter time period than would otherwise be the  
7 case absent the settlement's condition).

8 **Q. WHAT IS THE “SYNERGY TIMEFRAME” YOU REFER TO ABOVE?**

9 A. The “synergy timeframe” is the time period during which the Merged Company will be  
10 integrating the two companies (i.e., Qwest and CenturyLink) and making merger-related  
11 changes to achieve synergy cost savings. CenturyLink has stated that it anticipates total  
12 synergy savings of \$625 million to be “fully recognized over a three-to-five year period  
13 following closing.”<sup>12</sup> Therefore, the “synergy timeframe” associated with the proposed  
14 transaction is three to five years (and potentially longer if the Merged Company  
15 experiences integration problems<sup>13</sup>). Under CenturyLink’s “best case scenario”  
16 assumptions, three years is the absolute minimum synergy timeframe, and the time period  
17 during which consumers and CLECs will be most at risk as a result of the integration  
18 activities.

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proceedings in which I have participated, indicate that CenturyLink’s own projections of the synergy timeframe is three to five years.

<sup>12</sup> Exhibit GCB-1T at p. 11.

<sup>13</sup> Exhibit TJG-1T at p. 116.

1 **Q. WHY IS IT IMPORTANT THAT THE TIME PERIOD FOR QWEST OSS**  
2 **AVAILABILITY BE FOR AT LEAST THREE YEARS?**

3 A. The ultimate question regarding appropriate time frames for merger conditions is what  
4 time period is necessary to protect the public interest.<sup>14</sup> Here, the need for protection is  
5 greater than in prior mergers. The proposed transaction involves the purchase of a Bell  
6 Operating Company (“BOC”) by a non-BOC incumbent local exchange carrier (“ILEC”) that  
7 has been acting in many cases as primarily a rural carrier claiming exemption from  
8 ILEC, much less BOC, obligations. Because the BOC has greater wholesale obligations  
9 and more complex systems than a non-BOC ILEC – and certainly more obligations and  
10 complex systems than an exempt (or, self-proclaimed exempt) rural ILEC – such ILECs  
11 have no experience in fulfilling such commitments. Further, CenturyLink has never  
12 processed the number and types of wholesale orders that Qwest routinely processes. In  
13 other words, the more complex merger integration will be, the longer it takes to integrate  
14 the companies to produce synergy savings. By way of example, for the acquisition of  
15 Embarq, CenturyLink estimated that it would fully recognize its estimated synergy  
16 savings “within the first three years of operation.”<sup>15</sup> However, because integrating Qwest  
17 will be more complex than integrating Embarq, CenturyLink has estimated that it would

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<sup>14</sup> *In the Matter of Embarq Corporation and CenturyTel, Inc. Joint Application for Approval of Merger between the Two Companies and Their Regulated Subsidiaries*, Oregon Public Utility Commission Docket No. UM1416, Order No. 09-169, May 11, 2009 (“Oregon Embarq-CenturyTel Merger Order”), 2009 Ore. PUC LEXIS 152, \*11 (rejecting the Joint Applicants proposal to reduce various conditions from five years to three years, concluding that the longer five year period “serves to protect customers should a significant negative event occur with the new parent” and “is a more reasonable means to protect customers.”)

<sup>15</sup> *In the Matter of Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, Memorandum Opinion and Order, WC Docket No. 08-239, FCC 09-54, June 25, 2009 (“FCC CenturyTel/Embarq Merger Order”), ¶ 7 and Declaration of R. Stewart Ewing, Jr. on behalf of CenturyTel, WC Docket No. 08-238, ¶ 2.

1 fully recognize its estimated synergy savings from the proposed transaction over a longer  
2 period: three-to-five years following the merger. While a time period shorter than three  
3 years may have been appropriate for conditions related to the CenturyTel/Embarq merger  
4 due to the shorter synergy timeframe for that merger and the less complex integration  
5 requirements, a time period of less than three years for OSS conditions associated with  
6 the proposed transaction is inadequate because of the proposed transaction's longer  
7 synergy timeframe.

8 Wholesale customers therefore need sufficient conditions in place throughout the time  
9 that merger-related changes are occurring in order to insulate them from the tendencies of  
10 the Merged Company to seek OSS synergies and unwarranted market advantages at the  
11 expense of competitors and competition. As I explained at pages 36-37 of my responsive  
12 testimony, out of the numerous ways the Merged Company could integrate Qwest and  
13 CenturyLink to the detriment of CLECs and competition, degrading the quality or access  
14 to OSS would be the most effective, as well as one of the most difficult to detect and  
15 remedy. An extension of Qwest's OSS for less than three years would provide the means  
16 for the Merged Company to act upon its incentive to integrate OSS in such a way that  
17 degrades the quality or access by CLECs.

18 The "at least three-year" timeframe in the Joint CLEC proposed Condition 19 is objective  
19 and minimally adequate because it is based on CenturyLink's own projections and covers  
20 the minimum synergy timeframe. The timeframe in the Staff Settlement (Condition 23)  
21 and the Integra Settlement (Condition 12) – at least two years or July 1, 2013, whichever

1 is later) – is arbitrary and inadequate because it is not based on CenturyLink’s projections  
2 (or any other facts in the record associated with the proposed transaction that I am aware  
3 of) and is shorter than the Joint Applicants’ minimum estimate of the synergy timeframe.  
4 The facts demonstrate that the Merged Company’s integration efforts will extend well  
5 beyond two years as well as July 1, 2013, which means that the time period is too short to  
6 adequately address merger-related harms to the public interest.

7 **Q. THE JOINT CLECS ARE ESSENTIALLY ASKING FOR THE QWEST OSS TO**  
8 **BE MADE AVAILABLE FOR AT LEAST ONE ADDITIONAL YEAR THAN IS**  
9 **PROVIDED IN EITHER THE STAFF SETTLEMENT OR INTEGRA**  
10 **SETTLEMENT. IS THIS A REASONABLE REQUEST?**

11 A. Yes. Given the enormous amount of time, money and effort that has been invested over  
12 the last decade to get Qwest’s OSS to where they are today and to build CLEC internal  
13 systems to interface with Qwest’s OSS, the Joint CLECs’ modest request for the Merged  
14 Company to make available Qwest’s OSS for one year longer than the current  
15 commitment is perfectly reasonable. It took more than three years just to test and  
16 evaluate Qwest’s OSS to determine if it was sufficient to meet the requirements of  
17 Section 271.<sup>16</sup> So, when the Merged Company decides to modify or replace Qwest’s  
18 OSS post-merger, it is reasonable to assume that it will take at least three years (i) to  
19 decide which OSS the Merged Company intends to use going forward, (ii) to make  
20 changes to Qwest’s OSS, (iii) to test and evaluate the new OSS to ensure that it can  
21 handle the commercial volumes in Qwest’s territory and continue providing functionality

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<sup>16</sup> Exhibit\_\_TJG-3.

1 equal to current benchmarked standards, (iv) to allow cooperative testing of the systems  
2 with the CLECs to ensure that they meet the CLEC needs; and (v) to enable CLECs to  
3 develop internal systems to interface with the new OSS systems.

4 **Q. IS THE ADDITIONAL YEAR JUSTIFIED BASED ON THE CLECS' NEED TO**  
5 **INTERFACE WITH THE NEW OSS?**

6 A. Yes. Recall that the CLECs cannot begin to develop and deploy their own systems to  
7 interface with the Merged Company's systems unless and until they know exactly what  
8 OSS is being deployed. Currently CLECs have different levels of electronic bonding  
9 with Qwest. Some CLECs continue to use manual processes, while others have  
10 developed extensive system enhancements to allow automated exchange of information.  
11 Regardless of the level of system development, however, the CLECs cannot begin the  
12 development and testing of their own systems until CenturyLink has finished its OSS  
13 planning. Developing and testing the CLEC systems can take years and extensive capital  
14 and human resources.

15 **Q. IS THE TWO-YEAR TIME PERIOD IN CONDITION 23 OF THE STAFF**  
16 **SETTLEMENT BASED ON CONDITION 12 OF THE INTEGRA**  
17 **SETTLEMENT?**

18 A. Yes, apparently so. Both conditions require the Merged Company to, in the Qwest ILEC  
19 service territory, use and offer to wholesale customers the legacy Qwest OSS "for at least  
20 two years, or until July 1, 2013, whichever is later..."

1 **Q. IS IT SAFE TO ASSUME THAT A TIME PERIOD FOR QWEST OSS**  
2 **EXTENSION AGREED TO BY INTEGRA ADEQUATELY ADDRESSES**  
3 **MERGER-RELATED HARM TO OTHER CLECS, OR TO COMPETITION IN**  
4 **GENERAL?**

5 A. No. The two-year time period in the Integra Settlement is obviously a compromise from  
6 Integra's perspective,<sup>17</sup> but it cannot be taken as an appropriate compromise for other  
7 CLECs. As noted above, some CLECs have developed their own internal interfaces,  
8 back office systems and software for electronically bonding with Qwest's application-to-  
9 application OSS, and rely more heavily on those internally-developed interfaces, systems  
10 and software than does Integra. Therefore, while an approximate two-year extension of  
11 Qwest's OSS may be an acceptable compromise for Integra, based on Integra's unique  
12 circumstances, it is not adequate for other CLECs who would need to revamp more of  
13 their own internal systems, databases and software in response to a change to Qwest's  
14 OSS, as well as face a greater challenge and potentially higher costs to adapt to such  
15 changes on a shorter timeframe.

16 **Q. BESIDES THE DURATION OF QWEST'S OSS EXTENSION, ARE THERE**  
17 **OTHER SIGNIFICANT SHORTCOMINGS IN THE STAFF SETTLEMENT AND**  
18 **INTEGRA SETTLEMENT REGARDING OSS?**

19 A. Yes. Absent from both the Staff Settlement and Integra Settlement is any requirement for  
20 third-party OSS testing. This is a serious omission. The Merged Company should be

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<sup>17</sup> Integra originally proposed to require the Merged Company to maintain legacy Qwest OSS for at least three years. See, Joint CLEC proposed Condition 19.

1 required to conduct independent third-party testing similar to that used in the Regional  
2 Oversight Committee process during the Qwest 271 proceedings for any OSS that  
3 replaces a Qwest OSS that has undergone third-party testing.<sup>18</sup> Third-party testing is  
4 critical in determining the commercial readiness of OSS. Third party testing is defined  
5 by our extensive experience with this process. Further, state commissions in the Qwest  
6 region and the FCC have relied upon third party testing to validate Qwest's OSS.

7 **Q. PLEASE ELABORATE ON THE ROLE OF INDEPENDENT, THIRD-PARTY**  
8 **TESTING FOR TESTING OSS COMMERCIAL READINESS.**

9 A. The FCC has previously concluded that the most probative evidence that OSS functions  
10 are operationally ready is actual commercial usage. CenturyLink has never been through  
11 a Section 271 process and its systems have never been found to be 271 compliant. To  
12 date, there is no evidence that CenturyLink's legacy OSS (or any other OSS other than  
13 Qwest's existing OSS) is capable of handling the actual commercial usage that the OSS  
14 would be required to handle in Qwest's legacy territory if the proposed transaction is  
15 approved and the Merged Company decided to modify or replace Qwest's OSS. Absent  
16 actual commercial usage experience, the second-best option is independent, third-party  
17 testing. The FCC said:

18 The most probative evidence that OSS functions are operationally ready is  
19 actual commercial usage. Absent sufficient and reliable data on  
20 commercial usage, the Commission will consider the results of carrier-to-  
21 carrier testing, independent third-party testing, and internal testing in  
22 assessing the commercial readiness of a BOC's OSS. Although the  
23 Commission does not require OSS testing, a persuasive test will provide  
24 us with an objective means by which to evaluate a BOC's OSS readiness

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<sup>18</sup> Exhibit\_\_TJG-1T at pp. 36-48.

1 where there is little to no evidence of commercial usage, or may otherwise  
2 strengthen an application where the BOC's evidence of actual commercial  
3 usage is weak or is otherwise challenged by competitors. *The*  
4 *persuasiveness of a third-party review, however, is dependent upon the*  
5 *qualifications, experience and independence of the third party and the*  
6 *conditions and scope of the review itself. If the review is limited in scope*  
7 *or depth or is not independent and blind, the Commission will give it*  
8 *minimal weight.*<sup>19</sup>

9 Internal OSS testing that is not independent and blind is inferior to a truly independent  
10 third-party test in determining a BOC's OSS commercial readiness. Though CenturyLink  
11 claims that it extensively tests its own OSS, it has admitted that this testing does not  
12 involve third-party testing.<sup>20</sup> This means that CenturyLink's OSS testing is not  
13 "independent" or "blind," and would, therefore, be a step backwards for Qwest OSS that  
14 has undergone years of extensive and verifiable third-party testing. CenturyLink has  
15 specifically stated that it does not intend to engage in third-party testing post-merger for  
16 any replacement OSS that replaces an existing Qwest OSS.<sup>21</sup> So, despite the importance  
17 of third-party testing if/when the Merged Company modifies/replaces Qwest's OSS, it is  
18 not a commitment in the Staff Settlement or Integra Settlement and CenturyLink will  
19 certainly not conduct third-party testing of replacement OSS on its own volition.

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<sup>19</sup> *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, Memorandum Opinion and Order, WC Docket No. 02-314, FCC 02-332, Released December 23, 2002 ("Qwest 9 State 271 Order"), Appendix K "Statutory Requirements" at p. K-16 (emphasis added).

<sup>20</sup> CenturyLink response to Integra Washington Data Request #18.

<sup>21</sup> Minnesota Docket P-421, et al./PA-10-456, Hearing Transcript Volume 2B (public) at pp. 88-89 ("Q. No. Is it your – should you migrate the Qwest properties onto the CenturyLink OSS, would you engage in third-party testing before that went live? A. We would not engage in third-party testing." (Hunsucker))

1 Therefore, the Commission should require CenturyLink and Qwest to commit to the  
2 independent third-party testing provisions of Joint CLEC Condition 19(b).<sup>22</sup>

3 **Q. IS THERE ANOTHER IMPORTANT ADDITION THAT NEEDS TO BE MADE**  
4 **TO THE OSS CONDITIONS IN THE STAFF SETTLEMENT AND INTEGRA**  
5 **SETTLEMENT?**

6 A. Yes. The conditions should ensure that Qwest's current OSS operational capabilities and  
7 functionalities are benchmarked so that any successor OSS does not backslide on  
8 performance. Just as carriers in Embarq's ILEC territory did not want to revert to the  
9 more manual processes of CenturyTel's OSS in that merger, CLECs do not want Qwest  
10 to backslide from the 271-evaluated OSS in Qwest territory to CenturyLink OSS that has  
11 not been third-party tested or handled the commercial volumes in Qwest's legacy  
12 territory. The Joint CLECs have demonstrated that, left unchecked, a loss of  
13 functionality and/or efficiency would be the likely result of CenturyLink integrating its  
14 OSS into Qwest's region post-merger.<sup>23</sup> However, Qwest's 271 authority is premised on  
15 the functionalities and efficiencies available from its current OSS, and any step  
16 backwards in this regard (as would occur if CenturyLink's OSS was imported to Qwest's  
17 region) would cause Qwest to backslide on its 271 obligations under the Act. That is  
18 why it is vital that the operational capabilities and functionalities of Qwest's OSS be

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<sup>22</sup> Joint CLEC proposed Condition 19(b) states: "For any Qwest system that was subject to third party testing (*e.g.*, as part of a Section 271 process), robust, transparent third party testing will be conducted for the replacement system to ensure that it provides the needed functionality and can appropriately handle existing and continuing wholesale services in commercial volumes. The types and extent of testing conducted during the Qwest Section 271 proceedings will provide guidance as to the types and extent of testing needed for the replacement systems. The Merged Company will not limit CLEC use of, or retire, the existing system until after third party testing has been successfully completed for the replacement system."

<sup>23</sup> Exhibit\_\_\_TJG-14HCT at pp. 8-17 and Exhibits TJG-15C, TJG-17, TJG-18 and TJG-19.

1 benchmarked. This allows the Merged Company to modify Qwest's OSS after a three-  
2 year period, but provides a degree of certainty that the capabilities and functionalities of  
3 Qwest's OSS that are available to and used by CLECs today will be available when the  
4 Merged Company changes Qwest's OSS.

5 **Q. COULDN'T THE CLECS FILE A COMPLAINT IF THE OSS IS DEGRADED AS**  
6 **A RESULT OF THE MERGER AND INTEGRATION ACTIVITIES?**

7 A. Yes. CLECs always have the opportunity to file complaints which requires time and  
8 resources. Relying on that process, however, inappropriately shifts the burden to the  
9 CLECs for a responsibility that resides with CenturyLink. Instead, it is reasonable to  
10 expect CenturyLink to maintain the best systems of the merging entities and to ensure  
11 that the 271 compliant functionalities remain available to CLECs. To that end, the  
12 Commission should require the Merged Company to engage in independent third-party  
13 testing as recommended by Joint CLEC Condition 19(b), and benchmark Qwest's OSS  
14 functionalities to make sure these functionalities are not degraded or lost in the post-  
15 merger transition.

16 **C. *Joint Applicants have not made adequate commitments regarding the continued***  
17 ***provision of non-UNE wholesale services.***

18 **Q. ARE QWEST'S WHOLESALE SERVICES ESSENTIAL TO THE ABILITY OF**  
19 **CLECS TO CONTINUE PROVIDING WASHINGTON CONSUMERS WITH**  
20 **COMPETITIVE LOCAL SERVICE ALTERNATIVES?**

1 A. Yes. This is evident from the FCC’s recent order denying Qwest’s petition for  
2 forbearance in the Phoenix Arizona Metropolitan Statistical Area (“MSA”). In this order,  
3 issued about six months ago, the FCC explains that “Qwest remains dominant” in  
4 “wholesale markets” and refers to Qwest as the “sole provider of wholesale facilities and  
5 services[.]”<sup>24</sup> The FCC also concluded that CLECs relied on Qwest’s wholesale services  
6 to compete with Qwest for mass market and enterprise end user customers.<sup>25</sup> While the  
7 FCC’s order focused on competition in Phoenix, Arizona and surrounding markets, it is  
8 reasonable to assume that similar conclusions apply to markets here in Washington.

9 **Q. IS THIS DEPENDENCE ON QWEST’S WHOLESALE SERVICES LIMITED TO**  
10 **UNBUNDLED NETWORK ELEMENTS (“UNES”) PROVIDED UNDER**  
11 **SECTION 251 OF THE ACT?**

12 A. No. Many CLECs rely significantly on non-UNEs purchased from Qwest under  
13 commercial and wholesale agreements and tariffs. These non-UNEs are typically the  
14 exact same facilities as their UNE counterparts – the only difference is in the terms and  
15 rates under which those facilities are provided. Therefore, it is essential for protections  
16 against merger-related harm to cover the breadth and diversity of local competition as it  
17 relates to the availability of wholesale services on which CLECs rely to provide  
18 competitive local service.

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<sup>24</sup> *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113, released June 22, 2010 (“Qwest Phoenix Forbearance Order”) at ¶ 34.

<sup>25</sup> Qwest Phoenix Forbearance Order, ¶ 80 (“Although there are several other providers that serve some mass market customers in the Phoenix MSA, they are ‘fringe’ competitors that are able to compete only by relying extensively on UNEs and other Qwest wholesale services.”) and ¶ 87 (“Based on the record evidence, we find competitors offering retail enterprise services in the Phoenix MSA primarily rely upon Qwest’s wholesale services...”)

1 **Q. DO CLECS RELY ON NON-UNES PURCHASED FROM QWEST TO PROVIDE**  
2 **COMPETITIVE SERVICES TO WASHINGTON CONSUMERS?**

3 A. Yes. For example, CLECs such as Charter and tw telecom rely on Qwest special access  
4 services for transport or to gain access to customers. tw telecom's reliance upon special  
5 access under a Regional Commitment Program or "RCP" is described later in this  
6 testimony.

7 As noted in the FCC's Qwest Phoenix Forbearance Order, "...there is no record evidence  
8 of significant competition for the wholesale products used to serve either mass market or  
9 enterprise customers."<sup>26</sup> The pricing and quality of wholesale services, such as QLSP  
10 (Qwest Local Services Platform), dark fiber, and special access, for example, are critical  
11 to the CLECs' provisioning of services to consumers in Washington. This continued  
12 dependence supports the Joint CLECs' need for an extension of the non-UNE  
13 commercial and wholesale agreements to cover the synergy timeframe, and in no  
14 circumstances less than at least three years.

15 **Q. WHAT CONCERNS DO YOU HAVE ABOUT THE INTEGRA SETTLEMENT**  
16 **CONDITION 3 RELATING TO COMMERCIAL AND WHOLESALE**  
17 **AGREEMENTS AND TARIFFS?**

18 A. A primary problem is the Applicable Time Periods associated with the non-UNE  
19 commercial and wholesale agreements and tariffs. The Applicable Time Period  
20 represents the length of time by which the wholesale agreement will be made available

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<sup>26</sup> Qwest Phoenix Forbearance Order at ¶ 96.

1 without termination/grandparenting, changes to terms and conditions, or increases in  
2 rates.<sup>27</sup> The “Applicable Time Periods” in Integra Settlement Condition 3 for the non-  
3 UNE offerings are as follows:

- 4 • Commercial Agreements: at least eighteen months (Condition 3(b))
- 5 • Wholesale Agreements: at least eighteen months (Condition 3(c))
- 6 • Tariffs: at least twelve months (Condition 3(d))

7 These time periods are significantly shorter than the minimum three-year synergy  
8 timeframe, and are also significantly shorter than the minimum three-year “Applicable  
9 Time Period” associated with interconnection agreement extensions (Condition 3(a)).  
10 These shorter timeframes for non-UNE wholesale agreements place CLECs who rely on  
11 them at a competitive disadvantage relative to other CLECs who purchase wholesale  
12 services as UNEs and interconnection under Section 251 of the Act, and therefore,  
13 receive a longer three-year period of service and rate stability. CLECs should not be  
14 discriminated against or penalized because of their mode of entry. Instead, the  
15 commitments related to wholesale service availability and rate stability should be  
16 consistent for all wholesale agreements, whether interconnection agreements, commercial  
17 agreements, wholesale agreements, or tariffed products.

18 The fact that CenturyLink has not committed to leave in place commercial and wholesale  
19 agreements and tariffs as long as the agreed-upon three-year interconnection agreement  
20 extension shows that CenturyLink does not intend to provide the needed stability  
21 regarding these non-UNE wholesale services on its own post-merger. It also confirms

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<sup>27</sup> The Integra Settlement defines the “Extended Time Period” as the unexpired term or for at least the Applicable Time Period, whichever occurs later. Condition 3.

1 that additional commitments are needed, as it signals intent by CenturyLink to eliminate  
2 or raise prices for these wholesale services early in the three-to-five year synergy  
3 timeframe.

4 **Q. HOW CAN THE COMMISSION SUPPLEMENT THE CONDITIONS IN THE**  
5 **INTEGRA SETTLEMENT TO ENSURE STABILITY FOR THE NUMEROUS**  
6 **CLECS THAT RELY ON WHOLESALE INPUTS PROVIDED UNDER NON-**  
7 **UNE WHOLESALE COMMERCIAL AND WHOLESALE AGREEMENTS AND**  
8 **TARIFFS?**

9 A. The Commission should condition merger approval on an extension of those agreements  
10 and tariffs, at current prices, for a period that corresponds to the synergy timeframe (see,  
11 Joint CLEC Conditions 6(a), 7 and 7(a) and definition of “Defined Time Period”). At an  
12 absolute minimum, these agreements and tariffs should be extended for at least three  
13 years following merger closing to match the minimum three-year synergy timeframe and  
14 the three-year Applicable Time Period for interconnection agreements.

15 **Q. WOULD DIFFERENT APPLICABLE TIME PERIODS FOR DIFFERENT**  
16 **TYPES OF WHOLESALE AGREEMENTS RESULT IN DISCRIMINATION**  
17 **BETWEEN AND AMONG CLECS?**

18 A. Yes. If this treatment of the various agreements was approved, it would create “winners”  
19 and “losers” by virtue of these artificial distinctions. Such disparate treatment of CLECs  
20 would harm the efficient operation of the market.

1 **Q. DOES THE FACT THAT NON-UNE WHOLESALE SERVICES ARE NOT**  
2 **REQUIRED UNDER SECTION 251 OF THE ACT JUSTIFY SHORTER**  
3 **EXTENSIONS FOR NON-UNE WHOLESALE SERVICES UNDER THE**  
4 **INTEGRA SETTLEMENT?**

5 A. No. This would presume that there are more alternatives for CLECs to Qwest’s non-  
6 UNE wholesale services than for Qwest’s UNE wholesale services. This assumption has  
7 no basis in fact. Indeed, the FCC recently rejected the notion that there are suitable  
8 available alternatives to Qwest’s wholesale services, whether they are UNE or non-UNE  
9 wholesale services. The FCC found: “the record reveals that no carrier besides Qwest  
10 provides meaningful wholesale services throughout the Phoenix marketplace, and that  
11 competitors offering business services largely must rely on inputs purchased from Qwest  
12 itself to provide service.”<sup>28</sup> The FCC also stated: “there is no record evidence of  
13 significant competition for the wholesale products used to serve either mass market or  
14 enterprise customers.”<sup>29</sup> The “wholesale services” and “wholesale products” referred to  
15 by the FCC include both UNE and non-UNE wholesale services and products.<sup>30</sup> While  
16 these conclusions were made about Qwest’s wholesale services in the Phoenix MSA,

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<sup>28</sup> Qwest Phoenix Forbearance Order at ¶ 2. See also ¶ 49 (“Although Qwest maintains that ‘there are numerous options for carriers to purchase ‘last mile’ wholesale services that allow them to bypass Qwest’s network entirely,’ we disagree and find instead that, however evaluated, the record in this proceeding reveals a lack of significant wholesale competitors to Qwest in the Phoenix MSA.”)

<sup>29</sup> Qwest Phoenix Forbearance Order at ¶ 96.

<sup>30</sup> See, e.g., Qwest Phoenix Forbearance Order at ¶ 68 (“These competitors...rely predominantly upon Qwest facilities, including UNEs *and other wholesale services*, to provide their services.”) (emphasis added)

1           there is no reason to believe that the conclusions would be any different about Qwest's  
2           wholesale services in Washington.<sup>31</sup>

3           In addition, the FCC expressly rejected the notion that “incumbent LECs, even if not  
4           required to offer UNEs, would have an incentive ‘to make attractive wholesale  
5           offerings.’”<sup>32</sup> In doing so, the FCC concluded that (i) Qwest was still dominant in  
6           wholesale markets and had the incentive and ability to discriminate against CLECs in  
7           retail markets, (ii) Qwest, as a profit-maximizing firm, had the incentive “to exploit its  
8           monopoly position as a wholesaler and charge supracompetitive rates”; and (iii) there is  
9           little if any evidence that ILECs/BOCs have voluntarily offered wholesale services at  
10          competitive prices once regulatory requirements governing wholesale prices were  
11          eliminated.<sup>33</sup> Given this Qwest dominance as a wholesaler, including dominance over  
12          non-UNE wholesale services, market forces cannot be relied upon to provide the post-  
13          merger stability that CLECs need.

14          Furthermore, when a “non impairment” finding is made and a particular wholesale input  
15          is no longer required to be provided as an UNE pursuant to Section 251 of the Act, it is  
16          incorrect to assume that alternative sources for that wholesale input besides Qwest are  
17          reasonably available to CLECs. Non-impairment designations are based on *inferences of*

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<sup>31</sup> Presumably, if Qwest believed that there was competition for its wholesale services in Washington it would not have withdrawn its petitions for forbearance in areas of Washington and other states.

<sup>32</sup> Qwest Phoenix Forbearance Order at ¶ 34.

<sup>33</sup> Qwest Phoenix Forbearance Order at ¶ 34.

1 *actual or potential* competition, not on a finding that CLECs actually have adequate  
2 alternatives to Qwest for essential wholesale facilities.<sup>34</sup>

3 **Q. NON-UNE WHOLESALE AGREEMENTS ARE SUBJECT TO SO-CALLED**  
4 **“MARKET-BASED” RATES AS OPPOSED TO TELRIC<sup>35</sup>-BASED RATES FOR**  
5 **UNE WHOLESALE SERVICES. DOES THIS JUSTIFY EXTENSIONS FOR**  
6 **NON-UNE WHOLESALE AGREEMENTS AND TARIFFS THAT ARE**  
7 **SHORTER THAN EXTENSIONS FOR INTERCONNECTION AGREEMENTS?**

8 A. No. As noted above, the FCC has found that market forces are insufficient to control  
9 Qwest’s incentive and ability to discriminate against CLECs. Based on the commitment  
10 embodied in Integra Settlement Condition 3, it appears that CenturyLink intends to seek  
11 rate increases for non-UNE wholesale services (subject to “market-based” prices) before  
12 it can seek rate increases for UNE wholesale services (subject to “TELRIC-based prices).  
13 Such an outcome makes no sense. If market forces were actually disciplining Qwest’s  
14 ability to raise rates for non-UNE wholesale services, then prices for these services would  
15 be driven *closer to* their underlying cost, and there would be no need for Qwest to seek  
16 increases in these rates which already greatly exceed underlying cost. Nothing in the  
17 Joint CLEC proposed conditions would prevent the Merged Company from seeking rate  
18 *reductions* for these non-UNE wholesale services if competitive pressures ever emerge.

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<sup>34</sup> *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-290, February 4, 2005 (“Triennial Review Remand Order”) at ¶¶ 41-45 and 88. As the FCC stated, non-impairment rests on the FCC’s “exercise of discretion to use *reasonable inferences* instead of fact-specific proceedings...” (Emphasis added).

<sup>35</sup> TELRIC stands for Total Element Long Run Incremental Cost. TELRIC pricing rules are found in 47 C.F.R. § 51, Subpart F.

1           However, the fact that CenturyLink/Qwest has signaled a desire to raise rates for these  
2           non-UNE wholesale services after 18 months shows that market forces are not  
3           sufficiently disciplining these prices and that the conditions in the settlements need to be  
4           supplemented to lengthen the Applicable Time Periods for non-UNE wholesale  
5           agreements.

6   **Q.    DOES THE FACT THAT CONDITION 3(D) REFERS GENERALLY TO**  
7   **“TARIFF” AND NOT “INTRASTATE TARIFFS” GIVE YOU CONCERN?**

8   A.    No. Competition in Washington depends on and is directly impacted by the continued  
9           availability of interstate as well as intrastate access services at reasonable rates, and  
10          because the Commission must ensure that the proposed transaction is in the public  
11          interest, the conditions attached to any merger approval should cover both interstate and  
12          intrastate tariffs. For instance, tw telecom and Charter purchase services from Qwest’s  
13          interstate special access tariff for transport and/or to provide services to Washington end  
14          user customers in competition with Qwest.

15 **Q.    DO CLECS USE REGIONAL COMMITMENT PLANS OFFERED VIA TARIFF**  
16 **TO PROVIDE LOCAL SERVICES AS WELL?**

17 A.    Yes. A Regional Commitment Program (“RCP”) is an optional pricing plan that allows  
18          DS1 and/or DS3 customers to receive discounted rates for committing to minimum  
19          monthly recurring revenue on DS1 and/or DS3 circuits for a 48-month term. Although it  
20          is an interstate offering, it would be considered under condition 3(d).

1 **Q. CAN YOU PROVIDE EXAMPLES OF HOW TREATMENT OF RCPS CAN**  
2 **HARM COMPETITION?**

3 A. Yes. On June 1, 2010 (after the proposed transaction was announced), Qwest  
4 grandfathered its then-existing RCP (effective May 31, 2010) and introduced a new RCP  
5 that substantially reduced the discounts previously available under the RCP, and in turn,  
6 increased the cost for CLECs who purchase special access facilities under the RCP. For  
7 example, tw telecom currently purchases special access facilities from Qwest under a  
8 RCP Agreement, and has estimated that its special access costs will increase 22% absent  
9 the extension of non-UNE wholesale agreements it is requesting as part of the Joint  
10 CLEC merger conditions.

11 Under Integra Settlement Condition 3(d)(i), CenturyLink/Qwest has agreed to extend  
12 “term and volume discount plans” – of which the RCP is one – in effect on the merger  
13 closing date by 12 months beyond the expiration of the then existing term. The 12-month  
14 extension may provide sufficient price stability for a CLEC such as Integra and others  
15 that have RCP Agreements set to expire in 2013 or later. That is, by extending their RCP  
16 Agreements by an additional year as provided in the Integra Settlement, those CLECs  
17 will effectively cap the rates they pay for their special access services for at least the  
18 minimum three-year synergy period. However, CLECs such as tw telecom with RCP  
19 Agreements that expire sooner,<sup>36</sup> will be at a disadvantage since they will be forced onto  
20 the higher effective RCP rates well before other CLECs. The result of the condition is  
21 that some CLECs will receive less rate stability than others, and some CLECs will be

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<sup>36</sup> tw telecom has a RCP Agreement with Qwest that is set to expire in June 2011.

1 forced to pay higher prices than others depending on when their RCP Agreements are due  
2 to expire. Such disparate treatment of CLECs by operation of the Integra Settlement will  
3 harm the efficient operation of the market by systematically identifying winners and  
4 losers based on an expiration date in an agreement instead of on a company's ability to  
5 efficiently compete in the market.

6 **Q. DO YOU HAVE OTHER CONCERNS ABOUT THE INTEGRA SETTLEMENT**  
7 **AS IT RELATES TO RCP AGREEMENTS?**

8 A. Yes. Condition 3(d)(i) states that term and volume discount plans "offered by Qwest as  
9 of the Closing Date" will be extended by twelve months beyond the expiration date of the  
10 then existing term (unless the CLEC opts out). The phrase "offered by Qwest as of the  
11 Closing Date" presents a problem for CLECs who rely on RCP Agreements. As  
12 explained above, Qwest grandfathered a RCP in June 2010, and replaced it with a new  
13 RCP that would result in significantly higher costs for CLECs. Qwest is now arguing  
14 that the existing RCP Agreements with CLECs (which are based on the now-  
15 grandfathered RCP) are no longer "offered by Qwest as of the Closing Date," so the  
16 CLECs' current RCP Agreements are not eligible for extension.<sup>37</sup> Based on Qwest's  
17 position, there would be no extension for CLECs' existing RCP Agreements under the  
18 merger conditions of the Integra Settlement.

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<sup>37</sup> Testimony of Karen Stewart on behalf of Qwest, Arizona Docket Nos. T-01051B-10-0194, et al., December 1, 2010, at p. 12, lines 17-21 ("...certain carriers are demanding extensions of services known as Regional Commitment Plans, which are discount plans for interstate DS1 services that are filed by Qwest with the FCC. An extension is no longer available under the current tariff.") Qwest's argument is flawed because so long as a CLEC's existing RCP Agreement expires after the Closing Date, the now-grandfathered RCP would be "offered by Qwest as of the Closing Date" via existing RCP Agreements.

1 Likewise, if a CLEC's existing RCP Agreement expires before the Closing Date, the  
2 CLEC would be unable to extend its existing RCP Agreement with Qwest and be forced  
3 on to the new RCP that increases the CLEC's costs and negatively impacts its ability to  
4 compete. Because tw telecom's RCP Agreement with Qwest expires in June 2011, it  
5 would not be eligible for extension if the transaction closes after that date.

6 Under the conditions, some CLECs are entitled to no protection (or less protection than  
7 other CLECs) from merger-related harm just because the arbitrary expiration date in the  
8 CLEC's agreement with Qwest pre-dates the arbitrary (and unknown) merger closing  
9 date. This is patently unfair, produces unreasonable results, significantly reduces the  
10 effectiveness of the commitments in the Integra Settlement and provides competitive  
11 advantages to some CLECs over others.

12 All CLECs should be entitled to the protections of merger commitments regardless of  
13 when they executed their wholesale services agreement with Qwest and regardless of the  
14 date on which the merger may close. Qwest should not be allowed to eliminate and raise  
15 prices for wholesales services while the proposed transaction is being reviewed, and then  
16 tie critical merger commitments to the merger closing date in order to lock in the higher  
17 prices and fewer services going-forward. Such an outcome undermines the effectiveness  
18 of the merger commitments as well as the public interest in fostering competition for the  
19 benefit of consumers.

20 **Q. HOW CAN THE INTEGRA SETTLEMENT BE SUPPLEMENTED TO**  
21 **ADDRESS THE PROBLEM ABOUT EXTENDING RCP AGREEMENTS?**

1 A. In addition to extending them for a minimum period of three years, they should also  
2 apply to the non-UNE wholesale agreements/tariffs in place as of the merger filing,<sup>38</sup> or  
3 at least the agreements in effect at the end of the current year, to provide the price  
4 stability that CLECs need.

5 **Q. INTEGRA SETTLEMENT CONDITIONS 3(b)(ii) AND 3(c)(ii) STATE THAT IF**  
6 **THE MERGED COMPANY WITHDRAWS A NON-UNE AGREEMENT AFTER**  
7 **THE 18-MONTH APPLICABLE TIME PERIOD, THE AGREEMENT WILL**  
8 **REMAIN AVAILABLE FOR AN ADDITIONAL 18-MONTH PERIOD ON A**  
9 **GRANDPARENTED BASIS TO SERVE EMBEDDED BASE CUSTOMERS**  
10 **CURRENTLY SERVED BY THE AGREEMENT AND SUBJECT TO RATE**  
11 **CHANGES. DOES THIS ADDITIONAL 18-MONTH TIME PERIOD PROVIDE**  
12 **ANY DEGREE OF CERTAINTY OR STABILITY?**

13 A. No. These provisions are inadequate for numerous reasons. First, the lack of a price cap  
14 for the additional 18-month time period fails to provide any stability about the price  
15 CLECs will pay for these wholesale services. This renders the commitment essentially  
16 meaningless because Qwest could simply price the wholesale service at a level that  
17 makes using it uneconomic for CLECs. It is irrelevant that the wholesale service is  
18 “offered” if the Merged Company sets the price so high that CLECs cannot use it to serve  
19 retail customers as they do today. The FCC concluded in the Qwest Phoenix Forbearance  
20 Order: “there is little evidence, either in the record or of which we otherwise are aware,

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<sup>38</sup> Joint CLEC proposed Condition 1 states: “[a]ny wholesale service offered to competitive carriers at any time between the Merger Filing Date up to and including the Closing Date will be made available and will not be discontinued for at least the Defined Time Period, except as approved by the Commission.”

1 that the BOCs or incumbent LECs have voluntarily offered wholesale services at  
2 competitive prices once regulatory requirements governing wholesale prices are  
3 eliminated.”<sup>39</sup> Based on this conclusion, it is likely that the Merged Company will seek  
4 rate increases for these wholesale services immediately following the initial 18-month  
5 time frame as part of its merger integration efforts.

6 Second, limiting the availability of wholesale services to a CLEC’s embedded base being  
7 served by the agreement prevents CLECs from using the non-UNE wholesale services to  
8 expand their business and add new customers. This would have a chilling effect on the  
9 ability of CLECs to compete with Qwest using these wholesale services going forward.

10 Third, limiting the availability of wholesale services to a CLEC’s embedded base being  
11 served by the agreement effectively eliminates these wholesale services as a replacement  
12 to UNEs if/when UNEs are no longer available due to non-impairment designations.

13 **Q. WOULD THE MERGED COMPANY BE HARMED BY EXTENDING THE**  
14 **COMMERCIAL AND WHOLESALE AGREEMENTS AND TARIFFS AT**  
15 **CURRENT RATES FOR THE TIME PERIOD PROPOSED BY THE JOINT**  
16 **CLECS?**

17 A. No. Recall that the Joint CLECs are not seeking rate reductions or a share of the synergy  
18 savings – they are seeking rate stability (status quo) during the integration period. The  
19 rates under the non-UNE wholesale agreements are already substantially higher than the  
20 UNE rates set by the Commission for those same wholesale facilities. For instance, for

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<sup>39</sup> Qwest Phoenix Forbearance Order at ¶ 34.

1 dark fiber in Washington, the commercial dark fiber rate (per mile) is 7.5 times higher  
2 than the UNE dark fiber rate.<sup>40</sup> In addition, the commercial wholesale rates were set by  
3 Qwest unilaterally without any negotiation or input from CLECs. CenturyLink/Qwest  
4 has provided no reason why the rates for non-UNE wholesale services should be  
5 increased even higher above their underlying cost, particularly at the same time the  
6 Merged Company will be pursuing merger-related synergy savings.

7 **Q. DO YOU HAVE AN EXAMPLE DEMONSTRATING THAT QWEST IS**  
8 **ATTEMPTING TO UNDERMINE THE EFFECTIVENESS OF THE MERGER**  
9 **CONDITIONS BY INTRODUCING RATE INCREASES BEFORE THE**  
10 **MERGER CLOSING DATE?**

11 A. Yes. One example relates to charges for directory listings. Condition 4(b) in the Integra  
12 Settlement prohibits the Merged Company from, in the Qwest legacy territory post-  
13 merger, assessing any fees, charges, surcharges or other assessments upon CLECs for  
14 activities that arise during the subscriber acquisition and migration process other than  
15 such charges that were approved and assessed by Qwest before the merger closing date  
16 (unless Qwest first receives commission approval). This prohibition includes: “Storage  
17 or other fees, rents or service order charges assessed upon a CLECs’ subscriber directory  
18 listings information submitted to the Merged Company for publication in a directory  
19 listing or inclusion in a directory assistance database.”

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<sup>40</sup> Compare the rates for Unbundled Dark Fiber (“UDF”) at Section 9.7.5 of Qwest Washington’s Negotiations Template Interconnection Agreement (available at <http://www.qwest.com/wholesale/clecs/nta.html>) to the rates for Qwest Commercial Dark Fiber (“QDF”) in Exhibit A to the QDF Services Agreement between Qwest and Integra Telecom (available at <http://www.qwest.com/wholesale/downloads/2006/061222/IntegraTelecomMSA-QDF2-6-06.pdf>)

1 **Q. WHY WAS THIS CONDITION INCLUDED?**

2 A. As noted in my previous testimony, the CenturyLink companies (Embarq, CenturyTel)  
3 have attempted to charge CLECs for customer acquisition activities, including local  
4 number portability, directory listings, directory assistance, etc. Qwest and other major  
5 providers have never charged for these activities. This condition, therefore, was to  
6 prevent CenturyLink from importing those anticompetitive practices into the Qwest  
7 region post-merger. The wording of the condition, however, has allowed Qwest to  
8 violate the spirit of the Integra Settlement even before the merger is approved.

9 **Q. PLEASE EXPLAIN.**

10 A. Since the prohibition against new directory listings charges in Integra Settlement  
11 Condition 4(b) is tied to the merger closing date, it apparently does not prevent Qwest  
12 from introducing new directory listings charges *before* the merger closing date.  
13 Unfortunately, that is precisely what Qwest is doing through the release of a recent non-  
14 CMP notice introducing a new wholesale directory listings charge for facilities-based  
15 CLECs.

16 **Q. CAN YOU DESCRIBE QWEST'S RECENT ACTION TO INTRODUCE A NEW**  
17 **CHARGE FOR WHOLESALE DIRECTORY LISTINGS?**

18 A. Yes. On November 30, 2010, Qwest issued a product notice to CLECs across its  
19 fourteen-state region that it intended to revise certain language in its wholesale product  
20 catalog ("PCAT") with respect to the application of charges for wholesale white pages

1 directory listings.<sup>41</sup> The product notice is attached as Exhibit TJG-21. The product  
2 notice announced that, effective January 1, 2011, Qwest would remove language from its  
3 PCAT that currently exempts the “Facility-Based Directory Listings” (“FBDL”) product  
4 from non-recurring charges.<sup>42</sup> As a result of this change in PCAT language, facilities-  
5 based CLECs ordering FBDL will be subject to a new nonrecurring charge for such items  
6 as Additional Listings, Reference Listings, Informational Listings, etc.<sup>43</sup>

7 **Q. DID QWEST MAKE THIS NOTIFICATION THROUGH ITS CHANGE**  
8 **MANAGEMENT PROCESS (“CMP”)?**

9 A. No. Qwest considers PCAT revisions relating to rates and charges as outside the scope of  
10 the CMP, and therefore, provided notice of the new wholesale directory listings via a  
11 *non-CMP* notice. As a result, this new charge will not be considered within the CMP  
12 channels, which at least provide CLECs an opportunity to object to these unexpected and  
13 arguably improper charges. Notably, the new charge will not be reviewed or approved by  
14 the state commission before its effective date (January 1, 2011).

15 **Q. ARE YOU AWARE OF OTHER RECENT INSTANCES IN WHICH QWEST IS**  
16 **MAKING CHANGES THAT LESSENS THE EFFECTIVENESS OF THE**  
17 **COMMITMENTS MADE IN THE MERGER CONDITIONS?**

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<sup>41</sup> See PROD.LIST.11.30.10.F.08550.WhitePagesDirListV53; Product Notification; Announcement Date: November 30, 2010; Effective Date: January 1, 2011.

<sup>42</sup> Qwest describes FBDL as “a product for Facility-Based CLECs who want their end-user listings on the Qwest Directory Assistance database and available to other 3rd Party DA providers and directory publishers.” See <http://www.qwest.com/wholesale/pcat/whitepagedirlist.html> (downloaded 12/10/10), at p. 2.

<sup>43</sup> The new rate will be at the prevailing retail rate minus the wholesale discount specified in the CLEC’s Interconnection Agreement with Qwest.

1 A. Yes. On June 14, 2010, Qwest issued a product notice that announced a number of  
2 changes to the directory listings process.<sup>44</sup> One change was a revision to Qwest's  
3 treatment of CLEC directory listings that produced an error condition (e.g., due to an  
4 invalid subscriber address). Qwest's revision was to declare that, if a CLEC did not  
5 provide Qwest with a correcting order within five business days, Qwest had the option to:

6 Update the listing by changing the listed name to the Provider name and  
7 changing it to Non-Published (NP). You will be billed normal NP listing  
8 monthly charges and nonrecurring charges (where applicable) for a  
9 premium/privacy listing.<sup>45</sup>

10 In other words, Qwest created a new charge applicable to directory listings that had not  
11 previously been assessed. A CLEC objected to Qwest applying the Non-Published rate to  
12 an erred listing. Nonetheless, on July 29, 2010, the Directory Listing Provisioning  
13 Process V45 was published to the Qwest website with the language about Non-Published  
14 rates included over the CLEC's objections.

15 **Q. HOW DO THESE ACTIONS BY QWEST RELATE TO THE INTEGRA**  
16 **SETTLEMENT IN THIS CASE?**

17 A. These examples – like the RCP example above – demonstrate that Qwest is taking steps  
18 to undermine the effectiveness of the merger conditions before the merger closing date.  
19 CenturyLink and Qwest are tying the conditions related to wholesale services availability  
20 and rate stability to the merger closing date, and then introducing changes before the  
21 closing date, such as eliminating wholesale services and raising wholesale rates, that will

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<sup>44</sup> PROS.LIST.06.14.10.F.07951.DirListProvProcV45; Announcement Date: June 14, 2010; Proposed Effective Date: July 29, 2010.

<sup>45</sup> *Id.*

1 not be addressed by the merger conditions. These changes will not be reviewed or  
2 approved by state commissions before they become effective, and some of them will not  
3 be handled through Qwest's CMP process. Qwest could further reduce the effectiveness  
4 of the merger conditions it has already negotiated in this case (or may negotiate in the  
5 future with other parties) by introducing similar additional notices before the Washington  
6 Commission rules on the proposed transaction (or even after the Commission rules but  
7 before CenturyLink and Qwest decide to close the merger).

8 At the very least, these examples are indicative of CenturyLink's premeditated plans to  
9 import CenturyLink's anticompetitive charges into the Qwest ILEC region – a territory  
10 that dwarfs CenturyLink's ILEC territory in the states in which Qwest competes. Thus,  
11 what CLECs will find, if the Commission refuses to act, is that their costs of acquiring  
12 customers will increase dramatically since there are vastly more access lines in Qwest's  
13 ILEC territories than CenturyLink's. Therefore, it is critical that the Commission support  
14 merger conditions that close the existing loopholes and gaps in the settlements so that  
15 consumers and the continued development of competition are not harmed.

16 **Q. PLEASE SUMMARIZE YOUR POSITION ON THE INADEQUACIES OF THE**  
17 **INTEGRA SETTLEMENT REGARDING NON-UNE COMMERCIAL AND**  
18 **WHOLESALE AGREEMENTS AND TARIFFS.**

19 A. To avoid the unreasonable and discriminatory effects described above, the proposed  
20 merger requires additional conditions under which the Joint Applicants are required to  
21 extend current commercial and wholesale agreements and tariffs, at current prices for the

1 time period proposed in the Joint CLECs' proposed conditions (and under no  
2 circumstance less than at least three years following merger closing). To keep Qwest  
3 from watering down these commitments while the merger is being reviewed, the  
4 commitments should also make clear that the extension should apply to the agreements in  
5 place as of the merger filing date (or at least at the end of the current year).

6 ***D. Joint Applicants have not made sufficient commitments to overcome concerns***  
7 ***about merger-related harm to wholesale service quality.***

8 **Q. INTEGRA SETTLEMENT CONDITION 2 ADDRESSES WHOLESAL**  
9 **SERVICE QUALITY. DOES THIS CONDITION PROVIDE ADEQUATE**  
10 **INCENTIVES TO THE MERGED COMPANY TO MAINTAIN WHOLESAL**  
11 **SERVICE QUALITY POST-MERGER AND NOT ALLOW IT TO DEGRADE AS**  
12 **A RESULT OF INTEGRATION EFFORTS?**

13 **A.** No. The most important shortcoming in this regard is that the condition fails to include  
14 the Joint CLECs' proposed Condition 4(a) under which an "Additional PAP" or "APAP"  
15 would apply if the Merged Company failed to provide wholesale service quality at levels  
16 Qwest provided prior to the merger. The APAP is a minimum five-year performance  
17 assurance plan applicable to the legacy Qwest ILEC territory which would compare the  
18 Merged Company's monthly performance with the Qwest performance that existed in the  
19 twelve months prior to the merger filing date. This comparison would be made using the  
20 current Washington Performance Indicators ("PIDs"), products and disaggregation, as  
21 well as the same statistical methodology that exists in the Qwest Washington

1 Performance Assurance (“WPAP”) to determine whether a statistically significant  
2 deterioration in performance exists. Whereas the current WPAP compares wholesale  
3 service quality to retail service quality to determine whether Qwest is providing  
4 nondiscriminatory access, the APAP compares pre-merger wholesale service quality to  
5 post-merger wholesale service quality to determine whether there has been merger-  
6 related deterioration in wholesale service quality. The APAP is intended to provide the  
7 proper incentives to the Merged Company not to pursue synergy savings at the expense  
8 of its wholesale customers.

9 **Q. IS THE PURPOSE OF THE APAP TO INCREASE SERVICE QUALITY POST**  
10 **MERGER?**

11 A. No. The purpose of the APAP is to simply maintain the service quality that existed prior  
12 to the merger. In other words, the APAP exists only to provide the proper incentives for  
13 the Merged Company to not degrade service post merger – a function that the current  
14 WPAP does not provide. The fact that CenturyLink and Qwest are so adamantly opposed  
15 to the APAP signals their apparent belief that wholesale service quality will be degraded  
16 post merger. The Commission should create proper incentives regardless of  
17 CenturyLink’s and Qwest’s opposition to this reasonable approach.

18 **Q. THE INTEGRA SETTLEMENT WOULD PREVENT THE MERGED COMPANY**  
19 **FROM ELIMINATING OR WITHDRAWING THE WPAP FOR AT LEAST**

1           **THREE YEARS AFTER THE MERGER CLOSING DATE.<sup>46</sup> WHY IS THIS**  
2           **INADEQUATE?**

3    A.    The WPAP does not (and would not) identify or rectify merger-related harm to wholesale  
4           service quality. The WPAP was designed to capture discriminatory treatment, not  
5           merger-related service quality deterioration, and as such, the WPAP compares *wholesale*  
6           service quality to *retail* service quality. This comparison would not capture or address  
7           deterioration in wholesale service quality related to the merger, particularly if both retail  
8           and wholesale service quality deteriorated post-merger. To properly capture merger-  
9           related deterioration in wholesale service quality, pre-merger wholesale service quality  
10          must be compared to post-merger wholesale service quality, as the APAP does.  
11          Moreover, the APAP provides financial incentives in the form of APAP remedy  
12          payments for merger-related wholesale service quality deterioration. These remedies  
13          would provide the necessary incentives to the Merged Company to not pursue merger  
14          savings at the expense of wholesale service quality or pay current WPAP remedies as a  
15          cost of doing business.<sup>47</sup> These remedies would also provide incentives to the Merged  
16          Company to move quickly to resolve wholesale service quality problems if/when they  
17          occur during integration so as to limit the resulting harmful effects on CLECs and end  
18          user customers.

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<sup>46</sup> Condition 2(a). The language allows the Merged Company to seek to “reduce or modify the Qwest Performance Indicator Definition (PID) or Qwest Performance Assurance Plan (QPAP)” after 18 months.

<sup>47</sup> Qwest has testified that its total QPAP remedy payment for Washington in 2009 was about \$148,000. Exhibit MGW-1RT at p. 15. This amounts to 0.02% of the \$625 million in annual synergy savings anticipated by CenturyLink.

1 **Q. DOES THE INTEGRA SETTLEMENT CONTAIN SUFFICIENT PROVISIONS**  
2 **FOR IDENTIFYING MERGER-RELATED WHOLESALE SERVICE QUALITY**  
3 **DETERIORATION?**

4 A. No. Integra Settlement Condition 2(a)(i) contains a provision that would track the  
5 Merged Company's post-merger wholesale service quality to CLECs. However, unlike  
6 Joint CLEC Condition 4(b) that requires the Merged Company to maintain the average  
7 wholesale service quality provided by Qwest to CLEC for 12 months prior to the merger  
8 filing date, the Integra Settlement establishes the benchmark on a rolling average tied to  
9 the merger closing date. Due to the rolling average relied upon by the Integra Settlement,  
10 over time the Merged Company will no longer be comparing pre-merger wholesale  
11 service quality to post-merger wholesale service quality (which is the relevant  
12 comparison for identifying merger-related harm to wholesale service quality).

13 For example, after the first three months following the merger closing date, each  
14 successive month of Qwest's *post-merger* performance will be added to the average  
15 performance, and beginning one year after the closing date Qwest's performance will be  
16 measured by a rolling twelve month average of Qwest's *post-merger* performance.  
17 Therefore, the only time period during which Integra Settlement Condition 2(a)(i) would  
18 truly compare Qwest's pre-merger wholesale service quality to Qwest's post-merger  
19 wholesale service quality is the first three months following the closing date.

20 **Q. DOES THE INTEGRA SETTLEMENT CONTAIN SUFFICIENT INCENTIVES**  
21 **FOR THE MERGED COMPANY TO QUICKLY AND EFFICIENTLY RESOLVE**

1           **WHOLESALE SERVICE QUALITY DETERIORATION IF/WHEN IT OCCURS**  
2           **POST-MERGER?**

3    A.    No.  Integra Settlement Condition 2(b) contains a provision that would require the  
4           Merged Company to perform a root cause analysis of post-merger wholesale service  
5           quality deterioration and propose a plan for resolving each deficiency within thirty days.  
6           This condition also allows CLECs to invoke the root cause procedures and to seek  
7           resolution at the state commission if the problem is not resolved (subject to a potential  
8           opposition from the Merged Company).  This is insufficient.

9           Because deteriorating wholesale service quality post-merger will negatively impact  
10          CLECs and their end user customers, it is imperative that proper incentives be in place  
11          for the Merged Company not to allow this deterioration *before* the proposed transaction is  
12          approved so that the Merged Company is aware of its obligations as it begins to integrate  
13          the two companies and eliminate duplicative functions and systems.  In addition, the  
14          incentives should be self-effectuating so that if/when post-merger wholesale service  
15          quality deterioration occurs, the Merged Company's incentives to resolve these problems  
16          are triggered immediately and without the need for additional litigation and disputes.  The  
17          root cause provision that requires the Merged Company to determine why service quality  
18          problems are occurring and to develop a plan to rectify them is of little benefit to CLECs  
19          and their end users who will be experiencing service-affecting problems and disruptions.  
20          And because the provision would give the Merged Company thirty days to develop a root  
21          cause analysis and would allow the Merged Company to oppose a CLEC request to

1 resolve wholesale service quality problems before the state commission, it will likely  
2 extend the duration of wholesale service quality problems and lead to future disputes.

3 It is not in the public interest to approve the merger based on a commitment from  
4 CenturyLink and Qwest to simply look into merger-related wholesale service quality  
5 problems as they occur and propose a plan to fix them; rather, the proposed transaction  
6 should not be approved unless there are sufficient assurances that wholesale service  
7 quality deterioration does not occur in the first place. The commitments in the Integra  
8 Settlement are inadequate, and should be bolstered by adopting the APAP.

9 *E. Joint Applicants' have not made sufficient commitments regarding non-*  
10 *impairment and forbearance filings.*

11 **Q. IN INTEGRA SETTLEMENT CONDITION 8, CENTURYLINK/QWEST AGREE**  
12 **NOT TO SEEK TO RECLASSIFY AS “NON-IMPAIRED” ANY QWEST**  
13 **WASHINGTON WIRE CENTERS AND NOT TO FILE NEW PETITIONS FOR**  
14 **FORBEARANCE FROM ANY SECTION 251 OR 271 OBLIGATIONS IN ANY**  
15 **QWEST WASHINGTON WIRE CENTERS BEFORE JUNE 1, 2012. IS THE**  
16 **TIME PERIOD OF THIS COMMITMENT ADEQUATE?**

17 **A.** No. While the Joint CLECs agree with moratoriums on non-impairment filings and  
18 petitions for forbearance to address merger-related harm, the time period of Condition 8  
19 is too short and arbitrary. If the proposed transaction is ultimately approved in the first  
20 quarter of 2011, as CenturyLink and Qwest are hoping, the June 1, 2012 expiration date  
21 results in an effective moratorium of about 15 months. This falls far short of the three-to-

1 five year time period during which the Merged Company will be integrating the two  
2 companies and pursuing merger-related synergy savings.<sup>48</sup> Also, to my knowledge, the  
3 settling parties have not provided any logical basis for the June 1, 2012, expiration date.

4 Joint CLECs have proposed in Condition 14 that such moratoriums should remain in  
5 effect for the Defined Time Period, which corresponds to the synergy timeframe. Under  
6 no circumstances should the timeframe of this commitment be less than three years. The  
7 timeframe proposed by Joint CLECs is sufficient in length because it covers the synergy  
8 timeframe, and is objective because it is based on CenturyLink's own projections.

9 *F. The Commission should adopt a Most Favored State condition.*

10 **Q. IN OREGON, ONE OF THE TWO REMAINING DISPUTED ISSUES BETWEEN**  
11 **THE SETTLING PARTIES IN THAT STATE RELATED TO WHETHER THE**  
12 **COMMISSION SHOULD ADOPT A MOST FAVORED STATE CONDITION.**  
13 **WHAT IS YOUR POSITION ON THIS ISSUE?**

14 A. I agree with the Oregon Staff and the Oregon Citizens Utility Board that the Oregon  
15 Commission should adopt a Most Favored State ("MFS") condition (see Joint CLEC  
16 proposed condition 29). That condition should apply in every state, including  
17 Washington. I described the need for and benefits of a MFS condition in my direct  
18 testimony.<sup>49</sup>

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<sup>48</sup> This also falls far short of the 42 month moratorium adopted by the FCC for the AT&T/BellSouth merger.  
Exhibit TJG-10 at footnote 31.

<sup>49</sup> Exhibit\_\_\_TJG-1T at pp. 153, 191-192.

1 **Q. WHY IS A MFS CONDITION NECESSARY FOR THE PROPOSED**  
2 **TRANSACTION TO MEET THE PUBLIC INTEREST STANDARD?**

3 A. This condition would ensure that the public interest benefits obtained as a result of  
4 conditions agreed to by CenturyLink/Qwest in other jurisdictions, or at the FCC, can also  
5 be applied in Washington. CenturyLink and Qwest requested expedited review and  
6 approval of the proposed transaction, and the Commission and other parties have worked  
7 diligently to analyze the proposed transaction on expedited timeframes to oblige the  
8 request. However, if a condition is adopted in another jurisdiction to address a merger-  
9 related harm that would arise in Washington but was not identified in this proceeding,  
10 consumers in Washington should not be penalized by foregoing the public interest  
11 benefits of that condition just because CenturyLink and Qwest wanted to expedite the  
12 proceedings.

13 Qwest claims that it sought expedited approval so that it could “bring the benefits...to  
14 consumer, business and wholesale customers sooner.”<sup>50</sup> That being the case, there is no  
15 reason that any benefits that accrue to consumer, business and wholesale customers in  
16 one state should not also accrue to consumer, business and wholesale customers in  
17 Washington. A MFS condition provides a proper balance between the interest of  
18 CenturyLink and Qwest to secure regulatory approval of the merger on a shortened  
19 timeframe and the interest of the Commission to ensure that approval of the merger is in  
20 the public interest. It is also consistent with well accepted non-discrimination principles

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<sup>50</sup> Exhibit MSR-IT at p. 6.

1 that are embodied in the Telecommunications Act of 1996 and many of this  
2 Commission's orders promoting competition in the local exchange market.

3 **Q. CENTURLINK HAS CLAIMED THAT A CONDITION OR COMMITMENT IN**  
4 **ONE JURISDICTION MAY NOT BE A NECESSARY OR EVEN APPROPRIATE**  
5 **CONDITION FOR ADOPTION IN ANOTHER JURISDICTION.<sup>51</sup> DOES THIS**  
6 **JUSTIFY REJECTING THE PROPOSED MFS CONDITIONS?**

7 A. No. CenturyLink's concern is already accounted for in the MFS conditions. The MFS  
8 condition proposed by Joint CLECs allows the Washington Commission to decide  
9 whether to expand or modify conditions adopted in this proceeding based on conditions  
10 adopted in other jurisdictions after the order is issued in Washington. Importantly, it does  
11 not *require* that all conditions adopted in other jurisdictions be imported to Washington.  
12 Therefore, these MFS conditions would allow the Washington Commission to consider  
13 whether conditions from other jurisdictions are necessary and/or appropriate for  
14 Washington before adopting it – i.e., there is not automatic or universal applicability as  
15 CenturyLink suggests.

16 **Q. CENTURLINK HAS CLAIMED THAT A MFS CONDITION SERVES AS A**  
17 **DISINCENTIVE TO NEGOTIATING A SETTLEMENT BECAUSE THE**  
18 **COMPANY CAN NEVER BE CERTAIN OF WHAT ADDITIONAL**

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<sup>51</sup> Oregon Docket UM1484, CenturyLink Exhibit CTL/1100, Jones/5-6.

1           **CONDITIONS MIGHT BE ADOPTED FROM OTHER JURISDICTIONS.<sup>52</sup> DO**  
2           **YOU AGREE?**

3    A.    No. CenturyLink's claim presupposes that it is appropriate for customers in some states  
4           to receive public interest benefits but not others. I contend, however, that wholesale and  
5           retail customers in Washington should have the opportunity to receive the same public  
6           interest benefits and protection from harms to the public interest as customers in other  
7           states.

8           In addition, CenturyLink's claim that a MFS condition would provide a disincentive to  
9           negotiating a settlement does not square with the facts. The Joint CLECs proposed a  
10          MFS condition (Condition 29) in their responsive testimony filed September 27, 2010.<sup>53</sup>  
11          Therefore, CenturyLink has been on notice since September that Joint CLECs supported  
12          a MFS condition and that the Washington Commission could potentially adopt a MFS  
13          condition in conjunction with transaction approval. Since that time, however,  
14          CenturyLink and Qwest have negotiated numerous settlements with parties in  
15          Washington and other states. The potential of the Washington Commission adopting the  
16          Joint CLECs' proposed MFS condition did not discourage CenturyLink or Qwest from  
17          negotiating these prior settlements. Indeed, the Louisiana Commission adopted a Most  
18          Favored State condition in conjunction with its approval of the proposed transaction in

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<sup>52</sup> Oregon Docket UM1484, CenturyLink Exhibit CTL/1100, Jones/6.

<sup>53</sup> Exhibit\_\_TJG-9.

1 that state<sup>54</sup> in mid-September, and that MFS condition apparently did not discourage  
2 CenturyLink/Qwest from negotiating all the settlements that have been filed since then.

3 **Q. IS THERE AN ALTERNATIVE TO ADOPTING A MFS CONDITION?**

4 A. Yes. The Washington Commission could simply wait until all other jurisdictions have  
5 ruled on the proposed transaction before rendering its decision. Absent a MFS condition,  
6 this is the only way for the Commission to ensure that Washington consumers receive the  
7 benefits and protections afforded to consumers elsewhere.

8 **III. CONCLUSION**

9 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

10 A. The wholesale conditions in the Integra Settlement and Staff Settlement are inadequate to  
11 address the merger-related harm posed by the proposed transaction to Joint CLECs, the  
12 competitive marketplace and the public interest. To address these harms, I recommend  
13 that the proposed transaction be denied unless approval is conditioned on each of the  
14 Joint CLECs' proposed conditions set forth in Exhibit TJG\_9 to my direct testimony.<sup>55</sup>  
15 However, if the Commission is not inclined to require each and every condition proposed  
16 by Joint CLECs, it should, at the very least, require CenturyLink/Qwest to supplement

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<sup>54</sup> Louisiana Public Service Commission Docket No. U-31379, Order No. U-31379, September 17, 2010 (“The Applicants shall provide notice to the LPSC of any condition imposed upon the merger, or agreed to in other jurisdictions, for the Commission’s review and possible adoption if deemed in the public interest.”)

<sup>55</sup> My testimony does not address each and every difference between the Joint CLECs proposed conditions list and the Integra Settlement conditions; rather, this testimony focuses on some of the differences most critical to Joint CLECs and competition as a whole. Although I do not address every important difference, that should not be construed as my agreement with the differing terms of the Staff Settlement or the Integra Settlement. I continue to recommend that if the Commission is inclined to approve the proposed transaction, it should make that approval conditional upon each of the Joint CLECs’ proposed conditions.

1 the conditions in the Integra Settlement and Staff Settlement to resolve their primary  
2 shortcomings. Specifically, and at a minimum, the proposed merger should not be  
3 approved unless such approval is subject to the following additions to the Integra  
4 Settlement's and Staff Settlement's conditions, as well as the conditions discussed by  
5 Messrs. Pruitt and Haas:

- 6 1. The Merged Company will use and offer to wholesale customers the  
7 legacy Qwest OSS for at least three years.
- 8 2. Robust, transparent third party testing will be conducted for any  
9 replacement OSS that replaces a Qwest system that was subject to  
10 third party testing; and the replacement OSS should be required to  
11 perform at current performance levels (which will be benchmarked  
12 to measure future performance).
- 13 3. The Applicable Time Periods for non-UNE commercial and  
14 wholesale agreements and tariffs should be the Defined Time Period  
15 initially proposed by Joint CLECs, or at a minimum, three years.
- 16 4. The extension of non-UNE commercial and wholesale agreements  
17 and tariffs, including term and volume discount plans, should apply  
18 to wholesale agreements in place as of the merger filing date. As  
19 noted in (3) above, the minimum time period for these agreements  
20 should be three years.
- 21 5. The Additional PAP should apply in addition to the QPAP.
- 22 6. The moratorium on Qwest requests to reclassify wire centers as  
23 "non-impaired" and requests for forbearance should apply for the  
24 Defined Time Period initially proposed by Joint CLECs.
- 25 7. A Most Favored State condition should be adopted.

26 The Commission should also supplement the merger conditions to address the concerns  
27 raised in the testimony of Mr. Pruitt and Mr. Haas. These remaining issues raised by  
28 Joint CLECs are merger-related, have not been sufficiently addressed in the Integra  
29 Settlement (or the Staff Settlement), and are not currently pending in separate litigation

1           either in the courts or before the Commission. The need for these additional  
2           commitments is supported by the record and critical to the public interest.

3   **Q.    DOES THIS CONCLUDE YOUR TESTIMONY REGARDING THE STAFF**  
4   **SETTLEMENT AND INTEGRA SETTLEMENT?**

5   A.    Yes, it does.