0107

 1 BEFORE THE WASHINGTON STATE

 2 UTILITIES AND TRANSPORTATION COMMISSION

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 3 In the Matter of the Joint )

 Application of )

 4 )

 QWEST COMMUNICATIONS ) DOCKET UT-100820

 5 INTERNATIONAL, INC. AND )

 CENTURYTEL, INC. )

 6 ) VOLUME III

 For Approval of Indirect ) PAGES 107-359

 7 Transfer of Control of Qwest )

 Corporation, Qwest )

 8 Communications Company LLC, )

 and Qwest LD Corp. )

 9 ------------------------------)

10 A hearing in the above matter was held on Wednesday,

11 January 5, 2011, at 9:00 a.m.., at 1300 South Evergreen Park

12 Drive Southwest, Olympia, Washington, before Administrative

13 Law Judge MARGUERITE FRIEDLANDER, Chairman JEFFREY GOLTZ,

14 Commissioner Patrick Oshie & Commissioner Philip Jones.

15 The parties were present as follows:

16 WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, by

 JENNIFER CAMERON-RULKOWSKI, Assistant Attorney General, P.O.

17 Box 40128, Olympia, Washington 98504; Telephone 360-664-1186

18 PUBLIC COUNSEL, by SIMON J. FFITCH, Senior Assistant

 Attorney General, 800 Fifth Avenue, Suite 2000, Seattle,

19 Washington 98104; Telephone 206-389-2055

20 QWEST COMMUNICATIONS INTERNATIONAL, by LISA A. ANDERL,

 Associate General Counsel, 1600 Seventh Avenue, Room 3206,

21 Seattle, Washington 98191; Telephone 206-345-1574

22 CENTURYTEL, INC. (CENTURYLINK), by CALVIN K. SIMSHAW,

 Senior Counsel, 805 Broadway, Vancouver, Washington 98660;

23 Telephone 360-905-5958

24 (Appearances continued on Page 2.)

25 Tami Lynn Vondran, CCR No. 2157

 Court Reporter

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 1 The parties were present as follows: (continued)

 2 JOINT CLECS, XO COMMUNICATIONS, COVAD, TW TELECOM OF

 WASHINGTON, MCLEOD TELECOMMUNICATIONS d/b/a/ PAETEC, CHARTER

 3 FIBERLINK and PAC-WEST TELECOMM, by MARK TRINCHERO, Attorney

 at Law, Davis, Wright, Tremaine, 1300 Southwest Fifth

 4 Avenue, Suite 2300, Portland, Oregon 97201; Telephone

 503-241-2300

 5

 SPRINT/T-MOBILE, by JUDITH A. ENDEJAN, Attorney at Law,

 6 Graham & Dunn PC, 2801 Alaskan Way, Suite 300, Seattle,

 Washington 98121; Telephone 206-340-9694

 7 &

 by KENNETH SCHIFMAN, Director/Senior Counsel, 6450 Sprint

 8 Parkway, Overland Park, Kansas 66251; Telephone 913-315-9783

 9 LEVEL 3, 360NETWORKS & CBEYOND, by ARTHUR BUTLER,

 Attorney at Law, Ater Wynne, 601 Union Street, Suite 1501,

10 Seattle, Washington 98101; Telephone 206-623-4711

11 DEPARTMENT OF DEFENSE & FEDERAL EXECUTIVE AGENCIES, by

 STEPHEN MELNIKOFF, General Attorney, Office of the Judge

12 Advocate General, 901 North Stuart Street, Suite 700,

 Arlington, Virginia 22203; Telephone 703-696-1643

13

 INTEGRA TELECOM, by TED GILLIAM, Senior Corporate

14 Counsel, 1201 Northeast Lloyd Boulevard, Suite 500,

 Portland, Oregon 97232; Telephone 503-453-8000

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23 BENCH EXHIBITS

24 B-1 Qwest and CenturyLink's response to BR-1

25 regarding the status of contemporaneous

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 1 proceedings before other commissions and

 2 agencies (original response filed on June 3,

 3 2010; supplemental response filed on July 9,

 4 2010; second supplemental response filed on

 5 August 9, 2010; third supplemental response

 6 filed on September 9, 2010; fourth supplemental

 7 response filed on October 8, 2010; fifth

 8 supplemental response filed on October 13,

 9 2010; sixth supplemental response filed on

10 November 8, 2010; seventh supplemental response

11 filed on November 12, 2010; eighth supplemental

12 response filed on December 7, 2010; ninth

13 supplemental response filed on December 22,

14 2010

15 B-2 Comcast's response to BR-2 regarding its motion

16 to withdraw from proceeding and whether it had

17 any side agreements with Applicants (response

18 filed on June 11, 2010)

19 B-3 Sprint's response to BR-3 regarding whether its

20 motion to compel a response to DR No. 5 is moot

21 (response filed on August 30, 2010)

22 B-4 Sprint's response to BR-4 regarding whether its

23 motion to compel responses to DR Nos. 41 and 42

24 is moot (response filed on August 30, 2010)

25 B-5 Joint CLECs' and Level 3's responses to BR-5

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 1 regarding the issues that remain unresolved

 2 following the Integra Settlement (response

 3 filed on January 3, 2011)

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 5 1 Settlement Agreement filed October 21, 2010

 6 2 Joint Memorandum Supporting Settlement

 7 Agreement

 8 3 Settlement Agreement filed November 10, 2010

 9 4 Petition for Consideration and Approval of

10 Settlement and Narrative in Support of

11 Settlement Pursuant to WAC 480-07-740

12 5 Settlement Agreement filed December 23, 2010

13 6 Appendix A - Settlement Conditions

14 JJ/MR/MV/SJ-7T Joint Testimony in Support of Settlement

15 Agreement

16 8 Settlement Agreement filed December 30, 2010

17 9 Narrative in Support of Settlement Agreement

18 10 Broadband Reporting Formats Conceptual Samples

19 PARTY: JOINT APPLICANTS

20 WITNESS: MARK S. REYNOLDS

21 MSR-1T Direct Testimony describing Qwest operations in

22 Washington and proposed benefits to customers

23 and competition

24 MSR-2RT Rebuttal Testimony addressing AFOR conditions

25 raised by Staff and price caps suggested by the

0122

 1 DoD/FEA

 2 WITNESS: JOHN JONES

 3 JJ-1T Direct Testimony concerning the merger

 4 transaction and CenturyLink's managerial,

 5 operational, technical ability, and experience

 6 needed to manage the combined company

 7 JJ-2 Corporate Organization Charts

 8 JJ-3 Local Operating Model/Premier Nationwide

 9 Network Map

10 JJ-4RT Rebuttal Testimony regarding, inter alia,

11 integration concerns, AFOR and retail

12 service/rate concerns, and DSL/Broadband

13 saturation

14 JJ-5 CenturyLink/Qwest TIER 2 Announcements

15 JJ-6C Integration Overview: September 9, 2010

16 JJ-7C IT Systems Integration Overview

17 WITNESS: G. CLAY BAILEY

18 GCB-1T Direct Testimony addressing the financial state

19 of both individual companies and the proposed

20 combined company, as well as a financial

21 overview of the transaction

22 GCB-2 PowerPoint Slides describing the transaction

23 and its projected financial results

24 GCB-3 Publication from Morgan Stanley, dated April

25 29, 2010, entitled "CenturyTel 1Q10 Preview:

0123

 1 Awaiting Embarq Synergy/Integration Update and

 2 Additional Color on Qwest Deal

 3 GCB-4 Publication from Moody's Investors Service,

 4 dated April 22, 2010, entitled "Rating Action:

 5 Moody's changes CenturyTel's outlook to

 6 negative; reviews Qwest's ratings for upgrade

 7 GCB-5 Publication from Standard & Poor's, dated April

 8 22, 2010, entitled "Research Update: CenturyTel

 9 'BBB-' rating on watch negative on deal to

10 acquire Qwest Communications; Qwest 'BB' rating

11 on watch positive

12 GCB-6HCRT Rebuttal Testimony addressing financial and

13 other concerns raised by Staff, Joint CLECs,

14 Sprint, and the DoD/FEA

15 WITNESS: TODD SCHAFER

16 TS-1T Direct Testimony regarding the history of

17 CenturyLink and the company's localized

18 business model

19 TS-2 Chart listing CenturyLink's consolidation

20 history from 1997 to 2009

21 TS-3 Chart analyzing the integration of the Embarq

22 transaction

23 TS-4 Chart describing the regional management

24 approach and how it fits into CenturyLink's

25 Go-To-Market model

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 1 TS-5 Map showing the five regions at the close of

 2 the Embarq transaction

 3 TS-6HCRT Rebuttal Testimony concerning operational

 4 issues raised by Staff

 5 WITNESS: MICHAEL R. HUNSUCKER

 6 MRH-1RT Rebuttal Testimony concerning proposed OSS

 7 conditions raised by Staff and wholesale and

 8 interconnection-related issues raised by the

 9 Joint CLECs

10 MRH-2 Proposed CLEC Merger Conditions

11 MRH-3SRT Supplemental Rebuttal Testimony regarding

12 HSR-related concerns raised by Joint CLECs and

13 Charter

14 MRH-4HC Consumer Sales Channels

15 WITNESS: ROBERT H. BRIGHAM

16 RHB-1RT Rebuttal Testimony addressing claims that the

17 proposed merger will be anti-competitive

18 RHB-2SRT Supplemental Rebuttal Testimony responding to

19 HSR-related claims raised by Sprint

20 RHB-3 Ex parte letter filed by Qwest with the FCC on

21 October 26, 2010, and the declaration of Beth

22 A. Halvorson

23 WITNESS: CHRISTOPHER VIVEROS

24 CV-1RT Rebuttal Testimony regarding conditions

25 proposed by the Joint CLECs, Integra, Level 3,

0125

 1 and Pac-West

 2 WITNESS: MICHAEL G. WILLIAMS

 3 MGW-1RT Rebuttal Testimony concerning wholesale

 4 performance assurance issues raised by Staff,

 5 Integra, and Joint CLECs

 6 MGW-2 Summary of Analysis - Proposed APAP Payments

 7 with Identical Pre-Merger and Post-Merger

 8 Performance Levels (using 2009 data)

 9 PARTY: COMMISSION STAFF

10 WITNESS: RICK T. APPLEGATE

11 RTA-1HCT Response Testimony relating to financial

12 aspects of the proposed transaction, the

13 resulting risks of harm, and recommended

14 conditions for approval

15 RTA-2 S-4 Pro Forma Combined Condensed Financials

16 RTA-3HC Consolidation Model

17 RTA-4 S-4 Risk Factors

18 RTA-5HC Synergies, Attachment to CenturyLink's Response

19 to UTC Staff Data Request No. 16

20 RTA-6HC Debt Maturities, Attachment to CenturyLink's

21 Response to UTC Staff Data Request No. 27.5

22 RTA-7 Fitch Ratings, Attachment to CenturyLink's

23 Response to UTC Staff Data Request N. 27.1

24 RTA-8 Moody's Ratings, Attachment to CenturyLink's

25 Response to UTC Staff Data Request No. 27.3

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 1 RTA-9 Standard & Poor's Ratings, CenturyLink's

 2 Response to UTC Staff Data Request No. 27.2

 3 RTA-10HC Implication of Loss of Investment Grade Rating

 4 RTA-11HC CenturyLink Revenue Forecast

 5 RTA-12HC Cash Flow Analysis

 6 RTA-13C CenturyLink ILECs' 2009 Annual Report

 7 RTA-14C Qwest's 2009 Annual Report

 8 WITNESS: REBECCA BEATON

 9 RB-1T Response Testimony addressing the potential

10 impact on the state's Enhanced 911 network, the

11 increasing scarcity of numbering resources and

12 recommended conditions for approval

13 RB-2 Qualifications

14 RB-3 Qwest ESI Net Contract

15 RB-4 Rate Center Consolidations

16 RB-5 Supplemental Response of Joint Applicants to

17 UTC Staff Data Request No. 138

18 RB-6 NRRI Paper: Evaluating the Proposed Merger of

19 CenturyLink and Qwest Communications

20 WITNESS: JOHN H. CUPP

21 JHC-1T Response Testimony relating to customer service

22 issues, the most recent Commission compliance

23 investigation of Qwest, and recommended

24 conditions for approval

25 WITNESS: JING LIU

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 1 JL-1HCT Response Testimony concerning Applicants'

 2 future investment in broadband deployment and

 3 increasing broadband speeds

 4 JL-2HC DSL Availability and Household Density Scatter

 5 Plot (Revised on January 5, 2011)

 6 JL-3HC DSL Availability at Wire Center Level (Revised

 7 on January 5, 2011)

 8 WITNESS: KRISTEN M. RUSSELL

 9 KMR-1T Response Testimony analyzing the companies'

10 service quality histories and including

11 recommended conditions for approval

12 KMR-2 WAC 480-120-439

13 KMR-3 Service quality requirements

14 KMR-4 Qwest's tariff pages (CSGP)

15 KMR-5 Response to DoD/FEA JA II-27

16 KMR-6C Embarq's customer credit payouts

17 WITNESS: MARK J. VASCONI

18 MJV-1T Response Testimony including a general overview

19 of the proposed transaction, the possible risks

20 associated with it, and recommended conditions

21 for approval

22 MJV-2 Qualifications

23 MJV-3 Pre-Merger organizational structure diagram

24 MJV-4 Post-Merger organizational structure diagram

25 MJV-5 Customer benefits

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 1 MJV-6 Staff list of conditions

 2 WITNESS: ROBERT T. WILLIAMSON

 3 RTW-1CT Response Testimony concerning the conversion of

 4 operations support systems and recommended

 5 conditions for approval

 6 RTW-2 Qualifications

 7 RTW-3C CenturyLink/Qwest Network Elements, September

 8 9, 2010

 9 PARTY: SPRINT NEXTEL

10 WITNESS: JAMES A. APPLEBY

11 JAA-1CT Response Testimony addressing the potential

12 competitive harm of the merger due to increased

13 market share

14 JAA-2C Per Minutes of Use Competitive Advantage

15 JAA-3C Competitive Advantage from Access Services

16 JAA-4C Access Merged Condition Estimate

17 JAA-5C Dividend Yield of the Merged Firm

18 JAA-6C Stock Appreciation of the Merged Firm

19 JAA-7HCSRT Supplemental Responsive Testimony describing

20 HSR-related concerns

21 JAA-8HC HSR Document - Key Transaction Risks and

22 Concerns

23 JAA-9HC HSR Document - Quartz IXC Observations

24 JAA-10HC HSR Document - Quartz Network Summary

25 JAA-11HC HSR Document - Rating Agency Presentation -

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 1 April 20, 2010

 2 JAA-12HC HSR Document - Synergy Opportunities

 3 JAA-13HC HSR Document - Key Transaction Benefits and

 4 Considerations

 5 JAA-14HC HSR Document - Key Transaction Positives and

 6 Opportunities

 7 JAA-15HC HSR Document - Project Crown Summary

 8 Information

 9 JAA-16HC HSR Document - Segmentation: Local and National

10 JAA-17HC HSR Document - Quartz IXC Observations

11 JAA-18HC HSR Document - Review Summary of Wholesale

12 Revenue

13 JAA-19HC HSR Document - Wholesale Revenue Assumptions

14 JAA-20HC HSR Document - Due Diligence Response No. 8

15 JAA-21HC HSR Document - Long Range Plan Assumptions

16 JAA-22HC HSR Document - Strategic Partnerships

17 JAA-23HC HSR Document - Operations Overview - Video

18 JAA-24HC HSR Document - Operations Overview -

19 Infrastructure Investment

20 JAA-25HC HSR Document - Network Diligence Update - April

21 19, 2010

22 JAA-26HC HSR Document - Customer Profile and Churn

23 Trends

24 JAA-27HC HSR Document - Customer ARPU

25 JAA-28HC HSR Document - Mass Market ARPU

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 1 JAA-29HC HSR Document - IPTV Quartz Review

 2 JAA-30HC HSR Document - Operational Overview - Higher

 3 ARPU

 4 JAA-31HC HSR Document - Project Crown Summary

 5 Information - Pages 5 and 6

 6 JAA-32HC HSR Document - Efficiencies graph

 7 JAA-33HC HSR Document - IPTV Revenue

 8 JAA-34HC HSR Document - Crystal IPTV Data

 9 JAA-35HC HSR Document - Crystal Operations Overview -

10 IPTV

11 JAA-36HC HSR Document - IPTV Quartz Review

12 JAA-37HC HSR Document - Overview of Stand-Alone Plans

13 JAA-38HC HSR Document - Overview of Wholesale Segment

14 JAA-39HC HSR Document - Overview of Stand-Alone Plans

15 JAA-40HC HSR Document - Financial Review - 3Q 2009

16 PARTY: PAC-WEST

17 WITNESS: JAMES C. FALVEY

18 JCR-1T Responsive Testimony concerning

19 anti-competitive potential of the proposed

20 merger

21 PARTY: DEPARTMENT OF DEFENSE/ALL FEDERAL EXECUTIVE AGENCIES

22 WITNESS: CHARLES W. KING

23 CWK-1T Responsive Testimony discussing the proposed

24 mergers impact on basic business service rates,

25 service quality, and competition,

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 1 qualification, and appearances of Mr. King

 2 before regulatory agencies

 3 CWK-2 Joint Petition for consent and approval of the

 4 transfer of Verizon's local exchange and long

 5 distance business in West Virginia to companies

 6 to be owned and controlled by Frontier

 7 Communications, West Virginia PSC, Case No.

 8 09-0871-T-PC, Commission Order (August 16,

 9 2010)

10 CWK-3 Excerpts from CenturyTel, Inc.'s SEC Form 10-Q,

11 filed August 16, 2010, pages: Cover, Title,

12 27-39

13 CWK-4 Qwest and CenturyLink FCC ARMIS Service Quality

14 Reports for 2009

15 PARTY: CHARTER FIBERLINK

16 WITNESS: BILLY H. PRUITT

17 BHP-1T Responsive Testimony discussing CenturyLink's

18 wholesale practices and policies

19 BHP-2 CenturyLink's response to Charter's Information

20 Request No. 4

21 BHP-3 CenturyLink's response to Charter's Information

22 Request No. 18

23 BHP-4 CenturyLink's response to Charter's Information

24 Request No. 25

25 BHP-5 CenturyLink's response to Charter's Information

0132

 1 Request No. 26

 2 BHP-6 CenturyLink's response to Charter's Information

 3 Request No. 34

 4 BHP-7 CenturyLink's response to Charter's Information

 5 Request No. 35

 6 BHP-8 CenturyLink's response to Charter's Information

 7 Request No. 36

 8 BHP-9 CenturyLink's response to Charter's Information

 9 Request No. 38

10 BHP-10 CenturyLink's response to Charter's Information

11 Request No. 44 and a map of the various

12 Washington exchanges

13 BHP-11 CenturyLink's response to Charter's Information

14 Request No. 45 and attached map

15 BHP-12 Qwest's response to Charter Information Request

16 No. 17

17 BHP-13 Qwest's response to Charter Information Request

18 No. 21

19 BHP-14HCSRT Supplemental Responsive Testimony addressing

20 HSR-related issues

21 BHP-15HC Wholesale Diligence Update document produced by

22 CenturyLink in response to Integra's First Set

23 of Information Requests, Request No. 143, and

24 Commission Staff Request No. 13

25 BHP-16HC Due Diligence Response No. 16 document produced

0133

 1 by CenturyLink in response to Integra's First

 2 Set of Information Requests, Request No. 143,

 3 and Commission Staff No. 13

 4 BHP-17HC Operations Overview document produced by

 5 CenturyLink in response to Integra's First Set

 6 of Information Requests, Request No. 143, and

 7 Commission Staff Request No. 13

 8 BHP-18CT Supplemental Testimony on proposed Integra

 9 Settlement

10 PARTY: LEVEL 3

11 WITNESS: RICHARD E. THAYER

12 RET-1T Responsive Testimony regarding competitive

13 issues such as compensation for ISP-bound

14 traffic

15 RET-2 Qualifications

16 RET-3 Excerpts of Qwest's and CenturyLink's

17 application filed with the FCC locating

18 CenturyLink's Washington exchanges

19 PARTY: JOINT CLECS

20 WITNESS: AUGUST H. ANKUM

21 AHA-1T Responsive Testimony addressing potential

22 hazards of the proposed merger to CLECs

23 AHA-2 Qualifications

24 AHA-3 The Promises vs. Realities of Recent ILEC

25 Mergers and Acquisitions

0134

 1 AHA-4 Discovery Responses Demonstrating the

 2 Significant Uncertainty Resulting from the

 3 Proposed Transaction

 4 AHA-5 Joint Applicants' Claims About Alleged Benefits

 5 Resulting From the Merger Compared to Their

 6 Discovery Responses

 7 AHA-6 Letter from Qwest Corporation to Kim Isaacs,

 8 OneEighty Communications, Inc, dated April 30,

 9 2010 and e-mail communication from Bonnie J.

10 Johnson of Integra to Scott Schipper

11 AHA-7 Letter from Thomas Jones, Counsel for Integra

12 to Marlene H. Dortch, Secretary, FCC, dated May

13 13, 2010, labeled Ex Parte and referencing FCC

14 WC Docket No. 09-95

15 WITNESS: TIMOTHY J. GATES

16 TJG-1HCT Responsive Testimony addressing potential harms

17 to Qwest's Wholesale Operations

18 TJG-2 Qualifications

19 TJG-3 Description of Qwest's OSS Testing in Relation

20 to 271 Authority

21 TJG-4 Assurances Not Met

22 TJG-5 A letter from Karen L. Clauson, Vice President,

23 Law & Policy, Integra Telecom and William Haas,

24 PAETEC, to Linda Gardner, Senior Regulatory

25 Attorney, CenturyLink and Todd Lundy, Associate

0135

 1 General Counsel, Qwest Corporation, dated July

 2 9, 2010 and a letter from Linda Gardner, Senior

 3 Regulatory Attorney, CenturyLink and Todd

 4 Lundy, Associate General Counsel, Qwest

 5 Corporation to Karen L. Clauson, Vice

 6 President, Law & Policy, Integra Telecom, dated

 7 July 1, 2010

 8 TJG-6 In the Matter of Applications Filed by Qwest

 9 Communications International Inc. and

10 CenturyTel, Inc., d/b/a CenturyLink for Consent

11 to Transfer Control, F.C.C. WC Docket No.

12 10-110, Comments of Cbeyond, Integra Telecom,

13 Socket Telecom, and tw telecom, dated July 12,

14 2010

15 TJG-7 Letter from Thomas Jones, Counsel for Integra

16 to Marlene H. Dortch, Secretary, FCC, dated May

17 19, 2010, regarding OSS problems

18 TJG-8 Daily Mail article, Thursday July 1, 2010,

19 Phone transition not going smoothly for a few

20 customers, by George Hohmann; Eyewitness Online

21 Webcast Video entitled July 21, 2010 Frontier

22 Problems - Local Business Having Major Problems

23 Since Frontier Switch, Reported by Darrah

24 Wilcox; and TradingMarkets.com article entitled

25 Frontier claims overtime is needed: Problems

0136

 1 force telecom company to work employees up to

 2 70 hours a week, by George Hohmann, dated July

 3 28, 2010

 4 TJG-9 Preliminary Conditions

 5 TJG-10 Comparison of CLEC-Proposed Conditions to

 6 Similar Conditions Adopted in Prior Merger

 7 Proceedings

 8 TJG-11 Letter from CenturyLink to Legacy Embarq CLEC,

 9 dated August 10, 2010, RE: My Account/WebRRS

10 Access Changes for Legacy EMBARQ CLECs

11 TJG-12 Map showing Qwest and CenturyLink Exchanges in

12 Washington

13 TJG-13HCSRT Supplemental Responsive Testimony concerning

14 HSR-related issues

15 TJG-14HCRT Rebuttal Testimony responding to Staff's

16 September 27, 2010, testimony

17 TJG-15C CenturyLink OSS Flow Diagram

18 TJG-16 Excerpt from Qwest's online Product Catalog

19 entitled Pre-Ordering Overview Containing a

20 Qwest Table Reflecting How Qwest Back-End

21 Service Order Processing Systems Process CLEC

22 Orders Differently Depending on Qwest Region

23 (Central, East, or West)

24 TJG-17 Matrix Comparing CenturyLink's and Qwest's LSR

25 Submission OSS Functionality

0137

 1 TJG-18 CenturyLink Discovery Responses Regarding OSS

 2 Pre-Order Functions and Order Types

 3 TJG-19 CMP August 14 and 16, 2001 CMP Redesign Meeting

 4 Minute Excerpts

 5 TJG-20CT Supplemental Testimony on proposed Staff/Public

 6 Counsel and Integra Settlements

 7 TJG-21 November 30, 2010, Announcement from Qwest to

 8 Charter regarding White Pages Listings - V53.0

 9 WITNESS: WILLIAM A. HAAS

10 WAH-1HCT Direct Testimony concerning PAETEC's operations

11 and the Integra Settlement

12 WAH-2 October 22, 2010, letter from Eric J. Branfman,

13 Bingham McCutchen LLP, to Marlene H. Dortch,

14 Secretary, FCC

15 WAH-3 December 10, 2010, letter from Eric J.

16 Branfman, Bingham McCutchen LLP, to Marlene H.

17 Dortch, Secretary, FCC

18 PARTY: INTEGRA

19 WITNESS: DOUGLAS DENNEY

20 DD-2 Additional Performance Assurance Plan

21

22

23

24

25

0138

 1 P R O C E E D I N G S

 2 (On the record at 9:00 a.m.)

 3 JUDGE FRIEDLANDER: Good morning. It is

 4 approximately 9:00 a.m. on Wednesday, January 5th, 2011.

 5 This is the time and place set for the evidentiary hearing

 6 in Docket UT-100820, the Joint Application of Qwest

 7 Communications International, Inc. and CenturyTel, Inc. for

 8 Approval of an Indirect Transfer of Control of Qwest

 9 Corporation, Qwest Communications Company LLC, and Qwest LD

10 Corp, Marguerite Friedlander, Administrative Law Judge,

11 presiding over this matter for the Commission.

12 The first thing we're going to do is take

13 appearances. And then we'll go ahead and address some

14 procedural matters. Since most of you have appeared before

15 me in the past, we'll go ahead and do abbreviated

16 appearances.

17 Appearing today on behalf of Qwest.

18 MS. ANDERL: Thank you, Your Honor. Lisa Anderl,

19 associate general counsel for Qwest.

20 JUDGE FRIEDLANDER: Thank you. Appearing today on

21 behalf of CenturyLink.

22 MR. SIMSHAW: Yes, Calvin Simshaw, in-house senior

23 regulatory counsel for CenturyLink.

24 JUDGE FRIEDLANDER: Thank you. Appearing today on

25 behalf of Staff.

0139

 1 MS. CAMERON-RULKOWSKI: Jennifer

 2 Cameron-Rulkowski, Assistant Attorney General, on behalf of

 3 Staff.

 4 JUDGE FRIEDLANDER: Thank you. Appearing today on

 5 behalf of Public Counsel.

 6 MR. FFITCH: Good morning, Your Honor. Simon

 7 ffitch, Senior Assistant Attorney General, for Public

 8 Counsel.

 9 JUDGE FRIEDLANDER: Thank you. Appearing today on

10 behalf of the Joint CLECs.

11 MR. TRINCHERO: Yes, Your Honor. Appearing today

12 on behalf of XO Communications, tw telecom, Pac-West, McLeod

13 d/b/a PAETEC, Covad and Charter Fiberlink, Mark P.

14 Trinchero, Davis, Wright, Tremaine.

15 JUDGE FRIEDLANDER: Thank you. Appearing today on

16 behalf of Level 3.

17 MR. BUTLER: Arthur A. Butler, of the Ater Wynne

18 Law Firm appearing on behalf of Level 3, 360networks and

19 Cbeyond.

20 JUDGE FRIEDLANDER: Thank you. Appearing today on

21 behalf of Sprint?

22 MR. SCHIFMAN: Good morning, Your Honor.

23 Appearing on behalf of Sprint is Ken Schifman, senior

24 counsel and Ms. Judy Endejan, outside counsel.

25 JUDGE FRIEDLANDER: Thank you. Could you spell

0140

 1 your last name, Mr. Schifman?

 2 MR. SCHIFMAN: Sure. It's S-c-h-i-f-m-a-n.

 3 JUDGE FRIEDLANDER: Thank you. And appearing

 4 today on behalf of Integra.

 5 MR. GILLIAM: Good morning, Your Honor, Ted

 6 Gilliam, appearing for Integra Telecom.

 7 JUDGE FRIEDLANDER: Thank you. Appearing today on

 8 behalf of the Department of Defense and all other executive

 9 agencies. I should say Federal Executive Agencies.

10 MR. MELNIKOFF: Good morning, Your Honor. Stephen

11 Melnikoff on behalf of the United States Department of

12 Defense and all other Federal Executive Agencies.

13 JUDGE FRIEDLANDER: Thank you. Is there anything

14 else that I have missed? Okay, hearing nothing let's go

15 into some housekeeping matters.

16 It sounds like the conference bridge is up and

17 running, contrary to what happened last Thursday, so we

18 should be good to go on that. If you are appearing via the

19 conference bridge I just want to let you know that,

20 especially if you're testifying, please speak slowly and

21 clearly so the court reporter can understand you. And

22 that's actually good advice for anybody testifying or

23 appearing before us today. Just speak slowly and clearly so

24 we can hear you.

25 If you have any cell phones please go ahead and

0141

 1 turn them off or turn them to vibrate so we're not disturbed

 2 during the hearing. And I'll go ahead and repeat that for

 3 whoever just tuned in. If you are testifying please go

 4 ahead and speak clearly for the court reporter. Please

 5 also, if you're on the conference bridge, do not put us on

 6 hold. You will be playing some very lovely but unnecessary

 7 music in the hearing room.

 8 Let's go ahead and get into the exhibit list. I

 9 distributed a revised exhibit list on Monday afternoon, and

10 I believe since then it has been revised at least a couple

11 of times. We received testimony from the Joint CLECs,

12 Mr. Haas, Mr. Gates and Mr. Pruitt. Those I have added to

13 the master exhibit list. And I believe we have some more

14 exhibits coming in this morning. So we'll go ahead and

15 start with, I believe, the settlement exhibit, broadband

16 reporting formats. Does somebody want to tell me more about

17 this?

18 MS. ANDERL: Thanks, Your Honor. Lisa Anderl.

19 And others can speak to this, as well. But as it states on

20 the cover sheet it's a nine page document that is conceptual

21 samples of the format of the reporting that is going to be

22 required after, or to implement the broadband commitment

23 that is merger Condition No. 14. We were planning on

24 offering that through Mr. Reynolds on the retail part of the

25 initial settlement panel. And he can explain a little bit

0142

 1 more about that. But that's, I believe, an exhibit that's

 2 been agreed to by the Joint Applicants and Staff and Public

 3 Counsel.

 4 JUDGE FRIEDLANDER: Okay. This is in relationship

 5 then to obviously that settlement agreement, the Staff,

 6 Public Counsel, Joint Applicants settlement agreement?

 7 MR. FFITCH: That's correct, Your Honor, on behalf

 8 of Public Counsel. This exhibit does contain samples from

 9 multiple parties just for illustrative purposes to the

10 Commission. And the parties have jointly reviewed and

11 discussed it, the exhibit that is. And it is our intention

12 to no later than 30 days after close of the transaction to

13 submit a final form of report both for the annual report and

14 for the initial 180 day plan document.

15 JUDGE FRIEDLANDER: Okay, thank you. And we have

16 two other exhibits, I believe, that are exhibits to the

17 testimony of Jing Liu. Ms. Cameron-Rulkowski, if you want

18 to tell me a little bit about these.

19 MS. CAMERON-RULKOWSKI: Your Honor, these are

20 errata pages. There were two data entry errors that Ms. Liu

21 discovered late in the game. So we have corrected those.

22 And Ms. Liu informs me that the data is correct even though

23 you cannot tell any difference on the scatter plot in her

24 Exhibit 2, but it now should, both exhibits should now

25 reflect the correct data.

0143

 1 JUDGE FRIEDLANDER: Okay. So these are just

 2 revisions, they're not additional exhibits to be entered

 3 into the record?

 4 MS. CAMERON-RULKOWSKI: That's correct, Your

 5 Honor, and they are probably being filed at this moment.

 6 JUDGE FRIEDLANDER: Okay. Thank you.

 7 I would advise also for the Joint Applicant, Staff

 8 and Public Counsel, that the broadband reporting format

 9 obviously does have to be filed, as well. We can't accept

10 filings at the Bench, so that needs to be filed with the

11 records center.

12 MR. FFITCH: And, Your Honor, also you request an

13 electronic copy of that, as well?

14 JUDGE FRIEDLANDER: Yes.

15 MR. FFITCH: Thank you, Your Honor.

16 JUDGE FRIEDLANDER: Thank you.

17 MS. ANDERL: Your Honor, a question then, did you

18 want to give out an exhibit number at this time?

19 JUDGE FRIEDLANDER: Yes, since that is a

20 settlement exhibit let's go ahead and give that Exhibit

21 No. 10. And I'll add that to the finalized exhibit list.

22 At this point are there any other exhibits we need to

23 discuss, objections to exhibits or any other matters

24 relating to the exhibit list itself?

25 Mr. Trinchero.

0144

 1 MR. TRINCHERO: Your Honor, I just note that

 2 Exhibit B-5, that was reserved for Joint CLECs response to

 3 Bench Request No. 5, I want to make sure you did receive

 4 that, and it has been added to the revised exhibit list?

 5 JUDGE FRIEDLANDER: Yes, I have received that and

 6 it has been added to the finalized exhibit list.

 7 MR. TRINCHERO: Thank you.

 8 JUDGE FRIEDLANDER: You're welcome.

 9 MS. ENDEJAN: Your Honor, I have two questions.

10 And I don't know if this is the right time to bring them up,

11 but I will. The first question is in terms of how do you

12 intend to handle, you know, some corrections to testimony

13 that has been marked as, you know, prefiled exhibits?

14 JUDGE FRIEDLANDER: Sure. If the party -- I

15 should say if the witness is testifying we can do that on

16 the record. If the witness is not testifying I would

17 recommend that there be either a revised exhibit depending

18 on how lengthy the corrections are or some kind of errata,

19 much like what was filed by Staff.

20 MS. ENDEJAN: Okay.

21 JUDGE FRIEDLANDER: I hope that helps.

22 MS. ENDEJAN: That helps. And Mr. Appleby will

23 make his corrections to his testimony when he's on the

24 stand.

25 JUDGE FRIEDLANDER: Certainly.

0145

 1 MS. ENDEJAN: My second question is for purposes

 2 of compiling the exhibit list. For instance, we designated

 3 a number of exhibits in connection with a witness, but I

 4 want to clarify that we're not precluded from

 5 cross-examining a witness by using an exhibit that wasn't

 6 designated as being for that witness.

 7 JUDGE FRIEDLANDER: No, I don't see any -- I don't

 8 have any qualms with that. If the exhibit has been

 9 designated for -- if it has been designated incorrectly, for

10 example, and someone else would have more knowledge about

11 that exhibit you're certainly free to ask another witness.

12 MS. ENDEJAN: Okay, thank you.

13 JUDGE FRIEDLANDER: Certainly.

14 Yes, Mr. Melnikoff.

15 MR. MELNIKOFF: Your Honor, we have two

16 corrections to Mr. King's testimony. He is not going to be

17 appearing as a witness as you know. I can do that orally

18 when the commissioners are here if you would like so they

19 can take his exhibit, and then I will file an errata --

20 JUDGE FRIEDLANDER: Okay.

21 MR. MELNIKOFF: -- if you keep the record open for

22 a few days?

23 JUDGE FRIEDLANDER: Right. And we will. I'll

24 keep the record open for approximately a week.

25 MR. MELNIKOFF: That's perfect.

0146

 1 JUDGE FRIEDLANDER: And we're certainly going to

 2 be doing the closing briefs, as well. So those will be

 3 coming in, as well.

 4 My question though was the first settlement panel

 5 I had Mr. King down as being -- we talked about this before

 6 though. Is he going to be testifying, is he going to be

 7 appearing via the conference bridge at all?

 8 MR. MELNIKOFF: No, Your Honor, nobody has

 9 questions for him. So on that basis he won't appear.

10 JUDGE FRIEDLANDER: Okay, thank you.

11 MR. BUTLER: Your Honor, with respect to B-5?

12 JUDGE FRIEDLANDER: Yes.

13 MR. BUTLER: Bench request responses indicated

14 here is for Joint CLEC's response on January 3rd. Level 3

15 also filed a supplemental response to that. Would that just

16 be included as part of that exhibit?

17 JUDGE FRIEDLANDER: It would be part of B-5. Any

18 other questions? Mr. Trinchero.

19 MR. TRINCHERO: Your Honor, just one question. I

20 just want to confirm this was received and that there are no

21 objections to it. I believe Mr. Halm of our D.C. office

22 filed just the other day an updated errata version of

23 BHP-14, the Pruitt supplemental responsive testimony, there

24 has been some minor errors.

25 JUDGE FRIEDLANDER: Right.

0147

 1 MR. TRINCHERO: Did you receive those?

 2 JUDGE FRIEDLANDER: Yes. The records center did

 3 receive it. I've received it. And as far as I know the

 4 commissioners have received it as well.

 5 MR. TRINCHERO: Thank you.

 6 JUDGE FRIEDLANDER: Okay. Are there any other

 7 questions? Ms. Endejan.

 8 MS. ENDEJAN: Again, I don't know if this is when

 9 you want to talk about it, but with respect to the post

10 hearing briefing.

11 JUDGE FRIEDLANDER: Uh-huh.

12 MS. ENDEJAN: When will we discuss that?

13 JUDGE FRIEDLANDER: We will discuss that -- we'll

14 actually discuss that today. We can discuss it now if you'd

15 like. I have received the comments from the parties

16 regarding the -- I guess now it's the modified joint motion

17 to revise the deadline for those post-hearing briefs. At

18 this point I'm going to hold the modified motion in

19 abeyance, because we don't know at this point what the

20 issues will be that the Commission is going to ask the

21 parties to address.

22 And once I know those, which most likely will be

23 at the end of the hearing tomorrow, or assuming we go into

24 Friday it will be on Friday, and at that point I'll also

25 rule on the motion when I give you the issues.

0148

 1 MS. ENDEJAN: Okay. I guess point of

 2 clarification. So the post-hearing briefing will be limited

 3 to issues that commissioners request further briefing on or

 4 will the post-hearing briefing be allowed to incorporate

 5 basically unresolved or disputed issues?

 6 JUDGE FRIEDLANDER: Well, my sense of it is that

 7 the post-hearing briefs will be limited to the issues that

 8 the Commission would like you to address. It's not another

 9 bite at the apple. You will have closing arguments though.

10 So, yes, Mr. Trinchero.

11 MR. TRINCHERO: Your Honor, I wanted to let you

12 know that we have been discussing with the Joint Applicants

13 this morning whether or not we might jointly request that

14 these briefs include the ability to brief all of the issues

15 that are in dispute in a written fashion. These are fairly

16 complicated issues. Certainly if the Commission also wants

17 us to provide oral closing we could do that, or we could

18 dispense with that. But we do feel that it impinges on our

19 due process rights to not be allowed to fully brief that.

20 I know that the Joint Applicants have not really

21 had a chance yet to socialize that within the companies to

22 find out if they would agree or not. But I wanted to raise

23 that.

24 JUDGE FRIEDLANDER: Well, you can certainly make

25 an oral motion when we address the modified joint motion at

0149

 1 that time that the Commission allow for additional topics to

 2 be briefed. I can tell you though that we're not looking

 3 for lengthy submissions here, and there may be a page limit.

 4 So if you want to address additional issues you would have

 5 to have first hopefully address the issues that we've given

 6 you. And if there is some leftover then you're certainly,

 7 you know, that would be the point at which to take up the

 8 additional issues you want to address.

 9 MR. TRINCHERO: Certainly, Your Honor. We would,

10 of course, first focus on whatever issues the Commission has

11 specified. We would just like the opportunity to also brief

12 the other issues to the extent possible within the page

13 limit.

14 JUDGE FRIEDLANDER: Thank you. Okay. Are there

15 any other questions? Yes, Ms. Cameron-Rulkowski.

16 MS. CAMERON-RULKOWSKI: I believe that, Your

17 Honor, that you had asked if there were any objections, and

18 I didn't hear any? Does that mean you would entertain a

19 stipulation to admit the exhibits? Or do we need to go

20 ahead and have them actually -- have a stipulation in place

21 but have them admitted after corrections are made on the

22 record? How would you like to handle that?

23 JUDGE FRIEDLANDER: No, I think what we can do is

24 go ahead and admit the exhibits. I will ask, first of all,

25 and we can do that right now, whether anyone has objections

0150

 1 to exhibits that have been filed?

 2 MS. ANDERL: Your Honor, as long as you're

 3 speaking of only the direct or rebuttal or responsive

 4 testimony and not the cross-examination exhibits that are

 5 included on the exhibit list?

 6 JUDGE FRIEDLANDER: Right.

 7 MS. ANDERL: Then no objection.

 8 JUDGE FRIEDLANDER: Right. So the direct and

 9 rebuttal testimony will be allowed in. You can certainly

10 make corrections on the record when the witness is

11 testifying. And that would be most helpful to the

12 Commission. Again, if your witness is not testifying

13 obviously that should be done -- it should be filed with the

14 Commission. And I don't think it will be necessary to do

15 that on the record, we can just have you file that with the

16 records center.

17 MS. ENDEJAN: So to clarify, Your Honor, what

18 exhibits are not being admitted?

19 JUDGE FRIEDLANDER: The cross-examination

20 exhibits.

21 And I would assume, Ms. Anderl, that your

22 intention was to hold those off in case during

23 cross-examination people have objections?

24 MS. ANDERL: Right. The cross-examination

25 exhibits that are marked right now are either offered or

0151

 1 identified by the Joint CLECs or by Sprint. And in the

 2 agreement we have with the Joint CLECs the Joint CLEC's

 3 cross-exhibits would only be used on cross-examination of

 4 the Joint Applicants' oral surrebuttal if necessary for

 5 that. So that would limit the scope of those. Then with

 6 regard to Sprint cross-examination exhibits we would like to

 7 just take them up one at a time as they are used or not used

 8 in cross-examination.

 9 JUDGE FRIEDLANDER: I see. Okay. So let me just

10 take a minute here. Right, all of the cross-examination

11 exhibits appear to have been filed by Joint CLECs or Sprint.

12 And per the agreement that you have with the Joint CLECs

13 those, I assume, are not going to be used unless there is

14 some question regarding the testimony?

15 MS. ANDERL: That's correct, Your Honor. It is

16 our intent to not offer them at this time, but to offer only

17 those which we do end up using as part of the

18 cross-examination on the rebuttal, the surrebuttal

19 testimony.

20 JUDGE FRIEDLANDER: Okay, thank you.

21 MS. CAMERON-RULKOWSKI: One more question. Was it

22 your intent then also to admit Exhibits 1 through 10?

23 JUDGE FRIEDLANDER: Yes, the settlement exhibits,

24 as well as the direct and rebuttal exhibits, everything but

25 the cross-examination exhibits.

0152

 1 MS. CAMERON-RULKOWSKI: Thank you, Your Honor.

 2 JUDGE FRIEDLANDER: You're welcome.

 3 So those have been admitted into the record.

 4 We'll deal with the cross-examination exhibits as they come.

 5 If there are objections I would expect that you would make

 6 those in a timely manner when the witness is appearing.

 7 So let's talk about the schedule, as well. The

 8 parties will be permitted to make opening statements. And

 9 before the commissioners come in I would like to get a sense

10 of who will be making the opening statements for the

11 parties. Do the Joint Applicants intend to make one

12 statement or will each of the attorneys be making a

13 statement?

14 MR. SIMSHAW: Your Honor, Calvin Simshaw for

15 CenturyLink. I will be making the statement for both Joint

16 Applicants.

17 JUDGE FRIEDLANDER: Okay. Great, thank you. How

18 about on behalf of Staff, will Staff be making an opening

19 statement?

20 MS. CAMERON-RULKOWSKI: Yes, Your Honor, I will be

21 making that statement on behalf of Staff.

22 JUDGE FRIEDLANDER: I assume, Mr. ffitch, that you

23 will be making a statement on behalf of Public Counsel?

24 MR. FFITCH: That's correct, Your Honor. Thank

25 you.

0153

 1 JUDGE FRIEDLANDER: Thank you. And on behalf of

 2 the Joint CLECs, Mr. Trinchero?

 3 MR. TRINCHERO: Yes, Your Honor, I will be making

 4 the opening statement on behalf of the Joint CLECs. I

 5 believe also that Level 3 and Cbeyond have authorized me to

 6 include them in that.

 7 JUDGE FRIEDLANDER: I see. I was wondering how

 8 that was going to work with Mr. Butler.

 9 MR. TRINCHERO: Unless Mr. Butler would rather do

10 the opening statement?

11 MR. BUTLER: It's okay. Thank you.

12 JUDGE FRIEDLANDER: Okay, thank you.

13 And so, Mr. Butler, I assume then you will be

14 doing the opening statement for 360networks?

15 MR. BUTLER: As a settling party I don't know if

16 we are making an opening statement.

17 JUDGE FRIEDLANDER: Then that's fine.

18 And also as a settling party, Mr. Gilliam

19 (phonetically pronounced Gilem), did I pronounce your name

20 right, Gilliam or Gilliam?

21 MR. GILLIAM: You did, Your Honor.

22 JUDGE FRIEDLANDER: And will you be making that

23 opening statement on behalf of Integra?

24 MR. GILLIAM: No, Your Honor.

25 JUDGE FRIEDLANDER: Okay. On behalf of DoD/FEA,

0154

 1 Mr. Melnikoff?

 2 MR. MELNIKOFF: I will make a brief opening

 3 statement, Your Honor.

 4 JUDGE FRIEDLANDER: Thank you. Ms. Endejan or

 5 Mr. Schifman, who will be make the opening statement?

 6 MS. ENDEJAN: Mr. Schifman will be making the

 7 opening statement on behalf of Sprint/T-Mobile.

 8 JUDGE FRIEDLANDER: Thank you. Okay. They will

 9 be limited to 15 minutes.

10 And after that the Commission will hear from the

11 witnesses supporting the settlement agreements first, as we

12 discussed in prehearing last Thursday. We will have the

13 first panel address the settlement agreement between Joint

14 Applicants, Staff and Public Counsel, as well as the

15 settlement agreement between Joint Applicants and the

16 DoD/FEA.

17 Then from what I have down the first panel will

18 include Mr. Jones, Mr. Reynolds, Mr. Vasconi and

19 Ms. Johnson. And I don't hear any corrections to that so

20 I'm going to assume that's what we're going to go with that.

21 The second panel will address the settlement

22 agreements between the Joint Applicants and 360networks and

23 Integra. And I have down that those witnesses will be

24 Mr. Denney, Mr. Hunsucker, Mr. Viveros, Mr. Williams and

25 Mr. Gustavson.

0155

 1 MR. BUTLER: Because she can appear by phone it

 2 will be Ms. Singer Nelson.

 3 JUDGE FRIEDLANDER: Okay. Thank you. So we will

 4 have Ms. Single Nelson appearing on behalf of 360networks.

 5 MR. TRINCHERO: Your Honor, I'm not sure if this

 6 is the appropriate time to interrupt, but at the prehearing

 7 conference I had indicated that the Joint CLECs had no

 8 cross-examination for Mr. Denney. I would like to just

 9 modify that, we have two or three questions for Mr. Denney.

10 JUDGE FRIEDLANDER: Okay. That's fine.

11 MS. ANDERL: Your Honor, at this point I don't

12 think we were planning on putting Mr. Williams up on the

13 direct panel but rather on the rebuttal.

14 JUDGE FRIEDLANDER: Okay. Thank you. I

15 appreciate the clarification.

16 Following the settlement panels we'll go ahead and

17 get into the oral rebuttal phase with testimony on behalf of

18 Sprint/T-Mobile from Mr. Appleby. We'll then reassemble the

19 two settlement panels for the surrebuttal before taking the

20 closing arguments. And as I've stated previously, the

21 modified joint motion to address the schedules for the

22 post-hearing briefs will be handled after -- I'm holding

23 that in abeyance, and when I give you the issues I'll rule

24 on the motion itself.

25 Ms. Endejan.

0156

 1 MS. ENDEJAN: Yes, Your Honor, I believe you may

 2 have omitted the opportunity for us to cross-examine

 3 witnesses in the disputed, whatever we called the panels.

 4 JUDGE FRIEDLANDER: I did, I apologize. I did, I

 5 apologize. What we were referring to last Thursday as the

 6 "second bucket," which are the disputed issues that have not

 7 been addressed by the settlement agreements that I believe

 8 that Sprint/T-Mobile has raised.

 9 So with that are there any other preliminary

10 matters that we need to address before I call the

11 commissioners in?

12 Mr. Schifman.

13 MR. SCHIFMAN: Yes, that second bucket that you

14 just described what -- how does that go as far as the order?

15 Is that with panel four and five or is that after panel four

16 and five?

17 JUDGE FRIEDLANDER: That would be after the

18 surrebuttal panels which are actually four and five, yes.

19 And I have that there are about eight witnesses that Sprint

20 intends to call. And I assume those are going to be done

21 individually?

22 MR. SCHIFMAN: Yes.

23 JUDGE FRIEDLANDER: And, actually, it will be the

24 sponsoring party calling the witness. And then you'll be

25 allowed to cross-examine. But I have down Mr. Reynolds,

0157

 1 Mr. Jones, Mr. Bailey, Mr. Shafer, Mr. Hunsucker,

 2 Mr. Brigham, Mr. Vasconi and Ms. Liu?

 3 MS. ENDEJAN: I believe that's correct. And it

 4 may be possible, Your Honor, that because sometimes these

 5 issues merge that the need to cross-examine in the second

 6 bucket may be alleviated by what we talk about on some of

 7 the other panels.

 8 JUDGE FRIEDLANDER: Certainly. Understood. Okay,

 9 thank you. Are there any other preliminary matters before

10 we take a brief recess? Okay. Hearing nothing we'll be on

11 recess.

12 (Break taken from 9:27 to 9:38 a.m.)

13 JUDGE FRIEDLANDER: We'll go back on the record.

14 I will note that I'm now joined by Chairman Jeffrey Goltz to

15 my immediate right, Commissioner Patrick Oshie and

16 Commissioner Philip Jones.

17 We'll go ahead and begin with opening statements.

18 Due to the amount of work ahead of us I am going to go ahead

19 and limit those to 15 minutes each. And giving the opening

20 statement on behalf of Qwest CenturyLink, Mr. Simshaw.

21 MR. SIMSHAW: Thank you.

22 Good morning, Mr. Chairman, Commissioners and Your

23 Honor. My name is Calvin Simshaw, I am an in-house counsel

24 with CenturyLink. And as Your Honor noted, I will be

25 delivering the opening statement on behalf of both the Joint

0158

 1 Applicants if this case. And we certainly appreciate the

 2 opportunity to deliver these initial remarks.

 3 This is not the first time that CenturyLink has

 4 stood before this Commission as the acquirer of telephone

 5 operating properties in the state of Washington. In 1997

 6 CenturyLink acquired PTI Communications. I was on the PTI

 7 communications end of that particular transaction. More

 8 recently in 2009 CenturyLink acquired the Embarq properties

 9 including those operating properties within the state of

10 Washington. As a consequence, CenturyLink is certainly a

11 known entity to the Commission when it comes to acquiring

12 and successfully operating properties within the state of

13 Washington.

14 Nonetheless, throughout this process the

15 Commission Staff and the Public Counsel repeatedly reminded

16 Joint Applicants that this is a big deal. It's after all

17 not every day that there's a change in control of the

18 largest ILEC in the state. We get that. And as a

19 consequence this has been a very involved process. The

20 Joint Applicants have responded to more than 500 data

21 requests. There has been thousands of pages of testimony

22 and exhibits submitted. There have been numerous technical

23 and settlement conferences.

24 Nor is Washington alone in its scrutiny of this

25 transaction. To date 17 states and the Department of

0159

 1 Justice have approved the transaction. Colorado, Nebraska,

 2 and Utah, just within the last few days, have issued their

 3 orders approving the transaction. There still remain four

 4 outstanding state approvals, as well as the FCC. The

 5 remaining states are Minnesota, Arizona, Oregon and, of

 6 course, Washington. This hearing represents the last

 7 evidentiary hearing before state commissions.

 8 As the Commission listens to the testimony and

 9 arguments we would urge that you keep in mind how this

10 transaction can be differentiated, and should be

11 differentiated, from other transactions that the Commission

12 may have reviewed in recent years.

13 It's important to note what you have and what you

14 don't have in this transaction. What you have are two

15 parties, CenturyLink and Qwest, who have a long history of

16 providing high quality service in the state of Washington.

17 What you do not have is a party that is receiving a pile of

18 cash and leaving the state. This is a stock transaction.

19 As such there is no cash changing hands and there is no

20 party that's attempting to exit the state. The shareholders

21 of both companies will continue to be heavily invested in

22 providing telecommunication services in the state of

23 Washington.

24 One of the areas you're likely to hear substantial

25 testimony and discussion of, and this is fairly typical of

0160

 1 these types of transactions, is in the area of systems

 2 integration. And, again, there is a basis to distinguish

 3 this transaction from some others that you may be familiar

 4 with.

 5 In this case the combined company will keep the

 6 Qwest systems and the employees. This is significant. This

 7 means that the combined company will not have to try to

 8 operate systems without having the employees that are

 9 familiar with and maintaining those systems.

10 The commission is going to hear from two

11 settlement panels this morning. These basically can be

12 divided with the terms retail settlements and wholesale

13 settlements.

14 On the first retail panel this arises as a result

15 of the fact that the Joint Applicants have entered a very

16 comprehensive settlement with the Commission Staff and the

17 Public Counsel. There is also an add-on settlement with the

18 Department of Defense. As you listen to that panel we think

19 you will see that the Staff and the Public Counsel have done

20 precisely the detailed and in-depth analysis that one would

21 expect with a transaction of this magnitude.

22 The settlement agreement covers 27 conditions, as

23 well as some sub parts. In our view these address all the

24 areas potentially impacting public interest. These include

25 financial reporting, and that includes synergy tracking and

0161

 1 earnings review. The settlement has terms on quality of

 2 service. There are caps or freezes on rates for basic

 3 services. There are provisions relating to integration

 4 issues. And there's a multitude of other conditions that

 5 apply to an assortment of consumer issues.

 6 I will not attempt to go through or burden you

 7 with my attempt at a description of the detail of each of

 8 those conditions. You will have access to a settlement

 9 panel with people that are more qualified to talk about

10 that.

11 One area of the settlement though that I would

12 like to touch upon just briefly is in the area of a

13 broadband commitment. The record in this docket shows that

14 with respect to the availability of broadband services

15 CenturyLink and Qwest are starting at a point that is

16 advanced beyond that which the Commission dealt with in the

17 Frontier and Verizon case. Even so, Staff and Public

18 Counsel were extremely aggressive in negotiating a broadband

19 commitment. And at the end of the day they succeeded in

20 extracting a commitment in Washington, a broadband

21 investment commitment that is higher than that in any of the

22 other states involved in this transaction.

23 Let me move to the second area which is, of

24 course, the wholesale issue. As the Commission is probably

25 painfully aware, when you put ILECs and CLECs in the same

0162

 1 room you will quite often generate a very contentious

 2 environment. This case is no exception. I would observe

 3 that in this case the CLECs, in particular Integra Telecom,

 4 were extremely engaged in the transaction and its review and

 5 scrutiny.

 6 The second settlement panel on wholesale issues

 7 will deal with a comprehensive settlement that the Joint

 8 Applicants entered with Integra Telecom as a result of some

 9 very substantial and far-reaching negotiations. Also the

10 subject of that panel is a more basic settlement between the

11 Joint Applicants and 360networks.

12 As I stated, in our view the Integra settlement

13 covers all legitimate merger related CLEC or wholesale

14 issues. These include OSS integration, service performance

15 assurances and extension of existing agreements. Again, I

16 will not attempt to go into detail on the various conditions

17 in that settlement, as once again you will have access to a

18 panel of experts that are very qualified to discuss that.

19 It is important to note that the terms of the

20 Integra settlement, and they are comprehensive in nature,

21 are available to all CLECs, whether those CLECs were parties

22 to this docket or not. Nonetheless, you are going to hear

23 from the nonsettling CLECs claims that the terms of the

24 Integra settlement, as comprehensive as it is, does not

25 address all of the issues that they have with CenturyLink

0163

 1 and Qwest.

 2 This is not surprising. We don't feel that it

 3 should address all issues. The issue here is not whether it

 4 addresses all the issues that the CLECs may have identified.

 5 The issue here is whether it addresses the legitimate merger

 6 related issues.

 7 As you listen to the testimony and arguments of

 8 the nonsettling CLECs you will note that in many instances

 9 they seek favorable resolution of nonmerger related industry

10 issues that heretofore they have either lost or have failed

11 to gain traction of in other commission dockets or

12 arbitration, FCC or court proceedings. We urge that the

13 Commission not confuse this CLEC wish list with the

14 legitimate merger related issues.

15 I would like to spend just one quick moment

16 commenting on the parties who did not participate in this

17 docket. AT&T Wireless and Verizon Wireless are not here.

18 Comcast is not here. Google and Microsoft are not here.

19 Now, I mention these parties because they represent the real

20 competitors that CenturyLink and Qwest must face whether

21 these companies merge or not. These are very large

22 nonregulated entities.

23 CenturyLink and Qwest need to combine to gain the

24 strength to be effective competitors with these entities.

25 Only then will the state of Washington have a viable

0164

 1 wireline competitive alternative to these entities. And

 2 only then will CenturyLink and Qwest be in a position to

 3 continue to provide service in higher cost areas that these

 4 entities have chosen not to invest in or provide services

 5 in.

 6 Finally, pursuant to my lawyerly duties I need to

 7 comment just quickly on standard of a review. The

 8 Washington Administrative Code at 480-143-170 provides that

 9 no transaction can be inconsistent with the public interest.

10 Over time the Commission has interpreted this to create a no

11 harm standard.

12 In conclusion, we submit that the record will show

13 that this transaction, subject to the conditions contained

14 in the comprehensive retail and the comprehensive wholesale

15 settlements, and with no need for additional conditions,

16 clearly meets that standard.

17 Thank you.

18 JUDGE FRIEDLANDER: Thank you, Mr. Simshaw. And I

19 would ask now if Staff is ready to provide their opening

20 statement?

21 MS. CAMERON-RULKOWSKI: Yes, Your Honor.

22 JUDGE FRIEDLANDER: Thank you.

23 MS. CAMERON-RULKOWSKI: Good morning,

24 Mr. Chairman, Commissioner Jones, Commissioner Oshie and

25 Judge Friedlander.

0165

 1 Staff is here today to support the settlement it

 2 entered into with the Joint Applicants and Public Counsel.

 3 The conditions in the settlement contain protections for all

 4 stakeholders. And Staff believes that these conditions

 5 render the transaction consistent with the public interest.

 6 Does the settlement cover the entire known universe of

 7 potential harms from the transaction? No. Staff has

 8 confidence, however, that the settlement conditions mitigate

 9 and offset those potential harms to the public interest that

10 are vital to address in this transaction.

11 Other settlements have been filed in this docket.

12 And I will just note here that Staff does not oppose any of

13 these. Each telecommunications merger in this state has

14 been unique. And Staff has made different recommendations

15 about what was in the public interest for each one.

16 The Commission has a history of examining each

17 such transaction based on the particular circumstances

18 surrounding the transaction. This transaction is the

19 largest telecommunications merger in Washington in recent

20 history in terms of the number of access lines and the

21 number of customers affected.

22 Both of the applicants have long histories as

23 regulated companies and long histories in Washington. Staff

24 and Public Counsel have worked with these companies for

25 years. While the companies are known entities, as

0166

 1 Mr. Simshaw mentioned, and from Staff's regulatory

 2 perspective are not bad actors, there are risks of harm to

 3 the public interest associated with this transaction. Staff

 4 considered these circumstances as it analyzed the issues and

 5 as it negotiated a settlement to mitigate the risks of harm.

 6 Staff identified what it considered to be the

 7 central issues in this proceeding after months of

 8 investigation and analysis. The settlement addresses

 9 Staff's issues including financial issues, broadband

10 deployment, service quality, retail pricing, operational

11 support systems, network integration, WTAP, that's W-T-A-P,

12 911 and rate center consolidation, as well as general

13 reporting and monitoring in many of these areas.

14 I would like to highlight the breadth of the

15 monitoring provided for in the settlement by pointing to the

16 financial condition in -- or the financial reporting in

17 Condition 1, which will allow the Commission to track

18 intercompany receivables and payables for the

19 posttransaction local operating companies in Washington.

20 Condition 4 which requires CenturyLink to report synergy

21 savings and merger costs to the Commission. Condition 13

22 which requires CenturyLink to report capital expenditures

23 and budgets for capital expenditures in Washington.

24 Condition 14 which provides for progress reports on

25 broadband deployment, service quality reporting conditions.

0167

 1 Service quality reports requirements in Conditions 16 and

 2 17. OSS integration status reports and OSS conversion

 3 notifications in Condition 22. Notification requirements

 4 related to replacement or integration of Qwest OSS systems

 5 in Condition 23. Condition 24's requirement of advance

 6 notice of rearrangements of major network components.

 7 Notification of the completion of OSS system conversions or

 8 integration required in Condition 25. And required

 9 reporting on lifeline complaints in Condition 26.

10 One issue that the settlement addresses in a small

11 but significant way is the issue of access charges. This is

12 an issue that Sprint discusses in depth in its prefiled

13 testimony, but which Staff believes would be better

14 addressed in CenturyLink and Qwest's upcoming AFOR

15 proceedings rather than in this merger proceeding.

16 Accordingly, Staff wholeheartedly supports

17 settlement Condition 3 which provides for an AFOR proceeding

18 for all of CenturyLink's post-merger local operating

19 companies in three to four years after closing and

20 guarantees that access charges will be an issue in that AFOR

21 proceeding.

22 Mr. Simshaw alluded to the effort that has gone

23 into analyzing this transaction. To reach its positions in

24 this settlement Staff issued over 160 data requests,

25 reviewed hundreds of data request responses, reviewed

0168

 1 Commission filings and other public documents relating to

 2 the Joint Applicants, conducted internal Staff discussions,

 3 followed some of the merger proceedings in other

 4 jurisdictions, participated in large group, small group and

 5 one-on-one technical conferences with the Joint Applicants

 6 and other parties and further discussed issues with various

 7 parties during many settlement meetings.

 8 Staff's policy witness is Mr. Mark Vasconi. He

 9 authored prefiled responsive testimony for Staff, as well as

10 testimony in support of the settlement. And he will be

11 available to answer questions about the settlement

12 conditions on the panel.

13 That concludes Staff's opening statement.

14 JUDGE FRIEDLANDER: Thank you. Mr. ffitch.

15 MR. FFITCH: Thank you. Good morning, Chairman

16 Goltz, Commissioners and Judge Friedlander.

17 I do not have much to add to the statements of

18 Joint Applicants and Staff, so my opening statement

19 hopefully will be reasonably brief.

20 Public Counsel supports the settlement agreement

21 with Joint Applicants and Staff because it contains, in our

22 view, conditions and commitments which we believe adequately

23 mitigate the potential harm posed to the public interest by

24 the merger as filed.

25 Key elements of the negotiated settlement from

0169

 1 Public Counsel's perspective include the broadband

 2 commitment about which you've already heard from Joint

 3 Applicants, which is the largest broadband commitment of any

 4 state involved in the merger. And I would note also

 5 includes the largest dollar allocation to unserved and

 6 underserved areas of any commitment of any state.

 7 Secondly, multiyear rate protection for all

 8 CenturyLink residential and business customers and also for

 9 all Qwest residential and business customers.

10 Thirdly, it was very important to us to see that

11 the agreement included provision for a full earnings review

12 at the time of the upcoming AFOR and appropriate filing

13 requirements for the financial information be provided to

14 the Commission at that time so that it was in a position to

15 conduct that review.

16 And, finally, the tracking and reporting of

17 synergies for consideration in that future AFOR.

18 Other provisions are also important to us, but I

19 wanted to specifically highlight those four as being

20 particularly significant from our perspective.

21 Public Counsel's focus in this case has been on

22 the retail impacts of the merger in keeping with our role as

23 a representative of residential and small business

24 customers. We have no objection to, and have agreed to the

25 wholesale provisions incorporated in the settlement

0170

 1 agreement with Joint Applicants and Staff.

 2 Public Counsel does not take any position with

 3 respect to the other wholesale issues being raised by other

 4 parties in the case with one exception, Public Counsel

 5 agrees with Staff and Joint Applicants that this docket is

 6 not the appropriate proceeding in which to consider access

 7 charge issues.

 8 In conclusion, Public Counsel would request that

 9 the Commission approve the settlement between Joint

10 Applicants, Public Counsel and Staff for the reasons set

11 forth in the joint testimony including the testimony of

12 Stephanie Johnson on behalf of our office. Ms. Johnson is a

13 member of the settlement panel, which will be seated

14 shortly, and will be available to respond to additional

15 questions regarding our support for the settlement. Thank

16 you very much.

17 CHAIRMAN GOLTZ: Judge, may I ask a question?

18 JUDGE FRIEDLANDER: Certainly.

19 CHAIRMAN GOLTZ: Mr. ffitch, do you agree with

20 counsel for the applicants that we should judge this on a no

21 harm standard?

22 MR. FFITCH: Yes, Your Honor.

23 CHAIRMAN GOLTZ: Is that because you think that's

24 required by law or that's simply just following Commission

25 precedent that is not required by law.

0171

 1 MR. FFITCH: Your Honor, we're comfortable that

 2 under the existing state of statutory law in Washington with

 3 the gloss of many years of Commission interpretation that

 4 the no harm standard is the correct standard for

 5 telecommunication mergers. As you're aware, Your Honor, the

 6 standard for energy mergers is the form of the net benefit

 7 standard. So we do not contest that the no harm standard is

 8 the correct standard.

 9 CHAIRMAN GOLTZ: Thank you.

10 JUDGE FRIEDLANDER: Thank you. Okay.

11 Mr. Melnikoff.

12 MR. MELNIKOFF: Thank you, Your Honor. Good

13 morning, Mr. Chairman, Commissioners, Judge.

14 I am Stephen Melnikoff appearing on behalf of the

15 United States Department of Defense and all other Federal

16 Executive Agencies. DoD/FEA is participating in this

17 proceeding as both a customer of Qwest and CenturyLink. As

18 we noted in our petition for intervention, DoD/FEA is one of

19 the largest users of telecommunication services in the state

20 of Washington with numerous military installations, civilian

21 offices that require a variety of services ranging from very

22 simple exchange services to very large complex systems.

23 It is essential to the federal agencies that we

24 receive high quality state-of-the-art performance at

25 reasonable cost, that this transaction not result in any

0172

 1 harm or degradation of service or unreasonable pricing of

 2 services has formed the foundation of our participation.

 3 Dod/FEA submitted prefiled testimony of our expert

 4 Charles King. Mr. King identified potential benefits

 5 associated with the transaction, but he noted concern as to

 6 basically three aspects.

 7 First, he observed that the cost of the

 8 transaction and integrating the companies must not be born

 9 by the customers, by the Applicants' customers.

10 He also recommended that the merged company offer

11 a retail service guarantee program as a step to insure

12 service does not suffer through the integration process.

13 Finally, Mr. King noted a concern unique to

14 DoD/FEA, the possibility that CenturyLink employees will not

15 have the required security clearances to work on current or

16 future government contracts that require such clearances.

17 That was a publicly alerted concern by CenturyLink,

18 announced by CenturyLink, in this summer in one of its ten Q

19 filings at the FCC.

20 Subsequent to filing that testimony DoD/FEA

21 participated in the discussions that lead to the settlement

22 agreement among the Staff, Public Counsel and the

23 Applicants. We also met with the Applicants to seek

24 resolution of our concerns. As a result of those meetings

25 and the agreements that resulted therefrom we believe that

0173

 1 grant of the joint application with associated agreements is

 2 in the public interest. All of DoD/FEA's contested issues

 3 are resolved.

 4 Other parties will address the benefits that flow

 5 from the Staff, Public Counsel, Applicants agreement. Our

 6 settlement builds on that agreement and includes two

 7 important features. First, the DoD agreement insures that

 8 government contracts are not jeopardized by the absence of

 9 employees holding the requisite security clearances. The

10 agreement states in part that CenturyLink and Qwest affirm

11 that no organizational or personal changes will impair

12 either the post-merger companies of building to perform

13 under existing contracts or its ability to bid on new

14 contracts that require security clearances of the company's

15 personnel. By recognizing the importance of and committing

16 to maintaining staff with necessary clearances Applicants

17 have dealt adequately with DoD/FEA's concerns and have

18 obviated the need for the Commission action on this point.

19 Second, Applicants agree to make an individual

20 case basis, ICB filing, with the Commission that commits not

21 to increase certain basic business service rates paid by the

22 Federal Executive Agencies and DoD pursuant to current

23 tariffs or price lifts for a three year period. This

24 provision alleviates DoD/FEA's concern that federal agencies

25 may be subject to rate increases for competitively

0174

 1 classified services that may be based in whole or in part on

 2 Applicants' need to recover transaction or integration

 3 costs.

 4 This rate stability assurance is an exchange for

 5 DoD/FEA's commitment to Applicants to maintain the federal

 6 agencies billings in Washington and a minimum of 90 percent

 7 of the average quarterly billings preceding the four

 8 quarters preceding the date of the agreement, essentially

 9 it's rate stability assurance in exchange for revenue stream

10 assurance for the Applicants.

11 Because the commitments are filed as an ICB in

12 accordance with the Commission's rules and practice, those

13 terms will be available to similarly situated customers

14 pursuant thereto. The Colorado and Utah Commissions

15 recently approved settlement agreements exactly similar to

16 the price cap that we just talked about and the security

17 clearance provision.

18 Also the DoD/FEA agreement insures that all

19 service quality requirements that are part of a Commission

20 order on the merger will be applicable to services provided

21 to the federal agencies under our settlement.

22 This provision and the provisions of the Staff,

23 Public Counsel settlement satisfy all of DoD/FEA's initial

24 concerns about the possible degradation of service quality

25 resulting from the integration process.

0175

 1 The DoD agreement, while the product of gives and

 2 takes of the negotiation process, provides Applicants and

 3 ratepayers in general benefits that will enhance the merger

 4 of the applicants. Given those benefits and resolving all

 5 DoD/FEA's contested issues, DoD/FEA can now urge the

 6 Commission to approve the transaction and the DoD agreement

 7 as being in the public interest. I would note that no

 8 parties, including the Staff and Public Counsel, opposed the

 9 DoD/FEA settlement. Thank you very much.

10 JUDGE FRIEDLANDER: Thank you. Mr. Schifman.

11 MR. SCHIFMAN: Good morning, Commissioners,

12 Mr. Chairman, Commissioner Oshie, Commissioner Jones and

13 Judge Friedlander. May it please the Commission, my name is

14 Ken Schifman, and I am here representing Sprint.

15 We heard from the Joint Applicants that they don't

16 believe some of their real competitors are here today.

17 Sprint does believe that we are a real competitor to

18 CenturyLink and Qwest. We compete with CenturyLink and

19 Qwest in the enterprise market, in the corporate market,

20 business market, and our wireless services compete with

21 their residential services. So we do believe that we are a

22 real competitor to the Joint Applicants, and we have real

23 concerns that this merger before it becomes approved needs

24 to be addressed.

25 We are here to examine whether the merger between

0176

 1 the two largest ILECs with over 74 percent of the ILEC lines

 2 in the state is in the public interest.

 3 The Commission has recently had to make this

 4 determination when confronted with the CenturyLink/Embarq

 5 merger in 2009, and the Verizon Frontier merger in 2010,

 6 which the Commission noted made the CenturyLink/Embarq

 7 merger pale in comparison. However, this merger makes the

 8 Frontier Verizon merger pale in comparison and requires

 9 substantially more scrutiny from the Commission.

10 In previous telecom mergers the Commission

11 addressed the public interest by taking into consideration

12 several important factors including--and this was noted in

13 the Verizon Frontier merger--the impact on competition at

14 both the wholesale and retail level including whether the

15 transaction might distort or impair the development of

16 competition.

17 Sprint has presented testimony from its witness,

18 Jim Appleby, that unequivocally establishes that the merger

19 will cause harm to the development of competition in this

20 state. Mr. Appleby's testimony focuses on two key sources

21 of this harm. The first is the significant imbalance in the

22 high rates that Qwest and CenturyLink charge for intrastate

23 switched access.

24 While the merger will allow Qwest to avoid paying

25 CenturyLink exorbitant charges on an economic basis, Qwest

0177

 1 competitors like Sprint will have to pay them. Which gives

 2 Qwest a tremendous pricing advantage in the enterprise and

 3 business market, and also an advantage because Sprint's

 4 wireless company pays switched access charges to these two

 5 ILECs.

 6 The second source of competitive harm stems from

 7 the Joint Applicants unwillingness to allow competitors to

 8 simplify and unify the complicated interconnection

 9 agreements that both wireless companies and wireline CLECs

10 enter into with the ILECs.

11 None of the settlement agreements provide any

12 solution to these two competitor harms which is why Sprint

13 opposes these settlement agreements. In fact, a proposed

14 agreement with the Staff actually increases the harm that

15 this merger does because it pushes any opportunity for

16 meaningful access charge reductions out for at least four to

17 five years.

18 While Sprint appreciates the fact that Staff is

19 considering access charges, we do think that the settlement

20 agreement that Staff reached, which pushes out the AFOR

21 reviews of both Qwest and CenturyLink for four years, up to

22 four years, is a net detriment because we won't be allowed

23 to pursue these issues either here, as part of the merger

24 review or any other subsequent proceedings. So Sprint does

25 believe, while we recognize Staff has put in a lot of work

0178

 1 into its settlement with the Joint Applicants, we do believe

 2 that that particular issue causes a net harm and a net

 3 detriment.

 4 The Commission has stated in previous mergers, and

 5 in a discovery order in this proceeding, "That the merger's

 6 impact on access charges and competition is within the

 7 purview of our examination." Accordingly we ask the

 8 Commission to conduct such an examination.

 9 Sprint opposes settlement agreements as they do

10 not fix the competitive harms that will result from this

11 merger as identified by Mr. Appleby, Sprint's witness in

12 this proceeding. Sprint opposes these settlements as they

13 only address wholesale conditions in the Qwest territory.

14 CenturyLink indicated that the Integra settlement could be

15 signed on to by various -- by other CLECs. But unless the

16 Commission orders that all the terms and conditions of the

17 Integra settlement be made available to other CLECs, then we

18 have no opportunity to sign on to it because it basically

19 says that you have to support them in this merger

20 proceeding, and obviously Sprint is not prepared to do that.

21 None of the conditions apply to the Embarq and

22 CenturyTel ILECs and their interconnection commercial and

23 wholesale agreements with wireless providers and CLECs. The

24 integra settlement agreement just deals with proceedings and

25 interconnection agreements and commercial agreements in the

0179

 1 Qwest territory. Well, Sprint purchases switched access, it

 2 has interconnection agreements, it has other types of

 3 agreements for special access within the CenturyLink

 4 territories here in Washington, as well. The fact that the

 5 Integra settlement that is being pushed here does not apply

 6 to any of the CenturyLink territories we believe is a major

 7 problem that needs to be addressed.

 8 Sprint is the third largest wireless carrier in

 9 the country and has rolled out 3G and 4G wireless services

10 in the state of Washington and across the country without

11 the benefit of receiving intrastate switched access charges

12 from its competitors. We can't charge anybody switched

13 access charges. So when one of our customers calls

14 CenturyLink customers we have to pay their charges. Their

15 customer calls our customer, we can't collect intrastate

16 access charges.

17 And the amounts for switched access charges here

18 in the state are really quite high. The Qwest rates are 2

19 cents a minute which is multiple times the .0007 rate that

20 applies for most local traffic. And the CenturyLink rates

21 range all the way up to for one of its companies, 14 cents a

22 minute. We believe this is an issue that needs to be

23 addressed. And there are merger related harms that arise

24 from these high access charges because of the combination of

25 these two ILECs and their IXC affiliates.

0180

 1 Instead of addressing a proposed condition

 2 regarding these access charges, as I said earlier, the Staff

 3 settlement delays any consideration of the access charges

 4 for at least four years when Qwest and CenturyLink are to

 5 make their AFOR initial filing. Qwest was slated to file a

 6 new AFOR in the first quarter of 2011. In the CenturyLink

 7 ILECs, according to the merger order that you approved when

 8 CenturyTel and Embarq merged, were slated to file their AFOR

 9 in 2014. Now this settlement doesn't require AFOR filings

10 for both the Qwest and CenturyLink ILECs until 2015,

11 cementing in stone their access advantages and the

12 competitive harms due to these ridiculously high intrastate

13 access charges.

14 Staff rationalizes this position claiming that

15 this delay will give the Commission time to determine the

16 amount of synergy savings. But the truth is that the merged

17 firm will begin realizing synergies from day one because of

18 the "owners economics," as explained by Mr. Appleby in his

19 testimony, that will occur once the merged firm is able to

20 route traffic over its significantly expanded local network.

21 Sprint is not proposing major access charge reform

22 but is simply asking the Commission to put in place a

23 condition when approving the merger that removes the

24 competitive harm due to the imbalance between the Qwest and

25 CenturyLink access charges. The access conditions proposed

0181

 1 by Sprint are not meant to engage in this type of major

 2 reform. They are meant to specifically address merger

 3 related harms identified by Mr. Appleby and if imposed will

 4 temper the possibilities that the merger will distort or

 5 impair competition--remember, that's the standard the

 6 Commission used in the Frontier and Verizon order--and

 7 thereby allowing the Commission to find the mergers in the

 8 public interest.

 9 In addition to the access charge issues Sprint

10 objects to the Staff settlement in the Integra, 360 and DoD

11 settlements for other reasons. Those settlements are

12 inadequate means to insure that the merger does not "distort

13 or impair the development of competition." Sprint objects

14 to those settlements for six reasons, in addition to the

15 access issues that I explained earlier.

16 Number one, the settlements do not require that

17 the CenturyLink interconnection agreements be extended, they

18 only apply to the Qwest agreements.

19 Number two, the extensions are for only three

20 years and not for four years. And we believe four years is

21 a more appropriate timeframe.

22 Number three, they do not allow for the porting of

23 interconnection agreements between states or between the

24 Qwest and CenturyLink entities into a consolidated Qwest,

25 CenturyLink, Embarq interconnection agreement. In other

0182

 1 words, we don't get the opportunity to merge together our

 2 interconnection agreements. The companies are merging

 3 together achieving all kinds of synergies from doing so, but

 4 we're not able to achieve those same synergies in our

 5 interconnection agreements. More interconnection agreements

 6 we have to manage, the different rates that are involved,

 7 the higher costs that imposes on competitors.

 8 Number four, the conditions do not require single

 9 point of interconnection that be made available. As I just

10 said, the companies are merging together, they're merging

11 their networks together, we should be able to have a single

12 point of interconnection between our networks and the new

13 merged company's networks.

14 Number five, they do not prevent the now third

15 largest ILEC in the country from claiming exemptions from

16 competition due to the rule exemption.

17 And, number six, these settlement agreements

18 contain no condition on enforcement of the merger condition.

19 This brings me to another point. Just because

20 certain settlements have been reached the Commission must

21 still make its, quote, public interest determination based

22 upon a full record that includes testimony supporting the

23 settlement agreements and testimony that opposes them.

24 Sprint will address the settlement agreements and

25 supplemental testimony that our witness, Jim Appleby, will

0183

 1 provide orally.

 2 Sprint urges the Commission to not ignore the

 3 testimony offered by Sprint and the other interveners

 4 offered before the settlement because we have the

 5 settlements here before us. Yes, they're important. Yes,

 6 they need to be addressed. But we believe that there's

 7 other issues that need to be reviewed, as well, and that the

 8 Commission should not ignore those issues.

 9 JUDGE FRIEDLANDER: Mr. Schifman, I think you've

10 went a little bit over your 15 minutes. So if you want to

11 go ahead and wrap things up.

12 MR. SCHIFMAN: I'll wrap up here.

13 JUDGE FRIEDLANDER: Thank you.

14 MR. SCHIFMAN: Two quick points to wrap up here.

15 Sprint does suggest that the Commission scrutinize

16 the broadband commitment. One reason is that CenturyLink

17 when it bought Embarq made a commitment to the FCC to role

18 out broadband in 100 percent of its territory. We think

19 that the Commission needs to review and examine whether the

20 broadband commitment made here, how that overlaps or is

21 already covered by the commitment made to the FCC.

22 Now I'll sum up. In sum, the Commission must do a

23 thorough independent review of the merger and the proffered

24 settlement agreements and not assume that all the issues

25 have been settled. The Commission did that in reviewing the

0184

 1 CenturyTel/Embarq merger and the Frontier and Verizon merger

 2 where it actually added conditions over and on top of what

 3 the Staff and the other parties' settlements with the

 4 Applicants.

 5 Here in reviewing the merger of the largest ILEC

 6 in the state we think it's even more important for the

 7 Commission to do its independent and thorough review.

 8 Sprint suggests that the Commission impose the conditions

 9 recommended by Sprint to insure that the public interest

10 standard is met and address the competitive harms that will

11 be caused by the merged firms unconsolidated intrastate

12 access rates. This should be addressed now and not in some

13 future AFOR review three to four years down the line.

14 In addition, merger approval should be conditioned

15 on extending all the interconnection and wholesale agreement

16 conditions to the CenturyLink ILEC's agreements and allow

17 the parties to consolidate and port their interconnection

18 agreements. This is very important from a competitive

19 perspective.

20 I appreciate the opportunity to appear before

21 everybody here at the Washington Commission and look forward

22 for the rest of the hearing.

23 JUDGE FRIEDLANDER: Thank you. Mr. Trinchero.

24 MR. BUTLER: Excuse me, Your Honor. I might just

25 interject. I indicated that I didn't need to make an

0185

 1 opening statement on behalf of 360. But in light of

 2 Mr. Schifman's statements I think I need to make a brief

 3 opening statement.

 4 JUDGE FRIEDLANDER: Okay. Why don't we go ahead

 5 and have Mr. Butler, and then, Mr. Trinchero, we'll allow

 6 you to give your opening statement.

 7 MR. BUTLER: 360networks intervened in this

 8 proceeding because it was concerned that the transaction

 9 proposed by the Joint Applicants could adversely impact the

10 competition in Washington, and in particular 360network's

11 rights and abilities to obtain interconnection and related

12 services that it needs to provide services.

13 In particular, the problem that 360 faced is the

14 fact that its interconnection agreement expired in March of

15 2009 and continues in effect on a month to month basis. 360

16 was concerned that with the introduction of new management

17 the new entity would decide not to continue the existing

18 interconnection agreement and would also change the template

19 agreement for successor agreements. And so 360 entered into

20 a settlement that the terms of which allowed 360network's

21 interconnection agreement to be extended for a period of

22 three years and allowed 360 to negotiate successor

23 agreements using the existing template of its agreement.

24 And, in addition, the terms of the agreement said

25 that 360 would be able to benefit from any conditions that

0186

 1 was subsequently placed by the FCC. That's why it felt that

 2 it wasn't disadvantaged by not resolving the other wholesale

 3 issues.

 4 In no way does the 360 settlement affect the

 5 rights of any other entity nor resolve any of the wholesale

 6 issues with respect to them. So, contrary to Mr. Schifman's

 7 statement, the 360networks' settlement would not impact

 8 Sprint's ability to argue about or resolve any wholesale

 9 issue. Thank you.

10 MR. MELNIKOFF: Your Honor.

11 JUDGE FRIEDLANDER: Yes.

12 MR. MELNIKOFF: I'm sorry to interject. Could I

13 ask for a clarification? I thought I heard Mr. Schifman in

14 Sprint's opening remarks say that they objected to the

15 Staff's, Public Counsel's and DoD's settlement. I don't

16 believe I've heard that they've objected to DoD's settlement

17 ever before. Is that -- did I mishear you?

18 JUDGE FRIEDLANDER: Mr. Schifman, would you please

19 answer.

20 MR. SCHIFMAN: Well, Sprint didn't file testimony

21 regarding the DoD settlement. We do believe it's a

22 settlement made available to one retail customer and terms

23 should be made available to wholesale customers, as well.

24 So I don't have any specific objection to the DoD

25 settlement. And Sprint didn't provide any testimony on

0187

 1 that. So I would say we take no position on the DoD

 2 settlement.

 3 MR. MELNIKOFF: Thank you, Your Honor.

 4 JUDGE FRIEDLANDER: Thank you. Mr. Trinchero.

 5 MR. TRINCHERO: Thank you, Judge Friedlander,

 6 Mr. Chairman, Commissioners. My name is Mark Trinchero, and

 7 I'm here today representing XO Communications, tw telecom,

 8 Pac-West Telecomm, McLeod USA Telecom d/b/a PAETEC Business

 9 Services, Covad Communications and Charter Fiberlink. In

10 addition, Level 3 Communications and Cbeyond Communications,

11 who are represented in this proceeding by Mr. Butler, have

12 agreed to have me deliver this opening statement on their

13 behalf, as well.

14 My clients are both wholesale customers of the

15 Joint Applicants and competitors. Apparently, according to

16 the Joint Applicants, we are not the real competitors in the

17 state; however, we do believe that this cross-section of

18 competitors represents a substantial and significant amount

19 of the competition in the state, including competitors not

20 only of Qwest but of CenturyLink. For example, Charter

21 Fiberlink provides services not only in Qwest territory but

22 in many of the rural parts of the state that are served by

23 CenturyLink.

24 My clients have intervened in this proceeding in

25 order to urge the Commission to counterbalance the risks of

0188

 1 harm to the competitive market in the state of Washington

 2 inherent in the proposed transaction by adopting a number of

 3 proposed conditions that would act as a means of mitigating

 4 these risks.

 5 The riskiness of mergers of this magnitude are

 6 discussed in detail in the prefiled testimony of Dr. Ankum

 7 and Mr. Gates, and I will not repeat them here. Those

 8 witnesses also provide a discussion of why competitors in

 9 the competitive market in the state are likely targets for

10 downsizing and other integration processes designed to

11 capture merger related synergies touted by the Joint

12 Applicants to be in the neighbor of over $600 million to be

13 realized over the next three to five years.

14 The Joint Applicants counter that CenturyLink and

15 its predecessor CenturyTel have strung together a series of

16 successful mergers including the recent merger with Embarq,

17 a company that was larger than CenturyTel when CenturyTel

18 acquired it.

19 In response to these arguments, in addition to the

20 fact that Qwest is, of course, a much larger acquisition

21 than was Embarq, I would like to paraphrase from the

22 cross-examination testimony of Dr. Ankum in the recent

23 hearings in the Oregon merger proceeding. Wherein

24 discussing the purported success of the recent Embarq merger

25 he stated, "Each merger is inherently different because of

0189

 1 merging of different cultures." With respect to the Embarq

 2 merger the jury is still out on that, but for the moment

 3 let's assume that that will work out as envisioned. That in

 4 no way is an assurance that now adding Qwest into this mix

 5 with a radically different culture is necessarily going to

 6 work out.

 7 In other words, past success in the business is no

 8 assurance at all of future success. And we're not saying

 9 that things will necessarily go wrong, all that we are

10 proposing is an insurance policy that if things do go wrong

11 the Commission should have in place certain conditions that

12 insulate competitors and competition.

13 The other thing you'll hear from the Joint

14 Applicants is that the settlement agreement with Integra

15 does exactly that. However, as detailed in the testimony

16 filed earlier this week by Mr. Gates, Mr. Pruitt of Charter

17 and Mr. Haas of PAETEC the conditions agreed to by Integra,

18 while they may protect the vital interests of Integra, are

19 not sufficient to protect the interests of other CLECs with

20 markedly different business plans and market entry methods.

21 Now, this morning the Joint Applicants said that

22 the Integra merger -- I'm sorry, the Integra settlement

23 addresses all legitimate merger related issues. Well, you

24 will hear from the remaining CLECs is simply a wish list of

25 items that have nothing to do with the merger. I believe

0190

 1 when you read the testimony that has been filed this week

 2 you will see that each and every one of the proposed

 3 conditions has to do with merger related harms. This is not

 4 simply a wish list of CLECs, this is proposed conditions

 5 related to potential harms that are meant to protect

 6 competitors just as are the conditions in the Integra

 7 settlement agreement. However, the conditions in the

 8 Integra settlement agreement are sufficient from the

 9 perspective of Integra which has a different business model

10 than these other CLECs.

11 While the Integra settlement agreement does

12 include a number of conditions that provide adequate

13 assurance to protect competitors in competition generally,

14 there are several areas where the Integra settlement

15 agreement conditions, or lack thereof, is woefully deficient

16 to sufficiently protect the interests of other competitors

17 and thus the competitive landscape in the state.

18 For this reason my clients, as well as Cbeyond and

19 Level 3, propose several important conditions not addressed

20 or addressed inadequately by the Integra settlement that the

21 Commission should impose in order to approve the merger in

22 the public interest.

23 First, in the Qwest legacy territory the merged

24 company should use and offer to wholesale customers the

25 legacy Qwest OSS for a minimum of three years. This is the

0191

 1 absolute minimum time period associated with the three to

 2 five year integration synergy timeframe CenturyLink has

 3 repeatedly forecasted. The Integra settlement timeframe is

 4 inadequate, it is only two years. It does not cover the

 5 minimum synergy time frame. And as a result, CLECs would

 6 face significant rick of harm related to OSS post-merger,

 7 especially those CLECs like PAETEC that have spent

 8 significant amounts of money to develop sophisticated

 9 interfaces with Qwest to insure realtime interactions with

10 Qwest to the benefit of end users.

11 Second, absent from the Integra settlement is any

12 requirement for third party OSS testing. The merged company

13 should be required to conduct independent third party

14 testing similar to that used in the Qwest 271 proceedings

15 for any OSS that replaces a Qwest OSS that has undergone

16 third party testing. Third party testing is critical in

17 determining the commercial readiness of OSS. CenturyLink

18 has never been through a Section 271 process. And its

19 systems have never been found to be 271 compliant.

20 The Commission should require CenturyLink and

21 Qwest to commit to the independent third party testing

22 provisions of the Joint CLEC condition 19B.

23 Furthermore, any replacement of a Qwest OSS must

24 result in true functional equivalence as described in

25 Mr. Haas' testimony.

0192

 1 Third, the applicable time periods for nonUNE

 2 commercial and wholesale agreements and tariffs should be at

 3 a minimum three years. Many CLECs rely significantly on

 4 nonUNEs--unbundled network elements, that's U-N-E, small

 5 s--purchased from Qwest under commercial and wholesale

 6 agreements and tariffs including special access in order to

 7 provide service to customers in Washington.

 8 These nonUNEs are typically the exact same

 9 functionalities as their UNE counterparts, the only

10 difference is in the terms and rates under which those

11 facilities are provided. Therefore, it is essential for

12 protection against merger related harm to cover the breadth

13 and diversity of local competition as it relates to

14 availability of wholesale services on which CLECs rely to

15 provide competitive service.

16 The applicable time periods in the Integra

17 settlement agreement for nonUNE offerings are as follows:

18 Commercial agreements 18 months, wholesale agreements 18

19 months and tariffs 12 months. These time periods are

20 significantly shorter than the minimum three year synergy

21 time frame, and they're also significantly shorter than the

22 minimum three year time period associated with

23 interconnection agreements in the Integra settlement.

24 These shorter time frames for nonUNE wholesale

25 agreements place CLECs to rely on them at a competitive

0193

 1 disadvantage relative to CLECs who purchase wholesale

 2 services as UNEs under interconnection agreements. CLECs

 3 should not be discriminated against or penalized because of

 4 their particular mode of entry.

 5 At an absolute minimum these agreements and

 6 tariffs should be extended for at least three years

 7 following merger closing to match the minimum three year

 8 synergy time frame and the applicable time frame for

 9 interconnection agreement extensions under this Integra

10 settlement agreement.

11 Fourth, competitors should not be permitted to

12 adopt or opt into any interconnection agreement to which

13 Qwest is a party in the same state or in any state to which

14 Qwest is an ILEC. This was covered also in Mr. Schifman's

15 opening statement.

16 The lack of any interconnection agreement porting

17 or cross-state adoption provisions in the Integra settlement

18 constitute a significant omission of necessary conditions to

19 insure the competitor's transaction costs do not increase as

20 a result of the proposed merger. This is particularly true

21 for competitors that operate in multiple CenturyLink and

22 Qwest service areas and who, therefore, have many different

23 agreements on a state-by-state basis with both Qwest and

24 CenturyLink.

25 To address these concerns the Commission should

0194

 1 adopt an additional condition that permits a competitor to

 2 adopt or opt into any interconnection agreement to which

 3 Qwest is a party in the same state or in any state to which

 4 Qwest is an ILEC subject to a state commission required

 5 terms and pricing to be included in the porting agreement.

 6 Fifth, the Commission should impose a condition

 7 that provides CLECs with the right to use a single point of

 8 interconnection per LATA for all of the merged company

 9 entities operating within the LATA. This is also similar to

10 a provision proposed by Sprint and discussed in

11 Mr. Schifman's opening statement; and, therefore, I will not

12 belabor that point.

13 I would simply mention that our proposal is

14 limited to situations in which the networks of the Joint

15 Applicants after merger are interconnected. If the Joint

16 Applicants post-merger have the ability to carry their own

17 traffic then they should also be required to carry the

18 traffic of competitors that choose to interconnect at only

19 one point on their network. This basic principle reflects

20 well-established nondiscrimination standard under Section

21 251 which requires the incumbent to provide interconnection

22 to the competitor on terms that are equivalent to what the

23 incumbent provides to itself.

24 Sixth, the merged company should commit to comply

25 with federal and state law as it relates to its directory

0195

 1 assistance and directory listing responsibilities in all of

 2 its ILEC territories just as Qwest currently does. The

 3 Integra settlement fails to address any of the Joint CLECs

 4 concerns with respect to CenturyLink's failure to provide

 5 wholesale access to directory listing and directory

 6 assistance functions in a nondiscriminatory manner.

 7 Currently, Qwest allows CLECs to submit its

 8 directory service requests to retain at or change a CLEC

 9 directory listing in the white and yellow pages directories

10 that Qwest causes to be published for its own customers

11 without charge. The merged company should be required to

12 follow that same pre-merger practice.

13 Seventh, Commission should impose a commitment

14 that prevents CenturyLink from avoiding its obligations as

15 an ILEC under Section 251(c) by using the rural exemption as

16 a shield against network interconnection obligations which

17 promote competition.

18 Although the Integra settlement addresses the

19 rural exemption issue it is limited to the rural exemption's

20 application to only the Qwest ILEC service territory.

21 Because this condition only applies to Qwest, and not to

22 CenturyLink, it is of limited use to competitors such as

23 Charter who provide service in Washington's smaller less

24 densely populated communities in competition with

25 CenturyLink.

0196

 1 CenturyLink's assertion of the rural exemption has

 2 the effect of increasing operational costs for such

 3 competitors, and the Commission should go beyond the limited

 4 terms of the Integra settlement by securing commitments from

 5 the merged company to waive its right to seek rural

 6 exemption for rural telephone companies and to waive its

 7 right to seek suspension and modification for rural carriers

 8 under Section 251(f)(2).

 9 Eighth, the extension of nonUNE commercial

10 wholesale agreements and tariffs including terms and volume

11 discounts should apply to wholesale agreements in place as

12 of the merger filing date.

13 The Integra settlement states that term and volume

14 discount plans offered by Qwest as of the closing date will

15 be extended by 12 months beyond the expiration date other

16 than existing term. The phrase offered by Qwest as of the

17 closing date presents a problem for CLECs who rely on

18 Qwest's regional commitment plan agreements.

19 Qwest grandfathered the RCP in June 2010 and

20 replaced it with a new RCP that results in significantly

21 higher costs for CLECs. Qwest is now arguing that the

22 existing RCP agreements with CLECs, which are based on the

23 now grandfathered regional commitment plan, are no longer

24 offered by Qwest as of the closing date. So the CLECs

25 current RCP agreements are not eligible for extension.

0197

 1 Based on this position there would be no extension

 2 for CLEC's existing RCP agreements under the conditions of

 3 the proposed Integra settlement. Likewise, if a CLEC's

 4 existing regional commitment plan agreement expires before

 5 the closing date the CLEC would be unable to extend its

 6 existing RCP agreement with Qwest and would be forced onto

 7 the new RCP that increases the CLEC's cost and negatively

 8 impacts its ability to compete.

 9 Ninth, the Integra settlement fails to include the

10 Joint CLEC's proposed additional performance assurance plan

11 or APAP which would allow -- which would apply if the merged

12 company failed to provide wholesale service quality at

13 levels Qwest provided prior to the merger.

14 The APAP is a minimum five year performance

15 assurance plan applicable to the legacy Qwest ILEC territory

16 which would compare the merged company's monthly performance

17 with the Qwest performance that existed in the 12 months

18 prior to the merger filing date.

19 This comparison would be made using the current

20 Washington performance indicators or PIDs, products and

21 disaggregation, as well as the same statistical methodology

22 that's used in the Qwest performance assurance plan to

23 determine whether a statistically significant deterioration

24 in the performance exists.

25 The QPAP was designed to capture discriminatory

0198

 1 treatment, not merger related service quality degradation,

 2 and as such the QPAP compares wholesale service quality to

 3 retail service quality. This comparison would not capture

 4 or address deterioration in wholesale service quality

 5 related to the merger, particularly if both retail and

 6 wholesale service quality were to deteriorate after the

 7 merger.

 8 To properly capture merger related deterioration

 9 and wholesale service quality, pre-merger wholesale service

10 quality must be compared to post-merger wholesale service

11 quality as the APAP does.

12 Moreover, the APAP provides financial incentives

13 in the form of APAP remedy payments for merger related

14 wholesale service quality deterioration. These remedies

15 would provide the necessary incentives to the merged company

16 to not pursue merger savings at the extent of wholesale

17 service quality or pay current QPAP remedies as a cost of

18 doing business.

19 JUDGE FRIEDLANDER: Mr. Trinchero, you're right up

20 to that 15 minute mark. If you want to just go ahead and

21 wrap it up.

22 MR. TRINCHERO: I am on my last two here.

23 The moratorium on Qwest's request to reclassify

24 our wire centers as nonimpaired and request for forbearance

25 should apply for a longer period of sometime than in the

0199

 1 Integra. While the Joint CLECs agree with moratoriums on

 2 nonimpairment filings and petitions for forbearance to

 3 address merger related harm, the time period proposed in the

 4 Integra settlement is too short and arbitrary. If the

 5 proposed transaction is ultimately approved in the first

 6 quarter of 2011, as CenturyLink and Qwest are hoping, the

 7 June 1, 2012, expiration date results in effective

 8 moratorium of about only 15 months. This falls far short of

 9 the three to five year time period during which the merged

10 company will be integrating and capturing merger related

11 synergies. The Joint CLECs have proposed in Condition 14

12 that such moratoriums should remain in effect for at a

13 minimum of three years consistent with the synergy time

14 frame.

15 Then, finally, the Commission should adopt a most

16 favored state condition proposed by the Joint CLECs. This

17 condition would insure that the public interest benefits

18 obtained as a result of conditions agreed to by CenturyLink,

19 and other jurisdictions or at the FCC, can also be applied

20 in Washington. This is consistent with provisions that have

21 been imposed by this Commission in energy cases, and we

22 believe it would allow Washington customers to benefit from

23 the review and conditions imposed in other states.

24 And with that, thank you.

25 JUDGE FRIEDLANDER: Thank you. We're going to go

0200

 1 ahead and take our midmorning break. But before we do I'll

 2 just give you a heads up of what's going to happen as soon

 3 as you come back into the room. When you do come back in

 4 we're going to try to seat the first panel. And I will have

 5 each of the counsel call their witnesses to the stand. When

 6 we have all of the witnesses on the panel I will swear them

 7 in. And we'll begin with direct, go to cross and then

 8 redirect. So we are on recess for ten minutes.

 9 (Break taken from 10:48 to 11:03 a.m.)

10 JUDGE FRIEDLANDER: Okay. We'll go back on the

11 record. At this time I would like to seat, for Commission

12 inquiry, the first settlement panel addressed in this

13 settlement between Joint Applicants, Staff, Public Counsel

14 and the DoD/FEA.

15 I'll ask counsel for the parties to call their

16 witness beginning with Mr. Simshaw.

17 MR. SIMSHAW: Thank you, Your Honor. To

18 participate on the retail panel CenturyLink would call John

19 Jones.

20 JUDGE FRIEDLANDER: Thank you. If you just want

21 to -- yeah, just fill in the chairs.

22 And, Ms. Anderl, would you like to call your

23 witness?

24 MS. ANDERL: Yes, thank you. Qwest calls Mark

25 Reynolds to the stand or to participate in the retail panel.

0201

 1 JUDGE FRIEDLANDER: Thank you.

 2 Ms. Cameron-Rulkowski, if you would like to call your

 3 witness.

 4 MS. CAMERON-RULKOWSKI: Staff calls Mr. Mark

 5 Vasconi.

 6 JUDGE FRIEDLANDER: Thank you. Mr. ffitch.

 7 MR. FFITCH: Public Counsel calls Ms. Stephanie

 8 Johnson.

 9 JUDGE FRIEDLANDER: Thank you. And you might as

10 well stay standing because I'm going to go ahead and

11 administer the oath.

12

13 JOHN JONES, MARK REYNOLDS, MARK VASCONI, STEPHANIE JOHNSON,

14 having been first duly sworn on oath

15 testified as follows:

16

17 JUDGE FRIEDLANDER: Mr. Simshaw, if you want to

18 begin the direct.

19

20 DIRECT EXAMINATION

21 BY MR. SIMSHAW:

22 Q. Mr. Jones, could you state your name and position

23 for the record?

24 A. (Jones) My name is John Jones. I work for

25 CenturyLink. And I'm the vice president of the state

0202

 1 government affairs.

 2 JUDGE FRIEDLANDER: I don't know if your mic is

 3 on.

 4 A. (Jones) How is this?

 5 JUDGE FRIEDLANDER: Thank you.

 6 Q. (By Mr. Simshaw) Mr. Jones, are you sponsoring

 7 testimony that is encompassed with the document that is

 8 entitled the joint testimony of parties in support of the

 9 Public Counsel and Staff settlement?

10 A. (Jones) Yes, I am.

11 Q. Do you have any charges or corrections to the

12 testimony that is encompassed within that document?

13 A. (Jones) I do not.

14 MR. SIMSHAW: With that, Your Honor, I believe

15 Mr. Jones is available to participate in the panel.

16 JUDGE FRIEDLANDER: Thank you. Ms. Anderl.

17 MS. ANDERL: Thank you, Your Honor.

18

19 DIRECT EXAMINATION

20 BY MS. ANDERL:

21 Q. Mr. Reynolds, would you please state your name and

22 your business address for the record?

23 A. (Reynolds) Yes. My name is Mark Reynolds. And my

24 business address is 1600 Seventh Avenue, Room 1506, Seattle,

25 Washington 98166.

0203

 1 Q. Thank you. By whom are you employed and in what

 2 position?

 3 A. (Reynolds) I'm employed by Qwest Corporation. And

 4 I'm the assistant vice president of regulatory affairs.

 5 Q. Were you also one of the sponsors of the joint

 6 testimony in support of the Staff and Public Counsel and

 7 Joint Applicants' settlement agreement?

 8 A. (Reynolds) Yes, I am.

 9 Q. Thank you.

10 MS. ANDERL: Your Honor, subject to the other

11 witnesses being impaneled, we do have the one item with

12 regard to Exhibit 10 that we would inquire of Mr. Reynolds

13 on. Would you like me to wait or do that now?

14 JUDGE FRIEDLANDER: Why don't we wait. Yeah,

15 thank you. And Ms. Cameron-Rulkowski.

16 MS. CAMERON-RULKOWSKI: Thank you, Your Honor.

17

18 DIRECT EXAMINATION

19 BY MS. CAMERON-RULKOWSKI:

20 Q. Mr. Vasconi, would you please state your full

21 name?

22 A. (Vasconi) My full name is Mark Vasconi.

23 Q. And where are you employed?

24 A. (Vasconi) I'm employed with the Washington

25 Utilities & Transportation Commission.

0204

 1 Q. What position do you currently hold with the

 2 Commission?

 3 A. (Vasconi) I currently hold the position of interim

 4 director of regulatory services.

 5 Q. When you filed a responsive testimony in this case

 6 was that the position that you held at that time?

 7 A. (Vasconi) No. At the time I was a

 8 telecommunications manager in the regulatory services

 9 division.

10 Q. Did you jointly sponsor testimony in support of

11 the settlement?

12 A. (Vasconi) Yes, I did.

13 Q. Thank you.

14 MS. CAMERON-RULKOWSKI: Mr. Vasconi is available.

15 JUDGE FRIEDLANDER: Thank you. And, Mr. ffitch.

16 MR. FFITCH: Thank you, Your Honor.

17

18 DIRECT EXAMINATION

19 BY MR. FFITCH:

20 Q. Good morning, Ms. Johnson.

21 A. (Johnson) Good morning.

22 Q. Would you please state your full name for the

23 record and your business address?

24 A. (Vasconi) My name is Stephanie Johnson. My

25 business address is 800 Fifth Avenue, Suite 2000, Seattle,

0205

 1 Washington 98104.

 2 Q. And by whom are you employed and in what capacity?

 3 A. (Johnson) I'm employed by the Attorney General's

 4 Office of Washington of the Public Counsel section. And I'm

 5 a regulatory analyst.

 6 Q. Ms. Johnson, have you prepared testimony on behalf

 7 of Public Counsel in support of the settlement agreement

 8 with Joint Applicants and Staff in this case?

 9 A. (Johnson) Yes, I have.

10 Q. Is that testimony included as a portion of what's

11 been marked as Exhibit 7T?

12 A. Yes, it is.

13 Q. You have any changes or corrections to that

14 testimony?

15 A. (Johnson) No, I don't.

16 Q. Is that testimony true and correct to the best of

17 your knowledge?

18 A. (Johnson) Yes, it is.

19 MR. FFITCH: Your Honor, Ms. Johnson is available

20 for inquiry from the Bench and for cross-examination.

21 JUDGE FRIEDLANDER: Thank you. Ms. Anderl, you

22 mentioned earlier the broadband exhibit, Exhibit 10. Why

23 don't we go ahead and do that now and then we will open the

24 panel up for cross-examination.

25 MS. ANDERL: Okay. Thank you, Your Honor. Now,

0206

 1 has the Bench been provided with the copies?

 2 JUDGE FRIEDLANDER: We have. Thank you.

 3

 4 DIRECT EXAMINATION (continued)

 5 BY MS. ANDERL:

 6 Q. Mr. Reynolds, do you have in front of you what's

 7 been marked for identification as Exhibit No. 10?

 8 A. (Reynolds) Yes, I do.

 9 Q. Can you generally -- does that exhibit relate to

10 the broadband commitment in the settlement agreement that's

11 identified as Number 14, Condition No. 14?

12 A. (Reynolds) Yes, it does.

13 Q. Can you describe generally what this document

14 reflects?

15 A. (Reynolds) Yes. It reflects reporting commitments

16 that are required in Condition 14 regarding the broadband

17 commitment that is contained in Condition 14, which includes

18 annual reporting regarding availability of broadband

19 services, deployment costs, expenditures. There's also a

20 draft report that pertains to the 180 day report that will

21 be the initial layout of planned deployments by wire center

22 that will be the subject of discussion by Public Counsel and

23 Staff and the Joint Applicants regarding selecting the wire

24 centers for the first deployment.

25 Q. Okay. On the cover sheet it says broadband

0207

 1 reporting formats, plural, and then it says conceptual

 2 samples. So do I understand that these are not the final

 3 form of reports?

 4 A. (Reynolds) That's correct. In fact, the parties

 5 commit to submitting a final format template within 30 days

 6 of the close of the transaction.

 7 Q. Thank you.

 8 MS. ANDERL: I have no further questions. And,

 9 Your Honor, if Exhibit 10 hasn't already been swept into the

10 record we would move its admission.

11 JUDGE FRIEDLANDER: And it has. Thank you.

12 MS. CAMERON-RULKOWSKI: Your Honor, at this time

13 we did have an issue with regard to Exhibit 6. With your

14 permission I would like to address that briefly.

15 JUDGE FRIEDLANDER: Yes, please.

16 MS. CAMERON-RULKOWSKI: Thank you. This is the

17 settlement conditions that are attached to the joint

18 settlement between Staff, Public Counsel and the Joint

19 Applicants. And the witnesses on the panel are prepared to

20 answer any questions that you might have with regard

21 specifically to Condition No. 16. But the parties would

22 like to go ahead and refile the conditions' list in order to

23 clarify some of the language in 16B.

24 I'll just reiterate that the witnesses on the

25 panel are ready to explain any questions that you might

0208

 1 have. And we will be attempting to refile that as soon as

 2 possible, and we hope today.

 3 JUDGE FRIEDLANDER: Okay, thank you. And so we're

 4 talking about Condition 16B of Exhibit 6 and you all are

 5 still working on language; is that correct?

 6 MS. CAMERON-RULKOWSKI: That's correct. And there

 7 are no substantive changes, it's just to clarify what is

 8 there right now.

 9 JUDGE FRIEDLANDER: Okay. And as you said before

10 that the group would try to get this to us today?

11 MS. CAMERON-RULKOWSKI: That is our intent.

12 JUDGE FRIEDLANDER: Okay. If the settlement panel

13 is still up here then the Commission and the parties will

14 have the opportunity to cross-examine and ask clarifying

15 questions of the panel. If the panel is not seated at the

16 time that we get the revisions they will be subject to

17 recall by the other parties and for clarifying questions

18 just so everyone is aware of that. And I believe that will

19 be provided to the Commission and to the other parties; is

20 that correct?

21 MS. CAMERON-RULKOWSKI: That's correct, Your

22 Honor.

23 JUDGE FRIEDLANDER: Thank you. And I believe

24 without anything further, Ms. Endejan, the witnesses are

25 available for cross.

0209

 1 MS. ENDEJAN: Thank you, Your Honor. If it would

 2 please the Bench, Mr. Schifman and I have kind of divided

 3 responsibilities for the witnesses. I will question the

 4 Joint Applicants and Mr. Schifman will question the Staff.

 5 JUDGE FRIEDLANDER: Thank you.

 6

 7 CROSS-EXAMINATION

 8 BY MS. ENDEJAN:

 9 Q. Okay. This could go to either Mr. Jones or

10 Mr. Reynolds, okay. So I consider you both Joint

11 Applicants. So you can flip a coin to see who answers, all

12 right. I'm going to ask you some questions about the

13 specifics of the Staff settlement agreement, do you have a

14 copy of that in front of you?

15 A. (Reynolds) Yes.

16 Q. Okay. Now, I'm going to ask you about some of the

17 conditions here, and I'm going to go through it,

18 specifically Condition No. 3, the AFOR filing.

19 Now, Qwest was obligated to make a new AFOR filing

20 irrespective of this settlement agreement; correct,

21 Mr. Reynolds, I mean another AFOR filing, I believe, in

22 February of this year were it not for the settlement?

23 A. (Reynolds) Right. The current Qwest AFOR

24 terminates in November of 2011. And that AFOR had a

25 requirement that Qwest engage in discussions and

0210

 1 negotiations for a new AFOR prior to the term, the

 2 concluding term of the existing AFOR.

 3 Q. Okay. So that new AFOR filing was a preexisting

 4 obligation prior to the settlement agreement; correct?

 5 A. (Reynolds) Yes, it's embedded in the AFOR language

 6 in the AFOR order that approved the settlement.

 7 Q. So in effect would you agree with me that this

 8 settlement agreement, to the extent that it has conditions

 9 affecting the AFOR, constitutes an amendment to or change to

10 the existing AFOR?

11 A. (Reynolds) It certainly affects the termination

12 date of the existing AFOR and extends it out as indicated in

13 the condition.

14 Q. Okay. So it does modify the existing AFOR?

15 A. (Reynolds) Yes.

16 Q. All right. Now when you look at the pro forma

17 results of operations filing in Section 3(b)(i), is this

18 something that the company is required to do irrespective of

19 the settlement agreement?

20 A. (Reynolds) The Qwest AFOR, and this is also

21 contained in that section towards the end of the section.

22 The requirement for the financials under the Qwest AFOR is

23 required in the AFOR for Qwest to produce those financial

24 reports for the Commission in anticipation of negotiations

25 for a new AFOR. The CenturyLink company requirements are

0211

 1 consistent with what would be required of a company that may

 2 be negotiating in an AFOR.

 3 Q. Okay. So this provision again reflects a

 4 pre-existing obligation prior to the settlement agreement?

 5 A. (Reynolds) It does for Qwest.

 6 Q. All right. Now going to Sub d of Section 3, it

 7 appears that the Joint Applicants have agreed "that the

 8 issues in the future AFOR proceedings shall include the

 9 analysis and disposition of merger synergies," do you see

10 that?

11 A. (Reynolds) Yes.

12 Q. Was it anticipated by those who negotiated the

13 settlement agreement that the Joint Applicants would share

14 the merger synergies with the citizens of Washington State?

15 A. (Reynolds) I don't think there's any condition

16 that relates to exactly how the disposition of those

17 synergies would be realized, certainly there isn't in the

18 condition only that given the fact that synergies will occur

19 over a three to five year period. Part of the reason for

20 extending the AFOR's was to allow those synergies to occur

21 so that they could be evaluated in the financial reports

22 that the companies would file in anticipation of an AFOR.

23 Q. So is it the Joint Applicants' position that the

24 language disposition of merger synergies does not

25 necessarily mean that the Joint Applicants will share those

0212

 1 merger synergies with Washington customers?

 2 A. (Reynolds) I don't think we formulated a position.

 3 Q. Perhaps we could ask -- Mr. Schifman will ask

 4 Mr. Vasconi his understanding of that term.

 5 Okay. And, actually, I believe that one of the

 6 rationalizations put forth in the testimony in support of

 7 the settlement was that the Commission would be able to take

 8 into account any synergy savings that would not be available

 9 immediately. Do you agree with me that that's one of the

10 justifications for, I guess, prolonging the next AFOR filing

11 for a period of three to four years?

12 A. (Jones) I would agree that's so they can take it

13 into account, yes.

14 Q. Now, Mr. Jones, I take it that you've read the

15 testimony of Mr. Bailey filed on behalf of CenturyLink in

16 this proceeding, have you not?

17 A. (Jones) I've reviewed it. I have not read it

18 recently.

19 Q. Okay. Well, and I don't know if you have it in

20 front of you, but I want to test your recollection of that

21 testimony because Mr. Bailey states in his -- I believe it's

22 his testimony dated November 1, 2010, he states, and I'll

23 read this to you, subject to check, that Mr. Bailey said,

24 "Additionally, as has been the experience of the company in

25 previous transactions, including the Embarq acquisition,

0213

 1 CenturyLink begins to realize synergies immediately after

 2 the consummation of the merger providing a still larger

 3 buffer for the merged company to fund one time integration

 4 and transaction costs without reducing network investment or

 5 raising rates"?

 6 MS. ANDERL: Your Honor, may I just interpose a

 7 clarifying question. And that is for the reference to that

 8 testimony, again, and the opportunity to provide the witness

 9 with a copy of it.

10 JUDGE FRIEDLANDER: Certainly.

11 MS. ENDEJAN: It's Exhibit GCB-6HCRT, testimony of

12 November 1st, 2010, Page 30, Lines 17 through 21.

13 MS. ANDERL: May I approach, Your Honor?

14 JUDGE FRIEDLANDER: Yes.

15 (Document handed to the witness.)

16 A. (Jones) Page 30, Line 21?

17 BY MS. ENDEJAN:

18 Q. Page 30, Lines 17 through 21.

19 A. (Jones) Okay.

20 Q. Do you recall reading this testimony?

21 A. (Jones) Yes.

22 Q. Okay. Would you disagree that CenturyLink knew

23 that synergies would be, I guess, begin to occur immediately

24 after the consummation of the merger, and they would not

25 have to occur over time?

0214

 1 A. (Jones) I am not the financial witness, and we do

 2 have a financial witness available for cross, but my

 3 understanding is that conceivably certain synergies do begin

 4 occurring at close, but for them to fully manifest the three

 5 to five year timeframe is what the company has declared

 6 publically.

 7 Q. You were involved in the negotiation of the

 8 settlement agreement, were you not, though?

 9 A. (Jones) Indirectly.

10 Q. Okay. Would it be fair to say that you knew that

11 the estimated synergies for the merger has been presented

12 as, I guess, $625 million?

13 A. (Jones) Yes.

14 Q. Is that on an annual basis?

15 A. (Jones) I'm not -- I would defer to Mr. Bailey

16 just for clarification on that.

17 Q. Okay. And you would defer with him in terms of --

18 strike that.

19 Did you have any understanding if any of those

20 synergy savings would cover the integration and transaction

21 costs when you were entering into this settlement agreement?

22 A. (Jones) No.

23 Q. Okay. Did you have any idea, before you entered

24 into this settlement agreement, what the amount of synergies

25 would be for, I guess, achieved by the Joint Applicants in

0215

 1 the state of Washington?

 2 A. (Jones) No, I did not.

 3 Q. Do you have any ballpark estimate?

 4 A. (Jones) I do not.

 5 Q. Okay. So I guess I'll have to ask Mr. Bailey

 6 questions about when synergies were to be achieved or not?

 7 A. (Jones) That would probably be best.

 8 Q. Okay. So in the testimony that was put forth

 9 supporting this would you agree with me that there's at

10 least a question as to whether or not synergies would not be

11 available and known and quantified for a period of three to

12 four years?

13 A. (Jones) I don't believe all synergies would, no.

14 Q. Let me go back to the settlement agreement. And,

15 again, this could be for either Mr. Reynolds or Mr. Jones,

16 it would be Conditions 5 and 6, do you see those? Where you

17 agree that you will not seek recovery of management costs or

18 merger costs from retail or wholesale customers?

19 A. (Jones) Yes.

20 Q. What it your understanding that anticipated

21 synergy savings would cover those costs?

22 A. (Jones) I do not know if the synergy savings would

23 directly cover those costs. Again, I would defer to

24 Mr. Bailey to go into more of the details of that. This was

25 really more of our assurance that we would not pass those

0216

 1 costs on to Washington consumers.

 2 Q. Did you make that assurance with the knowledge

 3 that the company had planned for, and had a plan in place,

 4 to cover those anticipated costs?

 5 A. (Jones) Yes, the company would have a way of

 6 recovering those costs.

 7 Q. Okay. Now, turning to Condition No. 11 in that it

 8 deals with affiliated interest compliance. Now, the Joint

 9 Applicants are obligated by law to comply with all

10 applicable state and federal statutes regarding affiliated

11 interest transactions; correct?

12 A. (Jones) Correct.

13 Q. So this really isn't a concession or a commitment,

14 it's just a commitment to comply with the law, isn't it?

15 A. (Jones) Correct. And it's No. 9 instead of 11.

16 Q. I'm sorry, No. 9.

17 Furthermore, in Condition No. 11 you have agreed,

18 "you" meaning Joint Applicants, have agreed to make a number

19 of books and records available for inspection by the

20 Commission, do you not?

21 A. (Jones) Yes.

22 Q. Now, you are aware that the Commission Staff has

23 the right pursuant to Washington statutory law to ask you to

24 produce any book or record for inspection; correct?

25 A. (Jones) That's correct.

0217

 1 Q. Okay. So, again, this really isn't a commitment

 2 to do something that you're not already required to do;

 3 right?

 4 A. (Jones) I think if you look at all of the

 5 financial reporting conditions and commitments that we have

 6 made here you'll find that they're substantive and

 7 substantial as compared to probably anything we have

 8 committed to in any other state. So if you look at them as

 9 a whole you will see the Commission has more than adequate

10 incite into the company's books, records, merger costs,

11 management costs, anything that relates to the merger

12 itself.

13 Q. Right. But the Commission has that right

14 independent of anything you agree to provide to them in this

15 settlement agreement; right? They could ask you to produce

16 them?

17 A. (Jones) I would think they could. I'm not an

18 expert of what the full authority of this Commission is.

19 But I believe this probably exceeds in some respects when

20 you look at it in total.

21 Q. Okay. Then finally Condition 27 deals with, I

22 guess, committing to live up to the existing 911 service

23 contracts. It's on Page 12. Do you see that?

24 A. (Reynolds) Yes, that's correct.

25 Q. So this, again, was a preexisting legal obligation

0218

 1 of Qwest, was it not?

 2 A. (Reynolds) Yes.

 3 Q. So this is just simply an agreement to abide by

 4 your contractual commitment?

 5 A. (Reynolds) That's correct. And it memorializes

 6 that agreement within the context of this settlement.

 7 Q. Okay. Now, I believe that all of you, including

 8 the Joint Applicants, have testified that you believe the

 9 settlement agreement is consistent with the public interest,

10 would that be a fair characterization of your position?

11 A. (Reynolds) Yes.

12 A. (Jones) Yes.

13 Q. Okay. And I think, Mr. Reynolds, in your direct

14 testimony in favor and support of the merger, and I don't

15 know if you have that in front of you, Mr. Reynolds?

16 A. (Reynolds) I do. Just one minute, let me access

17 it.

18 Q. Sure. Okay. If you could turn to Page 11 of your

19 direct testimony, which is Exhibit MSR-1T, and Lines 18 and

20 19 specifically, do you see that?

21 A. (Reynolds) Yes.

22 Q. Okay. Now, that sentence specifically states that

23 you are testifying that the transaction is in the public

24 interest and will provide a number of benefits to customers

25 of CenturyLink and Qwest in Washington. When you use the

0219

 1 term "customers" did you intend to include wholesale

 2 customers?

 3 A. (Reynolds) Yes.

 4 Q. And further on in your testimony, I believe at

 5 Page 25, Lines 1 through 12, you testify about the benefits

 6 that wholesale customers might benefit from the merger

 7 transaction. Could you take a minute to read that?

 8 A. (Reynolds) I've reviewed it.

 9 Q. Okay. And I don't mean to mischaracterize your

10 testimony, but from it I've derived what you perceive to be

11 three primary benefits from wholesale customers. The first

12 is you state that the combined company will continue to

13 serve wholesale customers, you see that?

14 A. (Reynolds) Yes.

15 Q. Now, that is basically the continuance of an

16 existing obligation, is it not?

17 A. (Reynolds) Yes, I believe both companies have

18 obligations to serve the wholesale customers both by tariff

19 and by contractual agreements.

20 Q. Okay. So there's no intent to cease continuing to

21 serve wholesale customers?

22 A. (Reynolds) That's correct.

23 Q. As a result of the merger?

24 A. (Reynolds) It's an assurance.

25 Q. Okay. And then you state that another advantage

0220

 1 is that you'll provide a bigger footprint for the existing

 2 services that you already provide. Is that the second

 3 identified benefit that you testify about for wholesale

 4 customers?

 5 A. (Reynolds) Yes.

 6 Q. Okay. So essentially what it means is you'll just

 7 cover a larger area, but you won't do anything different

 8 from providing the existing services?

 9 A. (Reynolds) Not initially, but I think over time as

10 the company seeks to, you know, achieve synergies on a

11 network basis that there may be some benefits to combining

12 the networks in certain ways that might benefit wholesale

13 customers.

14 Q. Okay. But you don't talk about that in your

15 testimony here?

16 A. (Reynolds) I don't. But that was part of my

17 thought as I drafted it.

18 Q. Okay. Then, finally, you talk about a commitment

19 regarding broadband wireless services. Now, was Qwest in

20 the business of provisioning broadband wireless services

21 prior to the merger?

22 A. (Reynolds) No.

23 Q. It's your testimony that Qwest did not have plans

24 to provision broadband wireless services prior to the

25 merger?

0221

 1 A. (Reynolds) Not on a retail basis.

 2 Q. Is this a new service that you claim the merger

 3 will bring about?

 4 A. (Reynolds) No. I'm saying -- here I'm saying that

 5 as the companies extend fiber deeper into their network all

 6 customers can benefit, including wireless providers, to the

 7 extent that we put more capacity in fiberoptic cable deeper

 8 into our network that provides opportunities for hauling all

 9 traffic including retail and wholesale traffic.

10 Q. Okay. Now, Qwest would have continued to make

11 that investment in expanding its fiber network without the

12 merger, would it not?

13 A. (Reynolds) It would have independently, but to the

14 extent that the combined company will be planning both

15 companies together there are certain economies that the

16 companies may achieve in the network design.

17 Q. Okay. But other than those identified benefits

18 for wholesale customers I guess is there any other testimony

19 from a Qwest or CenturyLink witness that would describe the

20 benefits wholesale customers would get from the merger other

21 than your testimony here?

22 A. (Reynolds) I think that both CenturyLink/Qwest

23 witnesses that deal with wholesale, such as Mr. Hunsucker,

24 Mr. Viveros, deal with those issues.

25 Q. Okay. Now in terms of -- again I'm trying to put

0222

 1 this in the context of the settlement agreement, all right?

 2 And the settlement agreement with Staff which there's been

 3 representations today incapsulates, I guess, all relevant

 4 merger related concerns.

 5 Let me ask you about the commitment made by the

 6 companies regarding retail rates. Now, you've agreed that

 7 you're going to freeze retail rates for at least the next

 8 three years; correct?

 9 A. (Reynolds) With the exception -- not all retail

10 rates, no.

11 Q. Well, with the exception of, I guess, the 1FB

12 rate?

13 A. (Reynolds) Well, for Qwest under its AFOR what

14 Qwest has agreed to freeze -- and maybe we should take the

15 companies independently. CenturyLink has agreed to freeze

16 their basic residential service and their basic business

17 service. Qwest has agreed to freeze its basic residential

18 service. All three of those services are currently under

19 tariff. Qwest business service, simple business service, is

20 competitively classified, not just under the AFOR but by a

21 prior proceeding. We have agreed to cap that business

22 service for three years allowing only a $1 increase during

23 that three year period.

24 Q. Okay. So the settlement agreement represents a

25 commitment from the Joint Applicants with respect to rate

0223

 1 treatment for business and retail customers, wouldn't you

 2 agree?

 3 A. (Reynolds) Yes, for their basic exchange services

 4 only.

 5 Q. Okay. And to the extent you're making this

 6 commitment this revises the AFOR, again, because it provides

 7 a term that isn't in the existing AFOR; correct?

 8 A. (Reynolds) It does create a new condition,

 9 especially for the business services. The business services

10 currently has pricing flexibility. And I will say that it

11 is -- and repeat that it is only the simple business

12 service, what we call the 1FB, that is affected by the

13 commitment here.

14 Q. Okay, but there's no provision in the settlement

15 agreement that addresses or reflects any commitment with

16 respect to wholesale rates; correct?

17 A. (Reynolds) I believe any commitments that the

18 company has with respect to wholesale rates would be

19 included in the Integra settlement, and I'm really not the

20 correct witness to respond to that.

21 Q. Okay. But you were involved in negotiating the

22 settlement agreement with Staff?

23 A. (Reynolds) That's correct.

24 Q. And in those, I guess, wholesale rate treatment

25 was not a subject of negotiation?

0224

 1 A. (Reynolds) It was not a subject of negotiation in

 2 this settlement conference that this panel represents, yes.

 3 Q. Okay.

 4 A. (Reynolds) But I'm sure it was a topic of

 5 discussion when the company met with the CLECs which

 6 resulted in the Integra settlement.

 7 Q. When you use the term the CLECs -- strike that.

 8 Would it be fair to say that Integra is not

 9 representative of all CLECs?

10 A. (Reynolds) Yes, I think that's a fair statement,

11 but, I guess, it's my testimony that the company had

12 settlement discussions with all CLECs that are parties to

13 this proceeding.

14 Q. Okay. But in terms of the Staff settlement would

15 it be fair to say there was really very little discussion of

16 wholesale issues or concerns?

17 A. (Reynolds) The one issue that deals with some

18 wholesale issues is the issue pertaining to wholesale OSS,

19 and I don't remember exactly what the condition was, but

20 that directly pertains to wholesale customers.

21 Q. Okay. Nothing to do with wholesale rates?

22 A. (Reynolds) That's correct.

23 Q. Okay. Now, I believe in your testimony at

24 Page 25, again, referring to what we were talking about, you

25 agreed that wholesale customers should be included in the

0225

 1 group of, I guess, recipients of the benefits of the merger,

 2 would that be a fair statement?

 3 A. (Reynolds) I believe my representation is is that

 4 they are included in the benefits and I try to discuss what

 5 a few of those benefits might be.

 6 Q. Okay. Did the topic of intrastate access charges

 7 ever come up during the discussions with Staff regarding

 8 this settlement agreement?

 9 A. (Reynolds) They came up in regard to -- and I

10 think that they're memorialized in Condition No. 3 regarding

11 the issues that would be discussed in the upcoming AFOR

12 discussions that intrastate access would be one of the

13 subjects of the discussion.

14 Q. And that discussion is to take place four years

15 from now; is that correct?

16 A. (Reynolds) I believe that the condition suggests

17 no later than three years and no -- or no later than four

18 years, no earlier than three. So it's in year four, I

19 believe, that those discussions would take place. However,

20 initial discussions could start prior to that. When we

21 initially negotiated the Qwest AFOR it was a very long

22 period. It was a period of probably 18 months that we were

23 in discussions with the various parties.

24 Q. But between today, January 5, 2011, and that

25 future AFOR date, the intrastate access rates of Century and

0226

 1 Qwest are to remain the same?

 2 A. (Reynolds) They remain under tariff. There's no

 3 condition in here that affects switched access charges one

 4 way or the other. They remain as they exist pre-closing,

 5 they remain the same post-closing until the discussions that

 6 will be had during the upcoming AFOR discussions.

 7 Q. So it's possible they could even increase?

 8 A. (Reynolds) It's possible they could increase, it's

 9 possible they could decrease.

10 Q. Are you aware of -- do you know what the

11 CenturyLink intrastate access rates currently are?

12 A. (Reynolds) No.

13 Q. Okay. You wouldn't have any reason to question

14 that the top end of the rate is 14 cents a minute in some

15 CenturyLink territories, whereas the Qwest intrastate access

16 rate is 2 cents a minute?

17 A. (Reynolds) I don't have any knowledge to confirm

18 that.

19 Q. Okay. Now, I believe a lot of the testimony put

20 forward by the Joint Applicants is the need to merge in

21 order to face intense competition in the telecommunications

22 industry. Would that be a fair characterization of the

23 Joint Applicants' position?

24 A. (Jones) Yes, that would be one of the components.

25 Q. And competition, would you agree that competition

0227

 1 is intense in the telecommunications industry?

 2 A. (Jones) Yes, I would.

 3 Q. Would you agree that technology changes quite

 4 rapidly in the telecommunications industry?

 5 A. (Jones) Yes.

 6 Q. And customer choice changes quite rapidly in the

 7 telecommunications industry?

 8 A. (Jones) Yes.

 9 Q. So would it be fair to say that for purposes of

10 today's competitive environment four years could be a very

11 long time for no change to occur?

12 A. (Jones) It could be. But the very technology

13 you're talking about is actually changing--going back to

14 your intrastate access issue. What's going to happen in

15 four years is intrastate access minutes for us are going to

16 decline rapidly, and a lot of that traffic is moving to

17 carriers like Sprint who are picking up those revenues due

18 to the lost minutes and lost access lines on our part. That

19 is a major change going on. That will keep happening.

20 The AFOR will give us a chance to look at both

21 companies combined. Look at some of the synergy effects

22 that are out there, and then determine through a full

23 commission proceeding what all the moving parts need to be

24 to keep from disparaging Washington customers.

25 Q. So is it your testimony, Mr. Jones, that it's in

0228

 1 the public interest to delay considering reducing the Joint

 2 Applicants' access charges to competitive carriers for a

 3 four year period?

 4 A. (Jones) My understanding of Washington rules is

 5 that a carrier like yourself has the opportunity to come in

 6 and file a complaint. There's recourse in those four years

 7 to challenge those rates if you choose to do so.

 8 Q. When a carrier comes in and files a complaint,

 9 that carrier bears the burden of proof though, does it not?

10 A. (Jones) I believe so.

11 Q. Now, have you done any analysis of whether any of

12 the anticipated synergies could have covered rate reductions

13 for access charge reductions, are you aware of any such

14 analysis?

15 A. (Jones) No, I'm not.

16 Q. Have you done any analysis that shows basically

17 the amount of revenues that the merged company will keep if

18 access revenues remain at current levels over the next four

19 years?

20 A. (Jones) No, I have not, and I have not seen any

21 documentation around that.

22 Q. Did you review the testimony of Mr. Appleby filed

23 by Sprint in this case?

24 A. (Jones) Earlier. It's been a while though.

25 Q. Now, would you agree with me that intrastate

0229

 1 access charges are a significant cost to competitive

 2 carriers?

 3 A. (Jones) They could be, yes.

 4 Q. Okay. And would you also agree with me that if

 5 they were reduced it would benefit those carriers?

 6 A. (Jones) It would probably benefit the carriers.

 7 Q. And in your experience would a reduction in access

 8 charges, intrastate access charges, lead to lower ultimate

 9 rates provided by competitive carriers?

10 A. (Jones) That's really a good question. I think

11 the issue is what the carrier who receives the benefit of

12 reduced access charges does with those. Was that a pass

13 through for customers? I mean where does the benefit

14 ultimately end up.

15 Q. Well, wouldn't you agree that a competitive market

16 would force rate reductions if costs are lowered in order

17 for carriers to keep competing?

18 A. (Jones) Depending on the market it could.

19 MS. ENDEJAN: Your Honor, I think I will reserve

20 the remainder of my questions for the last bucket panel or

21 whatever you call it.

22 JUDGE FRIEDLANDER: For clarification, we have

23 been referring to the disputed issues not related to the

24 settlement as the "second bucket." So thank you,

25 Ms. Endejan.

0230

 1 MS. ENDEJAN: Thank you.

 2 JUDGE FRIEDLANDER: Mr. Schifman, I'm looking at

 3 the clock now thinking about lunch and when we should break.

 4 And are your questions longer than 15 minutes? Is this

 5 something that we should maybe take an early break before we

 6 interrupt you?

 7 MR. SCHIFMAN: My questions are likely to be more

 8 than 15 minutes. I do have a couple of questions to

 9 follow-up with Mr. Reynolds and Mr. Jones, and they will be

10 very brief. Maybe we do those and then do a break for lunch

11 before we address the other two witnesses on the panel.

12 MS. ANDERL: Your Honor, I guess I would object to

13 that procedure. Typically, without some extenuating

14 circumstances, one attorney for a party gets to cross a

15 witness, not multiple attorneys ganging up on a witness from

16 the same -- multiple attorneys from the same party. If

17 there are extenuating circumstances we're certainly willing

18 to reconsider our objection, but at this point I would

19 object.

20 JUDGE FRIEDLANDER: Mr. Schifman.

21 MR. SCHIFMAN: We do have a panel of witnesses

22 here that are addressing a settlement agreement that was

23 just entered into within the last few days, with testimony

24 filed within the last few days. I think it probably makes

25 sense to give us a little levity here just for levity sake.

0231

 1 JUDGE FRIEDLANDER: These are not questions that

 2 Ms. Endejan can ask?

 3 MR. SCHIFMAN: I suppose I can dictate them to

 4 her, but I thought it might be easier for us to just quickly

 5 go through them, less than five minutes here.

 6 JUDGE FRIEDLANDER: Unless Ms. Anderl can quote me

 7 a rule that says we can't have multiple attorneys I'm going

 8 to allow it. And then following the follow-up questions

 9 we'll go ahead and talk about a recess. So please proceed.

10

11 CROSS-EXAMINATION

12 BY MR. SCHIFMAN:

13 Q. Just a quick question for Mr. Reynolds.

14 Mr. Reynolds, you mentioned that the rate freeze in the

15 settlement pertains to Qwest for only the 1FB rate; is that

16 correct --

17 A. (Reynolds) That's correct.

18 Q. -- for business. Okay.

19 A. There's also a provision in there that requires us

20 to continue UNE rate stabilization plans we have in place

21 for our complex business services, the PBX trunks, Centrex,

22 other complex business services. We do have rate

23 stabilization plans in our catalog for virtually all those

24 services. So those would continue through the AFOR

25 discussions.

0232

 1 Q. And so the other services, for example, bundles

 2 that are offered by Qwest, are not capped by this

 3 settlement; is that correct?

 4 A. (Reynolds) That's correct --

 5 Q. So --

 6 A. (Reynolds) -- nor are features.

 7 Q. Sorry to talk over you there. You said neither

 8 are features?

 9 A. (Reynolds) No. That's correct. Bundles, packages

10 and features are not capped.

11 Q. Okay. And so if there are reductions to Qwest or

12 CenturyLink's revenues as a result of the Commission's

13 approval of the merger in other areas, for example, in

14 intrastate access charges you would have the ability to

15 recover some of those costs from your own customers in your

16 bundles and features rates; is that correct?

17 A. (Reynolds) We may have the ability to charge a

18 higher rate. I don't know that we have the ability to

19 recover the cost depending on how competitive the market is,

20 and it's very competitive.

21 Q. Mr. Jones, as far as -- let me go back to

22 Mr. Reynolds.

23 Mr. Reynolds, your testimony, your rebuttal

24 testimony in the case basically said that you wanted to have

25 the Qwest AFOR renewal start in February of this year; is

0233

 1 that correct?

 2 A. (Reynolds) Could I have a reference?

 3 Q. Pages 2 and 3 of your rebuttal. Let's see if we

 4 can get to it here. In other words, you objected to the

 5 Staff conditions that proposed to extend the AFOR; is that

 6 right?

 7 A. (Reynolds) That's not entirely right. I believe

 8 that I objected to the conditions that Staff would impose

 9 during the extension. I believe I also have a Q and A where

10 I believe it's -- I believe it's on Page 7, the Q and A

11 starting at three where I ask myself the question about the

12 extension. And the answer is based on my testimony above

13 regarding Staff Conditions Nos. 29 and 30. "Proposal is

14 unacceptable unless the price cap conditions are

15 eliminated." Then I go on to talk, but I say "absent those

16 conditions Qwest would not oppose extension of the AFOR."

17 Q. Okay. In considering the settlement of this

18 matter did Qwest perceive it to be a benefit that its access

19 charges would not be reviewed in the context of an AFOR

20 renewal until three to four years after the closing of the

21 merger?

22 A. (Reynolds) I don't think we thought about that. I

23 mean that was not a basis for discussions of the extension.

24 Obviously if -- well, I'll just stop there.

25 Q. Mr. Jones, I'll ask you the same question, did

0234

 1 CenturyLink consider it to be a benefit from the settlement

 2 agreement that its access charges would not be reviewed from

 3 three to four years after the closing date of the merger due

 4 to the AFOR renewal provisions?

 5 A. (Jones) Only from the standpoint that we believe

 6 that would be the right process and vehicle to look at

 7 access charges in conjunction with many other factors that

 8 go into that consideration.

 9 Q. But CenturyLink went through the United companies,

10 here in Washington, went through a review of its intrastate

11 access rates outside of an AFOR plan; is that correct?

12 A. (Jones) Due to a complaint, I believe, that was

13 filed, yes.

14 MR. SCHIFMAN: Okay. I have nothing further for

15 these witnesses.

16 JUDGE FRIEDLANDER: Thank you. I'm thinking that

17 since it's approximately seven to noon, why don't we go

18 ahead and take an hour lunch break and return here around

19 let's just say 1:00. We're in recess. Thank you.

20 (Break taken from 11:53 to 1:03 p.m.)

21 JUDGE FRIEDLANDER: We'll be back on the record.

22 Before the lunch recess I believe we left off with

23 Mr. Schifman asking questions. Do you have questions for

24 the panel?

25 MR. SCHIFMAN: Yes, I do, Your Honor.

0235

 1 JUDGE FRIEDLANDER: Great. Please proceed.

 2 MR. SCHIFMAN: Thank you.

 3

 4 CROSS-EXAMINATION (continued)

 5 BY MR. SCHIFMAN:

 6 Q. Hi, Mr. Vasconi, Ken Schifman, on behalf of

 7 Sprint. How are you?

 8 A. (Vasconi) Fine. Good afternoon.

 9 Q. Good afternoon. Do you have the motion to approve

10 the settlement agreement before you? Or actually the

11 settlement agreement first is what I want to look at, not

12 the conditions, the actual settlement agreement.

13 A. (Vasconi) Yes, I do.

14 Q. Okay. And if you don't mind could you turn to

15 Page 4, Paragraph 12. Can you just review that to yourself,

16 please. And basically that provision, sir, allows a party

17 to the settlement agreement to state its rejection of

18 additional conditions that the Commission may impose and

19 withdraw from the agreement. Is that how you interpret that

20 condition or that paragraph?

21 A. (Vasconi) Let me continue reading it, please.

22 Thank you.

23 MS. CAMERON-RULKOWSKI: Your Honor, I'm going to

24 probably object if this question is going to end up asking

25 for a legal conclusion from Mr. Vasconi.

0236

 1 JUDGE FRIEDLANDER: Mr. Schifman.

 2 MR. SCHIFMAN: I don't think I'm asking for a

 3 legal conclusion.

 4 JUDGE FRIEDLANDER: Okay. Then I guess I will go

 5 ahead and overrule the objection. Mr. Vasconi, have you

 6 reviewed?

 7 A. (Vasconi) Yes, I've review.

 8 JUDGE FRIEDLANDER: Please proceed, Mr. Schifman.

 9 BY MR. SCHIFMAN:

10 Q. My question, Mr. Vasconi, is if the Commission

11 orders additional conditions than are the ones that are

12 embodied in the Staff settlement agreement, is Staff stating

13 by virtue of this Paragraph 12 that it will be rejecting the

14 settlement that's been reached with the Joint Applicants?

15 A. (Vasconi) No, I don't believe so.

16 Q. Okay. For example, if the Commission imposes a

17 condition that the interconnection agreement conditions that

18 relate to the Qwest territory also apply to the CenturyLink

19 territory, would Staff at that point exercise its right to

20 reject the settlement?

21 A. (Vasconi) I think at that point Staff would

22 examine the settlement and make a determination in the

23 period of time that we have available under this provision.

24 Q. Okay. Sitting here today do you have an opinion

25 on that?

0237

 1 A. (Vasconi) No, I do not.

 2 Q. If I asked you the same questions with respect to

 3 the interconnection agreement being extended for four years

 4 rather than three years would your answer be the same

 5 related to how Staff would approach that?

 6 A. (Vasconi) Yes, it would be the same.

 7 Q. The same issue with respect to whether intrastate

 8 access charges would be considered in the context of the

 9 Commission's resolution of this matter, is Staff saying that

10 they would reject the settlement if the Commission decided

11 to do that?

12 A. (Vasconi) We would consider what the Commission

13 came up with, and we would then make a determination as to

14 what we do going forward in that period where we have

15 available to us.

16 Q. Okay. So sitting here today you have no specific

17 opinion regarding the intrastate access charge condition and

18 whether or not it would cause Staff to opt out of this

19 settlement agreement?

20 A. (Vasconi) That is correct.

21 Q. Let's move to the settlement agreement conditions

22 themselves, please. And settlement agreement Condition 4

23 relates to synergies and synergy reporting, does it not?

24 A. Yes, it does.

25 Q. And it says that "CenturyLink will track and file

0238

 1 annually a confidential report reflecting merger costs and

 2 synergy savings on a company-wide and Washington basis";

 3 right?

 4 A. (Vasconi) Correct.

 5 Q. Today do you have -- have you been given an

 6 estimate as to what the synergies are from a Washington

 7 basis?

 8 A. (Vasconi) No, we have not.

 9 Q. Has Staff independently calculated what the

10 synergies are from a Washington state basis as related to

11 this merger?

12 A. (Vasconi) At a high level utilizing the notion

13 that Washington would be roughly 10 percent of the total

14 access lines after the merger occurs, if it is approved,

15 Washington would roughly receive around $57 million of

16 synergies.

17 Q. And that's based on the annual operating

18 synergies; correct, of 575 million?

19 A. (Vasconi) Yes, that's correct.

20 Q. Okay. And the companies have stated that they

21 project that they'll also achieve $50 million annually in

22 capital expenditure synergies; correct?

23 A. (Vasconi) Yes, that's correct.

24 Q. So would you include that $50 million annually in

25 your calculation of the amount that Washington should get

0239

 1 out of this merger?

 2 A. (Vasconi) Because those aren't expense dollars

 3 those are capital dollars capital dollars typically have a

 4 benefit that might extend over a longer period of time. So

 5 it would be maybe some fraction of that 50 million. But I

 6 don't know that one could say it's exactly 10 percent in any

 7 one year.

 8 Q. Okay. So you estimated roughly 57 million based

 9 on a 10 percent of the total access line calculation; right?

10 A. (Vasconi) Correct.

11 Q. Okay. And you expect based on what the companies

12 have told you that those would be annual savings over a

13 period of three to five years that they'll achieve those

14 types of savings?

15 A. (Vasconi) We expect that it will get to about

16 575 million of savings on an annual basis, but it will take

17 three to five years to get there.

18 Q. Okay. Did you hear the testimony earlier today

19 regarding whether or not the companies expect to achieve

20 synergy savings on day one?

21 A. (Vasconi) I did.

22 Q. And it's your understanding, based on the

23 testimony from the companies, that they will be achieving at

24 least some synergies as soon as the merger is consummated?

25 A. (Vasconi) There may be some, yes.

0240

 1 Q. Okay. So using your $57 million number have you

 2 calculated what you think the total synergy savings that

 3 should be related to the state of Washington as reflected in

 4 this Condition 4?

 5 A. (Vasconi) No.

 6 Q. Okay. Is it your expectation, sir, that the

 7 synergy savings that the companies are going to report on a

 8 Washington basis would be returned in whole or in part to

 9 Washington retail and wholesale customers?

10 A. (Vasconi) Yes, at some point. This is something

11 that is going to be considered in the AFOR's that we have

12 scheduled no earlier than three years and no later than four

13 years from the close.

14 Q. So what's the purpose of getting this -- and I

15 think you just answered my question, but I'll ask you more

16 directly. Is that the only purpose then for obtaining

17 Washington specific synergies is for their use in the AFOR

18 renewals that will be filed three to four years from the

19 closing date?

20 A. (Vasconi) That's certainly a major consideration

21 that we have because we do believe that synergy benefits --

22 that synergy savings should provide concrete benefits to

23 Washington ratepayers.

24 Q. Okay. Do you think it's a good idea for those

25 synergy savings to be providing concrete benefits to

0241

 1 Washington ratepayers before a three to four year period,

 2 would that be a good idea also?

 3 A. (Vasconi) I think it's probably -- yes, it could

 4 be, uh-huh.

 5 Q. And the Staff settlement that was reached that

 6 delays any synergy savings to be returned to Washington

 7 ratepayers, in the context of an AFOR, to at least three to

 8 four years from now doesn't permit synergies to be realized

 9 by Washington customers before that date; is that true?

10 A. (Vasconi) No, I think given the broadband

11 commitments that are in this proceeding synergy benefits

12 that occur up through that period will accrue to Washington

13 customers.

14 Q. Is that the only condition in the merger

15 settlement here -- strike that.

16 Is the broadband commitment the only condition in

17 the settlement that Washington customers will receive

18 benefits prior to the review of the AFOR's?

19 A. (Vasconi) That's certainly the biggest one. The

20 rate stabilizations may be characterized as avoided revenue,

21 if you will, that the company is foregoing, provides a

22 benefit to Washington ratepayers.

23 Q. Okay. And if the companies reduced their

24 intrastate access charges would you agree with me -- as part

25 of this merger approval would you agree with me that synergy

0242

 1 savings that the companies will begin realizing on day one

 2 could be used to cover some of those reductions of revenues

 3 that the companies would have if they reduced their access

 4 rates?

 5 A. (Vasconi) Reductions in access charges could

 6 potentially be part of synergy benefits. But the most

 7 direct beneficiary of reductions in access charges would

 8 likely be those who currently pay access charges, namely

 9 long distance carriers. And there is not necessarily any

10 guarantee that the reduction in access charges will flow

11 through on a one-to-one basis to end users.

12 Q. In the access complaint against the Embarq

13 companies that the Commission ruled upon in 2009, are you

14 familiar with that order?

15 A. (Vasconi) Yes, I am.

16 Q. Okay. And did you provide testimony in that case?

17 A. (Vasconi) No, I did not.

18 Q. Did members who you supervise from the Washington

19 Staff provide testimony in that case?

20 A. (Vasconi) During the dependency of that case I was

21 not at the Washington Commission.

22 Q. But you've read the Commission's order?

23 A. (Vasconi) Yes.

24 Q. And do you recognize that the Commission there

25 made some statements in its order that reductions of access

0243

 1 charges do benefit competition and consumers ultimately?

 2 A. (Vasconi) Yes, I did.

 3 Q. Do you agree with those statements?

 4 A. (Vasconi) Generally I do.

 5 Q. Before the AFOR's are reviewed in three to four

 6 years, according to the settlement agreement, is there any

 7 other way that synergies can flow through to wholesale

 8 customers of the companies if you don't consider intrastate

 9 access charges?

10 A. (Vasconi) I can't think of any. No, I cannot

11 think of any right now.

12 Q. Okay. Let's go to Conditions 5 and 6 in the

13 Appendix A to the settlement agreement. And those

14 conditions, correct me if I'm wrong, if I summarize them

15 wrong, but they generally mandate that the CenturyLink ILECs

16 and the Qwest ILECs can't recover from their retail or

17 wholesale customers increases in management costs and the

18 merger costs; is that true?

19 A. (Vasconi) That's correct.

20 Q. Okay. And in the agreement, I believe in

21 Condition 20, allows the Qwest companies -- allows Qwest to

22 increase their business rates by $1 from what they currently

23 stand at; is that correct?

24 A. (Vasconi) That's correct.

25 Q. Okay. So what provision here in this agreement

0244

 1 mandates that any excess revenue that Qwest gets from

 2 increasing their business rates by $1 doesn't go to cover

 3 management costs or merger costs?

 4 A. (Vasconi) There are none.

 5 Q. So can the Commission be assured then of any

 6 dollar of revenue that Qwest or CenturyLink get from their

 7 customers or from wholesale customers, how can we know that

 8 those dollars are not going to go to covering increased

 9 management costs or increased merger costs?

10 A. (Vasconi) With respect to that dollar there's no

11 guarantee. However, with respect to other retail rates that

12 are specified in Condition 20 we do have guarantees that

13 there will be no increases to residential rates or to

14 CenturyLink's business 1FBs.

15 Q. But one of the conditions that you advocated in

16 your testimony for this merger was that bundled rate

17 packages not be increased over a specific term; is that

18 correct?

19 A. (Vasconi) That is correct.

20 Q. Was that term three years?

21 A. (Vasconi) Yes, it was three years.

22 Q. Okay. And that did not -- that proposed condition

23 that you offered did not make its way into the settlement;

24 correct?

25 A. (Vasconi) That's correct, because the companies

0245

 1 had the ability to price bundles in a matter that's separate

 2 from what is currently with tariff rates, with establishing

 3 the price on tariffed rates. So --

 4 Q. So the company -- I'm sorry go ahead.

 5 A. (Vasconi) So in the context of this agreement we

 6 didn't believe that it would be appropriate to impact those

 7 particular provisions that are currently allowed in law.

 8 Q. Although you advocated for that in your testimony?

 9 A. (Vasconi) I did.

10 Q. And because Qwest and CenturyLink have pricing

11 flexibility on their bundled services they could increase

12 those rates to their bundled customers; is that correct?

13 A. (Vasconi) Yes, it is.

14 Q. Okay. And they could use those increases in

15 revenues to cover management costs and merger related costs;

16 correct?

17 A. (Vasconi) Or other costs that they have, yes.

18 Q. Yeah. Or revenue reductions like access charge

19 reductions; right?

20 A. (Vasconi) Conceivably, yes, they could. However,

21 I think it's important to note that in possibly reducing

22 access that requires a complete examination of rates and

23 results of operations that we didn't believe was appropriate

24 for this proceeding.

25 Q. Do you agree with me that the companies that pay

0246

 1 access charges to CenturyLink and Qwest are also competitors

 2 to Qwest and CenturyLink?

 3 A. (Vasconi) Yes.

 4 Q. Okay. And what specific merger related harms was

 5 Staff concerned with and that you feel are addressed by the

 6 settlement agreement?

 7 A. (Vasconi) The merger related harms that we believe

 8 are addressed are things such as finance -- insuring that

 9 financial reporting continue and that we have adequate

10 records going forward to be able to examine the companies in

11 the context of the AFOR. We're concerned that in the

12 context of broadband services that unserved and underserved

13 areas would continue to receive investment. And we're also

14 concerned with rate stabilization plus a number of other

15 concerns.

16 Q. Let's try to address a couple of those. With

17 respect to rate stabilization what specifically about the

18 merger was a harm that Staff saw that needed to be addressed

19 with rate stabilization?

20 A. (Vasconi) We were concerned that business rates

21 and residential rates for single party users would be

22 increased, and the condition of maintaining tariff rates at

23 current levels is something that we think addresses that.

24 With respect to Qwest's single party business rate given the

25 AFOR and competitive classification of that service we

0247

 1 believe that the $1 increase is something that while it's an

 2 increase it's relatively small and it provides some

 3 stability going forward for customers.

 4 Q. Do you agree with me, Mr. Vasconi, that generally

 5 in competitive markets prices decrease rather than increase?

 6 A. (Vasconi) I do, but the prices typically go to

 7 cost, I think.

 8 Q. When Staff agreed to the settlement, let me get

 9 out some papers here, did Staff take a look at the

10 Commission's order in the Verizon Frontier case regarding

11 the types of factors the Commission looks at when

12 determining whether the public interest is promoted by the

13 merger?

14 A. (Vasconi) Yes.

15 Q. Okay. And one of those factors, I'll read it for

16 you, and just let me know if you considered this when

17 accepting the settlement, is the impact on competition at

18 the wholesale and retail level including whether the

19 transaction might distort or impair the development of

20 competition, did you take that into account?

21 A. (Vasconi) Yes, we did.

22 Q. What did you take into account in the Staff

23 settlement regarding the impact on competition at the

24 wholesale level?

25 A. (Vasconi) Specifically insuring the OSS, the

0248

 1 wholesale OSS systems would be in place and that there would

 2 be no dramatic transition off of those systems --

 3 Q. Okay.

 4 A. (Vasconi) -- for a period of time.

 5 Q. And so did you look at the impact on

 6 interconnection agreements?

 7 A. (Vasconi) No, we did not.

 8 Q. Did you look at the impact on network issues that

 9 the companies have with respect to a single point of

10 interconnection, for example?

11 A. (Vasconi) No, not explicitly, but there is a

12 condition that we did put into the agreement indicating that

13 if there were any network rearrangements Staff would need to

14 be made aware of those.

15 Q. Is there anything in the settlement agreement that

16 you believe promotes the development of wholesale

17 competition?

18 A. (Vasconi) Other than what might be in the Integra

19 agreement, no.

20 Q. Okay. Which brings me -- what's Staff's position

21 on the Integra agreement, do you think that should be made

22 available as part of the Commission order to all CLECs and

23 wireless carriers?

24 A. (Vasconi) Yes.

25 Q. Okay. Condition 20 talks about the retail rate

0249

 1 cap. And there's a description of a rate freeze except for

 2 "exogenous events." Are exogenous events defined in the

 3 settlement agreement?

 4 A. (Vasconi) No, not explicitly.

 5 Q. So this is not really a hard cap on rates for

 6 retail customers; correct?

 7 A. (Vasconi) Well, I believe it is because in that

 8 particular paragraph identifying or referencing exogenous

 9 events it indicates that those exogenous events are limited

10 to activities or orders issued by the FCC or this

11 Commission.

12 Q. Okay. Go to Condition 28, please. And that

13 condition talks about rate center consolidation; correct?

14 A. (Vasconi) Correct.

15 Q. Can you explain to me what's the purpose of this

16 condition?

17 A. (Vasconi) The purpose of this condition is to

18 effectively conserve numbering resources.

19 Q. Does it have anything to do with the consolidation

20 of the networks of the two companies?

21 A. (Vasconi) Not explicitly, no.

22 Q. Okay. So does this mean that the rates that the

23 companies charge for customers in these various exchanges

24 should be merged together? In other words, if one exchange

25 that's listed here charges $15 for a residential line and

0250

 1 the other one charges $16, is the purpose of this to make it

 2 so that they, customers, are charged $16 or $15 in both of

 3 those exchanges?

 4 A. (Vasconi) No. Typically rate center consolidation

 5 occurs between exchanges where the rates are the same.

 6 Q. But is there any provision here where the rates

 7 are different for these various rate centers?

 8 A. (Vasconi) No.

 9 Q. Okay. Do you agree with me that the intrastate

10 access charges charged by the various ILECs that are the

11 Joint Applicants here differ? In other words, the Embarq

12 access charges are different than the Qwest access charges

13 and they're different than the CenturyTel ILEC access

14 charges?

15 A. (Vasconi) Yes, they are.

16 Q. Do you agree with me that it would be a good idea

17 to get those access charges consolidated to a single rate?

18 A. (Vasconi) I think that's going to be the result --

19 that determination should be the result of the further

20 examination of access charges and everything that is

21 impacted by them, namely other rates, as well, other

22 business or residential rates.

23 Q. I think Ms. Endejan asked the Qwest and

24 CenturyLink witnesses this, but I want to ask you this. By

25 virtue of the fact that, for example, a cap is being put on

0251

 1 the Qwest 1FR rate, do you agree with me that the terms of

 2 the Qwest AFOR are being changed as part of this settlement?

 3 A. (Vasconi) I think the terms of the Qwest AFOR are

 4 being extended and in a -- and with respect to the rate,

 5 yes, it is being -- there is a change in the Qwest AFOR.

 6 Q. Okay. Is it technically possible for the Staff

 7 and the Commission to review Qwest's AFOR at the time it was

 8 suppose to be reviewed absent this merger agreement? In

 9 other words, we heard that the agreement was, the AFOR was

10 to expire in November of 2011. Is it possible for Staff and

11 the Commission to do its work on the Qwest AFOR if there had

12 been no change in the termination date of the AFOR?

13 A. (Vasconi) I think it's possible, but I think what

14 would result is an incomplete assessment of the situation

15 that we see if the merger is approved.

16 Q. But nothing in this transaction prevents the

17 Commission from doing that work absent this settlement?

18 A. (Vasconi) No, not absent this settlement.

19 Q. Okay. We covered this a little bit, but I just

20 want to make sure I got it here. We talked about the

21 synergy realization beginning right after the merger closes,

22 at least beginning; correct?

23 A. (Vasconi) We did, we talked about it.

24 Q. Do you agree with that that the company has stated

25 that it will begin obtaining synergies from the merger right

0252

 1 after the merger closes?

 2 A. (Vasconi) Yes.

 3 Q. And if the Commission does not address intrastate

 4 access charges as part of this -- as part of its resolution

 5 of the merger, do you agree with me that while the company

 6 will be realizing merger synergies its access rates will

 7 stay stable until the review of the Qwest and CenturyLink

 8 AFOR's?

 9 A. (Vasconi) Its access rates could conceivably drop,

10 they could conceivably increase because they are not part of

11 any examination that is planned, at least by the Commission,

12 outside of the AFOR.

13 Q. Okay. Was there any specific reason why you

14 picked three to four years for the AFOR review in Condition

15 3?

16 A. (Vasconi) Well, in testimony that the company had

17 offered up they indicated that synergy benefits would accrue

18 to the company in a three to five year period. So we looked

19 at that. And then when one considered the Embarq, the

20 Embarq/CenturyTel agreement/merger, that was five years from

21 2009 which would take it to 2014. So looking at a three to

22 four year window we thought was sufficient to be able to

23 capture most of the synergies or to be able to bring in most

24 of the synergies into the results of operation examination.

25 Q. And your answer there raises a question to me. So

0253

 1 the settlement agreement that's being proposed with respect

 2 to the Embarq/CenturyTel AFOR that was supposed to be filed

 3 as a result of the Commission's approval of that merger, it

 4 extends that AFOR filing by a year; is that correct?

 5 A. (Vasconi) That was suppose to take place in 2014.

 6 This could extend it as much as one year.

 7 Q. Okay. And so what's your opinion of -- why does

 8 Staff believe it has the authority to change the results of

 9 the Commission's order where it ordered Embarq and

10 CenturyTel to file an AFOR five years after the close of

11 that merger?

12 A. (Vasconi) Staff doesn't have the authority to

13 change that.

14 Q. Okay.

15 A. (Vasconi) But this was an agreement that all

16 parties came to, and as part of the agreement we

17 incorporated the three to four year period.

18 Q. Would a shorter period -- would Staff be opposed

19 to a shorter period for an AFOR review than the three to

20 four years?

21 A. (Vasconi) The issue with that, again, is merger

22 synergies are probably not going to be fully realized in any

23 period shorter than three years. So we would, I think -- we

24 clearly believe that a three to four year window is

25 appropriate here.

0254

 1 Q. How long has it been since the Embarq/CenturyTel

 2 closed, that was in 2009; correct?

 3 A. (Vasconi) 2009.

 4 Q. And hasn't the companies provided information as

 5 part of their testimony in this case regarding the amount of

 6 synergies that they've realized as part of that merger

 7 already?

 8 A. (Vasconi) We have seen a report generated by

 9 CenturyTel/Embarq that indicated what those synergy benefits

10 were to date.

11 Q. Okay. And so we're about a year and a half out

12 from the approval of that merger; correct, or the closing of

13 that merger?

14 A. (Vasconi) I believe so. I think that merger

15 closed in I want to say the first half of 2009 sometime.

16 Q. So roughly 18 months; correct?

17 A. (Vasconi) Uh-huh.

18 Q. So we have a pretty good idea of where they're

19 tracking on synergy savings as a result of that merger just

20 18 months out from that; right?

21 A. (Vasconi) We have an idea, but there are probably

22 additional activities associated with the CenturyTel/Embarq

23 merger that have not occurred yet. So we're not real

24 certain where that will ultimately end up.

25 Q. I believe the companies have testified that

0255

 1 they're ahead of their projections on synergy savings on the

 2 Embarq/CenturyTel merger; right?

 3 A. (Vasconi) I think that's true.

 4 Q. Okay. So these synergy savings and the timing of

 5 them aren't set in stone; are they?

 6 A. (Vasconi) No, there's going to be some variation I

 7 would believe in that.

 8 Q. Let's get to the broadband commitment, that's

 9 Paragraph 14 of the settlement. And that requires an

10 investment of no less than $80 million in the state of

11 Washington over a five year period; is that right?

12 A. (Vasconi) Correct.

13 Q. Does Staff have an understanding, based on the

14 documents that were produced in this case, in statements

15 made in testimony by the companies -- and statements made by

16 the companies in testimony as to how much of that

17 $80 million was already in the joint business plans of Qwest

18 and CenturyLink? In other words, how much is incremental of

19 this $80 million?

20 A. (Vasconi) I don't know.

21 Q. But Staff believes that this $80 million broadband

22 commitment is a benefit of this settlement agreement;

23 correct?

24 A. (Vasconi) Yes, we do.

25 Q. Okay. Are you aware that as part of the

0256

 1 CenturyTel/Embarq merger that the FCC required CenturyLink,

 2 the new CenturyLink, to rollout broadband to 100 percent of

 3 their combined territory within three years?

 4 A. (Vasconi) I think there was -- I believe that's

 5 true. I have not reviewed that approval statement; however,

 6 I think it was 90 percent with wireline assets and then the

 7 rest of it could be provided through other means.

 8 MR. SCHIFMAN: May I approach the witness?

 9 JUDGE FRIEDLANDER: Yes. What exhibit is that?

10 MR. SCHIFMAN: We're going to tell you.

11 JUDGE FRIEDLANDER: Thank you.

12 MR. SCHIFMAN: Yeah, I'm going to show the witness

13 MRH-20, an exhibit that's been marked MRH-20.

14 JUDGE FRIEDLANDER: Thank you.

15 MR. SCHIFMAN: That paragraph at the top --

16 MS. CAMERON-RULKOWSKI: MRH-20 is listed in the

17 exhibit list as a UTC order.

18 MR. SCHIFMAN: No, I'm talking about the FCC

19 order. I'm sorry, I think we gave the wrong number it's 18,

20 MRH-18.

21 COMMISIONER JONES: Mr. Schifman, what page are

22 you referring to on that?

23 MR. SCHIFMAN: I am referring to Page 8771 is how

24 I have it numbered. It's the appendix, Commissioner Jones,

25 Appendix C which is at the very end of the exhibit, and

0257

 1 actually go to --

 2 COMMISIONER JONES: I think I see it.

 3 MR. SCHIFMAN: Now I just lost it. Here we go.

 4 So is everybody -- are we at the right place?

 5 JUDGE FRIEDLANDER: Are we still at 8771?

 6 MR. SCHIFMAN: Yes, 8771.

 7 BY MR. SCHIFMAN:

 8 Q. Mr. Vasconi, do you see there the commitment that

 9 CenturyTel and Embarq agreed to and was ordered by the FCC

10 in its approval of that merger regarding broadband?

11 A. (Vasconi) Yes, I see it.

12 Q. So of the $80 million that the companies have

13 committed to spend here in Washington as a result of the

14 settlement agreement, do you know how much of that

15 $80 million was already committed by the company to

16 basically fulfill its commitment that the FCC ordered?

17 A. (Vasconi) Well, there's -- in terms of percent

18 availability currently with the current Century Embarq

19 properties they are approaching 90 percent now if not

20 slightly greater than that.

21 Q. But do you have an opinion as to how much is

22 incremental of the $80 million than what they agreed to do

23 as part of the FCC merger approval of the CenturyTel/Embarq

24 merger?

25 A. (Vasconi) I don't know exactly how much of the

0258

 1 80 million would be diverted to going to that commitment.

 2 However, as I just indicated, from what I can recollect

 3 their properties are roughly at 90 percent now, so it would

 4 seem that that commitment to the FCC has virtually been met

 5 currently before the 80 million has been earmarked.

 6 MR. SCHIFMAN: Is the application that the Joint

 7 Applicants filed, is that an exhibit that's listed?

 8 JUDGE FRIEDLANDER: I don't believe so. It is

 9 part of the record but it has not been offered as an

10 exhibit.

11 MR. SCHIFMAN: I have a page from that application

12 that I've copied off that I would like to at least show the

13 witness here, I don't know if we necessarily need to admit

14 it into evidence, but I would like to be able to show it to

15 the witness. I mean it's part of the record as the

16 application.

17 JUDGE FRIEDLANDER: Right. Ms. Cameron-Rulkowski,

18 do you have any objection to that?

19 MS. CAMERON-RULKOWSKI: I don't have any

20 objection.

21 JUDGE FRIEDLANDER: Which page are you showing to

22 the witness?

23 (Document handed up to the Bench.)

24 MS. CAMERON-RULKOWSKI: Does this correspond with

25 Exhibit A?

0259

 1 MR. SCHIFMAN: It's the same thing.

 2 MS. CAMERON-RULKOWSKI: Thank you.

 3 MR. SCHIFMAN: So it looks like I've handed the

 4 witness a page from the joint application that I believe,

 5 thanks to counsel's clarification, is Exhibit A to the

 6 application. And it's a map of the state of Washington with

 7 CenturyLink exchanges and Qwest exchanges.

 8 BY MR. SCHIFMAN:

 9 Q. As of 12-31-2009, what does it say about DSL

10 enabled lines in that exhibit, Mr. Vasconi?

11 A. (Vasconi) It says that as of 12-31-2009, which is

12 over a year ago, CenturyLink was at 86 percent attainment.

13 Q. And Qwest was at?

14 A. (Vasconi) 88.

15 Q. Okay. And do you have statistics that update that

16 86 and 88 percent?

17 A. (Vasconi) Yes, we do. They were filed

18 confidentially.

19 Q. In Staff testimony as of what date?

20 A. (Vasconi) This was as of September 27, 2010, with

21 some additional updates since then. Those updates and that

22 exhibit, it contained newer data, were offered up by

23 Ms. Jing Liu in her direct testimony.

24 MR. SCHIFMAN: Which I couldn't see because I'm

25 in-house counsel.

0260

 1 CHAIRMAN GOLTZ: Ms. Endejan can look at them, I

 2 guess.

 3 MR. SCHIFMAN: Got to love the rules, huh. Just

 4 give me one moment, please.

 5 CHAIRMAN GOLTZ: I want to ask the companies, the

 6 Applicants, is there a problem with that information being

 7 available? That was filed confidentially. Is that an issue

 8 you want to maintain confidentiality in?

 9 MS. ANDERL: Yes, it's highly confidential

10 information, Your Honor, and in-house counsel is not

11 permitted to inspect that information which is broadband

12 availability on a per wire center basis.

13 CHAIRMAN GOLTZ: Although if it's a year old then

14 it's okay?

15 MS. ANDERL: This information on the map isn't

16 done on a wire center basis, it's on a statewide basis.

17 CHAIRMAN GOLTZ: I understand.

18 MS. ANDERL: Part of it, yes. But you're right,

19 part of it is the age of the data, but part of it is the

20 granularity.

21 BY MR. SCHIFMAN:

22 Q. So has the data that Staff provided, is it a

23 statewide basis or a wire center basis that you were just

24 discussing that updated these percentages?

25 A. (Vasconi) It's wire center data that can be

0261

 1 aggregated to a statewide basis.

 2 Q. Have you done that aggregation?

 3 A. (Vasconi) Ms. Liu did that in creating her

 4 testimony.

 5 Q. Okay. I think that's all I have for Mr. Vasconi.

 6 Let me take a look and see what, if anything, I have for

 7 Ms. Johnson, Johnston?

 8 A. (Johnson) Johnson.

 9 JUDGE FRIEDLANDER: Do you need a moment?

10 MR. SCHIFMAN: Yeah, can you just give me one

11 moment?

12 JUDGE FRIEDLANDER: Sure.

13 CHAIRMAN GOLTZ: Ms. Anderl, is the

14 aggregated number -- I understand the wire center issue, but

15 is the aggregated number also confidential? If it's a big

16 number don't you want to boast about that?

17 MS. ANDERL: While Mr. Schifman is checking for

18 questions for Ms. Johnson if I might have a moment to confer

19 with our clients about that that would be something we could

20 respond to.

21 CHAIRMAN GOLTZ: Sure.

22 (Brief discussion held off the record.)

23 MS. ANDERL: Your Honor, we would be happy to put

24 into the record on a nonconfidential basis the updated

25 percentages availability for two numbers, one for all the

0262

 1 CenturyLink ILECs and one for Qwest.

 2 CHAIRMAN GOLTZ: I don't know if that -- does that

 3 help?

 4 MR. SCHIFMAN: Sure. If they want to say what it

 5 is that's fine.

 6 MS. ANDERL: This is from Ms. Liu's exhibit which

 7 is the handiest reference document that I have.

 8 CenturyLink, all ILECs is 91 percent DSL availability rates

 9 and Qwest is 89 percent.

10 JUDGE FRIEDLANDER: Which exhibit is that for

11 Ms. Liu?

12 MS. ANDERL: It is JL-3HC.

13 JUDGE FRIEDLANDER: Thank you.

14 MR. SCHIFMAN: Ms. Johnson, are we ready to go

15 here? Judge?

16 JUDGE FRIEDLANDER: If you have questions for her

17 please proceed.

18 MR. SCHIFMAN: I do.

19 BY MR. SCHIFMAN:

20 Q. Ms. Johnson, as part of your testimony supporting

21 the settlement you tout the broadband benefit as one of the

22 reasons why Public Counsel agreed to -- or the broadband

23 commitment is one of the reasons why Public Counsel agreed

24 to the settlement; is that correct?

25 A. (Johnson) Yes, we do. I do.

0263

 1 Q. Of the $80 million that's pledged to broadband

 2 investment, do you know how much of that is going to DSL

 3 rollout as opposed to video services that the companies are

 4 going to offer?

 5 A. (Johnson) We don't have specific information about

 6 the various pieces; however, we didn't accept just a dollar

 7 commitment on this piece. There are a lot of various

 8 components about where broadband would be deployed, which

 9 wire centers. And also in the planning process that there

10 will be an emphasis on areas where they're going to be

11 looking at wire centers where there's less than 85 percent

12 deployed.

13 So for Public Counsel the number wasn't the

14 specific issue alone, it involved various pieces. And we

15 feel that together the components of the settlement allow us

16 to feel that the companies are going to be deploying

17 broadband to more than just video services.

18 Q. You do recognize that that investment will be

19 allowed to let them have the ability to provide video

20 services in addition to DSL services?

21 A. (Johnson) Yes.

22 Q. Let's go to the testimony that's in support of the

23 settlement. I'm going to Page 32.

24 A. (Johnson) Okay.

25 MR. FFITCH: Excuse me, does Counsel have a line

0264

 1 reference for the witness?

 2 BY MR. SCHIFMAN:

 3 Q. Yes, going to Lines 18 through 20 and then on to

 4 the next page.

 5 A. (Johnson) Okay.

 6 Q. Talks about public interest standard and synergy

 7 analysis, and says "must result in benefits to customers."

 8 You see that reference to customers?

 9 A. (Johnson) Correct.

10 Q. Do you think the Commission is charged with

11 looking at only the merger's impact on retail customers or

12 also on wholesale customers?

13 A. (Johnson) That would be customers all together,

14 not just retail customers.

15 Q. So that includes wholesale customers; right?

16 A. (Johnson) Yes.

17 Q. Okay. And then you go on in that answer, Lines 3

18 through 5, and you talk about the agreement includes several

19 components which provide a means by which synergy benefits

20 can be appropriately shared with customers. What portion of

21 the settlement agreement shares synergies with wholesale

22 customers?

23 A. (Johnson) Well, it sets out that the synergies

24 would be tracked and reported in the -- to the AFOR. And

25 this is something that we actually looked at and looked to

0265

 1 the CenturyTel/Embarq, the way the Commission had previously

 2 set up synergies to be tracked and reported and taken into

 3 consideration when the financial analysis would be done in

 4 that case. And so we used the same blueprint for that. And

 5 when -- in the AFOR commitment, which is No. 3, I believe it

 6 specifically states that synergies would be taken into

 7 account in that. And the Commission has stated that as a

 8 result of these mergers synergies should be shared with

 9 customers. So we feel taken together it allows for that.

10 Q. And the AFOR reviews won't begin until at least

11 three to four years from the merger closing date; right?

12 A. (Johnson) This is correct.

13 Q. Is there anything in the agreement that shares

14 synergies with wholesale customers prior to the review of

15 the AFORs?

16 A. (Johnson) Nothing that I'm aware of. I'm not as

17 familiar with the wholesale issues as I am with retail.

18 Q. Let's go back to Page 29 of the testimony, Lines 1

19 through 7?

20 A. (Johnson) Okay, I'm there.

21 Q. And I asked Mr. Vasconi some questions about

22 Conditions 5 and 6 regarding management costs and merger

23 costs. And do you recall those questions and the answers

24 that he gave?

25 A. (Johnson) Vaguely. I mean I couldn't state them

0266

 1 verbatim.

 2 Q. Thank you. I'm not expecting you to.

 3 A. (Johnson) Okay, perfect.

 4 Q. Do you have any independent knowledge of how it

 5 can be assured that any rate increases that Qwest or

 6 CenturyLink ILECs may make, for example, in their bundled

 7 prices or the $1 increase to business rates, how those

 8 increased revenues will not go to covering management costs

 9 or merger costs?

10 A. (Johnson) Well, I do know as a component of the

11 synergy reporting there's also reporting associated with

12 merger costs that is an additional line item on that

13 confidential report. So that would be something that would

14 be taken into consideration in that proceeding, but other

15 than that, no.

16 Q. That would be taken into consideration in the

17 future AFOR proceedings?

18 A. (Johnson) Correct. As specified by the Commission

19 in the previous CenturyTel/Embarq order.

20 Q. And Condition 20, if you go down to Lines 8

21 through 11 of your testimony there talks about a retail rate

22 cap. Is there, in your knowledge, anything in the

23 settlement that provides wholesale customers a rate cap?

24 A. (Johnson) Nothing that I'm aware of.

25 MR. SCHIFMAN: No further questions for the

0267

 1 witness.

 2 JUDGE FRIEDLANDER: Thank you. At this point I'm

 3 getting a feeling that Mr. Trinchero would like to

 4 cross-examine the panel. Are there any other parties that

 5 had intended on cross-examining this panel? Okay,

 6 Mr. Trinchero, it looks like you are it.

 7 MR. TRINCHERO: Your Honor, I do have just a few

 8 questions for Mr. Vasconi.

 9 JUDGE FRIEDLANDER: Okay.

10 MR. TRINCHERO: Thank you.

11

12 CROSS-EXAMINATION

13 BY MR. TRINCHERO:

14 Q. Good afternoon, Mr. Vasconi, how are you today?

15 A. (Vasconi) Good afternoon. I'm fine.

16 Q. Mr. Schifman had asked you some questions about

17 Conditions 5 and 6 in the settlement agreement, I'm just

18 going to have you flip to those if you don't mind on Page 3

19 of Appendix A.

20 In Condition No. 5 the companies have agreed "not

21 to seek recovery from their retail or wholesale customers

22 any increases in overall management costs related to the

23 transaction"; is that correct?

24 A. (Vasconi) Yes.

25 Q. And in six CenturyLink has agreed not to "seek

0268

 1 recovery through retail or wholesale service rates,

 2 transition, integration, branding or transaction costs in

 3 Washington"; is that correct?

 4 A. (Vasconi) That's correct.

 5 Q. You may recall earlier Mr. Schifman asked you some

 6 questions about how the Commission might be able to enforce

 7 that provision with respect to, for example, potential

 8 increases in bundled rates and/or the business rate. And I

 9 guess that same question I would like to direct to the

10 wholesale rates. What, if any, mechanisms are in place for

11 the Commission and the Commission Staff to determine whether

12 or not the merged company is recovering from its wholesale

13 customers either of these types of costs?

14 A. (Vasconi) Well, from the standpoint of access

15 charges as a form of wholesale service provided by the

16 companies the companies would have to come in and make an

17 access charge showing. And in that kind of proceeding,

18 given the reporting that we would have on these particular

19 items, we may be able to see whether or not these costs are

20 showing up in access charges.

21 Q. The term "recovery from wholesale customers"

22 that's used and also the term "wholesale service rates" as

23 used in Conditions 5 and 6 in the settlement, do those terms

24 in your mind reflect rates other than access rates?

25 A. (Vasconi) They very well might, yes. And to the

0269

 1 point of trying to understand what is going on with these

 2 costs relative to those rates which I think in the main the

 3 Commission does not necessarily review because they're

 4 typically parts of interconnection agreements we would not

 5 have the ability to look at that impact.

 6 Q. So from your answer I understand that you would

 7 include within that term rates paid by wholesale customers

 8 under interconnection agreements; is that correct?

 9 A. (Vasconi) I would.

10 Q. What about rates paid by wholesale customers under

11 commercial agreements?

12 A. (Vasconi) They could, yes.

13 Q. Other wholesale agreements, as well?

14 A. (Vasconi) Right.

15 Q. And I take it that your answer for rates paid

16 under those types of agreements is the same that there is no

17 mechanism in place for the Staff to review?

18 A. (Vasconi) That's correct.

19 Q. I'm going to have you flip to Condition 28 on Page

20 13 of Appendix A. This is the rate center consolidation.

21 With respect to rate center consolidation is it possible for

22 such rate center consolidation to impact reciprocal

23 compensation rates paid between competitors and the ILEC?

24 A. (Vasconi) I really haven't examined that.

25 Q. And so in negotiating this particular provision

0270

 1 you did not make an analysis of how this might impact

 2 wholesale customers?

 3 A. (Vasconi) No.

 4 Q. Mr. Schifman also asked you a couple of questions

 5 about the basis for the time frame that was used for

 6 determining the extension on the AFOR. And if I'm not

 7 mistaken you responded that in large part that was based on

 8 the synergies period that the company had stated in its

 9 testimony?

10 A. (Vasconi) That's correct.

11 Q. And that's that three to five year period?

12 A. (Vasconi) That's right.

13 Q. Now in the settlement agreement you also have a

14 provision that deals with wholesale OSS and specifically the

15 reference is to Condition 23 at Page 9 of Appendix A. As I

16 understand it this would keep the current Qwest OSS in place

17 for two years; is that correct?

18 A. (Vasconi) Yes, it is.

19 Q. Isn't it true that Staff in its testimony had

20 proposed a longer term for that?

21 A. (Vasconi) We had proposed three years originally.

22 Q. And in proposing the three years initially was it

23 Staff's position that the term should be linked in some way

24 to the synergy period, the capturing of synergies?

25 A. (Vasconi) I don't exactly recall if it was, but it

0271

 1 would make some sense that that were the case. But with the

 2 Integra settlement at two years, also specifying a 270 day

 3 review period, if you will, we believe that that started to

 4 get us pretty close to the three year period.

 5 Q. And I'm going to just explore that with you. Is

 6 it your understanding under the Integra settlement agreement

 7 that that 270 day period could actually start prior to the

 8 end of the two year period?

 9 A. (Vasconi) That is true, we understand that.

10 Q. And so the merged company could file that on day

11 271?

12 A. (Vasconi) Yes.

13 Q. And have a new OSS mechanism replacement of some

14 sort in place within two years?

15 A. (Vasconi) Yes, that is true; however, I think

16 given the continuation of the CMP process, coupled with the

17 fact that even under -- my understanding is that even under

18 Qwests existing agreements they can change or modify OSS

19 platforms currently. So our view was that two year period

20 would be sufficient to insure that wholesale carriers

21 concerns with respect to OSS would be protected.

22 Q. And that's true even though it falls in a time

23 frame less than the minimum three years projected, three to

24 five years for the synergies?

25 A. (Vasconi) Yes.

0272

 1 Q. You were asked some questions by Mr. Schifman

 2 about the opt out provision, which I'm going to refer to it

 3 in that, do you recall that testimony?

 4 A. (Vasconi) I believe so.

 5 Q. And specifically if the Commission were to in its

 6 order change the duration of that OSS provision that we were

 7 just talking about, is it Staff's position that it would

 8 then withdraw from the settlement agreement?

 9 A. (Vasconi) It's our position that we would reserve

10 the right to review that and then make a determination at

11 that point in time.

12 Q. But sitting here today you would not have an

13 objection to such a modification?

14 A. (Vasconi) I would reserve the right to look at it

15 when the Commission issued an order.

16 Q. Thank you.

17 MR. TRINCHERO: One moment, Your Honor. I have

18 nothing further, Your Honor. Thank you.

19 JUDGE FRIEDLANDER: Thank You. Mr. Simshaw, did

20 you have any redirect?

21 MS. ANDERL: Your Honor, the Joint Applicants were

22 wondering if we might hold any redirect until after

23 questions from the Bench?

24 JUDGE FRIEDLANDER: That's fine.

25 Ms. Cameron-Rulkowski, do you have any redirect?

0273

 1 MS. CAMERON-RULKOWSKI: I do have a couple of

 2 questions, but I would second Ms. Anderl.

 3 JUDGE FRIEDLANDER: And Mr. ffitch.

 4 MR. FFITCH: Your Honor, we would also like to

 5 request that it be delayed until after Bench questioning.

 6 JUDGE FRIEDLANDER: That's fine. So are there any

 7 questions from the Bench? Chairman Goltz.

 8 CHAIRMAN GOLTZ: I'm sure it's confidence that you

 9 know you're going to have to clarify after we get done.

10

11 CROSS-EXAMINATION

12 BY CHAIRMAN GOLTZ:

13 Q. So what I would like to do first is go through the

14 Appendix A to the settlement agreement with some questions.

15 Some of the ground has been covered. And I'll start with

16 Mr. Vasconi. And Ms. Johnson may what to chime in on some

17 of these. And then I'm going to have some questions

18 primarily, I think, for the Applicants, primarily

19 Mr. Reynolds.

20 So, first going to Paragraph 3 on the AFOR, and

21 going to Paragraph 3(b)(i), the pro forma results of

22 operations. I gather, Mr. Vasconi, the purpose of this is

23 to basically set up or give the Commission the data and

24 information with which it either ends up to evaluate the

25 AFOR, propose the AFOR that's called for in the next

0274

 1 paragraph, or ultimately perhaps if an AFOR doesn't work out

 2 that would give you the basis for conducting a general rate

 3 case?

 4 A. (Vasconi) That is correct.

 5 Q. So now going down to Paragraph 3(c) I understand

 6 that -- and I'm going to be referring to the AFOR statute a

 7 little bit, and I'm not asking you to draw legal

 8 conclusions, but just your understanding. If you need to

 9 defer to counsel that's fine.

10 But as I understand it under the AFOR statute the

11 company can propose--and this is a requirement they would

12 have agreed to propose--the company proposes to do one

13 either with a consolidated AFOR or one for each of the

14 subparts. And it says in Paragraph C, "The parties

15 understand that the Commission may request filing of a

16 consolidated AFOR plans on its onw motion." Is that a

17 meaningful sentence, I mean when you say "request," do you

18 mean request like please do or do you mean file one?

19 A. (Vasconi) I mean file it.

20 Q. Okay. So when you say request here it's not like

21 please, it's do it?

22 A. (Vasconi) Right, right.

23 Q. Is that the understanding, Mr. Jones, of the

24 companies, as well, of that paragraph?

25 A. (Jones) Yes, sir.

0275

 1 Q. Mr. Reynolds, is that your understanding?

 2 A. (Reynolds) Yes.

 3 Q. My other understanding of the AFOR statute, at the

 4 end of the day the AFOR is proposed and the Commission can

 5 either reject it, accept it or modify it. And if it's a

 6 modification at least the company has a right within a

 7 certain period of time to accept it. And so in effect am I

 8 correct in characterizing that they in effect have a veto

 9 power over that?

10 A. (Vasconi) Yes, I believe they do given the

11 structure of the statute.

12 Q. Right. So that gets to my next question. In

13 following this through assume--and I'm guessing that if

14 access charges are an issue we're going to see Mr. Trinchero

15 and others here in the hearing room--and if we assume that

16 the access charge proposal by the company at that point--the

17 merged company at that point--is not satisfactory, either is

18 not satisfactory to the Commission and so it's rejected, or

19 if the Commission proposes an -- accepts Mr. Trinchero's

20 suggestion and we lower them further and the company is not

21 satisfied with that, at that point we have no AFOR?

22 A. (Vasconi) I think that's right.

23 Q. Then what happens? Where are we at that point? I

24 know where we are, I think, with the CenturyLink companies,

25 because they still have their tariffed rates. Are we back

0276

 1 to the existing AFOR with the Qwest company?

 2 A. (Vasconi) I think that throws it all the way back

 3 to rate of return regulation for the Qwest companies.

 4 Q. From pre-AFOR rates?

 5 A. (Vasconi) Well, from the standpoint of what was

 6 waived during the AFOR that Qwest currently operates under.

 7 If that AFOR is not extended--and others may have a better

 8 opinion on this than me--if that AFOR is not extended it

 9 would go back to a pre-AFOR status, regulatory status.

10 CHAIRMAN GOLTZ: Judge Friedlander, maybe this is

11 one of those issues when we list briefing issues we could

12 just ask the parties to comment on.

13 A. (Vasconi) My short and glib answer would be we're

14 in the dark side of the moon then. We don't know what that

15 looks like I don't believe.

16 BY CHAIRMAN GOLTZ:

17 Q. Okay. That answers my questions sort of on AFORs.

18 Going back one paragraph to Paragraph 2 on cost of

19 capital, where in the course of either an AFOR or a general

20 rate case, I assume, it states that the companies "will not

21 advocate for a cost of capital that is higher than what it

22 would have been absent the transaction." So I'm trying to

23 visualize what that evidence looks like. Would there be

24 presented in affect alternate versions of cost of capital

25 witnesses by the Company, by Staff, by Public Counsel,

0277

 1 perhaps by others that would say here's what it is now and

 2 here's what it would have been?

 3 A. (Vasconi) I think that's right, plus the use of

 4 surrogates, surrogates looking at other companies that might

 5 be similarly situated and looking at what their cost of

 6 capital was or will be at the time. So it would be the use

 7 of surrogates and then...

 8 Q. So the use of surrogates in that context would

 9 mean companies like CenturyLink companies that have not

10 merged with other companies?

11 A. (Vasconi) That's true.

12 Q. So I mean do you share my sort of ambiguity of it

13 all?

14 A. (Vasconi) I understand, yes.

15 Q. Okay. On the synergy reports in Paragraph 4, and

16 maybe I can ask the companies this, is there a standard

17 methodology for determining merger synergies? We're seeing

18 these synergy reports show up and these requirements for

19 them in merger cases and is it -- I mean how do you evaluate

20 that? Mr. Jones, do you know?

21 A. (Jones) I'm not sure I'm the right person to tell

22 you how we do that or how it would be done. But I guess in

23 terms of the report itself there would be some type of

24 template that would be developed in terms of what we would

25 use.

0278

 1 Q. Is Mr. Bailey the person to ask about that?

 2 A. (Jones) I think ultimately, yes.

 3 Q. And he would be the person to ask how you came to

 4 the figure of the -- the synergy savings figure as well

 5 that's in his testimony?

 6 A. (Jones) Yes, sir.

 7 Q. Maybe you can answer this. Is the synergy report

 8 requirement something that's shown up in other states'

 9 decisions on this transaction?

10 A. (Jones) I can't recall another state that we've

11 actually produced or will produce synergy reports. We have

12 various reports that we're going to provide in other states.

13 I really would have to check. There could be, but I can't

14 recall one right now.

15 Q. My question was going to be, and maybe I'll ask

16 Mr. Bailey this, do you count up synergy savings in each

17 state and add them up? Or do figure out what they are

18 overall and then back it down to the state level or do you

19 know?

20 A. (Jones) I would think the latter but you had

21 better ask Mr. Bailey.

22 Q. Okay. On the broadband commitment on Paragraph 14

23 we had some questions about whether in fact that's already

24 required. Mr. Jones, you weren't asked any of those

25 questions. So I'll ask you to respond to that issue. Is

0279

 1 this a commitment that you're already under an obligation to

 2 make anyway?

 3 A. (Jones) No, sir, we view this as beyond the

 4 commitment that was already made. If you'll notice the

 5 investment actually starts this year. And we're very far

 6 along on the FCC commitment. So this would be a new

 7 investment.

 8 Q. So whatever funds are spent -- did you have to

 9 document your broadband commitment to the FCC?

10 A. (Jones) Yes, we've had to file reports.

11 Q. Okay. So can I assume then that we could get

12 those reports in addition and compare them with the

13 reports--if we approve this with that condition--we compare

14 them with the reports that you're filing in this proceeding

15 and there would be no double counting?

16 A. (Jones) Yes, sir. The reports we file at the FCC

17 are more on a percentage basis. It's for our national

18 footprint, they're not state specific, as long as you

19 understand that. They're not state specific reporting.

20 Q. So then I couldn't tell if there's double

21 counting?

22 A. (Jones) I don't think you could from that.

23 Q. How could I tell if there's double counting?

24 A. (Jones) I'm not sure other than through the

25 reporting process we would -- well, it doesn't address the

0280

 1 double counting, but you would have a clear view into our

 2 spend going forward in terms of the exchanges we're

 3 enabling, the new customers that are being enabled, and the

 4 85 percent threshold Ms. Johnson referenced, you would have

 5 a clear idea where the investment was actually going.

 6 Q. Right. But you're not saying, are you, that your

 7 FCC commitment is complete?

 8 A. (Jones) We are on track to meet it by the end of

 9 2012 for all categories.

10 Q. Okay. If this is approved with this condition how

11 long would your $80 million expenditure, what time period

12 would that cover?

13 A. (Jones) Five years.

14 Q. So we could at least tell it's not double counting

15 after 2012?

16 A. (Jones) I think so. I think the main thing is the

17 company's intent here is pure in that we see this as

18 investment that will further enable broadband in the state

19 of Washington. And whether it be speed or enablement, the

20 company's motives are to continue investing and to make a

21 firm commitment on what a minimum or what an investment

22 would like look for this state and honor that.

23 Q. I have a couple more questions back to the AFOR I

24 just realized.

25 Mr. Vasconi, the thought was to take up the issue

0281

 1 of access charges in the AFOR proceeding. Am I correct in

 2 assuming that this settlement, if approved, would not

 3 prohibit any party, any company from filing a complaint over

 4 the merged company's access charged?

 5 A. (Vasconi) That is correct. And, in fact, in

 6 looking back over the last five or six years there have

 7 been, I want to say, two and maybe three access charge

 8 complaints filed by specific companies that have resulted in

 9 access charge reductions.

10 Q. And I'll ask both you and then the Companies this

11 question, too, of your understanding of this construct. If

12 we approve this settlement would you deem it to prohibit the

13 Commission from filing a complaint on access charges against

14 the merged companies?

15 A. (Vasconi) No, I would not.

16 Q. The Companies, do you have a view on that?

17 A. (Jones) Are you talking about within the context

18 of before the AFOR filing?

19 Q. Before the AFOR.

20 A. (Jones) I would think you had the authority to if

21 you chose to.

22 Q. Mr. Reynolds, you agree with that, too?

23 A. (Reynolds) Yes, I do.

24 Q. Okay. Let me ask a couple of things,

25 Mr. Reynolds. Ms. Endejan went over some of this, but in

0282

 1 your testimony, it's about Page 12. It's not Page 12, it's

 2 Page 11. The question where I think you summarized the case

 3 that this proposed merger is in the public interest, do you

 4 see that?

 5 A. (Reynolds) Yes. This is in my direct; right?

 6 Q. It's in your direct, yes. You basically have four

 7 reasons why you argue that this in the public interest, as I

 8 understand it. Am I correct that these four statements on

 9 Pages 11, carried over to Page 12, the answer to that

10 question is the same justification virtually verbatim in

11 every state in which this transaction has been pending?

12 A. (Reynolds) I would say it would be very similar,

13 yes.

14 Q. I did check Oregon and Minnesota over the lunch

15 hour, and except for the change of the company, of the

16 states and a couple of names it's word for word. So who

17 wrote this then, do you know?

18 A. (Reynolds) I think it was probably initially

19 drafted for some of our first hearings, and Minnesota would

20 probably be a good bet. And John Stanosh, president of

21 Minnesota probably had a hand in that.

22 Q. Let me ask you, the first one is on Page 11, Line

23 19 you give the first reason. And am I correct that's

24 basically saying we're bigger, the merged companies would be

25 bigger and stronger and that's a plus?

0283

 1 A. (Reynolds) That's right, with the economies scope

 2 and scale that are attended to that.

 3 Q. The second reason over on Page 12, Line 5, it

 4 says, "The combined company will have a strategic focus to

 5 offer products and services at rates, terms and service

 6 quality levels that provide differentiation in the market."

 7 So what's the difference? I mean is there a strategic focus

 8 that the combined companies would have that Qwest doesn't

 9 have now?

10 A. (Reynolds) Not necessarily, but I think each

11 company has a strategic vision independent of one another.

12 And I think one of the advantages of this merger is that it

13 combines two companies and you get a cross-pollination of

14 the ideas. For example, Qwest is not pursuing IPTV,

15 CenturyLink is. And to the extent that Qwest has strategic

16 business services--that I point out in my

17 testimony--CenturyLink does not. There may be application

18 for those products and services in CenturyLink territory.

19 And so it allows this cross-pollination of two companies,

20 two cultures and two focuses to come together and hopefully

21 take the best of both.

22 Q. What does it mean "rates, terms and service

23 quality levels that provide differentiation in the market"?

24 A. (Reynolds) I think if we don't differentiate

25 ourselves from our competitors we'll die on the vine. I

0284

 1 mean we as wireline providers we need to provide incentives

 2 for customers to stay with us. And we need to be strategic

 3 in our focus, and we need to be very creative in how we do

 4 that. We're facing competitors with, in many cases, better

 5 technology than we have. So we have to be very creative in

 6 how we do that and differentiate our products accordingly.

 7 Q. The third reason is the merging of CenturyLink's

 8 regional operating model and targeted marketing focus with

 9 Qwest's industry leading network, etc., will result in a

10 continued provision of high quality services to retail and

11 wholesale customers in Washington. Ms. Endejan asked about

12 that. That sounds to me like you're saying the advantage is

13 a continuation of what we're doing, and if we didn't -- the

14 implication is that if we didn't approve this it would be a

15 lessening of the services that you're providing now. If

16 it's a continuation it's not improvement, you know what I

17 mean? If this testimony is filed in all these states it

18 must have been pretty carefully drafted. So I read that as

19 saying -- I sense possible negative implication that if we

20 don't approve this than things are going to get worse?

21 A. (Reynolds) You know, I think that things would

22 stay the same which is not where, I believe either company

23 wants to be right now. I mean CenturyLink truly does have a

24 much more regional focus in their integration of their

25 operations along with their marketing. They empower people

0285

 1 very close to the market to develop products, to develop

 2 promotions.

 3 Qwest is not necessarily there right now, we're

 4 not on that same page. And I think that that, once again,

 5 what I discussed before about a cross-pollination of ideas

 6 and cultures, I think we can learn from that. And I think

 7 given Qwest's large markets the application of this regional

 8 approach will really benefit us.

 9 Would Qwest have done that on its own? Well,

10 Qwest has tried to do that in fits and starts, I can tell

11 you, over the last 10 to 15 years. And I don't think we've

12 ever successfully implemented it. But I think CenturyLink

13 has. In fact, it's kind of a hallmark of their integration.

14 So I think we can learn from that.

15 Now what CenturyLink doesn't have is the

16 enterprise market focus that Qwest has had to have dealing

17 with major customers in major urban areas. And I think they

18 can learn from us in that respect. If you look at the way

19 the corporations have already started to take form, a lot of

20 the Qwest enterprise market is remaining intact, or a lot of

21 the Qwest enterprise personnel and departments are remaining

22 intact in the new CenturyLink organization.

23 And also the structure that CenturyLink is

24 starting to develop for the new company uses this

25 go-to-market approach and regional marketing approach. And

0286

 1 that's how it's structuring the new entity. So hopefully

 2 that responded to what you were asking.

 3 Q. So let me ask another question, that maybe I

 4 should ask Mr. Bailey this, as well. When I think of

 5 mergers and, you know, I think back at one point Pacific

 6 Northwest Bell merged with Mountain Bell and whatever the

 7 third one was, I forget what it was, but it formed one

 8 company. And now what I see with this merger though is

 9 there's going to be still a whole bunch of individual

10 companies operating in the state of Washington.

11 Wouldn't there be more synergies if you were one

12 company, one operating company filing one AFOR, filing one

13 set of tariffs for the entire service area?

14 A. (Reynolds) I believe that in time the answer is

15 probably yes. I think immediately the answer is no and that

16 there would be fairly significant customer impacts of trying

17 to do that level of rate rebalancing and that level of

18 integration. The nice part about this merger is it gives

19 the company time by acquiring the operating entity under an

20 umbrella and allowing it to take a look at the operations,

21 take a look at the products and services and slowly

22 integrate those across the companies. That's the beauty of

23 this, they don't have to do it day one. And I'll let John

24 give his response.

25 Q. Mr. Jones, do you have anything to add?

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 1 A. (Jones) Sure. And Mark answered that properly. I

 2 think the main thing is that our whole focus on this whole

 3 integration and merger has been to not disrupt any customers

 4 and keep things as status quo as possible. I think what

 5 you're alluding to is something we would want to look at up

 6 the road. But it's something we first would want operate to

 7 the companies, get a feel for each individual state. We're

 8 looking at 37 different states. So we're going to look at

 9 things holistically at first and then we will start being

10 able to evaluate which model would work best for a state and

11 then make the right decision at that time. All with an eye

12 on minimizing whatever customer impact could be associated

13 with that.

14 Q. A couple more questions. The first one is--and

15 please don't read anything into this question, but I really

16 don't know the answer. I have a sense of what happens if we

17 approve this. I have a sense of what happens if we approve

18 it with conditions. But what happens if we say no? What's

19 the structure when it's been approved in a number of other

20 states how does it go forward? Does the whole thing

21 collapse or does Qwest Washington get spun off in some way

22 or have you thought about that?

23 A. (Jones) I believe the purchased agreement would

24 govern that, and I don't have that, I'm not that familiar

25 with it, but I'm sure there's some type of contingency in

0288

 1 the purchase agreement that would address that issue.

 2 Q. Mr. Reynolds?

 3 A. (Reynolds) I honestly don't know.

 4 Q. Mr. Vasconi, Ms. Johnson?

 5 A. (Vasconi) I don't know.

 6 A. (Johnson) I don't know either.

 7 Q. Okay. My last question is, and this is a question

 8 that I'm pretty sure someone will be asked, and that is what

 9 happens to Qwest Field? It's probably not in the purchase

10 agreement. I assume it stays the same because Qwest

11 survives.

12 A. (Reynolds) I don't know if it is in the purchase

13 agreement. But there is an agreement with Vulcan between

14 Qwest and Vulcan that probably dictates the terms of any

15 transition in name change. I honestly don't know what that

16 is. But it is something you can find out.

17 CHAIRMAN GOLTZ: Thank you. I have no further

18 questions.

19 JUDGE FRIEDLANDER: Thank you. Commissioner

20 Oshie.

21 COMMISSIONER OSHIE: Thank you, Judge.

22

23 CROSS-EXAMINATION

24 BY COMMISSIONER OSHIE:

25 Q. I would like to refer to Appendix A to the

0289

 1 settlement agreement, I believe that's been marked as

 2 Exhibit 6, Page 3, Paragraph 7. It's simple sentence, I'll

 3 read it into the record.

 4 "CenturyLink will not pledge the assets of the

 5 CenturyLink ILECs and Qwest to secure borrowing undertaken

 6 by CenturyLink without approval of the Commission."

 7 All right. Let's start with Staff, what does that

 8 mean?

 9 A. (Vasconi) Well, Mr. Appleby -- actually,

10 Mr. Applegate included this in his testimony. But what it

11 means is that if CenturyLink needs to acquire more debt and

12 in the process of doing that it needs to effectively attach

13 its operating companies as--I'll use the term loosely--as

14 collateral that needs to be given approval by the

15 Commission.

16 Q. All right. So is that just Washington properties

17 or is that the total company? Mr. Jones or Mr. Reynolds,

18 what's the intent?

19 A. (Reynolds) Well, the intent I think of this

20 negotiations in this particular agreement is Washington

21 specific. And I would agree with Mr. Vasconi that what it

22 prohibits is encumbering regulated company assets of either

23 the regulated CenturyLink ILECs or Qwest Corporation as a

24 regulated entity for borrowing for the parent company.

25 Q. So it's not all assets then it's only those what

0290

 1 would be determined by the company in its judgment to be

 2 regulated assets?

 3 A. (Reynolds) I believe that's so.

 4 Q. Regulated by this Commission or?

 5 A. (Reynolds) Yes.

 6 Q. Okay. Mr. Jones, is that your opinion?

 7 A. (Jones) Yes, that would be my understanding.

 8 Q. Okay. So of the balance sheet of Qwest as an

 9 example, let's have a ballpark, what's the assets on the

10 balance sheet? So what's regulated and what isn't as far as

11 just ballpark percentages, Mr. Reynolds? Half? I mean we

12 are looking at a lot of depreciation over the years.

13 A. (Reynolds) I honestly don't know the answer to

14 that.

15 Q. I understand that. And, Mr. Jones, same question

16 for CenturyLink?

17 A. (Jones) I really do not know the number.

18 Q. Okay. Now, so what kind of process are we looking

19 at? Mr. Reynolds -- or excuse me, Mr. Vasconi, from Staff's

20 point of view what process is going to be used then? When

21 will the filings be made, if ever? But in Staff's vision,

22 how will filings be made, how much time will the Commission

23 have to consider the filing before making a decision? And

24 what information will be included in the filing of nature?

25 A. (Vasconi) Is this in the filing of an AFOR?

0291

 1 Q. No, this is for approval of the encumbrance of the

 2 regulated assets of CenturyLink and Qwest.

 3 A. (Vasconi) Well, I would envision that the company

 4 would need to file with us, first of all, their intention to

 5 acquire more debt. And we would also need to know what the

 6 terms of that transaction would be with an investment bank

 7 or with the actual lender.

 8 And then we would likely need to go through an

 9 examination where the company would need to file its records

10 with an identification of what is regulated, what is not.

11 And I would think that it would follow along the lines of

12 FCC reporting requirements that separate unregulated from

13 regulated plans. There isn't currently any definition of

14 how much time that would take, so there's really nothing

15 definite about that.

16 Q. Hasn't Staff objected to the FCC's separations

17 assignments in prior rate cases, namely Verizon's?

18 A. (Vasconi) Yes, we have.

19 Q. So I assume Staff, if they wanted to walk through

20 and say we're going to use the FCC's separation allegation

21 of 25/75, with 75 percent regulated, 25 percent unregulated,

22 Staff might have an objection to that?

23 A. (Vasconi) Yes, that's true.

24 Q. So Staff doesn't have a sense then of how much

25 time would be needed to consider the filing and to make a

0292

 1 decision?

 2 A. (Vasconi) That's correct. Sitting here today,

 3 that's right.

 4 Q. I guess we could try to make up a number if we

 5 chose to. Mr. Reynolds, how much time do you think the

 6 Commission will need to make that decision?

 7 A. (Reynolds) I think it depends on the quality of

 8 the information that we can provide --

 9 Q. I would agree.

10 A. (Reynolds) -- and the amount of discussion that we

11 have with Staff prior to the filing. Obviously, this is, I

12 don't think, something we would do in a vacuum. To the

13 extent we were going to do this we would probably explore it

14 with Staff and determine what type of information was needed

15 and then make a filing for Commission's disposal of it.

16 Q. Mr. Jones.

17 A. (Jones) I see this as an opportunity to work with

18 Staff and develop whatever process would need to be in

19 place. If it's not explicit in the settlement itself then

20 that's something we could help develop to put some structure

21 around that.

22 Q. I think that's an issue here that we need to get

23 our arms around as to what kind of process -- if we accepted

24 the settlement what kind of process would be required, and

25 how much time would we have to make that decision, what kind

0293

 1 of information would need to be filed, as well as you might

 2 even agree on what kind of, how to do the separations

 3 allocation prior to.

 4 And I assume, Ms. Johnson, not just Staff but

 5 Public Counsel would have an opinion on separations, as

 6 well?

 7 A. (Johnson) I assume we would have an opinion on

 8 that, as well, yes.

 9 Q. So that would benefit Public Counsel, as well, to

10 have some kind of structure around approval of how approval

11 would be sought and the rules so to speak?

12 A. (Johnson) Yes, I think so.

13 Q. So the final question on this section is under

14 what conditions would we approve? I mean what's the

15 threshold? How do we make that judgment? And I say that

16 because, and I guess there is a question here about our

17 statutory authority. I mean we don't have the authority to

18 approve of these transactions that I'm aware of in statute.

19 As a matter of fact, I believe that that authority is that

20 the companies have to give us notice when that happens,

21 which a statute had been changed. And so there is no

22 statutory authority requiring approval. I have a question

23 whether we can require that even with an order since we --

24 it's kind of -- it's like acquiescing to jurisdiction in

25 certain respects.

0294

 1 So, anyway, I think the easier question really is

 2 how do we -- because we have no statutory direction, how do

 3 we -- what conditions would we be looking for approval.

 4 Mr. Jones.

 5 A. (Jones) Speaking as a nonattorney.

 6 Q. So you'll give the right answer.

 7 A. (Jones) It may be equally long-winded, I don't

 8 know. I think the way we're having to look at it, sir, is

 9 from the standpoint of the public interest itself. Again, I

10 have to look at it from a policy standpoint in terms of

11 what's going on in the industry today, what's going on at

12 the state level today in terms of challenges both providers

13 and the states are facing.

14 There is a lot of demands for new types of

15 services for increased speeds, for lower rates. All that is

16 going on and that's happening with or without us. And I

17 think the way I view it is Washington State should be

18 looking for is a longer term view of telecommunications in

19 this state, and how do you get there from here, and meeting

20 the needs of citizens going forward.

21 So if you have a stronger provider, a good blend

22 of operational experience for both companies, the

23 opportunity to bring new and better services to the market

24 and then put a much more stable, financially stable

25 competitor there for the long-term, then I think that's got

0295

 1 to be kind of the umbrella that you look at in terms of the

 2 long-term good for the state.

 3 And then you ask yourself, you've got two fairly

 4 solid providers in the state today, what happens if they

 5 don't come together? Do they get better, do they get worse

 6 knowing the environment that we're in terms of competition

 7 and technology? So to me I would be looking for a longer

 8 term view and then for an outcome that would benefit the

 9 majority of Washington citizens longer term.

10 Q. Mr. Vasconi, do you think that the simple answer

11 is that it's kind of the standard whether it's in the public

12 interest? I think that's how Mr. Jones defined it early in

13 his answer?

14 A. (Vasconi) Yeah, I think that clearly has a lot to

15 play with it. But then I think there's also an examination

16 of risk that would need to move forward, because if you're

17 talking about the potential of encumbering assets I think

18 you have to examine what the likelihood might be that those

19 assets are placed in some jeopardy if there's a default or a

20 bankruptcy.

21 Now, I don't know what those measures would be

22 sitting here today, but what this is intended to do is to

23 try and insulate to some degree the regulated assets of

24 CenturyLink and Qwest in the event that the company was not

25 able to meet its obligations. So there's an implicit in

0296

 1 that some notion of risk that we're trying to immunize

 2 customers in Washington from.

 3 Q. Perhaps this isn't a fair question because its

 4 contemporary circumstances, really derived analysis and

 5 derived decisions that are made. But is it in the public

 6 interest to encumber Washington assets of CenturyLink and

 7 Qwest to provide capital to provide service in Minnesota?

 8 A. (Vasconi) I think it is. You know, well, I think

 9 it is not in Washington ratepayers interest to be encumbered

10 in order to provide service elsewhere.

11 Q. Okay. Ms. Johnson, would you agree with that?

12 A. (Johnson) Will you ask the question one more time

13 to make sure I understand what you're asking?

14 Q. It's a broad question, but I'm really -- it's just

15 whether you would think that -- is it in the public interest

16 here in Washington to encumber Washington assets to provide

17 capital for the benefit of other states?

18 A. (Johnson) Sitting here today without a broader

19 examination of things I would assume no, but it would depend

20 on the full circumstances, I suppose.

21 Q. Mr. Vasconi, it looks like you may have a further

22 opinion on this question or not?

23 A. (Vasconi) No, I don't.

24 Q. Okay. Well, those are the things when I read that

25 section I thought, well, this is very interesting and

0297

 1 certainly has a lot more complexity than the one sentence

 2 that was represented in the agreement.

 3 Let's go back to the AFOR discussion. Mr. Jones,

 4 has there been synergies that have in your -- to the benefit

 5 of the merge CenturyLink/Embarq companies since the order

 6 approving its merger was issued?

 7 A. (Jones) Have synergies already been realized from

 8 that transaction is what you're asking?

 9 Q. That's exactly what I'm asking.

10 A. (Jones) My understanding is yes.

11 Q. Back to you, Mr. Vasconi, is it in the public

12 interest to delay the possible receipt of those benefits to

13 those customers of the now merged company of CenturyLink and

14 Embarq for, I don't know, at least two more years? I

15 thought that our, you know, the position taken by Staff and

16 by the Commission was that we wanted to look at that within

17 a shorter period of time and determine if and how those

18 benefits should enure to the ratepayers that were affected

19 by the merger. But these conditions delay that. So why is

20 that in the public interest to delay the possible enuring of

21 benefits to those ratepayers for a longer period?

22 A. (Vasconi) I think the public interest is enhanced

23 if those benefits accrue to end users earlier rather than

24 later. But when we looked at it we looked at it -- we

25 looked at the establishment of the AFOR time line from a

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 1 couple of perspectives. One was from a practical

 2 perspective given that Qwest was going to have to come in

 3 starting next month to review the new AFOR, their new AFOR,

 4 if you will. And then looking at the fact that merger

 5 synergies may take a period of time in order to be captured

 6 that we went to the three to four year period. But clearly

 7 the sooner the merger benefits can accrue to the public the

 8 better.

 9 Q. Is it complicated at all by the fact that

10 CenturyLink is going to be -- at least my understanding of

11 the proposal is that they're going to be operated

12 independently of Qwest? In other words, I'm thinking, well,

13 why not go through with the merger conditions that were

14 established in CenturyTel/Embarq merger since for all

15 intents and purposes it's going to be -- they're going to be

16 treated as independent companies? At least that's the

17 proposal.

18 So why not just follow through? If the benefits

19 are enuring why not just, you know, being as Mr. Jones

20 testified, they're realized. So why not if those benefits

21 are material to rates, why would we want to make the rate

22 change and lower rates to reflect that at least in some way?

23 A. (Vasconi) I guess we could do that. Under the

24 Commission's authority we could probably -- the Commission

25 could engage in an examination of their rates given merger

0299

 1 benefits.

 2 Q. I would think that the -- it's a little different

 3 situation then the one we're faced here directly I would

 4 think, which is what you initially responded in that, you

 5 know, Qwest and CenturyLink presents a new situation, the

 6 one in which there's been no real opportunity, as of yet, to

 7 develop the synergy benefits that they believe are possible

 8 through this merger?

 9 A. (Vasconi) Yes, that's true.

10 Q. But we have an operating history with the

11 Embarq/CenturyTel merger?

12 A. (Vasconi) Even in that context though I think the

13 operating history for them is relatively short. We've seen

14 effectively one year's worth of reporting in that merger.

15 And, yes, there were savings. But from my recollection of

16 looking at that report, which I believe was filed

17 confidentially, those savings were not particularly large at

18 this point. Now, they may grow going forward.

19 Q. I believe that was the testimony in that case, the

20 expectations of further growth. Ms. Johnson.

21 A. (Johnson) I just was going to add that I think

22 there's another major step of integration that still remains

23 to happen. And so because of those components of the rate

24 that integration is happening at we were hoping to be able

25 to hold off and gain all of those synergies from those

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 1 pieces, as well.

 2 Q. That's in the public interest for the ratepayers

 3 of Embarq/CenturyTel to wait?

 4 A. (Johnson) well, I think -- I'm not sure that it's

 5 in the interest to not be able to get the later synergies at

 6 some point into rates. And so I think that by delaying it

 7 it allows to take into consideration all of the pieces.

 8 Q. Wouldn't it be even more compelling if they were

 9 to be operated as one company?

10 A. (Johnson) I think that, you know, that might be

11 Public Counsel's preference, but I don't get to be in charge

12 of that. So based on the structure that we're facing we're

13 trying to figure out how to work with that and how to best

14 deal with the recent mergers and the proposed merger.

15 Q. Okay. Let's move on to the broadband commitment.

16 What I would really like to get clarification on is the

17 agreement states $80 million over five years at $16 million

18 a year. So a couple of areas I would like to get some

19 testimony on here, find out what's going on.

20 One is, you already have a CAPEX budget, and I'm

21 assuming it's of a certain number, and I don't know if you

22 can testify to that or not in this hearing room as to what

23 that may be for the two companies that are before us, both

24 Qwest and CenturyLink. So what does $16 million represent

25 of that? I think Mr. Schifman asked if that was incremental

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 1 and the answer -- I don't remember the answer being yes.

 2 Incremental to the existing CAPEX budget. And what further

 3 complicates it is the issue of your obligations,

 4 CenturyLink's obligations under the FCC order and ours to

 5 already spend money to extend broadband to customers

 6 throughout this state, and of course, throughout its service

 7 territory actually.

 8 So how do we figure out what $80 million really

 9 means in terms of benefits to Washington ratepayers or

10 whether it's just part of the existing CAPEX budget, it's

11 just going to be now rededicated in some way to broadband

12 where it would have gone to other services and to other

13 investments made by the company here in Washington or both

14 companies?

15 So, Mr. Vasconi, let's start with you, and

16 Ms. Johnson, as well. So how do we know what the

17 $80 million really represents with all these moving pieces?

18 A. (Vasconi) With respect to the FCC commitment,

19 which was 90 percent for wireline deployment of DSL, I think

20 we're there with respect to the Century properties.

21 Q. So does that mean that all of the $80 million will

22 be spent in Qwest territory?

23 A. (Vasconi) No, I don't believe so because of the

24 reporting requirements that we have, the 180 day report is

25 part of the commitment requires that the parties sit down

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 1 with Staff and Public Counsel to review their deployment

 2 plan with specific attention to those areas that have not

 3 yet attained an 85 percent level of DSL availability.

 4 Q. So how do we know that those plans weren't already

 5 in place?

 6 A. (Vasconi) Well, we really don't necessarily know

 7 that.

 8 Q. So, Ms. Johnson.

 9 A. (Johnson) I can follow, as well. I think Public

10 Counsel assumes a baseline level of broadband investment in

11 part of our interest in the commitment in that our

12 commitment is larger than any other state is that when -- is

13 going forward as the combined company is looking nationally

14 at where they're going to be investing money Washington is

15 going to have this requirement that will put them on equal

16 footing or greater -- there will be -- or at least an

17 incentive to be investing here because of this requirement.

18 So it's a minimum standard, I think, because of that piece,

19 as well.

20 As to the FCC component that you're discussing,

21 that wouldn't apply to the -- I mean all of this money won't

22 be spent just for Qwest properties. And we're working out

23 the reporting requirements right now. And one of the

24 requirements would be looking at the spending, the

25 expenditures by wire center. So we'll know which wire

0303

 1 centers were CenturyLink and which were Qwest. And as we're

 2 developing this there might be some sort of way that we can

 3 work into it a means by which we'll see which money is going

 4 to which places.

 5 But at this time CenturyLink properties are looked

 6 to already be at the FCC standard that was outlined in that

 7 order. It was 100 percent overall, but 98 percent wireline

 8 and the CenturyLink properties in Washington are at

 9 91 percent. So largely it looks like it could be met. And

10 there might be other ways we could outline the reporting or

11 develop a different piece of report to do that to take a

12 look at that and see that those components are being kept

13 separate.

14 But, again, I think that we have assumed there

15 would be an ongoing investment of broadband. And we

16 don't -- this isn't all necessarily a new commitment but

17 felt that the other pieces that were targeting it to

18 different areas and the planing processes that were going to

19 look at the wire centers with lower deployment numbers. And

20 also to the unserved areas that that was really important to

21 Public Counsel.

22 Q. So have those areas already been determined?

23 A. (Johnson) No, they haven't. Well, the five wire

24 -- well, central offices--sorry, I get the terms confused

25 sometimes--those obviously have been stated. And then the

0304

 1 other ones haven't been decided as of yet. The companies

 2 have indicated that that was something they wouldn't be able

 3 to do until after the merger because of the information that

 4 would be shared associated with it and the costs associated

 5 with those things. They could probably answer this question

 6 better. So that would be something that would be done after

 7 the fact that it would be worked on by the parties.

 8 Q. So other than Clearwater, Glenwood, Willard,

 9 Nespelem and Eureka, we wouldn't know as the Bench where the

10 money is going to be spent?

11 A. (Johnson) No, not that I know of.

12 Q. And we wouldn't know even on what side of the

13 companies it would be spent other than it seems that people

14 are fairly confident that CenturyLink can sort of be all it

15 can be already with broadband?

16 A. (Johnson) I'm not sure that it's necessarily

17 confidence in that. I think that a component of the

18 CenturyTel/Embarq merger was that CenturyTel was going to be

19 taking this over and would be deploying broadband to places

20 where Embarq hadn't done it. And so, you know, I think that

21 going forward that's something we're going to want to look

22 at is that that sort of commitment that they made in that

23 merger they'll still be -- the general proposal that they

24 would be deploying more broadband. So I think that's

25 something that I'm interested in maintaining a look at as we

0305

 1 look at these sort of things that those properties aren't

 2 being ignored with the acquisition of Qwest. But at this

 3 current time we don't really have great detail as to exactly

 4 what it would be.

 5 Q. And so maybe this isn't a fair question,

 6 Ms. Johnson, but we really don't know. We had some idea of

 7 what the infirmities, if you will, of getting broadband out

 8 to just take a percentage, we just don't know what that

 9 would cost?

10 A. (Johnson) No. We, Public Counsel, had asked some

11 of those questions in discovery, but there wasn't

12 information available.

13 Q. So we really don't know what $80 million

14 represents other than a dollar figure as far as expanding

15 broadband in the state of Washington?

16 A. (Johnson) I think it's a dollar number and it's a

17 commitment based on what we've seen in other places and

18 across the country in trying to make sure that Washington

19 also would be in a place where the companies would continue

20 to invest money in that as they're meeting those commitments

21 in other states Washington wouldn't be left behind, there

22 would be continued investment here, as well.

23 Q. Wouldn't it have been better to kind of take the

24 FCC's approach which is to say, you know, just pick a

25 percentage and say that, you know, 95 percent of the

0306

 1 customers of both CenturyLink and Qwest will be touched by

 2 broadband in five years? And then we wouldn't really know

 3 whether it would cost 80 million or 40 million or

 4 150 million, but then there would be some certainty that --

 5 I'm assuming the policy objectives that the settling parties

 6 have agreed to would then have some confidence that it's

 7 been met, the objective has been met. Right now as it seems

 8 to me there's a number out there, but you really don't know

 9 how that money is going to be spent and you don't know

10 whether it's going to satisfy the -- what you believe to be

11 the need in Washington for expanded broadband service?

12 A. (Johnson) I think that for the purposes of

13 settlement we were able to come up with what we did and the

14 parameters that we did. But other than that we weren't able

15 to negotiate those other components.

16 Q. That's a fair answer. I understand that. So,

17 Mr. Reynolds and Mr. Jones, let's go back to the question

18 that Mr. Schifman asked. I don't remember who he asked. I

19 think it was -- he may have asked maybe Mr. Vasconi, so why

20 don't we ask you, Mr. Reynolds, first. So what does

21 $80 million represent? Is it incremental to the existing

22 CAPEX budget of the company to expand broadband in

23 Washington or is it just part of it?

24 A. (Reynolds) It's part of it.

25 Q. What percentage does it represent? Well, that's

0307

 1 probably a confidential number. So let's say is it more

 2 than half or is it less than half?

 3 A. (Reynolds) I honestly don't know. I don't have

 4 those figures in front of me right now. I think that in

 5 discovery those have been provided on a confidential basis.

 6 Q. All right, thank you. Mr. Jones, same question.

 7 A. (Jones) Yes, sir, I don't know the actual number.

 8 I will talk a little bit about what the 80 million means, if

 9 that's all right, from a standpoint of how we're viewing it.

10 We see it as a substantial number. We see it as a number

11 that -- beyond just broadband investment itself it does a

12 lot of different things. First of all, it puts people to

13 work, which I think is very important. Our employees get to

14 do what they're trained to do and keep deploying.

15 The other thing, in terms of the percentage issue

16 you mentioned, I really believe this approach is going to

17 work better for Washington consumers in that if you will

18 read the -- or having seen it in the settlement, is the

19 reporting aspect of this within 180 days of close we will

20 start bringing in our plans on a wire center basis.

21 When you're up to 90 percent deployment in the

22 course of the remaining 10 percent is where your most

23 expense is. But as we all know, we can build it but they

24 won't come necessarily. This gives the company an

25 opportunity to, first of all, work with the Commission to

0308

 1 identify needs, and some of the communities that are

 2 targeted here that we've agreed to do will be needed.

 3 They're very small, but it will be a great enabler for them.

 4 This allows us to the work with the Commission to

 5 determine where the money is going and where it should go,

 6 to assess demand, to also assess stimulus dollars that are

 7 going to be spent in the coming years. And there's no sense

 8 in duplicating investment in a lot of cases in very rural

 9 areas. So we believe this approach is going to work very

10 well and allow the company to work probably even more

11 closely with the Commission.

12 The other thing about the 80 million is that it's

13 a guaranteed minimum, it's a certainty issue. It sounds

14 cold, but to get right down to it, we may not have to spend

15 anything if we didn't want to. We could just hold things

16 steady and not spend a dime. This gives, in an environment

17 like we're in today, with the economy like it is, access

18 line losses, competition, etc. We're making a guaranteed

19 minimum. This is not the maximum amount. This is the floor

20 that we're putting on the table to say we will spend at

21 least this much. You have that certainty. And then

22 probably much more beyond that.

23 So I want to make sure you understand this, it is

24 not the entire amount by any means. This is what we're

25 putting on the table saying this is good and we will do. So

0309

 1 from that standpoint we think it's the right thing to do.

 2 The other thing, too, to the wholesale benefit.

 3 If we keep investing in our network that we're talking about

 4 at a tune of $80 million, at a minimum, that network is

 5 going to be enhanced for competitors, as well. They use

 6 that network to make their business model work. So from

 7 that standpoint we think it is a very good thing.

 8 And when you factor in the people you would be

 9 putting to work, whether it be outside contractors,

10 whatever, it's all good for the economy of this state, and

11 every other state we have made that commitment in. So

12 that's very high level, I understand, but that's how we view

13 it as an operating company who will be making that

14 investment.

15 Q. Thank you.

16 A. (Reynolds) Can I say something, too?

17 Q. Sure.

18 A. (Reynolds) I guess so. I just wanted to reference

19 the Commission back to the AFOR order where, you know, we

20 had a $4 million DSL commitment in that. And although we

21 had a number of wire centers that had not previously been

22 served that were part of our commitment, there was an

23 additional $2 million that needed to be spent, and the

24 Commission laid out an aspirational goal at that time that

25 we looked to wire centers that were under 75 percent.

0310

 1 And I think if the Commission and Public Counsel

 2 can attest to this, too, if you look at the wire centers

 3 that we worked out with Staff and Public Counsel, those are

 4 the wire centers, I think, where the Commission wants us to

 5 go.

 6 And one of the most important parts of this

 7 commitment is our obligation to sit down with Public Counsel

 8 and Staff at 180 days and workup a list that's very similar

 9 to the list that we worked up in the AFOR. And we

10 systematically went through that list. We built those wire

11 centers. And if you've read our deployment report that we

12 put out at the conclusion of spending the 4 million you'll

13 see we far exceeded our goals in that deployment to wire

14 centers that we probably ordinarily wouldn't have built to.

15 So I'm just saying that we have a really good

16 track record of working a program like this. And probably

17 more important than the baseline commitment of 80 million

18 are the obligations that are laid out in here to sit down

19 and work with Staff, the reporting requirements that we have

20 laid out.

21 This allows the Commission to systematically track

22 what we're doing on wire center by wire center basis,

23 percent availability, where we're building, the expenditures

24 we make. A simple CAPEX number from the past isn't going to

25 tell you any of that. I mean we may well have spent most of

0311

 1 that money on Fiber to the Node and it may have only

 2 benefited, you know, certain customers raising a speed from

 3 five meg up to ten. This is tangible, and I think it's a

 4 lot different than that, so I just wanted to add that.

 5 Q. One section or one clause, I guess, in that, it's

 6 Paragraph 14, caught my eye. And that is at the top of the

 7 page on the first sentence. And it's in the definition of

 8 unserved, "no wireline service available from the

 9 CenturyLink ILECs or Qwest." So does that mean that the

10 80 million is going to be reaching out to areas to extend

11 basic telecommunication service, voice service is what I'm

12 getting at?

13 A. (Johnson) I think it's wireline, implying wireline

14 broadband rather than satellite broadband. But maybe we

15 should have made that clarification.

16 A. (Reynolds) Good distinction.

17 Q. I don't know about The Chairman or Commissioner

18 Jones, but that makes me feel more comfortable.

19 COMMISSIONER OSHIE: I can extend my

20 cross-examination to the break time. I'll try.

21 JUDGE FRIEDLANDER: I was going to wait to take a

22 break until after you were finished.

23 BY COMMISSIONER OSHIE:

24 Q. Actually, I only have one other area and that

25 deals with the issues that have been raised by the CLECs

0312

 1 here. You know, why two years, Mr. Vasconi? I mean Staff

 2 agreed to two years, why not three? That's what they've

 3 requested in their testimony. That doesn't seem like it's

 4 that great a stretch to me. There's an obvious link between

 5 the synergies and how the companies are going to operate,

 6 whether they're going to operate as one or operate as two.

 7 And I think the testimony is pretty clear that they're a lot

 8 more comfortable dealing with Qwest than they are with

 9 CenturyLink. And so they have real questions about

10 CenturyLink. So why not just give it the extra year, let's

11 get this thing figured out? If they can't get it done in

12 two there will be three.

13 A. (Vasconi) We came to the two year determination in

14 large part because of Integra's settlement. And Integra

15 being the largest CLEC, I believe, operating in Washington,

16 I believe. We came -- we looked at that and thought that

17 coupled with the approval process that's in that agreement

18 would be sufficient to insure that wholesale OSS concerns

19 would be properly handled.

20 Q. Have you had an opportunity to review Mr. Gates'

21 testimony dated January 3, 2011, now marked as TJG-20CST?

22 A. (Vasconi) Very briefly.

23 Q. Does that give you any pause that perhaps two

24 years is not enough? I know that you explained why the

25 Staff settled on two years, but there's additional

0313

 1 information that wasn't in the record, and I think perhaps

 2 wasn't, you know, within your knowledge base at the time, at

 3 least perhaps not as specifically laid out as what's in

 4 Mr. Gates' testimony.

 5 Let me frame it a little differently, Mr. Vasconi.

 6 I understand the position that Staff is in because of the

 7 settlement, but would three years really be, you know, would

 8 that be a game stopper for Staff?

 9 A. (Vasconi) I think we could live with three years.

10 COMMISSIONER OSHIE: I don't have any other

11 questions, Judge.

12 JUDGE FRIEDLANDER: Thank you. Why don't we go

13 ahead and take a ten minute midafternoon recess. And we

14 will come back and commence with any clarification from

15 Commissioner Jones. Thank you.

16 (Break taken from 3:20 to 3:37 p.m.)

17 JUDGE FRIEDLANDER: Okay. We will go back on the

18 record. And I believe we left off with clarifying questions

19 that Commissioner Jones may have.

20 COMMISIONER JONES: Thank you, Judge.

21

22 CROSS-EXAMINATION

23 BY COMMISIONER JONES:

24 Q. I know we are coming down the home stretch here.

25 I'll try to make this brief. I will split it up between

0314

 1 Mr. Jones and Mr. Reynolds first and then go to Mr. Vasconi

 2 and Ms. Johnson.

 3 So this is probably more for Mr. Reynolds. I

 4 think in response to the Chairman's noting of your direct

 5 testimony, even though it was replicated in many states, you

 6 might want to go to Page 25 again. I think Mr. Schifman

 7 referred you to this in the beginning about the benefits of

 8 wholesale competition. So in there you list two or three

 9 points, and one of those points as I read it is that

10 wireless back call, deepening fiber in the network and the

11 ability to carry out more robust wireless back call as a

12 benefit; correct?

13 A. (Reynolds) That is correct.

14 Q. So let's talk about special access for a minute.

15 First of all, how are special access services covered under

16 the settlement agreements, both the Integra settlement

17 agreement and under the Staff settlement agreement? Special

18 accesses. I think it's covered under either a commercial

19 agreement, what are the terms used, Mr. Reynolds?

20 A. (Reynolds) Well, my understanding special access

21 is in a catalog together for Qwest under the AFOR. I'm

22 pretty sure it's probably tariffed for the CenturyLink

23 companies. And as far as the Integra settlement, I would

24 defer to the wholesale panel on that. I'm not that familiar

25 with that settlement, and they could probably answer the

0315

 1 question of what the status of that is and whether those

 2 rates and terms and conditions, you know, have an extension

 3 on them or not, I honestly don't know.

 4 Q. Mr. Jones, you were the one -- actually it was

 5 Mr. Cheek who signed the settlement agreement with Integra,

 6 was it not?

 7 A. (Jones) Yes, sir.

 8 Q. Okay. So is this a question that you can answer

 9 or do we have to refer this to Mr. Cheek?

10 A. (Jones) I would defer to our wholesale witnesses

11 that we brought for the next panel.

12 Q. Okay.

13 A. (Reynolds) I can tell you though, your question

14 initially was on wireless back call that the company is

15 doing, that Qwest is doing, is done via contractural

16 agreements with the wireless providers. So they are

17 contracts and probably not purchased out of the tariff.

18 Q. Right. And is it your understanding that most of

19 the special access purchased is, at least for this state, is

20 covered under the FCC interstate special access tariff or

21 covered under the intrastate?

22 A. (Reynolds) My understanding is a lot of what the

23 carriers purchase is interstate special access. There is

24 some intrastate, but I would think the majority of what they

25 purchase is interstate.

0316

 1 Q. And you are aware, of course, that this is a

 2 substantial cost to the wireless carriers?

 3 A. (Reynolds) Yes.

 4 Q. And has been the subject of numerous inquiries by

 5 the FCC?

 6 A. (Reynolds) Yes.

 7 Q. The GAO issued a report on it in 2006 so it is

 8 something of concern when we talk about robust and wholesale

 9 competition in the state. And if you assume, as you do in

10 your testimony, that wireless is one of the platforms that

11 you compete with, as a wireline ILEC, you would acknowledge

12 that this is a concern?

13 A. (Reynolds) I understand. It is an issue.

14 Q. This is more for you, Mr. Reynolds, I think in

15 response to a question from Mr. Schifman, or someone. We're

16 talking about the rate stabilization provisions, and

17 especially in Section 20 of the Staff settlement agreement,

18 where it says that "Qwest's rate for competitively

19 classified standalone business 1FB service shall be capped

20 at $30" per month, "which is $1 more than the rate currently

21 in effect."

22 When I became a commissioner that was one of the

23 first issues I dealt with was your petition for competitive

24 classification of both analog and digital business services.

25 That was fairly contentious as I recall, and our Staff did a

0317

 1 very granular analysis based on wire centers and based on

 2 the availability of UNEs, loops, transport in our state. So

 3 I've been thinking about this, mainly today and yesterday.

 4 So how does this affect at all our competitive

 5 classification order in your view? I mean we seem to be

 6 admitting here that, at least for the purposes of

 7 settlement, we're going to cap the rate for a period of

 8 time. So could not one argue that the market is not fully

 9 competitive throughout wire centers in our state?

10 A. (Reynolds) No. I think the Commission made the

11 finding it made, I believe it was back in 2003 when that

12 docket took place. And as far as I know there's been

13 nothing but increased competition since then. At the time,

14 you're absolutely right, the basis for the competitive

15 classification was the UNEs that the competitive local

16 exchange providers were providing. I think if you were to

17 take a look at the same markets today you would find out

18 that there was a lot more facility-based competition. And

19 we're losing those lines to facility-based competitors,

20 rather than competitors leasing services from us.

21 So if nothing it's more robust today. And

22 probably we have more of a case for competitive

23 classification even though it's already competitively

24 classified. And the freezing of that business rate with the

25 $1 up, I think the $1 up signals that it was already

0318

 1 competitively classified service. And so I think Staff was

 2 willing to afford some flexibility to that. And I think the

 3 fact that the AFOR is extended for three years is what's new

 4 for us. It was intended to be a four year agreement

 5 initially and then we would renegotiate. But to add some

 6 stability to the post-merger environment it was something

 7 that we negotiated.

 8 Q. Isn't it true though, and I take your point on

 9 inter platform competition from Comcast Cable VoIP and from

10 wireless, especially 4G, but isn't it true that in a

11 competitive market that prices tend to go down not up?

12 A. (Reynolds) I think prices both go up and down, it

13 depends on niches in the market. And if a competitive

14 provider has to take advantage of niches as they exist

15 otherwise they won't make any margins. If everybody is

16 pricing at marginal cost I don't think they would be in

17 business too long. So you have to take advantage of the

18 dynamics of the market.

19 I think we may never exercise the $1 up, the

20 market may be too competitive. But I think it was a

21 recognition of the fact that the service was completely

22 competitively classified previously and we had full pricing

23 flexibility. So I think that's the reason it's there.

24 Q. Mr. Vasconi, any comments on this? Both the

25 impact on our competitive classification of business

0319

 1 services and why the rate appears to be going up not down?

 2 A. (Vasconi) I wanted to sort of echo some of what

 3 Mr. Reynolds had to say with respect to the $1, potential $1

 4 increase. It was in recog -- we agreed to it in recognition

 5 of the fact that Qwest is under an AFOR that -- and

 6 competitively classified service, more to the point, that

 7 does provide them with complete pricing flexibility with

 8 respect to business services.

 9 So we thought from the standpoint of no harm it is

10 advisable. And we were glad to be able to come to an

11 agreement that did put a cap on how far that rate could go

12 up, yet still recognizing the fact that -- and we believe it

13 still recognizes the fact that Qwest does have competitive

14 classification for business services.

15 Q. Okay. That's fine. This is both for Mr. Jones

16 and Mr. Reynolds, and this is more of a federal issue on

17 access reform, but it does relate to the state of Washington

18 because obviously we have intrastate access charges that we

19 have authority over. It's my understanding, Mr. Reynolds,

20 that the traditional position of Qwest in federal

21 proceedings has been one of advocating bill and keep; is

22 that correct?

23 A. (Reynolds) In the context of access or in the

24 context of interconnection agreements and the exchange of

25 traffic between local providers?

0320

 1 Q. In the context of federal issues affecting

 2 intercarrier payments, whether they be inter or intrastate?

 3 A. (Reynolds) I think it depends on the nature of the

 4 competitor and the negotiations that take place between the

 5 competitors. I mean to the extent that you have -- not a

 6 competitor but a wholesale provider that is negotiating

 7 interconnection with us, to the extent you have an

 8 interconnector that fully plans to terminate 100 percent of

 9 their traffic to us, bill and keep doesn't make much sense.

10 To the extent that it's relatively equal exchange of

11 traffic, bill and keep does make sense.

12 Q. That was my question. I should have had the

13 assumption if traffic is roughly balanced between the

14 originating carrier and the --

15 A. (Reynolds) Then I would agree with that, yes.

16 Q. Okay. Mr. Jones, that's not your position. And

17 you and I have seen each other on various federal panels in

18 the Missoula plan and afterwards. But just at a high level

19 what is your position federally on access reform right now?

20 A. (Jones) Switched intrastate?

21 Q. Yes.

22 A. (Jones) The company has taken a position along

23 with some of the other midsized companies that access reform

24 is needed. And we've worked with the FCC, and as you

25 probably know better than most, we're looking at possibly

0321

 1 NPRM in February. But our position has been a transition

 2 towards parody with interstate rates over time with

 3 recognition as the FCC has recognized in the national

 4 broadband plan that there could be consumer harms with a

 5 flash-cut.

 6 So we are in favor of a migration towards parody,

 7 and with a recognition that in certain markets, our

 8 exchanges, that higher rates could be needed and that parody

 9 may not be achieved in every case, but there could be a

10 migration towards lower rates.

11 Q. So my last question on this is whose position

12 prevails if the merger goes forward? I would assume that

13 since CenturyLink is the acquiring company that your

14 position on this important policy and economic matter would

15 prevail, Mr. Jones?

16 A. (Jones) It's a fair question. And we have several

17 policy issues to reconcile as two companies. For the most

18 part we've found commonality in most of our positions.

19 Intercarrier comp is one where we're having to spend more

20 time. And our process will be, just so you know, is that

21 we're looking at it from both companies' perspective looking

22 at the revenue impacts, looking at consumer impacts. And

23 our goal is to arrive for our day one close that all of our

24 employees will know the overall position for the company.

25 Q. Okay. Thank you. That's good enough for now.

0322

 1 I'm sure we'll have further conversations on this. Turning

 2 to Mr. Vasconi and Ms. Johnson.

 3 Mr. Vasconi, I think Mr. Schifman asked you a

 4 question about opting in for the Integra settlement

 5 agreement. Do you have that in front of you?

 6 A. (Vasconi) The Integra agreement?

 7 Q. Yeah. Because I'm going to refer to a provision,

 8 and I just want to make sure.

 9 A. (Vasconi) No, I don't.

10 Q. I'll just wait until Ms. Jennifer can get it in

11 front of you. Just for all the other parties I am going to

12 be referring to Paragraph 15 of that settlement agreement.

13 Judge, I don't know the exhibit number, I took

14 this out of the file before it was tagged. What's the

15 Integra settlement agreement?

16 JUDGE FRIEDLANDER: Sure. I have the Integra

17 settlement agreement itself as Exhibit 3.

18 BY COMMISIONER JONES:

19 Q. So I'm referring to Exhibit 3. You still don't

20 have it?

21 A. (Vasconi) I still don't have it.

22 MS. CAMERON-RULKOWSKI: It will take me a while to

23 dig it up.

24 BY COMMISIONER JONES:

25 Q. I can give you mine. And I'm only raising this

0323

 1 because Mr. Schifman did. Mark, you might want to take a

 2 minute and just tell me when you've read it. I think

 3 Mr. Schifman's question dealt with whether any requesting

 4 carrier, other than Integra, a CLEC would have an

 5 opportunity to opt into the terms of this stipulation?

 6 A. (Vasconi) okay.

 7 Q. So my question is, as I read that, any other

 8 requesting carrier could opt into the terms of the Integra

 9 settlement agreement?

10 A. (Vasconi) That's how I read that, as well.

11 Q. And, Ms. Johnson, you have any comment on that? I

12 realize that retail competition was more of a concern than

13 wholesale competition, but this is an important point for

14 wholesale competition in the state.

15 A. (Johnson) Correct. I read this now, and as I read

16 it it looks to say that.

17 Q. Next question is on the OSS. And I have some

18 questions, of course, for Mr. Gates in the other panel when

19 they come up and the other witnesses. But I guess,

20 Mr. Vasconi, after reading all of this, both what

21 Commissioner Oshie referred to in terms of the testimony

22 submitted by Mr. Gates on January 3rd, his responsive

23 testimony, the testimony of the Joint Applicants, I guess my

24 question to you is are there any specific upside benefits to

25 a potential conversion of an OSS? Put aside the stay-out of

0324

 1 two or three years, but let's say the Joint Applicants move

 2 to a new OSS or to convert the legacy Qwest OSS to what is

 3 called the E-A-S-E, the EASE at some point. Based on your

 4 reading of the evidence is there any upside to that?

 5 A. (Vasconi) I think the most obvious upside to that

 6 is the fact that when you're operating two systems it's more

 7 expensive than operating one. So there are efficiencies

 8 typically, or at least cost savings associated with

 9 operating one system rather than operating two in parallel.

10 Q. My question was more in functionalities though.

11 And I realize that this is Mr. Williamson's bailiwick and

12 not yours. But based on the functionality of the two

13 systems can you see any either through the electronic

14 bonding or the customer support or whatever, are there

15 benefits?

16 A. (Vasconi) I'm not in any position to feel

17 comfortable in answering that question because I don't have

18 any expertise with resect to those kinds of issues on

19 operating systems.

20 Q. But you would agree, based on Mr. Williamson's

21 testimony representing Staff that there are substantial

22 risks to any conversion post-transaction?

23 A. (Vasconi) Yes, there are risks, and that's why we

24 believe that the two year period that's in the agreement,

25 coupled with the other conditions associated with wholesale

0325

 1 OSS, are sufficient to mitigate those risks. The 270 day

 2 notice period, the testing and acceptance provisions of the

 3 OSS portion of the agreement also go to mitigating risk.

 4 The fact that CMP is still certainly in place goes to

 5 mitigating risk.

 6 And really even absent, even absent the

 7 transaction Qwest has it within its ability to change

 8 wholesale operating systems currently. So the fact that

 9 there will eventually be a migration or an integration from

10 Qwest to something else is something that could happen even

11 without the merger. So we think that the two year -- the

12 conditions placed on OSS in the agreement are sufficient to

13 mitigate against the risks that wholesale carriers are going

14 to be damaged by the merger.

15 Q. My last question is a broader one, but it does

16 relate to testimony, and I think it was in your testimony,

17 as well as perhaps Mr. Williamson, and certainly the Joint

18 CLEC witnesses. But my question revolves around, it's not

19 management culture per se, but it's more management

20 capability.

21 It appears to me that based on the evidence that

22 this CenturyLink is a company that has prospered and built

23 up a system starting in rural areas, going into some

24 suburban areas in certain parts of the country around Las

25 Vegas, Orlando and different areas, but it's primarily been

0326

 1 a rural based carrier protected by the rural exemption under

 2 251F and over provisions of the Telecommunications Act. It

 3 is purchasing, and you see this in the financial analysts in

 4 Moody's and S&P, as well, the analysts are saying and

 5 certain witnesses are saying that this is a completely

 6 different company that they're acquiring, Qwest. It's based

 7 in urban areas, urban competition, and has a strong

 8 enterprise component.

 9 So I guess my question to you is, Staff and also

10 Public Counsel, is what gives you confidence that

11 CenturyLink has the ability to pull this off?

12 A. (Vasconi) I think the confidence comes from -- my

13 confidence comes from the fact that CenturyLink has indeed

14 been able to acquire other properties in the relatively

15 recent time period that we're looking at. Embarq was one.

16 And with Embarq they clearly acquired a company that did

17 have some substantial urban properties associated with it.

18 And I think it's also important to note that in

19 terms of operating in rural parts of Washington or rural

20 parts of the Intermountain West 14 state region that Qwest

21 has, Qwest has substantial rural properties, as well. There

22 could potentially be synergies between the Qwest network

23 that's in place, as well as the Century network that is in

24 place.

25 What may hurt that -- what may restrict that now

0327

 1 is the fact that those properties are owned by different

 2 entities. When those properties combine there may be some

 3 efficiencies, there may be some synergies that could occur

 4 that otherwise would not occur.

 5 And I think given the track record that

 6 CenturyLink seems to have to date of managing new properties

 7 or managing acquired properties, I think that bodes well,

 8 especially when we see that over a period of three to five

 9 years you're going to see synergies, I would believe that

10 Qwest -- that the expertise that Qwest has in the markets

11 that it operates in will be something that's utilized by

12 Qwest's new owner, assuming the transaction is approved, in

13 moving forward to insure that service continues, and is

14 hopefully expanded.

15 So I have some confidence that Century, in its

16 acquisition of Qwest, will continue operations in a

17 beneficial way.

18 Q. Just a quick follow-up on that to see what Staff

19 examined as you reached your settlement. So you're saying,

20 at least to me here on the Bench, you're saying,

21 Commissioner, you should have confidence because they've

22 acquired primarily rural properties, PTI, Embarq; right?

23 Embarq is primarily rural in nature?

24 A. (Vasconi) Yeah, it's primarily rural, but they

25 also do have a number of urban properties associated with

0328

 1 that. And they've been able to manage those properties, at

 2 least in the period that the merger has been in place.

 3 Q. But did you specifically look at other parts of

 4 the country and perhaps some challenges that CenturyLink had

 5 or is having in acquiring more urban properties? Was that a

 6 part of your due diligence on that?

 7 A. (Vasconi) No.

 8 Q. Okay. Judge, that's all. Oh, Mr. Jones, if you

 9 want to say anything here? If you want to keep it short, I

10 think I understand your rationale for the acquisition, but I

11 primarily wanted to get Staff's concerns, but if you wanted

12 to join in a little bit.

13 A. (Jones) Yeah, I would like to address the

14 wherewithal to operate urban properties. I believe our

15 public earnings show that in the six largest Embarq markets

16 that we have acquired that all of the metrics in those

17 markets are up in a significant way. Reduced line loss,

18 increase DSL ads.

19 I think this is my seventh acquisition in 17 years

20 with the company, and in terms of the management structure

21 and the cultures I have complete confidence in our

22 management teams's ability to do both small acquisitions and

23 large acquisitions. As you know, we've purchased millions

24 of Verizon and GTE access lines over the years, which were

25 partial acquisition, not total asset, converted those

0329

 1 billing systems, done everything. Like I said, our track

 2 record, even though it's in the past, is very telling. And

 3 I don't think there's another company in the United States

 4 that has made as many different types of acquisitions,

 5 including fiber networks and all the other things we have

 6 done, that has this type of track record.

 7 And the analyst conferences I have been to

 8 recently, Boston and New York, the questions that we

 9 received at that time have gone away from can you do this?

10 to what are you going to do next? So I think we, for the

11 most part, for our shareholders anyway, they have confidence

12 that we can do this and have gotten past that point of it

13 because of the Embarq acquisition and the success ratio

14 there.

15 COMMISIONER JONES: Thank you. Judge, that's all

16 I have.

17 JUDGE FRIEDLANDER: Thank you. Mr. Simshaw, did

18 you have any redirect?

19 MR. SIMSHAW: Just one, Your Honor.

20

21 REDIRECT EXAMINATION

22 BY MR. SIMSHAW:

23 Q. Mr. Jones, there was considerable discussion

24 relative to the various broadband commitments and the

25 various merger orders. I would just like to go back to one

0330

 1 specifically, and that would be the commitment in the

 2 Embarq/CenturyLink merger in Washington. Do you know

 3 whether that commitment has been completed?

 4 A. (Jones) My understanding is that it has.

 5 Q. Therefore is it the case that there would be no

 6 overlap between the broadband commitment in Washington in

 7 this case and the broadband commitment that emanated from

 8 the CenturyLink/Embarq merger earlier?

 9 A. (Jones) Yes.

10 JUDGE FRIEDLANDER: Thank you. Ms. Anderl, any

11 redirect?

12 MS. ANDERL: Thank you. I have no questions.

13 JUDGE FRIEDLANDER: Thank you.

14 Ms. Cameron-Rulkowski, do you have any redirect?

15 MS. CAMERON-RULKOWSKI: Thank you, Your Honor, I

16 have a couple.

17

18 REDIRECT EXAMINATION

19 BY MS. CAMERON-RULKOWSKI:

20 Q. Mr. Vasconi, please direct your attention to the

21 conditions list, and please direct your attention to

22 Condition No. 3, the AFOR filing. If you would please

23 review Section a, and then is it your understanding that

24 this settlement would automatically change the Qwest AFOR

25 order or the CenturyTel/Embarq order?

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 1 A. (Vasconi) No, not automatically. As it's written

 2 it indicates that Qwest -- that CenturyLink will petition

 3 the Commission for the changes that are specified there.

 4 First, being the deferral of the Qwest AFOR review until the

 5 filings required in the next section of this condition are

 6 made. CenturyLink will need to petition the Commission for

 7 the extension of the Qwest AFOR period until the Commission

 8 issues an order on the filings. And then, third,

 9 CenturyLink will petition the Commission for the elimination

10 of the CenturyTel/Embarq merger conditions requiring a

11 results of operation filing within three years, and an AFOR

12 filing within five years of the close of the

13 CenturyTel/Embarq merger.

14 MS. CAMERON-RULKOWSKI: Thank you, Mr. Vasconi,

15 for laying that out. I have no further direct.

16 JUDGE FRIEDLANDER: Thank you. Mr. ffitch.

17 MR. FFITCH: No redirect. Thank you, Your Honor.

18 JUDGE FRIEDLANDER: Thank you. With that I'm

19 going to excuse the panel, and I thank you.

20 MR. SCHIFMAN: Judge, do we have the opportunity

21 to recross on the redirect?

22 JUDGE FRIEDLANDER: We do not usually do recross.

23 Just one moment. (Brief discussion held between Judge

24 Friedlander and the Commission.) How many questions did you

25 have, Mr. Schifman?

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 1 MR. SCHIFMAN: Just a couple.

 2 JUDGE FRIEDLANDER: We'll make an exception this

 3 once.

 4

 5 RECROSS-EXAMINATION

 6 BY MR. SCHIFMAN:

 7 Q. On the petitioning of the Commission, when looking

 8 at Section 3 of the settlement, what standard is the

 9 Commission suppose to utilize when determining whether or

10 not these things are going to happen on the AFOR? I'll ask

11 you, Mr. Vasconi.

12 A. (Vasconi) I would guess it would be a public

13 interest standard.

14 Q. So the Commission, in your view, could deny the

15 extensions that are set forth here that Qwest and

16 CenturyLink have to petition for?

17 A. (Vasconi) Yes, the Commission could probably

18 order -- or either approve or deny the petition.

19 Q. And the Commission would have that same ability

20 with respect to the settlement agreement in this condition

21 as far as either approving or denying whether or not Qwest

22 and CenturyLink should even have the ability to petition the

23 Commission for these types of extensions; right?

24 A. (Vasconi) Yes, I would believe that's right.

25 Q. And, Mr. Jones, on the questions regarding whether

0333

 1 or not the broadband commitments from the Embarq/CenturyTel

 2 merger order have been completed, you are referring to the

 3 Embarq/CenturyTel merger order from this Commission; is that

 4 correct?

 5 A. (Jones) I was.

 6 MR. SCHIFMAN: Okay. That's all I have.

 7 CHAIRMAN GOLTZ: Judge, I have one question I

 8 overlooked.

 9 JUDGE FRIEDLANDER: Okay.

10

11 RECROSS-EXAMINATION

12 BY CHAIRMAN GOLTZ:

13 Q. This is for Mr. Jones or Mr. Reynolds. Paragraph

14 4 of Appendix A to the settlement agreement, the synergy

15 reports. It talks about Century will file annually a

16 confidential report with the Commission. I just want to

17 make sure I understand that when you file the report it

18 would be pursuant to the confidentiality provisions and

19 state law and our Utilities law. And that if we require a

20 report we can't guarantee it's confidentiality, that would

21 be a subject of the laws of the state, including the Public

22 Records Act, do you understand that?

23 A. (Jones) I do now, if that is what --

24 Q. I just want to make sure that Staff wasn't saying,

25 Mr. Vasconi, that you weren't trying to give an ora of

0334

 1 confidentiality to that report that would otherwise not be

 2 pursuant to state law?

 3 A. (Vasconi) Correct.

 4 Q. In other words, it may be confidential if it meets

 5 the requirements for confidentiality under state law?

 6 A. (Vasconi) True.

 7 MS. ANDERL: Your Honor, if it helps, we're

 8 willing to stipulate to that, that's our understanding.

 9 JUDGE FRIEDLANDER: Thank you. And, once again, I

10 would dismiss the panel. And thank you for your testimony.

11 I would caution that you may be recalled depending on what

12 we get from the Joint Applicants, Staff and Public Counsel,

13 any revisions to the settlement agreement. Thank you.

14 Okay. I think we still have some time left, so

15 why don't we go ahead and attempt to impanel the second

16 group.

17 MS. ANDERL: Can we have a couple minutes off the

18 record while everybody gets organized?

19 JUDGE FRIEDLANDER: Sure.

20 MR. TRINCHERO: Your Honor, if I could take this

21 opportunity to just ask, I had never gotten a final, final

22 answer on whether or not Commissioners might have any

23 questions for any of our witnesses. If in fact we were

24 going to try to get any of them out here before the end of

25 the hearing we should do so now, so I'm just curious.

0335

 1 JUDGE FRIEDLANDER: You're specifically referring

 2 to Dr. Ankum or Mr. Falvey?

 3 MR. TRINCHERO: Or Mr. Gates or Mr. Haas, any of

 4 our CLEC witnesses.

 5 JUDGE FRIEDLANDER: Yes, I would say Mr. Gates

 6 we're going to definitely have questions for. Hold on just

 7 a second. We'll be off the record for a moment.

 8 (Break taken from 4:11 to 4:24 p.m.)

 9 JUDGE FRIEDLANDER: We'll go back on the record.

10 Okay. So I believe we were going to impanel the

11 settlement witnesses for the Joint Applicants and

12 360networks and the Integra settlements. So, Mr. Simshaw,

13 if you would call your witness.

14 MR. SIMSHAW: Thank you, Your Honor. CenturyLink

15 would call Mr. Mike Hunsucker.

16 JUDGE FRIEDLANDER: Thank you. Ms. Anderl, if you

17 would call your witness.

18 MS. ANDERL: Yes. Qwest calls Chris Viveros.

19 JUDGE FRIEDLANDER: Thank you. Mr. Gilliam, if

20 you would call your witness.

21 MR. GILLIAM: Thank you, Your Honor. Integra

22 calls Denney Douglas.

23 JUDGE FRIEDLANDER: Thank you. And Mr. Butler, if

24 you would call your witness.

25 MR. GILLIAM: Pardon, Your Honor. Doug Denney.

0336

 1 JUDGE FRIEDLANDER: Thank you. That's helpful.

 2 Mr. Butler, if you will call your witness.

 3 MR. BUTLER: 360networks calls Michel Singer

 4 Nelson via Commission's bridge line.

 5 JUDGE FRIEDLANDER: Thank you. I will have the

 6 panel rise and raise your right hand, and, Ms. Singer

 7 Nelson, I'll assume that you're doing the same.

 8

 9 MICHAEL HUNSUCKER, CHRISTOPHER VIVEROS,

10 DOUGLAS DENNEY, MICHEL SINGER NELSON,

11 having been first duly sworn on oath

12 testified as follows:

13

14 JUDGE FRIEDLANDER: Ms. Singer Nelson, we just

15 unmuted you. So I assume that you did actually swear or

16 affirm. If you could just affirm that?

17 A. (Singer Nelson) Yes, your Honor, I did. I said I

18 do.

19 JUDGE FRIEDLANDER: Thank you. So let's go ahead

20 and begin with direct, Mr. Simshaw, if you would like to

21 begin.

22

23 DIRECT EXAMINATION

24 BY MR. SIMSHAW:

25 Q. Mr. Hunsucker, would you state your full name,

0337

 1 your employer and your title?

 2 A. (Hunsucker) My name is Michael Hunsucker. I am

 3 employed by CenturyLink as director CLEC management.

 4 MR. SIMSHAW: Your Honor, since there's no direct

 5 testimony, prefiled direct testimony, associated with this

 6 panel, I believe I will release Mr. Hunsucker to participate

 7 in the panel.

 8 JUDGE FRIEDLANDER: Thank you. And, Ms. Anderl.

 9 MS. ANDERL: Yes.

10

11 DIRECT EXAMINATION

12 BY MS. ANDERL:

13 Q. Mr. Viveros, could you please state your name and

14 your business address?

15 A. (Viveros) Yes. My name is Christopher Viveros.

16 My business address is 1350 Treat Boulevard, Suite 200,

17 Walnut Creek, California 94597.

18 Q. By whom are you employed and in what capacity?

19 A. (Viveros) I'm employed by Qwest Corporation as a

20 director of legal issues in the Qwest law department.

21 Q. Mr. Viveros, you previously caused to be filed

22 your rebuttal testimony, Exhibit CV-1RVT, that contains a

23 more detailed listing of your qualifications?

24 A. (Viveros) Yes, it does.

25 Q. Okay. You are testifying today in support of the

0338

 1 Integra and 360 settlement agreement?

 2 A. (Viveros) Yes, I am.

 3 MS. ANDERL: Thank you.

 4 JUDGE FRIEDLANDER: Thank you. And, Mr. Gilliam.

 5

 6 DIRECT EXAMINATION

 7 BY MR. GILLIAM:

 8 Q. Good afternoon, Mr. Denney.

 9 A. (Denney) Good afternoon.

10 Q. Could you state your correct name for the record,

11 please?

12 A. (Denney) Name is Douglas Denney.

13 Q. What is your present occupation?

14 A. (Denney) I'm employed by Integra Telecom as

15 Integra's director of cost and policy.

16 Q. And what do you do in that capacity?

17 A. (Denney) Part of my job duties include negotiating

18 interconnection agreements, monitoring, reviewing and

19 analyzing wholesale costs that Integra subsidiaries pay to

20 carriers such as Qwest. And also I represent Integra and

21 our affiliated companies on regulatory issues. I'm also

22 heavily involved in the review of Qwest performance

23 assurance plans.

24 MR. GILLIAM: Thank you. Your Honor, this witness

25 is available to participate in the panel.

0339

 1 JUDGE FRIEDLANDER: Thank you. And, Mr. Butler.

 2

 3 DIRECT EXAMINATION

 4 BY MR. BUTLER:

 5 Q. Ms. Singer Nelson, could you please state your

 6 name, employer and current position?

 7 A. (Singer Nelson) Yes. My name is Michel Singer

 8 Nelson. First name is spelled M-i-c-h-e-l. My job title is

 9 associate general counsel, and I'm employed by 360networks.

10 MR. BUTLER: Ms. Single Nelson is available to

11 participate in the panel.

12 JUDGE FRIEDLANDER: Thank you. I believe that we

13 have cross-examination questions from Sprint/T-Mobile,

14 Mr. Schifman.

15 MS. ANDERL: Your Honor, may I just ask a point of

16 order? It was my understanding that at least as far as

17 Integra goes, the Integra witness was going to ask for leave

18 to be permitted to give a brief statement on direct in

19 support of the settlement agreement?

20 JUDGE FRIEDLANDER: Is that the case, Mr. Gilliam?

21 MR. GILLIAM: Yes, Your Honor. We can go forward

22 with a brief statement.

23 JUDGE FRIEDLANDER: Okay. Mr. Denney, if you

24 would like to proceed.

25 (Mr. Denney's direct examination

0340

 1 continued.)

 2 A. (Denney) Thank you. This will just take a couple

 3 minutes, but I just wanted to be clear. The settlement

 4 agreement spells out in part that the parties entered into

 5 this agreement--I'm speaking of the Integra agreement--to

 6 avoid further expense, uncertainty and delay.

 7 And Integra believes that this agreement

 8 adequately addresses its concerns and the proposed

 9 conditions contained in prefiled testimony. And from

10 Integra's perspective with this agreement the transactions

11 are in the public interest and should be approved.

12 The settlement agreement is a compromise of many

13 issues, but at a high level the agreement is about

14 consistency and predictability in our business relationship

15 with Qwest and its new owner during a time that's inherently

16 unstable and unpredictable. And I would be happy to answer

17 further questions about the agreement.

18 JUDGE FRIEDLANDER: Thank you. I believe that now

19 we can open the panel up for cross-examination.

20 Mr. Schifman, if you would like to proceed?

21 MR. SCHIFMAN: Sure.

22

23 CROSS-EXAMINATION

24 BY MR. SCHIFMAN:

25 Q. Mr. Denney, you just mentioned that you believe

0341

 1 that the settlement addresses Integra's concerns that it had

 2 with the merger; is that correct?

 3 A. (Denney) That's correct.

 4 Q. Do you believe that Integra's concerns represent

 5 all of the other concerns of all the other CLECs and all the

 6 wireless carriers that operate in this state?

 7 A. (Denney) I'm certainly not speaking on behalf of

 8 any carrier other than Integra.

 9 Q. Okay. And does Integra operate a wireless carrier

10 in the state of Washington?

11 A. (Denney) No, we do not.

12 Q. So is it fair to say that the settlement then does

13 not represent -- that the Integra settlement does not

14 represent anything that would satisfy a wireless carrier's

15 issues with respect to the merger?

16 A. (Denney) I wouldn't quite put it like that because

17 there are certain provisions in the settlement that may

18 apply to wireless carriers. The settlement agreement was

19 not negotiated from the perspective of a wireless carrier,

20 it was negotiated from Integra who is a facilities-based

21 carrier that purchases and leases facilities from mostly

22 last mile facilities from Qwest.

23 Q. Okay. One of the concerns that was addressed in

24 the settlement from Integra's perspective was line

25 conditioning and guaranteeing an amendment to its

0342

 1 interconnection agreements in various states with respect to

 2 line conditioning; is that correct?

 3 A. (Denney) That's correct. There's a line

 4 conditioning amendment that allows -- really gives us some

 5 certainty in the provision of copper loops in order to allow

 6 carriers who purchase copper loops kind of some

 7 predictability in how they're delivered and gives us the

 8 ability to provide broadband services to our customers.

 9 Q. So would you agree with me that carriers who don't

10 buy unbundled loops from CenturyLink or Qwest wouldn't have

11 any interest in having a line conditioning amendment?

12 A. (Denney) That's likely the case.

13 Q. Okay. And does Integra operate in CenturyTel or

14 Embarq territories in the state of Washington?

15 A. (Denney) No, we do not.

16 Q. Okay. Would you have any opposition to the

17 conditions related to interconnection agreements that are

18 set forth in the Integra settlement being extended to the

19 CenturyTel and Embarq territories in this state?

20 A. (Denney) Integra's position in this settlement is

21 that this settlement adequately addresses all of our

22 concerns. And we're not asking for anything additional from

23 what we reached in the settlement agreement.

24 Q. But would you be opposed to extending conditions

25 to the CenturyTel and Embarq territories?

0343

 1 A. (Denney) More of anything is better, right. And

 2 less probably of anything from CenturyLink's perspective

 3 would be better for them. So we don't have a position,

 4 we're not asking for anything more. We haven't taken a

 5 position on, you know -- I wouldn't go far as to say we're

 6 opposed to anything, but we're not asking for anything more.

 7 This settlement we believe adequately addresses our

 8 concerns.

 9 Q. Got you. Can you turn to Paragraph 15 of the

10 Integra agreement. I'm only asking you this because

11 Mr. Jones asked about it, because I asked about it

12 previously. And it talks about the agreement will be made

13 available to any requesting carrier, do you see that?

14 A. (Denney) Yes.

15 Q. So how do you interpret that? Do you interpret

16 that as, for example, a wireless carrier like Sprint would

17 have to sign a line conditioning amendment in order to get

18 all the other terms of this settlement agreement?

19 A. (Denney) I don't think a line conditioning

20 amendment is a requirement in any part of the agreement. I

21 think the line conditioning amendment is something that's

22 available that's part of this agreement.

23 Q. Well, in the paragraph right above that it says,

24 "no later than 30 days after the closing date the parties

25 agree to amend its existing Qwest CLEC interconnection

0344

 1 agreements by executing the line conditioning amendment."

 2 So it does appear there's some type of responsibility to

 3 execute line conditioning amendments; is that true?

 4 A. (Denney) Right. Where exactly are you reading?

 5 Q. First two lines of Paragraph 14.

 6 A. (Denney) So your question is whether Sprint would

 7 be required to execute a line conditioning agreement as part

 8 of --

 9 Q. In order to get all the other terms of this

10 settlement.

11 A. (Denney) The way the language reads is the parties

12 will amend their agreement. The parties that had executed

13 into this agreement were Integra and CenturyLink. So it was

14 to assure that Integra had the ability to enter into that

15 line conditioning amendment. So I hadn't thought about that

16 question before as to whether it's a requirement of all

17 parties. And perhaps that's one better asked of CenturyLink

18 as to whether that's a requirement or not. It wasn't

19 Integra's intent to set it up that it would require parties

20 to enter into agreements they didn't need.

21 Q. Got you. Thank you for that explanation.

22 Mr. Hunsucker, what is your opinion on that?

23 A. (Hunsucker) Paragraph 14 was put in there as a

24 condition as part of the settlement agreement. What we have

25 said in other states, and what we would say here is, to the

0345

 1 extent a carrier doesn't need a line conditioning amendment

 2 there's no requirement for them to have a line conditioning

 3 amendment. But if they choose or need a line conditioning

 4 amendment this is the amendment that would be applicable and

 5 available to them as part of their interconnection

 6 agreement.

 7 Q. As far as commercial agreements, Mr. Hunsucker,

 8 that a CLEC or a wireless carrier have, how does that work

 9 in terms of this particular settlement? They will be

10 extended for a period of time; is that true?

11 A. (Hunsucker) I'm not sure I understand.

12 Q. Commercial agreements?

13 A. (Hunsucker) Right. Let me make sure I understand

14 first. You're saying a carrier opts into this, decides they

15 want to take advantage of this agreement?

16 Q. Yes.

17 A. (Hunsucker) Then on commercial and wholesale

18 agreements they would be extended for an 18 month period as

19 is. Then in addition to that there would be an 18 month

20 grandparent or grandfather period at a minimum. There's

21 no -- it doesn't signal any intent that we're going to

22 eliminate these products, only this is the time period that

23 we provide certainty that those contracts/agreements will

24 stay in place for a period of time under the exact

25 conditions that are there today pre-merger. They would be

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 1 available post-merger but there is absolutely -- at this

 2 point we don't know whether we could continue them or not.

 3 We're just trying to create business certainty for our CLEC

 4 customers for that 18 month period.

 5 Q. Okay. And, Mr. Hunsucker, this agreement refers

 6 only to Qwest interconnection agreements, Qwest tariffs,

 7 Qwest commercial agreements and Qwest wholesale agreements;

 8 is that correct?

 9 A. (Hunsucker) That's correct.

10 Q. Okay. So the inverse of that is CenturyLink

11 wholesale agreements, CenturyLink interconnection

12 agreements, CenturyLink commercial agreements are not

13 affected by this Integra settlement; is that true?

14 A. (Hunsucker) That's correct. ICAs are not affected

15 and are not extended under this agreement. Those were

16 extended under the CenturyTel/Embarq agreement at the FCC.

17 We're still in that period of extension, which were two year

18 and three year periods for those. So we continue to abide

19 by our previous merger commitment. But there's no

20 commitment in here that we will extend those agreements.

21 Q. When does the merger commitment from the

22 Embarq/CenturyTel merger as far as extension of

23 interconnection agreements there expire?

24 A. (Hunsucker) The longest period of time since the

25 merger closed July 1st, 2009, would be July 1st, 2012.

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 1 Q. Okay. And if this merger consummates and closes

 2 in the first quarter of 2011 the extensions of the Qwest

 3 interconnection agreements under this settlement will go

 4 into the year 2014; is that correct?

 5 A. (Hunsucker) That's correct.

 6 Q. So the extension of the Embarq/CenturyTel

 7 agreements under the FCC condition are only going to go

 8 through July of 2012; is that right?

 9 A. (Hunsucker) Let me answer that question this way.

10 That's the time period under which we are required to

11 continue to make those available. That is not necessarily

12 the time period they would go through because we could

13 continue to operate on a month-to-month basis after that

14 period of time. And honestly if you look at a lot of the

15 contracts we have, for example, even with Sprint CLEC, it

16 was a 2005 agreement that expired in 2007, that could have

17 been terminated in 2007, that we're still operating under

18 today and is part of the extension period by the FCC

19 condition.

20 Q. Is there any technical reasons, not talking about

21 the legal reasons from the CenturyTel/Embarq merger order,

22 but are there any technical reasons why the CenturyTel and

23 Embarq interconnection agreements cannot also be extended

24 according to the same terms that are set forth in the

25 Integra settlement?

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 1 A. (Hunsucker) I'm not aware of any technical reasons

 2 why those could not be extended. As I've said here, I've

 3 never been asked that question in any other state, not

 4 something I've put a lot of thought in. But just off the

 5 top of my head I can't come up with a technical reason.

 6 Q. Just trying to be original here, this is the last

 7 hearing, you know.

 8 A. (Hunsucker) I appreciate that.

 9 Q. Mr. Hunsucker, has CenturyLink quantified any

10 financial harm to the CenturyLink entities if the

11 CenturyLink ICAs were extended in addition to the Qwest ICAs

12 pursuant to the same terms as set forth in the Integra

13 agreement?

14 A. (Hunsucker) No, we have not. I mean we have over

15 1,000 interconnection agreements, some of them go back as

16 far as 1999 that we're continuing to operate under, and we

17 have not undertaken any calculation of any financial impact

18 positive or negative if we extended those agreements.

19 Q. Mr. Hunsucker, I'm thinking this more in terms of

20 CLECs and CMRS carriers, but I think I can ask this to you

21 as an ILEC. Do you consider with respect to an

22 interconnection agreement, do you have more security knowing

23 what the term is of that agreement rather than operating on

24 a month-to-month basis?

25 A. (Hunsucker) Yes and no. It depends upon the

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 1 contract. It depends upon the terms of those contracts. I

 2 mean it could be one way or the other given the specifics of

 3 each individual contract. We have not quite 2,000 of these

 4 contracts across the nation, so, you know, it could go

 5 either way.

 6 Q. Okay. You have -- and when you say we have over

 7 2,000, are you referring to the CenturyTel/Embarq ILECs only

 8 or are you referring to Qwest also?

 9 A. (Hunsucker) The CenturyTel/Embarq ILECs, and that

10 would cover interconnection agreements, termination

11 agreements, resell agreements as well as wireless

12 interconnection agreements.

13 Q. With respect to interconnection agreements,

14 Mr. Hunsucker, that you have, do you have a number as far as

15 how many interconnection agreements you have either

16 nationally or in the state of Washington?

17 A. (Hunsucker) I do not have the number off the top

18 of my head. I know we've responded to that in data

19 requests, but I can't recall the number.

20 Q. Let me see if I can find it real quick. We may

21 have to get back to that when you come back on the other

22 panel. Okay. But you would agree with me you have hundreds

23 of interconnection agreements nationally; correct?

24 A. (Hunsucker) Yes, I believe it's over 1,000.

25 Q. Okay. And as far as this Integra agreement that

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 1 you reached, does it apply only in the state of Washington

 2 or does it apply in multiple states?

 3 A. (Hunsucker) This agreement was drafted to apply in

 4 every state in which Integra operated and at the FCC. We

 5 agree to these conditions in exchange for Integra's

 6 withdrawing from the various proceedings and also supporting

 7 the transaction in the public interest with these

 8 conditions. So it was a multistate national settlement.

 9 Q. How many states do you know off the top of your

10 head?

11 A. (Hunsucker) No. I can look at the front here and

12 tell you. They're enumerated here in the front of the

13 agreement.

14 A. (Denney) I know how many Integra states we operate

15 in.

16 Q. That might help.

17 A. (Denney) We're in nine Qwest states. The

18 agreement does cover to the extent we expand into any of the

19 additional Qwest states, as well.

20 Q. Okay. So the terms of this settlement are meant

21 to operate in at least nine states in the Qwest region;

22 right, Mr. Hunsucker?

23 A. (Hunsucker) Yeah, I think Mr. Denney is right. It

24 would really be all 14 states to the extent they decide to

25 do business in any of those states.

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 1 Q. What about any non-Qwest states, say, Nevada?

 2 A. (Hunsucker) No, this doesn't cover that.

 3 Q. Doesn't cover that. With respect to the Qwest

 4 region you would agree with me; right, Mr. Hunsucker, that

 5 your company has the technical ability to implement the

 6 terms of this agreement in all of these states; true?

 7 A. (Hunsucker) In all of which states?

 8 Q. All of the Qwest region states that Mr. Denney

 9 talked about and that are identified on the front page of

10 the Integra agreement?

11 A. (Hunsucker) In all the Qwest states I think the

12 answer is yes. The only thing that I would caveat is I do

13 think there are some transitional schedules in the line

14 conditioning amendment such that some of that capability may

15 not be there today, but it is being deployed over a period

16 of time. So clearly we have or will have the technical

17 capability to meet all of these conditions.

18 Q. Regarding the Qwest network in the various states,

19 there's nothing that you know of that prevents the company

20 from implementing this settlement in all the Qwest states,

21 is there?

22 A. (Hunsucker) Not that I'm aware of. We met with

23 our network folks, and they didn't raise any issues. I

24 don't think we would have agreed to this had they had

25 particular issues. We would have tried to make sure those

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 1 were covered in this agreement.

 2 Q. Okay. Now, getting to interconnection agreements.

 3 One of the conditions that are not in this particular

 4 agreement with Integra is the ability to what we call port

 5 interconnection agreements between entities in a single

 6 state or between states; is that right?

 7 A. (Hunsucker) That's correct.

 8 Q. Okay. Do you know if Qwest and CenturyLink, in

 9 discovery responses, do you know if they identified any

10 technical reasons that you know of right now regarding

11 whether or not the porting of interconnection agreements can

12 be done?

13 A. (Hunsucker) I don't recall whether we did or

14 didn't.

15 Q. Okay. Have you quantified -- and just to get this

16 straight so the commissioners know, I'm sure they do

17 already, that you oppose the porting of interconnection

18 agreements between entities and between states; is that

19 true?

20 A. (Hunsucker) Yes, that's correct.

21 Q. Have you identified the financial harms that would

22 accrue to Qwest and CenturyLink ILECs if such a condition

23 were permitted?

24 A. (Hunsucker) No, we have not, but I think that's

25 one of the critical points here is that, or couple points,

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 1 is, one, there are specific rates in each of the individual

 2 states that have been set by the various state Commissions.

 3 So allowing just a simple port of any agreement without

 4 amending the rate schedules is in my mind -- I mean it's not

 5 possible, it's not something we would want to do. Secondly,

 6 I know that there are certain things in the Qwest agreements

 7 where they have operationalized certain billing procedures

 8 and requirements. Those are things that we cannot do as we

 9 convert this company day one.

10 Obviously, that's part of trying to integrate the

11 companies is to get to a single process, a single way of

12 doing it. So that prevents it from happening, as well.

13 There could be technical differences within the CenturyLink

14 network versus the Qwest network. We haven't quantified any

15 of those and have done no financial modeling on what that

16 would cost.

17 Q. Okay. With respect to state specific rates I

18 think was one of the first reasons you mentioned there. Are

19 you aware the conditions proposed, at least by Sprint, and I

20 think also by the Joint CLECs, allow for the implementation

21 of state specific rates within a ported interconnection

22 agreement?

23 A. (Hunsucker) Yes, they do. But it's not just as

24 simple as taking those rates and putting them in the

25 interconnection agreement. State Commissions may have

0354

 1 determined there's different ways to recover rates, they're

 2 nonrecurring or monthly recurring. So it also requires a

 3 lot of changes in the actual body of the contract itself.

 4 So it's not just a simple we're going to take this language

 5 out of this agreement in Minnesota and put the Washington

 6 rates on the back of it and we're done. I think as

 7 Ms. Endejan said this morning, these contracts are very

 8 complicated, they're very complex. And she's right, and

 9 that's one thing that prevents us from simply taking one

10 agreement into another state and using it.

11 Q. Are you aware, Mr. Hunsucker, that the FCC in

12 contemplating the merger between AT&T and BellSouth ordered

13 the ability for CLECs and wireless carriers to port

14 interconnection agreements between entities and between

15 states?

16 A. (Hunsucker) Yes, I'm aware of that. That was Two

17 Box, I don't know how similar their systems, their

18 contracts, their processes were. And I know AT&T

19 voluntarily agreed to do that as part of their voluntary

20 commitments. It's not something that we're comfortable

21 doing.

22 Q. Would you agree with me that interconnection

23 agreements for Embarq/CenturyTel ILECs and interconnection

24 agreements for the Qwest ILECs with CLECs and CMRS carriers,

25 they generally do the same things; right? In other words,

0355

 1 they talk about how the networks are interconnected, they

 2 talk about reciprocal compensation, they talk about

 3 application of certain tariffs, those are all items that are

 4 in -- that are substantially similar between the Qwest ICAs

 5 and the Embarq and CenturyTel ICAs; correct?

 6 A. (Hunsucker) I think that's a significant

 7 oversimplification of the contracts to say they do the same

 8 things. They address the same issues, yes, but if you go

 9 look at the Qwest template it's 400 and some pages without

10 attachments. So it's not -- it's a real oversimplification

11 to say it does the same thing. Yeah, it has the same

12 concepts, intercarrier compensation, interconnection

13 billing, all the typical legal language that's required, but

14 it's not that simple.

15 Q. Is CenturyTel and Embarq working towards a single

16 interconnection agreement for the CenturyTel and Embarq

17 ILECs?

18 A. (Hunsucker) Yes. As I've testified in other

19 states we have begun that process to attempt to get to a

20 single template for Embarq and CenturyTel properties.

21 Q. And why are you doing that?

22 A. (Hunsucker) Two reasons. One, I think it's for

23 our own internal benefit. And, two, it's for the benefit of

24 the CLEC customers. And that drives us to create

25 efficiencies for our company, as well as our CLEC customers.

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 1 That is something that we will probably undertake with the

 2 Qwest agreement at some point in time. It's a process where

 3 you have to reconcile, you know, your policy positions and

 4 those type of things.

 5 But, again, as part of this agreement we're

 6 extending ICAs for three years and we're still in an ICA

 7 extension period for Embarq and CenturyTel. So we don't

 8 have to do it day one, we don't have to do it at the end of

 9 the first year. We have time to get there. And it's --

10 from my personal experience, because it's my staff that's

11 doing this, it's been a very difficult and long process to

12 work through getting to a single interconnection template.

13 Q. So do you think your company will accrue cost

14 savings from working toward a single agreement as far as

15 managing interconnection agreements and billing under

16 interconnection agreements?

17 A. (Hunsucker) You know, we haven't really looked at

18 it from that perspective. We're just trying to get on a

19 common template.

20 Q. Regarding billing for intercarrier compensation

21 and interconnection agreements, I suppose you're working

22 towards a common template for how you bill intercarrier comp

23 as part of this new template that you're developing for the

24 CenturyTel and Embarq agreements; is that right?

25 A. (Hunsucker) Yeah, I would probably ask you to

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 1 clarify what you mean by how to bill, that sounds like more

 2 of a billing system issue. So I'm not sure I understand

 3 exactly what you're asking.

 4 Q. No, that's a good clarification that you asked

 5 for. I don't mean it as far as how to bill. I guess I mean

 6 it more from the perspective of just administering the

 7 interconnection agreement and looking at its terms and

 8 conditions and then rendering bills to carriers that you

 9 exchange traffic with?

10 A. (Hunsucker) Obviously the template that we will

11 come up with will have a section on intercarrier comp. It

12 will talk about how we treat local services, how we treat

13 nonlocal services, what rates are subject to access charges,

14 what rates are subject to recip comp. Some states will use

15 the FCC opt in rate. Other states will have TELRIC-based

16 reciprocal compensation rates. It will be a myriad of how

17 you get there. But we're trying to get that into a single

18 template.

19 Q. Have you identified the policy differences yet

20 between the Qwest template and the CenturyLink templates

21 that you have out there?

22 A. (Hunsucker) I have not. I think our policy group

23 has gone through looking at those type of issues, but I was

24 not personally involved in doing that.

25 Q. So you have no personal knowledge of those policy

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 1 differences at this time?

 2 A. (Hunsucker) No, not as I sit here today I can't,

 3 you know, tell you what those differences are.

 4 JUDGE FRIEDLANDER: Mr. Schifman, I guess I should

 5 note that we are getting close to 5:00. And we do have a

 6 public comment period at 5:30. So if this is a good place

 7 to break and recess until tomorrow morning maybe we should

 8 go ahead and do that?

 9 MR. SCHIFMAN: Okay. That's fine with me.

10 JUDGE FRIEDLANDER: Okay. And so what we'll do is

11 we'll adjourn and we'll come back tomorrow at 9:30. Thank

12 you.

13 MR. FFITCH: Your Honor?

14 JUDGE FRIEDLANDER: Yes.

15 MR. FFITCH: I just would like to interject, if I

16 may, a request on the record in front of other counsel

17 regarding attendance of our witness. I would like to

18 request permission for our witness to be excused from the

19 hearing room and to be available tomorrow for the rest of

20 the hearing by telephone. Ms. Johnson.

21 JUDGE FRIEDLANDER: That's fine.

22 MR. FFITCH: Thank you, Your Honor.

23 JUDGE FRIEDLANDER: Sure. We are adjourned.

24 Thank you.

25 (Off the record at 4:57 p.m.)

0359

 1 C E R T I F I C A T E

 2

 3 I, TAMI LYNN VONDRAN, a Certified Court Reporter,

 4 do hereby certify that I reported in machine shorthand the

 5 foregoing proceedings in the above-entitled cause; that the

 6 foregoing transcript was prepared under my personal

 7 supervision and constitutes a true record of the testimony

 8 of the said witness.

 9 I further certify that I am not an attorney or

10 counsel of any parties, nor a relative or employee of any

11 attorney or counsel connected with the action, nor

12 financially interested in the action.

13 DATED at Edgewood, Washington this 10th day of

14 January, 2011.

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