

Exhibit No. ____ (DD-1T)

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Complaint by the Joint)
CLECs against the Joint Applicants) UT-111254
Regarding OSS for Maintenance and)
Repair)

DIRECT TESTIMONY OF

DOUGLAS DENNEY

ON BEHALF OF

INTEGRA TELECOM

October 14, 2011

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1 **I. INTRODUCTION**

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

3 A. My name is Douglas Denney. I work at 1201 Lloyd Blvd, Suite 500 in Portland, Oregon.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Integra Telecom, Inc., as Integra's Director of Costs and Policy. My
6 job duties include negotiating interconnection agreements, monitoring, reviewing and
7 analyzing the wholesale costs Integra or its subsidiaries pay to carriers such as Qwest,
8 and representing Integra and its affiliates on regulatory issues. I am also involved in all
9 aspects of the Merged Company's post merger compliance with the Integra Merger
10 Settlement agreement, including commitments made by the Merged Company in other
11 settlement agreements that impact Integra's business.

12 Integra Telecom, Inc. has 7 affiliated companies in Washington. These companies are:
13 Electric Lightwave, LLC, Eschelon Telecom of Washington Inc., Advanced TelCom, Inc,
14 OCG Telecomm Limited, Shared Communications Services, Inc., Oregon Telecom Inc.,
15 and United Communications, Inc. For convenience, I will generally refer to Integra
16 Telecom, Inc. and its affiliates as Integra. I will refer specifically to Eschelon when
17 discussing events specific to Eschelon, such as the Eschelon-Qwest arbitrations and
18 resulting interconnection agreement.

19 **Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL**
20 **BACKGROUND.**

1 A. I received a B.S. degree in Business Management from Phillips University in 1988. I
2 spent three years doing graduate work at the University of Arizona in Economics, and
3 then I transferred to Oregon State University where I have completed all the requirements
4 for a Ph.D. except my dissertation. My field of study was Industrial Organization, and I
5 focused on cost models and the measurement of market power. I taught a variety of
6 economics courses at the University of Arizona and Oregon State University. I was hired
7 by AT&T in December 1996 and spent most of my time with AT&T analyzing cost
8 models. In December 2004, I was hired by Eschelon Telecom, Inc. (“Eschelon”).
9 Eschelon was purchased by Integra in August 2007. I am presently employed by Integra.
10 I have participated in over 50 proceedings in the Integra operating territory. Much of my
11 prior testimony involved cost models — including the HAI Model, BCPM, GTE’s ICM,
12 U S WEST’s UNE cost models, and the FCC’s Synthesis Model. I have also testified
13 about issues relating to the wholesale cost of local service — including universal service
14 funding, unbundled network element pricing, geographic de-averaging, and competitive
15 local exchange carrier access rates. I testified on a number of issues in the Eschelon-
16 Qwest arbitrations,¹ and have been involved in the Qwest and Verizon “non-impaired”
17 wire center lists and related issues. I have also been involved in the performance
18 assurance plans that impact Integra. This includes negotiations of changes to

¹ The docket numbers for the Qwest-Eschelon ICA arbitrations are, for Arizona, T-03406A-06-0572; T-01051B-06-0572 (“Arizona arbitration”); for Colorado, 06B-497T (“Colorado arbitration”); for Minnesota, P-5340, 421/IC-06-768 (“Minnesota arbitration”); for Oregon, ARB 775 (“Oregon arbitration”); for Utah, 07-2263-03 (“Utah arbitration”); and for Washington, UT-063061 (“Washington arbitration”).

1 performance plans to help assure they provide meaningful incentives for wholesale
2 service quality.

3 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN WASHINGTON?**

4 A. Yes. I have been involved in numerous dockets in Washington over the years while
5 working for AT&T, Eschelon, and Integra. I've participated in multiple UNE cost
6 dockets in Washington including multiple phases of docket UT-960369 regarding shared
7 transport and geographic deaveraging. In addition I was involved in all other aspects of
8 this docket providing witness support and reviewing compliance filings. I filed testimony
9 again on geographic deaveraging in docket UT-023003 and provided witness support in
10 that docket on other issues. I filed testimony in docket UT-033044, the original Triennial
11 Review Order ("TRO") docket, which was suspended in the middle of the hearings when
12 the D.C. Circuit Court remanded parts of the TRO to the FCC. I've also been involved in
13 the subsequent Triennial Review Remand Order ("TRRO") docket UT-053025 regarding
14 the impact of the TRO and TRRO on competition. As part of that docket I was involved
15 in the "non-impaired" wire center list workshops and following investigations for both
16 Qwest and Verizon.² I've been involved in docket UT-100562 regarding the future of
17 state universal service and intrastate access rates. I also filed testimony in the Frontier-
18 Verizon acquisition in docket UT-090842. I testified in docket UT-063061 regarding the
19 interconnection agreement arbitration between Eschelon and Qwest. In addition, I was
20 involved in all aspects of the 2007 stipulation regarding changes to Qwest's Performance

² See dockets UT-073033, UT-073035, and UT-083060.

1 Assurance Plan which was approved by this Commission (docket UT-073024) and is the
2 current performance assurance plan in place in Washington today. I was also involved in
3 Qwest's AFOR docket, UT-061625, and its subsequent impact on Qwest's wholesale
4 performance.

5 I also testified on behalf of Integra in the merger docket, UT-100820, and I was Integra's
6 witness regarding the settlement agreement reached between Integra and the Joint
7 Applicants ("Integra Settlement Agreement")³ during the merger proceedings on January
8 6, 2011.

9 **Q. PLEASE DESCRIBE HOW YOUR TESTIMONY IS ORGANIZED.**

10 A. The first section of this testimony introduces this testimony, describes my background
11 and describes Integra. The second section of this testimony discusses the merger of
12 Qwest and CenturyLink. The third section of this testimony defines and discusses
13 acronyms and terms used in the testimony and exhibits, including the following terms:
14 CEMR (GUI), MEDIACC (application-to-application or B2B), MTG, CTG, legacy
15 Qwest OSS, and replacement system. The fourth section of this testimony discusses the
16 context in which the merger settlement agreements were negotiated and the merger orders
17 were issued and includes examples of previous Qwest testimony about the condition of
18 its legacy OSS that is inconsistent with Qwest's current position on aging OSS. The fifth
19 section of this testimony discusses the impact of repair OSS changes to CLECs. The

³ Excerpts from the Integra Settlement Agreement were attached to the Joint CLECs' Complaint, as part of Attachment A, and a copy is of the entire agreement is attached to the testimony of Ms. Johnson as Exhibit BJJ-3 at JC000002-JC000042.

1 sixth section of this testimony explains that the Joint Applicants' stated reasons for their
2 conduct reflects inconsistencies, and that their conduct is contrary to the Merged
3 Company's obligations. In the sixth section, I discuss approximately a dozen of the
4 arguments that the Merged Company makes or has made to attempt to justify its conduct.
5 The seventh section of this testimony discusses the counts of the Joint CLECs' Complaint
6 their request for relief in this matter and explains that the facts in Integra's testimony
7 (including exhibits) supports those counts and requests for relief. The eight section of
8 this testimony concludes my testimony.

9 **Q. ARE THERE ANY EXHIBITS TO YOUR TESTIMONY?**

10 A. No. I do, however, reference a number of exhibits to the testimony submitted on behalf
11 of Integra by Bonnie J. Johnson ("BJJ").

12 **Q. PLEASE PROVIDE AN OVERVIEW OF INTEGRA AND ITS BUSINESS?**

13 A. Integra is a competitive local exchange carrier ("CLEC") providing communications
14 services across 33 metropolitan areas in 11 states of the Western United States. We own
15 (directly or under indefeasible rights to use) and operate backbone fiber networks. These
16 backbone networks connect to our intercity, interstate data network for a combined 5,000
17 fiber route-mile network in the Western U.S. We provide a comprehensive suite of high-
18 quality data, broadband and voice services to over 100,000 small-to-medium-sized
19 business customers and "enterprise" customers.

20 Our network is designed to deliver products such as Ethernet over broadband at speeds of

1 up to 25 Mbps over a variety of delivery technologies tailored to the unique applications
2 of our small-to-medium-sized business, enterprise and wholesale customers, including
3 Ethernet over direct fiber access, Ethernet over copper and Ethernet over next-generation
4 bonded digital subscriber lines, or DSL. We have 230 unique collocations, 42 in
5 Washington, positioned across our markets. Providing services to our customers
6 primarily over our owned switching and transport facilities allows us to control the
7 quality and reliability of our service offerings and efficiently innovate and provide
8 advanced products and services. At the same time, we cannot be successful without
9 access to the last-mile, and Qwest is virtually the only supplier of last-mile facilities
10 within its territory.

11 While we continue to make large investments in expanding and upgrading our network,
12 therefore, we remain almost entirely dependent upon the incumbent local exchange
13 carrier for last mile connections to our customers.

14 **Q. HOW DOES THE SIZE OF INTEGRA COMPARE TO THE SIZE OF THE**
15 **MERGED COMPANY?**

16 A. The Merged Company is Integra's largest competitor, but Integra is relatively small when
17 compared to the Merged Company. The Merged Company operates in 37 states,⁴
18 compared to 11 for Integra. Further, the Merged Company has more than 48,000

⁴ See <http://www.centurylinkqwestmerger.com/index.php?page=about-the-transaction>.

1 employees,⁵ compared to 2,100 for Integra, and the combined Merged Company
2 proforma revenue in 2010 was \$18.8 billion,⁶ compared to Integra's 2010 revenue of
3 \$616 million.⁷ To put these differences into perspective, the Merged Company has 23
4 employees for each Integra employee and \$30.50 of revenue for each Integra dollar of
5 revenue. The Merged Company earns more revenue by the second week in January than
6 Integra will obtain in a year.

7 **II. THE MERGER OF QWEST AND CENTURYLINK**

8 **Q. WHEN DID CENTURYLINK ANNOUNCE ITS PROPOSED MERGER WITH**
9 **QWEST AND FILE A REQUEST WITH THE COMMISSION FOR MERGER**
10 **APPROVAL?**

11 A. CenturyLink announced its plans to acquire Qwest on April 22, 2010.⁸ On May 13,
12 2010, the Washington Commission received an application requesting approval of an
13 indirect control of Qwest Communications International, Inc., and Qwest
14 Communications Corporation to Century Link in Docket No. UT-100820 (the
15 Washington "merger proceeding" or "merger docket"). CenturyLink and Qwest ("Joint

⁵ At the end of 2010 Qwest had 28,343 employees (see <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9OTA2NTB8Q2hpbGRJRD0tMXxUeXBIPtM=&t=1>) and CenturyLink had more than 20,000 employees (see <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9ODg1ODR8Q2hpbGRJRD0tMXxUeXBIPtM=&t=1>).

⁶ Combined, CenturyLink and Qwest had \$18.8 billion in revenue in 2010 (see <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9ODg1ODR8Q2hpbGRJRD0tMXxUeXBIPtM=&t=1>).

⁷ See <http://www.bizjournals.com/portland/blog/2011/06/integras-dudley-slater-wins-top-honor.html> for references to Integra's employees and revenues.

⁸

<http://www.centurylinkqwestmerger.com/downloads/pressreleases/CenturyLink%20Qwest%20Merger%20Press%20Release%204-22-2010.pdf> . April 22, 2010 is the "Merger Announcement Date."

1 Applicants”) filed similar petitions in other states as well, and thus there were also
2 merger proceedings in other Qwest states such as Arizona, Colorado Minnesota,
3 Montana, Oregon, and Utah, in addition to a proceeding before the Federal
4 Communications Commission (“FCC”).

5 **Q. DID THE COMMISSION ADDRESS COMPETITION AND WHOLESALE**
6 **CUSTOMERS IN WASHINGTON WHEN DECIDING WHETHER TO**
7 **APPROVE THE MERGER?**

8 A. Yes. The Commission recognized the need for telecommunications competition and
9 effective wholesale service conditions.⁹ Integra along with McLeod USA
10 Telecommunications Services L.L.C. d/b/a PAETEC Business Services; and **tw telecom**
11 **of washington llc**, (collectively referred to as the “Joint CLECs”) are individual
12 competitive local exchange carriers (“CLECs”) providing local telecommunications
13 and/or competitive voice services (“competitive local service”) in competition with
14 Qwest, an incumbent local exchange carrier (“ILEC”) and a Bell Operating Company
15 (“BOC”).¹⁰ Each of the Joint CLECs also relies on Qwest as its wholesale supplier of
16 essential wholesale services or interconnection used as essential inputs to provide
17 competitive local services. Joint CLECs are wholesale customers of Qwest’s. While

⁹ Washington Final Order No. 14, March 14, 2011, pp. 56-57, ¶ 93, citing RCW 80.36.300, -300(2) and -300(5) collectively.

¹⁰ Washington Final Order No. 14, March 14, 2011, p. 134, ¶270 (3), p. 47, ¶ 96. In paragraph 106 of the WA Answer, Joint Applicants admit that Qwest is a Washington ILEC, but state: “CenturyLink, Inc. is not an ILEC, is not a party to any interconnection agreements, and has no duty of non-discrimination as to Joint CLECs.” “WA Answer” refers to the Answer of Qwest Corporation and CenturyLink, Inc. to the Joint CLEC Complaint, Washington Docket No. UT-111254.

1 merger proceedings were pending, Integra and Joint Applicants entered into a settlement
2 agreement, excerpts of which are quoted below and a complete copy of which is provided
3 in Exhibit BJJ-3 to the testimony of Ms. Johnson (“Integra Settlement Agreement”).

4 On March 14, 2011, the Washington Commission issued Order No. 14, “Final Order
5 Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and
6 Authorizing Transaction”. The Commission found that the “The commitments in the
7 five multiparty Settlement Agreements, in conjunction with the additional conditions in
8 this Order, are sufficient to protect Washington customers and the public interest from
9 risk of harm associated with this change of control transaction.”¹¹ The Commission also
10 found the five multiparty Settlement Agreements consistent with the public interest and
11 were made a condition of the order.¹²

12 **Q. DID THE FCC ADDRESS COMPETITION AND WHOLESALE CUSTOMERS**
13 **WHEN DECIDING WHETHER TO APPROVE THE MERGER?**

14 A. Yes. On March 18, 2011, the FCC issued an order approving the CenturyLink-Qwest
15 merger.¹³ Excerpts from the FCC’s Merger Order are provided in Exhibit BJJ-5 to the
16 testimony of Ms. Johnson. The FCC Merger Order subjected CenturyLink to a list of
17 commitments that were “conditions of our approval,”¹⁴ of the CenturyLink/Qwest

¹¹ Washington Final Order No. 14, March 14, 2011, p. 136, ¶287 (5).

¹² Washington Final Order No. 14, March 14, 2011, pp. 137 ¶ 288 (6).

¹³ *Memorandum Opinion and Order*, FCC 11-47, In the Matter of Applications filed by Qwest Communications International, Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control, WC Docket No. 10-110, March 18, 2011 (“FCC Merger Order”), Exhibit BJJ-5 at JC000572-JC000578.

¹⁴ FCC Merger Order, Appendix C, page 2, Exhibit BJJ-5 at JC000575.

1 merger. In its order, under the heading “Operations Support Systems and Wholesale
2 Customer Service,” the FCC said:

3 Ensuring robust competition not only for American households but also for
4 American businesses requires particular attention to the role of wholesale
5 communications markets, through which providers of broadband and other
6 services secure critical inputs from one another. Well-functioning wholesale
7 markets can help foster retail competition, as it is not economically or practically
8 feasible for competitors to build facilities in all geographic areas. The Applicants
9 have committed that the transaction ‘will not cause any reduction, impairment, or
10 discontinuance to any customer,’ including wholesale customers, and in fact will
11 result in a company that is better able to service its wholesale customers. We
12 believe that the voluntary commitments discussed in this section will ensure that
13 wholesale competitors are not harmed by this transaction, and that the transaction
14 serves the public interest.¹⁵
15

16 **Q. ARE THE COMMISSION’S FINAL DECISION IN THE MERGER DOCKET**
17 **AND THE FCC’S MERGER ORDER ENFORCEABLE?**

18 A. Yes. The Commission, in approving the merger, specifically recognized that Qwest and
19 CenturyLink would remain subject to regulation by the Commission. Specifically, Final
20 Order No. 14 states: “The Commission should retain jurisdiction over the subject matter
21 and the parties to effectuate the terms of this Order,” and “The Commission retains
22 jurisdiction to effectuate the terms of this Order.”¹⁶ Those obligations include, for
23 example, the obligations in the Integra Settlement Agreement and the Washington Staff
24 Agreement. The Commission found that “[W]e find the proposed transaction, subject to
25 the commitments in the settlement agreements, as modified in this Order, and as further

¹⁵ FCC Merger Order, ¶20, Exhibit BJJ-5 at JC000573-JC000574.

¹⁶ See Order No.14, UT-100820 at 291 & 296.

1 conditioned below, to be consistent with the public interest and will result in no net
2 harm”.¹⁷

3 The FCC said that CenturyLink’s commitments “constitute binding and enforceable
4 conditions of our approval.”¹⁸ The FCC ordered that CenturyLink shall comply with the
5 commitments contained in Appendix C of its order.¹⁹ That CenturyLink’s merger
6 commitments are sometimes characterized as “voluntary” does not mean, therefore, that
7 they are any less binding or enforceable.²⁰

8 **Q. HAVE EVENTS OCCURRED SINCE THE COMMISSION’S DECISION IN THE**
9 **MERGER PROCEEDING THAT ARE THE SUBJECT OF THIS PROCEEDING?**

10 A. Yes. A number of events have occurred since the Commission’s decision with respect to
11 Operational Support Systems (“OSS”) used for maintenance and repair functions. In my
12 testimony, I will refer to the OSS used for maintenance and repair functions generally as
13 “repair OSS.” The Merged Company’s efforts to create and implement a new repair OSS
14 by the end of 2011 and to integrate, retire, and/or replace repair OSS early and without
15 following requisite procedures are the subject of this proceeding and the request of Joint
16 CLECs in their Complaint that the Commission investigate, make findings, and order
17 appropriate remedy(ies), including directing Joint Applicants’ compliance with this
18 Commission’s order approving the merger, as well as settlement agreements,

¹⁷ Order No. 14, UT-100820 , p. 53, ¶87 .

¹⁸ FCC Merger Order, ¶2; see *id.* ¶¶20 & 22, Exhibit BJJ-5 at JC000573-JC000574

¹⁹ FCC Merger Order, ¶45.

²⁰ FCC Merger Order, ¶20, Exhibit BJJ-5 at JC000573.

1 commitments to the FCC, the Telecommunications Act of 1996 (the “Act”),²¹ and
2 interconnection agreements (“ICAs”).

3 **III. DEFINITION AND DISCUSSION OF TERMS: CEMR (GUI), MEDIACC**
4 **(APPLICATION-TO-APPLICATION OR B2B), MTG, CTG, LEGACY QWEST**
5 **OSS, REPLACEMENT SYSTEM**

6
7 **Q. WHAT ARE CEMR AND MEDIACC?**

8 A. CEMR stands for “Customer Electronic Maintenance and Repair”; MEDIACC stands
9 for MEDIated ACCess; and MEDIACC-EBTA stands for “Mediated Access Electronic
10 Bonding Trouble Administration.” MEDIACC and MEDIACC-EBTA are often used
11 interchangeably. CEMR and MEDIACC are Qwest’s OSS for maintenance and repair²²
12 (repair OSS).

13 CLECs may call Qwest’s service centers to report troubles, or CLECs may report
14 troubles electronically. CEMR and MEDIACC represent two ways to exchange trouble
15 and repair information electronically with Qwest. CEMR is a Graphical User Interface
16 (“GUI”), and it has been referred to as a “human-to-computer” interface.²³ MEDIACC is
17 an application-to-application or computer-to-computer interface (sometimes informally
18 referred to as “Business-to-Business, or “B2B,” interface) using electronic bonding.²⁴
19 Over-simplifying somewhat, this means that CEMR is a Qwest interface that the CLEC

²¹ The Telecommunications Act of 1996 amended the Communications Act of 1934, 47 U.S.C. §151 *et seq.* Joint CLECs refer to these Acts collectively as the “Act.”

²² See WA Answer, p.12, ¶35.

²³ Qwest/CenturyLink Report on MEDIACC Risks, Minnesota PUC Docket Nos. P-421, et al./PA-10-456 & P-5340, et al./C-11-684, Oct. 6, 2011 [“Merged Company MN Compliance Filing”], p. 4. Joint CLECs will respond to the report by a deadline to be set by the Minnesota Commission.

²⁴ See WA Answer, p.12, ¶35.

1 user logs into to enter trouble information, whereas with MEDIACC the CLEC user
2 initiates trouble information from the CLEC's own systems.²⁵ William Haas of PAETEC
3 has described the latter (MEDIACC) application-to-application (B2B), or electronic
4 bonding, function this way:

5 The preorder, the order, the billing, the trouble and repair functionalities
6 that we rely on today are very much integrated into the systems that
7 PAETEC has developed internally. They drive all of our internal
8 processes from sales to service delivery to our NOC, network operation
9 center that does the trouble repair work, to our billing systems. We rely
10 very heavily on these OSS systems, and we are very, very integrated in
11 terms of our back office systems with the Qwest OSS systems today. . . .
12 We have what we call application-to-application systems that talk in real-
13 time to each other. Many of our processes that used to be manual, where
14 information would come to us and we would have to work and order a
15 trouble ticket manually, we have integrated into the system so that those
16 processes all take place automatically to a great extent. And that's the
17 kind of functionality that we hope will be continued going forward.²⁶
18

19 One or both of CEMR and MEDIACC may be used by a carrier to exchange maintenance
20 and repair information with Qwest.²⁷ Qwest's template negotiations interconnection
21 agreement proposal, for example, includes the following description:

22 **12.2.2 Maintenance and Repair**

23 12.2.2.1 Qwest shall provide electronic interface gateways, including an
24 electronic bonding and a GUI interface, for reviewing an End User

²⁵ Merged Company MN Compliance Filing, p. 2 (MEDIACC "is a B2B interface that allows legacy Qwest wholesale customers to submit electronic requests for repair to legacy Qwest's repair systems via their own computer systems.").

²⁶ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc. (Dec. 20, 2010), Vol. II, p. 465, line 16 – p. 466, line 13 (Haas, PAETEC).

²⁷ See WA Answer, p. 12, ¶35.

1 Customer's trouble history at a specific location, conducting testing of an
2 End User Customer's service where applicable, and reporting trouble to
3 facilitate the exchange of updated information and progress reports
4 between Qwest and CLEC while the Trouble Report (TR) is open and a
5 Qwest technician is working on the resolution. . . .²⁸
6

7 CenturyLink has said that, "[f]or a B2B interface to function, both companies must
8 program their systems to transmit and receive information from each other."²⁹

9 Qwest Corporation uses CEMR and MEDIACC, and has at times said that it has a
10 significant percentage of Qwest Corporation repair tickets being in MEDIACC.³⁰ In
11 addition, Qwest offers CEMR and MEDIACC to CLECs to exchange repair information
12 between Qwest Corporation and CLECs.³¹ For example, Integra uses the GUI interface
13 (CEMR),³² and at some point Integra may move to the application-to-application (B2B)
14 interface. PAETEC³³ and **tw telecom**³⁴ use both the GUI (CEMR) and the application-

²⁸ Qwest Fourteen State Negotiations Template, v.04.20.11 (JC000410), available at <http://www.qwest.com/wholesale/clecs/nta.html>

²⁹ Merged Company MN Compliance Filing, p. 2.

³⁰ See CO Answer, p. 6, ¶30. "CO Answer" refers to the Answer of Qwest Corporation and CenturyLink, Inc. to the Amended Complaint, which was filed with the Commission in Colorado Docket No. 11F-436T on July 18, 2011. The Merged Company has moved to amend its CO Answer in other respects, but not as to this admission. In WA, however, the Merged Company denied this allegation. WA Answer, ¶36. See Exhibit BJJ-68 for statements by Qwest/CenturyLink indicating Qwest uses MEDIACC and CEMR for its own purposes, including serving its retail customers. The Merged Company has done much to confuse how it currently uses MEDIACC and how it will use MTG. See, e.g., Exhibit BJJ-62, MN PUC Transcript (Aug. 11, 2011), pp. 56-58. Regarding "use and offer," see Section VI(A) below.

³¹ CenturyLink admitted this statement in Colorado, see CO Answer, p.6, ¶30, but denies this statement, without explanation in Washington, see WA Answer, p. 8, ¶36.

³² CenturyLink denies this statement in its Washington Answer, p.8, ¶36.

³³ CenturyLink admitted that PAETEC uses both the GUI (CEMR) and the application-to-application (MEDIACC) interfaces in Qwest ILEC service territory in Colorado, see CO Answer, p.6, ¶30, p.6, ¶30, but denies this statement, without explanation in Washington, see WA Answer, p. 8, ¶36

³⁴ Direct Testimony of Lyndall Nipps, **tw telecom**, CO Dkt. No. 11F-436T (Aug. 12, 2011).

1 to-application or B2B (MEDIACC) interfaces in Qwest ILEC service territory. The
2 Merged Company has said that its own personnel use CEMR, as well as certain retail
3 customers.³⁵ About MEDIACC, the Merged Company recently said: “Thirteen
4 wholesale customers across the legacy Qwest region use the MEDIACC B2B gateway.
5 Of these, nine are CLECs. Eight of these use software from a vendor for their interface
6 to MEDIACC.”³⁶

7 **Q. WHAT IS MTG?**

8 A. The acronym “MTG” refers to the following name coined by Qwest: “Maintenance
9 Ticketing Gateway.” If MTG is completed and implemented, it will be a Qwest-
10 developed system for maintenance and repair but, as of the date of this testimony, MTG
11 does not exist as it has not even been developed yet. Previously, in 2008, Qwest had
12 coined the name “Common Ticketing Gateway” or “CTG” to describe repair OSS it said
13 it would develop, but that effort was deferred indefinitely in April of 2009.³⁷

14 **Q. WHAT ARE CMIP AND XML?**

15 A. The acronym “CMIP” refers to “Common Management Information Protocol.” The
16 acronym “XML” refers to “Extensible Markup Language.” Very generally, CMIP and
17 XML are languages or communications protocols that provide a system of digital

³⁵ See CO Discovery Response to Joint CLEC Request 4(d). CO Docket No. 11F-436T. (“Employees within the following Legacy Qwest departments currently use CEMR, and will use CEMR going forward: Wholesale Markets, Network Services, Business Markets Group, Information Technology, Finance.”) See also, Albersheim Answer Testimony, CO Docket No. 11F-436T, Sep. 15, 2011, p. 13, line 8 (“A handful of retail customers use CEMR for repair.”)

³⁶ Merged Company MN Compliance Filing, p. 2.

³⁷ Exhibit BJJ-7, CR Detail (status history), at JC000043- JC000044; Exhibit BJJ-59 (Qwest notice) at JC000931-JC000932. See my discussion regarding 2008-2009 in Section IV(C).

1 message formats and rules for exchanging messages in or between systems. In other
2 words, CMIP and XML allow a computer to “talk” with MEDIACC and electronic
3 bonding (EBTA). Both CMIP³⁸ and XML are industry standards. MEDIACC uses
4 CMIP. If developed and implemented, MTG will use XML.³⁹

5 **Q. ARE CEMR AND MEDIACC LEGACY QWEST OPERATIONAL SUPPORT**
6 **SYSTEM (OSS)?**

7 A. Yes. It is undisputed that CEMR and MEDIACC are legacy Qwest OSS.⁴⁰ This is
8 significant because, in paragraph 12 of the Integra Settlement Agreement,⁴¹ Qwest and
9 CenturyLink, as “the Merged Company,” commit to “use and offer to wholesale
10 customers, the *legacy Qwest Operational Support Systems (OSS)* for at least two years,
11 or until July 1, 2013 whichever is later,” after which the Merged Company may replace
12 or integrate Qwest systems if it first establishes a detailed transition plan and complies
13 with certain procedures.⁴² (The length of the time period has been modified, both by later
14 settlement agreement and via Joint Applicants’ commitment to the Federal
15 Communications Commission (FCC), to at least thirty months after the Closing Date.⁴³)

³⁸ See, e.g., <http://www.atis.org/docstore/product.aspx?id=21171>.

³⁹ See Exhibit BJJ-9 at JC000060, Qwest CR Detail, Dec. 17, 2008 (“Currently MEDIACC uses CMIP communication protocol today. Qwest is migrating to an XML interface.”).

⁴⁰ See WA Answer, p. 8, ¶35; *see also* CenturyLink’s Comments, MN Dkt. No. P-421, et al./PA-10-456 (June 30, 2010), p. 2 (“CEMR and MEDIACC are legacy Qwest OSS”).

⁴¹ Note, however, that CenturyLink’s OSS commitments to the FCC, quoted below, do not use the term “legacy Qwest” in each case and in some instances refers instead to “Qwest.”

⁴² Exhibit BJJ-3, Integra Settlement Agreement, at ¶12 (emphasis added) at JC000010.

⁴³ See WA Answer, p. 5, ¶14 (“Qwest/CenturyLink admits that the two-year period agreed to in Washington was modified to a 30-month period by later agreements and Qwest/CenturyLink’s FCC commitments”); Exhibit BJJ-4, Joint CLEC Merger Agreement, March 3, 2011, p. 2 of 7 at JC000550; FCC Memorandum

1 **Q. IS MTG A LEGACY QWEST OSS?**

2 A. No. The Maintenance Ticketing Gateway (“MTG”) is not a legacy Qwest OSS.
3 CenturyLink and Qwest admit that “MTG is a new system”⁴⁴ that “will be developed.”⁴⁵
4 According to a recent Qwest timeline, the Merged Company did not even begin working
5 on draft technical specifications (“tech specs”) for MTG until July and the Merged
6 Company’s timeline provides that it is not even publishing *draft* tech specs to CLECs
7 until August.⁴⁶ Qwest Corporation has not, and does not, use the maintenance ticketing
8 gateway (MTG).⁴⁷

9 **Q. HAS QWEST NONETHELESS ASSERTED THAT MTG IS A LEGACY QWEST**
10 **OSS?**

11 A. Yes, in at least two contexts. Recently, Qwest attempts to portray MTG as a legacy
12 Qwest OSS because Qwest is the developer.⁴⁸ To make this leap, Qwest attempts to
13 characterize MTG as an existing Qwest system by using the past tense, stating: “CEMR,
14 MEDIACC, and MTG are all legacy Qwest systems. That is, all of these systems *were*

Opinion and Order, WC Docket No. 10-110 (March 18, 2011), p. 30, Appendix C.

⁴⁴ WA Answer, p. 12, ¶66.

⁴⁵ CenturyLink admitted this statement in Colorado, see CO Answer, p.6, ¶26, but denies this statement, without explanation in Washington, see WA Answer, p. 8, ¶32.

⁴⁶ See Exhibit BJJ-1, timelines, at JC000377.

⁴⁷ CenturyLink admitted this statement in Colorado, see CO Answer, p.6, ¶26, but denies this statement, without explanation in Washington, see WA Answer, p. 8, ¶32.

⁴⁸ See Affidavit of Renee Albersheim, p. 3, ¶7, to Qwest/CenturyLink’s WA Preliminary Injunction Response, WA Dkt. No.111254 (Aug. 18, 2011). Ms. Albersheim goes on to distinguish CEMR, MEDIACC, and MTG as not being developed by legacy CenturyLink. *Id.* To the extent that Ms. Albersheim is attempting to further Qwest’s erroneous argument that “integrate” in the Integra Settlement Agreement means combination with CenturyLink, see Section VI(B) of my testimony below.

1 developed by Qwest Corporation.”⁴⁹ As indicated in my previous response, however,
2 MTG has not yet been developed and is just entering the draft technical specification
3 stage. Qwest admits that MTG “will be developed”⁵⁰ in the future. MTG is not an OSS,
4 much less a legacy OSS.

5 Additionally, Qwest erroneously asserted that MTG is an OSS of legacy Qwest in a
6 March 21, 2011 email (Exhibit BJJ-31). Qwest’s email was sent during a time period
7 when Qwest had announced that it was taking a “completely different approach” to
8 developing and implementing new repair OSS.⁵¹ Qwest identified the completely
9 different approach as using QControl as a platform for its new system (while re-naming it
10 QPortal for local carriers). Qwest was heavily advocating QPortal at that time as an
11 “existing” Qwest platform,⁵² though it is not a Qwest Corporation platform. I discuss this
12 issue in Section VI(K) of this testimony.

13 **Q. HAVE JOINT APPLICANTS ADMITTED THAT MTG IS THE REPLACEMENT**
14 **SYSTEM?**

15 A. Yes. Both pre- and post-merger, Joint Applicants have acknowledged that MTG is a
16 “new system”⁵³ which is the “replacement”⁵⁴ for MEDIACC (and potentially CEMR,

⁴⁹ See Affidavit of Renee Albersheim, p. 3, ¶7, to Qwest/CenturyLink’s WA Preliminary Injunction Response, WA Dkt. No.111254 (Aug. 18, 2011) (emphasis added).

⁵⁰ WA Answer, p. 3.

⁵¹ Exhibit BJJ-7 at JC000052.

⁵² See, e.g., Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 14 (JC000767) (Qwest 3/10/11 entry, Row 2(a)).

⁵³ Feb. 16, 2011 monthly CMP meeting (“until the new system is available”) at JC000050; June 15, 2011 monthly CMP meeting (same IT representative confirming it is a new system) at JC000941; CenturyLink May 2, 2011 email (“change from CEMR and MEDIACC to the *new system*”) (emphasis added) at

1 though Joint Applicants have been less clear as of late about CEMR, as discussed below).
2 On July 1, 2011, Qwest said in CMP: “As stated previously, *the MTG project* is a
3 proactive effort *to develop a replacement system* in an effort to prevent problems before
4 they ramp up – given the age of the *systems* and the advice of our IT team.”⁵⁵ Qwest also
5 said: “MTG is ultimately *intended to replace* the legacy Qwest MEDIACC system. . . .
6 The timing of *the replacement* will be . . . per the schedule that was published on June
7 15, 2011.”⁵⁶

8 Under the terms of the merger commitments, MTG is the “replacement interface,”⁵⁷ the
9 “replacement for a Qwest OSS Interface,”⁵⁸ “any wholesale OSS implemented by the
10 Merged Company,”⁵⁹ the “surviving system,”⁶⁰ the “successor OSS,”⁶¹ and “any other
11 OSS.”⁶²

JC000294; WA Answer, p. 2 ¶2, 2nd paragraph (new OSS); *id.* p. 12, ¶66 (“Admitted that MTG is a new system”).

⁵⁴ Exhibit BJJ-53, July 1 2011 Qwest CMP Matrix, pp. 10 & 14, at JC000763 and JC000767 (“As stated previously, the MTG project is a proactive effort to develop *a replacement system*...”)(emphasis added); Merged Company (Mr. Hunsucker) email to Integra (May 19, 2011) (“the replacement system, MTG”) at JC000305. *See also* Exhibit BJJ-36, Merged Company May 2, 2011 email to Integra (indicating the company needs “to implement a replacement system for CEMR and MEDIACC for operations of Qwest Corporation and intends to move forward with installation and implementation of the MTG system at the same time it continues to use CEMR and MEDIACC.”) at JC000294; Jan. 19, 2011 CMP monthly Qwest CMP meeting (“we are conducting a Preliminary Implementation Plan Review meeting for the MTG project which is the CEMR MEDIACC replacement”). *See also* CO Answer, p. 2 (“eventual replacement”) at JC000055.

⁵⁵ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 10 (emphasis added) at JC000763.

⁵⁶ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, pp. 29 & 48 (emphasis added) at JC000782 and JC0000801. Regarding the timing of the *retirement* of MEDIACC versus the “replacement,” see the next question and answer below.

⁵⁷ Exhibit BJJ-3, Integra Settlement Agreement, ¶12(c)(i) at JC000011.

⁵⁸ Exhibit BJJ-3, Integra Settlement Agreement, ¶12(c)(i) at JC000011.

⁵⁹ Exhibit BJJ-3, Integra Settlement Agreement, ¶12(c)(iii) at JC000011.

⁶⁰ Exhibit BJJ-3, Integra Settlement Agreement, ¶12(a) at JC000010.

1 **Q. QWEST AND CENTURLINK ALLEGE THAT “THE PORTION OF THE CR**
2 **PERTAINING TO THE RETIREMENT OF CEMR/MEDIACC HAS BEEN**
3 **WITHDRAWN.”⁶³ DOES THE WITHDRAWAL OF THIS PORTION OF THE**
4 **CHANGE REQUEST MEAN THAT THE MERGED COMPANY IS NOT**
5 **RETIRING MEDIACC?**

6 A. No. Withdrawal of a change request to retire MEDIACC should logically mean that the
7 party requesting the change (in this case, Qwest) will no longer make the requested
8 change to retire MEDIACC. When Integra asked Qwest to withdraw both its
9 introduction of MTG and its retirement of MEDIACC change requests, Integra intended
10 that substantive result. Instead, Qwest withdrew the paperwork for the retirement piece
11 of the CR but, nonetheless, continues to take steps to retire MEDIACC. After withdrawal
12 of Qwest’s change request to retire MEDIACC, which occurred on or about May 13,
13 2011⁶⁴ or May 18, 2011, Qwest issued a revised timeline for its MTG project on June 14,
14 2011 that continues to include a specific date on which to “Retire MEDIACC.”⁶⁵

15 In their Response to Joint CLECs’ Motion for Temporary Relief and Request for Oral
16 Argument (“WA Motion for Temporary Relief”), Qwest and CenturyLink state:
17 “Curiously, within the Motion’s nearly five pages of detailed history of the
18 communications in the CMP (pages 6-11 of the Motion), there is no reference to the May

⁶¹ Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 3 (first full paragraph and last paragraph) at JC000551.

⁶² Exhibit BJJ-5, FCC Merger Order, Appendix C, IV(A)(1)-(2) at JC000576-JC000577.

⁶³ See WA Answer, pp. 2-3.

⁶⁴ Exhibit BJJ-9, CR Detail (status history), at JC000059.

⁶⁵ Exhibit BJJ-1, Qwest June 14, 2011 revised timeline.

1 18, 2011 CMP meeting in which Qwest/CenturyLink proposed that the
2 CEMR/MEDIACC retirement Change Request (CR) be withdrawn, and the industry
3 representatives agreed.”⁶⁶ There is nothing curious about the fact that Joint CLECs
4 would not mention or give significance to withdrawal of the CR, because Qwest’s paper
5 withdrawal of the change request, and a portion of the other change request, did not
6 meaningfully change the status of the work on MEDIACC. Adding “eventual” before
7 “retirement ” -- as Qwest does at least 10 times in its July 1, 2011 CMP response⁶⁷ --
8 does not change the fact that the Merged Company *is* retiring MEDIACC. The Merged
9 Company is still actively working to retire MEDIACC (the application-to-application or
10 B2B interface), as reflected in its later timeline. The same timeline makes it equally clear
11 that MTG is the successor and surviving system in this project.

12 **Q. DOES THE WITHDRAWAL OF A PORTION OF THE INTRODUCTION OF**
13 **MTG CHANGE REQUEST REFERRING TO REPLACEMENT OF CEMR**
14 **MEAN THAT THE MERGED COMPANY IS NOT RETIRING CEMR?**

15 A. No. The Merged Company attempts to distinguish CEMR (the GUI) from MEDIACC in
16 two ways: (1) the Merged Company has not identified for CLECs a date on which it will
17 retire CEMR (unlike the date provided in its revised timeline for MEDIACC); and (2) the
18 Merged Company made certain “upgrades” to CEMR which it has claimed stabilized

⁶⁶ WA Response to Motion for Temporary Relief, August 18, 2011, p. 8, ¶18.

⁶⁷ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, pp. 6 (JC000759), 23, 24, 25 (JC000776-JC000778), 28 (JC000781), 35, 36-37 (JC000778-JC000790), 43 (JC000796), 46 (JC000799), and 54 (JC000807).

1 CEMR at least to some degree. I discuss the second of these two claims in Section VI(E)
2 when discussing the Merged Company's various claims of system instability or stability.

3 Regarding the first of these claims, although the Merged Company has not identified the
4 CEMR retirement date for CLECs, it has specifically said in CMP that there is an end
5 date for the availability of CEMR as it exists today. On July 1, 2011, Qwest said:

6 Until MEDIACC is retired and replaced by MTG. . . , users will be given
7 the option to continue using CEMR with MEDIACC as the backend or
8 with MTG as the backend. Upon retirement of MEDIACC CEMR will
9 function seamlessly through MTG. . . .⁶⁸

10
11 The corollary to this statement is that, once MEDIACC is retired and replaced by MTG,
12 users will *not* be given the option to use CEMR with MEDIACC as the backend, which is
13 how the legacy Qwest CEMR works today.⁶⁹ CEMR will no longer function through
14 MEDIACC. CEMR will interface with MTG, which will interface with Qwest's backend
15 systems. Qwest is actively working toward moving CEMR on to the new system MTG
16 instead of the legacy Qwest system MEDIACC.

17 On July 1, 2011, via CMP, Qwest said that "the CEMR application will continue to be
18 used *for the full time period* required by the settlement agreements."⁷⁰ This also suggests
19 that, as with MEDIACC, CEMR will be retired, though not immediately.

⁶⁸ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 57 (JC000810).

⁶⁹ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 56 (JC000809)

⁷⁰ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 19 (JC000772) (emphasis added).

1 Qwest has made no announcement that it has made any decision (whether final or
2 definitive or not) to move any CenturyLink entity that does not use CEMR today to
3 CEMR. To the contrary, the Merged Company has said that “It is anticipated that MTG
4 will eventually be a system adopted for all CenturyLink CLECs...”⁷¹ CEMR will be
5 retired, consistent with the Merged Company’s stated preference to move to one system
6 to gain efficiencies and synergies,⁷² as discussed below in Section VI(L).

7 The fact that Qwest removed the words “and also replace CEMR” from the MTG change
8 request CR Detail on June 17, 2011⁷³ does not mean that the Merged Company is not
9 going to replace CEMR. Qwest is proceeding with the MTG “effort to develop a
10 replacement system,”⁷⁴ though its verbiage, and in some cases timing, have changed.
11 Regardless, replacement of CEMR, is subject to the merger conditions regarding when
12 and how a replacement system will be implemented, and those conditions do not include
13 implementation of the replacement system before CLEC acceptance of that system.

14 **Q. DOES THE MERGED COMPANY ADMIT THAT THE CHANGE REQUEST TO**
15 **RETIRE MEDIACC, PRIOR TO WITHDRAWAL, VIOLATED THE MERGER**
16 **SETTLEMENT AGREEMENTS?**

⁷¹ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 29 (JC000782); *see also* Qwest and CenturyLink Response to Integra WA Discovery Request No. 35(c) (“It is anticipated that MTG will eventually be a B2B repair system adopted for all CenturyLink entities’ customers. . .”).

⁷² *See, e.g.*, MN Hrg. Tr., MN Dkt. No. P-421, et al./PA-10-456, Vol. 2B (Oct. 6, 2010), p. 33, lines 13-17 (Mr. Hunsucker, CenturyLink).

⁷³ Exhibit BJJ-8 (6/17/11 revision to description of change) at JC000933.

⁷⁴ Exhibit BJJ-53, July 1 2011 Qwest CMP Matrix, pp. 10 & 14, at JC000763 and JC000767.

1 A. Yes. In response to a Joint CLEC data request regarding the rationale for withdrawal of
2 the change request, the Merged Company responded, “Qwest Corporation determined
3 that it was not necessary to retire CEMR, and that *the merger agreements did not permit*
4 *the retirement of MEDIACC before late in 2013.*”⁷⁵

5 **Q. DOES THE CHANGE IN TIMING FOR THE RETIREMENT OF MEDIACCC**
6 **AND CEMR MEAN THAT THE MERGED COMPANY HAS ADDRESSED THE**
7 **CONCERNS OF JOINT CLECS OR BROUGHT ITSELF INTO COMPLIANCE**
8 **WITH ITS MERGER OBLIGATIONS?**

9 A. No. Qwest changed the timing of retirement of MEDIACC from the end of 2011 to 2013
10 and of CEMR from the end of 2011 until an indefinite time period in 2013 or after. In the
11 meantime, Qwest suggests that, although Qwest and its other customers may move to
12 MTG, the change in timing of the retirement of MEDIACC and CEMR means that
13 CLECs may remain on MEDIACC and CEMR (which interfaces with MEDIACC) for at
14 least 30 months after the merger closing date, even though they are concerned about
15 potentially catastrophic⁷⁶ and disastrous⁷⁷ failure of the Qwest repair OSS. I discuss the
16 problems with this argument in my testimony below, including Sections VI(D) and
17 VI(E). In Section VI(C) of my testimony, I explain that the fact that a new system is
18 created before its predecessor is retired does not mean that the new system being

⁷⁵ Response to WA Joint CLEC Data Request 10(c). Respondents Cecelia Tank and Renee Albersheim (emphasis added).

⁷⁶ Exhibit BJJ- 36, CenturyLink May 2, 2011 email at JC000294.

⁷⁷ WA Response to Motion for Temporary Relief, August 18, 2011, p. 6, ¶15.

1 implemented is not the replacement system or that the new system is not subject to
2 sufficient CLEC acceptance *before* its implementation.

3 **Q. DESPITE ITS ATTEMPTS TO MINIMIZE THE IMPACT TO CEMR, HAS THE**
4 **MERGED COMPANY INDICATED THAT CEMR WILL BE IMPACTED BY**
5 **THE PLANNED CHANGE FROM MEDIACC TO MTG?**

6 A. Yes. Recently, the Merged Company said: “It should be noted that CEMR is impacted
7 by MEDIACC, in that some of the repair functions performed by CEMR require access
8 to MEDIACC. As a part of the project to create MTG, CenturyLink QC is creating a
9 version of CEMR that will use MTG instead of MEDIACC. The current
10 CEMR/MEDIACC configuration will remain in place for those customers that do not
11 wish to switch to MTG at this time.”⁷⁸ Whether a customer wishes to switch to MTG or
12 not, however, the customer will be forced onto MTG in event of an existing system
13 failure. Additionally, as a result of integration of MEDIACC and MTG, CEMR users
14 may be adversely affected.⁷⁹

15 **Q. WILL THERE BE CHANGES TO CEMR THAT IMPACT THE CEMR USER**
16 **EXPERIENCE ONCE CEMR INTERFACES WITH MTG?**

⁷⁸ Merged Company MN Compliance Filing, p. 5.

⁷⁹ In CMP, the Merged Company (Tracy Strombotne) said: “today, CEMR interfaces with MEDIACC and we would like it to interface with MTG. Tracy said it is possible that if *Qwest swaps out the backend, there could be an issue with the front end*” See Exhibit BJJ-8, 6/8/11 CMP ad-hoc all meeting minutes at JC000945

(emphasis added).

1 A. Apparently, yes. Previously, the Merged Company said in CMP, “The CEMR GUI
2 application will be revised to also interface with the MTG application to application
3 system. These updates to the CEMR GUI will not impact the CEMR online user
4 functionality, user experience or service standards. Linkage between CEMR and Qwest’s
5 downstream systems is transparent to CEMR users.”⁸⁰ Despite such claims of a seamless
6 transition for CEMR users as they convert from CEMR interfacing with MEDIACC to
7 CEMR interfacing with MTG,⁸¹ however, the Merged Company admitted in Ms.
8 Albersheim’s September 15, 2011 testimony in Colorado that there will be changes when
9 the CEMR interface is converted from MEDIACC to MTG. She said:

10 **Q. WILL CLEC USERS SEE ANY DIFFERENCE AT ALL BETWEEN**
11 **CEMR/MEDIACC AND CEMR/MTG?**

12 A. Yes, there will be minor differences. A couple of screens that display
13 information from legacy Qwest systems to the CLEC users will have a
14 slightly altered appearance.⁸²

15 The parties do not necessarily agree as to whether a difference is “minor.” In CMP,
16 Integra asked the Merged Company to explain the differences. The Merged Company
17 did not provide the requested detail, but it did confirm that there will be “some specific
18 format changes to both the ‘circuit history’ and ‘report history screens.’”⁸³ Changes to
19 “screens” and “format” are not transparent to CEMR users, and they affect the user’s

⁸⁰ Exhibit BJJ-54, Integra July 18 CMP Matrix, Part B, p. 25, Row 59 at JC000886 (Merged Company July 1, 2011 response).

⁸¹ See also Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 57 (JC000810).

⁸² Exhibit BJJ-2, Albersheim Answer Testimony, Colorado Docket No. 11F-436T, Sep. 15, 2011, p. 23, lines 7-11.

⁸³ See Exhibit BJJ-67 (Qwest CMP email to Integra, Oct. 11, 2011).

1 experience, contrary to the Merged Company's earlier claims. The amount of CEMR
2 user training required by such changes cannot be assessed based on the information
3 provided by the Merged Company to date. As a result, the Merged Company's claim that
4 CLECs which rely on CEMR will be able to immediately take advantage of MTG if
5 MEDIACC were to fail, is premature and cannot be determined until the Merged
6 Company details the impacts to CEMR of changing the interface from MEDIACC to
7 MTG.⁸⁴

8 **IV. CONTEXT IN WHICH THE SETTLEMENT AGREEMENTS WERE**
9 **NEGOTIATED AND THE MERGER ORDERS WERE ISSUED.**

10 **Q. DO CENTURYLINK AND QWEST ENCOURAGE THE COMMISSION TO**
11 **REVIEW THE CONTEXT IN WHICH EVENTS RELATING TO OSS**
12 **OCCURRED?**

13
14 A. Yes. In the Washington Answer, in a number of instances, CenturyLink and Qwest admit
15 in part and deny in part allegations made by Joint CLECs,⁸⁵ stating that "context is
16 required to provide full meaning."⁸⁶ In paragraph 55 of their Washington Answer,
17 CenturyLink and Qwest allege that the summary in the Joint CLEC Complaint "of the

⁸⁴ In an October 11, 2011 email sent by the Merged Company to the CMP distribution list, the Merged Company said that the CEMR changes "will be fully disclosed with the CEMR draft Release Notice that is to be issued on November 14, 2011." CLECs then have only until November 17, a few days later, to comment, according to the Merged Company's CEMR release calendar.

⁸⁵ At times, CenturyLink and Qwest erroneously characterize the Joint CLECs' complaint as though made only by Integra [see, e.g., WA Answer ¶55 ("Integra's summary of the FCC order")]. The complaint was brought jointly by PAETEC, Integra, and **tw telecom** ("Joint CLEC Complaint").

⁸⁶ WA Answer, ¶¶25, 28, 29, 30, 38, 40, 41, 42, 45.

1 FCC order and the Qwest/CenturyLink FCC merger commitments is incomplete and fails
2 to provide proper context.”⁸⁷

3 **Q. DID JOINT CLECS FAIL TO PROVIDE PROPER CONTEXT, AND DO YOU**
4 **PROVIDE ADDITIONAL CONTEXT IN THIS TESTIMONY?**

5 A. No, in the Complaint, Joint CLECs did not fail to provide proper context, particularly
6 when viewed in light of the rules regarding notice pleading for filing of complaints (and,
7 as a practical matter, the 30-page limit as to length). For example, in addition to
8 accurately quoting from the FCC Order in paragraph 55,⁸⁸ Joint CLECs provided citation
9 to the FCC’s Merger Order, and they provided excerpts from the FCC’s order in
10 Attachment A to their Complaint (which is referenced in the Complaint).⁸⁹ Joint CLECs
11 provided citation to quoted testimony, all of which is available to Joint Applicants from
12 their own merger proceedings to confirm the accuracy of the quotations and information.
13 Joint Applicants had an opportunity to reply in their Answer, and will have additional
14 opportunities to respond in testimony.

15 Yes, I provide additional context in this testimony, including context in which settlement
16 agreements were negotiated while various merger proceedings were ongoing; the
17 settlement agreement terms (with exhibits to the testimony of Ms. Johnson containing

⁸⁷ WA Answer, ¶55.

⁸⁸ Paragraph 55 of the Complaint states: “On March 18, 2011, the FCC issued an order in WC Docket No. 10-110 in which the FCC accepted certain commitments made by CenturyLink as conditions of approval, including a commitment in paragraph IV(A)(1) that, in Qwest ILEC territory, following the Merger Closing Date, ‘CenturyLink will not replace Qwest OSS or integrate it with any other OSS for at least 30 months following the Merger Closing Date.’” To confirm that Joint CLECs’ accurately quoted this language, see Exhibit BJJ-5 at JC000576.

⁸⁹ See also Exhibit BJJ-5 at JC000572-JC000578.

1 copies of settlement agreement terms⁹⁰); and context in which settlement agreement
2 terms and the merger were approved. Providing context further supports the allegations
3 in Joint CLECs' Complaint in this matter.

4 **Q. ALTHOUGH CENTURYLINK AND QWEST INDICATED THAT CONTEXT IS**
5 **REQUIRED TO PROVIDE FULL MEANING, HAVE THEY ALSO BEEN**
6 **CRITICAL OF USE OF INFORMATION THAT PROVIDES CONTEXT?**

7 A. Yes. CenturyLink and Qwest have criticized Joint CLECs for quoting testimony from
8 proceedings in other states.⁹¹ They have even gone so far as to contend that testimony in
9 merger proceedings in other states is irrelevant.⁹² The testimony, however, is primarily
10 from the proceedings to approve the CenturyLink and Qwest merger in those states, and
11 often the individuals quoted are the very same individuals who testified in this state. The
12 quotations reflect sworn testimony and publicly filed documents from other public
13 proceedings of which the Commission may take notice⁹³ and to which CenturyLink and
14 Qwest, both parties to the merger proceedings, have ample opportunity to respond in this
15 matter. Additionally, CenturyLink told this Commission that "CenturyLink and Qwest

⁹⁰ See Exhibit BJJ-3 (Integra Settlement Agreement) at JC000002-JC000042; Exhibit BJJ-4 (Joint CLEC Merger Agreement) at JC000549-JC000555; Exhibit BJJ-5 (Excerpts from the Minnesota Department of Commerce agreement, the Colorado Staff agreement, and the FCC Merger Order) at JC000572-JC000578; and Exhibit BJJ-6 (CenturyLink and Qwest letter to the Oregon PUC regarding the Joint CLEC Merger Agreement) at JC000593-JC000594.

⁹¹ WA Response to Motion for Temporary Relief, August 18, 2011, p. 6, ¶17.

⁹² WA Answer, ¶19.

⁹³ *E.g.*, WAC 480-07-490 (4) **Records in other proceedings**. A portion of the record of any other commission proceeding that is otherwise admissible may be received as an exhibit in the form of a copy; by citation to the transcript or exhibit number; or by incorporation into the transcript of the current proceeding, as determined by the presiding officer.

1 wholesale operations . . . systems, services and staffing requirements are based on
2 national operations . . . , not state-specific requirements.”⁹⁴

3 **Q. ARE THERE ADDITIONAL REASONS WHY CONTEXT, INCLUDING**
4 **PREVIOUS MERGER TESTIMONY IN WASHINGTON AND OTHER STATES,**
5 **IS IMPORTANT?**

6 A. Yes. The Joint Applicants’ failure to comply with their merger commitments affects not
7 only the Joint CLECs, but also other CLECs in Washington who use legacy Qwest OSS.
8 In Minnesota, where a generic docket is pending in addition to the Joint CLECs’ formal
9 complaint docket, Covad and Cbeyond have filed comments indicating an affect on their
10 interests as well. Additionally, that failure concerns the integrity of the administrative
11 and evidentiary process, this Commission’s order approving the merger, and the
12 Commission’s key goal of competition in the telecommunications industry.⁹⁵ In
13 Minnesota, the Department of Commerce said in its comments: “The Department agrees
14 with the Joint CLECs that there is a public interest in the Commission enforcing its
15 procedures and orders, and that interest is not limited to the parties to the 11-684
16 complaint.”⁹⁶

⁹⁴ WA Rebuttal Testimony of Mr. Hunsucker, CenturyLink WA Dkt. No. UT-100820 (Nov. 1, 2010), p. 12 (last paragraph) – p. 13 (first paragraph); *see also* CO Rebuttal Testimony of Mr. Hunsucker, CenturyLink, CO Dkt. No. 10A-350T (Oct. 15, 2010), p. 12; *see also* MN Hrg. Tr. Vol. 2B, Mr. Hunsucker, CenturyLink, MN Dkt. No. P-421, et al./PA-10-456 (Oct. 6, 2010), pp. 27-28, p. 9, lines 5-7.

⁹⁵ Washington Final Order No. 14, March 14, 2011, pp. 56-57, ¶ 93, citing RCW 80.36.300, -300(2) and -300(5) collectively.

⁹⁶ Comments of the Minnesota DOC, MPUC Docket Nos. P-421, et al./PA-10-456 and P-5340, 5643, 5323, 5981,438,465, 5986, 421/C-11-684 (Aug. 4, 2011), p. 3, available via edockets,10-456, Search, at

1 Pre-merger, in support of obtaining Commission approval, Joint Applicants specifically
2 represented to this Commission that, post-merger, “CenturyLink will have *no immediate*
3 *need (or be under any time pressure)* to make any alterations to OSS in Qwest areas.”⁹⁷

4 Now that the Merged Company has obtained Merger Approval, the company is claiming
5 significant time pressure to make an immediate change to legacy Qwest OSS for
6 maintenance and repair, with migration planning already begun and deployment of a new
7 system to occur by the end of 2011. This is very different from the context for the
8 settlement agreements and merger approval presented pre-merger by Joint Applicants.

9 **Q. ARE THE CURRENT CLAIMS OF QWEST AND CENTURYLINK ALSO**
10 **DIFFERENT FROM EARLIER QWEST TESTIMONY?**

11 A. Yes. The claims that Qwest and CenturyLink are making today about “outdated and
12 obsolete hardware” for a system that is 14 years old⁹⁸ and potentially catastrophic⁹⁹ and
13 disastrous¹⁰⁰ OSS failure are also very different from Qwest’s own prior sworn testimony
14 about the state of its legacy OSS. Qwest indicated a desire to move from CMIP (used by
15 MEDIACC) to XML (to be used by CTG/MTG) for repair OSS in 2008.¹⁰¹ Qwest said

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showeDocketsSearch&searchType=new&userType=public>

⁹⁷ Joint Applicants’ Reply Brief, WA Docket No. UT-100820, January 11, 2011, p. 12, ¶24 (emphasis added).

⁹⁸ WA Answer, p. 2, ¶2, second paragraph.

⁹⁹ WA Answer, ¶16; Exhibit BJJ- 36, CenturyLink May 2, 2011 email at JC000294.

¹⁰⁰ WA Response to Motion for Temporary Relief, August 18, 2011, p. 6, ¶17; *see also id.* Affidavit of Renee Albersheim [“Albersheim Colorado Affidavit”], p. 6.

¹⁰¹ Exhibit BJJ-9 at JC000060 (Dec. 17, 2008 CMP meeting minutes).

1 the benefit of the proposed application was to use “industry standard” languages.¹⁰²
2 Qwest made its “funding” decision¹⁰³ to place development of CTG/MTG¹⁰⁴ on hold
3 “indefinitely” in April of 2009.¹⁰⁵ After this decision, Qwest presented testimony in a
4 Minnesota proceeding in October of 2009 to rebut testimony from the Minnesota
5 Department of Commerce (“DOC”) that was critical of Qwest legacy OSS, including
6 OSS for maintenance and repair. The same witness who has presented an affidavit in this
7 matter regarding alleged problems resulting from “aging, no longer standard”¹⁰⁶ OSS,
8 Renee Albersheim of legacy Qwest now CenturyLink, testified:

9 Importantly, *the fact that some systems have been in use for multiple*
10 *years does not mean that they are antiquated.* Qwest *augments and*
11 *updates its systems on a regular basis to incorporate the latest*
12 *technology* and to allow Qwest to provision the latest products and
13 services to all of its customers. Dr. Fagerlund’s [DOC] testimony does not
14 contain any analysis of these regular updates and, in fact, does not contain
15 any detailed evaluation of Qwest’s systems and a comparison of them to
16 industry standards. Instead, he presents broad, sweeping statements that
17 negatively characterize Qwest’s systems without truly evaluating them.¹⁰⁷

18 Another Qwest witness similarly testified:

19 Qwest's OSS are not antiquated, obsolete or inefficient, as demonstrated
20 here and in the testimony Telcordia is providing in response to Dr.
21 Fagerlund. Contrary to Dr. Fagerlund's claims, Qwest's OSS have proven
22 to be effective and efficient when used to facilitate UNE conversions.

¹⁰² Exhibit BJJ-59, Qwest notice, April 7, 2009, at JC000931.

¹⁰³ Exhibit BJJ-7, CMP minutes, at JC000055. The CMIP protocol used by MEDIACC, however, remains an industry standard protocol. See, e.g., <http://www.atis.org/docstore/product.aspx?id=21171>.

¹⁰⁴ WA Answer, p. 2, ¶2, last paragraph.

¹⁰⁵ Exhibit BJJ-59, Qwest notice, April 7, 2009, at JC000931.

¹⁰⁶ Albersheim Washington Affidavit, p. 7.

¹⁰⁷ Exhibit BJJ-60, MN Surrebuttal Testimony of Renee Albersheim, Qwest, MN Dkt. No. P421/C-07-370; P421/C-07-371 (Oct. 16, 2009), p. 32, line 14 – p. 33, line 3.

1 Furthermore, Qwest's repair systems are fully capable of handling post-
2 conversion repairs of converted services and repairs of commingled EELs,
3 with no changes needed.¹⁰⁸ . . .
4

5 It is important not to equate complicated with antiquated. Qwest's
6 operational support systems ("OSS") are not antiquated. On the contrary,
7 Qwest's systems are highly sophisticated and efficient and are capable of
8 inter-relating an astonishing number of accounts, facilities and processes. .
9 . . Moreover, as the telecommunications landscape has changed, Qwest
10 has deployed state- of-the-art OSS technology to ensure that its systems
11 are current, as described in the testimony that Telcordia is filing in this
12 proceeding. This technology facilitates automated provisioning, remote
13 monitoring and testing capabilities, automated record updates, and other
14 operational efficiencies. The deployment of this type of technology allows
15 CLEC systems to interact directly with Qwest's systems and to carry out
16 the ordering, provisioning, billing, *and repair processes* through efficient,
17 automated functions. *These functions and the technologies that permit*
18 *them are consistent with current industry standards*, contradicting any
19 suggestion that Qwest's systems are 'antiquated.'¹⁰⁹
20

21 Furthermore, while Dr. Fagerlund repeatedly opines that Qwest's OSS are
22 inadequate, he fails to cite any instance where Qwest's OSS have not or
23 could not perform the functions for which they were designed and built.¹¹⁰
24
25

26 Regarding Qwest's last point as to lack of evidence of a problem, there were fewer
27 outages last year than there have been since 2003, as Qwest recently admitted in CMP.¹¹¹

28 Ms. Johnson describes inconsistencies between Ms. Albersheim's testimony today that
29 "fundamentally the development of MTG is no different than other systems updates

¹⁰⁸ Exhibit BJJ-60, MN Surrebuttal Testimony of Rachel Torrence, Qwest, MN Dkt. No. P421/C-07-370; P421/C-07-371 (Oct. 16, 2009), p. 2, lines5-10.

¹⁰⁹ Exhibit BJJ-60, MN Surrebuttal Testimony of Rachel Torrence, Qwest, MN Dkt. No. P421/C-07-370; P421/C-07-371 (Oct. 16, 2009), p. 3, line 19 – p. 4 line 16 (emphasis added).

¹¹⁰ Exhibit BJJ-60, MN Surrebuttal Testimony of Rachel Torrence, Qwest, MN Dkt. No. P421/C-07-370; P421/C-07-371 (Oct. 16, 2009), p. 7, lines 14-16.

¹¹¹ Exhibit BJJ-7 at JC000050, CR Detail (Feb. 16, 2011 CMP meeting).

1 implemented through CMP over the years”¹¹² and Ms. Albersheim’s earlier testimony in
2 the Qwest-Eschelon Washington ICA arbitration. Regarding this issue, please refer to
3 Ms. Johnson’s testimony within her discussion of Exhibit BJJ-52.

4 **Q. HAS THE MERGED COMPANY RECENTLY TRIED TO EXPLAIN AWAY ITS**
5 **INCONSISTENT TESTIMONY?**

6 A. Yes. In its October 6, 2011 Minnesota Compliance Filing, the Merged Company
7 attempts to isolate Dr. Fagerlund’s criticisms to systems that legacy Qwest leases from
8 Telcordia (apparently because CEMR and MEDIACC are not leased from Telcordia).¹¹³
9 The above-quoted testimony, however, is not by Dr. Fagerlund. Ms. Torrence of Qwest,
10 in her above-quoted testimony, specifically includes “repair processes.” Ms. Albersheim
11 expressed no exception for repair in her testimony that “*the fact that some systems have*
12 *been in use for multiple years does not mean that they are antiquated.* Qwest
13 *augments and updates its systems on a regular basis to incorporate the latest*
14 *technology* and to allow Qwest to provision the latest products and services to all of its
15 customers.¹¹⁴ Repair was a key issue in that Minnesota docket.

16 **A. CONTEXT BEFORE INTEGRA SETTLEMENT AGREEMENT**

¹¹² Albersheim Washington Affidavit, p. 7.

¹¹³ Merged Company MN Compliance Filing, p. 9.

¹¹⁴ Exhibit BJJ-60, MN Surrebuttal Testimony of Renee Albersheim, Qwest, MN Dkt. No. P421/C-07-370; P421/C-07-371 (Oct. 16, 2009), p. 32, line 14 – p. 33, line 3.

1 **Q. DURING THE MERGER PROCEEDINGS DID CENTURYLINK AND QWEST**
2 **PROVIDE ASSURANCES REGARDING OSS AND/OR THE MERGER**
3 **COMMITMENTS?**

4 A. Yes. On July 27, 2010, prior to any of the merger settlement agreements mentioned
5 above, the Joint Applicants filed reply comments with the FCC in which they said that
6 the applicants “did not discuss plans to integrate OSS because the immediate plan is to
7 maintain both companies’ separate OSS and continue operations as usual.”¹¹⁵ They
8 added that “existing OSS arrangements will not be disrupted.”¹¹⁶

9 **Q. PLEASE DESCRIBE THE MINNESOTA EVIDENTIARY HEARINGS AND**
10 **SUPPLEMENTAL TESTIMONY RELATED TO THE MERGER AND OSS.**

11 A. On October 5-7, 2010, evidentiary hearings were held before the ALJ in Minnesota.
12 These hearings took place after the DOC Settlement, but before the other merger
13 settlement agreements mentioned above.

14 At the Minnesota evidentiary hearing, on October 5, 2010, Diane Wells, a manager in the
15 telecommunications division of the Minnesota Department of Commerce,¹¹⁷ testified that
16 the Department tried “to assure that the act of the merger didn’t result in anyone
17 becoming worse off and to provide stability, continuity, and certainty”¹¹⁸ and, specifically

¹¹⁵ Reply Comments of Joint Applicants, FCC WC Dkt. No. 10-110 (July 27, 2010), p. 20.

¹¹⁶ Reply Comments of Joint Applicants, FCC WC Dkt. No. 10-110 (July 27, 2010), p. 20 (citing Declaration of William Cheek of CenturyLink on pages 20-21).

¹¹⁷ MN Hrg. Tr., Dkt. No. P-421, et al./PA-10-456 (Oct. 5, 2010), Vol. 1, p. 155, lines 6-11 (Ms. Wells, MN DOC).

¹¹⁸ MN Hrg. Tr., P-421, et al./PA-10-456 (Oct. 5, 2010), Vol. 1, p. 157, lines 5-8; see *id.* p. 164, line 23 – p. 165, line 7 (stability and certainty); *id.* p. 171, line 25 – p. 172, line 1 (Ms. Wells, MN DOC).

1 with respect to wholesale customers, that the settlement document between Joint
2 Applicants and the Department “provides certainty to the CLECs by ensuring the existing
3 OSS will be in place for at least 24 months from closing.”¹¹⁹ Ms. Wells testified that “we
4 were trying to get some certainty, so two years from closing. The Department has
5 expressed significant concern with the OSS that Qwest has in place in past proceedings,
6 so we didn’t want to preclude CenturyLink, if it could come up with a better system, from
7 being able to do that *at some point in the future*.”¹²⁰

8 At the Minnesota evidentiary hearing, on October 6, 2010, Michael Hunsucker,
9 CenturyLink’s Director of CLEC Management,¹²¹ testified that, as to its settlement
10 agreement with the DOC regarding changes to OSS, the Merged Company committed to
11 at least a two-year “moratorium before we make *any* changes.”¹²² Mr. Hunsucker
12 testified:

13 Q Lines 4 through 7 where you talk about the timeline for changes to the
14 OSS systems and other wholesale operations, on line 4 you said, the
15 immediate intent is, however -- I’m sorry, let me back up. The immediate
16 intent, however, is for the merged company to maintain a Qwest and
17 CenturyLink separate OSS systems. And then on line 7 you state that
18 wholesale customers will not face immediate changes to existing
19 operations. Has the company yet developed a specific timeline for when
20 these changes will occur?

¹¹⁹ MN Hrg. Tr., Dkt. No. P-421, et al./PA-10-456 (Oct. 5, 2010), Vol. 1, p. 158, lines 3-6 (Ms. Wells, MN DOC).

¹²⁰ MN Hrg. Tr., Dkt. No. P-421, et al./PA-10-456 (Oct. 5, 2010), Vol. 1, p. 171, line 25 - p. 172, line 6 (Ms. Wells, MN DOC) (emphasis added).

¹²¹ MN Hrg. Tr., Dkt. No. P-421, et al./PA-10-456 (Oct. 6, 2010), Vol. 2B, p. 6, line 25 – p. 7, line 1 (Mr. Hunsucker, CenturyLink).

¹²² MN Hrg. Tr., Dkt. No. P-421, et al./PA-10-456 (Oct. 6, 2010), Vol. 2B, p. 84, lines 10-11 (Mr. Hunsucker, CenturyLink) (emphasis added).

1 A No, we have not developed a specific timeline. What we have
2 committed to is the 24-month *moratorium before we make any changes*.

3 Q And presumably before committing to do so, there will be some
4 discussions about when those changes might occur?

5 A Yeah, I would think -- we've had some very high-level discussions
6 about how long we think it would -- think that it might take and how much
7 *certainty* we're willing to give our CLEC customers.¹²³

8
9 Mr. Hunsucker recognized that a key purpose of a moratorium of not less than two years
10 was so that CLECs would have certainty; that CLECs value operational certainty and
11 continuity; and that continuity, stability, and certainty for the CLECs are in the public
12 interest:

13 You know, we believe that the voluntary commitments that we have made
14 go a long way to provide the CLECs with the certainty and business
15 continuity that they need.¹²⁴ . . .

16 Q Do wholesale customers value operational certainty and continuity?

17 A Yes. I mean, I think that's what I said in my opening statement, that
18 they do. And that's why we agreed to the voluntary conditions in order to
19 provide that certainty.¹²⁵ . . .

20 Q Okay. You said earlier, and correct me if I'm wrong, that you thought
21 it was in the public interest because this all contributed to continuity,
22 stability, and certainty for the CLECs, and that was all in the public
23 interest?

24 A Correct.¹²⁶
25
26

¹²³ MN Hrg. Tr., Dkt. No. P-421, et al./PA-10-456 (Oct. 6, 2010), Vol. 2B, p. 83, line 24 – p. 84, line 21 (Mr. Hunsucker, CenturyLink) (emphasis added).

¹²⁴ MN Hrg. Tr., P-421, et al./PA-10-456 (Oct. 6, 2010), Vol. 2B, p. 11, lines 6-10; see *id.* p. 78, lines 19-23 (Mr. Hunsucker, CenturyLink).

¹²⁵ MN Hrg. Tr., P-421, et al./PA-10-456 (Oct. 6, 2010), Vol. 2B, p. 92 line 19 – p. 93, line 24 (Mr. Hunsucker, CenturyLink).

¹²⁶ MN Hrg. Tr., P-421, et al./PA-10-456 (Oct. 6, 2010), Vol. 2B, p. 129, lines 9-14 (Mr. Hunsucker, CenturyLink).

1 Mr. Hunsucker, on October, 6, 2010, assured the Commission that there would be no
2 burning need to make OSS changes or convert to any new OSS system post-transaction
3 closing. Specifically, Mr. Hunsucker testified:

4 In regards to OSS, CenturyLink has not made a decision regarding
5 whether the CenturyLink or Qwest system or a combination of both will
6 be maintained long term for the combined company. What we have said is
7 that the decision on OSS will be based on methodical review of both
8 systems, including functionality and efficiencies both from an internal
9 perspective to the company and from an external perspective to our CLEC
10 customers across the 38-state region.

11 CenturyLink is not under the gun to make a quick OSS decision as
12 CenturyLink will own both systems post-transaction closing, in stark
13 contrast on other past mergers where providers were under time pressures
14 to convert to a new system.¹²⁷

15
16 On October 18, 2010, parties filed Supplemental Surrebuttal Testimony in Minnesota.
17 Mr. Timothy Gates of QSI Consulting addressed certain limitations of the Minnesota
18 DOC Agreement, including more limited DOC Agreement language than in the
19 conditions proposed by Joint CLECs, such as the DOC Agreement's use of "not
20 discontinue"¹²⁸ with respect to certain OSS.¹²⁹ Mr. Gates quoted the testimony of the
21 Colorado commission's Telecommunications Section Chief (and former Qwest OSS
22 witness¹³⁰), who said:

¹²⁷ MN Hrg. Tr., P-421, et al./PA-10-456 (Oct. 6, 2010), Vol. 2B, p. 9, line 21 – p. 10, line 10 (Mr. Hunsucker, CenturyLink).

¹²⁸ See, e.g., Suppl. Surreb. of Timothy Gates, QSI Consulting, on behalf of Joint CLECs, MN Dkt. No. P-421, et al./PA-10-456, pp. 27-28 (Oct. 18, 2010) ["QSI Gates MN Suppl. Surreb."].

¹²⁹ See, e.g., QSI Gates MN Suppl. Surreb, pp. 25-28 (Oct. 18, 2010).

¹³⁰ QSI Gates MN Suppl. Surreb., p. 26, line 12 and footnote 53 (Appendix A to the CO Answer Testimony

1 'Although Qwest is the larger entity and has more experience in the
2 wholesale market, any changes made by CenturyLink to Qwest's back-
3 office systems, to Qwest's business processes, to Qwest's interconnection
4 negotiation template, or to Qwest's CMP increase the possibility of
5 uncertainty among the interconnecting carriers. This uncertainty will in
6 turn effect competition in general.'¹³¹
7

8 Mr. Gates made clear that the CLEC goal was to ensure that such OSS changes were
9 precluded during the two-year (preferably three-year) period (consistent with Mr.
10 Hunsucker's commitment to at least a two-year "moratorium before we make *any*
11 *changes*"¹³²) and that OSS changes, along with the additional steps required by the Joint
12 CLECs' merger conditions before making such changes, occurred *after* the initial two- or
13 three-year time period.¹³³

14 **Q. WAS A SECOND HEARING HELD IN MINNESOTA, AND DID**
15 **CENTURYLINK MAKE ANY REVISIONS OR CLARIFICATIONS TO ITS**
16 **PREVIOUS TESTIMONY?**

17 A. Yes. On November 1, 2010, Mr. Hunsucker testified as follows:

of Lynn Notarianni, CO Dkt. No. 10A-350T. "Ms. Notarianni testified on behalf of Qwest and its predecessor US WEST in more than 45 proceedings regarding operations and systems matters. *Id.* She provided project management oversight and OSS testimony in the 271 proceedings to gain 271 long distance entry. *Id.*") (Oct. 18, 2010).

¹³¹ QSI Gates MN Suppl. Surreb., p. 26, lines 11-17 and footnote 54, quoting CO Answer Testimony of Lynn Notarianni, CO Dkt. No. 10A-350T, Sept. 15, 2010, p. 52, lines 4-9.

¹³² MN Hrg. Tr., P-421, et al./PA-10-456 (Oct. 6, 2010), Vol. 2B, p. 84, lines 10-11 (Mr. Hunsucker, CenturyLink), quoted in QSI Gates MN Suppl. Surreb., p. 27, lines 5-7 (emphasis in testimony of Mr. Gates).

¹³³ QSI Gates MN Suppl. Surreb, p. 27, line 1 – p. 28, line 3 and footnote 57 (Oct. 18, 2010).

1 Q So you testified at the prior hearing that there would be a 24-month
2 moratorium on any changes to Qwest's OSS ; isn't that right?

3
4 A That's the words that are here. But, again, we're referring to the
5 discontinuation, I'm looking, the actual commitment that we made was we
6 will not discontinue their OSS post-transaction closing.

7
8 Q And when we asked you to explain that commitment what you told us
9 was that
10 there wouldn't be any changes for 24 months ; isn't that true, sir?

11
12 A Yes, and maybe I misspoke the last time. Because what we're talking
13 about
14 again are the words that are on the page which is not discontinue the OSS.

15
16 Q And so we need to read the settlement agreement, as I understand it,
17 very
18 literally in order to understand what your company has committed to ; isn't
19 that
20 right?

21
22 A Well, I think the settlement agreement speaks for itself, it says will
23 not discontinue the OSS.¹³⁴

24
25
26 **Q. WHICH SETTLEMENT AGREEMENT WAS MR. HUNSUCKER DESCRIBING**
27 **IN THE ABOVE-QUOTED TESTIMONY, AND IS THE LANGUAGE OF THAT**
28 **AGREEMENT THE SAME AS THE INTEGRA SETTLEMENT AGREEMENT**
29 **IN THIS RESPECT?**

30 A. At the time of Mr. Hunsucker's October 6 and November 1, 2010 Minnesota testimony,
31 the Integra Settlement Agreement had not yet been executed. Mr. Hunsucker was
32 describing the Minnesota DOC settlement agreement. No, the Minnesota DOC

¹³⁴ MN Hrg. Tr., P-421, et al./PA-10-456 (Nov. 1, 2010), Vol. 4, p. 32, lines 5-23 (Mr. Hunsucker, CenturyLink).

1 agreement does not have the same language as the Integra Settlement Agreement in this
2 respect. As discussed in Mr. Gates' October 18, 2010 testimony (described above), the
3 "not discontinue" language of the Minnesota DOC agreement is one of the limitations of
4 that agreement that was not acceptable to CLECs. The Integra Settlement Agreement
5 does not contain that more limited language and instead uses the broader "use and offer
6 to wholesale customers" language discussed in Section VI(A) below.

7 **Q. AFTER THE INTEGRA SETTLEMENT AGREEMENT WAS EXECUTED, DID**
8 **CENTURYLINK DESCRIBE ITS LANGUAGE IN A MANNER SIMILAR TO A**
9 **MORATORIUM ON OSS CHANGES?**

10 A. Yes. In the Washington hearing, CenturyLink's attorney specifically referred to a
11 "freeze" on the wholesale OSS for the two-year period under the Integra Settlement
12 Agreement.¹³⁵ The parties appear to agree, based on Mr. Hunsucker's testimony in the
13 second Minnesota merger hearing (quoted above), that the language of the Integra
14 Settlement Agreement controls as to that agreement. CenturyLink's use of "freeze" after
15 execution of the Integra Settlement Agreement with respect to the then two-year time
16 period, however, illustrates CenturyLink's understanding that changing legacy Qwest
17 OSS during that time period is prohibited because there is a freeze on such changes. In
18 contrast, the arguments that Qwest and CenturyLink are currently making about CMP
19 and industry standards appear to suggest that no changes are frozen during that time

¹³⁵ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 407, lines 14-17 (Mr. Simshaw, CenturyLink).

1 period,¹³⁶ contrary to the language of the Integra Settlement Agreement, as further
2 discussed in Sections VI(G)-VI(J) below.

3 **Q. DOES A FREEZE ON CHANGING REPAIR AND OTHER LEGACY QWEST**
4 **OSS MEAN THAT NO SYSTEMS CHANGES ARE MADE IN CMP FOR TWO**
5 **YEARS (OR 30 MONTHS)?**

6 A. No. In her discussion of Exhibit BJJ-52, Ms. Johnson provides an example involving 16
7 systems changes progressing in CMP. Only one of the 17 system changes pending in
8 CMP in June -- the last item (introduction to MTG) in Attachment J in Exhibit BJJ-52 --
9 is the subject of CLEC objection based on the merger commitments. Ms. Johnson
10 explains that Exhibit BJJ-52 illustrates the different nature of the latter change as
11 compared to the other sixteen OSS changes.¹³⁷ Ms. Johnson also provides excerpts from
12 the testimony of Renee Albersheim, legacy Qwest now CenturyLink employee, in the
13 Qwest-Eschelon Colorado interconnection agreement arbitration that illustrates that
14 Qwest and Ms. Albersheim know that the repair OSS change is a significant change of
15 the type that falls within the language of the Integra Settlement Agreement.

¹³⁶ WA Response to Motion for Temporary Relief, August 18, 2011, pp. 14-16.

¹³⁷ The Merged Company has ignored that its own attorney used the term “freeze” to describe the 30-month period and then attempted to argue that Integra is interpreting the settlement agreement as a prohibition against all changes to legacy Qwest OSS. See Hunsucker Answer Testimony, Colorado Docket No. 11F-436T, Sep. 15, 2011, p. 5, line 16 – p. 6, line 2. The ongoing routine changes occurring today in CMP without Integra objection, such as those discussed by Ms Johnson, show that Integra is not interpreting the settlement agreement in the broad manner alleged by the Merged Company. The examples also show that the pending change to XML is not a routine change and is precisely the type of OSS change that is prohibited during the 30-month time period.

1 **Q. DID CENTURYLINK MAKE SIMILAR ASSURANCES IN THE WASHINGTON**
2 **MERGER PROCEEDINGS?**

3 A. Yes. On November 1, 2010, parties filed Rebuttal Testimony in Washington. In his
4 Rebuttal Testimony, Mr. Hunsucker said:

5 In the FCC's merger review proceeding, CenturyLink and Qwest have
6 provided a sworn statement that CenturyLink plans to continue operating
7 both CenturyLink and Qwest existing OSS uninterrupted for the
8 immediate future until it completes its evaluation of the best options for all
9 stakeholders. *This is expected to take 12 months at the very least.* It is
10 reasonable and appropriate from a *regulatory*, business, and operational
11 perspective for CenturyLink and Qwest to evaluate the strengths and
12 weaknesses of Qwest's and CenturyLink's respective OSS, *to consider the*
13 *desires of the broad, multi-state base of CLEC customers*, and to analyze
14 the logistical and economic factors that bear on whether or how to migrate
15 to a single OSS platform for all states.¹³⁸

16
17
18 **B. SETTLEMENT AGREEMENT TERMS**

19
20 **Q. DID THE MERGER PROCEEDINGS RESULT IN SETTLEMENT**
21 **AGREEMENTS AND COMMITMENTS RELATED TO HOW THE MERGED**
22 **COMPANY WOULD DEAL WITH OSS POST MERGER?**

23 A. Yes. The merger proceedings resulted in numerous settlements and commitments related
24 to OSS. A few significant settlements between Qwest, CenturyLink and other parties
25 were the October 4, 2010 settlement agreement with the Minnesota Department of

¹³⁸ Rebuttal of Michael R. Hunsucker, WA Dkt. UT-100820, p. 48 (November 1, 2010) (emphasis added); see also Rebuttal of Michael R. Hunsucker, CO Dkt. No. 10A-350T, pp. 46-47 (Oct. 15, 2010); see also Rebuttal of Michael R. Hunsucker, MN Dkt. No. P-421, et al./PA-10-456, p. 40, lines 14-22 (Sept. 13, 2010) (referring to "Joint Petitioners" where CO refers to Qwest and CenturyLink).

1 Commence (“DOC Agreement”); the November 6, 2010 settlement agreement with
2 Integra (“Integra Settlement Agreement”); the settlement agreement with the Colorado
3 Commission Staff filed on November 8, 2010 (“Colorado Staff Agreement”), the March
4 3, 2011 settlement agreement with the Joint CLECs in Minnesota (“Joint CLEC Merger
5 Agreement); the March 10, 2011 settlement agreement with Integra in Washington
6 (“Integra Merger Agreement); and merger commitments contained in the FCC’s, March
7 18, 2011 order approving the merger.¹³⁹

8 **Q. PLEASE PROVIDE THE PROVISIONS RELATED TO OSS CONTAINED IN**
9 **THE MINNESOTA DOC AGREEMENT.**

10 A. The Minnesota DOC Agreement states:

11 Qwest Corporation or any successor entity (pre-merger or post-merger
12 “Qwest” or “Qwest Corporation”) will not discontinue their wholesale
13 Operations Support Systems (OSS) for a minimum of 24 months, post
14 transaction closing.

15
16 In the event that any Qwest OSS is subsequently changed or retired,
17 Qwest Corporation will utilize the terms and conditions set forth in the
18 Change Management Process (CMP) and consistent with the CMP
19 condition below, but in no event shall there be less than 6 months notice of
20 the retirement of the legacy Qwest OSS from current Qwest territories.

21 In the event that any CenturyLink OSS is introduced, changed or retired,
22 CenturyLink will provide 6 months advance notification to the affected
23 interconnecting carriers. During that 6 month notice period established for
24 retiring a Qwest or CenturyLink OSS, any interconnected CLEC or
25 Commercial Mobile Radio Service (CMRS) provider shall be permitted to
26 test the proposed replacement OSS in a timeframe no less than the

¹³⁹ *Memorandum Opinion and Order*, FCC 11-47, In the Matter of Applications filed by Qwest Communications International, Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control, WC Docket No. 10-110, March 18, 2011 (“FCC Merger Order”).

1 timeframe provided for under the existing Qwest CMP process, and Qwest
2 and/or CenturyLink shall cooperate with such testing at no charge to the
3 testing carrier, including but not limited to, making available a testing
4 environment.¹⁴⁰

5 On November 1, 2010, the Joint Applicants filed a Supplemental Stipulation and
6 Agreement with the Minnesota DOC. Regarding OSS, it states:

7 B. Wholesale (Subsection B of Section III of the October 4 Agreement)
8 1. Operational System Support (Par. 1 of the October 4 Agreement)

9
10 For purposes of the October 4 Agreement, notices of changes or
11 retirements to Qwest OSS will be done in accordance with the time frames
12 of Qwest's Change Management Process (CMP). The provision for a
13 minimum 6 months notice requirement applies to changes to
14 CenturyLink's OSS or to any changes for which no other time frame
15 applies.
16

17 **Q. PLEASE DESCRIBE THE INTEGRA AGREEMENT AS IT RELATES TO OSS.**

18 A. On November 10, 2010, the Joint Applicants filed a settlement agreement with Integra
19 (“Integra Settlement Agreement”) with the Washington commission in the merger
20 docket.

21 The Integra Settlement Agreement recites that the “Parties have entered into this
22 Agreement to avoid further expense, inconvenience, *uncertainty* and delay.”¹⁴¹

23 Paragraph 15 of Section B of the Integra Settlement Agreement states:

24 After fully executed, filed with and, where necessary, approved by a
25 Commission, this Agreement will be made available to any requesting

¹⁴⁰ Exhibit BJJ-5, Minnesota DOC Agreement, p. 3, ¶III(B)(1) at JC000558.

¹⁴¹ Integra Settlement Agreement, p. 13, §E (emphasis added) at JC000014.

1 carrier. Additionally, if an order approving this transaction includes any
2 condition not contained in this Agreement or includes provisions
3 inconsistent with those contained in this Agreement, the Merged Company
4 will make that condition or provision available to other carriers in that
5 state upon request, to the extent applicable.¹⁴²

6
7 CenturyLink's and Qwest's allegation in their Washington Answer that "the FCC merger
8 order and the Qwest/CenturyLink commitments that gave rise to that order did not
9 contemplate that the FCC merger order would change the bargain that
10 Qwest/CenturyLink and Integra struck with the Integra Agreement"¹⁴³ is contrary to
11 paragraph 15, which expressly contemplates that conditions or provisions from any order
12 approving the transaction would be available to other carriers, including Integra.

13 Paragraphs 10, 11, and 12 of Section B of the Integra Settlement Agreement state:

14 10. The Merged Company will make available to each wholesale carrier in
15 the legacy Qwest ILEC service territory the types and level of data,
16 information, and assistance that Qwest made available as of the Closing
17 Date concerning Qwest's wholesale Operational Support Systems
18 functions and wholesale business practices and procedures, including
19 information provided via the wholesale web site (which Qwest sometimes
20 refers to as its Product Catalog or "PCAT"), notices, industry letters, the
21 change management process, and databases/tools (loop qualification tools,
22 loop make-up tool, raw loop data tool, ICONN database, *etc.*).

23
24 11. The Merged Company shall ensure that Wholesale and CLEC
25 operations are sufficiently staffed and supported, relative to wholesale
26 order volumes, by personnel, including IT personnel, adequately trained
27 on the Qwest and CenturyLink systems and processes. With respect to the
28 Wholesale and CLEC operations, such personnel shall be dedicated
29 exclusively to wholesale operations so as to provide a level of service that

¹⁴² Integra Settlement Agreement, p. 11, §15 at JC000012.

¹⁴³ WA Answer, p. 10, ¶55.

1 is not materially less than that which was provided by Qwest prior to the
2 Merger Closing Date and to ensure that CLEC protected information is not
3 used by the Merged Company's retail operations or marketing purposes.
4 The Merged Company will employ people who are dedicated to the task of
5 meeting the needs of CLECs and other wholesale customers.
6

7 12. In legacy Qwest ILEC service territory, after the Closing Date, the
8 Merged Company will use and offer to wholesale customers the legacy
9 Qwest Operational Support Systems (OSS) for at least two years, or until
10 July 1, 2013, whichever is later, and thereafter provide a level of
11 wholesale service quality that is not materially less than that provided by
12 Qwest prior to the Closing date, including support, data, functionality,
13 performance, electronic flow through, and electronic bonding. After the
14 period noted above, the Merged Company will not replace or integrate
15 Qwest systems without first establishing a detailed transition plan and
16 complying with the following procedures:
17

18 a. *Detailed Plan.* The Merged Company will provide notice to the
19 Wireline Competition Bureau of the FCC, the state commission of any
20 affected state and parties to this agreement at least 270 days before
21 replacing or integrating Qwest OSS system(s). Upon request, the
22 Merged Company will describe the system to be replaced or
23 integrated, the surviving system, and steps to be taken to ensure data
24 integrity is maintained. The Merged Company's plan will also
25 identify planned contingency actions in the event that the Merged
26 Company encounters any significant problems with the planned
27 transition. The plan submitted by the Merged Company will be
28 prepared by information technology professionals with substantial
29 experience and knowledge regarding legacy CenturyLink and legacy
30 Qwest systems processes and requirements. CLEC will have the
31 opportunity to comment on the Merged Company's plan in a forum in
32 which it is filed, if the regulatory body allows comments, as well as in
33 the Qwest Change Management Process.
34

35 b. *CMP.* The Merged Company will follow the procedures in the Qwest
36 Change Management Process ("CMP") Document.¹⁴⁴

¹⁴⁴ The Qwest CMP Document is available at <http://www.qwest.com/wholesale/cmp/>

1
2 c. Replacement or Retirement of a Qwest OSS Interface.

3 i. The replacement or retirement of a Qwest OSS Interface may not
4 occur without sufficient acceptance of the replacement interface by
5 CLECs to help assure that the replacement interface provides the
6 level of wholesale service quality provided by Qwest prior to the
7 Closing Date (as described in paragraph 12 above). Each party
8 participating in testing will commit adequate resources to complete
9 the acceptance testing within the applicable time period. The
10 Parties will work together to develop acceptance criteria. Testing
11 will continue until the acceptance criteria are met. Sufficient
12 acceptance of a replacement for a Qwest OSS Interface will be
13 determined by a majority vote, no vote to be unreasonably
14 withheld, of the CMP participants (Qwest and CLECs) in testing,
15 subject to any party invoking the CMP's Dispute Resolution
16 process. The requirements of this paragraph will remain in place
17 only until completion of merger-related OSS integration and
18 migration activity. If a dispute arises as to whether such merger-
19 related OSS integration and migration activity is complete, the
20 state commission will determine the completion date.

21
22 ii. The Merged Company will allow coordinated testing with
23 CLECs, including a stable testing environment that mirrors
24 production, jointly established test cases, and, when applicable,
25 controlled production testing, unless otherwise agreed to by the
26 Parties. Testing described in this paragraph associated with
27 merger-related system replacement or integration will be allowed
28 for the time periods in the CMP Document, or for 120 days,
29 whichever is longer, unless otherwise mutually agreed to by the
30 Parties.

31
32 iii. The Merged Company will provide the wholesale carriers
33 training and education on any wholesale OSS implemented by the
34 Merged Company without charge to the wholesale carrier.

35
36 d. Billing Systems. The Merged Company will not begin integration of
37 Billing systems before the end of the minimum two year or July 1,

1 2013 period, whichever is longer, noted above, or without following
2 the above procedures, unless the integration will not impact data,
3 connectivity and system functions that support or affect CLECs and
4 their customers.

5
6 i. Any changes by the Merged Company to the legacy Qwest
7 non-retail OSS will meet all applicable ICA provisions related
8 to billing and, to the extent not included in an ICA, will be
9 Ordering and Billing Forum (OBF) compliant.¹⁴⁵

10
11 As shown above, there is an exception under certain circumstances allowing the Merged
12 Company to begin integration for billing systems (paragraph 12d). There is no similar
13 exception for repair systems.

14 **Q. PLEASE DESCRIBE THE WASHINGTON STAFF AGREEMENT AS IT**
15 **RELATES TO OSS.**

16 A. On December 23, 2010, the Joint Applicants filed a settlement agreement in Washington
17 with the Washington Commission Staff and Public Counsel in Docket No. UT-100820
18 (Washington Staff Agreement). Paragraphs 22, 23 and 25 of the Washington Staff
19 Agreement contain OSS conditions. Paragraph 23 of the Washington Staff Agreement
20 contains provisions requiring CenturyLink to use and offer legacy Qwest OSS for at least
21 two years. Paragraph 23(a) requires advance notice to Commission when certain OSS
22 changes are made and paragraph 23(c) discusses replacement or retirement of a Qwest
23 OSS.

¹⁴⁵ Integra Settlement Agreement, pp. 8-10, ¶¶10-12, including subparts at JC000569-JC000571.

1 **Q. PLEASE PROVIDE THE PROVISIONS OF THE JOINT CLEC MERGER**
2 **AGREEMENT THAT RELATE TO OSS.**

3 A. On March 4, 2011, the Joint Applicants filed a settlement agreement with PAETEC,
4 OrbitCom, Inc., TDSM, POPP, Velocity, and Charter Fiberlink, CCO, LLC, in which
5 these Joint CLECs opted in to the Integra Settlement Agreement; agreed to clarifications,
6 modification or additional terms; and agreed not to participate in regulatory review of the
7 merger transaction (the "Joint CLEC Merger Agreement").¹⁴⁶

8 On pages 1-4, the Joint CLEC Merger Agreement states (with footnote omitted):

9 Joint CLECs have elected to opt-into the terms of the November 6, 2010
10 Integra Settlement. Joint CLECs agree that the terms set forth in the
11 Integra Settlement, together with the following clarifications, modification
12 or additional terms, resolves the issues raised by the Joint CLECs in
13 Minnesota. To the extent there is inconsistency between the terms of the
14 Integra Settlement and the following, the following terms will control:

15
16 Unless otherwise indicated below, the following terms apply throughout
17 the Qwest ILEC 14- state territory:

18
19 **1. OSS and 3rd Party Facilitator (paragraph 12 of Integra**
20 **Settlement):**

21
22 A. The first paragraph of paragraph 12 of the Integra Settlement is
23 modified to read as follows:

24
25 "In legacy Qwest ILEC service territory, after the Closing Date,
26 the Merged Company will use and offer to wholesale customers
27 the legacy Qwest Operational Support Systems (OSS) for at least
28 thirty months and thereafter provide a level of wholesale service
29 quality that is not less than that provided by Qwest prior to the

¹⁴⁶ (March 3, 2011) (filed in MN Docket P-421, et al./PA-10-456 on March 4, 2011). A copy of the Joint CLEC Merger Agreement was attached to the Joint CLECs' Complaint, as part of Attachment A, and a copy is also attached to the testimony of Ms. Johnson as Exhibit BJJ-4.

1 Closing date, with functionally equivalent support, data,
2 functionality, performance, electronic flow through, and electronic
3 bonding. After the period noted above, the merged company will
4 not replace or integrate Qwest systems without first establishing a
5 detailed transition plan that at a minimum meets the standards
6 articulated above and complying with the procedures as set forth in
7 the Integra settlement."
8

9 B. The first sentence of subsection d of paragraph 12 will be modified to
10 read as follows:
11

12 "The Merged Company will not begin integration of Billing
13 systems before the end of the minimum thirty month period noted
14 above, or without following the above procedures, unless the
15 integration will not impact data, connectivity and system functions
16 that support or affect CLECs and their customers."
17

18 C. The following additions, clarifications, or modifications are made to the
19 terms of paragraph 12 of the Integra Settlement:
20

21 If the Joint Applicants seek to replace the legacy Qwest OSS, Joint
22 Applicants will provide CLECs with three years of the most
23 currently available, aggregate transaction volume data, on a
24 monthly basis, for use in determining the appropriate volume
25 thresholds for testing and recognizing trend lines. The transaction
26 volume data shall include data from transactions submitted by
27 individual CLECs and any authorized third parties submitting
28 transactions on behalf of any CLEC.
29

30 Testing of any successor OSS will include sufficient volumes to
31 test at no less than 125% of the peak volumes of all CLEC
32 transactions (including Qwest and CenturyLink affiliates), using
33 the peak volumes that occurred during the most recent 12 month
34 period identified through the aggregate transaction volume data.
35

36 Acceptance testing will require a majority vote, no vote to be
37 unreasonably withheld, of the CMP participants in testing, and
38 must reflect two-thirds or more of the transaction volumes.
39

40 Acceptance criteria, testing and voting of CMP participants will be
41 conducted for each of the separate functions of pre-ordering,
42 ordering, provisioning, maintenance and repair, and billing
43 capabilities.

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Functional equivalency requires the provision of functionally equivalent data flowing into the CLEC system sufficient to enable the CLEC to maintain its existing level of back office system automation. To the extent Joint Applicants require information regarding a CLEC's back office systems to comply with this condition, a CLEC shall confidentially disclose such information to the Merged Entity during the CMP process upon request. CLECs acknowledge that changes in Qwest's OSS may require changes in a CLEC's back office systems to interface with any new or modified OSS to retain the automated functionality of its own back office systems. CLECs agree to not make changes to their back office systems that impede the ability of the Qwest OSS to provide functionally equivalent flow through.

A 3rd party facilitator will be used to assist in the testing of any successor OSS with the cost of such facilitator to be borne by the Joint Applicants. The Parties also agree to cap the cost of such facilitator services at no more than \$1 million in the Qwest 14-state ILEC territory. Within the parameters of the terms of the Integra Settlement, the 3rd Party Facilitator would perform the following: (i) working within the existing Qwest CMP processes, assist the parties in identifying parameters and baseline metrics to ensure comparable functionality, flow through rates and ability to handle commercial volumes, including load testing; (ii) assist the parties in adhering to the time table for testing and the metrics for success; (iii) provide an "observe and report" function by having access to the OSS test results, with the authority to report the statistics to the Commission and each affected CLEC; and (iv) assist in trying to resolve issues and disputes that arise, prior to either party seeking dispute resolution. Both CenturyLink and participating CLECs will jointly prepare the RFP to retain the 3rd party facilitator's services and all parties agree to ensure that costs associated with the 3rd party facilitation are prudent and reasonable. The cap is not intended as a goal or an expectation regarding the cost of the 3rd party facilitation services. Neither party waives its right to seek changes to the cap nor waives its right to oppose any proposed change to the cap. The party seeking permission to change the cap would have the burden of demonstrating that such a change is sought in good faith and necessary to satisfy the responsibilities of the 3rd party facilitator under this agreement.

1 On page 6 of the Joint CLEC Merger Agreement, the parties to that agreement said:

2 Nothing in this agreement shall prevent Joint CLECs from obtaining the
3 benefit of additional FCC conditions not addressed in this Agreement,
4 whether they are based on voluntary commitments by the merging parties
5 or conditions mandated by the FCC. . . .
6

7 CenturyLink's and Qwest's allegation in their Washington Answer that "the FCC merger
8 order and the Qwest/CenturyLink commitments that gave rise to that order did not
9 contemplate that the FCC merger order would change the bargain that
10 Qwest/CenturyLink and Integra struck with the Integra Agreement"¹⁴⁷ is contrary to this
11 language on page 6, which expressly contemplates that CLECs will be able to obtain the
12 benefit of additional FCC conditions.

13 On March 8, 2011, Joint Applicants filed the Joint CLEC Merger Agreement with the
14 Oregon Commission in Docket No. UM 1484 and said that "there are no provisions in the
15 agreement that require this Commission's action in order for them to take effect." They
16 also described some provisions of the agreement as "self-effectuating" and others as
17 "available to CLECs upon request."¹⁴⁸

18 **Q. PLEASE DESCRIBE THE FCC MERGER ORDER AND THE OSS RELATED**
19 **COMMITMENTS THAT WERE A PART OF THAT ORDER.**

¹⁴⁷ WA Answer, p. 10, ¶55.

¹⁴⁸ A copy of the Oregon filing letter is attached to the testimony of Ms. Johnson as Exhibit BJJ-6..

1 A. On March 18, 2011, the FCC issued an order approving the CenturyLink/Qwest
2 merger.¹⁴⁹ The *FCC Merger Order* subjected CenturyLink to a list of commitments that
3 were “conditions of our approval,”¹⁵⁰ of the CenturyLink/Qwest merger. Specifically, the
4 FCC determined that CenturyLink’s commitments “constitute binding and enforceable
5 conditions of our approval.”¹⁵¹ CenturyLink’s commitments are reflected in the FCC’s
6 Order, and include the following on pages 30-31:

7 A. Operations Support Systems ("OSS") Replacement:

- 8
- 9 1. In Qwest ILEC territory, following the Merger Closing Date,
10 CenturyLink will not replace Qwest OSS or integrate it with any
11 other OSS for at least 30 months following the Merger Closing
12 Date, and thereafter will provide a level of wholesale service
13 quality that is not less than that provided by Qwest prior to the
14 Merger Closing Date, with functionally equivalent support, data,
15 functionality, performance, electronic flow through, and electronic
16 bonding.
- 17
- 18 2. If CenturyLink plans to replace Qwest OSS or integrate it with any
19 other OSS, then at least 180 days before replacement or integration
20 of any of the Qwest OSS, CenturyLink will notify the FCC,
21 affected states, and affected wholesale customers, file its proposed
22 transition plan with the Commission and the affected states, and
23 seek input from affected wholesale customers on such transition
24 plan.

25
26 CenturyLink will prepare a detailed OSS transition plan describing
27 the OSS to be replaced or integrated, the surviving OSS, and why
28 the change is being made. The plan also will identify planned
29 contingency actions in the event that CenturyLink encounters any

¹⁴⁹ *Memorandum Opinion and Order*, FCC 11-47, In the Matter of Applications filed by Qwest Communications International, Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control, WC Docket No. 10-110, March 18, 2011 (“FCC Merger Order”). This document was attached to the Second Status Report as Attachment A.

¹⁵⁰ *FCC Merger Order*, Appendix C, page 25 at JC000575.

¹⁵¹ *FCC Merger Order*, ¶2 at JC000573; see *id.* ¶22 at JC000574.

1 significant problems with the planned transition. The plan
2 submitted by CenturyLink will be prepared by information
3 technology professionals with substantial experience and
4 knowledge regarding legacy CenturyLink and legacy Qwest
5 systems processes and requirements. CLECs will have the
6 opportunity to comment on the Merged Company's plan in a forum
7 in which it is filed, if the regulatory body allows comments, as well
8 as in the Qwest Change Management Process.
9

- 10 3. The commitments made in this Section IV.A will not expire three
11 years following the Merger Closing Date.
12

13 **C. TIMING OF QWEST REPAIR OSS CMP ACTIVITY, SIGNIFICANCE OF**
14 **TIMING, AND FAILURE TO DISCLOSE ISSUES DESPITE AMPLE**
15 **OPPORTUNITY TO DO SO**
16

17 **Q. WHEN DID QWEST FIRST INDICATE THAT IT PLANNED TO CREATE AND**
18 **IMPLEMENT A NEW SYSTEM IN 2011, RETIRE QWEST'S LEGACY OSS**
19 **FOR REPAIR, AND REPLACE QWEST'S LEGACY OSS FOR REPAIR WITH**
20 **THE NEW OSS?**

- 21 A. On Monday, November 10, 2010, two days after CenturyLink and Qwest first filed the
22 Integra Settlement Agreement in the Colorado merger proceeding (Colorado Docket No.
23 10A-350T),¹⁵² Qwest, via a web posting, indicated that Qwest planned to retire and
24 replace Qwest's legacy OSS for repair (CEMR and MEDIACC) with a new, as-yet-
25 developed repair system (MTG).¹⁵³ On November 17, 2010, during a CMP meeting,

¹⁵² Notice of Settlement Agreement Between Joint Applicants and Integra Telecom, Inc., CO Dkt. No. 10A-350T (Nov. 8, 2010) at JC000001.

¹⁵³ See Exhibit BJJ-7 at JC000043-000044, Qwest Change Request ("CR") Detail for CR # SCR121608-02 ["Title: REVISED 11/10/10 Introduction of MTG (Maintenance Ticketing Gateway) application to application."]. The 11/10/10 revised "Description of Change" said: "11/10/10 REVISION: Revision to change application name and reestablish implementation timeline. New application will include limited

1 Qwest said that Qwest was looking at doing two things: 1) retiring CEMR and replacing
2 it with a front GUI, and 2) retiring MEDIACC and replacing that with an XML B2B
3 (application-to-application) ticketing interface.¹⁵⁴ Qwest indicated that it would be
4 sending out a notice to CLECs with more information.¹⁵⁵ On December 17, 2010, Qwest
5 distributed an announcement to CLECs that included a timeline for these OSS changes
6 that commenced with the announcement on December 17, 2010 and ended with a
7 targeted production date for the replacement system of September 19, 2011.¹⁵⁶
8 September of 2011 was after the Joint Applicants' desired and projected date for
9 completion of their merger, which ultimately closed on April 1, 2011.¹⁵⁷

10 **Q. YOU MENTION THAT NOVEMBER 10, 2010 WAS TWO DAYS AFTER THE**
11 **JOINT APPLICANTS FILED THE INTEGRA SETTLEMENT AGREEMENT.**
12 **WERE YOU INVOLVED IN NEGOTIATION OF THE INTEGRA**
13 **SETTLEMENT AGREEMENT, AND DID QWEST OR CENTURYLINK**
14 **DISCLOSE THE ACTIONS QWEST WOULD TAKE REGARDING REPAIR**
15 **OSS JUST DAYS AFTER EXECUTION OF THAT AGREEMENT?**

16 **A.** I was directly involved in settlement discussions and, no, neither Qwest nor CenturyLink
17 informed Integra of any plan to initiate changes or begin integration regarding Qwest

testing and also replace CEMR.” See also Exhibit BJJ-9 at JC000059, Qwest CR #SCR121608-01 (Retirement of MEDIACC).

¹⁵⁴ See Exhibit BJJ-7 at JC000057, CR Detail for CR # SCR121608-02, Nov. 17, 2010 CMP minutes.

¹⁵⁵ See Exhibit BJJ-7 at JC000057, CR Detail for CR # SCR121608-02, Nov. 17, 2010 CMP minutes.

¹⁵⁶ See Exhibit BJJ-1 at JC000063- JC000064, QwestNotif.No.SYST.MEDI.12.17.10.F.08642.MTG_IntrfceNewApptoApp (Dec. 17, 2010). See also CO Answer, p. 2, ¶2.

¹⁵⁷ WA Answer, p. 10, ¶58.

1 OSS for maintenance and repair, and/or to introduce a new system, in November of 2010
2 or to implement MTG or other new system by the end of 2011. They did not mention
3 any claim of, or concern about, instability or viability of Qwest OSS for maintenance and
4 repair (CEMR and/or MEDIACC). They requested and received an exception under
5 certain circumstances for billing integration,¹⁵⁸ but they did not request or receive an
6 exception for OSS for maintenance and repair.

7 **Q. MAY JOINT APPLICANTS REASONABLY ARGUE THAT INTEGRA WAS ON**
8 **NOTICE OF THE ACTIONS QWEST WOULD TAKE REGARDING REPAIR**
9 **OSS JUST DAYS AFTER EXECUTION OF THAT AGREEMENT IN 2010**
10 **BECAUSE QWEST HAD SUBMITTED CHANGE REQUESTS IN 2008 AND**
11 **THEN DEFERRED THEM¹⁵⁹?**

12 A. No. As Ms. Johnson describes in her testimony, in 2008, Qwest initiated two change
13 requests in CMP to implement a new repair system (referred to as Common Ticketing
14 Gateway, or CTG) and retire and replace MEDIACC.¹⁶⁰ Other than a single brief entry
15 for December 17, 2008 in the CMP Change Request Detail for each change request, when
16 Qwest said it would be implementing a new repair ticketing gateway called CTG to
17 provide Extensible Markup Language (“XML”) transactions [instead of Common

¹⁵⁸ See Exhibit BJJ-3, Integra Settlement Agreement, at ¶12(d) at JC000011.

¹⁵⁹ In response to the allegation of Joint CLECs at paragraph 31 of their Complaint that Qwest and CenturyLink did not provide any indication to Integra or the Commission regarding any intent to make *this* change or otherwise implement a new system *in 2011*, Joint Applicants said: “Qwest/CenturyLink first notified Joint CLECs of plans – later withdrawn – to retire MEDIACC and replace it with MTG in 2008.” WA Answer, p. 8, ¶31. See also Merged Company MN Compliance Filing, p. 8 (discussed in my response below).

¹⁶⁰ See Exhibit BJJ-7 at JC000043-JC000058 & Exhibit BJJ-9 at JC000059-JC000061.

1 Management Interface Protocol (“CMIP”), used by MEDIACC] and retire MEDIACC,
2 there is no further record in the Change Request Detail of any efforts by Qwest to
3 actually make these changes at that time.¹⁶¹ On Qwest’s own initiative, Qwest chose to
4 not work, or stop working, on those change requests, and the meeting minutes from that
5 time do not provide any reason for Qwest’s decision.¹⁶² Qwest simply sent a notice to
6 CLECs on April 7, 2009 stating that, effective immediately, the development and
7 implementation of CTG “has been *indefinitely* placed on HOLD” and providing no
8 reason.¹⁶³ There is no mention in the 2008 minutes or the 2009 notice of system
9 instability or potential system failure. Given that Qwest, after providing no reason for its
10 change of course in April of 2009, testified in October of 2009 that it regularly augments
11 and updates its systems as needed,¹⁶⁴ it was reasonable to assume that Qwest had
12 concluded that no changes were needed to maintain repair functions and technologies
13 consistent with industry standards.

14 In January of 2011, in CMP, Qwest said: “Qwest placed the project on HOLD and the
15 CR was placed in a Deferred status due to funding concerns. The CR remained in
16 Deferred status for almost two years until Qwest was able to secure resources and
17 support.”¹⁶⁵ In July of 2011, in CMP, Qwest denied that it failed to maintain or update

¹⁶¹ See Exhibit BJJ-7 at JC000058 and Exhibit BJJ-9 at JC000060.

¹⁶² See Exhibit BJJ-7 at JC000058 and Exhibit BJJ-9 at JC000060. In fact, there are no minutes after the initial December 17, 2008 meeting through indefinite deferment. See *id.*

¹⁶³ Exhibit BJJ- 59, Qwest Notification Number SYST.04.07.09.F.06245.CTG_NewApp_On_Hold (emphasis added), at JC000931-JC000932.

¹⁶⁴ See Section IV above, discussing Qwest’s testimony in Exhibit BJJ-60.

¹⁶⁵ See Exhibit BJJ-7, January 19, 2011 CMP meeting minutes, at JC000055.

1 the MEDIACC database and said instead that using XML instead of CMIP is a “design
2 decision to upgrade to industry standard.”¹⁶⁶

3 More recently, Qwest has represented to the Commission that a “primary reason Qwest
4 introduced MTG in 2008 was because Qwest was concerned about the long term viability
5 of MEDIACC.”¹⁶⁷ The CMP minutes from 2008 and 2009 do not reflect this reason.
6 Instead, both at that time and in July of this year, Qwest attributed the reason for its
7 proposed repair OSS change as a design decision to use XML instead of CMIP.

8 Given that the project had since April 6, 2009 been deferred indefinitely with no activity
9 since then in CMP or otherwise, Integra had no notice that -- within days of executing a
10 settlement agreement on November 6, 2010 -- Qwest would suddenly take changes that
11 had previously been on hold indefinitely and treat them as an urgent matter that needs to
12 be addressed by the end of 2011. This is particularly true because Qwest and
13 CenturyLink had just negotiated and executed a settlement agreement that, to the
14 contrary, provides that all legacy Qwest OSS, including OSS for maintenance and repair,
15 would be used by Qwest and offered to CLECs for at least two years¹⁶⁸ and that, during
16 those two years, the Merged Company “shall meet or exceed the average wholesale
17 performance provided by Qwest to CLEC.”¹⁶⁹

¹⁶⁶ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 21 (JC000774).

¹⁶⁷ WA Response to Motion for Temporary Relief, August 18, 2011, p. 13, ¶31.

¹⁶⁸ See Exhibit BJJ-3, Integra Settlement Agreement, at ¶12 at JC000010-JC000011.

¹⁶⁹ See Exhibit BJJ-3, Integra Settlement Agreement, at ¶2(a)(i) at JC000010.

1 During the time period when settlement negotiations were occurring, Joint Applicants
2 publicly provided assurances that such changes would not be needed. In Washington, for
3 example, on November 1, 2010, both Robert Brigham on behalf of Qwest and John Jones
4 on behalf of CenturyLink testified that the proposed transaction is an example of an ILEC
5 transaction for which there is no “need to create new OSS.”¹⁷⁰ In the light of such
6 affirmative representations, Integra could hardly have anticipated that, only days after
7 executing the settlement agreement, Qwest would update its website to indicate that
8 Qwest would be creating new OSS or that it would announce shortly thereafter that it
9 would create the new OSS by the end of 2011.

10 **Q. DESPITE THE FACTS IN YOUR PREVIOUS RESPONSE, HAS THE MERGED**
11 **COMPANY NONETHELESS ARGUED THAT INTEGRA WAS ON NOTICE OF**
12 **THE ACTIONS QWEST WOULD TAKE REGARDING REPAIR OSS JUST**
13 **DAYS AFTER EXECUTION OF THAT AGREEMENT IN 2010 BECAUSE**
14 **QWEST HAD SUBMITTED CHANGE REQUESTS IN 2008 AND THEN**
15 **DEFERRED THEM?**

16 A. Yes. In its October 6, 2011 Minnesota Compliance Filing, the Merged Company argues:
17 “By deferring the change request rather than withdrawing it, Legacy Qwest informed the

¹⁷⁰ Rebuttal Testimony of Robert Brigham, Qwest, WA Dkt. No. UT-100820 (Nov. 1, 2010), p. 5, footnote 5; Rebuttal Testimony of John Jones, CenturyLink, WA Dkt. No. UT-100820 (Nov. 1, 2010), p. 18, lines 18-19.

1 CLECs at the CMP that it had every intention of restarting the change request in the
2 future.”¹⁷¹

3 **Q. DO YOU AGREE?**

4 A. No. The facts set forth above show that the Merged Company’s argument is
5 unreasonable. Moreover, the most that the Merged Company has been able to come up
6 with is that indefinite deferral of its change request means deferral until some point “in
7 the future.”¹⁷² A period of more than 30 months after the merger closing date is in the
8 future. When deferral of the change request is viewed in light of the Joint Applicants’
9 per-merger assurances and their affirmative commitment to Integra (after deferral but
10 before reactivation) to use and offer legacy Qwest OSS for a period of years, the only
11 reasonable interpretation of the indefinite deferral is that the deferral period would be *no*
12 *shorter* than the timeframes allowed by the merger settlement agreements. This
13 understanding is particularly reasonable because there are CRs in CMP that have been in
14 deferred status longer than the repair OSS CRs that are the subject of this matter (which
15 were placed in deferred status in April of 2009).¹⁷³ This illustrates that, not only does the
16 *status* of deferral not inform CLECs in CMP that Qwest “had every intention of restarting
17 the change request in the future,”¹⁷⁴ but also the *length of the deferral* does not
18 communicate that intention. A deferral from April of 2009 (when the repair OSS CRs

¹⁷¹ Merged Company MN Compliance Filing, p. 8.

¹⁷² Merged Company MN Compliance Filing, p. 8.

¹⁷³ Ms. Johnson provides the details regarding these product/process CRs in her direct testimony.

¹⁷⁴ Merged Company MN Compliance Filing, p. 8.

1 were deferred) until 2014 (*i.e.*, after the 30-month period in the merger settlement
2 agreements) would be shorter than the deferral that has already occurred from 2004 to
3 2011 for one of the product/process CRs discussed by Ms. Johnson. Based on the
4 experience with those CRs, a CLEC negotiating with Qwest in 2010 could reasonably
5 have expected that Qwest/CenturyLink intended to leave these repair OSS CRs in
6 deferral status until at least 2014.

7 As Ms. Johnson discusses in her testimony, of the 254 Qwest Corporation system CRs
8 that are in a completed status, none of those CRs was first deferred and then reactivated
9 and completed. Also, Ms. Johnson indicates that there are at least four system CRs that
10 Qwest withdrew after it had first placed the CRs in a deferred status. In other words,
11 these are examples of deferred CRs that were never reactivated. Qwest's own track
12 record with respect to deferred CRs shows that there is nothing about the status of
13 deferral or the length of the deferral that would "inform" CLECs that the change request
14 would be re-started earlier and certainly not before timeframes expressly agreed upon by
15 Qwest in the merger settlement agreements.

16 **Q. ARE QWEST'S CLAIMS TODAY ABOUT WHAT IS PRUDENT AND NO**
17 **DIFFERENT FROM WHAT NORMALLY OCCURS IN CMP¹⁷⁵ CONSISTENT**
18 **WITH QWEST'S CLAIMS ABOUT THE PRIMARY REASON FOR ITS 2008**
19 **CHANGE REQUEST AND WITH ITS INDEFINITE DEFERRAL OF THAT**
20 **REQUEST IN 2009?**

¹⁷⁵ WA Response to Motion for Temporary Relief, August 18, 2011, p. 14, ¶34.

1 A. No. If it were true that the primary reason for Qwest's 2008 repair OSS change request
2 was a concern in 2008 about the long term viability of MEDIACC, Qwest cannot then
3 show that it acted responsibly or prudently¹⁷⁶ in (1) choosing to not fund known needed
4 OSS changes for system viability, or changes to "meet evolving standards,"¹⁷⁷ and
5 instead defer them indefinitely; (2) representing later to CLECs and regulators that legacy
6 Qwest OSS are "fully operational,"¹⁷⁸ with no time pressure to make any changes¹⁷⁹ or
7 plan to create new OSS;¹⁸⁰ or (3) committing to use, as well as to offer to wholesale
8 customers, legacy Qwest OSS for at least 30 months after the merger closing date,¹⁸¹
9 when Qwest already had a known concern that MEDIACC may not be viable for that
10 time period. Today, Qwest argues: "It is not prudent for any industry participant to
11 ignore changes in standards and technological advances."¹⁸² If its current version of
12 events is to be believed, however, Qwest ignored its 2008 concern about system viability
13 and changes in industry standards for a period of approximately two years and then acted
14 on that concern only after first obtaining Integra's non-participation in the merger dockets
15 with execution of the Integra Settlement Agreement on November 6, 2010.

¹⁷⁶ Now that Qwest has the benefit of its merger approval, it argues in its WA Response to Motion for Temporary Relief, ¶34 that "proactive systems management" is part of the process and needed to meet its obligations, but it does not explain where was the proactive systems management pre-merger, if everything that Qwest is saying today was true then.

¹⁷⁷ WA Response to Motion for Temporary Relief, August 18, 2011, p. 15, ¶36.

¹⁷⁸ WA Rebuttal Testimony of Mr. Jones, CenturyLink, Dkt. No. UT-100820 (Nov. 1, 2010), p. 18, lines 15-16.

¹⁷⁹ Joint Applicants' Reply Brief, WA Docket UT 100820 (January 21, 2011), p. 12, ¶24.

¹⁸⁰ E.g., CO Hrg. Tr., Dkt. No. 10A-350T (Nov. 10, 2010), Vol. 3, p. 96, lines 18-22 (Mr. Hunsucker, CenturyLink).

¹⁸¹ Exhibit BJJ-3, Integra Settlement Agreement, ¶12 at JC000010-JC000011; Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 2 at JC000550.

¹⁸² WA Response to Motion for Temporary Relief, August 18, 2011, p. 15, ¶35.

1 **Q. DID CLECS RAISE CONCERNS TO CENTURYLINK AND QWEST**
2 **REGARDING ITS PLAN TO RETIRE THE WHOLESALE OSS CEMR AND**
3 **MEDIACC?**

4 A. Yes. On December 20, 2010, PAETEC submitted written comments to CMP by email, in
5 which PAETEC objected to Qwest's proposed OSS changes. PAETEC's comments
6 highlight the uncertainty that Qwest's actions caused for CLECs. PAETEC said:

7 Due to the extensive OSS interfaces between PAETEC and Qwest and the
8 limited information of the proposed changes provided to PAETEC thus
9 far, PAETEC prefers to reserve our response(s) until we have more
10 information and understand the impact of the proposed changes on
11 PAETEC's internal processes and back office systems. For the reason
12 noted above, it is premature for PAETEC to respond at this time.
13 However, due to the limited time frame and potential magnitude of the
14 impact, PAETEC must object to the new proposed changes until we have
15 a clear understanding of the impacts, cost, resources, etc that the proposal
16 will have on PAETEC.¹⁸³
17

18 On January 4, 2011, Integra submitted written comments to CMP. Integra objected that
19 Qwest's December 17, 2010 CMP Announcement contains insufficient information for
20 Integra to conclude that the replacement system is beneficial to CLECs and that Qwest
21 was unclear about whether or how Qwest's notice is consistent with Qwest and
22 CenturyLink's merger commitments, including the merger settlement agreement
23 executed by Qwest, CenturyLink, and Integra in November of 2010. Integra asked Qwest
24 to provide additional information, including to the extent that Qwest claims the current

¹⁸³ Exhibit BJJ-13, Email from PAETEC to Qwest CMP (Dec. 20, 2010) at JC000074.

1 system(s) is unstable, sufficient information to allow verification of that claim. Integra
2 asked, for example, that Qwest please identify any notices or other communications about
3 outages or problems that were due to the alleged instability and explain the problems
4 caused and any steps taken to resolve those problems. To date, Qwest has not identified
5 any notices in response to this request. On January 5, 2011, PAETEC indicated in CMP
6 comments that PAETEC agrees with Integra's comments and poses the same inquiries.

7 On February 1, 2011, PAETEC submitted written comments to CMP. PAETEC
8 indicated that Qwest's actions might violate the merger settlement agreements and
9 reserved PAETECs rights with respect to that issue. PAETEC said, from "an
10 IT/operational perspective":

11 To date, Qwest has only provided vague, high-level information about the
12 functionalities of MTG. Accordingly, PAETEC is unable to make an
13 informed decision to support or oppose the proposed change.

14
15 Since Qwest has only provided a high level explanation of its proposal to
16 replace MEDIACC and CEMR with MTG, PAETEC has significant
17 questions and concerns that are unanswered by the information provided
18 by Qwest at this time. As Qwest likely knows from filings PAETEC has
19 made in other regulatory forums, PAETEC has made significant
20 investments in its own back office systems that are e-bonded with
21 MEDIACC/CEMR that result in real time, automated system interactions,
22 most notably with respect to EBTA (Electronic Bonded Trouble
23 Application). The potential loss of the automated functionality enabled by
24 the e-bonding between MEDIACC/CEMR and the PAETEC OSS is at the
25 heart of several over-arching concerns:

- 26
27 1) Though Qwest avers that MTG will provide the same functions
28 as CEMR/MEDIACC, Qwest's statement is very high
29 level. Nothing in the documentation provided so far clearly

1 identifies whether the proposed MTG will perform the same
2 level of automated, real-time information exchange between
3 the MTG and another company's back office system using a
4 substantially similar interface. Significantly more information
5 is required to make a determination as to the interface and the
6 functional capabilities of MTG.

- 7 2) Will the proposed change to MTG support the continued use of
8 PAETEC back office automated processes currently enabled
9 using the XML interface with MEDIACC/CEMR? If not, what
10 is different about MTG that inhibits or prevents the continued
11 use of these automated processes that the e-bonded interface
12 with MEDIACC/CEMR supported?
- 13 3) What changes (details) will there be as to how Qwest and
14 PAETEC interface, send and receive information back-and-
15 forth between MTG and our existing systems? (Attempting to
16 determine the extent of the modification required to PAETEC's
17 myriad of internal systems.)
- 18 4) How will Qwest test MTG before putting it into
19 production? Will a third party be used to test the new system,
20 or will Qwest propose CLECs be the only testing partners? If
21 so, what criteria will be used to justify the end of testing and
22 deployment into commercial use?
- 23 5) What are the time, costs, and resources that will be required of
24 CLECs to implement the proposed MTG replacement?
- 25 6) What are, if any, the increased time, costs, and resources that
26 will be required of CLECs to maintain MTG over
27 MEDIACC/CEMR?

28
29 On February 2, 2011, Integra submitted written comments to CMP, in which Integra said
30 its concerns are similar to those expressed by PAETEC the day before and in which
31 Integra asked about a comparison of system functionality and compliance with the
32 merger settlement agreement terms. PAETEC's and Integra's CMP comments reflect the
33 uncertainty created by Qwest's conduct and the potential impact to CLECs, including the

1 work to review and respond to changes and the potential modifications to CLEC back-
2 office systems and processes.

3 On February 2, 2011, Integra also submitted its comments and questions to both Qwest
4 legal and CenturyLink legal, per Qwest's direction in CMP to contact legal regarding
5 compliance with the merger agreements and orders. Integra said that both "Qwest and
6 CenturyLink are parties to the merger settlement agreement with Integra, and therefore
7 both should respond as to whether and how Qwest's proposed changes (which would be
8 implemented after the closing date) comply with the settlement agreement"; Integra
9 added:

10 Qwest has not provided sufficient information to determine whether its
11 proposed CEMR/MEDIACC changes would be something in which we
12 may be interested. Even assuming that the changes were acceptable,
13 however, we do not know what other OSS changes the company may be
14 planning or may announce before the closing date but implement after the
15 closing date. If CLECs disagree with proposed OSS changes, and the
16 changes would occur (like these) during the 2 year timeframe covered by
17 the settlement agreement, what prevents the company from making those
18 changes, if the company can make these CEMR/MEDIACC
19 changes? Does the company distinguish the CEMR/MEDIACC situation
20 and, if so, how? We are hoping for a cooperative approach, and we need
21 a better understanding of the company's position.

22
23 **Q. DID QWEST AND CENTURYLINK HAVE AMPLE OPPORTUNITY TO**
24 **INFORM INTEGRA AND THE COMMISSION OF ITS PLANNED 2011 QWEST**
25 **REPAIR OSS CHANGES, AND ANY NEED OR REASONS FOR THOSE**
26 **CHANGES, BEFORE INTEGRA EXECUTED THE SETTLEMENT**
27 **AGREEMENT AND THE COMMISSION APPROVED THE MERGER?**

1 A. Yes. During October and early November, 2010, representatives of CenturyLink,¹⁸⁴ and
2 in some cases representatives of Qwest, communicated with Integra about potential
3 settlement, including telephone communications, as well as in-person meetings on
4 October 14, 2010 and November 4-5, 2010. CenturyLink indicated that it was in
5 communication with Qwest. On November 1, 2010, Qwest and CenturyLink filed
6 rebuttal testimony, including testimony regarding OSS, in the Washington merger docket.
7
8 On Saturday, November 6, 2010, the parties executed the Integra Settlement Agreement;
9 on Sunday November 7, 2011, Qwest and CenturyLink executed the notice of settlement;
10 and on Monday, November 8, 2011 Qwest and CenturyLink filed the notice of settlement
11 with the Colorado Commission in the merger docket. The settlement was filed with the
12 Washington Commission on November 10, 2010.¹⁸⁵ The chief information officer of
13 CenturyLink reviewed, amended, and agreed to the Integra Settlement Agreement.¹⁸⁶
14 Executives of both Qwest and CenturyLink executed the Integra Settlement Agreement,
and both Qwest and CenturyLink are parties to the Integra Settlement Agreement.¹⁸⁷

¹⁸⁴ CenturyLink representatives participating in settlement negotiations with Integra included Michael Hunsucker of CenturyLink (who testified in the multi-state merger proceedings) and CenturyLink attorney Linda Gardner.

¹⁸⁵ Notice of Settlement Agreement Between Joint Applicants and Integra Telecom, Inc., WA Dkt. No. UT-100820 (Nov. 10, 2010).

¹⁸⁶ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 406, lines 16-22 (Mr. Hunsucker, CenturyLink).

¹⁸⁷ Exhibit BJJ-3, Integra Settlement Agreement, p. 1 (parties) & p. 14 (execution by William E. Cheek, CenturyLink President Wholesale Operations and by R. Steven Davis, Qwest Senior Vice President – Public Policy & Government Relations) (Nov. 6, 2011) (filed in MN Docket P-421, et al./PA-10-456 on Nov. 8, 2011).

1 As I discuss above, Qwest posted its plan to retire and replace legacy Qwest OSS and to
2 create and implement new OSS on November 10, 2010.¹⁸⁸ As such a plan can hardly be
3 developed overnight, it is reasonable to conclude that Qwest knew of its planned actions
4 before execution and filing of the Integra Settlement Agreement. The web posting shows
5 that Qwest knew of it before conclusion of the Washington evidentiary hearing. In
6 discovery, Qwest and CenturyLink admit that, before execution of the Integra Settlement
7 Agreement, Qwest was aware that within a short time Qwest would modify the status of
8 the repair OSS change requests (which occurred days later on November 10, 2010).¹⁸⁹
9 Joint Applicants attempt to excuse non-disclosure to Integra by stating in discovery:
10 “Members of the Legacy Qwest and Legacy CenturyLink *negotiation team* were not
11 aware that Legacy Qwest would modify the status of the change requests.”¹⁹⁰ However,
12 Qwest and CenturyLink cannot reasonably argue that their executive team failure to
13 investigate information pertinent to their commitment to continue using and offering
14 MEDIACC excuses them from the merger conditions. Otherwise, a company could
15 always benefit from failure to disclose information by simply not providing information
16 to its negotiators. Also, given that public proceedings were occurring in multiple states,
17 it is difficult to fathom that all individuals at Qwest who did know these facts were

¹⁸⁸ Because Qwest simply updated its website, with no corresponding distribution to CLECs of a written notice on that date, CLECs may not have learned about the Qwest change until later, such as when Qwest provided a notice to CLECs on December 17, 2010. As I testified in Arizona on December 20, 2010, I learned of Qwest’s December 17, 2010 CMP Announcement (which contained the timeline with implementation of a new system before the end of 2011) on December 17, 2010, but I was in hearings in Oregon and had not yet had a chance to discuss the notice internally before the Arizona hearing. AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 434, lines 4-12.

¹⁸⁹ Qwest and CenturyLink Response to Integra WA Discovery Request Nos. 20(a) & 20(b).

¹⁹⁰ Qwest and CenturyLink Response to Integra WA Discovery Request Nos. 20(a) (emphasis added).

1 unaware that litigation was pending or that settlement negotiations may be occurring or
2 that those individuals could not have identified the negotiation team members or someone
3 in contact with those team members. Instead, Qwest waited until after the Integra
4 Settlement Agreement was executed and filed before, two days later, making this change.

5 Qwest and CenturyLink also did not disclose the 2011 repair OSS changes, or any need
6 or reasons for those changes (such as alleged system instability or concern for their
7 ability to meet both the OSS and the service quality commitments), to the Commission
8 during the Washington evidentiary hearings in January, in their initial or reply briefs of
9 January 14 and January 21, 2011, or at any time before the Commission's Order No. 14
10 on March 14, 2011.

11 I am not aware of anything in the Commission rules that prevented Qwest and/or
12 CenturyLink from filing a notice of the repair OSS issue and any reasons for Qwest's
13 OSS changes at any time in the merger docket, so long as other parties were served with a
14 copy.¹⁹¹ Also, there were established deadlines in the merger docket that provided ample
15 opportunity for CenturyLink and/or Qwest to raise this issue if system obsolescence or
16 potential system failure were an obstacle to Qwest both using its legacy repair OSS
17 without implementing a replacement system for at least two years and meeting or
18 exceeding the average wholesale performance provided by Qwest to CLEC prior to the
19 Merger Closing Date during that minimum two-year time period. Also, all four of the
20 following events occurred before the Commission's Order No. 14:

¹⁹¹ See WAC 480-07-150.

- 1 • On January 4-5, 2011, Qwest received CLEC comments in CMP, including
2 objections based on merger commitments.¹⁹²
3
4 • On January 13, 2011, in a CMP Response, Qwest expressed concern about its
5 ability to “ensure . . . service quality for automation of repair functionality”
6 without making the OSS changes, and Qwest referred questions about the merger
7 commitments to Qwest and CenturyLink legal departments.¹⁹³
8
9 • On January 19, 2011, in CMP, Qwest reviewed a Power Point presentation
10 (provided to CLECs nearly a month after Mr. Hunsucker’s testimony in Arizona,
11 quoted below, that he had discussed this issue with Qwest and Qwest said the
12 repair OSS changes were due to system instability¹⁹⁴) that listed additional
13 benefits of MTG, not mentioned earlier, such as stability and increased
14 reliability.¹⁹⁵
15
16 • On February 9, 2011, Qwest’s attorney expressed concerns about its ability to
17 abide by both its OSS commitments and its wholesale service quality obligations
18 in an email to Integra, copied to CenturyLink’s attorney.¹⁹⁶
19

20 Far from expressing such concerns to the Commission, Qwest and CenturyLink
21 advocated adoption of the Integra Settlement Agreement as written (*e.g.*, “Moreover,
22 absent a catastrophic failure of MEDIACC, MTG will not operate as a replacement for
23 any Qwest system at least until the agreed-upon 30-month period has expired.”¹⁹⁷) and
24 represented to the Commission that CenturyLink will have no immediate need or be

¹⁹² Exhibits BJJ-11 & BJJ-12 at JC000069 – JC000071.

¹⁹³ Exhibit BJJ-13 at JC000074 – JC000078.

¹⁹⁴ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 338, lines 19-25 (Mr. Hunsucker, CenturyLink).

¹⁹⁵ Exhibit BJJ-14 at JC000928.

¹⁹⁶ See Exhibit BJJ-17 at JC000099 (Qwest Feb. 9, 2011 email) (“If we failed to replace CEMR and MEDIACC the merged company may not be able to meet its obligations under the settlement agreement, such as its obligation to ‘meet or exceed the average wholesale performance provided by Qwest to CLEC [prior to the Merger Closing Date].’”)

¹⁹⁷ See WA Answer, p. 5, ¶16.

1 under any time pressure to make any alterations to OSS in Qwest areas,¹⁹⁸ as I discuss
2 further below.

3 **Q. DID QWEST'S AND CENTURYLINK'S FAILURE TO INFORM INTEGRA AND**
4 **THE COMMISSION OF ITS PLANNED 2011 OSS CHANGES, AND ANY**
5 **REASONS FOR THOSE CHANGES, BEFORE INTEGRA EXECUTED THE**
6 **SETTLEMENT AGREEMENT AFFECT INTEGRA'S ABILITY TO ADDRESS**
7 **THOSE ISSUES WITH THE COMMISSION?**

8 A. Yes. The Integra Settlement Agreement filed on November 8, 2010 provides that Integra
9 would withdraw or not submit pre-filed testimony and that Integra would not oppose the
10 merger transaction.¹⁹⁹ Joint Applicants have described Integra as “the first, most vocal
11 and most active CLEC opponent of this merger”²⁰⁰ and as the “most active and
12 investigative CLEC.”²⁰¹ By first obtaining Integra’s execution of the settlement
13 agreement and then announcing its planned 2011 changes to legacy Qwest OSS,
14 CenturyLink and Qwest ensured Integra could no longer oppose the merger.

15 With respect to CLECs generally, as I discussed above, the fact that, on and after
16 November 10, 2010²⁰² and November 17, 2010,²⁰³ CenturyLink and Qwest continued to

¹⁹⁸ Joint Applicants’ Reply Brief, WA Docket No. UT-100820, January 11, 2011, p. 12, ¶24.

¹⁹⁹ Integra Settlement Agreement, p. 12, §C at JC000011. Now that the agreement is final, however, Integra may act to enforce the agreement. *Id.* §E at JC000014.

²⁰⁰ Joint Applicants’ Statement of Position, CO Dkt. No. 10A-350T (Dec. 24, 2010), p. 33 [JC000734].

²⁰¹ Joint Petitioners’ Reply Brief, MN Docket P-421, et al./PA-10-456 (Dec. 8, 2010), p. 2 (last paragraph).

²⁰² November 10, 2010 is the date on which Qwest via a web posted indicated it would introduce a new system to replace CEMR/MEDIACC. See Exhibit BJJ-7 at JC000044 & Exhibit BJJ-9 at JC000059.

1 represent to regulators, including this Commission,²⁰⁴ that the Merged Company would
2 use and offer the legacy Qwest OSS, with no exception for repair OSS, for at least two
3 years (even extending this time period to thirty months) and also meet or exceed the
4 average wholesale performance provided by Qwest to CLEC for at least three years after
5 the closing date communicated to CLECs and regulators that, despite pre-merger CMP
6 activity and even assuming legacy Qwest OSS used for maintenance and repair were
7 aging or currently unstable, the Merged Company nonetheless had the ability to address
8 the situation in a manner that would meet all of its commitments for at least thirty months
9 without making changes to legacy Qwest OSS and without implementing a new system.

10 **D. CONTEXT AFTER INTEGRA SETTLEMENT AGREEMENT**

11
12 **Q. WAS THE INTEGRA SETTLEMENT AGREEMENT DISCUSSED DURING**
13 **THE COLORADO MERGER HEARINGS?**

14 A. Yes. The Integra Settlement Agreement was filed on November 8, 2010 in Colorado. On
15 November 8-10, 2010, an evidentiary hearing was held in the Colorado Qwest-
16 CenturyLink merger proceeding (Docket No. 10A-350T). At the hearing, the Colorado
17 Commission Telecommunications Section Chief testified that access to OSS was the
18 “biggest area of concern that staff had.”²⁰⁵ Before joining the Colorado Commission, the

²⁰³ November 17, 2010 is the date of the Qwest monthly CMP meeting at which Qwest described its plan to retire and replace legacy Qwest OSS for repair and to create and implement a new replacement system. See Exhibit BJJ-7 at JC000057- JC000058.

²⁰⁴ See citations in my previous response. *See also* CO Hrg. Tr. Vol. 3 (Nov. 10, 2010) at p. 96, lines 18-22 (Robert Brigham, Qwest, testifying that there is no plan to create any new OSS system); Joint Applicants’ Statement of Position, CO Dkt. No. 10A-350T (Nov. 24, 2010).

²⁰⁵ CO Hrg. Tr., Dkt. No. 10A-350T, (Nov. 10, 2010) Vol. 3, p. 202, lines 22-25 (Ms. Notarianni, CO PUC)

1 Section Chief worked for Qwest and its predecessor, U S WEST, for more than 19 years,
2 where she held various management positions within the Network, Information
3 Technologies and Wholesale divisions.²⁰⁶ She testified that the “OSS side of it actually
4 covers more than those just gateway interfaces to the CLECs. It covers the downstream
5 systems as well.”²⁰⁷ I presented Integra’s understanding that the Integra Settlement
6 Agreement provides “consistency and predictability”; that it contains “a fairly detailed
7 process as to what’s going to happen if there are changes that are *going to occur*”; and it
8 provides CLECs a chance to have input into the changes.²⁰⁸ Mr. Hunsucker of
9 CenturyLink described the Integra Settlement Agreement, including the provision
10 requiring the Merged Company to file a detailed plan with the FCC and the state
11 commissions.²⁰⁹ Mr. Hunsucker described “threshold” criteria or “parameters” that the
12 Merged Company must perform pursuant to merger condition 12 (OSS) if the Merged
13 Company replaces or integrates a Qwest OSS interface.²¹⁰ He testified: “Once we meet
14 certain thresholds, *then* we are able to implement.”²¹¹ Mr. Hunsucker recognized that, if

(emphasis added).

²⁰⁶ CO Direct Testimony of Ms. Notarianni of CO Staff, Dkt. No. 10A-350T (Sept. 15, 2010), Appendix A, p. 1.

²⁰⁷ CO Hrg. Tr., Dkt. No. 10A-350T Vol. 3 (Nov. 10, 2010), p. 211, lines 12-16 (Ms. Notarianni, CO PUC) (emphasis added).

²⁰⁸ CO Hrg. Tr., Dkt. No. 10A-350T (Nov. 8, 2010), Vol. 1, p. 97, line 10 – p. 98, line 2 (Mr. Denney, Integra) (emphasis added). See also WA Hrg. TR. Dkt. UT100820 (Jan. 5, 2011), Vol III, p. 341, line 14.

²⁰⁹ CO Hrg. Tr., Dkt. No. 10A-350T (Nov. 8, 2010), Vol. 1, p. 87, line 22 – p. 88, line 12 (Mr. Hunsucker, CenturyLink). See also WA Hrg. TR. Dkt. UT100820 (Jan. 6, 2011), Vol IV, p. 405, line 14 - .p. 406, line 15.

²¹⁰ CO Hrg. Tr., Dkt. No. 10A-350T (Nov. 8, 2010), Vol. 1, p. 87, line 22 – p. 88, line 25 (Mr. Hunsucker, CenturyLink).

²¹¹ CO Hrg. Tr., Dkt. No. 10A-350T (Nov. 8, 2010), Vol. 1, p. 88, lines 22-23 (Mr. Hunsucker, CenturyLink) (emphasis added).

1 a change in Qwest OSS occurred, CLECs could incur costs.²¹² Mr. Hunsucker also
2 testified on November 10, 2010 that the company has no plan to create any new OSS
3 system.²¹³

4 **Q. DID CENTURYLINK AND QWEST FURTHER CONFIRM THAT THERE WAS**
5 **NO IMMEDIATE NEED TO MAKE ALTERATIONS TO OSS IN QWEST**
6 **TERRITORY?**

7 A. Yes. On January 21, 2011 Joint Applicants filed their Reply Brief in the Washington
8 proceeding in which CenturyLink and Qwest confirmed that there would be no burning
9 need for OSS changes post-merger:

10 CenturyLink will have *no immediate need (or be under any time*
11 *pressure)* to make any alterations to OSS in Qwest areas.²¹⁴
12

13 Subsequently, On March 14, 2011, the Washington Commission issued its “Final Order
14 Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and

²¹² CO Hrg. Tr., Dkt. No. 10A-350T (Nov. 10, 2010), Vol. 3, p. 101, lines 3-16 (Mr. Hunsucker, CenturyLink) (emphasis added).

²¹³ CO Hrg. Tr., Dkt. No. 10A-350T (Nov. 10, 2010), Vol. 3, p. 96, lines 18-22 (Mr. Hunsucker, CenturyLink) (emphasis added).

²¹⁴ Joint Applicants’ Reply Brief, WA Docket UT 100820 (January 21, 2011), p. 12, ¶24, (emphasis added). See also, Joint Applicants’ Statement of Position, CO Dkt. No. 10A-350T (Nov. 24, 2010), pp. 39-40 [JC000740- JC000741]; Joint Petitioners’ Post-Hearing Brief, MN Dkt. No. P-421, et al./PA-10-456, (Nov. 24, 2010), p. 26.

1 Authorizing Transaction.” The Commission found that the settlement agreements serve
2 important goals.²¹⁵

3 **Q. WHAT DID CENTURYLINK SAY DURING THE OREGON HEARINGS**
4 **RELATED TO OSS?**

5 A. CenturyLink continued to assure the Commissions that there was no reason to make
6 immediate changes to Qwest’s OSS. On December 16-17, 2010, evidentiary hearings
7 were held before the ALJ in Oregon in the Qwest/CenturyLink merger proceeding
8 (Docket No. UM 1484). On December 16, 2010, John Jones, CenturyLink’s Vice
9 President of State Government Affairs,²¹⁶ assured the commission that there would be no
10 burning need to make OSS changes or convert to any new OSS system post-transaction
11 closing. Specifically, Mr. Jones testified:

12 Q Now, the company has agreed with Integra and with staff to continue
13 using Qwest OSS for an additional two years; is that correct?

14 A I believe so, yes.

15 Q How much longer after that two-year period do you anticipate that it
16 will take Qwest to integrate the Qwest with CenturyLink OSS?

17 A I really do not have any knowledge of that. All I know is that
18 historically, again, this is our approach to looking at systems – and in this
19 particular case, particularly, there is no rush to do either. We can operate
20 both systems indefinitely. There’s no – we are not compelled to do
21 anything quickly or rashly.²¹⁷ . . .

²¹⁵ Washington Decision, Order No. 14, Docket UT 100820, (March 14, 2011) p. 136, ¶287 (5).

²¹⁶ OR Hrg. Tr., Dkt. No. UM 1484 (Dec. 16, 2010), Vol. I, p. 35, lines 22-25 (Mr. Jones, CenturyLink).

²¹⁷ OR Hrg. Tr., Dkt. No. UM 1484 (Dec. 16, 2010), Vol. I, p. 42, lines 4-17 (Mr. Jones, CenturyLink) at JC000693.

1 Q . . . Would the company be subject to major operational problems if it –
2 based on having to *wait* 24 months?

3 A *No.* I’m answering more from the standpoint of the total integration
4 process. Like I said, *we are not compelled or forced in any way to*
5 *change any system.* . . .²¹⁸
6

7 **Q. WHAT HAPPENED IN BETWEEN THE OREGON AND ARIZONA**
8 **HEARINGS?**

9 A. The day after the Oregon hearings and the day before the Arizona hearings, on Friday,
10 December 17, 2010, Qwest distributed an announcement to CLECs describing a “*New*
11 *Application to Application Interface,*” called MTG, and Qwest said the “Maintenance
12 Ticketing Gateway (MTG) will be a *replacement* for MEDIACC and CEMR.” (“CMP
13 Announcement”).²¹⁹ In the CMP Announcement, Qwest indicated that MTG will allow
14 both “Qwest and Wholesale customers” to use the new system.²²⁰ Qwest provided an
15 effective date for the change of September 19, 2011.²²¹

16 **Q. WAS THIS NOTICE DISCUSSED DURING THE ARIZONA HEARINGS?**

17 A. Yes. An evidentiary hearing was held in the Arizona Qwest-CenturyLink merger
18 proceeding (Docket No. T-01051B-10-0194, etc.). On Monday, December 20, 2010, I

²¹⁸ OR Hrg. Tr., Dkt. No. UM 1484 (Dec. 16, 2010), Vol. I, p. 64, lines 4-10 (Mr. Jones, CenturyLink) (emp. added) at JC000694.

²¹⁹ Qwest Notif. No. SYST.MEDI.12.17.10.F.08642.MTG_IntrfceNewApptoApp (Dec. 17, 2010) (emphasis added) at JC000062-JC000064.

²²⁰ Qwest Notif. No. SYST.MEDI.12.17.10.F.08642.MTG_IntrfceNewApptoApp (Dec. 17, 2010) at JC000062-JC000064.

²²¹ Qwest Notif. No. SYST.MEDI.12.17.10.F.08642.MTG_IntrfceNewApptoApp (Dec. 17, 2010) at JC000062-JC000064.

1 was asked about the December 17, 2010 CEMR/MEDIACC/MTG Qwest CMP
2 Announcement. I testified that I had seen the notice when it arrived on Friday and,
3 although I had not yet had an opportunity to have discussions internally about the notice,
4 “that notice seems inconsistent with the condition that [Joint Applicants] will not change
5 or replace a system.”²²²

6 Mr. Haas of PAETEC indicated in the summary to his testimony that he had heard the
7 CenturyLink testimony about CEMR instability, but that from PAETEC’s side, while
8 PAETEC has seen minor instability, it is nothing that is impacting PAETEC.²²³ Since
9 then, Qwest has admitted in CMP that there were fewer outages last year than there have
10 been since 2003.²²⁴ Mr. Haas said that functionality is PAETEC’s primary concern and
11 that, if PAETEC moves to a new system, PAETEC would not have an objection to it if it
12 has the same functionality, though there would be costs involved.²²⁵ Mr. Haas provided
13 this testimony after the Integra Settlement and Colorado Staff Agreements had been
14 entered into, and both of those agreements provided that any move to a new system
15 would not occur before the end of an at least two-year period and only then after CLECs
16 had opportunities to provide comments and objections in CMP, perform testing, and vote

²²² AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc. (Dec. 20, 2010), Vol. II, p. 434, lines 22-24; *id.* p. 434, lines 8-24 (Mr. Denney, Integra) at JC000708.

²²³ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 469, lines 14-17 (William Hass, PAETEC).

²²⁴ Exhibit BJJ-7 at JC000050, CR Detail (Feb. 16, 2011 CMP meeting).

²²⁵ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 469, lines 18-23 (William Hass, PAETEC).

1 regarding sufficient acceptance of a replacement system, including its functionality.²²⁶
2 Consistent with this, PAETEC's comments in CMP since then show that, when Mr. Haas
3 said PAETEC would not have an objection *if* PAETEC moves to a new system with the
4 same functionality, that PAETEC referred to a move after the applicable time periods had
5 passed and merger procedures had been followed.²²⁷

6 Ms. Stewart of Qwest was also asked about the Qwest CMP Announcement. Ms. Stewart
7 testified that she was familiar with the Qwest CMP Announcement made via CMP but
8 that she was not the witness that is representing the settlement agreement on OSS and
9 that she did not know whether the CMP Announcement is consistent with the settlement
10 agreement.²²⁸

11 Mr. Hunsucker of CenturyLink was also asked about the Qwest CMP Announcement.
12 Mr. Hunsucker testified that he was made aware of the CMP Announcement at the time it
13 was made, but that he did not know the time frame, including whether the move to the
14 new system or replacing the system was some time after the closing of the merger
15 transaction.²²⁹ Mr. Hunsucker testified:

16 And in my discussions with the Qwest folks, that is a system that is very
17 unstable today. It was built in the late '90s, early 2000 time period. They
18 can't find parts for it to replace that system and keep it up and running.

²²⁶ Exhibit BJJ-3, Integra Settlement Agreement, ¶12; Exhibit BJJ-5, CO Staff Agreement, ¶17.

²²⁷ See, e.g., Exhibit BJJ-15 at JC000094 – JC000095.

²²⁸ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., Vol. II (Dec. 20, 2010), p. 384, lines 7-10; *id.* p. 380, line 11 – p. 384, line 14 (Ms. Stewart, Qwest) [JC000703-JC000707].

²²⁹ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 338, line 8 – p. 339, line 10 (Mr. Hunsucker, CenturyLink) [JC000700-JC000701].

1 And *due to the instability of that system*, they are looking to replace that
2 system with a new system that will provide stability to the CLECs.²³⁰
3

4 Mr. Hunsucker's testimony, and his failure to explain his testimony in light of earlier
5 CMP communications in 2010 and in light of the age of other legacy Qwest OSS, are
6 discussed in Sections VI(D)-VI(E) below.

7 **Q. DOES CENTURYLINK'S ARIZONA HEARING TESTIMONY ABOUT REPAIR**
8 **OSS INSTABILITY CONTRADICT CENTURYLINK TESTIMONY BEFORE**
9 **THE WASHINGTON COMMISSION AND OTHER STATE COMMISSIONS?**

10 A. Yes. Only weeks before Mr. Hunsucker provided the above-quoted testimony in Arizona
11 based on "discussions with the Qwest folks"²³¹ (and before Integra entered into the
12 Integra Settlement Agreement), John Jones of CenturyLink testified in Washington and
13 Colorado, when arguing that there would be no need to create new OSS post-merger, that
14 "CenturyLink and Qwest have well-established, fully operational and tested systems."²³²
15 Mr. Jones did not limit his testimony to CenturyLink systems. He affirmatively
16 represented to the Commission that Qwest's systems are "well-established, fully

²³⁰ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 338, lines 19-25 (Mr. Hunsucker, CenturyLink) (emphasis added) [JC000700].

²³¹ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 338, lines 19-25 (Mr. Hunsucker, CenturyLink) (emphasis added) [JC000700].

²³² WA Rebuttal Testimony of Mr. Jones, CenturyLink, Dkt. No. UT-100820 (Nov. 1, 2010), p. 18, lines 15-16; *see also* CO Rebuttal Testimony of Mr. Jones, CenturyLink, Dkt. No. 10A-350T (Oct. 15, 2010), p. 17, lines 15-19; AZ Rebuttal Testimony of Jeff Glover, CenturyLink, Dkt. No. T-01051B-10-0194, etc (Oct. 27, 2010), p. 34, lines 19-20; *see* MN Rebuttal Testimony of Mr. Jones, CenturyLink, MN Dkt. No. P-421, et al./PA-10-456 (Sept. 13, 2010), p. 18, line 7 ("fully operational and tested systems").

1 operational and tested systems.”²³³ He expressed no exception for repair OSS. Mr.
2 Jones testified that, as CenturyLink’s Vice President of State Government Affairs, he has
3 worked in various regulatory positions over nearly 17 years with the company, that he
4 has been active in numerous state and federal proceedings, and that in his present role he
5 leads the state field teams that are responsible for regulatory, legislative and government
6 activities in 33 states.²³⁴ If any discussions with Qwest folks were needed before he
7 could affirmatively represent these facts to the Commission, then it was fair to assume,
8 based on his experience with regulatory matters, that the necessary due diligence had
9 been performed or that, if not performed, he would have limited his testimony to
10 CenturyLink systems or said he did not know as to Qwest systems. Commissions were
11 entitled to rely on the sworn testimony of Mr. Jones in this respect when considering
12 whether to approve the merger subject to commitments as to the length of time post-
13 merger that Qwest would both use and offer to CLECs legacy Qwest OSS, including
14 repair OSS.

15 Regarding due diligence, Mr. Hunsucker now claims, “It was not necessary for me or
16 CenturyLink to investigate whether Qwest/CenturyLink might consider adding an
17 *optional* repair interface while still using and offering existing systems... in order to enter

²³³ WA Rebuttal Testimony of Mr. Jones, CenturyLink, Dkt. No. UT-100820 (Nov. 1, 2010), p. 18, lines 15-16; *see also* CO Rebuttal Testimony of Mr. Jones, CenturyLink (Oct. 15, 2010), p. 17, lines 15-19.

²³⁴ Direct Testimony of Mr. Jones, CenturyLink, Dkt. UT-100820 (May 21, 2010), p. 1, line 8 – p. 2, line 6; *see also* Direct Testimony of Mr. Jones, CenturyLink, Dkt. No. 10A-350T (May 27, 2010), p. 1, line 9 – p. 2, line 8.

1 the Integra Settlement.”²³⁵ In addition to mischaracterization of the “use and offer”
2 language of the settlement agreements [see Section VI(A)], this statement is wrong on the
3 facts. At the time of both the November 1, 2010 Washington testimony of Mr. Jones and
4 the December 20, 2010 Arizona testimony of Mr. Hunsucker, Qwest’s pending CMP
5 changewas *not* for an optional system; it was expressly a replacement and retirement of
6 CEMR and MEDIACC.²³⁶ Further, the Merged Company now admits that this change
7 request was in violation of the merger settlement agreements.²³⁷

8 **Q. DID CENTURYLINK AND QWEST, WHEN TESTIFYING TO THE STATE**
9 **COMMISSIONS REGARDING OSS AND WHEN ENTERING INTO**
10 **ADDITIONAL SETTLEMENT AGREEMENTS, MODIFY THEIR**
11 **COMMITMENTS TO TAKE INTO ACCOUNT THE DECEMBER 17 CMP**
12 **ANNOUNCEMENT AND CENTURYLINK’S STATED POSITION ON**
13 **DECEMBER 20 THAT THE REPAIR SYSTEM WAS UNSTABLE AND NEEDED**
14 **TO BE REPLACED WITH A NEW SYSTEM?**

²³⁵ Hunsucker Direct, CO Docket No. 11F-436T, Sep. 15, 2011, p. 10, lines 13-15 (emphasis added).

²³⁶ Exhibit BJJ-7 (Nov. 10, 2010 CMP Description of Change) at JC000043 (“New application will ... replace CEMR”); Exhibit BJJ-7 (Nov. 17, 2010 CMP minutes) at JC000057 (“Qwest indicated that we are looking at doing two things: 1) retiring CEMR and replacing it with a front GUI interface, and 2) retiring MEDIACC and replacing that with an XML B2B ticketing interface.”); (Dec. 17, 2010 Qwest announcement) at JC000062 [“The Maintenance Ticketing Gateway (MTG) will be a replacement for MEDIACC and CEMR.”]; BJJ-1 at JC000063-JC000064 (Dec. 17, 2010 timeline).

²³⁷ Response to WA Joint CLEC Data Request 10(c). (“Qwest Corporation determined that it was not necessary to retire CEMR, and that **the merger agreements did not permit the retirement of MEDIACC** before late in 2013.” Respondents Cecelia Tank and Renee Albersheim.) (emphasis added)

1 A. No. CenturyLink and Qwest continued to represent to regulators that there would be a
2 freeze of wholesale legacy Qwest OSS for a period of at least two years and that Qwest
3 would both use the legacy Qwest OSS and offer it to CLECs during that time.

4 On December 23, 2010, CenturyLink and Qwest entered into a settlement agreement
5 with the Washington commission staff which, like the Integra Settlement Agreement in
6 this respect, provides: “In legacy Qwest ILEC service territory, after the Transaction
7 closes, CenturyLink will use and offer to wholesale customers the legacy Qwest
8 Operational Support Systems (OSS) for at least two years, or until July 1, 2013,
9 whichever is later. . . .”²³⁸ The signatories later filed testimony in support of the
10 settlement.²³⁹

11 In January, 2011, evidentiary hearings were held before the ALJ in Washington in the
12 Qwest/CenturyLink merger proceeding (Docket No. UT-100820). On January 6, 2011,
13 Mr. Hunsucker of CenturyLink testified that, per condition 12 of the Integra Settlement
14 Agreement, “there is a very robust transparent process *before* we can make this OSS
15 conversion.”²⁴⁰ He said: “It’s not *just* we’re going *to decide in two years we’re going to*
16 *make a change* and we can suddenly implement that.”²⁴¹ Rather, he described the steps

²³⁸ WA Order No. 14, Docket No. UT-100820 (March 14, 2011), Appendix C (WA Staff Agreement), at Appendix A, p. 9 (Condition 23).

²³⁹ WA Order No. 14, Docket No. UT-100820 (March 14, 2011) at ¶3.

²⁴⁰ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 405, lines 1-3 (emphasis added) (Mr. Hunsucker, CenturyLink).

²⁴¹ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 406, lines 9-11 (emphasis added) (Mr. Hunsucker, CenturyLink).

1 that then have to occur under the Integra agreement before the OSS change.²⁴² As
2 discussed above, CenturyLink's attorney specifically referred to a "freeze" on the
3 wholesale OSS for the two-year period under the Integra Settlement Agreement.²⁴³ Mr.
4 Hunsucker testified that this is "a 24-month or a few months *longer*" time period before
5 the company "can retire a system and go to a new system" than the "nine-month process"
6 that otherwise would occur without the settlement agreement.²⁴⁴ Mr. Hunsucker
7 concluded, therefore, that condition 12 "goes well beyond the certainty and the status quo
8 that CLECs have to date."²⁴⁵ In other words, he indicated that condition 12 provides a
9 time period well beyond the nine-month process.

10 On January 21, 2011, CenturyLink and Qwest represented to the Washington
11 Commission that: "The Non-Settling CLECs' conjecture about potential OSS
12 degradation in Washington also ignores the key fact that CenturyLink is not simply
13 acquiring access lines from Qwest, but rather, is acquiring the *entire company*. Because
14 it is acquiring Qwest's existing systems, personnel, documented policies, experiences,
15 and processes, CenturyLink will have no immediate need (or be under any time or
16 financial pressure) to make any alterations to Qwest's OSS."²⁴⁶ CenturyLink and Qwest

²⁴² WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 405, lines 1-3; *id.* p. 405, line 14 – p. 406, line 8 (Mr. Hunsucker, CenturyLink).

²⁴³ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 407, lines 14-17 (Mr. Simshaw, CenturyLink).

²⁴⁴ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 406, line 23 – p. 407, line 3 (emphasis added) (Mr. Hunsucker, CenturyLink).

²⁴⁵ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 407, lines 1-4 (Mr. Hunsucker, CenturyLink).

²⁴⁶ WA CenturyLink's and Qwest's Reply Brief, UT-100820 (Jan. 21, 2011), p. 12, ¶24. *See also* Joint Applicants' Statement of Position, CO Dkt. No. 10A-350T (Nov. 24, 2010), pp. 39-40 [JC000740-JC000741] (statement made after Qwest's November 10, 2010 repair OSS change via web posting that Mr. Hunsucker later testified was made due to system instability).

1 also pointed out that, pursuant to the Integra Settlement Agreement, the “Joint Applicants
2 agree that they will ‘meet or exceed the average wholesale performance provided by
3 Qwest to CLEC’ for at least three years after the closing date.”²⁴⁷ When making this
4 representation in January, CenturyLink and Qwest did not mention any need for, and did
5 not request, any exception, such as an exception in the event of a “catastrophic failure of
6 MEDIACC”²⁴⁸ during the initial post-merger three-year period. CenturyLink and Qwest
7 urged the Washington Commission to find that the conditions are in the public interest²⁴⁹
8 and assured the commission that the Merged Company will comply with all of the
9 conditions in the agreements, stating: “The Settlement Agreements contain a set of
10 comprehensive protections for retail consumers and wholesale competitors, including
11 regulatory and reporting requirements that will provide the Commission information to
12 assure compliance with those protections. By approving the merger with the conditions
13 provided in the Settlement Agreements, the Commission can be assured that the merger is
14 in the public interest.”²⁵⁰

15
16 On March 3, 2011, Joint Applicants entered into the Joint CLEC Merger Agreement with
17 PAETEC, POPP, TDSM, Velocity and certain other CLECs, in which these Joint CLECs
18 opted in to the Integra Settlement Agreement; agreed to clarifications, modification or
19 additional terms; and agreed not to participate in regulatory review of the merger
20 transaction. The Joint CLEC Merger Agreement states that its OSS terms apply
21 throughout Qwest ILEC 14-state territory and that it modifies the first paragraph of

²⁴⁷ WA CenturyLink’s and Qwest’s Reply Brief, UT-100820 (Jan. 21, 2011), p. 18, ¶39.

²⁴⁸ See WA Answer, p. 5, ¶16.

²⁴⁹ See, e.g., WA CenturyLink’s and Qwest’s Reply Brief, UT-100820 (Jan. 21, 2011), p. 9, ¶19.

²⁵⁰ WA CenturyLink’s and Qwest’s Reply Brief, UT-100820 (Jan. 21, 2011), p. 1, ¶2.

1 paragraph 12 of the Integra Settlement Agreement to provide that, in legacy Qwest ILEC
2 service territory, after the Closing Date, the Merged Company will use and offer to
3 wholesale customers the legacy Qwest OSS for at least thirty months.²⁵¹ Although other
4 modifications were made to the Integra Settlement Agreement, there is no modification to
5 create an exception of any kind for repair OSS. To the contrary, the Joint CLEC Merger
6 Agreement reaffirms the commitment that the Merged Company will meet or exceed the
7 average wholesale performance provided by Qwest to CLEC for at least three years after
8 the closing date. CenturyLink and Qwest filed the Joint CLEC Merger Agreement with
9 the Minnesota Commission on March 4, 2011 and the Oregon Commission on March 8,
10 2011. Although those filings represented opportunities for CenturyLink and Qwest to
11 notify the commissions of any concern that legacy Qwest repair OSS were unstable or
12 obsolete, or that they had a concern that the Merged Company could not meet some or all
13 of the merger commitments, CenturyLink and Qwest did not make any such disclosure in
14 those filings, or separate filings.

15 On March 16, 2011, CenturyLink and Qwest filed updated commitments with the FCC in
16 which they represented to the FCC that “In Qwest ILEC territory, following the Merger
17 Closing Date, CenturyLink will not replace Qwest OSS or integrate it with any other OSS
18 for at least 30 months following the Merger Closing Date²⁵²

²⁵¹ A copy of the Joint CLEC Merger Agreement was attached to the Joint CLECs’ Complaint, as part of Attachment A, and a copy is also attached to the testimony of Ms. Johnson as Exhibit BJJ-4.

²⁵² CenturyLink and Qwest joint letter to the FCC dated March 16, 2011, WC Docket No. 10-110.

1 **Q. WHAT DID THE CONTINUED REPRESENTATIONS OF CENTURYLINK AND**
2 **QWEST REGARDING OSS COMMUNICATE TO CLECS AND REGULATORS?**

3 A. The fact that, after November 10, 2010,²⁵³ December 17, 2010,²⁵⁴ and December 20,
4 2010,²⁵⁵ CenturyLink and Qwest continued to represent to regulators that the Merged
5 Company would use and offer to wholesale customers the legacy Qwest OSS, with no
6 exception for repair OSS, for at least two years (even extending this time period to thirty
7 months) and also meet or exceed the average wholesale performance provided by Qwest
8 to CLEC for at least three years after the closing date communicated to CLECs and
9 regulators that, despite pre-merger CMP activity and even assuming legacy Qwest OSS
10 used for maintenance and repair were aging or currently unstable, the Merged Company
11 nonetheless had the ability to address the situation in a manner that would meet all of its
12 commitments for at least thirty months without making changes to legacy Qwest OSS
13 and without implementing a new system. The CLECs' understanding of this meaning
14 and intent of the settlement agreements was reinforced by the repeated assurances of
15 CenturyLink and Qwest that the Merged Company "will have no immediate need (or be
16 under any time pressure) to make any alterations to OSS in Qwest areas."²⁵⁶ As evidence

²⁵³ November 10, 2010 is the date on which Qwest via a web posted indicated it would introduce a new system to replace CEMR/MEDIACC. See Exhibit BJJ-7 at JC000044 & Exhibit BJJ-9 at JC000059.

²⁵⁴ December 17, 2010 is the date of the Qwest CMP announcement stating Qwest was introducing a new system to replace CEMR/MEDIACC. See Exhibit BJJ-1.

²⁵⁵ December 20, 2010 is the date of CenturyLink's testimony (quoted above) that CenturyLink had discussed the repair OSS with Qwest and the reason Qwest was replacing the existing system with a new one was due to instability of the existing legacy Qwest OSS. See AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 338, lines 19-25 (Mr. Hunsucker, CenturyLink).

²⁵⁶ WA CenturyLink's and Qwest's Reply Brief, UT-100820 (Jan. 21, 2011), p. 12, ¶24 (emphasis added). See also Joint Applicants' Statement of Position, CO Dkt. No. 10A-350T (Nov. 24, 2010), pp. 39-40

1 of regulator-reliance on this representation, in the Minnesota ALJ's Report issued on
2 January 11, 2011, the ALJ cited this assurance when making a finding of fact that
3 CenturyLink "will have no immediate need to make any alterations to OSS in Qwest
4 areas."²⁵⁷ In the Initial Commission Decision in Colorado, the Commission relied upon
5 the representations of Joint Applicants both that existing legacy Qwest OSS would be
6 used and offered to wholesale customers for at least two years and that there would be
7 continuity with respect to wholesale service quality and specifically the CPAP. The
8 Washington Decision states: "The Qwest Performance Indicator Definitions (QPID) and
9 Qwest Performance Assurance Plan (QPAP) are left unchanged for 18 months from the
10 transaction's closing, and the combined company will not withdraw or attempt to
11 eliminate the QPAP for at least three years after closing."²⁵⁸

12 The absence of any request by CenturyLink and Qwest for an exception to its
13 commitments due to repair system instability or obsolescence, or in the event of a
14 "catastrophic failure of MEDIACC,"²⁵⁹ also communicated that message to CLECs and
15 regulators. If the Merged Company needed an exception for repair OSS, such as an
16 exception in the event of a significant and unrepairable failure of MEDIACC, the Merged

[JC000740- JC000741]; and Joint Petitioners' Initial Post-Hearing Brief, MN Dkt. No. P-421, et al./PA-10-456, (Nov. 24, 2010), p. 26.

²⁵⁷ MN ALJ Findings of Fact, Conclusions of Law and Recommendation, OAH Docket No. 11-2500-21391-2, MN PUC Docket No. P-421, et al./PA-10-456 (Jan. 10, 2011) at ¶229 (citing Joint Applicants' Initial Brief at pp. 26-27).

²⁵⁸ Washington Decision, Final Order No. 14, p. 15 (March 14, 2011). *See also* Colorado Decision No. C11-0001, p. 20, 2nd bullet, p. 21 1st bullet & p. 27, ¶¶76-78. *See* Joint Applicants' Statement of Position, CO Dkt. No. 10A-350T (Nov. 24, 2010), p. 26 (assuring both that there will be no time pressure to make any alterations to OSS in Qwest areas and that the "merged company, of course, will continue to comply with applicable terms of. . . Qwest's Performance Assurance Plans").

²⁵⁹ *See* WA Answer, p. 5, ¶16..

1 Company could have declined to enter into the Integra Settlement Agreement unless it
2 included an exception for repair OSS, just as the Merged Company declined to enter into
3 the Integra Settlement Agreement without an exception for billing integration.²⁶⁰
4 Similarly, if that were the case, the Merged Company could have declined to enter into
5 the Joint CLEC Merger Agreement unless it modified the Integra Settlement Agreement
6 to include an exception for repair OSS or for a failure of MEDIACC, just as the Integra
7 Settlement Agreement was modified in other respects in the Joint CLEC Merger
8 Agreement.²⁶¹ CenturyLink and Qwest obtained no such exceptions, and instead asked
9 the Commission to rely upon its representations to the Commission.²⁶²

10 **Q. HAS THE MERGED COMPANY PROVIDED AN ADEQUATE EXPLANATION**
11 **FOR ITS FAILURE TO BRING ITS STATED CONCERNS TO THE**
12 **COMMISSION BEFORE MERGER APPROVAL?**

13 A. No. The Merged Company admits that Joint Applicants did not bring concerns about
14 potential repair system failure or the company's ability to meet the merger conditions to
15 the attention of regulators in the merger proceedings.²⁶³ It attempts to explain away this
16 fact by arguing that "the focus of the merger proceedings was to examine the impacts of
17 integrating legacy Qwest and legacy CenturyLink systems, not to determine the status of

²⁶⁰ See Exhibit BJJ-3, Integra Settlement Agreement, ¶12(d) at JC000011.

²⁶¹ See Exhibit BJJ-4 (Joint CLEC Merger Agreement), p. 2 ("clarifications, modification or additional terms") at JC000550.

²⁶² WA CenturyLink's and Qwest's Reply Brief, UT-100820 (Jan. 21, 2011).

²⁶³ WA Supplemental Response to Joint CLEC Data Request 17, October 10, 2011 (Respondent: Legal).

1 existing legacy Qwest systems.”²⁶⁴ Similarly, in Minnesota, the Merged Company
2 argued that “there wasn’t a dispute about the adequacy of Qwest’s OSS.”²⁶⁵ These
3 arguments fail to acknowledge that the absence of a focus on, or dispute about, the status
4 of legacy Qwest’s systems was because Joint Applicants affirmatively represented in
5 sworn testimony that “CenturyLink and Qwest have fully operational and tested
6 systems”²⁶⁶ and they chose not to bring the issue of potential repair OSS failure, or
7 Qwest’s conclusion that the Merged Company may not be able to meet its merger
8 commitments,²⁶⁷ to the Commission before merger approval. Certainly, the Merged
9 Company’s ability to meet its merger commitments was at issue in the proceeding and, in
10 fact, was at least in part a basis for merger approval. Moreover, given the importance
11 placed by the parties on OSS issues, the focus would have quickly shifted to this issue
12 had Joint Applicants raised it with the Commission. As discussed in my previous answer,
13 the fact that Joint Applicants instead continued to make its affirmative representations
14 about its ability to meet its merger commitments communicated to CLECs and regulators
15 that, despite Qwest claims of risk to the system and its merger companies, the Merged
16 Company somehow had the ability to address the situation in a manner that would meet
17 all of its commitments for at least thirty months without making changes to legacy Qwest
18 OSS and without implementing a new system.

²⁶⁴ WA Supplemental Response to Joint CLEC Data Request 17, October 10, 2011 (Respondent: Legal). See discussion in Section VI(B).

²⁶⁵ Exhibit BJJ-62, MN Transcript (Aug. 11, 2011), p. 35, lines 18-20.

²⁶⁶ WA Rebuttal Testimony of Mr. Jones, CenturyLink, Dkt. No. UT-100820 (Nov. 1, 2010), p. 18, lines 15-16.

²⁶⁷ Exhibit BJJ-17, Qwest Feb. 9, 2011 email to Integra and CenturyLink at JC000099.

1 **V. IMPACT OF REPAIR OSS CHANGES TO CLECS**

2 **Q. WOULD CHANGES, AND MAKING CHANGES, TO CEMR AND MEDIACC**
3 **IMPACT CLECS?**

4 A. Yes. Although CenturyLink and Qwest denied that CEMR and MEDIACC are “vital to
5 the CLECs’ abilities to conduct business in Washington.”²⁶⁸ Mr. Hunsucker of
6 CenturyLink recognized in Colorado that, if a change in Qwest OSS occurred, CLECs
7 could incur costs.²⁶⁹ Mr. Haas testified in the merger proceedings that, if PAETEC
8 moves to a new system, there would be costs involved.²⁷⁰

9 Qwest admits that CEMR goes through MEDIACC first and then MEDIACC interfaces
10 with Qwest’s back-end systems.²⁷¹ Therefore, a failure of MEDIACC, such as during an
11 integration or system change, would also affect CEMR users and their customers.

12 Qwest OSS changes require CLECs to expend resources (*e.g.*, conducting testing and/or
13 reviewing and commenting on technical specifications and work required to then modify
14 their own systems and/or conduct training) and may impose costs on CLECs, as indicated
15 by Mr. Gates on behalf of Joint CLECs:

16 Not only would CLECs have to expend significant time and money testing
17 the CenturyLink replacement systems, but they would also have to
18 materially modify their own systems. For instance, the CLECs have built

²⁶⁸ See WA Answer, p. 8, ¶35 (denying above-quoted allegation from Complaint).

²⁶⁹ CO Hrg. Tr., Dkt. No. 10A-350T (Nov. 10, 2010), Vol. 3, p. 101, lines 3-16 (Mr. Hunsucker, CenturyLink).

²⁷⁰ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 469, lines 18-23 (William Hass, PAETEC).

²⁷¹ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 56 (JC000809).

1 their own interfaces to electronically bond directly to the existing Qwest
2 systems. These CLEC systems would need to be modified, at significant
3 expense, by the CLEC to work with the new replacement system. . . .
4 Also, like Qwest, some CLECs have integrated their electronic interfaces
5 into their own back end systems. . . . Another example is for trouble ticket
6 reporting. PAETEC, for example, has established electronic bonding
7 capability with Qwest that allows automated escalation of the trouble
8 ticket, and automated resolution or closing of the trouble ticket and
9 notification to the customer. In other words, by establishing the electronic
10 bonding with Qwest, a PAETEC trouble ticket can go from “open” to
11 “closed” with little or no intervention by PAETEC’s technicians. These
12 automated capabilities are possible because PAETEC, for example,
13 undertook a substantial effort to develop its own back end systems and
14 processes and then code, test and link those systems and processes to
15 Qwest’s systems and interfaces. These CLEC back end systems would be
16 subject to change if the Merged Company changed Qwest’s legacy OSS
17 post-transaction, and could potentially require CLECs to revert to
18 significantly less efficient manual processes if the modified OSS offered
19 by the Merged Company does not afford CLECs access to the same degree
20 of the Merged Company’s back end systems and data via the electronic
21 interface.²⁷²

22
23 **VI. JOINT APPLICANTS’ STATED REASONS FOR THEIR CONDUCT REFLECT**
24 **INCONSISTENCIES, AND THEIR CONDUCT IS CONTRARY TO THE**
25 **MERGED COMPANY’S OBLIGATIONS.**

26 **Q. PLEASE SUMMARIZE HOW CENTURYLINK AND QWEST HAVE**
27 **ATTEMPTED TO JUSTIFY THEIR CONDUCT.**

28 A. Qwest and CenturyLink have made a number of arguments, some of which have changed
29 over time or are inconsistent. Mainly, they argue or have argued (a) that Qwest
30 Corporation will meet its commitment to “use and offer to wholesale customers” the

²⁷² Responsive Testimony of Timothy Gates, QSI Consulting, on behalf of Joint CLECs, WA Docket UT-100820, p. 54, line 3 – p. 56, line 18 (September 27, 2010) [QSI Gates Responsive]; *see also* Direct Testimony of Timothy Gates, QSI Consulting, on behalf of Joint CLECs, MN Dkt. No. P-421, et al./PA-10-456, pp. 51-53 (Aug. 19, 2010) [“QSI Gates MN Direct”]; *see also* CO Answer Testimony of Timothy Gates, QSI Consulting, on behalf of Joint CLECs, CO Docket10A-350T, pp. 55-57 (Sept. 15, 2010) [“QSI Gates CO Answer”].

1 legacy Qwest OSS²⁷³ by giving the term “use” either no meaning or an unreasonably
2 narrow meaning; (b) that the term “integrate” similarly either has no meaning or has an
3 unreasonably narrow meaning; (c) that MTG is an update or system improvement and not
4 the replacement system, despite admissions and evidence to the contrary; (d) that repair
5 system instability or viability concerns are so serious, and in fact potentially
6 catastrophic²⁷⁴ and disastrous,²⁷⁵ that, even though Qwest has long known about them,
7 they justify violating the merger agreement terms for Qwest and its retail customers; (e)
8 that, for wholesale CLEC customers, however, system instability or viability concerns are
9 suddenly of no or little concern, so the Merged Company may meet its merger
10 commitments by offering those same repair systems to CLECs for at least 30 months; (f)
11 that the Merged Company may breach its OSS merger commitments if it deems that
12 doing so is necessary to meet its wholesale service quality merger obligations, even
13 though the merger agreements contain no pick-and-choose provision under which the
14 Merged Company may select which commitments to meet and which to breach; (g) that
15 the Merged Company may re-label its conduct “optional” to avoid its merger
16 commitments, though there is no optional, alternative, or voluntary exception in the
17 merger agreements; (h) that the Merged Company may avoid its merger commitments if
18 any customer, including an internal Qwest customer, prefers or desires different terms,
19 though there is no exception in the merger agreements for customer requests to the

²⁷³ Exhibit BJJ-3, Integra Settlement Agreement, ¶12 at JC000010-JC000011; Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 2 at JC0000550.

²⁷⁴ WA Answer, ¶16; Exhibit BJJ- 36, CenturyLink May 2, 2011 email at JC000294.

²⁷⁵ WA Response to Motion for Temporary Relief, August 18, 2011, p. 6, ¶15.

1 contrary; (i) that industry standards which were known to Qwest and CenturyLink at the
2 time they entered into the merger commitments may excuse breach of those
3 commitments, though there is no industry standards exception in the merger agreements;
4 (j) that the Merged Company may avoid its merger commitments by using CMP
5 procedures to make OSS changes, though use of CMP is only one of several requirements
6 in the merger OSS commitments; (k) that MTG is a legacy Qwest OSS so that the merger
7 terms do not apply, even though MTG has not even been developed yet; and (l) a
8 decision may have been made to use MTG for all entities but, in any event, the decision
9 is not final or definitive, so until the Merged Company chooses to recognize the decision
10 as final, there is no relationship or motivation for the Merged Company relating to the
11 merger or synergies.

12 **Q. DO YOU AGREE THAT THE ARGUMENTS ASSERTED BY QWEST AND**
13 **CENTURYLINK JUSTIFY THEIR CONDUCT OR MEAN THAT THEY HAVE**
14 **NOT VIOLATED THEIR OBLIGATIONS?**

15 A. No. Together, their various arguments have taken time and resources to address and have
16 caused substantial uncertainty. I will address each of those arguments in the order in
17 which they appear in my previous answer.

18 **A. USE AND OFFER TO WHOLESALE CUSTOMERS**

19 **Q. QWEST AND CENTURYLINK HAVE ARGUED THAT JOINT CLECS DO**
20 **“NOT DISPUTE” THAT QWEST/CENTURYLINK WILL “USE AND OFFER”**

1 **MEDIACC CONSISTENT WITH THE INTEGRA SETTLEMENT AGREEMENT**
2 **TERMS.²⁷⁶ IS THIS ARGUMENT ACCURATE?**

3 A. No.²⁷⁷ The Merged Company is violating its obligation to use legacy Qwest OSS, as well
4 as its obligation to offer to CLECs nondiscriminatory access to legacy Qwest OSS while
5 maintaining the requisite level of wholesale service quality.

6 **Q. YOU SAID THAT JOINT APPLICANTS GIVE THE TERM “USE” EITHER NO**
7 **MEANING OR AN UNREASONABLY NARROW MEANING. PLEASE**
8 **EXPLAIN.**

9 A. Qwest Corporation is obligated per the settlement agreements to “use and offer to
10 wholesale customers the legacy Qwest Operational Support Systems (OSS)”²⁷⁸ for at
11 least 30 months.²⁷⁹ In this sentence, there is a requirement for Qwest Corporation to
12 “use” the legacy Qwest OSS, and another requirement for Qwest Corporation to “offer to
13 wholesale customers” the legacy Qwest OSS. Although the Merged Company at times
14 appears to read these requirements synonymously (*i.e.*, giving “use” no separate

²⁷⁶ WA Response to Motion for Temporary Relief, August 18, 2011, p. 8, ¶18.

²⁷⁷ See, *e.g.*, Joint CLEC Motion for Temporary Relief, WA Dkt. No. UT-111254 (August 10, 2011), p. 3 (“***Contrary to the merger conditions*** relating to OSS, the Merged Company has announced plans and taken steps to implement and integrate new maintenance and repair OSS - “MTG” – to replace the legacy Qwest maintenance and repair OSS before the expiration of the moratorium period and without first complying with the procedures set forth in paragraph 12 of the Integra Agreement (and as supplemented by the Joint CLEC Merger Agreement). Absent Commission intervention, Qwest will integrate Qwest systems and replace MEDIACC with MTG for itself by the end of this year, ***so that Qwest will use the new system (MTG) instead of using the legacy Qwest OSS (MEDIACC)*** during the moratorium period and after.”) (emphasis added); see *id.* p. 20 (discussing “use and offer” language).

²⁷⁸ Exhibit BJJ-3, Integra Settlement Agreement, ¶12; Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 2; see also Exhibit BJJ-5, CO Staff Agreement, ¶17 (referencing conditions and commitments in the Integra agreement).

²⁷⁹ WA Answer, p. 5, ¶14.

1 meaning), with contracts, I understand that a contract should be interpreted, when
2 possible, to give effect to all of its provisions.²⁸⁰

3 The language of the agreements does not support the Merged Company's narrow reading
4 of the word "use." Although the Merged Company suggests that "to wholesale
5 customers" modifies "use," that is not what the language in the agreements says. If "to
6 offer" is eliminated, the phrase "use . . . to wholesale customers" does not make sense.
7 The phrase "to wholesale customers" modifies "offer." Contrary to the Merged
8 Company's attempts to re-characterize this language after the fact, this provision does *not*
9 state that Qwest Corporation will 'offer use of legacy Qwest OSS to wholesale
10 customers',²⁸¹ 'use and offer this legacy Qwest OSS *to* CLEC customers',²⁸² or 'use
11 legacy Qwest OSS *for its CLEC customers* that wish to continue to use it.'²⁸³ Similarly,
12 this provision does not say that Qwest Corporation will 'use for wholesale customers and
13 offer to wholesale customers' legacy Qwest OSS. Qwest Corporation must use the
14 legacy Qwest OSS, as well as offer them to wholesale customers, for at least 30 months.

²⁸⁰ *Nishikawa v. U.S. Eagle High LLC*, 1598 P.2d 1265, 1269 (Wash. Ct. App. 2007) ("When interpreting a contract, we give undefined terms their plain, ordinary, and popular meaning. and we harmonize clauses that seem to conflict. Our goal is to interpret the agreement in a manner that gives effect to all of the contract's provisions.") (citations omitted); *Nat'l Merit Ins. Co. v. Yost*, 3 P.3d 203, 205 (Wash. Ct. App. 2000) (rejecting interpretation of insurance policy that would render policy cause redundant and meaningless).

²⁸¹ See CenturyLink MN Comments, MN Dkt. No. P-421, et al./PA-IO-456, June 30, 2011, p. 2 ("These systems remain in place and CenturyLink *offers their use* to wholesale carriers, as required by the settlement agreement.") (emphasis added).

²⁸² WA Response to Motion for Temporary Relief, August 18, 2011, p. 13, ¶30.

²⁸³ See CenturyLink MN Reply Comments, MN Dkt. No. P-421, et al./PA-IO-456, July 22, 2011, p. 9, footnote 11 ("CenturyLink has repeatedly stated that it will continue to use MEDIACC *for its CLEC customers* that wish to continue to use it") (emphasis added).

1 Nonetheless, the Merged Company has recently argued that, if Qwest Corporation uses
2 MTG for its retail customers, that this does not violate the “use and offer to wholesale
3 customers” language of the settlement agreements. Specifically, the Merged Company
4 argues:

5 Integra suggests that if CenturyLink uses MTG for its *retail* customers that
6 this somehow violates the ‘use and offer to wholesale customers’
7 requirements. This section has nothing to do with retail customers.
8 CenturyLink has repeatedly stated that it will continue to use MEDIACC
9 *for its CLEC customers* that wish to continue to use it. In other words, it
10 will continue to be ‘used and offered to wholesale customers’ as
11 required.²⁸⁴

12
13 In other words, the Merged Company argues that “use and offer to wholesale customers
14 the legacy Qwest Operational Support Systems (OSS)”²⁸⁵ actually means ‘use the non-
15 retail legacy Qwest OSS and offer to wholesale customers the legacy Qwest non-retail
16 Operational Support Systems (OSS).’ The agreements do not say that. Significantly,
17 when the parties intended in paragraph 12 to refer only to “non-retail” legacy Qwest
18 OSS, they showed they were fully able to do that. Subparagraph (d) to paragraph 12 of
19 the Integra Settlement Agreement, relating to billing systems, specifically refers to
20 “legacy Qwest *non-retail* OSS”²⁸⁶ when the parties intended to limit the phrase legacy
21 Qwest OSS to only non-retail OSS. No “non-retail” qualifier applies with respect to the

²⁸⁴ See CenturyLink MN Reply Comments, MN Dkt. No. P-421, et al./PA-IO-456, July 22, 2011, p. 9, footnote 11 (emphasis added).

²⁸⁵ Exhibit BJJ-3, Integra Settlement Agreement, ¶12 at JC000010-JC000011; Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 2 at JC000550; *see also* Exhibit BJJ-5, CO Staff Agreement, ¶17 (referencing conditions and commitments in the Integra agreement) at JC000566.

²⁸⁶ Exhibit BJJ-3, Integra Settlement Agreement, ¶12(d) at JC000011; *see also* Exhibit BJJ-5, CO Staff Agreement, ¶17 (referencing conditions and commitments in the Integra agreement) at JC000566.

1 maintenance and repair legacy Qwest OSS that Qwest Corporation is required to use for
2 at least 30 months following the merger closing date.

3 **Q. IS THE MERGED COMPANY ATTEMPTING TO RE-DEFINE “USE” AFTER**
4 **THE FACT?**

5 A. Yes. The Merged Company is attempting to re-define the phrase “use and offer” without
6 regard to the context in which this language was negotiated and agreed upon. The phrase
7 “use and offer” was a part of the CLEC coalition’s proposed language in the merger
8 proceedings. The settlement agreements were agreed upon in the context of (1) broad
9 assurances by Joint Applicants about legacy Qwest OSS and their continued use and
10 viability²⁸⁷ without change, and (2) CLEC objections to, and rejection of, contrary
11 attempts by Joint Applicants to then narrow those assurances in their written merger
12 commitments, such as with the more limited language of the Minnesota Department of
13 Commerce (“Department” or “DOC”) settlement agreement. The Joint CLEC settlement
14 agreement language was intended to better capture the Joint Applicants’ broad assurances
15 to regulators and CLECs.

²⁸⁷ For example, Joint Applicants said: “CenturyLink and Qwest have well-established, fully operational and tested systems.” See CO Rebuttal Testimony of Mr. Jones, CenturyLink, Dkt. No. 10A-350T (Oct. 15, 2010), p. 17, lines 15-19; *see also* WA Rebuttal Testimony of Mr. Jones, CenturyLink, Dkt. No. UT-100820 (Nov. 1, 2010), p. 18, lines 15-16; AZ Rebuttal Testimony of Jeff Glover, CenturyLink, Dkt. No. T-01051B-10-0194, etc (Oct. 27, 2010), p. 34, lines 19-20; *see* MN Rebuttal Testimony of Mr. Jones, CenturyLink, MN Dkt. No. P-421, et al./PA-10-456 (Sept. 13, 2010), p. 18, line 7 (“fully operational and tested systems”).

1 As discussed in Mr. Gates' October 18, 2010 Minnesota testimony,²⁸⁸ the "not
2 discontinue" language of the Minnesota Department of Commerce agreement is one of
3 the limitations of that agreement that was not acceptable to CLECs. The Integra
4 Settlement Agreement does not contain that more limited language and instead uses the
5 broader "use and offer to wholesale customers." CenturyLink suggests that it is in
6 compliance with the Integra Settlement Agreement because, after its most recent
7 revisions to its repair OSS plan, it will keep CEMR or MEDIACC "in place" (*i.e.*, not
8 discontinue CEMR or MEDIACC) for 30 months, while it does not deny that in the
9 meantime Qwest Corporation will implement a new system without prior majority CLEC
10 acceptance and encourage others to use the new system before the merger OSS
11 procedures are performed.²⁸⁹ Joint CLECs expressly rejected a merger condition of not
12 discontinuing existing systems for a period of time as inadequate to meet their needs, and
13 none of them settled on those terms. The Integra Settlement Agreement does not contain
14 the more limited language ("not discontinue") to avoid the very argument that
15 CenturyLink is nonetheless now making.

16 A key purpose of the settlement agreement language is to ensure that, not only will the
17 Merged Company not discontinue CEMR and/or MEDIACC during the requisite time
18 period, but also the Merged Company will honor its repeated assurances to CLECs and
19 regulators, such as the following statements:

²⁸⁸ See, *e.g.*, Suppl. Surreb. of Timothy Gates, QSI Consulting, on behalf of Joint CLECs, MN Dkt. No. P-421, et al./PA-10-456, pp. 25-28 (Oct. 18, 2010) ["QSI Gates MN Suppl. Surreb."].

²⁸⁹ CenturyLink's MN Comments, MN Dkt. No. P-421, et al./PA-10-456 (June 30, 2011), pp. 2-3.

1 The Joint Applicants “did not discuss plans to integrate OSS because the
2 immediate plan is to maintain both companies’ separate OSS and continue
3 operations as usual.”²⁹⁰ They said that “existing OSS arrangements will not be
4 disrupted.”²⁹¹

5 “CenturyLink is not under the gun to make a quick OSS decision as CenturyLink
6 will own both systems post-transaction closing, in stark contrast on other past
7 mergers where providers were under time pressures to convert to a new
8 system.”²⁹²

9 “CenturyLink will have *no immediate need (or be under any time pressure)* to
10 make any alterations to OSS in Qwest areas.”²⁹³

11
12 The Commission should reject the Merged Company’s attempts to re-characterize Qwest
13 Corporation’s use of legacy Qwest OSS during the 30-month period as use for CLECs or
14 for certain wholesale customers,²⁹⁴ as opposed to use for itself, its own purposes, and its
15 customers. There is no exception in paragraph 12 to “use” of legacy Qwest OSS for any
16 purpose or customer. Before the merger closing date, Qwest “used” its existing repair
17 OSS for all purposes for which repair OSS were used for itself and any customer. Qwest
18 “used” CEMR and MEDIACC for itself, for exchanging information with wholesale and
19 retail customers, for storing trouble reports and data, etc.

²⁹⁰ Reply Comments of Joint Applicants, FCC WC Dkt. No. 10-110 (July 27, 2010), p. 20 [JC000624].

²⁹¹ Reply Comments of Joint Applicants, FCC WC Dkt. No. 10-110 (July 27, 2010), p. 20 [JC000624] (citing Declaration of William Cheek of CenturyLink on pages 20-21 [JC000624-JC000625]).

²⁹² MN Hrg. Tr., P-421, et al./PA-10-456 (Oct. 6, 2010), Vol. 2B, p. 9, line 21 – p. 10, line 10 (Mr. Hunsucker, CenturyLink) [JC000661-JC000662].

²⁹³ Joint Applicants’ Statement of Position, CO Dkt. No. 10A-350T (Nov. 24, 2010), pp. 39-40 [JC000740-JC000741]; Joint Petitioners’ Post-Hearing Brief, MN Dkt. No. P-421, et al./PA-10-456, (Nov. 24, 2010), p. 26 (emphasis added for both).

²⁹⁴ See, e.g., WA Answer, p. 13, ¶76 (“MTG will not replace MEDIACC, at least for *CLEC use*, until 2013...”) (emphasis added); see *id.* p. 2, ¶2 (“Qwest Corporation will make MTG available as an optional alternative to MEDIACC for all customers that wish to use it.”). By stating that “MTG will not replace MEDIACC, at least for CLEC use, until 2013, the Merged Company recognizes that MTG will otherwise replace MEDIACC earlier.

1 The above-quoted statements illustrate that “use” in “use and offer to wholesale
2 customers” means that, for at least the 30-month time period, Qwest will continue to use
3 legacy Qwest OSS as Qwest was using those OSS before the closing date – *without*
4 *alteration and without disruption of any existing legacy Qwest OSS arrangements* (for
5 its own purposes and those of its customers). Before the merger closing date, there *was*
6 *no alternative* Qwest Corporation repair OSS for any purpose or customer, and the Joint
7 Applicants assured regulators that the Merged Company would not create a new OSS.²⁹⁵
8 The agreement’s language cannot reasonably be read to mean, as the Merged Company
9 attempts to re-define it, that Qwest will use its legacy Qwest OSS for some customers and
10 repair purposes while creating and then using new OSS for other customers and repair
11 purposes. Upon implementation of MTG, however, the Merged Company plans to
12 integrate and replace MEDIACC with MTG for its own use, including Qwest’s *use* of
13 MTG in performing tasks that were previously performed *using* MEDIACC. For
14 example, the Merged Company admitted that: “Qwest/CenturyLink receives trouble
15 reports from MEDIACC and publishes events relating to those trouble reports back to the
16 end users of MEDIACC” today, whereas after implementation of MTG,

²⁹⁵ Rebuttal Testimony of John Jones, CenturyLink WA Dkt. No. UT-100820 (Nov. 1, 2010), p. 18, lines 18-21. *See also* Rebuttal Testimony of John Jones, CenturyLink, MN Dkt. No. P-421, et al./PA-10-456 (Sept. 13, 2010), p. 20, lines 2-3; Rebuttal Testimony of Robert Brigham, Qwest, MN Dkt. No. P-421, et al./PA-10-456 (Sept. 13, 2010), p. 5, footnote 8). On November 1, 2011, in Cross Answer Testimony filed in Washington Docket Number UT-100820, Mr. Gates pointed out that “the Joint Applicants’ have stated that the proposed transactions will not involve any ‘new’ OSS systems (i.e., systems not currently in use by either Qwest or CenturyLink).” Cross Answer Testimony of Mr. Gates on behalf of Joint CLECs, Dkt. No. UT-100820 (Nov. 1, 2010), p. 6, lines 9-13.

²⁹⁵ MN Hrg. Tr., P-421, et al./PA-10-456 (Oct. 6, 2010), Vol. 2B, p. 9, line 21 – p. 10, line 10 (Mr. Hunsucker, CenturyLink) [JC000661-JC000662].

1 “Qwest/CenturyLink will have *the same interactions* with end users of MTG.”²⁹⁶ This
2 illustrates that, after its pre-mature deployment of MTG in December of this year, the
3 Merged Company will be using MTG to perform tasks for which it agreed to continue
4 using legacy Qwest OSS for at least 30 months after the merger closing date. The
5 Merged Company’s efforts to re-define “use” at this late date are contrary to its own
6 representations, as well as the letter, language, and spirit of the agreements.

7 **Q. HAVE QWEST AND CENTURYLINK SAID THAT QWEST USES MEDIACC**
8 **FOR ITSELF OR ITS OWN USE, AND IS THE TIMING OF THESE**
9 **STATEMENTS SIGNIFICANT?**

10 A. Yes. Qwest/CenturyLink has repeatedly said that it currently uses MEDIACC for itself
11 and its purposes and, upon implementation of MTG, plans to integrate and replace
12 MEDIACC with MTG for its own use, as well as Qwest’s use in serving its wholesale
13 and retail customers.²⁹⁷ The timing of these admissions is significant because they
14 occurred primarily before Joint CLECs filed their July 19, 2011 Colorado motion for a
15 preliminary injunction, in which Joint CLECs highlighted the significance of these
16 admissions to the requirement of paragraph 12 that the Merged Company “use” the
17 legacy Qwest OSS for at least 30 months after the closing date.²⁹⁸ For example, note the
18 date of each of these admissions:

²⁹⁶ Qwest/CenturyLink CO Response to Joint CLECs’ First Set of Information Requests (Aug. 1, 2011),
Docket No. 11F-436T, pp. 42-43, Response to Request Nos. 21(a) &21(d) (emphasis added).

²⁹⁷ See Exhibit BJJ-68.

²⁹⁸ E.g., Joint CLEC Motion for Preliminary Injunction or, in the Alternative, Petition for Declaratory Order,

- 1 • June 15, 2011: “Tracy Strombotne – Qwest . . . Tracy said legacy Qwest uses
2 MEDIACC today and will have an opportunity to move to MTG.” (Qwest-prepared
3 June 15, 2011 CMP meeting minutes, Exhibit BJJ-8 at JC000940).
- 4
- 5 • June 15, 2011: “[O]n DECEMBER 12, we will migrate the software and then we will
6 move OVER THE FIRST OF OUR internal customers. She said we would THEN
7 work with interested external customers to point to CEMR TO MTG OR B2B
8 [application-to-application] WITH MTG”) (Final Qwest June 15, 2011 CMP meeting
9 minutes, Exhibit BJJ-8 at JC000942).
- 10
- 11 • June 15, 2011: “For any other internal or external customers that want to test or use
12 the system, they can.” (Final Qwest June 15, 2011 CMP meeting minutes, Exhibit
13 BJJ-8 at JC000942).
- 14
- 15 • June 20, 2011: “Qwest/CenturyLink does intend to implement MTG for its own use”
16 (CO Docket 11F-436T, Answer Subject to Motion to Dismiss, p. 5).
- 17
- 18 • July 1, 2011: “MTG will include legacy Qwest data.” (Qwest CMP Matrix, p. 22,
19 Exhibit BJJ-53 at JC000775).
- 20
- 21 • July 1, 2011: “Qwest continues to plan on first ‘moving’ itself to the MTG system
22 once it has been internally installed and tested.” (Qwest CMP Matrix, p. 54, Exhibit
23 BJJ-53 at JC000807).²⁹⁹
- 24
- 25 • July 18, 2011: Qwest/CenturyLink admitted the following -- “Qwest uses and offers
26 CEMR and MEDIACC in Colorado today. Qwest uses MEDIACC for itself with a
27 significant percentage of Qwest repair tickets being in MEDIACC. In addition,
28 Qwest offers CEMR and MEDIACC to CLECs to exchange repair information
29 between Qwest and CLECs.” CO Docket 11F-436T, Answer to Amended Complaint,
30 p. 6, ¶30.
- 31

32 **Q. HAS THE MERGED COMPANY MADE INCONSISTENT STATEMENTS**
33 **ABOUT QWEST’S USE OF MEDIACC AND CEMR?**

CO Docket No. 11F-436T (July 19, 2011), pp. 3 & 6.

²⁹⁹ The CMP responses that the Merged Company provided in a matrix to CLECs on July 1, 2011 (see Exhibit BJJ-53) were responses to questions that CLECs had been asking for some time. They were formal, written CMP responses upon which the Merged Company knew CLECs may rely. In other words, the Merged Company had ample opportunity to fully consider the information provided in its matrix and to obtain internal attorney review as needed before providing this long-awaited information to CLECs. With that advance planning, Qwest re-iterated the message communicated in the CMP meeting: Qwest will move *itself* to MTG first.

1 A. Yes. In some cases, the Merged Company has denied the very same allegation that it
2 previously admitted. For example, with respect to the last bullet point of my previous
3 answer (quoting from paragraph 30 of the CO Answer), on August 2, 2011, the Merged
4 Company in Washington denied the very same allegation that it had admitted in Colorado
5 on July 18, 2011.³⁰⁰ On July 19, 2011, in between the filing of the Colorado Answer and
6 the filing of the Washington Answer, Joint CLECs filed their Colorado motion
7 underscoring the significance of these admissions.³⁰¹ Since then, the Merged Company
8 has been back-pedaling on its otherwise clear admissions,³⁰² even though some of those
9 admissions were made in CMP by the Qwest representatives who routinely handle
10 OSS/system issues. The Merged Company cannot, however, change the facts by later
11 denying or attempting to re-characterize them when the facts prove disadvantageous.

12 In any event, as I discuss above, the earlier admissions reflect one example of the ways in
13 which Qwest uses MEDIACC today and needs to continue using it for at least 30 months
14 after the closing date. Even if the Merged Company's revisionist view of its earlier
15 admissions were accepted, that does not mean that the Merged Company may stop using
16 MEDIACC in the manner which it was used before the merger closing date. Before the
17 closing date, MEDIACC was used for all legacy Qwest Corporation repair OSS purposes,
18 and there was no "alternative" new system. That status quo is to be maintained until after

³⁰⁰ See WA Answer, ¶36.

³⁰¹ E.g., Joint CLEC Motion for Preliminary Injunction or, in the Alternative, Petition for Declaratory Order, CO Docket No. 11F-436T (July 19, 2011), pp. 3 & 6.

³⁰² The Merged Company has moved to amend its Complaint in Colorado regarding facts it admitted that are similar to those in paragraph 107 of the Complaint in Washington (also admitted in Washington), though it did not move to amend its admission in Colorado paragraph 30 (quoted above).

1 the expiration of the 30-month period and completion of the steps set forth in paragraph
2 12 of the settlement agreements.³⁰³ Additionally, the “use and offer” language of the
3 merger settlement agreements is only one of several requirements regarding OSS in
4 paragraph 12. The Merged Company’s current approach also violates terms in paragraph
5 12 regarding integration, as discussed in the next section.

6 **B. “INTEGRATE” IS NOT LIMITED TO COMBINATION WITH**
7 **CENTURYLINK OSS**

8 **Q. YOU ALSO SAID THAT JOINT APPLICANTS GIVE THE TERM**
9 **“INTEGRATE” EITHER NO MEANING OR AN UNREASONABLY NARROW**
10 **MEANING. PLEASE EXPLAIN.**

11 A. The Merged Company tends to focus on replacement or retirement of OSS, but the
12 language of their merger commitments is broader and includes integration. *Regardless of*
13 *whether or when the Merged Company retires a Qwest OSS (e.g., MEDIACC),* there
14 are prerequisites that the Merged Company must “first” follow before it can “integrate”
15 systems.³⁰⁴ Therefore, that the Merged Company continues to take steps to integrate
16 MTG for itself and potentially other customers this year is not cured or brought into
17 compliance by the fact that, after CLEC objection, the Merged Company moved the date
18 for retirement of MEDIACC. The Integra Settlement Agreement provides:

³⁰³ Regarding CenturyLink claims that an unrecoverable system failure may change the status quo, see Sections IV(C), VI(D)-(E) and VI(G). *See also* Exhibits BJJ-64 (PAETEC proposal) & BJJ-71 (Integra excerpts regarding a potential exception for a unique situation).

³⁰⁴ Integra Settlement Agreement, ¶12.

1 After the period noted above, the Merged Company will not replace *or integrate Qwest*
2 *systems* without first establishing a detailed transition plan and complying with the
3 following procedures: . . .

4 a. *Detailed Plan.* The Merged Company will provide notice to the Wireline
5 Competition Bureau of the FCC, the state commission of any affected state and
6 parties to this agreement at least 270 days before replacing or integrating Qwest OSS
7 system(s). Upon request, the Merged Company will describe the system to be
8 replaced *or integrated*, the surviving system, and steps to be taken to ensure data
9 integrity is maintained. . . . CLEC will have the opportunity to comment on the
10 Merged Company's plan in a forum in which it is filed, if the regulatory body allows
11 comments, as well as in the Qwest Change Management Process.³⁰⁵
12

13 CenturyLink's commitments in the FCC's Order include the following on pages 30-31
14 (with emphasis added):

15 A. Operations Support Systems ("OSS") Replacement:

- 16
- 17 1. In Qwest ILEC territory, following the Merger Closing Date,
18 CenturyLink will not replace Qwest OSS *or integrate it with any*
19 *other OSS* for at least 30 months following the Merger Closing
20 Date....
 - 21
 - 22 2. If CenturyLink plans to replace Qwest OSS *or integrate it with*
23 *any other OSS*, then at least 180 days before replacement or
24 integration of any of the Qwest OSS, CenturyLink will notify the
25 FCC, affected states, and affected wholesale customers....
26

27 CenturyLink will prepare a detailed OSS transition plan describing
28 the OSS to be replaced *or integrated*, the surviving OSS, and why
29 the change is being made....
30

³⁰⁵ Exhibit BJJ-3, Integra Settlement Agreement, ¶12 & ¶12(a) (emphasis added) at JC000010; see Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 2 (first paragraph of ¶12, "replace or integrate") at JC000550; see also Exhibit BJJ-5, CO Staff Agreement, ¶17 (referencing conditions and commitments in the Integra agreement) at JC000566.

1 Despite this language,³⁰⁶ including CenturyLink’s own reference in its FCC commitments
2 to integrating Qwest OSS “with *any other OSS*,” CenturyLink argues today that
3 “integrate” means narrowly only “the combination of Legacy CenturyLink and Qwest
4 systems in the Legacy Qwest territories.”³⁰⁷

5 For this position, Qwest relied on excerpts from testimony of Timothy Gates of QSI on
6 behalf of Joint CLECs and legal briefing which discusses integrating CenturyLink and
7 Qwest systems.³⁰⁸ The quoted portion from page 51 of the Joint CLECs’ Minnesota
8 Initial Brief contains one reference to “integration” in the first sentence, which states:
9 “Joint Petitioners have not provided sufficient detail regarding their plans with respect to
10 the integration of the Qwest and CenturyLink systems.” This sentence, however, exposes
11 the flaw in Joint Applicants’ argument. Specifically because the Joint Petitioners
12 provided so little detail regarding their OSS plans, CLECs had to rely on the scant
13 information available to them – which indicated that CenturyLink had no intent to create
14 any new systems.³⁰⁹ John Jones of CenturyLink testified in Minnesota as well as
15 Colorado and Washington that there would be no need to create new OSS post-merger.³¹⁰

³⁰⁶ Similarly, despite this language and their broad pre-merger assurances, CenturyLink argues today that the “focus of the merger proceedings was to examine the impacts of integrating legacy Qwest and legacy CenturyLink systems, not to determine the status of existing legacy Qwest systems.” See WA Supplemental Response to Joint CLEC Data Request 17, October 10, 2011 (Respondent: Legal) (discussed in Section IV(C)).

³⁰⁷ MN CenturyLink Reply Comments, MN Dkt. No. P-421, et al./PA-10-456 (July 22, 2011), p. 9.

³⁰⁸ MN CenturyLink Reply Comments, MN Dkt. No. P-421, et al./PA-10-456 (July 22, 2011), pp. 9-10, citing MN Direct Testimony of Timothy Gates (Aug. 19, 2010), pp. 37-38 & 41; MN Joint CLEC Initial Brief (Nov. 24, 2010), p. 51.

³⁰⁹ See for example CO Hrg. Tr., Dkt. No. 10A-350T (Nov. 10, 2010), Vol. 3, p. 96, lines 18-22 (Mr. Hunsucker, CenturyLink).

³¹⁰ WA Rebuttal Testimony of Mr. Jones, CenturyLink, Dkt. No. UT-100820 (Nov. 10, 2010), p. 19, lines

1 Mr. Gates discusses this fact in the same Minnesota Direct Testimony relied upon by
2 Joint Applicants for their unreasonably narrow definition of integration. That testimony
3 of Mr. Gates quotes Joint Petitioners' FCC Reply Comments indicating that integration
4 "will largely involve the use of existing systems rather than creating new ones."³¹¹ As
5 pointed out in the same Initial Brief cited by CenturyLink, as the acquiring carrier,
6 CenturyLink is likely to import its policies and practices into the Qwest region.³¹² If
7 there is no new system with which to integrate legacy OSS, then the alternative would be
8 to integrate the acquired and acquiring companies' OSS.³¹³ So, why were CLECs
9 discussing integration in the context of the combination of Qwest and CenturyLink
10 systems? ***Because Joint Applicants told them that is the context in which integration***
11 ***would occur.*** Mr. Gates explained this in later testimony in Washington when he
12 testified as follows:

13 I agree that the Joint Applicants' post-merger OSS integration plans are
14 largely unknown.... ***Because the Joint Applicants' have stated that the***
15 ***proposed transactions will not involve any 'new' OSS systems*** (i.e.,
16 systems not currently in use by either Qwest or CenturyLink), it is logical
17 to conclude that Joint Applicants plan to ultimately replace Qwest's . . .
18 OSS interface with CenturyLink's OSS....³¹⁴
19

10-11; *see also* CO Rebuttal Testimony of Mr. Jones, CenturyLink, Dkt. No. 10A-350T (Oct. 15, 2010), p. 17, lines 15-19; *see also* MN Rebuttal Testimony of Mr. Jones, CenturyLink, MN Dkt. No. P-421, et al./PA-10-456 (Sept. 13, 2010), p. 20, lines 2-3.

³¹¹ Joint Petitioners' Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 9, quoted in MN Direct Testimony of Timothy Gates (Aug. 19, 2010), p. 123.

³¹² MN Joint CLEC Initial Brief, MN Dkt. No. P-421, et al./PA-10-456 (Nov. 24, 2010), p. 23.

³¹³ See MN Joint CLEC Reply Brief, MN Dkt. No. P-421, et al./PA-10-456 (Dec. 8, 2010), p. 16 (evidence "suggests a likelihood that CenturyLink will implement its own OSS"); p. 22 ("the record indicates that CenturyLink will likely move to its own OSS").

³¹⁴ WA Cross Answering Testimony of Timothy Gates, QSI for Joint CLECs, WUTC Dkt. No. UT-100820, p. 6, lines 5-13 (emphasis added).

1 CLECs did not know then what, unfortunately, they know now – despite all pre-merger
2 evidence to the contrary, the Merged Company is forging ahead post-merger with
3 creating new OSS. Fortunately, the language in the settlement agreements is broad
4 enough to cover this scenario, as occasionally the Joint Applicants intimated that they
5 were not entirely ruling out creation of new OSS at some point.³¹⁵ The Integra language
6 clearly refers in paragraph 12 to “integrate Qwest systems” and *not* ‘integrate Qwest
7 systems with CenturyLink systems.’ CenturyLink’s own above-quoted FCC
8 commitments make clear that CenturyLink understood that integration is not limited to
9 combinations of Qwest and CenturyLink systems and more broadly covers integration of
10 Qwest OSS with any other OSS.

11 **Q. WHAT IS THE SIGNIFICANCE OF REJECTING THE MERGED COMPANY’S**
12 **FLAWED ATTEMPT TO RE-DEFINE INTEGRATION SO NARROWLY?**

13 A. By re-defining “integrate” narrowly to mean combinations of Qwest and CenturyLink
14 systems, the Merged Company seeks to carve out MTG integration on the grounds that
15 MTG is a combination of a legacy Qwest OSS with a new Qwest OSS and not a
16 combination of a legacy Qwest OSS with a CenturyLink OSS. In the Washington
17 Answer, for example, Qwest and CenturyLink state: “*Importantly*, this activity is not an
18 integration of Qwest *and CenturyLink* systems.”³¹⁶ This is not, however, a meaningful

³¹⁵ See, e.g., MN Hrg. Tr. Vol. 2B (Oct. 6, 2010), p. 34, lines 7-10 (Mr. Hunsucker, CenturyLink) (“Q . . . I take it what you’re saying is that you don’t know whether you might replace a Qwest system with a brand new system? A We don’t know what system we’re going to use in any situation at this point.”).

³¹⁶ WA Answer, p. 2, ¶2 (emphasis added).

1 or important distinction. As my previous response shows, their attempted carve out is
2 contrary to the broader language of the settlement agreements and CenturyLink's
3 commitments to the FCC. Nonetheless, in discovery, Qwest and CenturyLink responded
4 to the following question as follows:

5 **Request No. 15:** Did you, before entering into the Integra Settlement
6 Agreement, conduct any analysis, examination, or investigation for the
7 purpose of determining whether you could continue to use or offer legacy
8 Qwest OSS for a period of at least 24 months?
9

10 Response: Qwest/CenturyLink states that Qwest regularly reviews its
11 systems to assure continued compliance with relevant standards,
12 agreements, and laws. Apart from normal processes, *there was not a*
13 *detailed analysis, examination or investigation of the technical*
14 *parameters, life span or operations of the Legacy Qwest OSS specifically*
15 *related to the merger.* Qwest and CenturyLink determined that the merger
16 would not require the immediate integration of Legacy Qwest and Legacy
17 CenturyLink systems for purposes of Legacy Qwest's CLEC-facing
18 operations, so that Legacy Qwest systems could be used until the
19 companies were merged and a comprehensive examination of the two
20 companies' systems could take place. *These determinations assumed* that
21 post-merger, Qwest would not be prohibited from maintaining or
22 upgrading Legacy Qwest systems, *provided there was no "integration" of*
23 *Legacy CenturyLink systems that replaced Legacy Qwest systems.*³¹⁷
24

25 If that were the case, then when negotiating the Integra Settlement Agreement and
26 making commitments to the FCC regarding a time period when they could affirmatively
27 commit to using and offering legacy Qwest OSS, Joint Applicants would have inserted
28 reference to integration *with CenturyLink systems* into the language. They did not. No
29 reasonable reading of the Integra Settlement Agreement (referring to "integrate Qwest
30 systems" and *not* 'integrate Qwest systems with CenturyLink systems') and

³¹⁷ Qwest and CenturyLink Response to Integra WA Discovery Request No. 22 (emphasis added).

1 CenturyLink's own above-quoted FCC commitments regarding integration of Qwest OSS
2 with "any other OSS" supports this position or a belated claim that this was Joint
3 Applicants' understanding at the time. If it is true that Qwest and CenturyLink
4 performed no particular analysis as to whether they could deliver on their commitment to
5 CLECs and regulators to use and offer legacy Qwest OSS for at least 24 months (by
6 which they obtained Integra non-participation and Commission approval), even though
7 Qwest has since then claimed concern since 2008 about the viability of the repair OSS,
8 then the Commission should ask some serious questions of them and hold them
9 accountable for making commitments to obtain merger approval with disregard as to
10 whether they could be met.

11 The language in paragraphs 12 and 12(a) of the Integra and Joint CLEC Merger
12 Agreements and CenturyLink's commitments to the FCC applies to integrating Qwest
13 Corporation systems (for external or internal purposes) with: (1) new OSS (e.g., MTG);
14 (2) other Qwest entity OSS (e.g., QControl, Qwest Communications); and (3) other
15 CenturyLink entity OSS (e.g., Embarq OSS). In CMP, Qwest said "MTG will include
16 legacy Qwest data."³¹⁸ That, however, involves an impermissible integration during the
17 30-month time period.³¹⁹ Consistent with the merger agreements and orders, Qwest

³¹⁸ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 22 (JC000775) (emphasis added).

³¹⁹ It is also impermissible to integrate systems without first following the procedures set forth in paragraph 12. In CMP, the Merged Company (Tracy Strombotne) said: "today, CEMR interfaces with MEDIACC and we would like it to interface with MTG. Tracy said it is possible that if *Qwest swaps out the backend, there could be an issue with the front end.*" See Exhibit BJJ-8, 6/8/11 CMP ad-hoc all meeting minutes at JC000945

(emphasis added). To swap out the backend is also part of integration of Qwest systems, which is not permitted by the merger settlement agreements for any customer without *first* following the merger

1 Corporation cannot integrate systems for itself or its “internal or external customers”³²⁰
2 with MTG in legacy Qwest territory,³²¹ for at least 30 months following the merger
3 closing date.

4 **C. MTG IS THE REPLACEMENT SYSTEM AND NOT A LESSER**
5 **UPGRADE**

6 **Q. IN THE ABOVE-QUOTED DISCOVERY RESPONSE, JOINT APPLICANTS**
7 **REFER TO “MAINTAINING AND UPGRADING” LEGACY QWEST OSS.³²² IS**
8 **MTG AN UPDATE OR SYSTEM IMPROVEMENT AND NOT A**
9 **REPLACEMENT?**

10 **A.** No. Qwest and CenturyLink erroneously attempt to portray MTG as a lesser “upgrade”
11 to avoid both the settlement agreement’s use of “integrate”³²³ and “replacement.”³²⁴ I
12 discussed integration in my previous response, and I explained that Qwest has recognized

agreement procedures, such as a majority vote in CMP of all CMP participants in testing.

³²⁰ See Exhibit BJJ-8 at JC000942, June 15, 2011 Monthly CMP meeting (“Jamal Boudhaouia-Qwest . . . For any other internal or external customers that want to test or use the system, they can.”); *see also* comments of Tracy Strombotne of Qwest at JC000942. See my discussion above of the Merged Company’s erroneous attempt to limit the settlement agreement language to non-retail, , Section VI(A).

³²¹ See Exhibit BJJ-36, at JC000294, Merged Company May 2, 2011 email to Integra (indicating the company needs “to implement a replacement system for CEMR and MEDIACC *for operations of Qwest Corporation*”) (emphasis added).

³²² Qwest and CenturyLink Response to Integra WA Discovery Request No. 22, WA Dkt. No. 111254 (Sep. 7, 2011).

³²³ See WA Answer, p. 5, ¶16 (“[T]he offering of MTG is *not an integration* of Qwest and CenturyLink systems, but an *update* of legacy Qwest systems. . .”); WA Response to Motion for Temporary Relief, August 18, 2011, p. 9, ¶19 (“...MTG is not a legacy CenturyLink system that is being integrated with Qwest systems, but rather a Qwest-developed update to legacy Qwest systems.”). Regarding integration, see my previous response, Section VI(B).

³²⁴ See WA Answer, p. 3 (“The MTG application that will be offered at this time is an added interface option for customers to use, *not a change or replacement* to existing systems.”) (emphasis added). *See also* WA Response to Motion for Temporary Relief, August 18, 2011, ¶¶ 4, 19, 25, 28, 29, 32, & 39. Regarding the erroneous claim that this is an “option,” see my response below, Section VI(G).

1 MTG as the replacement system for MEDIACC, and in fact for CEMR, in Section III
2 above relating to definition of terms.

3 Ms. Johnson addresses this Qwest and CenturyLink argument in the discussion in her
4 testimony of Exhibits BJJ-14, BJJ-19, and BJJ-52. She explains that Exhibits BJJ-14 and
5 BJJ-19 are two Qwest Power Point presentations, provided in CMP only one month apart,
6 which describe the same substantive work steps and timing for the MTG project. In the
7 second presentation, however, Qwest re-characterizes how that work is described in the
8 wording of the documentation after CLECs, in between the two presentations, objected to
9 the project as being in violation of the merger commitments. As Ms. Johnson points out,
10 changing the wording used to describe a project does not change the nature of the project
11 itself. Since then, representatives of Qwest in CMP have continued to recognize that
12 MTG is the replacement system.³²⁵

13 Regarding the Merged Company's recent erroneous claim that "fundamentally the
14 development of MTG is no different than other systems updates implemented through
15 CMP over the years,"³²⁶ Ms. Johnson explains how the example in Exhibit BJJ-52 shows
16 that there are differences in the types of OSS changes, and despite recent Merged
17 Company attempts to blur those distinctions,³²⁷ the differences are recognizable. She
18 discusses Qwest Colorado arbitration testimony showing that Qwest knows that a change

³²⁵ See, e.g., Exhibit BJJ-53, July 1 2011 Qwest CMP Matrix, pp. 10 & 14, at JC000763 and JC000767 ("As stated previously, the MTG project is a proactive effort to develop *a replacement system...*") (emphasis added).

³²⁶ WA Response to Motion for Temporary Relief, August 18, 2011, p. 15, ¶34.

³²⁷ See WA Response to Motion for Temporary Relief, August 18, 2011, ¶34-36.

1 in technology or “underlying architecture,”³²⁸ such as moving to XML (whether for
2 ordering or repair) is a significant change and a new implementation.

3 **Q. DOES THE FACT THAT A NEW SYSTEM IS CREATED BEFORE ITS**
4 **PREDECESSOR IS RETIRED MEAN THAT THE NEW SYSTEM BEING**
5 **IMPLEMENTED IS NOT THE REPLACEMENT SYSTEM OR THAT THE NEW**
6 **SYSTEM IS NOT SUBJECT TO SUFFICIENT CLEC ACCEPTANCE *BEFORE***
7 **ITS IMPLEMENTATION?**

8 A. No. First, the new system should not be created and implemented during the 30-month
9 time period, per the terms of the Integra Settlement Agreement³²⁹ and consistent with the
10 Joint Applicants’ pre-merger assurances.³³⁰ Second, whenever that new system is
11 created, it is subject to the procedural requirements of the merger agreements, including
12 sufficient CLEC acceptance, *before* its implementation. When the pre-merger testimony,
13 settlement agreements, and the documentation (provided as exhibits to the testimony of
14 Ms. Johnson) are considered, it is simply not credible for the Merged Company to argue
15 that anyone would have anticipated or understood that the Merged Company would
16 implement paragraph 12 of the Integra Settlement Agreement to allow the Merged

³²⁸ Answer Testimony of Renee Albersheim, CO Dkt. No. 06B-497T (March 26, 2007), p. 70, lines 18-22; *see also* Rebuttal Testimony of Renee Albersheim, CO Dkt. No. 06B-497T (April 10, 2007), p. 35, lines 17-22.

³²⁹ Exhibit BJJ-3, Integra Settlement Agreement, ¶12 at JC000010 (“In legacy Qwest ILEC service territory, after the Closing Date, the Merged Company will use and offer to wholesale customers the legacy Qwest Operational Support Systems (OSS) for at least two years, or until July 1, 2013, whichever is later”); Exhibit BJJ-4, Joint CLEC Merger Agreement, pp. 1-2 at JC000549-JC000550 (modifying time period to 30 months). *See* WA Answer, p. 5, ¶14 (now 30 months).

³³⁰ *See, e.g.*, Rebuttal Testimony of Robert Brigham, Qwest, WA Dkt. No. UT-100820 (Nov. 1, 2010), p. 5, footnote 5; Rebuttal Testimony of John Jones, CenturyLink, WA Dkt. No. UT-100820 (Nov. 1, 2010), p. 18, lines 18-19 (both indicating that, post-merger, there will be no “need to create new OSS”).

1 Company to first implement a replacement system and then later seek CLEC acceptance
2 of that replacement system.

3 The Integra Settlement Agreement provides that the “replacement *or* retirement of a
4 Qwest OSS Interface may not occur without sufficient acceptance of the replacement
5 interface by CLECs to help assure that the replacement interface provides the level of
6 wholesale service quality provided by Qwest prior to the Closing Date.”³³¹ The Merged
7 Company is apparently reading this sentence as though replacement and retirement were
8 synonymous.³³² If that were the case, both would not be needed; they would be
9 redundant. With contracts, however, I understand as I said earlier that a contract should
10 be interpreted, when possible, to give effect to all of its provisions.³³³ The Merged
11 Company is *replacing* MEDIACC with MTG when it implements MTG in December of
12 2011,³³⁴ though it is not *retiring* MEDIACC until a later date. Contrary to the Merged
13 Company’s treatment of the terms as synonymous, system retirement and replacement do
14 not occur at the same time, because the replacement system is tested and in place before
15 the predecessor system is retired (or the CLEC would have no tested system to move to).

³³¹ Exhibit BJJ-3, Integra Settlement Agreement, ¶12(c)(i) at JC000010 (emphasis added).

³³² For an example of Joint Applicants treating these terms as synonymous, see, e.g., WA Answer, p. 8, ¶31 (“In May 2011, Qwest announced it would no longer be *retiring* MEDIACC during 2011, but would postpone the *replacement* of that system until 2013...” (emphasis added).

³³³ *Union Rural Electric Ass'n v. Public Utilities Comm'n*, 661 P.2d 247, 252 (Colo. 1983 (“We must adopt a construction of the agreement that will give effect to all of its provisions.”); *Trosper v. D.B. Wilkerson*, 764 P.2d 375, 376 (Colo. Ct. App. 1988) (integrated contract is to be interpreted in its entirety to harmonize and give effect to all of its provisions so that none will be rendered meaningless) (citing *Union Rural*).

³³⁴ See, e.g., WA Answer, p. 16, ¶107; *id.* at p. 13, ¶76 (“MTG will not *replace* MEDIACC, at least for *CLEC use*, until 2013...” (emphasis added). This indicates that MTG will replace MEDIACC *for Qwest’s use*, even though Qwest committed in paragraph 12 of the Integra Settlement Agreement to use legacy Qwest OSS (which includes MEDIACC) for a period of time after the merger closing date.

1 Increasing the time in between replacement and retirement does not change the fact that
2 Qwest is replacing MEDIACC without first obtaining sufficient acceptance of the
3 replacement interface by CLECs. The Merged Company is also integrating MTG with
4 “Qwest systems”³³⁵ as soon as any Qwest customer, including a Qwest internal customer,
5 uses MTG instead of MEDIACC or in conjunction with CEMR and/or MEDIACC or
6 other Qwest systems (including back-end systems). Replacing MEDIACC and
7 integrating MEDIACC without first obtaining sufficient CLEC acceptance of the
8 replacement system (MTG) each violate the Integra Settlement Agreement, even if
9 MEDIACC is retired at a later date.

10 **D. SYSTEM INSTABILITY, EVEN IF ESTABLISHED, IS NOT GROUNDS**
11 **TO VIOLATE MERGER TERMS**

12 **Q. WHEN DID JOINT APPLICANTS FIRST BEGIN TO ARGUE THAT THE**
13 **REASON FOR THEIR NOVEMBER 10, 2010 CMP CHANGE (ANNOUNCED TO**
14 **CLECS ON DECEMBER 17, 2010) WAS THAT CEMR AND/OR MEDIACC WAS**
15 **UNSTABLE?**

16 A. I believe this stability argument was first made by Mr. Hunsucker during the Arizona
17 merger hearings, discussed above, on December 20, 2010. Mr. Hunsucker did not
18 explain why there was no mention of instability or potential system failure as the reason
19 for its November 2010 change in Qwest’s communications with CLECs up to that day,

³³⁵ Exhibit BJJ-3, Integra Settlement Agreement, ¶12 at JC000010 (“After the period noted above, the Merged Company will not replace *or* integrate *Qwest systems* without first establishing a detailed transition plan and complying with the following procedures:”) (emphasis added).

1 including the November and December CMP monthly meetings and Qwest's December
2 17, 2010 CMP Announcement.

3 **Q. DID MR. HUNSUCKER ALSO POINT TO THE AGE OF CEMR?**

4 A. Yes. Mr. Hunsucker said: "It was built in the late '90s, early 2000 time period. They
5 can't find parts for it to replace that system and keep it up and running."³³⁶ As discussed
6 in Section IV above, regarding age of a system, Ms. Albersheim of Qwest previously
7 testified that "the fact that some systems have been in use for multiple years does not
8 mean that they are antiquated."³³⁷

9 Mr. Hunsucker did not address the age of Qwest's other OSS, which were also built
10 during roughly the same time period, and therefore he did not address how this stated
11 rationale would distinguish maintenance and repair from other OSS. His response
12 created uncertainty for CLECs as to, among other things, whether the Merged Company
13 will announce similar changes to other OSS without following the settlement agreement
14 procedures, including pre-implementation notice to state commissions and the FCC.

15 Since then, in discovery in Request No. 13, Joint CLECs used terminology previously
16 used by the Joint Applicants to describe repair OSS³³⁸ and asked Qwest and CenturyLink
17 to "identify any legacy Qwest OSS or system used by, supporting, or interfacing with

³³⁶ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 338, lines 19-25 (Mr. Hunsucker, CenturyLink).

³³⁷ Exhibit BJJ-60, MN Surrebuttal Testimony of Renee Albersheim, Qwest, MN Dkt. No. P421/C-07-370; P421/C-07-371 (Oct. 16, 2009), p. 32, lines 14-16.

³³⁸ See WA Answer, p. 2; ¶2 ("outdated and obsolete"; "stable"; "manufacturer-discontinued"; "fourteen years old"; and "likely begin experiencing problems in the near future").

1 Qwest wholesale customers or their OSS or systems (other than MEDIACC. . .) as of the
2 Closing Date that is outdated, obsolete, unstable and/or uses manufacturer-discontinued
3 hardware or unsupported software, or that is fourteen years old or older, or that will likely
4 begin experiencing problems in the near future and, for each” to provide the age of the
5 OSS and when they first learned of the condition. Qwest’s August 1, 2011 response to
6 Request No. 8, in its entirety, states:

7 Response:

8
9 Qwest/CenturyLink objects to all subparts of this request because it is not
10 reasonably calculated to lead to the discovery of admissible or relevant
11 evidence, because the request is unduly burdensome and harassing, and
12 because it is based on a faulty factual premise.

13
14 Respondent: Legal³³⁹

15
16 Additionally, when asked in Joint CLEC Request No. 16 about Qwest and CenturyLink’s
17 statement in the Washington Answer, at page 2, that “developing a backup system and an
18 eventual replacement is important to maintaining quality levels of service for CLECs and
19 their customers,” Qwest and CenturyLink said:

20 A key component of Qwest/CenturyLink’s efforts includes proactively
21 maintaining and upgrading systems to prevent against *potential failures*,
22 and this is *true for all . . . systems, not just the ones at issue in this case*.

23 Respondents: Legal, Cecilia Tank and Renee Albersheim³⁴⁰

³³⁹ Qwest and CenturyLink Response to Integra WA Discovery Request No. 8, WA Dkt. No. 111254 (Sep. 7, 2011).

³⁴⁰ Qwest and CenturyLink Response to Integra WA Discovery Request No. 16, WA Dkt. No. 111254 (Sep. 7, 2011).

1 **Q. DID THESE DISCOVERY RESPONSES CREATE ADDITIONAL**
2 **UNCERTAINTY FOR CLECS?**

3 A. Yes. The scope of the claimed problem is unclear, and Qwest's and CenturyLink's
4 discovery responses cause concern that, despite their recent merger commitments to both
5 use and offer to wholesale customers legacy Qwest OSS for at least 30 months and
6 maintain the requisite level of wholesale service quality, they may not be in a position to
7 do so. Additionally, if Qwest and CenturyLink finally seek Commission approval for an
8 exception to the merger procedures for repair OSS, it is important to know whether repair
9 OSS will be the only exception or whether this is just the first of more to come. Integra
10 has been trying to obtain this information for some time. On February 2, 2009, Integra
11 said to Qwest:

12 Qwest has not provided sufficient information to determine whether its
13 proposed CEMR/MEDIACC changes would be something in which we
14 may be interested. Even assuming that the changes were acceptable,
15 however, we do not know what other OSS changes the company may be
16 planning or may announce before the closing date but implement after the
17 closing date. If CLECs disagree with proposed OSS changes, and the
18 changes would occur (like these) during the 2 year timeframe covered by
19 the settlement agreement, what prevents the company from making those
20 changes, if the company can make these CEMR/MEDIACC
21 changes? Does the company distinguish the CEMR/MEDIACC situation
22 and, if so, how? We are hoping for a cooperative approach, and we need
23 a better understanding of the company's position.³⁴¹
24

³⁴¹ Exhibit BJJ-17 at JC000098, Integra Feb. 9, 2011 email.

1 Although CLECs have a legitimate need to know the scope of the issue, Qwest refused to
2 answer these questions, claiming they were “hypothetical.”³⁴² On April 1, 2011,
3 Integra’s President asked the Merged Company if it distinguishes the repair OSS situation
4 from other OSS, stating:

5 Until now, although Qwest has suggested there are extenuating
6 circumstances with respect to CEMR/MEDIACC, I believe that Qwest has
7 not recognized this as a unique situation. Without distinguishing this
8 situation from others, however, a precedent could be set that would be a
9 real problem for us as well as other CLECs and regulatory authorities. If
10 the Company intends to continue down the path of replacing
11 CEMR/MEDIACC with a new system, the Company needs to sync up
12 those plans with the terms of the merger settlement agreements and
13 orders.³⁴³

14 On May 3, 2011, Integra quoted from the President’s email in a follow up email to the
15 Merged Company,³⁴⁴ but as shown by the above-quoted discovery responses of Qwest
16 and CenturyLink, they still have not responded as to whether there are extenuating
17 circumstances that are unique to CEMR/MEDIACC.

18 **Q. HOW LONG HAS INTEGRA BEEN ASKING QWEST/CENTURYLINK TO**
19 **DEFINE THE SCOPE OF THE PROBLEM, SO THAT INTEGRA WOULD**
20 **KNOW IF CEMR/MEDIACC WERE THE EXCEPTION OR THE RULE, AND**
21 **WHEN DID THE MERGED COMPANY FINALLY TAKE A POSITION?**

³⁴² Exhibit BJJ-17 at JC000099, Qwest Feb. 9, 2011 email.

³⁴³ Exhibit BJJ-34 at JC000284, Integra Apr. 1, 2011 email.

³⁴⁴ Exhibit BJJ-36 at JC000298, Integra May 3, 2011 email.

1 A. Integra has been asking whether the potential instability or risk of failure is limited to
2 CEMR/MEDICACC or may apply to other legacy Qwest systems as well since at least
3 February of 2011. A list of excerpts from Integra communications to Qwest in which
4 Integra has attempted to find out whether the repair OSS are distinguishable is provided
5 in Exhibit BJJ-69 to the direct testimony of Ms. Johnson. As indicated above, Qwest and
6 CenturyLink refused to answer Integra's questions, claiming in email that the question is
7 hypothetical and objecting in discovery. When ordered by the Minnesota Commission to
8 make a compliance filing regarding potential risk of system failure, it served the Merged
9 Company's purposes to finally address whether MEDIACC is an exception.³⁴⁵ In its
10 October 6, 2011 Minnesota Compliance Filing, the Merged Company states that
11 "MEDIACC is an Exception" and "No other system has been classified by this team as
12 having reached 'end of life' status."³⁴⁶ The Merged Company provides no reason for
13 refusing to provide this response earlier. The Merged Company cites to no
14 documentation or verifying information. Moreover, on the same day as the Merged
15 Company made this claim in Minnesota, counsel for CenturyLink in Washington told

³⁴⁵ Merged Company MN Compliance Filing, p. 9 ("Given the above discussion, this Commission might be concerned that there are other applications needing the same attention as MEDIACC."). In Colorado, the Commission granted a Joint CLEC Motion to Compel regarding information about this issue. See notes to Exhibit BJJ-69.

³⁴⁶ Merged Company MN Compliance Filing, p. 9 ("While CenturyLink QC has not performed a thorough analysis of all of the Legacy Qwest systems, a review of systems status maintained by the Life Cycle Management team indicates that MEDIACC is the only system that faces the myriad of support issues reported above. No other system has been classified by this team as having reached 'end of life' status."). This is a relatively narrow response that indicates one team has not reached this conclusion while recognizing that the Merged Company has not performed a thorough analysis. Yet, the Merged Company argues, without verifiable support based on a thorough analysis, that "MEDIACC is an Exception." See *id.* Particularly given the number of inconsistent statements to date, it is difficult to rely on such an unsubstantiated claim.

1 counsel for Joint CLECs that CenturyLink was not yet prepared to respond to discovery
2 relating to “the existence of any other Qwest wholesale OSS that is outdated, obsolete,
3 etc.” because the “information as requested does not presently exist, and the preparation
4 of the response will require significant research and analysis.”³⁴⁷ Given the incomplete,
5 unsupported, and conflicting information provided to date, it is at best unclear whether
6 this information is reliable or subject to change.

7 **Q. HAVE QWEST AND CENTURYLINK MADE INCONSISTENT STATEMENTS,**
8 **AND DO THE INCONSISTENCIES CAUSE UNCERTAINTY?**

9 A. Yes. For example, as to the extent or severity of claimed repair system instability or
10 viability concerns, Qwest and CenturyLink make inconsistent statements such as
11 claiming that the “MEDIACC system is currently stable, but . . . could begin
12 experiencing problems in the near future”³⁴⁸ while also stating that “it is possible though
13 perhaps *unlikely* that MEDIACC would experience an unrecoverable failure.”³⁴⁹
14 Although Qwest and CenturyLink provided these statements of probability to the
15 Commission, in discovery, when asked about a significant and unrepairable failure of
16 MEDIACC (as those terms are used in the Washington Answer at page 5) and whether
17 and when Qwest and CenturyLink first identified that concern or probability, Qwest and

³⁴⁷ Letter from Lisa Anderl to Greg Merz (Oct. 6, 2011), p. 2.

³⁴⁸ WA Answer, p. 2, ¶2 (emphasis added). In the CO Answer, p. 2, Qwest and CenturyLink said, “The MEDIACC system is currently stable, but . . . *will likely* begin experiencing problems in the near future...” (emphasis added)

³⁴⁹ WA Response to Motion for Temporary Relief, August 18, 2011, p. 14, ¶32 (emphasis added).

1 CenturyLink said: “Qwest/CenturyLink states it has not determined a probability of
2 failure and cannot predict whether or not such a failure will occur.”³⁵⁰

3 In the Washington Answer, at page 2, Qwest and CenturyLink allege the MEDIACC
4 system uses “outdated and obsolete” hardware. When asked in discovery about when
5 they first knew of this condition, using their own characterization of the hardware,
6 however, Qwest and CenturyLink state in their August 1, 2011 response to Joint CLEC
7 Request No. 4(c) that, “Whether hardware is ‘outdated’ or ‘obsolete’ is not a binary,
8 bright line determination. Thus, the question is impossible to answer.”³⁵¹ This response
9 must be viewed in light of the vendor information that Qwest provided in CMP which
10 shows, for example, that the operating system used by MEDIACC was at end of support
11 in June of 2003,³⁵² and that more than eleven years ago, in a June 31, 2000 notice
12 regarding the database used by MEDIACC, a vendor said they “strongly recommend that
13 you upgrade to the newer version.”³⁵³ Qwest provided no reason why it did not follow
14 that recommendation at any point in the eleven years since then, particularly in light of its
15 recent assertion that it “is not prudent for any industry participant to ignore changes in
16 standards and technological advances.”³⁵⁴

³⁵⁰ Qwest and CenturyLink Response to Integra WA Discovery Request No. 16(c), WA Dkt. No. 111254 (Sep. 7, 2011).

³⁵¹ Qwest and CenturyLink Response to Integra WA Discovery Request No. 4(c), WA Dkt. No. 111254 (Sep. 7, 2011).

³⁵² Exhibit BJJ-54, at JC000904, July 18, 2011 Integra Matrix Rely.

³⁵³ Exhibit BJJ-54, at JC000907, July 18, 2011 Integra Matrix Rely.

³⁵⁴ WA Response to Motion for Temporary Relief, August 18, 2011, p. 15, ¶35.

1 **Q. HAS QWEST RECENTLY ATTEMPTED TO ADDRESS WHY IT DID NOT ACT**
2 **PRUDENTLY?**

3 A. Yes, although the attempt is not persuasive. In its October 10, 2011 Minnesota
4 Compliance Filing, the Merged Company said:

5 A logical question after reading the above discussion of hardware and software is
6 why hasn't CenturyLink QC upgraded any of the components that are no longer
7 supported? CenturyLink QC has evaluated the options of upgrading each of the
8 various hardware and software components described above. The answer is
9 complicated because of interdependencies between the various hardware and
10 software components. If one component is changed, others are impacted. . . . The
11 conclusion of . . .in-depth analysis is that it would be more efficient, and no more
12 costly, to create a new B2B gateway rather than to attempt to modify MEDIACC.
13 The result of this analysis forms the basis of the design for MTG.

14 Legacy Qwest introduced the original change request to convert MEDIACC to
15 MTG in 2008. Unfortunately, funding for the change was not available and, the
16 change request had to be deferred.³⁵⁵

17 The conclusion is that Qwest chose not to fund the change, chose not to make changes it
18 had determined through in-depth analysis were needed, and chose to act imprudently. It
19 is not the case that the change request "had to be" deferred. Qwest decided not to fund
20 these changes. Qwest chose to defer the change request rather than to make changes it
21 has determined were "more efficient" and "no more costly" than attempting to modify
22 MEDIACC. Despite being on notice for a significant period of time of hardware and
23 software issues, Qwest also unilaterally chose not to attempt to modify MEDIACC. All
24 of these facts were known to Qwest when Qwest, as a Joint Applicant, represented to the

³⁵⁵ Merged Company MN Compliance Filing, pp. 7-8.

1 Commission that Qwest has “well-established, fully operational and tested systems”³⁵⁶
2 and when Qwest entered into the merger settlement agreements.

3 In its Minnesota Compliance Filing, the Merged Company said that “Qwest was able to
4 obtain the needed funding for the project and restart the change request in November,
5 2010.”³⁵⁷ With respect to the timing in November of 2010, the Merged Company does
6 not mention that Qwest waited until *after* the Integra Settlement Agreement was executed
7 and filed before, only two days later, making this change, as discussed in Section IV(C)
8 above.

9 Further it should be noted that when Qwest issued its initial Change Request (“CR”) in
10 2008, it did not mention to CLECs concerns regarding the CEMR and MEDIACC
11 systems and potential risks associated with Qwest’s failure to prudently update its
12 systems.³⁵⁸

13 **Q. IN ADDITION TO CLAIMS OF INSTABILITY, HAS QWEST OR**
14 **CENTURYLINK PROVIDED OTHER REASONS FOR THE REPAIR OSS**
15 **CHANGE?**

³⁵⁶ CO Rebuttal Testimony of Mr. Jones, CenturyLink, Dkt. No. 10A-350T (Oct. 15, 2010), p. 17, lines 15-19.

³⁵⁷ Merged Company MN Compliance Filing, p. 8.

³⁵⁸ See Exhibit BJJ-7 at JC000058 and Exhibit BJJ-9 at JC000060. There is no mention in the 2008 minutes or the 2009 notice of system instability or potential instability or failure.

1 A. Yes. At times, Qwest describes the change as a “design” decision³⁵⁹ relating to industry
2 standards³⁶⁰ and at other times a “funding” decision.³⁶¹ Qwest also portrays it as the
3 result of customer preference or request.³⁶²

4 **Q. IF CEMR AND/OR MEDIACC WERE UNSTABLE, DOES THAT MEAN THE**
5 **MERGED COMPANY HAS A UNILATERAL RIGHT TO PROCEED WITH ITS**
6 **PROJECT WITHOUT NOTICE TO AFFECTED COMMISSIONS AND**
7 **WITHOUT COMPLYING WITH THE MERGER COMMITMENT**
8 **PROCEDURES BEFORE IMPLEMENTATION OF A NEW SYSTEM?**

9 A. No. Even assuming some instability, viability, or other issue remains, Qwest has not
10 provided a valid reason why it has not then notified this Commission and other affected
11 regulators, pre- or post-merger, and obtained modified procedures to address that
12 situation, if in fact it can establish there is a problem. There is no provision in the
13 settlement agreements and commitments for Qwest or CenturyLink (and/or any one or
14 more CLECs or other customers) to modify filed settlement agreement OSS procedures,
15 even by mutual consent, without prior Commission approval to act contrary to approved
16 merger conditions.

³⁵⁹ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 21 (using XML instead of CMIP is a “design decision to upgrade to industry standard”) at JC000774.

³⁶⁰ WA Response to Motion for Temporary Relief, August 18, 2011, p. 15, ¶36. See my discussion in Section VI(I) below.

³⁶¹ On January 19, 2011, Qwest said it “continued development of CTG through early April of 2009 but at that point, Qwest placed the project on HOLD and the CR was placed in a Deferred status *due to funding concerns*. The CR remained in Deferred status for almost two years *until Qwest was able to secure resources and support*.” See Exhibit BJJ-7, CMP minutes, at JC000055 (emphasis added).

³⁶² See, e.g., WA Answer, p. 2; CO Preliminary Injunction Response, Dkt. No. 11F-436T (Aug. 2, 2011), p. 12. See my discussion in Section VI(H) below.

1 Q. DID QWEST ARGUE THAT THE INTEGRA SETTLEMENT AGREEMENT
2 ALLOWED FOR QWEST UNILATERAL ACTION TO REPLACE CEMR
3 AND/OR MEDIACC?

4 A. Yes, Qwest went so far as to argue that the Integra Settlement Agreement *required* Qwest
5 to replace CEMR and MEDIACC. On February 9, 2011, in response to an Integra
6 February 2, 2011 email,³⁶³ Qwest's attorney, in an email copied to CenturyLink's
7 attorney, said:

8 First, you ask whether Qwest's proposed changes comply with the
9 settlement agreement entered into by our two companies. Yes, Qwest's
10 proposed changes not only comply with the settlement agreement, but are
11 required as part of Qwest's maintenance of the Operational Support
12 Systems ("OSS") during the post-merger period in order to meet Qwest's
13 obligations under Sections 251 and 271 as well as performance obligations
14 under the PAPs and ICAs. CEMR and MEDIACC are part of Qwest's
15 OSS and are being replaced by another Qwest Operational Support System
16 – Maintenance Ticketing Gateway (MTG). CEMR and MEDIACC have
17 become obsolete and were first noticed for replacement in December of
18 2008. *If we failed to replace CEMR and MEDIACC the merged*
19 *company may not be able to meet its obligations under the settlement*
20 *agreement, such as its obligation to "meet or exceed the average*
21 *wholesale performance provided by Qwest to CLEC [prior to the Merger*
22 *Closing Date]."*

23
24 Second, you ask whether the company plans to follow each step in the
25 OSS section of the settlement agreement with respect to the retirement of
26 CEMR, MEDIACC and implementation of MTG. Presumably you are
27 referring to section 12.c of the settlement agreement. Qwest believes
28 those procedures are triggered under paragraph 12 only if the merged
29 company determines after the 2-year or July 2013 timeframe to replace the
30 Qwest systems, for example, with a CenturyLink system. The section 12
31 procedures do not apply to a replacement initiated by Qwest well before
32 the merger particularly where the replacement of Qwest's own systems is

³⁶³ See Exhibit BJJ-17 at JC000098.

1 needed for the purpose of maintaining the automated service quality of
2 Qwest's systems that CLECs claim to want. ***While it will not be following***
3 ***the procedures of section 12***, Qwest will, however, follow all applicable
4 processes required by the CMP Document that are associated with an OSS
5 replacement.

6
7 Finally, you ask two hypothetical questions about other changes that
8 Qwest may be planning or may announce before the closing date, but
9 implement after the closing date. You ask what would prevent the
10 company from making the hypothetical changes if the company can retire
11 CEMR and MEDIACC and how we distinguish the hypothetical changes
12 from the changes with CEMR and MEDIACC. I know of no such
13 hypothetical changes to Qwest's systems. We will answer the
14 hypothetical questions if and when a real situation arises that meets the
15 constraints of your hypothetical.³⁶⁴
16

17 **Q. HOW DID INTEGRA RESPOND?**

18 A. In a reply email on the same day to Qwest and CenturyLink attorneys, Integra addressed
19 each of the above points and their inconsistency with the merger commitments. Integra
20 reserved its right to act to enforce the settlement conditions, once effective, as needed.
21 With respect to Qwest's statement that "the merged company may not be able to meet its
22 obligations under the settlement agreement," Integra said:

23 In addition to your claim being unsupported, we are unaware of Joint
24 Applicants having informed the commissions that they already believe
25 they may not be able to meet their merger commitment to CLECs and
26 state commissions. In fact, during the Minnesota merger hearing this
27 week (available by webcast), Joint Applicants argued that the merger
28 conditions adequately satisfy the public interest, which more than suggests
29 that the companies intend to meet all of those conditions.³⁶⁵
30

³⁶⁴ Exhibit BJJ-17 at JC000099 (emphasis added).

³⁶⁵ Exhibit BJJ-17 at JC000100.

1 **Q. DID THE MERGED COMPANY INFORM THIS OR OTHER COMMISSIONS**
2 **IN THE ONGOING MERGER PROCEEDINGS THAT IT MAY NOT BE ABLE**
3 **TO MEET ALL OF ITS OBLIGATIONS UNDER THE INTEGRA**
4 **SETTLEMENT AGREEMENT?**

5 A. No. In fact, as pointed out in Integra's above-quoted email, Joint Applicants continued to
6 argue that the merger conditions adequately satisfy the public interest, without indicating
7 that they may not be able to meet one or more of those conditions. I am not aware of
8 Qwest and/or CenturyLink informing this or other Commissions in the merger dockets of
9 any information to counter or correct the impression left by their testimony that Qwest
10 has "well-established, fully operational and tested systems."³⁶⁶

11 Whereas Integra was precluded by the settlement agreements at this point from
12 commenting on the proposed transaction in the merger proceeding,³⁶⁷ nothing in the
13 settlement agreement prevented Qwest's attorneys and CenturyLink's attorneys from
14 telling this Commission³⁶⁸ and other regulators that Qwest's position was that the "the

³⁶⁶ WA Rebuttal Testimony of Mr. Jones, CenturyLink, Dkt. No. UT-100820 (Nov. 1, 2010), p. 18, lines 15-16.

³⁶⁷ Section F of the Integra Agreement provides that the agreement (including the prohibition on opposing the merger) "is effective upon execution" but that the settlement terms contained in Section B (which include the OSS terms) "shall not become effective unless and until the Transaction closes. If the Transaction does not close, this Agreement and Settlement Terms are null and void." Consistent with this provision, and with Section E regarding enforcement of the agreement, Joint CLECs made their filings relating to this issue after closing of the transaction. They first gave the Merged Company, after the closing, opportunities to correct before making their filings. Given that the Merged Company still continues to insist on a December 2010 new system implementation, however, Joint CLECs had to proceed.

³⁶⁸ Regarding opportunities for Joint Applicants to raise this issue from November 2010 though the Commission's Decision on Rehearing, Reargument, and Reconsideration adopted on March 2, 2011, see my discussion in Section IV(C) above.

1 merged company may not be able to meet its obligations under the settlement
2 agreement,³⁶⁹ particularly if the claims of alleged instability of CEMR/MEDIACC
3 leading to this stated concern were legitimate. Neither Qwest nor CenturyLink informed
4 this Commission by written notice or otherwise, that the Merged Company may not be
5 able to meet its merger obligations.

6 **Q. DID INTEGRA ASK THE MERGED COMPANY, AFTER THE CLOSING**
7 **DATE, WHY IT HAD NOT OR DID NOT RAISE THE ISSUE WITH**
8 **REGULATORS, IF QWEST AND CENTURYLINK WERE CONCERNED**
9 **ABOUT THEIR ABILITY TO MEET THE MERGER CONDITIONS DUE TO**
10 **SYSTEM INSTABILITY OR OTHER ISSUE?**

11 A. Yes. In response to the Merged Company's May 2, 2011 email claiming the potential of
12 a "catastrophic failure with CEMR and MEDIACC,"³⁷⁰ Integra said (with emphasis
13 added):

14 To date, CenturyLink has not provided data that adequately verifies this is
15 a realistic concern. *If CenturyLink nonetheless has that concern, please*
16 *explain why the Merged Company has not already gone to the regulators*
17 *to establish this fact and seek relief regarding the merger commitments*
18 *to address this unique situation.* Doing so would give CLECs and
19 regulators a forum to respond and address a solution that meets everyone's
20 needs. *CLECs did not accept the risk of a catastrophic failure when they*
21 *signed a merger agreement that promises them not less than the service*
22 *quality provided by Qwest previously.* We do not accept it now. The
23 Merged Company has made *both* OSS commitments and commitments to
24 maintain service quality levels, and if either is in jeopardy in the Merged
25 Company's view, then it has an obligation to tell the regulators that, as

³⁶⁹ Exhibit BJJ-17 at JC000099.

³⁷⁰ Exhibit BJJ-36 at JC000294.

1 previously indicated. Moreover, if the Merged Company does believe that
2 there may be a catastrophic failure, then that is all the more reason to
3 propose a waiver of the moratorium time period combined with
4 completion of all required merger steps earlier, so that the old systems can
5 be replaced with a new system with no less functionality and quality of
6 service without undue delay, while all carriers are fully protected in the
7 transition as anticipated by those merger procedures.³⁷¹
8

9 The Merged Company has not filed detailed plans and notices with the regulators, even
10 though it claimed concern about a problem of potential “catastrophic” proportions, a
11 problem that could threaten its ability to meet its merger commitments; the merger
12 commitments require advance notice to regulators; and its customer asked it to make
13 these filings if the Merged Company really had such concerns.

14 In addition, by the time Qwest and CenturyLink entered into the Joint CLEC Merger
15 Agreement on March 3, 2011, both CenturyLink and Qwest were on notice via CMP,
16 emails, and other communications of the position of CLECs that proceeding with
17 Qwest’s repair OSS plans after the transaction closing date but before the end of the 30-
18 month OSS time period would violate the merger settlement agreements. Nonetheless,
19 Qwest and CenturyLink did not request, and did not receive, any exception to the merger
20 conditions allowing the Merged Company to proceed with a replacement system
21 implementation before the end of that period and without prior sufficient acceptance by
22 CLECs. Both Qwest and CenturyLink, by executing the Joint CLEC Merger Agreement
23 on March 3, 2011, reaffirmed the unaltered provisions of the Integra Settlement
24 Agreement and committed to the terms of the Joint CLEC Merger Agreement.

³⁷¹ Exhibit BJJ-36 (May 3, 2011) at JC000297.

1 **Q. IN LIGHT OF THESE REQUESTS, HAS QWEST OR CENTURYLINK**
2 **PROVIDED ANY INFORMATION SHOWING THAT, EITHER PRE- OR POST-**
3 **MERGER, THEY INITIATED INFORMING THIS OR OTHER COMMISSIONS**
4 **THAT THE MERGED COMPANY MAY NOT BE ABLE TO MEET ALL OF ITS**
5 **OBLIGATIONS UNDER THE INTEGRA SETTLEMENT AGREEMENT OR**
6 **THAT THE SYSTEMS IT COMMITTED TO USE FOR 30 MONTHS MAY**
7 **FAIL?**

8 A. No. Nonetheless, in their Washington Answer, Qwest and CenturyLink provide an
9 unqualified denial of the allegations in paragraph 64 of Joint CLECs Complaint, in which
10 the Joint CLECs allege that, “Although given the opportunity to bring any concerns about
11 alleged system instability or the company’s ability to meet all of its merger commitments
12 to regulators while the merger proceedings were pending, Joint Applicants did not initiate
13 bringing such concerns to this Commission or other Commissions in Qwest territory
14 during these proceedings or since then.” In discovery requests in this matter, in Request
15 No. 19, Joint CLECs asked Joint Applicants to “indicate whether, after the merger
16 announcement date but before the Closing Date, Qwest or CenturyLink communicated to
17 the Commission or the FCC any concern, belief, or position that the Merged Company
18 may not be able to meet its commitments or obligations under the settlement agreements
19 or ‘voluntary’ commitments (including commitments with respect to both wholesale
20 service quality and OSS); any concern, belief, or position that CEMR and/or MEDIACC
21 may be outdated, obsolete and/or unstable now or in the near future; or any concern,

1 belief, or position that any Qwest OSS or system may not remain stable for 24 or 30
2 months after the Closing Date.”

3 Qwest’s response to Joint CLEC Request No. 19, in its entirety, states:

4 Response: No, but such communications were not necessary or required.

5 Respondent: Legal, Cecilia Tank and Renee Albersheim

6
7 **E. SYSTEM INSTABILITY, IF ESTABLISHED, APPLIES TO CEMR AS**
8 **WELL AS MEDIACC AND, IF THEY ARE UNSTABLE, THIS MEANS**
9 **MERGED COMPANY CANNOT COMPLY WITH 30-MONTH TIME**
10 **PERIOD EVEN THOUGH IT SOUGHT NO EXCEPTION**

11 **Q. IF REPAIR SYSTEM INSTABILITY IS A PROBLEM, IS THE PROBLEM**
12 **LIMITED TO MEDIACC?**

13 A. No. Although the Merged Company has made inconsistent claims about MEDIACC (as
14 discussed in my next response), the Merged Company has made it clear that a failure of
15 MEDIACC will adversely affect CLECs and their end user customers. On September 15,
16 2011, Renee Albersheim on behalf of the Merged Company, under the heading “The
17 Harm That Could Result if MEDIACC Fails,” testified: “If MEDIACC fails and MTG is
18 not available, all CLECs will have to submit repair requests to Qwest/CenturyLink by
19 telephone. *This is true of both MEDIACC users and CEMR users, as CEMR relies on*
20 *MEDIACC to perform repair functions.*”³⁷² In response to the question “Would this

³⁷² Exhibit BJJ-70, Albersheim Answer Testimony, Colorado Docket No. 11F-436T, Sep. 15, 2011, p. 23, line 16-18. (emphasis added); *see also* Merged Company MN Compliance Filing, p. 5 (“It should be noted that CEMR is impacted by MEDIACC, in that some of the repair functions performed by CEMR require access to MEDIACC.”)

1 ultimately impact end-user customers?” Ms. Albersheim responds: “Yes. This would
2 impact the CLECs’ end-user customers, and it would impact Qwest/CenturyLink end-
3 user customers.”³⁷³

4 **Q. YOU INDICATED THAT THE MERGED COMPANY HAS MADE**
5 **INCONSISTENT STATEMENTS ABOUT CEMR. PLEASE DESCRIBE.**

6 A. At times, recently, the Merged Company has attempted to distinguish CEMR from
7 MEDIACC by arguing that, whereas MEDIACC is unstable or less stable, the Merged
8 Company made certain “upgrades” to CEMR which have stabilized CEMR at least to
9 some degree. The three primary problems with this argument are: (1) CEMR does not
10 interface directly with Qwest backend systems; CEMR interfaces with MEDIACC, so
11 instability of MEDIACC, if any, is also instability of CEMR; (2) per Qwest, CEMR runs
12 on unsupported software (in addition to the CMIP software used via MEDIACC); and (3)
13 the “updates” presented to CLECs in May of 2011 as having been made “recently” to
14 stabilize CEMR were, Qwest later admitted, made in the third quarter of 2010 – before
15 Qwest and CenturyLink said that CEMR is unstable and its instability is the reason for
16 Qwest’s 17, December 2010 CMP Announcement. In their recent opposition to a Joint
17 CLEC motion, Qwest and CenturyLink argue that their varying claims about system
18 stability and instability are not inconsistent.³⁷⁴ Not only are their claims inconsistent, but

³⁷³ Exhibit BJJ-70, Albersheim Answer Testimony, Colorado Docket No. 11F-436T, Sep. 15, 2011, p. 23, line 19 – p. 24, line 2. *See also* Merged Company MN Compliance Filing, p. 11.

³⁷⁴ WA Response to Motion for Temporary Relief, August 18, 2011, p. 16, ¶37.

1 also the timing of when the Qwest and CenturyLink claims were made raises questions
2 about the veracity of those claims.

3 First, Qwest confirmed in CMP that CEMR interfaces with MEDIACC:

4 For trouble ticketing, CEMR goes through MEDIACC first and then
5 MEDIACC interfaces with Qwest's back-end systems. . . . For trouble
6 ticketing, CEMR has always gone through MEDIACC.³⁷⁵

7 Therefore, instability of MEDIACC, if any, is also instability of CEMR. Qwest
8 confirmed these facts in the same CMP document on July 1, 2011 in which Qwest listed
9 hardware upgrades made to CEMR³⁷⁶ and said:

10 The software used by both systems is CMIP Toolkit: Vertel 2.1.1, which is **not**
11 supported by the vendor Both CEMR and MEDIACC are Qwest developed
12 applications . . . using the CMIP Toolkit specified above.³⁷⁷

13 When asked why Qwest had said that MEDICACC cannot run on newer hardware, Qwest
14 added in the same July 1st CMP document:

15 Running unsupported software on new hardware does not eliminate the
16 risk.³⁷⁸

17 In the July 1 CMP document, therefore, Qwest recognized that, as CEMR goes through
18 MEDIACC to get to Qwest's back-end systems, CEMR uses CMIP Toolkit. Per Qwest,
19 CMIP Toolkit is unsupported software, and even when hardware upgrades are made,
20 hardware upgrades do not eliminate the risk.
21

³⁷⁵ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 56 (JC000809).

³⁷⁶ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 56 (JC000809).

³⁷⁷ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, pp. 1-2 (JC000754-JC000755).

³⁷⁸ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, pp. 20-21 (JC000773-JC000774).

1 On July 18, 2011 in CMP responses³⁷⁹ and on July 21, 2011 in discovery requests,³⁸⁰
2 Integra and Joint CLECs asked Qwest about the apparent inconsistency between Qwest
3 claims that CEMR is stable because hardware upgrades were made and Qwest statements
4 that CEMR runs on unsupported software so hardware upgrades do not eliminate the risk.
5 In its CMP reply, for example, Integra said:

6 Per Qwest's 7/1/11 statement, running new hardware does not eliminate
7 the risk of using unsupported software. Per Qwest's 5/20/11 information,
8 CEMR uses unsupported software. Therefore, applying Qwest's current
9 logic, the risk has not been eliminated for CEMR.³⁸¹
10

11 After CLECs pointed out this problem with Qwest's inconsistent arguments, on August 1,
12 2011, Qwest sent an email to CMP participants stating "information on the Qwest
13 3/10/11 CMP Matrix was incorrect. MEDIACC uses CMIP software. CEMR does not.
14 A correction . . . has been provided."³⁸² Revised portions of the matrix were included in
15 the email. Similarly, on the same day, Qwest and CenturyLink said in discovery: "The
16 information on the Qwest CMP Matrix was incorrect, CEMR does not use CMIP."³⁸³

³⁷⁹ Exhibit BJJ-54, July 18, 2011 Integra Matrix Reply.

³⁸⁰ Qwest and CenturyLink Response to Integra WA Discovery Request No. 8, WA Dkt. No. 111254 (Sep. 7, 2011), asking questions regarding the statement, in their Answer, at page 3, when Qwest and CenturyLink allege, "[A]s a result of the continued efforts of Qwest/CenturyLink's technical team, the CEMR online interface was upgraded to a stable hardware and software platform" (emphasis added).

³⁸¹ Exhibit BJJ-54, July 18, 2011 Integra Matrix Reply, Part C, pp. 5-6 at JC000821-JC000822.

³⁸² Exhibit BJJ-56, Qwest Aug. 1, 2011 email, at JC000915.

³⁸³ Qwest and CenturyLink Response to Integra WA Discovery Request No. 8(c), WA Dkt. No. 111254 (Sep. 7, 2011).

1 The information, however, was correct, as shown above. Because CEMR via MEDIACC
2 uses CMIP, if CMIP were to experience a “catastrophic failure,”³⁸⁴ CEMR users would
3 be impacted as well as MEDIACC users. In an email to Qwest and CMP participants,
4 Integra pointed out that Qwest’s August 1, 2011 “correction” was inconsistent with the
5 information in Qwest’s July 1, 2011 matrix stating that CEMR goes through
6 MEDIACC.³⁸⁵

7 Second, even setting aside the CMIP Toolkit, CEMR nonetheless uses unsupported
8 software according to Qwest’s CMP vendor information. Per Qwest, the “database used
9 by CEMR is Oracle 10.2.0.4, which is **not** supported by the vendor.”³⁸⁶ When asked in
10 CMP to identify all the upgrades to CEMR and when they were made, Qwest identified a
11 number of server changes, but no software changes (to either CMIP or Oracle
12 10.2.0.4).³⁸⁷ Qwest said: “Running unsupported software on new hardware does not
13 eliminate the risk.”³⁸⁸ Therefore, the upgrades that Qwest made to CEMR did not
14 eliminate that risk for CEMR because, per Qwest, CEMR uses unsupported Oracle
15 software.

16 **Q. WHEN WERE THE UPDATES TO CEMR MADE, AND WHAT IS THE**
17 **SIGNIFICANCE OF THE TIMING?**

³⁸⁴ WA Answer, p. 5, ¶16.

³⁸⁵ Exhibit BJJ-57, Integra Aug. 2, 2011 email, at JC000919.

³⁸⁶ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 2 (JC000755).

³⁸⁷ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 56 (JC000809).

³⁸⁸ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, pp. 20-21 (JC000773-JC000774).

1 A. The updates presented to CLECs in May of 2011 as having been made recently to
2 stabilize CEMR were, Qwest later admitted, made in the third quarter of 2010. Qwest
3 provided this fact after merger approval, on July 1, 2011.³⁸⁹ Previously, Qwest portrayed
4 the order of events in the following manner: (1) CEMR was unstable, (2) because CEMR
5 was unstable,³⁹⁰ Qwest took action in CMP on November 10, 2010 and December 17,
6 2010 to retire and replace CEMR with MTG; (3) CLECs provided feedback in January
7 through April 2011 in CMP regarding retirement and replacement of CEMR and
8 MEDIACC, including comments as to Qwest's CMP activity as being inconsistent with
9 the merger agreements; (4) "based upon feedback from the CLEC community,"³⁹¹ Qwest
10 said, on May 27, 2011, that it "recently" made changes to upgrade and stabilize CEMR;
11 (5) and therefore Qwest would not retire CEMR or MEDIACC at this time but would
12 continue to offer them to CLECs for a period of time.

13 The order of events, however, is significantly different from earlier suggestions when
14 viewed in light of Qwest's response on July 1, 2011 that they were made "as part of the
15 CEMR upgrade during 2010 third quarter."³⁹² The third quarter ends in September.
16 Therefore, the CEMR upgrade occurred, per Qwest, by the end of September 2010,³⁹³
17 which is *before* Qwest announced its MTG project on December 17, 2010, *before*

³⁸⁹ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 50 (JC000803).

³⁹⁰ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 338, lines 19-25 (Mr. Hunsucker, CenturyLink) ("*due to the instability of that system*, they are looking to replace that system with a new system that will provide stability to the CLECs") (emphasis added).

³⁹¹ Exhibit BJJ-44, at JC000329, CenturyLink May 27, 2011 email.

³⁹² Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 50 (JC000803).

³⁹³ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 50 (JC000803).

1 CenturyLink testified that the reason for Qwest's announcement was the instability of
2 CEMR, and *before* CLECs provided their feedback in CMP. The intervening event
3 between CenturyLink's December 20, 2010 Arizona testimony regarding CEMR
4 instability and CenturyLink's May 27, 2011 claim of CEMR stability was not the CEMR
5 upgrade. The intervening event was that it became clear the Joint Applicants needed to
6 try to justify their conduct in light of their merger obligations.

7 Qwest and CenturyLink have asserted that, although Joint CLECs have pointed to various
8 apparently inconsistent statements from them about stability and instability, all of those
9 Joint Applicants' statements are true.³⁹⁴ It simply cannot be true, however, that a CEMR
10 upgrade made before the end of September 2010 was made in response to CLEC
11 feedback received in January through April of 2011. Clearly, however, CenturyLink
12 intended to convey to CLECs that Qwest had made the upgrades recently and in response
13 to those CLEC concerns when CenturyLink made the following statement to CLECs in
14 CMP on May 27, 2010:

15 *Based upon feedback* from the CLEC community *as this project has been*
16 *discussed*, the *CenturyLink* technical team has been working behind the
17 scenes to test various options that would further minimize the impact of
18 this project on customers. *As a result*, the CEMR online interface was
19 *recently* upgraded to a *stable* hardware and software platform that
20 integrates well with current MEDIACC application, and will allow it to
21 interface seamlessly to an MTG B2B application.³⁹⁵

³⁹⁴ WA Response to Motion for Temporary Relief, August 18, 2011, p. 16, ¶37.

³⁹⁵ Exhibit BJJ-44, at JC000329, CenturyLink May 27, 2011 email.

1 Similarly, it cannot be true that CEMR instability was the reason for the December 17,
2 2010 CMP Announcement if upgrade work performed before the end of September 2010
3 made CEMR stable. If meaningful later or additional work was done to upgrade CEMR,
4 surely Qwest would have identified the work and the timing of the work in its CMP
5 response on July 1, 2011, when specifically asked to “fully describe the changes”
6 referenced in the above-quoted email and indicate when each change was made (“e.g.,
7 when is recently?”).³⁹⁶

8 If upgrade work performed before the end of September 2010 did not make CEMR
9 stable, contrary to CenturyLink’s May email but as indicated by Mr. Hunsucker’s
10 December 2010 testimony,³⁹⁷ then Qwest and CenturyLink cannot justify not having
11 made a request pre-merger or initiated proceedings post-merger to obtain an exception to
12 their merger commitments due to this circumstance and instead arguing to regulators that
13 it may meet its commitments by offering CEMR to CLECs for at least 30 months.

14 **Q. IF QWEST AND CENTURYLINK ESTABLISH THAT SYSTEM INSTABILITY**
15 **OR VIABILITY IS A PROBLEM, DOES IT FOLLOW THAT THE MERGED**
16 **COMPANY MAY MEET ITS MERGER COMMITMENTS, INCLUDING**
17 **SERVICE QUALITY COMMITMENTS, BY OFFERING THOSE SYSTEMS TO**
18 **CLECS FOR 30 MONTHS?**

³⁹⁶ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 50 (JC000803).

³⁹⁷ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 338, lines 19-25 (Mr. Hunsucker, CenturyLink).

1 A. No. If repair OSS instability or viability concerns are so serious, and in fact potentially
2 catastrophic³⁹⁸ and disastrous,³⁹⁹ such that Qwest shows it must implement MTG earlier
3 than 30 months for any purpose or use, then it cannot also be true that system instability
4 or viability concerns are suddenly of no or little concern, so the Merged Company may
5 meet its merger commitments by offering those same repair systems to CLECs for at least
6 30 months.

7 To the extent that a pattern can be discerned among the Qwest and CenturyLink
8 inconsistencies, the pattern appears to be that instability or risk of failure justifies Qwest
9 moving to MTG for itself and its retail customers but not for its CLEC customers, who
10 are left to risk the consequences of an unrecoverable failure and declining best efforts
11 support⁴⁰⁰ despite merger obligations to provide wholesale service quality with legacy
12 Qwest OSS. Particularly when the audience is business and operational personnel, the
13 Merged Company causes uncertainty and doubt by focusing on instability, risk, and the
14 possibility of catastrophic failure in an attempt to intimidate CLECs into agreeing with
15 their position and to try to shift any risk to CLECs. That is not what CLECs bargained
16 for in the very recent merger settlement agreements promising certainty and continued
17 use of the legacy Qwest OSS for 30 months. When the audience is regulators or the legal
18 issue of compliance with the merger agreements is being discussed, the Merged

³⁹⁸ WA Answer, ¶16; Exhibit BJJ- 36, CenturyLink May 2, 2011 email, at JC000294.

³⁹⁹ WA Response to Motion for Temporary Relief, August 18, 2011, p. 6, ¶15.

⁴⁰⁰ Merged Company MN Compliance Filing, p. 10.

1 Company makes assurances that CEMR⁴⁰¹ and MEDIACC⁴⁰² are stable and argues that
2 the Merged Company may meet its merger commitments by leaving those stable systems
3 in place and offering them to CLECs. The Merged Company is seeking to have it both
4 ways by protecting itself by moving to MTG while attempting to shift the burden to
5 CLECs if they do not move, though that result is contrary to the merger agreement terms.

6 **F. SERVICE QUALITY OBLIGATIONS MUST BE MET, IN ADDITION TO**
7 **OSS OBLIGATIONS**

8 **Q. HAVE QWEST AND CENTURYLINK ASSERTED THAT THE MERGED**
9 **COMPANY MAY CHOOSE WHICH MERGER OBLIGATIONS TO PERFORM**
10 **AND THAT IT MAY SHIFT THE CONSEQUENCES OF THEIR BREACH TO**
11 **CLECS?**

12 A. Yes. On February 9, 2011, Qwest's attorney said:

13 . . . Qwest's proposed changes not only comply with the settlement
14 agreement, but *are required* as part of Qwest's maintenance of the
15 Operational Support Systems ("OSS") during the post-merger period *in*
16 *order to meet Qwest's* obligations under Sections 251 and 271 as well as
17 *performance obligations* under the PAPs and ICAs. CEMR and
18 MEDIACC are part of Qwest's OSS and are being replaced by another
19 Qwest Operational Support System – Maintenance Ticketing Gateway
20 (MTG). CEMR and MEDIACC have become obsolete and were first
21 noticed for replacement in December of 2008. If we failed to replace
22 CEMR and MEDIACC the merged company may not be able to meet its
23 obligations under the settlement agreement, such as its obligation to 'meet
24 or exceed the average wholesale performance provided by Qwest to CLEC
25 [prior to the Merger Closing Date].'⁴⁰³
26

⁴⁰¹ WA Answer, p. 3, ¶2.

⁴⁰² WA Answer, p. 2, ¶2.

⁴⁰³ Exhibit BJJ-17, Qwest Feb. 9, 2011 email, at JC00099 (emphasis added).

1 On March 21, 2011, Qwest's attorney again argued that the Integra Settlement
2 Agreement allows Qwest to replace, repair, and manage its OSS as needed to provide
3 satisfactory service quality. She said that the procedures of paragraph 12(c) were
4 intended to apply only after that two-year period.⁴⁰⁴ Qwest cited several provisions of
5 that agreement requiring the Merged Company to provide satisfactory wholesale
6 performance levels in support of this position. Qwest ignored the language of paragraph
7 12 requiring Qwest to use legacy Qwest OSS during that two-year period and also
8 ignored that the reason the procedures applied after the two-year period is that no such
9 changes were supposed to occur before the end of that period.

10 On May 2, 2011, CenturyLink's attorney went so far as to say that the Qwest would not
11 only stop using legacy Qwest contrary to paragraph 12, but also that CLECs would be
12 expected to bear the consequences, including relieving Qwest from PAP payments for
13 poor service quality, if CLECs attempted to exercise their right under the merger
14 agreements with respect to legacy Qwest OSS. Specifically, CenturyLink said:

15 . . . As has already been discussed, CenturyLink does need to implement a
16 replacement system for CEMR and MEDIACC for operations of Qwest
17 Corporation and intends to move forward with installation and
18 implementation of the MTG system at the same time it continues to use
19 CEMR and MEDIACC. Any implementation and potential replacement
20 of CEMR and MEDIACC by MTG will be done in a collaborative manner
21 with all of CenturyLink's affected customers and will follow the processes
22 of the CMP. In addition, CenturyLink will agree to follow either the terms
23 of the settlement agreements or, as Integra has suggested in previous
24 communications surrounding this issue, other processes agreed to by

⁴⁰⁴ Exhibit BJJ-31, Qwest March 21, 2011 email, at JC000238-JC000240.

1 affected parties.⁴⁰⁵ While CenturyLink is willing to withdraw the CR at
2 this time, CenturyLink continues to have concerns that a catastrophic
3 failure could result with MEDIACC and CEMR and **it is CenturyLink's**
4 **expectation that CLECs remaining on MEDIACC and CEMR would**
5 **agree to PAP relief if another system is available** and that there will be
6 continued discussions regarding a process to be used to withdraw
7 MEDIACC and CEMR once MTG is implemented. In order to avoid the
8 potential need for resubmitting the CR, CenturyLink seeks rapid resolution
9 with affected customers on either an agreed upon transition process to the
10 replacement system or the **PAP relief** discussed above.

11
12 CenturyLink continues to evaluate MTG as a potential replacement
13 solution for systems currently used by all CenturyLink
14 affiliates. CenturyLink will continue to keep all of its customers apprised
15 of this evaluation.⁴⁰⁶

16
17 In other words, CenturyLink told CLECs to exercise their merger rights at their peril –
18 capitulate to CenturyLink's process being implemented in violation of the approved
19 settlement agreement and without regulator approval and get off CEMR and MEDIACC
20 early, or bear the risks of consequences that should have been prevented by the merger
21 wholesale service quality commitments.

22 **Q. HAD QWEST AND CENTURYLINK MADE ANY COMMITMENTS THAT**
23 **CLECS WOULD NOT BE FORCED INTO SUCH A POSITION?**

24 **A. Yes. Only a mere eight weeks earlier, CenturyLink and Qwest reaffirmed *all* of the**
25 **following commitments:**

⁴⁰⁵ (footnote *not* in original) The affected parties, from Integra's perspective, included regulators as well as other CLECs, given that the settlement agreement terms were approved such that deviations from those filed and approved terms would require approval. See Integra's Feb. 20, 2011 CMP comments, Row 4(c), repeated in first column, pp. 36-37 of July 1, 2011 Qwest CMP Matrix (Exhibit BJJ-53) (JC000789-JC000790); Exhibit BJJ-34, Integra email, April 1, 2011, at JC000284; Exhibit BJJ-36, Integra email, May 3, 2011, at JC000296.

⁴⁰⁶ Exhibit BJJ-36, CenturyLink May 2, 2011 email, at JC000294 (emphasis added).

1 The Parties will not seek to reduce or modify the Qwest Performance
2 Indicator Definition (PID) or Qwest Performance Assurance Plan (QPAP).
3 . . .⁴⁰⁷

4 [T]he Merged Company shall meet or exceed the average wholesale
5 performance provided by Qwest to CLEC [before the merger closing
6 date]⁴⁰⁸

7 [T]he Merged Company will use and offer to wholesale customers the
8 legacy Qwest Operational Support Systems [for at least 30 months]⁴⁰⁹

9 Neither the Joint CLEC Merger Agreement nor the Integra Settlement Agreement
10 contains any exception for repair OSS or any provision allowing CenturyLink selection
11 of compliance with some of these terms but not the others. Integra responded
12 accordingly in its February 9,⁴¹⁰ March 21,⁴¹¹ and May 3, 2011⁴¹² email replies to Qwest
13 and CenturyLink.

14 The fact that CenturyLink would seek relief from performance assurance plans so soon
15 after agreeing to abide by the PID/PAP plans for at least a defined time period caused
16 additional concern and uncertainty for Integra. This is particularly true when combined
17 with the Merged Company's intent to proceed with implementing and using a new
18 system. Providing PAP relief would reduce any remaining incentive to fully maintain
19 and meet the company's obligations to provide at least the level of support and service as

⁴⁰⁷ Exhibit BJJ-4, Joint CLEC Merger Agreement, pp. 2-3 [adopting provisions of Integra Settlement Agreement, including this provision in Integra Settlement Agreement, ¶2(a)].

⁴⁰⁸ Exhibit BJJ-4, Joint CLEC Merger Agreement, pp. 2-3 [adopting provisions of Integra Settlement Agreement, including this provision in Integra Settlement Agreement, ¶2(a)(i)].

⁴⁰⁹ Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 2 at JC000550.

⁴¹⁰ Exhibit BJJ-17, Integra Feb. 9, 2011 email, at JC000100-JC000101.

⁴¹¹ Exhibit BJJ-31, Integra March 21, 2011 email, at JC000241-JC000244.

⁴¹² Exhibit BJJ-36, Integra May 3, 2011 email, at JC000295-JC000299.

1 before for both CEMR and MEDIACC during the 30-month time period and until
2 sufficient acceptance by CLECs of a replacement. Although CenturyLink said that it will
3 run both the new and old systems simultaneously, this does not appear to be a
4 commitment to run them both fully to the required support and service levels for the
5 requisite time period. If it were, CenturyLink would not expect PAP relief.

6 CenturyLink's stated expectation that it would receive relief from PAP payments
7 suggested that those CLECs which exercise their right under the merger settlement
8 agreement to continue using CEMR and MEDIACC are doing so at their own risk and, if
9 harm results, there is no relief, not even PAP relief, for them. Clearly, that is not the
10 bargain CLECs made – and the commissions approved – in the merger dockets. Integra
11 told CenturyLink that “CLECs did not accept the risk of a catastrophic failure when they
12 signed a merger agreement that promises them not less than the service quality provided
13 by Qwest previously. We do not accept it now.”⁴¹³

14 **Q. HAVE QWEST AND CENTURYLINK CONTINUED TO SUGGEST THAT**
15 **THEY NEED NOT MEET ALL OF THEIR MERGER COMMITMENTS?**

16 **A.** Yes. This Commission's Final Order No. 14 states: “The combined company shall
17 comply with all existing wholesale performance requirements, remedies and penalties in
18 the legacy Qwest ILEC service territory that are required under existing regulation,
19 tariffs, ICAs, or other agreements. The combined company is also required to continue to
20 provide CLECs, as well as, when requested, Commission Staff and the FCC with reports

⁴¹³ Exhibit BJJ-36, Integra May 3, 2011 email, at JC000297.

1 for any wholesale service performance metrics that legacy Qwest previously made
2 available, prior to the merger.”⁴¹⁴ Those obligations include, for example, the obligations
3 in the Integra Settlement Agreement and the Washington Staff Agreement. The
4 Commission found that “[W]e find the proposed transaction, subject to the commitments
5 in the settlement agreements, as modified in this Order, and as further conditioned below,
6 to be consistent with the public interest and will result in no net harm”.⁴¹⁵ Nonetheless,
7 in paragraph 90 of their Washington Answer, Qwest and CenturyLink denied the
8 allegation of Joint CLECs that the “Commission’s approval of the merger was expressly
9 conditioned upon compliance by Qwest and CenturyLink with the terms and conditions
10 of the settlement agreements, including the Integra Settlement Agreement.”⁴¹⁶ In
11 addition to their denial, they state in paragraph 90 (with emphasis added): “Nothing in
12 the orders indicates that compliance with *all the terms* of all settlements is a pre-
13 condition to merger approval.” In isolation, this sentence, followed by a reference to
14 compliance with settlement agreements being a separate issue, may mean a variety of
15 things. When viewed in light of Qwest’s and CenturyLink’s February 9, March 21, and
16 May 2 above-quoted emails, it appears to be further argument that the Merged Company
17 may select which of the settlement terms to abide by, rather than abiding by all of its
18 commitments. Nothing in the Integra Settlement Agreement, the Washington Staff
19 Agreement, the Joint CLC Merger Agreement, or Order No. 14 supports that position.

⁴¹⁴ WA Final Order 14, pp. 14-15, Dkt No. UT-100820 (March 14, 2011).

⁴¹⁵ WA Final Order 14, p. 53, ¶87 Dkt. No. UT-100820 (March 14, 2011).

⁴¹⁶ Joint CLEC Complaint, Dkt. No. UT-111254 (July 11, 2011), p. 33, ¶90, referencing WA Final Order No. 14, UT-100820, 292.

1 **G. OPTIONAL, ALTERNATIVE, OR VOLUNTARY USE IS NOT GROUNDS**
2 **TO VIOLATE MERGER TERMS, AND THE MERGED COMPANY**
3 **ADMITS MTG IS NOT ONLY A FAIL SAFE OR BACKUP**

4 **Q. DOES CHARACTERIZING THE REPLACEMENT SYSTEM AS VOLUNTARY,**
5 **AN ALTERNATIVE, OR AN OPTION ALLOW JOINT APPLICANTS TO**
6 **AVOID THEIR MERGER COMMITMENTS?**

7 A. No. First, characterization of the replacement system as optional is erroneous in light of
8 the Merged Company's claim that the existing repair OSS cannot be relied upon not to
9 fail. An unusable option is not an option. Nonetheless, when alleging merger
10 compliance, the Merged Company continues to represent that it "will keep the
11 MEDIACC system in place until late 2013, withdrawing it *only* after complying with our
12 merger commitments."⁴¹⁷ This statement is erroneous, as the Merged Company has
13 admitted to this Commission that it will not keep MEDIACC in place for the entire 30-
14 month settlement agreement period in the event of a catastrophic failure.⁴¹⁸ According
15 to the Merged Company, MEDIACC "will *likely* begin experiencing problems *in the near*
16 *future*."⁴¹⁹ Given the Merged Company's post-merger claims of risk of problems and
17 potentially catastrophic⁴²⁰ and disastrous⁴²¹ failure of the Qwest repair OSS, the Merged
18 Company is not even currently offering to CLECs "well-established, fully operational

⁴¹⁷ Merged Company MN Compliance Filing, p. 2 (emphasis added).

⁴¹⁸ WA Answer, ¶16.

⁴¹⁹ CO Answer, Dkt. No.11F-436 , p. 2, ¶2, 2nd paragraph (emphasis added). Qwest and CenturyLink recently moved to amend their Colorado Answer in other respects; the motion does not include any change to this allegation.

⁴²⁰ WA Answer, ¶16; Exhibit BJJ- 36, CenturyLink May 2, 2011 email at JC000294.

⁴²¹ CO Preliminary Injunction Response, CO Dkt. No.11F-436 (Aug. 2, 2011), p. 5.

1 and tested”⁴²² legacy Qwest OSS, as they were described by Joint Applicants pre-merger.
2 Although the Merged Company claims that “CLECs will have the option of converting to
3 MTG early, but they are not required to do so,”⁴²³ CLECs *will* be required to do so if
4 there is a system failure.⁴²⁴

5 Second, characterizing the replacement system or its implementation as “initial” or
6 “optional” in the interim or when convenient does not change that the evidence shows
7 that MTG is the replacement system.

8 There is no exception in paragraph 12 for “initial” or “optional” use, integration, or
9 replacement. For example, paragraph 12 does *not* say that the Merged Company will not
10 replace or integrate Qwest systems without first establishing a detailed transition plan and
11 complying with the following procedures, *unless an entity or customer elects another*
12 *course or opts to use a replacement system without first complying with those*
13 *procedures*. A single CLEC or group of CLECs cannot by agreement alter Qwest’s
14 commitments on an optional or alternative basis. Once the replacement system is
15 implemented, obstacles are erected to other CLECs gaining a true say in the development
16 and acceptance of the replacement system and in avoiding costs associated with
17 duplicative work, as I discuss further below.

⁴²² WA Rebuttal Testimony of Mr. Jones, CenturyLink, Dkt. No. UT-100820 (Nov. 1, 2010), p. 18, lines 15-16; *see also* CO Rebuttal Testimony of Mr. Jones, CenturyLink, Dkt. No. 10A-350T (Oct. 15, 2010), p. 17, lines 15-19; AZ Rebuttal Testimony of Jeff Glover, CenturyLink, Dkt. No. T-01051B-10-0194, etc (Oct. 27, 2010), p. 34, lines 19-20; *see* MN Rebuttal Testimony of Mr. Jones, CenturyLink, MN Dkt. No. P-421, et al./PA-10-456 (Sept. 13, 2010), p. 18, line 7 (“fully operational and tested systems”).

⁴²³ Merged Company MN Compliance Filing, p. 2.

⁴²⁴ *See* PAETEC’s and Integra’s proposals regarding the event of system failure at Exhibits BJJ-64 and BJJ-71.

1 The Merged Company can point to no language in the settlement agreements
2 distinguishing its position as to repair OSS from other OSS. If the Merged Company's
3 view were accepted, therefore, the Merged Company could create and implement an
4 entire suite of new systems before the end of the 30-month OSS moratorium to
5 "eventually" replace all legacy Qwest OSS, move itself to the new systems, and leave
6 only CLECs on the legacy Qwest OSS for 30 months. The Merged Company's
7 representations to regulators and CLECs do not support that understanding or result.
8 And, notably, that result could not be reconciled with the requirement of paragraph 12 of
9 the Integra Settlement Agreement that the Merged Company "use" legacy Qwest OSS, as
10 well as offer it to wholesale customers, for at least two years (30 months per the FCC
11 commitment and Joint CLEC Merger Agreement⁴²⁵).

12 The actions that the Merged Company is currently taking to create a new system during
13 the 30-month moratorium on legacy Qwest OSS changes as a replacement for MEDIACC
14 and/or CEMR both without waiting for expiration of that time period and without
15 following the requisite procedures (such as a vote in CMP) violates the settlement
16 agreement and the Commission's order approving the agreement. Those actions are
17 inconsistent with the spirit as well as the letter of the settlement agreements. And, based
18 on the pre-merger approval representations of Joint Applicants, Joint CLECs could not
19 have anticipated when negotiating settlement language that requires Qwest to "use" as
20 well as "offer to wholesale customers" legacy Qwest OSS for a period of time and,

⁴²⁵ WA Answer, p. 5, ¶14.

1 thereafter, not replace a Qwest OSS interface without first receiving sufficient CLEC
2 acceptance, that the Merged Company would act as it has since the Merger Closing Date.

3 **Q. DOES THE MERGED COMPANY'S CHARACTERIZATION OF THE**
4 **REPLACEMENT SYSTEM AS AN ALTERNATIVE, OR A "BACKUP,"⁴²⁶ MEAN**
5 **THAT THE REPLACEMENT SYSTEM WILL BE USED ONLY IN THE EVENT**
6 **OF A "CATASTROPHIC"⁴²⁷ FAILURE OR OTHER EMERGENCY?**

7 **A.** No. In discovery, Joint CLECs referred Qwest and CenturyLink to their reference in the
8 Washington Answer to a backup and asked in Request No. 15(b):

9 Please indicate whether you have reviewed or considered using MTG exclusively
10 as a backup or fail safe, with no carrier or customer (including Qwest and Qwest
11 internal customers) moving to or otherwise using or integrating with MTG, unless
12 Qwest and its wholesale customers move to MTG in the event that a significant
13 and unrepairable failure of MEDIACC or CEMR occurs? If not, please describe
14 in detail why not.

15 Qwest and CenturyLink provided the following response:

16 No, Legacy Qwest has not reviewed or considered using MTG exclusively as a
17 backup or fail safe. Given customer interest/desire and the optional nature, there is
18 no reason to prevent customers from using it when developed. In addition, it is
19 prudent to solicit optional input from CLEC and other customers during the
20 development process, even as MEDIACC continues to be used and offered, and
21 MTG is developed for optional use.

22 Respondents: Cecilia Tank and Renee Albersheim⁴²⁸

23 ⁴²⁶ WA Answer, ¶2, p. 2.

24 ⁴²⁷ WA Answer, p. 5, ¶16.

⁴²⁸ Qwest and CenturyLink Response to Integra WA Discovery Request No. 15(b), WA Dkt. No. 111254 (Sep. 7, 2011).

1 Their discovery response confirms that the Merged Company is *not* developing MTG
2 exclusively as a backup or fail safe. The Merged Company also has not shown that it has
3 offered any alternative or available avenues for addressing a potential emergency other
4 than its own MTG project in violation of the merger agreement terms.

5 **Q. WHY IS THE APPROACH CURRENTLY BEING IMPLEMENTED BY THE**
6 **MERGED COMPANY OVER CLEC OBJECTION NOT A BACKUP OR FAIL**
7 **SAFE, CONTRARY TO THE MERGED COMPANY’S USE OF THE TERM**
8 **“BACKUP”⁴²⁹?**

9 A. Yes. On August 16, 2011 PAETEC sent an email to the Merged Company in CMP
10 asking the Merged Company to address a proposal raised by PAETEC.⁴³⁰ In its email,
11 PAETEC discusses why the Merged Company’s proposal to develop MTG is not a true
12 backup or fail safe:

13 As an e-bonded user, PAETEC needs time to build to a new interface for our back
14 office systems. PAETEC estimates that, even if it dropped everything and devoted
15 all available resources to that task (something it is not in a position to do, has not
16 budgeted to do, and should not have to do under the merger agreements), it would
17 take a minimum of six months to do the necessary work. During that six-month or
18 longer time period, there would be *no* equivalent backup for PAETEC’s use and
19 PAETEC would be forced into a manual process. In other words, if MEDIACC
20 went down tomorrow, PAETEC would not have an e-bonded interface available
21 to it for at least six months and then only after expending resources (to do the
22 manual work for processing trouble tickets and to develop an interface) it should
23 not have to expend at this time. The merger agreement between PAETEC and
24 CenturyLink says that Qwest will provide functionally equivalent support, data,
25 functionality, performance, electronic flow through, and electronic bonding.

⁴²⁹ WA Answer, ¶2, p. 2.

⁴³⁰ This proposal and the referenced email were filed by PAETEC in Minnesota Docket, P-421, et al./PA-10-456, on Sept. 21, 2011.

1 PAETEC recently met with CenturyLink to try to make sure it's IT experts
2 understand the automation that our back office systems are able to perform due to
3 the e-bonding of our system with various Qwest OSS and related databases,
4 including MEDIACC. Certain PAETEC trouble tickets can be addressed from
5 initiation through resolution without any manual intervention, up to and including
6 an automatically dialed call to the customer. In other words, they automatically
7 flow through from initiation through resolution of the trouble. Without a CMIP
8 interface to MTG, we would lose this automated functionality, which is not
9 available with, for example, CEMR or calls to service centers. PAETEC's and
10 Qwest's systems talk to each other today, but they would not be able to talk to
11 each other in this scenario for at least six months. This would be an additional
12 breach of the merger agreement terms. Other e-bonded or application-to-
13 application repair interface users are in basically the same position as PAETEC,
14 because they also could not use MTG without first building an interface. So,
15 MTG is not a backup for them in the meantime either.⁴³¹

16 The PAETEC proposal allows for the Merged Company to develop MTG on the
17 new/different platform to address the stated problem of instability or risk of failure, using
18 XML as the Merged Company suggests, while also building MTG so that PAETEC could
19 continue to use a CMIP interface. In this manner, MTG would be implemented early, but
20 only as a true backup for all carriers in the event of a MEDIACC failure. Eventually,
21 MTG with an XML interface could then be implemented in an orderly manner, consistent
22 with the timeframes and procedures of the merger agreements.⁴³²

23 **Q. HAS THE MERGED COMPANY RESPONDED TO PAETEC'S PROPOSAL**
24 **FROM AUGUST 16, 2011?**

⁴³¹ PAETEC proposal filed in MN Docket, P-421, et al./PA-10-456, Attachment 1, Sep. 21, 2011.

⁴³² PAETEC proposal filed in MN Docket, P-421, et al./PA-10-456, Attachment 1, Sep. 21, 2011.

1 A. No. A month after PAETEC’s email, Ms. Albersheim stated that the Merged Company is
2 “seriously evaluating”⁴³³ the proposal, but has not yet made a “business decision
3 regarding the implementation of PAETEC’s request.”⁴³⁴

4 **H. CUSTOMER REQUESTS ARE NOT GROUNDS TO VIOLATE MERGER**
5 **TERMS**

6 **Q. DO CUSTOMER REQUESTS⁴³⁵ ALLOW JOINT APPLICANTS TO AVOID**
7 **THEIR MERGER COMMITMENTS?**

8 A. No. There is no exception in the settlement agreements for deviating from their terms
9 because a customer (including an internal Qwest customer, a CLEC, an IXC, a wireless
10 company,⁴³⁶ or a customer of legacy CenturyLink or Embarq) desires or prefers a
11 different result. In fact, before the merger closed, CenturyLink warned of the pitfalls of
12 making OSS decisions based on customer preferences instead of laws and *contracts* (e.g.,
13 settlement contracts). Mr. Hunsucker of CenturyLink testified:

14 Whether post-Transaction CenturyLink ultimately chooses an existing
15 OSS or selects new systems should be left to be resolved through refined
16 analysis and the need to respond to marketplace conditions, governed and
17 controlled by existing laws and contracts. For example, the geographic
18 location of the CLEC may have an impact on which system a particular
19 CLEC desires. If a CLEC provides service in only the southeastern part of

⁴³³ Albersheim Answer Testimony, Colorado Docket No. 11F-436T, Sep. 15, 2011, p. 21, line 4.

⁴³⁴ Albersheim Answer Testimony, Colorado Docket No. 11F-436T, Sep. 15, 2011, p. 21, lines 8-9.

⁴³⁵ Qwest and CenturyLink Response to Integra WA Discovery Request No. 36(c), WA Dkt. No. 111254 (Sep. 7, 2011). (“Qwest Corporation has a plan as to how to proceed and is proceeding with MTG as an option because customers have requested an XML B2B interface for repair. . .”); *see also* WA Response to Motion for Temporary Relief, August 18, 2011, p. 14, ¶33.

⁴³⁶ Qwest and CenturyLink Response to Integra WA Discovery Request No. 1(c), WA Dkt. No. 111254 (Sep. 7, 2011). (“Regarding the customers who have requested MTG: These customers were approaching legacy Qwest as IXC and wireless carriers, and therefore would not have made requests via the CMP.”).

1 the country (where Qwest does not operate), it might prefer the
2 CenturyLink OSS system. Likewise a CLEC in the southwest that
3 provides service in only Qwest's territory may want to continue to use the
4 Qwest system.⁴³⁷

5 That other customers allegedly desire or prefer a different result is not a valid reason for
6 the Merged Company to violate its merger commitments.⁴³⁸ By that logic, CenturyLink
7 could implement all new OSS slated to replace all legacy Qwest OSS today, if it could
8 simply show or claim that some wireless customer wanted it. Obviously, that is not what
9 was promised or intended when the parties entered into their settlement agreements and
10 the Commission approved the merger.

11 Compliance with the merger settlement agreement terms does not mean that other
12 customers which desire XML will not be able to move to XML. It means that they may
13 obtain XML, but within the timeframes and in compliance with the procedures
14 established by the merger settlement agreements and the Merged Company's own region-
15 wide commitments to the FCC. Given that the Merged Company claims that it has been
16 receiving customer requests to move to XML since at least 2007,⁴³⁹ the Merged Company
17 was fully aware of those requests when it made its pre-merger assurances (such as that
18 "CenturyLink will have *no immediate need (or be under any time pressure)* to make any

⁴³⁷ WA Rebuttal of Michael R. Hunsucker, WA Dkt. No. UT-100820, p. 49 (Nov. 1, 2010).

⁴³⁸ The Merged Company has said it received requests in 2007 – *before* Qwest unilaterally decided against developing MTG then and delaying indefinitely its MTG plans in April of 2009. (See Exhibit BJJ-62, Aug.11, 2011 MN Transcript, p. 34.) Obviously, other carrier/customer requests were not sufficiently important to the company and did not create a sufficient need to develop MTG then, because it unilaterally decided not to move forward at that time. If more recent requests come in, that would hardly be surprising since the Merged Company has raised the specter of a catastrophic failure of the existing system. As discussed, that the company claims a risk of repair OSS failure does not mean the company's unilateral approach is the only solution to that claimed risk.

⁴³⁹ See Exhibit BJJ-62, Aug.11, 2011 MN Transcript, p. 34.

1 alterations to OSS in Qwest areas⁴⁴⁰) and when it voluntarily committed not to replace
2 Qwest OSS or integrate it with *any other OSS* for at least 30 months following the
3 merger closing date.⁴⁴¹ Consistent with the latter merger commitment, the Merged
4 Company may not integrate Qwest OSS with other OSS, which includes the OSS of other
5 customers.⁴⁴²

6 **I. INDUSTRY STANDARD COMPLIANCE IS NOT GROUNDS TO**
7 **VIOLATE MERGER TERMS**

8 **Q. DOES A STATED DESIRE TO COMPLY WITH INDUSTRY STANDARDS⁴⁴³**
9 **ALLOW JOINT APPLICANTS TO AVOID THEIR MERGER**
10 **COMMITMENTS?**

11 A. No. First, Qwest and CenturyLink have not shown that only XML is industry compliant
12 and that CMIP is not. More than one may be industry compliant, even when the industry
13 moves toward one or the other. As to the timing of when a move may be made,
14 regardless of whether the move is made because of industry standards or other reasons,
15 the timing and terms of OSS changes was negotiated and agreed upon as part of the
16 merger settlement agreements. Second, there is no exception in the settlement
17 agreements for deviating from their terms because Qwest or a customer reportedly desires

⁴⁴⁰ Qwest's and CenturyLink's Reply Brief, Docket No. UT-I00820 (Jan. 21, 2011), p. 12, ¶23-24;; *see also* Joint Petitioners' Post-Hearing Brief, MN Dkt. No. P-421, et al./PA-10-456, (Nov. 24, 2010), p. 26 (emphasis added in both).

⁴⁴¹ FCC Order, p. 30, ¶IV(A)(1) (emphasis added).

⁴⁴² CenturyLink has said that, "[f]or a B2B interface to function, both companies must program their systems to transmit and receive information from each other." Merged Company MN Compliance Filing, p. 2. The Merged Company cannot integrate Qwest OSS with "other OSS" for the purpose of exchanging information with each other until after the 30-month period.

⁴⁴³ WA Response to Motion for Temporary Relief, August 18, 2011, p. 15, ¶36.

1 or prefers a different result based on industry standards. After all, it is not as if Qwest
2 and CenturyLink did not know which standard Qwest's repair OSS were using, or which
3 standard Qwest prefers or asserts is more compliant with industry standards, at the time
4 of execution of the settlement agreements. In fact, they make a point of arguing that
5 Qwest has known of these facts since 2008,⁴⁴⁴ and that the chief information officer of
6 CenturyLink reviewed, amended, and agreed to the Integra Settlement Agreement.⁴⁴⁵ By
7 the time both Qwest and CenturyLink executed the Joint CLEC Merger Agreement,
8 Mr. Hunsucker had already testified about the repair OSS changes in CMP and alleged
9 system instability,⁴⁴⁶ showing these facts were known before execution of the latter
10 agreement. Although Joint Applicants entered into other modifications to the Integra
11 Settlement Agreement at that time, there is no modification in the Joint CLEC Merger
12 Agreement to create an exception for repair OSS, including any exception due to industry
13 standards.

14 **J. USING CMP PROCEDURES WITHOUT THE ADDITIONAL MERGER**
15 **PROCEDURES DOES NOT BRING JOINT APPLICANTS INTO**
16 **COMPLIANCE**

17 **Q. DOES COMPLIANCE WITH CMP PROCEDURES ALONE ALLOW JOINT**
18 **APPLICANTS TO AVOID THEIR MERGER COMMITMENTS?**

⁴⁴⁴ WA Answer, p. 2. See Exhibit BJJ-9 at JC000060, CR Detail, Dec. 17, 2008 ("Currently MEDIACC uses CMIP communication protocol today. Qwest is migrating to an XML interface.").

⁴⁴⁵ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2010), Vol. IV, p. 406, lines 16-22 (Mr. Hunsucker, CenturyLink).

⁴⁴⁶ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 338, lines 19-25 (Mr. Hunsucker, CenturyLink).

1 A. No. The procedures and steps outlined in paragraph 12 and subparts of the Integra
2 Settlement Agreement and the OSS provisions of the Joint CLEC Merger Agreement
3 expressly go beyond ordinary CMP procedures. The Integra Settlement Agreement
4 requires the Merged Company to use CMP procedures (see paragraph 12(b)), but that is
5 only one of several procedures that the Merged Company must follow for the OSS
6 changes described in that agreement (see paragraphs 12, 12(a), 12(c), and 12(d)).⁴⁴⁷ The
7 Joint CLEC Merger Agreement also includes procedures, such as use of a third party
8 facilitator, in addition to use of CMP.⁴⁴⁸

9 Mr. Hunsucker, when testifying in Washington, described the steps that have to occur
10 under the Integra Settlement Agreement before the OSS change.⁴⁴⁹ This testimony, after
11 execution of the Integra Settlement Agreement, illustrates an understanding on
12 CenturyLink's part that the settlement agreement procedures extend beyond and modify
13 the CMP procedures. He testified, for example, that the time period in paragraph 12 of
14 the Integra Settlement Agreement is "a 24-month or a few months *longer*" time period
15 before the company "can retire a system and go to a new system" than the "nine-month
16 process" that otherwise would occur in CMP without the settlement agreement.⁴⁵⁰

17 Mr. Hunsucker concluded, therefore, that condition 12 "goes well beyond the certainty

⁴⁴⁷ Exhibit BJJ-3, Integra Settlement Agreement, paragraph 12 and subparts at JC000010-JC000011.

⁴⁴⁸ Exhibit BJJ-4, Joint CLEC Merger Agreement, pp. 2-3 at JC000549-JC000550.

⁴⁴⁹ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 405, lines 1-3; *id.* p. 405, line 14 – p. 406, line 8 (Mr. Hunsucker, CenturyLink).

⁴⁵⁰ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 406, line 23 – p. 407, line 3 (emphasis added) (Mr. Hunsucker, CenturyLink).

1 and the status quo that CLECs have to date.”⁴⁵¹ In other words, he recognized that the
2 “status quo” with CMP is changed by the terms of the Integra Settlement Agreement.

3 The nine-month (*i.e.*, 270 day) process that “would occur without the settlement
4 agreement” referenced by Mr. Hunsucker is the 270-day process for introduction of a
5 new interface under Section 7.1 of the CMP Document.⁴⁵² If CenturyLink completes the
6 270-day CMP process before the end of the 30-month period, it will provide a *shorter*
7 time period before it goes to a new system, not a longer one as described by
8 Mr. Hunsucker. If Joint CLECs were agreeable to the Merged Company starting that
9 process before the end of the 24-month (now 30-month) period, Joint CLECs would not
10 have needed to include this provision in the settlement agreements, because CLECs are
11 entitled to the nine-month (270-day) process per the CMP Document, without more. As
12 Mr. Hunsucker’s testimony shows, the settlement agreements *extend* the CMP’s 270-day
13 process by the time period in the settlement agreements (30 months), because the 270-day
14 process is not supposed to start until “after the period” noted in paragraph 12.⁴⁵³ CLECs
15 are entitled to a *longer* time period as a result of the settlement agreements (30 months
16 without changes *plus* the at least 270-day CMP period for changes). The Merged

⁴⁵¹ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 407, lines 1-4 (Mr. Hunsucker, CenturyLink).

⁴⁵² The CMP Document (available at <http://www.centurylink.com/wholesale/cmp/>) states in Section 7.1: “Introduction of a New Application-to-Application Interface At least two hundred and seventy (270) calendar days in advance of the planned Release Production date of a new application-to-application interface, CenturyLink will issue a Release Notification, post the Preliminary Interface Implementation Plan on CenturyLink’s Web site, and host a design and development meeting.”

⁴⁵³ In March 18, 2011, FCC order in WC Docket No. 10-110, pages 30-31, paragraph A(2), the unilateral CenturyLink commitment includes a description of the plan to be filed with affected commissions as a “proposed” plan. A plan is not proposed if it has already been implemented (for some or all customers).

1 Company has nonetheless started the 270-day CMP process well in advance of the time
2 period in the settlement agreements, over CLEC objection.

3 **K. CLAIMS THAT MTG IS A LEGACY QWEST OSS, AND QPORTAL IS**
4 **AN EXISTING QWEST CORPORATION OSS, ARE ERRONEOUS**

5 **Q. IS MTG A LEGACY QWEST OSS?**

6 A. No. I addressed this question in Section III of my testimony regarding definition of
7 terms. As-yet-to-be-developed MTG is not an OSS, much less a legacy OSS, of any
8 company.

9 **Q. HAS QWEST NONETHELESS ASSERTED THAT MTG IS A LEGACY QWEST**
10 **OSS?**

11 A. Yes. Qwest has erroneously asserted that MTG is an OSS of legacy Qwest. In a March
12 21, 2011 email sent to Integra and copied to CenturyLink, Qwest's attorney pointed out
13 that the Integra Settlement Agreement uses the phrase "legacy Qwest OSS" and said:
14 "The word 'legacy' modifies 'Qwest' not 'OSS.' MTG is an OSS of 'legacy Qwest.'"⁴⁵⁴
15 Later in the same email, Qwest's attorney said: "As discussed above, the requirement in
16 paragraph 12 is that the merged company provide 'legacy Qwest OSS' for two years or
17 until July 1, 2013, whichever is later. The merged company will follow that requirement
18 by offering MTG, which is an OSS of legacy Qwest."⁴⁵⁵

19 **Q. IN WHAT CONTEXT DID QWEST MAKE ITS MARCH 2011 ARGUMENT?**

⁴⁵⁴ Exhibit BJJ-31 at JC000238, Qwest attorney email (copied to Qwest attorney and CenturyLink attorneys) to Integra (March 21, 2011). On August 2, 2011, Qwest made a similar argument in an Affidavit of Renee Albersheim of Qwest. See my discussion of Ms. Albersheim's Affidavit in Section III above.

⁴⁵⁵ Exhibit BJJ-31 at JC000240.

1 A. In March of 2011, Qwest was heavily advocating in CMP that it would be using an
2 “existing” Qwest platform,⁴⁵⁶ called QControl or QPortal, as a platform for its new
3 system (MTG) and then, in the above-quoted email, Qwest characterized MTG as OSS of
4 legacy Qwest. Because the term “legacy Qwest” is used in paragraph 12 of the Integra
5 Settlement Agreement, and by this time CLECs has objected to Qwest’s MTG project as
6 in violation of the merger agreements, Qwest had an incentive to re-characterize MTG as
7 “existing” or “legacy” OSS to attempt to fit it within those terms. No amount of
8 wordsmithing, however, can make something that “will be developed”⁴⁵⁷ in the future
9 into an existing or legacy system.

10 On February 16, 2011, Qwest said in CMP that it had decided to use a “completely
11 different approach” to developing and implementing new repair OSS so that development
12 “cannot just be picked up where we left off.”⁴⁵⁸ Qwest identified the completely different
13 approach as using QControl as a platform for its new system⁴⁵⁹ (while re-naming it
14 QPortal for local carriers⁴⁶⁰). QControl is a repair system offered by Qwest

⁴⁵⁶ See, e.g., Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 14 (JC000767) (Qwest 3/10/11 entry, Row 2(a)).

⁴⁵⁷ WA Answer, p. 3, ¶2.

⁴⁵⁸ Exhibit BJJ-7 at JC000052.

⁴⁵⁹ During the March 16, 2011 CMP meeting, Integra asked if QPortal was just the platform and if MTG was “a new system” that sits on the QPortal platform. Qwest confirmed, yes, that is correct. Qwest said that QPortal is just the platform to “hang” the new system “off of.” See Exhibit BJJ-7 at JC000050 (3/16/11 entry, as finalized 3/25/11, emphasis omitted).

⁴⁶⁰ Exhibit BJJ-26 at JC000148, Qwest CMP Response, March 10, 2011 (“QPortal is branded as QControl, and that is the name the system is known by for Qwest national customers.”).

1 Communications⁴⁶¹ to retail and other customers, but it is not used by Qwest Corporation
2 for local customer accounts (*e.g.*, CLEC accounts).⁴⁶²

3 With respect to the term “legacy Qwest” OSS, the Integra Settlement Agreement defines
4 “Qwest” as “Qwest Corporation” (*i.e.*, not Qwest Communications).⁴⁶³ In other words,
5 QControl and QPortal also are *not* legacy Qwest OSS. Despite Qwest attempts to
6 characterize MTG as an existing, legacy Qwest OSS, MTG, QControl and QPortal do not
7 meet the definition of legacy Qwest OSS, as that term is used in the Integra Settlement
8 Agreement. Integra pointed out this fact in a May 3, 2011 email to the Merged
9 Company.⁴⁶⁴

10 **Q. DOES THE MERGED COMPANY STILL MAINTAIN THAT IT WILL USE**
11 **QCONTROL OR QPORTAL AS A PLATFORM FOR MTG AND, IF NOT, WHY**
12 **IS THIS SIGNIFICANT?**

13 A. No. The Merged Company has indicated that “The QPortal Platform is no longer a part
14 of the MTG development project.”⁴⁶⁵ Resources and time were expended unnecessarily

⁴⁶¹ The Trademark Electronic Search System identifies the registrant for QControl as Qwest Communications International Inc. [JC000413- JC000414], which is identified as “QCI” on page 1 of the Integra Settlement Agreement. QCI is not part of the definition of “Qwest” on page 2 of the Integra Settlement Agreement, Exhibit BJJ-3, at JC000003.

⁴⁶² See, *e.g.*, <http://www.qwest.com/wholesale/tools/managemyaccount.html> (listing Qwest Control for “National” accounts but CEMR and MEDIACC for “Local” accounts) [JC000411- JC000412].

⁴⁶³ Exhibit BJJ-3, Integra Settlement Agreement, p. 2, §A (Definitions).

⁴⁶⁴ See Exhibit BJJ-36 at JC000296, Integra May 3, 2011 email to the Merged Company.

⁴⁶⁵ Exhibit BJJ-53, Qwest July 1, 2011 CMP Matrix, p. 16 (JC000769). *See also* Exhibit BJJ-8, June 17, 2011 web posting update (“The MTG application will now interface with CEMR vs. QPORTAL for the online GUI functionality so it will include Client Self testing functionality.”); June 8, 2011 CMP meeting minutes (“Susan Lorence - Qwest said that Bonnie’s questions appeared to be associated with QPortal functionality which was originally going to provide the GUI interface of MTG but that CEMR

1 on what the Merged Company claimed was a completely different approach to
2 developing and implementing replacement repair OSS when, in fact, it now appears to
3 have been nothing more than window dressing designed to support an argument that the
4 MTG implementation and development was consistent with the merger conditions
5 because it was using an “existing” system. Also, as Qwest has changed course before, it
6 is unknown if Qwest will change course again and, to the extent it reverts to QControl or
7 QPortal, it is important to explain that neither QControl and QPortal are not legacy OSS
8 of Qwest Corporation. They do not meet the terms of the Integra Settlement Agreement.

9 **L. CHARACTERIZING A DECISION AS NOT FINAL OR NOT**
10 **DEFINITIVE DOES NOT MEAN THE DECISION HAS NOT BEEN**
11 **MADE OR THE CONDUCT IS NOT MERGER-RELATED**

12 **Q. HAS THE MERGED COMPANY SAID THAT MTG WILL BE THE REPAIR**
13 **OSS FOR OTHER CENTURYLINK ENTITIES?**

14 A. Yes. On May 2, 2011, the Merged Company said in an email: “CenturyLink continues
15 to evaluate MTG as a potential *replacement* solution for systems currently used by *all*
16 *CenturyLink affiliates*.”⁴⁶⁶ On May 3, 2011, Integra inquired about this statement and
17 asked, if no decision had been made, whether CLECs would potentially be asked to move
18 to a new repair system for Qwest (MTG) and then move again for the Merged

functionality would not be retired and would interface with the MTG app to app.”) at JC000945-
JC000946.

⁴⁶⁶ Email from Merged Company attorney to Integra (May 2, 2011) (emphasis added) at JC000294. *See also* Albersheim CenturyLink Answer Testimony, CO Docket No. 11F-436T, Sep. 15, 2011, p. 21, lines 14-16 (“Qwest/CenturyLink has recommended to the Executive Leadership Team that MTG be implemented in the Legacy CenturyLink territories. The Executive Leadership Team has yet to make a final decision on MTG.”).

1 Company.⁴⁶⁷ The next day, on May 4, 2011, representatives of the Merged Company
2 (legacy Qwest and legacy CenturyLink) met with Integra in Minnesota, and I participated
3 in that meeting on behalf of Integra. The Merged Company's representatives told Integra
4 that the Merged Company has decided to move to a single OSS application for all
5 Merged Company entities for repair – MTG. They said they were conveying this
6 information in response to Integra's question as to whether CLECs would potentially be
7 asked to move to a new repair system for Qwest (MTG) and then move again for the
8 Merged Company. This CenturyLink decision was communicated just about a month
9 after the Closing Date, despite Mr. Hunsucker's pre-merger testimony that the Merged
10 Company's "evaluation of the best options for all stakeholders" is "expected to take 12
11 months at the very least."⁴⁶⁸

12 Since then, the Merged Company has attempted to back away from, or qualify, the
13 decision communicated in the May 4, 2011 meeting. In CMP, Qwest said "MTG will
14 include legacy Qwest data. We have made no *definitive* decision to include legacy
15 CenturyLink data,"⁴⁶⁹ and Qwest said that "It is anticipated that MTG will eventually be
16 a system adopted for all CenturyLink CLECs but a *final* decision on this issue has not yet
17 been made."⁴⁷⁰ The Merged Company should not be able to make decisions and then

⁴⁶⁷ Exhibit BJJ-36, at JC000295, May 3, 2011 email from Integra to Merged Company.

⁴⁶⁸ Rebuttal of Michael R. Hunsucker, WA Dkt. UT-100820, p. 48 (Nov. 1, 2010); *see also* Rebuttal of Michael R. Hunsucker, CO Dkt. No. 10A-350T, p. 46 (Oct. 15, 2010); *see also* Rebuttal of Michael R. Hunsucker, MN Dkt. No. P-421, et al./PA-10-456, p. 40, lines 17-18 (Sept. 13, 2010).

⁴⁶⁹ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 22 (JC000775) (emphasis added).

⁴⁷⁰ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 29 (JC000782) (emphasis added); *see also* Qwest and CenturyLink Response to Integra WA Discovery Request No. 35(c), WA Dkt. No. 111254 (Sep. 7, 2011), ("It is anticipated that MTG will eventually be a B2B repair system adopted for all CenturyLink

1 escape the consequences or implications of those decisions by re-characterizing them as
2 not final or definitive.

3 One implication of the decision to use MTG for all CenturyLink entities for repair is that
4 it illustrates that the decisions that CenturyLink is making are merger-related, despite
5 suggestions to the contrary.⁴⁷¹ The Merged Company prefers to move to one OSS for all
6 entities,⁴⁷² and the “merger is intended to bring about improved efficiencies and practices
7 in all parts of the combined company.”⁴⁷³ CLECs would not be confronted with these
8 motivating factors for the change, and the timing of the change, if there had been no
9 merger. Yet, CenturyLink and Qwest object to discovery questions relating to this issue
10 on the grounds that “development of MTG for use by Embarq or Legacy CenturyLink
11 and its customers is not an issue in this case.”⁴⁷⁴ Development of MTG for use by
12 Embarq or legacy CenturyLink and its customers, however, relates to merger-related
13 incentives for the change and integration issues. In her September 15, 2011 Colorado
14 testimony Ms. Albersheim said, “Qwest/CenturyLink has recommended to the Executive

entities’ customers, but a *final* decision on this issue has not yet been made.”) (emphasis added).

⁴⁷¹ See, e.g., Exhibit BJJ-17 at JC000099 (Qwest Feb. 9, 2011 email) (“The section 12 procedures do not apply to a replacement initiated by Qwest well before the merger particularly where the replacement of Qwest’s own systems is needed for the purpose of maintaining the automated service quality of Qwest’s systems that CLECs claim to want. While it will not be following the procedures of section 12, Qwest will, however, follow all applicable processes required by the CMP Document that are associated with an OSS replacement.”).

⁴⁷² See, e.g., MN Hrg. Tr., P-421, et al./PA-10-456, Vol. 2B (Oct. 6, 2010), p. 33, lines 13-17 (Mr. Hunsucker, CenturyLink) (quoted below).

⁴⁷³ WA Rebuttal Testimony of Mr. Hunsucker, CenturyLink, WA Dkt. No. UT-100820 (Nov. 1, 2010), p. 47.

⁴⁷⁴ Qwest and CenturyLink Response to Integra WA Discovery Request No. 36(a), 36(b) & 36(c), WA Dkt. No. 111254 (Sep. 7, 2011).

1 Leadership Team that MTG be implemented in the Legacy CenturyLink territories. The
2 Executive Leadership Team has yet to make a final decision on MTG.”⁴⁷⁵

3 **Q. IF THE MERGED COMPANY’S PLAN AND INTENT IS NOT TO USE MTG**
4 **FOR OTHER CENTURYLINK ENTITIES, DOES THAT LEAVE IMPORTANT**
5 **ISSUES UNRESOLVED?**

6 A. Yes. If the Merged Company’s plan and intent is not to use MTG for other CenturyLink
7 entities, then the question asked by Integra on February 20, 2011 and again on May 3,
8 2011 remains unresolved:

9 Is the merged company moving to MTG? If not, will CLECs have to
10 move to MTG and move again?⁴⁷⁶ . . . It appears that, including in Qwest
11 territory, you are saying that CLECs may have to move to MTG and move
12 again. . . . If it is the case, please explain why the Merged Company is
13 nonetheless already proceeding with MTG implementation at everyone’s
14 time and expense before the Merged Company even decides upon a plan
15 for how it intends to proceed?⁴⁷⁷

16 The Merged Company attempts to dismiss this question by stating:

17 Qwest Corporation has a plan how to proceed and is proceeding with
18 MTG as an option because customers have requested an XML B2B
19 interface for repair, and because Qwest Corporation is concerned about the
20 lack of support for the components of the MEDIACC application.
21 Whether or not CenturyLink entities will decide to use and offer MTG for
22 their wholesale customers is not relevant to a determination of the best
23 course for providing service to Qwest Corporation’s wholesale and CLEC
24 customers.⁴⁷⁸

⁴⁷⁵ Albersheim Answer Testimony, CO Docket No. 11F-436T, Sep. 15, 2011, p. 21, lines 14-16.

⁴⁷⁶ Exhibit BJJ-22 at JC000121, February 20, 2011 list of Integra questions; Exhibit BJJ-36, at JC000295, May 3, 2011 email from Integra to Merged Company.

⁴⁷⁷ Exhibit BJJ-36, at JC000295, May 3, 2011 email from Integra to Merged Company.

⁴⁷⁸ Qwest and CenturyLink Response to Integra WA Discovery Request No. 36(c), WA Dkt. No. 111254 (Sep. 7, 2011).

1 The Merged Company is creating a discriminatory situation by treating the best course
2 for itself and its retail customers separately from the best course for its wholesale
3 customers. Either instability of MEDIACC is an issue for none or for all. If the latter,
4 the solution is not for the Merged Company to ignore the merger agreement requirements
5 but to have sought a timely exception to them from regulators so that it could perform the
6 requisite steps earlier than 30 months for repair OSS.

7 Additionally, the discovery response ignores the reality that the Merged Company prefers
8 to move to one repair OSS for all entities to gain efficiencies and synergies.
9 Mr. Hunsucker of CenturyLink testified:

10 Q But the preference -- just to be clear, the preference would be to have
11 a single system for both the CenturyLink legacy companies and the Qwest
12 legacy companies, correct?

13 A Yes.⁴⁷⁹

14
15 When discussing OSS obligations, Mr. Hunsucker also testified:

16 [A]ny changes will occur only after a thorough and methodical review of
17 both companies' systems and processes to determine the best system to be
18 used on a going forward basis. . . .⁴⁸⁰

19 CenturyLink testified that the critical systems migration criteria CenturyLink is using
20 include "overall support of key business needs, including. . . efficiency"⁴⁸¹ and that
21 integration practices could "result in efficiencies for the combined company."⁴⁸²

⁴⁷⁹ See, e.g., MN Hrg. Tr., MN Dkt. No. P-421, et al./PA-10-456, Vol. 2B (Oct. 6, 2010), p. 33, lines 13-17 (Mr. Hunsucker, CenturyLink).

⁴⁸⁰ WA Rebuttal Testimony of Mr. Hunsucker, CenturyLink, WA Dkt. No. UT-100820 (Nov. 1, 2010), p.47.

⁴⁸¹ WA Rebuttal Testimony of Mr. Hunsucker, CenturyLink, WA Dkt. No. UT-100820 (Nov. 1, 2010), p.

1 If MTG is not the choice for use by all entities, then we are back to the problem of
2 CLECs expending the resources to move to MTG and then having to expend the
3 resources to move again to a different system when CenturyLink chooses a different
4 system. Although the Merged Company characterizes this type of comment as “CLEC
5 requests for assurances that MTG would be the B2B platform for repair going
6 forward,”⁴⁸³ this is *not* a request for an assurance that *MTG* will be used going forward.
7 It is a request that whatever repair OSS will be used going forward, if different from the
8 legacy Qwest OSS, be implemented only after following the merger agreement
9 timeframes and requirements.

10 Additionally, Legal’s post-merger discovery response is very different from
11 CenturyLink’s pre-merger testimony regarding the approach that would be taken by the
12 Merged Company to making OSS decisions after the merger closing date:

13 This kind of parent-level transaction does not force the Company into
14 short timelines. Rushing the selection and integration of critical systems
15 designed to serve millions of *retail and wholesale customers* seamlessly is
16 not an option, nor, as I have said, does this type of transaction force
17 CenturyLink to do so. By the same token, mandating arbitrary dates before
18 which implementation of systems integration cannot occur would be just
19 as ill-advised. CenturyLink is committed to follow proven processes that
20 involve careful review of all aspects of the integration to ensure that the
21 merger goes as smoothly as possible for customers, employees and other
22 key stakeholders. Based on its past experience and track record,
23 CenturyLink is confident that it understands the processes that lead to

17.

⁴⁸² WA Rebuttal Testimony of Mr. Hunsucker, CenturyLink, WA Dkt. No. UT-100820 (Nov. 1, 2010), p. 46.

⁴⁸³ Qwest and CenturyLink Response to Integra WA Discovery Request No. 35(a), WA Dkt. No. 111254 (Sep. 7, 2011).

1 efficient and smooth integrations. This track record demonstrates that this
2 Transaction is not contrary to the public interest. *If decisions are hurried*
3 *to benefit one subset of customers, or constrained or limited to the*
4 *supposed benefit of another subset*, such as proposed by the Joint CLECs
5 and other intervenors, *it only increases the likelihood that problems will*
6 *develop to the detriment of a much larger base of residential and*
7 *business customers and employees.*⁴⁸⁴

8 Now that the Merged Company has the benefit of merger approval, it is unilaterally
9 implementing the approach that it said pre-merger was “not an option” and increasing the
10 likelihood that problems will develop to the detriment of customers, including wholesale
11 customers that may be forced to expend resources to move to one system and then move
12 again.

13 **VII. COUNTS OF THE JOINT CLEC COMPLAINT AND REQUESTS FOR RELIEF**

14
15 **Q. DO THE FACTS DESCRIBED IN INTEGRA’S TESTIMONY SUPPORT THE**
16 **COUNTS OF THE JOINT CLEC COMPLAINT AND REQUESTS FOR RELIEF?**

17 A. Yes. In the Joint CLEC Complaint, the Joint CLECs alleged violation of the
18 Commission’s order from the merger proceeding (Count I), breach of the settlement
19 agreements (Count II), breach/violation of interconnection agreements (“ICAs”) (Count
20 III), and breach of the duty of non-discrimination (Count IV). Additionally, they
21 included the requests for relief set forth on pages 37-38 of the Joint CLEC Complaint,
22 including a request that the Commission grant such other and further relief, including
23 temporary or injunctive relief as needed, as the Commission may find appropriate under

⁴⁸⁴ WA Rebuttal Testimony of John Jones, CenturyLink, WA Dkt. No. UT-100820 (Nov. 1, 2010), p. 12, line 18 – p. 13, line 11 (emphasis added).

1 the circumstances. The facts described in my testimony and the testimony of
2 Ms. Johnson (including exhibits) support the counts of the Joint CLEC Complaint and
3 their requests for relief.

4 Regarding the first count, violation of the Commission's order, I discuss the terms of that
5 order in Section II above regarding the merger of Qwest and CenturyLink. Regarding the
6 second count, breach of settlement agreements, I provide OSS terms from those
7 agreements in Section IV(B) above, and Ms. Johnson provides complete copies of the
8 Integra Settlement Agreement and the Joint CLEC Merger Agreement as Exhibits BJJ-3
9 and BJJ-4 to her testimony. Ms. Johnson also provides additional excerpts in Exhibit
10 BJJ-5, and she provides a copy of a letter by CenturyLink and Qwest that they filed in
11 Oregon regarding the Joint CLEC Merger Agreement as Exhibit BJJ-6. In addition to the
12 OSS terms provided above, the Integra Settlement Agreement contains the following
13 terms:

14 CenturyLink and all of its incumbent local exchange carrier ("ILEC")
15 affiliates will comply with 47 U.S.C. Sections 251 and 252. . . .

16
17 In the legacy Qwest ILEC service territory, after the Closing Date, Qwest
18 Corporation shall be classified as a Bell Operating Company ("BOC"),
19 pursuant to Section 3(4)(A)-(B) of the Communications Act and shall be
20 subject to all requirements applicable to BOCs, including Sections 271
21 and 272.⁴⁸⁵

22
23 Regarding the third count, breach/violation of interconnection agreements, Ms. Johnson
24 attaches excerpts from the Joint CLECs' interconnection agreements in Exhibit BJJ-58,

⁴⁸⁵ Exhibit BJJ-3, Integra Settlement Agreement, Section B ("Terms"), ¶¶6-7, at JC000009.

1 which is also Exhibit 2 to the Joint CLEC Complaint. Paragraphs 100 and 101 of the
2 Joint CLEC Complaint describe provisions of those ICAs that have been breached,
3 including ICA provisions that require Qwest to comply with laws and regulations (which
4 includes laws and regulations requiring compliance with Commission orders and
5 procedures, as well as laws requiring nondiscrimination, requiring nondiscriminatory
6 access to UNEs, and prohibiting backsliding),⁴⁸⁶ to provide services under the ICA in a
7 nondiscriminatory manner, including nondiscriminatory access to UNEs and OSS,⁴⁸⁷ to
8 comply with performance standards for service quality (see Exhibit B for PIDs and
9 Exhibit K for PAP),⁴⁸⁸ and to provide repair and maintenance on a nondiscriminatory
10 basis, including to provide necessary maintenance business process support as well as
11 system interfaces required to provide CLEC at least the same level and quality of service
12 for all services as Qwest provides for itself, its subscribers, any of its Affiliates or
13 subsidiaries.⁴⁸⁹ The ICAs have been publicly filed and approved by the Commission and
14 are incorporated by reference. The Qwest ICAs with ELI and UNICOM allow ELI to use
15 the “MEDIACC Electronic Bonding (EB)” interface or Graphical User Interface

⁴⁸⁶ See, e.g., ATI ICA, ¶¶ 1.3, 2.2; 11.1.1; 26.31; ELI ICA, ¶¶(A)1.2, (A)1.4, (A)3.30, (E)1.2; Eschelon ICA ¶¶1.2, 1.3, 2.2, 5.27.1, 9.1.2, 9.23.1.2; Integra ICA ¶¶ 1.2, 2.2; 26.31; UNICOM ICA ¶¶1.2, 2.2, 5.27.1, 6.1.1, 9.1.2; tw telecom ICA ¶5.27.1.

⁴⁸⁷ See, e.g., ATI ICA ¶ 8.1.3; ELI ICA ¶¶ (E)1.3.2, (E)1.3.6, (E)1.4.1, (E)1.4.2, (E)1.4.3; Eschelon ICA ¶¶1.3, 9.1.2, 9.23.1.1, 9.23.1.2, 12.1.2.1, 12.1.2.2; Integra ICA ¶ 8.1.3; UNICOM ICA ¶9.1.2, 12.1.2.

⁴⁸⁸ See, e.g., Eschelon ICA ¶12.1.2.1; ELI ICA Part A ¶8.1; Integra ICA ¶ 24.1.

⁴⁸⁹ See, e.g., ELI ¶(E)1.4.3, (H)8.1.1, (H)8.1.2; Eschelon ICA ¶¶12.1.2.1, 12.4.0.1, 12.4.0.2, 12.4.0.3.

1 (“GUI”).⁴⁹⁰ The ICAs have been publicly filed and approved by the Commission and are
2 incorporated by reference.

3 Regarding the final count, breach of the duty of non-discrimination, the Act prohibits
4 discrimination by Incumbent Local Exchange Carriers (ILECs).⁴⁹¹ Additionally, the
5 Commission indicated in its merger order that it believes “specific conditions are
6 necessary to safeguard the effectiveness of wholesale service offerings on which
7 competitors rely in order to preserve the benefits afforded retail customers by robust and
8 effective competition.”⁴⁹² Qwest may not discriminate in favor of itself, its customers,
9 any of its subsidiaries or Affiliates or, including CenturyLink and CenturyLink entities.⁴⁹³

10 As I discuss above, the Merged Company is creating a discriminatory situation by
11 treating the best course for itself and its retail customers separately from the best course
12 for its wholesale customers, by moving itself separate from or earlier than CLECs, and by
13 acting for itself and its retail or other customers in violation of the merger agreements and
14 orders.

⁴⁹⁰ See PAETEC ICA ¶12.2.2.2; ELI ICA ¶(H)2.2.2; UNICOM ICA ¶12.2.2.2. The PAETEC ICA provides that MEDIACC EB uses CMIP protocol. See PAETEC ICA ¶12.2.2.3. Qwest’s new system, MTG, in contrast, will not use CMIP protocol.

⁴⁹¹ See, e.g., 47 U.S.C. §251(c)(3)-(c)(4) & §271(c)(2)(B)(ii).

⁴⁹² WA Final Order No. 14, p. 58, ¶97, Dkt. UT-100820 (March 14, 2011).

⁴⁹³ See, e.g., §51.307(a) (requiring access to UNEs on “on terms and conditions that are just, reasonable, and nondiscriminatory”); §51.313 (“Just, reasonable, and nondiscriminatory terms and conditions” for the provision of UNEs). See also *In the Matter of Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, Utah, Washington, and Wyoming*, FCC WC Docket No. 02-314 (released Dec. 23, 2002).

1 The conduct of Qwest and the Merged Company in all of these respects has caused, and
2 will continue to cause, harm to the Joint CLECs, as well as other CLECs, and will also
3 harm the public interest in fair, reasonable, and nondiscriminatory competition.

4 **Q. IS CEMR A LIVE ISSUE AND DOES IT CONTINUE TO BE AN IMPORTANT**
5 **PART OF THE JOINT CLEC COMPLAINT?**

6 A. Yes. In comments filed by CenturyLink in Minnesota, CenturyLink said that CEMR
7 “does not appear to be a live issue” because CenturyLink is “planning on maintaining”
8 CEMR.⁴⁹⁴ The Merged Company attempts, unsuccessfully, to distinguish CEMR from
9 MEDIACC in two ways: (1) the Merged Company has not identified for CLECs a date
10 on which it will retire CEMR (unlike the date provided in its revised timeline for
11 MEDIACC); and (2) the Merged Company made certain “upgrades” to CEMR which it
12 has claimed stabilized CEMR at least to some degree. I discuss the first of these two
13 claims in Section III of this testimony when defining and discussing terms. I discuss the
14 second of these two claims in Section VI(E) of this testimony when discussing the
15 Merged Company’s various claims of system instability or stability. CEMR is a live
16 issue and an important part of the Joint CLEC complaint.

17 **VIII. CONCLUSION**

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

⁴⁹⁴ MN CenturyLink Reply Comments, MN Dkt. No. P-421, et al./PA-10-456 (July 22, 2011), p. 1, footnote 1.

1 A. Yes.

2

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