BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of,

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

Docket No. UT-100820

JOINT CLECS' BRIEF ON ADDITIONAL ISSUES

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DAVIS WRIGHT TREMAINE LLP

Mark P. Trinchero
Aaron K. Stuckey
1300 SW Fifth Avenue, Suite 2300
Portland, OR 97201
Telephone: 503-778-5318
FAX: 503-778-5299

K.C. Halm
Brian A. Nixon
1919 Pennsylvania Ave., N.W., Suite 800
Washington, D.C. 20006
Telephone: 202-973-4287
FAX: 202-973-4499

Attorneys on Behalf of the Joint CLECs

REDACTED VERSION

TABLE OF CONTENTS

Page

I. Introduction 1

II. The Proposed Merger Cannot Be Approved Unless The Commission Finds That It Will Not Harm The Public Interest In Maintaining A Competitive Marketplace 2

III. The Proposed Merger Poses Substantial Risks Of Harm To Wholesale Customers And Local Competition in Washington 3

IV. The Proposed Transaction Cannot Be Approved Consistent With The Public Interest Based Solely On The Wholesale Conditions In The Integra and Staff Settlements 6

A. The Merging Companies Have Not Made Adequate Commitments Regarding the Continuing Provision of Non-UNE Wholesale Services 10

1. CLECs (other than Integra) rely extensively on Qwest's non-UNE wholesale services 11

2. To Adequately Protect Local Competition, Prices For Facilities Purchased Under Wholesale Agreements Must Be Capped At Current Levels for At Least Three Years, Consistent With the Minimum Synergy Period and the ICA Extension in the Integra Settlement 13

3. The Additional 18-month Extension of Commercial Agreements Provides Little If Any Benefit to CLECs or Local Competition 17

4. Extending Wholesale Agreements for Three Years at Current Rates Would Not Cause Competitive Harm to CenturyLink 17

B CenturyLink and Qwest Have Not Committed to Sufficient Conditions to Ensure That Competitors' Interconnection-Related Transaction Costs Will Not Rise As a Result of the Merger 18

C. The Merging Companies Have Failed To Commit to An Adequate Moratorium on Non-Impairment And Forbearance Filings 24

V. The Commission Should Adopt A Most Favored State Condition 25

VI. Reply to Staff, Public Counsel And Joint Applicants' Argument of January 14th On Commission-Identified Issues 26

VII. Conclusion And Recommendation 29

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I. INTRODUCTION

1. Pursuant to Administrative Law Judge Friedlander's order dated January 7, 2011 (Order No. 13), the Joint CLECs[1] hereby file this Brief on Additional Issues in the above entitled matter concerning the proposed acquisition of the Qwest Operating Companies ("Qwest")[2] by CenturyTel, Inc. and its affiliates ("CenturyLink") [3](collectively, the "Joint Applicants" or "Merging Companies"). In addition to briefing these additional issues, in Section VI the Joint CLECs will also provide a brief reply to Staff, Public Counsel and Joint Applicants' initial arguments on Commission-identified Issues 3 and 4.

2. As discussed in prior briefing, the Merging Companies' dual role with respect to CLECs (as both their primary competitor and sole supplier of certain essential wholesale facilities[4]) creates a strong incentive for the Merging Companies to undermine their wholesale CLEC customers by increasing wholesale rates, imposing unreasonable terms, diminishing wholesale

[1] The "Joint CLECs" consist of the following competitive local exchange carriers: Charter Fiberlink WA-CCVII, LLC; XO Communications Services, Inc.; tw telecom of Washington, LLC; McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services; and Covad Communications Company.

[2] The Qwest Operating Companies include Qwest Communications International, Inc., Qwest Corporation, Qwest LD Corp., and Qwest Communications Company LLC.

[3] CenturyLink, as referred to herein, includes CenturyTel, Inc., CenturyTel of Washington, Inc., CenturyTel of Inter-Island, Inc., CenturyTel of Cowiche, Inc., CenturyTel Long Distance, LLC, CenturyTel Solutions, LLC, CenturyTel Fiber Company II, LLC, United Telephone Company of the Northwest, and Embarq Communications, Inc.

[4] Throughout the brief, "wholesale services" generally refers to any combination of interconnection, unbundled network elements, resale or collocation purchased pursuant to 47 U.S.C. § 251(c), and similar services purchased out of non-Section 251(c) commercial or wholesale agreements and/or Qwest ILEC tariffs.

service quality, and otherwise reducing the availability and value of the wholesale offerings on which CLECs depend in order to provide services to their end-users.[5]

3. Over the past 14 years, this Commission has presided over the development of various proceedings, negotiations and regulatory mandates that have allowed local competition to materialize and grow in Washington. As a result, there are now multiple CLECs providing different product offerings to different market segments in competition with the Merging Companies to the benefit of Washington consumers. CenturyLink's acquisition of Qwest (the "Proposed Merger"), however, threatens to disrupt this competitive balance and should not be approved without substantial enforceable commitments that adequately address the serious risks to wholesale customers and local competition. To be adequate, such commitments must ensure that the wholesale products, service quality and systems currently provided by Qwest continue at current levels and prices for at least the full three to five year period during which the post-merger company (the "Merged Company") expects to achieve projected synergies. Anything less leaves wholesale customers and competition in Washington unduly and unnecessarily exposed to the significant risks posed by the Proposed Merger.

II. THE PROPOSED MERGER CANNOT BE APPROVED UNLESS THE COMMISSION FINDS THAT IT WILL NOT HARM THE PUBLIC INTEREST IN MAINTAINING A COMPETITIVE MARKETPLACE.

4. The Proposed Merger requires Commission approval under RCW Chapter 80.12 and WAC Chapter 480-143. In considering whether to approve this transaction, the Commission must determine whether the transaction is consistent with the "public interest."[6] Under this standard, the proposed transaction must present "no harm" to the customers of the Joint Applicants.[7]

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[5] *See, e.g.,* Responsive Testimony of Dr. August H. Ankum, Exhibit_AHA-IT ("Ankum Responsive"), p. 14, lns. 6-16.
[6] WAC 480-143-170.
[7] *See, e.g.,* Testimony of Mark J. Vasconi, Exhibit _MJV-IT, p. 9, lns. 5-10.

5. The Proposed Merger presents serious risks to CLECs as captive wholesale customers that rely on the Merging Companies for the interconnection and wholesale services necessary to offer competitive choice to Washington consumers. The Commission's focus on competition is particularly important in this case because the Proposed Merger's impact on *wholesale* customers and local competition will invariably affect the public interest in terms of reasonable rates and service quality for *retail* services, especially since the Proposed Merger involves one ILEC proposing to acquire another (which also happens to be Washington's largest telephone service provider and Regional BOC).

6. The Proposed Merger poses substantial risks of harm to CLECs and the competitive marketplace in a variety of ways, and the Merging Companies have failed to adequately address those risks through any existing, enforceable assurances or settlement conditions. Accordingly, the Merging Companies have failed to meet their burden to demonstrate that this Proposed Merger is in the "public interest," *i.e.*, that it will not cause harm to competitors.

III. THE PROPOSED MERGER POSES SUBSTANTIAL RISKS OF HARM TO WHOLESALE CUSTOMERS AND LOCAL COMPETITION IN WASHINGTON.

7. While all mergers involve the risk of failure and harm to shareholders and customers, the risks associated with the Proposed Merger are substantially greater than most. Indeed, CenturyLink's own regulatory filings acknowledge the enormous risks associated with this transaction.[8] These risks are of great concern to Washington's CLECs, which will depend on the Merged Company for essential wholesale facilities and interconnection they need to provide competitive local service.

8. As discussed in the testimony of Dr. Ankum, the documented failures of recent similar

[8] *See, e.g.,* Ankum Responsive, p. 56, lns. 4-23. (referencing CenturyLink, Inc. Form S-4 Registration Statement, Registration No. 222 (June 4, 2010)).

mergers between ILECs highlight the inherent problems with transactions of this nature.[9] These examples illustrate the enormous risks and uncertainties associated with ILEC mergers. They also demonstrate that claims of synergy savings are frequently unreliable and are often overtaken by operational problems and unexpectedly high integration costs. Indeed, post-merger problems and failures drove two of these merged ILECs (Hawaiian Telcom and FairPoint) to file Chapter 11 bankruptcy petitions.[10] Like the Hawaiian Telecom and FairPoint mergers, the Proposed Merger in this case involves a smaller ILEC purchasing a much larger one based on lofty but vague claims of expected synergies, efficiencies and other benefits.

9. In addition, CenturyLink's recent acquisition of Embarq further illustrates and increases the significant risks associated with its acquisition of Qwest. CenturyLink has already demonstrated a record of post-merger problems in the short time following its acquisition of Embarq, including deficiencies in CenturyLink's OSS and systems integration.[11] The challenges associated with CenturyLink's acquisition of Embarq pale in comparison to the challenges associated with its proposed acquisition of Qwest, which is much larger than Embarq, has substantial wholesale responsibilities, and is subject to unique additional BOC regulatory responsibilities that CenturyLink and Embarq have never had.[12] CenturyLink's traditional focus of operations in less densely populated areas means that it has not faced the level of competition and wholesale service demand that ILECs such as Qwest have experienced in larger metropolitan areas.[13] This

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[9] The following transactions are of particular relevance to the Proposed Merger: (1) Hawaiian Telcom's acquisition of Hawaii's BOC, Verizon Hawaii; (2) FairPoint's acquisition of Verizon operations in northern New England; and (3) Frontier's acquisition of 4.8 million Verizon lines in 14 states. *See* Ankum Responsive, p. 26, ln. 11 to p. 37, ln. 7.

[10] Responsive Testimony of Timothy Gates, Exhibit _TJG-1HCT ("Gates Responsive), p. 91, ln. 14 to p. 92, ln. 3.

[11] *See, e.g.,* Tr. Vol. IV (1-6-11), p. 221, ln. 16, to p. 222, ln. 25 (testimony of Mr. Hunsucker). *See also* Gates Responsive, p. 130, lns. 2-5.

[12] *See* Ankum Responsive, pp. 12-13.

[13] For instance, Qwest processes, on average, *****BEGIN CONFIDENTIAL** XXXXXXXXXXX **END CONFIDENTIAL** *** ports in Washington than does CenturyLink, and CLECs purchase *****BEGIN CONFIDENTIAL** XX **END CONFIDENTIAL** *** unbundled network element ("UNE") loops in Washington

lack of experience with high commercial ordering volumes raises profound doubts about CenturyLink's ability to meet the demands of wholesale customers operating in more densely populated urban and suburban areas served by Qwest. As such, CenturyLink's problems integrating Embarq foreshadow more extensive problems integrating the significantly different and much larger Qwest operations.

10. Even more troubling is the fact that CenturyLink's proposed acquisition of Qwest comes immediately after the Embarq transaction and before the Embarq integration has been completed. If the Proposed Merger is approved, *CenturyLink will have grown by nine times its size over the span of two years.*[14] Due to the rapidity and overlapping nature of CenturyLink's exponential growth, Dr. Ankum testified that the circumstances of the Proposed Merger present "disturbing similarities to the experience of WorldCom and other failed acquisitions."[15]

11. Finally, as the acquiring carrier, CenturyLink is likely to import its own anticompetitive policies and practices into the Qwest region, which includes the vast majority of Washington's population and the overwhelming majority of competitive carriers. Rather than retain practices and offerings that Qwest has developed after years of litigation, arbitrations and negotiation, it is likely that CenturyLink will gravitate towards its own familiar practices, particularly as it seeks savings to achieve expected synergies and to fund substantial integration costs.[16]

12. CenturyLink's post-merger drive to achieve enormous projected synergies, even as it faces substantial integration costs, will put the Merged Company under intense pressure to cut costs,

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from CenturyLink, compared to ***BEGIN CONFIDENTIAL** XXXXXX **END CONFIDENTIAL** *** UNE loops from Qwest. Gates Responsive, p. 26-27.

[14] Gates Responsive, p. 79, lns. 22-23.

[15] Ankum Responsive, p. 11, lns. 16-17.

[16] For example, CenturyLink (unlike Qwest) assesses charges on various stages of the customer acquisition and migration process, including when a number port is requested, when a competitor connects to the customer's premises at the customer side of a CenturyLink Network Interface Device ("NID") enclosure, and when competitors seek to include their customers in CenturyLink directories.

raise prices and undermine competitors.[17] In this case, the Merged Company's pursuit of over $600 million in synergies, at the same time it faces substantial post-merger integration costs and inevitable merger-related operational problems, creates a substantial risk to the public interest, particularly to wholesale customers and local competition.

13. The Merged Company's incentive to cut costs, augment its market share, and increase its revenues, to achieve its anticipated synergies threatens the continued availability of wholesale facilities and interconnection from Qwest on which CLECs currently rely. CenturyLink's strong financial incentive to eliminate or reduce the quality of these wholesale offerings (or increase their price) should be matched by equally strong conditions or commitments to prevent or discourage these actions and protect the public interest. Such conditions or commitments should persist for at least the three to five year period during which the Merged Company expects to obtain merger synergies.

IV. THE PROPOSED TRANSACTION CANNOT BE APPROVED CONSISTENT WITH THE PUBLIC INTEREST BASED SOLELY ON THE WHOLESALE CONDITIONS IN THE INTEGRA AND STAFF SETTLEMENTS.

14. On November 6, 2010, the Merging Companies entered into a settlement with Integra Telecom (the "Integra Settlement") in this matter. None of the other Joint CLECs were parties to that settlement or participants in its negotiation. Although all the Joint CLECs participated in the settlement conferences convened by Staff prior to announcement of the Integra Settlement, the Merging Companies chose to negotiate a single separate settlement solely with Integra. Thereafter, the Staff, Public Counsel and the Merging Companies reached a settlement ("Staff Settlement") that focuses almost entirely on retail issues, with the exception of an OSS-related

[17] Ankum Responsive, pp. 44-45.

condition that that is nearly identical to one of the Integra Settlement OSS-related conditions.[18] Accordingly, references herein to the "Integra Settlement" refer also to the Staff Settlement.

15. While the Integra Settlement addresses a number of the risks and potential harms of the Proposed Merger, it does so from Integra's perspective and fails to adequately address issues critical to other CLECs and competition generally. To that end, the Integra Settlement clearly reflects compromises that Integra believed were in its own business interests. Other CLECs, however, differ from Integra in a number of ways, including their internal systems, the types of customers they target, the geographical areas they serve, and the mix of wholesale products they require from the ILEC.[19]

16. For example, CLECs use different UNE services and different non-UNE commercial and wholesale agreements and tariffs in order to provide divergent services to their end user customers in Washington, all in competition with the ILEC.[20] For example, Integra witness Mr. Denney admitted that Integra purchases approximately 80 percent of its wholesale services under an ICA.[21] Integra may have been willing to compromise on the length of extensions for commercial and/or wholesale agreements, including tariffed offerings, in order to obtain other concessions important to Integra's interests.[22] Moreover, not all CLECs' commercial and/or wholesale agreements have the same expiration date and, again, the deal struck by Integra was

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[18] The Staff Settlement includes an OSS condition that is nearly identical to one of the OSS provisions in the Integra Settlement, with minor modifications. In particular, the Staff Settlement (Condition 23) requires that the Merged Company provide wholesale service quality that is "not less than" that provided by Qwest prior to the closing date, while the Integra Settlement (Condition 12) only requires wholesale service quality that is "not materially less" than that provided by Qwest prior to the closing date. Additionally, the Staff Settlement (unlike the Integra Settlement) provides that the Merged Company will provide support, data, functionality, performance, electronic flow through, and electronic bonding that is "functionally equivalent" to that provided prior to the merger (Staff Condition 23; Integra Condition 12).

[19] Supplemental Testimony of Proposed Settlement of Timothy J. Gates, Exhibit_TJG-20CT ("Gates Supplemental"), pp. 9-11.

[20] *Id.* at p. 9 lns. 13-14.

[21] *See* Tr. Vol. IV (1-6-11), p. 383, lns. 17-24 (testimony of Mr. Denney).

[22] Gates Supplemental at p. 9, ln. 20 to p. 10, ln. 1.

calculated only to address Integra's specific interests.[23] For example, the Integra Settlement does not adequately protect the interests of a CLEC like tw telecom that purchases special access services from a tariff not subject to extension under the Integra Settlement, or that has a non-UNE wholesale agreement that might expire before the merger closing (because any wholesale agreement that expires prior to the merger closing date is not eligible for extension under the Integra Settlement).[24]

17. In addition, the line-conditioning commitment, while obviously important to Integra, provides little or no benefit to other CLECs due to differing business plans.[25] Charter and tw telecom, for example, do not offer xDSL service to Washington customers and have no plans to do so.[26] Likewise, CLECs have different OSS capabilities and use different Qwest OSS interfaces, depending on the development of their own systems and network.[27] CLECs that have developed more internal OSS interfaces, systems and software will naturally need more time to adjust to post-merger changes to Qwest's existing OSS.[28] While it may have been acceptable for Integra to agree to a two-year extension of Qwest's OSS as a compromise for the line conditioning commitment, for example, this two-year period does not provide sufficient protection for other CLECs that have built more extensive internal systems and software based on Qwest's existing OSS – internal systems that would need to be modified or replaced when Qwest's OSS changes.[29]

18. In these and other ways, the compromises made by Integra (including the OSS provision

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[23] *Id.*. at p. 9, lns. 19-20.
[24] *Id.* at p. 10, lns. 18-21.
[25] *Id.* at p. 10, lns. 12-14.
[26] *Id.* at p. 10, lns. 10-12.
[27] *Id.* at p. 11, lns. 4-8; Testimony on Proposed Settlements of William A. Haas, Exhibit_WAH-1HCT, pp.7-9.
[28] Gates Supplemental at p. 11, lns. 11-14.
[29] *Id.* at p. 12, lns. 5-9.

subsequently incorporated into the Staff Settlement) do not provide sufficient basic protections for the Joint CLECs. Conditions that reflect the compromises of one CLEC cannot be relied upon to adequately protect the interests of Washington consumers since the competitive market is comprised of multiple competitors serving different customers in a variety of ways.

19. To fully protect the broad public interest in competition without doing harm, conditions for merger approval must fully address this broader array of competitive interests represented by the many CLECs in this proceeding. Addressing their concerns through adequate, enforceable commitments as set forth below is essential to ensure that the broader public interest in a continued robust, competitive marketplace is sufficiently protected.

20. As an absolute minimum, to ensure that the Proposed Merger does not harm the public interest in local competition, its approval must be conditioned on commitments that, for at least the three to five year synergy period (during which wholesale customers and competition will be most vulnerable to harm): (a) ensure the continued availability of existing wholesale services at current prices; (b) preclude unnecessary increases in CLEC transaction costs (*i.e.*, ICA negotiation and arbitration costs); (c) ensure stable ongoing access to UNEs through a moratorium on further non-impairment and forbearance filings; (d) ensure open and reasonable access to and interconnection with the Merged Company's combined network through a single point of interconnection per LATA; (e) ensure reasonable directory listing and directory assistance practices; (f) preclude CenturyLink's continued use of the rural exemption to avoid its Section 251 ILEC obligations; (g) retain Qwest's current OSS and preclude any decline in functionality upon transition to a successor OSS; and (h) provide an enforceable mechanism to prevent or discourage any decline in wholesale service quality.

21. The Integra Settlement does not adequately address these critical issues set forth above.

Therefore, the Joint CLECs urge the Commission to withhold its approval of the Proposed Merger unless and until sufficient additional commitments are imposed to protect the public interest. This brief will address the first three issues identified above (a, b, and c), while the remainder have either previously been addressed in Joint CLECs' Initial Brief on Commission-Identified Issues (d, e, and f) or are being addressed in the separate briefing by CBeyond filed simultaneously herewith (g and h) and in which arguments the Joint CLECs concur.

A. The Merging Companies Have Not Made Adequate Commitments Regarding the Continuing Provision of Non-UNE Wholesale Services.

22. The Merging Companies have committed in the Staff Settlement to extend interconnection agreements ("ICAs") for 3 years from the closing date of the merger. This provides a minimally adequate period of stability for ICAs during which no CLEC will face changes in UNE terms or prices.[30] In contrast, the Merging Companies have committed to a far more limited extension of wholesale or commercial agreements (hereafter referred to collectively as "wholesale agreements") under which CLECs purchase the same (or similar) wholesale facilities as non-UNEs, but under a wholesale agreement rather than an ICA. Specifically, the Merging Companies have committed to extend wholesale agreements with a price cap for only 18 months from closing, with an additional 18 months beyond that solely for embedded base customers with no limit on price increases. With respect to wholesale Regional Commitment Plan ("RCP") agreements, the Integra Settlement would provide an extension of only 12 months from merger closing or, at a CLEC's option, 12 months after the termination date in the agreement.

23. These limited extensions for wholesale agreements are unreasonable and fail to adequately protect local competition from the risks associated with the Proposed Merger. Although these

limited extensions may be adequate for Integra, they are not sufficient for the majority of CLECs, which rely more than Integra on these wholesale offerings. Accordingly, the Proposed Merger should be further conditioned on a commitment to extend current wholesale agreements, at current prices in effect as of the merger filing date, by three years following the merger's closing date, consistent with the extension of ICAs in the Integra Settlement.

1. CLECs (other than Integra) rely extensively on Qwest's non-UNE wholesale services.

24. In its order denying Qwest's petition for forbearance in the Phoenix Arizona MSA, the FCC found: "the record reveals that no carrier besides Qwest provides meaningful wholesale services throughout the Phoenix marketplace, and that competitors offering business services largely must rely on inputs purchased from Qwest itself to provide service."[31] The FCC also stated: "there is no record evidence of significant competition for the wholesale products used to serve either mass market or enterprise customers."[32] The "wholesale services" and "wholesale products" referred to by the FCC include both UNE and non-UNE wholesale services and products.[33] While these conclusions were made about Qwest's wholesale services in the Phoenix MSA, there is no reason to believe that the conclusions regarding Qwest's wholesale services in MSAs in Washington would be any different.[34]

25. Most CLECs rely largely on UNEs to provide competitive services to their customers, but

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[30] The Joint CLECs recognized that, during the extension of the Qwest ICAs, interconnection, collocation, resale, local number portability, directory listings/assistance, and other longstanding Qwest wholesale rates, terms and conditions will remain unchanged.

[31] *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113, released June 22, 2010, at ¶ 2.

[32] *Id.*, at ¶ 96.

[33] *See, e.g.*, *Id.*, at ¶ 68.

[34] Gates Supplemental at p. 27, ln. 15 to p. 28, ln. 2.

many also rely substantially on non-UNEs purchased from Qwest under wholesale agreements.[35] These UNEs and non-UNEs are typically the same facilities, distinguished only by the fact that Qwest charges substantially more for its non-UNE facilities under wholesale agreements than the cost-based rates set by the Commission for UNEs provided under ICAs. This reliance on wholesale agreements extends to a broad range of wholesale inputs, including dark fiber, broadband services, special access services and the combined loop/transport/switching platform referred to as "QLSP." For example, CLECs such as Charter and tw telecom rely on Qwest special access services for transport or to gain access to customers.[36]

26. There is no question that continued access to these wholesale facilities is critical to the ability of a number of Washington CLECs to serve their customers and compete in Washington's local exchange markets.[37] The record clearly establishes that CLECs in Washington depend extensively on facilities purchased from Qwest under wholesale agreements and that the continued availability of those facilities is essential to protecting the public's interest in local competition.

27. Integra's decision to accept less than a three-year extension of wholesale agreements reflects Integra's own business interests, distinct from many other CLECs providing competitive local service. Indeed, a number of CLECs in this case rely substantially more than Integra on these non-UNE wholesale offerings.[38] As such, while the limited extensions in the Integra Settlement may be adequate for Integra, they fail to meet the needs of other CLECs that rely on

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[35] In fact, Charter does not rely on any UNEs to provide service to its customers. Supplemental Testimony of Billy H. Pruitt, Exhibit_BHP-18CT, p.7, lns. 13-17.
[36] Gates Supplemental at p. 24, lns. 3-4.
[37] *Id.* at p. 23, lns. 15-18.
[38] *Id.* at pp. 9-11; see also, Tr. Vol. IV (1-16-11), p. 383, lns. 21-24 (testimony of Integra witness Mr. Denney that "at least 80 percent would be out of ICA out of expenditures"); Gates Supplemental at p.10, ln. 15 to p.11, ln. 2; Testimony on Proposed Settlements of William A. Haas, Exhibit_WAH-1HCT, p.12, lns. 5-10.

Qwest's wholesale agreements. The compromises reflected in the Integra Settlement cannot be accepted as sufficient to protect the interests of CLECs generally or the public's interest in promoting local competition, which require additional commitments to ensure stable service offerings and prices for all wholesale services (both UNE and non-UNE) following the Proposed Merger.

2. To Adequately Protect Local Competition, Prices For Facilities Purchased Under Wholesale Agreements Must Be Capped At Current Levels For At Least Three Years, Consistent With the Minimum Synergy Period and the ICA Extension in the Integra Settlement.

28. To ensure adequate stability for the many CLECs that rely substantially on wholesale inputs provided under wholesale agreements, the merger must be conditioned on an extension of those agreements, at current prices, for at least three years following the closing of the Proposed Merger to match the minimum three-year synergy period and the three-year extension of ICAs. As Dr. Ankum testified, "the availability of wholesale services should be stable over the foreseeable future to offset the substantial uncertainty and risks of degraded wholesale services associated with the proposed merger, including the risks that stem from the Merged Company's efforts to achieve synergy savings post-merger."[39]

29. There can be little doubt that wholesale services currently purchased from Qwest will be a natural target in the Merged Company's efforts to achieve its ambitious synergy savings target.[40] As captive wholesale customers, CLECs have no other suppliers to turn to for these wholesale services, which makes them uniquely vulnerable to price increases that increase their costs and potentially impede their ability to compete. That the Merged Company is likely to eliminate or raise prices on Qwest's non-UNE wholesale services is readily apparent from the fact that the

[39] Ankum Responsive at p. 67, ln. 37 to p. 68, ln. 3.
[40] *Id.* at pp. 41-42.

acquiring company, CenturyLink, does not offer these services and apparently has little intent to provide them post-merger unless required.[41] This likelihood is further confirmed by the refusal of the Merging Companies to extend existing non-UNE wholesale agreements by at least the same length as their agreed-upon extension of ICAs. The Merging Companies' unwillingness to agree to an equal extension of Qwest's already higher priced non-UNE wholesale services indicates an unmistakable intent to increase those prices even higher as soon as possible during the three to five-year synergy period.

30. The Integra Settlement's failure to cap non-UNE wholesale rates for the minimal three-year synergy period is compounded by the fact that the limited 18-month cap does not apply to current rates in effect on the date of the merger filing. Instead, that cap will only apply to rates in effect on the transaction's closing date, even if those rates were raised during the pendency of the Proposed Merger. This is particularly troubling given that the Merging Companies are already "taking steps after the Merger Announcement Date . . . to enhance ... revenues at the expense of wholesale customers."[42] For example, shortly after the merger filing, on May 31, 2010, Qwest reduced the discounts available under its wholesale RCP agreement. Therefore, even the limited 18-month price cap is largely illusory in relation to wholesale price increases implemented between the Proposed Merger's filing and closing dates.

31. The Merging Companies' failure to commit to a uniform three-year extension of RCP agreements is also highly problematic. The new RCP agreement implemented after the Proposed Merger was announced, increases costs and substantially reduces the discounts previously available for special access facilities.[43] For example, tw telecom currently purchases special

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[41] *Id.* at p. 74, lns. 3-14.
[42] *Id.* at p. 90, lns. 5-7.
[43] Gates Supplemental at p. 31, lns. 3-5.

access facilities from Qwest under an RCP agreement set to expire in June 2011, and has estimated that its special access costs will increase 22% absent the extension of non-UNE wholesale agreements it is requesting as part of the Joint CLEC merger conditions.[44]

32. Under the Integra Settlement, CenturyLink and Qwest have agreed to extend "term and volume discount plans" (which include RCP agreements) in effect on the merger closing date by only 12 months beyond the expiration of the then-existing term. The 12-month extension may provide sufficient price stability for Integra and any other CLEC with RCP agreements set to expire in 2013 or later.[45] However, CLECs such as tw telecom with RCP agreements that expire sooner, will be materially disadvantaged since they will be forced onto the higher effective RCP rates well before other CLECs. Moreover, if a CLEC's existing RCP agreement expires before the closing of the Proposed Merger, the CLEC would be unable to extend its existing agreement and be forced onto the new RCP that increases the CLEC's costs and negatively impacts its ability to compete.[46] Because tw telecom's RCP agreement with Qwest expires in June 2011, it would not be eligible for extension if the transaction closes after that date.[47]

33. Such disparate treatment of CLECs will harm the efficient operation of the market by artificially creating winners and losers based on an expiration date in an agreement instead of on a company's ability to efficiently compete in the market. Under the Integra Settlement, some CLECs would receive no protection (or less protection than other CLECs) from merger-related harm just because the arbitrary expiration date in the CLEC's agreement with Qwest is before the arbitrary (and unknown) merger closing date. This is patently unfair, produces unreasonable results, significantly reduces the effectiveness of the commitments in the proposed settlement

[44] *Id.* at lns. 6-10.
[45] *Id.* at lns. 13-15.
[46] *Id.* at p. 33, lns. 1-3.

and provides competitive advantages to some CLECs over others.[48] All CLECs should be entitled to the protections of merger commitments regardless of when they executed their wholesale services agreement with Qwest and regardless of the date on which the merger may close. Qwest should not be allowed to eliminate and raise prices for wholesales services while the proposed transaction is being reviewed, and then tie critical merger commitments to the merger closing date in order to lock in the higher prices and fewer services going-forward.[49] Such an outcome undermines the effectiveness of the merger commitments as well as the public interest in fostering competition for the benefit of consumers.[50]

34. To avoid this unreasonable and discriminatory effect, the Commission should require an additional alternative condition under which CenturyLink and Qwest commit to extending all RCP agreements in effect as of the merger filing date by three years from the date the transaction closes. CLECs could still extend their existing RCP agreements by one year as provided in the Integra Settlement, but CLECs would also have the option of extending their current RCP agreements by three years from the transaction's closing date. This condition should apply to the non-UNE wholesale agreements/tariffs in place as of the merger filing (or at least the agreements in effect at the end of the current year) to provide the price stability that CLECs need.

3. The Additional 18-Month Extension of Commercial Agreements Provides Little If Any Benefit to CLECs or Local Competition.

35. The Merging Companies' commitment to extend wholesale commercial agreements an additional 18 months without a price cap for embedded base customers is inadequate for several reasons. First, without a price cap, this extension provides no stability on the most important

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[47] *Id.* at lns. 4-5.
[48] *Id.* at lns. 9-11.
[49] *Id.* at lns. 14-17.
[50] *Id.* at lns. 17-19.

material term in the purchase of these facilities. Second, the absence of a price cap would allow the Merged Company to price these wholesale products beyond the reach of CLECs, which would effectively eliminate the product's availability. Third, limiting the availability of wholesale inputs purchased under these agreements to a CLEC's embedded base effectively prevents CLECs from using those inputs to grow their customer base. To the extent a CLEC relies on particular wholesale inputs to serve retail customers, the embedded base limitation in the Integra Settlement would prevent that CLEC from adding any new customers. In that sense this particular aspect of the Merging Companies' commitment is highly anticompetitive.

4. **Extending Wholesale Agreements for Three Years at Current Rates Would Not Cause Competitive Harm to CenturyLink.**

36. Extending wholesale agreements for a full three years at current rates would not result in any competitive harm to the Merged Company.[51] The rates under those agreements are already substantially higher than the UNE rates set by the Commission for those same wholesale facilities.[52] For instance, for dark fiber in Washington, the commercial rate (per mile) is 7.5 times higher than the UNE dark fiber rate.[53] In addition, the commercial wholesale rates were set by Qwest unilaterally without any negotiation or input from CLECs.[54] The Merging Companies have provided no reason why the rates for non-UNE wholesale services should be allowed to increase, particularly at the same time the Merged Company will be pursuing merger-related synergy savings.

37. The need for post-merger stability and certainty applies to all wholesale facilities, not just those provided as UNEs under ICAs. Indeed, providing more stability for UNEs than non-UNEs

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[51] Gates Supplemental at p. 35, lns. 17-18.
[52] *Id.* at lns. 18-20.
[53] *Id.* at p. 35, ln. 20 to p. 36, ln. 2.
[54] *Id.* at p. 36, lns. 2-3.

does not serve the public interest. To the contrary, it unduly slants the competitive playing field in favor of certain CLECs over others, depending on the mix of wholesale products they need. As a result, it is critical that Qwest's commercial and wholesale agreements be extended for at least three years at current rates, coextensive with the three-year extension of ICAs, to match the minimum three-year synergy period.

B. CenturyLink and Qwest Have Not Committed to Sufficient Conditions to Ensure That Competitors' Interconnection-Related Transaction Costs Will Not Rise As a Result of the Merger.

38. The Integra Settlement includes several important conditions related to ICAs. However, these conditions will not eliminate the potential for the Merged Company to increase competitors' transaction costs associated with negotiating or arbitrating ICAs. In particular, the lack of any ICA "porting" (also known as cross-state adoption) provision constitutes the omission of a significant condition necessary to ensure that competitors' transaction costs do not increase as a result of this merger.

39. If this transaction is approved, the Merged Company will be significantly larger than either of the two pre-merger companies. Indeed, the Merging Companies' witnesses have testified that the Merged Company will control 17 million access lines, with operations spanning 37 states,[55] and a combined pro forma revenue of $19.8 billion (as of year end 2009).[56] Collectively, this increased size and scope will make CenturyLink the third largest ILEC/BOC in the nation.[57] This increase in size and resources will benefit the Merged Company by allowing it to obtain certain operating economies and efficiencies. However, to the extent such economies are achieved, they should also accrue in part to the benefit of captive wholesale customers and

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[55] Direct Testimony of John Jones (CenturyLink), Exhibit_JJ-1P, p. 8, lns. 17-18.
[56] Direct Testimony of Mark S. Reynolds (Qwest), Exhibit_MSR-1T, p. 11. lns. 3-4.
[57] Ankum Responsive at p. 94, lns. 3-4.

consumers.

40. At the same time, the size and operating power accruing from the merger will also give the Merged Company a strong incentive to use its enhanced market power as leverage during negotiations and dealings with competitors. The FCC has explained that, under the "Big Footprint" theory, "a merger between two incumbent LECs may increase the merged entity's incentive to engage in anticompetitive behavior by allowing it to capture or internalize a higher proportion of the benefits of such anticompetitive strategies against regional or national competitors."[58] The Merged Company's relative size is a concern because: "[t]he larger the resulting incumbent LEC is, the greater is its ability to internalize these spillover effects."[59] The "spillover effects" referred to here have been described by the FCC as "discriminatory conduct by an incumbent LEC in its region [that] affects competitors in areas both inside and outside the incumbent's region."[60] The resulting effects on competitors of such spillover effects can "directly or indirectly *harm customers*, whose business the incumbent LEC is seeking to gain."[61] In other words, as ILECs increase in size and scope, their ability to leverage such size and scope to the disadvantage of competitors also increases. That, in turn, can lead to a degradation of service to end-user customers in Washington.

41. Further, evidence in this case, and in the industry generally, demonstrates that the operational uncertainty arising from the Merged Company's plans to consolidate ICA terms is significant. Indeed, documents produced by CenturyLink indicate that the company intends to

[58] *In the Matter of Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8741, n. 106 (2009).
[59] *Id.*
[60] *In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Application to Transfer of Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032 at ¶ 177 (2000).

***BEGIN CONFIDENTIAL XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.[62] END CONFIDENTIAL *** Such an agreement would likely import many of the wholesale "worst" practices identified in the testimony of Charter witness Mr. Pruitt and Joint CLEC witness Mr. Gates. This substantially increases the uncertainty and risks that stem from the Merged Company's efforts to achieve synergy savings post-merger through degraded wholesale services and interconnection terms.[63]

42. Given these anticipated post-closing actions, the Joint CLECs are concerned that ICA terms may not be stable over the foreseeable future because the Merged Company will use its size and market power to force competitors into negotiations of a new agreement. This is particularly true for competitors that operate in multiple CenturyLink and Qwest service areas, and which therefore have many different agreements (on a state-by-state basis) with the Merging Companies.[64] The potential that such agreements may be undermined or degraded by the Merged Company's potential use of its increased size and leverage to gain a competitive advantage is not an idle concern. As Joint CLEC witness Dr. Ankum explained:

> wholesale customers need certainty with regard to the elements and services they purchase from Qwest (or the Merged Company) for business planning purposes, and based on the transaction as filed, there is no such certainty. CLECs cannot simply go elsewhere for the wholesale services they need from Qwest and CenturyLink both now and post-merger, so certainty in this area is absolutely essential.[65]

43. This is why competitors are concerned that the Merged Company may direct its integration

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[61] *Id.* (emphasis added).
[62] Supplemental Responsive Testimony of Billy H. Pruitt, Exhibit No. _BHP-14HC, Qwest Communications International, Inc., HSR Filing Attachment 4C-29 (Exhibit titled "Wholesale Diligence Update," prepared on April 19, 2010 by Bill Cheek, President, Wholesale Operations CenturyLink).
[63] *See* Supplemental Testimony of Billy H. Pruitt, Exhibit_BHP-18CT, pp. 3-5.
[64] *See, e.g., id.* p. 11, ln. 22 to p. 12, ln. 2.

efforts to the detriment of wholesale customers either by withdrawing 251 services, or significantly changing the offerings Qwest currently makes available under its ICA.[66] The effect of these issues is potential for a significant increase in the transaction costs of competitors – in both substantial time and resources to negotiate and/or arbitrate replacement agreements. Requiring wholesale customers to receive, review, negotiate and execute ICAs for this purpose could result in disruption or delay during the transfer of control. And that disruption and delay would be exacerbated if wholesale customers disagree with the terms included in the ICAs with the Merged Company, resulting in parties seeking resolution of those disputes before this Commission.[67] Negotiations with the Merged Company over the terms of new agreements will inevitably lead to longer and more contentious negotiations, and potentially arbitrations, which can be lengthy and require the expenditure of significant resources by competitors and by the Commission.[68]

44. At least one competitor, Charter, is very familiar with the inherent pitfalls of this process through its experience negotiating and arbitrating ICAs with both CenturyLink and Qwest in multiple states. Because Integra generally does not compete with CenturyLink in Washington (and other states), it would not have the experience of negotiating or arbitrating an ICA with CenturyLink in Washington (or elsewhere).[69] Thus, it is not surprising that the Integra Settlement does nothing to address concerns that are unique to competitors that must negotiate and in some cases arbitrate ICAs with both CenturyLink and Qwest in multiple states. This is likely the reason that the Integra Settlement omits any discussion of cross-state adoptions, or so-

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[65] Ankum Responsive at p. 69, lns. 5-10.
[66] *Id.* at p. 68, lns. 9-13.
[67] *Id.* at p. 72, lns. 1-5.
[68] *Id.*
[69] Supplemental Testimony of Billy H. Pruitt, Exhibit__BHP-18CT, p. 11, ln. 15 to p. 12, ln. 17.

called ICA "porting."

45. To address these concerns the Commission must adopt an additional ICA condition that permits competitors to opt-in to Qwest's ICAs in Washington and then "port" such agreements to another state. That same condition should also recognize the inverse, *i.e.* it should require the Merged Company to permit competitors to opt-in to Qwest ICAs in another state and then "port" such agreements to Washington, provided Commission-required terms and pricing are added to the agreements ported into Washington.

46. Proposed Joint CLEC Condition 10 provides language that would accomplish these objectives. That condition permits a competitor to adopt, or opt-into, any ICA to which Qwest is a party, in the same state, or in any state to which Qwest is an ILEC. Such a condition is not new to merger proceedings, as the FCC has previously adopted similar conditions in conjunction with its approval of the AT&T/BellSouth merger, and the Bell Atlantic/GTE merger. In the most recent case, the agency required AT&T/BellSouth to make available to any CLEC any ICA (negotiated or arbitrated) to which an AT&T/BellSouth ILEC is a party in any state within the AT&T 22-state footprint, subject to state-specific pricing and technical feasibility.[70] Notably, the Joint CLECs' proposed condition permits the state commission to modify the ICA before opt in if the Merged Company demonstrates technical infeasibility, or if the TELRIC-based prices in the ICA are inconsistent with the TELRIC-based prices in the state in question.[71]

47. Adoption of this additional interconnection condition will protect against merger-related harms to the benefit of competitors, competition, and ultimately end user customers in Washington. These conditions will ensure that competitors' transaction costs are not arbitrarily

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[70] *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5672, ¶ 19 (2007).
[71] Ankum Responsive, p. 67, lns. 17-20.

raised, or adversely affected, which will allow competitors to continue offering competitively priced services to Washington customers. Furthermore, these conditions will ensure that the Merged Company does not attempt to obtain synergy "savings" through the imposition of new or increased rates and surcharges, or other improper or anticompetitive terms in any new consolidated template ICA the Merged Company may introduce in the future.

C. The Merging Companies Have Failed To Commit to An Adequate Moratorium on Non-Impairment And Forbearance Filings.

48. CenturyLink and Qwest have committed in the Integra Settlement to not seek to reclassify as "non-impaired" any Qwest wire centers for the purposes of Section 251 of the Act and not to file new petitions for forbearance from any Section 251 or Section 271 obligation in any Qwest wire center before June 1, 2012. While the Joint CLECs agree with a moratorium on non-impairment filings and petitions for forbearance, the June 1, 2012 expiration date in the Integra Settlement is inadequate.

49. The Joint CLECs have proposed in Condition 14 that such a moratorium should remain in effect during the Defined Time Period (which corresponds to the Merged Company's synergy time period). If the proposed transaction is ultimately approved in the first quarter of 2011 (as the Merging Companies are hoping), the June 1, 2012 expiration date results in an effective moratorium of about 15 months. This falls far short of the three to five-year time period during which the Merged Company will be engaged in integration and pursuing merger-related synergy savings. This also falls far short of the 42-month moratorium adopted by the FCC in connection with the AT&T/BellSouth merger. Accordingly, the time period of the moratorium should be the Defined Time Period as set forth in Joint CLEC Condition 14 (and in no circumstances less than the minimum three-year period associated with the Merged Company's synergy estimate).

50. The moratorium proposed by the Joint CLECs would provide critical certainty for wholesale customers related to the bottleneck inputs they purchase from the Merged Company while it integrates the two separate companies and pursues significant synergy savings. To adequately protect the public's interest in competition, it is essential to provide CLECs with an adequate period of certainty during which the terms and conditions of access to the wholesale inputs they need to provide competitive local exchange services remain unchanged.

V. THE COMMISSION SHOULD ADOPT A MOST FAVORED STATE CONDITION.

51. A Most Favored State ("MFS") condition would ensure that the public interest benefits obtained as a result of conditions agreed to by the Merging Companies in other jurisdictions, or at the FCC, can also be applied here in Washington. The Merging Companies requested expedited review and approval of the proposed transaction, and the Commission and other parties have worked diligently to analyze the proposed transaction on expedited timeframes to oblige the request. However, if a condition is adopted in another jurisdiction to address a merger-related harm that would arise in Washington but was not identified in this proceeding, consumers in Washington should not be penalized by foregoing the public interest benefits of that condition just because the Merging Companies wanted to expedite these proceedings. A MFS condition provides a proper balance between the interest of the Merging Companies to secure regulatory approval of the merger on a shortened timeframe and the interest of the Commission to ensure that approval of the merger is in the public interest. In addition, this Commission has adopted such conditions in other transactions.[72]

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[72] *In the Matter of the Joint Application of MidAmerican Energy Holdings Company and PacificCorp DBA Pacific Power & Light Company for an Order Authorizing Proposed Transaction*, Stipulation, ¶8, pp.2-4, Docket No. UE-051090 (Wash. UTC Jan. 19, 2006); *In the Matter of the Joint Application of MidAmerican Energy Holdings Company and*

52. We understand that CenturyLink opposes a MFS condition because, in its view, a condition or commitment adopted in one jurisdiction may not be appropriate for adoption in another state. However, this concern has already been accounted for in the MFS condition proposed by Joint CLECs, which allows the Commission to decide whether to expand or modify conditions adopted in this proceeding based on conditions adopted in other jurisdictions after the order is issued in Washington. Rather than *requiring* that all conditions adopted in other jurisdictions be imported to Washington, the proposed MFS provision would allow the Commission to consider whether conditions from other jurisdictions are necessary and/or appropriate for Washington.

53. Alternatively, if the Commissions is not inclined to impose a MFS condition, the Commission could simply wait until all the remaining jurisdictions (including the FCC) have ruled on the Proposed Merger before rendering its decision. Absent a MFS condition, this is the only way for the Commission to ensure that Washington consumers receive the benefits and protections afforded to consumers elsewhere.

VI. REPLY TO STAFF, PUBLIC COUNSEL AND JOINT APPLICANTS' ARGUMENTS OF JANUARY 14TH ON COMMISSION-IDENTIFIED ISSUES

54. As noted in the introduction, above, Joint CLECs hereby reply to Staff, Public Counsel and Joint Applicants' initial arguments of January 14, 2011 on Commission-identified Issues 3 and 4. With respect to Commission Issue 3, concerning the merged company's use of separate subsidiaries, the Joint Applicants raise a red herring by asserting that the potential "consolidation contemplated by the Commission in its framing of issue Number 3, would involve a combining of existing study areas and likely would trigger the need for an FCC waiver of the study area

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PacificCorp DBA Pacific Power & Light Company for an Order Authorizing Proposed Transaction, Order No. 07, Docket No. UE-051090 (Wash. UTC Feb. 21, 2006) (adopting Stipulation with MFS condition).

freeze."[73]

55. The alleged changes that the Joint Applicants suggest will be necessary need not arise if the Commission simply adopts the approach for regulatory oversight of the Merged Company recommended by Staff, Public Counsel, and the Joint CLECs. As the Staff and Public Counsel explain in their brief, "[t]he Agreement leaves the door open for the Commission to treat the local operating companies as one entity for the purposes of ... designing retail and access rates in the new AFOR proceeding."[74] In addition, Staff and Public Counsel point out that applying a single statewide regulatory regime would appropriately reflect the post-merger consolidation of infrastructure and operations into the single company that will "dwarf all other local exchange carrier operations in Washington."[75] For these reasons, the Staff and Public Counsel recommend that the Commission "treat the merged companies as a single entity for regulatory purposes, including ratemaking purposes, ..."[76]

56. The same rationale applies to the Merged Company's wholesale obligations. Because the consolidated entity's operations will "dwarf" competitors in the state, and lead to a consolidated infrastructure, there is no reason to treat the separate subsidiaries as individual operating companies subject to differing wholesale obligations. Instead, the Commission should adopt the Staff and Public Counsel's recommendation and treat the merged companies as a single entity for regulatory purposes, including wholesale obligations.

57. With respect to Commission Issue 4, which asks whether the Merged Company would be eligible for the rural exemption under 47 U.S.C. § 251, the Joint Applicants and the Staff/Public Counsel suggest that this proceeding is not the appropriate forum for review of the application of

[73] Joint Applicants Brief at ¶ 40.
[74] Staff and Public Counsel Brief at ¶ 27.
[75] *Id.*

the rural exemption. The Joint Applicants assert that the Commission can take no action on the rural exemption issue because the issues have not been raised in a "section 251 proceeding" and that "[n]o such section 251 proceeding has occurred here."[77] Similarly, the Staff and Public Counsel point to the same authority to support its conclusion that a competitive carrier must actually request Section 251(c) elements "before the issue of whether to terminate the rural exemption would come before the Commission."[78]

58. Both of these arguments fail to address the underlying policy question raised by the Commission. The Commission's briefing order asks whether the "merged company (or its subsidiaries) operating in Washington [would] be ***eligible*** for the rural exemption under 47 U.S.C. § 251."[79] This question is different from the question of whether the rural exemption can be "terminated" in this proceeding. Given the context of this proceeding, and the "no harm" standard applicable to this transaction, the Commission's question asks (in essence) whether the public's interest is enhanced if the soon to-be-largest incumbent local exchange carrier ("ILEC") in the state (and the nation's soon to-be-third largest ILEC) continues to enjoy the benefits of the rural exemption, i.e., a shield designed for the smallest ILECs to avoid having to comply with the statutory obligations under 47 U.S.C. § 251(b) and (c).

59. As explained in the Joint CLECs' Initial Brief, the public interest is not enhanced by the Merged Company's continued reliance on the rural exemption to avoid legal and regulatory obligations under Section 251. The obligations which some of CenturyLink's subsidiaries currently avoid are the essential market opening obligations that form the cornerstone for many forms of competitive entry in the local voice markets. For example, CenturyLink's subsidiaries

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[76] *Id.*
[77] Joint Applicants' Brief at ¶¶ 56 and 57.
[78] Staff and Public Counsel Brief at ¶ 30.

have no Section 251(c) interconnection, unbundling, resale or collocation obligations because they continue to hide behind the rural exemption. Any policy rationale that may once have supported the continued reliance on such exemptions, no longer exists given the Merged Company's soon to-be-dominance[80] in Washington.

60. In addition, the suggestion that this Commission cannot address the rural exemption issue in this proceeding is misleading. As noted in the Joint CLECs' Initial Brief, this Commission has already adopted conditions concerning another ILECs' revocation of the rural exemption, as in the Frontier-Verizon acquisition.[81] Further, the FCC and other state commissions have also addressed rural exemption revocation issues in decisions approving similar transactions.[82] Therefore, the Commission can act in this proceeding, as it has in others, to condition approval of the transaction on the Joint Applicants' commitment not to continue to invoke the rural exemption in the state of Washington.

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[79] Commission Order No. 13 (emphasis added).

[80] Staff and Public Counsel explained that the post-merger consolidation of infrastructure and operations into the single company will "dwarf all other local exchange carrier operations in Washington. Staff and Public Counsel Brief at ¶ 27.

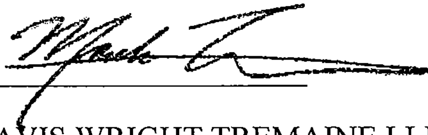
[81] Joint CLECs' Initial Brief at p. 13 (citing *the Matter of Applications Filed by Frontier Communications Corp. and Verizon Communications Inc. for Assignment of Transfer of Control*, Order, WC Docket No. 09-95; FCC 10-87, ¶ 39 (2010)).

[82] *In the Matter of Applications Filed by Frontier Communications Corp. and Verizon Communications Inc. for Assignment of Transfer of Control*, Order, WC Docket No. 09-95; FCC 10-87, ¶ 39 (2010); *see also* In the Matter of Verizon Communications Inc. and Frontier Communications Corp. Joint Application for an Order Declining to Assert Jurisdiction, or, in the alternative, to Approve the Indirect Transfer of Control of Verizon Northwest Inc., Order No. 10-067, Docket UM 1431, Appendix A, pp.9-10 (Feb. 24, 2010) (Frontier commits that it "will not seek to avoid any of its obligations on the grounds that it is exempt from any of the obligations pursuant to Section 251(f)(1) or Section 252(f)(2) of the Act.").

VII. CONCLUSION AND RECOMMENDATION

61. Based on the forgoing, the Joint CLECs urge the Commission to adopt (in addition to the conditions set forth in the Integra Settlement) the proposed conditions discussed herein, as well as those addressed in the Joint CLECs' prior brief dated January 14, 2011 and in the CBeyond brief dated January 21, 2011.

Respectfully submitted,



DAVIS WRIGHT TREMAINE LLP
Mark P. Trinchero
Aaron K. Stuckey
1300 SW Fifth Avenue, Suite 2300
Portland, OR 97201
Telephone: 503-778-53180
FAX: 503-778-5299

K.C. Halm
Brian A. Nixon
1919 Pennsylvania Ave., N.W., Suite 800
Washington, D.C. 20006
Telephone: 202-973-4287
FAX: 202-973-4499

Attorneys on Behalf of the Joint CLECs

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