OAH Docket No. 11-2500-21391-2
PUC Docket No. P-421, et al./PA-10-456

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

The above-entitled matter came before Administrative Law Judge Barbara L. Neilson for evidentiary hearings on October 5-7, 2010, and November 1, 2010, in the Large Hearing Room of the Minnesota Public Utilities Commission in St. Paul, Minnesota. Post-hearing submissions were received from the parties on November 24 and December 8, 2010. The OAH record remained open until December 10, 2010, for receipt of notification from the parties that they wished to conduct cross-examination regarding the affidavits submitted with the post-hearing briefs. No party requested that further cross-examination be conducted.

Michael J. Ahern and Karly Baraga Werner, Dorsey & Whitney, LLP, and Susan S. Masterton, CenturyLink, appeared on behalf of CenturyLink.

Jason D. Topp, Qwest Corporation Law Department, appeared on behalf of Qwest.

Dan Lipschultz, Moss & Barnett, P.A., appeared on behalf of McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services; OrbitCom, Inc.; TDS Metrocom; POPP.com, Inc.; tw telecom of minnesota, llc; DIECA Communications, Inc., d/b/a Covad Communications Company; Crystal Communications, Inc., d/b/a Hickory Tech; and Enventis Telecom, Inc., and CP Telecom, Inc. d/b/a Enventis. Mr. Lipschultz also appeared on behalf of the "Rural CLECS," which are composed of Ace Link Telecom., C-I Communications, Consolidated Telephone Co., Consolidated West, Farmers Mutual Telephone Co., Hometown Solutions, Hutchinson Telecommunications Co., Mainstreet Communications, New Ulm Telecom, Otter Telcom, Paul Bunyan Rural Telephone Cooperative, and Wikstrom Telephone Co.

Gregory Merz, Gray, Plant, Mooty, Mooty & Bennett, P.A., appeared on behalf of Integra Telecom of Minnesota, Inc. and Eschelon Telecom of Minnesota, Inc. (collectively "Integra") and Velocity Telephone, Inc.

Rogelio Pena, Pena & Associates, appeared on behalf of Level 3 Communications.

K.C. Halm, Davis Wright Tremaine LLP, appeared on behalf of Charter Fiberlink CCO, LLC.

Tom Bailey, Briggs & Morgan, P.A., appeared on behalf of Sprint Communications Company, L.P., d/b/a Sprint, Sprint Spectrum, L.P. d/b/a Sprint PCS, Nextel West Corp. d/b/a Nextel, and NPCR, Inc. d/b/a Nextel Partners ("Sprint"); T-Mobile Central, LLC ("T-Mobile"); and Cbeyond Communications, LLC.

Scott Rubin, Attorney at Law, appeared on behalf of the Communication Workers of America, accompanied by Gregg Corwin and Cristina Parra Herrera, Gregg M. Corwin & Associate Law Office, P.C.

Julia E. Anderson, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce, Office of Energy Security (OES).

Robert Vose, Kennedy & Graven, appeared on behalf of the Suburban Rate Authority.

Marc Fournier and Kevin O'Grady appeared for the staff of the Minnesota Public Utilities Commission.

STATEMENT OF ISSUES

Minn. Stat. § 237.23[1] specifies that it is unlawful for telephone companies or other entities subject to the provisions of Chapter 237 to "purchase or acquire the property, capital stock, bonds, securities, or other obligations, or the franchises, rights, privileges, and immunities of any telephone company doing business within the state without first obtaining the consent of the [C]ommission." Similarly, Minn. Stat. § 237.74, subd. 12, states that:

> No telecommunications carrier shall construct or operate any line, plant, or system, or any extension of it, or acquire ownership or control of it, either directly or indirectly, without first obtaining from the [C]ommission a determination that the present or future public convenience and necessity require or will require the construction, operation, or acquisition, and a new certificate of territorial authority. . . .

The overall issue to be addressed in this case is whether the proposed acquisition of Qwest by CenturyLink is in the public interest under Minn. Stat. § 237.23 and 237.74, subd. 12. As set forth in the Public Utilities Commission's Notice and Order for Hearing, that issue includes the following three inquiries:

[1] Unless otherwise specified, references to Minnesota Statutes are to the 2008 edition.

a. Whether the post-merger company would have the financial, technical, and managerial resources to enable the Qwest and CenturyLink Operating Companies to continue providing reliable, quality telecommunications services in Minnesota;

b. What impact the transaction would have on Minnesota customers and on competition in the local telecommunications market; and

c. What impact the transaction would have on Commission authority.

Based upon the record herein the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. Background

A. Parties

1. The Joint Petitioners in this proceeding are (1) Qwest Communications International, Inc.; (2) Qwest Corporation ("Qwest"); (3) Qwest LD Corp. and Qwest Communications Company LLC (collectively the "Qwest Operating Companies"); (4) CenturyLink, Inc. ("CenturyLink"), along with CenturyTel Holdings Inc. and CenturyTel of the Northwest, Inc; and (5) CenturyTel of Minnesota, Inc. d/b/a CenturyTel of Chester, Inc. d/b/a CenturyLink; CenturyTel of Northwest Wisconsin, LLC d/b/a CenturyLink; CenturyTel Acquisition LLC d/b/a CenturyLink Acquisition; CenturyTel Solutions, LLC d/b/a CenturyTel Solutions; CenturyTel Fiber Company II, LLC d/b/a LightCore, a CenturyLink Company; CenturyTel Long Distance, LLC d/b/a CenturyTel Long Distance; Embarq Corporation; Embarq Minnesota Inc. d/b/a CenturyLink; and Embarq Communications, Inc. d/b/a CenturyLink Communications (collectively the "CenturyLink Operating Companies").[2]

2. The Joint Petitioners are incumbent local exchange carriers ("ILECs") operating in Minnesota and numerous other states. CenturyLink also has some competitive local exchange carrier ("CLEC") affiliates.[3]

3. Qwest is Minnesota's largest ILEC and Minnesota's Regional Bell Operating Company ("RBOC"). It serves over 1.1 million access lines throughout the state. Qwest also is authorized to provide intrastate interexchange services; regulated retail and wholesale services; and interconnection services to CLECs through numerous interconnection agreements approved by the Commission.[4]

4. CenturyLink (formerly known as CenturyTel) is a publicly-traded Louisiana corporation with headquarters in Monroe, Louisiana. It serves approximately 7 million

[2] Joint Petition for Expedited Approval of Indirect Transfer of Control ("Joint Petition") at 1-2 (May 14, 2010).
[3] *Id.* at 4.
[4] *Id.* at 9.

access lines nationwide, 2.2 million broadband subscribers, and over 553,000 video subscribers. In Minnesota, CenturyLink provides regulated retail and wholesale services through the CenturyLink Operating Companies under the jurisdiction of the Commission; interconnection services to CLECs through numerous interconnection agreements approved by the Commission; fiber optic capacity to other carriers and to businesses; and retail interexchange service.[5]

5. A group of CLECs actively participated in this matter, jointly sponsored some witnesses, and jointly filed briefs.[6] The Joint CLECs include Cbeyond Communications, LLC; Charter Fiberlink CCO, LLC; Level 3 Communications; McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services; OrbitCom, Inc.; TDS Metrocom; POPP.com, Inc.; and tw telecom of minnesota, llc. Prior to its settlement with the Joint Petitioners, Integra Telecom of Minnesota, Inc. and Eschelon Telecom of Minnesota, Inc. (collectively "Integra") also participated in the Joint CLECs. The members of the Joint CLECs provide local telecommunications and/or local exchange service in competition with Qwest.[7] Charter also provides local service in competition with CenturyLink's affiliate, Embarq, in several areas of Minnesota as well as in other states.[8]

6. Sprint Communications Company, L.P. d/b/a Sprint, Sprint Spectrum, L.P. d/b/a Sprint PCS, Nextel West Corp. d/b/a Nextel, and NPCR, Inc. d/b/a Nextel Partners ("Sprint") and T-Mobile Central, LLC ("T-Mobile") also were active participants in this proceeding. Sprint is certified by the Commission as a CLEC and an interexchange carrier ("IXC") and currently provides local, intraexchange, and interexchange telecommunications services in Minnesota. Sprint's wireless affiliates are licensed by the Federal Communications Commission ("FCC") and provide wireless telecommunications services in Minnesota. In its capacities as a CLEC, IXC, and wireless carrier, Sprint is a customer of and a competitor to Qwest and CenturyLink.[9] T-Mobile is a commercial mobile radio service ("CMRS") provider licensed by the Federal Communications Commission ("FCC") to provide wireless telecommunications services in Minnesota. As a CMRS provider, T-Mobile competes with, interconnects with and exchanges traffic with various Qwest and CenturyLink entities.[10]

7. Prior to reaching a settlement with the Joint Petitioners shortly after the evidentiary hearing concluded, the Communications Workers of America also actively participated in this matter. The CWA is an international union with 8,764 members in Minnesota, including 2,142 Qwest employees.[11]

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[5] *Id.* at 6-8.
[6] Level 3 also filed a separate brief.
[7] *See* Petition to Intervene of PAETEC, OrbitCom, Popp.com, TDS Metrocom, and tw telecom (June 18, 2010) at 1; Petition to Intervene of Charter Fiberlink (June 24, 2010) at 1-2; Petition to Intervene of Cbeyond (July 1, 2010) at 1; Petition to Intervene of Level 3 (July 21, 2010) at 1-2.
[8] Ex. 40 (Pruitt Direct) at 6; Tr. Vol. 3 at 142-44 (Test. of Pruitt).
[9] Sprint's Petition to Intervene at 1 (June 17, 2010).
[10] T-Mobile's Petition to Intervene at 1 (June 25, 2010).
[11] CWA's Petition to Intervene at 1 (June 18, 2010).

8. The Department of Commerce (DOC) reached a settlement agreement with the Joint Petitioners just prior to the start of the hearing and did not offer the testimony that previously had been prefiled on its behalf. The DOC presented testimony at the hearing concerning the settlement agreement and also provided post-hearing briefs on the settlement.

9. The Suburban Rate Authority, which is a joint powers association comprised of 27 municipalities in the Twin Cities metropolitan area, filed a post-hearing brief but otherwise did not participate actively during this proceeding.

B. Procedural History

10. On May 14, 2010, Qwest and CenturyLink filed with the Public Utilities Commission a Joint Petition for approval of the indirect transfer of control of Qwest Communications International, Inc., Qwest Corporation, Qwest Communications Company, LLC, and Qwest LD Corp. under an Agreement and Plan of Merger as of April 21, 2010 (the "Merger Agreement").

11. On May 19, 2010, and May 20, 2010, the Commission issued notices seeking comments on the Joint Petitioners' filing and the appropriate procedural framework and schedule. On June 10, 2010, the matter came before the Commission for initial procedural determinations.

12. On June 15, 2010, the Commission issued a Notice and Order for Hearing; Order Approving Protective Order, Requiring Customer Notices, and Requiring Filing of Settlements. The Commission directed that a contested case proceeding pursuant to the Administrative Procedure Act, Minnesota Statutes §§14.57 – 14.62, be held on the issue of whether the proposed merger is consistent with the public interest, including the specific inquires set forth in the Statement of Issues above.[12] In the Notice of Hearing, the Commission noted that the Joint Petitioners wished to complete the proposed merger as soon as possible and had requested expedited action, and indicated that the "Commission concurs, subject to the requirements of proper record development and informed decision-making."[13] The Commission therefore asked that the Administrative Law Judge "conduct contested case proceedings as expeditiously as possible" and requested that the Report of the Administrative Law Judge be submitted by November 30, 2010, "if that can be done consistent with due process, full evidentiary development, and due deliberation."[14] The Commission also approved the draft Protective Order filed by the Joint Petitioners and the DOC; directed that any settlement reached between any of the parties in this case be transparent and filed as part of the case record; and required that the Joint Petitioners notify all Minnesota customers of the proposed merger and the opportunity to comment on it in a mailing separate from the customers' normal billings.[15]

[12] Notice and Order for Hearing at 2.
[13] *Id*. at 4.
[14] *Id*. at 5.
[15] *Id*.

13. The Joint Petitioners mailed the customer notices required by the Commission's Oder of June 15, 2010, to their Minnesota customers on July 21-23, 2010. The notice included information regarding how to submit comments to the Commission by mail, phone, fax, or internet. Members of the public subsequently submitted comments on the proposed merger to the Commission and to the Administrative Law Judge, which were e-Filed in this Docket.

14. The Minnesota Department of Commerce (DOC or Department) intervened in this matter as of right. Prior to issuance of the Notice of Hearing, the Commission granted the intervention petitions of Integra Telecom of Minnesota, Inc. and Eschelon Telecom of Minnesota, Inc. (collectively "Integra"); and Velocity Telephone, Inc. After the matter was referred to the Office of Administrative Hearings, additional petitions to intervene in this proceeding were filed pursuant to Minnesota Rules Part 1400.6200, and the following were made parties to this Proceeding:

- McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services; OrbitCom, Inc.; TDS Metrocom; POPP.com, Inc.; tw telecom of minnesota, llc; and DIECA Communications, Inc., d/b/a Covad Communications Company;
- Ace Link Telecom., C-I Communications, Consolidated Telephone Co., Consolidated West, Farmers Mutual Telephone Co., Hometown Solutions, Hutchinson Telecommunications Co., Mainstreet Communications, New Ulm Telecom, Otter Telcom, Paul Bunyan Rural Telephone Cooperative, and Wikstrom Telephone Co. (collectively "Rural CLECs");
- Crystal Communications, Inc., d/b/a Hickory Tech;
- Enventis Telecom, Inc., and CP Telecom, Inc. d/b/a Enventis;
- Level 3 Communications;
- Sprint;
- T-Mobile;
- Cbeyond Communications, LLC;
- Verizon;
- the Communication Workers of America (CWA); and
- the Suburban Rate Authority.

15. The Administrative Law Judge denied the petition of Midcontinent Communications to intervene by order dated August 13, 2010. However, Midcontinent was permitted to participate in the proceeding pursuant to Minn. R. 1400.6200, subp. 5,

and 1400.7150. Mary Lohnes, Regulatory Affairs Manager for Midcontinent Communications, filed comments on September 10, 2010.

16. On July 15, 2010, Verizon filed a Withdrawal and Dismissal of its intervention. The CWA and 360 networks also subsequently withdrew after reaching settlement agreements with the Joint Petitioners.

17. A prehearing conference was held before the Administrative Law Judge on July 7, 2010. On July 16, 2010, the First Prehearing Order was issued. An expedited schedule for prefiling the testimony and concluding the hearing was set, subject to revision as necessary to assure due process, full evidentiary development, and due deliberation. Under the schedule, the evidentiary hearing was to be held October 5-7, 2010, post-hearing briefs were to be filed on October 21 and 28, 2010, and the Report of the Administrative Law Judge was expected to be issued on November 30, 2010.

18. On August 11, 2010, Sprint filed a Motion to Compel Qwest and CenturyLink (the Joint Petitioners) to respond to seventeen Information Requests. By letter dated August 20, 2010, Sprint notified the Administrative Law Judge that the Joint Petitioners had subsequently provided supplemental responses to several of its Information Requests and that only two Information Requests remained in dispute. On August 25, 2010, the Joint Petitioners filed their response to Sprint's Motion to Compel regarding these two Information Requests.

19. On August 16, 2010, the Communications Workers of America (CWA) filed a Motion to Compel the Joint Petitioners to respond to eight Information Requests.

20. On August 23, 2010, Integra Telecom filed a Motion to Compel the Joint Petitioners to respond to one Information Request.

21. On August 31, 2010, the Joint Petitioners filed their Response to the Motions to Compel of CWA and Integra. At the same time, they also filed a Motion for a Supplemental Protective Order.

22. On September 2, 2010, the CWA filed a Reply Brief regarding its Motion to Compel.

23. On September 8, 2010, oral argument regarding all three Motions to Compel was heard in the Large Conference Room at the Public Utilities Commission.

24. On September 13, 2010, Sprint, T-Mobile, and Cbeyond Communications filed a Joint Response Opposing the Joint Petitioners' Motion for Supplemental Protective Order. On the same date, Integra, the CWA, and the CLEC Coalition also filed Responses in Opposition to the Joint Petitioners' Motion for Supplemental Protective Order.

25. The Joint Petitioners filed their Reply Brief regarding the Motion for Supplemental Protective Order on September 15, 2010.

26. On September 21, 2010, the Administrative Law Judge issued an Order regarding the Motions to Compel filed by Sprint, Integra, and the CWA, and the Motion for a Supplemental Protective Order filed by the Joint Petitioners. In that Order, the Administrative Law Judge granted Sprint's Motion to Compel the Joint Petitioners to respond to two Information Requests; granted Integra's Motion to Compel the Joint Petitioners to respond to one Information Request; granted the CWA's Motion to Compel the Joint Petitioners to respond to six Information Requests; and granted in part and denied in part the CWA's Motion to Compel the Joint Petitioners to respond to two other information requests. The September 21 Order directed the parties to "confer and attempt to reach agreement on what, if any, adjustments are needed to the schedule set forth in the First Prehearing Order as a result of the required production of the additional information encompassed by this Order" and indicated that a telephone conference call would be held to consider the matter if the parties were unable to reach agreement.

27. In the September 21, 2010, Order, the Administrative Law Judge also granted in part and denied in part the Joint Petitioners' Motion for Supplemental Protective Order, and issued a Supplemental Protective Order that, where applicable, would govern the information produced in response to the Ruling on the Integra and CWA Motions to Compel. The Supplemental Protective Order modified the Small Company exception set forth in Section 4 of the Protective Order issued by the Commission on June 15, 2010, to restrict disclosure to a reasonable number of outside attorneys; a reasonable number of outside consultants; a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Sensitive Trade Secret Information; and no more than three non-attorney in-house regulatory personnel. The Supplemental Protective Order continued to specify that such persons should not be primarily involved in marketing activities for the company, absent agreement or an order to the contrary. The Order did not modify the June 15 Protective Order governing disclosure to companies that did not fall within the Small Company exception. Finally, the Administrative Law Judge denied the Joint Petitioners' request to restrict dissemination of information to certain representatives of the CWA.

28. On September 22, 2010, the Joint Petitioners filed a Motion for the Administrative Law Judge to Reconsider the September 21, 2010 Order on a Limited Basis or, in the Alternative, to Certify the Motion for a Supplemental Protective Order to the MPUC and a Request for a Stay. In their motion, the Joint Petitioners contended that the September 21, 2010, Order issued by the Administrative Law Judge failed to adequately protect a limited number of "extraordinarily sensitive" documents, and sought to have those documents disclosed only to outside counsel and outside experts of the private Intervenors.

29. On September 23, 2010, a telephone conference call was held with the parties to discuss a request to adjust the deadline for filing the surrebuttal testimony, procedures for e-filing documents subject to the Supplemental Protective Order, and the Joint Petitioners' motion. During the conference call, the Joint Petitioners proposed that the deadline for the filing of the Intervenors' surrebuttal be extended from September 27 to October 1, but otherwise argued that the schedule should remain unchanged. The Intervenors proposed that the dates for filing testimony and the evidentiary hearing itself

be extended. The Administrative Law Judge extended the deadline for the filing of the Intervenors' surrebuttal to October 1, 2010, but denied the Intervenors' request to continue the hearing to early November. The Judge also granted the Joint Petitioners' request for a stay of the September 21, 2010, Order with respect to the specific documents at issue in the Motion to Reconsider or Certify.

30. On September 24, 2010, the Administrative Law Judge issued a Fourth Prehearing Order confirming the rulings that were made during the September 23, 2010, conference call. In the Order, the Administrative Law Judge noted: "The evidentiary hearing shall remain scheduled for October 5-7, 2010. If necessary, additional hearing days will be scheduled to consider information obtained late in this proceeding."

31. On September 27, 2010; Integra Telecom, Sprint, and T-Mobile filed responses in opposition to the Motion to Reconsider or Certify.

32. By Order dated September 28, 2010, the Administrative Law Judge required the Joint Petitioners to submit copies of the documents at issue in the Motion to Reconsider or Certify for *in camera* inspection by the Administrative Law Judge by the next day.

33. On September 30, 2010, the Administrative Law Judge issued an Order which granted in part and denied in part the Joint Petitioners' Motion to Reconsider or Certify and issued a Second Supplemental Protective Order that, where applicable, would govern the information produced in response to the Ruling. The Joint Petitioners were required to provide the information at issue to the appropriate parties by 4:30 p.m. on Friday, October 1, 2010. The Second Supplemental Protective Order (1) required that the CWA limit disclosure of the materials at issue to its outside counsel and outside expert, in accordance with its agreement to do so; and (2) required that the other Intervenors limit disclosure of the materials at issue to a reasonable number of outside attorneys; one outside consultant; and one in-house employee who is not now involved, and will not for a period of two years involve himself or herself in strategic or competitive decision-making (including, but not limited to, the sale or marketing or pricing of products or services) with respect to which the documents or information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the Joint Petitioners.

34. On October 1, 2010, the Administrative Law Judge granted the Joint Petitioners' motion to modify the portions of the First Prehearing Order relating to objections to the qualifications of a witness or the admissibility of prefiled testimony, and discussion of new information in witnesses' summaries of prefiled testimony. Under the Order, the Joint Petitioners were permitted to file any objections to the Intervenors' Surrebuttal Testimony by 2:00 p.m. on Monday, October 4, 2010, and Joint Petitioners' witnesses were permitted a limited opportunity to address new issues in their summaries, in response to the Intervenors' Surrebuttal Testimony.

35. On October 4, 2010, the Joint Petitioners and the Department of Commerce filed a Stipulation and Agreement and a Joint Motion for Approval by the Commission of the Stipulation and Agreement.

36. On October 4, 2010, the CWA filed a Motion to Change the Confidentiality Designation of Particular Information Produced by Qwest. Qwest filed a Response to the Motion on October 11, 2010.

37. The Joint Petitioners and intervening parties submitted prefiled direct and responsive testimony on June 14, 2010, August 19, 2010, September 13, 2010, September 27, 2010, and October 1, 2010.

38. The initial portion of the hearing was held as scheduled on October 5-7, 2010.

39. During the hearing on October 6, 2010, the Intervenors informed the Administrative Law Judge that they wished to submit additional testimony and schedule an additional day of hearing to address the discovery that had been provided by the Joint Petitioners after September 24, 2010, as well as the settlement agreement reached by the Joint Petitioners and the DOC that was filed on October 4, 2010.[16] After the parties presented their respective positions,[17] the Administrative Law Judge granted the Intervenors' proposed adjustment to the schedule, noting that their proposal was granted because of "due process concerns and the fact that documents have been provided late in this proceeding."[18] The modified schedule called for the submission of supplemental testimony on October 22 and October 29, 2010; an additional day of hearing on November 1, 2010; the submission of initial and reply briefs on November 9 and November 22, 2010; and issuance of the Report of the Administrative Law Judge on December 22, 2010.[19]

40. On October 8, 2010, Integra filed a Motion to Compel CenturyLink to produce all documents and information responsive to Integra's Third Set of Information Requests. CenturyLink filed a Response to the Motion on October 14, 2010.

41. Oral argument on the Integra and CWA Motions was heard via telephone conference call on October 15, 2010. On October 20, 2010, the Administrative Law Judge issued an Order denying the CWA's Motion to Change the Designation of Information Produced by Qwest and granting Integra's Motion to Compel CenturyLink to produce documents and information responsive to Integra's Third Set of Information Requests. CenturyLink was ordered to conduct a further reasonably diligent inquiry and to the extent possible, supplement its responses and production by the close of business on Tuesday, October 19, 2010.

[16] Tr. Vol. 2A at 7-13, 17-18.
[17] *Id.* at 6-18.
[18] *Id.* at 18-19.
[19] *Id.* at 19-21.

42. On October 18, 2010, PAETEC, OrbitCom, TDS Metrocom, POPP.com, tw telecom of Minnesota, Integra, Cbeyond, Charter, and Level 3 filed a notice on behalf of the Joint CLECs of their opposition to the Motion for Approval of the DOC Stipulation and Agreement. On October 20, 2010, the DOC and the Joint Petitioners filed letters replying to the notice of opposition. On October 21, 2010, the Joint CLECs filed a Motion to Strike the Joint Petitioners' reply brief. On October 22, 2010, the Joint Petitioners filed a response in opposition to the Motion to Strike.

43. On October 25, 2010, the Administrative Law Judge issued an Order denying the Joint CLECs' Motion to Strike. The Order clarified that the motion for approval of the Stipulation and Agreement reached between the Joint Petitioners and the Department of Commerce, along with the Joint CLECs' response in opposition, the Joint Petitioners' reply brief, and further discussion of this matter in hearing testimony and post-hearing submissions by the parties, would be addressed in the Findings of Fact, Conclusions of Law, and Recommendation issued by the Administrative Law Judge.

44. After receiving input from the parties, an Order for Settlement Conference was issued on October 27, 2010.

45. Additional prefiled surrebuttal and rejoinder testimony was submitted by the Intervenors and the Joint Petitioners on October 22 and 29, 2010.

46. An additional day of hearing was held on November 1, 2010.

47. During the hearing on October 5-7 and November 1, 2010, the prefiled testimony of eighteen witnesses was admitted into evidence. This included:

- the prefiled testimony of Duane Ring, John Jones, Mark Gast, Michael Hunsucker, John Stanoch, Michael Williams, Karen Stewart, and Robert Brigham sponsored by Joint Petitioners';
- the prefiled testimony of James Appleby sponsored by Sprint;
- the prefiled testimony of Billy Pruitt sponsored by Charter;
- the prefiled testimony of Bonnie Johnson and Douglas Denney sponsored by Integra;
- the prefiled testimony of Richard Thayer sponsored by Level 3;
- the prefiled testimony of Timothy Gates and August Ankum sponsored by Cbeyond, Integra, Charter, Level 3, PAETEC, TDS Metrocom, tw telecom, OrbitCom, and Popp.com;
- the prefiled testimony of William Haas sponsored by McLeodUSA d/b/a PAETEC; and

- the prefiled testimony of Randy Barber and Jasper Gurganus sponsored by the CWA.

48. A settlement conference was held before Administrative Law Judge Kathleen D. Sheehy on November 2, 2010.

49. On November 8, 2010, the Joint Petitioners filed a Settlement Agreement that they had reached with Integra Telecom in the above matter.

50. On November 10, 2010, Cbeyond, PAETEC, TDS Metrocom, tw telecom, OrbitCom and POPP.com filed a Motion on behalf of the Joint CLECS for Leave to File Additional Supplemental Testimony and for Modification of the Schedule. On November 11, 2010, the Joint Petitioners filed a Response in Opposition to the CLECs' Motion, and the Joint CLECs filed a Reply to the Joint Petitioners' Response. On November 12, 2010, the Joint CLECs and the Joint Petitioners sent additional email messages to the Administrative Law Judge regarding the Motion.

51. On November 12, 2010, the Administrative Law Judge granted the Joint CLECs' Motion for Leave to File Additional Supplemental Testimony and for Modification of the Schedule. Because the presentation of evidence during the hearing did not focus on the differing interests of the CLECs as they related to the Integra Settlement and any such differences would appear to be relevant to the Commission's consideration of whether the terms of that settlement adequately protected the public interest, wholesale customers and competition, the Administrative Law Judge determined that the receipt of limited additional factual information on this issue was consistent with principles of due process and full evidentiary development. Accordingly, the Administrative Law Judge ordered a limited adjustment to the schedule to allow the record to be supplemented to address this issue. The schedule was modified to require the filing of initial post-hearing briefs on November 24, 2010, along with affidavits by the Joint CLECs regarding the Integra Settlement as it related to their interests and the broader public interest; the filing of reply briefs on December 8, 2010, along with affidavits by the Joint Petitioners responding to the Joint CLEC affidavits; notification by December 10, 2010, of whether cross-examination is desired as to the affidavits; issuance of the Report of the Administrative Law Judge on January 10, 2011; and the filing of exceptions and replies to exceptions on January 24 and 31, 2011.

52. On November 15, 2010, the Joint Petitioners filed an Emergency Motion for Reconsideration of the November 12, 2010 Scheduling Order. On November 16, 2010, the Joint CLECs and Sprint filed responses in opposition to the Motion; the Joint Petitioners filed a Reply in Support of the Motion; and the Joint CLECs filed a further response.

53. On November 17, 2010, the Administrative Law Judge modified the schedule set forth in the November 12, 2010, Order to shorten the deadlines for the filing of exceptions and replies to exceptions to January 18, 2011, and January 25, 2011, respectively, but denied the Joint Petitioners' Emergency Motion in all other respects. In the Order, the Administrative Law Judge stated:

The Administrative Law Judge recognizes that the circumstances presented in this case are unique. Integra was a significant participant in this proceeding and one of the major proponents of the joint testimony offered in this matter. Its entry into a settlement agreement at this stage of the proceedings undoubtedly has an impact on the remaining CLECs. Because it appears that any differences in the interests of the CLECs would be relevant to the Commission's consideration of whether the terms of the Integra Settlement provide adequate protection of wholesale customers and competition, the Administrative Law Judge remains convinced that a limited adjustment to the schedule to allow supplementation of the record to address this issue is proper and in keeping with due process principles.

54. On November 24, 2010, initial post-hearing briefs were filed by the Joint Petitioners; the Joint CLECs;[20] Level 3; Sprint and T-Mobile; the Suburban Rate Authority; and the DOC. The Joint CLECs filed eight affidavits with their initial brief. Sprint and T-Mobile filed one affidavit with their initial brief.

55. On December 8, 2010, reply briefs were filed by the Joint Petitioners; the Joint CLECs; Level 3; Sprint and T-Mobile; and the DOC. The Joint Petitioners did not file any affidavits with their reply brief.[21]

56. By December 10, 2010, no party had requested that additional cross-examination be conducted of the individuals who filed affidavits. The OAH record closed on that date.

II. Nature of the Proposed Transaction

57. The Qwest entities currently operating in Minnesota are Qwest Corporation ("QC"), Qwest LD Corp ("QLDC"), and Qwest Communications Company, LLC ("QCC"). Each of those entities is a direct subsidiary of Qwest Services Corp. Qwest Services Corp, in turn, is a subsidiary of Qwest Communications International Inc. ("QCII"). QC, QLDC, and QCC are the operating companies that provide the actual telecommunications services to customers ("Qwest Operating Companies").[22]

58. QCII, which indirectly owns the Qwest Operating Companies, is a publicly-traded holding company. QCII's subsidiaries provide incumbent local exchange carrier ("ILEC") operations in 14 states and nationwide competitive local exchange and interexchange operations. QCII is the indirect sole shareowner of QC, which provides telecommunications services in Minnesota and 13 other states. QC provides regulated retail and wholesale service under the jurisdiction of this Commission. QC also provides interconnection service to Competitive Local Exchange Carriers ("CLECs")

[20] Cbeyond, Charter Fiberlink, Level 3, PAETEC, OrbitCom, POPP.com, TDS Metrocom, and tw telecom. Integra had entered into a settlement agreement by the time the post-hearing briefs were filed and did not join in the Joint CLECs' briefs.
[21] Joint Petitioners' Reply Brief at 4.
[22] Ex. 1 (Stanoch Direct) at 5.

through numerous interconnection agreements under the Telecommunications Act of 1996 (the "Act"), all of which are approved by the Commission.[23]

59. QCII is the indirect sole shareowner of QLDC, which provides resold interexchange services under the regulation of this Commission. QLDC was formed by Qwest for the purpose of providing interLATA interexchange services originating in Minnesota under Sections 271 and 272 of the Act. QCC provides long distance and competitive local exchange services under the regulation of the Commission and provides facilities-based and resold interexchange and competitive local exchange services nationwide.[24]

60. The subsidiaries of CenturyLink that are operating in Minnesota and are regulated by the Commission include CenturyTel of Chester, Inc., d/b/a CenturyLink, CenturyTel of Northwest Wisconsin LLC d/b/a CenturyLink, CenturyTel of Minnesota, Inc. d/b/a CenturyLink, and Embarq Minnesota, Inc. d/b/a CenturyLink (collectively "the CTL Minnesota ILECs"). The CTL Minnesota ILECs provide service to approximately 143,600 access lines in Minnesota.[25]

61. The other regulated, indirect subsidiaries of CenturyLink registered in Minnesota are CenturyTel Long Distance, LLC d/b/a CenturyLink Long Distance, Embarq Communications, Inc. d/b/a CenturyLink Communications, CenturyTel Fiber Company II, LLC d/b/a LightCore, a CenturyLink Company, CenturyTel Solutions, LLC d/b/a CenturyLink Solutions, and CenturyTel Acquisition LLC d/b/a CenturyLink Acquisition (collectively "the CTL Regulated Entities"). None of the CTL Regulated Entities or any entity that holds a controlling interest in them is experiencing a change in control as a result of this Transaction. The control of these companies will remain with CenturyLink.[26]

62. On April 21, 2010, QCII, CenturyTel, Inc. (which is now named CenturyLink, Inc.), and SB44 Acquisition Company ("Acquisition Company") entered into an Agreement and Plan of Merger. Acquisition Company is a direct wholly-owned subsidiary of CenturyLink created to effectuate the merger. Under the terms of the Merger Agreement, QCII and the Acquisition Company will merge, after which QCII will be the surviving entity and will become a wholly-owned, first-tier subsidiary of CenturyLink.[27]

63. Administrative notice was taken of the merger agreement, which was not offered as an exhibit in this proceeding. The merger agreement may be found at www.centurylinkqwestmerger.com/downloads/sec-filings/Qwest-8K%204-22-10.pdf .[28]

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[23] Ex. 1 (Stanoch Direct) at 5.
[24] *Id.* at 5-6.
[25] Ex. 5 (Jones Direct) at 4 and Ex. JJ-1.
[26] Ex. 5 (Jones Direct) at 4-5.
[27] Ex. 1 (Stanoch Direct) at 6-7; Ex. 5 (Jones Direct) at 4 and Ex. JJ-1; Joint Petition at 4 and Ex. A.
[28] Tr. Vol. 3 at 33; Joint Petition at 4 n. 2.

64. After the proposed transaction is closed, QCII shareholders will receive 0.1664 CenturyLink shares for each share of QCII common stock they own at closing. Upon completion of the transaction, the shareholders of pre-merger CenturyLink will own approximately 50.5% of post-merger CenturyLink, and the shareholders of pre-merger QCII will own approximately 49.5% of post-merger CenturyLink. CenturyLink will issue new stock to acquire QCII, and the proposed transaction does not involve the payment of cash.[29]

65. The proposed merger is designed to result in a non-taxable, stock-for-stock business transaction with no new debt or refinancing required.[30]

66. After the merger, the CTL Regulated Entities will retain their individual corporate identities and continue to operate as they do today. The Applicants committed that each company would continue to abide by all applicable statutes, rules, regulations, Commission orders, obligations, tariffs and pricelists under which they are currently regulated.[31]

67. The Transaction will not result in the transfer of assets, exchanges or operations to a wholly different provider. QCII will become a wholly owned subsidiary of CenturyLink. QCII's operating subsidiaries, QC, QCC and QLDC, will remain subsidiaries of QCII.[32]

68. Following the completion of the Transaction, the CenturyLink Board of Directors will increase from 13 members to 17 members. Four directors from the QCII Board of Directors will be added to the CenturyLink Board of Directors, including Edward A. Mueller, QCII's Chairman and Chief Executive Officer.[33]

69. The Transaction will result in a parent-level transfer of control of QCII only. QC, QCC, and QLDC will each continue to operate as separate carriers, providing services to their customers under the same regulatory regime in existence prior to the merger. The Joint Petitioners indicated that, after the transaction is completed, "there may be a change in the names under which the companies are doing business (i.e., the 'd/b/a' name) and certain billing and certain billing operations may be combined, but otherwise the transaction will be transparent for customers." The Joint Petitioners noted that retail end users and wholesale customers will continue to receive service from the same carrier that served them before the merger.[34] In addition, the Joint Petitioners indicated that, following the merger, "customers will continue to receive the same full range of products and services at the same rates, terms and under the same conditions as they did immediately before the close of the Transaction."[35]

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[29] Ex. 1 (Stanoch Direct) at 6-7; Ex. 5 (Jones Direct) at 3; Joint Petition at 5.
[30] *Id.* at 6; Ex. 5 (Jones Direct) at 3-4.
[31] Ex. 5 (Jones Direct) at 5.
[32] Ex. 1 (Stanoch Direct) at 7.
[33] Joint Petition at 4.
[34] Ex. 1 (Stanoch Direct) at 8.
[35] Ex. 5 (Jones Direct) at 5.

70. The DOC stressed the fact that there will be no change in corporate structure of the CenturyLink and Qwest operating entities as a result of the transaction. The proposed transaction is a parent level transfer of control, and the existing separate operating entities will continue to exist after the merger. Accordingly, the pre-merger obligations of these entitles will continue to apply after the merger. It was in this context that the DOC entered into a settlement agreement with the Joint Petitioners.[36]

III. Summary of Public Comments

71. A substantial number of public comments were filed in this proceeding with both the Administrative Law Judge and the Commission. All of the comments received have been e-Filed in this Docket.

72. In general, the comments filed by retail customers focused on broadband speeds and deployment, service quality and price, and loss of competition. Some individuals objected to the merger because they felt it would result in too large a company and benefit only corporate executives. Others expressed concern that the post-merger company would ultimately reduce services and increase costs. Several customers sought clarification on the effect of the merger on the "Price for Life" contracts they have with Qwest. Businesses and local units of government, particularly those in predominantly rural areas, tended to support the merger based on the belief that a larger, well-funded post-merger company would invest in the facilities needed to provide high speed internet access and other telecommunication services. Current customers of CLECs encouraged the Commission to condition the merger on (1) protecting the terms and conditions under which CLECs interconnect with Qwest, and (2) ensuring that any changes to Qwest's OSS are adequately tested with CLECs before implementation, so that their businesses are not disrupted. In addition, several individuals who have retired from Qwest expressed concern about what, if any, impact the merger would have on their pension benefits.

73. A more detailed summary of a representative sample of the public comments is attached to this Report as Appendix A.

IV. Settlement Agreements

74. Between October 1, 2010, and the date of this Report, four separate settlement agreements between the Joint Petitioners and certain interested parties were filed in this matter. As discussed below, these agreements were reached by the Joint Petitioners and the following parties: 360 networks; the DOC; the CWA; and Integra.

75. An overview of each of these Settlement Agreements is provided below.

[36] DOC Reply Brief at 3.

A. 360networks Settlement Agreement

76. 360networks is authorized to provide both local exchange and interexchange services in Minnesota. It is both a customer and a competitor of Qwest.[37]

77. On September 28, 2010, Joint Petitioners and 360networks entered into a Settlement Agreement that resolved all issues between them, including the manner in which the company's interconnection agreements with Qwest will be handled after the merger. The Settlement Agreement was filed in this docket on October 1, 2010. 360networks filed a Notice of Withdrawal of Intervention on October 4, 2010.

78. Under the terms of the agreement reached with 360networks, Qwest Corporation and any successor entity operating in current Qwest territories (1) agreed to honor all obligations under its existing ICAs with 360networks; (2) agreed not to terminate or change the conditions of certain of 360networks' ICAs (those that have either not expired as of the transaction closing date or have been expired less than three years as of the closing date) for 36 months after the closing date with the exception of changes of law, unless the parties agreed otherwise or a default or other triggering event occurred; and (3) agreed to allow 360networks to use its currently existing ICA as the basis for negotiating the initial successor agreement, and to incorporate the amendments to the existing ICA into the body of the agreement. The agreement specifies that 360networks will not be precluded from obtaining the benefits of additional FCC conditions not addressed in this agreement. In exchange, 360networks agreed that it would immediately take all necessary steps to withdraw from or cease participation in all pending merger review dockets.

B. DOC Settlement Agreement

79. The Joint Petitioners and the Department reached an agreement in principle on Friday morning, October 1, 2010. Rebuttal testimony was to be filed by the end of the day on October 1, 2010. The Department's witnesses had prepared rebuttal testimony but did not file it in light of the settlement.[38] The DOC also did not offer into evidence any of the testimony that had been filed prior to the hearing on its behalf.

80. The Joint Petitioners and the DOC filed their Stipulation and Agreement and a Joint Motion for Approval of Stipulation and Agreement on October 4, 2010. Based on the commitments contained in the Stipulation and Agreement, the DOC "finds that the transaction at issue in this docket is in the public interest as contemplated by Minnesota law and agrees to support approval of the transaction before the Minnesota Public Utilities Commission without additional conditions."[39]

81. As noted in the Procedural Findings above, a formal Notice of Opposition to the DOC Settlement was filed on October 18, 2010, by PAETEC, OrbitCom, TDS

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[37] 360networks' Petition to Intervene at 1 (June 24, 2010).
[38] Tr. Vol. 1 at 160-61.
[39] Ex. 3 (DOC Settlement Agreement) at 1-2, 10-11. Diane Wells provided testimony with respect to the agreement at Tr. Vol. 1 at 156-250.

Metrocom, POPP.com, tw telecom of Minnesota, Integra, Cbeyond, Charter, and Level 3. These entities urged the Administrative Law Judge to recommend that the Commission reject or substantially modify the proposed settlement so that it included adequate protections for wholesale customers and competition. They argued that the process used to produce the DOC Settlement Agreement was fundamentally flawed because it excluded all interveners and relied almost entirely on an Iowa settlement that was based on unique circumstances in that state and not intended for use in other jurisdictions. They emphasized that PAETEC has filed motions with the FCC and the Iowa Utilities Board objecting to the Joint Petitioners' use of the Iowa settlement in other jurisdictions. In addition, they asserted that the Settlement Agreement fails to adequately address the substantial merger risks to wholesale customers and competition, as evidenced by its failure to incorporate certain conditions proposed by the Joint CLECs relating to wholesale rate stability, service quality stability, network access stability, interconnection agreement stability, OSS stability, and the provision of conditioned copper loops (Joint CLEC Proposed Conditions 1, 4, 6, 7, 14, 16, 18, 19, and 27).

82. By letter dated October 20, 2010, the DOC responded to the Joint CLECs' Notice of Opposition. The DOC maintained in its letter that the Settlement Agreement between the Joint Petitioners and the DOC was appropriately negotiated, is in the public interest and should be approved.

83. On October 20, 2010, the Joint Petitioners filed a letter brief in support of their Motion for Approval of the DOC Stipulation and Agreement. The Joint Petitioners argued that the separate settlement talks and Proposed Agreement between the Joint Petitioners and the DOC were not unusual, and pointed out that participants in this proceeding would have adequate opportunity to advocate their respective positions on the Settlement Agreement. They asserted that the Settlement Agreement is in the public interest and that the commitments reflected in the Agreement provide important benefits regarding broadband investment and rates for Minnesota and Minnesota customers as well as certainty and stability for Minnesota wholesale customers.

84. The Stipulation and Agreement between the Joint Petitioners and the DOC was admitted into evidence during the hearing,[40] along with a subsequent Supplemental Stipulation and Agreement clarifying the terms and conditions of the agreement.[41] In addition, Diane Wells, Manager, DOC Telecommunications Division, provided testimony during the evidentiary hearing regarding the settlement, and provided an affidavit at the time that the DOC filed its reply brief.

85. The primary commitments made by the Joint Petitioners in the DOC Settlement Agreement (as further clarified in the Supplemental Stipulation and Agreement) are summarized below:

[40] Ex. 3.
[41] Ex. 104.

Broadband Commitment

- The post-merger Company will invest $50 million in broadband infrastructure in Minnesota over a five year period beginning on the date the transaction closes. One third of the broadband investment will be made in areas in Minnesota that are unserved or underserved.[42]

- This commitment applies to investments to serve retail broadband customers only. The term "unserved" means "areas that do not have access to broadband service of 256 Kbs (or above) download speed from any wireline provider." The term "underserved" means "areas that do not have 1.5 mps or below broadband download speeds available from any wireline provider." The geographic area associated with this commitment is measured by "living units" (individual street address).[43]

Wholesale Commitments

Operational System Support

- Qwest Corporation or any successor entity will not discontinue their wholesale Operations Support Systems (OSS) for a minimum of 24 months after the date the transaction closes. If any Qwest OSS is later changed or retired, Qwest Corporation will utilize the terms and conditions set forth in the Change Management Process (CMP). At least 6 months notice will be provided prior to the retirement of the legacy Qwest OSS from current Qwest territories.[44]

- If any CenturyLink OSS is introduced, changed, or retired, CenturyLink will provide 6 months advance notice to the affected interconnecting carriers.[45]

- During the 6-month period established for retiring a Qwest or CenturyLink OSS, any interconnected CLEC or Commercial Mobile Radio Service (CMRS) provider will be permitted to test the proposed replacement OSS in a timeframe no less than the timeframe provided for under the existing Qwest CMP process. Qwest and/or CenturyLink shall cooperate with the testing at no charge to the testing carrier, including, but not limited to, making a testing environment available.[46]

- The Supplemental Stipulation and Agreement clarified that notices of changes or retirements to Qwest OSS will be done in accordance with the time frames of Qwest's CMP. The provision for a minimum six months notice applies

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[42] Ex. 3 at 2. The DOC Settlement Agreement indicates that "unserved means no wireline broadband service is available" and "underserved means broadband wireline service up to 1.5 Mbps."
[43] Ex. 104 at 2; see also Ex. 95 (Stanoch Rejoinder) at 4-5, 6.
[44] Ex. 3 at 3.
[45] *Id.*
[46] *Id.*

to changes to CenturyLink's OSS or to any changes for which no other time frame applies.[47]

Interconnection Agreement Negotiations

- Qwest Corporation or any successor entity operating in current Qwest territories will honor all obligations under its existing interconnection agreements.[48]

- Extension: Qwest Corporation will not terminate or change the conditions (including the rates and terms)[49] of any CLEC or CMRS interconnection agreement, with the exception of changes required by law or to the extent Qwest is relieved by law of a current wholesale obligation, unless requested or agreed to by the CLEC or CMRS provider, or in the event of default or other triggering event expressly contemplated by the terms of the agreement, for a period of:

    1. 36 months from the transaction closing date for any CLEC or CMRS interconnection agreement that is not expired as of the closing date and for any CLEC or CMRS interconnection agreement that has been expired less than 3 years as of the closing date;

    2. 24 months from the closing date for any CLEC interconnection agreement that has been expired for more than 3 years and has been amended to include Qwest's TRRO (Triennial Review Remand Order) language and for any other CMRS interconnection agreement; or

    3. 12 months from the closing date for any CLEC interconnection agreement that has been expired for more than 3 years and not amended to include Qwest's TRRO language as of the closing date.[50]

As clarified by the parties in the Supplemental Stipulation and Agreement, the reference to "Qwest's TRRO language" is intended to encompass TRRO language included in any Qwest ICA that has been approved by the Commission, regardless of which party may have drafted the approved language.[51]

- Negotiation and Opting-In: Where parties are in negotiations for the initial successor agreement to an agreement covered in subpart 1, the interconnecting CLEC or CMRS provider may at its option use its currently existing agreement as the basis for negotiating the initial successor agreement with Qwest Corporation.

[47] Ex. 104 at 2.
[48] Ex. 3 at 3.
[49] Ex. 104 at 2.
[50] Ex. 3 at 3-4.
[51] Ex. 104 at 2.

Unless mutually agreed otherwise, the parties agree to incorporate the amendments to the existing agreement into the body of the agreement used as the basis for such negotiations of the initial successor agreement.

- An interconnecting CLEC or CMRS provider may opt-in to an interconnection agreement in its initial term or the extended term provided for in subpart 1, if applicable. This provision does not limit any opt-in rights a carrier may have under Section 252(i) or FCC rules or orders.

- If Qwest Corporation and a requesting CLEC or CMRS provider are in negotiations for a replacement interconnection agreement before the closing date, Qwest Corporation will allow the requesting CLEC or CMRS provider to continue to use the negotiation draft upon which the negotiations prior to the closing date have been conducted as the basis for negotiating the replacement interconnection agreement.[52]

Protection Against Tariff Changes

- Unless otherwise required by law or FCC or Minnesota regulatory commission decision, Qwest Corporation will not seek Approval for new tariff rates to establish any new wholesale charges for service order processing, including, but not limited to, fees associated with Access Service Requests and Local Service Requests, directory listings or directory listing storage, non-published number charges, local number portability charges, or E911 records transaction or storage charges for 36 months from the closing date.[53]

- In the Supplemental Stipulation and Agreement, the parties clarified that this commitment is intended to apply to Qwest charges from any source, not just tariff charges. The list of prohibited Qwest charges also includes charges to access the NID enclosure by a competitor with its own loop. In addition, the reference to Qwest is intended to include successor entities.[54]

MPAP

- Qwest Corporation will not discontinue the use of the Minnesota Performance Assurance Plan (MPAP) for 36 months after the transaction closing.

- CenturyLink and Qwest Corporation did not wave their right to seek modifications under the terms and conditions outlined in the Qwest MPAP.

[52] Ex. 3 at 4-5.
[53] *Id.* at 5.
[54] *Id.* at 3.

- Qwest Corporation will continue to provide the monthly reports of wholesale performance metrics to staff and to each CLEC as set forth in the MPAP, unless modified under the MPAP terms and conditions.[55]

Change Management Process

- Qwest Corporation will maintain the current Qwest Corporation Change Management Process ("CMP") for 36 months after the transaction closing, utilizing the terms and conditions set forth in the CMP document. CenturyLink and Qwest Corporation do not waive their rights to modify the CMP consistent with the provisions contained in the CMP document. Pending CLEC Change Requests shall continue to be processed in a commercially reasonable timeframe consistent with the CMP.[56]

FCC Obligations

- Any required terms and conditions applicable to CLECs or CMRS providers contained in the FCC's order approving the merger will, to the extent inconsistent, automatically be incorporated into and supersede the terms in the DOC Settlement (except to the extent the terms are state-specific).

- Nothing in the DOC Agreement precludes CLECs and CMRS providers from obtaining in Minnesota the benefits for additional FCC conditions not addressed in the agreement.[57]

- In the Supplemental Stipulation and Agreement, the parties clarified that the reference to “state-specific” terms is intended to refer to FCC conditions that may be specific to a state other than Minnesota, so that such state-specific FCC conditions would not be incorporated into the Minnesota settlement.[58]

Retail Price Commitments

- The post-merger Company agreed that it would not obtain a one-party flat rate residential (“1FR”) standalone, a one-party measured rate residential ("1MR") standalone, or a one-party flat rate business ("1FB") standalone increase through 2012 for all operating companies post-merger (Qwest, legacy Embarq, and legacy CenturyTel).

- The Company did, however, reserve the right to increase 1FR, 1MR, and 1FB standalone rates in a revenue neutral manner to offset revenue losses from exogenous events consistent with applicable Alternative Form of Regulation (AFOR) requirements in the legacy Qwest and legacy Embarq plans. The legacy CenturyTel companies similarly reserved the right to increase those standalone

[55] *Id.* at 5.
[56] *Id.* at 6.
[57] *Id.*
[58] Ex. 104 at 3.

rates in a revenue neutral manner to offset revenue losses from exogenous events as defined in the legacy Embarq AFOR without having to file a rate case.[59]

86. The DOC Settlement Agreement noted that the parties intended to settle and resolve the issues identified by the Commission in the Notice and Order for Hearing in a manner that is consistent with the public interest. The parties agreed to represent to the Commission that they recommended acceptance of the Stipulation and Agreement without reservation (apart from the rights and privileges reserved in the Agreement). The parties further agreed that the resolutions reached were for settlement purposes only and no precedent would be established by the resolution of the contested matters made in the Agreement. The parties specifically reserved the right to take positions contrary to the resolutions set forth in the Settlement in any future proceeding before the Commission or any other judicial or administrative body and to argue for entirely different results in such proceedings.[60]

87. The DOC Settlement incorporates many of the terms to which the parties involved in a parallel proceeding in the State of Iowa agreed. The Department elected to agree to the provision relating to extension of interconnection agreements because it felt comfortable that CLECs in Iowa were satisfied with the specified time frames and had no reason to insist on different time frames.[61] PAETEC is the only one of the nine Joint CLECs participating in the current case that was a party to the Iowa settlement.[62] Sprint and 360networks also participated in the settlement reached in Iowa.[63]

88. The Iowa settlement agreement included a provision stating that the parties agreed that the governing law and market conditions in Iowa were unique, the settlement resolved only the Iowa proceedings, and the agreement in Iowa shall not be used in any other proceedings as evidence of any party's position.[64]

89. The Department did not contact any CLEC representatives for their opinion on any of the issues it was discussing with the Joint Petitioners during their negotiations, or ask any CLEC representatives to prioritize their proposed conditions in order to obtain a better sense of what was more or less important to wholesale customers.[65] Based upon the FCC filings and discussions with CenturyLink representatives, the Department understood that CenturyLink was attempting to negotiate separately with various CLECs.[66] While CenturyLink has had discussions

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[59] Ex. 3 at 6-7.
[60] *Id.* at 7.
[61] Tr. Vol. 1 at 226-28, 230, 242.
[62] Tr. Vol. 1 at 242-43, 245.
[63] See *Order Approving Settlement Agreements, Granting Motions to Withdraw, and Allowing Proposed Reorganization,* Docket No. SPU-2010-0006 (Iowa Util. Bd. Nov. 19, 2010).
[64] Tr. Vol. 1 at 242; Iowa Settlement Agreement at ¶ 1 (Sept. 28, 2010) (available at https://efs.iowa.gov/efiling/groups/external/documents/docket/050948.pdf).
[65] Tr. Vol. 1 at 189-90, 238-39 (Test. of Wells).
[66] Tr. Vol. 1 at 238-39, 244 (Test. of Wells).

with various CLECs regarding their concerns, it did not reach out to CLECs in an attempt to involve them in the DOC Settlement Agreement.[67]

90. Although the DOC's Office of Energy Security (OES) may have a policy of inviting other parties in a docket to participate when it is involved in settlement negotiations,[68] there is no evidence that the Telecommunications Division of the DOC (a separate business unit from the OES) has a similar policy or that there is a DOC-wide settlement policy or practice.[69] Accordingly, there is no evidence that the DOC violated any agency settlement practice or policy when it entered into the Settlement Agreement with the Joint Petitioners without consulting with or including other intervenors. The parties to this proceeding have had a reasonable opportunity to review the terms of the DOC Settlement, challenge the terms of the agreement through cross examination of witnesses, and offer additional testimony concerning the terms of the agreement.

91. Approximately 60% of Qwest's ICAs fall within category one of the provision of the DOC Settlement governing extension of ICAs (relating to ICAs that have not expired as of the closing date or have been expired for less than three years). Approximately 38-39% fall within category two (relating to ICAs that have been expired for three or more years and contain TRRO language), and less than 1% falls within category three (relating to ICAs that have been expired for three or more years and do not contain TRRO language).[70]

92. Under the existing Qwest AFOR, Qwest is not entitled to take an increase in the 1 FR or 1 MR standalone rates in 2011 or 2012 unless it is in a manner that is authorized by the exogenous cost provisions of the AFOR. Therefore, given that Qwest accounts for 90% of the Joint Petitioners' access lines in Minnesota,[71] the DOC Settlement's cap on 1 FR and 1MR rates through 2012 adds no additional rate protection for the vast majority of the Joint Petitioners' residential customers in the state.[72] However, the terms of the DOC Settlement Agreement do require the Joint Petitioners to forego the possibility of taking an increase in the 1 FB standalone rate during 2011 or 2012 unless an increase is warranted by exogenous events.[73]

93. The existing AFOR plan for the legacy Embarq territory already prohibits rate increases for 1 FR and 1 FB business exchange service through 2011. Embarq does not offer 1 MR. Accordingly, the rate caps in the DOC Settlement Agreement will provide one additional year of rate protection for legacy Embarq customers.[74]

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[67] Tr. Vol. 2B at 118-19, 141-43, 151-55, 158-60 (Test. of Hunsucker).
[68] Joint Wireless Carriers' Initial Brief at 30 n. 79.
[69] See Affidavit of Diane Wells at ¶¶3-6 (Dec. 7, 2010) (attached to DOC Reply Brief).
[70] Tr. Vol. 2B at 112-13, 144-45 (Test. of Hunsucker).
[71] Ex. 32 (Ankum Surrebuttal) at 21-22 and n. 52.
[72] Ex. 98 (Gates Supplemental Surrebuttal) at 71-72.
[73] Tr. Vol. 1 at 68-70 (Test. of Stanoch); *see also* Ex. 98 (Gates Supplemental Surrebuttal) at 70-72.
[74] Tr. Vol. 1 at 136-40 (Test. of Jones); *see also Ex. 98 (*Gates Supplemental Surrebuttal) at 70-71.

94. Because legacy CenturyTel has no AFOR, the DOC Settlement Agreement will cap its 1 FR, 1 MR, and 1 FB rates through 2012 unless an increase is warranted by exogenous events.[75]

95. Therefore, the DOC Settlement Agreement would likely constrain Qwest's 1 FB rates and CenturyLink's 1 FR, 1 MR, and 1FB rates for about 1½ years, and Embarq's 1 FR and 1FB rates for one year.[76]

96. The purpose of the exogenous cost provision is to allow the Company to petition the Commission to adjust rates if a significant change in regulation occurs which affects costs or revenue of the company.[77] An entity under an AFOR may petition the Commission to be freed from rate freeze commitments if the Commission, legislature, or other government entities impose new costs, including cost changes stemming from Extended Area Service routing, intercarrier compensation, local service rate restructuring, state or federal universal service funding, telephone numbering or conservation, or governmental mandates regarding infrastructure build-out.[78]

97. The impact of the retail rate caps set forth in the DOC Settlement Agreement is somewhat limited in scope and there is a mechanism for lifting the caps under the exogenous cost provision. However, the Administrative Law Judge concludes that the DOC Settlement Agreement does in fact impose some rate limitations that were not already in place under the AFORs applicable to the Joint Petitioners, and that this aspect of the DOC Settlement Agreement is in the public interest. Despite the Joint CLECs' arguments,[79] the Administrative Law Judge is not persuaded that the retail price caps provide no significant value to Minnesota retail customers or that they are likely to create a potential anti-competitive price squeeze that could harm wholesale customers.

98. At the time it entered into the Settlement Agreement, the DOC did not have information about Qwest's historical spending on broadband infrastructure, nor did it request such information from Qwest.[80] During the hearing, Qwest disclosed the amounts it had invested in broadband infrastructure in Minnesota during 2005 – August 2010.[81] Based upon the differences between the historical amounts and the amount in the DOC Settlement Agreement, the Joint CLECs assert that the broadband commitment made in the Settlement Agreement "is clearly a step back from past commitments and an even larger retreat from the Joint Applicants' claims that the merger will enhance broadband deployment."[82] They further contend that the public interest benefits that the Joint Petitioners and the DOC allege will flow from the broadband commitment are overstated and largely illusory.

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[75] Tr. Vol. 1 at 137-38 (Test. of Jones).
[76] Ex. 98 (Gates Supplemental Surrebuttal) at 71.
[77] Ex. 95 (Stanoch Rejoinder) at 10.
[78] Ex. 98 (Gates Supplemental Surrebuttal) at 72; Tr. Vol. 1 at 221-22 (Test. of Wells).
[79] *See., e.g.,* Joint CLECs' Initial Brief at 38-39.
[80] Tr. Vol. 1 at 166-67 (Test. of Wells).
[81] Tr. Vol. 1 at 96, 100-01 (Test. of Stanoch) (information is protected as "Highly Sensitive Trade Secret Information" subject to Appendix B of the First Protective Order).
[82] Ex. 98 (Gates Supplemental Surrebuttal) at 21-22.

99. The Joint Petitioners have demonstrated that it is not reasonable to make direct comparisons between the amount of the broadband commitment in the DOC Settlement Agreement and Qwest's historical broadband expenditures. The $50 million commitment for broadband investment contained in the DOC Settlement Agreement relates only to investments associated with providing broadband service to retail end user customers. Future fiber-to-the-cell-site investment will not count towards meeting that commitment. In addition, one-third of that amount is entirely for the benefit of providing service to unserved and underserved retail customers. In contrast, Qwest's historical broadband investment figures include both retail last-mile services and services for wholesale customers, and fiber-to-the-cell-site investment has been a significant component of Qwest's broadband investment in recent years.[83]

100. In the absence of this merger proceeding and the targeted investment amount included in the DOC Settlement Agreement, it is unlikely that Qwest would proceed with broadband deployment in unserved or underserved areas as defined in the Agreement. Those areas tend to be low density areas that involve high costs to serve.[84]

101. The Administrative Law Judge concludes that the broadband investment provision of the DOC Settlement Agreement does provide a significant benefit to the public (particularly "unserved" and "underserved" retail customers, as defined in the Agreement). The Joint Petitioners had not included a commitment to any particular level of broadband investment in their petition for approval of the merger, many of the public comments filed in this proceeding focused on a desire for broadband, and the Agreement secured a commitment from the Joint Petitioners to invest resources in areas that otherwise likely would not have been pursued.[85]

C. CWA Settlement Agreement

102. On October 18, 2010, the Joint Petitioners entered into a Letter of Agreement with the CWA and another union, the International Brotherhood of Electrical Workers. As a result, the CWA withdrew its opposition to the proposed transaction and notified the Administrative Law Judge that, "Because the CWA Settlement is in the public interest and constitutes a reasonable resolution to the issues raised by CWA before this Commission, CWA will withdraw from this proceeding."[86] On October 21, 2010, the CWA filed the Letter of Agreement and a Notice of Withdrawal of Intervention.

103. As reflected in the Letter of Agreement, the settlement agreement reached by the CWA, IBEW, and the Joint Petitioners includes provisions relating to post-merger employment levels, call center employees, a National Employee Transfer Plan, investments, the use of contractors, discussion of possible combination of bargaining units or collective bargaining agreements, continued participation in the National Health Care Advisory Committee, and organizing and neutrality.

[83] Tr. Vol. 1 at 217; Ex. 95 (Stanoch Rejoinder) at 4-5, 6.
[84] Tr. Vol. 1 at 54-55 (Test. of Stanoch); Tr. Vol. 2A at 72-74 (Test. of Ring).
[85] Tr. Vol. 1 at 157-158 (Test. of Wells).
[86] CWA Letter to ALJ (Oct. 21, 2010) at 3.

104. In the cover letter transmitting the Letter of Agreement, the CWA indicated that its concern about the apparent intention of CenturyLink to move quickly to integrate billing, customer service, dispatch, and other operational support systems was resolved satisfactorily by the Joint Petitioners' commitment in the DOC Settlement Agreement to wait at least two years after closing before it begins to integrate the Qwest and CenturyLink wholesale OSS.[87]

105. The CWA indicated that its other major concerns in this docket were addressed by various provisions in the Letter of Agreement. With respect to its concern about the effect of the proposed transaction on employment levels, the CWA indicated that its outside consultant had had an opportunity to review synergy estimates prepared by the Joint Petitioners and "it does not appear that substantial reductions are anticipated in the field workforce." In addition, the CWA noted that CenturyLink had agreed as part of the settlement to a process whereby CWA and the Joint Petitioners will attempt to maximize employment levels throughout the CenturyLink/Qwest service areas. The settlement provides a transition period of approximately one year after the closing date (until May 15, 2012) during which CenturyLink agrees not to close any Qwest call center comprised of union-represented employees. CenturyLink also committed to certain enhanced separation benefits for a limited period of time (until October 6, 2012) for any affected call center employees, providing a further monetary incentive for CenturyLink to retain these call centers in service for an additional five months after the May 2012 commitment.[88]

106. With respect to its concern about the combined company's commitment to broadband deployment and other necessary network investments, the CWA indicated that the Joint Petitioners were not willing to commit at this time to specific broadband and other infrastructure investment targets. However, the CWA noted that the settlement agreement recognizes that such investments are essential to the financial health of Qwest and CenturyLink as well as the communities they serve, and that the parties will work together to facilitate this investment.[89]

107. Many of the other provisions contained in the CWA Letter of Agreement reaffirm commitments that were made by the Joint Petitioners in the merger agreement to keep collective bargaining agreements and various terms and conditions of those agreements in place after the transaction closes.[90]

D. Integra Settlement Agreement

108. On November 6, 2010, the Joint Petitioners and Integra entered into a Settlement Agreement that resolved “all contested issues, objections, proposed conditions and other advocacy related specifically to this Transaction as between them.” Integra further agreed that the Integra Settlement Agreement, “without modification or addition, is in the public interest” and that, in light of the Agreement, “from its

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[87] *Id*. at 1-2.
[88] *Id*. at 2 (*see also* CWA Letter of Agreement at 2-3).
[89] *Id*. at 2 (*see also* CWA Letter of Agreement at 4-5).
[90] *Id*. at 3 (*see also* CWA Letter of Agreement at 3-7).

perspective, Integra believes that the Transaction is in the public interest and should be approved by the FCC and state commissions.[91] On November 8, 2010, the settlement agreement involving Integra was filed in this matter.

109. The Integra Settlement Agreement addresses issues relating to rates and charges, operational systems support, change management, wholesale performance requirements and remedy plans, extensions of interconnection agreements and other commercial and wholesale agreements, compliance, dedicated wholesale resources, communications with wholesale customers, non-impaired wire centers, and line conditioning.

110. The primary commitments made by the Joint Petitioners in the Integra Settlement Agreement are summarized below:

- The Merged Company will not recover through wholesale service rates or other fees paid by Integra any costs related to or resulting from the transaction (including one-time transition or branding costs or any related transition, conversion, or migration costs); any acquisition premium paid by CenturyLink for QCI; or any increases in overall management costs that result from the transaction, including those incurred by the operating companies. These costs are not limited in time to costs incurred only through the closing date.[92]

- In the legacy Qwest ILEC service territory, the Merged Company will comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and commercial agreements applicable as of the closing date, and will continue to provide Integra (or, on request, state commission staff and the FCC) with reports of wholesale performance metrics that legacy Qwest made available as of the closing date.[93]

> For at least 18 months after the closing date, the parties will not seek to reduce or modify the Qwest Performance Indicator Definition (PID) or Qwest Performance Assurance Plan (QPAP) that is offered as of the closing date. After the 18-month period, the parties may seek modifications in accordance with the QPAP's terms and conditions. The Merged Company will not seek to eliminate or withdraw the QPAP for at least three years after the closing date.[94]
>
> For at least three years after the closing date, the Merged Company will meet or exceed the average wholesale performance provided by Qwest to Integra in the legacy Qwest ILEC service territory. During the first three months after the closing date, Qwest's performance will be compared to its performance for the 12 months prior to the closing date. Thereafter,

[91] Integra Settlement Agreement at 11-12.
[92] *Id*. at 2.
[93] *Id*. at 2-3.
[94] *Id*. at 3.

each successive month of Qwest's performance will be added to the three-month period in determining Qwest's performance until 12 months after the closing date. Beginning one year after the closing date, Qwest's performance will be measured by a rolling 12-month average performance.[95]

If the Merged Company fails to provide wholesale performance levels as measured above, the Merged Company must conduct a root cause analysis for the discrepancies, develop proposals to remedy each deficiency within 30 days, and provide this information to Integra for review and comment. If performance deficiencies are not resolved, Integra may request a resolution or wholesale service quality proceeding before the state commission.[96]

- Unless required by a change of law or upon agreement of Integra, the Merged Company will not terminate, change the terms and conditions, or increase the rates of any "extended agreements" (defined to include interconnection agreements, commercial agreements, wholesale agreements, interstate tariffs, intrastate tariffs, and other wholesale agreements between Qwest Corporation and Integra) during the unexpired term or for at least the applicable time period identified below, whichever occurs later:[97]

Interconnection Agreements: The applicable time period for Qwest's interconnection agreements is at least 36 months after the closing date (regardless of whether or not the initial or current term has expired or is in evergreen status). Integra will be allowed to use its pre-existing ICA as the basis for negotiating an initial successor agreement. Where the parties agree it is reasonable, they may incorporate amendments to the existing ICA into the body of the agreement used as the basis for negotiations. Integra may opt-in to an ICA in its initial term or the extended term.[98]

Commercial Agreements: The applicable time period for commercial agreements is at least 18 months after the closing date for Qwest's commercial agreements, including Broadband for Resale, Commercial Broadband Services, Commercial Dark Fiber, High Speed Commercial Internet Service, Local Services Platform, Internetwork Calling Name, and Commercial Line Sharing, as well as other commercial agreements to which Qwest and Integra were parties as of the closing date. After the 18-month period, Qwest reserves the right to modify rates. If a commercial agreement later becomes unavailable on a going forward basis, the agreement will remain available to Integra for at least 18 months on a grandparented basis to serve Integra's embedded base of customers

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[95] *Id*. at 3.
[96] *Id*. at 3-4.
[97] *Id*. at 4.
[98] *Id*. at 4-5.

already being served via services purchased under that commercial agreement, subject to Qwest's right to modify rates.[99]

Wholesale Agreements. The applicable time period for wholesale agreements is at least 18 months after the closing date and applies to offerings made available after a tariffed offering becomes unavailable via tariff (such as Wholesale Data Services Agreements or other agreements to which Qwest and Integra were parties as of the closing date). Similar to the commercial agreement provision discussed above, Qwest has the right to modify rates after the 18-month period and wholesale agreements that later become unavailable will remain available to Integra on grandparented basis to serve its embedded base of customers for at least 18 months.[100]

Tariffs. The applicable time period for Qwest wholesale tariff offerings that Integra ordered from Qwest via tariff as of the closing date is at least 12 months after the closing date. Qwest is permitted to engage in Competitive Response pricing as set forth in its tariffs. Term and volume discount plans offered by Qwest as of the closing date will be extended by 12 months beyond the expiration of the then-existing term, unless Integra opts out of this one-year extension. The Merged Company will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term.[101]

- The Merged Company agrees not to increase the rates in Qwest ICAs during the extended time period. If the Merged Company offers a new Section 251 product or service during the extended time period that is not offered under an ICA, the Merged Company may establish a rate using normal procedures.

The Merged Company may initiate or seek rate increases in a cost docket before the expiration of the 36-month period for extension of ICA terms only if the rate elements, charges or functionalities are not already provided under rates as of the closing date, or the cost docket is not initiated until at least 18 months after the closing date and any approved rate increases will not become effective until after expiration of the 36-month period.[102]

After the closing date, the Merged Company may not assess any fees or charges in the legacy Qwest ILEC serving territory for activities that arise during the subscriber acquisition and migration process unless those fees were approved by the applicable commission and charged by Qwest before the closing date or Qwest first receives Commission approval. This condition prohibits the Merged Company from imposing (1) service order

[99] *Id*. at 5-6.
[100] *Id*. at 6.
[101] *Id*.
[102] *Id*. at 6-7.

charges upon submission of local service requests for number porting; (ii) access or "use" fees for connecting a competitor's own self-provisioned loop or last mile facility to the customer side of the Merged Company's network interface device enclosure or box; and (iii) storage or related fee assessed upon Integra's submission of subscriber directory listings information to the Merged Company for publication in a directory listing or inclusion in a directory assistance database.[103]

- In the legacy Qwest ILEC service territory, if an ICA is silent as to an interval for the provision of a product or refers to Qwest website or Service Interval Guide (SIG), the applicable interval after the closing date shall be no longer than the interval in Qwest's SIG as of the closing date. After the 36-month period for extension of ICA terms, either party may request an amendment to the ICA to lengthen an interval.[104]

- CenturyLink and its ILEC affiliates agreed to comply with 47 U.S.C. §§ 251 and 252. The Merged Company agreed that it would not seek to avoid any of its obligations in the legacy Qwest ILEC service territory on the grounds that Qwest Corporation is exempt under Section 251(f)(1) or 251(f)(2).[105]

- After the closing date, Qwest Corporation shall be classified as a Bell Operating Company in the legacy Qwest ILEC service territory and shall comply with applicable requirements, including 47 U.S.C. §§ 271 and 272.[106]

- Qwest will not seek to reclassify any Qwest wire centers as "non-impaired" or file any new petition seeking forbearance from any Section 251 or 271 obligation or dominant carrier regulation in any Qwest wire center prior to June 1, 2012.[107]

- The Merged Company shall provide escalation information, contact lists, and account manager information thirty days prior to the closing date if possible, or within five business days. The company will provide at least 30 days advance written notice to wholesale carriers of changes to support center location, and reasonable notice of other changes.[108]

- The Merged Company will make available to each wholesale carrier in the legacy Qwest ILEC service territory the types and level of data, information, and assistance that Qwest made available as of the Closing Date concerning Qwest's wholesale OSS functions and wholesale business practices and procedures, including information provided via the wholesale web site, notices, industry letters, the change

[103] *Id*. at 7.
[104] *Id*. at 7-8.
[105] *Id*. at 8.
[106] *Id*.
[107] *Id*.
[108] *Id*.

management process, and databases/tools (loop qualification tools, loop make-up tool, raw loop data tool, ICONN database, etc.[109]

- The Merged Company will ensure that wholesale and CLEC operations are sufficiently staffed and supported by personnel who are adequately trained on the Qwest and CenturyLink systems and process and are dedicated exclusively to wholesale operations.[110]

- In legacy Qwest ILEC service territory, the Merged Company will use the legacy Qwest OSS after the closing date for at least two years, or until July 1, 2013, whichever is later, and will thereafter provide a level of wholesale service quality that is not materially less than that provided by Qwest prior to the closing date. After that time, the Merged Company will comply with the following procedures before replacing or integrating the Qwest systems:

> Detailed Plan. The Merged Company will establish a detailed transition plan including a contingency plan if significant problems are encountered and provide 270 days' advance notice to the FCC, affected state commissions, and parties to the Settlement Agreement.
>
> CMP. The Merged Company will follow the procedures in the Qwest Change Management Process (CMP).
>
> Replacement or Retirement of a Qwest OSS Interface. The replacement or retirement of a Qwest OSS Interface may not occur without sufficient acceptance of the replacement interface by Integra to help assure that the replacement interface provides the level of wholesale service quality provided by Qwest prior to the closing date. Each party participating in testing will commit adequate resources to complete the acceptance testing within the applicable time period. The parties will work together to develop acceptance criteria. Testing will continue until the acceptance criteria are met. Whether there is sufficient acceptance of a replacement will be determined by a majority vote of the CMP participants (Qwest and Integra) in testing, subject to any party invoking the CMP's dispute resolution process. The Merged Company will allow coordinated testing with Integra (including a stable testing environment that mirrors production, jointly established test cases, and, when applicable, controlled production testing) for the time period in the CMP or for 120 days, whichever is longer, in order to ensure that there is sufficient acceptance of the replacement interface before replacing or retiring a Qwest OSS Interface. The Merged Company will provide wholesale carriers

[109] *Id*.
[110] *Id*. at 9.

with training and education on any wholesale OSS implemented without charge to the wholesale carrier.[111]

Billing Systems. The Merged Company will not begin integration of billing systems before the end of the minimum two-year period or July 1, 2013, whichever is longer, or without following the above procedures unless the integration will not impact data, connectivity and system functions that support or affect Integra and its customers. Any changes to the legacy Qwest non-retail OSS will meet all applicable ICA provisions related to billing and, to the extent not included in an ICA, will be Ordering and Billing Forum compliant.[112]

- After the closing date, the Merged Company will engineer and maintain its network in compliance with applicable ICAs and federal and state law. It will not engineer the transmission capabilities of its network in a manner that disrupts or degrades access to the local loop or engage in any other practice that has that result.[113] The Merged Company will retire copper in compliance with applicable ICAs and federal and state law.[114]

- Within 30 days after the closing date, the parties agreed to amend existing Qwest-Integra ICAs by executing the line conditioning amendment attached to the Integra Settlement Agreement and filing the amendment with the applicable state commissions. The terms of the amendment will be included in the ICAs between the parties for the extended time period contemplated in the Settlement Agreement. In Minnesota, the parties agreed that the amendment would be executed and filed within ten days of execution of the Settlement Agreement and that the terms of the amendment would be implemented no later than January 15, 2011.[115]

111. The Settlement Agreement between the Joint Petitioners and Integra specifies that the terms of the Agreement also will be available to other carriers:

> After fully executed, filed with and, where necessary, approved by a Commission, this Agreement will be made available to any requesting carrier. Additionally, if an order approving this transaction includes any condition not contained in this Agreement or includes provisions inconsistent with those contained in this Agreement, the Merged Company will make that condition or provision available to other carriers in that state upon request, to the extent applicable.[116]

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[111] *Id*. at 9-10.
[112] *Id*. at 10.
[113] *Id*. at 11.
[114] *Id*.
[115] *Id*. Integra agreed that this amendment satisfied the line conditioning concerns it had expressed in Minnesota Docket No. P-421/CI-09-1066 and that it will seek no further relief on that issue in that docket.
[116] *Id*.

112. The Integra Settlement Agreement addresses a number of the risks and potential harms of the proposed merger and provides a number of substantial benefits to CLECs who choose to opt into the Agreement. However, it expressly focuses on Integra's concerns and perspectives and represents compromises reached between Integra and the Joint Petitioners.[117] None of the other eight Joint CLECs were parties to the Integra Settlement Agreement or participants in its negotiation.[118] They remain opposed to the proposed merger unless additional conditions are imposed to ensure that they are adequately protected from the risks of the proposed merger. The remaining Joint CLECs assert that there are significant differences between Integra and other CLECs, including differences in 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.[119] They maintain that the terms and compromises reflected in the Integra Settlement Agreement are not adequate to address issues critical to other CLECs or protect the broader public interest in competition in Minnesota.[120]

113. The affidavits filed by the Joint CLECs with their initial post-hearing brief provide support for their view that their operations and interests differ from those of Integra. For example, several other CLECs rely more heavily than Integra on a Qwest non-UNE combined loop/transport/switching platform product called Qwest Local Services Platform (QLSP). Qwest has offered QLSP under its Commercial QLSP Agreement as a replacement for UNE-P following non-impairment designations.[121] OrbitCom serves primarily rural customers in contrast to Integra, which serves customers primarily in the Twin Cities Metropolitan Area. Because nearly all of OrbitCom's wholesale facilities are purchased from Qwest under the QLSP Agreement, OrbitCom depends far more than Integra on Qwest's QLSP. Moreover, because there is no comparable UNE that OrbitCom would purchase under an ICA, the three-year extension of ICAs in the Integra Settlement Agreement has minimal value to OrbitCom.[122] Similarly, POPP.com, which provides a broad range of telecommunications services primarily to small and medium size businesses in the Twin Cities metro area, uses QLSP to serve a significant portion of its customer base.[123] And QLSP facilities are an important part of PAETEC's business in Minnesota, since it relies on QLSP in serving its business and residential customers in the state.[124] TDS Metrocom also relies on QLSP to serve its business customers in locations outside of

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[117] *See, e.g.,* Integra Settlement Agreement at 1, 12, 13.
[118] Affidavit of Timothy Gates (Nov. 24, 2010), attached to Joint CLECs' Post-Hearing Brief as Attachment 1 (hereinafter referred to as "Gates Aff.") at ¶ 3.
[119] Joint Petitioners' Initial Brief at 29.
[120] *Id.*; Gates Aff. at ¶ 3.
[121] Affidavit of Karrie Willis at ¶ 12 (Nov. 24, 2010), attached to Joint CLECs' Initial Brief as Attachment 8 (hereinafter referred to as "Willis Aff.").
[122] Affidavit of Brad VanLeur at ¶¶ 2 and 3 (Nov. 24, 2010), attached to Joint CLECs' Initial Brief as Attachment 2 (hereinafter referred to as "VanLeur Aff."); Integra's Highly Sensitive Responses to Joint CLECs' Information Request Nos. 1-2 (Nov. 17, 2010), attached to Joint CLECs' Initial Brief as Attachment 3 (hereinafter referred to as "Integra IR Responses 1-2").
[123] Willis Aff. at ¶ 13.
[124] Affidavit of Julia Redman-Carter at ¶ 2 (Nov. 24, 2010), attached to Joint CLECs' Post-Hearing Brief as Attachment 6 (hereinafter referred to as "Redman-Carter Aff.").

the Twin Cities metropolitan area, and continued use of QLSP is an important part of its business growth strategy.[125]

114. Another participant in the Joint CLECs, tw telecom of Minnesota (TWTC), provides facilities-based local and long distance telecommunications services in Minnesota to medium and large business customers. Because TWTC does not rely on UNEs from Qwest to serve its Minnesota customers, it would not obtain any benefit from the three-year ICA extension set forth in the Integra Settlement Agreement. Instead, TWTC purchases the wholesale facilities it needs from Qwest under wholesale agreements, including Qwest's Regional Commitment Plan ("RCP") Agreement under which TWTC purchases special access services [126]

115. One of the central components of the Integra Settlement appears to be the line conditioning commitments related to xDSL. Because Integra relies upon Qwest's UNE loops to provide telecommunications and internet service to its customers, it is likely that these commitments were important from its perspective. However, these provisions have no value to several of the other CLECs who have intervened in this proceeding. For example, Charter serves primarily residential and some business customers in more rural areas of the state using the network facilities of its cable affiliate for last mile connections, while relying on interconnection and OSS from Qwest. As a result, Charter does not rely upon Qwest or CenturyLink for UNE loops, or xDSL capable loops.[127] OrbitCom also does not purchase conditioned loops to provide DSL but instead purchases broadband services for resale under the Qwest Broadband Resale Agreement.[128] Finally, neither TDS Metrocom nor TWTC offer xDSL service to Minnesota customers, and neither of them have any plans to do so in the future. As a result, the line conditioning provisions contained in the Integra Settlement Agreement are of no benefit to those companies.[129]

116. There are also differences between CLECs' internal back-office systems. Integra uses manual processes to complete various steps in pre-order, ordering, trouble ticket management, and billing. In contrast, PAETEC's systems are far more automated and integrated into Qwest's current OSS. As a result, any transition to a new OSS following the merger will have a greater impact on PAETEC than it would on Integra.[130]

117. Because of these differences between Integra and the remaining Joint CLECs, it should not be assumed that the terms of the Integra Settlement will adequately protect the interests of all wholesale customers in Minnesota. The remaining Joint CLECs have proposed a number additional conditions they contend are

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[125] Affidavit of Steven Pitterle at ¶¶ 4, 5, and 6 (Nov. 24, 2010), attached to Joint CLECs' Post-Hearing Brief as Attachment 7 (hereinafter referred to as "Pitterle Aff.").
[126] Affidavit of Pamela Sherwood, Nov. 24, 2010, at ¶¶ 2, 8, and 9, attached to Joint CLECs' Post-Hearing Brief as Attachment 4 (hereinafter referred to as "Sherwood Aff.").
[127] Affidavit of Billy Pruitt, Nov. 24, 2010, at ¶¶ 14, 15 and 18, attached to Joint CLECs' Post-Hearing Brief as Attachment 5 (hereinafter referred to as "Pruitt Aff.").
[128] VanLeur Aff. at ¶ 15.
[129] Pruitt Aff. at ¶ 14; Sherwood Aff. at ¶ 16.
[130] Redman-Carter Aff. at ¶¶ 8-12.

necessary to ensure that the proposed transaction is in the public interest. These conditions are discussed in Section VI below.

118. Apart from the 36-month ICA extension for Qwest agreements, the Integra Settlement does not address any issues that the Joint Wireless Carriers (Sprint and T-Mobile) have raised in this proceeding. The Joint Wireless Carriers urge that additional conditions be imposed to address switched access rates, the consolidation and porting of ICAs, number porting, and enforcement. They also argue that the 36-month ICA extension should be extended to CenturyLink agreements as well as Qwest agreements.[131] The conditions proposed by the Joint Wireless Carriers will also be discussed below.

V. Is the Proposed Transaction in the Public Interest under Minn. Stat. §§ 237.23 and 237.74, subd. 12?

A. Positions of Parties

119. The Joint Petitioners assert that the proposed merger will provide numerous public benefits and is in the public interest. They allege that the "combined company will be positioned to compete effectively for customers in the increasingly competitive telecommunications market, in Minnesota and nationally" and that the transaction will "create a financially stronger and stable provider that has an enhanced ability to invest in local and national networks, deploy broadband and other advanced services, and provide outstanding service quality to its customers."[132] The Joint Petitioners maintain that the combination of CenturyLink's core fiber network and Qwest's national fiber-optic network and data centers will allow the post-merger company "to deliver strategic and customized product solutions to residential, business, wholesale, and government customers throughout the nation . . . ."[133] In addition, they generally contend that the transaction will provide the post-merger company with greater financial resources and access to capital, and thereby enable it to "invest in networks, systems and employees that can reach more customers with a broad range of innovative products and voice, data and entertainment services over an advanced network."[134]

120. The Joint Petitioners also assert that the increased economies of scale associated with the proposed merger will allow the post-merger company to offer a more diverse product mix and focus on providing advanced services to customers, such as higher speed broadband and IPTV. They contend that the broadband platform and related network infrastructure of both companies will support the wider deployment of advanced IP services, particularly because CenturyLink will be able to use Qwest's transport services to serve customers in lower density areas with high-bandwidth

[131] Joint Wireless Carriers' Initial Brief at 33-34.
[132] Joint Petitioners' Initial Brief at 10 -11, *citing* Ex. 1 (Stanoch Direct) at 3-4, 26, and 30-31 and Ex. 5 (Jones Direct) at 6-9 and 14-15.
[133] Joint Petitioners' Initial Brief at 12, *citing* Ex. 5 (Jones Direct) at 7.
[134] Joint Petitioners' Initial Brief at 12, *citing* Ex. 5 (Jones Direct) at 3 and 6-7.

services.[135] The Joint Petitioners further argue that their view that the transaction is in the public interest is enhanced by the settlement agreements they have reached with the DOC, the CWA, Integra, and 360networks.[136]

121. The Joint CLECs argue that the Joint Petitioners have not borne their burden to demonstrate that the proposed merger will produce significant public interest benefits that outweigh the serious public interest risks associated with the transaction. They maintain that the Joint Petitioners' vague and general assertions that combining the two ILECs' networks will "optimize network capacity," bring about "great economies in scale and scope," and enhance their ability to "deploy broadband and other advanced services" and "additional bandwidth-intensive services" are commonly made in all telecommunications mergers and are not sufficient to satisfy the Joint Petitioners' burden of demonstrating that the merger is in the public interest. They assert that the Joint Petitioners have failed to provide specific, credible evidentiary support for their claim that the proposed merger is in the public interest.[137] In particular, the Joint CLECs allege that the Joint Petitioners have not offered any specific evidence explaining how combining the two ILECs' networks will make each ILEC's network more efficient or result in more broadband services in Minnesota, what additional broadband services will be deployed in Minnesota by virtue of the merger (beyond what would otherwise be deployed by each ILEC individually), or what specific concrete benefits (such as lower prices or higher service quality) Minnesota consumers will obtain from this transaction.[138] To the contrary, they contend that the evidence shows that the larger combined ILEC would enhance the market power of both ILECs to the detriment of competition.[139]

122. The Joint CLECs also are critical of the Joint Petitioners' repeated references to the post-closing entities as the "combined company"[140] and the implication that CenturyLink and Qwest will "combine forces" and resources to create one large incumbent telephone company that is better able to serve Minnesotans and compete in the marketplace. The Joint CLECs contend that this is not an accurate reflection of the two companies' relative positions post merger since the two companies will not be combined and Qwest will continue to be operated as a separate legal entity.[141] The Joint CLECs argue that, to the extent that the two companies can, or do, combine resources (if not operations) in the future, there is no reason to believe that a larger incumbent telephone company benefits Minnesota. They emphasize that Qwest is already the largest wireline provider in Minnesota, and an incremental increase in its size and scope (through a combination of its assets and CenturyLink's assets) does not

[135] Ex. 5 (Jones Direct) at 6-7; Ex. 6 (Jones Rebuttal) at 11; Ex. 1 (Stanoch Direct) at 13, 15.
[136] Joint Petitioners' Initial Brief at 12-13.
[137] *See, e.g.,* Tr. Vol. 3 at 99 (Test. of Ankum).
[138] For example, the Joint CLECs point out that neither Mr. Stanoch nor Mr. Jones was able to provide a detailed explanation of the infrastructure improvements, increased broadband deployment, or operating efficiencies of the post-merger company. Tr. Vol. 1 at 56 (Test. of Stanoch); Tr. Vol. 1 at 122 (Test. of Jones).
[139] *See, e.g.,* Ex. 31 (Ankum Direct) at 62-63; Ex. 110 (Appleby Direct) at 10-12.
[140] *See, e.g.,* Joint Petitioners' Initial Brief at 1, 11, 12, 13, 14, 16, 27, and 32.
[141] *See, e.g.,* Ex. 17 (Hunsucker Rebuttal) at 3 ("the existing CenturyLink and Qwest operating entities will stay in place post-merger").

necessarily support the conclusion that it will be better positioned to compete effectively with smaller competitors in the state. They also assert that evidence relating to past telecommunications mergers casts doubt on the premise that a larger, combined company will increase local investments, much less succeed.[142] The Joint CLECs argue that the Commission should disapprove the proposed transaction unless the Joint Petitioners agree to a number of additional conditions.

123. Level 3 contends in its separate post-hearing brief that the Joint Petitioners have not shown that the post-merger company will not engage in certain anticompetitive behavior that can occur only as a result of the transaction. As a result, Level 3 contends that the transaction fails to meet the present or future public convenience and necessity test and other criteria set forth in Minn. Stat. § 237.74, subd. 12, and 237.011. It asserts that the Commission should not approve the transaction unless the Commission imposes the conditions urged by the Joint CLECS as well as those proposed by Level 3.[143] Level 3 further argues that the portion of the DOC Settlement Agreement pertaining to the 12- 24- or 36-month extension of ICAs should be rejected and the Commission should instead require a uniform three-year extension period.[144]

124. Sprint and T-Mobile (collectively the Joint Wireless Carriers) contend that the proposed transaction is not in the public interest unless the Commission adopts the additional proposed conditions they propose. They assert that the post-merger company will enjoy unwarranted market power in Minnesota due to "owner's economics" and argue that the company will be able to make pricing decisions that undercut its competitors. The Joint Wireless Carriers emphasize that the merged firm's market power will not be limited to local and long distance voice services but will extend to the transmission of data necessary to provide Internet, video, and entertainment services. They further contend that the transaction could result in significant consequences to the retail telecommunications market unless the Commission takes action to hold the merged company's market power in check.[145]

125. The DOC contends that the terms of the DOC Settlement Agreement[146] and the clarifying Supplemental Stipulation and Agreement[147] reasonably balance the needs of retail customers, wholesale customers, and the Joint Petitioners and are in the public interest. If the DOC Settlement is approved, the DOC agrees that the proposed merger is in the public interest. The DOC also has no opposition to the separate settlements reached with 360networks, the CWA, and Integra. The DOC believes that the post-merger company would have the financial, managerial and technical ability to continue to provide reliable, quality telephone service. It also maintains that the DOC

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[142] Tr. Vol. 3 at 84 (Dr. Ankum explained that there is only a fifty percent chance that a given merger will be successful).
[143] *See generally* Level 3's Brief at 1-11 and 16-31.
[144] *Id*. at 12-16.
[145] *See generally* Joint Wireless Carriers' Initial Brief at 3-20.
[146] Ex. 3.
[147] Ex. 104.

Settlement ensures that the impact of the transaction on retail and wholesale customers is reasonable.[148]

B. Would the post-merger company have the financial, technical, and managerial resources to enable the Qwest and CenturyLink Operating Companies to continue providing reliable, quality telecommunications services in Minnesota?

1. Financial Resources

126. The pro forma profile of the post-merger company will include 17 million access lines, approximately 5 million broadband subscribers, and more than 1 million enterprise customers.[149]

127. The pro forma financial profile of the merged company as of year-end 2009, would include pro forma revenues of $19.8 billion, earnings before interest, taxes, depreciation and amortization (EBITDA) of approximately $8.2 billion, and free cash flow (cash flow available after all cash operating expenses and capital expenditures) of $3.4 billion, without giving consideration to any synergies and before payment of $1.7 billion in dividends.[150]

128. The post-merger company will have one of the strongest balance sheets in the industry. Pro forma 2009 net debt-to-EBITDA was 2.4 times before synergies and 2.2 times after synergies on a full run-rate basis, excluding integration costs. These leverage ratios compare favorably with those of other similarly-situated ILECs.[151]

129. It is projected that the merged company will be able to create annual run-rate operating expense synergies of approximately $575 million, fully-recognized over a three-to-five-year period after the close of the transaction. The Joint Petitioners also project annual run-rate capital expenditure synergies of $50 million, for a total expected increase of $625 million in annual cash flow due to operating and capital synergies.[152]

130. The estimate of $575 million in operating expense savings is approximately 7% of Qwest's 2009 cash operating costs, while the estimate of $625 million in total synergies (including capital expenditure synergies) is less than 8% of Qwest's cash operating costs. These anticipated synergies are modest compared with other publicly-available ILEC merger synergy expectations. An 11% expected cost savings was announced at the time of the CenturyTel merger with Embarq. Other merger-related synergies from ILEC transactions have generally been 20% or more of the target company's cash operating costs in recent years.[153]

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[148] DOC Brief at 2-4.
[149] Ex. 22 (Gast Direct) at 5.
[150] *Id.* at 5-6.
[151] *Id.* at 10-11.
[152] *Id.* at 9.
[153] Ex. 23 (Gast Rebuttal) at 16-18.

131. The Merged Company expects to be financially sound and therefore anticipates that it will not be unduly pressured by investors or other stakeholders to achieve the expected financial synergies.[154]

132. Even without assuming any synergies, the Joint Petitioners project that, after meeting all operating, capital, and financial costs, the Merged Company will have approximately $1.7 billion in remaining cash flow that could be used for additional investment, debt repayments, and other appropriate uses.[155]

133. Over time, the Joint Petitioners expect that the proposed transaction will improve the ability of their operating companies in Minnesota to attract and access capital on reasonable terms.[156]

134. Several recent mergers and acquisitions involving ILECs demonstrate the financial challenges and risks associated with such transactions, particularly where a small ILEC attempts to integrate the OSS and other back-office systems of a materially larger organization:

- In 2005, the Carlyle Group acquired Verizon Hawaii, the franchised ILEC serving most of the state of Hawaii (later renamed Hawaiian Telcom). One aspect of the transaction was that the transferred company would develop its own back-office and OSS systems and processes to replace those of Verizon. The transition from Verizon's systems to the new systems that had been designed by a management and technology consultant did not go smoothly and there were problems with ordering, provisioning, billing and collection. Hawaiian Telcom reached a settlement with the consultant and hired a new consultant to develop and remediate the company's business support and customer service systems, including the OSS used to interact with CLECs and other wholesale customers. In the interim, Hawaiian Telcom used inefficient and expensive processes to undertake basic provisioning and ordering activities. Numerous retail customers received erroneous bills, and wholesale customers endured systems failures. Ultimately, in December 2008, Hawaiian Telcom filed for Chapter 11 bankruptcy protection, listing $1.4 billion in assets and $1.3 billion in debts.[157]

- In 2008, FairPoint Communications acquired Verizon's ILEC operations in Maine, New Hampshire, and Vermont. In October 2009, the company filed for Chapter 11 bankruptcy protection. In further proceedings regarding the reorganization plan, the Vermont Public Service Board determined that FairPoint had failed to realize any of the pre-acquisition forecasts it had issued regarding line loss, DSL service, cutover to new systems, transition expenses, synergies, operating

[154] *Id.* at 18.
[155] *Id.* at 18.
[156] Ex. 22 (Gast Direct) at 14.
[157] Ex. 27 (Gates Direct) at 85-90.

expenses, employee reduction, shareholder dividends, free cash flow, and other matters. The Board noted that FairPoint's financial crisis was caused in large part by its inability to successfully integrate the legacy Verizon exchanges into its OSS and other back-office systems. The New Hampshire PUC was also critical of FairPoint's operational shortcomings arising from its system cutover and emphasized that residential and business customers as well as wholesale customers and competitors experienced even poorer service quality than they had under Verizon.[158]

- The system cutovers and transitions occurring in connection with Frontier's recent acquisition of Verizon exchanges in fourteen states have been criticized by Integra, PAETEC, and FiberNet as adversely affecting their operations and the retail customers they serve. In particular, these companies have complained of increased response times for Access Service Requests, increased Access Ordering system errors, lengthy delays when calling Access Order centers, reductions in Access Ordering staff, inexperienced or inadequately-trained call center staff, problems with pre-ordering, ordering, and installation functions of Frontier's wholesale OSS systems, and other issues.[159]

135. Many Minnesotans are substituting wireless service for wireline service today. The wireless share of the total access line market has grown so significantly since 2001 that wireline and VoIP access lines now account for less than 40% of all wireline/wireless connections in Minnesota. As of June 2009, there were more than 4.25 million wireless subscribers in Minnesota, but only 2.68 million wirelines (both ILEC and CLEC).[160] Between December 2001 and December 2009, Qwest residential and business access lines in Minnesota declined by more than 48% even though the population of Minnesota grew by more than 5% during the same time period.[161]

136. In addition, if the proposed transaction is consummated, CenturyLink will have grown from a small rural company with about 1.3 million lines to a nationwide company of about 17 million lines over the course of only three years. CenturyTel acquired approximately 5.7 million access lines in its acquisition of Embarq in July 2009, has not yet completed that integration, and is now proposing to acquire and integrate Qwest, a 10-million line RBOC.[162]

137. In its S-4 filing with the SEC, CenturyLink itself recognized the risks associated with the Embarq transaction, stating:

[158] Ex. 27 (Gates Direct) at 90-99.
[159] *Id.* (Gates Direct) at 99-106.
[160] Ex. 21 (Rebuttal of Brigham) at 12-13 and n. 27 (*citing Local Telephone Competition: Status as of June 30, 2009;* Industry Analysis and Technology Division, Wireline Competition Bureau, Tables 8 and 17 (Sept. 2010)); Ex. 1 (Direct of Stanoch) at 23-24.
[161] Ex. 1 (Direct of Stanoch) at 19.
[162] Ex. 31 (Ankum Direct) at 11, 37-38. CenturyLink's acquisition of Embarq closed by July 2009, as indicated in Ankum Exhibit AHA-2 at 3.

> Moreover, these integration initiatives are expected to be initiated before CenturyLink has completed a similar integration of its business with the business of Embarq, acquired in 2009, which could cause both of these integration initiatives to be delayed or rendered more costly or disruptive than would otherwise be the case.[163]

138. On April 22, 2010, Standard & Poor's Ratings services placed its ratings on CenturyTel on CreditWatch with negative implications, including the BBB- corporate credit, A-3 commercial paper, and all other issue ratings.[164] In its rationale for the CreditWatch Negative, Standard & Poor's noted:

> While the transaction [the proposed acquisition of Qwest] improves CenturyTel's scale, making it the third-largest wireline operator in the U.S., with about 17 million access lines and 5 million broadband customers, it also increases the company's exposure to higher density markets, which have significant competition from the cable providers. Access-line losses at legacy CenturyTel were about 8.8% in the fourth quarter of 2009 compared to 11.2% at Qwest. While estimated operating cost synergies of about $575 million, which represent about 3% of total revenue, appear achievable, integration efforts will be difficult given the size of the combined company and CenturyTel's integration of previously acquired Embarq will likely not be complete until the end of 2011. Additionally, one-time integration costs of $800 million to $1 billion will constrain the combined company's initial net free cash flow generation.[165]

Moody's Rating Service also gave CenturyLink a negative rating outlook on April 22, 2010, and gave the following explanation:

> The negative rating outlook . . . reflects the considerable execution risks in integrating a sizeable company so soon after another large acquisition [Embarq in July 2009] while confronting the challenges of a secular decline in the wireline industry. The negative outlook also considers the possibility that the company may not realize planned synergies in a timely manner, especially if competitive intensity increases.[166]

2. Managerial Resources

139. The management team that has been identified for the Merged Company includes Chief Executive Officer Glen F. Post III, the current CEO and President of CenturyLink; Chief Financial Officer R. Stewart Ewing, Jr., the current CFO of CenturyLink; and Chief Operating Officer Karen A. Puckett, the current COO of CenturyLink. Combined, the CenturyLink senior leadership team has over 88 years of

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[163] CenturyLink S-4 at 16.

[164] Ex. 31 (Ankum Direct) at 44 n. 77 and Ex. AHA-6. At the same time, Standard & Poor's placed the BB corporate credit rating on Qwest on CreditWatch with positive implications.

[165] Ex. 31 (Ankum Direct) at 44 n. 77 and Ex. AHA-6.

[166] *Id.*

experience in the communications industry, including significant expertise relating to mergers and acquisitions.[167]

140. Christopher K. Ancell, currently the Executive Vice President of Business Markets Group for Qwest, has been named as the President of Business Markets Group for the post-merger company. The Wholesale Operations Tier 2 leaders for the Merged Company include two Qwest executives and three CenturyLink executives.[168]

141. CenturyLink recently announced that five of the Merged Company's six regional presidents will be current CenturyLink executives.[169] Minnesota will be part of the newly formed Midwest Region which will also include operations in North Dakota, South Dakota, Nebraska, Iowa, Illinois, and Wisconsin. Duane Ring, CenturyLink's current President for the Northwest Region, will become the Midwest Region President upon close of the Transaction.[170]

142. The majority of Qwest employees are expected to be retained by the post-merger company.[171] CenturyLink made commitments to retain experienced front-line workers in its Letter of Agreement with the CWA.[172]

3. Technical Resources

143. CenturyLink has had substantial experience with the integration of past mergers including, most recently, the Embarq/CenturyLink merger that closed in July 2009. That merger involved CenturyLink's integration of more than 5 million access lines in 18 states. The human resources and financial systems were successfully integrated shortly after the closing, and 50% of the billing system integration has been successfully completed.[173]

144. CenturyLink currently offers local and long distance voice, wholesale local network access, high-speed Internet, and information and video services in 33 states. It uses a regional operating model and local "go-to-market" strategies.[174] Its skilled workforce includes engineers, IT personnel, and technicians who have significant experience operating networks and systems. The post-merger company will be able to draw on the network and operational strength of both Qwest and CenturyLink.[175]

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[167] Ex. 5 (Jones Direct) at 9.
[168] Ex. 7 (Jones Surrebuttal) at 7; Ex. 18 (Hunsucker Surrebuttal) at 4-5.
[169] Joint CLECs' Reply Brief, Ex. A; see also CenturyLink News Release, Nov. 30, 2010, available at http://www.centurylinkqwestmerger.com/downloads/news/National%20Region%20HQ%20announcement.pdf .
[170] Ex. 7 (Jones Surrebuttal) at 7.
[171] Ex. 6 (Jones Rebuttal) at 8.
[172] CWA Letter of Agreement at 6.
[173] Ex. 8 (Ring Direct) at 6.
[174] Ex. 22 (Gast Direct) at 7.
[175] Ex. 5 (Jones Direct) at 7, 10-11.

145. CenturyLink works with 400 CLECs, approximately the same number of CLECs as Qwest, and many of those customers are the same companies for which Qwest currently provides service.[176]

146. The transaction is structured in a manner that ensures that CenturyLink will be acquiring the personnel, systems, and technical expertise of Qwest in this area.[177]

147. The DOC "agrees generally with Joint Petitioners that the post-merger company will possess the requisite financial, technical and managerial resources to continue to provide reliable, quality telecommunications services in Minnesota."[178]

148. While the proposed transaction presents risks and challenges, the Administrative Law Judge concludes that the Merged Company is likely to have the financial, technical, and managerial resources to enable the Qwest and CenturyLink Operating Companies to continue providing reliable, quality telecommunications services in Minnesota.

C. What impact would the transaction have on Minnesota customers and on competition in the local telecommunications market?

1. Impact on Retail Customers

149. It is likely that the merger will create a stronger company that will be of benefit to retail customers. The increased economies of scale and the broadband platform and infrastructure of both companies will likely enable the Merged Company to provide a more diverse product mix and enhance its ability to deploy advanced services such as higher speed broadband and IPTV.[179]

150. The proposed transaction will be virtually seamless for the customers of Qwest and CenturyLink in Minnesota. Immediately after the transaction, customers will continue to receive the same range of products and services at the same rates and terms and under the same conditions as prior to the close of the transaction.[180]

151. The broadband infrastructure investment made in the DOC Settlement Agreement will be of benefit to Minnesota retail customers, particularly those in "unserved" and "underserved" areas as defined in that Agreement.[181]

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[176] Tr. Vol. 4 at 60 (Test of Hunsucker).
[177] Ex. 5 (Jones Direct) at 7, 9; Ex. 1 (Stanek Direct) at 13-16; Ex. 7 (Jones Surrebuttal) at 7; Ex. 18 (Hunsucker Surrebuttal) at 4; Ex. 6 (Jones Rebuttal) at 6; CWA of Letter of Agreement.
[178] DOC Reply Brief at 2.
[179] Ex. 5 (Jones Direct) at 6-7; Ex. 1 (Stanoch Direct) at 13, 15; Ex. 6 (Jones Rebuttal) at 11.
[180] Ex. 5 (Jones Direct) at 5.
[181] Exs. 3, 104; Tr. Vol. 4 at 141-42 (Test. of Stanoch).

152. Some of the retail price caps contained in the DOC Settlement Agreement exceed those that were already in place under the AFORs applicable to the Joint Petitioners, and will be of benefit to Minnesota retail customers.[182]

153. The Administrative Law Judge concludes that it is likely that the proposed transaction will provide some benefit to Minnesota retail customers.

2. Impact on Competition in the Local Market

154. The Joint Petitioners argue that the Minnesota retail telecommunications market is very competitive, with a broad array of competitive alternatives and significant wireless competition. They maintain that the proposed merger with the commitments they have reached with the DOC, the CWA, 360networks, and Integra "include substantial commitments that provide additional assurance that the transaction is in the public interest and will bring important benefits to Minnesota."[183] The DOC noted in its Reply Brief that it "agrees generally with Joint Petitioners' statements, together with the DOC Settlement Agreements, regarding the impact of the merger on retail and wholesale customers and on the Commission."[184] The remaining Joint CLECs and the Joint Wireless Carriers disagree with this assertion and maintain that the Integra Settlement does not adequately protect wholesale customers or local competition from the risks of the proposed merger.

155. The impact on local competition is an important consideration in the Commission's public interest determination. As the Commission has stated:

> [A] key public interest consideration when evaluating a proposed sale is whether it will have a negative impact upon competition in the local market. The Commission has a particular relationship to this public interest concern because the Minnesota Legislature has identified fair and reasonable competition for local exchange telephone services as a priority public interest goal and has given the Commission major responsibilities for promoting that goal.[185]

156. Minn. Stat. § 237.011 directs the Commission to consider a number of state goals as it executes its regulatory duties with respect to telecommunications services. These goals include "maintaining just and reasonable rates;" "encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission;" "encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner;" "maintaining or improving quality of service;" and "promoting

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[182] Exs. 3, 104; Ex. 98 (Gates Supplemental Surrebuttal) at 71.
[183] Joint Petitioners' Initial Brief at 8.
[184] DOC Reply Brief at 2 (*citing* Joint Petitioners' Initial Brief at 10-33).
[185] Order Approving Sale, Granting ETC Status, and Issuing Certificate of Authority and Requiring Filings in *In the Matter of the Joint Petition of Citizens Utilities Company and GTE Corporation for Approval of Citizens' Acquisition of GTE Telephone Properties,* Docket P-5316, 407/PA-99-1239, (July 24, 2000) ("Citizens/GTE Order") at 6.

customer choice." The Commission's public interest determination in connection with proposed mergers must also take these goals into consideration.[186]

157. In July of 2010, the Federal Trade Commission and the Department of Justice notified the Joint Petitioners that the merger review received early termination under the Hart-Scott-Rodino Act. Accordingly, the proposed merger has received clearance from an antitrust perspective.[187]

158. With limited exceptions, Qwest and CenturyLink provide service in predominately complementary service areas in Minnesota. As a result, Minnesota residential and business customers are not likely to see the elimination of a telephone service provider as a result of the proposed transaction. In a few limited areas, one of the Joint Petitioners serves business or government customers in the service area of the other Joint Petitioner. In those instances, the customers have a choice of a number of other carriers.[188]

159. Qwest has demonstrated that it is facing increasing competitive pressure in Minnesota from a diverse group of companies that also offer voice and broadband services, including CLECs, cable TV companies, wireless providers, and VoIP providers. Qwest residential and business access lines in Minnesota declined over 48% between December of 2001 and December of 2009. In contrast, the number of wireless subscribers increased by more than 105%.[189] ILEC wirelines represent only 26% of all wireline, VoIP and wireless connections in Minnesota, and wireline and VoIP access lines account for less than 40% of all wireline/wireless connections.[190]

160. Because the post-merger company is likely to be better able to offer voice and broadband services in a more efficient manner, it is likely that the transaction will enable the post-merger company to better compete with wireless products.[191]

161. The increased financial strength of the post-merger company will assist it in pursuing its Fiber to the Node and Fiber to the Cell Tower efforts, which is likely to allow it to better compete with cable providers.[192] The combination of Qwest's national fiber-optic network and data centers with CenturyLink's core fiber network is likely to increase the company's ability to serve Minnesota business and government customers.[193]

162. As Minnesota's BOC, Qwest owns and controls the vast majority of the State's telecommunications infrastructure.[194] Evidence obtained in Commission

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[186] *Citizens/ GTE Order* at 6.
[187] Joint Petitioners' Initial Brief at 32, *citing* Form 425 filed with SEC on July 22, 2010, available at: http://investor.qwest.com/qcii-sec-filings .
[188] Ex. 1 (Stanoch Direct) at 18-19.
[189] *Id.* at 20-23.
[190] Ex. 21 (Brigham Rebuttal) at 13.
[191] Ex. 1 (Stanoch Direct) at 24-27.
[192] *Id.* at 22-23.
[193] Ex. 1 (Stanoch Direct) at 28-29.
[194] Ex. 32 (Ankum Surrebuttal) at 21; s*ee also* Ex. 1 (Stanoch Direct) at 12-13.

investigations shows that CLECS "rely on Qwest's wholesale facilities to enable them to offer telecommunications customers effective competitive alternatives to Qwest's services, and that for a large portion of the market it is infeasible for the CLECs to duplicate Qwest's facilities ... facilities constructed by Qwest over decades under the regulatory protection of the MNPUC."[195] Access to wholesale facilities thus is essential to the ability of many CLECs to continue providing Minnesota consumers with a competitive local service alternative.

163. CLECs rely on interconnection with Qwest and number porting to provide competitive local service in Minnesota.[196] Most CLECs rely extensively on UNEs to access end-user customers, but many also rely substantially on non-UNEs purchased from Qwest under commercial or wholesale agreements.[197] Reliance on wholesale agreements extends to a broad range of wholesale products, including dark fiber, broadband services, special access services, and the combined loop/transport/switching platform referred to as Qwest Local Service Platform ("QLSP").

164. The record reflects that CenturyLink assesses some charges and engages in some other practices affecting CLECs that Qwest does not employ. For example, CenturyLink has assessed charges to Charter when Charter requests a number port, connects to the customer's premises through the customer side of the Network Interface Device ("NID") enclosure, or submits a directory listing/directory assistance listing to CenturyLink.[198] CenturyLink also required a CLEC, McLeodUSA, to negotiate a new resale agreement using CenturyLink's template agreement following its acquisition of several Ameritech exchanges in Wisconsin.[199] After the acquisition, CenturyLink declined to continue offering an automated electronic interface that Ameritech and US WEST had been using and on which McLeodUSA was relying to provide competitive local services.[200] As a result of losing this functionality, McLeodUSA was forced to revert to submitting written orders (which made it more expensive for McLeodUSA to serve its customers), and it ultimately decided to severely limit use of resold Centrex for

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[195] Ex Parte Comments of the Minnesota Public Utilities Commission filed in *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Minneapolis/St. Paul Metropolitan Statistical Area,* WC Docket No. 07-97, MPUC Docket No. P-421/CI-07-661 (Feb. 8, 2008) ("Commission Forbearance Comments"), at 2-3. The FCC ultimately denied Qwest's Petition for Forbearance in four Metropolitan Statistical Areas including the St. Paul-Minneapolis MSA, based in part upon a finding that the record "does not reflect any significant alternative sources of wholesale inputs for carriers in the four MSAs." Memorandum Opinion and Order in *In the Matter of Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas,* WC Docket No. 07-97 (July 25, 2008), at 28.
[196] Ex. 40 (Pruitt Direct) at 11; Ex. 27 (Gates Direct) at 15.
[197] Joint CLECs' Initial Brief at 33-35; *see also* Affidavit of Brad VanLeur, November 24, 2010 (attached to Joint CLEC's Initial Brief as Attachment 2) at ¶¶ 3-4; Affidavit of Steven Pitterle on Behalf of TDS Metrocom, Inc. November 24, 2010 (attached to Joint CLEC's Initial Brief as Attachment 7); Affidavit of Karrie Willis on Behalf of POPP.com, Inc. November 24, 2010 (attached to Joint CLEC's Initial Brief as Attachment 8).
[198] Ex. 40 (Pruitt Direct) at 10.
[199] Ex. 44 (Haas Surrebuttal) at 4.
[200] *Id*. at 3-4.

new customers in the exchange. This caused McLeodUSA to lose customers and opportunities to increase its customer base.[201]

165. In addition, CenturyLink does not provide the range of wholesale services that Qwest provides. For example, CenturyLink does not provide anything comparable to Qwest's Commercial Local Services Platform ("QLSP") product on which many CLECs depend, particularly in less densely populated areas of the state. Nor does CenturyLink provide anything comparable to Qwest's Commercial Dark Fiber offering.[202]

166. The continued availability of facilities purchased from Qwest is important to the ability of a number of Minnesota CLECs to serve their customers and compete in Minnesota's local exchange markets. If affordable access to these wholesale facilities were lost, it would not only harm competition, but would also likely harm the retail consumers who rely on the services that CLECs provide through the use of these facilities.[203]

167. Because CLECs rely extensively on Joint Petitioners' interconnection and wholesale network inputs, they are largely captive customers of these two ILECs. Moreover, since the Joint Petitioners also compete with CLECs, the Joint Petitioners may have disincentives to provide CLECs with quality, reasonably priced, nondiscriminatory wholesale services and network access. Under the pressure of its debt load, the promises of merger savings to shareholders and regulators, and significant integration costs, there is a risk that CenturyLink will be forced to cut costs when integrating the two companies, leading to a degradation of services to wholesale customers and harm to competition.[204]

168. Competitors are concerned that the Merged Company may direct its integration efforts to the detriment of wholesale customers by withdrawing services, or significantly changing the offerings Qwest currently makes available. As Dr. Ankum testified:

> 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.[205]

169. As a general matter, the majority of mergers (often estimated at two out of three) fail.[206] The record contains evidence regarding three recent ILEC mergers that illustrate the substantial associated risks, particularly where a smaller ILEC is acquiring

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[201] *Id.* at 4-5.
[202] Ex. 31 (Ankum Direct) at 70.
[203] Ex. 98 (Gates Supplemental Surrebuttal) at 74.
[204] Ex. 31 (Ankum Direct) at 13, 45.
[205] Ex. 31 (Ankum Direct) at 65-66.
[206] *Id.* at 6 and n. 4.

a larger one: (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.[207] There were substantial post-merger problems in each instance that left an "enormous gulf between the anticipated benefits claimed by company management . . . and the ensuing realities."[208] The Hawaiian Telcom and FairPoint mergers were followed by Chapter 11 bankruptcy petitions.[209] Rather than achieving the benefits projected by management, these mergers resulted in an array of serious problems for their retail and wholesale customers, including decreases in service quality and Operational Support System ("OSS") failures.[210]

170. The record further reflects that CenturyLink has experienced post-merger problems in conjunction with its recent acquisition of Embarq. Shortly after the Embarq acquisition, CLECs were affected by failures in CenturyLink's OSS – failures which, among other things, caused CenturyLink to seek a waiver of the FCC's one business day number porting requirement. CenturyLink has also experienced significant post-merger problems with its Embarq systems integration in North Carolina. As reported by the Communications Workers of America ("CWA") and acknowledged by CenturyLink, the Embarq transaction resulted in a number of serious problems that affected operations and service in North Carolina, including:

> …workers being dispatched to incorrect locations for service; workers reported being dispatched for service with insufficient or incorrect information; longer out of service periods and longer delays in initiating service; differing and confusing software that dispatches/assigns technicians; the [CenturyTel and Embarq] systems do not appear to be interconnected or coordinated; negative impacts on work flow; inefficiencies in the new systems; and consumer frustration about installation and service appointments not being met and long hold times.[211]

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[207] *Id*. at 26-37; Ex. 27 (Gates Direct) at 84-105.
[208] Ex. 31 (Ankum Direct) at 28.
[209] *Id.* at 27.
[210] *Id.* at 28-30. For example, following its merger, Hawaiian Telcom experienced significant slow-downs in call answer and handling times in its customer service centers, billing errors, missed deadlines for special access circuit orders, delays in porting telephone numbers, and lack of a functioning electronic interface to which wholesale customers could submit trouble tickets which, according to the Vermont Public Service Board, resulted in "major problems for wholesale and retail customers . . . that have taken years to correct." *Id.* at 29; Ex. 27 (Gates Direct) at 89-90, 94. Similarly, FairPoint experienced "widespread disruptions to wholesale customers due to OSS system failures, order fall-outs, and manual processing work-arounds" following its acquisition of Verizon exchanges. Its retail service quality declined to a point that triggered maximum payments under Vermont's retail service quality plan, and widespread operational shortcomings arising from its systems cutover caused poor service quality for residential and business customers, as well as wholesale customers and competitors. Ex. 31 (Ankum Direct) at 29; Ex. 27 (Gates Direct) at 97-98. Frontier has also experienced "wholesale OSS failures, ordering delays, understaffed access order centers [and] trouble report backlogs" following its acquisition of Verizon exchanges. Ex. 31 (Ankum Direct), Ex. AHA-2 at 2.
[211] Ex. 28 (Gates Surrebuttal) at 16-17.

The CWA also reported "insufficient training or resources provided to former Embarq employees about the new systems."[212] CenturyLink acknowledged that these problems in North Carolina were caused by the "differences between the old and new systems," and "a lack of familiarity with the new systems."[213] These problems reduced CenturyLink's service quality under its self-reported customer service metrics[214] to the point where the former Embarq's system functionality "just disappear[ed]."[215] Joint CLEC witness, Mr. Gates, testified that CenturyLink's service integration problems in North Carolina were likely wide-spread given that those problems reduced the company's service quality performance metrics even though those metrics were spread out over one million access lines following its acquisition of Embarq.[216]

171. CenturyLink's service integration challenges associated with its acquisition of Qwest are likely to be substantially greater than those it experienced with its Embarq acquisition given Qwest's unique BOC responsibilities and its substantially larger size and wholesale volumes.[217] Moreover, since CenturyLink is still in the process of integrating Embarq, the overlap between the two transactions may increase the risk of problems.

172. CenturyLink's relative lack of wholesale experience compared to Qwest may pose a risk of harm to the Merged Company's wholesale customers and competition. The record establishes that CenturyLink's level of experience in providing wholesale services and facilities to CLECs is significantly less than Qwest's.[218] In addition, CenturyLink has historically operated primarily in less-densely populated areas of the country[219] and has no experience operating as a BOC with its attendant Section 271 responsibilities. Although CenturyLink asserts that it will draw upon the expertise and systems of Qwest, there is no assurance that CenturyLink will leave Qwest's wholesale operations and staffing levels unaffected.

173. It is evident that the proposed merger presents certain risks to wholesale customers and competition in the local market. Because the Joint Petitioners presented little detailed information in this proceeding regarding the specific approaches that will be taken by the post-merger company with regard to wholesale services, it is difficult to predict what impact the proposed transaction will have on competition. However, taking into account the substantial protections afforded by the Settlement Agreements the Joint Petitioners have reached with the DOC, the CWA, 360networks, and, most significantly, Integra, it is concluded that it is not likely that the merger will have a harmful effect on wholesale customers or local competition. As illustrated in the overview of the Integra Settlement terms set forth in Section IV (D) above and further

[212] *Id*. at 18.
[213] *Id*.
[214] Ex. 9 (Ring Rebuttal) at 5; Ex. 28 (Gates Surrebuttal) at 17.
[215] Ex. 28 (Gates Surrebuttal) at 20.
[216] *Id*. at 17.
[217] Ex. 31 (Ankum Direct) at 11-12; *see also* Ex. 27 (Gates Direct) at 25-27, *citing* CenturyLink Response to Integra Minnesota Data Request No. 2, Trade Secret Attachment Integra-2 and Qwest Response to Integra Minnesota Data Request No. 2, Trade Secret Attachment D.
[218] Ex. 31 (Ankum Direct) at 10.
[219] Tr. Vol. 2A at 42-43 (Test. of Ring).

discussed in Section VI below, the terms of the Integra Settlement Agreement address a large number of the concerns expressed by the Intervenors in this matter and will provide competing carriers with significant levels of certainty and stability.

D. What impact would the transaction have on Commission authority?

174. The proposed transaction will not result in any changes in the manner in which the CenturyLink Operating Companies or the Qwest Operating Companies are regulated by the Commission. They will continue to be subject to applicable statutes, rules, Commission orders, and other obligations.[220]

175. There is no evidence that the proposed transaction will have any impact on the Commission's authority over the post-merger company.

VI. What, if any, additional conditions are necessary to ensure that the Proposed Transaction is in the public interest?

A. Joint CLECs' Proposed Conditions

176. Timothy Gates and August Ankum of QSI Consulting in Cambridge, Massachusetts, initially provided testimony in this manner proposing that the Commission's approval of the merger be subject to 30 conditions. Their testimony was sponsored by Cbeyond Communications, Charter, Integra, Level 3, PAETEC, TDS Metrocom, t.w. telecom, OrbitCom, and POPP.com.[221] Some of these conditions are incorporated to some extent in the Settlement Agreements that the Joint Petitioners have reached with the DOC and Integra.[222] As noted above, the Settlement Agreement between the Joint Petitioners and Integra specifies that the terms of that Agreement, once approved, will be available to any other carrier who so requests. In addition, the Agreement states that, if an order approving the transaction includes any condition not contained in the Agreement or any provision that is inconsistent with the terms of the Agreement, the merged company will make that condition or provision available to other carriers upon request, to the extent applicable.[223]

177. In their post-hearing briefs, the Joint CLECs acknowledge that the Integra Settlement addresses a number of the risks and potential harms of the proposed transaction; however, they contend that the Integra Settlement fails to adequately address other issues that are critical to other CLECs and competition generally. Consequently, they urge the Commission to adopt not only the Integra Settlement

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[220] Ex. 5 (Jones Direct) at 5, 11-12.

[221] Exs. 27 (Gates Direct) and 31 (Ankum Direct). The proposed conditions are set forth in Ex. TJG 8, attached to Ex. 27 (Gates Direct).

[222] See Joint Petitioners' Initial Brief, Ex. A and Joint Petitioners' Proposed Findings (noting that some aspects of Proposed Conditions 1-4, 6-19, 24, 26-27, and 29-30 are addressed in the Integra, DOC, and/or 360networks Settlement Agreements).

[223] *Id*. at 11.

conditions but also eight additional conditions that they argue are necessary to ensure adequate protection of the broader public interest in local competition.[224]

176. Accordingly, based on differences among CLECs that distinguish them from Integra, the Joint CLECs propose the following additional commitments as conditions for approval of the proposed merger:

(a) a commitment to extend current wholesale/commercial agreements for at least 36 months from the date the Transaction closes subject to the current rates, terms and conditions in effect as of the date the proposed merger was filed with the Commission - May 14, 2010;[225]

(b) a commitment that permits CLECs to opt-in to ICAs in Minnesota and "port" such agreements to another state or opt-in to ICAs in another state and "port" such agreements into Minnesota, provided Commission-required terms and pricing are added to the agreements ported into Minnesota;[226]

(c) a commitment to retain Qwest's current OSS for at least three years from the date the Transaction closes and implement third-party testing at commercial volumes with specific performance benchmarks to ensure that any successor OSS performs at no less than the level of Qwest's current OSS;[227]

(d) a commitment not to assert the rural exemption or seek suspensions or modifications for rural carriers under Section 251 of the Act;[228]

(e) a commitment to ensure open and reasonable access to and interconnection with the merged company's combined network through a single point of interconnection, provided that the Merged Company's affiliates' networks in a LATA are interconnected;[229]

(f) a commitment to provide directory services in compliance with existing law;[230]

(g) a commitment to a minimum 36-month moratorium on any further non-impairment or forbearance filings;[231] and

[224] Joint CLECs' Initial Brief at 29-90.
[225] *Id.* at 32-44.
[226] *Id.* at 44-50.
[227] *Id.* at 50-65.
[228] *Id.* at 65-71.
[229] *Id.* at 71-76.
[230] *Id.* at 76-82.
[231] *Id.* at 82-83.

(h) a commitment to implement the additional performance assurance plan ("APAP") proposed by the Joint CLECs as an enforceable mechanism to prevent or discourage any decline in wholesale service quality post merger.[232]

177. Each of these proposed conditions is discussed below.

1. 36-Month Extension of Current Wholesale/Commercial Agreements at Current Rates, Terms and Conditions

178. In the Integra Settlement Agreement, the Joint Petitioners committed to extend ICAs for three years from the closing date of the transaction. The Joint CLECs agree that this provides a minimally adequate period of stability for ICAs during which no CLEC will face any change in UNE terms or prices.[233]

179. As part of the Integra Settlement Agreement, the Joint Petitioners committed to a more limited extension of Qwest's commercial and wholesale agreements.[234] Such commercial and wholesale agreements or offerings will be extended by 18 months from the Transaction Closing Date with a price cap. After the 18-month period, Qwest reserves the right to modify rates. If the commercial or wholesale agreement later becomes unavailable on a going forward basis, "the agreement will remain available to CLEC on a grandparented basis to serve CLEC's embedded base of customers already being served via services purchased under that [commercial or wholesale] agreement" for at least eighteen months after Qwest has notified CLEC that the agreement is no longer available, "subject to Qwest's right to modify rates."[235] Qwest wholesale tariff offerings that CLECs ordered from Qwest via tariff as of the Closing Date, including Wholesale Regional Commitment Plan ("RCP") Agreements, will be extended by 12 months from the transaction Closing Date or, at a CLEC's option, by 12 months beyond the termination date in the particular CLEC's Agreement.[236]

180. The Joint CLECs contend that the limited extensions for commercial/wholesale agreements contained in the Integra Settlement Agreement are unreasonable and do not adequately protect local competition from the risks associated

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[232] *Id.* at 83-89.
[233] *Id.* at 32.
[234] The Integra Settlement Agreement defines "commercial agreements" as "offerings made available after a UNE(s) becomes unavailable via ICA," including Broadband for Resale, Commercial Broadband Services (QCBS), Commercial Dark Fiber, High Speed Commercial Internet Service (HSIS), Local Services Platform (QLSP), Internetwork Calling Name (ICNAM), and Commercial Line Sharing, "as well as any other Commercial agreement to which Qwest and CLEC were parties as of the closing date." Integra Settlement Agreement at 5. The Agreement defines "wholesale agreements" as "offerings made available after a tariffed offering becomes unavailable via tariff," including Wholesale Data Services Agreement (ATM, Frame Relay, GeoMax, HDTV-Net, Metro Optical Ethernet, Self-Healing Network, and Synchronous Service Transport), "as well as any other Wholesale agreement to which Qwest and CLEC were parties as of the Closing Date." Integra Settlement Agreement at 6.
[235] Integra Settlement Agreement at 5-6.
[236] *Id.* at 6.

with the proposed merger. They argue that a majority of CLECs rely more extensively than Integra on a number of Qwest's non-UNE wholesale offerings and thus recommend that the proposed merger should be further conditioned on a commitment to uniformly extend current commercial/wholesale agreements for three years after the Transaction's closing date, consistent with the extension of ICAs in the Integra Settlement and in accordance with the minimum three-year synergy period anticipated by the Joint Petitioners. They further contend that these agreements should be extended based on the rates that were in effect as of the date the Joint Petitioners filed their petition for approval of the transaction (May 14, 2010) rather than the rates that are in effect on the date the transaction closes, even if those rates were raised during the pendency of proceedings seeking approval of the proposed merger. The Joint CLECs emphasize the differences between the UNE rates and the rates under wholesale/commercial agreements, and maintain that extending those agreements at current rates would not cause competitive harm to the Joint Petitioners. Finally, they argue that the additional 18-month extension set forth in the Integra Settlement Agreement for embedded base customers without a price cap provides little if any benefit to CLECs or local competition.[237]

181. The Joint Petitioners argue that they made substantial concessions in the Integra Settlement Agreement, and assert that the approach in that agreement "represent[s] more than a reasonable compromise." They emphasize that the commercial agreements that the Joint CLECs want to be extended for three years may not even be covered under the Telecommunications Act or fall within the Commission's jurisdiction.[238] They maintain that this proposed condition "has nothing to do with the merger" and involves the same issues that have existed for some time between Qwest and the CLECs.[239] They also assert that the Joint CLECs ignore fundamental differences between ICAs (which primarily involve UNEs that must be provided at a cost-based rate under 47 U.S.C. § 251) and commercial/wholesale offerings (which are offered under 47 U.S.C. § 271 or voluntarily, and which primarily relate to services that formerly were within the scope of § 251(c) but are no longer subject to the restraints on pricing that apply to UNEs). Citing the *Southwestern Bell Telephone v. Missouri Public Service Commission*[240] case, the Joint Petitioners argue that the Commission has no authority to interpret or enforce the obligations of 47 U.S.C. § 271 because the FCC has exclusive jurisdiction in that area.[241] The Joint Petitioners acknowledged that the Commission has taken the position that it has such authority and noted that an appeal by Qwest is pending in federal district court in Minnesota, in which Qwest is seeking a further declaration that the Commission has no authority over services provided under Section 271 or through commercial agreements.[242]

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[237] Joint CLECs' Initial Brief at 32-44.
[238] Joint Petitioners' Initial Brief at 28.
[239] Joint Petitioners' Reply Brief at 15.
[240] 530 F.3d (8th Cir. June 20, 2008).
[241] Joint Petitioners' Reply Brief at 15-19.
[242] Joint Petitioners' Reply Brief at 18; *see Qwest Corp. v. Minn. Pub. Util. Comm'n,* Case No. 0:10-cv-03735-DWF-JJK (D. Minn.).

182. Regardless of the outcome of the appeal, the Joint Petitioners contend that it is reasonable to provide different treatment for commercial/wholesale agreements and ICAs in light of the differing regulatory standards and the fact that CLECs have a choice whether or not to purchase from Qwest, another carrier, or self-provision the service.[243] They urge that the comparison between UNE and commercial rates made in the affidavits filed by the Joint CLECs is not relevant and should be rejected here as it was in the 271 Pricing proceeding.[244] They also point out that Qwest's QLSP agreements expire on January 4, 2011, and the Regional Commitment Plans expire at varying time periods, and contend that the Integra Settlement Agreement "softens the impact of any future changes in such product offers and provides stability to CLECs that would not exist without the concessions arising from the merger."[245]

183. The Joint CLECs demonstrated that many CLECs rely to a significant degree on non-UNEs purchased from Qwest under wholesale or commercial agreements. As Dr. Ankum observed, CLECs that rely on wholesale facilities under wholesale agreements have:

> . . . built their business plans significantly around the availability of the products provided under those commercial agreements and the specific terms set forth in those agreements. Retail customers in turn receive competitive services based on CLEC access to these wholesale services from Qwest under these commercial agreements. Importantly, these CLECs generally have no alternative to Qwest for the products or services, such as dark fiber or line sharing, provided under these commercial agreements.[246]

184. Continued access to wholesale facilities (such as Qwest's commercial dark fiber transport product, Qwest's commercial QLSP product, Qwest Wholesale Broadband, Qwest Broadband for Resale, QMOE, and various special services to obtain critical network inputs such as loops and transport that are no longer available as UNEs) is critical to the ability of a number of Minnesota CLECs to serve their customers and compete in Minnesota's local exchange markets.[247] If these wholesale facilities are no longer offered or if the prices charged for those offerings are raised, there would be an impact on retail as well as wholesale customers:

> [A] decision to not continue those commercial wholesale offerings or to raise the prices charged for those offerings affects retail customers as well as the wholesale customers (i.e., CLECs) who purchase those commercial offerings from Qwest. Affected retail customers that need the same

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[243] Joint Petitioners' Reply Brief at 18-19.
[244] *Id.* at 19-20.
[245] *Id.* at 20-21.
[246] Ex. 31 (Ankum Direct) at 70.
[247] Ex. 98 (Gates Supplemental Surrebuttal) at 74-76; Gates Aff. at ¶ 8.

service will either be disconnected or, if any service is available to them, moved to a service that is not from the customer's carrier of choice.[248]

185. The public's interest in and benefit from competition depends on the availability of services from more providers than just the ILEC and a single CLEC. Competition encompasses multiple CLEC options for consumers, each with different network approaches, target markets and business plans, as well as a marketplace that is sufficiently open to new competitors in the future.[249]

186. The majority of CLECs participating in this case rely considerably more than Integra on non-UNE wholesale offerings such as Qwest's QLSP product and dark fiber transport.[250] OrbitCom, for example, relies almost entirely on non-UNE facilities purchased under Qwest's Commercial QLSP Agreement to serve its customers.[251] TDSM also relies significantly on Qwest's QLSP product to serve its Minnesota customers outside the Twin Cities Metropolitan Area.[252] POPP.com and PAETEC rely heavily on Qwest's QLSP to serve customers in areas where they cannot yet economically justify investing in collocations.[253] In addition, POPP.com relies significantly on Qwest dark fiber both as a UNE under its ICA and as a non-UNE under Qwest's Commercial Dark Fiber Agreement ("Dark Fiber Agreement").[254] Similarly, TWTC relies on tariffed special access services purchased from Qwest under its wholesale Regional Commitment Plan ("RCP") and Annual Incentive Plan ("AIP") Agreements for the wholesale inputs it requires in Minnesota.[255]

187. CenturyLink does not currently make products such as dark fiber or line sharing available under commercial agreements (although it may offer them through grandfathered contracts that are not available to other CLECs). This increases the risk that these products will be withdrawn or the terms of their availability materially changed as a result of the merger.[256] CenturyLink has indicated little interest in providing certain wholesale services, such as dark fiber, after the merger unless it is required to do so.[257]

188. Because the Joint Petitioners have not extended existing non-UNE wholesale agreements at current prices by the same length as their agreed-upon

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[248] *Id.* at 74.
[249] Gates Aff. at ¶ 3.
[250] *See, e.g.,* Highly Sensitive Trade Secret Information included in Integra Telecom's Responses to Joint CLECs' Information Request Nos. 1-2 (Nov. 17, 2010) ("Integra IR Responses") at 3 (attached to Joint CLECs' Brief as Attachment 3); VanLeur Affidavit at ¶ 3; Willis Affidavit at ¶ 13; Redman-Carter Affidavit at ¶ 2; Pitterle Affidavit at ¶ 5; Willis Aff. at ¶ ¶ 2, 7, 8.
[251] VanLeur Aff. (Attachment 2) at ¶¶ 3-4.
[252] Pitterle Aff. at ¶ 4.
[253] Willis Aff. at ¶ 7; Redman-Carter Aff. at ¶ 2.
[254] Willis Aff. at ¶¶ 7-8.
[255] Sherwood Aff. at ¶¶ 9-10.
[256] Ex. 31 (Ankum Direct) at 70, lines 12-15.
[257] Tr. Vol. 2B at 71-72 (Test. of Hunsucker).

extension of ICAs, the Joint CLECs are concerned that the Joint Petitioners may intend to increase the prices of non-UNEs early in the three- to five-year synergy timeframe.[258]

189. Since the merger announcement date, Qwest has taken some steps that will increase the expenses of wholesale customers.[259] Specifically:

- On April 30, 2010, Qwest filed a "Product Notification" with an effective date of June 1, 2010, indicating that it would change its Regional Commitment Program (RCP) from a unit-based plan to a revenue-based plan and raise the commitment level from 90% to 95% of the total Company-provided in-service DS1 and DS3 Revenue. An RCP is a pricing plan that allows DS1 and/or DS3 customers to receive price reductions for committing to a minimum volume on DS1 and/or DS3 circuits for a certain period of time. As of May 31, 2010, the former RCP provisions were no longer available to wholesale customers. New, less favorable terms are required going forward.[260]

- More recently, Qwest introduced a new QLSP Agreement to take effect January 4, 2011, when the current QLSP agreement is set to expire.[261] On August 25, 2010, Qwest provided the new proposed QLSP agreement to OrbitCom. The new QLSP Agreement will increase the basic monthly charge by $1 per port while also reducing the discounts available under the current QLSP Agreement and eliminating a CLEC's ability to charge tandem access billing to interexchange carriers.[262] The new terms and pricing would result in a 40% decrease in the net income of OrbitCom.[263] TDS Metrocom will also pay significantly more under the new QLSP Agreement.[264] In addition, the new QLSP Agreement has a provision that allows annual rate increases.[265] It is not clear whether or not the 18-month price cap under the Integra Settlement would prevent the post-merger company from implementing those annual increases in the first year following the proposed merger's closing.

- Even more recently, on November 30, 2010, Qwest announced an increase in white page directory listing charges.[266]

190. As part of the DOC Settlement, the Joint Petitioners committed to cap the Merged Company's basic retail residential and business rates at current levels through 2012.[267] The Joint CLECs are concerned that the Joint Petitioners' decision to increase

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[258] Gates Aff. at ¶ 10.
[259] Ex. 31 (Ankum Direct) at 86.
[260] *Id.* at 85-86 and Ex. AHA-5.
[261] Gates Aff. at ¶ 11.
[262] VanLeur Aff. at ¶¶ 8, 10-12; Gates Aff. at ¶11.
[263] VanLeur Aff. at ¶ 8.
[264] Pitterle Aff. at ¶ 9.
[265] *Id.* at ¶ 10; Gates Aff. at ¶ 11.
[266] *See* Joint CLECs' Reply Brief at 26-28 and Attachment B.
[267] Ex. 3 at 6.

wholesale QLSP rates while capping their own basic retail rates could create a potential anti-competitive price squeeze in which CLECs relying on QLSP face higher prices for the wholesale inputs they use to compete in the retail market while their primary competitors, Qwest and CenturyLink, keep their retail rates flat.[268]

191. It is not clear from the record how long the old QLSP Agreement had been in effect or what factors Qwest took into account in ordering the rate increase.

192. Some CLECs subscribe to the terms of various tariffed plans offered by Qwest, such as Qwest's Regional Commitment Plan (RCP) and Qwest's Annual Incentive Plan (AIP). The AIP is a 12-month offering that provides additional discounts associated with revenue growth over the year. Once a year, those discounts are provided as a billing credit. The AIP contract of one of the Joint CLECs, tw telecom of Minnesota (TWTC), will expire in January 2011 unless the conditions proposed by the Joint CLECs are adopted.[269] TWTC also has an RCP Agreement with Qwest that is set to expire in June 2011. Under that RCP Agreement, TWTC agrees to maintain a base of at least 90% of the existing circuits purchased from Qwest as special access and receives in exchange a 22% discount off the tariffed monthly rate of those circuits. The RCP guarantees rate stabilization at the then-tariffed monthly rate, regardless of whether Qwest files for tariffed price increases. However, Qwest has already filed with the FCC to eliminate the existing RCP plan (grandfathering existing RCP agreements), change the RCP from a circuit-based plan to a revenue-based commitment, and increase the commitment levels required from 90% of circuits to 95% of revenue. If the terms of the current RCP agreement expire without the extension requested by the Joint CLECs as part of the merger conditions, TWTC will see its special access costs increase 22%.[270]

193. The Joint CLECs contend that the commitment made in the Integra Settlement Agreement to extend RCP Agreements by 12 months after the transaction closes or by 12 months after an Agreement's expiration may provide sufficient price stability for a CLEC such as Integra and others that have RCP Agreements set to expire well after the transaction closes. By extending their RCP Agreements by an additional year as provided in the Integra Settlement Agreement, those CLECs will effectively cap the rates they pay for their special access services for at least the minimum three-year synergy period. But the Joint CLECs assert that that term of the Integra Agreement will provide far less benefit to CLECs whose RCP Agreements are set to expire prior to the transaction closing date because they will be forced onto the higher effective RCP rates well before other CLECs. As a result, they maintain some CLECs will receive less rate stability than others, some CLECs will be forced to pay higher prices than others depending on when their RCP Agreements are due to expire, and some CLECs will gain a competitive advantage over others.[271] As noted by Mr. Gates, "Such disparate treatment of CLECs by operation of the settlement will harm the efficient operation of the market by systematically identifying winners and losers based on an expiration date

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[268] Gates Aff. at ¶ 11.
[269] Sherwood Aff. at ¶ 10.
[270] *Id.* at ¶ 9.
[271] Gates Aff. at ¶ 12.

in an agreement instead of on a company's ability to efficiently compete in the market."[272]

194. Under the Integra Settlement Agreement, if the post-merger company decides to eliminate a wholesale or commercial offering after the initial 18-month extension period, the company will make the offering available to CLECs on a grandparented basis to serve embedded base customers for at least an additional 18 months after notification is given that it is no longer available, subject to rate modifications that the post-merger company deems appropriate. The Joint CLECs contend that this commitment is inadequate for several reasons:

- Because there is no price cap for the additional 18-month period, they argue that there will be no stability or certainty regarding the price that CLECs will have to pay for these wholesale services. The post-merger company would be free to offer the wholesale service at a price that is beyond the reach of CLECs and effectively eliminate the availability of the service.[273]

- Limiting the availability of wholesale inputs purchased under these agreements to a CLEC's embedded customer base will prevent CLECs from using wholesale services to expand their business and add new customers, and the Joint CLECs contend that this could have a chilling effect on the ability of CLECs to compete with Qwest using those services.[274]

- Finally, according to the Joint CLECs, limiting wholesale agreements to a CLEC's embedded base would defeat the use of those agreements as an effective ongoing alternative to UNEs that are no longer available because of non-impairment designations.[275]

195. The Administrative Law Judge concludes that the Joint CLECs have not demonstrated that this proposed condition is reasonable or necessary for the transaction to be deemed to be in the public interest. As the Joint Petitioners emphasize, commercial agreements arise under 47 U.S.C. § 271 or because Qwest has made a voluntary decision to offer such agreements. Most of these agreements relate to services that formerly were within the scope of unbundled network elements under Section 251(c), but subsequently have been found by the FCC to not meet the impairment standard. Because a BOC is free to offer such elements at rates that are market-based, the Joint CLECs' attempt to compare the prices that they used to receive under Section 251 with rates they currently receive under commercial agreements or federal tariffs is not appropriate and has been rejected in prior Commission proceedings. Accordingly, providing different treatment for ICAs and commercial agreements comports with the differing regulatory standards governing such

[272] *Id.*
[273] *Id.* at ¶ 13.
[274] *Id.*
[275] *Id.*

agreements and the fact that CLECs have a choice as to whether to purchase from Qwest, purchase from another carrier, or self-provision.

196. Qwest's current QLSP agreements expired on January 4, 2011. The RCPs expire at varying time periods, as do other agreements. As a result, the termination dates of various commercial agreements and tariffed services will inevitably vary between CLECs, and the differences between CLECs that exist under the Integra Settlement Agreement will exist regardless of whether the Integra Settlement and the proposed merger are approved. Moreover, regardless of the proposed merger or the terms of the Integra Settlement Agreement, prices for commercial/wholesale agreements could be altered and services could be terminated at any time, as long as consistent with the terms of the agreement. As a result, the additional price stability assurances contained in the Integra Settlement Agreement provide a benefit to CLECs to which they would not otherwise be entitled. The provisions of the Integra Agreement provide a level of certainty and stability for wholesale customers following the proposed merger that would not otherwise exist, and lessen the impact of any future changes in such product offers.

197. Therefore, the Administrative Law Judge recommends that this condition not be adopted by the Commission.

198. The Administrative Law Judge is sympathetic, however, to the arguments posed by the Joint CLECs. In particular, it appears that CLECs whose contracts expire during the pendency of this case find themselves in a difficult position. The Joint Petitioners have consistently pressed for an expedited schedule in this case so that the merger closing can take place as soon as possible. The settlement agreements generally extend contracts that are in place at the time of closing, as opposed to the date the merger petition was filed. CLECs whose agreements expired while this case has been pending have been forced to accept new agreements, with higher prices, to ensure that they will have some agreement in place at the time of closing. The Commission may wish to consider whether there is some permissible mechanism to require that the extension apply to contracts that lapsed while this case was pending, and not just to the contracts that are in place on the Closing Date.

2. Ability to Port ICAs

199. The Integra Settlement Agreement does not include any commitment by the Joint Petitioners to allow the "porting" of interconnection agreements (also known as cross-state adoption). The Joint CLECs contend that this constitutes a significant omission in the Integra Settlement, and argue that approval of the proposed merger should be further conditioned on a commitment by the Joint Petitioners to allow ICAs approved in one state to be ported to Minnesota and vice versa, provided that Commission-required terms and pricing are added to the agreements ported into Minnesota.[276]

[276] Joint CLECs' Initial Brief at 44-50.

200. As noted above, the Merged Company will control 17 million access lines in 37 states and will have a combined pro forma revenue of $19.8 billion (as of year-end 2009),[277] making it the third largest ILEC in the nation.[278] The Merged Company will be significantly larger than either of the two Joint Petitioners with a larger combined network footprint, a greater number of lines, and significantly more revenue. In accordance with the "Big Footprint" theory,[279] the Joint CLECs argue that the size and operating power accruing from the merger will give the Merged Company a cost advantage over its customers and competitors, and will provide it with a strong incentive to use its market power as leverage during negotiations and dealings with competitors. In their view, any benefits to the Merged Company from this increase in size and resources should also accrue in part to the benefit of captive wholesale customers and the general public as well as the Merged Company. The Joint CLECs maintain that, as incumbent LECs increase in size and scope, their ability to leverage such size and scope to the disadvantage of competitors also increases, with the possibility that service to end user customers will suffer. As a result, they argue that it is important to ensure that competitors' transaction costs do not increase as a result of this merger.[280]

201. The Joint CLECs argue that significant operational uncertainty arises from the Merged Company's apparent plans to consolidate ICA terms. They express concern 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. They maintain that competitors such as Charter that operate in multiple CenturyLink and Qwest service areas and have many different agreements with the Joint Petitioners on a state-by-state basis may experience particular difficulty.[281] The Joint CLECs also maintain that the Merged Company will likely impose a standard template agreement upon all competitors at some point in the future that is likely to incorporate many of CenturyLink's wholesale practices that the Joint CLECs find objectionable, and lead to more contentious negotiations and potentially lengthy and expensive arbitrations.[282]

202. In light of these concerns, the Joint CLECs urged that the following condition be imposed by the Commission:

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[277] Ex. 22 (Gast Direct) at 5.

[278] Ex. 31 (Ankum Direct) at 90.

[279] The FCC has explained that, under this 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." *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) (citing *SBC/Ameritech Order*, 14 FCC Rcd. at 14798, para. 193).

[280] Joint CLECs' Initial Brief at 44-46.

[281] *Id.* at 46-47; Pruitt Aff. at ¶¶ 17-20 (Charter has negotiated interconnection agreements with CenturyLink in Minnesota and has negotiated and arbitrated interconnection agreements with CenturyLink in a number of other states in the Midwest, including Wisconsin and Missouri). In contrast, Integra does not compete with CenturyLink in Minnesota. *Id.* at ¶ 19.

[282] Joint CLECs' Initial Brief at 47-48.

In the legacy CenturyLink ILEC territory, the Merged Company will permit a requesting carrier to opt in to any interconnection agreement to which Qwest is a party in the same states, including agreements in evergreen status. If there is no Qwest ILEC in the state, the Merged Company will permit a requesting carrier to opt into any interconnection agreement to which Qwest is a party in any state in which Qwest is an ILEC. Agreements subject to the opt-in rates described in this condition will apply in full, without modification and subject to the other conditions set forth herein. To the extent that the Merged Company seeks to modify agreements subject to the opt-in rights described in this condition, the Merged Company will permit the opt-in and the agreement shall become effective, subject to the Merged Company's right to subsequently seek from the applicable state commission an order modifying the agreement. The state commission may require modification of the agreement to the extent that the commission determines that the Merged Company has established that (1) it is not Technically Feasible for the Merged Company to comply with one or more provisions of the agreement or (2) the price(s) set forth in the agreement are inconsistent with TELRIC-based prices in the state in question. More consistency in interconnection agreement offerings will provide more consistency for wholesale customers dealing with CenturyLink in multiple states, and will enable the industry to rely on interconnection agreement terms from the pre-closing entity that both has been through Section 271 approval proceedings and has the greater volume of CLEC wholesale business.

a. "CenturyLink ILEC territory," as used in this condition, excludes any CenturyLink ILEC for which a state commission has granted CenturyLink a rural exemption pursuant to Section 251(f) of the Federal Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq, (the Communications Act) before the Merger Filing Date.

b. Nothing in this condition precludes a regulatory body from determining that any operating company of the Merged Company, which as of the Merger Closing Date operates under a Section 251(f) exemption or a 251(f)(2) suspension or modification, must cease to do so. In the event that such a ruling is made, this condition would then apply to the applicable operating company as well.[283]

203. In the AT&T/BellSouth merger, a porting condition was among the commitments to which the companies voluntarily agreed. Under that condition, AT&T/BellSouth were required to make available to any CLEC any ICA (negotiated or

[283] *See* Ex. 27 (Gates Direct), Ex. TJG-8, Condition 10. As discussed more fully below, Charter further proposes as a condition of approval of this transaction that any operating company affiliates of CenturyLink or Qwest that currently operate under a Section 251(f) exemption or waiver relinquish and surrender such legal rights upon the Closing Date. *Id*. n. 5.

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. That condition was adopted by the FCC.[284] In a subsequent decision involving that merger, the Illinois Commission found it had authority to enforce that requirement post-merger.[285]

204. The Joint Petitioners oppose the imposition of this condition and argue that it goes "far beyond the requirements of the Telecommunications Act and beyond any need for certainty and stability that may arguably rise as a result of the proposed transaction." They contend that allowing a CLEC to port an agreement from another state would undermine the parties' expectations that the original state's rules and network configurations would apply, not Minnesota's, and there would be a potential that the ported agreement may violate Minnesota-specific rules governing interconnection. They also assert that the imposition of this condition is beyond the scope of the Commission's authority to approve and arbitrate ICAs and would have an effect on the Commission's authority. The Joint Petitioners also maintain that the Joint Wireless Carriers' request for a unified ICA for all Qwest and CenturyLink entities in all states is contrary to the Joint CLECs' position that the business plans of CLECs mandate differing contract and settlement terms.[286]

205. The DOC is also opposed to this condition because it would require the Commission to accept, interpret, and enforce ICAs approved by other state commissions. The DOC believes that this would have a negative impact on the Commission's authority to approve and enforce ICAs. Although interconnecting parties are free to negotiate an ICA, the DOC emphasizes that, if disputes arise in the course of these negotiations, the process allows for an arbitration to be conducted and decided by the Commission. In the DOC's view, a condition allowing a CLEC to have the option of adopting an ICA approved in another state for use in Minnesota would effectively remove the Commission from the dispute resolution process and would thereby have a negative impact on the Commission's authority.[287]

206. There are a number of practical, operational, and legal issues that would arise if this condition were imposed. Because CenturyLink and Qwest ICAs have been negotiated with the particular network and facilities in mind, it would be contrary to the expectations of the parties that an ICA could be imposed upon another entity's network and facilities. As a technical or logical matter, not all negotiated terms can be applied to all companies or in all jurisdictions. For example, Minnesota has a list of required unique terms that must be included in ICAs in order to obtain state approval. Many of those terms are not required in contracts from other states, and commissions in those states may have made differing substantive rulings. Following such an approach would also be contrary to the review and approval process conducted by the Commission.

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[284] Ex. 31 (Ankum Direct) at 76; Joint Petitioners' Brief at *In the Matter of AT&T, Inc. and BellSouth Corporation,* Application for Transfer, 22 FCC Rcd 5662 (rel. March 26, 2007).
[285] *Sprint Communications Company L.P. v. Illinois Bell Telephone Co.,* Docket No. 07-0629 (July 20, 2008).
[286] Joint Petitioners' Reply Brief at 24-26.
[287] DOC Reply Brief at 10.

Moreover, importing terms from another state could allow CLECs to effectively ignore or inappropriately modify Minnesota rulings on particular issues.[288]

207. The Administrative Law Judge concludes that the Intervenors have not shown by a preponderance of the evidence that the imposition of this proposed condition is reasonable or necessary to ensure that the proposed transaction is in the public interest within the meaning of Minn. Stat. §§ 237.23 and 237.74, subd. 12. Although this condition has been adopted in other merger situations, it appears that the merging companies had already voluntarily agreed to make that commitment. In addition, as the DOC and Joint Petitioners have pointed out, adoption of this condition could have a negative effect on the Commission's authority and create other operational and legal issues.

3. Additional OSS Commitments

208. The Joint CLECs contend that the Integra Settlement does not adequately address the Operations Support Systems (OSS) risks associated with the proposed merger in several respects. Therefore, they recommend the following additional OSS commitments:

a. an extension of Qwest's OSS for at least three years to match the 3- to 5-year period during which the Joint Petitioners expect to achieve anticipated synergies;

b. a commitment by the Merged Company that any successor OSS will perform at the same level as Qwest's current OSS as confirmed by third-party testing at commercial volumes; and

c. a commitment to specific benchmarks to ensure that specific components of wholesale OSS service quality, including support, data, billing, functionality, performance, electronic flow through and electronic bonding, are not degraded. Without a benchmark to current standards, the Joint Petitioners commitment to Integra that such functionalities will not be degraded in the future is essentially meaningless.

209. The specific language of the proposed condition is as follows:

> In legacy Qwest ILEC 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 three years and provide at least the same level of wholesale service quality, including support, data, functionality, performance, and electronic bonding, provided by Qwest prior to the Merger Filing Date. After the minimum three-year period, the Merged Company will not replace or integrate Qwest systems without first complying with the following procedures:

[288] Ex. 17 (Hunsucker Rebuttal) at 26-27.

a. The Merged Company will prepare and submit a detailed plan to the Wireline Competition Bureau of the FCC and the state commission of any affected state before replacing or integrating Qwest system(s). The Merged Company's plan will describe the system to be replaced or integrated, the surviving system, and why the change is being made. The plan will describe steps to be taken to ensure data integrity is maintained. The plan will describe CenturyLink's previous experience with replacing or integrating systems in other jurisdictions, specifying any problems that occurred during that process and what is been done to prevent those problems in the planned transition for the affected states. The Merged Company's plan will also identify planned contingency actions in the event that the Merged Company encounters any significant problems with the planned transition. The plan submitted by the Merged Company will be prepared by information technology professionals, retained at the Merged Company's expense, with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. Interested carriers will have the opportunity to comment on the Merged Company's plan.

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

c. Before implementation of any replacement or to be integrated system, the Merged Company will allow for coordinated testing with CLECs, including a stable testing environment that mirrors production and, when applicable, controlled production testing. The Merged Company will provide the wholesale carriers training and education on any wholesale OSS implemented by the Merged Company without charge to the wholesale carrier.[289]

210. The Joint Petitioners contend that the OSS issue has been adequately addressed and resolved in the DOC and Integra Settlement Agreements. In those agreements, Joint Petitioners committed to keep Qwest's OSS in place for at least 24 months or until July 1, 2013, whichever is later; provide detailed notification 270 days in advance of replacing or integrating any OSS systems; follow the CMP in connection with any such change; provide notification, testing and training before replacing an OSS

[289] *See* Ex. 27 (Gates Direct), Ex. TJG-8, Condition 19.

interface; and ensure that any changes to billing systems comply with ICAs as well as Ordering and Billing Forum requirements.[290]

211. The FCC defines OSS to include five functions: (1) pre-ordering, (2) ordering, (3) provisioning, (4) maintenance and repair, and (5) billing. OSS includes all of the computer systems, databases and personnel that an ILEC uses to perform internal functions necessary for these five functions. The FCC also requires an adequate CMP to handle changes to the OSS systems. [291]

212. The ability of CLECs to access the ILEC's OSS on a nondiscriminatory basis to review customer information and submit and review orders is critical to the efficient operation of the industry. These systems must be efficient, reliable and accurate. Inefficient systems that require extensive manual intervention, for instance, would make doing business with the ILEC difficult, more costly, and more prone to error because of the increased manual nature of the work.[292]

213. The FCC has found that CLECs would be "severely disadvantaged, if not precluded altogether, from fairly competing," if they did not have nondiscriminatory access to OSS.[293] Qwest itself has acknowledged that its existing OSS plays "a crucial role in the transactions between Qwest and all CLECs"[294] and is "the lifeblood of . . . Qwest's wholesale operation . . . ."[295]

214. The FCC has determined OSS to be a "network element."[296] Consequently, a CLEC must be permitted nondiscriminatory access to an ILEC's OSS functions in order to provide pre-order information to potential customers, sign up customers, place orders for services or facilities, track the progress of its orders to completion, obtain relevant billing information from the ILEC, and obtain prompt repair and maintenance services for its customers.[297]

215. CenturyLink and Qwest currently use different OSS.[298] Qwest's OSS, CMP and supporting processes and data were extensively tested during the Section

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[290] Joint Petitioners Brief at 25; Ex. 3 (DOC Settlement Agreement) at III.B.1; Tr. Vol. 1 at 158 (Testimony of Wells); Integra Settlement Agreement, ¶ B.12.a.-d.

[291] Ex. 27 (Gates Direct) at 35, *citing In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming,* Memorandum Opinion and Order, WC Docket No. 02-314, FCC 02-332 (Released Dec. 23, 2002 ("*Qwest 9 State 271 Order,*" at ¶ 33 and 47 C.F.R. § 51.319(g).

[292] Ex. 27 (Gates Direct) at 34-35.

[293] *Id.* at 35, *citing In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report and Order, CC Docket No. 96-98, FCC 96-325 (rel. Aug. 8, 1996) ("Local Competition Order") at ¶ 518.

[294] Ex. 27 (Gates Direct) at 35 and 117, *citing* Qwest Post Hearing Brief filed in Utah Docket No. 07-2263-03 at 75.

[295] Ex. 27 (Gates Direct) at 35, *citing* Surrebuttal Testimony of Renee Albersheim on behalf of Qwest Corp. filed in Utah Docket No. 07-2263-03 (Aug. 10, 2007) at 39.

[296] *Local Competition Order* at ¶ 516.

[297] Ex. 27 (Gates Direct) at 36.

[298] *Id.* at 37.

271 approval process, including testing by an independent third-party, to ensure that they provided nondiscriminatory access.[299] According to Qwest, the collaborative OSS test "was the most comprehensive and collaborative of all of the OSS tests conducted to date."[300] In addition to extensive third-party testing, Qwest's OSS is also handling actual commercial volumes in Qwest's BOC territory today (and has for numerous years).[301]

216. In contrast, CenturyLink's OSS has not been third-party tested to determine whether it meets the nondiscrimination requirements of Section 271.[302] In addition, since CenturyLink has traditionally operated in rural areas exempt from full competition, its OSS has not handled the same quantities of wholesale customers and wholesale orders as Qwest is accustomed to handling. Relevant data show that CenturyLink will inherit an exponentially larger wholesale operation than it has operated to date.[303]

217. Joint Petitioners have not provided much detail regarding their plans with respect to the integration of the CenturyLink and Qwest OSS systems.[304] CenturyLink witnesses testified that the Company has made no decisions on what OSS it will employ in the long-term and it would not make such decisions until after the closing date of the transaction.[305] They also indicated that CenturyLink will make a careful, structured examination of both companies' systems and features and draw on the best of both companies' capabilities.[306] John Jones, Vice Present of State Government Affairs for CenturyLink, testified that "[t]here is an early and key focus on integrating various company systems and practices" and that CenturyLink is approaching the systems integration process "with an open mind as the Company evaluates and prepares to adopt the best systems of merged companies."[307] However, he indicated that, "while much integration planning can begin pre-merger, as is the case here, most of the decisions cannot and do not need to be made until after the merger."[308] In his view, it is not possible or appropriate to subject a pending transaction to a level of scrutiny that requires detailed plans at this stage of the proceeding.[309]

218. Michael Hunsucker, CenturyLink's Director of CLEC Management, generally testified that the Joint Petitioners "are each dedicated to having strong OSS for wholesale operations and . . . have met their obligations to wholesale customers in the past and will continue to do so. The merged company will have the option to retain

[299] *Id.* at 42-43 and Exhibit TJG-2 (describing in detail third party testing of Qwest's OSS); Ex. 28 (Gates Surrebuttal) at 115-16.
[300] Ex. 27 (Gates Direct) at 42, *citing* Brief of Qwest Corp., WC Docket No. 02-148, June 13, 2002, at 111.
[301] Ex. 27 (Gates Direct) at 25-28; Ex. 28 (Gates Surrebuttal) at 114-15.
[302] Ex. 27 (Gates Direct) at 37; see also CenturyLink Response to Integra Data Request No. 18 ("While CenturyLink has not conducted third-party testing of its systems....")
[303] Ex. 27 (Gates Direct) at 25-28; Ex. 28 (Gates Surrebuttal) at 114-15.
[304] *See* Exhibit AHA-3 at 1-5, attached to Ex. 31 (Ankum Direct).
[305] See, e.g., Ex. 17 (Hunsucker Rebuttal) at 11.
[306] See, e.g., Ex. 6 (Jones Rebuttal) at 9; Ex. 17 (Hunsucker Rebuttal) at 14.
[307] Ex. 6 (Jones Rebuttal) at 7.
[308] *Id.* at 8.
[309] *Id.* at 13.

Qwest's existing § 271 compliant systems or to choose an OSS that better addresses the provision of service to the merged company's entire customer base."[310] Mr. Hunsucker further noted:

> Because the immediate plan is to maintain both companies' separate OSS and continue operations as usual, there was no need for the Joint Petitioners to have rushed to decide OSS integration issues so early in the process. Wholesale customers in CenturyLink areas and in Qwest areas will not face immediate changes in their existing systems interfaces and existing OSS arrangements will not be disrupted. This stands in stark contrast to the FairPoint and Hawaiian Telcom transactions cited by the CLECs, both of which involved the creation of entirely new OSS. The ILECs involved in those other acquisitions had to quickly develop plans because they had to operate under new systems and processes on Day One after the acquisition closed. Unlike those ILECs, CenturyLink will have legacy systems, processes and experienced personnel in place post-merger so CenturyLink can undertake a highly disciplined process to convert systems and processes as necessary for smooth integration.[311]

219. CenturyLink witnesses further testified that they are committed to giving CLEC customers ample notice of any changes and will involve CLEC customers in testing of OSS changes.[312]

220. The Joint CLECs assert that, if Qwest's OSS is replaced with CenturyLink's OSS, it will result in a degradation in basic OSS functionality and performance levels available to CLECs after the merger.[313] Carriers such as Charter and PAETEC that use both of the merging companies' systems prefer the functionality of the existing Qwest OSS over the existing CenturyLink OSS. The Joint CLECs do not want Qwest to "backslide" from the 271-evaluated systems in Qwest territory to CenturyLink systems that have not been subjected to rigorous third-party testing.[314]

221. The record includes two examples of deficiencies in the functionality of CenturyLink's OSS compared to that of Qwest. The first example relates to the Qwest and CenturyLink CLEC-facing OSS interfaces for maintenance/repair ("M&R"). Qwest's MEDIACC-EBTA provides the ability to "mechanically process telephone circuit repair activities including repair ticket generation and MLT (Mechanized Loop Tests)."[315] Qwest's MEDIACC allows for "M&R queries [to be] forwarded directly from the MEDIACC gateway for processing by Loop Maintenance Operations System (LMOS) and Work Force Administration (WFA)"[316] "without having to go through the Business

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[310] Ex. 17 (Hunsucker Rebuttal) at 11.
[311] *Id.* at 12-13.
[312] See, e.g., Ex. 17 (Hunsucker Rebuttal) at 12.
[313] Ex. 98 (Gates Supplemental Surrebuttal) at 35-36.
[314] Ex. 27 (Gates Direct) at 37-38.
[315] *Id.* at 55-57, *citing* Qwest Response to Integra Data Request No. 19.
[316] *Id.* at 56, *citing* Final Report of the Qwest OSS Test, May 3, 2002, Issued by Cap Gemini Ernst & Young (Third Party Tester), Version 3.0 at p. 247.

Process Layer . . . ."[317] In contrast, CenturyLink's "Access Care for trouble reporting system for circuits" requires the following process:

> The Wholesale customer will call in to the SSO (Special Service Operations) and CenturyLink will record all the pertinent information on the ticket. If SSO has remote test access, SSO will then do a diagnostic test to isolate the trouble. Once it is determined if it is a central office, cable, or premise issue, the SSO will request dispatch to the proper technician to resolve the issue. Once the field technician has fixed the issue, they will call back into SSO to test the circuit to confirm the repair. CenturyLink will then call the reporting party and do acceptance testing, if the circuit is working and they accept it, the ticket is closed.[318]

In legacy Embarq territory, CLECs have the option to submit and track trouble tickets for unbundled loops and features electronically via a web-based repair ticket ordering system ("WebRRS"). This comparison demonstrates that Qwest allows electronic bonding capability for maintenance and repair that permits a direct connection between the CLEC's M&R query and the Qwest repair technicians – a capability that is not available through either CenturyLink's web-based WebRRS or CenturyLink's Access Care (SSO) process (which requires multiple phone calls and increased manual intervention, with the increased possibility of error).[319]

222. The second example relates to CEMR (Qwest's web-based maintenance and repair GUI [Graphic User Interface] and WebRRS (CenturyLink's web-based maintenance and repair GUI). The Joint CLECs contend that CEMR has functionality that WebRRS does not have. For instance, CLECs can submit trouble tickets for special access circuits through Qwest's CEMR, but that is not permitted through CenturyLink's WebRRS.[320]

223. The FCC evaluates the amount of electronic flow through offered by a BOC when evaluating its 271 capabilities. Generally, the more orders electronically flow through, the less manual intervention and risk of human error. The FCC has concluded that, to meet a BOC's ongoing 271 obligations, the BOC must show that its OSS are capable of flowing through orders in a manner that affords competing carriers a meaningful opportunity to compete and its OSS are capable of flowing through orders in substantially the same time and manner as for retail orders.[321]

224. Discovery responses submitted by the Joint Petitioners indicate that, at a minimum, Qwest's CLEC-facing OSS interface for Local Service Requests (LSRs) will

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[317] *Id.* at 56, lines 18-19, citing Final Report of the Qwest OSS Test, May 3, 2002, Issued by Cap Gemini Ernst & Young (Third Party Tester), Version 3.0 at p. 251.
[318] Ex. 27 (Gates Direct) at 56, *citing* CenturyLink Response to Integra Data Request No. 16.
[319] *Id.* at 56-57.
[320] *Id.* at 57, citing http://www.qwest.com/wholesale/systems/WebHelp/Introduction.htm and "A Guide to Embarq Online Wholesale Repair System," available at http://embarq.centurylink.com/wholesale/docs/webrrs.app.pdf ("For special access circuits or switched access circuits, customers continue to call 888-883-1484 to report trouble."
[321] *Id.* at 29, citing Qwest 9-State 271 Order, ¶106.

be modified or replaced if the proposed transaction is approved. The interface Qwest currently uses to process CLEC LSRs is Interconnect Mediated Access (IMA). In discovery responses, CenturyLink indicated that, "after the systems of the [merged] company have been consolidated after the merger, the company intends to support a UOM [unified ordering model] interface for LSRs," and Qwest stated that "IMA is not UOM compliant." Based on these responses, it is likely that CenturyLink will either replace or modify IMA after the merger.[322] If CenturyLink considers its EASE system to be UOM compliant, it is possible that EASE would be used for LSRs. The Joint CLECs have found that Qwest's OSS has better functionality than EASE.[323]

225. CenturyLink has indicated that it does not plan to engage in third-party testing of any OSS interface that it may use to replace Qwest's OSS post-merger. However, CenturyLink witnesses indicated during the hearing that CenturyLink would make any replacement available to CLECs for testing and abide by the CMP process,[324] and the Joint Petitioners have confirmed those commitments in the Integra and DOC Settlement Agreements.

226. The FCC has concluded that "[t]he most probative evidence that OSS functions are operationally ready is actual commercial usage." If such evidence is not available, the FCC will consider the results of testing:

> Absent sufficient and reliable data on commercial usage, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS. Although the Commission does not require OSS testing, a persuasive test will provide us with an objective means by which to evaluate a BOC's OSS readiness where there is little to no evidence of commercial usage, or may otherwise strengthen an application where the BOC's evidence of actual commercial usage is weak or is otherwise challenged by competitors. The persuasiveness of a third-party review, however, is dependent upon the qualifications, experience and independence of the third party and the conditions and scope of the review itself. If the review is limited in scope or depth or is not independent and blind, the Commission will give it minimal weight.[325]

227. If the Merged Company modifies or replaces Qwest's OSS, it may result in disruption and cost related to the CLECs' own internal systems.[326] Some CLECs have built their own systems interfaces to electronically bond (or e-bond) directly with Qwest's OSS, and some have also integrated their electronic interfaces into their own back end systems.[327] For example, PAETEC has established e-bonding capability with Qwest

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[322] Ex. 28 (Gates Surrebuttal) at 23-24.
[323] Ex. 38 (Johnson Surrebuttal), Ex. BJJ-27.
[324] Tr. Vol. 2B at 88-89 (Test. of Hunsucker).
[325] Ex. 28 (Gates Surrebuttal) at 111-12, quoting Qwest 9-State Order, Appendix K "Statutory Requirements" at K-16 (emphasis added).
[326] Ex. 27 (Gates Direct) at 51-53.
[327] *Id.* at 52.

that allows a trouble ticket to be processed from "open" to "closed" in an automated manner with little or no intervention by PAETEC's technicians.[328] These automated capabilities are possible because PAETEC made a significant investment to develop and implement enhancements in its back office systems.[329] PAETEC's ability to continue using its own back office system automation depends on continued access to e-bonded interfaces that allow information to flow from the ILEC systems and back office databases directly into the PAETEC back office systems via the e-bonding into the PAETEC systems, and vice versa.[330] PAETEC's internal systems are far more automated and integrated than Integra's systems.[331] However, the advance notice, testing, root cause analysis, and other provisions included in the Integra Settlement Agreement will be of substantial benefit in avoiding or reducing the possibility that OSS integration problems will occur.

228. The systems integration problems experienced in the WorldCom/MCI, US West/Qwest, Carlyle Group/Verizon Hawaii, FairPoint/Verizon, and Frontier/Verizon mergers discussed in the testimony of Timothy Gates and August Ankum provide further evidence of the problems that OSS integration failures can have on competitors, and ultimately end user customers.[332] As was noted by Dr. Lichtenberg of the National Regulatory Research Institute, "[b]oth the Hawaii Telcom and the FairPoint acquisitions failed at least in part due to problems associated with the development and cutover to new systems."[333]

229. The Joint Petitioners contend that the Joint CLECs' concerns about potential OSS degradation in Qwest service areas are unfounded. They emphasize that CenturyLink is not simply acquiring access lines from Qwest, but instead is acquiring the entire company. As a result, CenturyLink will acquire Qwest's existing systems, personnel, policies, and processes, and will have no immediate need to make any alterations to OSS in Qwest areas.[334]

230. The Administrative Law Judge concludes that the Joint CLECs have not demonstrated that the additional OSS conditions they seek are necessary for the proposed transaction to be approved. The Intervenors are understandably concerned about the lack of detailed information from Joint Petitioners regarding post-merger changes to Qwest's OSS and the possibility that any changes that may occur will have an adverse impact on the OSS functionalities and capabilities available to CLECs who currently use Qwest's systems. However, the terms of the Integra Settlement Agreement provide significant and adequate safeguards to address the concerns expressed by the Joint CLECs. Under the Integra Agreement, the legacy Qwest OSS will be kept in place for at least two years from the Closing Date or until July 1, 2013,

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[328] *Id.* at p. 53.
[329] Redman-Carter Aff. at ¶ 4.
[330] *Id.* at ¶ 7.
[331] *Id.* at ¶¶8-10.
[332] Ex. 31 (Ankum Direct) at 24-37; Ex. 27 (Gates Direct) at 84-106.
[333] S. Lichtenberg, "Evaluating the Proposed Merger of CenturyLink and Qwest Communications" (NRRI Paper July 9, 2010) at 5 (filed in this docket by Commission staff on July 12, 2010).
[334] Joint Petitioners' Initial Brief at 26-27; Ex. 17 (Hunsucker Rebuttal) at 10-12, 39-43.

whichever is later, and the Merged Company will "thereafter provide a level of wholesale service quality that is not materially less than that provided by Qwest prior to the Closing date, including support, data, functionality, performance, electronic flow through, and electric bonding."[335] The Integra Agreement further requires that the Merged Company follow the procedures set forth in the Qwest CMP in connection with any such change and provide at least 9 months' advance notice to the FCC, state commissions, and parties to the agreement in advance of replacing or integrating any Qwest OSS systems.[336] The Merged Company will allow coordinated testing with CLECs for the time period in the CMP or for 120 days, whichever is longer, and will provide the wholesale carriers free training and education on any wholesale OSS. Significantly, the Integra Settlement Agreement specifies that "[t]he replacement or retirement of a Qwest OSS Interface may not occur without sufficient acceptance of the replacement interface by CLECs to help assure that the replacement interface provides the level of wholesale service quality provided by Qwest prior to the Closing Date."[337] In addition, the Integra Agreement states that the parties will "work together to develop acceptance criteria," "[t]esting will continue until the acceptance criteria are met," and sufficient acceptance of a replacement will be determined by a majority vote of the CMP participants (Qwest and CLECs) in testing, subject to any party invoking the CMP Dispute Resolution process. The provisions of the Integra Settlement Agreement provide reasonable protections against the possible adverse impacts of the merger that have been identified by the Joint CLECs by ensuring that Qwest's OSS will not be prematurely or abruptly discontinued, testing opportunities will be available to CLECs, and post-merger wholesale service quality will not be materially less than pre-merger quality.

231. The Joint CLECs have not convincingly demonstrated that the public interest requires that Qwest OSS be extended one additional year, any new OSS undergo third-party testing, or current wholesale service quality benchmarks be specified. The Joint CLECs correctly note that the Integra Agreement's requirement that the Merged Company provide a level of wholesale service quality following the discontinuance of the Qwest OSS that is "not materially less" than that provided by Qwest prior to the merger is somewhat imprecise, and will likely require resort to dispute resolution processes in the future. However, the use of such a standard does not necessarily mean that the Merged Company will be permitted to "backslide" on Qwest's 271 obligations or otherwise suggest that the Agreement is contrary to the public interest.

4. Use of Rural Exemption

232. A "rural telephone company" is defined in the Federal Telecommunications Act as "a local exchange carrier operating entity" that meets one of the following four requirements:

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[335] Integra Settlement Agreement at 9, ¶ 12.
[336] *Id*. at ¶ 12.a.
[337] *Id*. at ¶ 12.c.

(A) provides common carrier service to any local exchange carrier study area that does not include either—

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.[338]

233. The rural exemption set forth in the Act provisionally exempts rural carriers from the obligations set forth in section 251(c) of the Act until they receive a bona fide request for interconnection from a telecommunications carrier. Once they receive such a request, the exemption may be terminated by a state commission if the commission finds that the request is not unduly burdensome, is technically feasible, and is consistent with universal service policies set forth in certain portions of Section 254.[339] Under Section 251(f)(2) of the Act, "[a] local exchange carrier with fewer than 2 percent of the Nation's subscriber lines in the aggregate nationwide to petition a State commission for a suspension or modification of the application of a requirement of 251(b) or (c) to telephone exchange service facilities specified in the petition."[340]

234. The Joint CLECs contend that the Merged Company should not be permitted to use the rural exemption. Under their proposed condition:

> The Merged Company will not seek to avoid any of the obligations of CenturyLink under the Assumed Agreements on the grounds that CenturyLink is not an incumbent local exchange carrier ("ILEC") under the Communications Act. The Merged Company will waive its right to seek the exemption for rural telephone companies under Section 251(f)(1) and its right to seek suspensions and modifications for rural carriers under Section 251(f)(2) of the Communications Act.[341]

[338] 47 U.S.C. § 153 (37). Section 251(f)(2) of the Act permits
[339] 47 U.S.C. § 251(f)(1); Ex. 31 (Ankum Direct) at 88-89.
[340] 47 U.S.C. § 251(f)(1)
[341] Ex. 27 (Gates Direct), Ex. TJG-8, Condition 12; Ex. 31 (Ankum Direct) at 89-92.

Charter proposes as a further condition of approval of this transaction that any operating company affiliates of CenturyLink or Qwest that currently operate under a Section 251(f) exemption or waiver should be required to relinquish and surrender such legal rights upon the Closing Date.[342]

235. Given the circumstances of this transaction and the fact that CenturyLink will become the third-largest ILEC in the nation, the Joint CLECs contend that it is appropriate to predicate approval of the transaction on this condition. They noted that CenturyLink has recently agreed to at least partially waive certain protections from the rural exemption in Oregon. In that case, the Oregon Public Utilities Commission determined that federal law did not preclude a carrier's ability to waive the rural exemption.[343]

236. The Integra Settlement Agreement addresses the rural exemption issue to a certain extent in Paragraph 6, which states:

> CenturyLink and all of its incumbent local exchange carrier ("ILEC") affiliates will comply with 47 U.S.C. Sections 251 and 252. In the legacy Qwest ILEC service territory, the Merged Company will not seek to avoid any of its obligations on the grounds that Qwest Corporation is exempt from any of the obligations pursuant to Section 251(f)(1) or Section 251(f)(2) of the Communications Act.

237. Three of CenturyLink's four affiliates in Minnesota operate under a rural exemption.[344] Qwest does not currently operate under a rural exemption.[345]

238. Currently, less than 15 percent of CenturyLink's access lines are covered by the rural exemption.[346]

239. The Joint CLECs point out that the language in the Integra Settlement Agreement applies only to "the legacy Qwest ILEC service territory," and argue that the Integra Settlement does not adequately address their concern that CenturyLink has a practice of using the rural exemption in an anticompetitive manner. The Joint CLECs assert that the protections afforded by the Integra Settlement Agreement are of limited utility to competitors like Charter who provide service in Minnesota's smaller, less densely populated communities in competition with CenturyLink.[347]

240. The Joint CLECs argue that CenturyLink's current reliance on "rural" company status for many of its separate operating companies has the effect of

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[342] *Id*. at n. 5.
[343] Ex. 31 (Ankum Direct) at 89-92, *citing In the Matter of Western Radio Services Company Request for Interconnection Agreement of CenturyTel of Eastern Oregon, Inc.,* Order Answering Certified Questions, ARB 864, 2009 Ore. PUC LEXIS 421 at**18-23 (Ore. PUC Dec. 14, 2009).
[344] Pruitt Aff. at ¶ 36; Tr. Vol. 2B at 109 (Test. of Hunsucker).
[345] Pruitt Aff. at ¶ 35.
[346] Tr. Vol. 2B at 109 (Test. of Hunsucker) ("when you look at the CenturyLink company, more than 85 percent of our access lines are not covered by the rural exemption today").
[347] Pruitt Aff. at ¶ 34.

increasing competitors' operating costs because competitors cannot rely upon access to interconnection, UNEs, and collocation rights provided under Section 251(c) to support their service arrangements. They contend that CenturyLink's use of the rural exemption is another example of the "worst practices" in which CenturyLink engages at the expense of competition and the public interest.[348]

241. According to the Joint CLECs, "the rural exemption is intended for small rural carriers whose economic viability may be threatened if they were obligated to incur costs to implement all the unbundling and resale provisions of the Telecommunications Act of 1996, such as the costs associated with the development of sophisticated OSS,"[349] and not companies as large as the Merged Company. The Joint CLECs point out that the Commission has previously denied another Minnesota ILEC's attempt to invoke the rural exemption because it determined that there were "close operational ties" between the ILEC's local operating company and its national parent company,[350] and contend that the evidence in this case shows that CenturyLink's operating companies have "close operational ties" with the parent company.

242. John Jones, CenturyLink's Vice President of State Government Affairs, acknowledged that the CenturyLink operating companies in Minnesota do not have their own presidents or government affairs employees, do not handle their own billing, and do not have their own operational support systems, legal department, or human resources departments. Mr. Jones indicated that these functions for the most part are run out of the company's headquarters in Monroe, Louisiana, and agreed that there are "close operational ties between the corporate headquarters and the Minnesota ILECs."[351] However, Mr. Jones did not agree that employees in CenturyLink's Louisiana headquarters office "effectively operate" the four Minnesota ILECs. He indicated that "the day-to-day operations really roll up into the region structure" under Duane Ring, who currently works in the Midwest Region headquarters in LaCrosse, Wisconsin.[352] In his testimony, Mr. Ring indicated that the centralized operations group located at CenturyLink's corporate headquarters decides which service delivery processes should be standardized, with input from the field.[353] He also acknowledged that the Regional Call Centers are managed by Vice President of Customer Care, Karen Victory, who is

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[348] Joint CLECs' Initial Brief at 66.
[349] Ex. 31 *(*Ankum Direct) at 89-90.
[350] Order Denying Claim to Rural Exemption at 8, in *In the Matter of AT&T Communications of the Midwest, Inc.'s Petition for Arbitration with GTE Communications, Inc. Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996*, Docket P-442, 407/M-96-939 (Minn. PUC 1996). The Commission explained that, although the local operating company viewed in isolation might qualify as a rural carrier (i.e., since less than 15% of its access lines were in cities or towns with populations exceeding 50,000), the national entity did not qualify for such treatment. The Commission reasoned that because there were "close operational ties" between the local operating company and its national parent company, it must therefore consider the parent company for purposes of evaluating the ILEC's claims for a rural exemption. Further, the Commission concluded that Congress had no intention of extending the rural exemption to an ILEC (GTE) which was then one of the nation's largest local telephone service providers in the United States. *Id*. at 4-5.
[351] Tr. Vol. 1 at 127, 130-31 (Test. of Jones).
[352] *Id* .at 131.
[353] Tr. Vol. 2A at 45 (Test. of Ring).

based out of the corporate headquarters.[354] Although Mr. Ring agreed that the Vice Presidents who are ultimately responsible for making decisions regarding operations, marketing, sales, customer care, and operations are located in Monroe, he testified that decision-making in those areas is a collaborative effort and many of the managers in those areas are located in the field.[355] Accordingly, although several functions are centralized at corporate headquarters in Louisiana, there also was some evidence that day-to-day operations were handled on a regional or local basis.

243. The Joint CLECs also argue that there is precedent for requiring this type of condition. They contend that the FCC found that a similar condition was appropriate in the Verizon/Frontier merger proceeding.[356] That case did not, however, involve the imposition of a condition that had been resisted by the carrier, nor did it involve approval of a condition requiring waiver of the rural exemption with respect to the acquiring company's existing service territory or affiliates. In that case, Frontier *voluntarily* committed "not to assert that it is exempt from section 251(c) obligations pursuant to section 251(f)(1) in the areas transferred from Verizon that are rural telephone companies outside of West Virginia, or 'to move or reclassify any exchanges or wire centers currently located in Verizon West Virginia's legacy service areas so as to . . . take advantage of the rural exemption under Section 251(f)(1).'" The FCC later concluded that these commitments adequately addressed concerns expressed by those commenting on the proposed transaction, and approved the transaction.[357]

244. The Joint Petitioners contend that the proposed waiver of the rural exemption in legacy CenturyLink territories is beyond the scope of a merger approval proceeding. They assert that the Federal Telecommunications Act and the FCC have granted certain rights to rural ILECs in recognition of the unique characteristics of serving rural, sparsely populated territories. They contend that the conditions that trigger eligibility for the rural exemption remain the same after the merger as they did before. In addition, they point out that the rural exemption requires a petition to the Commission, Commission review of pertinent facts and mitigating factors, and subsequent findings, and argue that these legal processes should not be circumvented. Accordingly, they assert that this condition should not be imposed as part of a merger approval proceeding.[358]

245. The Administrative Law Judge recommends that the Commission reject the attempt by the Joint CLECs to impose this condition in the current proceeding. The proposed transaction is structured as parent-level transfer of control that will not result in any change in the corporate structure of the CenturyLink and Qwest operating entities as a result of the transaction. Because nothing about the merger changes the operations of those entities, there is no proper basis to require as a condition of the

[354] Tr. Vol. 2A at 46-47 (Test. of Ring).
[355] *Id.* at 48-49.
[356] FCC Order in *In the Matter of Applications Filed by Frontier Communications Corp. and Verizon Communications Inc. for Assignment of Transfer of Control*, WC Docket No. 09-95; FCC 10-87, ¶¶ 39, 40 (2010).
[357] *Id*. at ¶ 40.
[358] Ex. 17 (Hunsucker Rebuttal) at 29-30; Tr. Vol. 2B at 109-10 (Test. of Hunsucker).

merger that CenturyLink affiliates relinquish their current rights to the rural exemption. The Merged Company's voluntary commitment in the Integra Settlement Agreement that it will not seek to change the status quo by asserting that Qwest is entitled to the rural exemption applies in the legacy Qwest ILEC service territory is an adequate safeguard that is logically related to the merger. In fact, this commitment accomplishes the same purpose as the condition approved by the FCC in the Frontier/Verizon merger proceeding. In any event, the Joint CLECs did not demonstrate in this record that the rural exemption does not apply to the CenturyLink affiliates that currently claim it. Moreover, because the Act provides a process to challenge the exemption, other remedies are available to CLECs that believe the exemption has been inappropriately claimed.

5. Commitment to Single Point of Interconnection per LATA

246. The Joint CLECs propose that the following additional condition be imposed on the Joint Petitioners:

> At CLEC's option, the Merged Company will interconnect with CLEC at a single point of interconnection per LATA, regardless of whether the Merged Company provides service in such LATA via multiple operating company affiliates or a single operating company.[359]

The Integra Settlement does not include any language that addresses this topic.

247. In Minnesota and several other states, CenturyLink has established multiple separate legal operating entities (i.e., affiliates). The Joint CLECs contend that CenturyLink takes the position that each separate legal entity may demand that competitors such as Charter obtain separate interconnection agreements with each entity, and establish separate connections with the network associated with each entity, even where the networks may be contiguous to and interconnected with one another.[360] They assert that CenturyLink thereby avoids the obligation to permit competitors to interconnect at a single Point of Interconnection ("POI") in a Local Access and Transport Area ("LATA").[361] The Joint CLECs argue that this practice can harm competition because it unreasonably increases competitors' interconnection costs and gives the Merged Company a competitive advantage over CLECs that are forced to expend resources to build out to multiple points on the ILEC's network.[362] They emphasize that the Merged Company will have many legacy CenturyLink exchanges that are adjacent or in close proximity to legacy Qwest exchanges,[363] and argue that, if the Merged Company provisions facilities to connect the legacy networks of CenturyLink and Qwest

[359] Ex. 27 (Gates Direct), Ex. TJG-8, Condition 28.
[360] Ex. 41 (Pruitt Surrebuttal) at 20.
[361] Ex. 40 (Pruitt Direct) at 36.
[362] Ex. 27 (Gates Direct) at 183; *see also* Ex. 40 (Pruitt Direct) at 38.
[363] Ex. 27 (Gates Direct) at 184; Ex. 40 (Pruitt Direct), Exhibit BHP-9 (Map of Qwest and CenturyLink exchanges in Minnesota); Ex. 1 (Stanoch Direct) at 15; Tr. Vol. 1 at 56-57 (Test. of Stanoch).

to realize the benefits of a larger interconnected footprint, the same benefits should also flow through to competitors interconnecting with the Merged Company.[364]

248. Billy Pruitt, Manager of Interconnection Services for Charter, provided testimony regarding Charter's recent experiences with CenturyLink in Wisconsin. He indicated that Charter has been forced to separately interconnect with 13 out of the 17 wholly-owned affiliates of CenturyLink in Wisconsin.[365] During ICA contract negotiations, Charter sought to establish a single POI in each LATA between Charter's network and the CenturyLink separate legal entities' networks (as a group) in the same LATA in order to minimize the need for duplicative interconnection facilities and associated monthly facility costs and allow a more efficient use of network resources.[366] According to Mr. Pruitt, the CenturyLink separate legal entities (both rural and non-rural) rejected Charter's proposal and argued that they had no legal obligation to permit Charter to interconnect via a single POI per LATA. They insisted that, for all future interconnections, Charter must establish a separate POI with each of the 13 CenturyLink separate legal entities with whom Charter exchanges traffic even though all are wholly-owned affiliates of CenturyLink and in some cases are contiguous to one another.[367]

249. The dispute between Charter and CenturyLink's Wisconsin companies regarding this issue gave rise to a Section 252 arbitration proceeding before the Wisconsin Public Service Commission.[368] Based upon the Wisconsin Commission's March 16, 2010, Order, it appears that the arbitration panel awarded a modified version of the contract language proposed by CenturyTel, and Charter requested that the Commission modify that award. Ultimately, the Wisconsin Commission affirmed the arbitration award, noting:

> The Commission sustains the panel award's determination [sic] of this issue because it has not been shown to be inconsistent with federal law. The award modified CenturyTel's language to define a POI as the network point where (1) local traffic is exchanged and (2) cost responsibility for facilities is divided between the parties. The award is thus consistent with federal law that does not require non-Bell Operating companies, such as CenturyTel, Inc., to give a competitor a single POI in each LATA for several legally separate operating companies. The award properly establishes a separate POI in each LATA within the network of each

[364] Ex. 27 (Gates Direct) at 185; Ex. 31 (Ankum Direct) at 82. *See also Local Competition Order* at ¶ 209.
[365] Ex. 40 (Pruitt Direct) at 36. Of the thirteen, Mr. Pruitt indicated that nine operate under a "rural" designation, and the other four operate as "non-rural" companies. *Id*. It should be noted that Mr. Hunsucker asserted that Mr. Pruitt is factually incorrect in stating that CenturyLink has 17 operating companies in Wisconsin. He indicated that CenturyLink has nine rural and three non-rural operating companies in Wisconsin. Ex. 17 (Hunsucker Rebuttal) at 37 n. 34.
[366] *Id.* at 36-37.
[367] *Id.* at 36; Ex. 41 (Pruitt Surrebuttal) at 20.
[368] Ex. 40 (Pruitt Direct) at 37.

> CenturyTel operating affiliate, and thereupon reasonably directs the parties to mutually agree upon specific trunking arrangements.[369]

Accordingly, it appears that Charter did not prevail on this issue.[370]

250. The Joint Petitioners oppose imposition of this proposed condition. They maintain that existing law requires that interconnection be on a single point on an ILEC's *network*, and contend that the proposed condition goes beyond the requirements of the Act and relevant FCC orders. They argue that the proposed condition involves a complex and fact-specific issue for which adequate forums already exist. They also contend that this issue is beyond the scope of a merger approval proceeding.[371]

251. The Administrative Law Judge concludes that the Joint CLECs have failed to meet their burden to demonstrate that this proposed condition is relevant to any potential harm caused by the merger or is otherwise appropriately addressed in this proceeding. Disputes between Charter and CenturyLink regarding the type of interconnection required by the Act are more appropriately addressed in interconnection proceedings in which a full evidentiary record can be developed, rather than being summarily decided in this proceeding. Accordingly, the Administrative Law Judge recommends that the Commission not impose this proposed condition.

6. Directory Listing and Directory Assistance Practices

252. The Joint CLECS have proposed that the following condition be imposed:

> The Merged Company will provide nondiscriminatory access to directory listings and directory assistance in compliance with federal and state law. Specifically, the Merged Company will be responsible for ensuring that all directory listings submitted by CLECs for inclusion in directory assistance or listings databases are properly incorporated into such databases (whether such databases are maintained by the Merged Company or a third party vendor). Further the Merged Company will ensure that CLECs' subscriber listings are accessible to any requesting person on the same terms and conditions that the Merged Company's subscriber listings are available to any requesting person.[372]

253. Section 251(b)(3) of the Act states that all local exchange carriers have the duty to permit all competing providers to have "nondiscriminatory access to

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[369] Order Determining Disputed Issues Regarding Arbitration Award in *Petition of Charter Fiberlink, LLC, for Arbitration of an Interconnection Agreement Between the CenturyTel Non-Rural Telephone Companies of Wisconsin and Charter Fiberlink, LLC,* and *Petition of Charter Fiberlink, LLC, for Arbitration of an Interconnection Agreement Between the CenturyTel Rural Telephone Companies of Wisconsin and Charter Fiberlink, LLC,* Dockets No. 5-MA-148 and 5-MA-149 (Wis. Pub. Serv. Comm'n, March 16, 2010), at 11.

[370] *Id*.; *see also* Ex. 17 (Hunsucker Rebuttal) at 36 n. 33 (noting that "Charter lost that issue...").

[371] Ex. 17 (Hunsucker Rebuttal) at 36-38; Joint Petitioners' Brief at 28.

[372] Ex. 27 (Gates Direct), Ex. TJG-8, Condition 23.

telephone numbers, . . . directory assistance, and directory listing."[373] The Joint CLECs allege that CenturyLink has failed to comply with the Act by shifting its obligations under Section 251(b)(3) to third-party vendors and refusing to contract with competitors (in an interconnection agreement) for certain basic directory listing and directory assistance functions, such as the obligation to publish competitor's listings in the same directories in which it publishes its own customers listings, and the obligation to ensure that competitor's listings are available to its own customers who request directory assistance.[374] Although the Joint CLECs acknowledge that it is not uncommon or improper for ILECs to use third-party vendors for directory assistance activities, they contend that provisions regarding the ILEC's responsibilities must still be included in interconnection agreements and the ILEC must accept responsibility (and ultimately liability) for addressing and resolving the problems.

254. The record contains one example of this issue. Within the last several years, CenturyLink subscribers who called directory assistance by dialing "4-1-1" were not able to obtain Charter subscribers' listing information from CenturyLink's directory assistance service. The subscriber was told that such information was not available. After some investigation, Charter determined that the problem arose because CenturyLink had contracted with a third-party vendor to operate its directory assistance database. That third-party vendor did not have Charter's listings in its local database and was not querying the correct national database. According to Charter, CenturyLink disclaimed any obligation to remedy the situation, and asserted that the practices of its directory assistance database vendor were not subject to scrutiny from competitors like Charter.[375] However, CenturyLink has since asserted that it had remedied the problem by contracting with a different third-party directory assistance vendor.[376]

255. The Joint CLECs express concern that CenturyLink will employ such practices in the Qwest ILEC markets after the merger, and that directory services provided by competitors will be degraded if CenturyLink, or its third-party vendor, fails to properly maintain directory assistance and directory listings databases in the same manner that Qwest does throughout its ILEC serving territory.[377] They argue that the proposed condition merely requires that the Merged Company provide wholesale directory services in compliance with existing law and does not impose any additional operational burdens.[378]

256. The Joint Petitioners contend that this condition is unnecessary because the record demonstrates that the Joint Petitioners have committed to complying with all federal and state laws as well as with the terms of applicable interconnection agreements.[379] In addition, the Integra Settlement Agreement requires compliance with

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[373] 47 U.S.C. § 251(b)(3).
[374] Ex. 27 (Gates Direct) at 162-163.
[375] *Id.* at 163-165.
[376] *Id.* at 164.
[377] *Id.* at 163.
[378] Tr. Vol. 1 at 48 (Test. of Hunsucker); Tr. Vol. 1 at 39 (Test. of Stanoch).
[379] Ex. 17 (Hunsucker Rebuttal) at 28-29; Tr. Vol. 2B at 48 (Test. of Hunsucker).

Sections 251 and 252 of the Federal Communications Act, which includes laws related to directory listings.

257. The Administrative Law Judge concludes that the Joint CLECs have not demonstrated that this condition is needed for the transaction to be deemed to be in the public interest. The Joint CLECs argue that the proposed condition "simply requires that the Merged Company provide wholesale directory services in compliance with existing law."[380] If that is the case, the Joint Petitioners' Settlement Agreement with Integra already explicitly addresses this concern by stating that "CenturyLink and all of its incumbent local exchange carrier ("ILEC") affiliates will comply with 47 U.S.C. Sections 251 and 252."[381] Should CenturyLink improperly deny its responsibility to provide access to directory services in the future, any affected CLEC would have the right to file a complaint with the Commission, in which all the relevant facts and applicable law can be fully presented and considered. Imposition of this condition on the merger is simply not necessary.

7. Moratorium on Non-Impairment and Forbearance Filings

258. The Integra Settlement Agreement includes the following provision:

> Qwest will not seek to reclassify as "non-impaired" any Qwest wire centers for purposes of Section 251 of the Communications Act, nor will the Merged Company file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 or 271 obligation or dominant carrier regulation in any Qwest wire center before June 1, 2012.[382]

259. While the Joint CLECs agree that a moratorium on non-impairment filings and petitions for forbearance is warranted, they contend that the June 1, 2012, expiration date in the Integra Settlement is inadequate. Accordingly, they have continued to urge the adoption of proposed Condition 14, which states:

> For at least the Defined Time Period [defined as a time period of at least 5-7 years after the Closing Date or, alternatively, a time period that is a minimum of 42 months (i.e., 3.5 years) and continues thereafter until the Applicants are granted Section 10 forbearance from the condition], the Merged Company will not seek to reclassify as "non-impaired" any wire centers for purposes of Section 251 of the Communications Act, nor will the Merged Company file any new petition under Section 10 of the

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[380] Joint CLECs' Brief at 78.

[381] Integra Settlement Agreement, ¶ B.6. Of course, the imposition of a condition requiring compliance with particular provisions of federal law appears superfluous in any event, since telecommunication companies covered by the law are obviously obligated to comply.

[382] Integra Settlement Agreement at ¶ B.8.

Communications Act seeking forbearance from any Section 251 or 271 obligation or dominant carrier regulation in any wire center.[383]

260. The Joint CLECs propose that such a moratorium should remain in effect during the Defined Time Period (which corresponds to the Joint Petitioners' own synergy time period). The Joint CLECs point out that the June 1, 2012, expiration date set forth in the Integra Settlement Agreement falls far short of the three-to-five year time period during which the Joint Petitioners will be integrating the two companies and pursuing merger-related synergy savings. They also emphasize that it falls far short of the 42-month moratorium adopted by the FCC in relation to the AT&T/BellSouth merger.[384]

261. The Joint CLECs argue that the time period of the moratorium should under no circumstances be less than the minimum three-year period associated with the Joint Petitioners' synergy estimate. They contend that at least a three-year moratorium is necessary to adequately protect the public's interest in competition and provide an appropriate level of certainty for wholesale customers related to the bottleneck inputs they purchase from the Merged Company.

262. The Joint Petitioners argue that the moratorium period set forth in the Integra Settlement Agreement adequately resolves any issue raised by the Joint CLECs in Proposed Condition 14. They further contend that the proposed condition is not consistent with the rules and guidelines the FCC established in the Triennial Review Order and the Triennial Review Remand Order, which require that filings for non-impaired status be based on the competitive marketplace and the alternatives that CLECs have in that marketplace to buy or self-provision network elements they need to compete. Finally, the Joint Petitioners emphasize that the Commission, Qwest, and a representative body of CLECs worked cooperatively in Minnesota to establish clear and consistent procedures for future wire center reclassification petitions. The stipulation reached by Qwest and the CLECs was approved by the Commission in 2007 and the settlement agreement has not been terminated in Minnesota. The Joint Petitioners maintain that the Joint CLECs' proposed condition ignores the agreement that was reached regarding the process that would be used.[385]

263. The Administrative Law Judge concludes that the Joint CLECs have not demonstrated that this condition should be required in this proceeding. Specific procedures were developed with the input of CLECs to govern the process for determining impairment of a wire center, and it is not appropriate to circumvent those procedures by imposing the condition urged by the Joint CLECs in this proceeding. Moreover, the moratorium until June 1, 2012, to which the Joint Petitioners agreed in the Integra Settlement, provides a reasonable period of certainty to the CLECs while the merger is in its early stages.

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[383] Ex. 27 (Gates Direct), Ex. TJG-8, Condition 14.
[384] *Id*. at Ex. TJG-9, n. 31.
[385] Ex. 14 (Stewart Rebuttal) at 15-18, *citing* Docket Nos. PO-5692, 5643, 465, 6422/M-06-211 and P-999/CI-06-685 (MPUC Order dated Oct. 5, 2007); Ex. 17 (Hunsucker Rebuttal) at 28-29.

8. Commitment to Implement APAP

264. The Joint CLECs proposed the imposition of an Additional Performance Assurance Plan as described in part (a) of recommended Condition 4. That condition specifies in its entirety:

> In the legacy Qwest ILEC territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy Qwest as of the Merger Filing Date. The Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy Qwest made available, or was required to make available, to the CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to state commission staff or the FCC, when requested. The state commission and/or the FCC may determine that additional remedies are required, if the remedies described in this condition do not result in the required wholesale service quality performance or if the Merged Company violates the merger conditions.
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> > a. No Qwest Performance Indicator Definition (PID) or Performance Assurance Plan (PAP) that is offered, or provided via contract or Commission approved plan, as of the Merger Filing Date ("Current PAP") will be reduced, eliminated, or withdrawn for at least five years after the Closing Date and will be available to all requesting CLECs until the Merged Company obtains approval from the applicable state commission, after the minimum 5-year period, to reduce, eliminate, or withdraw it. For at least the Defined Time Period, in the legacy Qwest ILEC territory, the Merged Company shall meet or exceed the average wholesale performance provided by Qwest to each CLEC for one year prior to the Merger Filing Date for each PID, product, and disaggregation. If the Merged Company fails to provide wholesale performance as described in the preceding sentence, the Merged Company will also make remedy payments to each affected CLEC in an amount as would be calculated using the methodology (e.g., modified Z test, critical Z values, and escalation payments) in the Current PAP, for each missed occurrence when comparing performance post- and pre- Closing Date ("Additional PAP").
> >
> > b. In the legacy Qwest ILEC territory, for at least the Defined Time Period, the Merged Company will meet or exceed the average monthly performance provided by Qwest to each CLEC for one year prior to the Merger Filing Date for each metric contained in the CLEC-specific monthly special access performance reports that Qwest provides, or was required to provide, to CLECs as of the

> Merger Filing Date. For each month that the Merged Company fails to meet Qwest's average monthly performance for any of these metrics, the Merged Company will make remedy payments (calculated on a basis to be determined by the state commission or FCC) on a per-month, per-metric basis to each affected CLEC.[386]

265. The Integra Settlement Agreement did not adopt the APAP, but did include the following provision:

> In the legacy Qwest ILEC service territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy Qwest as of the Merger Closing Date. In the legacy Qwest service territory, the Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy Qwest made available, or was required to make available, to CLECs as of the Merger Closing Date, or as subsequently modified or eliminated as permitted under this Agreement or pursuant to any changes in law. The Merged Company shall also provide these reports to state commission staff or the FCC, when requested. The state commission and/or the FCC may determine that additional remedies are required, to the extent of state commission or FCC finds it is consistent with its jurisdiction. The Merged Company does not waive its right to oppose such a request.
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> a. The Parties will not seek to reduce or modify the Qwest Performance Indicator Definition (PID) or Qwest Performance Assurance Plan (QPAP) that is offered, or provided via contract or Commission approved plan, as of the Merger Closing Date for at least eighteen months after the Closing Date. After the eighteen month period, the Parties may seek modifications under the terms and conditions outlined in the QPAP. The Merged Company will not seek to eliminate or withdraw the QPAP for at least three years after the Closing Date. The QPAP will be available to all requesting CLECs unless the Merged Company obtains approval from the applicable state commission to eliminate or withdraw it.
>
> i. For at least three years after the Closing Date, and consistent with the FCC's required conditions of the Embarq-CenturyTel merger, in the legacy Qwest ILEC service territory, the Merged Company shall meet or exceed the average wholesale performance provided by Qwest to CLEC, measured as follows:

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[386] Ex. 27 (Gates Direct), Ex. TJG-8, Condition 4; Ex. 35 (Denney Direct) at 9.

(a.) For the first three months after Closing Date, Qwest’s performance will be compared to Qwest's performance for the twelve months prior to Closing Date.

(b) Thereafter, each successive month of Qwest's performance will be added to the three-month period in (a.) in determining Qwest's performance until twelve months after Closing Date.

(c) Beginning one year after Closing Date, Qwest’s performance will be measured by a rolling twelve month average performance.

b. If the Merged Company fails to provide wholesale performance levels as measured by the methodology described in this condition, the Merged Company must conduct a root cause analysis for the discrepancies and develop proposals to remedy each deficiency within thirty days and provide this to CLEC for review and comment.

i. CLEC may invoke the root cause procedure for deterioration in wholesale performance for any PID, product, or disaggregation included within a PID measure if CLEC determines that the performance it received for that PID, product, or disaggregation is materially different and provides the basis for CLEC's determination.

ii. If performance deficiencies are not resolved, CLEC may request a resolution or wholesale service quality proceeding before the state commission. The Merged Company does not waive its right to oppose such a request.[387]

266. The APAP proposed by the Joint CLECs is a minimum five-year performance assurance plan applicable to the legacy Qwest ILEC territory which would compare the Merged Company’s post merger monthly performance with the performance that existed twelve months prior to the merger filing date.[388] The APAP would compare the Merged Company’s post merger monthly performance (“current performance”) with the performance that existed in the twelve months prior to the merger filing date (i.e., May 2009 through April 2010) (“prior performance”).[389] This comparison would be made using the current Minnesota Performance Assurance Indicators (“PIDs”), products and disaggregation, as well as the same statistical methodology that exists in the Minnesota PAP to determine whether a statistical

[387] Integra Settlement Agreement at ¶ B.2.
[388] Ex. 35 (Denney Direct) at 9; Gates Aff. at ¶ 16.
[389] *Id.*

significant deterioration in performance exists. If such a deterioration is found to exist, then the APAP would calculate payments for each missed occurrence using the methodology from the Minnesota PAP, including one allowable miss and escalation payments for consecutive months of below-standard performance.[390]

267. The Joint CLECs contend that the Merged Company must maintain service quality at current levels to ensure that the proposed merger is in the public interest. According to the Joint CLECs, this cannot be accomplished without a strong disincentive for the Merged Company to achieve its promised synergies at the expense of the CLECs through a deterioration of its wholesale market operations. The Joint CLECs argue that the APAP is necessary to (1) ensure that wholesale quality does not decline post merger, and (2) provide a truly enforceable mechanism to protect impacted CLECs if wholesale quality does decline.

268. The APAP proposed by the CLECs would not replace the Minnesota PAP, but would work in addition to the existing PAP. The current Minnesota PAP is a part of many carriers' interconnection agreements. It compares Qwest's wholesale performance for CLECs to Qwest's retail performance and is designed to ensure that Qwest does not treat itself more favorably than it treats CLECs who rely upon Qwest's wholesale facilities. The Minnesota PAP was put in place when Qwest entered the interLATA long distance market to help ensure that local markets remained open to competition. The Minnesota PAP was not developed to identify merger-related harm and would not capture deteriorating performance if the Merged Companies performance deteriorated for both wholesale and retail services simultaneously or if wholesale performance deteriorated but remained above the minimum benchmarks.[391]

269. The Joint CLECs argue that the APAP is needed to provide the proper incentives to the Merged Company not to pursue savings at the expense of its wholesale customers.[392] The APAP compares pre-merger wholesale service quality to post-merger wholesale service quality to determine whether there has been a merger-related deterioration in wholesale service quality. If significant deterioration in performance exists, then the APAP would calculate payments for each missed occurrence using the methodology from the Minnesota PAP.[393]

270. The Joint Petitioners contend that this issue has been addressed and sufficiently resolved in the Integra Settlement Agreement, which keeps in place existing wholesale service standards and reports. They further contend that the record shows that the APAP does not address nondiscrimination or accurately measure performance degradation.[394] They maintain that the proposed APAP does not accurately measure performance against the standard required by the Act and would result in a windfall to CLECs.[395] The Joint Petitioners assert that the APAP is flawed and emphasize that

[390] Ex. 35 (Denney Direct) at 9-10.
[391] *Id.* at 10.
[392] Gates Aff. at ¶ 16.
[393] Ex. 35 (Denney Direct) at 10.
[394] Ex. 12 (Williams Rebuttal) at 8-19; Tr. Vol. 4 at 117 (Test. of Williams).
[395] Ex. 91 (Williams Rejoinder) at 2.

even the company that sponsored the plan--Integra--has agreed to a significantly modified approach to ensure that wholesale service quality does not deteriorate after the merger.[396]

271. The Administrative Law Judge concludes that the APAP recommended by the Joint CLECs should not be required as a condition of approval of the proposed merger. The Joint Petitioners provided convincing evidence that the APAP has serious flaws and should not be adopted. Most significantly, they demonstrated that substantial payments would be due under the proposed APAP even if service levels remained exactly the same, resulting in a windfall to CLECs.[397] Moreover, if the Commission were to condition its approval of the merger upon the adoption of the proposed APAP, its action arguably would amount to requiring the Joint Petitioners to make self-executing payments to their competitors and thus exceed the Commission's authority.[398]

272. The Administrative Law Judge also finds that the Integra Settlement Agreement provides an adequate mechanism to discourage any decline in wholesale service quality and is consistent with the public interest. The Integra Settlement provides for a comparison of service quality before and after the Transaction; requires the Merged Company to meet or exceed the average wholesale performance provided by Qwest to the CLEC for at least three years after the transaction closing date; and requires the Merged Company to conduct a root cause analysis if service deteriorates and develop proposals to remedy deficiencies within thirty days. A CLEC may also invoke the root cause procedure if the CLEC determines that the performance it received for a PID, product, or disaggregation is materially different post-merger.

B. Additional Level 3 Proposed Conditions

273. Level 3, which is a member of the Joint CLECs, asserts that this transaction should only be approved by the Commission if the Commission imposes the conditions urged by the Joint CLECs as well as six additional conditions urged by Level 3.[399]

274. Each of Level 3's additional proposed conditions is discussed below.

1. Leveraging of Billing Disputes

275. Level 3 alleges that the merger creates an opportunity for the Merged Company to leverage a billing dispute that one of its entities may have with a CLEC by refusing to deliver services or by "slow rolling" the delivery of services that the CLEC is purchasing in another state or from another affiliate of the Merged Company. Level 3 alleges that this behavior would not occur in the absence of the merger, and contends that a transaction that creates an entity that can leverage billing disputes across its footprint, in Minnesota or elsewhere, fails to meet the public interest test set forth in

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[396] Integra Settlement Agreement at ¶ B**.2.**
[397] Ex. 91 (Williams Rejoinder) at 2 and Ex. MGW-1; Tr. Vol. 4 at 117 (Test. of Williams).
[398] *See In Re Qwest's Wholesale Service Quality Standards*, 702 N.W.2d 246 (Minn. 2005).
[399] Level 3 Brief at 4.

Minn. Stat. § 237.74, subd. 12. Level 3 further contends that allowing the Merged Company to leverage billing disputes will have a negative impact on the goal of maintaining just and reasonable rates required by Minn. Stat. § 237.011(2) because it will force competitive carriers to pay rates that are excessive or inappropriate in order to provide services. As a result, Level 3 contends that, before the Commission can approve the transaction, it must impose a condition that prohibits the Combined Entity from leveraging billing disputes. Level 3 asserts that this will eliminate any ambiguity that such action is permissible and will establish a framework for rapid Commission resolution in the event such conduct is attempted.[400]

276. The Joint Petitioners oppose this proposed condition. They point out that, although the Joint Petitioners operate multiple affiliates today, Level 3 has provided no evidence that the behavior it seeks to sanction has ever occurred or in fact has any causal relationship to the merger. They argue that billing disputes typically are handled through the terms of the applicable ICA, and point out that the Joint Petitioners have committed to abide by their existing ICAs and to keep Qwest's ICAs in place for a minimum of 36 months after the merger as part of the Integra Settlement.[401]

277. In its Reply Brief, the DOC agreed that, should the post-merger company leverage billing disputes or engage in rural CLEC arbitrage as described by Level 3, that would constitute anti-competitive conduct of concern. However, the DOC asserted that it is not alleged that such anti-competitive conduct is likely nor does the record suggests that it is. In the event such conduct were to occur at some future time, the DOC argues that the Commission is well-equipped with broad powers to determine the particular facts and to prohibit the specific anti-competitive behavior.[402]

278. The Administrative Law Judge finds that Level 3 has not demonstrated the need for this condition or the appropriateness of imposing it in connection with this proceeding. Accordingly, it is recommended that the Commission not require this condition for approval of the transaction. As noted by the DOC and the Joint Petitioners, if the behavior described by Level 3 does, in fact, occur, or if the Merged Company does not abide by the terms of the applicable ICA, the appropriate proceeding to address those concerns is a complaint before the Commission where the facts can be determined and a remedy ordered if shown to be warranted.

2. Rural CLEC Arbitrage

279. Level 3 also contends that the Commission should prohibit the Combined Entity from engaging in "rural CLEC arbitrage." In this regard, Level 3 asserts that the proposed transaction eliminates the potential competitive entry by either party into the territories of the other and provides an economic incentive for the Combined Entity to take advantage of the rural exemption by having "a CenturyLink ILEC affiliate operating in an adjoining Qwest serving area set up a rural CLEC affiliate and let Qwest lose

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[400] Ex. 42 (Thayer Direct) at 27-28; Level 3 Brief at 4-8.
[401] Joint Petitioners' Reply Brief at 31-32; Ex. 17 (Hunsucker Rebuttal) at 53; Ex. 14 (Stewart Rebuttal) at 36-37.
[402] DOC Reply Brief at 11.

customers to that rural CLEC, which can then charge the higher CenturyLink access rates." Level 3 argues that such an arrangement would hurt competition by forcing competitive terminating carriers to pay for more services. It urges the Commission to prohibit the Combined Entity from establishing a rural CLEC that will compete in Qwest territory or, in the alternative, require that the Combined Entity cap access rates at the Qwest rate if rural CLECs are created to compete in adjoining Qwest territories.[403]

280. The Joint Petitioners argue that there is no evidence apart from Level 3's "rank speculation" to show that the merged company has any intent to engage in the behavior that Level 3 has described or that such behavior has ever occurred as a result of a merger proceeding involving either of the Joint Petitioners or any other rural ILECs. They emphasize that Level 3's witness Mr. Thayer acknowledged that "the applicants have not indicated they will act in such a manner."[404] They point out that no other intervenor has raised this issue, and argue that there is no legitimate basis for granting this condition.[405]

281. The DOC again noted that the type of conduct described by Level 3 would constitute anti-competitive conduct, but emphasized that it has not been alleged or shown that this conduct is likely to occur. The DOC noted that avenues were available to address such issues should the conduct occur in the future.[406]

282. The Administrative Law Judge concludes that Level 3 has not borne its burden to show that this condition is needed or reasonable in connection with this proceeding. As noted by the DOC, if the behavior described by Level 3 does, in fact, occur, the appropriate proceeding to address those concerns is a complaint before the Commission where the facts can be determined and a remedy ordered if shown to be necessary. Accordingly, it is recommended that the Commission not require this condition for approval of the transaction.

3. Uniform 3-Year Extension of ICAs

283. Level 3 urged the Commission to reject the staggered periods of ICA extension that are set forth in the DOC Settlement Agreement and instead adopt a uniform three-year extension period for all ICAs or, in the alternative, allow a CLEC to choose the extension period that best suits its business needs.[407]

284. The Integra Settlement Agreement does provide for a 36-month extension period for Qwest's ICAs regardless of whether or not the initial or current term has expired or is in evergreen status.[408] The terms of the Integra Agreement are available to any requesting carrier.[409] Accordingly, it appears that Level 3's interest in having a

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[403] Level 3 Initial Brief at 8-12; Ex. 42 (Thayer Direct) at 17-20.
[404] Exhibit 42 (Thayer Direct) at 17.
[405] Joint Petitioners' Reply Brief at 32-33.
[406] DOC Reply Brief at 11.
[407] Level 3 Brief at 19-22; Ex. 42 (Thayer Direct) at 3-5.
[408] Integra Settlement Agreement at B.3.a.
[409] *Id.* at B.15.

uniform 3-year ICA extension available has been adequately addressed, and there is no need to impose a further condition.

4. 8YY Traffic

285. Level 3 contends that CenturyLink is routing 8YY traffic in a manner that incurs artificially high transport charges. It contends that, when 8YY calls originate on a wireless network, CenturyLink receives the calls from the wireless carriers and routes them to Level 3 which is providing services to the 800 customer. When a call originates with a wireless carrier and then is handed to CenturyLink, Level 3 asserts that CenturyLink is not routing the call to the nearest tandem capable of providing the 8YY dip and then to Level 3, but is instead routing the call to a distant tandem. Level 3 maintains that CenturyLink then charges the full transport to the distant tandem rather than charging for the minimal transport that would have been charged had the traffic been routed to the nearest, network efficient tandem. Level 3 expressed concern that this practice might be imported throughout the Qwest operating territory and argued that such a practice is both contrary to the public interest and inconsistent with the policy favoring just and reasonable rates. Level 3 urges that the Commission require the Combined Entity to route traffic for 8YY to its nearest tandem. It further recommends that this condition encompass traffic of a customer of the Combined Entity without regard to the entity that has the contractual relationship. For example, the traffic of an Embarq customer should be routed to the nearest Qwest, CenturyLink, or Embarq tandem capable of 8YY dips. In the alternative, Level 3 urged the Commission to cap the mileage that the Combined Entity can charge to the actual distance or 8 miles, whichever is less.[410]

286. The Joint Petitioners argued that the Commission should decline to consider imposition of this condition. They argue that issues relating to 8YY traffic are complex and require a thorough understanding of the governing law as well as the operational and economic interests of all affected parties. They assert that these issues have existed in the industry and between the companies for some time, entirely independently of the merger transaction, and contend that such issues are far beyond the public interest considerations involved in this merger proceeding.[411]

287. The Administrative Law Judge finds that Level 3 has not demonstrated that it is necessary to impose this condition in order to find that the transaction is in the public interest. The consideration of this issue is more appropriately considered in a setting where a full factual record can be developed and considered.

5. Billing Dispute Deadlines

288. Level 3 contends that within the last year Qwest unilaterally implemented a 90-day deadline for accepting billing disputes. It contends that the mere extension of the ICAs under the Settlement Agreements in this proceeding will not preclude the Joint

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[410] Level 3 Brief at 19-22; Ex. 42 (Thayer Direct) at 25-27.
[411] Joint Petitioners' Brief at 29-30; Joint Petitioners' Reply Brief at 33-34; Ex. 17 (Hunsucker Rebuttal) at 53.

Petitioners from implementing unilateral policy changes that alter ICA provisions. As a result, Level 3 urges that the Commission prohibit the Combined Entity from unilaterally imposing any new policies or changes to an ICA.[412]

289. In response, the Joint Petitioners contend that this is an issue that specifically relates to Level 3 and is not relevant to whether or not the merger should be approved.[413]

290. The Administrative Law Judge recommends that this proposed condition not be imposed in this proceeding. This is a matter that should be negotiated in an ICA, not made a condition of merger approval.

6. ISP-Bound Traffic

291. In the view of Level 3, it is imperative and in the public interest to impose a condition to ensure that the Joint Petitioners will abide by the requirements of the Core Mandamus Order issued by the U.S. Court of Appeals for the DC Circuit on January 10, 2010.[414] Level 3 proposes that the Commission impose a condition relating to how the Combined Entity will treat ISP-bound traffic for purposes of compensation and relative use charges. Specifically, Level 3 recommends that the Combined Entity be required to compensate terminating carriers at the appropriate rate for ISP-bound traffic and direct that ISP-bound traffic include traffic provisioned using virtual NXX codes. In addition, they urge that the Combined Entity be required to treat all locally-dialed ISP-bound traffic, including virtual NXX traffic, as local traffic in the calculation of relative use factors pursuant to 47 C.F.R. § 703 (b).[415]

292. The Joint Petitioners contend that issues involving the appropriate compensation for ISP-bound traffic are not affected by the proposed merger and are appropriately addressed in separate arbitration or complaint proceedings before the Commission. In fact, they point out that this issue has already been the subject of a Commission proceeding,[416] and assert that the Commission has already ruled on this issue against Level 3's position in prior proceedings.[417] The Joint Petitioners contend that the issue of appropriate compensation for ISP-bound traffic is far outside the scope of the public interest considerations involved in the evaluation of the proposed transaction. They further assert that this issue has far-reaching implications for the industry as well as the Joint Petitioners.

293. The Administrative Law Judge concludes that Level 3 has not demonstrated that it is necessary or reasonable to address this issue in the context of

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[412] Ex. 42 (Thayer Direct) at 29-30.
[413] Ex. 14 (Stewart Rebuttal) at 37-38; Tr. Vol. 2A at 121 (Test. of Stewart).
[414] *Core Comm., Inc. v. FCC,* 592 F.3d 139 (D.C. Cir. 2010).
[415] Level 3 Brief at 24-30; Ex. 42 (Thayer Direct) at 9-17.
[416] *In the Matter of the Complaint of Level 3 Communications Against Qwest Corporation Regarding Compensation for ISP-Bound Traffic*, MPUC Docket No. P-421/C-05-721, Order dated May 8, 2006.
[417] Ex. 14 (Stewart Rebuttal) at 36; see also *In the Matter of a Joint Application for Approval of an Interconnection Agreement Between Midwestern Telecommunications, Inc. and Qwest Corporation,* Docket Number P-6849, 421/IC-10-1173.

this proceeding. Issues involving intercarrier compensation for ISP-bound traffic and the treatment of virtual NXX traffic are complex and have been the subject of several Commission dockets and other litigation. It is also possible that these issues may involve differing interpretations of state and federal law. Other avenues available to address these issues will allow for more appropriate development and consideration of the factual and legal arguments involved.

C. Joint Wireless Carriers' Proposed Conditions

294. The Joint Wireless Carriers, Sprint and T-Mobile, urged that the Commission impose five additional conditions on any finding that the merger is in the public interest. Their proposed conditions relate to reduction of access charges, consolidation/porting of existing ICAs, extension of existing ICAs for 48 months, one-day number porting, and enforcement provisions.[418]

295. Each of the conditions proposed by the Joint Wireless Carriers is discussed below.

1. Reduction of Access Charges

296. The Joint Wireless Carriers propose the following condition relating to reduction of access charges:

> a. No later than 30 days after the closing date of the Merger, all legacy CenturyLink ILECs in Minnesota (CenturyTel and Embarq) must reduce their intrastate switched access rates to mirror the intrastate switched access rates and rate structure of the legacy Qwest ILEC in Minnesota.
>
> b. No later than 120 days after the closing date of the Merger, all post-merger CenturyLink ILECs in Minnesota (CenturyTel, Embarq, and Qwest) must reduce their ***intrastate*** switched access rates to mirror the ***interstate*** switched access rates and rate structure of the legacy Qwest ILEC in Minnesota.[419]

297. In support of this condition, the Joint Wireless Carriers argue that the post-merger company "will enjoy unwarranted market power in Minnesota, which could have significant consequences to the retail telecommunications market unless the Commission takes action to ensure the Merged Firm's market power is held in check."[420] The Joint Wireless Carriers contend that the Merged Firm will have the ability to offer numerous other standalone or bundled services such as broadband Internet service and IPTV, and that this will present a significant revenue opportunity that will more than offset losses that may be attributable to a decline in traditional local voice service. Based on "owner's economics," they assert that the combined networks of

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[418] *Id*. at 2.
[419] *Id*. at 1-2, 21 (emphasis in original).
[420] Joint Wireless Carriers' Initial Brief at 3.

Merged Firm will allow the Firm to enjoy significant expense savings by self-provisioning more network services and eliminating the need to purchase these services from a third-party carrier.[421] In particular, the Joint Wireless Carriers maintain that the Merged Firm will enjoy owner's economics with respect to the cost of local traffic termination, i.e., switched access and special access services.[422] They argue that the merger transaction provides Qwest LD with a competitive advantage over Sprint LD and all other non-affiliated LD carriers attempting to bid and win telecommunications business since Qwest LD can price its services low enough to undercut its competitors who must account for excessive access charges in their pricing decisions.[423] The Joint Wireless carriers argue that CenturyLink currently charges "bloated" wholesale rates for switched access services (i.e., the compensation that long distance and wireless providers must pay to CenturyLink to deliver calls to CenturyLink's local customers), which unaffiliated carriers have no choice but to pay.[424] They urge the Commission to "reject the antiquated rationale that the Merged Firm requires higher switched access rates to cover the network costs of providing voice services when it will be offering other telecommunications and data services that more than cover its network costs."[425]

298. The Joint Wireless Carriers contend that their proposed condition "is necessary to prevent the Merged Firm from continuing to burden its competitors with exorbitant switched access rates, a burden the Merged Firm itself will not have to bear due to owner's economics."[426] They argue that, as a first step, the Commission should require all the legacy CenturyLink ILECs (CenturyTel and Embarq) to reduce their intrastate switched access rates to the intrastate rates of the legacy Qwest ILEC in Minnesota. Then, as a second step, in order to bring the rates of all the Merged Firm ILECs closer to the actual cost of providing switched access service, they recommend that the Commission require that the intrastate switched access rates of all of the post-merger CenturyLink ILECs be reduced to the interstate switched access rates of the legacy Qwest ILEC.[427]

299. The Joint Petitioners argued that the Joint Wireless Carriers have failed to show the facts supporting its proposed condition by a preponderance of the evidence. They also contend that this proposed condition is unnecessary for the proposed merger to meet the required statutory requirements. They contend that, after the merger, Qwest will continue to pay the same access rate to CenturyLink as any other long-distance company, eliminating the risk of a perceived competitive advantage.[428] The Joint Petitioners emphasize that the Commission already has two open proceedings to investigate the access charges of CenturyLink's legacy Embarq and legacy CenturyTel ILECs, respectively, as well as a generic docket to consider the issue as it affects the entire industry, and argue that these issues are more properly dealt with in those

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[421] Ex. 111 (Appleby Supplemental Surrebuttal) at 5; Tr. Vol. 2B at 123-24 (Test. of Hunsucker).
[422] Ex. 46 (Appleby Direct) at 8; Ex. 48 (Appleby Surrebuttal) at 3-4.
[423] Ex. 48 (Appleby Surrebuttal) at 4-5.
[424] Joint Wireless Carriers' Initial Brief at 4-5.
[425] *Id*. at 16.
[426] *Id.* at 20; Ex. 46 (Appleby Direct) at 18-23.
[427] Joint Wireless Carriers' Initial Brief at 21.
[428] Exhibit 6 (Jones Rebuttal) at 30.

dockets than in this merger proceeding.[429] They assert that this issue involves complex financial, legal, and policy issues that are not related to the merger and are outside the scope of the public interest standard that applies to the consideration of the merger. They further contend that the Joint Wireless Carriers' position is based on a flawed understanding of the concept of market power; Mr. Appleby's calculations regarding the merged company's financial metrics ignore the realities of the market and the benefits Joint Petitioners hope to realize from the merger; and Mr. Appleby's cost calculations oversimplify and ignore the various inputs that have gone into the development of intrastate access rates by state commissions over the years.[430]

300. In their Reply Brief, the Joint Wireless Carriers contend that it is not just Sprint and T-mobile who must pay the Joint Petitioners' excessive access rates, but also all CLECs and interexchange carriers that terminate interLATA. or interMTA traffic to the Joint Petitioners' customers. They argue that this issue should not be put aside simply because the Commission has an open rulemaking docket considering comprehensive reform of the access charge structure for all Minnesota carriers. They further maintain that the potential harm from the Merged Firm's excessive access rates is well-documented in the record of this case.[431]

301. The DOC also opposed imposition of this condition and emphasized that several pending matters before the Commission directly address potential changes to access charges as to all telecommunications carriers as well as the access charges of the legacy Embarq and CenturyTel operating companies.[432] In the view of the DOC, access charge reform is an industry-wide issue that is not unique or specific to the companies requesting approval in this merger proceeding. For this reason, the DOC believes the inclusion of changes in access charges as a condition of the proposed merger is inappropriate. In addition, the DOC argued that the facts concerning the application of Minn. Stat. § 237.12, subd. 3, to access charge changes have not been adequately developed in the record of this proceeding. Finally, the DOC noted that imposing such a condition could negatively impact the Commission's authority because the condition would be adopted without the full development of a record beyond the merger analyses involved in this proceeding.[433]

302. The Administrative Law Judge concludes that the Joint Wireless Carriers have not adequately demonstrated the underlying factual basis for their proposal or that the public interest requires it to be imposed in this proceeding. The complex and

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[429] The Joint Petitioners cited MPUC Docket Nos. 06-51, 07-1198, and 08-983.
[430] Joint Petitioners' Reply Brief at 35-36.
[431] Joint Wireless Carriers' Reply Brief at 7-9.
[432] The DOC cited *In the Matter of the Request for Comments of the MPUC Relating to a Rule to Modify Telephone Access Charges*, Docket No. P-999/R-06-51; *In the Matter of the Request for Comments of the MPUC Relating to a Rule to Modify Telecommunications Universal Service Funding*, Docket No. P-999/R-06-50; *In the Matter of Verizon's Verified Complaint to Reduce the Intrastate Switched Access Charges of Embarq Minnesota, Inc.*, Docket No. P-3012 et al./C-07-1198; *In the Matter of Verizon's Verified Complaint to Reduce the Intrastate Switched Access Charges of CenturyTel Minnesota, Inc.*, Docket No. C-08-983.
[433] DOC Reply Brief at 3-4.

industry-wide issues involved are more appropriately considered in the other dockets that are pending involving this issue.

2. Consolidation/Porting of Existing ICAs

303. The Joint Wireless Carriers also support the imposition of a condition relating to the consolidation and porting of existing ICAs. They proposed the following language (which differs from that proposed by the Joint CLECs):

> The Merged Firm shall permit a carrier customer to "port" the entirety of an existing interconnection agreement, whether negotiated or arbitrated, entered into with any CenturyLink/Qwest ILEC in Minnesota, to any other CenturyLink/Qwest ILEC within Minnesota and the Merged Firm shall permit a carrier customer to "port" the entirety of an existing interconnection agreement (except for state-specific rates), whether negotiated or arbitrated from another state in the Merged Firm's territory where it is currently effective to Minnesota and apply that agreement (whether it be an in-state agreement or an agreement from another state) to all carrier customer affiliates and aggregate all carrier customer affiliate arrangements under one ported agreement. For purposes of this condition, state-specific rates do not include billing arrangements such as bill-and-keep for the exchange of traffic or contractual provisions to share the costs of interconnection facilities. This condition shall continue for 48 months after the closing date of the merger and shall apply to any existing agreement, whether in its initial term or outside its initial term but where such agreements continue to be effective, and to any new agreements created during the 48 month period. Any agreement so ported more than 12 months after the merger shall be effective for 36 months after the porting request is granted. If an agreement is ported from another Merged Firm entity within a state or across state lines, any interconnection agreement that would otherwise apply is canceled without penalty.[434]

304. The Joint Wireless Carriers emphasize that, in Minnesota alone, CenturyLink has 43 ICAs with CLECs and 25 with wireless companies, and Qwest has 137 ICAs with CLECs, 20 with wireless companies, and 11 with paging companies,[435] and they argue that the sheer volume of ICAs that the post-merger Company would have in Minnesota puts competitive carriers at risk of incurring substantial cost to renegotiate and potentially arbitrate critical function and pricing terms in existing ICAs after the merger closes. They further point out that the merger would transform the Joint Petitioners into the third-largest carrier in the country, with a 75% share of the wireline market in Minnesota, and argue that the Merged Firm will be more like a BOC than a rural ILEC, and should be held to BOC standards. Given the substantial costs associated with the negotiation and arbitration of ICAs and the ability of the post-merger

[434] Joint Wireless Carriers' Initial Brief at 28.
[435] Ex. 46 (Appleby Direct) at 24, citing Ex. 59 (Qwest Response to Sprint IR No. 22) and Ex. 63 (Qwest Response to Integra IR No. 76).

firm and competing carriers to use the provisions of the existing ICAs to make any amendments necessary as a result of the merger, the Joint Wireless Carriers propose that the Commission condition approval of the merger on allowing competing carriers to consolidate their existing ICAs with the operating entities of the Merged Firm, which would include the porting of existing ICAs from one operating entity wholly owned by the Merged Firm to another wholly-owned operating entity within the Merged Firm's footprint. They oppose limiting the consolidation/porting solely to existing Qwest ICAs among Qwest legacy entities post-merger and urge that the same consolidation/porting be permitted among CenturyLink legacy entities.[436]

305. The Administrative Law Judge recommended that the Commission not adopt a separate condition proposed by the Joint CLECs that would have permitted the porting of an ICA under certain circumstances. For the same reasons discussed in Section IV(A)(2) above, the Administrative Law Judge also recommends that the Commission decline to adopt the Joint Wireless Carriers' proposed condition.

3. Extension of Existing ICAs for 48 Months

306. The Joint Wireless Carriers further propose that "[a]ny existing Qwest or CenturyLink interconnection agreement, whether in its initial term or otherwise currently effective, may be extended by carrier customers from the date the merger closes by a requesting carrier for 48 months or for three years after a request is granted, whichever is longer."[437] In their post-hearing brief, the Joint Wireless Carriers indicated that they proposed this condition in response to the staggered extension dates for different ICAs contained in the DOC Settlement Agreement, and urged that the Commission reject the language contained in the DOC Settlement and instead adopt their proposed language. They also noted that they concurred with the Joint CLECs' testimony addressing problems with the language of the ICA Commitments contained in the DOC Settlement Agreement.

307. Under the Integra Settlement Agreement, Qwest's ICAs will be extended for at least 36 months after the closing date (regardless of whether or not the initial or current term has expired or is in evergreen status). The Joint Wireless Carriers point out that this provision applies only to Qwest ICAs and argue that it should be modified to apply to both Qwest and CenturyLink agreements.[438]

308. The Joint Petitioners contend that this proposed condition is unnecessary.[439]

309. The Joint Wireless Carriers have not demonstrated that a 48-month extension of ICAs is necessary to ensure that the transaction is in the public interest. In addition, because Qwest is the company that will be acquired, it is reasonable for the Integra Settlement Agreement to focus on the extension of Qwest ICAs. The

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[436] Joint Wireless Carriers' Reply Brief at 9-13; Ex. 46 (Appleby Direct) at 26-28.
[437] Joint Wireless Carriers' Initial Brief at 31; Ex. 46 (Appleby Direct) at 25-26.
[438] Joint Wireless Carriers' Reply Brief at 34.
[439] Joint Petitioners' Reply Brief at 24-25.

Administrative Law Judge thus recommends that the Commission not adopt this recommended condition.

4. One-Day Number Porting

310. With respect to the porting of numbers to competitors, the Joint Wireless Carriers proposed the following condition:

> The Merged Firm must adopt the best practices of Qwest for porting numbers to competitors. As such, both CenturyLink and Qwest must comply with the FCC's one-day porting requirement and not degrade the existing Qwest porting capabilities.[440]

311. In support of this proposed condition, the Joint Wireless Carriers indicate that they "are aware of several business practices that are handled differently by legacy Qwest and legacy CenturyLink entities" and urged the Commission to require that the Merged Firm to adopt Qwest's best practices in order to avoid consumers experiencing a lower quality of service. In particular, the Joint Wireless Carriers note that Qwest already provides one-day porting in Minnesota, but CenturyLink recently received a waiver from the FCC to delay its implementation of the one-day local number portability standard until February of 2011. In its request for the waiver, CenturyLink indicated that it wanted to finish adopting the Embarq porting system across its entire footprint rather than update two separate systems to one-day porting and asserted that it could not satisfy both the timeline for merger conditions put in place by the FCC and the one-day porting requirement deadline. The Joint Wireless Carriers argue that the Merged Firm "should not be permitted to choose practices that inhibit competitive choice."[441]

312. Joint Petitioners argued that the Joint Wireless Carriers have not provided sufficient evidence to support their view that this condition is required. They also contend the proposed condition is unnecessary in any event because the FCC order that granted CenturyLink a waiver from the requirement that number porting requests be completed within one day will expire on February 11, 2011, and make this issue moot.[442]

313. The Joint Wireless Carriers have not demonstrated that this condition is reasonable or necessary to ensure that the proposed transaction is in the public interest. The Administrative Law Judge recommends that this proposed condition not be adopted by the Commission.

5. Enforcement Provisions for Merger Conditions

314. Finally, the Joint Wireless Carriers proposed the following condition relating to enforcement of the merger conditions:

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[440] Joint Wireless Carriers' Initial Brief at 32.

[441] *Id.* at 31-32; see also Ex. 46 (Appleby Direct) at 30-32.

[442] *In the Matter of Local Number Portability, Porting, Interval and Validation Requirements*, WC Docket No. 07-244; DA 10-1439, ¶ 19; Joint Petitioners Reply Brief at 36.

> The Minnesota Public Utilities Commission, the courts, and to the extent appropriate, the FCC if it adopts a similar condition, shall each have jurisdiction to enforce these Merger Conditions and carrier customers shall be granted standing to complain to the foregoing bodies if the Merger Conditions are violated. The Merged Firm will be responsible for paying attorneys fees of complaining parties in any case where complaining parties seek to enforce Merger Conditions and are successful in such enforcement. In addition, in any instance where a complaining party seeks to enforce a Merger Condition through complaints to the Minnesota Public Utilities Commission, the courts, or to the FCC to the extent appropriate if it adopts a similar condition, and is successful in such enforcement, the complaining party may also require, at its option, that the term of any Merger Condition so enforced be extended for an additional 48 months in addition to the initial term.[443]

The Joint Wireless Carriers argue that this provision will erase doubt about merger condition enforcement and encourage the Merged Firm to implement all of the merger conditions approved by the Commission in good faith.

315. The Joint Petitioners contend that this proposed condition is unnecessary because ICAs already contain language allowing a party to seek resolution of disputes before the Commission at any time.[444] They also maintain that this condition would be contrary to the public interest by imposing additional costs on the Joint Petitioners and the Commission. They further assert that the Commission has no authority to accord jurisdiction to the courts or the FCC. In addition, they maintain that asking the Commission to allow the parties to choose alternative forums for dispute resolution may reduce or change the Commission's authority over the parties and the Transaction, in conflict with the third prong of the public interest criteria applicable to this proceeding.[445]

316. The Joint Wireless Carriers have not demonstrated that this proposed condition is necessary to ensure that the proposed transaction is in the public interest, nor have they demonstrated that the Commission can confer jurisdiction on the courts or the FCC. Accordingly, the Administrative Law Judge recommends that this condition not be adopted in this proceeding.

D. Suburban Rate Authority Concerns

317. In its post-hearing brief, the Suburban Rate Authority urged that any merger condition requiring broadband infrastructure investment clearly preserve Qwest’s obligations under its current Alternative Form of Regulation (AFOR) plan in Minnesota, which remains in effect until December 31, 2013.[446] That AFOR contains several provisions relating to broadband that are designed to benefit local governments

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[443] Joint Wireless Carriers’ Brief at 33; Ex. 46 (Appleby Direct) at 32-33.
[444] Ex. 17 (Hunsucker Rebuttal) at 50.
[445] Joint Petitioners Reply Brief at 36-37.
[446] Ex. 95 (Stanoch Rejoinder) at 2. Appendix C of Qwest’s AFOR, which contains provisions relating to its broadband investment plan, is attached to Ex. 95 (Stanoch Rejoinder) as Ex. JMS-1.

and other public institutions. For example, the AFOR requires continued investment in expanding the availability of high-speed Internet in Minnesota, technology upgrades to enhance the capacity and performance of Qwest's network "to meet the future needs of all telecommunications consumers," and standards for deployment of broadband infrastructure.[447]

318. The DOC Agreement contains a clause indicating that it "constitutes the Parties' entire agreement on all matters set forth herein, and it supersedes any and all prior oral and written understandings or agreements on such matters."[448] Because an AFOR plan is similar to an agreement, the Suburban Rate Authority expressed concern that the broadband obligations in the DOC Settlement Agreement might be construed to supersede Qwest's AFOR obligations. Accordingly, the Suburban Rate Authority seeks clarification that any merger condition requiring specific broadband investments does not limit or supersede Qwest's existing broadband obligations under its AFOR, including Qwest's obligation to target broadband deployment on "distribution areas."[449]

319. At the request of the Suburban Rate Authority, John Stanoch of Qwest affirmed in his testimony at the evidentiary proceeding that nothing in the DOC Settlement changes the Qwest AFOR infrastructure commitment.[450] The Joint Petitioners argue that no further action on this issue is necessary in light of Mr. Stanoch's testimony.[451]

320. The DOC also noted its agreement with Mr. Stanoch's testimony in its post-hearing Reply Brief. The DOC further stated that the present obligations under Qwest's AFOR will continue as obligations of the post-merger entity and the AFOR is not affected by the DOC Settlement Agreement.[452]

321. Accordingly, it is clear on the record of this proceeding that there is no intent on the part of the Joint Petitioners or the DOC that the DOC Settlement Agreement would change the infrastructure commitment made by Qwest in its AFOR. An express statement that commitments made by the Joint Petitioners in Settlement Agreements relating to this merger are in addition to, and do not constitute a limitation on, Qwest's AFOR obligations has been included in the Conclusions of Law below.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

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[447] Ex. JMS-1 to Ex. 95 (Stanoch Rejoinder) at 3, 7-9.
[448] Ex. 3 at Section V.D.
[449] Suburban Rate Authority Brief at 2, 6.
[450] Tr. Vol. 4 at 141-42.
[451] Joint Petitioners' Reply Brief at 37.
[452] DOC Reply Brief at 13.

CONCLUSIONS OF LAW

1. The Minnesota Public Utilities Commission and the Administrative Law Judge have jurisdiction over the subject matter of this hearing pursuant to Minn. Stat. §§ 216B.50 and 14.57 - 14.62 and Minn. Rules Parts 1400.5100 - 1400.8300.

2. The Commission gave proper notice of the hearing in this matter, has fulfilled all relevant substantive and procedural requirements of law or rule and has the authority to take the action proposed.

3. The public interest standard under Minn. Stat. §§ 237.23 and 237.74, subd. 12, applies to the proposed merger. As stated by the Commission, the ultimate issue in this case is whether the proposed merger is in the public interest.[453]

4. Pursuant to Minn. Rule 1400.7300, subp. 5, the Joint Petitioners bear the burden of proof in this proceeding to establish facts demonstrating that the proposed transaction is in the public interest. Similarly, any party advocating an affirmative proposal has the burden of proof to establish facts demonstrating that their proposal is reasonable and necessary to ensure that the transaction is in the public interest.[454]

5. The Joint Petitioners' Settlement Agreements with the DOC, 360networks, the CWA, and Integra are in the public interest and should be approved by the Commission.

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[453] Notice and Order for Hearing at 2.

[454] Minn. R. 1400.7300, subp. 5 ("the party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard"). *Accord In re Consolidated Appeal from an Order of the MPUC (Northwestern Bell Telephone Company),* 365 N.W.2d 341 (Minn. App. 1985) (although a telephone company that seeks a change in rates has the burden of proof to show that the rate change is just and reasonable, a party that is proposing other changes (i.e., seeking to require the telephone company to provide low cost or free TDDs to customers with hearing impairments) bears the burden to prove the facts at issue and the reasonableness of its proposals under Minn. R. 1400.7300, subp. 5, unless the substantive law provides a different burden or standard); Findings of Fact, Conclusions and Recommendation in *In the Matter of Northern States Power Company's Petition for Approval to Merge with New Century Energies, Inc.,* OAH Docket No. 12-2500-12509-2, PUC Docket No. E,G-002/PA-99-1031 (Feb. 28, 2000) at 27 ("As the Party proposing the action in this proceeding, NSP has the burden of establishing facts supporting its proposals by a preponderance of the evidence. Similarly any other Party advocating an affirmative proposal has the burden of proving that proposal by a preponderance of the evidence"). *See also* Minn. Rule 7812.2210, subp. 16, which implements Minn. Stat. § 237.74, subd. 12, for CLEC transactions and specifies that the party seeking merger approval bears the burden of "demonstrat[ing] to the commission that the present or future public convenience and necessity require or will require the acquisition" and "show[ing] that the merger is consistent with the public interest, based on such factors as the potential impact of the merger on consumers, competition, rates, and service quality)." There is no specific rule applicable directly to ILECs.

6. The protections afforded by the Integra Settlement Agreement should be afforded to all requesting carriers operating in the State of Minnesota, in accordance with Paragraph 15 of that Agreement.[455]

7. Commitments made by the Joint Petitioners in Settlement Agreements relating to this merger are in addition to, and do not constitute a limitation on, Qwest's AFOR obligations.

8. The merger proposed by the Joint Petitioners, as modified by the conditions set forth in the DOC, 360networks, CWA, and Integra Settlement Agreements, is consistent with the public interest and should be approved.

9. Any of the above Findings of Fact more properly considered Conclusions of Law are hereby adopted as such.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Public Utilities Commission include in its Order in this proceeding a determination that the proposed merger between Qwest and CenturyLink, as modified by the Settlement Agreements with the Department of Commerce, 360networks, the Communications Workers of America, and Integra Communications, is consistent with the public interest, that it approve the Settlement Agreements in their entirety, and that it approve the merger with such Settlement Agreements.

Dated: January 10, 2011

/s/ Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Notice is hereby given that pursuant to Minnesota Statute § 14.61, and the Rules of Practice of the Public Utilities Commission and the Office of Administrative Hearings, exceptions to this report, if any, by any party adversely affected must be filed within twenty days of the mailing date hereof or such other date as established by the Commission's Executive Secretary or as agreed to by the Parties with the Commission's Executive Secretary. Questions regarding filing of exceptions should be directed to Dr. Burl Haar, Executive Secretary, Minnesota Public Utilities Commission,

[455] Integra Settlement Agreement at 11, ¶ 15 ("After fully executed, filed with and, where necessary, approved by a Commission, this Agreement will be made available to any requesting carrier. Additionally, if an order approving this transaction includes any condition not contained in this Agreement or includes provisions inconsistent with those contained in this Agreement, the Merged Company will make that condition or provision available to other carriers in that state upon request, to the extent applicable.")

Suite 350 Metro Square, 121 Seventh Place East, St. Paul, Minnesota 55101. Exceptions must be specific and stated and numbered separately. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Administrative law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and 14 copies of each document should be filed with the Commission.

The Minnesota Public Utilities Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commission may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Commission as its final order.