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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint)
Application of)Docket UT-082119
)Volume II
)Pages 24-132
EMBARQ CORPORATION AND CENTURYTEL,)
INC.,)
))
For approval of Transfer of Control)
of United Telephone Company of the)
Northwest d/b/a Embarq and Embarq)
Communications, Inc.)

A hearing in the above-entitled matter
was held at 9:34 a.m. on Tuesday, May 19, 2009, at
1300 South Evergreen Park Drive, S.W., Olympia,
Washington, before Administrative Law Judge DENNIS
MOSS, Chairman JEFFREY GOLTZ, and Commissioner
PATRICK OSHIE.

The parties present were as follows:

UNITED TELEPHONE COMPANY OF THE
NORTHWEST, d/b/a EMBARQ CORPORATION, by William E.
Hendricks, Attorney at Law, 902 Wasco Street, Hood
River, Oregon, 97031.

PUBLIC COUNSEL, by Sarah A. Shifley,
Assistant Attorney General, 800 Fifth Avenue, Suite
2000, Seattle, Washington 98104.

Barbara L. Nelson, CCR
Court Reporter

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1 COMMISSION STAFF, by Jonathan C.
2 Thompson, Assistant Attorney General, 1400 S.W.
3 Evergreen Park Drive, S.W., P.O. Box 40128, Olympia,
4 Washington 98504-0128.

5 CENTURYTEL, INC., by Charles L. Best,
6 Attorney at Law, 1631 Northeast Broadway, Suite 538,
7 Portland, Oregon 97232.

8 COMCAST PHONE OF WASHINGTON, LLC, and
9 LEVEL 3 COMMUNICATIONS, LLC, by Arthur A. Butler,
10 Attorney at Law, Ater Wynne, 601 Union Street, Suite
11 1501, Seattle, Washington 98101.

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(PANEL) G. CLAY BAILEY, BARBARA YOUNG, STEFANIE

6

JOHNSON, and WILLIAM WEINMAN

7

and

8

MARK GAST and DR. TREVOR ROYCROFT (via teleconference

9

bridge)

10

Examination by Chairman Goltz

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11

Examination by Commissioner Oshie

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Examination by Chairman Goltz

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Examination by Commissioner Oshie

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Examination by Chairman Goltz

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1 JUDGE MOSS: Let's go on the record. Good
2 morning, everyone. My name is Dennis Moss. I'm an
3 Administrative Law Judge with the Washington
4 Utilities and Transportation Commission. We are
5 convened this morning in our settlement hearing in
6 the matter of the joint application of Embarq
7 Corporation and CenturyTel, Inc. for approval of
8 transfer of control of United Telephone Company of
9 the Northwest, doing business as Embarq and Embarq
10 Communications, Inc. Our docket number is UT-082119.

11 Our first order of business will be to take
12 appearances from the companies and other
13 representatives, and so we'll start with the
14 Applicants. Mr. Hendricks.

15 MR. HENDRICKS: Is this on yet? Yes, Tre
16 Hendricks, on behalf of United Telephone Company of
17 the Northwest, d/b/a Embarq.

18 JUDGE MOSS: And the short form is fine
19 today. Just your name and your --

20 MR. BEST: Thank you, Your Honor. Charles
21 Best, on behalf of CenturyTel.

22 JUDGE MOSS: Thank you. Go ahead, Mr.
23 Butler.

24 MR. BUTLER: Arthur A. Butler, appearing on
25 behalf of Comcast Phone of Washington, L.L.C., and

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1 Level 3 Communications, L.L.C.

2 JUDGE MOSS: Yes, I did receive your notice
3 of appearance for Level 3 yesterday. All right.

4 MS. SHIFLEY: Sarah Shifley, on behalf of
5 the Public Counsel Section of the Washington Attorney
6 General's Office.

7 JUDGE MOSS: All right.

8 MR. THOMPSON: Jonathan Thompson, Assistant
9 Attorney General, on behalf of Commission Staff.

10 JUDGE MOSS: All right. Thank you very
11 much. Now, we have a couple matters I want to take
12 up before we bring the Commissioners in just to get
13 the preliminaries out of the way.

14 First of all, my understanding is that the
15 parties want to stipulate the record; is that
16 correct?

17 MR. BEST: That's correct, Your Honor.

18 JUDGE MOSS: All right. Well, I left copies
19 of the exhibit list there. I hope everyone got a
20 copy. Does anyone need one? Okay. And so you see
21 there, in addition to the pre-filed testimonies and
22 exhibits from the various parties, we have a list of
23 bench exhibits there, which include the bench request
24 response, Number 1, its various supplements, the
25 various side agreements about which we will have some

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1 discussion later today, and Public Counsel's response
2 to Bench Request Number 1, as well.

3 In addition, we have what I have designated
4 here as joint testimony and exhibits, and this is
5 basically the settlement material. We have of course
6 the settlement agreement itself as an exhibit, the
7 narrative supporting the settlement agreement is our
8 second exhibit there. And then I was furnished, or
9 the Commission was furnished, I should say, a set of
10 exhibits, I believe those came from CenturyTel,
11 several rating bulletins and news reports and so on
12 and so forth, and I've identified those separately
13 for ease of reference. I notice they did not have
14 page numbers. So if we need to get into them, we'll
15 have shorter documents to say it's on the third page
16 or what have you, so that is why I did it that way.

17 Other than that, the exhibit list consists
18 of, as I mentioned, the pre-filed testimonies and
19 exhibits. Without objection, these will all be
20 admitted as marked.

21 (The following exhibits were marked in
22 conjunction with the hearing.)

23 E X H I B I T L I S T

24 BENCH EXHIBITS

25 B-1 CenturyTel and Embarq response to BR-1 re

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1 side-agreements negotiated with intervenors
2 (original response filed on 3/10/2009;
3 supplemental response filed on 3/12/2009; 2d
4 supplemental response filed on 4/13/2009)
5 B-2 Side-agreement between Applicants and Level 3
6 B-3 Side-agreement between Applicants and Comcast
7 B-4 Side-agreement between Applicants and IBEW
8 B-5 Public Counsel response to BR-1 re Applicants'
9 side-agreements with Intervenors

10 JOINT TESTIMONY AND EXHIBITS RE SETTLEMENT AGREEMENT

11 JT-1 Settlement Agreement filed April 22, 2009
12 JT-2T Narrative Supporting Settlement Agreement
13 JT-3 October 27, 2008 Rating Bulleting from
14 Standard & Poor's Regarding CenturyTel, Inc.
15 JT-4 January 9, 2008 Market News article regarding
16 Standard & Poor's rating of Embarq Corporation
17 JT-5 October 27, 2008 Rating Action from Moody's
18 regarding Embarq Corporation
19 JT-6 October 28, 2008 Fitch Headline Affirming
20 CenturyTel and Embarq's ratings
21 JT-7 March 6, 2009 Fitch Ratings "Corporates"
22 Review of CenturyTel, Inc.
23 JT-8 March 3, 2009 Moody's Credit Opinion regarding
24 CenturyTel, Inc.

25 G. CLAY BAILEY

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1 GCB-1T Direct Testimony providing an overview and
2 asserting various operational, financial,
3 managerial and competitive benefits or neutral
4 results from the proposed transaction, if
5 consummated

6 GCB-2 Rebuttal Testimony asserting no need for the
7 HCT specific financially-based conditions proposed
8 by Public Counsel or for most conditions
9 proposed by Staff

10 CROSS-EXAMINATION EXHIBITS

11 MARK A. GAST

12 MAG-1T Direct Testimony concerning financial
13 capabilities of the proposed combined
14 CenturyTel/Embarq company

15 MAG-2 Corporate Organization Charts

16 MAG-3T Rebuttal Testimony re certain continuing
17 Embarq obligations resulting from Commission
18 approval of its separation from Sprint in
19 Docket

20 CROSS-EXAMINATION EXHIBITS

21 BARBARA C. YOUNG

22 BCY-1T Direct Testimony asserting various
23 operational, financial, managerial and
24 competitive benefits of neutral results from
25 the proposed transaction, if consummated

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1 BCY-2T Rebuttal Testimony

2 PUBLIC COUNSEL

3 TREVOR R. ROYCROFT

4 TRR-1 Response Testimony (Highly Confidential)

5 HCT analyzing the proposed merger from an economic

6 perspective, identifying harm to the public

7 interest and recommending conditions to bring

8 the transaction into a form that will meet the

9 public interest standard for approval

10 TRR-2 Witness Qualifications (Curriculum Vitae)

11 COMMISSION STAFF

12 BETTY A. ERDAHL

13 BAE-1 Response Testimony (Highly Confidential)

14 HCT identifying potential rates and quality of

15 service impacts, and proposing conditions

16 BAE-2 Applicants' Response to Public Counsel Data

17 HC Request 48

18 BAE-3 Applicants' Response to Staff Data Request 9

19 BAE-4 United Telephone Co. of the NW (Embarq)

20 Quality of Service Guarantee

21 CROSS-EXAMINATION EXHIBITS

22 WILLIAM H. WEINMAN

23 WHW-1T Response Testimony addressing the "policy

24 foundation" of Staff's position and

25 recommendations for conditions

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1 WHW-2 Telecommunications Exchange Boundaries Map
2 (Conclusion of Exhibit Identification.)

3 JUDGE MOSS: Now, we'll have a panel of
4 witnesses this morning. This is our standard
5 procedure in settlement hearings. Not exclusive
6 procedure, but it has been our standard procedure for
7 some time. I understand that each party who is a
8 signatory to the settlement agreement will have a
9 representative for us this morning; correct?

10 MR. BEST: Yes, Your Honor.

11 JUDGE MOSS: Well, why don't we have those
12 folks come up and take their seats and I'll get them
13 sworn in. And we'll have our introductions after the
14 Commissioners are in here, so that they will have the
15 benefit of that, as well. But in the meantime, I'll
16 ask you to stand, please raise your right hand.

17 Whereupon,

18 G. CLAY BAILEY, STEFANIE A. JOHNSON, BARBARA C.

19 YOUNG, and WILLIAM H. WEINMAN,

20 having been first duly sworn by Judge Moss, were
21 called as witnesses herein and were examined and
22 testified as follows:

23 JUDGE MOSS: Thank you very much. Please be
24 seated. With that, let me ask if there's anything
25 preliminary that I need to consider, or shall I go

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1 ahead and take a brief recess and get the
2 Commissioners and we'll start with any opening
3 statements and then the questions? Anything? Ms.
4 Shifley.

5 MS. SHIFLEY: Your Honor, are there also
6 people appearing on the bridge line that need to be
7 sworn in, as well?

8 JUDGE MOSS: Thank you, Ms. Shifley. I
9 don't know that we have any that need to be sworn in.
10 We have our witness panel here. We'll only swear
11 additional witnesses if specific questions come up
12 that one of the panelists can't answer and we need to
13 refer to another witness. So while we need to have
14 those witnesses available, it won't be necessary to
15 swear them in light of the fact that we've stipulated
16 their testimonies and exhibits.

17 MS. SHIFLEY: Thank you, Your Honor.

18 JUDGE MOSS: But you do remind me that I
19 should ask if there are additional counsel or other
20 party representatives on the bridge line who wish to
21 enter an appearance today? And hearing nothing, I
22 suppose that would just leave the IBEW unrepresented
23 today, since Mr. Butler now has Comcast and Level 3
24 covered.

25 All right, great. All right. Well, we'll

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1 take a brief recess and I'll get the Commissioners.

2 (Recess taken.)

3 JUDGE MOSS: Let's go back on the record,
4 please. I'll state for the record that Chairman
5 Goltz and Commissioner Oshie have joined me on the
6 bench this morning, will be hearing this matter.
7 Commissioner Jones is absent today. He's
8 recuperating from some knee surgery, so we won't have
9 him with us today.

10 I'm going to ask the panelists, I told them
11 I would reserve their introductions until the
12 Commissioners were here, so I'll ask the panelists to
13 introduce themselves to the tribunal, and then we'll
14 proceed with an opening statement by Mr. Best, and
15 from there we'll have questions from the bench. So
16 please introduce yourselves.

17 MR. BAILEY: My name is Clay Bailey. I'm
18 Vice President and Treasurer of CenturyTel.

19 MS. YOUNG: Good morning. Barbara Young,
20 I'm the state executive for Embarq for the states of
21 Oregon and Washington.

22 MS. JOHNSON: Good morning. I'm Stefanie
23 Johnson. I'm a regulatory analyst with Public
24 Counsel.

25 MR. WEINMAN: Good morning. I'm Bill

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1 Weinman. I'm Assistant Director of
2 Telecommunications for the Staff.

3 JUDGE MOSS: And previously, I have
4 confirmed, I believe, that Dr. Roycroft, you are on
5 the conference bridge line? Are you still with us,
6 Dr. Roycroft?

7 DR. ROYCROFT: Yes, I am.

8 JUDGE MOSS: Okay, very good. And Mr. Gast,
9 I believe, was going to be on the bridge line this
10 morning. Are you there?

11 MR. GAST: Yes, sir.

12 JUDGE MOSS: All right. And Ms. Erdahl?
13 Ah, you're in the audience, I see. All right. I
14 apologize. I don't have my glasses on. I can't see
15 beyond the first row.

16 All right. I think that in the event that
17 the Commissioners have questions the panelists can't
18 answer, then we'll call on our other witnesses as
19 necessary, which is why I wanted to confirm their
20 presence. If that occurs, I will pause to swear you
21 at that time. Otherwise, we've stipulated your
22 materials into the record and won't need to have to
23 take that step.

24 All right. So Mr. Best, would you like to
25 proceed?

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1 MR. BEST: Thank you, Your Honor. Thank
2 you, Chair Goltz and Commissioner Oshie. We're here
3 today and we're very happy to be here today to deal
4 with the settlement in the merger case between
5 CenturyTel and Embarq.

6 As you know, we filed an application back in
7 November of 2008 seeking to merge the two entities,
8 because we believe it creates a stronger, more viable
9 business, and we think it brings benefits for
10 Washington consumers and the companies themselves.

11 I don't want to go into a lot of detail and
12 steal the thunder from the witnesses, but during the
13 process, some issues were raised by other parties
14 about financial issues and concerns about the impact
15 on customers, and we're happy to be here today to
16 tell you that we have reached agreement with the
17 other parties in the case, including Public Counsel
18 and Staff, and we think we have a very balanced
19 agreement.

20 It's an agreement that the Company believes
21 that it can operate under and achieve the synergies
22 and benefits for customers that it envisioned, and it
23 also protects consumers should any unusual events
24 occur, which we don't expect, but nonetheless, it
25 does provide those protections.

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1 It was a lot of hard work, and we'd like to
2 thank both Staff and Public Counsel for helping us
3 get to this point. For a while, it didn't look like
4 we might get there, but we're very pleased that we
5 did and we think that this settlement actually is a
6 very good thing for both the Company and consumers in
7 Washington State. Other than that, that's about all
8 I had.

9 JUDGE MOSS: Thank you, Mr. Best. I know
10 from experience that our court reporter is very
11 capable and can keep up with the rapid-fire speech,
12 but I will ask that everyone try to moderate the pace
13 of their speech. I struggle with this myself. But
14 if you can do that, it's helpful to not wear her out
15 by 10:00, so -- all right.

16 With that, we can turn to the bench for
17 questions of the panelists. Chairman Goltz, would
18 you care to proceed?

19 CHAIRMAN GOLTZ: Thank you. Again, thanks
20 to all of you for being here today. I think what we
21 might want to do is maybe start with some general
22 questions and then proceed to the agreement on sort
23 of topic-by-topic matters, so we'll be going back and
24 forth.

25 MR. BEST: That's fine, Your Honor.

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1 Actually, I believe Mr. Bailey has a presentation
2 prepared, if you'd like to --

3 CHAIRMAN GOLTZ: Oh, that would be great.

4 MR. BEST: That might be better.

5 JUDGE MOSS: All right. I'm sorry, I didn't
6 understand that. Go ahead, Mr. Bailey.

7 MR. BAILEY: Thank you. Once again, my name
8 is Clay Bailey. I'm Vice President and Treasurer of
9 CenturyTel. I'm very appreciative of the opportunity
10 to be here and address you all directly concerning
11 the CenturyTel-Embarq merger.

12 We're obviously very excited about the
13 merger. We think it brings many benefits to all
14 stakeholders involved, including the ratepayers in
15 the state of Washington, as well as our employees and
16 our stockholders.

17 We feel that this transaction obviously does
18 no harm to the ratepayers in the state of Washington,
19 but actually benefits the ratepayers in the state of
20 Washington for many reasons, and those reasons I'd
21 like to briefly address with you all today.

22 First, from a financial standpoint, this
23 transaction gives the Washington ILECs ties to a
24 parent who is stronger in terms of financial
25 strength, in terms of access to capital. This

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1 transaction is a stock, an all-stock transaction, and
2 that's very important, because also what that means
3 is there's no incremental debt added to the balance
4 sheet of these companies as a result of these
5 transactions.

6 So to the extent that we're able to realize
7 synergies or efficiencies in this transaction, those
8 efficiencies do not go to service new incremental
9 debt. It actually goes to strengthen the balance
10 sheet of the companies. When you look at the
11 financial aspects of the transaction, when we
12 announced in -- I think it was October the 27th of
13 2008, at that point in time, we were expecting the
14 combined companies to have a debt-to-EBITDA ratio,
15 which is basically the debt as compared to the cash
16 flow of the companies, of 2.3 times, and after
17 synergies, it was 2.1 times. So obviously the lower
18 the number, the better.

19 And these two companies, CenturyTel and
20 Embarq, are two of the strongest companies in our
21 industry as far as all of our peers are concerned.
22 We're both investment grade rated, and that's very
23 important. And I think the importance of that has
24 been highlighted of late as we've seen the credit
25 markets freeze up on us. You know, companies that

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1 were non-investment grade back in the last half of
2 2008 really had difficulty accessing capital.

3 So it's very important that these companies
4 are investment grade rated. And you know, during the
5 boom time of the last several years, there's been
6 many companies who have levered up their balance
7 sheet to do various initiatives that they felt were
8 important at that time. CenturyTel and Embarq chose
9 not to do that because we believe that a conservative
10 balance sheet is definitely the way to go because it
11 allows us to invest in new technologies. For
12 example, had CenturyTel not been investment grade, we
13 may not have been able to purchase the 700 megahertz
14 spectrum that we purchased a couple years ago.

15 So there's many advantages to being
16 investment grade, and we still feel strongly about
17 that. We've communicated that to the street, to Wall
18 Street, and to all of our investors. And this
19 transaction preserves those investment grade ratings.

20 And I think we actually filed the ratings
21 opinions of the three major rating agencies with the
22 Commission a couple weeks ago. And basically, the
23 three major agencies issued a report subsequent to
24 the announcement of the transaction reaffirming the
25 investment grade ratings of the companies, and then

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1 subsequent to that we actually had an additional two
2 of the three rating agencies actually issue reports
3 in 2009 that further affirmed the ratings of the
4 Company.

5 So the rating agencies think that this
6 transaction is a good transaction in terms of credit
7 quality. And also, even the banks that participate
8 in Embarq's credit facility -- Embarq currently has a
9 revolving credit facility that they use from time to
10 time for operating needs, and as a result of the
11 merger, the change of control provisions in the
12 credit facility were triggered, and that allowed the
13 banks to actually walk away from the credit of the
14 combined company once the merger was closed, but we
15 went out, reached out to banks and actually received
16 consent from 100 percent of those banks that they
17 would in fact remain in the credit of the combined
18 company.

19 So not only do you have the rating agencies
20 thinking it's a good bet, obviously the banks think
21 it's a good bet. Otherwise, they would not put their
22 capital at risk.

23 So when you look at it from a financial
24 perspective, there's no new debt, there's significant
25 synergies that I'll get into a little bit later. We

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1 feel like this is a very enhancing transaction from a
2 financial standpoint. And obviously that's even more
3 important today as we are in obviously volatile
4 credit conditions in the credit marketplace.

5 And when you look at it from a financial
6 aspect, that's just, in my mind, one important aspect
7 of this transaction, because there's also other
8 important aspects that benefit the customer in the
9 state of Washington.

10 For example, as a result of the transaction,
11 we are able to pick and choose the best systems and
12 practices of both companies. A great example of that
13 is the CenturyTel customer care and billing system
14 that we refer to as Ensemble. That system is a very
15 robust system that CenturyTel developed, and I think
16 we completed development of that system in 2004.

17 We spent some \$250 million on that system,
18 and it's really a state-of-the-art system, because
19 basically what it does is it has one database for all
20 the customer information. And that's very, very
21 important from a back office perspective, because
22 when a customer calls in to our customer service
23 center, a customer service rep has all of the data
24 for that particular customer at their fingertips. So
25 it has all of the services available to that

0045

1 particular customer. It also has any promotional
2 offers that may be available to that particular
3 customer. And with all of it in one system, it
4 obviously is less prone to error on the customer
5 service representative's behalf.

6 If you contrast that to where Embarq is
7 today with their billing systems, you know, whereas
8 Century can bill local, long distance and Internet
9 all from the same billing system, Embarq actually has
10 separate systems to bill each one of those services,
11 so the more systems that you're swiveling between if
12 you're a customer service rep, the more apt you are
13 to make an error.

14 And furthermore, the CenturyTel system is a
15 system that is a plain text driven system, which is
16 very important, in sharp contrast to what Embarq has
17 today, which is basically a code system. And what
18 that means is if a customer service rep is trying to
19 build a bundle while the customer is on the phone and
20 say they want to add voice mail to that bundle, they
21 go grab voice mail as plain text, whereas the
22 customer service rep for Embarq would actually have
23 to have a code memorized in order to add voice mail
24 to that bundle.

25 So that's very important, because like I

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1 said, it prevents billing errors when the customer
2 receives their first bill, which in fact will
3 decrease the volume of calls back into the customer
4 service center after the customer receives their
5 first bill.

6 So it's a very important back office
7 function that we feel like that we have a very robust
8 system. And you know, the question always comes up,
9 Well, is the system scalable? Can you add Embarq's
10 six, you know, plus million customers to this system?
11 And the answer is absolutely. This system is run off
12 an Amdocs engine platform, which is the same platform
13 that is used by AT&T, and I think they, if I recall
14 correctly, have over 40 million customers on that
15 system and I think T-Mobile and Sprint use the same
16 engines for their billing platform. So it's a very
17 scalable system, and we're, you know, happy to be
18 able to convert the Embarq customers over to that
19 system.

20 Now, in contrast, when you look at the
21 wholesale systems of the combined companies, Embarq
22 has the more advanced system, because they have a
23 system that they refer to as EASE, which is a system
24 that is an automated system that allows the CLECs to
25 automatically interconnect into Embarq, whereas

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1 CenturyTel's system is, even though it has electronic
2 interface, it's more manual on the back end, so it's
3 more -- you know, any time that something's manual,
4 it's obviously more prone to error.

5 So we're happy to be able to convert over
6 time these CenturyTel systems -- or the CenturyTel
7 CLECs over to the Embarq EASE system. So that's the
8 great thing about this acquisition, is that we can
9 pick and choose the best of class in terms of
10 systems.

11 And the other great thing, at least in my
12 mind, is the fact that since we're purchasing or
13 merging with Embarq in its entirety, that all of the
14 systems that are in place with Embarq today will
15 remain in place once the acquisition is complete.
16 All of the employees that have the knowledge of those
17 systems will come over with the acquisition, so we
18 can convert those systems as we determine feasible in
19 terms of timing.

20 So you know, versus an asset purchase, where
21 you extract assets out of another company; you're
22 required to be able to cut over all the systems on
23 day one. And that's inherently more risky of a
24 transaction, because we've done those in the past and
25 done them very well, but they are riskier than what

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1 we're doing here today.

2 So the fact that we're purchasing all the
3 operations and the employees and expertise of Embarq
4 is very important in this transaction.

5 So from a system perspective, we really have
6 some good things in store for our customers. When
7 you look at this transaction from a synergy
8 perspective, we've communicated that we'll generate
9 approximately \$400 million worth of synergies in this
10 transaction.

11 And you know, the first question that I
12 would think of, well, how does that relate in terms
13 of -- is that a high number, a low number, or is that
14 a reasonable number? And I would say it's a very
15 reasonable number. When you look at past precedence
16 transactions over the last -- I think it's two and a
17 half to three years, we compared very favorably.

18 So for example, the synergies that we are
19 hoping to get from the Embarq transaction is about 10
20 percent of the operating expenses of the -- of Embarq
21 and about 12 percent of their EBITDA.

22 When you look at that compared to what the
23 precedent transactions are, the mean for those
24 transactions is 19 percent of operating expenses and
25 26 percent of EBITDA.

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1 So our numbers are a lot lower than their
2 numbers, so that means that we're being more
3 conservative in the way that we approach the
4 synergies.

5 And to the extent that you're able to
6 generate even a dollar's worth of synergies out of
7 this transaction, it's beneficial because we're not
8 adding any new debt as a result of the transaction.
9 So like I said earlier, any synergy that we can
10 generate is a benefit to the company, because it does
11 not go to service new debt. And that's very
12 important.

13 CHAIRMAN GOLTZ: Can just I ask you, \$400
14 million is an annual number; is that correct?

15 MR. BAILEY: That's correct. And the \$400
16 million will be recognized over time as we convert
17 the systems from either Embarq to CenturyTel or vice
18 versa.

19 A good example of that is the I.T. area. We
20 expect to, you know, derive significant synergies
21 from the I.T. area, and that gets back to the
22 description of the Ensemble billing system that I
23 talked about earlier. You know, Embarq has multiple
24 applications, has multiple systems, and if we convert
25 all of those systems down to one Ensemble system,

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1 then you don't need the hardware to support those old
2 systems, you don't need the software to support those
3 old systems, and you obviously don't need the people
4 to support those old systems. So you generate
5 synergies by virtue of going to a more efficient
6 platform.

7 And even from a customer service rep
8 standpoint, you know, we're able to handle the
9 customer call in a more timely fashion, because
10 you're only dealing with one system.

11 So you know, you can get the customer in and
12 out of the call center on a quicker basis. You know,
13 there's other areas of synergies that we expect to
14 realize. For example, human resources, H.R. We
15 don't need two H.R. departments in a combined
16 company, we don't need two treasurers. So you know,
17 at the close -- which is my position, or CFOs. So
18 you can go down the line, and we can only hope for
19 the best there. So -- but there's many areas.

20 So I've kind of focused a little bit up to
21 this point with the synergies as it relates to the
22 employee synergies and the I.T., but there's also
23 network synergies that are significant in this
24 transaction.

25 For example, the SS7 networks that we both

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1 have today, Embarq has a nationwide database for
2 C-name and LNP, whereas CenturyTel outsources to a
3 third party. So we'll be able to bring those
4 services to Embarq's database.

5 And probably one of the more significant
6 areas, as it relates from a network standpoint, is
7 CenturyTel's -- what I call the lightcore fiber
8 backbone network that we have today. It's about a
9 17,000-mile long-haul fiber system that we purchased
10 back in 2003, actually, mostly out of bankruptcy from
11 another company, and that has been a phenomenal asset
12 for this company.

13 Basically, what it does, it allows us to
14 control our own costs from a network standpoint. So
15 we haul our own traffic over our own network versus
16 paying a third party. So that does two things for
17 us. It reduces our cost, and secondly, it improves
18 our quality of service.

19 And that's going to be significant, because
20 as a result of this transaction, we have said that
21 we're going to extend that lightcore network, that
22 fiber network into Washington, because we're going to
23 run it through Las Vegas, in Nevada, and pick up
24 those customers that were acquired from Embarq.
25 We're going to run it -- actually a northern leg

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1 that's going to go through Montana and come into
2 Washington, and that's going to be significant.

3 And an example of that is, for example, the
4 Internet traffic, when a customer gets on the
5 Internet, the providing company actually has to
6 provide that traffic to an Internet drain to get it
7 to the server, wherever it's going. CenturyTel is
8 able to aggregate Internet traffic.

9 So if we want to aggregate traffic from
10 Oregon and Washington and even Colorado, if it's
11 cheaper for us to drop that traffic off even in
12 Florida, we're able to haul that traffic to Florida
13 and drop it off at Internet drain traffic there.
14 Versus if you don't have that something, what Embarq
15 would have to do today is to hand that traffic off in
16 Washington and be subject to whatever those rates are
17 at that point. So we can kind of shop for lower
18 rates in terms of dropping that traffic off. So
19 that's one advantage.

20 Another advantage is, for example, is LD,
21 long distance traffic. We're able to take the
22 traffic on our lightcore network and switch it
23 wherever the switch is located and then take it
24 closer to the point of termination. And obviously
25 that saves us cost. And once again, it's the quality

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1 of service issue for us.

2 You know, the lightcore network also allows
3 us to offer advanced services. For example, in
4 Columbia, Missouri, we have a head end where we offer
5 IPTV service, which is basically video over copper.
6 And that service is obviously a robust service that
7 we provide not only in Columbia, but also in La
8 Crosse, Wisconsin. So what we're able to do is, we
9 have a head end in Columbia, Missouri, and then we're
10 able to haul the video content up to La Crosse,
11 Wisconsin, and provide the content to those IPTV
12 customers there.

13 So with the expansion of the lightcore
14 network, you know, if and when we determine that some
15 of the markets in Washington are feasible for IPTV,
16 we will be able to transport the video content from
17 wherever our head end is over the lightcore network,
18 and it will make it more efficient and it will
19 basically improve the business case so we can, you
20 know, offer the service here in Washington.

21 And basically, you know, the lightcore
22 network is very efficient. It does other things,
23 too, that I won't get into, but centralized
24 applications. So for example, unified messaging. If
25 we wanted to put voice mail into the system, we can

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1 put it in in a central location, pipe it out over the
2 lightcore network, as opposed to putting it in each
3 individual island or each individual chain, so it's a
4 cost savings there. So it's very significant.

5 And you know, that lightcore network, with
6 the acquisition and with the expansion to Washington,
7 is definitely going to benefit the ratepayers in the
8 state of Washington, because like the Internet drain
9 traffic, the opportunity for IPTV in the marketplace
10 here in Washington. So you know, we're very excited
11 about that.

12 And I guess the last thing I wanted to
13 briefly touch on with you all is the stipulation that
14 we reached with Staff and consumer counsel. And
15 basically, you know, we feel like this transaction is
16 in the public interest, but we wanted to make sure
17 that we addressed all of the concerns of the parties.
18 And we feel like we've done that. And very
19 appreciative of working, you know, with the Staff and
20 the Public Counsel.

21 But basically what that stipulation does is
22 -- it does several things. First of all, it
23 maintains the conditions that Sprint agreed -- or
24 that Embarq agreed to when they spun from Sprint back
25 in 2006.

0055

1 Secondly, it allows for dividend
2 restrictions from the Washington subsidiaries up to
3 the parent. If CenturyTel's common equity, market
4 equity falls below 50 percent of the net book value
5 of the company, we will not pay dividends.

6 Thirdly, we've agreed not to pledge the
7 assets of the Washington ILECs without Commission
8 approval.

9 Fourthly, we have agreed that we would not
10 ask for a higher cost of capital in a post-merger
11 situation than what we would have been entitled to in
12 a pre-merger situation.

13 Next, it provides for service credits to the
14 extent that we miss installation or repair service
15 times for a period of 12 months after we convert the
16 Washington customers to the new billing system.

17 It also requires us to file an alternative
18 form of regulation within five years after we
19 consummate the transaction.

20 And furthermore, it says that we will freeze
21 our local rates and not ask for an increase in those
22 local rates or stand-alone residential rates for a
23 period of one year after the acquisition.

24 We've also agreed not to request recovery of
25 any merger-related cost and/or branding cost as a

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1 result of the transaction.

2 And lastly, we've agreed to provide DSL
3 service to an additional 2,200 customers in the state
4 of Washington. And just as a point there for the
5 Commissioners to note, you know, CenturyTel is very
6 focused on broadband deployment. I mean, when you
7 look at our operations, we have broadband capability
8 across CenturyTel's footprint of 89 percent of our
9 customers. And that number is, at least in my mind,
10 is impressive, but it's even more impressive when you
11 think about the fact that we only have 14 customers
12 per square mile across our company footprint.

13 So even though we serve predominantly rural
14 areas, we've been very aggressive in putting forth
15 broadband deployment in our markets. And you know,
16 this is a business, and we see our future in
17 broadband deployment. So even though sometimes the
18 business case may not make sense, we pushed the
19 pencil a little bit to get it there and to be a
20 little more aggressive than other companies have in
21 deploying DSL.

22 Now, there are still some challenges,
23 obviously, with the remaining 11 percent, but we have
24 done everything, at least in our minds, reasonable --
25 you know, from a prudent business standpoint to

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1 deploy DSL. So you know, the 2,200 customers is --
2 definitely we see as a benefit in many ways.

3 So you know, once again, as far as the
4 stipulation goes with the Staff and the Public
5 Counsel, we wholeheartedly support it, I support it,
6 along with the narrative that was mentioned, and
7 would urge the Commission to adopt the stipulation.

8 And once again, you know, we're very excited
9 about the transaction. I'm thankful to be here to be
10 able to address you all directly and would be happy
11 to answer any questions that you all may have.

12 JUDGE MOSS: Thank you, Mr. Bailey.
13 Anything else from the panel before we turn to the
14 Commissioners? Ms. Johnson.

15 MS. JOHNSON: I have a short prepared
16 statement.

17 JUDGE MOSS: Go ahead.

18 MS. JOHNSON: Great. Public Counsel
19 believes that, taken together, the conditions of the
20 settlement agreement provide --

21 JUDGE MOSS: Please slow down a little bit.

22 MS. JOHNSON: Oh, I'm sorry. Provide a
23 reasonable resolution of the issue areas raised in
24 Dr. Roycroft's direct testimony. Several noteworthy
25 components include, but are not limited to the

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1 following:

2 The settlement agreement preserves the
3 spirit of the spinoff settlement tailoring the
4 financial and service quality conditions to the new
5 merged company. It requires customer notice in case
6 of a future name change of the merged company,
7 specific notice regarding the Lifeline program
8 following a name change, as well as notice of any
9 name changes in long distance providers as a result
10 of the merger.

11 The agreement prevents the recovery of
12 merger-related cost in rates. It provides broadband
13 service to a portion of residential lines that are
14 currently not DSL-enabled, and finally the agreement
15 provides benefits associated with synergy sharing in
16 the form of a conditioned one-year minimum stayout
17 for request to raise residential rates and permits
18 any party to address merger synergies in future rate
19 or AFOR proceedings.

20 This set of merger conditions adequately
21 addresses the risks and potential harms that Public
22 Counsel believes could otherwise result from the
23 merger. Public Counsel therefore recommends that the
24 Commission approve the agreement as submitted as
25 being in the public interest.

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1 JUDGE MOSS: Thank you, Ms. Johnson.

2 Anything else?

3 MS. JOHNSON: No.

4 JUDGE MOSS: Mr. Weinman is shaking his head
5 in the negative.

6 MR. WEINMAN: I think everybody said in
7 previous statements --

8 JUDGE MOSS: Pretty much a rehash of the
9 rebuttal testimony, anyway. My compliments to Mr.
10 Bailey for such an organized presentation in that
11 regard.

12 All right. With that, then, I think we are
13 ready for our questions from the bench.

14

15 E X A M I N A T I O N

16 BY CHAIRMAN GOLTZ:

17 CHAIRMAN GOLTZ: Thank you, Judge Moss. And
18 thank you, Mr. Bailey. I think what we'd like to do
19 is just start off with some general questions and we
20 can kind of go through the agreement terms subject
21 area by subject area.

22 Just so I make sure I have the numbers
23 right, you stated that Embarq has six million
24 customers and CenturyTel has about two million, a
25 little bit more?

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1 MR. BAILEY: That's correct.

2 CHAIRMAN GOLTZ: And that's nationwide. And
3 what about state of Washington?

4 MR. BAILEY: State of Washington, CenturyTel
5 has approximately 140,000 and Embarq has around
6 70,000.

7 CHAIRMAN GOLTZ: And can you just give us an
8 update on -- I know you've sought approval of this
9 transaction in a number of states. Could you give us
10 a status report of how many states are remaining?

11 MR. BAILEY: Sure. There's three states
12 remaining, plus the FCC. We have a statutory
13 deadline in the state of Virginia that expires
14 tomorrow, so we expect approval actually tomorrow
15 from Virginia.

16 From Pennsylvania, we actually have a
17 hearing on the 28th, and they -- the Commission and
18 the Commission Staff has promised action on the 28th
19 as it relates to the transaction.

20 And from the FCC standpoint, there's
21 actually a 180-day time clock that expires on June
22 the 7th. And that -- you know, we've been in
23 constant negotiations with the FCC Commissioners and
24 Staff and trying to expedite that and hopefully have
25 that by month end, as well.

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1 CHAIRMAN GOLTZ: Do you expect any
2 conditions on the merger out of the FCC that you
3 don't have in the stipulation here?

4 MR. BAILEY: Yes, sir. They're still
5 working on some of those, but there's conditions and
6 it's mainly around the CLEC area and interconnection
7 area, basically that would, you know, not result in
8 degradation of service as far as Embarq is concerned.

9 It would also require us to convert to the
10 system that Embarq uses for interconnection. And
11 they want to make sure, too, that we have the staff
12 to handle the manual process on the CenturyTel side
13 until we convert to the Embarq system. And we've
14 already, you know, upgraded our staff in those areas
15 just to make sure everybody's comfortable. And also
16 there potentially could be some provisions around,
17 you know, extending current agreements.

18 CHAIRMAN GOLTZ: I noticed also in the
19 Oregon order or settlement that there was a -- I
20 think they referred to it as a most favored state
21 situation. Is that common in some of the other
22 settlements that you've had around the country?

23 MR. BAILEY: No, sir. The only other most
24 favored nation clause that I'm aware of is in
25 Louisiana. And the one that was passed in Oregon

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1 only applied to orders that were passed after they
2 adopted their order. And you know, it was only to
3 the extent that they missed something. So in other
4 words, if it furthered the public interest argument
5 in Oregon, then they would adopt it, and it only
6 applied to orders passed after they adopted their
7 order.

8 CHAIRMAN GOLTZ: And you had no objection to
9 that provision in Oregon?

10 MR. BAILEY: Well, you know, we felt like
11 the -- you know, the Staff had done a good job of
12 assessing all of the -- all of the issues with the
13 merger. We didn't necessarily, you know, feel like
14 it was necessary, but, you know, we did ultimately
15 agree to it in order to get the -- get the order
16 approved by the Commission.

17 MR. BEST: Your Honor and Chairman Goltz,
18 this is Chuck Best for CenturyTel. Mr. Bailey was
19 not actually part of that docket. I was the attorney
20 representing the Company. We actually did file in
21 opposition to that specific -- the Commission had
22 alerted us ahead of time that they might put that in
23 and wanted our views on it. And we did oppose it,
24 first of all, because we didn't think it was
25 necessary, but there were a number of other issues

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1 that it raised as well. So Mr. Bailey doesn't know
2 this, so I didn't want him to have to unfairly answer
3 this.

4 CHAIRMAN GOLTZ: Okay. I had another one.
5 I'll think about it. Maybe I'll defer to my
6 colleague for the time being.

7 COMMISSIONER OSHIE: Thank you, Mr.
8 Chairman.

9

10 E X A M I N A T I O N

11 BY COMMISSIONER OSHIE:

12 COMMISSIONER OSHIE: Mr. Bailey, I want to
13 follow up on a question asked by Chairman Goltz, and
14 that's with regard to the CLEC interconnection
15 requirements that you believe the FCC would impose in
16 the -- I guess the migration of the Embarq's access,
17 CLEC access system to CenturyTel.

18 And if that were to be true, if that was
19 what the FCC required as a result of their
20 deliberations in their final order, is it your
21 understanding that those conditions would be imposed
22 immediately, or would there be a time or grace
23 period, if you will, in which the migration would
24 then be accomplished?

25 MR. BAILEY: Yeah, it's my understanding,

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1 and just so you all know, I'm not directly involved
2 in those negotiations, but it's my understanding that
3 we would be required to convert to -- for the
4 CenturyTel CLECs, or the CLECs interconnecting
5 directly with CenturyTel would be required to convert
6 to Embarq's EASE system within 15 months after the
7 close of the transaction. At least that's my latest
8 understanding where those discussions are at.

9 COMMISSIONER OSHIE: Okay. Thank you.

10

11 E X A M I N A T I O N

12 BY CHAIRMAN GOLTZ:

13 CHAIRMAN GOLTZ: I remember my other
14 question, and that is, in this state you've made a --
15 I guess it was termed a broadband commitment to
16 extend service to 2,200 additional households. And I
17 guess I have two questions in that regard. One is
18 what is the -- are there similar commitments in other
19 states for extending broadband service, and sort of
20 what's the magnitude of those?

21 And second, you testified or you stated that
22 you have 14 customers per square mile. And my
23 question is in that, is that Washington or is that
24 system-wide, and if it's system-wide, is it different
25 in Washington?

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1 MR. BAILEY: Regarding the first question in
2 terms of the broadband commitments, we don't have any
3 other commitments to deploy broadband in any of the
4 other states as a result of the transaction.

5 And you know, I mentioned that we had 89
6 percent availability kind of across our footprint,
7 and I think in the state of Washington we actually
8 have -- it's either 92 or 93 percent DSL
9 availability, at least on CenturyTel's side.

10 And as far as the customers per square mile,
11 the 14 customers per square mile is a CenturyTel-wide
12 number. And I apologize, I don't know what the
13 Washington number is. I can get that for you all.

14 CHAIRMAN GOLTZ: I would like that,
15 actually, if that's possible to get.

16 JUDGE MOSS: We'll make that Bench Request
17 6. It will be Exhibit B-6. It's actually going to
18 be Bench Request 2, but it will be Exhibit B-6.

19 MR. BEST: Your Honor, Ms. Marie Taylor is
20 here from CenturyTel. I believe she does know the
21 answer to that. I don't know if she needs to be
22 sworn, but I think we actually have the information.

23 JUDGE MOSS: If we have a fact in the
24 record, it will have to be sworn. So Ms. Taylor, are
25 you prepared to be sworn and give the answer, or do

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1 we need to get a bench request response?

2 MS. TAYLOR: Let me pull up my spreadsheet,
3 and then I can be sworn.

4 MR. GAST: Mark Gast has the answer.

5 JUDGE MOSS: Mr. Gast has the answer. Mr.
6 Gast, are you there?

7 MR. GAST: Yes, I am.

8 JUDGE MOSS: All right. Mr. Gast, although
9 we cannot have the solemnity of the oath that we
10 would have were you here in the room, I will
11 nevertheless swear you. I'll ask that you please
12 raise your right hand.

13 Whereupon,

14 MARK A. GAST,
15 having been first duly sworn by Judge Moss, was
16 called as a witness herein and was examined and
17 testified as follows:

18 JUDGE MOSS: Thank you. And you can now
19 give us the answer.

20 MR. GAST: Okay. For CenturyTel, the
21 density -- access line density per square mile is
22 9.99.

23 CHAIRMAN GOLTZ: And excuse me. That's
24 state of Washington?

25 MR. GAST: That's the state of Washington;

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1 that's correct. And for Embarq in the state of
2 Washington, it's 10.85.

3 Also, with respect to a previous question,
4 we just got notified today that the Virginia order
5 has also been issued approving the transaction.

6 JUDGE MOSS: Thank you. In this same line,
7 just to complete the picture, perhaps, Mr. Gast, do
8 you know what the DSL penetration is for Embarq in
9 Washington?

10 MR. GAST: Yes, it is -- currently it's 78
11 percent. Adding the 2,200 access line broadband
12 commitment will increase that to 83 percent.

13 JUDGE MOSS: Thank you.

14 CHAIRMAN GOLTZ: So maybe while Mr. Gast --
15 if we can just jump ahead a little bit regarding that
16 2,200 commitment. You obviously have that in mind as
17 to where that is; is that correct?

18 MR. GAST: Yes, we do.

19 CHAIRMAN GOLTZ: And that's all in Embarq's
20 existing territory?

21 MR. GAST: Yes, it is.

22 CHAIRMAN GOLTZ: And could you describe just
23 technically what that entails?

24 MR. GAST: I can try. I'm not an -- I don't
25 have a lot of expertise in engineering here, but my

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1 understanding is the provisioning of the additional
2 2,200 lines -- additional network capability, perhaps
3 digital loop carrier systems need to be installed
4 and/or transport facilities need to be installed to
5 offer that capability.

6 Essentially the loops are at a distance
7 greater from our central office that we cannot add
8 that capability today without adding increased
9 network functionality and increased network costs.

10 CHAIRMAN GOLTZ: And do you have a budget
11 for that? Do you know how much that would -- adding
12 2,200 --

13 MR. GAST: I don't know that answer. I
14 don't know what that is worth.

15 CHAIRMAN GOLTZ: And do you know what,
16 historically, over the past several years, how many
17 additions to broadband there have been in the Embarq
18 territory?

19 MR. GAST: I'm sorry, the number of access
20 lines?

21 CHAIRMAN GOLTZ: What I'm wondering, is this
22 sort of a new jump or is this a continuation of a
23 preexisting trend?

24 MR. GAST: I would say this is a new jump.
25 This is something that we would not do, because

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1 economically, it really isn't economically feasible
2 to do this or make this investment.

3 CHAIRMAN GOLTZ: Okay. So then,
4 Commissioner Oshie, we'll just go through the merger
5 agreement sort of section-by-section? Does that
6 work?

7 COMMISSIONER OSHIE: That would be fine.

8 CHAIRMAN GOLTZ: So turning to the
9 settlement agreement on page three, the agreed
10 conditions, the first section is sort of -- is the
11 continuation of the earlier separation conditions.

12 There was an agreement regarding the
13 separations orders service guarantee that would
14 extend that to both companies after a period of time.
15 And I was just wondering what went into that thought,
16 as opposed to just starting it right away?

17 MS. YOUNG: Barb Young, with Embarq. The
18 service guarantee provision for Embarq will continue.
19 That was a condition of the spinoff from Sprint. So
20 we are already doing that and we'll continue to do
21 that.

22 The new obligation for CenturyTel is
23 dependent upon a projected date for the billing
24 change. And I think the thought was there that if
25 there's an issue, which of course we do not expect,

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1 with the billing conversion, that could drive
2 increased appointment misses or whatever. So that
3 was the reason for it starting from that particular
4 date, at least that's my understanding.

5 CHAIRMAN GOLTZ: So the idea is that they're
6 going to extend these billing systems or merge them
7 or actually adopt one, as opposed to the other, that
8 there might be some one-time glitches?

9 MS. YOUNG: Because they're tied in with
10 dispatching, it's all tied together, yes, there was
11 some concern on behalf of Public Counsel that it
12 could drive some misses and so therefore did not want
13 that particular commitment to begin until that
14 transition had started, versus starting, like, at the
15 close of merger.

16 CHAIRMAN GOLTZ: And that was acceptable to
17 Public Counsel?

18 MS. JOHNSON: Yes, it was.

19

20 E X A M I N A T I O N

21 BY COMMISSIONER OSHIE:

22 COMMISSIONER OSHIE: Maybe I can follow up
23 on that, Ms. Young. So this commitment that's made
24 with regard to the extension of Embarq's service
25 guarantees, I can understand the -- well, maybe you

0071

1 can explain when you expect to have the conversion?
2 It was already said in the record, but I'm trying to
3 get my arms around the dates here.

4 MS. YOUNG: I believe, Commissioner Oshie,
5 that the obligation under the conditions was a
6 three-year obligation. And actually, it was
7 dependent upon us coming and actually asking to be
8 relieved of that particular condition, which may or
9 may not have happened. In any event, those will
10 continue until such time as the billing conversion
11 starts.

12 Now, I'm not aware -- Mr. Bailey can maybe
13 answer this -- when our tentative idea is on when the
14 billing conversion would start for Washington. But I
15 think the notion here is that once we have that date,
16 a fairly firm understanding of what that date is, we
17 will then put a tariff together to make the filing
18 for CenturyTel based upon that projected date of
19 billing conversion.

20 COMMISSIONER OSHIE: And what if -- if
21 there's a glitch, I can understand the concern that
22 if there's a problem with the system, that you do not
23 want to be penalized for the conversion. If there's
24 a penalty, its importance, then, would be to drive
25 better performance of an operating system.

0072

1 So I guess my -- what happens if -- I
2 believe the service guarantees expire on January --
3 in January 2010. What if there's a problem with the
4 conversion and that doesn't happen until then? Have
5 the parties considered that particular outcome or the
6 risk of that?

7 MS. YOUNG: Commissioner Oshie, my
8 understanding is that the obligation for Embarq under
9 those service guarantees don't automatically expire.
10 We would be required to come in and withdraw that
11 tariff. Certainly, I would suspect that if we tried
12 to do that and the billing conversion had not begun
13 yet for CenturyTel, that would not be approved, nor
14 would we come in and ask to have that withdrawn if
15 there's a gap between when those obligations might
16 cease for Embarq and when the billing transaction
17 might -- or billing change might happen with
18 CenturyTel. Does that make sense? I don't think --

19 COMMISSIONER OSHIE: No, no, it does make
20 sense. Thank you.

21 I'm going to ask the same -- well, maybe a
22 little slightly different question to Staff and
23 Public Counsel. What did you believe, as the
24 parties, that you were -- what were you getting out
25 of this provision?

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1 In other words, if they have the ability to
2 come in in 2010 and say, It's over, we want to
3 withdraw the service guarantees, and that's, you
4 know, not that far away, so what is it that you were
5 -- were you considering that these would extend for a
6 much longer period?

7 MR. WEINMAN: Bill Weinman, for Staff.

8 Actually, we did not -- at least from Staff's point
9 of view, we did not anticipate that it will extend.
10 I mean, obviously the Company, certainly Embarq is
11 going to have to come in and file for a withdrawal,
12 so we can handle the problem at that time. One thing
13 --

14 COMMISSIONER OSHIE: Excuse me, Mr. Weinman.
15 Did you say that you anticipated that it would
16 extend?

17 MR. WEINMAN: We did not.

18 COMMISSIONER OSHIE: Oh, you did not
19 anticipate that there would be an extension?

20 MR. WEINMAN: Correct. Other than the 12
21 months that is in the settlement agreement. Both of
22 these companies have very good service quality
23 records. Their incidents of missed appointments and
24 their trouble indexes are low. And they're exemplary
25 in the telecommunications field.

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1 The one thing that we, from Staff's point of
2 view, agreed with the Company is that if there's
3 going to be disruption, it will happen fairly quickly
4 once the system is converted. And so the choice was
5 at that time do we have the Company file a tariff
6 once they know the exact date that the cutover will
7 happen, which then means we either get into some less
8 than statutory notice or we're going to be having a
9 period of waiting while the system is converted.

10 And it is preferable to Staff to at least
11 have the budget date going on when the cutover is
12 going to occur and have those service quality
13 guarantees in place when that does happen. It's the
14 largest point of risk.

15 My experience from Pacific Telecom's side,
16 when CenturyTel acquired us, there was very little
17 disruption. Our customers didn't really even notice
18 that -- in Oregon, anyway, that there was anything
19 that changed. There were no really surprises that
20 came along. It was very smooth and handled very
21 well.

22 COMMISSIONER OSHIE: All right. Thank you,
23 Mr. Weinman. Ms. Young, do you have a comment on my
24 question?

25 MS. JOHNSON: Ms. Johnson?

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1 certainly were not worried about it. I mean, the
2 other thing that does happen with the companies is
3 they do give credits voluntarily. And so it's not
4 like they just stop tomorrow and no money ever gets
5 back to a customer that's had a problem with them.

6 COMMISSIONER OSHIE: Thank you, Mr. Weinman.

7

8 E X A M I N A T I O N

9 BY CHAIRMAN GOLTZ:

10 CHAIRMAN GOLTZ: Turning to the financial
11 conditions in Part E-2, so help me with the
12 limitation on payments of dividends. How will we
13 know -- how will that -- will there be a reporting
14 effort in that, so we can confirm where you are in
15 that?

16 MR. BAILEY: You know, Commissioner -- this
17 is Clay Bailey. I'm not aware of a reporting
18 requirement along those lines, but, you know, it's my
19 understanding that we're required to file some
20 reports, annual reports with the Commission on an
21 annual basis. But I guess the unfortunate thing here
22 is this more applies to at the parent company level,
23 but we wouldn't object to filing something with you
24 guys on an annual basis.

25 CHAIRMAN GOLTZ: I'm just wondering how we

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1 confirm that this commitment is actually being met?
2 And you're saying you wouldn't object to some sort of
3 provision that would allow us to get that
4 information?

5 MR. BAILEY: No, sir, we would not object.

6 CHAIRMAN GOLTZ: Also, I don't -- on
7 Paragraph 2-C, which is over the top of page 6, for
8 three years after the close of the merger, the merged
9 company ILECs will not advocate in any general rate
10 case for a higher cost of capital as compared to what
11 its cost of capital would have been absent the
12 merger.

13 How are you going to figure that one out?
14 How could you figure that one out? I mean, so in two
15 years after the close of the merger, you come in and
16 advocate in a general rate case for a certain cost of
17 capital of X. How are we going to know what that
18 cost of capital would have been but for the merger?

19 MR. BAILEY: Yes, sir, that one may be a
20 little bit difficult. There's going to be a lot of
21 subjective judgment involved in that, because
22 obviously the market conditions change over time.
23 And as time changes and the risk profile of the
24 companies change, the cost of equity changes.

25 So I guess what we would have to do is look

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1 at a comparable company, maybe at that point in time,
2 say if it's two or three years from now, and they had
3 a similar profile of what we had before the merger,
4 then we could look at their cost of capital.

5 CHAIRMAN GOLTZ: Or what you hypothetically
6 would have two years after the close of the merger.
7 I mean, you're comparing a hypothetical company.

8 And I gather that -- and we'll get into this
9 a little bit later when we talk about some sort of --
10 talk about earnings review, that your advocacy of a
11 cost of capital, that would be -- the burden would be
12 on you all to sort of demonstrate this hypothetical
13 cost of capital of an unmerged set of companies?

14 MR. BAILEY: That's my understanding.

15 CHAIRMAN GOLTZ: And what about for -- any
16 comments on that from Public Counsel or Staff on the
17 difficulties of figuring that one out?

18 MR. WEINMAN: Well, there certainly are
19 difficulties and you're going to have to probably do
20 look for surrogates. Part of the problem is, though,
21 and it exists with all telcos right now, is they're
22 moving in a direction towards more and more
23 non-regulated entities, like IPTV, Internet.

24 And so the problem is there for any telco
25 that's trying to look at a cost of capital and have

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1 the right amount of risk on the equity piece of the
2 regulated portion of that business.

3 So I mean, we say it's there and it is, but
4 the realities are the problem's there regardless,
5 even after the three years.

6 CHAIRMAN GOLTZ: I think I recall this being
7 in the Oregon order. Is this kind of typical in your
8 various orders around the country?

9 MR. BAILEY: To my knowledge, Oregon and
10 Washington are the only two states that have asked to
11 adopt this provision.

12 CHAIRMAN GOLTZ: We're the only ones that
13 can figure it out.

14 MR. WEINMAN: Actually, that provision is in
15 the spinoff order of Embarq, and so we carried it
16 forward.

17 CHAIRMAN GOLTZ: Okay. Do you have any
18 other questions?

19 COMMISSIONER OSHIE: Yes, I have a couple
20 questions. Thanks, Mr. Chairman.

21

22 E X A M I N A T I O N

23 BY COMMISSIONER OSHIE:

24 COMMISSIONER OSHIE: I want to talk about,
25 briefly, under your Section 2-A-1, which is an

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1 explanation of how you're going to determine whether
2 or not there will be I believe a dividend, why was
3 the -- I guess one of the effective comparables here
4 the value of -- market value of common equity based
5 on the stock price?

6 It seems unusual to me in that, you know, it
7 subjects the analysis to the vagaries of the market,
8 which may not at all reflect the financial health of
9 the company, either to the good or to the bad. It's
10 anticipating, I suppose, and putting your faith in
11 those people, whether they work for big institutions
12 or whether they're just sitting at home on Scott
13 Trade, make the right decisions with regard to the
14 company to drive the stock price up or down.

15 So it seems like an unusual way of framing
16 up how there would be a determination of whether
17 there would be a dividend that can be afforded the
18 parent. So maybe the parties can explain how they
19 reached this conclusion?

20 MR. BAILEY: I'll make an attempt. The
21 equity value of a company is, as you mentioned, can
22 be volatile at times, because obviously you have
23 people shorting your stock, you know, betting the
24 stock's going to go down, you have arbitrage players
25 out there. There's many reasons that can drive the

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1 stock price down, even though the fundamentals of the
2 company haven't changed.

3 But having said that, we built in such a
4 level that if the equity value falls below half of
5 the book value of the debt, basically what we're
6 doing here in my mind is using the equity value as a
7 proxy for the company's access to capital. Because
8 usually if you're having problems on the liquidity
9 side, then you're going to have problems on the
10 equity side, so -- and it's easier to gauge the stock
11 price than it is to measure what's, you know, more
12 readily available to measure the stock price than it
13 is what's going on on the liquidity side and the bond
14 markets and so forth and so on.

15 So in my mind, that's the reason we all
16 chose the common equity of the company.

17 COMMISSIONER OSHIE: Mr. Weinman.

18 MR. WEINMAN: Well, I think we chose the
19 market value approach because it gives us a certain
20 amount of certainty of what the market is doing and
21 thinking of the company.

22 If we looked at the book value of the
23 long-term debt and the net equity, those things --
24 those numbers really don't change very much unless
25 the company were to go out and issue a large amount

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1 of debt for some reason. And usually the market
2 value at least gives us a sense of what the
3 investment community is doing in judging CenturyTel's
4 ability to go forward and produce cash flow levels
5 that are significant and are not starting to drive
6 the company's share price down.

7 There are aberrations that will happen in
8 that scenario, obviously with the fall of the market
9 last year. And fourth quarter, I don't know where
10 that calculation would have put CenturyTel, but those
11 are things that I believe could be handled. The fact
12 that it only penalizes the company from -- to
13 limiting the dividend of 50 percent of the prior
14 year's net income, so it affects the local operating
15 company's equity level in that it retains more if the
16 parent is starting to produce some negative aspects.

17 The other side of the coin is is it doesn't
18 do anything in terms of cash distribution between the
19 local operating company and the parent. So the
20 company still has the ability to maintain their cash
21 flows and utilize cash in the most efficient method
22 as possible.

23 COMMISSIONER OSHIE: Mr. Weinman, how --
24 maybe you can explain Staff's vision, if you will, of
25 how it plans to enforce this provision? Will the

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1 Company be required to file quarterly reports of
2 debt?

3 I mean, I can see the average stock price
4 and, you know, the number of shares outstanding.
5 That's readily accessible on a daily basis, but -- so
6 explain, perhaps.

7 MR. WEINMAN: I think for us, what we need
8 to do amongst ourselves, in terms of Staff, is come
9 up with some level that we think is an appropriate
10 trigger to start talking with the Company if we're
11 not given quarterly reports, and we'll perform that
12 function.

13 And then we can talk with the Company and
14 fine-tune the numbers, but at least we'll have some
15 basic level of stating if the stock price hits a
16 certain level, we need to be concerned and start
17 talking with the Company about whether or not they're
18 meeting this commitment.

19 MR. BAILEY: And also, Commissioner, I may
20 add, if it's okay, that the Staff will be able to get
21 the debt numbers on a quarterly basis when we file
22 our 10-Q. Since we are a publicly-traded company,
23 the book value of the debt is in those numbers, and
24 then obviously the market value of the equity is
25 available on the Internet. So the information will

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1 be there. It will just be a process of how often do
2 you, you know, review the information.

3 COMMISSIONER OSHIE: All right. Thank you.

4 JUDGE MOSS: Maybe this would be a good time
5 for our morning recess? Why don't we do that. We'll
6 take a 15-minute break until 11:00.

7 (Recess taken from 10:45 to 11:03 a.m.)

8 JUDGE MOSS: Let's be back on the record.

9 Commissioner Oshie or Chairman Goltz, further
10 questions?

11

12 E X A M I N A T I O N

13 BY CHAIRMAN GOLTZ:

14 CHAIRMAN GOLTZ: I think I'm ready to move
15 on to Paragraph 4 on merger synergies. And this is
16 frankly where I had most of my questions. Actually,
17 I apologize for being a little bit late. I had just
18 looked up on Webster's online the definition of
19 synergy, and it notes something mutually
20 advantageous. So I assume that that's what this is
21 meant to be, that there would be something that
22 arises out of this merger that's going to be mutually
23 advantageous, and I'm assuming that means not just
24 between CenturyTel and Embarq, although that
25 certainly is the case, but also between the companies

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1 and the ratepayers.

2 So I gather is that the assumption that
3 you're all making as well?

4 JUDGE MOSS: We need verbal answers.

5 MS. JOHNSON: Oh, yes.

6 MR. WEINMAN: From the Staff, yes, that is
7 exactly what we envision.

8 CHAIRMAN GOLTZ: Is that with the companies,
9 as well?

10 MR. BAILEY: Yes.

11 CHAIRMAN GOLTZ: So my first question really
12 relates to just going down to Paragraph 4-A. And
13 maybe you just had to put this provision somewhere in
14 the agreement, but maybe you could explain what the
15 petition -- the commitment to petition for an AFOR,
16 how is that sort of a synergy? Why does that fall
17 into that category, as opposed to something
18 miscellaneous that you're going to be doing?

19 MR. WEINMAN: I'll take that one, because it
20 was one of Staff's requests. I think the thing from
21 our perspective is is this a synergy? It is a
22 synergy in that the telephone companies have got to
23 move away from regulation to the extent they can and
24 have a little more flexibility, which will behoove
25 both their customer base and the company itself, and

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1 start reacting to the market a bit.

2 And so by having at least these larger
3 companies into AFOR regulation, it will be an
4 advantage to customers who otherwise may be just
5 stuck with a tariff and the tariff never changes.
6 Obviously, with both these companies, they've been
7 out for a long time.

8 CHAIRMAN GOLTZ: When you say they've been
9 out, you mean --

10 MR. WEINMAN: They've not been before the
11 Commission for general rate cases for years, at least
12 that's my understanding. And so it will put a little
13 more focus into that direction.

14 CHAIRMAN GOLTZ: So this was a
15 Staff-initiated provision?

16 MR. WEINMAN: Yes.

17 CHAIRMAN GOLTZ: Okay. And is there any --
18 I'll first ask Staff and then the Company. I mean,
19 AFOR can mean a lot of different things. Do you have
20 anything specific in mind? And then, does the
21 Company have anything specific in mind?

22 MR. WEINMAN: I mean, I guess Staff doesn't
23 have a particular methodology for that alternative
24 form of regulation. Qwest has got one, so I assume
25 that's where we would start, looking at that model

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1 and see if it's working.

2 CHAIRMAN GOLTZ: Any comments from the
3 Companies?

4 MS. YOUNG: This is Barb Young. I would
5 agree with Staff on that. We would potentially start
6 with looking at the Qwest alternative form of
7 regulation as a starting point. And I think Staff is
8 correct that there are some benefits in that type of
9 regulation for customers. Initially you would think
10 that it gives the Company flexibility, but certainly
11 it does allow us to respond to the market quicker.

12 So therefore, where we have levels of
13 competition, we can turn out products and services at
14 a faster rate to meet that competition than we can
15 today with regard to having to file through the
16 tariff process.

17 So I think -- you know, I think there are
18 some benefits for customers. And I'm not an expert
19 on the Qwest AFOR, but I believe that there were some
20 commitments in that AFOR with regard to broadband, et
21 cetera. So whether or not that would be required of
22 us in an AFOR, I don't know. But it's not all --

23 CHAIRMAN GOLTZ: And one of the questions
24 that can come up in an AFOR proceeding is whether or
25 not there's an earnings review at the time of the

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1 initiation of the AFOR. And I gather that in
2 contemplating -- well, I'll ask you. Is it
3 contemplated that at the time of, if not before the
4 AFOR, there would be an earnings review?

5 MR. WEINMAN: I think that in our
6 discussions with the Company, both Staff and PC have
7 consistently said that if you're coming in for any
8 kind of a general rate increase, you will rely on the
9 conditions that are defined today, a full earnings
10 review, and the same things anticipated that -- that
11 in an AFOR, there will be some sort of an earnings
12 review if they don't come in before, and probably
13 even if they do come in before.

14 MS. JOHNSON: I was just going to add,
15 sorry, that this is -- if you look at Number 12, the
16 Commitment Number 12 is related in that it discusses
17 synergy benefits again and mentions the earnings,
18 that Staff and Public Counsel may seek an earnings
19 review related to an AFOR.

20 CHAIRMAN GOLTZ: So from at least Staff and
21 Public Counsel, and the Companies recognize that,
22 that at least at the time of the AFOR, there would be
23 an earnings review?

24 MS. JOHNSON: Yes, at the -- I mean, the
25 understanding is that it's going to be an AFOR filing

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1 and that, you know, depending on what is discovered
2 in the investigation.

3 CHAIRMAN GOLTZ: And this would not preclude
4 in any way, would it, an earnings review prior to the
5 time of the filing of the AFOR?

6 MS. JOHNSON: No.

7 CHAIRMAN GOLTZ: Is that the Companies'
8 understanding, as well?

9 MR. BAILEY: Yeah, we -- obviously, you
10 know, given the state of the industry that we're in,
11 we are in a very competitive marketplace. You know,
12 CenturyTel lost 6.4 percent of its access lines in
13 2008, and Embarq lost in excess of 9 percent. So
14 we're in a very competitive industry, and obviously
15 we are and have aggressively pursued alternative
16 regulation plans in many of the states where it's
17 been -- you know, where it's allowed us to do that.

18 And you know, obviously we're not excited
19 about an earnings investigation because of the
20 competitive nature of the business that we're in and,
21 secondly, you know, as there continues to be pressure
22 on the revenues, it's not that we're concerned about
23 it, it's just that it somewhat I guess distracts from
24 our ability to, you know, run the business to a
25 degree from a competitive standpoint.

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1 So it's a -- we're in that situation now in
2 the industry where, you know, you're going from a
3 monopolistic company to a competitive company, and
4 that transition is sometime a little bit difficult
5 because you are facing intense competition, but by
6 the same token, we are a carrier of last resort, so
7 there has to be regulation oversight, but it has to
8 be conducive to a competitive environment, and that's
9 what we would hope that the AFOR would give us.

10 Because, like was mentioned, you know, to
11 the extent that you file a tariff today and you have
12 to file that in advance of offering the service, then
13 it gives your competitors time to see what the new
14 pricing's going to be. So an AFOR program is
15 definitely something that we're interested in and,
16 you know, we look forward to working with the
17 Commission and the Staff to get that accomplished
18 within the time frame consider herein.

19 CHAIRMAN GOLTZ: So in listening to your
20 opening statement and reviewing the testimony in the
21 stipulation, it seems to me that the main synergy is
22 related to what you described as the \$400 million of
23 synergy savings?

24 MR. BAILEY: That's correct.

25 CHAIRMAN GOLTZ: And as I understand it,

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1 those savings, at least the portion of those that
2 would be attributable to the ratepayers in the state
3 of Washington, would be -- would be realized only
4 after there's some revisiting of the rates. That is
5 to say that the -- either an AFOR proceeding or some
6 other earnings review, that that would be the time
7 when all those decreased costs to the companies would
8 be accounted for in the rates?

9 MR. BAILEY: Well, actually, yeah. I mean,
10 that's definitely one point when it could be
11 accounted for in the rates. The second point is the
12 fact that it does make us a more financially viable
13 company, and we are under intense pressure, from a
14 revenue standpoint, because of the competitive nature
15 that we're in.

16 So in one sense we have our revenues under
17 pressure. These cost savings can actually prevent us
18 from coming in for a rate increase. So just to cover
19 the investment. So it's actually, you know, just so
20 we don't come -- just because we don't come in and
21 ask for or go through an earnings investigation and
22 implement a rate reduction doesn't mean that the
23 customers aren't receiving the benefit of the
24 synergies.

25 CHAIRMAN GOLTZ: Right. So basically what

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1 you're saying is, as a result of the merger and those
2 financial synergies, that it decreases the
3 probability that you otherwise would have come in for
4 a rate increase?

5 MR. BAILEY: That's right.

6 CHAIRMAN GOLTZ: Now, am I understanding
7 correctly that currently the companies have just
8 residential rates? It's not a uniform rate. So the
9 merged companies, even within your companies, there's
10 disparate rates depending on where you are?

11 MR. BAILEY: That's correct.

12 CHAIRMAN GOLTZ: And would you envision that
13 ultimately those rates would be levelized in some
14 way? Standardized, I should say.

15 MR. BAILEY: That's something we could
16 definitely look at. They will be standardized after
17 the acquisition in terms of bundled pricing. So to
18 the extent that we offer a regulated service with a
19 non-regulated service and offer that service for, you
20 know, \$40, those type pricing packages will be
21 available on a uniform basis throughout the state.

22 It's just the tariffed rate for like a
23 stand-alone basic R-1 service does remain different
24 throughout the exchanges.

25 CHAIRMAN GOLTZ: So the standard, if you say

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1 two customers in places now where they have different
2 R-1 rates, basically the incremental cost to get a
3 bundled rate would be different for the two?

4 MR. BAILEY: It will be different for the
5 two, but the customer won't necessarily know that.
6 So for example, we can, in a bundle, combine an
7 access line with long distance and say DSL,
8 broadband, and that rate will be the same regardless
9 -- that rate will be the same throughout the state of
10 Washington regardless of what that customer's
11 residential rate is in their tariff.

12 CHAIRMAN GOLTZ: And one of the synergies, I
13 guess, probably -- or the claimed synergies that
14 follow from what you said a few minutes earlier was
15 that the companies agree just to -- not to seek a
16 residential rate increase for one year?

17 MR. BAILEY: That's correct.

18 CHAIRMAN GOLTZ: And except if there's
19 exogenous events. Do you have any events in mind
20 that might fall within that exception?

21 MR. BAILEY: Yeah, the only -- I mean,
22 there's things, for example, significant access
23 reform at the federal level or significant action by
24 the FCC that could shift incremental cost over to the
25 state jurisdiction would be a good example, or you

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1 know, say the FCC decided to eliminate our federal
2 interstate access revenues, then we would consider
3 that an exogenous event.

4 CHAIRMAN GOLTZ: Let me ask one more thing,
5 see if my math is wrong in this. As I understand it,
6 so you take the \$400 million of company-wide savings,
7 the approximately eight million customers nationwide
8 of the two companies, and the approximately 200,000
9 customers within the state of Washington, I calculate
10 that as being about 1/40th of your customer base is
11 in the state of Washington.

12 And so if you do the math, it would seem
13 like the synergy savings would be about \$10 million
14 attributable to the state of Washington. And so my
15 question is is how will the customers in the state of
16 Washington realize some portion of that?

17 MR. BAILEY: Well, first of all, they'll
18 realize a portion of it through the broadband
19 commitment that we made with, you know, the
20 stipulation of the Staff. Secondly, the service
21 guarantees that we put in there will obviously cost
22 money. And then, I guess, you know, more
23 importantly, I keep going back, at least in my mind,
24 to the fact that we are in a very intense competitive
25 industry, and you know, financial health of the

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1 company is very important to the customer.

2 Because if you look at a company who does
3 not have the financial health that CenturyTel and
4 Embarq had, those type of companies do not have DSL
5 availability to 93 percent of their footprint. So
6 it's important to have that financial strength
7 because those companies that are struggling
8 financially are more worried about making their next
9 debt and interest payment versus, you know, more so
10 worried about how can we deliver advanced services to
11 our customers.

12 So it's very, very critical that we remain,
13 you know, healthy from a financial standpoint because
14 that does allow us to bring advanced services. I
15 mean, for example, CenturyTel-wide, we've, you know,
16 made pushes internally to not only bring DSL to our
17 customers, but also increase the speeds. I mean, 63
18 percent of our enabled customer base has access up to
19 10 megs of speed for DSL service. So those kind of
20 things are not -- you don't -- are not able to be
21 done in a company that's struggling financially,
22 because they don't have the resources to put back
23 into the network like we do.

24 So you know, just the continuation of
25 driving speeds faster and the continuation of driving

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1 DSL in the network, you know, offering things like
2 IPTV, those kind of things are actual benefits of
3 this merger because we're a financially stronger
4 company.

5 CHAIRMAN GOLTZ: And I'll have some more
6 questions on broadband when we get to that, Paragraph
7 8. But synergies in general, how will, you know, two
8 years from now, three years from now, how will we
9 know? How will we be able to tell, or will we, what
10 the benefit has been? Is there going to be any way
11 to quantify that, any data that we'll be able to say,
12 Yep, that saved our ratepayers X?

13 MR. BAILEY: Yeah, it's going to be a little
14 bit difficult, because the business is very fluid
15 right now. You know, we continue to experience
16 customer loss, so as a prudent business matter, do we
17 have to continue to cut cost in the business? If you
18 don't have as many access lines, you don't need as
19 many customer service reps.

20 So you know, over time, it is going to be a
21 little bit difficult to determine what a synergy
22 number is for a particular area, because, you know,
23 the argument is -- are going to be made, okay, well,
24 would that have happened anyway, because we're losing
25 6.4 percent of our customers a year? How much of the

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1 synergy is attributable to normal decline in the
2 business versus as a result of the acquisition? So
3 to your point, it will be a little bit difficult to
4 pinpoint.

5 CHAIRMAN GOLTZ: But is there any way that
6 the companies will -- or the resulting company will
7 be able to track that for its purposes?

8 MR. BAILEY: Yes, sir. We'll track it at a
9 consolidated level. But when you get down and trying
10 to allocate it to an individual state, that's where
11 it gets difficult.

12 CHAIRMAN GOLTZ: How do you track it at a
13 consolidated level?

14 MR. BAILEY: Well, for example, in my
15 position, if we terminate one of the treasurers, then
16 we know how much that treasurer made and what their
17 benefits were. So that --

18 CHAIRMAN GOLTZ: Are you going to terminate
19 the one with the higher salary? Never mind.

20 MR. BAILEY: I may need to get you to write
21 me a letter. Anyway, yes, sir. We will be able to
22 track it at that level. So -- but the question, and
23 then you have to get down to, okay, you know, how
24 much of that cost went to an individual state. And
25 so that one's actually a little bit easier than to

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1 say, okay, our customer service reps, we had X number
2 today, we have X number tomorrow, how much of that
3 was due to synergies, how much of that was due to the
4 fact that we have fewer customers?

5 CHAIRMAN GOLTZ: But you're saying the
6 resulting company will be able to say at the end of
7 year one, year two, because of the merger, we saved
8 the following for internal operating expenses?

9 MR. BAILEY: Yes, sir.

10 CHAIRMAN GOLTZ: One last question, and
11 maybe someone else can answer this. Mr. Weinman
12 raised this issue, but do you know when was the last
13 rate case or earnings review each of the companies
14 had? Ms. Taylor probably knows this.

15 MS. YOUNG: This is Barb Young, for Embarq.
16 I believe our last rate case was 1989 for United
17 Telephone.

18 MS. TAYLOR: That approximate area, even
19 before that, maybe.

20 CHAIRMAN GOLTZ: Okay. I have no other
21 questions on this area. Commissioner Oshie.

22

23 E X A M I N A T I O N

24 BY COMMISSIONER OSHIE:

25 COMMISSIONER OSHIE: I have just a few

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1 follow-up questions. I really would like to talk to
2 the panel, but maybe first with Mr. Weinman, and then
3 maybe Ms. Johnson, as well.

4 You know, with regard to the merger
5 synergies, I mean, we've heard -- there's numbers out
6 there as what might be possible or what's expected.
7 It's approximately \$400 million. The Chairman's kind
8 of done a back-of-the-envelope calculation looking at
9 this service territory, just allocated broadly,
10 saying, well, there's a per capita distribution among
11 the different customers, you know, it's about \$10
12 million for the state of Washington.

13 So I know that Mr. Roycroft recommended that
14 a portion of that be returned immediately to the
15 customers by the form of a rate credit, which
16 apparently, you know, understandably, I guess, from
17 the sense of -- in the sense of making a settlement
18 deal, that was dropped.

19 Mr. Weinman, I believe in your testimony you
20 recommended that there be an earnings review. I
21 don't recall specifically if there was a time, but it
22 just -- it seems to me, and this is a question really
23 for you, Mr. Weinman, at least initially. You know,
24 five years seems like a long period to wait. And
25 although Paragraph 12 does say that the parties could

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1 initiate an earnings review, I believe in your
2 testimony, Mr. Weinman, you recommended the Company
3 had to come in. The Company had to file.

4 And it seems to me for, you know, this --
5 the provision in the agreement, that allowing the
6 Company to -- well, requiring them to come in, but
7 only within five years, I mean, if I'm the Company
8 and I'm realizing, you know, significant synergies
9 from this deal, I wouldn't want to come in. I would
10 rather just sit out, and if there's going to be a
11 change in rates, I mean, I suppose there's -- Mr.
12 Bailey talked about, you know, the access lines and
13 the loss of lines and competition, but you know, I
14 think a lot of this territory's very rural, and I
15 don't know what the level of competition is in much
16 of the rural territories.

17 So does Staff have an anticipation here, an
18 expectation that, you know, the Companies will come
19 in before five years or that Staff would want to
20 initiate an earnings review prior to that time?

21 MR. WEINMAN: Excuse me. From Staff's
22 perspective, the Company has said that it will
23 transition this over a three-year period in terms of
24 the mergers and integrating the systems. And while
25 they've said that there's a \$400 million synergy

0101

1 saving, will that be the number? It certainly would
2 not stand up to any rate case that -- where known and
3 measurable is the criteria from the pro forma
4 adjustment.

5 And so we believe that we need some time to
6 see what those synergies are. There's some
7 offsetting factors here with line loss, and I believe
8 that if we were to look, at least at CenturyTel and
9 looked at their quarterly earnings and the rate of
10 return, it was fairly low, 2 percent. And so -- I
11 mean, that's just a recorded basis; it's not being
12 pro-formed.

13 So in dealing within five years, if it takes
14 three years to do the transition and the integration
15 to achieve those savings, we can either look at it at
16 that point and have a -- probably a better idea of
17 what the synergy savings really are, and if we don't
18 look at it then, then in the fourth year, that will
19 be accumulating, for better, for worse, in terms of
20 helping offset the cost the Companies experienced in
21 a line loss, and we'll know where those -- where that
22 overall factor is coming in. We're willing to wait.

23 COMMISSIONER OSHIE: Well, how will Staff
24 know when it's timely to seek an earnings review?
25 Reports required?

0102

1 MR. WEINMAN: At this point, we're willing
2 to and would hope that the AFOR comes in quicker than
3 five years, but we honestly don't know that. I mean,
4 it's not like the customer has experienced any change
5 in their rates, except for the exogenous factor
6 issue. And if that does happen, there will be a full
7 earnings review, and at that point in time we can
8 analyze to see what the synergies are of the pieces
9 that we know, and what that impact is is on a fully
10 pro-formed results of operation.

11 COMMISSIONER OSHIE: I know that, you know,
12 the merging and trying to integrate systems and
13 administration is a very difficult task and one in
14 which I have no experience doing and I just -- I can
15 envision the complications, but I would also assume
16 that a couple factors generally come into play.

17 And you know, one is that, you know,
18 initially, the Company will seek to achieve what I'll
19 call the low-hanging fruit, those, you know, systems,
20 the integration aspects that are easiest to achieve.
21 And I suppose within that bundle, it would be the
22 easiest to achieve with the greatest amount of
23 financial return as a result of doing that, and there
24 would be a graduated scale depending on what was
25 going on as far as the actual complication of

0103

1 integration, that that would, as it becomes more
2 complicated, more difficult to achieve, there of
3 course would be more investment to accomplish that
4 task, so that would be done over a period of
5 transition.

6 So it would -- I guess from my perspective,
7 I'll have to think a little bit about the five-year
8 period and whether it might be a better result to
9 have an earlier period of reporting.

10 I know, Mr. Weinman, you recommended in your
11 testimony that there be an earnings review. Staff, I
12 don't know if it's really shifted positions, but now
13 has agreed to an AFOR, and it sounds like that's what
14 Staff is recommending, as opposed to an earnings
15 review.

16 MR. WEINMAN: Well, actually, I believe
17 Staff contemplates -- I think in my testimony is
18 about five years out, also, but Staff contemplates
19 that because these Companies haven't been in, that
20 there will be an earnings review that's fairly
21 substantial. I mean, they've just been out too long.

22 And certainly the things that are affecting
23 the industry these days, it's in a state of flux and
24 change, so there's offsetting factors to what's going
25 on here.

0104

1 COMMISSIONER OSHIE: All right. Thank you,
2 Mr. Weinman. Ms. Johnson, do you have any comments?

3 MS. JOHNSON: I would actually defer to Dr.
4 Roycroft on the bridge line on this issue.

5 COMMISSIONER OSHIE: Certainly.

6 JUDGE MOSS: All right. Well, Dr. Roycroft,
7 if you're going to give us some addition to our
8 record today, I'll need to swear you, as well. So
9 are you there?

10 DR. ROYCROFT: Yes, I am.

11 JUDGE MOSS: I'll ask you to please raise
12 your right hand.

13 Whereupon,

14 DR. TREVOR ROYCROFT,
15 having been first duly sworn by Judge Moss, was
16 called as a witness herein and was examined and
17 testified as follows:

18 JUDGE MOSS: Thank you very much. Do you
19 have the question in mind?

20 DR. ROYCROFT: In general, I do. If I stray
21 too far from the question, please just redirect me,
22 but you know, I mean, given the ability of the
23 settlement to allow an earnings review before the
24 five-year period gave Public Counsel some level of
25 comfort with the time -- with the five-year time

0105

1 frame.

2 And the points raised by Mr. Weinman
3 regarding the ramp-up of the synergy savings also
4 entered into the analytical process here from the
5 standpoint that you don't want to do the earnings
6 review too quickly. There are -- that there may be
7 costs associated with implementing the merger that
8 you would then have to extract out of your test year,
9 and the synergy benefits, you know, do not all come
10 at once. So doing it too quickly has its downside.

11 The five-year obligation to have something
12 happen is a positive when combined especially with
13 the, you know, the ability to do something earlier
14 than that if Public Counsel believes the need is
15 there prior to the five-year period.

16 COMMISSIONER OSHIE: Thank you, Mr.
17 Roycroft. Mr. Weinman, just a couple more questions,
18 and Chairman Goltz touched upon it, which is is it
19 Staff's expectation that when there is an earnings
20 review, that there would also be a review of the
21 different rate groups? I believe that CenturyTel has
22 -- I'm frankly not -- I believe Embarq has a standard
23 rate throughout its territory or --

24 MR. WEINMAN: Actually, Embarq's got a
25 couple of basic rates that -- one, in the rural area,

0106

1 it's less than the R-1 than it is in the areas like
2 Poulsbo. I think from the overall perspective of
3 Staff is we looked to stabilize the rates and on a
4 company-wide basis whenever we can. And that's
5 certainly -- rate design will be one of the issues
6 that really gets a close look at with these companies
7 when we look at them.

8 COMMISSIONER OSHIE: Well, I assumed from
9 your testimony that what Staff was really trying to
10 -- perhaps what they were advocating for the
11 Commission was to consolidate the different rate
12 groups?

13 MR. WEINMAN: That's true, too.

14 COMMISSIONER OSHIE: So Staff also
15 recommended that the exchanges be merged, I guess,
16 the rate centers be merged, excuse me, so -- and in
17 that effort to save numbers?

18 MR. WEINMAN: Correct.

19 COMMISSIONER OSHIE: I think that was --
20 that's not in the settlement. Is that Staff's --
21 going to be one of Staff's interests going forward?

22 MR. WEINMAN: We're not giving up on that.
23 And actually, we have the ability to do it outside of
24 a rate proceeding and this agreement, and so we will
25 go forth with that process and look at consolidating

0107

1 rate centers to save numbers.

2 COMMISSIONER OSHIE: Thank you, Mr. Weinman.

3 I have no further questions.

4

5 E X A M I N A T I O N

6 BY CHAIRMAN GOLTZ:

7 CHAIRMAN GOLTZ: I just have a couple
8 follow-ups. Mr. Weinman, either you or Company
9 representatives just give an idea of the range of
10 basic sort of service, the various rates?

11 MR. WEINMAN: You guys are going to have to
12 help me.

13 MR. BAILEY: As I recall, CenturyTel ranges
14 from approximately \$9.50 all the way up to \$16 for
15 residential rates here in the state.

16 MS. YOUNG: Embarq has two rate groups, one
17 at \$8.90 and one at \$9.40, but then our extended, our
18 service adders, if you will, are separate, so we have
19 a range of adders from \$2 up to \$7 for residential.

20 CHAIRMAN GOLTZ: Now, I just wanted to
21 clarify one thing. When I -- I read through the
22 settlement and I read the narrative. And as I read
23 paragraph -- I'm jumping ahead now a little bit, but
24 page 9, paragraph 12, synergy benefits, it basically
25 says that Staff and Public Counsel may seek an

0108

1 earnings review. And over on paragraph 16 of the
2 narrative that's on page 7, and this is the Staff's
3 narrative, it states, and I quote, In addition, the
4 companies commit to file for an alternative form of
5 regulation with applicable earnings review no later
6 than five years after closing the merger.

7 In reading that paragraph, it sounds to me
8 that the Staff is saying that the companies are
9 committing to not just file for an AFOR, but actually
10 file a rate case concurrently with that. And I don't
11 know that that's what I glean from paragraph 12 of
12 the agreement.

13 So I was wondering if that's -- if there's a
14 misunderstanding between Staff and the Companies on
15 who brings forward the rate case information?

16 MR. WEINMAN: Well, with the five-year AFOR
17 criteria, then if we go that far, obviously, then the
18 Company's going to bring forward that and have the
19 burden of proof and --

20 CHAIRMAN GOLTZ: They would have the burden
21 of proof on the earnings review at the -- with AFOR,
22 that's your view of that?

23 MR. WEINMAN: Right.

24 CHAIRMAN GOLTZ: Is that the Company's view,
25 as well?

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1 MR. BAILEY: I'm not exactly familiar with
2 all the details of the AFOR filing, but I do know
3 that we agreed to adhere to the requirements of the
4 AFOR, and I'm not sure that if I know that that
5 includes an earnings investigation or not, but if it
6 does, we'll agree to it. But you know, obviously if
7 it doesn't, you know, we have not agreed to that at
8 this point.

9 CHAIRMAN GOLTZ: Okay. Public Counsel have
10 any comments on that?

11 MS. JOHNSON: We -- I imagine that we will
12 be requesting an earnings review. It leaves open
13 that we would ask the Commission -- or we would come
14 to the Commission and ask that you require that. And
15 so I know that that was something -- that's something
16 we really --

17 CHAIRMAN GOLTZ: My question really is who
18 goes first, the Companies or Public Counsel or Staff
19 on the earnings review? Is it a complaint or is it a
20 filing?

21 MR. WEINMAN: I guess from Staff's
22 standpoint, it will probably be the Companies that
23 come forth first. Anything in the interim before the
24 AFOR, are we going to move to go forward? Unless
25 there's some drastic change that would indicate

0110

1 significant synergies to the point where it would
2 impact the financial statements and possibly the
3 rates charged to customers, we're probably not going
4 to go in that direction.

5 CHAIRMAN GOLTZ: I might be asking an
6 interpretive question that might be more of a legal
7 question. I'm wondering if Counsel had any comments
8 on this issue?

9 MR. BEST: Your Honor, Chuck Best for
10 CenturyTel. My understanding of the agreement is is
11 that the Company agreed it would move forward with
12 the AFOR and it was our understanding that an
13 earnings review would likely be part of that. Now,
14 what that entails, I think the Commission probably
15 has -- and Staff has some latitude. Our
16 understanding -- I think what we were thinking was
17 that we would follow a process similar to Qwest and
18 my understanding is there was an earnings review in
19 that case. So maybe I'm wrong, but that's --

20 MS. JOHNSON: I'm not sure that there was a
21 full earnings review in the Qwest case, but I think
22 this is subject to whatever the rule is and the
23 Commission deciding what needs to be looked at in
24 this specific case.

25 CHAIRMAN GOLTZ: Okay. Mr. Weinman.

0111

1 MR. WEINMAN: And I would agree with Public
2 Counsel. I believe there had been earnings reviews
3 before Qwest filed for the AFOR, so that there was
4 probably more comfort with what the results of
5 operations had been producing out of Qwest. And
6 that's not the case with these companies because
7 they've been out so long.

8 MS. JOHNSON: I think there had certainly
9 been an earnings review more recently than there has
10 been with either of these companies. Actually, if I
11 recall correctly, I think Public Counsel requested a
12 full earnings review in that case, so we would be
13 consistent.

14 CHAIRMAN GOLTZ: Okay. I have no further
15 questions on whatever paragraph that was, Paragraph
16 4. I have no questions on Paragraph 5. Do you have
17 any questions on that?

18 COMMISSIONER OSHIE: Nope, no questions, Mr.
19 Chairman.

20 CHAIRMAN GOLTZ: And then on Paragraph 6, on
21 customer notice, my only question is I gather that
22 what we've done is sort of punted forward a little
23 bit the idea of what the notice will be. And do I
24 assume, then, and the Companies will work with Staff
25 and Public Counsel regarding notice. I gather if

0112

1 there's going to be a change, then that would then be
2 kicked up to the Commission for resolution? Is that
3 the way -- is that my understanding? Is that your
4 understanding, as well?

5 MR. WEINMAN: I guess my understanding was
6 that, at least from Staff's perspective, is that the
7 parties would be able to work something out that
8 adequately notices the customers as to what the
9 changes are and what the customer can expect. And so
10 if for some reason the parties can't come to agree on
11 the notice, I only know of one referee.

12 CHAIRMAN GOLTZ: Okay. Is that your
13 understanding, too? Is that the Company's
14 understanding?

15 MS. YOUNG: Yes.

16 CHAIRMAN GOLTZ: Any other questions on
17 Paragraph 6 or Paragraph 7?

18 COMMISSIONER OSHIE: No questions.

19 CHAIRMAN GOLTZ: And then Paragraph 8, on
20 broadband improvement, this is being one of the
21 synergies that's held out or one of the items that's
22 held out as being one of the benefits to the public
23 interest, and my first question is, is there similar
24 -- I should say we already talked about whether
25 there's other similar commitments in other state

0113

1 settlements, but as I understand it, there's very few
2 or maybe one or two other states where you had a
3 broadband commitment.

4 MR. BAILEY: Actually, I think this is the
5 only state where we've got a broadband commitment.

6 CHAIRMAN GOLTZ: Only state. But is there
7 some sort of overall understanding of the broadband
8 effort, the broadband deployment effort nationwide
9 going forward in the next couple years?

10 MR. BAILEY: Yes. Yes, sir, it is. And as
11 I mentioned earlier, we realize that broadband's our
12 future. You know, we've been very aggressive in
13 deploying in that we have 89 percent availability.
14 But even outside of that, with all the initiatives,
15 the federal jurisdiction at the FCC as it relates to
16 the stimulus bill and, you know, we're very involved
17 there to make sure that we're comfortable that the
18 way those funds are, you know, disbursed actually
19 will go to enhance the rural customers that we serve.

20 So yes, sir, we're very aware of the
21 initiative to push broadband deployment. And we've
22 even -- you know, we accomplished 89 percent
23 availability really without being told to do so. So
24 that in and of itself is to me a significant flag
25 that we are very concerned about getting the service

0114

1 to our customers.

2 CHAIRMAN GOLTZ: And is the -- the Company's
3 now nationwide. Are you seeking federal stimulus
4 dollars to assist you in the broadband deployment
5 effort?

6 MR. BAILEY: We haven't yet, because the
7 eligibility criteria has not been determined, but
8 once it comes out and we understand the rules, we
9 most likely will be, yes.

10 CHAIRMAN GOLTZ: But your commitment here is
11 not linked to any availability of federal funds?

12 MR. BAILY: No, sir.

13 CHAIRMAN GOLTZ: And do you know internally
14 what the Company's -- do you have numbers in mind for
15 the next three years for the Company nationwide as
16 far as expansion of broadband availability to
17 customers?

18 MR. BAILEY: No, sir, I don't. A lot of
19 that's going to be contingent upon, you know, what we
20 find once we are actually able to get into the Embarq
21 operations. I think nationwide, they're a little bit
22 less than us in terms of availability, and like I
23 said, I think we've been a little bit more aggressive
24 than other companies have been in pushing it out.

25 So I don't have an answer for you now, but

0115

1 you know, I can say we've done what we've done to
2 this point without being told to do so and we
3 understand that that's our future. We're in a very
4 competitive environment, we have cable companies
5 competing against us that's offering this service,
6 and if we don't offer advanced services, we'll
7 continue -- you know, the marketplace will discipline
8 us and we'll lose customers and we'll no longer be a
9 viable company. So it's definitely in our interest
10 to push broadband out as quickly and as aggressively
11 as we can.

12 CHAIRMAN GOLTZ: And as I understand it, and
13 I'm going to rapidly get into technical areas that
14 I'm not competent to get into, but what you're
15 proposing here for these 2,200 companies is not
16 laying fiber in the ground, in the terms frequently
17 used, to expand broadband in some context?

18 MR. BAILEY: That's correct. This will be
19 DSL, which will be broadband over copper. And
20 basically we'll employ equipment, as Mr. Gast said
21 earlier, out into the network. And you know, the
22 biggest impediment to broadband is the loop length.
23 Right now the technology dictates that the customer
24 needs to be within 18,000 feet of the DSLAM or of
25 the, you know, the necessary equipment to provision

0116

1 DSL, and that's a lot of the impediment on the last
2 remaining 11 percent that we haven't, you know,
3 provided the service to.

4 So that's what we'll be doing, is making
5 sure the loop lengths are short enough to provision
6 the service, and then we'll put the necessary
7 components in the network to make the service work.

8 CHAIRMAN GOLTZ: In reviewing this, I've
9 reviewed a number of agreements that the companies
10 have reached with other entities that either are or
11 were parties to this proceeding. I'm referring to
12 Exhibit B-4, which is a letter, as I understand it,
13 memorializing the agreement with the IBEW. Are you
14 familiar with that exhibit?

15 MR. BAILEY: I was not involved in those
16 negotiations, but I know that exhibit was filed with
17 the Commission, yes.

18 CHAIRMAN GOLTZ: And my question is, and
19 maybe this is a question for Counsel, but on page
20 three of that, there's discussing investment that the
21 parties agreed to make. And in reading, it's about
22 five paragraphs, but in reading that, I got the
23 impression that what the Companies were agreeing to
24 was a fairly major investment in fiber technology and
25 investment.

0117

1 And my question then becomes, as a result of
2 this agreement, are we going to see in a number of
3 other states substantial sort of fiber in the ground
4 broadband deployment, as opposed to the DSL
5 extension?

6 MR. BAILEY: No, sir. At this point, you
7 know, we feel that the service that we provide is a
8 service that the marketplace is looking for and that
9 the customers want. I mean, based on, you know, the
10 work that we've done thus far, and I'm not familiar
11 at all with the numbers, but it just isn't -- doesn't
12 make economic sense for us to lay fiber to every
13 home, basically to retrench a pipe to every house
14 from the central office. It's very, very expensive.

15 You know, the technology has evolved and
16 such that the DSL over copper is a very viable
17 service. Like I said, for example, we have up to 10
18 megs of speed to 63 percent of our available customer
19 base. So you know, we're pushing higher speeds
20 further and further out, so we don't really feel a
21 need to, you know, lay fiber.

22 And there's also other technologies that
23 we're testing that will, you know, increase speeds to
24 the home utilizing that existing fiber network, you
25 know, for example, like pair bonding. So if there's

0118

1 two wires running to the house, you can tie them
2 together basically and increase the speed to the
3 customer.

4 So there's things we're working on and
5 trying to even push it out further in terms of
6 speeds, but we don't have any plans right now to put
7 fiber to every house. It would be expensive and it
8 would most likely require us to increase our rates.

9 CHAIRMAN GOLTZ: I guess my concern was not
10 questioning the economics of extending DSL versus
11 fiber in the ground to any given set of customers,
12 but on page 3 of this Exhibit B-4, they make
13 reference to various states, Washington not being
14 among them, as those that may offer the wide
15 footprint within which to expand these new
16 technologies.

17 And it just -- it raised in my mind, at
18 least, these various merger synergies, that maybe
19 other states are going to be reaping the benefit of
20 broadband deployment in a way that we will not be
21 seeing in the state of Washington. In other words,
22 there will be fiber being laid, with all these merger
23 synergies, the \$400 million worth, that much of these
24 savings will be dedicated to investment in broadband
25 and fiber in states in which geographical layout may

0119

1 be more conducive to that, but we're going to see a
2 disproportionate amount of those savings devoted to
3 those states.

4 MR. BAILEY: Right. Yeah, actually,
5 Washington has been one of the states that we've been
6 a little bit more aggressive to in committing to
7 bring fiber to the state, because, as I mentioned
8 earlier, we're actually bringing our lightcore fiber
9 network to Washington and we, you know, committed
10 that to Nevada, as well. But there's many, many
11 states on the eastern side of the country that we
12 have not made that commitment to.

13 So really, Washington is on the forefront of
14 reaping the immediate benefits of this transaction
15 because of the lightcore network. And like I said
16 earlier, that will position us to maybe even offer
17 IPTV, which is video over copper in some of the
18 Washington markets, and that's the things that we're
19 looking at now. So Washington really is kind of
20 ahead of the game in terms of seeing the benefits of
21 the transaction.

22 CHAIRMAN GOLTZ: So you're telling me, don't
23 worry about it?

24 MR. BAILEY: Well, no, sir, I'm not saying
25 that.

0120

1 MS. YOUNG: I have just a couple of things,
2 too. Because we have not fully designed and
3 determined where these 2,200 lines are that we're
4 going to build out to, Mr. Bailey's absolutely
5 correct that the majority of them will be provisioned
6 through DSLAMs, et cetera. But there may be
7 occasions where we do have to do some interoffice
8 transport work.

9 And typically, if we're beefing up
10 interoffice transport facilities, it's not with
11 copper. So I would not want to say that this 2,200
12 line buildout will not result in any new fiber
13 placement, but -- so at least on the interoffice
14 side. Again, we don't know how much, because we've
15 not identified the customer locations yet.

16 CHAIRMAN GOLTZ: Thank you. I have no more
17 questions on this area, other than just a comment,
18 though. In reviewing Exhibit B-4, it did raise these
19 questions, which I think is illustrative of the
20 reason why these sort of side agreements are
21 important for us, so we can really evaluate the whole
22 public interest of this transaction.

23 If there's agreements that send resources
24 one way or another, you know, we need to know about
25 those. Commissioner Oshie.

0121

1 COMMISSIONER OSHIE: No questions, Chairman
2 Goltz.

3 CHAIRMAN GOLTZ: So any questions on
4 Paragraphs 9, 10? I don't have any questions on 9,
5 10, or 11.

6 COMMISSIONER OSHIE: I have no questions on
7 those paragraphs.

8 CHAIRMAN GOLTZ: We already covered
9 Paragraph 12, as well. So do you have any further
10 questions on those?

11 COMMISSIONER OSHIE: No, no questions on
12 either -- any or all those paragraphs, so --

13 CHAIRMAN GOLTZ: Okay. I guess the only
14 other questions I had was regarding the various side
15 agreements. I understand that was quite a -- they
16 finally all got filed with the Commission through
17 some process. And you know, we did go through, as I
18 understand, it's before my time, quite a substantial
19 proceeding in a prior -- in a different proceeding
20 about side agreements and whether they need to be
21 filed with the Commission or not.

22 So I'm glad to see these finally got filed,
23 but I think, as I understand it, it is a legal
24 requirement that they do be filed, and I'm sorry that
25 it did take some time to get that resolved. Judge

0122

1 Moss, you may have some comments on that?

2 JUDGE MOSS: Yeah, I do have a couple
3 comments on that, because the Commission does regard
4 this as an important matter from a process
5 perspective in terms of the integrity of our
6 regulatory process.

7 Counsel are familiar, I'm sure, with our
8 procedural rules, which include detailed rules on
9 what we call alternative dispute resolution, the
10 subject matter including settlements. And I just
11 refer you specifically to WAC 480-07-700, which
12 reads, I'll just read the pertinent part here at the
13 beginning: The Commission supports parties' informal
14 efforts to resolve disputes without the need for
15 contested hearings when doing so is lawful and
16 consistent with the public interest and subject to
17 approval by Commission order.

18 I'll skip the next sentence, but then it
19 goes on to say: The Commission cannot delegate to
20 parties the power to make final decisions in any
21 adjudicative proceeding. The Commission retains and
22 will exercise its authority in every adjudicative
23 proceeding to consider any proposed settlement or
24 agreement for approval.

25 Now, we sometimes are accused of not writing

0123

1 clear law, but I don't think it gets any clearer than
2 that. If you enter into an agreement resolving an
3 issue in a contested proceeding before this
4 Commission, you must bring that agreement to the
5 Commission for review and approval.

6 Part of the central concern is the question
7 in the telecommunications sector also relates in the
8 cases of the Comcast and Level 3 agreements, for
9 example, to the federal law concerning
10 interconnection agreements.

11 Now, both the Level 3, and to a greater
12 extent, the Comcast agreement, do implicate at least
13 the subject matter of interconnection agreements.

14 You will recall, I'm sure, that the bench
15 request that solicited the filing or the submission
16 of these documents into our record included the
17 inquiry as to whether the Companies intended for
18 these provisions that were being offered to Level 3
19 and Comcast, whether the Companies intended these to
20 be generally applicable in the industry.

21 And eventually you all did agree or
22 determined internally that the terms of these two
23 agreements were not meant to be exclusively applied
24 to Level 3 and Comcast, but would be generally
25 available in the industry, as I understand your

0124

1 second supplemental bench request response.

2 And I suppose I should pause just to confirm
3 that point. I think I saw Mr. Best nodding in the
4 affirmative there.

5 MR. BEST: That's correct, Your Honor.

6 MR. HENDRICKS: Yes, Your Honor.

7 JUDGE MOSS: So I think with respect to
8 those, the point is sufficiently made. What
9 particular option we'll exercise with respect to
10 those agreements, of course we entered the order
11 allowing Level 3 to withdraw, but we didn't know
12 about the presence of a written agreement or a side
13 agreement at the time, so I suppose we'll have to
14 modify that order in some respect as we consider
15 these settlements and whether to approve them. And
16 if so, I feel certain that if the settlements are
17 approved, then that will be subject to the condition
18 that the Companies have already agreed to, that these
19 will be generally available. But we can take care of
20 that in our written order.

21 I want to ask first, has anyone appeared on
22 the teleconference bridge line for IBEW? Apparently
23 not. I will still say a word on the record for that,
24 despite the presence of counsel, and I will also note
25 for the record that counsel did not request leave not

0125

1 to appear today, which is also a requirement of our
2 procedural rules.

3 The IBEW request raises its own set of
4 issues concerning the proprieties of practice before
5 the Commission. The IBEW's representative stated on
6 the record at our pre-hearing conference his
7 commitment that the organization would limit its
8 participation in this proceeding strictly to the
9 issues that concern us in this type of proceeding and
10 would not in any way involve labor negotiations or
11 labor relations issues in connection with this merger
12 proceeding, yet that is precisely what the IBEW did.

13 And I think the agreement that we see in
14 Exhibit B-4 speaks very plainly to the point in its
15 opening paragraph in which the statement is made, We
16 have appreciated the engagement of your two labor
17 organizations, CWA and IBEW, in our discussions of
18 the proposed merger between CenturyTel, so on, so
19 forth. This letter is written to set forth the
20 agreements we have reached with respect to that
21 merger.

22 The letter goes on then to outline a whole
23 series of labor relations agreements. Well, that's
24 inappropriate, and it undermines the credibility of
25 the union as a party in the proceeding and of the

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1 union's representative, who made these
2 representations to us on the record.

3 And I'll go one step further to say that the
4 filing that the IBEW made in response to the
5 Commission's notice alerting the parties to the fact
6 that this would be a subject for our hearing today,
7 or actually initially for our evidentiary hearing,
8 and of course that continued into this hearing, the
9 filing that was made in response to that notice, one,
10 was procedurally inappropriate. There's no provision
11 in our rules for a response to be filed to a
12 Commission notice.

13 Putting that aside, the substance of the
14 filing is remarkable. It exhibits a type of
15 sophistry that we do not like to see in the legal
16 profession generally and certainly not in filings
17 that are made to this Commission.

18 So I think the IBEW, at least, although he's
19 not here to hear it, the IBEW can expect some comment
20 in the Commission's order in this proceeding
21 concerning these matters. And I think I've said
22 sufficient on the record today so that we can leave
23 that subject.

24 I'll ask you, Mr. Butler, since you are here
25 for Comcast and Level 3, if you have any comment?

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1 It's not required, but I'll give you the opportunity.

2 MR. BUTLER: I'll just make a couple brief
3 comments. First of all, from the perspective of both
4 Level 3 and Comcast, we did not view the agreements
5 that were entered into to be in any way, shape or
6 form interconnection agreements. In fact, by their
7 terms, I think they make clear they are not
8 interconnection agreements. So unlike the Qwest
9 secret agreements of a number of years ago, we think
10 these are significantly different.

11 If you look at the terms, they really are
12 agreements or acknowledgement that the status quo in
13 Embarq territory will continue. So there was no real
14 issue there presented by that.

15 The other thing in the Comcast agreement was
16 simply an agreement by the applicants not to try to
17 interfere with interconnection applications on the
18 basis of the fact that services were going to be
19 provided to a subsidiary that utilized VoIP services.

20 Otherwise, you know, the agreements where we
21 would proceed in good faith to negotiate
22 interconnection agreements, which then would be
23 presented to the Commission for approval. So we did
24 believe that this was different from the situation in
25 the Qwest situation.

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1 There was also no attempt to keep these
2 agreements secret. In fact, when Comcast filed its
3 petition or motion to withdraw, there had been
4 pending for almost a month an outstanding data
5 request from Public Counsel asking for the production
6 of any agreements with any other CLECs. We thought
7 that that would be adequate to get those agreements
8 to the attention of the parties, but as soon as we
9 received the letter from Commission Staff raising the
10 question about that agreement, we immediately
11 contacted the applicants to see if they had any
12 objection to producing it. They did not. And we
13 filed it as a supplement to our motion to withdraw.

14 We also, upon the first time we heard a
15 request, waived any claim for confidentiality that
16 Comcast had. And again, we contacted the applicants
17 to see if they would agree, and they did. So those
18 agreements were made available on the record in the
19 proceeding as not being confidential.

20 When I saw a copy of a letter from Glenn
21 Blackmon, who is representing a CLEC that is not a
22 party to this proceeding, I immediately contacted him
23 and advised him that that agreement was available in
24 the record on the Commission's Web site, and I
25 directed him to the location where he could find

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1 that.

2 JUDGE MOSS: All right.

3 MR. BUTLER: Thank you.

4 JUDGE MOSS: To close that point, I did
5 receive -- I should say not I, but the Commission
6 received yesterday a letter from Mr. Blackmon on
7 behalf of his client, which I believe the name is
8 Axxis, A-x-x-i-s, stating that they were satisfied
9 they were not prejudiced by this.

10 Nevertheless, I think, Mr. Butler, you will
11 agree that the language in 480-07-700 is pretty
12 clear. It should have been filed as part of your
13 request to withdraw in both cases, whether you felt
14 it was an agreement that otherwise had to be filed
15 with the Commission under the interconnection filing
16 requirements or not.

17 And in connection with those second -- the
18 second part of that is I recall the Qwest litigation
19 some years ago, which resulted in substantial
20 penalties being leveled ultimately. One of the
21 points the Commission made in its order or tried to
22 make in its order there was it is up to us to decide
23 whether the agreement is of such nature as it needs
24 to be required, considered and approved as an
25 interconnection agreement, and we've had other

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1 proceedings in which the Commission has made that
2 same sort of determination.

3 So I would just simply make those points to
4 close the loop on this. And of course the Companies
5 themselves, the applicants need to be quite sensitive
6 to this sort of thing themselves, because of course
7 it is you who are jurisdictional to us and who are
8 subject to penalties and various sorts of
9 consequences that can flow from this sort of thing,
10 which I don't believe the Commission will find that
11 necessary in this particular proceeding under the
12 circumstances. I think that we can maybe follow the
13 no harm, no foul rule with respect to the Comcast and
14 Level 3 agreements, and we'll take appropriate action
15 with respect to the IBEW agreement.

16 So is there anything else anybody wishes to
17 say?

18 CHAIRMAN GOLTZ: Yeah, Judge Moss, I just
19 wanted to ask -- I meant to mention this earlier. I
20 believe, Counsel, you mentioned that the Virginia
21 Commission had issued its order either yesterday or
22 this morning or something like that.

23 MR. BEST: I believe it's one of the
24 witnesses on the phone, Your Honor.

25 JUDGE MOSS: Mr. Gast, I believe.

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1 MR. BEST: Mr. Gast.

2 CHAIRMAN GOLTZ: In any event, I was just
3 going to ask the parties if -- I believe there are
4 still a couple of these pending. If any of those are
5 finalized orders in the next -- you know, between now
6 and when we issue our order on this, if you could
7 provide us with a copy of that decision. I assume
8 you'll hear about it before most people will. And so
9 it might be easier, if you could just -- you'll hear
10 about it. If you could just get it to us through the
11 Commission's secretary's office and a copy to Judge
12 Moss, a copy of whatever it is that's decided. And
13 it sounds like the FCC may not be issuing theirs for
14 a little bit, but if they do, I'd like to see a copy
15 of that right away, too.

16 JUDGE MOSS: And the applicants can regard
17 that as a bench request. So just file them through
18 this docket and that will be the easiest way for us
19 to be sure that we remain fully informed. Anything
20 else from the bench?

21 CHAIRMAN GOLTZ: Thank you all for coming
22 out. It was very useful.

23 JUDGE MOSS: Anything else from the parties?
24 I believe, then, that will conclude our business. We
25 see no reason for briefs in this sort of case. We'll

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1 take the matter under advisement and issue an order
2 in due course.

3 MR. BEST: Thank you, Your Honor.

4 MR. HENDRICKS: Thank you.

5 (Proceedings adjourned at 12:08 p.m.)

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