

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of A Complaint By The
Joint CLECs Against the Joint Applicants
Regarding OSS For Maintenance And
Repair

Docket No. UT-(new)

**FORMAL COMPLAINT AND
PETITION**

Advanced Telecom, Inc. dba Integra; Electric Lightwave, LLC dba Integra; Eschelon Telecom of Washington, Inc. dba Integra Telecom; Oregon Telecom Inc. dba Washington Telecom dba Integra; Unicom f/k/a United Communications, Inc. dba Integra (together “Integra”); McLeod USA Telecommunications Services L.L.C., dba PAETEC Business Services (“PAETEC”); and **tw telecom of washington llc (“tw telecom”)** (collectively referred to as the “Joint CLECs”) for their complaint against Qwest Corporation (“Qwest”) and CenturyLink, Inc. (“CenturyLink”) (collectively “Joint Applicants”), pursuant to RCW 80.04.110 and WAC 480-07-305 and Sections 251, 252, and 271 of the Telecommunications Act of 1996 (the “Act”),¹ state as follows:

NATURE OF THE ACTION

1. The Joint CLECs bring this Complaint to request that the Commission investigate, make findings, and order appropriate remedy(ies), including directing Joint Applicants’ compliance with this Commission’s order approving the indirect transfer of the operating subsidiaries of Qwest Communications International, Inc., including Qwest, to CenturyLink (“Merger”), as well as settlement agreements, commitments to the Federal Communications Commission (“FCC”), the Act, and interconnection agreements.

¹ The Telecommunications Act of 1996 amended the Communications Act of 1934, 47 U.S.C. §151 *et seq.* Joint CLECs refer to these Acts collectively as the “Act.”

2. The conduct of CenturyLink and Qwest which is the subject of this Complaint is further described below and includes CenturyLink's and Qwest's plans, and steps taken in furtherance of those plans, to implement a new system for maintenance and repair and to retire, replace, and/or integrate certain Operational Support Systems ("OSS") used for maintenance and repair ["Joint Applicants' Repair OSS Conduct"].

3. Exhibit 1 to this Complaint contains Qwest's December 10, 2010, March 16, 2011, and June 14, 2011 repair OSS timelines. Exhibit 2 to this Complaint contains excerpts from interconnection agreements between Qwest and Joint CLECs. Exhibit 3 to this Complaint contains a chronology of events. Because time is of the essence, Joint CLECs have not waited for the propounding of discovery requests to provide documentation verifying the facts in this Complaint. In addition to the Complaint with Exhibits 1-3, Joint CLECs are also serving upon CenturyLink, Qwest, and Staff copies of the documents that are identified in Exhibit 3 (Chronology) by document stamp numbers. While the documents are numerous,² they are not new to Qwest and CenturyLink. Much of the documentation is posted on the Qwest wholesale website or has been exchanged among the parties in emails.

PARTIES AND JURISDICTION

4. The Joint CLECs are identified as follows:
- a. Integra is an Oregon corporation with its principal place of business in Portland, Oregon.
 - b. PAETEC is an Iowa limited liability company with its principal place of business in Hiawatha, Iowa.
 - c. **tw telecom** is a Delaware limited liability company with its principal place of business in Littleton, Colorado.

² Document numbers JC000001-JC000750.

5. Each of the Joint CLECs is authorized to provide local exchange service in Washington as a Competitive Local Exchange Carrier (“CLEC”), is a “telecommunications company” as that term is defined in RCW 80.04.010 and has been classified by the Commission as a “competitive telecommunications company” under RCW 80.36.320.

6. The Joint CLECs are represented in this proceeding by their attorneys:

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7. Qwest is, upon information and belief, a Delaware corporation with its principal place of business in Denver, Colorado, and is a subsidiary of Qwest Communications International, Inc. Qwest provides switched local exchange services in Washington as an Incumbent Local Exchange Carrier (“ILEC”).

8. CenturyLink is, upon information and belief, a Louisiana corporation with its principal place of business in Monroe, Louisiana.

9. Qwest and CenturyLink are public service companies and telecommunications companies as those terms are defined in RCW 80.04.010, and as those terms are otherwise used in RCW Title 80.³

10. Qwest and CenturyLink are represented in this proceeding by their attorney:

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11. The Commission has jurisdiction over this matter pursuant to RCW 80.01.040 and RCW 80.04.470. Additionally, the Commission retained jurisdiction over the subject matter and the parties to effectuate the terms of its Order in Docket No. UT-100820.⁴

FACTUAL ALLEGATIONS

12. By Final Order Approving and Adopting, Subject to Certain Conditions, Multiparty Settlement Agreements and Authorizing Transaction dated March 14, 2011 (Order No. 14), the Commission gave final approval to the Merger of Qwest and CenturyLink in Docket No. UT-100820, as conditioned by the terms of five multiparty Settlement Agreements attached to and made part of Order No. 14.⁵

13. The five multiparty Settlement Agreements that were made part of Order No. 14 include settlement agreements between Joint Applicants and 360networks, Integra, Commission Staff and Public Counsel, Department of Defense and all other Federal Executive Agencies, and tw telecom.⁶ The Commission concluded that the five multiparty Settlement Agreements, in

³ Order No. 14, WUTC Docket No. UT-100820, Conclusion of Law ¶284.

⁴ Order No. 14, WUTC Docket No. UT-100820, ¶¶291 & 296.

⁵ Order No. 14, WUTC Docket No. UT-100820, Ordering paragraph (1) at ¶292.

⁶ Order No. 14, WUTC Docket No. UT-100820, ¶¶275-279.

conjunction with additional conditions in its Order, protect Washington customers and the public interest from risks of harm associated with the change of control transaction.⁷

14. In paragraph 12 of the Integra settlement agreement, Qwest and CenturyLink, as “the Merged Company,” commit to “use and offer to wholesale customers, the legacy Qwest Operational Support Systems (OSS) for at least two years, or until July 1, 2013 whichever is later,” after which the Merged Company may replace or integrate Qwest systems if it first establishes a detailed transition plan and complies with certain procedures. The length of the time period has been modified, both by later settlement agreement and via Joint Applicants’ commitment to the Federal Communications Commission (FCC), to at least thirty months after the Closing Date.⁸

15. At the time that the Qwest-CenturyLink merger proceeding, Docket No. UT-100820, was before the Commission, similar applications were pending in the other legacy Qwest jurisdictions, including Arizona, Colorado, Minnesota, Montana, Oregon, and Utah, as well as pending before the FCC. Similar commitments were made by the Joint Applicants in other jurisdictions.

16. Joint Applicants understood and knew that the procedures in the subparagraphs of paragraph 12 in the Integra Agreement occur before system integration or replacement system implementation, not after. This understanding is illustrated by the testimony in Colorado of CenturyLink’s witness, about the OSS terms of the Integra Agreement, that: “Once we meet certain thresholds, *then* we are able to implement.”⁹

⁷ Order No. 14, WUTC Docket No. UT-100820, ¶287.

⁸ Joint CLEC Merger Agreement, March 3, 2011, p. 2 of 7; FCC Memorandum Opinion and Order, WC Docket No. 10-110 (March 18, 2011), p. 30, Appendix C. The Commission took administrative notice of the Joint CLEC Merger Agreement (the “Minnesota Settlement”). Order No. 14, WUTC Docket No. UT-100820, ¶86.

⁹ CO Hrg. Tr., Dkt. No. 10A-350T (Nov. 8, 2010), Vol. 1, p. 88, lines 22-23 (Mr. Hunsucker, CenturyLink) (emphasis added); see also WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2010), Vol. IV, p. 405, lines 1-3 (Mr.

17. In their Reply Brief, Qwest and CenturyLink emphasized that there would be no time pressure to make any alterations to OSS in Qwest territory:

. . . CenturyLink has repeatedly stated that: (1) it has made no decisions on what OSS it will employ in the long term, and (2) it will make a careful, structured examination of both companies' systems and features and draw on the best of both companies' systems and features and draw on the best of both companies' capabilities in order to employ industry leading OSS for the long term.

The Non-Settling CLECs' conjecture about potential OSS degradation in Washington also ignores the key fact that CenturyLink is not simply acquiring access lines from Qwest, but rather is acquiring the *entire company*. Because it is acquiring Qwest's existing systems, personnel, documented policies, experiences, and processes, CenturyLink will have no immediate need (or be under any time pressure) to make any alterations to Qwest's OSS. CenturyLink has also repeatedly acknowledged that Qwest's OSS will continue to be subject to Section 251, Section 271, and ICA obligations applicable to Qwest territories (footnote omitted; underlining added).¹⁰

18. Similarly, CenturyLink witness Michael Hunsucker assured regulators that there would be no burning need to make OSS changes or convert to any new OSS system post-transaction closing. Specifically, Mr. Hunsucker testified: "CenturyLink is not under the gun to make a quick OSS decision as CenturyLink will own both systems post-transaction closing, in stark contrast on other past mergers where providers were under time pressures to convert to a new system."¹¹

19. On October 6, 2010, in testimony before the Minnesota Commission, Mr. Hunsucker of CenturyLink recognized that a key purpose of a moratorium on any OSS changes¹²

Hunsucker, CenturyLink) ("there is a very robust transparent process *before* we can make this OSS conversion") (emphasis added).

¹⁰ Qwest's and CenturyLink's Reply Brief, Docket No. UT-100820 (Jan. 21, 2011), p. 12, ¶¶23-24; *see also* Joint Applicants' Statement of Position, CO Dkt. No. 10A-350T (Nov. 24, 2010), pp. 39-40 [similar quote; "CenturyLink will have no immediate need (or be under any time pressure) to make any alterations to OSS in Qwest areas."].

¹¹ MN Hrg. Tr., P-421, et al./PA-10-456 (Oct. 6, 2010), Vol. 2B, p. 9, line 21-p. 10, line 10 (Mr. Hunsucker, CenturyLink).

¹² MN Hrg. Tr., P-421, et al./PA-10-456, Vol. 2B (Oct. 6, 2010), p. 84, lines 10-11 (Mr. Hunsucker, CenturyLink) ("What we have committed to is the 24-month moratorium before we make any changes."); *see also* WA Hrg. Tr.,

of not less than two years was so that CLECs would have certainty; that CLECs value operational certainty and continuity; and that continuity, stability, and certainty for the CLECs are in the public interest.¹³ Mr. Hunsucker acknowledged the importance of providing certainty to CLECs for a “reasonable time period.”¹⁴

20. On October 18, 2010, parties filed Supplemental Surrebuttal Testimony in Minnesota. Mr. Timothy Gates of QSI Consulting, in testimony on behalf of Joint CLECs, including Integra, PAETEC, and **tw telecom**, addressed certain limitations of a settlement agreement between the Minnesota Department of Commerce (“MN DOC Agreement”), including more limited MN DOC Agreement language than in the conditions proposed by Joint CLECs, such as the DOC Agreement’s use of “not discontinue”¹⁵ with respect to certain OSS.¹⁶ Mr. Gates quoted the testimony of the Colorado commission’s Telecommunications Section Chief (and former Qwest OSS witness¹⁷), who said:

‘Although Qwest is the larger entity and has more experience in the wholesale market, any changes made by CenturyLink to Qwest’s back-office systems, to Qwest’s business processes, to Qwest’s interconnection negotiation template, or to Qwest’s CMP increase the possibility of uncertainty among the interconnecting carriers. This uncertainty will in turn effect competition in general.’¹⁸

21. Mr. Gates made clear that the Joint CLEC goal was to ensure that such OSS changes were precluded during the two-year (preferably three-year) period (consistent with Mr.

Dkt. No. UT-100820 (Jan. 6, 2010) Vol. IV, p. 407, lines 14-17 (Mr. Simshaw, CenturyLink attorney) (referring to a “freeze” on the wholesale OSS for the two-year period under the Integra Agreement).

¹³ MN Hrg. Tr., P-421, et al./PA-10-456 (Oct. 6, 2010), Vol. 2B, p. 11, lines 6-10; see *id.* p. 78, lines 19-23 (Mr. Hunsucker, CenturyLink); *id.* at Vol. 2B, p. 92 line 19 – p. 93, line 24; *id.* at Vol. 2B, p. 129, lines 9-14.

¹⁴ MN Hrg. Tr., P-421, et al./PA-10-456, Vol. 2B (Oct. 6, 2010), p. 83, line 24-p. 84, line 21.

¹⁵ See, e.g., Suppl. Surreb. of Timothy Gates, QSI Consulting, on behalf of Joint CLECs, MN Dkt. No. P-421, et al./PA-10-456, pp. 27-28 (Oct. 18, 2010) [“QSI Gates MN Suppl. Surreb.”].

¹⁶ See, e.g., QSI Gates MN Suppl. Surreb., pp. 25-28 (Oct. 18, 2010).

¹⁷ QSI Gates MN Suppl. Surreb., p. 26, line 12 and footnote 53 (Appendix A to the Answer Testimony of Lynn Notarianni, CO Dkt. No. 10A-350T. “Ms. Notarianni testified on behalf of Qwest and its predecessor US WEST in more than 45 proceedings regarding operations and systems matters. *Id.* She provided project management oversight and OSS testimony in the 271 proceedings to gain 271 long distance entry. *Id.*”) (Oct. 18, 2010).

¹⁸ QSI Gates MN Suppl. Surreb., p. 26, lines 11-17 and footnote 54, quoting Answer Testimony of Lynn Notarianni, CO Dkt. No. 10A-350T, Sept. 15, 2010, p. 52, lines 4-9.

Hunsucker's commitment to at least a two-year "moratorium before we make *any changes*"¹⁹) and that OSS changes, along with the additional steps required by the Joint CLECs' merger conditions before making such changes, occurred *after* the initial two- or three-year time period.²⁰

22. On November 1, 2011, in Cross Answer Testimony filed in Washington Docket Number UT-100820, Mr. Gates pointed out that "the Joint Applicants' have stated that the proposed transactions will not involve any 'new' OSS systems (i.e., systems not currently in use by either Qwest or CenturyLink)."²¹

23. During October and early November, 2010, representatives of CenturyLink, and in some cases representatives of Qwest, communicated with Integra about potential settlement, including telephone communications, as well as in-person meetings on October 14, 2010 and November 4-5, 2010. CenturyLink indicated that it was in communication with Qwest. Neither Qwest nor CenturyLink informed Integra of any plan to initiate changes or begin integration regarding Qwest OSS for maintenance and repair, and/or to introduce a new system (e.g., MTG), in November of 2010 or to implement MTG or other new systems by the end of 2011. They did not mention any claim of or concern about instability of Qwest OSS for maintenance and repair (CEMR and/or MEDIACC).

¹⁹ MN Hrg. Tr., P-421, et al./PA-10-456 (Oct. 6, 2010), Vol. 2B, p. 84, lines 10-11 (Mr. Hunsucker, CenturyLink), quoted in QSI Gates MN Suppl. Surreb., p. 27, lines 5-7 (emphasis in testimony of Mr. Gates).

²⁰ QSI Gates MN Suppl. Surreb., p. 27, line 1 – p. 28, line 3 and footnote 57 (Oct. 18, 2010).

²¹ Cross Answer Testimony of Mr. Gates on behalf of Joint CLECs, Dkt. No. UT-100820 (Nov. 1, 2010), p. 6, lines 9-13. Mr. Gates provided the following footnote to support this testimony: "See, e.g., Rebuttal Testimony of Jeff Glover on behalf of CenturyLink, Iowa Docket No. SPU-2010-006, August 26, 2010, at p. 19 ("Those acquirers had business plans that included spending significant funds to develop new systems, which will not be required in the CenturyLink-Qwest combination, at least, in terms of creating and testing new software systems.") See also, Iowa Rebuttal Testimony of Max Phillips on behalf of Qwest Communications International, Inc., Iowa Docket No. SPU-2010-0006, August 26, 2010, p. 3, footnote 4 ("in ILEC transactions where there has not been the need to create new OSS – as is the case with the proposed Transaction...")."

24. On November 10, 2010, the Joint Applicants filed with the Commission their settlement agreement with Integra (“Integra Agreement”), which they proposed the Commission approve and adopt.²² The Integra Agreement does not contain the more limited language (*e.g.*, “not discontinue”²³) of the Minnesota DOC Agreement and instead requires Qwest to use, as well as offer to wholesale customers, legacy Qwest OSS for two years (later modified to 30 months), after which the Merged Company may replace or integrate Qwest systems if it first establishes a detailed transition plan and complies with certain procedures.

25. Pursuant to Page 13, Section E of the Integra Agreement: “The parties have entered into this agreement to avoid further expense, inconvenience, **uncertainty** and delay.” (Emphasis added). Furthermore, as provided in paragraph 15 of the Settlement Agreement:

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

26. In paragraphs 2, 10, 11 and 12 of the Integra Agreement, additional commitments are made by the Joint Applicants regarding wholesale service quality, the types and level of data, information, and assistance concerning OSS functions and wholesale business practices and procedures, and the sufficient staffing and support of wholesale operations, relative to wholesale order volumes, by personnel, including IT personnel, who must be adequately trained on the Qwest and CenturyLink systems and processes. The Joint Applicants also committed to employ people dedicated to the task of meeting the needs of CLECs and other wholesale customers.

²² Order No. 14, WUTC Docket No. UT-100820, ¶276.

²³ MN DOC Agreement, p. 3, ¶III(B)(1).

27. Mr. Denney of Integra presented Integra's understanding that the Integra Agreement provides "consistency and predictability;"²⁴ that it contains "a fairly detailed process as to what's going to happen if there are changes that are going to occur;" and it provides CLECs a chance to have input into the changes.²⁵

28. Timothy Gates, on behalf of the Joint CLECs, testified that OSS changes may impose costs on CLECs due to, for instance, the need to test replacement systems and materially modify CLECs' own systems.²⁶ Mr. Hunsucker of CenturyLink has recognized that, if a change in Qwest OSS occurred, CLECs could incur costs.²⁷

29. Joint Applicants have described Integra as "the first, most vocal and most active CLEC opponent of this merger"²⁸ and as the "most active and investigative CLEC."²⁹ The Integra Agreement (which was executed on November 6, 2010, filed in Minnesota on November 8, 2011, and filed in Washington on November 10, 2011) provided that Integra would withdraw or not submit pre-filed testimony and that Integra would not oppose the merger transaction.³⁰

30. On November 10, 2010, Mr. Hunsucker testified in Colorado that the merged company had no plan to create any new OSS system.³¹

31. On the same day as Mr. Hunsucker's Colorado testimony and the filing of the Integra Agreement with this Commission (November 10, 2010), Qwest via a web posting indicated that Qwest planned to retire and replace Qwest's legacy OSS for repair

²⁴ WA Hrg. Tr., WUTC Docket No. UT-100820 (Jan. 5, 2011), Vol. III, p. 340, line 14; see *id.* p. 340, line 6 ("certainty").

²⁵ CO Hrg. Tr., Docket No. 10A-350T (Nov. 8, 2010), Vol. I, p. 97, line 10; p. 98, line 2.

²⁶ Responsive Testimony of Timothy Gates, QSI Consulting, on behalf of Joint CLECs, UT-100820, pp. 55-56 (Sept. 27, 2010) ["QSI Gates WA Responsive"].

²⁷ CO Hrg. Tr., Docket No. 10A-350T, Volume III (Nov. 10, 2010) p. 101, lines 3-16.

²⁸ Joint Applicants' Statement of Position, CO Dkt. No. 10A-350T (Dec. 24, 2010), p. 33.

²⁹ Joint Petitioners' Reply Brief, MN Docket P-421, et al./PA-10-456 (Dec. 8, 2010), p. 2 (last paragraph).

³⁰ Integra Agreement, p. 12, §C. Now that the agreement is final, however, Integra may act to enforce the agreement. *Id.* §E. See *Voicestream Minneapolis, Inc. v. RPC Props. Inc.*, 743 N.W.2d 267, 271 (MN. Sup. Ct. 2008).

³¹ CO Hrg. Tr., Docket No. 10A-350T, Volume III (Nov. 10, 2010) p. 96, lines 18-22.

(CEMR/MEDIACC) with a new repair system (MTG).³² At no point after merger announcement but before execution of the Integra Agreement, which prevented Integra from opposing the merger, did Qwest or CenturyLink provide any indication to Integra, this Commission, or other commissions, regarding any intent or make this change or otherwise implement a new system (MTG) in 2011.

32. Qwest Corporation has not, and does not, use the maintenance ticketing gateway (MTG). In fact, from the time that Qwest issued its web posting up to today, MTG has not even been developed yet. According to a recent Qwest timeline (Exhibit 1 to this Complaint), the merged company will not even begin working on draft technical specifications for MTG until July 2011.³³

33. After its November 10, 2010, change via a web posting, Qwest said in its Change Management Process (CMP) that it has decided to use Qwest Communications' QControl as a platform³⁴ for MTG (while re-naming it QPortal for local carriers³⁵). Qwest has erroneously asserted that "MTG is an OSS of 'legacy Qwest,'" as that term is used in the Integra Agreement.³⁶ On information and belief, Qwest's rationale for this erroneous statement is that, due to its stated decision to use QControl/QPortal as a platform for MTG, Qwest may assert that MTG is an existing legacy Qwest system, or improvements to an existing legacy Qwest system. With respect to the term "legacy Qwest" OSS, however, the Integra Agreement defines "Qwest"

³² Qwest Change Request ("CR") Detail of CR #SCR121608-02 ["Title: REVISED 11/10/10 Introduction of MTG (Maintenance Ticketing Gateway) application to application."] The revised "Description of Change" states: 11/10/11 REVISION: Revision to change application name and reestablish implementation timeline. New application will include limited testing and also replace CEMR." See also Qwest CR #SCR121608-01 (Retirement of MEDIACC).

³³ See Exhibit 1 to this Complaint [Qwest revised timeline (June 14, 2011)].

³⁴ During the March 16, 2011 CMP meeting, Integra asked if QPortal was just the platform and if MTG was a new system that sits on the QPortal platform. Qwest confirmed that is correct. Qwest said that QPortal is just the platform to "hang" the new system "off of."

³⁵ Qwest CMP Response, March 10, 2011 ("QPortal is branded as QControl, and that is the name the system is known by for Qwest national customers.").

³⁶ Qwest attorney email (copied to Qwest attorney and CenturyLink attorneys) to Integra (March 21, 2011).

as “Qwest Corporation” (*i.e.*, not Qwest Communications).³⁷ QControl is used by Qwest Communications,³⁸ but is not used by Qwest Corporation for local customer accounts (*e.g.*, CLEC accounts).³⁹

34. CenturyLink has recently acknowledged that MTG is a “new” system.⁴⁰

35. Qwest legacy OSS for maintenance and repair are Customer Electronic Maintenance and Repair (CEMR) and Mediated Access Electronic Bonding Trouble Administration (MEDIACC). CEMR is a graphical user interface (GUI), and MEDIACC is an application to application interface using electronic bonding. One or both may be used by a carrier to exchange maintenance and repair information with Qwest. These interfaces with Qwest are vital to the CLECs’ abilities to conduct business in Washington.

36. Qwest uses and offers CEMR and MEDIACC in Washington today. Qwest uses MEDIACC for itself with a significant percentage of Qwest repair tickets being in MEDIACC. In addition, Qwest offers CEMR and MEDIACC to CLECs to exchange repair information between Qwest and CLECs. For example, Integra and **tw telecom** currently use the GUI interface CEMR, and PAETEC uses both the GUI (CEMR) and the application-to-application (MEDIACC) interfaces, in Qwest ILEC service territory.

37. If Qwest changes its OSS, those changes require CLECs to expend resources (*e.g.*, conducting testing and/or reviewing and commenting on technical specifications and any work required to modify the CLECs’ systems and/or conduct training). Moving to MTG would impose significant costs upon CLECs in order to modify their own systems to coordinate with

³⁷ Integra Agreement, p. 2, §A (Definitions).

³⁸ The Trademark Electronic Search System identifies the registrant for QControl as Qwest Communications International Inc., which is identified as “QCI” on page 1 of the Integra Agreement. QCI is not part of the definition of “Qwest” on page 2 of the Integra Agreement.

³⁹ See, *e.g.*, <http://www.qwest.com/wholesale/tools/managemyaccount.html> (listing CEMR and MEDIACC for “Local” accounts).

⁴⁰ CenturyLink May 2, 2011 email (“change from CEMR and MEDIACC to the *new system*”) (emphasis added); also June 15, 2011 monthly CMP meeting (Tracy Strombotne, Qwest IT).

the new OSS changes which Qwest intends to implement.⁴¹ Qwest has said that CEMR points to, or interfaces with, MEDIACC (rather than directly to Qwest's back-end systems). If a problem arises in transition from MEDIACC to MTG, therefore, it will adversely impact not only MEDIACC users but CEMR users as well. Depending on the nature of the problem, CLEC's end user customers may be adversely impacted as well.

38. On December 16-17, 2010, evidentiary hearings were held in Oregon in the Qwest-CenturyLink merger proceeding (Docket No. UM1484). On December 16, 2010, John Jones, CenturyLink's Vice President of State Government Affairs, assured regulators that the Merged Company can operate both companies' systems indefinitely; that the company is not compelled to do anything quickly.⁴² Mr. Jones testified:

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

A *No*. I'm answering more from the standpoint of the total integration process. Like I said, *we are not compelled or forced in any way to change any system*. . . .⁴³

39. The next day, on December 17, 2010, Qwest distributed an announcement (“December 17 CMP Announcement”⁴⁴) to CLECs describing a “new application to application interface” called MTG, and Qwest said that the “maintenance ticketing gateway (MTG) will be a replacement for MEDIACC and CEMR.” In the announcement, Qwest indicated that MTG will allow both “Qwest and wholesale customers” to use the new system. Qwest provided an effective date for the change of September 19, 2011, which it subsequently moved to December

⁴¹ Answer Testimony of Timothy Gates, QSI Consulting, on behalf of Joint CLECs, Docket No. 10A-350T, p. 55-57 (Sept. 15, 2010).

⁴² OR Hrg. Tr., Docket No. UM1484 (Dec. 16, 2010), Vol. I, p. 42, lines 4-17 & p. 64, lines 4-10.

⁴³ OR Hrg. Tr., Dkt. No. UM 1484 (Dec. 16, 2010), Vol. I, p. 64, lines 4-10 (Mr. Jones, CenturyLink) (emp. added).

⁴⁴ Qwest Notification No. 545T.MEDI.12.17.10F.08642. MTG_IntrfcNewApptoApp (Dec. 17, 2010)

12, 2011 to accommodate its own needs.⁴⁵ Both the September and December dates would occur after the Joint Applicants' own estimates for the merger Closing Date, which ultimately occurred on April 1, 2011.

40. The December 17 CMP Announcement was followed by Mr. Hunsucker's testimony on December 20, 2010 before the Arizona Corporation Commission in which he said he was made aware of the CMP Announcement at the time it was made, and he added:

And in my discussions with the Qwest folks that is a system [CEMR/MEDIACC] that is very unstable today. It was built in the late '90s, early 2000 time period. They can't find parts for it to replace that system and keep it up and running. And due to the instability of that system, they are looking to replace that system with a new system that will provide stability to the CLECs.⁴⁶
(Parenthetical added).

41. Mr. Hunsucker did not explain why there had been no mention of instability in Qwest's communications with CLECs, including the November and December CMP monthly meetings and Qwest's December 17, 2010 CMP announcement. He also provided no verification of the alleged instability or any explanation why it had not been previously mentioned prior to entering into the Integra Agreement described above. In addition, Mr. Hunsucker did not provide evidence of any CLEC request in CMP complaining of outages and asking for a change in CEMR or MEDIACC due to instability. Mr. Hunsucker's testimony created uncertainty for CLECs as to, among other things, whether the merged company will announce similar changes to other OSS without following the procedures provided for in the Integra Agreement, including prior notice to state commissions and the FCC.

42. In January, 2011, evidentiary hearings were held before the ALJ in Washington in the Qwest/CenturyLink merger proceeding (Docket No. UT-100820). On January 6, 2011,

⁴⁵ See http://www.qwest.com/wholesale/cmp/cr/CR_SCR121608-02.html (3/16/11 entry with 23/25/11 revisions). Qwest omitted the discussion from the meeting minutes, which was the subject of CLEC objections. See, e.g., *id.*

⁴⁶ AZ Hrg. Tr. Docket No. T-10151B-10-0194, etc. Vol. II (December 10, 2010), p. 338, lines 19-25.

Mr. Hunsucker of CenturyLink testified that, per condition 12 of the Integra Agreement, “there is a very robust transparent process *before* we can make this OSS conversion.”⁴⁷ He said: “It’s not *just* we’re going *to decide in two years we’re going to make a change* and we can suddenly implement that.”⁴⁸ Rather, he described the steps that then have to occur under the Integra agreement before the OSS change.⁴⁹ CenturyLink’s attorney specifically referred to a “freeze” on the wholesale OSS for the two-year period under the Integra Agreement.⁵⁰ Mr. Hunsucker testified that this is “a 24-month or a few months *longer*” time period before the company “can retire a system and go to a new system” than the “nine-month process” that otherwise would occur without the settlement agreement.⁵¹ Mr. Hunsucker concluded, therefore, that condition 12 “goes well beyond the certainty and the status quo that CLECs have to date.”⁵² In other words, he indicated that condition 12 provides a time period well beyond the nine-month process.

43. On January 4, 2011, Integra submitted written comments to CMP in which it objected to Qwest’s December 17 CMP Announcement as not providing sufficient information for Integra to conclude that the replacement system is beneficial to CLECs. Integra also commented that Qwest was unclear about whether or how Qwest’s notice is consistent with the Joint Applicants’ merger commitments and specifically the Integra Agreement.

44. On January 5, 2011 PAETEC joined in Integra’s comments and posed the same inquiries. Integra and PAETEC’s comments and questions reflect the uncertainty that Qwest’s actions caused for CLECs.

⁴⁷ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2010), Vol. IV, p. 405, lines 1-3 (emphasis added) (Mr. Hunsucker, CenturyLink).

⁴⁸ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2010), Vol. IV, p. 406, lines 9-11 (emphasis added) (Mr. Hunsucker, CenturyLink).

⁴⁹ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2010), Vol. IV, p. 405, lines 1-3; *id.* p. 405, line 14 – p. 406, line 8 (Mr. Hunsucker, CenturyLink).

⁵⁰ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2010), Vol. IV, p. 407, lines 14-17 (Mr. Simshaw, CenturyLink).

⁵¹ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2010), Vol. IV, p. 406, line 23 – p. 407, line 3 (emphasis added) (Mr. Hunsucker, CenturyLink).

⁵² WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2010), Vol. IV, p. 407, lines 1-4 (Mr. Hunsucker, CenturyLink).

45. On January 19, 2011, Qwest's repair OSS Change Request ("CR") was discussed in the monthly CMP meeting. Regarding Qwest's CR to develop "CTG" (which was revised in November of 2010 to develop "MTG"), Qwest said it "continued development of CTG through early April of 2009 but at that point, Qwest placed the project on HOLD and the CR was placed in a Deferred status *due to funding concerns*. The CR remained in Deferred status for almost two years *until Qwest was able to secure resources and support.*"⁵³ Qwest reviewed a Power Point presentation that defined MTG as the "CEMR/MEDIAACC Replacement" and indicated that MTG would allow both Qwest and its customers to use MTG.⁵⁴ Qwest also identified a benefit⁵⁵ to itself of its being able, going forward, to use the same system for repairs for local Qwest Corporation accounts,⁵⁶ as for its repairs for national and international Qwest Communications accounts.⁵⁷ Unlike the Qwest December 17, 2010, CMP Announcement, which listed the benefit of the new application as using a more advanced type of technical communication, the Power Point presentation (provided nearly a month after Mr. Hunsucker's Arizona testimony) lists additional benefits not mentioned earlier, such as stability and increased reliability.⁵⁸

46. On February 9, 2011, in response to written comments filed with Qwest pursuant to the CMP process, Qwest's legal counsel replied to Integra and PAETEC, stating in part:

If we [Qwest] failed to replace CEMR and MEDIAAC the merged company may not be able to meet its obligations under the settlement agreement, such as its obligation to

⁵³ http://www.qwest.com/wholesale/cmp/cr/CR_SCR121608-02.html (1/19/11 entry) (emphasis added).

⁵⁴ <http://wholesalecalendar.qwestapps.com/detail/287/2011-01-19>

⁵⁵ <http://wholesalecalendar.qwestapps.com/detail/287/2011-01-19> ("Benefits" - "Allows alignment of Qwest Local and Qwest National repair into a common set of bonding and management systems").

⁵⁶ <http://wholesalecalendar.qwestapps.com/detail/287/2011-01-19> ("Technology - GUI" - "Creates one web portal for local and national transport repair"; "Technology - B2B" - "Replace MEDIAACC for Local network with an XML ticketing functionality by enhancing the national eBonding Gateway to cover local Products. This project would include turning down the MEDIAACC interface after a migration period.").

⁵⁷ <http://wholesalecalendar.qwestapps.com/detail/287/2011-01-19> ("NOTE: QCC National Transport repair tickets are currently submitted through the QPortal."). See <http://www.qwest.com/wholesale/tools/managemyaccount.html> (listing Qwest Control as the system for "National & International").

⁵⁸ <http://wholesalecalendar.qwestapps.com/detail/287/2011-01-19>

“meet or exceed the average wholesale performance provided by Qwest to CLEC (prior to the merger closing date).

Second, you ask whether the company plans to follow each step in the OSS section of the settlement agreement with respect to the retirement of CEMR, MEDIAAC and implementation of MTG. Presumably you are referring to Section 12.c of the settlement agreement. Qwest believes that those procedures are triggered under paragraph 12 only if the merged company determines after the two year or July 2013 time frame to replace the Qwest systems, for example, with a CenturyLink system. The Section 12 procedures do not apply to a replacement initiated by Qwest well before the merger particularly where the replacement of Qwest’s own systems is needed for the purpose of maintaining the automated service quality of Qwest’s systems that CLECs claim to want. While it will not be following the procedures of Section 12, Qwest will, however, follow all applicable processes required by the CMP document that are associated with an OSS replacement.

47. Qwest’s reinterpretation of the language of the Integra Agreement filed with and approved by the Commission in resolution of Docket No. UT-100820 is unsupported by the record in that docket as well as the plain language of the Integra Agreement.

48. Integra addressed each of these points, and their inconsistency with the merger commitments, in a reply email on February 9, 2011, sent to attorneys for both Qwest and CenturyLink. Integra reserved its right to act to enforce the settlement conditions, once effective, as needed. With respect to Qwest’s statement that “the merged company may not be able to meet its obligations under the settlement agreement,” Integra said:

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

49. Whereas Integra was precluded by the settlement agreements at this point from commenting on the proposed transaction in the merger proceedings,⁵⁹ nothing in the settlement

⁵⁹ Section F of the Integra Agreement provides that the agreement (including the prohibition on opposing the merger) “is effective upon execution” but that the settlement terms contained in Section B (which include the OSS terms) “shall not become effective unless and until the Transaction closes. If the Transaction does not close, this Agreement and Settlement Terms are null and void.” Consistent with this provision, and with Section E regarding

agreement prevented Qwest's attorneys and CenturyLink's attorneys from telling this Commission and other regulators that Qwest's position was that the "the merged company may not be able to meet its obligations under the settlement agreement,"⁶⁰ particularly if the claims of alleged instability of CEMR/MEDIACC leading to this stated concern were legitimate. Neither Qwest nor CenturyLink informed this or other commissions, by written notice or otherwise, that the merged company may not be able to meet its merger obligations.

50. On February 7, 2011, the Joint Applicants filed a settlement agreement with **tw telecom** in which **tw telecom** opted into the Integra agreement; agreed to clarifications, modifications or additional commitments; and agreed not to participate in regulatory review of the merger transaction (**tw telecom** Agreement). Executives for both Qwest and CenturyLink executed the **tw telecom** Agreement and both Qwest and CenturyLink are parties to the **tw telecom** Agreement.

51. Throughout February, 2011, Integra continued to seek answers to a variety of questions arising from Qwest's CEMR, MEDIACC and MTG activity. Efforts to obtain clarification continued into March and remain unresolved. As of the filing of this Complaint, questions remain unanswered,⁶¹ creating significant uncertainty.

52. On March 3, 2011, Joint Applicants entered into a settlement with PAETEC, POPP, TDSM, Velocity and certain other CLECs, in which these Joint CLECs opted in to the Integra Agreement; agreed to clarifications, modification or additional terms; and agreed not to

enforcement of the agreement, Joint CLECs made their filings relating to this issue after closing of the transaction. They first gave the Merged Company, after the closing, opportunities to correct before making their filings. Given that the Merged Company still continues to insist on a December 2010 new system implementation, however, Joint CLECs had to proceed.

⁶⁰ February 9, 2011 email from Qwest's attorney (copied to CenturyLink's attorney) to Integra.

⁶¹ On July 1, 2011 at 1:45am central time, Qwest distributed certain additional information via CMP ("July 1, 2011 CMP Matrix"). Although Joint CLECs are still reviewing that information and a reply will be provided in CMP, the information provided by Qwest does not address all of the questions asked and the information also raises additional questions and inconsistencies.

participate in regulatory review of the merger transaction (the “Joint CLEC Merger Agreement”).⁶² Among other things, the Joint CLEC Merger Agreement states that its OSS and third party facilitator terms apply throughout Qwest ILEC 14-state territory, which includes Washington, and that it modifies the first paragraph of paragraph 12 of the Integra Agreement to provide that, in legacy Qwest ILEC service territory, after the Closing Date, the Merged Company will use and offer to wholesale customers the legacy Qwest OSS for at least thirty months. The Commission took administrative notice of the Joint CLEC Merger Agreement (also known as the “Minnesota Settlement”).⁶³

53. On March 8, 2011, Joint Applicants filed the Joint CLEC Merger Agreement with the Oregon Commission in Docket No. UM 1484. Although this Commission did not incorporate the third-party facilitator provision of the Joint CLEC Merger Agreement,⁶⁴ the Joint Applicants told the Oregon Commission in their March 8, 2011 letter that that “there are no provisions in the agreement that require this Commission’s action in order for them to take effect,” and they described some provisions of the agreement as “self-effectuating” and others as “available to CLECs upon request.”

54. On March 10, 2011, Qwest sent an announcement and CMP response in which Qwest said: “Qwest reserves the right under CMP requirements to request an earlier retirement of any application in the event all users have migrated off the old application.”⁶⁵ Qwest did not cite any merger condition allowing the claimed “right.”

55. On March 18, 2011, the FCC issued an order in WC Docket No. 10-110 in which the FCC accepted certain commitments made by CenturyLink as conditions of approval,

⁶² A copy of the Joint CLEC Merger Agreement was attached to the Joint CLECs’ letter, as part of Attachment A, filed with the Commission on June 6, 2011 and is incorporated by reference.

⁶³ Order No. 14, WUTC Docket No. UT-100820, ¶86.

⁶⁴ Order No. 14, WUTC Docket No. UT-100820, footnote 298 to ¶114.

⁶⁵ See Qwest Notification Number SYST.MEDI.03.10.11F.08921 Resp_Addtl_Comments_MTG.

including a commitment in paragraph IV(A)(1) that, in Qwest ILEC territory, following the Merger Closing Date, “CenturyLink will not replace Qwest OSS or integrate it with any other OSS for at least 30 months following the Merger Closing Date.”

56. Although Qwest has pointed to the word “legacy” and placement of this word in paragraph 12 of the Integra Agreement,⁶⁶ in CenturyLink’s commitment to the FCC in paragraph IV(A)(1), the term “legacy” is not used. The phrase “any other OSS”⁶⁷ includes, for example, QPortal, QControl, and MTG. QPortal, QControl, and MTG are not legacy Qwest Corporation OSS. In any event, this FCC commitment is not limited to legacy Qwest OSS.

57. On April 1, 2011, Qwest and CenturyLink closed the transaction (the Closing Date or Merger Closing Date). CenturyLink distributed an announcement saying that “CenturyLink and Qwest have merged to become the third largest telecommunications company in the United States.”

58. Although the transaction completed on April 1, 2011, the respective telecommunications entities, Qwest and CenturyLink, remain separate. Qwest and CenturyLink each remain a party to the Integra and Joint CLEC Agreements approved by the Commission in UT-100820.

59. On April 20, 2011, the repair OSS CR was discussed at the monthly CMP meeting. The Merged Company did not change the effective date of December 12, 2011 presented previously by Qwest. The Merged Company, when asked about impacts to back office systems of its planned changes, confirmed that there will be interface impacts, but said it could not provide details.

⁶⁶ Qwest attorney email (copied to Qwest attorney and CenturyLink attorneys) to Integra (March 21, 2011). Integra disagrees with Qwest’s statements. See, e.g., Integra reply email (March 21, 2011).

⁶⁷ FCC Order, WC Dkt. No. 10-110 (March 18, 2011) at ¶IV(A)(1), p. 30, Appendix A (quoted in previous paragraph).

60. On May 2, 2011, the Merged Company said in an email⁶⁸ to Integra that the Merged Company needs “to implement a replacement system for CEMR and MEDIACC for operations of Qwest Corporation and intends to move forward with installation and implementation of the MTG system at the same time it continues to use CEMR and MEDIACC.” After having agreed to terms in executed settlement agreements months earlier, CenturyLink said that it “will agree” to follow the settlement agreement terms or other agreed upon processes. CenturyLink added that “there will be continued discussions regarding a process to be used to withdraw MEDIACC and CEMR *once MTG is implemented*.”⁶⁹ The procedures in paragraph 12 of the Integra Agreement, however, are supposed to occur before MTG may be implemented. After having executed settlement agreements months earlier that include continuing PAP payments, CenturyLink indicated that due to the alleged instability of the existing system (which it said could result in a “catastrophic failure”), it needed an agreement to transition to MTG or relief from PAP payments.

61. On May 3, 2011, in an email to Qwest and CenturyLink, Integra addressed the Merged Company’s assertion that “CenturyLink continues to have concerns that a catastrophic failure could result with MEDIACC and CEMR.” Integra said (with emphasis added):

To date, CenturyLink has not provided data that adequately verifies this is a realistic concern. *If CenturyLink nonetheless has that concern, please explain why the Merged Company has not already gone to the regulators to establish this fact and seek relief regarding the merger commitments to address this unique situation.* Doing so would give CLECs and regulators a forum to respond and address a solution that meets everyone’s needs. *CLECs did not accept the risk of a catastrophic failure when they signed a merger agreement that promises them not less than the service quality provided by Qwest previously.* We do not accept it now. The Merged Company has made *both* OSS commitments and commitments to maintain service quality levels, and if

⁶⁸ The Merged Company’s May 2, 2011 email relates to change in status (pending withdrawal) of a deferred Change Request (SCR121608-01) (Retirement of MEDIACC); it does not relate to change in status of pending CR #SCR121608-02 (Introduction of MTG). The pending CR continues to have a December 12, 2011 MTG deployment date. http://www.qwest.com/wholesale/cmp/cr/CR_SCR121608-02.html

⁶⁹ Email from Merged Company attorney to Integra (May 2, 2011) (emphasis added).

either is in jeopardy in the Merged Company's view, then it has an obligation to tell the regulators that, as previously indicated. Moreover, if the Merged Company does believe that there may be a catastrophic failure, then that is all the more reason to propose a waiver of the moratorium time period combined with completion of all required merger steps earlier, so that the old systems can be replaced with a new system with no less functionality and quality of service without undue delay, while all carriers are fully protected in the transition as anticipated by those merger procedures.

62. The Merged Company has not filed detailed plans and notices with the regulators, even though it claimed concern about a problem of potential "catastrophic" proportions, a problem that could threaten its ability to meet its merger commitments;⁷⁰ the merger commitments require advance notice to regulators; and its customer asked it to make these filings if the Merged Company really had such concerns.

63. In Integra's May 3, 2011 email, Integra also addressed the Merged Company's statement that "it is CenturyLink's expectation that CLECs remaining on MEDIACC and CEMR would agree to PAP [Performance Assurance Plan] relief if another system is available." This is a particularly troublesome statement, given that it was made within weeks or months of the Joint Applicants' advocacy in favor of agreements containing service quality promises and PAP obligations. As discussed above, although given the opportunity to bring any concerns about the company's ability to meet all of its merger commitments to regulators while the merger proceedings were pending, Joint Applicants did not do so.⁷¹ Integra said in its May 3rd email (with emphasis added):

Following on your stated concern regarding a catastrophic failure, you indicate that "it is CenturyLink's expectation that CLECs remaining on MEDIACC and CEMR would agree to PAP relief if another system is available." We do not agree. It is not as though the claimed concern about CEMR/MEDIACC is a new concern that arose suddenly after the agreements were negotiated. Qwest says it has been reviewing this issue since 2008

⁷⁰ The Merged Company repeated this stated concern at the June monthly CMP meeting. See June 15, 2011 CMP meeting minutes (Tracy Strombotne of Qwest) ("The project is intended to prevent service level issues pre-merger/post-merger. We have an obligation to keep the same service levels, and we would not be able to do that."). http://www.qwest.com/wholesale/cmp/cr/CR_SCR121608-02.html.

⁷¹ See above discussion of Integra's February 9, 2011 email to Qwest legal and CenturyLink legal.

[3/10/11] Matrix, Row 2(1)] and thus Qwest was fully aware of it when negotiating and executing the merger agreement. Nonetheless, the Merged Company did not obtain this proposed term in the settlement agreement (an agreement that does not allow the Merged Company to use ‘another system’ during the moratorium period). The fact that CenturyLink would seek relief from performance assurance plans so soon after agreeing to abide by the PID/PAP plans for at least a defined time period causes additional concern. This is particularly true when combined with the Merged Company’s intent to proceed with implementing and using a new system. Providing PAP relief would eliminate any remaining incentive to fully maintain and meet the company’s obligations to provide at least the level of support and service as before for both CEMR and MEDIACC during the moratorium period and until sufficient acceptance by CLECs of a replacement. Although CenturyLink states that it will run both the new and old systems simultaneously, this does not appear to be a commitment to run them both fully to the required support and service levels for the requisite time period. Rather, the PAP relief proposal seems to suggest that those CLECs which exercise their right under the merger settlement agreement to continue using CEMR and MEDIACC are doing so at their own risk and, if harm results, there is no relief, not even PAP relief, for them. Clearly, that is not the bargain CLECs made – and the commissions approved – in the merger dockets.

64. Although given the opportunity to bring any concerns about alleged system instability or the company’s ability to meet all of its merger commitments to regulators while the merger proceedings were pending, Joint Applicants did not initiate bringing such concerns to this Commission or other commissions in Qwest territory during those proceedings or since then.

65. On May 4, 2011, representatives of the Merged Company (legacy Qwest and legacy CenturyLink) met with Integra in Minnesota. They said that Qwest Corporation uses MEDIACC for itself, with a significant percentage of Qwest repair tickets being in MEDIACC. They also told Integra that the Merged Company has decided to move to a single OSS application for all Merged Company entities for repair – MTG. They said they were conveying this information in response to Integra’s earlier question as to whether CLECs would potentially be asked to move to a new repair system for Qwest (MTG) and then move again for the Merged Company. This CenturyLink decision was communicated just about a month after the Closing

Date,⁷² despite Mr. Hunsucker's pre-merger testimony that the Merged Company's "evaluation of the best options for all stakeholders" is "expected to take 12 months at the very least."⁷³

Mr. Hunsucker indicated in the May 4 meeting that they still needed approval from William Cheek before they could confirm that the company would follow steps in the merger conditions (even post MTG implementation).

66. Pre- and post-merger, Qwest has acknowledged that MTG is a "new system"⁷⁴ which is the "replacement"⁷⁵ for MEDIACC (a legacy Qwest OSS). Under the terms of the merger agreements, MTG is the "replacement interface,"⁷⁶ the "replacement for a Qwest OSS Interface,"⁷⁷ "any wholesale OSS implemented by the Merged Company,"⁷⁸ the "surviving system,"⁷⁹ and the "successor OSS."⁸⁰

⁷² Joint CLECs pointed out this fact in comments filed in Minnesota on June 28, 2011. On June 30, 2011, CenturyLink suggested in comments filed in Minnesota that a decision had not yet been made (see discussion of June 30, 2011 below), while suggesting on the same day in CMP that a decision had been made but now it is not "definitive." See July 1, 2011 CMP Matrix. If it were the case that a decision had not been made, then the parties would be back to the initial question, asked by Integra on February 20, 2011 and repeated in Integra's email on May 3, 2011: "Is the merged company moving to MTG? If not, will CLECs have to move to MTG and move again? You did not answer the latter question. Your email states that 'CenturyLink continues to evaluate MTG as a potential replacement solution for systems currently used by all CenturyLink affiliates.' 'All' affiliates includes Qwest Corporation. It appears that, including in Qwest territory, you are saying that CLECs may have to move to MTG and move again. Please confirm if that is the case. If it is the case, please explain why the Merged Company is nonetheless already proceeding with MTG implementation at everyone's time and expense before the Merged Company even decides upon a plan for how it intends to proceed."

⁷³ Rebuttal of Michael R. Hunsucker, WUTC Dkt. No. UT-100820 (Nov. 1, 2010), p. 48; see also Rebuttal of Michael R. Hunsucker, CO Dkt. No. 10A-350T, p. 46 (Oct. 15, 2010).

⁷⁴ Feb. 16, 2011 monthly CMP meeting ("until the new system is available"); June 15, 2011 monthly CMP meeting (same IT representative confirming it is a new system); CenturyLink May 2, 2011 email ("change from CEMR and MEDIACC to the *new system*") (emphasis added).

⁷⁵ Merged Company (Mr. Hunsucker) email to Integra (May 19, 2011) ("the replacement system, MTG"). See also Merged Company May 2, 2011 email to Integra (indicating the company needs "to implement a replacement system for CEMR and MEDIACC for operations of Qwest Corporation and intends to move forward with installation and implementation of the MTG system at the same time it continues to use CEMR and MEDIACC."); Jan. 19, 2011 CMP monthly CMP meeting ("we are conducting a Preliminary Implementation Plan Review meeting for the MTG project which is the CEMR MEDIACC replacement").

⁷⁶ Integra Agreement, ¶12(c)(i).

⁷⁷ Integra Agreement, ¶12(c)(i).

⁷⁸ Integra Agreement, ¶12(c)(iii).

⁷⁹ Integra Agreement, ¶12(a).

⁸⁰ Joint CLEC Merger Agreement, p. 3 (first full paragraph and last paragraph).

67. On May 18, 2011, the repair OSS CR was discussed at the monthly CMP meeting. Qwest's representative said there were some CLEC requests to look at the technical timeline as it relates to merger agreements and she hoped to have a revised timeline by the next CMP meeting, once she had management review/approval. Qwest said the issue is the timelines do not mesh and there will be an issue when attempting to merge that timeline with the current CMP timeline, and there was also an issue of money if there is a modified timeline. She said there was a burning need to get the new system in place.

68. On May 19, 2011, Mr. Hunsucker told Integra that final approval from the CenturyLink executive committee on the replacement system, MTG, was pending.

69. On May 27, 2011, the Merged Company sent an email to CMP participants which said the CEMR online interface was recently upgraded to a "stable" hardware and software platform that integrates well with the current MEDIACC application, and will allow it to interface seamlessly to an MTG B2B (i.e., application-to-application) application.

70. Integra asked a number of questions raised by the May 27th email, but the Merged Company has not adequately responded to the questions about the "upgrades" to make the system "stable." For example, Qwest has not responded to the following questions asked by Integra in its June 1, 2011 reply email: "Why did the Company make these changes now? Why did the Company choose to not take these steps to make the existing system more stable before? Why did the Company wait until recently to make these 'upgrades,' when if there was an instability problem, the Company had these means available to make them stable?" If it were true that the reason for Qwest's rush to implement a new system by December of 2011 were to address an instability problem, then Qwest could have (a) avoided the need for development of a

new system during the OSS moratorium period by making the “upgrades” earlier,⁸¹ or (b) once the upgrades were made (making the system “stable” and eliminating the stated need for a new system) stop development of the new system until after the OSS moratorium period.

71. Qwest has not provided a valid reason as to why Qwest is rushing to implement a new system in Qwest territory by the end of this year, despite post-merger assurances that the system is now “very stable”⁸² and pre-merger assurances by CenturyLink that there would be no need to act quickly.⁸³ Even assuming some instability or other issue remains, Qwest has not provided a valid reason why it has not then notified this Commission and other affected regulators and obtained modified procedures to address that situation. There is no provision in the settlement agreements for Qwest or CenturyLink (and/or any one or more CLECs) to modify the filed settlement agreement OSS procedures, even by mutual consent, without prior Commission approval to act contrary to the approved merger conditions.

72. On June 8, 2011, the repair OSS CR was discussed on an ad hoc CMP call. The Merged Company said that due to work by IT the company had been able to “stabilize” the “CEMR platform so that there was not a need to change out CEMR.”

73. On June 14, 2011, the Merged Company distributed a revised timeline to CMP participants (which is attached as part of Exhibit 1 to this Complaint). The revised timeline does not comply with the procedures and requirements of the merger settlement agreements, CenturyLink’s commitments to the FCC, and this Commission’s Order. In the revised timeline,

⁸¹ See Integra’s February 20, 2011 questions to Qwest (“Please clarify the following: If the timeline, as indicated by Qwest, is roughly 9-12 months for a hardware upgrade to the current system and the timeline is roughly 9-12 months for a new application, why did Qwest choose to implement the new system instead of simply upgrading the End of Life hardware, which would allow Qwest to retain the existing system (MEDIACC/CEMR)?”).

⁸² See June 15, 2011 CMP meeting minutes (Tracy Strombotne, Qwest), at http://www.qwest.com/wholesale/cmp/cr/CR_SCR121608-02.html; see also Qwest email to CMP participants (May 27, 2011) (“stable”).

⁸³ OR Hrg. Tr., Dkt. No. UM 1484 (Dec. 16, 2010), Vol. I, p. 42, lines 4-17 (Mr. Jones, CenturyLink); see also above quotations from Joint Applicants’ WA Reply Brief and OR testimony of Mr. Jones.

the Merged Company maintains its earlier schedule, which includes deployment of the replacement system, MTG, by December 12, 2011, during the 30-month moratorium and freeze period and without first following the merger procedures. On June 15, 2011, Tracy Strombotne of Qwest said, in a CMP meeting, that “on December 12, we *will* migrate the software and then *we will move over* the first of our *internal* customers.”⁸⁴ An internal customer is Qwest itself. In other words, Qwest will be *using* MTG after December 12, 2011, in violation of its commitment in paragraph 12 of the Integra Agreement to “*use . . . the legacy Qwest*” OSS for a longer period of time.⁸⁵

74. In the June 14, 2011 revised timeline, the Merged Company also includes a specific date on which to “Retire Mediacc,”⁸⁶ contrary to very recent Merged Company attempts to suggest that, notwithstanding all evidence to the contrary, it has not yet made a decision to use MTG or to integrate, retire, and replace MEDIACC with MTG.⁸⁷ Those recent suggestions are inconsistent with the documented facts.

75. The continued insistence of the Merged Company on a December 2011 MTG implementation date, despite assurances to regulators that there would be no reason to hurry or act quickly,⁸⁸ shows that resolution of this Complaint is extremely time sensitive and of the utmost importance. Harm will not be prevented, and a solution or remedy will be more difficult

⁸⁴ http://www.qwest.com/wholesale/cmp/cr/CR_SCR121608-02.html (emphasis added).

⁸⁵ In recent CenturyLink comments filed in Minnesota, CenturyLink states with respect to CEMR and MEDIACC that it still “*offers* their use to wholesale customers, as required by the settlement agreement.” CenturyLink’s Comments, MN Dkt. No. P-421, et al./PA-10-456 (June 30, 2011), p. 2 (emphasis added). Notably, CenturyLink omits its obligation to also “use” legacy Qwest OSS for 30 months.

⁸⁶ See also June 15, 2011 CMP meeting minutes (Tracy Strombotne, Qwest) (“with a plan to retire the system in 2013”), http://www.qwest.com/wholesale/cmp/cr/CR_SCR121608-02.html

⁸⁷ CenturyLink’s Comments, MN Dkt. No. P-421, et al./PA-10-456 (June 30, 2011) at, e.g., p. 3 (“if and when MEDIACC is retired”); p. 3 (“If CenturyLink decides it wants to retire . . . MEDIACC. . .”); p. 3 (MTG is “not a change or replacement to existing systems”); p. 4 (“if it later becomes the replacement system”).

⁸⁸ E.g., OR Hrg. Tr., Dkt. No. UM 1484 (Dec. 16, 2010), Vol. I, p. 42, lines 4-17 (Mr. Jones, CenturyLink); see also above quotation from Joint Applicants’ WA Reply Brief.

to address, after the pre-implementation deadlines (in columns A and B of the June 14, 2011 revised timeline) have passed.

76. Although the merger agreements require insertion of dates in the timeline for procedures required by paragraph 12 of the Integra Agreement *before* any MTG implementation, additional columns were added in the June 14, 2011 revised timeline to the existing timeline for later dates, *after* MTG implementation/deployment. Under the revised timeline, therefore, procedures that per the merger conditions should occur before MTG implementation will not occur until after MTG implementation. Some of the procedures required by the merger agreements do not appear in the revised timeline. There are also duplicative steps that impose additional burdens on CLECs, including during a time when this activity should not be occurring.

77. The revised timeline (post-MTG implementation, columns D & E) shows Qwest issuing a notice to retire MEDIACC *three weeks before*⁸⁹ *the parties vote* as to whether to accept MTG to replace MEDIACC. Without a successful vote, however, MEDIACC cannot be either retired or replaced per the merger agreements.⁹⁰ A premature retirement notice under these circumstances would create additional confusion and more uncertainty. MTG replacement of MEDIACC is treated in the timeline as a foregone conclusion, with a specific date being assigned to its retirement. After all, CenturyLink will have already implemented MTG at least a year earlier, per the revised timeline. This sequencing of events would render the intent of the procedures, to provide meaningful input, collaboration, and mutual development before a vote, meaningless as a practical matter.

⁸⁹ “Issue Retirement Notice” on January 10 and “CMP Vote” on January 31.

⁹⁰ Integra Agreement, ¶12(c)(i) (“The replacement or retirement of a Qwest OSS Interface may not occur without sufficient acceptance of the replacement interface by CLECs”).

78. The revised timeline also raises issues of discrimination. In the June 15, 2011 CMP monthly meeting, Qwest said: “on December 12, we will migrate the software and then we will move over the first of our internal customers. She said we would then work with interested external customers to point to CEMR or MTG or B2B [application-to-application] with MTG.” She did not explain why Qwest would move itself first. Qwest indicated in CMP that its “internal customers” (i.e., Qwest) could move to MTG, even if no CLEC moves to MTG. If the Merged Company moves itself to the new system early, it will have a reduced incentive to properly maintain and support CEMR/MEDIACC. A discriminatory situation may arise in which the Merged Company provides better service and support for itself with a new system than for CLECs under the existing system. While the Merged Company may argue that CLECs are choosing this consequence by not expending the resources to move to a new system before the time period required by the approved settlement agreement, it is not the CLEC’s choice that the Merged Company would act contrary to the merger Orders and conditions. If Qwest moves some CLECs and not others, discrimination may also occur. Additionally, this would create additional uncertainty as to how the procedures in paragraph 12 of the Integra Agreement, as modified by the Joint CLEC Agreement, will be applied.

79. Even setting aside the problem of these events not occurring before MTG implementation (columns A and B of the timeline), when they do appear on the schedule (columns D and E of the timeline), the revised timeline is too compressed. For example, the revised timeline indicates that the company will not perform a walk through until July 13 to July 18. CLEC Comments are due shortly after on Friday, July 20, 2012, and the company will issue “final” technical specifications on Tuesday, July 24 – only two business days after receiving CLEC comments. When Joint Applicants represented that the “benefits granted the CLECs

through the Department of Commerce and Integra settlements” include “cooperation” and “opportunities for CLEC . . . input,”⁹¹ CLECs and regulators were led to believe this opportunity would be meaningful and the input taken into account. The revised timeline is inconsistent with the Joint Applicants’ representations to regulators.

80. On June 15, 2011, during the monthly CMP meeting, a Merged Company’s IT representative said that the system is very stable now. She said that “Qwest uses MEDIACC today and will have an opportunity to move to MTG.”⁹² If Qwest moves to MTG, however, Qwest will not “use” the legacy Qwest OSS (MEDIACC) for at least 30 months, as required by the Integra Agreement (as modified by the Joint CLEC Merger Agreement).

81. When asked in CMP on June 15, 2011 why there is a burning need to implement MTG by the end of the year now that the company says the system is stable, the Merged Company’s IT representative repeated an earlier claim that the “burning need is the old hardware and the concern that it will fail,” even though in the same CMP meeting she said the system is now “very stable.”⁹³ She also contradicted her earlier statement that “we *will move*” internal customers when she later in the same meeting said “if we don’t physically move any customers to it, it is just sitting there until we use the new system.” The Merged Company did not explain why it is in a hurry to implement a system that would just sit there. To the extent that she was implying MTG is a fail-safe system in the event of a crisis, her coworker clarified that this is not the case, stating: “it is not a fail safe. . . . For any other internal or external customers that want to test or use the system, they can.”

82. On June 30, 2011, CenturyLink filed comments in Minnesota in which, despite all evidence to the contrary, CenturyLink said that MTG is “not a change or replacement to existing

⁹¹ Joint Petitioners Reply Brief, MN Dkt. No. P-421, et al./PA-10-456 (Dec. 8, 2010), p. 3.

⁹² June 15, 2011 Monthly CMP meeting.

⁹³ <http://wholesalecalendar.qwestapps.com/detail/292/2011-06-15>.

systems” and characterized MTG as optional.⁹⁴ If, as Qwest and CenturyLink periodically suggest, the existing system is obsolete and/or unstable, however, there would be nothing optional about the new system, because it would be necessary for all CLECs as well as Qwest to move to a stable or non-obsolete system, after the Merged Company receives Commission approval to modify the merger conditions to provide for completion of the requisite procedures before the end of the moratorium period.⁹⁵ If, as Qwest and CenturyLink periodically suggest, the existing system is now stable, then no carrier, including Qwest, needs to move to a new system during the 30-month moratorium period, and there is no reason why Qwest cannot comply with its commitment in paragraph 12 of the Integra Agreement to “use” (as well as “offer to wholesale customers”) the legacy Qwest OSS.

83. In its June 30, 2011 comments, CenturyLink essentially argues that it is in compliance with the Integra Agreement because, after its most recent revisions to its OSS plan, it will not discontinue CEMR or MEDIACC for 30 months (while it does not deny that in the meantime it will implement a new system without prior majority CLEC acceptance, use the new system itself, and encourage others to use the new system before the merger OSS procedures are performed).⁹⁶ Joint CLECs, however, expressly rejected a merger condition of not discontinuing existing systems for a period of time as inadequate to meet their needs, and none of them settled on those terms.⁹⁷ The Integra Agreement does not contain the more limited language (“not

⁹⁴ CenturyLink’s Comments, MN Dkt. No. P-421, et al./PA-10-456 (June 30, 3011), pp. 2-3; see *id.* p. 3 (MTG is “not a change or replacement to existing systems”). But see Qwest July 1, 2011 CMP Matrix (“MTG is ultimately intended to replace the legacy Qwest MEDIACC system.”).

⁹⁵ See May 3, 2011 Integra reply email to Qwest and CenturyLink (quoted above) stating, *e.g.*: “To date, CenturyLink has not provided data that adequately verifies this is a realistic concern. If CenturyLink nonetheless has that concern, please explain why the Merged Company has not already gone to the regulators to establish this fact and seek relief regarding the merger commitments to address this unique situation. Doing so would give CLECs and regulators a forum to respond and address a solution that meets *everyone’s* needs.”

⁹⁶ CenturyLink’s Comments, MN Dkt. No. P-421, et al./PA-10-456 (June 30, 3011), pp. 2-3.

⁹⁷ See discussion above of MN DOC Agreement and the October 18, 2010 MN Supplemental Surrebuttal Testimony of Mr. Gates of QSI Consulting on behalf of Joint CLECs (including Integra, PAETEC, and **tw telecom**).

discontinue”) and instead uses broader language (“use and offer”) to avoid the very argument that CenturyLink is nonetheless now making. CenturyLink’s position violates the Integra Agreement.

84. The Joint Applicants’ conduct violates not only the terms of the Integra Agreement, but also of Commission Order No.14, UT-100820, which approved the Integra Agreement.⁹⁸ The conduct also violates the Joint CLEC Merger Agreement, the Staff Agreement, the **tw telecom** Agreement, and CenturyLink’s commitments to the FCC.

85. The Joint Applicants’ conduct also breaches and violates interconnection agreement (ICA) terms requiring nondiscrimination (including nondiscriminatory access to OSS) and compliance with the law and regulatory decisions. Exhibit 2 to this Complaint contains excerpts from the ICAs with relevant ICA provisions.

86. CLECs’ objections to Joint Applicants’ Repair OSS conduct have been raised in the CMP and escalated with Qwest’s and CenturyLink’s operational personnel, including at or above the Vice President level. The CMP Document, which outlines the rules and procedures governing conduct of Qwest’s CMP, expressly provides in Section 15 (Dispute Resolution) that: “This process does not limit any party’s right to seek remedies in a regulatory or legal arena at any time.”

87. Despite objections made by CLECs pre- and post-merger to Joint Applicants’ Repair OSS Conduct, the Joint Applicants continue to engage in conduct that is contrary to the terms of the Integra Agreement described above, the Joint CLEC Merger and tw telecom Agreements described below, and Commission Order No. 14, UT-100820.

⁹⁸ See Order No.14, UT-100820, pp. 14-18.

**CLAIM FOR RELIEF
COUNT I — VIOLATION OF COMMISSION ORDER**

88. The Joint CLECs incorporate by reference the above-paragraphs 1 through 87.

89. The merger of Qwest and CenturyLink was subject to Commission approval pursuant to RCW 80.12 and WAC 480-143, which prohibits any entity subject to RCW 480-143 from acquiring any property of any telephone company doing business in Washington without first obtaining Commission approval, and WAC 480-143-170 which prevents any telecommunications carrier from acquiring ownership or control of any line, plant, or system without obtaining a determination by the Commission that the present or future public convenience and necessity require or will require the acquisition.

90. The Commission's approval of the merger was expressly conditioned upon compliance by Qwest and CenturyLink with the terms and conditions of the settlement agreements, including the Integra Settlement Agreement.⁹⁹

91. Further, the Commission, in approving the merger, recognized that Qwest and CenturyLink would remain subject to regulation by the Commission.¹⁰⁰

92. Joint Applicants' Repair OSS Conduct is contrary to the merger conditions ordered by this Commission.

93. Violation by Qwest and CenturyLink of this Commission's merger order has caused, and will continue to cause, harm to the CLECs, including but not limited to the Joint CLECs, and will also harm the public interest in fair and reasonable competition.

COUNT II – BREACH OF SETTLEMENT AGREEMENTS

94. The Joint CLECs incorporate by reference the above-paragraphs 1-93.

⁹⁹ See Order No. 14, UT-100820, ¶292.

¹⁰⁰ See Order No. 14, UT-100820 at ¶¶291 & 296.

95. The Integra, Staff, and **tw telecom** settlement agreements (“Settlement Agreements”) have been specifically approved by the Commission. The Commission has taken administrative notice of the Joint CLEC Merger Agreement, which Joint Applicants have indicated does not require Commission action for its provisions to take effect, and adopted its extended timeframes.

96. Despite CLEC objections to the Joint Applicants’ conduct, Joint Applicants have stated their intent to move forward, and have taken steps to move forward, with the repair OSS Change Request and associated timeline over CLEC objection. Their conduct has caused uncertainty, even though the parties entered into the Settlement Agreements in part to obtain certainty,¹⁰¹ and it causes work and creates change at a time when the moratorium on such change should have been in place. Such action by the Joint Applicants constitutes a breach of the Integra, Staff, Joint CLEC, and **tw telecom** Settlement Agreements.

97. The breach of the Settlement Agreements has caused, and will continue to cause, harm to the Joint CLECs, as well as other CLECs, and will also harm the public interest in fair and reasonable competition.

COUNT III – BREACH/VIOLATION OF INTERCONNECTION AGREEMENTS

98. The Joint CLECs incorporate by reference the above-paragraphs 1-97.

99. Integra,¹⁰² PAETEC,¹⁰³ and tw telecom¹⁰⁴ each currently has one or more entities with an Interconnection Agreement (ICA) in place with Qwest in Washington.

¹⁰¹ Integra Agreement §E, p. 13 (adopted by PAETEC and **tw telecom**).

¹⁰²Advanced Telecom, Inc. dba Integra; Electric Lightwave, LLC dba Integra; Eschelon Telecom of Washington, Inc. dba Integra Telecom; Integra Telecom of Washington, Inc. fna OGC Telecomm Limited; Oregon Telecom Inc. dba Washington Telecom dba Integra; Unicom f/k/a United Communications, Inc. dba Integra. Oregon Telecom Inc. d/b/a Washington Telecom opted in to the Covista interconnection agreement.

¹⁰³ McLeod USA Telecommunications Services L.L.C. d/b/a PAETEC Business Services.

¹⁰⁴ **tw telecom of oregon llc**

100. The Qwest ICAs with Joint CLECs require Qwest to comply with laws and regulations (which includes laws and regulations requiring compliance with Commission orders and procedures, as well as laws requiring nondiscrimination, requiring nondiscriminatory access to UNEs, and prohibiting backsliding),¹⁰⁵ to provide services under the ICA in a nondiscriminatory manner, including nondiscriminatory access to UNEs and OSS,¹⁰⁶ to comply with performance standards for service quality (see Exhibit B for PIDs and Exhibit K for PAP),¹⁰⁷ and to provide repair and maintenance on a nondiscriminatory basis, including to provide necessary maintenance business process support as well as system interfaces required to provide CLEC at least the same level and quality of service for all services as Qwest provides for itself, its subscribers, any of its Affiliates or subsidiaries.¹⁰⁸ The ICAs have been publicly filed and approved by the Commission and are incorporated by reference. Exhibit 2 to this Amended Complaint contains excerpts of relevant ICA provisions.

101. The Qwest ICAs with ELI and UNICOM allow ELI to use the “MEDIACC Electronic Bonding (EB)” interface or Graphical User Interface (“GUI”).¹⁰⁹

102. Qwest’s conduct in violation of the terms of the Settlement Agreements regarding OSS and the Commission’s order in the merger docket also constitutes a violation of the Joint CLECs’ ICAs. Qwest discriminatory conduct in implementing terms for itself and between and among CLECs also breaches the Joint CLECs’ ICAs.

¹⁰⁵ See, e.g., ATI ICA, ¶¶ 1.3, 2.2; 11.1.1; 26.31; ELI ICA, ¶¶(A)1.2, (A)1.4, (A)3.30, (E)1.2; Eschelon ICA ¶¶1.2, 1.3, 2.2, 5.27.1, 9.1.2, 9.23.1.2; Integra ICA ¶¶ 1.2, 2.2; 26.31; UNICOM ICA ¶¶1.2, 2.2, 5.27.1, 6.1.1, 9.1.2; tw telecom ICA ¶5.27.1.

¹⁰⁶ See, e.g., ATI ICA¶ 8.1.3; ELI ICA ¶¶ (E)1.3.2, (E)1.3.6, (E)1.4.1, (E)1.4.2, (E)1.4.3; Eschelon ICA ¶¶1.3, 9.1.2, 9.23.1.1, 9.23.1.2, 12.1.2.1, 12.1.2.2; Integra ICA¶ 8.1.3; UNICOM ICA ¶9.1.2, 12.1.2.

¹⁰⁷ See, e.g., Eschelon ICA ¶12.1.2.1; ELI ICA Part A ¶8.1; Integra ICA ¶ 24.1.

¹⁰⁸ See, e.g., ELI ¶(E)1.4.3, (H)8.1.1, (H)8.1.2; Eschelon ICA ¶¶12.1.2.1, 12.4.0.1, 12.4.0.2, 12.4.0.3.

¹⁰⁹ See PAETEC ICA ¶12.2.2.2; ELI ICA ¶(H)2.2.2; UNICOM ICA ¶12.2.2.2. The PAETEC ICA provides that MEDIACC EB uses CMIP protocol. See PAETEC ICA ¶12.2.2.3. Qwest’s new system, MTG, in contrast, will not use CMIP protocol.

103. Qwest's breach and violation of its ICAs with the Joint CLECs has caused, and will continue to cause, harm to the Joint CLECs, as well as other CLECs, and will also harm the public interest in fair and reasonable competition.

COUNT IV – BREACH OF DUTY OF NON-DISCRIMINATION

104. The Joint CLECs incorporate by reference the above-paragraphs 1-103.

105. The Telecommunications Act of 1996 amended the Communications Act of 1934, 47 U.S.C. § 151 et seq. The Act prohibits discrimination by Incumbent Local Exchange Carriers (ILECs). See, e.g., 47 U.S.C. §251(c)(3)-(c)(4) & §271(c)(2)(B)(ii). ILECs are similarly prohibited by Washington law from discriminating against CLECs or in favor of their own affiliates. See Washington RCW 80.16.020.

106. Qwest is a Washington ILEC. As a consequence, the Joint Applicants, both individually and collectively, are prohibited from discriminating against the CLECs. Qwest may not discriminate in favor of itself, its customers, any of its subsidiaries or Affiliates or, including CenturyLink and CenturyLink entities.

107. Based upon Qwest's representation in CMP, Qwest will transition its "internal customers" to MTG before, and/or in the absence of, any CLECs moving to MTG. Qwest has taken steps in furtherance of deploying and implementing MTG for itself and its internal customers. When the Merged Company moves itself to MTG early, it will have a reduced incentive to properly maintain and support CEMR/MEDIACC, as it is required to do by the ICAs and the Act.

108. A discriminatory situation arises as a result of this transition since Qwest may provide better service and support for itself with a new system than for the CLECs under the existing system.

109. In addition, if Qwest moves some CLECs and not others, discrimination may also occur.

110. The discrimination by Qwest occasioned by the move of Qwest internal entities to MTG and the prospect of moving some CLEC, but not others to MTG, violates the Act's prohibition on discrimination and has caused, and will continue to cause harm to the Joint CLECs, as well as other CLECs, and will also harm the public interest in fair and reasonable competition.

RELIEF REQUESTED

WHEREFORE, the Joint CLECs request that the Commission:

1. Conduct an investigation regarding Joint Applicants' compliance with the obligations described in this Complaint, including those set forth in the Commission's order approving the merger and settlement agreements upon which that order was based;
2. Based upon the factual record resulting from the Commission's investigation, find that Joint Applicants' conduct breaches and violates their settlement agreements with the Joint CLECs, as well as Commission staff.
3. Based upon the factual record resulting from the Commission's investigation, declare that Joint Applicants' conduct violates the Commission's order approving the merger;
4. Based upon the factual record resulting from the Commission's investigation, declare that Joint Applicants' conduct violates or is inconsistent with CenturyLink's commitments to the FCC;
5. Based upon the factual record resulting from the Commission's investigation, find that Joint Applicants' conduct breaches and violates interconnection agreement terms;
6. Permanently enjoin Qwest and CenturyLink from proceeding in violation of the obligations set forth in the agreements and the Commission's order approving the merger;

7. Require Qwest and CenturyLink to file regular compliance reports with the Commission and/or commission staff, with copies to Complainants and requesting carriers, to ensure compliance and to prevent backsliding on a going forward basis;

8. Require that Joint Applicants compensate Joint CLECs for all costs incurred, including reasonable attorneys' fees, in order to enforce the Commission's order approving Joint Applicants' merger and the settlement agreements;

9. Grant such other and further relief, including temporary or injunctive relief as needed, as the Commission may find appropriate under the circumstances.

Respectfully submitted on this 11th day of July, 2011.

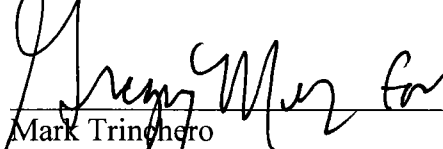
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