

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

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

**RESPONSIVE TESTIMONY OF
DOUGLAS DENNEY**

**ON BEHALF OF
INTEGRA TELECOM**

**NON CONFIDENTIAL VERSION-
INFORMATION SUBJECT TO PROTECTIVE ORDER HAS BEEN REDACTED**

December 15, 2011

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1 **I. INTRODUCTION**

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

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

4 **Q. DID YOU FILE DIRECT TESTIMONY IN THIS DOCKET?**

5 A. Yes. I filed Direct Testimony in this docket on behalf of Integra Telecom, on October
6 14, 2011.

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

8 A. Each section of my testimony responds to Answer Testimony filed by Mr. Michael
9 Hunsucker and Ms. Renée Albersheim on behalf of CenturyLink/Qwest or Robert
10 Williamson on behalf of Staff of Washington Utilities and Transportation Commission,
11 which I have tried to group generally by subject matter. The first section of this
12 testimony introduces this testimony. The second section of this testimony addresses
13 retirement of legacy Qwest repair operational support systems (“OSS”) and
14 Ms. Albersheim’s claim of an increasing risk of an unrecoverable system failure. The
15 third section explains that the threat of a disastrous CEMR/MEDIACC failure renders
16 meaningless any assurances to continue offering CEMR/MEDIACC. The fourth section
17 describes the impact to CEMR users of a transition to MTG, regardless of system failure.
18 The fifth section addresses the inability of CLECs to transition to MTG in the event of a
19 MEDIACC failure. The sixth section explains that performance payments are an
20 insufficient incentive and, if payments are made post-merger in higher amounts than paid
21 pre-merger, this signifies an independent breach of the merger settlement agreements.

1 The seventh section describes alternative solutions that now need to be considered
2 because Qwest/CenturyLink have raised the specter of disastrous OSS failure including:
3 (a) updating MEDIACC; (b) building MTG to speak both CMIP and XML languages;
4 and (c) compensation or funding, such as early PAETEC testing, outsourced at the
5 Merged Company's expense, as part of an open, transparent project for which the Merged
6 Company properly bears the costs. The eighth section addresses the Change
7 Management Process ("CMP"), the status quo as to OSS versus CMP procedures, and the
8 source of Qwest's obligation to retain CMP. The ninth section explains that CLECs did
9 not claim that all system changes in CMP are prohibited but rather this is a CenturyLink
10 claim, unlike CLECs' position which recognizes pertinent differences in changes made in
11 CMP. The tenth section addresses customer requests, including in-region and out-of-
12 region requests. The eleventh section discusses CenturyLink's and Qwest's failure to
13 notify the Commission and failure to disclose information in settlement negotiations.
14 The twelfth section addresses the Merged Company's obligation to use and offer to
15 wholesale customers the legacy Qwest OSS, including a discussion of the Merged
16 Company's recent claim that it does not use MEDIACC, contrary to previous admissions.
17 The thirteenth section responds to additional erroneous and inconsistent claims by the
18 Merged Company. The fourteenth section addresses Mr. Hunsucker's claim that the
19 CenturyLink acted in good faith. The fifteenth section concludes my testimony.

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

1 A. Yes. I have the following exhibits to my testimony, and three contain confidential
2 information:

3 Exhibit DD-1: Discovery responses of Qwest/CenturyLink (public).

4 Exhibit DD-2: Discovery responses of Qwest/CenturyLink (confidential).

5 Exhibit DD-3: MEDIACC Production Disaster Recovery Plan, Creating Date
6 11/15/01, Last Revision (Reviewed) Date: 07/12/11 (confidential).

7 Exhibit DD-4: A “failover plan specifically designed to address any failure of the
8 server that houses the database and middleware used by MEDIACC,”¹ September
9 20, 2003 (confidential).

10 Exhibit DD-5: Qwest/CenturyLink Report on MEDIACC Risks, MN Docket Nos.
11 10-456 and 11-684 (October 6, 2011) [publicly filed “Merged Company MN
12 Compliance Filing”] (without attachments).

13 In addition, I reference a number of exhibits to the testimony submitted on behalf of
14 Integra by Bonnie J. Johnson (“BJJ”).

15 **II. RETIREMENT OF REPAIR OSS AND CLAIMED INCREASING RISK OF OSS**
16 **FAILURE**

17 **Q. HAS CENTURYLINK MADE A COMMITMENT NOT TO RETIRE CEMR?**

18 A. No. Ms. Albersheim states, “There are no plans *at this time* to retire CEMR,”² but this is
19 no commitment at all.³ The fact that CenturyLink is not stating or disclosing a plan does
20 not mean that CEMR will not be retired. The company has expressed a preference for

¹ Exhibit DD-5, Merged Company MN Compliance Filing, p. 6 (describing MN Highly Sensitive Trade Secret Attachment O).

² Direct Testimony of Renée Albersheim on behalf of CenturyLink, WUTC Docket UT-111254, (Oct. 14, 2011), (“Albersheim Direct Test.”), p. 4, lines 16-17 (emphasis added); *see also*, Answer Testimony of Renée Albersheim on behalf of CenturyLink, CO Docket No. 11F-436T, Sept. 15, 2011, (“Albersheim Answer Test.”), p. 5, lines 14 – 15 (emphasis added).

³ I address this issue at Direct Testimony of Douglas Denney on behalf of Integra Telecom, WUTC Docket UT - 111254, October 14, 2011 (“Denney Direct”), pp. 21-27; *see also*, CO Docket No. 11F-436T, August 12, 2011 (“Denney Direct”), Docket 11F-436T, pp. 20-23.

1 using one system for the entire Merged Company, and it has not indicated that CEMR
2 will be that system for repair for GUI users.⁴

3 **Q. WHAT REASON DOES CENTURYLINK GIVE AS A RATIONALE FOR ITS**
4 **NEED TO RETIRE MEDIACC?**

5 A. Ms. Albersheim states, “Legacy Qwest evaluated the MEDIACC system and determined
6 that both the hardware and the software are no longer fully supported by the vendor.”⁵

7 Ms. Albersheim states there is “an increased risk of unrecoverable failure of MEDIACC
8 in the future,”⁶ and that this risk is increasing.⁷ Previously, CenturyLink was more
9 precise saying MEDIACC “will *likely* begin experiencing problems *in the near future*.”⁸

10 Ms. Albersheim omits that Qwest has known about the unsupported components of
11 MEDIACC since before 2008⁹ and that nothing in the status of MEDIACC has changed

4 Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 23, lines 1-6 and Section VI(L), pp. 163-166; *see also*, Denney Direct, CO Docket 11F-436T (Aug. 12, 2011), p. 21, lines 8-13 and Section VI(L), pp. 140-145.

5 Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 6, lines 5-6; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 6, lines 15-16.

6 Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 6, lines 9-10; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 6, lines 19-20; *see also*, WA Preliminary Injunction Response, WUTC Docket UT-111254, (Aug. 18, 2011), p. 14, ¶32; *id.* at Declaration of Renée Albersheim [Albersheim Washington Declaration], p. 6 & pp. 8-9; *see also* potentially “disastrous” failure of the Qwest repair OSS. CO Preliminary Injunction Response, CO Dkt. No.11F-436 (Aug. 2, 2011), p. 5; *id.* at Exhibit A, Affidavit of Renée Albersheim [“Albersheim Colorado Affidavit”], pp. 7-9.

7 Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 6, line 10; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 10, lines 14-17.

8 CO Answer, CO Docket No.11F-436, p. 2, ¶2, 2nd paragraph (emphasis added). Qwest and CenturyLink moved to amend their Colorado Answer in other respects; the motion does not include any change to this allegation. In any event, the motion was denied.

9 In 2008, Qwest initiated two change requests in CMP to implement a new repair system (referred to as Common Ticketing Gateway, or CTG) and retire and replace MEDIACC. See Exhibit BJJ-7 at JC000043-JC000058 & Exhibit BJJ-9 at JC000059-JC000061. Although it did not provide this reason at the time, Qwest now claims that it introduced these CRs because of concern about the long term viability of MEDIACC. See WA Preliminary Injunction Response, WUTC Docket UT-111254, (Aug. 18, 2011), p. 13; *see also*, CO Preliminary Injunction Response, CO Docket No.11F-436T (Aug. 2, 2011), p. 11; and Denney Direct, WUTC Docket UT-

1 since the merger proceedings.¹⁰ It is unclear how CenturyLink can determine that the
2 risk is increasing or that problems in the near future are likely given their responses in
3 discovery explaining that “CenturyLink cannot predict if or when MEDIACC will fail,”¹¹
4 and testimony in the Minnesota Commingling Docket arguing that the age of systems
5 does not determine whether they are obsolete.¹²

6 If system stability were an important and increasing risk facing CEMR and MEDIACC
7 users, Qwest should have raised this issue with the Commission much earlier.¹³ But in
8 fact, Qwest never mentioned system instability as a justification for retirement of CEMR
9 and MEDIACC until after CLEC questions regarding Qwest’s December 2010
10 announcement¹⁴ and the merger settlement agreements.¹⁵

111254, (Oct. 14, 2011); pp. 57-60; *see also*, Denney Direct, CO Docket 11F-436T (Aug. 12, 2011), pp. 52-55.

¹⁰ Denney Direct, WUTC Docket UT-111254, (Oct. 14, 2011); p. 59, line 3 – p. 60, line 9 & pp. 138-140; *see also*, Denney Direct, CO Docket 11F-436T (Aug. 12, 2011), p. 54, line 3 – p. 55, line 9 & pp. 121-122.

¹¹ CenturyLink Discovery Response to Joint CLEC Request 01-014(c), WUTC Docket UT-111254; *see also, id.* Response to Joint CLC Request 01-016(c) and CenturyLink Discovery Response to Joint CLEC Request 01-009(c), CO Docket No. 11F-436T. *See also id.* Response to Joint CLEC Request 01-005(b) and 01-016(c); *see also*, Colorado Response to Joint CLEC Request 01-004(b) and 01-011(c).

¹² See Denney Direct, WUTC Docket UT-111254, (Oct. 14, 2011); pp. 31-33 citing to Exhibit BJJ-60; *see also*, Denney Direct, CO Docket 11F-436T (Aug. 12, 2011), pp. 27-29, citing to Exhibit BJJ-60, *see also*, MN Surrebuttal Testimony of Rachel Torrence, Qwest, MN Docket No. P421/C-07-370; P421/C-07-371 (Oct. 16, 2009).

¹³ Denney Direct, WUTC Docket UT-111254, (Oct. 14, 2011); p. 56, line 16 – p. 57, line 6, generally, see Section IV(C), pp 55-73; *see also*, Denney Direct, CO Docket 11F-436T (Aug. 12, 2011), p. 51, line 15 – p. 52, line 5; generally, see Section IV(C), pp. 50-66.

¹⁴ Qwest Notif. No. SYST.MEDI.12.17.10.F.08642.MTG_IntrfceNewApptoApp (Dec. 17, 2010).

¹⁵ See Denney Direct, WUTC Docket UT-111254, (Oct. 14, 2011); p. 71, lines 9-14 and citations and pp. 77-80; *see also*, Denney Direct, CO Docket 11F-436T (Aug. 12, 2011), p. 64, lines 11 – 16 and citations and pp. 71-73.

1 Q. STAFF STATES THAT “THE USE OF LEGACY MEDIACC OSS POSES
2 POSSIBLE SERIOUS RISKS.”¹⁶ PLEASE RESPOND.

3 A. Joint CLECs have been attempting to verify claims by Qwest and CenturyLink that the
4 existing Qwest repair OSS are unstable¹⁷ and/or at risk of a catastrophic failure¹⁸ for
5 months.¹⁹ On the one hand, there is little or no evidence of a history of outages or other
6 problems sufficient to support the claim,²⁰ and the Merged Company now asserts that
7 MEDIACC is “stable.”²¹ Ms. Albersheim recently went so far as to say that,
8 “Qwest/CenturyLink has *no evidence* to suggest that MEDIACC will experience an
9 immediate unrecoverable failure, or that such a failure will occur before October 2013.”²²
10 On the other hand, the Merged Company has claimed that problems are likely,²³ and it
11 has persuaded Commission Staffs in at least two states that use of legacy MEDIACC
12 poses possible serious or significant risks.²⁴ When all of the attachments to, and

¹⁶ Williamson Test., WUTC Docket UT-111254, (Nov. 30, 2011); p. 23, lines 20-22.

¹⁷ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 338, lines 19-25 (Mr. Hunsucker, CenturyLink) (“*due to the instability of that system*, they are looking to replace that system with a new system”) (emphasis added) [JC000700].

¹⁸ WA Answer, p. 5, ¶ 16. “WA Answer” or “Washington Answer” refers to the Answer of Qwest Corporation and CenturyLink, Inc. to the Complaint, which was filed with the Washington Commission in Docket No. UT-111254 on July 11, 2011. *See also*, CO Answer, p. 5, ¶14.

¹⁹ E.g., Exhibit BJJ-11 & Exhibit BJJ-12 (Integra and PAETEC CMP comments requesting sufficient information to verify Qwest’s claim) (both Jan. 5, 2011).

²⁰ See Denney Responsive Test., WUTC Docket No. UT-111254, (Dec. 15, 2011), Section VI; and Hanson Direct, PAETEC, WUTC Docket No. UT-111254 (Oct. 14, 2011), p. 1, lines 18-23; Nipps Direct, **tw telecom**, WUTC Docket No. UT-111254 (Oct. 14, 2011), p. 6, line 24 – p. 7, line 2; *see also*, Nipps Direct, **tw telecom**, CO Docket No. 11F-436T (Aug. 12, 2011), p. 6, lines 1-5.

²¹ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 16, line 4. *See also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 6, line 19; Merged Company MN Compliance Filing, p. 14.

²² Albersheim Rebuttal of Staff Testimony, CO Docket No. 11F-436T (Dec. 1, 2011), p. 4, lines 12-14 (emphasis added).

²³ In the CO Answer, p. 2, Qwest and CenturyLink said, “The MEDIACC system is currently stable, but ...*will likely* begin experiencing problems in the near future...” (emphasis added).

²⁴ Williamson Test., WUTC Docket UT-111254, (Nov. 30, 2011); p. 23, lines 20–22. *See also*, Notarianni CO Staff

1 statements in, the testimony of Qwest and CenturyLink (as well as their Minnesota
2 October 6, 2011 Compliance Filing) are viewed together, they amount to an admission by
3 the Merged Company that Qwest, at a minimum, failed to act prudently²⁵ and Qwest
4 knew²⁶ it had not properly maintained and updated the legacy Qwest repair OSS, despite
5 numerous assurances during the merger proceedings about its ability to maintain the
6 Qwest OSS for at least 30 months post-closing in a manner allowing the Merged
7 Company to meet or exceed legacy Qwest performance.

8 Staff's statement suggests that Staff has concluded that the risk of a problem with
9 MEDIACC and CEMR is real or is significant enough to require action. As I discuss in
10 the next section, the *threat* of a potentially catastrophic²⁷ and disastrous²⁸ failure of the
11 Qwest repair OSS – whether the risk is real or not – renders CenturyLink/Qwest
12 assurances to continue offering MEDIACC meaningless. If the threat of OSS failure is
13 real, there is even more urgency to avoiding an OSS failure. The Staff's conclusion

Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 25, lines 4-5 (“significant risks”); see also *id.* p. 24, lines 1-3 (“risk for extensive outages”).

²⁵ See CenturyLink/Qwest WA Preliminary Injunction Response, WA Dkt. No. UT-111254 (Aug. 18, 2011), p. 15, ¶ 35 (“It is not prudent for any industry participant to ignore changes in standards and technological advances.”). If its current version of events is to be believed, however, Qwest ignored its 2008 concern about system viability and changes in industry standards for a period of approximately two years and then acted on that concern only after first obtaining Integra's non-participation in the merger dockets with execution of the Integra Settlement Agreement on November 6, 2010. See Denney Responsive Test., WUTC Docket No. UT-111254, (Dec. 15, 2011), Sections XI and XIII(D) and Johnson Responsive Testimony. See also, Denney Rebuttal, CO Docket No. 11F-436T (Oct. 31, 2011), pp. 54-67 & 95-97; Johnson Rebuttal, CO Docket No. 11F-436T (Oct. 31, 2011), pp. 7-9.

²⁶ CenturyLink was aware of the issue before merger approval as well. Denney Direct Test., WUTC Docket No. UT-111254, (Oct. 14, 2011), pp. 129-133. and Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 23, lines 7-13. See also, Denney Rebuttal, CO Docket No. 11F-436T (Oct. 31, 2011), pp. 59-62 (and citations therein).

²⁷ Exhibit BJJ- 36, CenturyLink May 2, 2011 email at JC000294.

²⁸ WA Preliminary Injunction Response, WA Dkt. No. UT-111254 (Aug. 18, 2011), p. 6, ¶ 15.

1 provides an additional reason why the Commission should require the Merged Company
2 to take steps to ensure that it can meet its merger commitments going forward and to
3 provide verification to the Commission of the completion of those steps, as discussed in
4 Section VII(A) below.

5 **III. THREAT OF UNRECOVERABLE OSS FAILURE RENDERS ASSURANCES TO**
6 **CONTINUE OFFERING MEDIACC MEANINGLESS**

7 **Q. DOES THE ASSERTED POTENTIAL DISASTER HAVE ANY AFFECT ON THE**
8 **SIGNIFICANCE OF MERGED COMPANY CLAIMS THAT IT WILL COMPLY**
9 **WITH MERGER AGREEMENTS BY CONTINUING TO MAKE CEMR AND**
10 **MEDIACC AVAILABLE FOR THE MINIMUM 30-MONTH PERIOD?**

11 A. Yes. The merger settlement agreements require the Merged Company to use and offer to
12 wholesale customers the legacy Qwest OSS for at least 30 months, a requirement I
13 discussed in Section VI(A) on pages 94-105 of my direct testimony and which I discuss
14 further below in Section VIII. The Merged Company also agreed to meet or exceed
15 legacy Qwest's performance for a three-year period.²⁹ Both Mr. Hunsucker and Ms.
16 Albersheim claim that the Merged Company will meet its merger commitments because
17 it will continue to use and offer MEDIACC throughout the 30-month settlement period.³⁰

²⁹ Exhibit BJJ-3, Integra Settlement Agreement, p. 3, ¶2(a)(i) at JC000010; Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 1 (adopting provisions of Integra Settlement Agreement); Appendix E to WUTC Order 14, **tw telecom** Settlement Agreement, p. 2 (adopting provisions of Integra Settlement Agreement).

³⁰ Direct Testimony of Michael R. Hunsucker on behalf of CenturyLink, ("Hunsucker Direct Test.") WUTC Docket UT-111254, (Oct. 14, 2011), p. 4, lines 1-5; *see also*, CO Docket 11F-436T (Sep. 15, 2011), Hunsucker Answer Test, p. 4, line 19- p. 5, line 3; Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 8, lines 16-18 & p. 18, lines 10-11; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 15, lines 4-5 & p. 19, lines 5-9.

1 Mr. Hunsucker goes so far as to say that the Merged Company will use and offer
2 MEDIACC during that time period “in precisely the same way it was used and offered”
3 before the merger.³¹ As no unrecoverable failure of MEDIACC occurred at any time
4 before the merger, this statement is obviously untrue in the event of an unrecoverable
5 failure of MEDIACC. Ms. Albersheim states that, throughout the 30-month settlement
6 period, the Merged Company “will keep MEDIACC in production, and will receive
7 repair requests from wholesale customers using MEDIACC as a B2B interface for
8 repair.”³² Ms. Albersheim testifies to this statement, even though she then concedes that,
9 if there is an unrecoverable failure of MEDIACC, the Merged Company will *not* keep
10 MEDIACC in production. She specifically indicates that, because MEDIACC will no
11 longer be in production, MEDIACC will not receive repair requests from wholesale
12 customers using MEDIACC as a B2B interface but, rather, the Merged Company will
13 receive them by telephone.³³ She concludes, therefore, that wholesale and end user
14 customers will be adversely affected by the inability to use MEDIACC (*i.e.*, “lack of
15 automation”).³⁴ Claims that MTG is optional similarly fail in light of the risk of
16 unrecoverable failure of MEDIACC. In the event of MEDIACC failure, the ability to use
17 and offer the legacy Qwest OSS (MEDIACC) goes away and the “option” to use a new

³¹ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 4, lines 2-3; *see also*, Hunsucker Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 4, line 19- p. 5, line 1.

³² Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 19, lines 1-2; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 19, lines 8-9.

³³ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 23, lines 13-15; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 23, lines 16-18.

³⁴ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 23, line 17 – p. 24, line 4; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 24, lines 1-6.

1 and different OSS (MTG) becomes mandatory prematurely. A so-called commitment to
2 keep MEDIACC in production to use and offer it for at least 30 months in meaningless in
3 this context.

4 Given the zealousness with which the Merged Company has advocated the existence of a
5 risk of potentially disastrous repair OSS failure to CLECs,³⁵ any discussion of what might
6 happen if there is no unrecoverable failure of CEMR/MEDIACC is at best academic at
7 this point, regardless of whether the risk is real. The reality is that no one can take that
8 risk, despite the recent merger commitments of both Qwest and CenturyLink. According
9 to the Merged Company, the inability to take that risk applies to state commissions as
10 well. Although Qwest and CenturyLink notably did not bring this issue to the attention
11 of the Commissions pre-merger, the Merged Company sought to place the responsibility
12 of a system failure squarely on regulators, stating to the Minnesota Commission:

13 Our people say that there's a risk that's important that needs to be addressed....
14 [I]f that risk comes to fruition, it would have been this Commission that issued an
15 order that would cause the type of concerns that we're attempting to proactively
16 address.³⁶
17

³⁵ For the same reason, it would hardly be surprising if inquiries about use of XML/MTG have increased or will increase, given that the Merged Company has raised the specter of a catastrophic failure of the existing repair system and indicated that companies assume that risk if they do not move. (*E.g.*, Exhibit BJJ-36 at JC000294.) Any such inquiries do not mean that, absent this claimed threat, the same parties would be interested in moving to XML or, if interested in moving to XML long term, moving earlier than provided for by the merger settlement agreements. For example, PAETEC's direct testimony shows that it may be interested in moving to XML, but it wants the benefit of its bargain in the settlement agreement regarding the timing of the work needed before such a move. **tw telecom**, in its direct testimony, also indicates that, although it has an interest in XML at least outside of Qwest territory, nothing about that inquiry means that it intended any move to XML to be performed in violation of the merger settlement agreements.

³⁶ Exhibit BJJ-62, Transcript, Aug. 11, 2011 MN PUC hearing, p. 31, line 20 – p. 32 line 2 (counsel for CenturyLink).

1 Despite the CLECs' and the Joint Applicants'³⁷ understanding of the merger conditions,
2 the Merged Company leaves the Commission with little choice but to address the claimed
3 risk. CLECs are in a similar position as well. Although they should be able to fully
4 enforce their rights under the settlement agreements, CLECs cannot risk the impact to
5 their businesses and customers of a system failure, however unjustified it may be that
6 Qwest and CenturyLink placed CLECs and their customers in this position. Any
7 solution, however, should focus on addressing the claimed risk and retaining as much as
8 possible of the purpose and procedures of the settlement agreements. I discuss a solution
9 proposed by PAETEC and another alternative involving early PAETEC testing in Section
10 VII below. There also should be some penalty or remedy for violation of the merger
11 settlement agreements and Order. Otherwise, the Merged Company is rewarded by being
12 relieved of some of its obligations due to the company's belated claims of their own OSS
13 failure while CLECs suffer the consequences by losing those rights.

14 **Q. IS THE MERGED COMPANY USING AND OFFERING MEDIACC "IN**
15 **PRECISELY THE SAME WAY"**³⁸ **THAT IT WAS USING AND OFFERING THE**
16 **SYSTEM PREVIOUSLY?**

17 A. No. When the Merged Company raised the specter of catastrophic,³⁹ disastrous,⁴⁰ and
18 unrecoverable⁴¹ system failure at some time in the future and said that these risks were

³⁷ E.g., Qwest Feb. 9, 2011 email to Integra and CenturyLink at JC000099.

³⁸ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 4, lines 2-3; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 4, line 20.

³⁹ CenturyLink May 2, 2011 email, Exhibit BJJ- 36, at JC000294.

⁴⁰ WA Preliminary Injunction Response, WUTC Docket UT-111254, (Aug. 18, 2011), p. 6; *see also*, CO

1 increasing with time,⁴² it irrevocably changed the way that MEDIACC is offered.
2 Carriers using MEDIACC today are faced with these risks and the cost that system failure
3 would impose on their business. These threats force carriers to consider alternatives that
4 they might not otherwise consider or might not have planned on having to consider
5 (given the Merger Settlement Agreements), such as MTG. (Regarding alternatives to
6 address the potential risk, see Section VII below.)

7 In addition to the threat of unrecoverable failure, MEDIACC was not previously offered
8 along with a so-called alternative option, and it has not been Qwest's practice to offer
9 OSS alternative options. As discussed by Ms. Johnson in her responsive testimony,
10 Qwest could have elected to offer an alternative to IMA-EDI for CLECs requesting IMA-
11 XML, particularly as Qwest describes the latter CLECs as "enthusiastic about moving to
12 XML" for ordering,⁴³ but Qwest chose not to do so before withdrawing its first IMA-
13 XML change request in CMP. MEDIACC is not being "use[d] and offer[ed] to
14 wholesale customers"⁴⁴ *in precisely the same way* as it was previously,⁴⁵ and it is not
15 even being offered in a manner that is typical of the status quo.

Preliminary Injunction Response, CO Dkt. No.11F-436 (Aug. 2, 2011), p. 5.

⁴¹ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 6, lines 9-10; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sept. 15, 2011), p. 10, lines 15-16.

⁴² Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 6, lines 5-10; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sept. 15, 2011), p. 10, lines 14-17.

⁴³ Qwest/CenturyLink, Inc. Response to Colorado Staff's First Set of Data Requests, Response No. 2d, p. 6 (Respondents: Legal, Cecilia Tank, and Renée Albersheim). See Exhibit DD-1.

⁴⁴ Exhibit BJJ-3, Integra Settlement Agreement, pp. 8-10, ¶12. See JC000569-JC000571 and Denney Direct, WUTC Docket UT-111254, (Oct. 14, 2011); pp. 46-47; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 41.

⁴⁵ *See also* Denney Direct, WUTC Docket UT-111254, (Oct. 14, 2011); pp. 94-105; *see also*, Denney Direct, CO

1 **IV. IMPACT TO CEMR USERS OF TRANSITION TO MTG**

2 **Q. MS. ALBERSHEIM STATES THAT THERE HAS BEEN “CONFUSION ABOUT**
3 **HOW CEMR INTERFACES WITH MEDIACC.”⁴⁶ PLEASE RESPOND.**

4 A. First, it should be noted that, to the extent there is any confusion, Qwest is the source of
5 the confusion. Ms. Albersheim states, “CEMR/MEDIACC does NOT use the CMIP
6 toolkit,” even though the “initial response to a question in the CMP was that CEMR uses
7 CMIP.”⁴⁷ Ms. Albersheim’s testimony causes further confusion, because her use of the
8 passive voice masks the fact that the responding party (who indicated in CMP that CEMR
9 does use CMIP) was Qwest. In other words, Qwest first told CLECs in CMP that CEMR
10 uses CMIP⁴⁸ and then Qwest later told CLECs in CMP that its initial statement was
11 incorrect and that CEMR does not use CMIP.⁴⁹ Second, Ms. Albersheim ignores the
12 point in my direct testimony, which is that Integra disagrees with Qwest’s recent
13 characterization of the first Qwest CMP response as incorrect.⁵⁰ Because Qwest admits
14 that MEDIACC uses CMIP and CEMR relies upon MEDIACC, then CEMR is also

Docket No. 11F-436T (Aug. 12, 2011), pp. 85-90.

⁴⁶ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 22, footnote 32. *See also* Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 22, footnote 35.

⁴⁷ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 22, footnote 32.

⁴⁸ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, pp. 1-2 (JC000754-JC000755). *See also* Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 135, lines 10-12; and Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 117, lines 13-18.

⁴⁹ Exhibit BJJ-56, Qwest Aug. 1, 2011 email, at JC000915. *See also* Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 136, lines 11-16; Exhibit DD-1, Qwest and CenturyLink response to Joint CLEC Request No. 5(c), CO Docket No. 11F-436, Aug. 1, 2011; and Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 118, line 18 through p. 119, line 3.

⁵⁰ Although Qwest made a correction in CMP that is referenced by Ms. Albersheim, Integra disagreed with this correction in CMP. *See* Exhibit BJJ-57 at JC000919.

1 *MEDIACC to perform repair functions.*⁵⁵ In response to the question “Would this
2 ultimately impact end-user customers?” Ms. Albersheim responds: “Yes. This would
3 impact the CLECs’ end-user customers, and it would impact Qwest/CenturyLink end-
4 user customers.”⁵⁶

5 Further, Ms. Albersheim admits that CLECs that transition to MTG will be impacted by
6 arguing that CEMR users who stay with MEDIACC will not be impacted, “*unless they*
7 *wish to make the switch* early.”⁵⁷ If CEMR/MEDIACC fails⁵⁸ or because the threat of
8 failure presents a risk they cannot take, then CLECs will have to make the switch to
9 MTG early even if they do not otherwise “wish” to do so, because as Ms. Albersheim
10 points out, in an event of a failure, without MTG, end user customers will be impacted as
11 “CLEC repair requests will inevitably slow down Qwest/CenturyLink’s responsiveness to
12 CLEC repair requests.”⁵⁹

55 Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 23, lines 13-15 (emphasis added); *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 23, line 16-18. (emphasis added); *see also* CenturyLink response to Joint CLEC Request No. 01-006(c), CO Docket No. 11F-436; and Merged Company MN Compliance Filing, p. 5 (“It should be noted that CEMR is impacted by MEDIACC, in that some of the repair functions performed by CEMR require access to MEDIACC.”)

56 Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 23, lines 17-18; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 23, line 19 – p. 24, line 2. *See also* Merged Company MN Compliance Filing, p. 11.

57 Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 22, line 4 (emphasis added); *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 22, line 9. [emphasis added].

58 Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 24, lines 7-9; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 24, lines 9–11.

59 See Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 23, line 18 – p. 24, line 2; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 24, lines 2–4.

1 **V. INABILITY OF CLECS TO TRANSITION TO MTG IN THE EVENT OF A**
2 **MEDIACC FAILURE**

3 **A. MTG IS NOT A FAILOVER FOR MEDIACC**

4 **Q. ASSUMING THAT, IN THE EVENT OF A MEDIACC FAILURE, MTG**
5 **FUNCTIONS AS CENTURYLINK PLANS AND THE TRANSITION FROM**
6 **CEMR/MEDIACC TO CEMR/MTG DOES NOT HAVE SUBSTANTIAL**
7 **PROBLEMS, EVEN THEN WILL ALL CLECS BE ABLE TO TRANSITION TO**
8 **MTG IMMEDIATELY?**

9 A. No. Ms. Albersheim admits that CLECs which exercise their rights under the merger
10 settlement agreements during the 30-month period and thus will not have not developed
11 an interface to MTG will not be able to transition immediately to MTG.⁶⁰ This is also the
12 case for CLECs that rely upon a third party vendor⁶¹ that has not yet developed a system
13 to system interface with MTG.⁶² Ms. Albersheim states that CLECs will only have the
14 ability to use a vendor to interface to MTG, *if* a vendor such as Synchronoss has
15 developed an interface to MTG.⁶³ The Merged Company has submitted no evidence,
16 however, showing that third party vendors have committed to providing a system to

⁶⁰ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 24, lines 13-15; see also *id.* p. 5, lines 4-6; *see also*, Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 17, line 9; and, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 24, lines 15-17; see also *id.* p. 6, lines 1-3 (“For a B2B interface to function, both companies must program their systems to transmit and receive information from each other.”).

⁶¹ There could be several reasons for a wholesale customer to contract with a third party vendor, which may or may not relate to XML. It may be cheaper and more efficient for a wholesale customer to use a third party vendor to develop and maintain systems that interface with ILEC systems rather than perform these functions in house.

⁶² Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 24, lines 17-19; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 24, lines 17-19.

⁶³ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 24, lines 17-19; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 24, lines 17-19.

1 interface with MTG before the announced retirement date for MEDIACC, or that all
2 CLECs using a vendor use or will use a particular vendor if one had made that
3 commitment. About MEDIACC, the Merged Company recently said: “Thirteen
4 wholesale customers across the legacy Qwest region use the MEDIACC B2B gateway.
5 Of these, nine are CLECs. Eight of these use software from a vendor for their interface
6 to MEDIACC.”⁶⁴ In these instances, the CLEC or its vendor “will have to develop that
7 interface before they can transition to MTG.”⁶⁵ As PAETEC does not use a software
8 vendor, it is the ninth CLEC. The inability of PAETEC to transition immediately and the
9 reasons why MTG is not a backup in the event of a system failure are described in the
10 direct testimony of Mr. Hansen and in PAETEC’s alternative proposal (Exhibit BJJ-64).
11 Because CenturyLink has indicated that it cannot know when MEDIACC will fail,⁶⁶ but
12 says the risk is increasing⁶⁷ and the consequences are potentially disastrous,⁶⁸ these
13 CLECs are being forced to take action today, despite merger settlement commitments
14 promising that no action to move to or integrate with a replacement interface is required
15 for at least 30 months after the merger.

⁶⁴ Merged Company MN Compliance Filing, p. 2. For the four remaining wholesale customers, the Merged Company did not indicate whether they use a software vendor in the public portion of the Minnesota filing. See *id.*

⁶⁵ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 5, lines 4-6 & p. 24, line 19; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 24, line 21. *See also* Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 6, lines 1 - 3. [“For a B2B interface to function, both companies must program their systems to transmit and receive information from each other.”]

⁶⁶ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 24, lines 20-21; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 24, line 22 – p. 25, line 1.

⁶⁷ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 10, lines 10-13; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 10, lines 14-17.

⁶⁸ WA Preliminary Injunction Response, WUTC Docket UT-111254, (Aug. 18, 2011), p. 6; *see also*, Preliminary Injunction Response, CO Docket No.11F-436 (Aug. 2, 2011), p. 5.

1 **B. MERGER TERMS REQUIRING ACTION**

2 **Q. STAFF REFERS TO THE MERGER SETTLEMENT AGREEMENT TERMS⁶⁹**
3 **AND TO A NEED FOR THE MERGED COMPANY TO KEEP MEDIACC**
4 **OPERATIONAL.⁷⁰ DO THE MERGER SETTLEMENT AGREEMENT TERMS**
5 **REQUIRE THE MERGED COMPANY TO KEEP MEDIACC OPERATIONAL?**

6 **A.** Yes. Updating MEDIACC and keeping it operational is one of the proposals that Joint
7 CLECs have proposed, along with additional needed steps, to address the asserted risk of
8 OSS failure. I discuss Joint CLECs' proposals in Section VII below. Staff indicates that
9 CenturyLink/Qwest is required by the settlement agreements to maintain CEMR and
10 MEDIACC for at least 30 months.⁷¹ For example, the following requirements of the
11 merger settlement agreements compel CenturyLink/Qwest to take steps to avoid an OSS
12 failure and/or a lapse in service quality performance (such as decreased performance due
13 to an OSS failure):

14 For at least three years after the Closing Date . . . the Merged Company shall meet
15 or exceed the average wholesale performance provided by Qwest to CLEC [prior
16 to the Closing Date].⁷²

17
18 In legacy Qwest ILEC service territory, after the Closing Date, the Merged
19 Company will use and offer to wholesale customers the legacy Qwest Operational
20 Support Systems (OSS) for at least thirty months and thereafter provide a level of

⁶⁹ Williamson Test., (Nov. 30, 2011), p. 5, line 8 – p. 7, line 23. *See also*, Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 15, line 7 (“take steps to assure” OSS stability”).

⁷⁰ Williamson Test., (Nov. 30, 2011), p. 12, line 20 – p. 21, line 5. *See also*, Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 22, line 1 (“invoke any necessary options” to minimize downtime).

⁷¹ Williamson Test., (Nov. 30, 2011), p. 12, line 20 – p. 21, line 5. *See also*, Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 25, lines 4-7 (“at a sufficient performance level for 30 months”).

⁷² Exhibit BJJ-3, Integra Settlement Agreement, p. 3, ¶2(a)(i) at JC000010; Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 1 (adopting provisions of Integra Settlement Agreement); *See also*, Appendix E to WUTC Order 14 , **tw telecom** Settlement Agreement, p. 2 (adopting provisions of Integra Settlement Agreement).

1 wholesale service quality that is not less than that provided by Qwest prior to the
2 Closing date, with functionally equivalent support, data, functionality,
3 performance, electronic flow through, and electronic bonding. After the period
4 noted above, the merged company will not replace or integrate Qwest systems
5 without first establishing a detailed transition plan that at a minimum meets the
6 standards articulated above and complying with the procedures as set forth in the
7 Integra settlement.⁷³
8

9 These are aspects of the merger settlement agreement about which Qwest expressed
10 concern regarding the Merged Company's ability to meet them before the merger closing
11 date, though neither Qwest nor CenturyLink raised that concern with the Commission
12 before merger approval.⁷⁴

13 Regarding the meaning of the term "integrate" in the above-quoted language (as well as
14 the agreement's "use and offer" language), Staff in Colorado indicated that Colorado
15 Staff understood that CLEC concerns during the merger proceedings were more
16 comprehensive than the narrow interpretation provided in CenturyLink's recent
17 testimony.⁷⁵ The Colorado Staff was involved in negotiation sessions.⁷⁶ The Integra
18 agreement and the Colorado Staff agreement, which is "nearly identical" to the Integra

⁷³ Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 2, ¶1(A); see also Exhibit BJJ-3, Integra Settlement Agreement, p. 9, ¶12; Appendix C to WUTC Order 14, Staff Settlement Agreement, pp. 9-10, ¶23. The length of the time period has been modified, both by the Joint CLEC settlement agreement and via Joint Applicants' commitment to the Federal Communications Commission (FCC), to at least thirty months after the Closing Date. WA Answer, p. 5, ¶14.

⁷⁴ See Exhibit BJJ-17, Qwest Feb. 9, 2011 email to Integra and CenturyLink at JC000099.

⁷⁵ Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 8, line 15 – p. 9, line 4). Regarding CenturyLink's narrow interpretation, see Hunsucker CenturyLink CO Test., Docket No. 11F-436T (Sept. 15, 2011), p. 4, lines 9-18, p. 5, lines 9-15 & p. 11, lines 8-12, which is substantially the same as Hunsucker Direct Test., WUTC Docket UT-111254 (Oct. 14, 2011), p. 3, lines 9-19, p. 4, lines 12-18, & p. 11, lines 3-8.

⁷⁶ Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 7, lines 4-6.

1 agreement,⁷⁷ were executed on November 6-7, 2010. At the Colorado merger hearing on
2 November 10, 2010, the Staff witness testified that access to OSS was the “biggest area
3 of concern that staff had.”⁷⁸ Colorado Staff indicated in its own settlement with respect
4 to wholesale issues that the Integra agreement sufficiently addresses the concerns
5 regarding wholesale matters raised by Staff.⁷⁹ Colorado Staff’s position shows that, at
6 the time the parties entered into their agreements in November of 2010, Colorado Staff,
7 like CLECs, understood the OSS concerns to be broader than now claimed by
8 CenturyLink.⁸⁰ This Integra settlement language is the same in Washington.⁸¹ I discuss
9 integration in Section IV(B) on pages 105-112 of my direct testimony.

10 **Q. DOES THE STAFF SUGGEST STEPS THAT THE MERGED COMPANY**
11 **SHOULD TAKE TO MAINTAIN MEDIACC FOR THE 30-MONTH**
12 **TIMEFRAME, AS REQUIRED BY THE MERGER AGREEMENTS?**

13 A. Yes, the Staff suggests the need for a continuously-updated, Commission-reviewed
14 disaster recovery plan.⁸² The Staff said that, in order to enhance MEDIACC’s chances of

⁷⁷ Williamson Test., (Nov. 30, 2011), p. 5, line 15.

⁷⁸ CO Hrg. Tr., Dkt. No. 10A-350T, (Nov. 10, 2010) Vol. 3, p. 202, lines 22-25 (Ms. Notarianni, CO PUC); see Williamson Test., (Nov. 30, 2011), p. 4, lines 5-6 (“the Commission placed great weight on wholesale OSS in its decision modifying the settlement agreements”).

⁷⁹ Stipulation and Settlement Agreement Between Joint Applicants and Commission Trial Staff, Docket No. 10A-350T (Nov. 7, 2011), p. 8, ¶17.

⁸⁰ Colorado Staff said, for example, that “CLECs and Staff were also concerned with having a stable OSS and operational environment.” Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 8, lines 17-18. See also WUTC Order No. 14, p. 65, ¶114 (referencing the need to take into account “the uncertainty and potential risks to Washington’s competitive environment” should changes result in degradation to wholesale service quality) & p. 66, ¶115 (referencing “CLEC concerns over potential *modification or* replacement of Qwest’s OSS”).

⁸¹ The multi-state Integra agreement is Appendix B to Order No. 14 approving the merger in Washington.

⁸² Williamson Test., (Nov. 30, 2011), p. 24, line 32 – p. 25, line 2. See also, Notarianni CO Staff Cross Answer

1 survivability, a “Disaster Recovery Plan must be updated every 90 days to include any
2 new information gained since the last update. It should also include the latest list of
3 physical location of spare parts and emergency vendor contact lists. A test of the Disaster
4 Recovery Plan should be completed each November, or more frequently, until
5 MEDIACC is retired.”⁸³ This is a good start, but to the extent that the Merged Company
6 interprets this statement to mean a written plan(s) without more,⁸⁴ a minimum showing
7 involving paper assurances would be inadequate to meet CLECs’ needs. This is
8 particularly true in this context, in which Joint CLECs have already had to file complaints
9 to attempt to obtain compliance with existing written assurances.⁸⁵

10 **Q. IS IT SUFFICIENT TO ENHANCE THE “CHANCES” OF OSS**
11 **SURVIVABILITY?**⁸⁶

12 A. No. It is necessary to enhance the chances of MEDIACC/CEMR survivability, but
13 leaving Washington customers (end users as well as CLECs) to take those chances is not
14 what CLECs bargained and settled for in the merger proceedings. The Staff’s
15 recommendation does not address what happens when a test is completed and the test

Test., Docket No. 11F-436T (Oct. 31, 2011), p. 22, lines 13-14 & p. 25, lines 23-26.

⁸³ Williamson Test., (Nov. 30, 2011), p. 24, lines 33 – 40.

⁸⁴ An obligation to include “the latest list of physical location of spare parts” without more would allow the Merged Company to provide a list that identifies, for example, few or no spare parts. The list may be accurate, but it would be inadequate to protect customers from harm. Rather than waiting to receive such a list, find it inadequate, and then take the time to obtain parts or support, those steps should be taken now. After all, the Merged Company has had ample opportunity to provide such information to date. In these circumstances created by CenturyLink/Qwest, the Merged Company should have an affirmative obligation to obtain additional spare parts and contract for support, including from non-traditional sources and at higher rates as needed, as discussed in Section VII(A) below.

⁸⁵ Staff states: “I can understand the CLECs’ diminished trust in Qwest/CenturyLink.” Williamson Test., (Nov. 30, 2011), p. 21, lines 5 – 6.

⁸⁶ Williamson Test., (Nov. 30, 2011), p. 24, lines 33 – 40.

1 demonstrates an imminent problem or Qwest's OSS otherwise fails the test. If a test
2 failure occurs six months from now, six months have been lost that could have been spent
3 taking steps, in addition to those identified by Staff, to *avoid* the failure and ensure the
4 merger conditions are met.

5 Such steps should be taken and expedited now, as I discuss in Section VII below, rather
6 than waiting for additional test or other evidence of a potential OSS failure, during a time
7 when the Merged Company indicates that the risk of failure is "increasing."⁸⁷ In its
8 March 14, 2011, Final Order Approving and Adopting, Subject to Conditions, Multiparty
9 Settlement Agreements and Authorizing Transaction (Order No. 14), the Commission
10 found that the "The commitments in the five multiparty Settlement Agreements, in
11 conjunction with the additional conditions in this Order, are sufficient to protect
12 Washington customers and the public interest from risk of harm associated with this
13 change of control transaction."⁸⁸ The issues in this matter go to the heart of the public
14 interest to be protected by the Commission because the actions and inactions of
15 CenturyLink/Qwest have left Washington customers exposed to the risk of "extensive
16 outages" of Qwest repair OSS based on Qwest's own belated⁸⁹ "articulation of the
17 hardware and software environment currently in place" for MEDIACC/CEMR.⁹⁰ The

⁸⁷ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 10, lines 11-13.

⁸⁸ Washington Final Order No. 14, March 14, 2011, p. 136, ¶287 (5). The Commission also found the five multiparty Settlement Agreements consistent with the public interest, and they were made a condition of the order. *Id.* pp. 137 ¶ 288 (6).

⁸⁹ See Section XI (Failure to Notify) below.

⁹⁰ Notarianni CO Staff Cross Answer Test., CO Docket No. 11F-436T (Oct. 31, 2011), p. 24, lines 1-3; see also Exhibit DD-5, Merged Company MN Compliance Filing, p. 11.

1 steps and remedies ordered by this Commission need to go farther to protect Washington
2 customers and the public interest from risk of harm, as intended by the above-quoted
3 finding and the Commission's Order. If the Commission were to order the Merged
4 Company to take the steps discussed below in both Section VII(A) (updating MEDIACC)
5 and Section VII(B) (MTG to speak both CMIP and XML languages), for example, then
6 work would begin now to both provide a somewhat decreased risk of MEDIACC failure
7 and to get a CMIP solution in place in the event that a MEDIACC failure occurs -- rather
8 than waiting for a test or system failure and then scrambling to develop a suitable
9 alternative⁹¹ while customers are adversely affected or likely to be affected.

10 **VI. PERFORMANCE PAYMENTS ARE INSUFFICIENT INCENTIVE AND, IF**
11 **PAID IN HIGHER THAN PREVIOUS AMOUNTS, SIGNIFY AN INDEPENDENT**
12 **BREACH OF THE MERGER SETTLEMENT AGREEMENTS.**

13 **Q. MS. ALBERSHEIM TESTIFIES THAT THE MERGED COMPANY WILL HAVE**
14 **“A SIGNIFICANT FINANCIAL INCENTIVE TO PROPERLY MAINTAIN**
15 **MEDIACC, SINCE IT WILL INCUR PENALTIES IF MEDIACC DOES NOT**
16 **MEET ITS PERFORMANCE INDICATOR (‘PID’) REQUIREMENTS.”⁹²**
17 **PLEASE RESPOND.**

⁹¹ MTG is not a suitable alternative for some MEDIACC/CEMR users (including those users who bargained to use the existing legacy Qwest OSS for 30 months) at this time. See, e.g., Exhibit BJJ-64 (PAETEC discussion, in its CMP proposal, of why MTG is not a true backup). See pages 152-153 of my direct testimony and Section VII below.

⁹² Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 19, lines 7-9; see also, Albersheim Answer Test., CO Docket No. 11F-436T (Sept. 15, 2011), p. 19, lines 14-16. See also, Williamson Test., WUTC Docket UT-111254, (Nov. 30, 2011), p. 22, lines 6-9.

1 A. Ms. Albersheim's characterization of financial incentives as *significant* is overblown.
2 The PID identified by Ms. Albersheim regarding Gateway Availability for MEDIACC is
3 GA-3.

4 The Gateway Availability measure for MEDIACC is in most, but not all state PAPs, but
5 is currently removed from the list of PIDs that could make monthly payments.
6 CenturyLink would have to miss the gateway availability measure for three consecutive
7 months, before payments would be made anywhere. This means, if the system
8 experiences a catastrophic failure, CenturyLink would have two months to find a solution
9 before any payments would be made, during which CLECs and their customers would
10 suffer and incur costs. It should also be noted that all of the PIDs discussed in Ms.
11 Albersheim's testimony or her Exhibit RA-9 make Tier 2 payments only. These are
12 payments made into the general fund, not directly to the CLECs who are impacted.

13 Further, despite her direct testimony in both Washington and Colorado of "significant
14 financial incentives,"⁹³ in her rebuttal testimony to the Colorado staff Ms. Albersheim
15 downplays these financial incentives stating that adding payments for poor OSS
16 performance in Colorado, "provides no additional assurance of system stability."⁹⁴

17 Properly implemented performance plans can incent behavior (i.e. performance),
18 however, the QPAP as currently implemented for the CEMR and MEDIACC availability

⁹³ Albersheim Rebuttal to CO Staff, CO Docket No. 11F-436T (Dec. 1, 2011), p. 9, line 19.

⁹⁴ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 19, lines 7-9; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sept. 15, 2011), p. 19, lines 14-16. *See also*, Williamson Test., WUTC Docket UT-111254, (Nov. 30, 2011), p. 22, lines 6-9.

1 across the Qwest/CenturyLink region fails to provide these incentives. The merged
2 company cannot have it both ways claiming that payments provide *significant financial*
3 *incentives* while at the same time arguing that inclusion of payments adds *no additional*
4 *assurance of system stability*.

5 **Q. EVEN ASSUMING THE PERFORMANCE ASSURANCE PENALTIES WERE**
6 **“SIGNIFICANT,”⁹⁵ DOES THE FACT THAT THE MERGED COMPANY**
7 **WOULD PAY SIGNIFICANT PENALTIES MEAN THAT THE MERGED**
8 **COMPANY IS IN COMPLIANCE WITH THE MERGER SETTLEMENT**
9 **AGREEMENTS AND THIS COMMISSION’S ORDER?**

10 A. No. In her response, Ms. Albersheim refers only to the company’s obligations under the
11 Colorado Performance Assurance Plan (“CPAP”).⁹⁶ The applicable agreement for
12 determining whether the Merged Company is in compliance with its settlement
13 commitments, however, is the merger settlement agreement. In its agreement with
14 Integra, CenturyLink and Qwest made the following commitment:

15 [T]he Merged Company shall meet or exceed the average wholesale
16 performance provided by Qwest to CLEC [before the merger closing
17 date].⁹⁷

⁹⁵ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 19, line 7; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sept. 15, 2011), p. 19, line 14.

⁹⁶ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 19, lines 14-15; *see id.* p. 19, lines 9-12; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sept. 15, 2011), p. 20, lines 1-2; *see id.* p. 19, lines 16-19.

⁹⁷ Exhibit BJJ-4, Joint CLEC Merger Agreement, pp. 2-3 [adopting provisions of Integra Settlement Agreement, including this provision in Integra Settlement Agreement, ¶2(a)(i)].

1 The Merged Company did not simply agree to extend and abide by the CPAP. The
2 Merged Company agreed to *meet or exceed* legacy Qwest's performance. A failure of
3 repair OSS resulting in worse performance and additional penalties independently
4 violates this commitment in the Integra settlement agreement, and it violates the
5 Commission Order relying upon and approving that commitment.

6 Additionally, in the event of an unrecoverable MEDIACC failure, the Merged Company
7 will admittedly⁹⁸ retire and replace MEDIACC before the end of the 30-month period.

8 If there is no MEDIACC failure, the Merged Company is in violation of the agreements
9 and Order for the reasons set forth in Joint CLECs' direct testimony. If there is a
10 MEDIACC failure, the Merged Company is also in violation of the agreements and Order
11 for these reasons. There should be some consequence to the Merged Company for
12 violating settlement agreements and a Commission order.

13 **Q. WERE QWEST AND CENTURYLINK AWARE, BEFORE COMMISSION**
14 **APPROVAL OF THE MERGER, THAT QWEST MAY BE UNABLE TO MEET**
15 **ITS COMMITMENT TO MEET OR EXCEED LEGACY QWEST WHOLESALE**
16 **PERFORMANCE?**

17 A. Yes. On February 9, 2011, Qwest's attorney told Integra and CenturyLink:

18 CEMR and MEDIACC are part of Qwest's OSS and are being replaced by
19 another Qwest Operational Support System – Maintenance Ticketing
20 Gateway (MTG). CEMR and MEDIACC have become obsolete and

⁹⁸ WA Answer to Complaint, (Aug. 2, 2011), ¶16; *see also*, CO Answer to Amended Complaint, (Jul. 18, 2011), ¶14.

1 were first noticed for replacement in December of 2008. If we failed to
2 replace CEMR and MEDIACC the merged company may not be able to
3 meet its obligations under the settlement agreement, such as its obligation
4 to 'meet or exceed the average wholesale performance provided by Qwest
5 to CLEC [prior to the Merger Closing Date].'⁹⁹

6
7 I discuss this issue and the Joint Applicants' failure to raise Qwest's concern about its
8 ability to meet its merger commitments with the Commission before merger approval in
9 my direct testimony in Section VI(D) on pages 116-133.

10 **Q. IN HER ANSWER TESTIMONY, MS. ALBERSHEIM IS ASKED THE**
11 **QUESTION "IS MEDIACC STABLE TODAY"?¹⁰⁰ PLEASE COMMENT ON**
12 **MS. ALBERSHEIM'S RESPONSE.**

13 A. Ms. Albersheim testifies MEDIACC is considered unstable if it fails to meet its target of
14 99.25% availability for three months in a row.¹⁰¹ She also notes that there was only one
15 instance of MEDIACC missing its targeted availability since 2010. I have four
16 comments regarding this response.

17 First, the 99.25% availability comes from the PAPs in the Legacy Qwest territory. This
18 is the benchmark standard which represents a lower bound on performance, below which
19 would trigger a payment, if this PID were contained in the state PAP. Normally the
20 performance measures use parity as the comparable measure and a statistical test is

⁹⁹ Exhibit BJJ-17, Qwest Feb. 9, 2011 email to Integra and CenturyLink, at JC00099.

¹⁰⁰ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 25, line 1; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 25, line 2.

¹⁰¹ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 25, lines 2-4; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 25, lines 3-5.

1 applied to determine whether performance is significantly different from parity. In other
2 words, when parity is the comparison payments are not made for all results below parity,
3 but only for results significantly below parity. When a parity measure is not available,
4 then a benchmark is used. The benchmark replaces the statistical comparison that is done
5 with a parity measure. In other words, the benchmark does not represent an acceptable
6 performance level, but rather a level that if not reached is evidence of performance
7 significantly below the standard.

8 Second, it is wrong to conclude that substandard performance for three consecutive
9 months is appropriate evidence of system instability. Under this interpretation
10 CenturyLink would conclude that the system was stable if it was completely unavailable
11 for two months, but working on the third month. This pattern could be repeated such that
12 CenturyLink would conclude the system stable even if it were completely unavailable for
13 8 months out of the year. This cannot be the case.

14 Third, Ms. Albersheim admits that, under the Merged Company's definition of stability,
15 there has been no period of time since at least 2010 when MEDIACC was unstable. The
16 statement that MEDIACC is "stable today"¹⁰² implies that there was some point in time
17 when MEDIACC was not stable, but there is no evidence that that is the case, at least as
18 the Merged Company defines unstable.

¹⁰² Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 25, lines 1-2; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 25, lines 2-3.

1 Finally, regarding the one example identified by Ms. Albersheim since 2010 when
2 MEDIACC failed to perform above the minimum benchmark,¹⁰³ her own discovery
3 response shows that performance was not a result of either a hardware or software
4 problem with MEDIACC:

5 **Request No. 9:** Provide the root cause analysis and resolution for the
6 MEDIACC failure referenced in the Answer Testimony of Renée Albersheim,
7 Exhibit RA-13 Gateway Availability PIDs GA-3 and GA-6.
8

9 Response:

10 Please see confidential attachment A. This root cause analysis report indicates
11 that the source of the outage was a network issue that resulted in the unavailability
12 of multiple CenturyLink QC applications. This outage was not caused by a
13 failure of either the MEDIACC or CEMR applications.
14

15 Respondents: Renée Albersheim and Cecilia Tank¹⁰⁴
16

17 Her testimony, however, indicates that this performance miss for an unrelated cause
18 would nonetheless be counted as the first of three months of targeted availability for
19 purposes of determining MEDIACC instability.¹⁰⁵

20 Together, these items show that, for all of the Merged Company's statements about the
21 potential for catastrophic¹⁰⁶ and disastrous¹⁰⁷ OSS failure, the problems that it claims

¹⁰³ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 25, lines 3-4; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 25, lines 3-4.

¹⁰⁴ Exhibit DD-1, CenturyLink's Response to Staff's First Data Request, CO Docket No. 11F-436T, Request No. 9, p. 13.

¹⁰⁵ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 25, lines 2-4; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 25, lines 3-5.

¹⁰⁶ CenturyLink May 2, 2011 email, Exhibit BJJ- 36, at JC000294.

¹⁰⁷ WA Preliminary Injunction Response, WUTC Docket UT-111254, (Aug. 18, 2011), p. 6; *see also*, CO Preliminary Injunction Response, CO Dkt. No.11F-436 (Aug. 2, 2011), p. 5.

1 gives rise to that concern have been in existence (and known to Qwest) for years,¹⁰⁸
2 MEDIACC has never been unstable as Qwest uses that term, and the only instance that
3 the Merged Company can identify when MEDIACC failed to meet the minimum
4 performance standard it was not the result of those problems, but something else
5 altogether.

6 **Q. WOULD THE FAILURE OF MEDIACC AS A RESULT OF QWEST'S FAILURE**
7 **TO MAINTAIN THE SYSTEM, BE CONSIDERED A FORCE MAJEURE**
8 **EVENT, AS SUGGESTED BY MR. HUNSUCKER¹⁰⁹?**

9 A. No. The definition of "force majeure" in Section 5.7.1 of Qwest's own template
10 interconnection agreement negotiations proposal (which is the language of Section 5.7 of
11 the Washington SGAT), for example, states:

12 **5.7 Force Majeure**

13 5.7.1 Neither Party shall be liable for any delay or failure in performance of any
14 part of this Agreement from any cause beyond its control and without its fault or
15 negligence including, without limitation, acts of nature, acts of civil or military
16 authority, government regulations, embargoes, epidemics, terrorist acts, riots,
17 insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work
18 stoppages, power blackouts, volcanic action, other major environmental
19 disturbances, or unusually severe weather conditions (collectively, a Force
20 Majeure Event). Inability to secure products or services of other persons or
21 transportation facilities or acts or omissions of transportation carriers shall be
22 considered Force Majeure Events to the extent any delay or failure in performance
23 caused by these circumstances is beyond the Party's control and without the
24 Party's fault or negligence. The Party affected by a Force Majeure Event shall
25 give prompt notice to the other Party, shall be excused from performance of its
26 obligations hereunder on a day to day basis to the extent those obligations are

¹⁰⁸ See my discussion of outdated and obsolete hardware at Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 123; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 106-107.

¹⁰⁹ Hunsucker Direct Test., WUTC Docket No. UT-111254 (Oct. 14, 2011), p. 9, line 20 – p. 10, line 2.

1 prevented by the Force Majeure Event, and shall use reasonable efforts to remove
2 or mitigate the Force Majeure Event. In the event of a labor dispute or strike the
3 Parties agree to provide service to each other at a level equivalent to the level they
4 provide themselves.¹¹⁰

5
6 Consistent with this conclusion, and in response to CenturyLink’s suggestion that an
7 unrecoverable OSS failure may simply be treated as a force majeure event,¹¹¹ the
8 Colorado PUC Telecommunications Section Chief (who is a former US West/Qwest
9 employee within the Information Technologies and Wholesale divisions and OSS witness
10 in the 271 proceedings) said:

11 Qwest determined what it believed was the appropriate hardware and software
12 platform for CEMR and MEDIACC many years prior to the existence of the
13 Merger and the Settlement Agreement. Qwest has had plenty of opportunity to
14 upgrade the hardware and software to different platforms and/or otherwise create
15 a stable environment through a back up or failover plan prior to the Merger. As
16 an alternative option, Qwest could have replaced the system altogether prior to the
17 Settlement Agreement. Information provided by Qwest/CenturyLink in this
18 docket shows that Qwest issued a CMP notice in CMP to replace
19 CEMR/MEDIACC, which notice was subsequently deferred in 2009.¹¹²
20 Although no official reason was cited, I assume that Qwest chose to defer
21 spending financial resources on the replacement at that time.^[113] To imply that an
22 unrecoverable systems crash constitutes a ‘force majeure’ event would be
23 disingenuous.¹¹⁴

24
25 **Q. DOES THE STAFF MAKE A RECOMMENDATION REGARDING THE PIDS**
26 **AND PAP?**

¹¹⁰ <http://www.centurylink.com/wholesale/clecs/nta.html>

¹¹¹ Hunsucker Answer Test., CO Docket No. 11F-436T (Sept. 15, 2011), p. 10, lines 13-18; see also Hunsucker Direct Test., WUTC Docket No. UT-111254 (Oct. 14, 2011), p. 9, line 20 – p. 10, line 2; Exhibit DD-5, MN OSS Compliance Filing, p. 13.

¹¹² “See Ms. Johnson’s Exhibit No. BJJ-8.” [See Exhibit DD-5, Merged Company MN Compliance Filing, p. 12, footnote 22.] Brackets indicate portion not in original.

¹¹³ [Qwest later attributed the decision to defer the change request to “funding.” See Exhibit BJJ-7, Jan. 19, 2011 Qwest CMP minutes, at JC000055; Exhibit DD-5, Merged Company MN Compliance Filing, p. 12, footnote 22.]

¹¹⁴ Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 13, line 11 – p. 14, line 2.

1 A. Yes. Washington Staff recommends that “Gateway Availability PIDs, GA-3 and GA-6
2 contained in the Qwest Performance Assurance Plan (QPAP), and any other PIDs that
3 may apply, along with all required penalties, will continue to be required.”¹¹⁵ I would
4 suggest the following approach to this issue to be clear that the PID measures will be
5 returned to the QPAP and CLECs will be eligible to receive payments:

6 The Performance Indicator Definition (“PID”) Gateway Availability (measures
7 GA-3 and GA-6) will immediately be returned to the Washington Qwest
8 performance assurance plan (“QPAP”), with Tier 1 payment eligibility for
9 CLECs, and will remain in the PAP until expiration of the minimum 30-month
10 time period or retirement of MEDIACC, whichever is later.

11 **VII. PROPOSED SOLUTIONS TO ADDRESS ASSERTED OSS RISK**

12 **A. UPDATE MEDIACC AND KEEP MEDIACC/CEMR OPERATIONAL**

13 **Q. MS. ALBERSHEIM CLAIMS THAT THE COSTS OF DEVELOPING A NEW**
14 **B2B INTERFACE WOULD BE ON PAR WITH THE COSTS OF UPDATING**
15 **MEDIACC.¹¹⁶ DID QWEST OR CENTURYLINK CONSIDER THE COST**
16 **IMPOSED UPON CLECS?**

17 A. No, it does not appear that they did. Ms. Albersheim relies upon Confidential Exhibit
18 RA-9 to support the decision to abandon MEDIACC, but the document barely mentions
19 costs imposed upon CLECs.¹¹⁷

¹¹⁵ Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 13, line 11 – p. 14, line 2.

¹¹⁵ Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 24, lines 27-30.

¹¹⁶ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 6, line 14 – p. 7, line 1; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 7, lines 4-8.

¹¹⁷ Albersheim Direct Test., WUTC Docket No. 111254 (Oct. 14, 2011) Confidential Exhibit RA-9, p. 4. *See also*

1 **Q. SOME OF THE PROPOSALS YOU DESCRIBE BELOW INVOLVE SOME USE**
2 **OF MTG-XML AS A REMEDY. IS IT NECESSARY TO ALSO KEEP**
3 **MEDIACC/CEMR OPERATIONAL IF SOME OF THOSE REMEDIES ARE**
4 **ADOPTED?**

5 A. Yes. CenturyLink and Qwest have attempted to qualify or limit the risk of OSS failure as
6 to situations in which MTG-XML is not available,¹¹⁸ without clearly acknowledging that
7 MTG is untested and unavailable today and may be for some time. Although they have
8 made assertions about other customers inquiring about XML for repair, those assertions
9 do not translate to evidence that any such customer has committed to build, test, and
10 interface to MTG-XML now or in February. To date, CenturyLink and Qwest have
11 provided no evidence that any CLEC, vendor, or wholesale customer will have built to
12 and tested MTG at any time in 2012 or even any time before retirement of MEDIACC, if
13 companies vote to retire it, in 2013 or after. Those are, at best, unknowns.

14 What is known today is that no vendor or customer has built to and tested MTG today
15 and, for a MEDIACC user such as PAETEC that relied upon the merger agreements, it is
16 not in a position to do so. It is important to note that the fact that the Merged Company
17 indicates in CMP that, except in Minnesota, it will make MTG-XML available over
18 CLEC objection in February 2012 does not mean that, even if allowed to do so, any
19 wholesale customer will be in a position to use MTG-XML at that point or will even start
20 development and testing. For example, the change from IMA-EDI to IMA-XML for

Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), Confidential Exhibit RA-4b, p. 4.

¹¹⁸ Exhibit DD-5, Merged Company MN Compliance Filing, p. 11.

1 ordering (as opposed to repair) was implemented by Qwest in October of 2006, and the
2 first CLEC (Eschelon) did not move to IMA-XML until April of 2007, approximately six
3 months later. In other words, the existence of an implementation date on a CMP calendar
4 does not mean any customer is ready to implement on that date, even in the absence of
5 merger conditions.¹¹⁹ To the extent that the Merged Company has created an impression
6 that MTG-XML immediately solves that problem presented by its belated allegations of a
7 potentially catastrophic failure of the repair OSS, therefore, the impression is false.
8 CenturyLink and Qwest have provided no evidence to date of any company that has
9 committed to even a six month timeline for MTG-XML. MTG-XML does not solve the
10 problem identified by Joint CLECs and, even to the extent that MTG-XML is used, there
11 is going to be a period of months if not a year or more when CLECs and their customers
12 are left with discriminatory risks of system failure and significant adverse impact. Even
13 assuming some use of MTG-XML (such as described in some of the proposals),
14 therefore, the Merged Company must also take additional steps to avoid the failure of
15 MEDIACC/CEMR in the event of failure (as described in Section VII(A)).

¹¹⁹ In Colorado, Ms. Albersheim said that “CLEC transitions from one gateway to another have always been staggered over a window of time, depending on each CLEC’s available resources to make the transition.” Albersheim Rebuttal of Staff Testimony, CO Docket No. 11F-436T (Dec. 1, 2011), p. 8, lines 11-12. She argues that the “only difference with this transition is that the window is longer.” See *id.* This testimony ignores the critical difference – that no applicable merger conditions were in place for previous transitions, whereas Qwest and CenturyLink agreed to specific terms and procedures in the merger settlement agreements here.

1 **Q. HAVE THE CLECS PROPOSED TO THE MERGED COMPANY THAT IT**
2 **TAKE ADDITIONAL STEPS TO UPDATE MEDIACC AND KEEP IT**
3 **“OPERATIONAL”¹²⁰?**

4 A. Yes. To avoid discussions in the context of potential settlement, I will refer here to the
5 proposals of Joint CLECs publicly filed in Washington, Colorado, and/or Minnesota.
6 CenturyLink and Qwest have rejected the alternatives proposed by Joint CLECs to date.
7 The Commission should order the requested relief. For example, Joint CLECs¹²¹ have
8 proposed that, to help ensure compliance with the merger agreements going forward, the
9 Merged Company take specific steps to ensure the stability and viability of
10 MEDIACC/CEMR for at least 30 months in a manner that meets or exceeds Qwest’s pre-
11 closing performance levels.¹²²

12 In Joint CLECs’ view, the parties are before the Commission so soon after the extensive
13 merger proceedings because CenturyLink and Qwest have not delivered on pre-merger
14 assurances and commitments.¹²³ In other words, written assurances have proven
15 inadequate. Therefore, additional written assurances are insufficient to indicate that the

¹²⁰ Williamson Test., (Nov. 30, 2011), p. 12, line 20 – p. 21, line 5. See also my discussion above in Section V(B).

¹²¹ In Colorado, “Joint CLECs” also includes PAETEC, **tw telecom**, and Integra. In Minnesota, the Joint CLECs include Eschelon Telecom of Minnesota, Inc. d/b/a Integra Telecom and Integra Telecom of Minnesota (together “Integra”); McLeodUSA Telecommunications Services L.L.C. d/b/a PAETEC Business Services (“PAETEC”); **tw telecom of minnesota llc** (“**tw telecom**”); Popp.com, Inc. (“POPP”), US Link, Inc., d/b/a TDS Metrocom, LLC (“TDSM”), and Velocity Telephone, Inc. (“Velocity”). Proposals of the Joint CLECs are described, for example, in November 7, 2011 and December 7, 2011 Minnesota comments filed jointly by the Joint CLECs relating to the Merged Company’s Compliance Filing (Exhibit DD-5). See also Denney testimony in CO Docket No. 11F-436T, including October 31, 2011 Denney Rebuttal to CenturyLink/Qwest at pages 22-35 and December 1, 2011 Denney testimony regarding Colorado Staff recommendations at pages 4-24.

¹²² Exhibit BJJ-3, Integra Settlement Agreement, ¶¶2(a)(i) & 12; Exhibit 4, PAETEC agreement (30 months).

¹²³ See, e.g., Section XI below (citing assurances).

1 Merged Company has the ability to meet its recent assertions that it will keep the
2 MEDIACC system “in production”¹²⁴ and “in place until late 2013.”¹²⁵ Its own
3 Compliance Filing (see Exhibit DD-5) demonstrates the assertion cannot be relied upon.
4 The Merged Company needs to demonstrate to the Commission its ability to keep
5 MEDIACC/CEMR in production, taking into account what the Merged Company asserts
6 is an “increasing” risk of OSS failure.¹²⁶

7 Joint CLECs’ proposal to update MEDIACC/CEMR and keep MEDIACC and CEMR
8 operational stems in part from a recommendation made by the Staff in Colorado, which it
9 is necessary to describe to understand the Joint CLEC proposal. The Colorado Staff’s
10 recommendation is based at least in part from a discrepancy that the Colorado Staff, after
11 conducting discovery, identified between how the Merged Company protects retail
12 customers from a disastrous OSS failure and the Merged Company’s approach for
13 CLECs. The Colorado Staff witness said:

14 **Q. DOES QWEST HAVE A FAILOVER AND DISASTER RECOVERY**
15 **PLAN FOR ITS OWN REPAIR TICKETING SYSTEMS USED FOR ITS**
16 **RETAIL CUSTOMERS?**
17

18 **A.** Yes. Qwest appears to have such capabilities for both its Repair Call Expert
19 (RCE) and Qwest Repair Expert (RX) OSSs. To not have the same level of
20 service available to the CLECs with regard to the MEDIACC system may indicate
21 to Staff some level of risk of discriminatory treatment.
22

¹²⁴ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 19, line 1.

¹²⁵ Exhibit DD-5, Merged Company MN Compliance Filing, p. 2; Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 8, line 13.

¹²⁶ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 10, lines 11-13.

1 **Q. PLEASE EXPLAIN STAFF'S CONCERNS OVER POSSIBLE**
2 **DISCRIMINATORY TREATMENT.**

3
4 **A.** Section 251 of the Telecom Act requires non-discriminatory access to the
5 ILEC OSS by the CLECs. To the extent an 'unrecoverable' event occurs with
6 regard to MEDIACC, and a manual process is required for submittal of repair
7 tickets versus the existence of automated repair capabilities for
8 Qwest/CenturyLink retail business creates a potential violation of the §251
9 requirement.¹²⁷

10
11 I discuss compliance with Section 251 of the Act, which is one of the Merged Company's
12 merger commitments,¹²⁸ and discrimination below. The Colorado Staff discussed
13 failover and a disaster recovery plan for MEDIACC/CEMR. Joint CLECs' proposal and
14 request for relief from this Commission includes both failover capabilities and a disaster
15 recovery plan.

16 **Q. ARE A FAILOVER PLAN AND A DISASTER RECOVERY PLAN THE SAME**
17 **THINGS?**

18 **A.** No. As I discuss below, however, the Merged Company at times appears to attempt to
19 blur the distinction. I will discuss failover capability first, including steps to remedy an
20 existing discriminatory situation, followed by discussion of a disaster recovery plan.
21 Additionally, I will discuss the need for clarity with respect to what is required and
22 therefore suggest use of a disaster *avoidance* plan with respect to meeting the Merged
23 Company's merger commitments.

¹²⁷ Notarianni CO Staff Cross Answer Test., CO Docket No. 11F-436T (Oct. 31, 2011), p. 22, line 13 – p. 23, line 7, citing response to Staff Data Request 01-06, Confidential Exhibit LMVN-6. .

¹²⁸ Exhibit BJJ-3, Integra Settlement Agreement, ¶6.

1 **1. Failover Capabilities.**

2 **Q. PLEASE DESCRIBE YOUR UNDERSTANDING OF FAILOVER¹²⁹ OR**
3 **FAILOVER CAPABILITIES.**

4 A. According to publicly available sources, “failover” means “Automatically switching to a
5 different, redundant system upon failure or abnormal termination of the currently active
6 system.”¹³⁰ With failover, in the event of a physical disruption to a network component,
7 “data is immediately rerouted to an alternate path so that services remain
8 uninterrupted.”¹³¹ Failover includes the “process by which an alternate system takes over
9 and emulates the primary system if the primary system becomes unusable.”¹³² In other
10 words, there is system redundancy such that, when the primary system fails, the
11 redundant system takes over. Consistent with these definitions, CenturyLink and Qwest
12 said in discovery responses to staff in Colorado, when asked about failover capabilities of
13 Qwest retail systems, that its repair ticketing systems for its retail customers have failover
14 capabilities.¹³³ The MTG interface, to which MEDIACC users must build, does not meet

¹²⁹ See Exhibit BJJ-8, at JC000956, Qwest-prepared Feb. 16, 2011 CMP meeting minutes (“Lynn Notarianni – Colorado PUC asked what is Qwest’s *fail over* plan today...” & “Russ Rutledge – Qwest said the current environment is not built in a high availability cluster environment which is more resilient. If it fails, it is down until it is fixed....”) (emphasis added).

¹³⁰ <http://dictionary.reference.com/browse/failover>

¹³¹ <http://www.expertglossary.com/storage/definition/failover>

¹³² <http://www.expertglossary.com/storage/definition/failover>

¹³³ Notarianni Answer Test., CO Docket No. 11F-436T, (Oct. 31, 2011), p. 22, lines 13-17 and note 17, citing confidential response to Colorado Staff Data Request 01-06. In Washington, Joint CLECs have sent to CenturyLink/Qwest the same questions as in Colorado Staff Data Requests 01-05 and 01-06 and, although they had not received a response as of the drafting of this testimony, given that the Qwest retail repair systems are not state-specific, it should be fair to assume that the responses will be the same.

1 this definition of failover, as for example there is no automatic switching over from
2 MEDIACC to MTG upon failure of MEDIACC.¹³⁴

3 **Q. PLEASE ADDRESS WHETHER CENTURYLINK AND QWEST HAVE**
4 **ADMITTED THAT THERE IS NO FAILOVER FOR MEDIACC AND, AT**
5 **LEAST TO THE EXTENT THAT CEMR INTERFACES WITH MEDIACC, FOR**
6 **CEMR.**

7 A. CenturyLink/Qwest response to Joint CLEC Data Request 02-017 states: “MEDIACC is
8 currently on 15 year old technology that does not support failover capabilities.”¹³⁵ This is
9 consistent with Qwest’s admission in CMP about MEDIACC that, “If it fails, it is down
10 until fixed.... There is no fail over.”¹³⁶ As the Merged Company admits that CEMR
11 interfaces with MEDIACC,¹³⁷ it also has admitted that CEMR also has no failover to the
12 extent MEDIACC experiences an unrecoverable system outage.¹³⁸ Although
13 CenturyLink and Qwest entitled their Minnesota Compliance Filing “Report on
14 MEDIACC Risks” (Exhibit DD-5), the title of the Compliance Filing, to be accurate,
15 should be “Report on MEDIACC and CEMR Risks” because the Merged Company
16 acknowledges that it is incorrect that only MEDIACC is at risk, concedes that MEDIACC

¹³⁴ Regarding reasons why MTG is not a backup in the event of a MEDIACC failure, see the discussion in PAETEC’s proposal (Exhibit BJJ-64) & Denney Direct, WUTC Docket No. UT-111254 (Oct. 14, 2011), pp. 148-154 as well as Denney Responsive Test., WUTC Docket No. UT-111254, (Dec 15, 2011), Section VII(B).

¹³⁵ Exhibit DD-1, CenturyLink Response to Joint CLEC Data Request 02-017, WA UTC Docket No. UT-111254, (Dec. 7, 2011). *See also*, Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 21, lines 18-19 and note 16.

¹³⁶ Exhibit BJJ-8 (Qwest Feb. 16, 2011 CMP meeting minutes) at JC000956. Qwest made this statement in response to a question in CMP by Lynn Notarianni of CO Staff about Qwest’s fail over plan. *See id.*

¹³⁷ Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 56 (JC000809).

¹³⁸ CenturyLink Response to Joint CLEC Data Request 02-018, WA UTC Docket No. UT-111254, (Dec. 7, 2011). *See also*, Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 20, lines 16-18.

1 impacts significant CEMR transactions for repairs, and admits that CEMR users and their
2 end user customers will be adversely impacted by a system failure.¹³⁹

3 The conclusion that Qwest does not have failover capability for MEDIACC is also
4 consistent with the Merged Company's claims regarding the consequences for
5 MEDIACC and CEMR users and their end user customers of a potential unrecoverable
6 system failure.¹⁴⁰ After all, if MEDIACC had a redundant system today such that
7 MEDIACC would automatically fail over to that redundant system in the event of a
8 failure or abnormal termination of MEDIACC, then CLECs would not be operating under
9 the threat of a disastrous failure with no backup currently in place. CLECs – like the
10 Merged Company's retail customers – would be protected from that risk by the existence
11 of a failover redundant system/capability.

12 **Q. DESPITE ADMISSIONS THAT CENTURYLINK AND QWEST DO NOT HAVE**
13 **A FAILOVER FOR MEDIACC, IS THERE REASON TO BELIEVE THAT**
14 **CENTURYLINK AND QWEST MAY CLAIM THAT THERE IS FAILOVER**
15 **CAPABILITY FOR MEDIACC OR ATTEMPT TO MINIMIZE THE LACK OF**
16 **FAILOVER?**

¹³⁹ Exhibit DD-5, Merged Company MN Compliance Filing, pp. 5 & 11.

¹⁴⁰ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 23, line 16 – p. 24, line 4.

1 A. Yes. In the context of claiming that the Merged Company can meet its merger
2 commitment to continue offering CEMR/MEDIACC for at least 30 months,¹⁴¹ Qwest and
3 CenturyLink, in their October 6, 2011 Compliance Filing in Minnesota said:

4 If a server experiences a failure, CenturyLink QC has contingency plans in place
5 to deal with such failures. These are known as failover plans. These plans
6 provide contact points, tasks to be performed and timing for these tasks, in order
7 to get servers back into operation. ***There is a failover plan specifically designed***
8 ***to address any failure of the server that houses the database and middleware***
9 ***used by MEDIACC.***¹⁴² These are the steps that CenturyLink QC will follow to
10 restore the server. These steps do not guarantee that the server can be restarted.¹⁴³

11 Although this paragraph ends with a statement that these steps do not guarantee that the
12 server can be restarted, the context suggests that there is a contingency plan in place in
13 that eventuality. The Merged Company identified the referenced contingency, or
14 failover, plan as the “ebco-1 Failover Plan”¹⁴⁴ (see Exhibit DD-4). The Merged
15 Company discusses the use of servers (“identified as ebco-1, ebco-2, ebco-3 and ebco-4”)
16 on pages 5-6 of its publicly filed Minnesota Compliance Filing (Exhibit DD-5). When
17 discussing risks associated with these servers, the Merged Company identifies the risks as
18 “hardware risks.”¹⁴⁵ The Merged Company said that the “hardware and software used by
19 the MEDIACC application are interdependent, as the use of one impacts the use of the
20 other.”¹⁴⁶

¹⁴¹ Exhibit DD-5, Merged Company MN Compliance Filing, pp. 2-4 (regarding the Merged Company’s commitment to keep MEDIACC in place).

¹⁴² Footnote 14 on page 6 of original states: “See Highly Sensitive Trade Secret Attachment O – ebco-1 Failover Plan.” Attachment O is attached to this testimony as Confidential Exhibit DD-4.

¹⁴³ Exhibit DD-5, Merged Company MN Compliance Filing, p. 6 (emphasis added).

¹⁴⁴ Exhibit DD-5, Merged Company MN Compliance Filing, p. 6, note 14. See Exhibit DD-4.

¹⁴⁵ Exhibit DD-5, Merged Company MN Compliance Filing, p. 5.

¹⁴⁶ Exhibit DD-5, Merged Company MN Compliance Filing, p. 5.

1 XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
2 XXXXX XXXXX XXXXX XXXXX XXXXX [End Confidential] Despite the Merged
3 Company's representation in Minnesota that there is a failover plan specifically designed
4 for MEDIACC, there is no failover for MEDIACC.¹⁴⁸

5 **Q. CENTURLINK AND QWEST DESCRIBED EXHIBIT DD-4 AS STEPS THAT**
6 **THE MERGED COMPANY WILL FOLLOW "TO RESTORE THE SERVER."¹⁴⁹**
7 **IS THIS DIFFERENT THAN A FAILOVER PLAN?**

8 A. Yes. CenturyLink and Qwest appear to be collapse the concepts of a failover and a
9 disaster recovery plan, which could have the benefit to the Merged Company of placing
10 less of a burden on it to do one but not both. They said the failover plan (Exhibit DD-4)
11 contains steps "to restore the server."¹⁵⁰ If this sentence were truly referring to a failover
12 plan, it would state that a failover plan contains steps needed to switch to a different
13 server (whereas, after a disastrous system failure, a disaster recovery plan would contain
14 steps to attempt to restore the server). The failover is the means for switching to a
15 different system to restore use *of the application* (e.g., MEDIACC) in the interim while
16 the primary failed system is being worked on. Since then, the Merged Company has
17 twice supplemented its responses to Staff Data Requests 01-003 in Colorado to provide
18 two separate documents, one identified as a failover plan (Exhibit DD-4), and the other as

¹⁴⁸ Consistent with Colorado Staff's testimony, CO Docket No. 11F-436T, (Oct. 31, 2011), p. 21, lines 18-19, that Qwest does not currently have a failover plan for MEDIACC, on August 12, 2011, Integra submitted evidence that Qwest said in CMP about MEDIACC that, "There is no fail over." See Exhibit BJJ-8 (Qwest Feb. 16, 2011 CMP meeting minutes) at JC000956. Qwest did not dispute this evidence in its WA testimony on October 14, 2011.

¹⁴⁹ Exhibit DD-5, Merged Company MN Compliance Filing, p. 6.

¹⁵⁰ Exhibit DD-5, Merged Company MN Compliance Filing, p. 6.

1 a disaster recovery plan (Exhibit DD-3). In Washington, CenturyLink and Qwest
2 provided these documents recently, after inquiry by Integra.¹⁵¹ For the reasons discussed,
3 Exhibit DD-4, to the extent it even constitutes a failover, is discriminatory and
4 inadequate.

5 **2. Steps to Remedy Discrimination.**

6 **Q. YOU INDICATED ABOVE THAT THE JOINT CLEC PROPOSAL FOR**
7 **KEEPING MEDIACC OPERATIONAL SUCH AS BY DEVELOPING**
8 **FAILOVER CAPABILITIES IS BASED AT LEAST IN PART ON A**
9 **DISCREPANCY BETWEEN HOW THE MERGED COMPANY PROTECTS**
10 **RETAIL CUSTOMERS FROM AN OSS FAILURE AND THE MERGED**
11 **COMPANY’S APPROACH FOR CLECS. DID JOINT CLECS ALLEGE**
12 **DISCRIMINATION IN THEIR COMPLAINT IN THIS MATTER?**

13 A. Yes. Joint CLECs allege breach of the duty of nondiscrimination in Count IV of their
14 Complaint. Additionally, Joint CLECs allege, in Count I, breach of the merger order,
15 which requires nondiscriminatory and compliance with the law conduct consistent with
16 the public interest¹⁵²; in Count II, breach of the settlement agreements, which require
17 compliance with Section 251 of the Act,¹⁵³ and in Count III, breach/violation of the
18 interconnection agreements (“ICAs”), which require nondiscrimination and compliance

¹⁵¹ Nov. 16, 2011 email exchange (disaster recovery plan) and Dec. 13, 2011 email exchange (failover plan).

¹⁵² E.g., WUTC Order 14, p. 58, ¶97; see also *id.* pp. 91-92, ¶¶ 177-178 (indicating the Commission expects the Merged Company to comply with the laws).

¹⁵³ Exhibit BJJ-3, Integra Settlement Agreement, p. 8, ¶6.

1 with the law.¹⁵⁴ The Commission has recognized that CLECs may bring a complaint
2 against the Merged Company to allege discriminatory practices.¹⁵⁵ I discuss the duty of
3 nondiscrimination and these claims in my direct testimony.¹⁵⁶

4 **Q. DO MR. HUNSUCKER AND MS. ALBERSHEIM DISCUSS THE**
5 **NONDISCRIMINATION DUTY AND THESE DISCRIMINATION CLAIMS IN**
6 **THEIR DIRECT TESTIMONY?**

7 A. No. Although both witnesses include footnotes to certain paragraphs of the Joint CLEC
8 complaint, neither witness discusses the nondiscrimination laws and these allegations.

9 **Q. HAVE CENTURYLINK AND QWEST DENIED THAT THEY HAVE A DUTY**
10 **OF NONDISCRIMINATION?**

11 A. Yes. In paragraph 105 of Count IV of their Complaint, Joint CLECs allege that the “Act
12 prohibits discrimination by Incumbent Local Exchange Carriers (ILECs)”¹⁵⁷ and that
13 “ILECs are similarly prohibited by Washington law from discriminating against CLECs
14 or in favor of their own affiliates. See Washington RCW 80.16.020.”¹⁵⁸ In their Answer
15 to the Complaint, CenturyLink and Qwest deny paragraph 105 without admitting any
16 portion of it,¹⁵⁹ and they state that “Qwest/CenturyLink generally denies the allegations

¹⁵⁴ E.g., Exhibit BJJ-58, Integra-Qwest ICA, Part A, §§1(B)-(C) & §7.3 and Att. 8, §5.1.7; PAETEC-Qwest ICA, Part A, §1.4 and Part G, §13.1.1. See Count III of the Joint CLEC Amended Complaint, ¶82.

¹⁵⁵ WUTC Order 14, p. 92, ¶178.

¹⁵⁶ E.g., Denney Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 95, lines 3-5 & pp. 169-173.

¹⁵⁷ WA Complaint (July 11, 2011), p. 36, ¶105.

¹⁵⁸ WA Complaint (July 11, 2011), p. 36, ¶105.

¹⁵⁹ WA Answer (Aug. 2, 2011), p. 16, ¶105.

1 of the Complaint, except where specifically admitted.”¹⁶⁰ This denial applies, therefore,
2 to Qwest the ILEC¹⁶¹ as well as to CenturyLink, Inc.

3 After denying paragraph 105, CenturyLink and Qwest add: “Section 252 of the Act
4 permits parties to negotiate ICAs or amendments without regard to non-discrimination
5 standards.”¹⁶² While they could have admitted paragraph 105, except as to this
6 qualification, they chose a blanket denial instead. More importantly, to the extent that
7 this sentence is intended to suggest that some sort of agreement was reached to disregard
8 the prohibitions against discrimination,¹⁶³ the suggestion is wholly inaccurate. In the
9 Integra merger settlement agreement (into which the other Joint CLECs opted), the
10 *Merged Company*¹⁶⁴ agrees to extend the interconnection agreements (“ICAs”), without
11 change to their terms and conditions, for at least 36 months after the closing date.¹⁶⁵ The
12 interconnection agreements between the Joint CLECs and Qwest in Minnesota contain

¹⁶⁰ WA Answer (Aug. 2, 2011), p. 1.

¹⁶¹ Section 251(b) of the Act contains certain nondiscrimination obligations applicable all local exchange carriers, and Section 251(c) of the Act contains additional nondiscrimination obligations with respect to ILECs. For example, Section 251(c) provides (with emphasis added) that an “additional obligation” of ILECs is the “duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, *nondiscriminatory* access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable and *nondiscriminatory* in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.” Per the FCC, “operations support systems and the information they contain fall squarely within the definition of ‘network element’ ... under section 251(c)(3).” FCC First Report and Order, ¶516.

¹⁶² WA Answer (Aug. 2, 2011), p. 16, ¶105. Apparently, CenturyLink and Qwest intend to refer to Section 252(a)(1) of the Act, which applies to agreements arrived at through voluntary negotiations (not arbitrations) and which provides that, in the case of voluntary negotiations, an ILEC “may negotiate and enter into a binding agreement with the requesting telecommunication carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251.”

¹⁶³ To the contrary, Section 252(a)(1) allows CenturyLink, Inc., to voluntarily assume Section 251(c) duties not to discriminate, without regard to the provision of 251 that the obligations in this subsection apply to ILECs.

¹⁶⁴ The “Merged Company” includes both Qwest (which is an ongoing operating entity) and CenturyLink, Inc., as discussed below. See Exhibit BJJ-3, Integra Settlement Agreement, p. 2, ¶A (Definitions).

¹⁶⁵ Exhibit BJJ-3, Integra Settlement Agreement, p. 4, ¶3.

1 provisions prohibiting discrimination and requiring nondiscriminatory access to OSS,¹⁶⁶
2 as well as provisions requiring compliance with the federal Act and other laws.¹⁶⁷
3 Moreover, the Integra settlement agreement provides: “CenturyLink *and* all of its
4 incumbent local exchange carrier (“ILEC”) affiliates *will comply* with 47 U.S.C. Sections
5 251 and 252.”¹⁶⁸

6 In paragraph 106 of their Complaint, Joint CLECs allege that “Qwest is a Washington
7 ILEC. As a consequence, the Joint Applicants, both individually and collectively, are
8 prohibited from discriminating against the CLECs. Qwest may not discriminate in favor
9 of itself, its customers, any of its subsidiaries or Affiliates or, including CenturyLink and
10 CenturyLink entities.”¹⁶⁹ In their Answer to the Complaint, CenturyLink and Qwest
11 admit only the first sentence (that Qwest is an ILEC) and provide a denial “as to the
12 remainder of the paragraph.”¹⁷⁰ Therefore, Qwest and CenturyLink deny that *Qwest*
13 (admittedly an ILEC) may not discriminate in the manner described. After denying this
14 allegation, CenturyLink and Qwest add: “CenturyLink, Inc., is not an ILEC, is not a
15 party to any interconnection agreements, and has *no duty of non-discrimination as to*
16 *Joint CLECs*.”¹⁷¹ The latter statement eliminates the possibility that CenturyLink and
17 Qwest are quibbling about the manner in which the duty to discriminate is described or

¹⁶⁶ See, e.g., Count III of the Complaint & Attachment 1 to the Complaint at Eschelon ICA, ¶¶1.3. 9.1.2, 9.23.1, 12.1.2.1; PAETEC ICA, ¶9.11, ¶36.1, ¶37.

¹⁶⁷ See, e.g., Count III of the Complaint & Attachment 1 to the Complaint at Eschelon ICA, ¶1.3; PAETEC ICA, p. 1 & Part A ¶19; *tw telecom* ICA, ¶5.27.1.

¹⁶⁸ Exhibit BJJ-3, Integra Settlement Agreement, p. 8, ¶6 (emphasis added).

¹⁶⁹ WA Complaint (July 11, 2011), p. 36, ¶106.

¹⁷⁰ WA Answer (Aug. 2, 2011), p. 16, ¶106.

¹⁷¹ WA Answer (Aug. 2, 2011), p. 16, ¶106 (emphasis added).

1 worded in the Complaint. CenturyLink and Qwest clearly disavow any duty of
2 nondiscrimination by CenturyLink, Inc. First, it is not the case that CenturyLink, Inc.,
3 has no duty of nondiscrimination as to Joint CLECs. Second, to the extent that the duty
4 of nondiscrimination applies to Qwest the ILEC, Qwest remains an operating entity in
5 Minnesota that must comply with state and federal laws, and the Commission may hold
6 Qwest accountable for violation of the law and breach of its agreements. In other words,
7 alleged ignorance (or lack of a duty in some cases) by CenturyLink Inc. does not excuse
8 Qwest or reduce Qwest's obligations, either before or after the merger.

9 a. **CenturyLink, Inc., has a Duty of Nondiscrimination.**

10 **Q. DOES CENTURYLINK, INC. HAVE A DUTY OF NONDISCRIMINATION?**

11 A. Yes. CenturyLink, Inc., is a party and signatory to the Integra Settlement Agreement, the
12 Joint CLEC Agreement,¹⁷² and the **tw telecom** Agreement. The Integra Settlement
13 Agreement, into which the other Joint CLECs opted, defines CenturyLink, Inc., as
14 "CenturyLink"¹⁷³ and contains the following definition: "'Merged Company' refers to
15 the post-merger company (CenturyLink *and* its operating companies, collectively, after
16 the Closing Date)."¹⁷⁴ In the merger settlement agreements, CenturyLink, Inc.

¹⁷² The Joint CLEC agreement (Exhibit BJJ-4) provides on pages 1-2 that it clarifies, modifies, and expands the Integra settlement agreement. The Minnesota Commission approved the Joint CLEC agreement in ordering paragraph 1 of its March 31, 2011 order approving the merger. The Integra agreement provides in paragraph 15 on page 11 that if an order approving the merger includes other conditions or provisions, the Merged Company will make that condition or provision available to other carriers in that state upon request to the extent the condition is applicable. The Joint Applicants' March 8, 2011 letter to the Oregon Commission regarding the Joint CLEC agreement explains that the Joint CLEC agreement's OSS conditions are applicable throughout Qwest's 14-state ILEC region and thus they apply in all of those states without any other Commission action for them to take effect. See Exhibit BJJ-6.

¹⁷³ Exhibit BJJ-3, Integra Settlement Agreement, p. 1, first paragraph.

¹⁷⁴ Exhibit BJJ-3, Integra Settlement Agreement, p. 2, ¶A (Definitions) (emphasis added).

1 voluntarily took on certain post-closing obligations, such as the obligation to extend the
2 interconnection agreements (which contain provisions requiring nondiscrimination, as
3 discussed above) and the following obligations:

4 For at least three years after the Closing Date . . . *the Merged Company* shall
5 meet or exceed the average wholesale performance provided by Qwest to CLEC
6 [prior to the Closing Date].¹⁷⁵

7
8 In legacy Qwest ILEC service territory, after the Closing Date, *the Merged*
9 *Company* will use and offer to wholesale customers the legacy Qwest Operational
10 Support Systems (OSS) for at least thirty months and thereafter *provide a level of*
11 *wholesale service quality that is not less than that provided by Qwest prior to the*
12 *Closing date*, with functionally equivalent support, data, functionality,
13 performance, electronic flow through, and electronic bonding....¹⁷⁶

14
15 Additionally, in Washington, in the settlement agreement with Staff, the parties defined
16 “CenturyLink, Inc.” as “CenturyLink”¹⁷⁷ and agreed as follows:

17 As part of a comprehensive settlement with Commission Staff and Public
18 Counsel, *CenturyLink* agrees to the following conditions:

19
20 **23. OSS – Wholesale**

21 In legacy Qwest ILEC service territory, after the transaction closes, *CenturyLink*
22 will use and offer to wholesale customers the legacy Qwest Operational Support
23 Systems (OSS) ... and thereafter provide a level of wholesale service quality that
24 is not less than that provided prior to the Transaction’s closing, with functionally
25 equivalent support, data, functionality, performance, electronic flow through, and
26 electronic bonding....¹⁷⁸

27

¹⁷⁵ Exhibit BJJ-3, Integra Settlement Agreement, p. 3, ¶2(a)(i) (emphasis added); Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 1 (adopting provisions of Integra Settlement Agreement); **tw telecom** Settlement Agreement, p. 2 (adopting provisions of Integra Settlement Agreement).

¹⁷⁶ Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 2, ¶1(A) (emphasis added); see also Exhibit BJJ-3, Integra Settlement Agreement, p. 9, ¶12.

¹⁷⁷ Appendix C to WUTC Order No. 14, Staff Settlement Agreement, p. 1 (emphasis added).

¹⁷⁸ Appendix C to WUTC Order No. 14, Appendix A to Staff Settlement Agreement, pp. 9-10 (emphasis added).

1 The level of wholesale service quality that *the Merged Company* (including
2 CenturyLink, Inc.) commits to provide includes wholesale service that is required to be
3 nondiscriminatory, because nondiscrimination is a requirement applicable to Qwest's
4 provision of wholesale service prior to the closing date. Therefore, CenturyLink, Inc.,
5 agreed to provide a nondiscriminatory level of wholesale service quality after the closing
6 date. CenturyLink, Inc. has obligations under the settlement agreements to ensure that
7 the Merged Company and its operating company, Qwest Corporation, meet their merger
8 obligations. In return for accepting these obligations, CenturyLink, Inc., has already
9 obtained the benefit it sought of merger approval. CLECs, in contrast, are having to
10 litigate already to obtain the benefit of their bargain.

11 **b. Qwest Corporation has an Ongoing Duty of**
12 **Nondiscrimination.**

13 **Q. DOES QWEST CORPORATION HAVE AN ONGOING DUTY OF**
14 **NONDISCRIMINATION?**

15 A. Yes. When the Department of Commerce in Minnesota asked recently “why Qwest
16 and/or CenturyLink did not reveal to the Commission *at any time during the merger*
17 *proceeding* the imminent risk, or inadequacy, of the legacy Qwest maintenance and
18 repair OSS, MEDIACC,” the Merged Company answered that “*CenturyLink was not*
19 *aware of this issue.*”¹⁷⁹ As discussed in my testimony, the undisputed facts show that

¹⁷⁹ CenturyLink/Qwest response to MN DOC Request No. 7(g), Docket No. P421, et al./C-11-684 (Oct. 26, 2011) (emphasis added).

1 CenturyLink was aware of this issue during the merger proceedings.¹⁸⁰ Answers like
2 this, however, suggest that CenturyLink seeks to enjoy the benefits and synergies of a
3 merger with Qwest Corporation while distancing itself from the actions and obligations
4 of Qwest Corporation. There may be some suggestion that, if CenturyLink was unaware,
5 or for some reason does not have a particular obligation, then there is no accountability or
6 consequence. There also may be an erroneous suggestion or mindset that what is done is
7 done and, even if the law was violated or an agreement breached, the merger somehow
8 eliminated the responsible party against which action could be taken or obviated the need
9 for action. To the extent such suggestions are made, they are erroneous. Qwest
10 Corporation was not dissolved, and it was not relieved of its statutory and contract
11 obligations, by the merger. Both CenturyLink and Qwest represented in their merger
12 application that, after the merger, Qwest Corporation will continue to provide services
13 just as it does today “but through a parent with even greater financial strength.”¹⁸¹
14 Michael Hunsucker of CenturyLink testified that “the existing CenturyLink and Qwest
15 operating entities, including wholesale operations, will stay in place post-merger, so the
16 relationships between the companies and the CLECs will remain status quo,”¹⁸² and post-
17 merger Qwest will continue “operations as usual.”¹⁸³ Qwest Corporation, which is a

¹⁸⁰ Denney Direct, WUTC Docket No. UT-111254, pp. 68-73; see also Section XI of this testimony.

¹⁸¹ CenturyLink and Qwest Joint Application for Expedited Approval of Indirect Transfer of Control, WUTC Docket UT-100820 (May 13, 2010), p. 19.

¹⁸² Hunsucker Rebuttal, WUTC Docket UT-100820, (Nov. 1, 2010), p. 4.

¹⁸³ Hunsucker Rebuttal, WUTC Docket UT-100820, (Nov. 1, 2010), p. 15. (“Because the immediate plan is to maintain both companies’ separate OSS and continue operations as usual, there was no need for CenturyLink and Qwest to rush to decide OSS integration issues early in the process. Wholesale customers in CenturyLink areas and in Qwest areas will not face immediate changes in their existing systems interfaces and existing OSS arrangements will not be disrupted.”).

1 party and signatory to the merger settlement agreements, remains an ongoing operating
2 entity, and it is an ILEC and a Regional Bell Operating Company (“RBOC”) in
3 Washington.¹⁸⁴

4 The law could not be more clear that Qwest, as an ILEC, must provide requesting carriers
5 (e.g., CLECs) nondiscriminatory access to unbundled network elements (“UNEs”),¹⁸⁵
6 including nondiscriminatory access to OSS.¹⁸⁶ The quality of the OSS, as well as the
7 quality of access to the OSS, that the ILEC provides to CLECs must be at least the
8 quality that the ILEC provides to itself.¹⁸⁷ Clearly, that is not the case when, unlike
9 MEDIACC/CEMR, the OSS Qwest uses for itself to serve its retail customers has
10 automatic failover capability and the company has identified no similar risk of an
11 unrecoverable failure. In contrast, Qwest and CenturyLink have belatedly¹⁸⁸ asserted that
12 the quality of MEDIACC/CEMR is so poor that, unlike Qwest’s retail systems, the risk of
13 potential unrecoverable MEDIACC/CEMR failure “needs to be addressed”¹⁸⁹ and, if

¹⁸⁴ Order 14, Final Order Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction, (March 14, 2011), p. 15.

¹⁸⁵ 47 U.S.C §251(c)(3); 47 C.F.R. §507.

¹⁸⁶ 47 C.F.R. §51.313; First Report and Order, ¶516.

¹⁸⁷ 47 C.F.R. §51.311(b).

¹⁸⁸ CenturyLink and Qwest had ample opportunity for rebuttal in response to CLEC testimony in the merger proceedings about the 271 testing of legacy Qwest’s OSS to raise any concerns or information that either company had about the age, support, stability, viability, risks, or need to replace Qwest repair OSS. Instead, Joint Applicants affirmatively represented that there would be no need to create new OSS post-merger and that Qwest has “fully operational and tested systems.” E.g., Jones Rebuttal, WUTC Docket No. 100820, (Nov. 1, 2010), p. 18, lines 15-16; *see also*, MN Rebuttal Testimony of John Jones, CenturyLink, MN Dkt. No. P-421, et al./PA-10-456 (Sept. 13, 2010), p. 18, line 7 & p. 20, lines 2-3; *see also* CO Rebuttal Testimony of Mr. Jones, Dkt. No. 10A-350T (Oct. 15, 2010), p. 17, lines 15-19 (“well-established, fully operational and tested systems”).

¹⁸⁹ MN Transcript, p. 31, line 20 – p. 32 line 2 (counsel for CenturyLink).

1 failure occurs, the impact may be “significant” and will affect end user customers.¹⁹⁰
2 Qwest should be held accountable for its conduct, including discriminatory conduct.
3 Otherwise, CLECs and their customers are left without a remedy and there will be little,
4 if anything, to incent better behavior going forward.

5 **c. Discrimination is Occurring.**

6 **Q. IS THE MERGED COMPANY DISCRIMINATING IN FAVOR OF ITS RETAIL**
7 **CUSTOMERS?**

8 A. As a result of Joint CLECs’ complaints and related state regulatory staff inquiries, facts
9 have come to light demonstrating that Qwest has for some time discriminated in favor of
10 its retail customers to the disadvantage of CLECs and their customers. I describe earlier
11 in Section VII(A) above the discovery and Colorado Staff testimony regarding regarding
12 the Merged Company’s treatment of retail repair systems with respect to failover, as
13 compared to its lack of automated failover for MEDIACC. Qwest has provided (and
14 therefore obviously funded at some point) automatic failover (back-up) repair OSS
15 capability for itself and its retail customers while not funding and providing that
16 capability for CLECs.¹⁹¹ In other words, Qwest has taken steps to seamlessly avoid an
17 OSS failure for its retail operations while making decisions that have left CLECs and

¹⁹⁰ Exhibit DD-5, Merged Company MN Compliance Filing, p. 11; see also Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 23, line 10 – p. 24, line 4.

¹⁹¹ See Exhibit DD-5, Merged Company MN Compliance Filing, pp. 7-8.

1 their customers exposed to the risk of potentially catastrophic¹⁹² and disastrous¹⁹³ OSS
2 failure.

3 While CenturyLink is aware of this situation, which is discussed in publicly filed
4 testimony, and even though CenturyLink said that Qwest Corporation will continue to
5 provide services “through a parent with even greater financial strength,”¹⁹⁴ CenturyLink
6 has not used that greater financial strength to remedy this situation in a manner that
7 allows the Merged Company to meet its obligation to use and offer MEDIACC and
8 CEMR for at least 30 months on a nondiscriminatory basis. While Qwest retail
9 customers will be protected from harm prevented by automatic failover and back-up
10 capability, CLEC wholesale customers exercising their rights under the merger settlement
11 agreements and their respective retail customers will not be equally protected from harm.
12 In the event of a MEDIACC/CEMR failure, the Merged Company’s plans do not include
13 automatic failover capability for MEDIACC, and they do not guarantee that the
14 MEDIACC server can be restarted.¹⁹⁵ The above-quoted requirements of the merger
15 settlement agreements, however, compel CenturyLink and Qwest to take steps to avoid
16 an OSS failure and/or a lapse in service quality performance. Therefore, the Commission
17 should require the Merged Company to take steps to ensure the stability and viability of

¹⁹² Exhibit BJJ-36, CenturyLink May 2, 2011 email at JC000294.

¹⁹³ WA Preliminary Injunction Response, WUTC Docket No. UT-111254 (Aug. 18, 2011), p. 6, ¶ 15.

¹⁹⁴ CenturyLink and Qwest Joint Application for Expedited Approval of Indirect Transfer of Control, WUTC Docket UT-100820 (May 13, 2010), p. 19.

¹⁹⁵ Exhibit DD-5, Merged Company MN Compliance Filing, p. 6. & Confidential Exhibit DD-4.

1 MEDIACC/CEMR for at least 30 months in a manner that meets or exceeds Qwest's pre-
2 closing performance levels.

3 CenturyLink and Qwest have rejected the alternatives described in this testimony.
4 PAETEC suggested another alternative (MTG to speak both CMIP and XML languages),
5 described in Section VII(B) below, to CenturyLink in business meetings on August 9,
6 2011 and in the Qwest Change Management Process ("CMP") on August 16, 2011. That
7 was four months ago. If CenturyLink and Qwest had acted promptly on this request, the
8 solution could very well have been in place or nearly in place by now. To the extent that
9 they now argue that this remedy suffers from not being immediately available, it is not
10 available at this time due to their refusal to timely accept and implement this option.
11 There is ample basis in the record for the Commission to require the Merged Company to
12 provide automated failover capability for MEDIACC, including funding and
13 implementing MEDIACC redundancy on Qwest's back-office side on an expedited basis,
14 to remain in place during the minimum 30-month merger settlement agreement period.
15 Such a requirement is consistent with the merger settlement agreements and the duty of
16 nondiscrimination. Both the failover capabilities proposal and the PAETEC CMIP
17 proposal require some Merged Company development/system work. In light of the time
18 pressures created by CenturyLink's and Qwest's conduct, the Commission could require
19 that the Merged Company either (1) fund and implement MEDIACC redundancy on
20 Qwest's back-office side on an expedited basis; or (2) fund and implement PAETEC's
21 CMIP CMP proposal, which allows for MTG development but not implementation

1 except when needed as a true backup (see Exhibit BJJ-64), on an expedited basis,
2 whichever can be implemented first.

3 **3. Disaster Recovery and Avoidance Plan(s).**

4 **Q. IS THE EXISTING DISASTER RECOVERY PLAN (EXHIBIT DD-3)**
5 **ADEQUATE TO ENSURE OSS STABILITY AND COMPLIANCE WITH THE**
6 **MERGER AGREEMENTS?**

7 A. No. First, the existing MEDIACC disaster recovery plan was created in 2001 and
8 appears to be out-of-date. For example, contrary to the recent claims of
9 CenturyLink/Qwest in CMP that there is no failover for MEDIACC,¹⁹⁶ the existing
10 disaster recovery plan states:

11 **[Begin Confidential]** XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
12 XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
13 XXXXX XXXXX **[End Confidential]**

14 If such information provided in the plan in Exhibit DD-3 is accurate and up-to-date, then
15 it is at best unclear how or why carriers and their customers are faced with the prospect of
16 an unrecoverable MEDIACC/CEMR failure. The disaster recovery plan does not appear
17 to have been tested regularly and, in fact, may have been dusted off in 2011 for purposes
18 of litigation. For example, **[Begin Confidential]** XXXXX XXXXX XXXXX XXXXX
19 XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX

¹⁹⁶ See Exhibit BJJ-8 (Qwest Feb. 16, 2011 CMP meeting minutes) at JC000956.

1 XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
2 XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX [End Confidential]

3 Second, Integra agrees with Staff that a disaster recovery plan is necessary and should be
4 submitted for review by the Commission, but even an accurate and up-to-date disaster
5 recovery plan does not by itself address the need presented in this case. This is
6 particularly true if the plan is simply an unsupported written document, without verifiable
7 evidence of actions taken to make recovery a reality (as I discuss in my next response
8 with respect to disaster avoidance).

9 **Q. WHY DO YOU DISTINGUISH BETWEEN DISASTER RECOVERY AND**
10 **DISASTER AVOIDANCE?**

11 A. More than recovery from a disaster is required by the merger settlement terms. As the
12 name “disaster recovery” suggests, a disaster has occurred by the time steps are taken to
13 recover from the disaster.¹⁹⁷ A disaster recovery plan is important generally, including in
14 the absence of merger settlement commitments or a known threat of disaster. The
15 additional factors to consider in this matter, of course, are the risk of potential disaster
16 claimed by the Merged Company and the presence of merger settlement commitments.
17 The Merged Company did not simply agree to extend and abide by the CPAP, which may
18 require certain payments in the event it does not perform at the requisite levels (as
19 discussed below). The Merged Company agreed to *meet or exceed* legacy Qwest’s

¹⁹⁷ A disaster recovery plan is a “written and approved course of action to take *after* a disaster strikes that details how an organization will restore critical business functions and reclaim damaged or threatened records. See also business continuity.” <http://www.expertglossary.com/records/definition/disaster-recovery-plan> (emphasis added).

1 performance for a three-year period,¹⁹⁸ and to “use and offer to wholesale customers” the
2 legacy Qwest OSS for at least thirty months.¹⁹⁹ The merger settlement agreement terms
3 compel Qwest/CenturyLink to take steps to assure the stability of the existing
4 CEMR/MEDIACC systems. Therefore, the Commission should require the Merged
5 Company to take steps to *avoid* an OSS disaster (*e.g.*, unrecoverable failure), and to
6 provide verification of completion of those steps to the Commission. Not only is this
7 approach compelled by the settlement agreement terms, but also it is in the public
8 interest, because customers should not be exposed to the risk of outages due to a problem
9 that Qwest and CenturyLink could have avoided.²⁰⁰

10 **Q. PLEASE PROVIDE EXAMPLES OF DISASTER AVOIDANCE**
11 **REQUIREMENTS.**

12 A. With respect to a disaster recovery and disaster avoidance plan(s) to be filed with the
13 Commission for approval, it/they should include verifiable documentation of steps taken
14 before the filing to make available the necessary equipment and resources to maintain
15 MEDIACC/CEMR so as to avoid outages and unrecoverable system failure. Such
16 documentation may include, for example, contracts that have been put in place with third
17 parties to obtain hardware, software, and/or support as needed. Just because the Merged

¹⁹⁸ Exhibit BJJ-3, Integra Settlement Agreement, p. 3, ¶2(a)(i) at JC000010; Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 1 (adopting provisions of Integra Settlement Agreement); See also, Appendix E to WUTC Order 14, Exhibit LN-1 to the Direct Testimony of Lyndall Nipps, WUTC Docket No. UT-111254, (Oct. 14, 2011), **tw telecom** Settlement Agreement, p. 2 (adopting provisions of Integra Settlement Agreement).

¹⁹⁹ Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 2, ¶1(A); see also Exhibit BJJ-3, Integra Settlement Agreement, p. 9, ¶12.

²⁰⁰ Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 23, lines 7-13. *See also*, Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 13, line 13 – p. 14, line 2.

1 Company claims that an item is unsupported or unavailable does not mean that some
2 level of support or replacement parts are not available for a higher price or from different
3 sources. The Merged Company may have to pay more or go to non-typical sources to
4 receive hardware or additional support. The Merged Company should also be required to
5 obtain and keep on hand hardware needed to maintain the system and avoid a failure and
6 to document that it has done so. The Merged Company said in its Minnesota Compliance
7 Filing that “Replacement parts if needed may not be available locally, and CenturyLink
8 QC could have to wait extra time should parts need to be shipped from another
9 location.”²⁰¹ This lead time is another reason why the Merged Company should stock up
10 on parts in advance. The Merged Company should also ensure that it has retained the
11 technical and functional skills required to properly maintain and, if needed, re-install or
12 restore CMIP and the expertise needed to rebuild the data server on new hardware if
13 needed.

14 **B. MTG TO SPEAK BOTH CMIP AND XML LANGUAGES**

15 **Q. YOU INDICATED THAT QWEST UNILATERALLY REJECTED THE**
16 **ALTERNATIVE OF UPDATING MEDIACC. DOES QWEST DISCUSS**
17 **ANOTHER ALTERNATIVE IN ITS TESTIMONY?**

18 **A.** Yes. Ms. Albersheim briefly discusses a proposal by PAETEC, which I describe below,
19 on pages 20-21 of her Answer Testimony. Although CenturyLink at one time described

²⁰¹ Exhibit DD-5, Merged Company MN Compliance Filing, p. 6.

1 planned MTG as a “backup,”²⁰² and PAETEC has since disputed that claim in CMP (as I
2 discuss in my next response), Ms. Albersheim does not address how the approach the
3 Merged Company is implementing in CMP over CLEC objection can both meet all of the
4 Merged Company’s merger commitments and ensure that PAETEC and its customers are
5 not harmed in the event of an unrecoverable repair OSS failure. Instead, by presenting
6 the need to move to MTG before the end of the minimum 30-month time period to avoid
7 an unrecoverable failure as an “option” for PAETEC and other B2B users,²⁰³ the Merged
8 Company once again²⁰⁴ seeks to shift the risk of its problem to CLECs who should not
9 have to choose between the rights they bargained for and suffering as the result of a
10 Qwest OSS failure.

11 **Q. IN ITS TESTIMONY, DID THE MERGED COMPANY ADDRESS ITS**
12 **PREVIOUS CLAIM THAT MTG IS BEING IMPLEMENTED AS A**
13 **“BACKUP”²⁰⁵ OR FAIL SAFE²⁰⁶?**

14 **A.** No, although the Merged Company conceded in its discovery responses that MTG is not
15 an exclusive backup system or fail safe.²⁰⁷ When providing its alternative proposal in

²⁰² WA Answer, (Aug. 2, 2011), ¶2, p. 2; *see also*, CO Answer, July 18, 2011, ¶2, p. 2 (“developing a backup system”).

²⁰³ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 24, lines 11-19; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 24, lines 13-21.

²⁰⁴ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 130-131 & 143-144; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 113-114 & 125-126.

²⁰⁵ WA Answer, (Aug. 2, 2011), ¶2, p. 2; *see also*, CO Answer, July 18, 2011, ¶2, p. 2 (“developing a backup system”).

²⁰⁶ In the June 15, 2011 CMP meeting, Qwest referred to a “fail safe”; Mark Coyne of Qwest asked “if it was fair to say December 12 was a fail safe option?”; Tracy Strombotne of Qwest initially said yes, but Jamal Boudhaouia of Qwest then clarified that “it is not a fail safe.” See Exhibit BJJ-8 at JC000942.

²⁰⁷ Response to Joint CLEC Request 01-015(b) (Aug. 5, 2011); *see also*, Qwest and CenturyLink Response to

1 CMP (see Exhibit BJJ-64), PAETEC discussed why the Merged Company's proposal to
2 develop MTG does not serve as a backup or fail safe for PAETEC:

3 As an e-bonded user, PAETEC needs time to build to a new interface for our back
4 office systems. PAETEC estimates that, even if it dropped everything and devoted
5 all available resources to that task (something it is not in a position to do, has not
6 budgeted to do, and should not have to do under the merger agreements), it would
7 take a minimum of six months to do the necessary work. During that six-month or
8 longer time period, there would be *no* equivalent backup for PAETEC's use and
9 PAETEC would be forced into a manual process. In other words, if MEDIACC
10 went down tomorrow, PAETEC would not have an e-bonded interface available
11 to it for at least six months and then only after expending resources (to do the
12 manual work for processing trouble tickets and to develop an interface) it should
13 not have to expend at this time. The merger agreement between PAETEC and
14 CenturyLink says that Qwest will provide functionally equivalent support, data,
15 functionality, performance, electronic flow through, and electronic bonding.
16 PAETEC recently met with CenturyLink to try to make sure it's IT experts
17 understand the automation that our back office systems are able to perform due to
18 the e-bonding of our system with various Qwest OSS and related databases,
19 including MEDIACC. Certain PAETEC trouble tickets can be addressed from
20 initiation through resolution without any manual intervention, up to and including
21 an automatically dialed call to the customer. In other words, they automatically
22 flow through from initiation through resolution of the trouble. Without a CMIP
23 interface to MTG, we would lose this automated functionality, which is not
24 available with, for example, CEMR or calls to service centers. PAETEC's and
25 Qwest's systems talk to each other today, but they would not be able to talk to
26 each other in this scenario for at least six months. This would be an additional
27 breach of the merger agreement terms. Other e-bonded or application-to-
28 application repair interface users are in basically the same position as PAETEC,
29 because they also could not use MTG without first building an interface. So,
30 MTG is not a backup for them in the meantime either.²⁰⁸

31
32 **Q. IS THE PAETEC OPTION A PROPOSAL TO DEVELOP A BACKUP SYSTEM**
33 **IN THE EVENT OF AN UNRECOVERABLE OSS FAILURE?**

Integra CO Discovery Request No. 10(b) (Aug. 1, 2011).

²⁰⁸ See Exhibit BJJ-64. PAETEC also filed its proposal and the referenced email in Minnesota Docket, P-421, et al./PA-10-456, on Sept. 21, 2011.

1 A. Yes. By its terms, the PAETEC proposal allows for the Merged Company to develop
2 MTG on the new/different platform to address the stated problem of instability or risk of
3 failure, using XML as the Merged Company suggests, while also building MTG so that
4 PAETEC could continue to use a CMIP interface. In this manner, MTG would be
5 implemented during the 30-month time period, but only as a true backup for all carriers in
6 the event of a MEDIACC failure. Eventually, an XML interface (or other interface) could
7 then be implemented in an orderly manner, consistent with the timeframes and
8 procedures of the merger agreements.²⁰⁹

9 **Q. MS. ALBERSHEIM DESCRIBES THE PAETEC OPTION AS AN “INTERIM**
10 **SOLUTION FOR CLECS WHO ARE NOT READY TO TRANSITION THEIR**
11 **B2B INTERFACES TO MTG.”²¹⁰ DOES THIS TESTIMONY SUGGEST**
12 **ANYTHING ABOUT ASSUMPTIONS MADE BY CENTURLINK?**

13 A. Yes. The Integra settlement agreement provides that the “replacement or retirement of a
14 Qwest OSS may not occur without sufficient acceptance by CLECs,” testing will
15 continue until the acceptance criteria are met (*i.e.*, a date which cannot be known at this
16 time), and sufficient acceptance of a replacement will be determined by a majority
17 vote.²¹¹ If the merger procedures are used as intended, it cannot be known today if MTG
18 will be accepted as a replacement system or whether participants will vote to retire
19 MEDIACC. Nonetheless, Ms. Albersheim’s statements assume that MTG via XML will

²⁰⁹ Exhibit BJJ-64.

²¹⁰ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 20, lines 8-9; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T, Sep. 15, 2011, p. 20, lines 16-17.

²¹¹ Exhibit BJJ-3, ¶12(c).

1 be the replacement system and the MEDIACC will be retired, thus making PAETEC's
2 proposal interim until PAETEC may "develop its own interface to MTG."²¹² If
3 PAETEC's proposal were truly given effect, CenturyLink should be open to considering
4 whether the alternative works well enough to be maintained over a longer period of time.
5 While it may ultimately be the case that XML and MTG are accepted without need for
6 continuing the CMIP alternative or implementing a different alternative, the result is not
7 known at this time. CenturyLink nonetheless appears to be treating its replacement of
8 MEDIACC with MTG-XML and retirement of MEDIACC as a foregone conclusion.

9 **Q. HAS THE MERGED COMPANY ACCEPTED PAETEC'S PROPOSAL FROM**
10 **AUGUST 16, 2011?**

11 A. No. Two months after PAETEC's August 16 email, Ms. Albersheim stated in her
12 Answer Testimony that the Merged Company is "seriously evaluating"²¹³ the proposal,
13 but had not yet made a "business decision regarding the implementation of PAETEC's
14 request."²¹⁴ Although time is of the essence -- with CenturyLink continuing to work on
15 its unilateral approach in the meantime -- more than a month has passed since the filing of
16 that testimony, without the Merged Company having accepted PAETEC's proposal.

²¹² Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 20, lines 13-14; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T, Sep. 15, 2011, p. 20, line 21 – p. 21, line 1.

²¹³ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 20, line 17; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 21, line 4.

²¹⁴ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 21, lines 2-3; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 21, lines 8-9.

1 **C. COMPENSATION OR FUNDING, SUCH AS EARLY PAETEC TESTING**
2 **FOR WHICH CENTURYLINK PROPERLY BEARS THE COSTS**

3 **Q. HAS ANY OTHER POTENTIAL APPROACH BEEN MENTIONED?**

4 A. Yes. During a public hearing, Minnesota Commissioner O'Brien asked the following
5 question:

6 This is a question for the CLECs. I want to just turn this issue slightly and ask
7 whether there is -- as I appreciate it, we have kind of two systems, and you got to
8 hold on to the one that helps your business interests, and they've got a different
9 product and all the rest of that. But is there a -- can that difference be monetized
10 and purchased?²¹⁵

11
12 The Merged Company's insistence that there is a risk of a potentially disastrous²¹⁶ OSS
13 failure has forced CLECs to consider alternatives designed to address that risk, including
14 solutions with a monetary component.²¹⁷ PAETEC said in its CMIP proposal in CMP:

15 If CenturyLink's claim of potentially disastrous or catastrophic failure has any
16 validity, somebody is going to have to perform additional work and expend
17 additional resources during the 30 month OSS moratorium period. Because
18 Qwest and CenturyLink did not disclose this issue earlier, and they are the parties
19 causing the resources to be spent, they are the proper parties to perform that work
20 and *bear those costs*.²¹⁸

21

²¹⁵ Exhibit BJJ-62, MN Transcript (Aug. 11, 2011), p. 52, lines 11-18.

²¹⁶ WA Preliminary Injunction Response, WUTC Docket UT-111254, (Aug. 18, 2011), p. 6; *see also*, CO Preliminary Injunction Response, CO Dkt. No.11F-436 (Aug. 2, 2011), p. 5.

²¹⁷ In an October 22, 2010 ex parte filing by PAETEC in the FCC's merger docket, WC Docket 10-110, at page 10, PAETEC said: "If that trouble ticket information exchange reverted to a manual non-e-bonded process, both PAETEC and Qwest would need to assign significantly more personnel to manage the same amount of trouble tickets. PAETEC conservatively estimates that is annual labor costs would increase more than \$700,000 to work trouble tickets manually if the e-bonding functionality is eliminated from Qwest's OSS. And if the Merged Company does not increase its own support staff to accommodate the additional call volume, the additional annual cost to PAETEC would increase dramatically as 'hold times' increase." This ex parte filing is also Exhibit WAH-2 to the Jan. 3, 2011 testimony of William Haas of PAETEC in the Washington merger docket, UT-100820.

²¹⁸ Exhibit BJJ-64 at JC001041-JC001042 (emphasis added).

1 As indicated in the direct testimony of Christopher Hansen of PAETEC, development to
2 make PAETEC's systems work with the Merged Company's proposed MTG cannot be
3 done without substantial work on PAETEC's part, but dedicating resources to perform
4 that work now is not a viable option because it is not in PAETEC's IT plan and the costs
5 to PAETEC are not in PAETEC's budget, because PAETEC reasonably relied upon the
6 settlement agreement terms.²¹⁹ Qwest Corporation created any repair OSS risk of failure
7 by choosing to not perform the necessary work to maintain and update its hardware,
8 software, and repair systems, despite notice since at least 2000 that it should do so,²²⁰ and
9 by choosing to not act prudently as the Merged Company has defined prudent
10 behavior.²²¹ Therefore, the Merged Company should bear the consequences and costs of
11 addressing the current situation.

12 **1. Early Outsourced PAETEC Testing with Transparent Process.**

13 **Q. HAVE JOINT CLECS PROVIDED PROPOSALS THAT INVOLVE THE**
14 **MERGED COMPANY FUNDING OR PROVIDING COMPENSATION FOR**
15 **ADDRESSING THE RISK OF QWEST OSS FAILURE DURING THE 30-**
16 **MONTH MERGER TIME PERIOD?**

²¹⁹ Hansen Direct, PAETEC, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 2-3; *see also*, Hanson Direct, PAETEC, WUTC Docket No. UT-111254 (Oct. 14, 2011), pp. 2-3; *see also* Exhibit DD-1, Joint CLEC Responses to Qwest/CenturyLink's First Set of Discovery Requests in Colorado, Response No. 1-21(b) (Sept. 12, 2011).

²²⁰ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 123 (discussing Sybase June 31, 2000 notice, Exhibit BJJ-54, at JC000907, July 18, 2011 Integra Matrix Rely); *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 106-107.

²²¹ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 62-63 & 123; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 55-56 & 107.

1 A. Yes. As part of PAETEC's CMP proposal (discussed in Section VII(B) above), the
2 Merged Company would pay for the costs associated with making MTG talk with CMIP
3 as well as XML. Alternatively, if that PAETEC proposal is not adopted, then another
4 proposal is for Qwest Corporation to reimburse the costs for PAETEC to outsource the
5 work to develop, test, and move to MTG-XML, including recoding or other needed work
6 such that PAETEC's back-office systems work with the XML protocol,²²² earlier than the
7 promised minimum of 30 months.²²³ If the Merged Company believes, as its witness has
8 testified, that "the risk of unrecoverable failure is increasing,"²²⁴ or the Merged Company
9 otherwise desires an early implementation of MTG, then it should reimburse PAETEC
10 for the additional resources or other charges relating to expediting the work for PAETEC
11 to avoid that increased risk. If the work is outsourced at the Merged Company's expense,
12 MTG would be usable by PAETEC in the event of an unrecoverable MEDIACC failure.
13 In contrast, the Merged Company's current approach leaves PAETEC without a backup
14 in the event of an unrecoverable MEDIACC failure.

15 **Q. WOULD A SOLUTION WITH A MONETARY COMPONENT FOR PAETEC'S**
16 **COSTS HAVE ANY APPLICATION FOR OTHER CLECS?**

²²² As described in the direct testimony of Christopher Hansen, PAETEC has already built to CMIP so that its back-office systems work with CMIP for repair, to accommodate Qwest's use of CMIP, at PAETEC's expense. If the Merged Company now wants PAETEC to build to a different protocol, earlier than allowed by its agreement with PAETEC, it is reasonable that the Merged Company should bear those costs.

²²³ See Joint CLEC Minnesota Reply Comments, Nov. 17, 2011, pp. 14-17.

²²⁴ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 10, lines 11-13; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sept. 15, 2011), p. 10, lines 15-16.

1 A. Further inquiry may be needed to determine whether any other CLECs would also pursue
2 cost recovery from the Merged Company. Integra is not seeking reimbursement of costs
3 for development for itself with this alternative approach.²²⁵ This approach could be
4 helpful to CLECs other than PAETEC, such as **tw telecom**²²⁶ and Integra, which are also
5 now faced with an asserted risk of unrecoverable system failure.²²⁷

6 **Q. ARE THERE STEPS THE COMMISSION COULD REQUIRE TO HELP**
7 **ENSURE THAT A MONETARY COMPONENT FOR SOME CLECS' COSTS**
8 **HAVE APPLICATION FOR OTHER CLECS?**

9 A. Yes. In addition to reimbursement for the outsourcing of work performed for PAETEC,
10 the Merged Company should be required to ensure that the development and testing are
11 open and transparent to other parties and Staff, including monitoring by requesting
12 vendors²²⁸ and use of CMP, regarding “functionally equivalent support, data,
13 functionality, performance, electronic flow through, and electronic bonding.”²²⁹ This
14 requirement would not be burdensome to the Merged Company, as Qwest shared

²²⁵ If compensation in other forms is ordered (such as payments resulting from costs incurred after an OSS failure if CEMR fails and Integra must use more manual processes), the Integra should be eligible for such payments as well.

²²⁶ If a vendor increases rates to CLECs, or passes along charges, CLECs such as **tw telecom** that use a vendor may seek reimbursement for the costs/charges passed on to them.

²²⁷ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), Section VI, pp. 91-92 & Section VI(E), pp. 133-142; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), Section V, pp. 81-82 & Section VI(E), pp. 116-124.

²²⁸ The Merged Company provided no evidence to date that any or all applicable vendors have started development or intend to offer an XML based product for repair in Qwest territory soon or even before MEDIACC is retired. If a vendor is not yet developing a product but requests to monitor PAETEC’s development and testing, the vendor(s) should be allowed to monitor as needed the work between PAETEC and the Merged Company (without access to confidential PAETEC information).

²²⁹ Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 2, ¶1(A) at JC000550; Appendix C to WUTC Order No. 14, Staff Settlement Agreement, App. A, p. 10, ¶23.

1 information publicly and among parties in a similar manner during development and
2 testing of XML for ordering, as described by Ms. Johnson within her discussion of
3 Exhibit BJJ-72 in her responsive testimony. With an open and transparent development
4 and testing process, there would be some verification of the work performed to help
5 ensure that functionality is at the requisite levels²³⁰ and works for other carriers and
6 vendors, as well as PAETEC.

7 The Joint CLEC settlement agreement requires a third party facilitator.²³¹ If the Merged
8 Company also obtains an exception to this requirement for the early PAETEC testing, at
9 least some additional participation by Staff and vendors with respect to PAETEC testing,
10 if Staff request an ability to monitor it or any vendors request some level of participation,
11 would help ensure development that may meet the needs of other CLECs, including those
12 using a software vendor, in the event of a system failure. The meetings and work with
13 PAETEC should be open to CLECs and vendor participants and communicated via CMP
14 for the benefit of CLECs which use CEMR (which interfaces with MEDIACC) and
15 CEMR users which may move to a B2B gateway, such as Integra.²³² For example,
16 comments, questions, and observations about functionality, specifications, and defect or
17 event notices before and during testing should be shared in CMP.

²³⁰ See Exhibit BJJ-4 (Joint CLEC Agreement), p. 2, ¶1(A) at JC000550.

²³¹ Exhibit BJJ-4, Joint CLEC Merger Agreement, pp. 3-4, at JC000551-JC000552.

²³² Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 14, lines 12-14; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 13, lines 21-22.

1 Although this approach would not meet the merger settlement agreement terms, it would
2 at least be more consistent with the purposes of those procedures and would help ensure
3 that the correct party bears the costs of deviating from the merger agreements and of not
4 having updated hardware and software when needed. As part of not deviating from the
5 merger settlement terms any more than necessary, it is a critical component of this
6 alternative that no company should be allowed to move to MTG until the PAETEC
7 testing results in sufficient acceptance²³³ of MTG and PAETEC has the ability to move to
8 MTG. If the Merged Company desires to move to MTG or has customers that it desires
9 to allow to move to MTG, this requirement provides an incentive to the Merged
10 Company to authorize the needed funding (an admitted stumbling block previously for
11 Qwest²³⁴) to get the work done in a timely manner.

12 This approach would not need to be considered, but for the Merged Company's assertions
13 of a potentially disastrous OSS failure and recent²³⁵ claim that risk of repair OSS failure
14 is increasing.²³⁶ Any approach adopted should be tailored to address the asserted concern
15 (potential OSS failure). If there are other factors driving the Merged Company's plans
16 now, such as other customer requests, internal alterations to legacy Qwest OSS or

²³³ See Exhibit BJJ-3, Integra Settlement Agreement, ¶12(c).

²³⁴ E.g., Exhibit BJJ-7, CMP minutes, at JC000055; Merged Company MN Compliance Filing, pp. 7-8.

²³⁵ In contrast, see WA Preliminary Injunction Response, WUTC Docket UT-111254, (Aug. 18, 2011), p. 14; *see also*, CO Preliminary Injunction Response, CO Dkt. No. 11F-436 (Aug. 2, 2011), p. 11 (emphasis added) (“it is possible though perhaps *unlikely* that MEDIACC would experience an unrecoverable failure.”); *see also*, Response to Joint CLEC Request 01-016(c) (Sept. 7, 2011); *see also*, Qwest and CenturyLink’s Responses to Joint CLECs’ First Set of Information Requests, CO Dkt. No. 11F-436T (Aug. 1, 2011), Response to Request No. 11(c) (“Qwest/CenturyLink states it has not determined a probability of failure and cannot predict whether or not such a failure will occur.”).

²³⁶ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 10, lines 11-13; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sept. 15, 2011), p. 10, lines 15-16.

1 creation of new OSS, the Joint Applicants or those customers should have raised them in
2 the merger proceedings when the Joint Applicants were representing that they would be
3 using and offering the legacy Qwest OSS, without making any alterations to them, and
4 would not be creating new OSS.²³⁷ The merger agreement procedures should be
5 respected, except to the limited extent necessary if the Merged Company shows that steps
6 are needed to address its belated claims of risk of unrecoverable system failure.

7 While new OSS development and testing would occur earlier than allowed by the merger
8 settlement agreements if this other option were adopted, the PAETEC work would serve
9 as a CLEC test case for MTG, rather than the unilateral approach currently being pursued
10 by the Merged Company. The Merged Company may argue that non-CLECs may serve
11 as a test case without PAETEC testing. There is reason to believe that would not be a
12 comparable or acceptable test. For example, the Merged Company has said that
13 customers indicating an interest in XML were approaching legacy Qwest as IXC and
14 wireless carriers,²³⁸ but it has submitted no evidence showing that IXC and wireless
15 carriers use all of the capabilities of the legacy Qwest repair OSS, or use them to the
16 same extent or in the same manner, as Joint CLECs. Moreover, unlike any such carriers,
17 PAETEC expended the resources to participate in the merger dockets, and it is a party to
18 a merger settlement agreement with Qwest and CenturyLink. PAETEC should receive
19 the benefit of its bargain, or if that benefit is not delivered, then a remedy for not

²³⁷ See citations on pp. 74-75 of Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011); *see also*, Citations on page 68 of Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011).

²³⁸ Response to Joint CLEC Request 01-001(c), WUTC Docket UT-111254 (Sept. 7, 2011); *see also*, CenturyLink Response to Joint CLEC Data Request 01-001(c), CO Docket No. 11F-436T (Respondents: Legal, Cecilia Tank and Renée Albersheim).

1 receiving it. Either PAETEC's backup alternative or Merged Company reimbursement of
2 PAETEC's costs would better address the risk of repair OSS failure, in a manner that is
3 more consistent with the merger terms and a proper balancing of interests.

4 **2. If Early Development or Implementation of MTG is Allowed With**
5 **PAETEC (or Another Company), It Should be Clear that It is**
6 **Proceeding as Part of a Non-Exclusive Remedy for the Merged**
7 **Company's Violation of its Obligations.**

8 **Q. STAFF RECOMMENDS THAT THE COMMISSION ALLOW DEVELOPMENT**
9 **OF MTG BEFORE EXPIRATION OF THE MINIMUM 30-MONTH TIME**
10 **PERIOD.²³⁹ WOULD ALLOWING SOME EARLY MTG DEVELOPMENT**
11 **PRECLUDE A FINDING THAT CENTURYLINK AND QWEST HAVE**
12 **VIOLATED THEIR OBLIGATIONS?**

13 A. No. There may be a tendency to avoid a finding of breach of the merger agreements and
14 other obligations, in light of the belated claims of a risk of potentially catastrophic²⁴⁰ and
15 disastrous²⁴¹ repair OSS failure, if such a finding means that nothing can be done with
16 MTG-XML for at least 30 months due to the settlement agreements. If the Commission
17 finds that the risk of a potential MEDIACC/CEMR failure must be dealt with to protect
18 the public interest, however, the Commission may fashion a remedy that includes
19 development of MTG-XML to some extent. For example, of the three proposed remedies
20 that I discuss above in this Section VII, two involve early development of MTG.²⁴²

²³⁹ Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 24 lines 3-9.

²⁴⁰ Exhibit BJJ- 36, CenturyLink May 2, 2011 email at JC000294.

²⁴¹ CO Preliminary Injunction Response, CO Dkt. No.11F-436 (Aug. 2, 2011), p. 5.

²⁴² See Section VII(B) and Section VII(C) above.

1 It is important to first find a breach of the agreements and Order²⁴³ before addressing the
2 steps necessary to avoid a disastrous OSS failure, however, to help deter such conduct
3 and to protect the integrity of the administrative process. The Commission should find
4 that Qwest/CenturyLink has breached the merger settlement agreements, violated the
5 Commission's merger Order (after knowingly and intentionally not providing known
6 information to the Commission and instead making affirmative assertions to the
7 contrary²⁴⁴), breached the interconnection agreements,²⁴⁵ and engaged in unlawful
8 discrimination.²⁴⁶ Without findings of fact and conclusions of law by the Commission as
9 to the appropriateness and legality of Qwest's and CenturyLink's conduct to date, there
10 will be little, if anything, to incent better behavior going forward. The Commission
11 should require Qwest to comply with the existing settlement agreements, Commission
12 orders, ICAs, and laws, and to file a compliance filing(s) demonstrating compliance. To
13 the extent that any variance is allowed, as a guiding principle, the merger settlement
14 agreement procedures should be respected, except to the limited extent exceptions are
15 necessary to address the belated claim of risk of unrecoverable repair OSS failure.
16 Additionally, to the extent that additional or incremental costs result, CenturyLink/Qwest,
17 as the cost-causer, should bear those costs.

²⁴³ As discuss in my direct testimony and this testimony, there is ample evidence in the record supporting a finding of breach of the merger settlement agreements and Order.

²⁴⁴ See, *e.g.*, Joint Applicants Reply Brief, WUTC Docket No. UT-100820, (Jan. 21, 2011), pp. 9-14.

²⁴⁵ See Exhibit BJJ-58.

²⁴⁶ See Count IV of the Joint CLEC Complaint, ¶¶104-110.

1 The Commission may find that CenturyLink and Qwest have violated the merger
2 settlement agreements and Order and also find that, due to the belated claim of
3 CenturyLink and Qwest that legacy repair OSS may experience an unrepairable failure,
4 development or implementation²⁴⁷ of MTG or other alternatives is needed earlier than
5 otherwise would be allowed under the merger settlement agreements. For example, in
6 Minnesota, the Commission both found that (1) the act of developing, implementing, and
7 shifting operations to the new MTG is inconsistent with (*i.e.*, a breach of) the order's
8 requirements; and (2) due to the potential failure of the existing CEMR/MEDIACC
9 system, the Merged Company should work with CLECs in developing MTG or other
10 alternatives.²⁴⁸ In response to the Merged Company's motion to reconsider the
11 Minnesota Commission's Order, the Department of Commerce (DOC)²⁴⁹ and the
12 Commission Staff in Minnesota recommend denying the motion, with the Staff stating:

13 During the merger proceedings the Merged Company repeatedly assured the
14 Commission that there was no need to create a new OSS, that there was no time
15 pressure to make any alterations to its OSS. The Joint CLECs, the ALJ and the
16 Commission did not challenge those assertions. In that climate the Merged
17 Company and the Joint CLECs came to an agreement regarding OSS transition,
18 an agreement that was approved by the Commission. However, in an abrupt and

²⁴⁷ Implementation of MTG-XML is not possible without some integration of Qwest systems. Paragraph 12 of the Integra settlement agreement, however, does not allow Qwest to integrate Qwest systems without first taking certain steps that Qwest will not have taken by its "internal" implementation deadline. Likewise, per its FCC commitment, CenturyLink will not integrate Qwest OSS with *any other OSS* for at least 30 months following the Merger Closing Date. As soon as MTG interfaces with any Qwest backend system (where MEDIACC or CEMR via MEDIACC formerly interfaced with those Qwest systems), for any carrier in any state in the 14-state Qwest territory, the Merged Company violates this commitment.

²⁴⁸ Order Barring Implementation of New Operational Support Systems and Requiring Cooperation and Filings, MN Docket Nos. P-21, et al./PA-10-456 & P-5340,5643,5323,5981,438,465,5986,421/C-11-684 (Sept. 6, 2011) ["MN Order Barring Implementation"], p. 7.

²⁴⁹ Answer of the MN DOC to the Motion for Reconsideration, Docket Nos. P-21, et al./PA-10-456 & P-421 et al./C-11-684 (Sept. 26, 2011), p. 1.

1 startling reversal the Merged Company now claims, based on information it
2 possessed at the time of the merger proceedings, that it is necessary to modify its
3 OSS immediately to prevent the risk of significant and imminent OSS failure.
4 This is a claim which the Merged Company did not believe was important enough
5 to bring to the attention of the Commission until it responded to the Joint CLECs
6 Complaint 10 months after testimony was filed in the Merger Docket. Whether
7 CenturyLink's current OSS is at significant risk or whether CenturyLink has
8 knowingly and intentionally violated a Commission order are questions that
9 remain open at this time. But, whatever the answer, whether CenturyLink or the
10 Joint CLECs prevail, Staff believes that the threat of OSS failure, real or
11 imagined, has frustrated the intent of the Commission's *Merger Order* condition
12 that would have granted the Joint CLECs a window of safety and quiescence in
13 which they could adjust to the new conditions upon which wireline competition in
14 Minnesota will either thrive or atrophy.²⁵⁰

15 At its public agenda meeting held on December 1, the Minnesota Commission voted to
16 deny the Merged Company's request for reconsideration, and it issued its Order denying
17 the motion on December 5, 2011. CenturyLink and Qwest have frustrated the intent of
18 this Commission's merger Order as well, and they should each be held accountable for
19 their conduct.

20 **Q. STAFF STATES THAT IT "DOES NOT BELIEVE QWEST/CENTURYLINK IS**
21 **IN VIOLATION OF THE INTEGRA OR STAFF/PC AGREEMENTS SINCE IT**
22 **HAS WITHDRAWN ITS CMP REQUEST TO RETIRE CEMR AND MEDIACC**
23 **PRIOR TO THE 30 MONTH PERIOD."²⁵¹ PLEASE RESPOND.**

24 **A.** The Merged Company's claim of extending the availability of CEMR and MEDIACC for
25 the minimum 30-month time period has been rendered meaningless by the Merged
26 Company's belated claim of a risk of an unrecoverable failure of the Qwest repair OSS

²⁵⁰ Staff Briefing Papers for December 1, 2011 Minnesota Commission meeting, Docket Nos. P-21, et al./PA-10-456 & P-421 et al./C-11-684 (Nov. 22, 2011), p. 11.

²⁵¹ Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 23, lines 14-17.

1 during that time period.²⁵² There is no stability for the CLEC operations or elimination of
2 an immediate cost of transition when confronted with a claim of potentially
3 catastrophic²⁵³ and disastrous²⁵⁴ failure of the Qwest repair OSS. These claims have
4 eliminated the promised “certainty.”²⁵⁵

5 The Merged Company has already taken steps, including the publication of technical
6 specifications for MTG-XML, without filing a detailed proposed plan with the FCC and
7 this Commission,²⁵⁶ without developing acceptance criteria for the replacement
8 interface,²⁵⁷ without conducting a vote or including a vote on its pre-implementation
9 “internal” timeline,²⁵⁸ and without choosing or using a third party facilitator.²⁵⁹
10 CenturyLink and Qwest have not provided CLECs with the required aggregate
11 transaction volume data, even though they currently “seek to replace the legacy Qwest
12 OSS.”²⁶⁰ The Merged Company fully intends to integrate Qwest systems with other
13 Qwest systems during the minimum 30-month timeframe and without first taking these
14 steps, despite the requirements of paragraph 12 of the Integra agreement and paragraph

²⁵² See Section III above.

²⁵³ Exhibit BJJ- 36, CenturyLink May 2, 2011 email at JC000294.

²⁵⁴ WA Preliminary Injunction Response, WA Dkt. No. UT-111254 (Aug. 18, 2011), p. 6, ¶ 15.

²⁵⁵ Exhibit BJJ-3, Integra Settlement Agreement, p. 13, §E; see also, WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 407, lines 1-4 (Mr. Hunsucker, CenturyLink).

²⁵⁶ See Exhibit BJJ-3, Integra Settlement Agreement, p. 9, ¶12(a). In the FCC order in WC Docket No. 10-110, pages 30-31, paragraph A(2), the unilateral CenturyLink commitment includes a description of the plan to be filed with affected commissions as a “proposed” plan. A plan is not proposed if it has already been implemented (for some or all customers).

²⁵⁷ See Exhibit BJJ-3, Integra Settlement Agreement, p. 10, ¶12(c).

²⁵⁸ Compare Exhibit BJJ-3, Integra Settlement Agreement, p. 10, ¶12(c) and Exhibit BJJ-4, Joint CLEC Settlement Agreement, p. 3, with Exhibit BJJ-1 at JC000377 (“Internal CMP Task”).

²⁵⁹ Exhibit BJJ-4, Joint CLEC Settlement Agreement, p. 3.

²⁶⁰ Exhibit BJJ-4, Joint CLEC Settlement Agreement, p. 2.

1 1(A) of the Joint CLEC agreement. And, although sufficient acceptance by CLECs, as
2 indicated by a vote, is supposed to decide the replacement or retirement of a system,
3 Qwest has acknowledged that it has already decided that it will replace and retire
4 CEMR/MEDIACC with MTG-XML.²⁶¹

5 **Q. STAFF STATES THAT MIGRATION TO XML IS “APPROPRIATE.”²⁶² WHEN**
6 **AND HOW IS THIS DETERMINATION MADE UNDER THE SETTLEMENT**
7 **AGREEMENT TERMS?**

8 A. The merger settlement agreements do not allow any one party to determine whether
9 migration to XML is good and necessary. As discussed above, the merger settlement
10 agreements contain timeframes and procedures (including a majority vote of the CMP
11 participants in CMP testing, reflecting two-thirds or more of transaction volumes²⁶³),
12 *after* which the Merged Company may integrate Qwest systems or replace them if
13 sufficient acceptance of the replacement interface is obtained. In other words, the vote
14 determines whether migration to XML is good and necessary. Until then, that is not the
15 issue. Integra, PAETEC, and **tw telecom** have expressed a willingness to explore a
16 migration to XML, but not a migration that is performed unilaterally by the Merged
17 Company in violation of the merger settlement agreements.

²⁶¹ Exhibit BJJ-1 at JC000377; Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 10, lines 20-22. *See also*, Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 10, lines 7-13.

²⁶² Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 23, lines 17-18.

²⁶³ Exhibit BJJ-4, Joint CLEC Settlement Agreement, ¶1(C), p. 3.

1 To the extent that Staff, when using the term “appropriate,” intends to refer to a necessity
2 due to the belated claim of a potentially unrecoverable repair OSS failure, the
3 Commission may address that threat as part of the remedy it orders in this matter, as
4 discussed above. The available alternatives are not mutually exclusive. If part of a
5 remedy is to allow development of XML, it is important to recognize that XML is not a
6 solution or backup in the event of a MEDIACC failure for companies, such as PAETEC,
7 that have not built to XML at the time of the OSS failure.²⁶⁴ An XML-only solution does
8 not remedy their situation. The remedy needs to address the situation of these companies,
9 however, particularly because Qwest and CenturyLink could have avoided the
10 situation,²⁶⁵ or could have apprised the Commission of it during the merger proceedings
11 so the Commission could have addressed it at that time,²⁶⁶ but they chose not to do so.
12 Additionally, after merger approval, the Merged Company could have filed a request with
13 the Commission to notify the Commission of the risk of a potential OSS failure and to
14 request an exception to the merger terms to address that risk, but they also chose not to
15 make such a filing with the Commission.

16 **Q. DOES STAFF AGREE THAT QWEST/CENTURYLINK DID NOT**
17 **DEMONSTRATE THE NEEDED DILIGENCE?²⁶⁷**

²⁶⁴ See the discussion in PAETEC’s proposal (Exhibit BJJ-64) & Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 152-153; *see also* Denney Rebuttal, CO Docket No. 11F-436T (Oct. 31, 2011), pp. 25-26.

²⁶⁵ Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 23, lines 7-13. *See also*, Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 13, line 13 – p. 14, line 2.

²⁶⁶ See Denney Responsive Testimony, WUTC Docket No. UT-111254, (Dec. 15, 2011), Section XI.

²⁶⁷ See, e.g., Denney Direct, WUTC Docket No. UT-111254, (Oct. 14, 2011), pp. 80-82.

1 A. Yes. Staff not only states that Qwest/CenturyLink could have avoided the current
2 situation,²⁶⁸ but also that they lacked “diligence.”²⁶⁹

3 **Q. STAFF STATES THAT QWEST/CENTURYLINK “CREATED A**
4 **CONUNDRUM.”²⁷⁰ DOES STAFF GO FAR ENOUGH?**

5 A. No. Integra and other parties expended significant time and resources to participate in
6 the merger dockets in multiple states and on expedited schedules to obtain resolution of
7 their issues, which eventually came in the form of the merger settlement agreements.²⁷¹
8 The Commission approved the Integra Settlement Agreement,²⁷² and it is applicable to all
9 CLECs doing business in the Washington territories of Qwest and CenturyLink.²⁷³
10 Failure to disclose known information about the condition and risks associated with
11 legacy Qwest OSS to regulators, while at the same time making commitments based on
12 the continued viability of those OSS to induce parties and regulators to support or accept
13 the proposed merger, and violation of the settlement agreements both run counter to the
14 public interest and those important goals.²⁷⁴ The Commission and the public have an

²⁶⁸ Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 23, lines 7-13.

²⁶⁹ Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 17, lines 3-5.

²⁷⁰ Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 17, line 5.

²⁷¹ E.g., Nipps **tw telecom** Direct, p. 4 lines, 9-10, WUTC Docket No. UT-111254, (October 14, 2011); Blanchard PAETEC Direct, WUTC Docket No. UT-111254, (Oct. 14, 2011), p. 6, lines 15-17; *see also* Nipps **tw telecom** Direct, CO Docket No. 11F-436T (Aug 12, 2011), p. 3, line 22 - p. 4, line 7; Nipps Rebuttal, CO Docket No. 11F-436T (Oct. 31, 2011), p. 3, lines 4-20; Hanson Direct, PAETEC, WUTC Docket No. UT-111254 (Oct. 14, 2011), pp. 2-3; and Blanchard PAETEC Direct, WUTC Docket No. UT-111254, (Oct. 14, 2011), p. 6 lines 5-20.

²⁷² Order 14, Final Order Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction, (March 14, 2011), p. 137.

²⁷³ Exhibit BJJ-6, March 8, 2011 CenturyLink and Qwest Letter to Oregon Commission, Docket No. UM-1484, p. 1 (emphasis added).

²⁷⁴ E.g., Nipps Direct, **tw telecom**, WUTC Docket No. UT-111254 (Oct. 14, 2011), p. 5, lines 3-6; *see also*, Nipps **tw telecom** Direct, CO Docket No. 11F-436T (Aug 12, 2011), p. 5, lines 9-12.

1 interest in ensuring the integrity of the negotiation, administrative and evidentiary
2 processes.²⁷⁵ Integra has demonstrated that Qwest and CenturyLink knew of an
3 immediate need to alter OSS in Qwest areas due to risk of repair system instability or
4 potential failure,²⁷⁶ but they nonetheless continued to maintain that they could abide by
5 their merger commitments (in reliance upon which this Commission should grant them
6 merger approval)²⁷⁷ and to assure the Commission that “CenturyLink will have no
7 immediate need (or be under any time pressure) to make any alterations to OSS in Qwest
8 areas.”²⁷⁸ The Commission should find that Qwest’s and CenturyLink’s wrongful
9 conduct was knowing and intentional.

²⁷⁵ Regarding CenturyLink/Qwest lack of good faith, see Denney Responsive Testimony, WUTC Docket No. UT-111254, (Dec. 15, 2011), Section XIV. *See also*, Denney Integra Rebuttal, CO Docket No. 11F-436T (Oct. 31, 2011), Section XIV, pp. 105-110.

²⁷⁶ See, *e.g.*, Denney Responsive Testimony, WUTC Docket No. UT-111254, (Dec. 15, 2011), Section XI; *see also*, Denney Rebuttal, CO Docket No. 11F-436T (Oct. 31, 2011), pp. 54-68. On February 8, 2011 (after December 2010 CenturyLink testimony about its discussion with Qwest about instability of the repair system, *see id.*), Qwest’s counsel described as “dead on the money” the Minnesota ALJ’s conclusion in the merger docket that the Integra settlement agreement addresses CLEC issues by “ensuring that *Qwest’s OSS will not be prematurely or abruptly discontinued*” and “the post-merger service quality will not be materially less than pre-merger quality.” MN Transcript (Feb. 8, 2011), p. 40, line 19 – p. 41, line 6; MN ALJ Report (January 10, 2011), ¶¶229-230 (emphasis added). And, as recently as October 2011, Centurylink continues to deny knowledge of the inadequacy of MEDIACC during the pendency of the merger proceedings. *See* Denney Rebuttal, CO Docket No. 11F-436T (Oct. 31, 2011), pp. 61-62. The Merged Company’s flat denial, in the face of known, documented facts to the contrary, is further evidence that additional Commission action is needed to ensure that the problem is addressed and the integrity of its proceedings protected.

²⁷⁷ See Joint Applicants’ Reply Brief, WUTC Docket No. UT-100820, Jan. 11, 2011, pp. 13-35. *See also*, Joint Applicants’ Statement of Position, CO Dkt. No. 10A-350T (Nov. 24, 2010), Section IV(E) (“No harm to Qwest and CenturyLink Customers”), pp. 33-38. In their January 11, 2011 Reply Brief in Washington, CenturyLink and Qwest did not notify the Commission of the potential instability of the Qwest repair OSS or seek any relief from the conditions of the Integra merger settlement agreement requiring the Merged Company to use those OSS for a period of years and to, at the same time, meet or exceed pre-closing service levels.

²⁷⁸ Joint Applicants’ Reply Brief, WUTC Docket No. UT-100820, Jan. 11, 2011, p. 12, ¶24. *See also*, Joint Applicants’ Statement of Position, CO Dkt. No. 10A-350T (Nov. 24, 2010), pp. 39-40. *See* the same sentence in CenturyLink/Qwest Ex Parte filed with the FCC on Nov. 8, 2010 in WC Docket No. 10-110, p. 2, and a substantially similar sentence (referring to no time *or financial* pressure) in Washington in CenturyLink’s and Qwest’s Reply Brief, UT-100820 (Jan. 21, 2011), p. 12, ¶24.

1 **VIII. THE CHANGE MANGEMENT PROCESS (“CMP”), STATUS QUO AS TO OSS**
2 **VERSUS CMP PROCEDURES FOR OSS, AND SOURCE OF OBLIGATION TO**
3 **RETAIN CMP**

4 **Q. MS. ALBERSHEIM DESCRIBES CMP.²⁷⁹ WHERE DOES INTEGRA RESPOND**
5 **TO THIS TESTIMONY?**

6 A. Ms. Johnson discusses development of CMP during Qwest’s 271 bid for long distance
7 approval, and describes the document governing CMP (the “CMP Document”), in her
8 responsive testimony and Exhibit BJJ-74 (excerpts from the CMP Document). In
9 addition, in that responsive testimony, Ms. Johnson provides information from the merger
10 proceeding relating to Mr. Hunsucker’s statement regarding retention of CMP, which I
11 discuss further below.

12 **Q. MR. HUNSUCKER TESTIFIES REGARDING THE “STATUS QUO.”²⁸⁰ IS THE**
13 **MEANING HE ATTACHES TO THE STATUS QUO NOW THE SAME**
14 **MEANING THAT HE DEMONSTRATED HE UNDERSTOOD DURING THE**
15 **MERGER PROCEEDINGS?**

16 A. No. Mr. Hunsucker admits that a “basic tenet of the CLEC positions in the merger
17 proceedings was the continuation of ‘status quo.’”²⁸¹ Post-merger, Mr. Hunsucker
18 suggests this basic tenet applies to the mechanics of CMP, and he attempts to re-define
19 the “status quo” to refer to CMP being used today as it was used before the Closing Date

²⁷⁹ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), pp. 13-14; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), pp. 13-14.

²⁸⁰ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 5, lines 18-19; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 6 lines 14-15.

²⁸¹ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 5, lines 18-19; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 6, lines 14-15.

1 for OSS.²⁸² Pre-merger, Mr. Hunsucker made it clear, when discussing *the time period* in
2 paragraph 12, that he understood that paragraph 12 of the Integra settlement agreement
3 “goes *well beyond* the certainty and the status quo that CLECs have to date.”²⁸³ To the
4 extent “status quo” is used to refer to the mechanics of CMP for OSS, paragraph 12
5 *changes* the status quo (*i.e.*, goes “well beyond” it), such as by extending the time period,
6 adding a majority vote,²⁸⁴ and allowing for “extra” testing.²⁸⁵ Paragraph 12 had to
7 change the way things work in CMP for OSS or else nothing would prevent new
8 implementations of OSS during the 30-month time period. Those changes to the way
9 things would otherwise work were made specifically to help achieve the “basic tenet” of
10 the “continuation of ‘status quo’”²⁸⁶ to use and offer legacy Qwest OSS for 30 months²⁸⁷
11 and not to create new OSS.²⁸⁸

12 Evidence from the merger proceedings shows that this basic tenet of CLECs’ position
13 related to certainty and stability regarding legacy Qwest OSS during the 30-month time

²⁸² Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), pp. 5-6; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), pp. 6-7.

²⁸³ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 407, lines 1-4 (Mr. Hunsucker, CenturyLink).

²⁸⁴ Although there was a customer request for a vote in CMP with respect to the earlier move from EDI to XML for ordering, Qwest denied the opportunity to vote on that move. *See* Johnson Responsive Test., WUTC Docket UT-111254, (Oct. 14, 2011); *see also* Johnson Rebuttal, CO Docket No. 11F-436T (October 31, 2011), p. 19.

²⁸⁵ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 9, lines 4-5; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 9, lines 8-9.

²⁸⁶ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 5, lines 18-19; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 6, lines 14-15.

²⁸⁷ Exhibit BJJ-3 (Integra agreement) ¶12 & Exhibit BJJ-4 (Joint CLEC agreement, p. 2, ¶1(A); *see also* Lyndall Direct, WUTC Docket No. UT-111254, (Oct. 14, 2011), Exhibit LN-1 (**tw telecom** agreement), p. 2 (opting into Integra agreement).

²⁸⁸ Brigham Rebuttal, WUTC Docket UT-100820 (Nov. 1, 2010), p. 5, footnote 5; *see also*, Brigham Rebuttal, Qwest, CO Docket No. 10A-350T (Oct. 15, 2010), p. 5, footnote 5; Jones Rebuttal, CenturyLink, WUTC Docket UT-100820 (Nov. 1, 2010), p. 18, lines 18-19; *see also*, Jones Rebuttal, CO Docket No. 10A-350T (Oct. 15, 2010), p. 17, lines 18-19.

1 period, not the mechanics of CMP. For example, Joint CLECs relied upon testimony of
2 the Colorado commission’s Telecommunications Section Chief (and former Qwest OSS
3 witness²⁸⁹), who said:

4 ‘Although Qwest is the larger entity and has more experience in the
5 wholesale market, any changes made by CenturyLink to Qwest’s back-
6 office systems, to Qwest’s business processes, to Qwest’s interconnection
7 negotiation template, or to Qwest’s CMP increase the possibility of
8 uncertainty among the interconnecting carriers. This uncertainty will in
9 turn effect competition in general.’²⁹⁰

10
11 Mr. Hunsucker testified then:

12 Q Do wholesale customers value operational certainty and continuity?

13 A Yes.²⁹¹

14 The Integra Settlement Agreement recites that the “Parties have entered into this
15 Agreement to avoid further expense, inconvenience, *uncertainty* and delay.”²⁹² The
16 Colorado Commission found that the Integra Settlement Agreement “will maintain some
17 certainty and stability in the relationships between the CLECs and the Joint
18 Applicants.”²⁹³

²⁸⁹ QSI Gates MN Suppl. Surreb., p. 26, line 12 and footnote 53 (Appendix A to the CO 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).

²⁹⁰ QSI Gates MN Suppl. Surreb., p. 26, lines 11-17 and footnote 54, quoting CO Answer Testimony of Lynn Notarianni, CO Docket No. 10A-350T (Sept. 15, 2010), p. 52, lines 4-9.

²⁹¹ MN Hrg. Tr., P-421, et al./PA-10-456 (Oct. 6, 2010), Vol. 2B, p. 92 line 19 – p. 93, line 24 (Mr. Hunsucker, CenturyLink).

²⁹² Exhibit BJJ-3, Integra Settlement Agreement, p. 13, §E (emphasis added) at JC000014.

²⁹³ Colorado Decision No. C11-0001, Dkt. No. 10A-350T , p. 27, ¶77.

1 **Q. MR. HUNSUCKER TESTIFIES THAT HE NEVER HEARD ANYONE REQUEST**
2 **THAT QWEST/CENTURYLINK “BE PROHIBITED FROM INTRODUCING**
3 **NEW OSS IF THE EXISTING OSS CONTINUED TO BE AVAILABLE.”²⁹⁴**
4 **PLEASE RESPOND.**

5 A. In a key respect, this is similar to CenturyLink’s argument that integration should be
6 limited to combination with CenturyLink OSS, which I discuss in Section VI(B) of my
7 direct testimony. The common aspect is that, for both arguments, CenturyLink chooses
8 to ignore that the proceedings and the merger settlement negotiations were negotiated in
9 context of public assurances from the Joint Applicants that it would not need to create
10 new OSS. Though the merger OSS testimony and discovery responses were extensive,
11 prior to filing of the Integra settlement agreement, Joint Applicants did not disclose the
12 potential of creating and introducing a new OSS as an optional alternative, which would
13 have been contrary to that testimony. They made no disclosure even though Qwest
14 admits that that, before execution of the Integra settlement agreement, Qwest was aware
15 that, within a short time, Qwest would reactivate the repair OSS change requests
16 (“CRs”).²⁹⁵ If it were true that Qwest was viewing the CRs as resulting in an optional
17 OSS at that time, Qwest would have known that fact and could have told Integra in
18 negotiations. Instead, Qwest waited until two days after the agreement was filed before
19 reactivating the CRs, thus depriving Integra of the opportunity to ask about them before

²⁹⁴ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 4, lines 16-18; *see also*, Hunsucker Answer Testimony, CO Docket No. 11F-436T (Sep. 15, 2011), p. 5, lines 12-15.

²⁹⁵ Response to Joint CLEC Requests Nos. 01-020(a) and 01-020(b); *see also*, Colorado Qwest and CenturyLink Response to Integra CO Discovery Request Nos. 13(a) & 13(b).

1 executing the agreement. Moreover, based on Integra's participation in CMP over the
2 years, Integra would have no reason to ask about a situation involving an optional
3 alternative OSS because Qwest had not previously offered such an option, including
4 when some customers wanted XML for ordering purposes and others did not.
5 Ms. Johnson describes these facts in her responsive testimony with respect to Exhibit
6 BJJ-72. Therefore, Joint CLECs have shown that they would have had no reason to
7 know to ask that the Merged Company be prohibited from doing something that the
8 public testimony, as well as Qwest CMP history to, militates against. In contrast, Qwest
9 admits to having facts at the time of negotiations that it did not disclose until afterwards.
10 If this issue should have come up, as Mr. Hunsucker himself suggests, then
11 Qwest/CenturyLink should have raised it before execution of the Integra settlement
12 agreement.

13 **Q. MR. HUNSUCKER SUGGESTS THAT A CLEC DESIRE TO CONTINUE CMP**
14 **INDICATES THAT CLECS EXPECTED THE LEGACY QWEST OSS TO**
15 **CHANGE.²⁹⁶ PLEASE RESPOND.**

16 A. In the merger proceedings, CMP was generally addressed with respect to a separate
17 proposed condition known as Condition 17 (*i.e.*, not the OSS condition, which was then
18 Condition 19).²⁹⁷ Here, Mr. Hunsucker testifies that the fact that CLECs emphasized the

²⁹⁶ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 5, lines 13-18; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 6 lines 9-14.

²⁹⁷ Exhibit TG-9 to the Responsive Testimony of Timothy Gates of QSI, WUTC Docket UT-100820 (Sept. 27, 2010, Condition Nos. 17 (CMP) and 19 (OSS)); *see also*, Exhibit TG-8, Condition Nos. 17 (CMP) and 19 (OSS), to the Direct Testimony of Timothy Gates of QSI, CO Docket No. 10A-350T (Sept. 15, 2010). *see also*, Ms.

1 need to retain CMP (*i.e.*, Condition 17) “made it clear to me that in fact they did expect
2 changes to take place during the 30 month period.”²⁹⁸ The key question, of course, is
3 what sorts of changes. Mr. Hunsucker ignores that CMP is much larger than OSS and
4 deals extensively with product and process²⁹⁹ issues.³⁰⁰

5 While CLECs dealt specifically with OSS in Condition 19 (later settlement agreement
6 paragraph 12), CLECs were seeking with Condition 17 to address the myriad of changes
7 that are routinely made in CMP. For example, CLECs told the FCC that “Integra and
8 other competitors receive and review hundreds of wholesale notices from Qwest each
9 month, many of which are issued via the CMP (e.g., notices of changes to Qwest’s
10 processes and procedures that are reflected in its online Product Catalog (“PCAT”).”³⁰¹

11 In CMP, there are five levels of notices (depending generally on effect of the change on
12 CLEC operating procedures) for product/process changes,³⁰² and only one level (a change
13 request) for systems.³⁰³ CLECs expect changes to products and processes to take place
14 during the 30-month period, and paragraph 12 does not address these non-system CMP

Johnson’s responsive testimony regarding proposed Joint CLEC condition 16 and Staff condition 17, both dealing with CMP, the language of which was omitted from the merger settlement agreements.

²⁹⁸ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 5, lines 15-18; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 6, lines 11-14.

²⁹⁹ See Exhibit BJJ-74 (CMP Document), Section 1.0 (addressing scope of CMP to include “products and processes” as well as systems).

³⁰⁰ With respect to OSS changes, see discussion of whether a freeze that includes new system implementations, such as MTG, means that all other OSS changes are frozen in Ms. Johnson’s direct testimony at pages 66-71 & Exhibit BJJ-52 and in Section IX of this testimony.

³⁰¹ Comments of Cbeyond, Integra, Socket and **tw telecom**, WC Dkt. No. 10-110 (July 12, 2010), p. 32.

³⁰² CMP Document, Section 5.4
(<http://www.centurylink.com/wholesale/downloads/2011/110907/CenturyLinkWhslChgMgtDoc090711.doc>).

³⁰³ CMP Document, Section 5.1
(<http://www.centurylink.com/wholesale/downloads/2011/110907/CenturyLinkWhslChgMgtDoc090711.doc>).

1 changes. Therefore, CMP must be retained to safeguard this broader set of issues.³⁰⁴
2 Regarding CMP versus OSS conditions, access to OSS was the “biggest area of concern
3 that staff had.”³⁰⁵ Joint CLECs negotiated a separate OSS-specific provision with broad
4 application, after rejecting the narrower “do not discontinue” OSS MN DOC language.³⁰⁶

5 **Q. MR. HUNSUCKER REFERS TO “RETENTION OF CMP AFTER THE**
6 **MERGER SETTLEMENT AGREEMENTS.”³⁰⁷ ARE THE MERGER**
7 **SETTLEMENT AGREEMENTS THE PRIMARY SOURCE OF THE MERGED**
8 **COMPANY’S OBLIGATION TO RETAIN AND CONTINUE QWEST’S CMP?**

9 A. No. The FCC expressly recognized that the OSS in legacy Qwest territory will continue
10 to be subject to the terms of Qwest’s Section 271 approvals on an ongoing basis.³⁰⁸ The
11 FCC pointed to CenturyLink’s representation that the company will continue to comply
12 with all of its Section 271 and Bell Operating Company (“BOC”) obligations going
13 forward:

14 CenturyLink responds that, though it has not previously operated subject to the
15 requirements of Section 271, ‘it is fully aware of (and has acknowledged) its duty

³⁰⁴ See paragraph 10 of the Integra Settlement Agreement, Exhibit BJJ-3; see also *id.* paragraphs 6-7.

³⁰⁵ CO Hrg. Tr., Dkt. No. 10A-350T, (Nov. 10, 2010) Vol. 3, p. 202, lines 22-25 (Ms. Notarianni, CO PUC) (emphasis added). Refer to Ms. Johnson’s discussion in her Responsive Test., WUTC Docket UT-111254, (Oct. 14, 2011), regarding Joint CLEC Condition 17 and Staff Condition 16 and specifically Staff’s testimony about the absence of this condition from the agreements.

³⁰⁶ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 99; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011) p. 90.

³⁰⁷ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), pp. 5-6; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), pp. 6-7.

³⁰⁸ *In the matter of Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, WC Docket No. 10-110 (March 18, 2011) [“FCC Order”], footnote 76 to ¶22.

1 to do so within Qwest’s in-region service areas, and the company will ensure that
2 the resources and expertise required to meet those obligations are in place.’ It
3 further asserts that ‘all rights that competitive LECs enjoy under Sections 251 or
4 271 will be unaffected by the merger,’ and that it intends to meet all of its legal
5 obligations. . . . CenturyLink will be a BOC in the legacy Qwest territory
6 following this transaction. . . . Consistent with this definition [of “BOC”] and
7 Commission precedent, we determine that CenturyLink is a successor to the
8 former U S West Communications Company and therefore responsible for all
9 obligations that apply to BOCs under the Act in the former U S West
10 Communications Company territories. In the legacy Qwest territory, post-merger
11 CenturyLink will be subject to all state and federal obligations – and all
12 applicable remedies for violation of those obligations – that Qwest was subject to
13 due to its BOC status.³⁰⁹

14
15 The post-merger company is therefore subject to all Section 271 and BOC obligations on
16 a going forward basis, without further action required by the Commission. One of these
17 ongoing Section 271 obligations, for example, is the obligation to provide Qwest’s
18 CMP³¹⁰ to help prevent backsliding and to help afford CLECs with a meaningful
19 opportunity to compete.³¹¹ The CMP Document, which was developed in conjunction
20 with Qwest’s bid for 271 approval, requires a unanimous vote to change Qwest’s
21 CMP.³¹²

22 **Q. IN YOUR RESPONSE ABOVE, YOU QUOTED MERGER TESTIMONY BY**
23 **MR. HUNSUCKER IN WHICH HE DISCUSSED THE 24-MONTH PERIOD IN**
24 **PARAGRAPH 12 VERSUS THE TYPICAL NINE-MONTH PERIOD**

³⁰⁹ FCC Order, ¶¶26-27 (footnotes omitted).

³¹⁰ Section 2.1, CMP Document , Exhibit BJJ-74.

³¹¹ See, e.g., *In the Matter of Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Arizona*, WC Docket No. 03-194, Rel. Dec. 3, 2003, ¶20 (citing Bell Atlantic FCC 271 Order).

³¹² Exhibit BJJ-74, CMP Document, Section 16.

1 **APPLICABLE IN CMP TO NEW OSS IMPLEMENTATIONS. PLEASE**
2 **EXPLAIN.**

3 A. In the Integra settlement agreement (see Exhibit BJJ-3), there are prerequisites that the
4 Merged Company must “first” follow before it can “integrate” Qwest systems or replace
5 them. Specifically, paragraph 12 of the Integra Settlement Agreement sets forth a
6 minimum 24-month period during which the Merged Company must use and offer to
7 wholesale customers the legacy Qwest OSS, as discussed in Section VI(A) on pages 85-
8 90 of my direct and in Section XII of this testimony. This is the time period that
9 CenturyLink, after execution of the agreement, referred to as a “freeze.” This
10 CenturyLink reference to a freeze was specific to the time period in paragraph 12 and
11 was in the context of a discussion of whether to “extend the freeze *on the wholesale OSS*
12 *system*” from two to three years.³¹³ The 24-month time period was later extended, not to
13 three years, but to 30 months, including in Washington.³¹⁴ This time period is then
14 referenced in the settlement agreements as “the period noted above.”³¹⁵ Paragraph 12
15 states (with emphasis added):

³¹³ WA Hrg. Tr., Docket No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 407, lines 14-17 (Mr. Simshaw, CenturyLink) (“with the Integra agreement being a multi-state agreement that this push to *extend the freeze on the wholesale OSS system* from two to three years”) (emphasis added). See discussion of whether a freeze that includes new system implementations, such as MTG, means that all other OSS changes are frozen in Ms. Johnson’s direct testimony at pages 66-71 & Exhibit BJJ-52 and Section IX of this testimony.

³¹⁴ WA Answer, (Aug. 2, 2011), p. 5, ¶13; *see also*, Qwest/CenturyLink Answer to Amended Complaint, ¶13.

³¹⁵ Exhibit BJJ-3 (Integra agreement) ¶12 & Exhibit BJJ-4 (Joint CLEC agreement, p. 2, ¶1(A); Appendix E to WUTC Order 14, **tw telecom** Settlement Agreement, p. 2 (adopting provisions of Integra Settlement Agreement); *see also* Nipps Direct, WUTC Docket No. UT-111254, (Oct. 14, 2011), Exhibit LN-1 (**tw telecom** agreement), p. 2 (opting into Integra agreement).

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

4 Query what was frozen for the time period noted above if not new system
5 implementations (such as MTG-XML), when at that time Joint Applicants were
6 promising they would not need to create new OSS and were not compelled for any reason
7 to change any system.³¹⁶ As indicated by CenturyLink’s counsel, it is the “wholesale
8 OSS.”

9 The subparagraphs to paragraph 12 then provide several steps, only one of which is
10 following the procedures in the CMP Document. They include, for example, notice to
11 affected commissions,³¹⁷ development of acceptance criteria, testing until the acceptance
12 criteria are met, a majority vote in CMP, *etc.* Not long after the settlement agreement
13 was signed, Qwest’s attorney, in an email to CenturyLink and Integra, said that the
14 procedures in subparagraph 12(c) apply under paragraph 12 “only if the merged company
15 *determines after the 2-year period* ... to replace Qwest systems.”³¹⁸

16 In the merger proceedings, Mr. Hunsucker testified about paragraph 12 of the Integra
17 settlement agreement (before the 24 months was extended to 30 months):

18 I think the last point that I would make on this topic is Qwest has the ability today
19 to retire a system. It's a nine-month process from the time they give notification

³¹⁶ See quotations and cites at Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 63 & p. 76; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 56 & 70.

³¹⁷ In March 18, 2011, FCC order in WC Docket No. 10-110, pages 30-31, paragraph A(2), the unilateral CenturyLink commitment includes a description of the plan to be filed with affected commissions as a “proposed” plan. A plan is not proposed if it has already been implemented (for some or all customers).

³¹⁸ Exhibit BJJ-17, at JC000099 (emphasis added).

1 until they can retire a system and go to a new system. This is a 24-month or a few
2 months longer than that depending on when the merger closes so it goes well
3 beyond the certainty and the status quo that CLEC have to date.³¹⁹

4 The settlement agreements extend the CMP's 270-day process by the time period in the
5 settlement agreements (30 months), because the 270-day process is not supposed to start
6 until "after the period" noted in paragraph 12.³²⁰

7 **IX. PROHIBITION OF ALL OSS CHANGES IS CENTURYLINK'S OWN CLAIM,**
8 **WHEREAS CLECS RECOGNIZE PERTINENT DIFFERENCES**

9 **Q. MR. HUNSUCKER CRITICIZES "INTERPRETING THE INTEGRA**
10 **SETTLEMENT AS A 'FREEZE' OR PROHIBITION AGAINST ALL CHANGES**
11 **TO LEGACY QWEST OSS."³²¹ WHICH COMPANIES MADE THESE CLAIMS?**

12 **A.** When their goal was to obtain merger approval, both CenturyLink and Qwest broadly
13 assured CLECs and Commissioners that:

14 CenturyLink will have *no immediate need (or be under any time pressure)* to
15 make any alterations to OSS in Qwest areas.³²²

16 Also, as I discuss in my previous response, counsel for CenturyLink described the time
17 period in paragraph 12 of the Integra settlement agreement as a "freeze on the wholesale

³¹⁹ WA Hrg. Tr., Docket No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 406, line 23 – p. 407, line 4 (emphasis added) (Mr. Hunsucker, CenturyLink).

³²⁰ This is discussed in my Direct Testimony. See Denney Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), pp. 159-160.

³²¹ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 6, lines 3-5; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011) p. 5, lines 16-17.

³²² Joint Applicants' Statement of Position, CO Docket No. 10A-350T (Nov. 24, 2010), pp. 39-40 [JC000740-JC000741]; Joint Petitioners' Post-Hearing Brief, MN Docket No. P-421, et al./PA-10-456, (Nov. 24, 2010), p. 26 (emphasis added for both).

1 OSS system” from two to three years.³²³ These CenturyLink assurances were quoted in
2 my direct testimony. Nonetheless, Mr. Hunsucker is critical of CLECs without
3 recognizing that he is criticizing his own company’s statements.

4 **Q. DID THE CLECS CLAIM “THAT THE MERGER SETTLEMENTS PROHIBIT**
5 **ALL OSS CHANGES?”³²⁴**

6 A. No. It was the CenturyLink attorney that used the word “freeze” to describe paragraph
7 12 after execution of the Integra settlement agreement.³²⁵ I explained in my direct
8 testimony that CenturyLink’s use of this term illustrates *CenturyLink’s* understanding
9 that changing legacy Qwest OSS during that time period is prohibited because there is a
10 freeze on such changes. More importantly, I go on to respond “no” to the following
11 question: “Does a freeze on changing repair and other legacy Qwest OSS mean that *no*
12 *system changes are made* in CMP for two years (or 30 months)?” I not only say no, but I
13 reference examples of system changes that have, in fact, been made in CMP without
14 CLEC objection during the 30-month period. I point out that Ms. Johnson provides the
15 examples in her direct testimony and explains that Exhibit BJJ-52 illustrates the different
16 nature of the latter change as compared to the other sixteen OSS changes. In other words,
17 Integra recognized that some system changes will be made in CMP during the 30-month

³²³ WA Hrg. Tr., Docket No. UT-100820 (Jan. 6, 2011), Vol. IV, p. 407, lines 14-17.

³²⁴ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 5, lines 7-8. *See also, id.* p. 4, lines 19-20; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011) p. 6, lines 3-4. *See also id.* p. 5, lines 16-17.

³²⁵ Denney Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), pp. 41-42.

1 period and distinguished those changes from the ones that are prohibited by paragraph 12
2 of the settlement agreement.

3 Ms. Johnson's testimony³²⁶ shows that, while there is a freeze on new implementation
4 OSS activity per the Merged Company's merger commitments, many other types of OSS
5 changes, including repair OSS changes, are ongoing in CMP.³²⁷ As Ms. Johnson points
6 out in her direct testimony, out of seventeen OSS change requests, CLECs have only
7 objected to one (introduction to MTG) and the rest are proceeding.³²⁸ There is a big
8 difference between a change request to implement an entirely new system and other
9 change requests.³²⁹ Ms. Albersheim has recognized previously that a change in
10 technology or "underlying architecture," such as moving to XML (whether for ordering
11 or repair) is a "significant" change, as Ms. Johnson described in her direct testimony.³³⁰
12 Finally, CMP serves a lot of other purposes (*e.g.*, product/process notices), so even if no
13 changes were made to any OSS, CMP would continue to be necessary, as I discussed in
14 the previous Section.

³²⁶ Johnson Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 66-71 and Exhibit BJJ-52; *see also*, Johnson Direct, CO Docket No. 11F-436T (Aug. 12, 2011) pp. 60-65 and Exhibit BJJ-52.

³²⁷ Johnson Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 67, lines 11-14; *see also*, Johnson Direct, CO Docket No. 11F-436T (Aug. 12, 2011) p. 60, line 27 – p. 61, line 1.

³²⁸ Johnson Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 67, line 11 – p. 68, line 4 and Exhibit BJJ-52; *see also*, Johnson Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 60, line 27 – p. 61, lines 3-13 and Exhibit BJJ-52.

³²⁹ Johnson Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 67, lines 11-16; *see also*, Johnson Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 60, line 27 – p. 61, lines 1-3.

³³⁰ Johnson Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 70, line 4 – p. 71, line 6 (quoting Ms. Albersheim's Washington arbitration testimony; *see also*, Johnson Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 63, line 11 – p. 64, line 16 (quoting Ms. Albersheim's Colorado arbitration testimony).

1 CLECs are not claiming that the merger settlement agreements prohibit all OSS changes
2 in CMP.

3 **Q. HAVE CLECS CLAIM THAT CENTURYLINK WOULD VIOLATE THE**
4 **MERGER SETTLEMENT AGREEMENTS IF IT IMPLEMENTED A NEW OSS**
5 **IN THE LEGACY EMBARQ OR LEGACY CENTURYTEL TERRITORY?**

6 A. No, thus it is unclear why Mr. Hunsucker argues this point.³³¹ Not only did CLECs not
7 make this claim, but **tw telecom** pointed out that it has been attempting to discuss a new
8 OSS in the legacy Embarq territory, only to have CenturyLink turn the discussion back to
9 Qwest.³³² To the extent that Mr. Hunsucker is attempting to suggest that Joint CLECs are
10 holding up development of MTG outside of legacy Qwest territory, the evidence is to the
11 contrary. Rather, it appears that CenturyLink may be holding up development of MTG
12 outside of legacy Qwest territory for its own merger-related reasons,³³³ and exercising its
13 expressed preference to move to a single system for all entities.³³⁴ This is true despite
14 suggestions that its conduct was not merger related.³³⁵

³³¹ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 7, lines 9-19; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 8, lines 4-14.

³³² Nipps **tw telecom** Direct, WUTC Docket No. UT-111254, (October 14, 2011) p. 7 lines, 9-13; *see also* Nipps Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 7, lines 5-15.

³³³ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 11, lines 9-12; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 12, lines 1-4.

³³⁴ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 167, lines 10-13; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 143, lines 18-24, quoting MN Hrg. Tr., Dkt. No. P-421, et al./PA-10-456, Vol. 2B (Oct. 6, 2010), p. 33, lines 13-17 (Mr. Hunsucker, CenturyLink).

³³⁵ See, e.g., Exhibit BJJ-17 at JC000099 (Qwest Feb. 9, 2011 email); Qwest/CenturyLink response to MN DOC Request No. 7(g) (Oct. 26, 2011), which asked Qwest to explain “why Qwest/CenturyLink did not reveal to the Commission at any time during the merger proceeding the imminent risk, or inadequacy, of the legacy Qwest maintenance and repair OSS, MEDIACC.” Qwest/CenturyLink said in its response: “As explained in prior filings, Qwest did not view this issue as being related to the merger.”

1 A discussion in my direct testimony questioned whether the rush to integrate MTG was
2 merger-related due to a desire by the Merged Company to move to a unified repair
3 system across all of its entities.³³⁶ The merger settlement agreements were put in place,
4 in part, to assure that the preferences or needs of CenturyLink's legacy companies did not
5 result in changes, for the specified period of time, to legacy Qwest's OSS.
6 Mr. Hunsucker's testimony that the needs and requirements of non-Qwest states must be
7 taken into account when a system is selected,³³⁷ calls into question whether the
8 introduction of MTG is merger related. Ms. Albersheim testifies, "Qwest/CenturyLink
9 has recommended to the Executive Leadership Team that MTG be implemented in the
10 Legacy CenturyLink territories."³³⁸

11 **X. CUSTOMER REQUESTS, IN-REGION AND OUT-OF-REGION**

12 **Q. DOES THE DESIRE OF LEGACY EMBARQ, LEGACY CENTURYLINK OR**
13 **OTHER WHOLESALE CUSTOMERS TO USE MTG JUSTIFY VIOLATION OF**
14 **THE MERGER SETTLEMENT AGREEMENTS?**

15 A. No. Ms. Albersheim argues that developing MTG is preferable now because
16 "Qwest/CenturyLink has very large wholesale customers who have requested an XML
17 interface for repair."³³⁹ These customers did not object the merger settlement

³³⁶ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 163-169; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 108-109 and 140-145.

³³⁷ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 11, lines 9-12; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 12, lines 1-4.

³³⁸ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 21, lines 8-9; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sept. 15, 2011), p. 21, lines 14-15.

³³⁹ Regarding wholesale customers, *see* Albersheim Direct Test. WUTC Docket UT-111254; (Oct. 14, 2011), p. 10,

1 agreements, and their request for an XML interface does not justify violation of these
2 agreements. Moreover, CenturyLink has not shown that there is any urgency to those
3 requests (other than the urgency created by its own claims of potential OSS failure), such
4 that they cannot be met by providing an XML interface but doing so within the
5 timeframes allowed by the settlement agreements.³⁴⁰

6 **Q. MS. ALBERSHEIM CLAIMS THAT TW TELECOM IS INCONSISTENT IN ITS**
7 **DESIRE TO USE A UNIFIED E-BONDED SYSTEM IN THE LEGACY**
8 **CENTURLINK TERRITORIES WHILE REJECTING THE**
9 **IMPLEMENTATION OF MTG IN THE LEGACY QWEST TERRITORY.³⁴¹**
10 **DOES SHE MISCHARACTERIZE TW TELECOM’S TESTIMONY?**

11 A. Yes. **tw telecom** witness, Mr. Nipps, explained in his direct testimony that **tw telecom** is
12 e-bonded with Qwest through Synchronoss,³⁴² a third party vender that e-bonds with
13 other LECs. Synchronoss is also e-bonded with Legacy Embarq.³⁴³ He said that, at the
14 time of legacy CenturyLink’s acquisition of legacy Embarq, legacy CenturyLink was
15 planning on integrating its territories into the e-bonded legacy Embarq system.³⁴⁴ If this
16 work were completed, **tw telecom** would have the benefit of an e-bonded system across

lines 9-10; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sept. 15, 2011), p. 10, lines 11-14.

³⁴⁰ This is discussed in my Direct Testimony. Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 155-156.

³⁴¹ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 21, lines 4-19; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 21, line 10 – p. 22, line 4.

³⁴² Nipps **tw telecom** Direct, WUTC Docket No. UT-111254, (October 14, 2011) p. 5 lines, 13-16; *see also* Nipps Direct, CO Docket 11F-436T (Sep. 15, 2011), p. 5, lines 16-18.

³⁴³ Nipps **tw telecom** Direct, WUTC Docket No. UT-111254, (October 14, 2011) p. 6 lines, 22-23; *see also* Nipps Direct, CO Docket 11F-436T (Sep. 15, 2011), p. 6, lines 24-25.

³⁴⁴ Nipps **tw telecom** Direct, WUTC Docket No. UT-111254, (October 14, 2011) p. 7 lines, 3-6; *see also* Nipps Direct, CO Docket 11F-436T (Sep. 15, 2011), p. 6, line 25 – p. 7, line 2.

1 the *legacy* CenturyLink territory.³⁴⁵ In other words, **tw telecom** was looking for an e-
2 bonded solution for the pre-merger CenturyLink territory (*i.e.*, a territory that does not
3 include legacy Qwest).

4 For Embarq territories, **tw telecom** has an interface via Synchronoss that *would allow tw*
5 **telecom** to e-bond going forward.³⁴⁶ For Qwest territory, **tw telecom** is *already using* e-
6 bonding (MEDIACC) via Synchronoss.³⁴⁷ And, in Qwest territory, **tw telecom** has not
7 experienced any stability issues with MEDIACC.³⁴⁸ These territories are also
8 distinguishable because the merger settlement agreement does not apply to Embarq
9 territories, but it does apply to Qwest territory. In the merger proceedings, when Joint
10 CLECs proposed merger terms that extended beyond Qwest’s territory, Joint Applicants
11 generally opposed those terms. One consequence of their opposition is that different
12 systems and terms will apply for a period of time among the various CenturyLink
13 entities. Mr. Hunsucker testified that “the existing CenturyLink and Qwest operating
14 entities, including wholesale operations, will stay in place post-merger, so the
15 relationships between the companies and the CLECs will remain status quo and there will
16 be none of the impacts that CLECs might encounter with ... completely new Operations

³⁴⁵ Nipps **tw telecom** Direct, WUTC Docket No. UT-111254, (October 14, 2011) p. 5 line 25 – p. 6, line 2; *see also* Nipps Direct, CO Docket 11F-436T (Sep. 15, 2011), p. 7, lines 2-4.

³⁴⁶ Nipps **tw telecom** Direct, WUTC Docket No. UT-111254, (October 14, 2011) p. 6 lines, 22-23; *see also* Nipps Direct, CO Docket 11F-436T (Sep. 15, 2011), p. 6, lines 24-25.

³⁴⁷ Nipps **tw telecom** Direct, WUTC Docket No. UT-111254, (October 14, 2011) p. 5 lines, 13-16 & p. 6, lines 22-23; *see also* Nipps Direct, CO Docket 11F-436T (Sep. 15, 2011), p. 5, lines 15-18 & p. 6, lines 17-18.

³⁴⁸ Nipps **tw telecom** Direct, WUTC Docket No. UT-111254, (October 14, 2011) p. 6 lines, 2-3; *see also* Nipps Direct, CO Docket 11F-436T (Sep. 15, 2011), p. 6, lines 4-5.

1 Support Systems (“OSS”).³⁴⁹

2 Nonetheless, Ms. Albersheim states that, if **tw telecom** is “ready now to build a B2B
3 interface to MTG out-of-region, it seems they should have no trouble using the same
4 interface in-region.”³⁵⁰ The trouble, of course, is that using a new interface in Qwest
5 territory during the 30-month time period violates the merger agreement, which is the
6 very reason **tw telecom** gave for participating in this proceeding.³⁵¹ Ms. Albersheim
7 does not address, **tw telecom’s** clear statement that “there is nothing about our request
8 relating to the Embarq and CenturyTel territories that should interfere with the Merged
9 Company’s ability to comply with [the merger] obligations.”³⁵² Instead, despite **tw**
10 **telecom’s** testimony and her own lack of knowledge of all factors affecting **tw telecom’s**
11 budget, planning, and business decisions, she argues that because, in her view, it might
12 make business sense for **tw telecom** to forego its rights, that **tw telecom** should be denied
13 those rights.

14 A good business reason or a change in circumstance may be a basis upon which to
15 request re-negotiation of an agreement or to seek modification of an Order, but it is

³⁴⁹ Hunsucker Rebuttal Test., WUTC Docket UT-100820, (Nov. 1, 2010) p. 4; see *id.* p. 15 (“Because the immediate plan is to maintain both companies’ separate OSS and continue operations as usual, there was no need for CenturyLink and Qwest to rush to decide OSS integration issues early in the process.”); see also, Hunsucker Rebuttal, CO Docket 10A-350T (Oct. 15, 2010), p. 4; see *id.* p. 19 (“Because the immediate plan is to maintain CenturyLink and Qwest’ separate OSS and continue operations as usual post-merger, and because in-place ICAs will continue pursuant to their terms, wholesale customers in CenturyLink areas and in Qwest areas will not face immediate changes in their existing operations with the post-merger affiliates.”).

³⁵⁰ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 21, lines 14-15; see also, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 21, lines 20-21.

³⁵¹ Nipps **tw telecom** Direct, WUTC Docket No. UT-111254, (October 14, 2011) p. 5 lines, 2-10; see also Nipps Direct, CO Docket 11F-436T (Sep. 15, 2011), p. 5, lines 3-12.

³⁵² Nipps **tw telecom** Direct, WUTC Docket No. UT-111254, (October 14, 2011) p. 7 line 22 – p. 8, line 3; see also Nipps Direct, CO Docket 11F-436T (Sep. 15, 2011), p. 8, lines 2-4.

1 important to note that that is *not* what happened here. The Merged Company acted first
2 and, when Integra offered to explore an exception for repair OSS to address the stated
3 problem, rejected those offers.³⁵³ Integra addressed this problem in CMP comments,
4 stating:

5 There is a saying about seeking forgiveness rather than permission. That is not an
6 acceptable approach here. These issues need to be dealt with in advance and not
7 after the fact. In fact, CLECs believe they *have* been dealt with, via the merger
8 settlement agreements, and Qwest still has not explained why it is acting as
9 though that is not the case.³⁵⁴

10 Ms. Albersheim's argument suggests that the Merged Company places no significance on
11 violation of a settlement agreement or Commission Order if the Merged Company can
12 come up with some business reason, including a reason that is to the disadvantage of
13 other parties to the agreement, to claim a need to act differently from the agreed upon
14 terms. The Merged Company cannot unilaterally make those decisions, however.

15 **XI. FAILURE TO NOTIFY**

16 **Q. MR. HUNSUCKER TESTIFIES THAT QWEST/CENTURYLINK DID NOT**
17 **APPROACH REGULATORS "FOR RELIEF FROM THE MERGER**
18 **COMMITMENTS" BECAUSE IT INTENDED TO COMPLY WITH THE**
19 **MERGER SETTLEMENT AGREEMENTS.³⁵⁵ DOES THIS ADDRESS THE**

³⁵³ See Exhibit BJJ-71.

³⁵⁴ Exhibit BJJ-30, Integra March 18, 2011 CMP matrix response, pp. 5-6 at JC000215-JC000216.

³⁵⁵ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 8, lines 7-14; *see also*, Hunsucker Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 9, lines 1-8.

1 **ISSUES IDENTIFIED IN YOUR DIRECT TESTIMONY THAT SHOULD HAVE**
2 **BEEN BROUGHT TO THE ATTENTION OF REGULATORS?**

3 A. No. First, Mr. Hunsucker’s testimony shows that the Merged Company admits that Joint
4 Applicants did not bring concerns about potential repair OSS failure or the company’s
5 ability to meet the merger conditions to the attention of regulators in the merger
6 proceedings.³⁵⁶ Second, I will note that, if it is the case that Qwest had concerns about
7 an unrecoverable failure of MEDIACC for as long as it is currently suggesting it has had
8 that concern, then at the time of executing the settlement agreements Qwest, a signatory
9 to the settlement agreements and a separate operating entity going forward,³⁵⁷ did not
10 intend to comply with them in the event of an unrecoverable OSS failure. (See Sections
11 III and VI above.) Finally, Integra provided extensive documentation and testimony in
12 its direct testimony regarding admissions by Qwest and CenturyLink and the timing of
13 those admissions that show that the repair OSS concerns not only should have been
14 disclosed to Integra before it executed the settlement agreement but also could and should
15 have been raised to the Commission before it issued its final order.³⁵⁸ Mr. Hunsucker
16 does not address whether notifying the parties and the Commission at the time of known,
17 expressed Qwest concerns about the Merged Company’s ability post-merger to meet its
18 OSS and service quality commitments would be fair, reasonable, and in the public

³⁵⁶ See also Exhibit DD-1, WA Supp. Response to CLEC Data Request 17, Oct. 10, 2011 (Respondent: Legal).

³⁵⁷ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 33; *see also*, Hunsucker Rebuttal Test., CO Docket 10A-350T (Oct. 15, 2010) , p. 35 (“post-merger, the Qwest and legacy CenturyLink ILECs will be operated as separate legal entity affiliates”); Joint Applicants’ Statement of Position, CO Docket 10A-350T, p. 2 (“there will be no change in corporate structure of the respective CenturyLink and Qwest operating entities as a result of the Transaction”).

³⁵⁸ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 55-73; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), Section IV(C), pp. 50-66.

1 interest. Failure to disclose known facts to the Commission is of particular concern
2 when affirmative representations are being made that suggest a different set of
3 circumstances and decisions are being made in reliance on those facts.

4 Instead, Mr. Hunsucker attempts to narrow the circumstances in which notice to the
5 Commission should be provided to only when “necessary to request relief” from those
6 commitments.³⁵⁹ He states that, “Should the need arise (and there is no reason to
7 speculate now about what circumstances might trigger such a need), Qwest/CenturyLink
8 will notify regulators and other stakeholders of changes in a manner that is consistent
9 with the merger settlements.”³⁶⁰ He does not explain why there is no need to speculate
10 now about what circumstances might trigger a need, given that Qwest and CenturyLink
11 have been speculating regularly on whether an unrecoverable OSS failure is “likely”³⁶¹ or
12 “unlikely”³⁶² to occur and whether the failure will be “in the near future.”³⁶³ The only
13 certainty CenturyLink and Qwest offer is that, if the failure occurs, end user customers
14 and CLECs in Colorado will be harmed.³⁶⁴ Given the latter certainty, there is plenty of
15 reason to notify the Commission, and there is no reason to wait for customers to be
16 harmed before relief is sought.

³⁵⁹ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 8, line 10; *see also*, Hunsucker Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 9, line 4.

³⁶⁰ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 8, line 10; *see also*, Hunsucker Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 9, line 4.

³⁶¹ WA Answer, (Aug. 2, 2011), ¶2, p. 2; *see also*, CO Answer, p. 2, ¶2, 2nd paragraph (emphasis added).

³⁶² WA Preliminary Injunction Response, WUTC Docket UT-111254, (Aug. 18, 2011), p. 14; *see also*, CO Preliminary Injunction Response, CO Docket No.11F-436 (Aug. 2, 2011), p. 11 (emphasis added).

³⁶³ WA Answer, (Aug. 2, 2011), ¶2, p. 2; *see also*, CO Answer, p. 2, ¶2, 2nd paragraph (emphasis added).

³⁶⁴ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 23, line 17 – p. 24, line 4; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 24, lines 1-6.

1 The Joint Applicants' choice to not bring forward concerns about legacy Qwest OSS to
2 the Commission and instead to vigorously pursue approval of the settlement terms and
3 the merger sent the message suggested by Mr. Hunsucker – Qwest/CenturyLink would
4 *comply* with the merger commitments. In other words, this choice communicated to
5 CLECs and the Commission that, despite potentially inaccurate Qwest claims of potential
6 OSS failure, the Merged Company somehow had the ability to address the situation in a
7 manner that would meet all of its commitments for at least thirty months without
8 changing legacy Qwest OSS, without creating a new OSS, and while continuing to use
9 and offer the legacy Qwest OSS in production.³⁶⁵ Joint Applicants should have told the
10 Commission that Qwest was concerned about its ability to deliver on these commitments.

11 **Q. HAS THE MERGED COMPANY PROVIDED AN ADEQUATE EXPLANATION**
12 **FOR JOINT APPLICANTS' FAILURE TO BRING OSS CONCERNS TO THE**
13 **COMMISSION BEFORE MERGER APPROVAL?**

14 A. No. This is true even though the concerns arose while the merger proceedings were
15 pending, and executives, attorneys and witnesses for Joint Applicants were aware of the
16 concerns, as shown below.

17 **Q. YOU SAID THAT CENTURYLINK AND QWEST KNEW OF THE CONCERNS**
18 **BEFORE MERGER APPROVAL. WILL YOU PROVIDE EXAMPLES?**

19 A. Yes. Each of the following examples occurred before the Commission's Decision on

³⁶⁵ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 89-90; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 79-81.

1 Rehearing, Reargument, and Reconsideration was adopted on March 2, 2011:

2 i Qwest and CenturyLink admit that, before execution of the Integra Settlement
3 Agreement and thus **before commencement of the Colorado merger hearing**,
4 Qwest was aware that, within a short time, Qwest would reactivate the repair OSS
5 change requests (which occurred days later on November 10, 2010).³⁶⁶ In fact, Qwest
6 now claims that it introduced its change requests in 2008 because of concerns it had
7 then about the long term viability of MEDIACC,³⁶⁷ meaning that, if true, Qwest knew
8 of those concerns throughout the merger proceedings.
9

10 i On December 20, 2010, Mr. Hunsucker testified that he had had discussions with
11 Qwest and that the system is very unstable. As the above paragraph shows, Qwest
12 was aware of the system concerns and its plan to create a new OSS to replace it at the
13 time of those discussions with CenturyLink's witness.³⁶⁸ Mr. Hunsucker expressed
14 concerns about the age of the system and ability to find parts for it, and he attributed
15 the reason for replacing the existing legacy Qwest system with a new OSS to
16 "instability of that system."³⁶⁹ Attorneys and representatives of both Qwest and
17 CenturyLink were present to hear this testimony, and a transcript was made available
18 after the hearing.
19

20 i On January 4-5, 2011, Qwest received CLEC comments in CMP, including
21 objections based on merger commitments.³⁷⁰ Integra provided those comments to
22 CenturyLink's attorney on February 2, 2011.³⁷¹
23

24 i On February 9, 2011, Qwest told Integra and CenturyLink's attorney that the Merged
25 Company may not be able to meet its merger commitments:
26

³⁶⁶ Response to Joint CLEC Requests Nos. 01-020(a) and 01-020(b); *see also*, Colorado Qwest and CenturyLink Response to Integra CO Discovery Request Nos. 13(a) & 13(b).

³⁶⁷ WA Preliminary Injunction Response, WUTC Docket UT-111254, (Aug. 18, 2011), p. 13; *see also*, CO Preliminary Injunction Response, CO Dkt. No.11F-436 (Aug. 2, 2011), p. 11.

³⁶⁸ Nonetheless, Qwest and CenturyLink continued to represent, after Mr. Hunsucker's discussions with Qwest and his testimony in Arizona, that CenturyLink will have "no immediate need (or be under any time pressure) to make any alterations to OSS in Qwest areas." Joint Applicants' Reply Brief, WUTC Docket No. UT-100820, Jan. 11, 2011, p. 12, ¶24.

³⁶⁹ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc. (Dec. 20, 2010), Vol. II, p. 338, lines 19-25.

³⁷⁰ Exhibit BJJ-11 & Exhibit BJJ-12 at JC000069 – JC000071.

³⁷¹ Exhibit BJJ-17 at JC000098.

1 CEMR and MEDIACC are part of Qwest's OSS and are being replaced by
2 another Qwest Operational Support System – Maintenance Ticketing Gateway
3 (MTG). CEMR and MEDIACC have become obsolete.... If we failed to replace
4 CEMR and MEDIACC the merged company may not be able to meet its
5 obligations under the settlement agreement, such as its obligation to 'meet or
6 exceed the average wholesale performance provided by Qwest to CLEC [prior to
7 the Merger Closing Date].³⁷²
8

9 As the above example shows, the conclusion that the Merged Company may not be able
10 to meet its merger commitments is not a matter of a difference in contract interpretation
11 between Joint Applicants and CLECs. This Qwest email represents Qwest's own
12 interpretation of the Integra settlement agreement, which lead Qwest to conclude and
13 share with CenturyLink, while the Minnesota merger proceeding was still pending, that
14 the Merged Company may not be able to meet its merger commitments if the issue of
15 potential system failure of CEMR and MEDIACC is not addressed.

16 i On February 9, 2011, Integra (which was bound by its settlement agreement not to
17 participate in the proceeding to oppose the merger) said to the attorneys³⁷³
18 representing Joint Applicants in this matter:

19
20 [W]e are unaware of Joint Applicants having informed the commissions that they
21 already believe they may not be able to meet their merger commitment to CLECs
22 and state commissions. In fact, during the Minnesota merger hearing this week
23 (available by webcast), Joint Applicants argued that the merger conditions
24 adequately satisfy the public interest, which more than suggests that the
25 companies intend to meet all of those conditions.³⁷⁴

³⁷² Exhibit BJJ-17, Qwest Feb. 9, 2011 email to Integra and CenturyLink at JC000099.

³⁷³ At an August 11, 2011 hearing in Minnesota, the Merged Company indicated that discussions were "on the business side." Exhibit BJJ-62, Transcript (Aug. 11, 2011), p. 35, lines 16-18. Integra's February 9 email, however, was addressed to in house and outside attorneys Jason Topp and Daphne Butler at Qwest and Michael Ahern, Susan Masterton, and Linda Gardner at CenturyLink. See Exhibit BJJ-17, Integra Feb. 9, 2011 email at JC0000100.

³⁷⁴ Exhibit BJJ-17, Integra Feb. 9, 2011 email to Qwest attorneys and CenturyLink attorneys at JC0000100.

1 All of the above events occurred before the Joint Applicants filed their request to respond
2 to the OCC's request in Colorado on February 10, 2011, a date on which they also could
3 have asked the Commission to address these concerns.

4 i On February 16, 2011, Integra's President expressed concerns about Qwest's repair
5 OSS to executives of both CenturyLink and Qwest and indicated that he understood
6 Qwest had referred questions to legal.³⁷⁵ On February 20, 2011, he provided a list of
7 questions to those executives.³⁷⁶ On February 22, 2011, Integra sent an email to
8 Qwest and CenturyLink attorneys (inhouse and outside counsel), stating: "On
9 Sunday, Integra's President Jim Huesgen provided a list of questions to [executives of
10 Qwest and CenturyLink], in response to a request from Mr. Mickens. As indicated in
11 his list of questions, Integra anticipates that legal will also respond separately
12 regarding the legal/regulatory issues. ... We understand that you are considering
13 these issues internally. When you have an idea of when Qwest legal and CenturyLink
14 legal will respond, please provide a status update at that time."³⁷⁷

15 Nothing in the Commission rules prevented Qwest and/or CenturyLink from filing a
16 notice regarding its concerns about legacy Qwest repair OSS and the ability of the
17 Merged Company to meet its merger commitments at any time in the merger docket, so
18 long as other parties were served with a copy.³⁷⁸

19 **Q. DESPITE ALL OF THIS EVIDENCE, DOES CENTURYLINK CONTINUE TO**
20 **DENY KNOWLEDGE OF THE INADEQUACY OF MEDIACC DURING THE**
21 **MREGER PROCEEDING?**

³⁷⁵ Exhibit BJJ-21 at JC000117.

³⁷⁶ Exhibit BJJ-22 at JC000118-JC000122.

³⁷⁷ Exhibit BJJ-23 at JC000123.

³⁷⁸ See Rule 1205 ("Service"), 4 CCR 7-231. See Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 67-72; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 60-65.

1 A. Yes. In a discovery response received on October 26, 2011, Qwest/CenturyLink was
2 asked the following question and provided the following response:

3 Request No. 7(g): Please fully explain why Qwest and/or CenturyLink did not
4 reveal to the Commission *at any time during the merger proceeding* the
5 imminent risk, *or inadequacy*, of the legacy Qwest maintenance and repair OSS,
6 MEDIACC.”

7
8 Response No. 7(g): ... “CenturyLink was not aware of this issue. Please see
9 Answer Testimony of Michael Hunsucker, at pages 9-11, filed on September 15th
10 in the Colorado complaint on this issue, Docket 11F-436T.³⁷⁹

11
12 The Minnesota merger Order was issued on March 31, 2011, after the Commission’s
13 Decision on Rehearing, Reargument, and Reconsideration was adopted on March 2,
14 2011. Therefore, the facts presented above which occurred before this Commission
15 adopted its Order also occurred before the Minnesota Order.

16 **Q. YOU MENTIONED THE INTEGRA SETTLEMENT NEGOTIATIONS. DOES**
17 **MR. HUNSUCKER ATTEMPT TO EXCUSE JOINT APPLICANTS’ FAILURE**
18 **TO RAISE THE IMMINENT “MTG PROJECT”³⁸⁰ DURING SETTLEMENT**
19 **NEGOTIATIONS WITH INTEGRA?**

³⁷⁹ Qwest/CenturyLink response to MN DOC Request No. 7(g), Docket No. P421, et al./C-11-684 (Oct. 26, 2011) (emphasis added). As to Qwest, the response indicates that “Qwest did not view this issue as being related to the merger.” *Id.*

³⁸⁰ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 8, line 15; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 9, line 9. See Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 56, line 16 – p. 57, line 2; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 51, line 15 – p. 52, line 1 (“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, in November of 2010 or to implement MTG or other new system by the end of 2011”).

1 A. Yes. Mr. Hunsucker testifies that he performed “sufficient due diligence” to prepare for
2 negotiations.³⁸¹ This is similar testimony to the part of the testimony cited by
3 Qwest/CenturyLink in the above-quoted discovery response. On page 69 of my direct, I
4 quote from a discovery response stating that “Legacy Qwest and Legacy CenturyLink
5 negotiation team were not aware that Legacy Qwest would modify the status of the
6 change requests.”³⁸² I responded that “Qwest and CenturyLink can’t reasonably argue
7 that their executive team failure to investigate information pertinent to their commitment
8 to continue using and offering MEDIACC excuses them from the merger conditions.
9 Otherwise, a company could always benefit from failure to disclose information by
10 simply not providing information to its negotiators.”³⁸³

11 Instead, Mr. Hunsucker calls this “argument” a “red herring,” and states, “It was not
12 necessary for me or CenturyLink to investigate whether Qwest/CenturyLink might
13 consider adding an *optional* repair interface while still using and offering existing
14 systems... in order to enter the Integra Settlement.”³⁸⁴ In addition to mischaracterization
15 of the “use and offer” term of the settlement agreements, this statement is wrong on the
16 facts. At the time of the November 1, 2010 Washington testimony of Mr. Jones, the
17 signing of the settlement agreement with Integra, and the December 20, 2010 Arizona

³⁸¹ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 9, lines 17-20; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 10, lines 10-13.

³⁸² Response to Joint CLEC WA Request No. 01-020(a); *see also*, Colorado Qwest and CenturyLink Response to Integra CO Discovery Request Nos. 13(a) (emphasis added).

³⁸³ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 69, lines 11-14; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 62, lines 10-14.

³⁸⁴ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 9, line 20 – p. 10, line 2. *See also* Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 10, lines 13-15 (emphasis added).

1 testimony of Mr. Hunsucker, Qwest's pending CMP change was, per Qwest, *not* for an
2 optional system; it was expressly a replacement and retirement of CEMR and
3 MEDIACC, and it was to occur before the end of 2011.³⁸⁵

4 **Q. DOES MR. HUNSUCKER PROVIDE ANY OTHER RATIONALE FOR**
5 **OMITTING THOSE FACTS IN SETTLEMENT NEGOTIATIONS WITH**
6 **INTEGRA?**

7 A. Yes. Mr. Hunsucker states that he first became aware of the MTG project during the
8 merger hearings in Arizona,³⁸⁶ which was after an agreement was reached with Integra.
9 He claims that he does "not recall"³⁸⁷ the issue being raised during the "several planning
10 meetings"³⁸⁸ and further, because Qwest and CenturyLink were required by federal law
11 to operate as separate legal entities, he "did not have full visibility into all of the legacy
12 Qwest business plans."³⁸⁹

13 **Q. IS THIS RATIONALE CONVINCING?**

³⁸⁵ Exhibit BJJ-7 (Nov. 10, 2010 CMP Description of Change) at JC000043 ("New application will ... replace CEMR"); Exhibit BJJ-7 (Nov. 17, 2010 CMP minutes) at JC000057 ("Qwest indicated that we are looking at doing two things: 1) retiring CEMR and replacing it with a front GUI interface, and 2) retiring MEDIACC and replacing that with an XML B2B ticketing interface."); (Dec. 17, 2010 Qwest announcement) at JC000062 ["The Maintenance Ticketing Gateway (MTG) will be a replacement for MEDIACC and CEMR."]; Exhibit BJJ-1 at JC000063-JC000064 (Dec. 17, 2010 timeline).

³⁸⁶ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 8, lines 18-20; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 9, lines 12-14.

³⁸⁷ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 9, line 1; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 9, line 15.

³⁸⁸ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 8, line 20; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 9, line 14.

³⁸⁹ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 9, lines 4-5; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 9, lines 18-19.

1 A. No. First and foremost, his discussion fails to acknowledge that Qwest was a
2 participant and a signatory to the Integra settlement agreement, separate from
3 CenturyLink. In addition, CenturyLink's Chief Information Officer ("CIO") was directly
4 involved in the Integra settlement. Thus, even if Mr. Hunsucker does not recall
5 discussions in meetings to prepare for the merger proceedings, he does acknowledge that
6 the CIO reviewed, amended, and agreed to the agreement,³⁹⁰ and cannot not deny that the
7 CIO should be expected to perform sufficient due diligence about OSS terms before
8 agreeing to them.

9 Second, Mr. Hunsucker testified in Arizona that he had had discussions with Qwest when
10 he learned of the MTG project.³⁹¹ If the requirement "under federal law to operate as
11 separate businesses"³⁹² did not prevent those discussions, then federal law did not prevent
12 discussions of this subject before the announcement to retire CEMR and MEDIACC. In
13 other words, he fails to show federal law precluded due diligence on the part of the
14 negotiation team.

15 Third, Mr. Hunsucker and other CenturyLink witnesses testified about OSS issues,
16 including Mr. Hunsucker's own testimony about the earlier Minnesota DOC settlement,
17 in "numerous"³⁹³ merger proceedings. In the event of an unrecoverable OSS failure, the

³⁹⁰ WA Hrg. Tr., Dkt. No. UT-100820 (Jan. 6, 2010), Vol. IV, p. 406, lines 16-22 (Mr. Hunsucker, CenturyLink).

³⁹¹ AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 338, lines 19-25 (Mr. Hunsucker, CenturyLink) (emphasis added) [JC000700]. *See also* Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 77-90; *see also*, Denney Direct, CO Docket No. 11F-436T (Sep. 15, 2011), pp. 70-81.

³⁹² Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 9, lines 2-5; *see also*, Hunsucker Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 9, lines 16-19.

³⁹³ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 9, line 1; *see also*, Hunsucker Answer

1 Merged Company will not meet even the lesser commitment to the DOC to “not
2 discontinue” legacy Qwest OSS, because such a failure effectively discontinues the
3 system. Mr. Hunsucker said that “there had been several planning meetings in
4 preparation for the numerous merger proceedings.”³⁹⁴ If these meetings were in any
5 respect to ensure testimony was true and accurate, it stands to reason that assurances
6 about OSS were discussed.

7 Fourth, Mr. Hunsucker’s line of reasoning doesn’t explain why even after he became
8 aware of the MTG project that Mr. Hunsucker and other Qwest and CenturyLink
9 witnesses continued to assure CLECs and regulators through sworn testimony that no
10 changes to OSS would occur for at least 24 months after the companies merged.³⁹⁵

11 Finally, this reasoning fails to explain why Qwest did not immediately withdraw its
12 change request to retire CEMR and MEDIACC in light of the merger settlement
13 agreements. As discussed above, Mr. Hunsucker attempts to excuse this by saying the
14 new system will be “optional” and current systems would still be in use.³⁹⁶ But, Qwest’s
15 pending CMP change was *not* for an optional system; it was expressly a replacement and
16 retirement of CEMR and MEDIACC.³⁹⁷ His argument also ignores that, in the event of

Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 9, line 15.

³⁹⁴ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 8, line 20; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 9, line 14.

³⁹⁵ See Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 77-90; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 70-81; *see also* Joint Applicants’ Reply Brief, WUTC Docket No. UT-100820, Jan. 11, 2011, p. 12, ¶24.

³⁹⁶ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 9, line 20 – p. 10, line 1; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 10, lines 13-15.

³⁹⁷ Exhibit BJJ-7 (quoted in above footnote).

1 an OSS failure (the risk of which was known to them), the current system will not be in
2 use.

3 **Q. DOES THE MERGED COMPANY NOW ADMIT THAT THE CHANGE**
4 **REQUEST TO RETIRE MEDIACC, PRIOR TO WITHDRAWAL, VIOLATED**
5 **THE MERGER SETTLEMENT AGREEMENTS?**

6 A. Yes. In response to a Joint CLEC data request regarding the rationale for withdrawal of
7 the change request, the Merged Company responded, “Qwest Corporation determined
8 that it was not necessary to retire CEMR, and that *the merger agreements did not permit*
9 *the retirement of MEDIACC before late in 2013.*”³⁹⁸

10 **Q. DOES CENTURYLINK MAKE LIGHT OF JOINT APPLICANTS’ FAILURE TO**
11 **DISCLOSE THE MTG PROJECT IN NEGOTIATIONS AND TO NOTIFY THE**
12 **COMMISSION OF OSS CONCERNS?**

13 A. Yes. Mr. Hunsucker dismisses this issue as “a distraction.”³⁹⁹ He says what is important
14 is that “*at this point in time* CenturyLink has been very diligent in clearing up any
15 misstatements or confusion and is committed to honoring the settlement agreements in
16 their entirety.”⁴⁰⁰ Clearly Joint CLECs disagree as to whether the Merged Company is
17 currently honoring the settlement agreements at this point in time. Even if you assume it
18 were honoring them, that should not excuse past behavior regarding misstatements to the

³⁹⁸ Response to WA Joint CLEC Data Request 10(c). Respondents Cecelia Tank and Renée Albersheim (emphasis added).

³⁹⁹ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 10, lines 6-8; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 10, lines 20-22.

⁴⁰⁰ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 10, lines 8-11; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 10, line 22 – p. 11, line 2 (emphasis added).

1 state commissions and constituting violations of merger settlement agreements and
2 orders. This is particularly true here, when the Commission's ability to deny merger
3 approval if appropriate based on the facts was taken from it by Joint Applicants' choice
4 to not provide notice to the Commission of facts pertinent to that decision and the public
5 interest. If such behavior can be ignored, then there is no deterrent effect for future
6 conduct. Taking steps to ensure compliant future conduct is particularly important in this
7 situation because there are other merger commitments yet to be fulfilled and because
8 CLECs rely on the Merged Company, due to its market power, for services addressed in
9 the settlement agreements. CenturyLink/Qwest misstatements,⁴⁰¹ confusion⁴⁰² and
10 behaviors have caused the Joint CLECs to expend extraordinary amount of time and
11 resources that they shouldn't have to expend to enforce agreements that were just
12 recently put into place. Choosing expediency over accuracy, if allowed, threatens the
13 integrity of the process. The Merged Company identifies no reason why Joint Applicants
14 should be excused for their conduct and the burden that conduct has placed on the
15 resources of CLECs and the Commission.

⁴⁰¹ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 10, lines 9-10; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 11, line 1.

⁴⁰² Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 12, line 17 – p. 13, line 4; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 13, lines 9-14.

1 **XII. USE AND OFFER TO WHOLESALE CUSTOMERS**

2 **Q. DOES CENTURYLINK ADDRESS THE MERGED COMPANY’S AGREEMENT**
3 **TO “USE AND OFFER TO WHOLESALE CUSTOMERS” THE LEGACY**
4 **QWEST OSS⁴⁰³?**

5 A. Yes. Mr. Hunsucker and Ms. Albersheim argue that the Merged Company complies with
6 this requirement of the merger settlement agreements. Integra disagrees. I discuss this
7 issue in Section VI(A) on pages 94-105 of my direct testimony.

8 **Q. MS. ALBERSHEIM STATES THERE HAS BEEN “CONFUSION REGARDING**
9 **WHETHER OR NOT CENTURYLINK ‘USES’ MEDIACC.”⁴⁰⁴ WHO IS THE**
10 **SOURCE OF THE CONFUSION?**

11 A. Qwest and CenturyLink are the source of confusion. CenturyLink/Qwest has repeatedly
12 said that Qwest uses MEDIACC for its own use but now denies statements previously
13 admitted. This was addressed in my Direct Testimony on pages 102-105 and in Exhibit
14 BJJ-68.

15 **Q. MS. ALBERSHEIM STATES THAT THE USE OF “INTERNAL” ON QWEST’S**
16 **MTG IMPLEMENTATION TIMELINE COMPARISON REFERS TO “NON-**
17 **CLEC OR NON-CMP CUSTOMERS” AND “NON-CMP WHOLESALE**
18 **CUSTOMERS.”⁴⁰⁵ DOES THIS MAKE SENSE?**

⁴⁰³ Exhibit BJJ-3, Integra Settlement Agreement, ¶12 at JC000010-JC000011; Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 2 at JC0000550.

⁴⁰⁴ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 11, line 15 – p. 12, line 1; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T, (Sep. 15, 2011), p. 12, lines 2-3.

⁴⁰⁵ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 12, lines 8-14; *see also*, Albersheim

1 A. No. On Qwest's timeline, the pre-implementation MTG-XML activities that take place
2 among carriers in CMP before the end of 2011 are labeled "internal," and the post-
3 implementation MTG-XML activities in CMP after year-end MTG implementation are
4 labeled "external." After first receiving the timeline, Integra asked in the June 15, 2011
5 CMP meeting who were the internal customers. Qwest responded that they had been the
6 "network team," though that had changed, and indicated that internal customers were
7 Qwest employees.⁴⁰⁶ This use of the term made sense because "internal" is often used to
8 refer to activities or employees within a company.⁴⁰⁷ In the same June meeting, Qwest's
9 CMP representative said that Qwest would move internal customers first and then would
10 work with interested external customers.⁴⁰⁸ On July 1, 2011, Qwest provided its formal,
11 written CMP response in which Qwest said: "Qwest continues to plan on first 'moving'
12 itself to the MTG system."⁴⁰⁹ This was consistent with the explanation that internal
13 customers are Qwest employees, as in June Qwest said that internal customers would
14 move first and in July, after opportunity to review and issue a formal response, Qwest
15 confirmed this meant Qwest was moving itself first.

16 In her testimony, in contrast, Ms. Albersheim argues that "internal" refers to
17 activities/employees that are outside of Qwest (*i.e.*, illogically, internal customers are
18 external to Qwest). Ms. Albersheim points to participation in CMP as the dividing line

Answer Test., CO Docket No. 11F-436T, (Sep. 15, 2011), p. 12, lines 10-16 and Exhibit RA-7.

⁴⁰⁶ See Exhibit BJJ-8, CMP meeting minutes at JC000939.

⁴⁰⁷ See Exhibit BJJ-8, CMP meeting minutes at JC000939.

⁴⁰⁸ See Exhibit BJJ-8, CMP meeting minutes at JC000942.

⁴⁰⁹ Exhibit BJJ-53, Qwest CMP Matrix, p. 54, July 1, 2011, at JC000807.

1 but, in a data response, the Merged Company states that the non-CMP wholesale
2 customers also “operate as CLECs and could participate in the CMP if they chose.”⁴¹⁰

3 In any event, as stated in my direct testimony,⁴¹¹ even if the Merged Company’s
4 revisionist view of its earlier admissions were accepted, that does not mean that the
5 Merged Company may stop using MEDIACC in the manner which it was used before the
6 merger closing date. Before the closing date, MEDIACC was used for all legacy Qwest
7 Corporation repair OSS purposes, and there was no “alternative” new system. That status
8 quo is to be maintained until after the expiration of the 30-month period and completion
9 of the steps set forth in paragraph 12 of the settlement agreements.⁴¹² Additionally, the
10 “use and offer” language of the merger settlement agreements is only one of several
11 requirements regarding OSS in paragraph 12. The Merged Company’s current approach
12 also violates terms in paragraph 12 regarding integration, as discussed in Section VI(B)
13 of my direct testimony.

14 **Q. MS. ALBERSHEIM STATES THAT RETAIL CUSTOMERS DO NOT USE**
15 **MEDIACC, BUT SOME USE CEMR.⁴¹³ IS THIS ACCURATE?**

16 A. Not entirely. It is now undisputed that some retail customers use CEMR. Regarding
17 MEDIACC, while retail customers may not have created a B2B interface, CEMR

⁴¹⁰ Response to Joint CLEC Request WA No. 01-001(c); *see also*, Colorado CenturyLink Response to Joint CLEC Data Request 01-001(c), CO Docket No. 11F-436T (Respondents: Legal, Cecilia Tank and Renée Albersheim).

⁴¹¹ Denney Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 104, line 14 – p. 105, line 5.

⁴¹² Regarding CenturyLink claims that an unrecoverable system failure may change the status quo, see Sections IV(C), VI(D)-(E) and VI(G). *See also* Exhibit BJJ-64 (PAETEC proposal) & Exhibit BJJ-71 (Integra excerpts regarding a potential exception for a unique situation).

⁴¹³ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 12, line 17 – p. 13, line 6; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 13, lines 1-8.

1 interfaces with MEDIACC and other Qwest legacy systems. Therefore, retail customers
2 depending on CEMR are using MEDIACC, just as CLEC customers that depend on
3 CEMR are using MEDIACC. Additionally, in light of the ILEC-caused confusion
4 discussed above, it remains unclear to what extent MEDIACC is used internally at Qwest
5 to serve the needs of retail customers, though those customers may not be interfacing
6 with the system directly.⁴¹⁴ In any event, the merger settlement agreements are not
7 limited to whether retail customers interface with Qwest OSS.

8 **Q. STAFF INDICATES THAT NONE OF THE ISSUES IN THIS CASE RELATE TO**
9 **RETAIL OSS.⁴¹⁵ IF THAT IS THE CASE, WHAT DOES THIS SAY ABOUT THE**
10 **MERGED COMPANY'S CLAIMS REGARDING ITS INCENTIVES?**

11 A. It means that the Merged Company does not have the strong incentive that it at one time
12 claimed to have to fully maintain and support MEDIACC and CEMR. It is important to
13 note that, when CenturyLink and Qwest were representing to Integra that Qwest does use
14 MEDIACC and CEMR for itself,⁴¹⁶ they provided as a reason for making this claim that
15 CLECs should take comfort in knowing that Qwest uses the system for itself, because
16 this indicates that Qwest has a strong incentive to ensure the system will not fail.⁴¹⁷ If
17 Staff's apparent conclusion that the statements that Qwest and CenturyLink made about

⁴¹⁴ See Exhibit BJJ-68.

⁴¹⁵ Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 8, lines 17-18. But see the above discussion, in Section VII, regarding discrimination.

⁴¹⁶ Exhibit BJJ-68 (examples of CenturyLink/Qwest statements that Qwest uses MEDIACC/CEMR itself).

⁴¹⁷ May 4, 2011 meeting between Integra and CenturyLink/Qwest, which I attended.

1 Qwest using CEMR/MEDIACC (see Exhibit BJJ-68) were inaccurate, then the Merged
2 Company does not have the claimed incentive.

3 Moreover, Integra's concerns are not limited to Qwest retail operations. The Merged
4 Company has said that customers indicating an interest in XML were approaching legacy
5 Qwest as IXC and wireless carriers.⁴¹⁸ CLECs are also concerned that decisions the
6 Merged Company makes for its IXC and wireless customers⁴¹⁹ should not trump any
7 other obligations including compliance with settlement agreement terms. Although Staff
8 suggests that some benefit may result if MTG is operational for a period of time,⁴²⁰ that
9 benefit is reduced if not eliminated if MTG is tested and then operational with carriers
10 that do not have all of the same uses, and need all of the same functionality, etc., as Joint
11 CLECs. In fact, Joint CLECs will be disadvantaged if those carriers and the Merged
12 Company, having already implemented MTG, are more averse to making changes
13 requested by CLECs.

⁴¹⁸ CenturyLink Response to Joint CLEC Data Request 01-001(c), CO Docket No. 11F-436T (Respondents: Legal, Cecilia Tank and Renee Albersheim).

⁴¹⁹ Staff concludes that requests by non-CLEC wholesale customers of Qwest is a "key additional driver influencing the migration of MTG using XML." Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 15, lines 13-14. The Merged Company cannot point to any competing settlement agreement terms with those carriers that would allow the non-CLEC wholesale customers to move to XML or otherwise trump Joint CLECs' settlement agreement terms. The Integra agreement was publicly filed and available for comment before approval, and no non-CLEC wholesale customers opposed it. Qwest advocated in favor of the Integra settlement without speaking up on behalf of those non-CLEC customers, though it was aware of such requests at the time. Regarding other customer requests for MTG-XML and Qwest's previous history with customer requests, see Denney Rebuttal, CO Docket No. 11F-436T (Oct. 31, 2011), pp. 50-54; Denney Direct, CO Docket 11F-436T (Aug. 12, 2011), pp. 133-134; Johnson Rebuttal, CO Docket No. 11F-436T (Oct. 31, 2011), pp. 16-20.

⁴²⁰ Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 18, lines 20-21.

1 **XIII. ADDITIONAL ERRONEOUS AND INCONSISTENT CLAIMS BY**
2 **CENTURYLINK/QWEST**

3 **A. MERGED COMPANY CLAIM OF RESPONSIVENESS**

4 **Q. MS. ALBERSHEIM ASSERTS THAT QWEST/CENTURYLINK DID NOT**
5 **“KEEP CHANGING ITS POSITION” BUT WAS SIMPLY BEING RESPONSIVE**
6 **TO CLECS.⁴²¹ CAN THE QWEST/CENTURYLINK INCONSISTENT**
7 **BEHAVIOR THAT IS DESCRIBED IN DETAIL IN CLECS’ TESTIMONY BE**
8 **EXPLAINED AWAY AS RESPONSIVENESS TO CLEC CONCERNS?**

9 **A.** No. To illustrate, simply juxtapose specific instances of Qwest/CenturyLink changes in
10 position identified in CLEC testimony with Ms. Albersheim’s unsupported assertion of
11 Qwest/CenturyLink responsiveness to CLEC concerns. For example:

12 *Position:* John Jones of CenturyLink testified, when arguing that there would be
13 no need to create new OSS post-merger, that “CenturyLink and Qwest have well-
14 established, fully operational and tested systems.”⁴²² He also testified that “we
15 are not compelled or forced in any way to change any system.”⁴²³

16 *Change in Position:* The Merged Company is compelled to create a new system
17 post-merger due to potentially “catastrophic”⁴²⁴ and “disastrous”⁴²⁵ OSS failure.

18 *CLEC concerns:* “Failure to continue to utilize the legacy Qwest OSS, failure to
19 continue to operate those OSS to provide service that is at least equal to the level
20 of service (flawed though it has been) provided by legacy Qwest, and the
21 mishandling of *any* integration of *legacy Qwest OSS* would be extremely
22 damaging to competitors and their end-user customers.⁴²⁶ The Integra Settlement

⁴²¹ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 14, line 3 – p. 15, line 6; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 14, line 5 – p. 15, line 7.

⁴²² Rebuttal Testimony of Mr. Jones, CenturyLink, CO Dkt. No. 10A-350T (Oct. 15, 2010), p. 17, lines 15-19.

⁴²³ Hrg. Tr., Dkt. No. UM 1484 (Dec. 16, 2010), Vol. I, p. 64, lines 4-10 (Mr. Jones, CenturyLink).

⁴²⁴ Exhibit BJJ- 36, Merged Company May 2, 2011 email at JC000294.

⁴²⁵ WA Preliminary Injunction Response, WUTC Docket UT-111254, (Aug. 18, 2011), p. 6; *see also*, Preliminary Injunction Response, CO Dkt. No.11F-436 (Aug. 2, 2011), p. 5.

⁴²⁶ Comments of Cbeyond, Integra Telecom, Socket Telecom, and **tw telecom**, *In the Matter of Applications Filed*

1 Agreement recites that the “Parties have entered into this Agreement to avoid
2 further expense, inconvenience, *uncertainty* and delay.”⁴²⁷ The Commission
3 found that the Integra settlement agreement “will maintain some certainty and
4 stability in the relationships between the CLECs and the Joint Applicants.”⁴²⁸

5 *Was CenturyLink’s Change in Position Responsive to CLECs’ concerns?*
6 Obviously not.

7 Further, once Qwest/CenturyLink started to allege repair system “instability,”⁴²⁹ CLECs
8 expressed concern about insufficiency of the information provided and requested
9 additional information including, to the extent that Qwest claims the current system(s) is
10 unstable, sufficient information to allow verification of that claim,⁴³⁰ and they attempted
11 to gain a “clear understanding of the impacts, cost, resources, etc.” of the proposal to
12 address the alleged instability.⁴³¹ The Qwest/CenturyLink statements ranging from
13 “MEDIACC system. . . will *likely* begin experiencing problems in the near future”⁴³² to
14 “it is possible though perhaps *unlikely* that MEDIACC would experience an
15 unrecoverable failure”⁴³³ to “Qwest/CenturyLink states it has not determined a
16 probability of failure and cannot predict whether or not such a failure will occur,”⁴³⁴

by Qwest Communications International Inc. and CenturyTel, Inc., d/b/a CenturyLink for Consent to Transfer of Control, WC Dkt. No. 10-110 (July 12, 2010) [“FCC Merger Proceeding”], p. 26 (emphasis added).

⁴²⁷ Exhibit BJJ-3, Integra Settlement Agreement, p. 13, §E (emphasis added) at JC000014.

⁴²⁸ Colorado Decision No. C11-0001, Dkt. No. 10A-350T , p. 27, ¶77.

⁴²⁹ E.g., AZ Hrg. Tr., Dkt. No. T-01051B-10-0194, etc., (Dec. 20, 2010), Vol. II, p. 338, lines 19-25 (Mr. Hunsucker, CenturyLink) [JC000700].

⁴³⁰ Exhibit BJJ-11, Email from Integra to Qwest CMP (Jan. 4, 2011) at JC000069.

⁴³¹ Exhibit BJJ-13, Email from PAETEC to Qwest CMP (Dec. 20, 2010) at JC000074.

⁴³² CO Answer, p. 2, ¶2, 2nd paragraph (emphasis added). In Washington CenturyLink said that it “could begin experiencing problems in the near future.” See WA Answer, (Aug. 2, 2011), ¶2, p. 2.

⁴³³ WA Preliminary Injunction Response, WUTC Docket UT-111254, (Aug. 18, 2011), p.14; *see also*, CO Preliminary Injunction Response, CO Dkt. No.11F-436 (Aug. 2, 2011), p. 11 (emphasis added).

⁴³⁴ Response to Joint CLEC Request WA No. 01-016(c); *see also*, Colorado Qwest and CenturyLink’s Responses to Joint CLECs’ First Set of Information Requests, CO Dkt. No. 11F-436T (Aug. 1, 2011), Response to Request No. 11(c).

1 which are addressed on pages 122-123 of my direct, are inconsistent, and they not
2 responsive to the CLECs' requests for clarity and verification. Since then, Ms.
3 Albersheim has muddied the waters further by claiming that the risk, which was
4 presented as unknown, is now somehow known to be "increasing."⁴³⁵ Other examples of
5 inconsistencies and non-responsiveness abound:

6
7 When CLECs pointed out to Qwest that its November 2010 web posting
8 indicating that Qwest planned to retire and replace Qwest's legacy OSS for repair
9 (CEMR and MEDIACC) was a violation of the merger settlement agreement,⁴³⁶
10 Qwest was not being responsive to CLECs when it argued that the merger
11 settlement agreement allows such a change.⁴³⁷ The Merged Company now admits
12 that that this initial notice did violate the settlement agreements.⁴³⁸

13 The Merged Company was not being responsive to CLECs when it denied that
14 Qwest has failed to maintain MEDIACC,⁴³⁹ while at the same time arguing that
15 the need to move to MTG is the result of outdated software and hardware,
16 providing, in support of that claim, documentation showing that support for some
17 of the software used by the system was discontinued as long as a decade ago.⁴⁴⁰

18 Providing inaccurate or inconsistent information⁴⁴¹ and making
19 "misstatements"⁴⁴² is not responsive to CLEC request for clear and accurate
20 information.

⁴³⁵ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 10, lines 10-13; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 10, lines 14-17.

⁴³⁶ See Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 64-67; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 56-60.

⁴³⁷ Exhibit BJJ-17, Qwest Feb. 9, 2011 email, at JC000099.

⁴³⁸ Response to WA Joint CLEC Data Request 10(c) ("Qwest Corporation determined that it was not necessary to retire CEMR, and that **the merger agreements did not permit the retirement of MEDIACC** before late in 2013." "Respondents Cecelia Tank and Renée Albersheim") (emphasis added).

⁴³⁹ In July of 2011, in CMP, Qwest denied that it failed to maintain or update the MEDIACC database. Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, p. 21 (JC000774). See Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 58, line 17 – p. 59, line 2; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 53, line 16 – p. 54, line 2.

⁴⁴⁰ Qwest/CenturyLink Report on MEDIACC Risks, MN Docket Nos. 10-456 and 11-684 (October 6, 2011) at pp. 6-7.

⁴⁴¹ *E.g.*, compare Exhibit BJJ-68 (examples of statements that company uses MEDIACC) with Albersheim Direct Test. WUTC Docket UT-111254 (Oct. 14, 2011), p. 11, line 14 – p. 12, line 4; *see also*, Albersheim Answer

1 The Merged Company was not being responsive to CLECs when it claimed that
2 upgrades were made to CEMR in response to CLEC feedback provided in April
3 2011 when those upgrades took place in September 2010.⁴⁴³

4 The Merged Company was not being responsive to CLECs when it threatened
5 CLECs who stay on MEDIACC with catastrophic failure,⁴⁴⁴ while at the same
6 time asserting that MEDIACC is stable.⁴⁴⁵ Nor was the Merged Company being
7 responsive to CLECs when it raised the specter of catastrophic failure and then
8 claimed that the move to MTG is optional.⁴⁴⁶

9 Despite this evidence of non-responsiveness, Ms. Albersheim asks, “should we hold to
10 our original positions and ignore the CLECs’ requests, and proceed with proposed
11 changes without regard to CLEC input?”⁴⁴⁷ What this rhetorical question ignores is that,
12 in this case, CLECs are asking the Commission to require the Merged Company to “hold
13 to” the “original positions” taken in the merger proceedings regarding the Qwest OSS,
14 upon with CLECs relied. The Joint Applicants’ original positions include that the
15 Merged Company would use and offer the legacy Qwest OSS, would not retire, replace
16 or integrate Qwest OSS, and would not create new OSS.⁴⁴⁸ The Merged Company
17 cannot reasonably characterize its actions in going ahead with development and

Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 12, lines 2-6.

⁴⁴² Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 10, lines 9-10; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 11, line 1.

⁴⁴³ See Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 139-140; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 120-122.

⁴⁴⁴ Exhibit BJJ- 36, CenturyLink May 2, 2011 email at JC000294.

⁴⁴⁵ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 6, line 9; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 6, line 19.

⁴⁴⁶ *E.g.*, Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 10, line 8, pl. 15, line 5, p. 21, line 16 and p. 25, line 8-9; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 10, line 12. p. 15, lines 6-7, p. 22, line 1, and p. 25, lines 9-10.

⁴⁴⁷ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 14, lines 15-17; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 14, lines 17-19.

⁴⁴⁸ See citations on pp. 74-75 of Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011); *see also*, citations on page 68 of Direct Testimony of Douglas Denney, CO Docket No. 11F-436T, Aug. 12, 2011.

1 implementation of the replacement system, MTG, over CLEC objection, as “responsive
2 to CLECs.”

3 **Q. MS. ALBERSHEIM POINTS TO THE REVISED SCHEDULE IN CMP AS THE**
4 **“MOST IMPORTANT EXAMPLE OF QWEST’S RESPONSIVENESS.”⁴⁴⁹ DOES**
5 **QWEST’S REVISED SCHEDULE⁴⁵⁰ ALLEVIATE CLEC CONCERNS ABOUT**
6 **COMPLIANCE WITH THE MERGER SETTLEMENT AGREEMENTS?**

7 A. No. First, as discussed above in Section III, the Merged Company’s advocacy to
8 persuade CLECs that there may be a potentially disastrous failure of MEDIACC renders
9 its claim that it can meet its own revised schedule, including maintaining MEDIACC in
10 production until retirement in or after 2013, meaningless. Second, Qwest’s revised
11 timeline allows Qwest to implement MTG *before* performing the pre-implementation
12 steps required by the merger agreements that were meant to ensure acceptable
13 implementation and address concerns raised in the merger proceedings, such as ensuring
14 at least equivalent functionality and electronic bonding capability. In other words, the
15 revised schedule places the cart before the horse. Under the revised timeline, steps that
16 per the merger conditions should be taken before MTG implementation will not occur
17 until after MTG implementation. Finally, there are duplicative steps (occurring before
18 and after implementation) that impose additional burdens on CLECs during a time when

⁴⁴⁹ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 14, line 19 – p. 15, line3; see also *id.* p. 8, line 20 – p. 9, line 5; see also, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 15, lines 1-4; see also *id.* p. 9, lines 3-9.

⁴⁵⁰ Exhibit RA-7; see also Exhibit BJJ-1 (showing changes in the timelines).

1 this activity should not be occurring, as well as inaccurate and unclear aspects to the
2 schedule.

3 The Merged Company's revised timeline, calls into question the value and effectiveness
4 of participating and providing feedback on the development of a system that is already
5 developed and in place and is being used by other wholesale customers. Effective and
6 meaningful participation precluding the Merged Company from implementing without
7 sufficient prior acceptance of the replacement interface, however, was a key term for
8 which CLECs bargained. Qwest allows other wholesale customers to implement earlier
9 under Qwest's revised timeline, but there is no assurance that those wholesale customers
10 such as IXC and wireless carriers, have the same needs as Joint CLECs, as I discussed in
11 Section VII(C) above.

12 If Qwest proceeds with implementation before the merger pre-implementation steps and
13 CLECs do not expend resources during the earlier time period to participate fully, the
14 Merged Company may later argue "changes" are precluded later due to cost, other carrier
15 needs (whether or not that carrier would have been in the majority if done at one time),
16 *etc.* In Answer Testimony, CenturyLink states that it assumes the risk of having to make
17 changes to MTG in 2013,⁴⁵¹ but CenturyLink provides no details or commitment as to
18 what this apparent assurance means. CenturyLink does not commit that it will indemnify
19 CLECs against damage that results from unwanted changes or a system failure.

⁴⁵¹ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 19, lines 17-21; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 20, lines 4-8.

1 CenturyLink does not commit that it will compensate CLECs who converted early for
2 increased costs they may incur as a result of changes required by CLECs that have not yet
3 converted. More specific assurances made by Joint Applicants pre-merger about CLECs
4 being protected by the merger settlement agreement have not proven worthy of reliance.
5 CenturyLink provides no reason why this vague assurance is any more reliable.

6 Ms. Albersheim testifies that the CLEC majority vote that is required before the
7 retirement of MEDIACC is a “powerful mechanism” for which CLECs bargained.⁴⁵²
8 The bargained-for vote mechanism, however, is a vote of all “CMP participants (Qwest
9 and CLEC) in testing.” Under the Merged Company’s unilateral pre- and post-
10 implementation schedule, CenturyLink does not clarify which participants (those in the
11 pre-implementation process? those in the post-implementation process? all?) will be
12 included by the requisite CMP majority vote to determine whether the replacement
13 interface receives sufficient acceptance. Moreover, the vote has no power or purpose if
14 MEDIACC experiences an unrecoverable failure.

15 In addition to the larger issues, there are additional inaccurate and unclear aspects to
16 Qwest’s schedule. In the revised timeline, the Merged Company does not identify, or
17 provide time periods, for many of the specific provisions of the merger conditions, even
18 though it has described the revised timeline as purportedly compliant with the merger

⁴⁵² Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 9, lines 11-20 & p. 20, lines 1-5; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 9, line 15 – p. 10, line 4 & p. 20, lines 9-13.

1 agreement.⁴⁵³ The revised timeline does not identify, for example, development of
2 acceptance criteria,⁴⁵⁴ continued testing until acceptance criteria are met,⁴⁵⁵ a pre-
3 implementation vote in CMP (with this omission indicating no intent to conduct a vote
4 before the December 2011 MTG implementation),⁴⁵⁶ provision of aggregate transaction
5 volume data,⁴⁵⁷ and use of a third party facilitator (not yet even identified).⁴⁵⁸ Each of
6 these items creates uncertainty for the very issues for which the settlement agreements
7 had meant to reduce uncertainty.

8 Also, the revised timeline shows Qwest issuing a notice post-implementation to retire
9 *MEDIACC three weeks before*⁴⁵⁹ *the parties vote* as to whether to accept MTG to
10 replace MEDIACC. MTG replacement of MEDIACC is treated in the timeline as a
11 foregone conclusion, regardless of the merger conditions. Without a successful vote,
12 however, MEDIACC cannot be either retired or replaced per the merger agreements.⁴⁶⁰

13 A premature retirement notice under these circumstances would create additional

⁴⁵³ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 15, lines 2-3; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 15, lines 3-4. *See also* <http://wholesalecalendar.qwestapps.com/detail/292/2011-06-15> (June 15, 2011 Monthly CMP Meeting, Qwest)

⁴⁵⁴ Integra Agreement, ¶12(c)(i). The post-implementation side of the revised timeline includes an arbitrary due date of September 18, 2012 for “Testing Acceptance Criteria Finalized,” though nothing in the merger agreement allows the Merged Company to set an arbitrary end date. At the same time, there is no commitment in the timeline for any development period leading up to that date. Notably, the pre-implementation side of the timeline (ending on December 12, 2011) does not even include this reference to testing acceptance criteria. The omission indicates that the Merged Company has no plan to develop (or finalize) testing acceptance criteria for the successor OSS before implementing it and integrating it for any requesting carrier (including Qwest).

⁴⁵⁵ Integra Agreement, ¶12(c)(i). To the contrary, the timeline states a specific retirement date.

⁴⁵⁶ Integra Agreement, ¶12(c)(i) and Joint CLEC Merger Agreement, p. 3 (second full paragraph).

⁴⁵⁷ Joint CLEC Merger Agreement, p. 2 ¶(C).

⁴⁵⁸ Joint CLEC Merger Agreement, pp. 3-4.

⁴⁵⁹ “Issue Retirement Notice” on January 10 and “Testing Ends – CMP Vote” on January 31, 2013, Exhibit BJJ-1 at JC000377.

⁴⁶⁰ 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”), Exhibit BJJ-3 at JC000011.

1 confusion and more uncertainty. The timeframes are also unreasonably short and provide
2 insufficient time for meaningful input, much less development of “acceptance criteria”⁴⁶¹
3 and “sufficient acceptance of the replacement interface.”⁴⁶² Even setting aside the
4 problem of events not occurring before MTG implementation, when they do appear on
5 the schedule (post-implementation), the revised timeline is too compressed.⁴⁶³ For
6 example, the Merged Company indicates that it will not perform a walk through until
7 July 13 to July 18, CLEC Comments are due shortly after on Friday, July 20, 2011, and
8 the company will issue “final” technical specifications on Tuesday, July 24 – only two
9 business days after receiving CLEC comments. When Joint Applicants represented that
10 the “benefits granted the CLECs through the Department of Commerce and Integra
11 settlements” include “cooperation” and “opportunities for CLEC . . . input,”⁴⁶⁴ CLECs
12 and regulators were lead to believe this opportunity would be meaningful and the input
13 taken into account. The revised timeline is inconsistent with the Joint Applicants’
14 representations to regulators. As PAETEC’s representative said in CMP, the short
15 timeframes do not “bode well” as to the company’s intent.⁴⁶⁵

16 **Q. STAFF POINTS TO QWEST/CENTURYLINK’S MTG IMPLEMENTATION**
17 **SCHEDULE.⁴⁶⁶ ARE ALL OF THE PROCEDURES FROM THE MERGER**

⁴⁶¹ Integra Agreement, ¶12(c)(i), Exhibit BJJ-3 at JC000011.

⁴⁶² Integra Agreement, ¶12(c)(i), Exhibit BJJ-3 at JC000011.

⁴⁶³ E.g., PAETEC email to CMP, June 14, 2011, Exhibit BJJ-51 at JC000384.

⁴⁶⁴ Joint Petitioners Reply Brief, MN Docket MN Dkt. No. P-421, et al./PA-10-456 (Dec. 8, 2010), p. 3.

⁴⁶⁵ June 15, 2011 Monthly CMP meeting, Exhibit BJJ-8 at JC000943.

⁴⁶⁶ Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 18, lines 9-16.

1 **AGREEMENTS REFLECTED IN THE MERGED COMPANY’S CMP**
2 **TIMELINE FOR MTG?**

3 A. No. The Merged Company’s MTG timeline (Exhibit BJJ-1 at JC000377) does not
4 identify, for example, development of acceptance criteria,⁴⁶⁷ continued testing until
5 acceptance criteria are met,⁴⁶⁸ provision of aggregate transaction volume data,⁴⁶⁹ and use
6 of a third party facilitator.⁴⁷⁰ Also, the revised timeline shows Qwest issuing a notice
7 post-implementation to retire MEDIACC *three weeks before*⁴⁷¹ *the parties vote* as to
8 whether to accept MTG to replace MEDIACC. The Commission should require the
9 Merged Company to complete these steps before any MTG implementation.
10 Alternatively, if the Commission for any reason (such as potential for catastrophic OSS
11 failure) allows implementation of MTG to any extent or for any company, the
12 Commission should clearly require that each of the merger agreement procedures be
13 completed before any retirement of MEDIACC (and before announcement MEDIACC
14 retirement) and should require the Merged Company to file documentation with the
15 Commission establishing completion of those steps, including the results of the voting in
16 CMP.

⁴⁶⁷ Exhibit BJJ-3, Integra Agreement, ¶12(c)(i).

⁴⁶⁸ Exhibit BJJ-3, Integra Agreement, ¶12(c)(i). To the contrary, the timeline states a specific retirement date.

⁴⁶⁹ Exhibit BJJ-4, Joint CLEC Merger Agreement, p. 2 ¶(C).

⁴⁷⁰ Exhibit BJJ-4, Joint CLEC Merger Agreement, pp. 3-4.

⁴⁷¹ “Issue Retirement Notice” on January 10 and “Testing Ends – CMP Vote” on January 31, 2013, see Exhibit BJJ-1 at JC000377.

1 **Q. STAFF PROPOSES THAT THE MERGED COMPANY BE ALLOWED TO**
2 **OFFER MTG IN PARALLEL WITH THE CURRENT OSS.⁴⁷² DOES THIS**
3 **IMPACT THE VOTING ACCEPTANCE PROCESS?**

4 A. Shortly after the Joint CLEC settlement agreement was signed, CenturyLink and Qwest
5 explained their agreement in a letter to the Oregon Commission (Exhibit BJJ-6). They
6 said that the agreement “contains some terms that are applicable throughout Qwest’s 14
7 state ILEC region” and that some of these provisions “may apply to *all Oregon CLECs*
8 because they are self-effectuating and deal with systems, such as Section 1.”⁴⁷³ Section 1
9 of the Joint CLEC settlement agreement is the section dealing with OSS, and it provides
10 that the Merged Company will not replace Qwest systems without following the
11 procedures in the Integra settlement agreement.⁴⁷⁴ As explained in the Joint Applicants’
12 letter, this provision applies to all CLECs in any state in Qwest’s 14-state ILEC region,
13 and not to some CLECs but not others.

14 To the extent that the Commission allows some early development or implementation of
15 MTG-XML in Qwest territory (*e.g.*, to address the risk of catastrophic OSS failure), if a
16 CLEC uses MTG-XML before the vote, the voting acceptance process should not be
17 prejudiced by early use of MTG-XML.⁴⁷⁵ Because CLECs are now confronted with a

⁴⁷² Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 16, lines 15-17.

⁴⁷³ Exhibit BJJ-6, March 8, 2011 CenturyLink and Qwest Letter to Oregon Commission, Docket No. UM-1484, p. 1 (emphasis added).

⁴⁷⁴ Exhibit BJJ-4, Joint CLEC (PAETEC) settlement agreement, Section 1, p. 2, ¶1(A).

⁴⁷⁵ Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 12, lines 14-17; see also *id.* at p. 17, lines 7-12.

1 claim of potentially catastrophic⁴⁷⁶ and disastrous⁴⁷⁷ failure of MEDIACC/CEMR, it
2 would hardly be surprising if the number of requests to use MTG-XML increase now that
3 the Merged Company has effectively conveyed to business folks that they are at great
4 peril if they remain on MEDIACC/CEMR, whether the risk is real or not. That does not
5 mean, however, that the companies would have otherwise moved, or moved at this time,
6 and it does not mean that there would be any reason to move before the 30-month merger
7 time period, absent that claimed threat. If the CLEC moves early -- not because it is
8 satisfied with MTG-XML -- but because the risk of unrecoverable MEDIACC/CEMR
9 failure leaves it no choice, the CLEC should not have to give up its rights to participate in
10 acceptance criteria and voting when functionality and other aspects of the replacement
11 system are finally addressed. Joint CLECs, however, bargained for those rights, and the
12 Commission granted all CLECs in Washington those rights when it approved the Integra
13 agreement.⁴⁷⁸ Second, if the CLEC does not move early so that it may exercise those
14 rights, the CLEC is forced into risking harm to itself and its customers in the event of an
15 unrecoverable failure, despite only recently obtaining assurances of certainty and OSS
16 availability in the merger settlement agreements. The CLEC loses either way. Therefore,
17 in my next response, I propose an alternative approach to addressing the acceptance vote
18 problem.

19 **Q. DO YOU HAVE ANY PROPOSALS REGARDING VOTING?**

⁴⁷⁶ Exhibit BJJ- 36, CenturyLink May 2, 2011 email at JC000294.

⁴⁷⁷ CO Preliminary Injunction Response, CO Dkt. No.11F-436 (Aug. 2, 2011), p. 5.

⁴⁷⁸ Order 14, Final Order Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction, (March 14, 2011), p. 137.

1 A. Yes. First, the Commission should require the Merged Company to complete the merger
2 steps, including the voting acceptance process, before any MTG implementation (except
3 in an emergency, as described in PAETEC's CMP CMIP proposal, which is also a part of
4 this proposal), as discussed in my direct and responsive testimony. If the Commission
5 allows an exception to the minimum 30-month time period to account for the risk of OSS
6 failure, other steps in the merger agreements would take place, but they would take place
7 earlier. This proposal eliminates the need to decide which companies may vote when,
8 because there will be one vote before any replacement of MEDIACC/CEMR for any
9 purpose, as intended by the merger settlement agreements.

10 Second, if the Commission for any reason (such as potential for catastrophic OSS failure)
11 allows implementation of MTG in Qwest territory to any extent or for any company, then
12 the Commission needs to address which companies may vote under what circumstances.
13 To allow all applicable CMP participants the ability to have a say in the development of a
14 replacement system and retirement of the current system, but at the same time not allow
15 CMP participants that have implemented a new system to abridge the rights negotiated in
16 the merger settlement agreements,⁴⁷⁹ the voting process should be broken into two
17 groups. The two groups would be: (1) those who have implemented the new system
18 early, and (2) those who have not (*i.e.*, those who would ordinarily have been included in
19 the vote as set out in the merger settlement agreements). At the time of the vote, each
20 group votes, and a majority vote is needed from group one, and a separate majority vote

⁴⁷⁹ Section 12.c.i of the Integra Merger Agreement (Exhibit BJJ-3) and Section 1.C of the Joint CLEC Merger agreement (Exhibit BJJ-4) describe the voting process.

1 is needed from group two.⁴⁸⁰ Testing will continue until the acceptance criteria are met.
2 No system retirement may occur without majority votes from both groups.

3 This proposal better protects the rights of both companies that have implemented the new
4 system and companies that have not. It allows carriers that are forced to implement the
5 new system because of risk of failure of the existing system to have the ability to
6 continue to participate in development of the replacement system to ensure, for example,
7 that it has the required functionality. It also addresses the concern that if a CLEC
8 customer decides to avail itself of MTG prior to its required use as a replacement for
9 CEMR/MEDIACC, that the voting acceptance process not be prejudiced by those
10 CLECs' early use of the system, by allowing those who have not implemented the new
11 system the ability to vote separately.

12 Further, this proposal also makes it clear that the Merged Company bears the risks⁴⁸¹
13 associated with implementation of a replacement system for some set of carriers and not
14 others, prior to the timeframes outlined in the merger settlement agreements, by requiring
15 the Merged Company to meet the development needs of both groups of CLECs.

⁴⁸⁰ Each group's majority vote also needs to represent two-thirds or more of the transaction volumes, consistent with the Joint CLEC Merger Agreement, Exhibit BJJ-4, p. 3, ¶1(C).

⁴⁸¹ Albersheim Direct Test., WUTC Docket No. UT-111254, (Oct. 14, 2011), p. 9, lines 6-10. Ms. Albersheim suggests that CenturyLink accepts the risk that CLECs will seek significant changes to the replacement system after it has been implemented. See *also*, Albersheim CO CenturyLink Answer Test., Docket No. 11F-436T (Sep. 15, 2011), p. 9, lines 3-14.

1 **B. CLEC CONSISTENCY WITH MERGER TESTIMONY**

2 **Q. MS. ALBERSHEIM TESTIFIES THAT CLECS EXPRESS A “NEW CONCERN**
3 **ABOUT THE LEGACY QWEST OSS IN GENERAL.”⁴⁸² PLEASE RESPOND.**

4 A. It is unclear what Ms. Albersheim means by “in general.” If she is referring to all legacy
5 Qwest OSS for *repair and non-repair*, I address the unknown scope of the problem (*e.g.*,
6 whether repair OSS are an exception or whether the company claims other legacy Qwest
7 are similarly aging or inadequately supported) in my direct testimony on pages 117-122.
8 The reasons why CLECs express concern about the scope of the problem, including the
9 Merged Company’s recent conduct and discovery responses, are discussed in my direct
10 testimony.

11 As indicated in my direct testimony, CLECs previously expressed concern about legacy
12 Qwest OSS, but Qwest witnesses testified that the age of the systems does not mean they
13 are antiquated, obsolete or inefficient and that the functions and technologies that are
14 used for “repair processes” are consistent with industry standards.⁴⁸³ The reasons why
15 Qwest and CenturyLink have heightened CLEC concerns about legacy Qwest’s repair
16 OSS more recently are discussed in my direct testimony, in which I describe how Qwest
17 waited until after the Integra settlement agreement was filed before, only two days later,
18 updating its website to indicate an intention to retire and replace CEMR and

⁴⁸² Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 16, lines 9-15; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 17, lines 1-7.

⁴⁸³ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 32-33; *see also*, Denney Direct, CO Docket No. 11F-436T, Aug. 12, 2011, pp. 28-29 (quoting Minnesota testimony of Qwest witnesses Ms. Torrence and Ms. Albersheim). *See also* Exhibit BJJ-60.

1 MEDIACC.⁴⁸⁴ I also describe how, since then, Qwest and CenturyLink have caused
2 uncertainty and doubt by focusing on instability, risk, and the possibility of catastrophic
3 failure in an attempt to justify their conduct and get their way, while switching gears and
4 claiming stability when compliance with their 30-month merger commitment is at
5 issue.⁴⁸⁵

6 In short, Ms. Albersheim chooses to overlook that Qwest and CenturyLink did not start
7 using terms such as “catastrophic” and “disastrous” to refer to its repair OSS until after
8 the Integra settlement agreement was signed. It is not credible to suggest that such
9 terminology, once used, would not naturally cause serious concerns. The heightening of
10 concern is new, and different from the concerns expressed in the merger proceedings,
11 precisely because Qwest and CenturyLink have changed their story from emphasizing
12 pre-merger the “well-established, fully operational and tested” nature of legacy Qwest
13 systems⁴⁸⁶ to, when expedient, focusing post-merger on potential pending disaster.

14 **Q. MS. ALBERSHEIM TESTIFIES THAT IT IS “IRONIC” THAT CLECS**
15 **EXPRESS A CONCERN ABOUT LEGACY QWEST OSS WHEN “IN THEIR**
16 **TESTIMONY AT THE MERGER PROCEEDINGS, THE CLECS WENT TO**
17 **GREAT LENGTHS TO PRAISE LEGACY QWEST’S OSS AND TO INSIST**

⁴⁸⁴ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 55-57; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), Section IV(C), pp. 50-52.

⁴⁸⁵ *See, e.g.*, Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), 64-66, 117-123, 133-142; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), 57-59, 102-107, 116-124. *See also*, Nipps Direct, **tw telecom**, WUTC Docket No. UT-111254 (Oct. 14, 2011), p. 7, lines 7-13; and Nipps Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 7, lines 9-15.

⁴⁸⁶ CO Rebuttal Testimony of Mr. Jones, CenturyLink, Dkt. No. 10A-350T (Oct. 15, 2010), p. 17, lines 15-19.

1 **THAT THESE OSS NOT BE REPLACED WITH LEGACY CENTURLINK**
2 **OSS.”⁴⁸⁷ PLEASE RESPOND.**

3 A. In the merger proceedings, CLECs said, for example:

4 Failure to continue to utilize the legacy Qwest OSS, failure to continue to operate
5 those OSS to provide service that is at least equal to the level of service (***flawed***
6 ***though it has been***) provided by legacy Qwest, and the mishandling of any
7 integration of legacy Qwest OSS would be extremely damaging to competitors
8 and their end-user customers.⁴⁸⁸

9 **Q. ARE YOU SAYING THAT QWEST’S WHOLESALE SYSTEMS AND**
10 **PROCESSES ARE WITHOUT FLAW?**

11 A. No. As explained above, it has taken many years, an enormous amount of
12 industry effort led by the ROC, and many millions of dollars to get Qwest’s
13 wholesale OSS, CMP, processes, procedures and practices to where they are
14 today. ***Qwest’s systems and processes are not perfect, but they are much better***
15 ***than they were prior to the 271 process and CLECs have experience with***
16 ***dealing with those systems.*** By contrast, CenturyLink’s OSS has not been through
17 independent third-party testing, and has not been tested for commercial volumes
18 or shown to be operationally ready for Qwest’s territory. And, given its relatively
19 recent deployment, CenturyLink’s OSS is much less familiar to CLECs. There is
20 a grave concern – grounded in CenturyLink’s lack of experience, the lack of
21 information from CenturyLink and Qwest, and recent system integration failures
22 – that OSS performance will get worse after the proposed transaction absent
23 binding conditions/commitments that ensure continued availability of Qwest’s
24 OSS and the continuation of PIDs and PAPs to measure the ongoing
25 performance.⁴⁸⁹

26 CLECs recognized that, despite flaws in Qwest’s OSS, legacy Qwest OSS was better
27 than the alternative, if CenturyLink’s OSS was the alternative.⁴⁹⁰ Additionally, as shown

⁴⁸⁷ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 16, lines 9-15; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 17, lines 1-7.

⁴⁸⁸ Comments of Cbeyond, Integra Telecom, Socket Telecom, and **tw telecom**, *In the Matter of Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc., d/b/a CenturyLink for Consent to Transfer of Control*, WC Dkt. No. 10-110 (July 12, 2010) [“FCC Merger Proceeding”], p. 26 (emphasis added).

⁴⁸⁹ Gates (QSI) Responsive Test., WUTC Docket UT-100820 (Sept. 27, 2010), p. 63, lines 1-15 (emphasis added); *see also*, Gates (QSI) Answer Test., CO Docket No. 10A-350T (Sept. 15, 2010), p. 63, line 4 – p. 64, line 5 (emphasis added).

⁴⁹⁰ Joint Applicants suggested that CenturyLink’s OSS was the alternative by stating that the Merged Company

1 by the underlined language in the above-quoted language, these excerpts illustrate that
2 CLECs also emphasized the need for continued use of the legacy Qwest OSS with at least
3 the level of service quality provided before the closing date.

4 **Q. MR. HUNSUCKER ALSO CLAIMS THAT CLECS' PRESENT POSITION IS**
5 **INCONSISTENT WITH THE MERGER TESTIMONY.⁴⁹¹ DOES THE JOINT**
6 **CLEC MERGER TESTIMONY QUOTED BY MR. HUNSUCKER⁴⁹² SUPPORT**
7 **CENTURLINK'S ARGUMENT?**

8 A. No. Mr. Hunsucker quotes testimony from the merger testimony of August Ankum of
9 QSI on behalf of Joint CLECs that Qwest's existing OSS is preferable to existing
10 CenturyLink OSS. This confirms that in the merger proceedings CLECs advocated
11 continued use of legacy Qwest's *existing* OSS (*i.e.*, not an as-yet-to-be developed and
12 untested OSS such as MTG). In the quotation provided by Mr. Hunsucker (and shown
13 below), Mr. Ankum specifically argues that CenturyLink should "*not replace* Qwest's
14 *existing* OSS post-transaction."⁴⁹³ The parties are before the Commission, however,

would not need to create any new OSS. See Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 105-109; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 92-94.

⁴⁹¹ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 11, line 17 – p. 12, line 7; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 12, line 9 – p. 13, line 9.

⁴⁹² Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 12, lines 15-18; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 13, lines 6-9.

⁴⁹³ Ankum Answer Test., WUTC Docket UT-100820, (Sept. 27, 2010), p. 51, footnote 83 (quoted in Hunsucker Direct Test. in this matter, only one year later, at page 12, lines 15-18; *see also*, Ankum Answer Test., CO Docket No. 10A-350T (Sept. 15, 2010), p. 50, footnote 83 (quoted in Hunsucker Answer Test. In this matter at page 13, lines 6-7.

1 specifically because the Merged Company is nonetheless replacing⁴⁹⁴ Qwest's existing
2 OSS prematurely.

3 **Q. IS MR. HUNSUCKER'S RECENT CHARACTERIZATION OF HIS**
4 **UNDERSTANDING OF "INTEGRATION" ⁴⁹⁵ CONSISTENT WITH CLEC**
5 **MERGER TESTIMONY AND THE SETTLEMENT AGREEMENTS?**

6 A. No. Mr. Hunsucker attempts to limit OSS integration to the combination of legacy Qwest
7 and legacy CenturyLink systems. This is the argument that I discuss in Section VI(B) on
8 pages 105-112 of my direct testimony. Mr. Hunsucker quotes the following testimony of
9 CLEC witness Dr. Ankum:

10 If CenturyLink is truly concerned about the "wholesale customer perspective,"
11 then CenturyLink will not replace Qwest's existing OSS post-transaction. As
12 evidenced by the CLEC proposed conditions, it is clearly the CLECs' perspective
13 that Qwest's existing OSS is preferable to existing CenturyLink OSS.⁴⁹⁶
14

15 CLEC witness Mr. Gates explained in his Washington testimony why CLEC testimony in
16 the merger proceedings tended to focus on integration between legacy Qwest and legacy
17 CenturyLink systems.

18 I agree that the Joint Applicants' post-merger OSS integration plans are largely
19 unknown.... *Because the Joint Applicants' have stated that the proposed*
20 *transactions will not involve any 'new' OSS systems* (i.e., systems not currently
21 in use by either Qwest or CenturyLink), it is logical to conclude that Joint

⁴⁹⁴ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), Section III, pp. 18-19 & Section VI(C) pp. 112-116; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), Section III, pp. 17-18 & Section VI(C), pp. 97-101.

⁴⁹⁵ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 11, line 3 – p. 12, line 18; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 11, line 16 – p. 13, line 9.

⁴⁹⁶ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 12, lines 15-18; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 13, lines 6-9 (citing to Answer Testimony of Dr. Ankum at footnote 83.)

1 Applicants plan to ultimately replace Qwest's . . . OSS interface with
2 CenturyLink's OSS....⁴⁹⁷

3 Further, the settlement agreement language does limit integration in way described by
4 Mr. Hunsucker. The Settlement Agreement at paragraph 12 states, "the Merged
5 Company will not replace *or integrate Qwest systems* without first establishing a detailed
6 transition plan and complying with the following procedures: . . ."⁴⁹⁸ In its FCC
7 commitments, the Merged Company references integration of Qwest's OSS "with *any*
8 *other OSS*."⁴⁹⁹ The Merged Company cannot now reasonably claim that integration is
9 limited to Qwest OSS with legacy CenturyLink OSS.

10 **C. SCOPE OF PROBLEM AND WHETHER MEDIACC IS AN EXCEPTION**

11 **Q. HAS INTEGRA ASKED QWEST/CENTURYLINK TO DEFINE THE SCOPE OF**
12 **THE PROBLEM, SO THAT INTEGRA WOULD KNOW IF CEMR/MEDIACC**
13 **STABILITY CONCERNS WERE THE EXCEPTION OR THE RULE?**

14 A. Yes. Ms. Albersheim testifies, "Legacy Qwest evaluated the MEDIACC system and
15 determined that both the hardware and the software are no longer fully supported by the
16 vendor."⁵⁰⁰ Integra has been asking whether the potential instability or risk of failure is

⁴⁹⁷ WA Cross Answering Testimony of Timothy Gates, QSI for Joint CLECs, WUTC Dkt. No. UT-100820, p. 6, lines 5-13 (emphasis added). See also Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 108, lines 13-19; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 93, line 15 – p. 94, line 3.

⁴⁹⁸ See Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 106, lines 1-3. The integration issue is addressed in detail in my direct testimony on pages 105-112; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 91, lines 9-11 and pp. 90-97.

⁴⁹⁹ CenturyLink's commitments in the FCC's Order on pages 30-31. (emphasis added)

⁵⁰⁰ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 6, lines 5-6; *see also*, Albersheim Answer Test., Docket No. 11F-436T (Sept. 15, 2011), p. 6, lines 15-16.

1 limited to CEMR/MEDICACC or may apply to other legacy Qwest systems as well since
2 at least February of 2011.⁵⁰¹ In her testimony, Ms. Albersheim equivocates, stating that
3 “MEDIACC could be considered an exception,” without commenting on whether other
4 legacy Qwest OSS are similarly situated.⁵⁰²

5 On October 24, 2011 CenturyLink provided a supplemental response to Joint CLEC
6 Request 01-008, containing a purported review of nearly 300 OSS that support or
7 interface with wholesale customers and claims that MEDIACC “is the only system in
8 which the application required changes as a result of server software and hardware
9 upgrades.”⁵⁰³

10 **D. DEFERRAL IN CMP NOT NOTICE TO CLECS**

11 **Q. MS. ALBERSHEIM STATES THAT QWEST “SUBMITTED” A CHANGE**
12 **REQUEST TO CMP IN NOVEMBER 2010.⁵⁰⁴ WAS THE CHANGE REQUEST**
13 **FIRST SUBMITTED IN NOVEMBER 2010?**

14 **A.** No. Ms. Johnson addresses this question in her direct testimony regarding the two repair
15 OSS change requests (“CRs”) that Qwest submitted in CMP in December of 2008,
16 deferred indefinitely in April of 2009, and then reactivated in 2010, but not until two days

⁵⁰¹ See Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 119-122; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 104-105.

⁵⁰² Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 16, lines 1-3; *see also*, Albersheim Answer Test., Docket No. 11F-436T (Sept. 15, 2011), p. 16, lines 12-14.

⁵⁰³ Exhibit DD-1, CenturyLink Supplemental Response to Joint CLEC Data Request 01-008, Docket No. 11F-436T.

⁵⁰⁴ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 5, 12-13. But *see id.* p. 17, lines 1-2; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sept. 15, 2011), p. 6, lines 9-10. But *see id.* p. 17, lines 10-11 (introduced in 2008).

1 after the Integra settlement agreement was filed. Additionally, on pages 57-62 of my
2 direct testimony, I specifically addressed the reasons why a suggestion by the Merged
3 Company that CLECs were on notice of its later conduct due to these deferred change
4 requests⁵⁰⁵ is not reasonable.

5 **E. COMPLICATION CAUSED BY CENTURYLINK/QWEST**

6 **Q. MS. ALBERSHEIM STATES THAT THIS CASE IS “RELATIVELY SIMPLE**
7 **AND STRAIGHTFORWARD”⁵⁰⁶ BUT CLECS HAVE MADE THIS CASE**
8 **“MORE COMPLICATED THAN IT ACTUALLY IS.”⁵⁰⁷ PLEASE RESPOND.**

9 A. The evidence, including the admissions by the Merged Company that are documented in
10 the Joint CLEC testimony, clearly demonstrates that the actions of CenturyLink and
11 Qwest are in violation of the Joint CLECs’ rights, as set forth in the Complaint.⁵⁰⁸ What
12 has not been so simple or straightforward is detailing the myriad of conflicting,
13 incomplete, and inconsistent claims, arguments, testimony, and actions by the
14 CenturyLink and Qwest that resulted in Joint CLECs being forced to prepare “several
15 hundred pages of testimony and even more pages of exhibits”⁵⁰⁹ to explain where we are
16 today and why the Joint CLECs found it necessary to file this complaint with the

⁵⁰⁵ WA Answer, (Aug. 2, 2011), p. 6, ¶25; *see also*, CO Answer, p. 6, ¶25.

⁵⁰⁶ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 27, line 6; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 27, line 3.

⁵⁰⁷ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 27, lines 8-9; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 27, line 6.

⁵⁰⁸ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 168-173; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 145-149.

⁵⁰⁹ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 27, line 7; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 27, line 4.

1 Commission. The length of the testimony was necessitated by the number of such
2 inconsistent actions and claims to which Joint CLECs had to reply, and document, so
3 very soon after the transaction closing date. It is not particularly time consuming to make
4 incomplete, inaccurate, and/or unsupported statements. It is more time consuming and
5 takes more resources (and more pages) to fill in the blanks and explain inaccuracies. In
6 his direct testimony, Mr. Nipps also expressed concern about CLECs having to expend
7 resources in this manner so soon after the closing date. He said that **tw telecom** is
8 “concerned that the companies completed their merger only months ago and we are
9 already having to come to regulators in order to force the Merged Company to comply
10 with its commitments.”⁵¹⁰ Joint CLECs did not envision this additional resource
11 expenditure when bargaining for a period of less uncertainty post-merger.⁵¹¹

⁵¹⁰ Nipps **tw telecom** Direct, WUTC Docket No. UT-111254, (October 14, 2011) p. 5 lines, 6-10; *see also* Nipps Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 5, lines 10-12.

⁵¹¹ Exhibit BJJ-3, Integra Settlement Agreement, p. 13, §E (emphasis added) at JC000014.

1 **Q. MR. HUNSUCKER ADMITS TO CENTURYLINK/QWEST**
2 **“MISSTATEMENTS,”⁵¹² AND MS. ALBERSHEIM REFERS TO**
3 **“CONFUSION.”⁵¹³ DO THEY IDENTIFY THE SPECIFIC MISSTATEMENTS**
4 **OR ACKNOWLEDGE THAT CONSEQUENCES MAY FOLLOW FROM**
5 **THEM?**

6 A. No. The combination of CenturyLink’s avoiding specifics on the one hand but admitting
7 generally that misstatements were made on the other hand allows the Company to appear
8 as though it has admitted and corrected mistakes when in fact it continues to deny
9 responsibility.

10 **F. FAULT BRINGS LEGITIMATE COMPLAINTS**

11 **Q. DID JOINT CLECS EXPEND THE RESOURCES TO SUBMIT EXTENSIVE**
12 **TESTIMONY FOR THE PURPOSE OF FINDING FAULT FOR THE SAKE OF**
13 **FINDING FAULT, AS SUGGESTED BY MS. ALBERSHEIM⁵¹⁴?**

14 A. No. Ms. Albersheim asserts that, if CenturyLink and Qwest “had not been responsive to
15 the CLEC concerns about MTG, the CLEC testimony would have been full of examples
16 about how Qwest/CenturyLink is not listening to the CLECs.”⁵¹⁵ She also said: “No

⁵¹² Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 10, line 9; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 11, line 1.

⁵¹³ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 13, lines 7-12; *see also*, Albersheim Answer Test., CO Docket 11F-436T (Sep. 15, 2011), p. 13, lines 9-14.

⁵¹⁴ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 14, lines 3-18; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 14, lines 5-20.

⁵¹⁵ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 14, lines 11-13; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 14, lines 13-15.

1 matter what Qwest/CenturyLink does, Integra will find fault.”⁵¹⁶ In other words, the
2 Merged Company seeks to avoid the consequences of its own conduct in violation of the
3 settlement agreements by portraying CLECs as complainers who simply find fault for the
4 sake of finding fault even though, as the documentation accompanying Joint CLECs’
5 direct testimony shows, there is fault to be found in the actions of Qwest and
6 CenturyLink.

7 Similarly, in Minnesota, the Merged Company portrayed the Joint CLECs’ legitimate
8 complaints as a “pounding in regulatory arenas.”⁵¹⁷ The Merged Company’s statement
9 prompted the Minnesota Department of Commerce to ask the Merged Company in
10 discovery: “Is it CenturyLink QC’s position that enforcement of parties’ settlement
11 commitments, and/or enforcement of the accompanying Commission Order adopting
12 those commitments, would constitute ‘pounding in regulatory arenas?’”⁵¹⁸ Joint CLECs
13 have a valid right to bring such Qwest and CenturyLink conduct before this Commission
14 for review and resolution. Doing so is not to find fault for the sake of finding fault or to
15 pound on the company; it is a proper exercise of a legitimate right.

⁵¹⁶ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 14, lines 17-18; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 14, lines 19-20.

⁵¹⁷ Exhibit BJJ-62, MN Aug. 11, 2011 Transcript, p. 25, lines 7-11 (Jason Topp, counsel for CenturyLink) (“it’s a little bit baffling for us to face this kind of pounding in regulatory arenas at the same time that when we talk business to business with these companies it seems like there is an interest in moving forward”). Regarding alleged efforts to talk business to business, *see* Exhibit BJJ-71 (attempts by Integra to resolve this issue, rejected by CenturyLink) and Nipps Direct, **tw telecom**, WUTC Docket No. UT-111254 (Oct. 14, 2011), p. 7, lines 7-13 (describing CenturyLink’s efforts to push its own position rather than respond to **tw telecom**’s concerns). As indicated by **tw telecom**, that a company may be open to moving forward with XML at some point does not mean that Qwest may move forward with XML/MTG in violation of the procedures and timelines in the merger agreements. *See id.* p. 7, line 14 – p. 8, line 2.

⁵¹⁸ MN DOC Information Request No. 6(c) to CenturyLink (Oct. 14, 2011).

1 The Merged Company attempts to portray itself as the injured party, despite its own
2 conduct. In addition to being contrary to the documented facts, Ms. Albersheim's
3 criticism of Integra⁵¹⁹ fails to recognize the relative size of Integra as compared to the
4 Merged Company. The Merged Company earns more revenue by the second week in
5 January than Integra will obtain in a year.⁵²⁰ In addition to greater resources, the Merged
6 Company sought to benefit itself via its merger with Qwest, and it continues to have
7 market power with respect to Section 251 services. It is the Merged Company's means
8 and incentives that should be considered. Integra, a much smaller company, is not
9 expending resources to complain for the sake of complaining; it is raising legitimate
10 concerns in an effort to obtain appropriate relief.

11 **G. QWEST TESTIMONY ON STATE OF QWEST OSS**

12 **Q. HAS THE MERGED COMPANY RECENTLY TRIED TO EXPLAIN AWAY ITS**
13 **INCONSISTENT TESTIMONY REGARDING LEGACY QWEST OSS IN AN**
14 **EARLIER MINNESOTA DOCKET?**

15 A. Yes. Ms. Albersheim attempts to isolate Minnesota Department of Commerce witness
16 Dr. Fagerlund's criticisms to systems that legacy Qwest leases from Telcordia
17 (apparently because CEMR and MEDIACC are not leased from Telcordia).⁵²¹ The

⁵¹⁹ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 14, lines 17-18; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 14, lines 19-20.

⁵²⁰ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 6, line 14 – p. 7, line 6; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 6, lines 4-14.

⁵²¹ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), pp. 15-16; *see also*, Albersheim Answer Test., Docket No. 11F-436T, p. 16, lines 6-8. *See also* Merged Company MN Compliance Filing, p. 9.

1 testimony quoted in my Colorado direct testimony, cited by Ms. Albersheim,⁵²² however,
2 is not by Dr. Fagerlund.⁵²³ The testimony of Ms. Torrence of Qwest regarding
3 compliance of Qwest OSS with industry standards that I cited, specifically includes
4 “repair processes.”⁵²⁴ Also, Ms. Albersheim expressed no exception for repair in her
5 testimony that “*the fact that some systems have been in use for multiple years does not*
6 *mean that they are antiquated. Qwest augments and updates its systems on a regular*
7 *basis to incorporate the latest technology* and to allow Qwest to provision the latest
8 products and services to all of its customers.⁵²⁵ As Qwest now claims that it introduced
9 its change requests in 2008 because of concerns it had then about the long term viability
10 of MEDIACC,⁵²⁶ this would mean that Qwest knew of those concerns at the time of this
11 Qwest testimony in 2009.

12 Ms. Albersheim states that her statements in Minnesota calling Legacy Qwest systems
13 “state of the art”⁵²⁷ were “true and accurate,”⁵²⁸ but excuses what now appear to be
14 contradictions by claiming, “As with all blanket assertions, there are going to be
15 exceptions. **MEDIACC could be considered an exception**, in that Qwest/CenturyLink

⁵²² Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 15, footnote 23.

⁵²³ Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 28-29.

⁵²⁴ Exhibit BJJ-60, MN Surrebuttal Testimony of Rachel Torrence, Qwest, MN Docket No. P421/C-07-370; P421/C-07-371 (Oct. 16, 2009), p. 3, line 19 – p. 4 line 16.

⁵²⁵ Exhibit BJJ-60, MN Surrebuttal Testimony of Renée Albersheim, Qwest, MN Docket No. P421/C-07-370; P421/C-07-371 (Oct. 16, 2009), p. 32, line 14 – p. 33, line 3.

⁵²⁶ See WA Preliminary Injunction Response, WUTC Docket UT-111254, (Aug. 18, 2011), p. 13; *see also*, CO Preliminary Injunction Response, CO Docket No.11F-436 (Aug. 2, 2011), p. 11.

⁵²⁷ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 15, line 17; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 16, line 10.

⁵²⁸ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 15, line 18; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 16, line 11.

1 recognizes that the system is at risk of an unrecoverable failure since it is not fully
2 supported by the vendor.”⁵²⁹ Repair was a key issue in the Minnesota docket, however,
3 and if Qwest’s repair OSS were, in fact, a known but undisclosed “exception” to
4 Ms. Albersheim’s “blanket assertions,” then it was incumbent upon her to disclose that
5 fact to the parties and the Commission to ensure that her testimony would not mislead
6 them.

7 **H. REPLACEMENT AND RETIREMENT ARE NOT SYNONYMOUS**

8 **Q. IS MTG A REPLACEMENT FOR MEDIACC?**

9 A. Yes, and the Merged Company admits this.⁵³⁰ In her testimony, Ms. Albersheim
10 nonetheless suggests that MTG does not count as a replacement for MEDIACC until such
11 time that MEDIACC is retired when she states: “Thus, when Joint CLECs admit that
12 MEDIACC will not be ‘retired’ until 2013, there is no way they can argue that MTG will
13 have ‘replaced’ it until that time.”⁵³¹ When read closely, Ms. Albersheim’s arguments⁵³²
14 boil down to Qwest’s erroneous conclusion that the language in the Integra Settlement
15 Agreement regarding “will not replace or integrate”⁵³³ is no different than the language

⁵²⁹ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 16, lines 1-3; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T (Sept. 15, 2011), p. 16, lines 12-14. [emphasis added]

⁵³⁰ See, *e.g.*, Exhibit BJJ-53, July 1 2011 Qwest CMP Matrix, pp. 10 & 14, at JC000763 and JC000767 (“As stated previously, the MTG project is a proactive effort to develop **a replacement system...**”) (emphasis added) ; *see also* Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 18-19 (quoting additional admissions); *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 17-18.

⁵³¹ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 26, line 16 – page 27, line 2; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T, (Sep. 15, 2011), p. 26, lines 16-18.

⁵³² Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 25, line 18 – p. 27, line 2; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T, (Sep. 15, 2011), p. 25, line 19 – p. 26, line 18.

⁵³³ Exhibit BJJ-3, Integra Settlement Agreement, pp. 8-10, ¶12. See JC000569-JC000571 and Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011) pp. 46-47, *see also*, Denney Direct, CO Docket No. 11F-436T (Aug.

1 “will not discontinue”⁵³⁴ that was included in the Minnesota DOC Merger Settlement, but
2 rejected in the Integra Settlement Agreement. This argument was refuted in my direct
3 testimony.⁵³⁵ Though Ms. Albersheim admits that “‘retire’ and ‘replace’ mean different
4 things,”⁵³⁶ she attempts to equate the two by arguing “they are both predicated on a
5 system no longer being available.”⁵³⁷ She is essentially saying that replace means to
6 replace and retire, but this is incorrect.⁵³⁸ As with its argument regarding “use and offer”
7 language, the Merged Company is attempting to make certain terms of the Integra
8 Settlement Agreement meaningless by not giving them effect.⁵³⁹

9 **XIV. LACK OF GOOD FAITH**

10 **Q. MR. HUNSUCKER TESTIFIED THAT CENTURYLINK HAS ACTED IN GOOD**
11 **FAITH.⁵⁴⁰ DO YOU AGREE?**

12 **A.** No, for all of the reasons stated in the direct and responsive testimony of Joint CLECs.⁵⁴¹
13 The Merged Company is unilaterally implementing its position in violation of the merger

12, 2011), p. 41.

⁵³⁴ Exhibit BJJ-5, Minnesota DOC Agreement, p. 3, ¶III(B)(1) at JC000558 and Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 44-45; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 39.

⁵³⁵ See Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 99, lines 5-15; *see id.* pp. 38-39; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 90, lines 1-10; *see id.* pp. 33-34.

⁵³⁶ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 26, line 15; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T, (Sep. 15, 2011), p. 26, line 15.

⁵³⁷ Albersheim Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 26, lines 15-16; *see also*, Albersheim Answer Test., CO Docket No. 11F-436T, (Sep. 15, 2011), p. 26, lines 15-16.

⁵³⁸ Even the definition of replace cited by Ms. Albersheim makes this clear. See Albersheim Answer Test., CO Docket No. 11F-436T, (Sep. 15, 2011), p. 26, footnote 39.

⁵³⁹ See Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 94-105; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), pp. 85-90.

⁵⁴⁰ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 13, lines 9-12; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sept. 15, 2011), p. 13, line 19 – p. 14, line 2.

⁵⁴¹ The Minnesota Department of Commerce has accurately observed that, “The Joint CLECs’ Comments raise

1 settlement agreements via CMP. The CMP Document provides that the “parties agree to
2 act in Good Faith in exercising their rights and performing their obligations pursuant to
3 this CMP.”⁵⁴² In the merger proceeding, Mr. Hunsucker testified that “CenturyLink
4 acknowledges that any future CenturyLink changes must comply with . . . formal
5 obligations such as Qwest’s CMP.”⁵⁴³

6 Additionally, Qwest’s duty to negotiate in good faith, which is addressed in Section
7 251(c)(1) of the Act and federal rule §51.301, is not limited to negotiation of
8 interconnection agreements. The federal rule provides that an incumbent LEC “shall
9 negotiate in good faith the terms and conditions of agreements to fulfill the duties
10 established by sections 251(b) and (c) of the Act.”⁵⁴⁴ The merger settlement agreements
11 contain terms relating to OSS, and the FCC has long held that “operations support
12 systems and the information they contain fall squarely within the definition of ‘network
13 element’ ... under section 251(c)(3).”⁵⁴⁵ The federal rule includes a non-exhaustive list
14 of examples of actions that violate the duty to negotiate in good faith, including
15 “intentionally misleading or coercing another party into reaching an agreement that it

important concerns about the Merged Companies’ possible knowing and intentional failure to comply with the Settlement Agreements Order.” DOC Comments, MN Docket No. P-421, et al./PA-10-456 (June 30, 2011), p. 2. Exhibit BJJ-74, CMP Document, Section 2.1.

⁵⁴²

Hunsucker Rebuttal, WUTC Docket UT-100820 (Nov. 10, 2010), p. 16; *see also*, Hunsucker Rebuttal, CO Docket No. 10A-350T (Oct. 15, 2010), p. 19. See discussion of Mr. Hunsucker’s merger testimony regarding CMP in Ms. Johnson’s responsive testimony as to CMP and Exhibit BJJ-74.

⁵⁴³

⁵⁴⁴

47 CFR §51.301(a).

⁵⁴⁵

First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499 (1996), ¶516.

1 would not have otherwise made”⁵⁴⁶ and “refusing to provide information necessary to
2 reach agreement.”⁵⁴⁷ Qwest waited until after the Integra settlement agreement was
3 executed and filed before, only two days later, updating its website to indicate an
4 intention to retire and replace CEMR and MEDIACC.⁵⁴⁸

5 In my direct testimony, I discussed the public interest and how the Joint Applicants’
6 failure to comply with their merger commitments concerns the integrity of the
7 administrative and evidentiary process, this Commission’s order approving the merger,
8 and the Commission’s key goal of competition in the telecommunications industry.⁵⁴⁹ I
9 also discussed the context in which the settlement agreements were negotiated and the
10 merger orders were issued,⁵⁵⁰ including the timing of Qwest repair OSS activity and the
11 significance of that timing and the Joint Applicants’ failure to disclose issues despite
12 ample opportunity to do so.⁵⁵¹

13 Based on the documented facts, the Merged Company cannot reasonably deny that,
14 before merger approval, Qwest and CenturyLink (including witnesses and attorneys)
15 knew both that the Qwest had indicated the legacy Qwest repair systems were unstable or
16 inadequately supported and subject to potential failure and that Qwest had expressed

⁵⁴⁶ 47 CFR §51.301(c)(5).

⁵⁴⁷ 47 CFR §51.301(c)(8).

⁵⁴⁸ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 55-57; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), Section IV(C), pp. 50-52.

⁵⁴⁹ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), p. 30; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), p. 26.

⁵⁵⁰ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 27-91; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), Section IV, pp. 23-81.

⁵⁵¹ Denney Direct, WUTC Docket UT-111254 (Oct. 14, 2011), pp. 55-73; *see also*, Denney Direct, CO Docket No. 11F-436T (Aug. 12, 2011), Section IV(C), pp. 50-66

1 concern to Integra and CenturyLink that the Merged Company may not be able to meet
2 its merger commitments. Nonetheless, Joint Applicants continued to represent to CLECs
3 and this Commission that they could meet their merger commitments, including use of
4 CEMR and MEDIACC for a period of years, while maintaining the requisite level of
5 service quality. When doing so, they did not disclose to this Commission Qwest's claims
6 of potential repair system failure and potential inability to meet merger commitments. To
7 the contrary, to obtain Commission approval of their merger, Joint Applicants assured the
8 Commission that the Merged Company would "maintain the existing OSS"⁵⁵² for a
9 period of years and broadly represented to this Commission that, post-merger,
10 "CenturyLink will have *no immediate need (or be under any time pressure)* to make any
11 alterations to OSS in Qwest areas."⁵⁵³ Now, however, CenturyLink is claiming an
12 immediate need and time pressure to alter OSS in Qwest areas due to a known but
13 previously undisclosed risk of potentially disastrous⁵⁵⁴ OSS failure. The Merged
14 Company's pre-merger assurances, which were made in multiple states including
15 Colorado with Joint Applicant knowledge of the alleged problems with CEMR and
16 MEDIACC, cannot be reconciled with the company's post-merger conduct in a manner

⁵⁵² Joint Applicants' Statement of Position, CO Dkt. No. 10A-350T (Nov. 24, 2010), p. 39.

⁵⁵³ Joint Applicants' Statement of Position, CO Dkt. No. 10A-350T (Nov. 24, 2010), pp. 39-40 (emphasis added).

⁵⁵⁴ WA Preliminary Injunction Response, WUTC Docket UT-111254, (Aug. 18, 2011), p. 6; *see also*, CO Preliminary Injunction Response, CO Dkt. No.11F-436 (Aug. 2, 2011), p. 5; *see also id.* at Declaration of Renée Albersheim [Albersheim Washington Declaration], p. 6; *see also*, Exhibit A. Affidavit of Renée Albersheim ["Albersheim Colorado Affidavit"], pp. 7-9.

1 indicating good faith. Yet, without different guidance from the Commission, the Merged
2 Company is willing to dismiss such conduct as a “distraction.”⁵⁵⁵

3 If Joint Applicants had provided notice to affected commissions early, as suggested by
4 Integra in February,⁵⁵⁶ the potential for system failure could have been addressed earlier.

5 The Minnesota Department of Commerce said:

6 [G]iven the settlement agreement and the Merged Company’s commitment to use
7 and offer legacy OSS for thirty months after the closing date of the merger, the
8 Merged Company could have notified the Commission and the affected parties of
9 the necessity for the development of a backup maintenance and repair OSS. The
10 Merged Companies unilateral decision ... reflects a disregard for the terms of the
11 settlement agreements and the Commission’s Settlement Agreement Order.⁵⁵⁷

12 **XV. CONCLUSION**

13 **Q. HAVE YOU ADDRESSED PROPOSED SOLUTIONS TO ADDRESS THE**
14 **ASSERTED OSS RISK, AND DO YOU HAVE ANY ADDITIONAL COMMENTS**
15 **IN LIGHT OF STAFF’S TESTIMONY?**

16 A. Yes. I discussed proposed solutions in Section VII of this testimony. Section VII
17 described available solutions that now need to be considered as a remedy because
18 CenturyLink and Qwest have raised the specter of disastrous OSS failure, including: (a)
19 updating MEDIACC; (b) building MTG to speak both CMIP and XML languages; and

⁵⁵⁵ Hunsucker Direct Test., WUTC Docket UT-111254, (Oct. 14, 2011), p. 10, lines 6-8; *see also*, Hunsucker Answer Test., CO Docket No. 11F-436T (Sep. 15, 2011), p. 10, lines 20-22.

⁵⁵⁶ See Exhibit BJJ-17 at JC000098; *see also* Exhibit BJJ-71.

⁵⁵⁷ DOC Comments, MN Docket No. P-421, et al./PA-10-456 (August 4, 2011), pp. 9-10.

1 (c) some form of funding or monetary compensation,⁵⁵⁸ such as early PAETEC testing,
2 outsourced at the Merged Company's expense, as part of an open, transparent project for
3 which the Merged Company properly bears the costs. Ms. Johnson also discussed Integra
4 efforts since February 2011 to explore a potential exception to the merger time period, if
5 repair is distinguished from other legacy Qwest OSS (based on Qwest/CenturyLink's
6 claimed potential risk of repair OSS failure) and if an exception is acceptable to CLECs
7 and regulators.⁵⁵⁹ It remains Integra's position that, to the extent that any variance from
8 the merger settlement terms is allowed, it should be narrowly tailored to the belated claim
9 of risk of repair OSS failure, and the merger settlement agreement procedures should be
10 respected, except to the limited extent exceptions are necessary to address that risk.
11 Additionally, to the extent that additional or incremental costs result, CenturyLink/Qwest
12 should bear those costs.

13 The Commission should also find that Qwest's and CenturyLink's wrongful conduct was
14 knowing and intentional, for the reasons discussed in this testimony and Joint CLECs'
15 earlier testimony. Staff's conclusions that Qwest and CenturyLink could have avoided
16 the present problem⁵⁶⁰ and that Qwest and CenturyLink lacked diligence⁵⁶¹ are consistent
17 with such a finding. The Commission should find that Qwest has engaged in unlawful

⁵⁵⁸ See October 22, 2010 ex parte filing by PAETEC in the FCC's merger docket, WC Docket 10-110, at page 10; Exhibit WAH-2 to the Jan. 3, 2011 testimony of William Haas of PAETEC in the Washington merger docket, UT-100820 (quoted in Section VII(3)).

⁵⁵⁹ Johnson Direct Test., WUTC Docket No. UT-111254, (Oct. 14, 2011), p. 84 and Exhibit BJJ-71.

⁵⁶⁰ Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 23, lines 7-13. *See also*, Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 13, line 13 – p. 14, line 2.

⁵⁶¹ Williamson Test., WUTC Docket No. UT-111254, (Nov. 30, 2011), p. 17, lines 3-5. *See also*, Notarianni CO Staff Cross Answer Test., Docket No. 11F-436T (Oct. 31, 2011), p. 4, line 18.

1 discrimination and recognize that there should be consequences for unlawful conduct,
2 even assuming the conduct gets corrected going forward.

3 The Commission should require that a combination of the proposed solutions is put in
4 place to help avoid an unrecoverable OSS failure and to ensure adequate and
5 nondiscriminatory procedures are in place in the event of an OSS failure.

6 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

7 A. Yes.

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