

c. Sprint?

**Objection:** The Joint CLECs further object to the request on the grounds that it seeks information that is not relevant to any matter at issue in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. The standard that a CLEC uses to communicate with another carrier is irrelevant to compliance of Qwest and CenturyLink with their legal obligations, including obligations set forth in the Commission's Merger Approval Order, Settlement Agreements"), interconnection agreements, and the federal Telecommunications Act.

**Response:** Subject to, and without waiving, the foregoing objections, Joint CLECs refer to and incorporate their response to Request No. 1-1 above.

**Request No. 1-6:** What standard is currently used by your company in the communication of repair issues to the carriers identified in request 1-6? Do you communicate to any other carrier via CMIP?

**Objection:** The Joint CLECs assume that the request is intended to refer to Request 1-5 rather than Request 1-6 and answer accordingly. The Joint CLECs further object to the request on the grounds that it seeks information that is not relevant to any matter at issue in this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. The standard that a CLEC uses to communicate with another carrier is irrelevant to compliance of Qwest and CenturyLink with their legal obligations, including obligations set forth in the Commission's Merger Approval Order, Settlement Agreements"), interconnection agreements, and the federal Telecommunications Act.

**Response:** Subject to, and without waiving, the foregoing objections, Joint CLECs refer to and incorporate their response to Request No. 1-1 above.

**Request No. 1-7:** Is MEDIACC

- a. Outdated;
- b. Sufficiently stable for your needs;
- c. Sufficiently supported?

**Objection:** Joint CLECs further object to the request on the ground that it is vague and ambiguous. In their Answer to the Formal Complaint and Petition in this docket, at page 2, Qwest and CenturyLink allege the MEDIACC system uses “outdated and obsolete” hardware. When asked in discovery about when they first knew of this condition, using their own characterization of the hardware, however, Qwest and CenturyLink state in their response to Joint CLEC Request No. 4 that, “Whether hardware is ‘outdated’ or ‘obsolete’ is not a binary, bright line determination. Thus, the question is impossible to answer.”<sup>11</sup> Qwest also does not define its use of “stable” or “supported.”

**Response:** Subject to, and without waiving, the foregoing objections, Joint CLECs respond as follows:

- a. Joint CLECs do not believe MEDIACC is outdated. The CMIP protocol used by MEDIACC remains an industry standard protocol.<sup>12</sup> In addition to exchanging repair information with Qwest via CMIP, PAETEC exchanges repair information with Verizon Business using CMIP protocol. From a functional perspective, MEDIACC allows PAETEC’s back office OSS to perform as many automated functions as does the XML protocol based B2B interface that it has in place with AT&T (see response to Request No. 1-1).

To the extent that, by “outdated,” Qwest is referring to the age of the repair OSS or is suggesting that MEDIACC is antiquated, Renee Albersheim of legacy Qwest now CenturyLink, testified: “Importantly, *the fact that some systems have been in use for multiple years does not mean that they are antiquated.* Qwest *augments and updates its systems on a regular basis to*

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<sup>11</sup>WA Merger Compliance Docket, Qwest and CenturyLink’s Responses to Joint CLECs’ First Set of Information Requests, Response to Request No. 4.

<sup>12</sup>See, e.g., <http://www.atlis.org/docstore/product.aspx?id=21171>.

*incorporate the latest technology* and to allow Qwest to provision the latest products and services to all of its customers.”<sup>13</sup> Similarly, Rachel Torrence of Qwest testified: “Qwest's OSS are not antiquated, obsolete or inefficient...It is important not to equate complicated with antiquated. Qwest’s operational support systems (“OSS”) are not antiquated.”<sup>14</sup>

Regarding age, the Merged Company has not shown that MEDIACC is any more “outdated” based on age than Qwest’s other OSS, for which Qwest is not currently making claims of potential instability. Although Integra has asked Qwest to distinguish repair OSS from other OSS<sup>15</sup> to define the scope of any alleged problem,<sup>16</sup> Qwest has not done so and, in fact, refused in discovery in this matter to provide the age of other OSS.<sup>17</sup>

b. To date, yes, MEDIACC has been sufficiently stable for Joint CLECs’ needs. MEDIACC has been operational on a regular basis over time. Joint CLECs have not experienced stability issues with MEDIACC that they consider to be outside the norm for system availability. Qwest indicated in CMP that Qwest tracks outages on all wholesale impacting systems and that there were no more outages last year than the prior year.<sup>18</sup> For CEMR (which interfaces with MEDIACC), for which Integra also tracks outages, there were fewer outages last year than there have been since 2003.<sup>19</sup> Integra and PAETEC asked Qwest to “identify any

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<sup>13</sup>CO Merger Compliance Docket, Direct Testimony of Bonnie Johnson, Exhibit BJJ-60, MN Surrebutal Testimony of Renee Albersheim, Qwest, MN Dkt. No. P421/C-07-370; P421/C-07-371 (Oct. 16, 2009), p. 32, line 14 – p. 33, line 3 (emphasis added).

<sup>14</sup>CO Merger Compliance Docket, Direct Testimony of Bonnie Johnson, Exhibit BJJ-60, MN Surrebutal Testimony of Rachel Torrence, Qwest, MN Dkt. No.P421/C-07-370; P421/C-07-371 (Oct. 16, 2009), p. 2, lines5-10.

<sup>15</sup> E.g., CO Merger Compliance Docket, Direct Testimony of Bonnie Johnson, Exhibit BJJ-17 at JC000098, Integra Feb. 2, 2011 email; Exhibit BJJ-34 at JC000284, Integra April 1, 2011 email; Exhibit BJJ-36 at JC000298, Integra May 3, 2011 email.

<sup>16</sup> See CO Merger Compliance Docket, Direct Testimony of Douglas Denney, pp. 102-105.

<sup>17</sup>WA Merger Compliance Docket, Qwest/CenturyLink response to Joint CLEC Request No. 13.

<sup>18</sup>CO Merger Compliance Docket, Direct Testimony of Bonnie Johnson, Exhibit BJJ-7 at JC000050, CR Detail (Feb. 16, 2011 CMP meeting).

<sup>19</sup>CO Merger Compliance Docket, Direct Testimony of Bonnie Johnson, Exhibit BJJ-7 at JC000050, CR Detail (Feb. 16, 2011 CMP meeting).

notices or other communications about outages or problems that were due to the alleged instability,”<sup>20</sup> and Qwest did not identify such notices or other communications.

Regarding continued stability of MEDIACC (and CEMR, which interfaces with MEDIACC) for at least 30 months after the merger closing date, information provided by Qwest/CenturyLink after execution of the Integra settlement agreement has contained inconsistencies and has been inadequate to allow an independent conclusion as to the actual ongoing stability and viability of MEDIACC. Because of the potential impact to their businesses and their customers, Joint CLECs must take into account information provided by Qwest and CenturyLink regarding the condition and status of Qwest OSS, including MEDIACC. Although it is wrong for the Merged Company to attempt to shift the risk and burden to CLECs in this manner, the reality is that, now that the Merged Company has raised the prospect of potentially catastrophic<sup>21</sup> and disastrous<sup>22</sup> failure of the Qwest repair OSS, CLECs are forced to attempt to address that possibility, despite the period of relative stability that the merger agreements were supposed to have provided.

As to the extent or severity of claimed repair system instability or viability concerns, Qwest and CenturyLink make inconsistent statements such as claiming that the “MEDIACC system is currently stable, but is currently stable and could begin experiencing problems in the near future”<sup>23</sup> while also stating that “it is possible though perhaps *unlikely* that MEDIACC

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<sup>20</sup> E.g., CO Merger Compliance Docket, Direct Testimony of Bonnie Johnson, Exhibit BJJ-12 at JC000069 (Integra Jan. 5, 2011 CMP comments) & Exhibit BJJ-12 at JC000071 (PAETEC Jan. 5, 2011 CMP comments) (PAETEC “poses the same inquiries”).

<sup>21</sup> CO Merger Compliance Docket, Direct Testimony of Bonnie Johnson, Exhibit BJJ- 36, CenturyLink May 2, 2011 email at JC000294.

<sup>22</sup> WA Merger Compliance Docket, Answer in Opposition to Declaratory Relief, ¶ 15.

<sup>23</sup> WA Merger Compliance Docket, Answer, ¶ 2, second paragraph; compare CO Merger Compliance Docket, Answer, p. 2, ¶2, 2<sup>nd</sup> paragraph (“The MEDIACC system is currently stable, but is fourteen years old and *will likely* begin experiencing problems in the near future . . . .”) (emphasis added).

would experience an unrecoverable failure.”<sup>24</sup> Although Qwest and CenturyLink provided these statements of probability to the Commission, in discovery, when asked about a significant and unreparable failure of MEDIACC (as those terms are used in the Washington Answer on page 5) and whether and when Qwest and CenturyLink first identified that concern or probability, Qwest and CenturyLink said: “Qwest/CenturyLink states it has not determined a probability of failure and cannot predict whether or not such a failure will occur.”<sup>25</sup> Qwest and CenturyLink have further stated, in response to Joint CLEC Discovery Request No. 3, that hardware used by MEDIACC is supported by the vendor at a “best efforts” level. Vendor information that Qwest provided in CMP shows, for example, that the operating system used by MEDIACC was at end of support in June of 2003,<sup>26</sup> and that more than eleven years ago, in a June 31, 2000 notice regarding the database used by MEDIACC, a vendor said they “strongly recommend that you upgrade to the newer version.”<sup>27</sup> Qwest has provided no reason why it did not follow that recommendation at any point in the eleven years since then, particularly in light of its recent assertion that it “is not prudent for any industry participant to ignore changes in standards and technological advances.”<sup>28</sup>

Either instability of MEDIACC is an issue for none or for all. If the latter, the solution is not for the Merged Company to ignore the merger agreement requirements but to have sought a timely exception to them from regulators so that it could perform the requisite steps earlier than 30 months for repair OSS. The Merged Company’s decision not to do so places CLECs in a

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<sup>24</sup>WA Merger Compliance Docket, Answer in Opposition to Declaratory Relief, ¶ 32 (emphasis added).

<sup>25</sup>WA Merger Compliance Docket, Qwest and CenturyLink’s Responses to Joint CLECs’ First Set of Information Requests, Response to Request No. 14(c).

<sup>26</sup> CO Merger Compliance Docket, Direct Testimony of Bonnie Johnson, Exhibit BJJ-54, at JC000904, July 18, 2011 Integra Matrix Reply.

<sup>27</sup> CO Merger Compliance Docket, Direct Testimony of Bonnie Johnson, Exhibit BJJ-54, at JC000907, July 18, 2011 Integra Matrix Reply.

<sup>28</sup>WA Merger Compliance Docket, Answer in Opposition to Declaratory Relief, ¶

position of addressing OSS changes during a time when they should not occur per the settlement agreements. PAETEC has made a proposal<sup>29</sup> that addresses the alleged instability of the repair OSS. PAETEC's proposal shows that, even assuming a genuine system instability or viability issue exists, there are other ways to address the problem. PAETEC's option, while still a compromise, is less burdensome and more consistent with the merger conditions than CenturyLink's approach.

c. To the extent that the request concerns vendor support, please see the Joint CLECs' response to Request 1-7.a, which response is incorporated here by reference. To the extent the request concerns support by the Merged Company, please see the Joint CLECs' response to Request 1-7.b, which response is incorporated here by reference. On March 18, 2011, CLECs asked Qwest regarding MEDIACC: "Has Qwest, as the developer, failed to maintain or update the database?" The Merged Company responded on July 1, 2011: "The database has been maintained by Qwest; however, the design decision is to upgrade to industry standard."<sup>30</sup> If the Merged Company's other statements regarding unsupported or insufficiently supported hardware, software and/or databases are factual, however, Qwest has not sufficiently supported MEDIACC's hardware, software and/or databases over time. Before execution of the Integra settlement agreement and afterward in furtherance of obtaining merger approval, however, Qwest and CenturyLink provided assurances regarding continued availability of legacy Qwest OSS,<sup>31</sup> and they represented that "existing OSS arrangements will not be disrupted."<sup>32</sup>

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<sup>29</sup> See JC001040-JC001042. PAETEC made its proposal to the Merged Company on August 9, 2011 and to CMP on August 16, 2011. See JC001045.

<sup>30</sup> See CO Merger Compliance Docket, Direct Testimony of Bonnie Johnson, Exhibit BJJ-53, July 1, 2011 Qwest CMP Matrix, P. 56 (JC000774).

<sup>31</sup> CO Merger Compliance Docket, Direct Testimony of Douglas Denney, pp. 29-38 and 65-66.

<sup>32</sup> Reply Comments of Joint Applicants, FCC WC Dkt. No. 10-110 (July 27, 2010), p. 20 (citing Declaration of William Cheek of CenturyLink on pages 20-21).