BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

IN THE MATTER OF A COMPLAINT BY THE JOINT CLECs AGAINST THE JOINT APPLICANTS REGARDING OSS FOR MAINTENANCE AND REPAIR	Docket No. UT-111254 QWEST CORPORATION AND CENTURYLINK’S OPENING BRIEF

Contents

1 Qwest Corporation dba CenturyLink QC ("Qwest" or "legacy Qwest") and CenturyLink, Inc. ("CenturyLink") (collectively "Qwest/CenturyLink") provide the following Opening Brief in this case

I. Introduction

2 The dispute in this case centers on the wholesale Operational Support Systems ("OSS") that Qwest/CenturyLink offers to CLECs for purposes of submitting repair tickets. Those OSS are known as CEMR (**C**ustomer **E**lectronic **M**aintenance and **R**epair), which is a graphical user interface that allows users to submit requests for repair to Qwest/CenturyLink's back office maintenance and repair systems via the internet, and MEDIACC (**MED**iated **ACC**ess), which is an electronic, computer to computer interface for maintenance and repair.[1] In November 2010, Qwest notified its wholesale customers that it was developing and would offer a new wholesale OSS, known as MTG (**M**aintenance **T**icketing **G**ateway) that performs the same functions as MEDIACC. At that time, Qwest also announced its plans to replace MEDIACC with MTG and to then retire MEDIACC.[2]

3 In late 2010 and early 2011, Qwest/CenturyLink entered into various commitments regarding the continued offering and performance of wholesale OSS in various merger settlement agreements. Subsequent to entering into those agreements, and prior to the close of the merger on April 1, 2011, Qwest modified its plans regarding MEDIACC and MTG, and announced on March 7, 2011 that MTG was no longer identified as a replacement to MEDIACC.[3] Later, Qwest/CenturyLink modified the plan to retire MEDIACC to extend the retirement date to October of 2013.[4]

4 As the testimony and evidence in this case clearly demonstrate, Qwest/CenturyLink is in compliance with the commitments in the merger settlement agreement with Integra and Commission Staff (the "Agreements") that require it to continue to use and offer legacy

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[1] Albersheim Direct Testimony, Exhibit RA-1T, p. 5-6.
[2] *Id.* p. 6.
[3] Tr. 152:4-8; Exhibit BJJ-8.
[4] Exhibit RA-12.

Qwest OSS. There is no prohibition on offering an additional wholesale OSS, which is what MTG will be. Qwest/CenturyLink intends to abide by its commitment to use and offer existing Qwest OSS, and to not retire, replace, or integrate existing OSS until the merger commitments and timelines are met. Adherence to these commitments is evidenced in the published timeline that shows that the steps in the merger commitments are built into the retirement process.[5]

5 During the next 20 months during which the OSS merger commitments apply, there are service quality measurements in place that can be used to gauge whether service quality associated with wholesale OSS has declined. No such decline has been alleged or demonstrated by the complainants, whose testimony indicates that the systems have been stable.[6]

6 The Joint CLECs in this case (Integra Telecom, tw telecom, and PAETEC) ask for various remedies, but any relief must be predicated on a finding of some violation or breach of the Agreement. The CLEC witnesses agree that so long as MEDIACC is offered, and not retired without compliance with the merger commitments, there will be no violation of the Agreements.[7] Thus, no relief is warranted. Further, several of the CLECs now request relief that is different from what the complaint asked for (a halt to implementation of MTG). Thus, the relief requested in the complaint must be denied, and there is no basis to grant any other relief.

7 Qwest/CenturyLink acknowledges that the Joint CLECs base their request for additional relief on the theory that MEDIACC could experience an unrecoverable failure at any time. Qwest/CenturyLink believe that the Joint CLECs have taken what is a legitimate business concern about MEDIACC – one that Qwest/CenturyLink is planning for – and have exaggerated that concern without knowing whether any MEDIACC failures might even

[5] Exhibits RA-12 and RA-14.
[6] Tr. 83:22; 105:6-10; 115:24-116:2; 172:18-173:10.
[7] Tr. 88:20-25; 106:3-17

occur. The evidence in this case shows that MEDIACC is an aging system, using an outdated protocol (CMIP), but is currently stable.[8]

8 MTG, by contrast, uses the most current industry standard XML protocol – one in use by all of the Joint CLECs in this case in one application or another.[9] Qwest was concerned about MEDIACC, and Qwest's analysis showed that updating MEDIACC would be as costly as developing a new system.[10] Under the circumstances Qwest, and now Qwest/CenturyLink, took the prudent course of developing MTG, which can be used now by customers who wish to convert, and which will be ready to be used in the future, should the need arise prior to October 2013. This does not mean that MEDIACC will fail, or experience an unrecoverable failure. It simply means that Qwest/CenturyLink is engaged in prudent business planning. Finally, as described in more detail below, the Joint CLECs' claims of discrimination are unfounded, and are premised on the theory that they should be allowed direct access to Qwest/CenturyLink's back office repair systems – an argument that was rejected in favor of mediated access nearly 10 years ago.

II. Qwest/CenturyLink's Offering of MTG on an Optional Basis Does Not Violate Any Rule, Order, or Merger Settlement Agreement.

A. The Merger Settlement Agreement.

9 All of the parties to this case agree that this dispute involves allegations that Qwest/CenturyLink is violating the merger settlement agreement ("Agreement"),[11] and that the language of the Agreement is important to determining whether those allegations have merit.

[8] Exhibit RA-1, p. 6.
[9] *Id.*, p. 7.
[10] *Id.*; *see also* Exhibit RA-8C.
[11] Exhibit BJJ-4.

10 The applicable language of the Agreement[12] is included in Appendix A to this brief for the Commission's reference, but essentially the Agreement requires Qwest/CenturyLink to "use and offer to wholesale customers" the legacy Qwest OSS for 30 months, and thereafter provide a level of wholesale service quality that is not less than that provided by Qwest prior to closing, which the agreement goes on to define as "functionally equivalent." After the 30 month period, Qwest/CenturyLink may "replace or integrate" Qwest systems provided it has established a detailed transition plan and complied with various procedures, including a 270-day notice, testing, a CLEC vote, and other items.[13]

B. What Does the Agreement Mean?

11 The parties agree that these terms, "use," "offer," "replace," "retire," and "integrate" are the relevant terms in the Agreement. They agree that these terms are not defined in the Agreement, and that they should be given their ordinary meanings.[14] Joint CLECs' allegations appear to be that Qwest/CenturyLink is in violation of all of the requirements imposed by these terms, but a fair reading of the Agreement shows that is incorrect.

1. What Does the Agreement Require and Prohibit?

12 The Agreement requires two things and prohibits three. Qwest/CenturyLink is required to "use and offer" the legacy Qwest wholesale OSS for 30 months following the merger close, which is until October 1, 2013. In this context, those OSS are CEMR and MEDIACC. Qwest/CenturyLink's sworn testimony in this matter, supported by the documentation in the change management process ("CMP"), is that Qwest/CenturyLink will continue to use these systems for CLEC wholesale maintenance and repair functions, and that these systems will continue to be offered to CLECs for those purposes as they were pre-merger.

[12] There are two relevant agreements in Washington, the settlement agreement with Staff, and the Integra agreement – both contain wholesale OSS terms.
[13] All quotes are references to ¶ 23 in the Staff Agreement.
[14] Tr. 201:3-18.

13 After the 30-month period passes, Qwest/CenturyLink may not "replace or integrate" a legacy Qwest system without having provided 270 days' notice and meeting other procedural requirements. In the context of the Agreement, which discusses the "surviving system," the phrase "replace or integrate" means that there are two systems that will end up as one – in the case of a replacement, the first (old) system is eliminated and the second (new) one takes its place. In the case of integration, there are two existing systems that are combined to produce one system.[15]

14 Staff correctly interprets this language as follows:

> MEDIACC is not replaced until it is retired and no longer available. When MEDIACC is retired MTG will be the only wholesale maintenance and repair system providing the maintenance and repair function. Designing a system that will be used as a replacement sometime in the future does not constitute a replacement if the original system is still in use. Offering MTG optionally in parallel with the old system does not constitute the retirement of MEDIACC as long as access to MEDIACC is maintained for the 30 month period.[16]

15 Finally, the "replacement or retirement" of a legacy Qwest system may not take place without acceptance testing. Qwest/CenturyLink has repeatedly affirmed its commitment to the testing and other requirements,[17] and withdrew any CMP references to replacement or retirement of MEDIACC before 2013 well before the complaint in this case was even filed.[18]

2. What Does the Agreement Allow?

16 Items or actions not prohibited by the Agreement (or other legal requirements) are allowed by the agreement. There is no prohibition in the Agreement against *adding* an optional wholesale OSS such as MTG.[19] Joint CLECs do not claim that MTG is prohibited by any other contractual requirements or legal provisions.[20] If the parties intended to prohibit adding

[15] Hunsucker Testimony, Exhibit MH-1T, p. 10.
[16] Williamson Testimony, Exhibit RTW-1T, p. 16
[17] Exhibits RA-1T, pp. 18-19 and MH-1T, p. 7.
[18] Tr. 152.
[19] See fn. 16, supra.
[20] Tr. 127:2-128:5 and 80:25-81:6.

an OSS in the Agreements, there would be terms providing that Qwest/CenturyLink "will use and offer legacy Qwest OSS *but shall not provide other wholesale OSS*" (or similar language) prior to the expiration of the 30-month period – but obviously no such proscriptive provision exists in the Agreement. The Commission should reject Joint CLECs' argument to add or imply terms to the parties' Agreement.

C. What is CenturyLink Doing?

1. Adding MTG Does Not Impact Whether Qwest/CenturyLink "Uses and Offers" MEDIACC, nor Does MTG's Availability Constitute Retirement or Replacement of MEDIACC.

17 As noted above, CenturyLink is simply adding an additional, optional OSS interface, an action that is not addressed by the Agreement and thus not prohibited. The only limitation on Qwest/CenturyLink OSS that applies during the 30-month period is to continue to "use and offer" MEDIACC to CLECs. After the 30-month period expires, the Agreement requires certain procedures to have been followed before a system is "retired" or "replaced." MEDIACC will not be retired or replaced until the agreed upon procedures are followed and the 30-month period is completed. In the meantime, the offering of MTG now does not constitute a replacement of MEDIACC because the original system is still in use. The fact that MTG may replace MEDIACC in the future does not mean that MEDIACC is replaced or retired now. The only way MEDIACC could be considered to be retired or replaced today is if it were no longer available, but that is not the case.[21]

2. Qwest/CenturyLink Will Continue to "Use and Offer" MEDIACC During the 30-Month Settlement Period.

18 It is undisputed that MEDIACC is available and fully operational today, and that Qwest/CenturyLink has committed to maintaining its availability and functionality

[21] Exhibit RA-1T, pp. 26-27 ("'Retire' and 'replace' mean different things, but both are predicated on a system no longer being available. Thus, when Joint CLECs admit that MEDIACC will not be 'retired' until 2013, there is no way they can argue that MTG will have 'replaced' it until that time.").

throughout the 30-month settlement period. These facts are dispositive of Joint CLECs' claims. Joint CLECs unpersuasively argue that Qwest/CenturyLink no longer "offers" MEDIACC because Qwest/CenturyLink indicated that there are risks associated with MEDIACC – that MEDIACC *might* fail. These arguments are based on a cobbled together set of excerpts, snippets, and out of context statements from which Joint CLECs conclude that Qwest/CenturyLink was not candid with the Commission during the merger hearings, and that MEDIACC is likely to fail in the next 20 months.

19 Of course, it is undisputed that MEDIACC has not failed, so their claims are based on the *possibility* of an unrecoverable MEDIACC failure. But every system *might* fail. In fact, over time, every system *will* fail. Speculating about possibilities is not enough to establish any violation of any rule, regulation, law, or merger settlement, not only because MEDIACC has not failed, but also because there is no evidence that such a failure is imminent or likely. Qwest/CenturyLink has presented significant evidence that it will continue to use and offer MEDIACC for the full 30 months of the settlement period. Thus, Qwest/CenturyLink did not mislead the Commission in the merger proceedings. To the contrary, Joint CLECs attempt to distort the purpose of the merger proceeding and Qwest/CenturyLink's statements to make the risks seem more serious and imminent than the evidence actually shows. The arguments of Joint CLECs regarding MEDIACC's stability stand in stark contrast to their own testimony and stated experiences with MEDIACC's actual operation.

3. MEDIACC is not in Imminent Danger of an Unrecoverable Failure.

20 It is important, therefore, to put the Qwest/CenturyLink statements regarding MEDIACC risks in perspective. On this issue, Joint CLECs engage in hyperbole. Qwest/CenturyLink has been transparent and proactive in addressing these risks. As Qwest/CenturyLink has stated, "(the) MEDIACC system is currently stable, but . . . could begin experiencing problems in the near future"[22] and "it is possible though perhaps unlikely that MEDIACC

[22] Qwest/CenturyLink Answer, p.2.

would experience an unrecoverable failure." Of course, "problems" are far different than "unrecoverable failures," but Qwest/CenturyLink has recognized the risks, has been transparent with CLECs about the nature of the risks, and has developed a multi-tiered plan to proactively address and minimize the risks – yet for some reason, Joint CLECs argue that Qwest/CenturyLink has behaved improperly. In fact, Qwest/CenturyLink has acted prudently and properly.

21 Joint CLECs have distorted Qwest/CenturyLink's statements into a claim – unsupported by any evidence or examination of the MEDIACC system – that MEDIACC is at risk of imminent failure, simply because Qwest/CenturyLink acknowledged that a risk exists. The Commission should decline Joint CLECs' invitation to assume facts the evidence does not support. The undisputed evidence is that MEDIACC is currently stable and operates well. Even if one of the four servers running the MEDIACC application should fail, Qwest/CenturyLink has plans to manually "fail over" the application to one of the other servers.[23] The fact that there are some risks given MEDIACC's advancing age is not a reason for panic or overstatements, it is a reason to proceed proactively while maintaining MEDIACC throughout the 30-month settlement period. By offering MTG on an optional basis now, while disclosing the risks associated with MEDIACC, Qwest/CenturyLink is proactively providing CLECs with the opportunity to make their own decision whether to continue with MEDIACC or adopt a system based on current technology and standards, while still complying with every requirement of the Agreements.

4. *CLECs Admit that MEDIACC's Performance Complies with Commission-Approved Standards and Has Been Stable.*

22 To examine the true picture of MEDIACC's performance and risks, the first and most important evidence is how MEDIACC has actually performed. Generally, past performance is a better predictor of future results than speculation. All parties agree that MEDIACC has

[23] Exhibit DD-5 pp.5-6 ("If one of [the four MEDIACC] servers is unavailable for any length of time, most of the components on the other two servers can be used.")

been stable, and its service quality has been acceptable. Integra witness Doug Denney testified that "under the Merged Company's definition of stability, there has been no period of time since at least 2010 when MEDIACC was unstable. The statement that MEDIACC is 'stable today' implies that there was some point in time when MEDIACC was not stable, but there is no evidence that that is the case, at least as the Merged Company defines unstable."[24] Indeed, as Renée Albersheim observed, "MEDIACC has only missed its monthly availability target of 99.25% once since 2010."[25]

23 The Joint CLECs' only criticism of the definition of stability is that the Commission-approved standard of gateway availability defines only a minimum acceptable level of performance.[26] But the Commission approved the 99.25% standard – and so did every other Commission where that issue was litigated in connection with the Performance Assurance Plans that measure acceptable levels of service quality performance for CLECs.[27] Yet in the face of a uniform and unanimous standard approved by every state commission, Joint CLECs offer no alternative standard for measuring MEDIACC stability.

24 Beyond performance measured against the Commission-approved PAP standards, Joint CLECs agree that MEDIACC is currently stable.[28] Joint CLECs concur that there were fewer outages of MEDIACC in 2010 than in any year since 2003, and there were no increases in outages in 2011.[29] Even those outages that have occurred are mostly unrelated to the MEDIACC system itself.[30] As Renée Albersheim testified, "MEDIACC is still operating, it is currently stable, and Qwest/CenturyLink intends to keep MEDIACC in place until its retirement is approved by the CLECs in 2013."[31]

[24] Denney Responsive Testimony, Exhibit DD-2T, p. 28.
[25] Exhibits RA-1T, p. 25 and RA-16.
[26] Exhibit DD-2T, p. 28.
[27] Tr. 174:22-25.
[28] Fn. 6, supra.
[29] Tr. 173:3-10.
[30] Exhibit DD-2T, p. 28.
[31] Exhibit RA-1T, p. 27.

5. The Existence of Some Level of Risk Does not Mean That Qwest/CenturyLink No Longer Offers MEDIACC to Wholesale Customers.

25 Qwest/CenturyLink continues to "use and offer" MEDIACC, and will do so until the 30-month period expires and the agreed-upon procedures are successfully completed. In response, Joint CLECs offer only the unsupportable argument that Qwest/CenturyLink "fundamentally changed the offer" of MEDIACC when Qwest/CenturyLink stated that MEDIACC was subject to certain risks. But the "use" and the "offer" of MEDIACC remains unchanged. Every function of MEDIACC works properly. CLECs use MEDIACC for the same functions and the same operations as before the merger and before the announcement of the MTG system. Qwest/CenturyLink offers those same functions and operations today and will do so throughout the 30-month period.

D. Qwest/CenturyLink Has Not Violated The Agreement.

26 The Agreements require Qwest/CenturyLink to continue to use and offer MEDIACC and not to retire, replace, or integrate it until October 2013, provided certain procedural and testing requirements are met. The evidence in this case shows overwhelmingly that Qwest/CenturyLink is in compliance with the Agreement and that no violation has occurred.

27 tw telecom agrees that no violation has occurred, responding on cross examination that their request in this proceeding is that the Washington Commission "should ask CenturyLink to adhere to the terms and conditions of its settlement agreement ….", and that "tw's interests would be satisfied" as long as Qwest/CenturyLink complies with the provision of paragraph 12 of the Integra agreement in terms of the steps it has to take and the timeline before retiring MEDIACC.[32] Further, it is tw's intent to continue to use MEDIACC for the full 30 months, and tw agreed that under those circumstances, MTG would not be replacing MEDIACC during that time. [33]

[32] Tr. 88:9-25.
[33] Tr. 84:5-21

28 PAETEC also agrees that no violation has taken place, and that if MEDIACC remains in place as required by the merger agreement, then PAETEC's concerns are addressed.[34]

29 Staff agrees that no violation has taken place. Staff's prefiled testimony so indicated, recommending that Qwest/CenturyLink be permitted to go ahead with development and implementation of MTG.[35]

30 Integra witness Bonnie Johnson also testified that the company understood that the conversion to CEMR/MTG was not mandatory at this time, and that under those circumstances Integra would likely remain with CEMR/MEDIACC.[36] As such, even if MTG is available to Integra and other CLECs, MEDIACC will not be retired or replaced for purposes of Integra's operations until the settlement period and agreed-upon procedures are completed.

III. The Commission Should Not Order Any Relief In This Matter.

A. Preventing MTG Implementation Not Only Denies Qwest/CenturyLink the Benefit of the Merger Settlement Bargain, It is Bad Policy.

31 As indicated above, Joint CLECs overstate the risks associated with MEDIACC. But this does not mean the risks are zero, or that the Commission should refuse to allow Qwest/CenturyLink to act proactively to minimize the chance those risks will negatively impact CLECs. If the Commission refused to allow Qwest/CenturyLink to implement MTG now, it would change the Agreements and deny Qwest/CenturyLink the rights bargained for, as set forth above. But apart from the contractual issues, preventing the implementation of MTG would disadvantage CLECs – and not just the CLECs who are parties to this case.

[34] Tr. 106:11-17.
Q. And so long as Qwest follows the timelines and performance duties set forth in the settlement agreement to retire or replace MEDIACC, that would address PAETEC's concerns?
A. Yes, as long as we had the time to develop and be able to talk to the system without losing any of our existing automation.
[35] Exhibit RTW-1T, p. 25.
[36] Tr. 153 :11-154 :17.

32 It is undisputed that if MTG is available, the consequences of an unrecoverable failure of MEDIACC would be dramatically lessened.[37] Most CLECs are CEMR users, and in the unlikely event of an unrecoverable MEDIACC failure, Qwest/CenturyLink can switch users from CEMR/MEDIACC to CEMR/MTG in less than 48 hours.[38] CEMR users would not need to engage in any reprogramming or other work to effect this change other than use a new URL or web address and understand identical information presented in a different format on two screens.[39] Such impact is minimal.

33 For MEDIACC users, the transition period would be longer than the 48 hours or less required to transition CEMR users, but the transition would be much longer and more impactful if MTG were not already operational. For example, during the transition period, a MEDIACC user such as PAETEC could use CEMR/MTG to submit repair tickets – indeed, PAETEC uses CEMR as a backup for MEDIACC today.[40] Staff agrees: CLECs could take advantage of a working CEMR if CenturyLink is allowed to move forward with a new CEMR interface to MTG.[41] Thus, even if the Commission disagrees with Qwest/CenturyLink, Staff, tw telecom, and PAETEC that implementing MTG while MEDIACC remains available does not violate the Agreements, the Commission should permit the optional implementation of MTG as an exception to the Agreements as a matter of good, proactive policy to prevent or minimize possible disruptions.

B. Mediated Access Is Not Discriminatory.

34 Staff and Joint CLECs raise some concern that MEDIACC risks present issues not present for Qwest/CenturyLink's retail operations. There is no discrimination because the differences are structural. Qwest/CenturyLink does not need systems to interface with its own repair systems. MEDIACC, CEMR, and MTG are each examples of "mediated access"

[37] Tr. 329:20-331:11, and Exhibit RA-1T, pp. 22-24.
[38] *Id*.
[39] *Id.*
[40] Tr. 104:24-2545.
[41] Exhibit RTW-1T, p. 18.

for CLECs that require CLECs to use a separate system to interface with or talk to Qwest/CenturyLink systems. At hearing, Joint CLEC witnesses agreed that the FCC and this Commission have ruled that mediated access to repair systems is appropriate.[42] Thus, there is no comparable system to MEDIACC for Qwest's retail operations. Qwest/CenturyLink does not use MEDIACC and no Qwest retail customers use MEDIACC.[43] There are innumerable differences between Qwest/CenturyLink's own repair systems and an *interface* to those systems because the interface is designed to accomplish a different task. Therefore, the fact that the interface MEDIACC is designed differently and has different capabilities than Qwest/CenturyLink's own repair systems is not evidence of discrimination. Indeed, Qwest/CenturyLink's retail repair systems serve both retail and wholesale customers, so the capabilities of those systems do benefit wholesale customers like Joint CLECs. The discrimination claim is illogical and based on a faulty premise.

C. Relief is Inappropriate in the Absence of Any Violation.

35 Without proving a violation of some commission rule, order, or the Agreement, there is no basis for relief in this case. Yet Joint CLECs ask the Commission to do exactly that and order affirmative relief in addition to, or in some cases instead of, their originally requested relief of preventing the release of MTG. As discussed above, legacy Qwest (now CenturyLink QC) continues to "use and offer" MEDIACC now and will do so throughout the agreed-upon 30-month period. Thus, there are no grounds for the Commission to order relief, whether preventing MTG implementation or ordering Qwest/CenturyLink to perform certain acts.

[42] Tr. 195:1-14.
[43] Exhibit RA-1T, pp. 12-13.

D. The Commission Should Reject Joint CLECs' Rebuttal Testimony Proposals.

36 Joint CLECs presented several proposals in Doug Denney's rebuttal testimony that were not requested in their complaint.[44] There is no reason to grant any of the relief Joint CLECs proposed in their rebuttal testimony.

1. Updating MEDIACC Would Prevent the Availability of Current Technology and Industry Standards for CLEC Repair Systems.

37 Doug Denney proposes to "Update MEDIACC" at pages 32-36 of his rebuttal testimony. However, this "proposal" consists mainly of criticizing Qwest for not following through with the initial Change Request to implement MTG (then called CTG) in 2008. Mr. Denney does not describe what actions should or could be taken to "update" MEDIACC, so it is impossible to respond to this proposal. Certainly, Qwest/CenturyLink has committed to maintain MEDIACC and has failover and disaster recovery plans in place.[45] Integra and the other CLECs have the opportunity for input and can vote to prevent the retirement of MEDIACC, as provided in the Agreement, when that proposal is formally presented in 2012 and evaluated during 2013.

38 Moreover, updating MEDIACC as an alternative to implementing MTG would be inefficient and bad policy for the competitive marketplace. MTG uses current industry-standard XML protocol, while MEDIACC uses CMIP, which is older and is not an industry standard for ILEC-to-CLEC telecommunications maintenance and repair, but rather is a wireless standard.[46] MTG has automatic failover capability; MEDIACC has failover capability but that capability is manual.[47] Devoting resources to indefinitely maintain MEDIACC would prevent Qwest/CenturyLink from offering newer technologies and capabilities to CLECs.

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[44] The Joint CLECs' Complaint asked the Commission to prevent Qwest/CenturyLink from implementing the MTG system.
[45] Exhibits RA-18T, p. 5, and RTW-3C.
[46] Tr. 120:1-122:8.
[47] Exhibit DD-5, pp. 5-6.

2. *The CMIP Proposal Benefits One CLEC For Only A Few Months.*

39 The second proposal Mr. Denney proffers in his rebuttal testimony is to modify MTG so that it uses the outdated CMIP "language" rather than or in addition to XML. Again, Mr. Denney fails to describe whether or how this could be done. And importantly, this proposal benefits only PAETEC,[48] so it is curious that an Integra representative proposes this alternative. Beyond these problems, however, the CMIP proposal would take months and significant resources to implement, and would benefit only one CLEC – PAETEC for a very limited period of time.[49] These resources would be largely wasted once MEDIACC is retired and MTG is implemented using only XML.

3. *Qwest/CenturyLink Does Not Oppose Early Development and Testing of MTG But Should Not Bear the Costs.*

40 The third proposal Mr. Denney offers in his rebuttal testimony is to allow early development and testing of MTG. This is exactly what Qwest/CenturyLink is proposing to do, so Qwest/CenturyLink does not oppose this proposal. Mr. Denney, however, proposes that Qwest/CenturyLink bear the costs of this early testing and development, which would be improper. Because the optional offering of MTG while maintaining MEDIACC does not violate the Agreement, there is no reason for Qwest/CenturyLink to bear PAETEC's (or any other carrier's) costs to implement the new system on their end. At the end of the settlement period, CLECs may be required to adopt new systems, including but not limited to MEDIACC. When that occurs, all parties will bear their own costs: Qwest/CenturyLink will bear the costs of developing and testing the new systems, and CLECs will bear the costs on their end to incorporate the new systems into their own business operations. Requiring Qwest/CenturyLink to bear CLEC implementation costs would be unprecedented and unwarranted.

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48 Exhibit RA-18T, pp. 7-8.
49 *Id.*

E. Qwest/CenturyLink Does Not Oppose The Staff Recommendations.

41 Commission Staff made six recommendations summarized at page 24 of Robert Williamson's testimony. Qwest/CenturyLink does not oppose these recommendations, and will update and test the disaster recovery plan as described in recommendation number 6.

F. Response to ALJ Friedlander's Questions

42 Judge Friedlander asked the parties to address two issues in the brief. The first issue is the status of the complaints in Minnesota and Colorado. The other issue is Commission enforcement of a settlement that it neither accepted nor adopted, which in this case is the PAETEC settlement.

43 In Colorado, the parties filed one round of briefs on February 29, 2012, and the case is submitted to the ALJ for a decision. In Minnesota, the Commission has ordered the parties to engage in negotiations to see if issues around the implementation of MTG can be resolved and to have a third party tester involved in testing the failover plan for MEDIACC. The Joint CLECs submitted the Minnesota order as supplemental authority in this case on February 28, 2012. Negotiations are ongoing.

44 On the second issue Qwest/CenturyLink believes that there might, in other cases, be serious issues and impediments to the Commission's contemplated enforcement of such a settlement. However, in this case that issue seems largely if not wholly moot, because there are terms identical to the PAETEC terms in both the Integra and Staff settlement agreements, and Qwest/CenturyLink is not challenging PAETEC's standing to seek relief in this docket.

IV. Conclusion

45 Joint CLECs unnecessarily complicate what is a relatively straightforward dispute. The question before the Commission is whether the Agreement prevents Qwest/CenturyLink from offering a new optional OSS: MTG. Qwest/CenturyLink has agreed to maintain the existing OSS, MEDIACC, for at least 30 months following the close of the merger, until all the agreed-upon procedures have been satisfactorily completed. The relevant language of the

Agreement requires Qwest/CenturyLink to continue to "use and offer" MEDIACC to CLECs during the 30-month period, and Qwest/CenturyLink have agreed to do so. No language, however, prevents Qwest/CenturyLink from introducing a new optional OSS provided it continues to "use and offer" the existing OSS.

46 To address this simple issue of interpreting an unambiguous contract, Joint CLECs submitted nearly 500 pages of prefiled testimony, exclusive of exhibits that consist of several hundred additional pages. Most of these pages are repetitive or argue irrelevant issues. Curiously, however, in all these pages of testimony, there is scant mention of the key fact in this case: after CLECs protested that retiring MEDIACC before October 2013 would violate the Agreement, Qwest/CenturyLink agreed to maintain MEDIACC until the agreed-upon procedures are completed and the 30-month settlement period is complete. Given these facts, as Staff agrees, there is no basis for the Commission to conclude that the offering of MTG on an optional basis violates the Agreement.

47 Nor should the Commission be concerned that MEDIACC is in danger of imminent, unrecoverable failure. While the risk exists, it is undisputed that MEDIACC has been stable and operates well. Qwest/CenturyLink has industry standard disaster recovery plans in place for both MEDIACC and CEMR, has spare parts on hand, and has years of internal expertise gained by operating and maintaining the systems. Thus, by (1) devoting the resources necessary to maintain MEDIACC, (2) following the disaster recovery plan, and (3) developing MTG, Qwest/CenturyLink's approach provides a multi-faceted, proactive approach to systems management that is consistent with merger commitments and protects the public interest.

Respectfully submitted this 14th day of March, 2011.

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APPENDIX A

23. OSS – Wholesale

In legacy Qwest ILEC service territory, after the Transaction closes, CenturyLink will use and offer to wholesale customers the legacy Qwest Operational Support Systems (OSS) for at least two years, or until July 1, 2013, whichever is later, and thereafter provide a level of wholesale service quality that is not less than that provided by Qwest prior to the Transaction's closing, with functionally equivalent support, data, functionality, performance, electronic flow through, and electronic bonding. After the period noted above, CenturyLink will not replace or integrate Qwest systems without first establishing a detailed transition plan and complying with the following procedures:

a. *Detailed Plan*. CenturyLink will provide notice to the Wireline Competition Bureau of the FCC, the Commission, and the Parties to this agreement at least 270 days before replacing or integrating Qwest OSS system(s). Upon request, CenturyLink will describe the system to be replaced or integrated, the surviving system, and steps to be taken to ensure data integrity is maintained. CenturyLink's plan will also identify planned contingency actions in the event that CenturyLink encounters any significant problems with the planned transition. The plan submitted by CenturyLink will be prepared by information technology professionals with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. CLECs will have the opportunity to comment on CenturyLink's plan in a forum in which it is filed, if the regulatory body allows comments, as well as in the Qwest Change Management Process.

b. *CMP*. CenturyLink will follow the procedures in the Qwest Change Management Process ("CMP") Document.

c. *Replacement or Retirement of a Qwest OSS Interface.*
   i. The replacement or retirement of a Qwest OSS Interface may not occur without sufficient acceptance of the replacement interface by CLECs to help assure that the replacement interface provides the level of wholesale service quality provided by Qwest prior to the Transaction's closing. Each party participating in testing will commit adequate resources to complete the acceptance testing within the applicable time period. The Parties will work together to develop acceptance criteria. Testing will continue until the acceptance criteria are met. Sufficient acceptance of a replacement for a Qwest OSS Interface will be determined by a majority vote, no vote to be unreasonably withheld, of the CMP participants (Qwest and CLECs) in testing, subject to any party invoking the CMP's Dispute Resolution process. The requirements of this paragraph will remain in place only until completion of Transaction-related OSS integration and migration activity. If a dispute arises as to

whether such Transaction-related OSS integration and migration activity is complete, the Commission will determine the completion date.

ii. CenturyLink will allow coordinated testing with CLECs, including a stable testing environment that mirrors production, jointly established test cases, and, when applicable, controlled production testing, unless otherwise agreed to by the Parties. Testing described in this paragraph associated with merger-related system replacement or integration will be allowed for the time periods in the CMP Document, or for 120 days, whichever is longer, unless otherwise mutually agreed to by the Parties.

iii. CenturyLink will provide the wholesale carriers training and education on any wholesale OSS implemented by CenturyLink without charge to the wholesale carrier.

d. *Billing Systems*. CenturyLink will not begin integration of Billing systems before the end of the minimum two year or July 1, 2013 period, whichever is longer, noted above, or without following the above procedures, unless the integration will not impact data, connectivity and system functions that support or affect CLECs and their customers.

i. Any changes by CenturyLink to the legacy Qwest non-retail OSS will meet all applicable ICA provisions related to billing and, to the extent not included in an ICA, will be Ordering and Billing Forum (OBF) compliant.