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 **POST-HEARING INITIAL BRIEF OF TW TELECOM OF WASHINGTON, LLC**

INTRODUCTION

tw telecom of washington, llc ("**tw**") respectfully submits this Post-Hearing Initial Brief. **tw** is also a signatory to the Post-Hearing Initial Brief submitted today by Advanced Telecom, Inc., d/b/a Integra, Electric Lightwave, LLC, d/b/a Integra, Eschelon Telecom of Washington, Inc., d/b/a Integra Telecom, Oregon Telecom, Inc., d/b/a Washington Telecom d/b/a Integra and Unicom f/k/a United Communications, Inc., d/b/a Integra (collectively, "Integra"); and Windstream Communications f/k/a McLeodUSA Telecommunications Services, LLC, d/b/a PAETEC Business Services ("PAETEC", and collectively with Integra and **tw**, the "Joint CLECs"), and concurs in the arguments therein. **tw** writes separately to address an issue raised by Qwest Corporation and CenturyLink, Inc. (collectively, "Respondents") in their cross-examination of **tw**'s witness, Mr. Lyndall Nipps. Respondents attempt, by raising **tw**'s unrelated attempt to secure e-bonding in Embarq legacy territory, to deflect attention from their breach of the Settlement Agreement approved by this Commission. This is a red herring: **tw**'s negotiations with Respondents in another service territory are unrelated to the OSS commitments Respondents made in this state, and upon which **tw** has relied.

ARGUMENT

On February 4, 2011, **tw** and Respondents entered into a settlement agreement (the "Settlement Agreement"). Pursuant to the Settlement Agreement, **tw** opted in to the terms of the settlement reached between Respondents and Integra (the "Integra Settlement Agreement"), with certain additional conditions intended to protect existing agreements between **tw** and Respondents.[1] The Settlement Agreement was approved and adopted by the Utilities and Transportation Commission (the "UTC" or the "Commission") in its Order approving the merger transaction.[2] Pursuant to the Settlement Agreement and the Integra Settlement Agreement, Respondents agreed to certain conditions regarding the maintenance of Qwest operational support systems ("OSS") and the required process for the replacement thereof. It is those provisions that are the subject of this proceeding.

In early 2011, **tw** initiated discussions with CenturyLink regarding development of electronic bonding ("e-bonding") for mean time to repair ("MTTR") trouble reporting in legacy Embarq territory.[3] Currently, **tw**'s MTTR trouble reporting in legacy Embarq territory is via a graphical user interface developed by its vendor Synchronoss. To date, **tw**'s attempts to commence and engage in substantive discussions with CenturyLink regarding e-bonding in legacy Embarq territory have been rebuffed.[4]

In cross-examination, Respondents' counsel asked Mr. Nipps a series of questions regarding **tw**'s efforts to secure an e-bonding interface in legacy Embarq territory, as well as

---

[1] *See generally* Appendix E to WUTC, Order 14: Final Order Approving and Adopting, Subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction, (March 14, 2011), Docket No. UT-111254 (the "Final Order").
[2] Final Order at ¶ 292.
[3] Direct Testimony of Lyndall Nipps (October 14, 2011), Docket No. UT-111254 ("Nipps Testimony"), p. 6, lines 3-6; Hrg. Tr. p. 81, lines 12-16 (Respondents' cross-examination of Lyndall Nipps, **tw telecom of washington, llc**). Note that Mr. Nipps' cross-examination testimony erroneously states that discussions with Qwest regarding e-bonding commenced around April 2012; the correct reference is to April 2011.
[4] Nipps Testimony, p. 9, lines 14-17.

regarding **tw**'s use of an XML interface in the service territories of other carriers.[5] **tw** assumes that this line of inquiry was intended to raise questions in the minds of the Administrative Law Judge and the Commission regarding why **tw** is reluctant to convert to MTG in Washington despite its use of, or interest in the use of, similar interfaces in other territories.

As a prefatory matter, it should be noted that **tw**'s objection in this docket is not to the eventual implementation of MTG. Rather, **tw**'s overriding concern is that Respondents adhere to the timelines and procedural protections set forth in the Settlement Agreement approved by this Commission.[6] **tw**'s withdrawal of its objection to the merger of CenturyLink and Qwest was premised upon the Respondents' compliance with the commitments that Respondents voluntarily made in the Settlement Agreement and the Integra Settlement Agreement. A change in OSS is not a mere flip of the switch, and requires a commitment of resources by the CLEC, a commitment that **tw**, in light of the Settlement Agreement, had not planned or budgeted for in the 2011-2012 timeframe.[7]

tw's plans regarding e-bonding in legacy Embarq territory are unrelated to the OSS commitments that Respondents have made in Washington. Obviously, **tw** was aware of its own ongoing efforts to secure e-bonding elsewhere prior to signing the Settlement Agreement here. Had **tw** wished to move immediately to an XML interface in Washington, the company was, of course, fully capable of pursuing that issue in negotiations with Respondents during the merger proceedings. However, **tw** chose not to do so, believing that stability in OSS post-merger in Washington was more beneficial to **tw**'s customers than an immediate change. **tw**'s determination that moving to an XML interface is preferable for MTTR reporting and other

---

[5] Hrg. Tr. p. 79, lines 18-25; p. 80, line 1; p. 81, lines 8-25; p. 82, lines 1-17 (Respondents' cross-examination of Mr. Nipps).
[6] *Id.*, p. 88, lines 20-25; Nipps Testimony, p. 9, lines 17-20.
[7] Nipps Testimony, p. 9, lines 1-7.

trouble administration in other service territories should not serve to gut the merger commitments that Respondents made in this state.

CONCLUSION

Respondents attempt, by raising an unrelated issue, to deflect the Commission's attention from the real question at issue in this docket. Respondents' obligations under the Settlement Agreement are independent of any negotiations between **tw** and Respondents in Embarq legacy territory. **tw** had hoped to make greater progress in those negotiations; **tw** had also relied upon Respondents' compliance with the merger conditions at issue here. It is those conditions that have been breached, and that the Commission should enforce.

Respectfully submitted on this 14 day of March, 2012

DAVIS WRIGHT TREMAINE LLP

Lauren P. Giles (WA 40890)
1201 Third Avenue, Suite 2200
Seattle, WA 98101
Telephone: (206) 757-8259
Facsimile: (206) 757-7259
laurengiles@dwt.com

Attorney for **tw telecom of washington llc**