

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 ANSWER IN
OPPOSITION TO "MOTION FOR
DECLARATORY RELIEF"

- 1 As set forth below, Qwest Corporation and CenturyLink, Inc. ("Qwest/CenturyLink"), answer the motion for "declaratory relief" (in actuality, a motion for a preliminary injunction) ("Motion") by Complainants Advanced Telecom, Inc. dba Integra; Electric Lightwave, LLC dba Integra; Oregon Telecom Inc. dba Washington Telecom dba Integra; Unicom f/k/a United Communications, Inc. dba Integra; McLeodUSA Telecommunications Services LLC dba PAETEC Business Services, and tw telecom of Washington llc ("Joint CLECs" or "Complainants") filed with the Commission on August 10, 2011.
- 2 Joint CLECs ask the Commission to enter an order granting temporary relief during the pendency of this complaint. Qwest/CenturyLink asks the Commission to deny the Motion without further proceedings as the Commission's rules and statutes do not grant the Commission authority to enter a preliminary injunction under the circumstances presented here. If the Commission wishes to consider the relief requested, the Commission should hold an evidentiary hearing on the Motion. This answer is supported by the Declaration of Renee Albersheim which is attached as **Exhibit A** and incorporated herein fully by reference.

I. Introduction

- 3 Joint CLECs fail to justify their request to stop Qwest from implementing the MTG repair interface system, particularly before all the evidence in this case is presented and considered. Once considered, however, the evidence reveals a rather simple story that the Motion obscures. It is undisputed that Qwest/CenturyLink will continue to "use and offer to

wholesale customers the legacy Qwest Operational Support System[] (OSS)” MEDIACC for 30 months following merger close, as agreed in paragraph 12 of the Integra Settlement in Washington later modified by other agreements.¹ Qwest/CenturyLink has reinstated a 2008 Qwest program to provide a new interface between CLEC systems and Qwest systems called Maintenance Ticket Gateway (“MTG”), but Qwest will continue to “use and offer” the existing interface systems, CEMR and MEDIACC, for the agreed-upon period. Prior to replacing the MEDIACC system (the CEMR system will continue to be used even after 2013), Qwest/CenturyLink will follow the agreed-upon procedures, including continued CLEC input through the Change Management Process (“CMP”) and the added merger process, acceptance testing, and a CLEC vote on the replacement system.

4 Preliminary development (and provision) of MTG on an *optional* basis for Qwest/CenturyLink’s CLEC and other wholesale customers is important now, because the MEDIACC system is old and no longer fully supported by the vendor. Prudent management, as well as Qwest/CenturyLink’s commitment to maintain industry standard levels of service quality for CLEC customers, requires a proactive approach now to avoid or minimize potential disruption, while at the same time ensuring that CLECs have full and complete opportunity for input consistent with the merger settlements and commission orders before the “replacement or retirement of a Qwest OSS interface”² occurs in late 2013. But nothing in the Integra Settlement prohibits Qwest/CenturyLink from developing alternatives or from considering changes to the Legacy Qwest systems – otherwise, the CMP that the parties agreed to continue would be meaningless.

5 The language of the Integra Settlement itself does not support Joint CLECs’ claims or Motion, so Joint CLECs largely ignore that language in favor of carefully selected statements and testimony. But the language of the Integra Settlement clearly defines the real obligations

¹ The Integra Settlement is attached hereto as **Exhibit B**.

² Integra Settlement ¶ 12(c).

and rights among the parties. Qwest/CenturyLink is not violating any merger commitments, settlements, or Commission orders, and no injunctive relief is appropriate – especially not the extraordinary relief of a preliminary injunction, which would in fact harm Qwest/CenturyLink.

6 Ultimately, the evidence demonstrates (1) that Joint CLECs will not likely succeed on the merits of their claims, (2) Joint CLECs face no real or immediate danger of irreparable injury, (3) the public interest would be placed at risk if preliminary injunctive relief is granted, and (4) Joint CLECs have offered no security to protect against potential injuries and damages that may result from granting an injunction before a full hearing on the merits of this case.

II. Argument

A. The Commission’s Rules and Laws Do Not Provide for a Preliminary Injunction in This Case.

7 Commission rules do not generally provide for preliminary injunctions. Joint CLECs cite the Commission’s “broad authority” to regulate public utilities, but cite no case or rule that authorizes preliminary injunctions. Indeed, an injunction is an equitable remedy, and the requesting party must meet stringent standards if it is to be granted. The Commission is limited in its authority to those powers expressly granted by statute, or necessarily implied.³ The Commission has the authority to act on a complaint, including a complaint alleging violation of a Commission order, only after notice and hearing. RCW 80.04.110.

8 The Joint CLECs cite RCW 80.01.100, noting that the Attorney General is empowered to enforce the Commission’s orders in court. This may be so, but this matter is not in court, and the ability to issue an injunction is therefore limited to those powers that have been granted to it by statute.

³ *In re Electric Lightwave, Inc.*, 123 Wash.2d 530, 536, 869 P.2d 1045, 1049 (Wash. 1994) (citing *Cole v. Wash. Utils. & Transp. Comm’n*, 79 Wash.2d 302, 306, 485 P.2d 71 (Wash. 1971)).

9 The State of Washington has empowered the Commission to grant injunctive-type relief only in very limited circumstances. Under RCW 34.05.479, and the corresponding Commission rule, WAC 480-07-630, the Commission may conduct an “emergency adjudicative proceeding” to “require that a dangerous condition be terminated or corrected, or to require immediate action in any situation involving an immediate danger to the public health, safety, or welfare requiring immediate action by the commission.” The rule goes on to provide that such situations include, but are not limited to: (a) Inadequate service by a public service company when the inadequacy involves an immediate danger to the public health, safety, or welfare; and (b) Violations of law, rule, or order related to public safety, when the violation involves an immediate danger to the public health, safety, or welfare.

10 Thus, Commission action on an “emergency” basis, which is essentially what the Joint CLECs request, is limited to those circumstances involving “immediate danger” to the public health, safety, or welfare.⁴ The Commission has used this authority sparingly, usually in situations such as pipeline safety issues, or other circumstances involving actual danger to life or property.⁵

11 The Commission should deny injunctive relief in this case, as there is no showing that there is any immediate danger to the public health, safety, or welfare. The procedural schedule has not yet been established in this matter, but a schedule has been established in Colorado which provides for a hearing of the entire matter, with full opportunity for discovery, multiple rounds of prefiled testimony, and an evidentiary hearing with cross-examination of witnesses within just a few months. A similarly expedited schedule could be established in

⁴ The Commission has previously stated that “It is useful to analogize the procedural options available to the Commission under [a complaint] to those in civil court where a petitioner may seek injunctive relief. The Administrative Procedure Act allows an agency to grant relief analogous to a preliminary injunction (citing RCW 34.05.479).” *Air Liquide America Corporation, et al., v. Puget Sound Energy, Inc.*; In re: Petition of Puget Sound Energy, Inc. for an Order Reallocating Lost Revenues Related to any Reduction in the Schedule 48 or G-P Special Contract Rates; Docket Nos. UE-001952 and UE-001959, Sixth Supplemental Order, January 22, 2001.

⁵ *Washington Utilities and Transportation Commission v. Tidewater Barge Lines Inc.*, Docket No. UG-001156, Complaint and Emergency Order to Perform Tests as a Condition of Resuming Operations, July 26, 2000. (This case involved leakage from a petroleum pipeline.)

Washington if the Commission deems it appropriate, but that issue can be discussed at the prehearing conference.

B. The Evidence Does Not Support Injunctive Relief

12 Even if the Commission had broad authority to grant an injunction without an evidentiary hearing, that relief is not supported by the claims made by the Joint CLECs. Joint CLECs' motion almost exclusively focuses on its ultimate claims for relief in this case, and spends little time explaining why the Commission must act now as opposed to waiting to consider all the evidence under established procedures. Joint CLECs want the Commission to stop an action that does not harm Joint CLECs and in fact provides an alternative system that some carriers have long desired. Development of MTG does not deprive Joint CLECs of any rights, maintains current systems, protects against potential disruptions, and complies with all relevant merger settlements, commitments, and orders.

13 In the event that the Commission determines to consider Joint CLECs' motion, the rules of civil procedure (specifically Rule 65, which governs injunctions) and interpretive decisions provide the relevant standards to determine whether such relief is justified. The general criteria governing the issuance of a preliminary injunction are outlined in *Tyler Pipe Indus., Inc. v. Department of Rev.*, 96 Wn.2d 785, 638 P.2d 1213 (1982): One who seeks relief by temporary or permanent injunction must show (1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him. The state's appellate courts have consistently held that a preliminary injunction "will not issue in a doubtful case." *E.g., Tacoma Stands Up For Life*, 106 Wn.2d 261, 265, 721 P.2d 946 (1986); *Tyler Pipe*, 96 Wn.2d at 793. To determine whether a clear right has been shown, the court must analyze the moving parties' likelihood of prevailing on the merits. *Id.*

14 In examining the preliminary injunction factors, the Commission must also consider that a preliminary injunction is an “extraordinary equitable remedy” “designed to prevent serious harm. Its purpose is not to protect a plaintiff from mere inconveniences or speculative and insubstantial injury.”⁶ As demonstrated below, Joint CLECs fail to meet these criteria.

15 Moreover, Rule 65 contemplates a “hearing” on a preliminary injunction, and Joint CLECs request a preliminary injunction based solely on two affidavits that simply agree with the allegations of the Amended Complaint and the Motion. Rule 65 also expressly requires the party requesting a preliminary injunction to post security sufficient “for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” Joint CLECs propose no bond or security, and as explained below, any security would have to be substantial in order to protect Qwest/CenturyLink and others from potentially disastrous consequences that might occur if Qwest/CenturyLink is not permitted to continue the schedule for MTG (Maintenance Ticket Gateway). At a minimum, if the Commission considers Joint CLECs’ Motion, it should hold an evidentiary hearing and require Joint CLECs to post sufficient security.

1. Joint CLECs Are Not Likely To Prevail on the Merits – the Current Plan Does Not Breach the Merger Settlement.

16 In order to prevail on the merits of their Complaint, Joint CLECs must demonstrate that Qwest/CenturyLink has violated an agreement, merger commitment, or a Commission order, which Qwest/CenturyLink clearly has not. Joint CLECs’ Motion rarely references the precise language of the merger settlement they claim is being violated. Instead, the Motion primarily attempts to change the agreement by referring to alleged statements and communications in other contexts. For example, Joint CLECs point to statements by Qwest witnesses in the Minnesota merger proceedings discussing the 30-month period as a

⁶ *Tyler Pipe Indus., Inc. v. Department of Rev.*, 96 Wn.2d 785, 796; 638 P.2d 1213 (1982)

“moratorium,” or Washington testimony that the period is a “freeze,”⁷ but those words in isolation have no real meaning, and the Integra Settlement does not use those terms.

17 The Integra Settlement is not ambiguous or unclear, so it is the language of the agreement that is controlling. A copy of the Integra Settlement is attached hereto as Exhibit B for the Commission’s reference. The main point of disagreement in this case revolves around paragraph 12 of the Integra Settlement, subparagraphs (a)-(c), which provides (Qwest/CenturyLink has bolded key portions of the language):

12. In legacy Qwest ILEC service territory, after the Closing Date, the **Merged Company 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 Closing date, including support, data, functionality, performance, electronic flow through, and electronic bonding. **After the period noted above, the Merged Company will not replace or integrate Qwest systems without first establishing a detailed transition plan and complying with the following procedures:**

a. *Detailed Plan.* The Merged Company will provide notice to the Wireline Competition Bureau of the FCC, the state commission of any affected state and parties to this agreement at least 270 days before replacing or integrating Qwest OSS system(s). Upon request, the Merged Company will describe the system to be replaced or integrated, the surviving system, and steps to be taken to ensure data integrity is maintained. The Merged Company’s plan will also identify planned contingency actions in the event that the Merged Company encounters any significant problems with the planned transition. The plan submitted by the Merged Company will be prepared by information technology professionals with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. CLEC will have the opportunity to comment on the Merged Company’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.* The Merged Company will follow the procedures in the Qwest Change Management Process (“CMP”) Document.⁸

Replacement or Retirement of a Qwest OSS Interface.

⁷ Motion, page 5.

⁸ The Qwest CMP Document is available at <http://www.qwest.com/wholesale/cmp/>

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 Closing Date (as described in paragraph 12 above). 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 merger-related OSS integration and migration activity. If a dispute arises as to whether such merger-related OSS integration and migration activity is complete, the state commission will determine the completion date.

ii. The Merged Company 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. The Merged Company will provide the wholesale carriers training and education on any wholesale OSS implemented by the Merged Company without charge to the wholesale carrier.

18 Joint CLECs' Motion does not dispute that Qwest/CenturyLink will continue to "use and offer" MEDIACC for CLEC customers until the 30-month period has passed, and that MEDIACC will not be "replace[d] or retire[d]" until testing and a favorable CLEC vote is accomplished in 2013. Curiously, within the Motion's nearly five pages of detailed history of the communications in the CMP (pages 6-11 of the Motion), there is no reference to the May 18, 2011 CMP meeting in which Qwest/CenturyLink proposed that the CEMR/MEDIACC retirement Change Request (CR) be withdrawn, and the industry representatives agreed.⁹ MEDIACC will not be replaced until late 2013.

⁹ Albersheim Declaration, ¶ III(1). As a result of the May 18 meeting, the portion of the CR pertaining to the retirement of CEMR/MEDIACC has been withdrawn. The CR was updated through CMP on May 31, 2011 to reflect a withdrawal date of May 18, 2011. *Id.*

19 Nor do Joint CLECs dispute that MTG is not a legacy CenturyLink system that is being integrated with Qwest systems, but rather a Qwest-developed update to legacy Qwest systems. Joint CLECs' complaint is with the fact that Qwest/CenturyLink is developing MTG as an additional, optional system during 2011. But nothing in the Integra Settlement above prevents Qwest from updating its own systems, including the development of new systems, provided it continues to "use and offer" existing systems to wholesale customers and does not "retire or replace" such systems until the 30-month period passes and the required procedures are followed.

2. CLECs Are Not Harmed Under the Current Plan

20 Joint CLECs spend a mere page and a half discussing the alleged "irreparable harm" that will result if temporary relief is not granted.¹⁰ There is no declaration offered in support of these allegations, nor is there any effort by the CLECs to describe the harm, other than to generally allege that there will be "uncertainty" created by the planned implementation of MTG. Even if true, this does not rise to the level of substantial and irreparable harm contemplated as a precondition to granting an injunction.

21 Joint CLECs also point to alleged harm to the public interest. Joint CLECs are correct that the public interest is a legitimate factor for the Commission to consider in this case, but Joint CLECs offer nothing more than speculation that some harm to competition might result from the implementation of MTG. Joint CLECs quote provisions of the Commission's order in the merger proceeding, but fail to make any showing that the possible harms identified by the Commission are likely or even possible in this case.

22 Joint CLECs quote from the paragraph in the merger order where the Commission expressed concern that without meaningful conditions, the merger could result in the company (1) attempting to extract monopoly-like rates for its wholesale services; (2) impose unreasonable

¹⁰ Motion, pages 24-25.

terms and conditions in its ICAs and wholesale contracts; and (3) weaken overall wholesale service quality.¹¹

23 However, Joint CLECs do not even allege, much less establish, that the development and implementation of MTG will result in rate increases, unreasonable contract conditions, or reduced service quality overall. As such, the harms alleged to the public interest are purely speculative on the part of the Joint CLECs. Further, because existing systems are being retained for the period of time required in the settlement agreement, there is no violation of either the agreement or the order, and no harm to the public interest in that respect.

24 Furthermore, the Joint CLECs ignore the Commission's discussion in paragraph 96, which establishes the context of the stated concerns.¹² This discussion makes it clear that the focus of the concerns was a CenturyLink replacement of a Qwest OSS with an untested CenturyLink OSS. That is not the case with MTG, which is a Qwest initiative that was begun well before the merger closed. Nevertheless, Qwest/CenturyLink has committed to comply with the merger conditions in connection with the replacement of MEDIACC with MTG.

25 Qwest/CenturyLink has stated repeatedly in the CMP that MTG is being offered to the CLECs as an additional, optional alternative to MEDIACC, that Qwest/CenturyLink will continue to use and offer CEMR to wholesale customers, and that Qwest/CenturyLink will continue to use and offer to wholesale customers the MEDIACC application until late 2013,

¹¹ Motion, pages 24-25, citing the Merger Approval Order at ¶¶ 92-94 (actually ¶¶ 94 and 95).

¹² Merger Approval Order, ¶ 96. "In this proceeding, the record is clear that there are marked differences in the wholesale service delivery capabilities of the acquiring entity, CenturyLink, and the company being acquired, Qwest. Qwest is the legacy BOC whose wholesale services and interconnection terms and conditions were established pursuant to rigorous and extensively detailed regulatory proceedings intended to facilitate local telephone service competition. On the other hand, although CenturyLink is a national telecommunications carrier that is also subject to significant wholesale service delivery obligations and systems, it is undeniable that its wholesale service delivery systems, particularly its OSS, have not been subject to the same level or degree of regulatory inquiry and testing that has been applied to Qwest. For this reason, we view the transaction as creating a risk that CenturyLink may not provide the quality and functionality of wholesale service now afforded by Qwest. Simply stated, the regulatory histories of the two companies raise concerns about the effectiveness of the combined company's post-merger wholesale service offerings."

consistent with the timeline agreed to in the merger agreements.¹³ The CLECs are not required to expend resources until the comment and input process begins for the 2013 MEDIACC replacement.¹⁴ The CLECs do not have to participate in the initial implementation of MTG.¹⁵ MTG is an optional alternative to MEDIACC.¹⁶ CLECs may choose to participate in the initial implementation at their own discretion, without prejudice to their rights to offer input, comment, and participate in testing until 2013.¹⁷

26 The design of MTG is not locked in following its initial implementation in December 2011.¹⁸ In 2013, the CLECs will have a full opportunity to provide input to the design of MTG as outlined in the implementation schedule, including the exercise of voting rights as provided in the merger settlement agreements.¹⁹ The CLECs have ultimate control over whether CenturyLink is allowed to retire MEDIACC as the retirement will only be possible by vote of the CLECs per the merger agreement.²⁰ The opportunity to vote during the 2013 phase of implementation ensures that CLECs' rights to a system that provides service levels consistent with industry standards is preserved.²¹ If Qwest/CenturyLink's design and implementation of the MTG system does not pass the CLEC vote, it cannot replace MEDIACC under the merger agreements.²² Thus, Qwest/CenturyLink bears the risk of having to make changes to comply with CLEC input and votes if reasonable CLEC design requirements require significant changes to what is developed in 2011 for MTG during the 2013 implementation schedule.²³ CLECs bear no additional risk by waiting to comment until that timeframe.

¹³ Albersheim Declaration ¶ III(1).

¹⁴ Albersheim Declaration ¶ III(3).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Albersheim Declaration ¶ III(4)

¹⁹ *Id.*

²⁰ Albersheim Declaration ¶ III(6).

²¹ *Id.*

²² *Id.*

²³ Albersheim Declaration ¶ III(5)

27 There is no real and immediate danger of injury to Joint CLECs because they have rights to input and a CLEC vote before MEDIACC is replaced in 2013 – rights which Qwest/CenturyLink affirms and intends to comply with. Because Joint CLECs retain these rights, there is no injury, much less an immediate one. The only risk of injury to Joint CLECs might come in 2013 if Qwest/CenturyLink replaces MEDIACC without following the merger agreements, which it will not do. The request would stop the development and offering of MTG now—long before 2013 and the retirement and replacement of MEDIACC.

28 Given these facts, Joint CLECs cannot demonstrate any breach of the Integra Settlement or any other commitment or Commission order, nor can they demonstrate any harm or injury. The simple fact is that even with the development and implementation of MTG, CLECs who use MEDIACC do not have to change anything about the way they interface with Qwest/CenturyLink’s repair systems until late in 2013 – exactly as the parties agreed in the merger commitments. Joint CLECs’ complaints that Qwest/CenturyLink’s optional implementation of MTG in 2011 might render the 2013 implementation a “fait accompli”²⁴ represent unfounded speculation at odds with Qwest/CenturyLink’s statements in the CMP. Such speculation assumes that Qwest will breach the Integra Settlement in 2013 and replace MEDIACC with MTG on a mandatory basis even if MTG fails testing and a CLEC vote in 2013.

29 The evidence is to the contrary; Qwest/CenturyLink’s communications regarding the MTG offering have demonstrated the company’s commitment to considering and implementing CLEC input as part of CMP. For example, when CLECs voiced concerns about Qwest’s announcement in November 2010 that MEDIACC and CEMR would be retired during 2011, Qwest changed its plans so that CEMR will not be retired at all, and MTG will initially be developed only as an optional alternative to MEDIACC, and will not replace MEDIACC until late 2013, and then only as set forth in applicable merger agreements and

²⁴ Motion, page 16.

commitments.²⁵ Against Qwest/CenturyLink's responsiveness to CLEC concerns and complaints in the CMP forum, Joint CLECs' unfounded speculation that Qwest/CenturyLink *might* breach the Integra Settlement in 2013 is no basis for enjoining preliminary development of MTG now. Joint CLECs cannot prove any violation of the Integra Settlement, any other merger commitment or settlement, or any Commission order. As such, Joint CLECs are not likely to prevail on the merits of this case, and therefore preliminary injunctive relief must be denied.

3. A Preliminary Injunction Would Disserve the Public Interest

30 Granting a preliminary injunction could cause more problems than it would solve or prevent. As stated above, MEDIACC will not be retired or replaced until 2013, and Qwest/CenturyLink will continue to "use and offer" this legacy Qwest OSS to CLECs until the 30-month period agreed to in the Integra Settlement is over. Beyond speculating that Qwest/CenturyLink might not comply with the Integra Settlement in 2013, Joint CLECs articulate little harm or injury justifying preliminary injunctive relief now, and certainly not before a full hearing on the merits. Such an injunction could prevent proactive management of the repair OSS interfaces MEDIACC, CEMR, and MTG, to the detriment of all CLECs and other wholesale customers.

31 A primary reason Qwest introduced MTG in 2008 was because Qwest was concerned about the long term viability of MEDIACC. The system was implemented in 1995, and the hardware and software used for MEDIACC are no longer fully supported by the vendors.²⁶ Like all aging systems, MEDIACC will need to be replaced at some point, and waiting too long could be harmful. After delaying the implementation of a replacement system, the need for proactive action grows greater every day.

²⁵ Albersheim Declaration ¶ IV(1).

²⁶ Albersheim Declaration ¶ V(1).

32 Given its age and eroding vendor support, it is possible though perhaps unlikely that MEDIACC could experience an unrecoverable failure. It is prudent for Qwest/CenturyLink to have a new system in place as soon as possible just in case such a failure occurs. While CenturyLink plans to support MEDIACC until 2013, consistent with its merger agreements, MTG will be available should an unrecoverable failure occur. While Qwest/CenturyLink cannot predict when or if MEDIACC will fail, it is prudent to develop and offer MTG on an optional basis as soon as possible to mitigate the consequences of any such failure.²⁷ Development of MTG now, while continuing to use and offer MEDIACC, complies with merger agreements *and* provides proactive technology management that protects CLECs and their customers.

33 If a failure of MEDIACC occurs without a backup developed to the fullest extent possible, CLECs, their customers, and Qwest/CenturyLink will all be harmed. CLECs will be negatively impacted if MEDIACC experiences an unrecoverable failure and MTG is not in place as an alternative system.²⁸ In that circumstance, all CLECs will have to call in repairs until MTG development is completed.²⁹ Those CLECs' customers will be similarly impacted if their repair requests are not timely addressed.³⁰ In addition, Qwest/CenturyLink's other wholesale customers will be harmed if they must maintain a non-standard interface in order to submit B2B repair transactions to Qwest/CenturyLink.³¹

34 Moreover, apart from any risk that MEDIACC might fail, prohibiting development of MTG would negatively impact other wholesale customers who desire to move to a more current industry standard interface rather than to continue to use MEDIACC.³² Proactive systems management is part of the process for ensuring that Qwest's systems continue to meet

²⁷ Albersheim Declaration ¶ V(3).

²⁸ Albersheim Declaration ¶VIII(1).

²⁹ *Id.*

³⁰ Albersheim Declaration ¶ VIII(4).

³¹ Albersheim Declaration ¶VIII(2).

³² Albersheim Declaration ¶ VIII(3).

standards set forth in interconnection agreements, commission rules, and industry standards. The Integra Settlement importantly left existing interconnection agreements in place, including the CMP forum.³³ A key function of CMP is to facilitate systems change over time, and fundamentally the development of MTG is no different than other systems updates implemented through CMP over the years.³⁴

35 Industry standards, such as those established by ATIS,³⁵ are constantly evolving and changing.³⁶ Many CLECs, including Integra, are members of ATIS.³⁷ Industry standards were key to the development of processes for interconnection to allow pre-ordering, ordering, maintenance and repair, and billing of services as required by the Telecommunications Act of 1996.³⁸ It is not prudent for any industry participant to ignore changes in standards and technological advances,³⁹ and that was not the intent of the merger commitments.

36 An example of systems upgrades to meet evolving industry standards occurred when Qwest converted its ordering B2B interface, Interconnect Mediated Access (“IMA”) from EDI to XML in 2006. The CLECs approved that conversion, and approved the retirement of IMA EDI in 2007.⁴⁰ Today, other CenturyLink wholesale customers have expressed interest in an ATIS compliant B2B interface (like MTG) for maintenance and repair.⁴¹ Continuing development of MTG, which complies with current industry standards, while still using and offering MEDIACC until the agreed procedures are completed in 2013, benefits providers who seek to move to industry-standard-compliant repair interfaces now while protecting Joint CLECs’ rights.

³³ Albersheim Declaration ¶ VII(1).

³⁴ *Id.*

³⁵ Alliance for Telecommunications Industry Solutions.

³⁶ Albersheim Declaration ¶ VII(2).

³⁷ Albersheim Declaration ¶ VII(3).

³⁸ Albersheim Declaration ¶ VII(4).

³⁹ Albersheim Declaration ¶ VII(5).

⁴⁰ Albersheim Declaration ¶ VII(6).

⁴¹ Albersheim Declaration ¶ VII(7).

37 As Joint CLECs note in their Motion, Qwest/CenturyLink has stated at different times that MEDIACC is at risk, is stable, or could experience failure.⁴² These statements are not inconsistent; all are true. MEDIACC currently works properly, but every passing day adds more risk that the aging system could fail. By seeking to stop MTG now, Joint CLECs ask the Commission to endorse increasing risk. Prudent and proactive management requires development of MTG as a backup and eventual replacement, and it is appropriate to seek user input and specifications as are outlined in Qwest/CenturyLink’s disclosed CMP timeline both in this initial stage and later when it is part of a replacement process for MEDIACC.

38 In fact, Joint CLECs have not (yet) sought to stop the development of MTG, only the “implementation and integration”⁴³ of that system, but it would not serve the public interest to stop either the development or implementation. Preliminarily enjoining Qwest/CenturyLink from continuing with the plans for the offering of MTG could injure the public, CLECs, and Qwest. As such, Joint CLECs have failed to establish the grounds necessary for the granting of a preliminary injunction as required by Washington law, and the Motion should be denied. At a minimum, the Commission must consider the potential cost to Qwest, other CLECs, and Washington customers that could occur if the MEDIACC system were to fail during the pendency of this case and Qwest/CenturyLink was not able to develop and implement the MTG system, and should require Joint CLECs to post substantial security as required by CR 65.

III. Conclusion

39 A preliminary injunction is an extraordinary remedy not directly mentioned in the Commission’s procedural rules. To the extent that the APA and the Commission’s rules do allow for emergency relief, such relief is only permitted when there is an immediate danger to the public health, safety, or welfare. Judicial authority on preliminary injunctions stresses


⁴² Motion, page 19.
⁴³ Motion, pages 27-28.

that such relief should be given sparingly and carefully. Joint CLECs' Motion fails to establish the evidence required to support the requested relief. Rather, the Motion's failure to establish a violation of any merger agreement establishes that CLECs are not entitled to any relief, preliminary or otherwise. Qwest/CenturyLink will continue to use and offer existing OSS to Joint CLECs, including CEMR and MEDIACC, for the agreed-upon 30 months, and will not replace MEDIACC without following the agreed-upon procedures. Joint CLECs' request to stop the optional implementation of additional Legacy Qwest updates only adds to risks and uncertainties, and should be rejected.

40 Qwest and CenturyLink request that after an evidentiary hearing and/or argument, the Commission deny all of the relief requested by Joint CLECs.

Respectfully submitted this 18th day of August, 2011.

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