

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of,

Joint Application of Qwest Communications International Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company LLC, and Qwest LD Corp.

Docket No. UT-100820

RESPONSIVE TESTIMONY

OF

TIMOTHY J GATES

Integra Telecom of Washington, Inc., Electric Lightwave, Inc., Advanced TelCom, Inc., and United Communications, Inc. d/b/a Unicom (collectively "Integra"); tw telecom of washington llc; Covad Communications Company; Level 3 Communications, LLC; McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services; Charter Fiberlink WA-CCVII, LLC; and Cbeyond Communications LLC

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September 27, 2010

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Exhibits

- Exhibit ___ TJG-2 – *Curriculum Vitae* of Timothy J Gates
Exhibit ___ TJG-3 – Description of Qwest’s OSS Testing in Relation to 271
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Exhibit ___ TJG-5 – Letters Regarding Streamlined Discovery Process
Exhibit ___ TJG-6 – CLEC Comments on Problems with Legacy Embarq OSS
Exhibit ___ TJG-7 – Integra Telecom’s May 19th Letter re: OSS problems
Exhibit ___ TJG-8 – Charleston Daily Mail Articles
Exhibit ___ TJG-9 – CLEC Recommended Conditions
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Exhibit ___ TJG-12 – Map Showing Qwest and CenturyLink Exchanges in
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1 **I. INTRODUCTION**

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

3 A. My name is Timothy J Gates. My business address is QSI Consulting, 10451 Gooseberry
4 Court, Trinity, Florida 34655.

5 **Q. PLEASE PROVIDE A BRIEF SUMMARY OF YOUR TESTIMONY.**

6 A. My testimony demonstrates that the proposed transaction should be rejected, or in the
7 alternative, approved only subject to robust, enforceable commitments or conditions
8 necessary to protect the public interest. I will discuss the significant commercial and
9 regulatory uncertainty surrounding the proposed transaction, and the significant merger-
10 related harms faced by competitive local exchange carriers (“CLECs”) and competition.
11 I will explain that the future of telecommunications markets, telecommunication
12 competition upon which consumers rely, and economic development in the state is in
13 serious question due to the proposed transaction. I also put the proposed transaction in
14 context by identifying significant problems that have occurred following similar, recent
15 transactions. Finally, to the extent the Washington Utilities and Transportation
16 Commission (“Commission”) does not reject the transaction outright, my testimony
17 describes and recommends conditions that the Commission should adopt or enforceable
18 commitments the Commission should obtain from the Joint Applicants as prerequisites to
19 transaction approval to prevent or offset the harm that would result if the transaction is
20 approved as filed.

1 **Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION WITH**
2 **THE FIRM?**

3 A. QSI Consulting, Inc. (“QSI”) is a consulting firm specializing in regulatory and litigation
4 support, economic and financial modeling, and business plan modeling and development.
5 QSI provides consulting services for regulated utilities, competitive providers,
6 government agencies (including public utility commissions, attorneys general and
7 consumer councils) and industry organizations. I currently serve as Senior Vice
8 President.

9 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
10 **EXPERIENCE.**

11 A. I received a Bachelor of Science degree from Oregon State University and a Master of
12 Management degree, with an emphasis in Finance and Quantitative Methods, from
13 Willamette University's Atkinson Graduate School of Management. Since I received my
14 Masters, I have taken additional graduate-level courses in statistics and econometrics. I
15 have also attended numerous courses and seminars specific to the telecommunications
16 industry, including both the National Association of Regulatory Utility Commissioners
17 (“NARUC”) Annual and NARUC Advanced Regulatory Studies Programs.

18 Prior to joining QSI, I was a Senior Executive Staff Member at MCI WorldCom, Inc.
19 (“MWCOR”). I was employed by MCI and/or MWCOR for 15 years in various public
20 policy positions. While at MWCOR I managed various functions, including tariffing,

1 economic and financial analysis, competitive analysis, witness training and MWCOM's
2 use of external consultants. Prior to joining MWCOM, I was employed as a Telephone
3 Rate Analyst in the Engineering Division at the Texas Public Utility Commission and
4 earlier as an Economic Analyst at the Oregon Public Utility Commission.
5 Exhibit__TJG-2 contains a complete summary of my work experience and education.

6 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION?**

7 A. Yes, on several occasions. I testified as an expert witness in the following Commission
8 dockets: UT-083041, UT-083025, UT-033011, UT-030614, UT-023043, UT-003013
9 (Part D), UT-960338, and U-88-2052-P. In addition, I have testified more than 200 times
10 in 45 states and Puerto Rico, and filed comments with the Federal Communications
11 Commission (FCC) on various public policy issues including costing, pricing, local entry,
12 competition, universal service, strategic planning, mergers and network issues. *See*,
13 Exhibit__TJG-2.

14 **Q. DO YOU HAVE EXPERIENCE WITH THE ISSUES IN THIS PROCEEDING?**

15 A. Yes. While at MCI I was involved in several mergers. I have also observed the
16 consolidation in the telecommunications industry over the last ten years or so. Over the
17 course of my career, I have investigated and/or testified on virtually every issue that
18 defines the wholesale relationship between a Bell Operating Company ("BOC") or
19 incumbent local exchange carrier ("ILEC") and their CLEC customers/competitors.
20 Further, I have experience assisting CLECs in their wholesale relationships with both

1 companies involved in the proposed transaction. For instance, I have participated in
2 dozens of arbitrations since the 1996 amendments to the Communications Act of 1934
3 (“Act”)¹ were enacted, including arbitrations and other proceedings involving Qwest and
4 CenturyLink (and/or their predecessors).

5 I am knowledgeable about the interconnection and business practice issues addressed in
6 this testimony as well as the potential impacts the proposed transaction may have on the
7 market, competitors and consumers. Further, I have reviewed the Application filed by
8 Qwest and CenturyLink in this proceeding² and the associated documentation.

9 **Q. ON WHOSE BEHALF ARE YOU FILING THIS RESPONSIVE TESTIMONY?**

10 A. My testimony is being filed on behalf of a number of CLECs: Integra Telecom of
11 Washington, Inc., Electric Lightwave, Inc., Advanced TelCom, Inc., and United
12 Communications, Inc. d/b/a Unicom (collectively “Integra”); tw telecom of washington
13 llc; Covad Communications Company; Level 3 Communications, LLC; McLeodUSA
14 Telecommunications Services, Inc., d/b/a PAETEC Business Services; Charter Fiberlink
15 WA-CCVII, LLC; and Cbeyond Communications LLC (collectively referred to in my
16 testimony as “Joint CLECs”).

¹ Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996) (“Telecom Act” or “Act”).

² See, Joint Application for Expedited Approval of Indirect Transfer of Control, Washington Utilities and Transportation Commission Docket No. UT-100820, May 13, 2010 (“Washington Joint Application”). For the purposes of this testimony, I will use CenturyLink (as opposed to CenturyTel) to refer to the company seeking to acquire Qwest, unless referring specifically to the legacy CenturyTel company that existed prior to the merger with Embarq.

1 **II. PURPOSE AND ORGANIZATION OF TESTIMONY**

2 **Q. PLEASE EXPLAIN THE PURPOSE OF YOUR TESTIMONY.**

3 A. The purpose of my testimony is to demonstrate that the proposed transaction should be
4 rejected, or in the alternative, approved only subject to robust, enforceable commitments
5 or conditions necessary to protect the public interest. The information (or lack thereof)
6 provided by the Joint Applicants to date is woefully insufficient to demonstrate that the
7 proposed transaction is in the public interest, and in fact, that sparse information shows
8 that there is substantial harm that could befall competition and competitors, their end
9 users and ultimately the public interest.

10 At this point, there is only one thing certain about the proposed transaction: uncertainty.
11 The Joint Applicants have put the parties on notice that material changes are coming
12 post-transaction, but has been unable or unwilling to provide any detail about those
13 material changes – *i.e.*, what will and will not change, when changes will occur, how the
14 changes will or will not impact consumers and/or competitors, or why those changes will
15 be made. The significant commercial and regulatory uncertainty surrounding the
16 proposed transaction, in and of itself, is harmful because it provides the Merged
17 Company³ the opportunity to operate to the detriment of competitors and the public.
18 Such uncertainty and the very real potential for harm to the public interest must be
19 addressed by either rejecting the transaction or putting in place enforceable

³ “Merged Company” as used in this testimony is defined in Exhibit __ TJK-9 as: “the post-merger company (CenturyLink and its Operating Companies, collectively, after the Closing Date).”

1 conditions/commitments to prevent or offset this harm. Likewise, as Dr. Ankum
2 explains, the alleged benefits touted by the Joint Applicants amount to nothing more than
3 unsupported, vague statements made to secure transaction approval, and are not verifiable
4 benefits on which the Commission should rely. As a result, the future of
5 telecommunications markets, telecommunication competition upon which consumers
6 rely, and economic development in the state is in serious question due to the proposed
7 transaction.

8 Further, I place this proposed transaction in context by identifying significant problems
9 that have occurred following similar, recent mergers, including the systems meltdown
10 following the FairPoint acquisition of Verizon properties. These examples provide the
11 Commission and competitors an indication of the problems that could be anticipated in
12 Qwest's territory post-transaction, and should give the Commission serious pause when
13 evaluating the Joint Applicants' unsupported claims – particularly in the absence of any
14 true measureable commitments from the Joint Applicants that benefits will result.

15 Finally, to the extent the Commission does not reject the transaction outright, my
16 testimony describes and recommends conditions that the Commission should adopt or
17 enforceable commitments the Commission should obtain from the Joint Applicants as
18 prerequisites to transaction approval to prevent or offset the harm that would result if the
19 transaction is approved as filed.

20 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

1 A. The remainder of my testimony is organized as follows:

- 2 • Section III discusses the requirements and obligations related to interconnection,
3 UNEs and collocation, as well as the significant efforts (and costs) expended by
4 CLECs to get ILECs to live up to these requirements and obligations so that CLECs
5 can secure interconnection, UNEs and collocation on terms, rates and conditions that
6 are just, reasonable and nondiscriminatory.
- 7 • Section IV discusses the harm to CLECs related to CenturyLink taking control of
8 Qwest's wholesale operations, including the challenges of integrating the two
9 companies as well as examples from this very proceeding showing that the Merged
10 Company is attempting to increase transaction costs and undermine CLECs' ability to
11 protect themselves from merger-related harm.
- 12 • Section V discusses the lessons learned from recent, similar transactions. These
13 examples show that the post-transaction integration process in recent mergers caused
14 significant harm to CLECs and retail customers, despite the merging companies in
15 those cases making the same types of unsupported statements about merger benefits
16 that the Joint Applicants have made in this proceeding.
- 17 • Section VI discusses certain commitments/conditions that the Commission should
18 impose upon the Joint Applicants if the Commission is inclined to approve the
19 proposed transaction. Other commitments/conditions are discussed in the testimony
20 of Dr. Ankum. These commitments/conditions are critical to prevent or offset the
21 harms the proposed transaction will cause for the market, CLECs and consumers.

22 **III. CLEC EFFORTS FOR EFFICIENT INTERCONNECTION**

23 **A. *Interconnection Rights and Responsibilities Under the Act***

24 **Q. PLEASE DESCRIBE THE INTERCONNECTION REQUIREMENTS UNDER**
25 **THE TELECOM ACT.**

26 A. The FCC and state regulatory bodies have recognized that the various subsections of
27 Section 251 of the Act impose escalating interconnection obligations on carriers
28 depending upon their classifications (*i.e.*, telecommunications carrier, LEC, or ILEC).

1 These classifications are based upon their market power, economic position (*e.g.*,
2 monopoly) and attendant public obligations (*e.g.*, common carrier obligations).

3 Section 251(a) of the Act identifies the general duties of telecommunications carriers to
4 “interconnect directly or indirectly with the facilities and equipment of other
5 telecommunications carriers.” Section 251(b) of the Act identifies the general duties of
6 all LECs which include number portability, dialing parity, and reciprocal compensation.
7 Section 251(c) imposes additional obligations and specific interconnection duties on
8 ILECs, including the duty to negotiate an interconnection agreement (“ICA”) in good
9 faith, provide interconnection on more specific rates, terms and conditions, provide
10 unbundled network elements (“UNEs”), offer services for resale at wholesale rates,
11 provide notice of network changes and provide collocation when requested. The FCC’s
12 *Local Competition Order*⁴ at paragraph 1241 describes these additional obligations as
13 follows:

14 Section 251(c) imposes obligations on incumbent LECs in addition to the
15 obligations set forth in sections 251(a) and (b). It establishes obligations
16 of incumbent LECs regarding: (1) good faith negotiation; (2)
17 interconnection; (3) unbundling network elements; (4) resale; (5)
18 providing notice of network changes; and (6) collocation.

19 These duties and obligations are all focused on affording CLECs equal, non-
20 discriminatory access to ILEC network facilities, systems and services.

⁴ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; First Report and Order, CC Docket No. 96-98, FCC 96-325, Released August 8, 1996 (“*Local Competition Order*”).

1 **Q. ARE ALL ILECS SUBJECT TO THE SAME REQUIREMENTS UNDER THE**
2 **ACT?**

3 A. All ILECs are subject to the requirements of Section 251(c) of the Act. However, some
4 ILECs –such as Qwest – are both ILECs *and* Bell Operating Companies (or BOCs) under
5 the Act. The Act requires BOCs to comply not only with Section 251(c) of the Act, but
6 also Section 271 of the Act. Section 271 requires BOCs to demonstrate compliance with
7 the 14-point competitive checklist before they are allowed to provide in-region
8 interLATA services. The FCC granted Qwest 271 authority throughout its 14-state BOC
9 territory in the 2002-2003 timeframe. Non-BOC ILECs, such as CenturyLink, are not
10 required to comply with Section 271 requirements.

11 **Q. HOW DOES THE STATE GET INVOLVED IN IMPLEMENTING THE**
12 **FEDERAL TELECOMMUNICATIONS REGULATORY FRAMEWORK?**

13 A. The state commissions have jurisdiction over approving ICAs and related disputes (*e.g.*,
14 arbitrations) pursuant to Section 252 of the Act⁵ and numerous provisions of state law.
15 State commissions also establish the rates ILECs are permitted to charge for UNEs,
16 interconnection and collocation under Sections 251 and 252, applying the FCC’s total
17 element long-run incremental cost methodology (“*TELRIC*”). State commissions also
18 determine whether certain ILEC central offices meet the federal standards for “*delisting*”
19 UNE loops or transport as a Section 251 unbundled network element. In addition, states

⁵ 47 U.S.C. §§ 252(b), (c) (empowering state regulators to arbitrate interconnection agreements between ILECs and competitors; establishing arbitration procedures; establishing substantive arbitration standards).

1 provided consultation to the FCC in relation to the BOCs' applications for Section 271
2 approval. As explained below, in this role, the state commissions conducted several
3 years' worth of fact-finding, hearings, and testing, and issued extensive recommendations
4 to the FCC regarding the BOCs' adherence to the 14-point competitive checklist. Many
5 states have continued their role in monitoring Qwest's compliance with Section 271
6 requirements by monitoring the Change Management Process ("CMP") and Qwest's
7 wholesale performance indicators and associated performance remedy plans.
8 Furthermore, states have an important role in determining whether a telecommunications
9 company should be relieved of its duties under Section 251 based upon the rural status of
10 that company.

11 ***B. ILEC Impacts on Market Entry Methods***

12 **Q. DID THE ACT MANDATE A PARTICULAR ENTRY STRATEGY FOR**
13 **COMPETITION?**

14 A. No. Back in 1995, when Congress was establishing the final terms of the new federal law
15 (the Telecom Act was signed into law in early February 1996), nobody was really sure
16 how, exactly, competition would develop. In the FCC's *Local Competition Order* the
17 FCC discussed the Act's anticipated market entry methods.

18 The Act contemplates three paths of entry into the local market -- the
19 construction of new networks, the use of unbundled elements of the
20 incumbent's network, and resale. The 1996 Act requires us to implement
21 rules that eliminate statutory and regulatory barriers and remove economic
22 impediments to each. We anticipate that some new entrants will follow

1 multiple paths of entry as market conditions and access to capital permit.
2 Some may enter by relying at first entirely on resale of the incumbent's
3 services and then gradually deploying their own facilities.⁶

4 Since passage of the Act, competitors have used all three paths of entry – (1) resale, (2)
5 UNEs, and (3) entirely separate network. The clients I represent in this proceeding fall
6 into all three categories. In cases two and three, the carriers are facilities-based – *i.e.*,
7 they own their own switches and in some instances, their own metro fiber rings that
8 provide interoffice transport. For instance, Integra and PAETEC primarily install their
9 own switching and fiber networks and purchase local access loops, interoffice transport,
10 collocation and other services from the ILEC in order to access customers (though both
11 serve a limited number of customers via resale). By comparison, cable-based CLECs like
12 Charter own both the switch and the “last mile” facilities (*i.e.*, hybrid fiber coaxial
13 distribution plant). But, like Integra and PAETEC, Charter must still interconnect with
14 the ILEC in order to send and receive traffic to the public switched telephone network.
15 In this way, the road to local competition always goes through the ILEC no matter what
16 entry strategy is employed.

17 **Q. CAN RELYING ON THE ILEC FOR NETWORK ELEMENTS OR**
18 **INTERCONNECTION RESULT IN CHALLENGES FOR THE CLEC?**

19 A. Yes. Putting aside the normal competitive risks of any business, a CLEC faces the
20 “Catch 22” of obtaining essential elements of its productive resource – material pieces of
21 its local network – from its principal competitor. For this competitive model to work, the

⁶ *Local Competition Order* at ¶ 12.

1 business, technical and operational terms by which the bottleneck elements are available
2 and by which networks are interconnected must be efficient, technology-neutral and
3 stable, so that CLECs can plan their business and make reasonable investment decisions.
4 The problem with this model is that ILECs have the incentive to hinder the CLECs'
5 efforts at every turn. As the FCC correctly noted in the *Local Competition Order*, "An
6 incumbent LEC also has the ability to act on its incentive to discourage entry and robust
7 competition by not interconnecting its network with the new entrant's network or by
8 insisting on supracompetitive prices or other unreasonable conditions for terminating
9 calls from the entrant's customers to the incumbent LEC's subscribers."⁷ That is why
10 one of the most critical components of this regulatory scheme is the vigilant enforcement
11 of the "stringent" nondiscrimination standard that Congress imposed on ILECs in the
12 Telecom Act. Under the stringent standard of nondiscrimination, not only is the ILEC
13 required to treat other carriers equally, the ILEC is also required to treat competitors the
14 same as it treats itself in providing access to the bottleneck elements of the local
15 network.⁸ As the FCC noted, this more stringent nondiscrimination requirement is
16 essential to ensure that competitors have a "meaningful opportunity to compete" against
17 the ILEC.⁹

⁷ *Local Competition Order* at ¶ 10.

⁸ *Id.* at ¶¶ 313-315. Equal treatment is subject to two limited exceptions - legitimate cost differences and technical infeasibility, the later which the FCC said would rarely occur. Also, the burden to prove legitimate cost differences or technical infeasibility rests with the ILEC.

⁹ *Id.* at ¶ 315.

1 **Q. TELECOMMUNICATIONS COMPETITION SEEMS TO DIFFER FROM THE**
2 **STANDARD COMPETITIVE BUSINESS MODEL. WOULD YOU AGREE?**

3 A. Yes. With most retail products or services, if customers want to switch suppliers, they
4 just switch. But in local telecommunications markets, the old provider (which in a
5 majority of cases is the ILEC) has to help move the retail customer to the new provider.
6 Likewise, with most retail products or services, if a customer switches, the old supplier is
7 simply out of the picture. But in local telecommunications, the old provider (when it is
8 the ILEC) remains constantly involved, sending calls to, and receiving calls from, its own
9 former customers (or the old provider may continue a relationship with the customer by
10 continuing to provide long-distance service, for example, after the customer has switched
11 local providers). And all the while, the new provider must rely on the old provider for
12 critical inputs to the new provider's retail services such as interconnection, UNEs,
13 collocation and resale.

14 Because of this unusual but unavoidable continuing interaction among providers, for
15 local telecommunications competition to work, competing providers must cooperate
16 behind-the-scenes, even though they are rivals, and even though their economic incentive
17 (as profit-maximizing firms) is to undermine – not help – the other provider's ability to
18 compete for end user customers. As a result, no matter how much retail competition
19 there might be, regulation is needed to make sure that the critical behind-the-scenes
20 cooperation actually occurs. This is the essence and purpose of Sections 251 and 271 of
21 the Act. Because ILECs and BOCs enjoy a significant advantage over CLECs in terms of

1 determining whether the wholesale relationship between them is successful, Sections 251
2 and 271 (and continued enforcement and compliance with those sections) are absolutely
3 critical to ensuring that ILECs and BOCs continue to cooperate with CLECs.

4 **Q. BASED ON THE INFORMATION ABOVE, IT SEEMS THAT THE CLECS ARE**
5 **ALSO CUSTOMERS OF THE ILEC. IS THAT CORRECT?**

6 A. Yes. The CLECs are frequently customers of the ILECs, purchasing network elements or
7 services from the ILEC on a wholesale basis for use in providing competitive retail
8 services to end-user customers. Significantly, the ILEC will continue to compete for that
9 retail end-user customer's business, while at the same time, acting as a wholesale
10 provider of critical inputs to the competitor. Thus, the ILEC is both a competitor of, and
11 wholesale supplier to, the competitive providers in that market.

12 **Q. DOES THE FACT THAT CLECS ARE CUSTOMERS OF QWEST AND, TO A**
13 **MUCH LESSER EXTENT, CENTURYLINK INFLUENCE THE CLECS'**
14 **CONCERNS REGARDING THE PROPOSED TRANSACTION?**

15 A. Absolutely. Not only are the CLECs concerned about the potential to pass through costs
16 of the proposed transaction in rates, they are also concerned with the ongoing stability
17 and viability of the companies. As customers, they also want to know that the services
18 currently purchased will continue to be available and that the quality and features will at
19 least be constant, if not improve. Further, if this transaction is approved they want to
20 ensure that the Merged Company does not continue to impose certain anti-competitive

1 wholesale practices on competitors. Qwest and CenturyLink should not be rewarded
2 with merger approval for past violations or noncompliance with regulatory requirements,
3 and the Merged Company should not be allowed to continue anti-competitive practices
4 going forward. The proposed transaction is contrary to the public interest if a merging
5 party is violating the law. The proposed transaction could make this problem worse in
6 each of the states at issue by increasing the Merged Company's incentive to engage in or
7 continue anticompetitive conduct and efforts to achieve the enormous synergy savings
8 projected by the Joint Applicants. Finally, integration has been difficult in many mergers
9 that Dr. Ankum and I discuss in our testimonies and the CLECs need enforceable, written
10 conditions/commitments that the best systems of the merging companies will be in place
11 following the proposed transaction, and that the integration of the merging companies
12 will not negatively impact the competitors' operations and ability to compete.

13 **Q. PLEASE CONTINUE WITH YOUR DISCUSSION OF THE UNIQUE**
14 **CONDITIONS IN TELECOMMUNICATIONS AS OPPOSED TO OTHER**
15 **INDUSTRIES.**

16 A. There is a phenomenon referred to in the industry as "network effects," or, sometimes, as
17 "Metcalfe's Law." The basic idea is that a network becomes more and more valuable as
18 more and more people are connected to it. A telephone "network" with only one phone
19 attached is useless. A network with two phones is useful, a thousand phones is better,
20 and a million is even better. To state the obvious, the value of a service is maximized if
21 the customer can contact any other person on the network. In competitive terms, though,

1 this means that, other things being equal, whichever network is the biggest will be the
2 most valuable, and the one to which consumers will want to be connected.

3 **Q. DOES THE NETWORK EFFECT RESULT IN THE INCUMBENT’S NETWORK**
4 **ALWAYS BEING MORE VALUABLE THAN SMALLER NETWORKS?**

5 A. Absent regulation that would be the case. Even in the Washington Joint Application (at
6 p. 10), the Joint Applicants discuss the importance of size in order to compete:

7 Even a carrier that knows its customers’ preferences cannot compete
8 effectively in today’s marketplace without sufficient size and scope to
9 match those preferences with suitable products or services offered at
10 affordable rates.

11 As long as the existing, incumbent network is bigger than a competing network, the
12 competing network will not be able to attract any customers – unless those customers can
13 call, and be called by, the people connected to the existing network. Additionally, as the
14 incumbent’s network gets bigger, it is able to spread its costs over a larger customer base
15 – resulting in efficiencies and economies of scale and scope. CenturyLink has stated that
16 “greater economies of scale result in lower overhead costs per customer, or per access
17 line” and “increased product availability and decreased per unit cost for a given
18 service...”¹⁰ Competition simply cannot develop if competitors do not have clear and
19 stable terms, conditions and rates for connecting to, and exchanging traffic with, the
20 existing incumbent network. Similarly, competition would not develop if the ILEC is
21 able to keep the benefits of its economies of scale and scope, and associated efficiencies

¹⁰ CenturyLink Response to Colorado Office of Consumer Counsel Data Request #1-15(a) and (b).

1 for itself and provide competitors access to critical bottleneck elements of the local
2 network on a more costly or less efficient basis. Again, Sections 251 and 271 of the Act
3 are designed to ensure that CLECs are on an equal footing with the ILEC and the benefits
4 accrued by the ILEC due to network effects and economies of scale and scope are
5 realized by the local telecommunications market as a whole, including CLECs.

6 **Q. HAS FACILITIES-BASED COMPETITION BEEN ABLE TO OVERCOME THE**
7 **MARKET POWER AND CONTROL THAT ILECS AND BOCS POSSESS OVER**
8 **THEIR LOCAL MARKETS?**

9 A. No. The latest FCC reports, even when adding in interconnected VoIP offerings, still
10 show the ILECs with more than 70 percent of the market.¹¹ And, the results are similar
11 in Washington, where the ILECs' share of total end-user switched access lines and VoIP
12 subscriptions was 69 percent as of the FCC's most recent Local Telephone Competition
13 Report.¹² Further, the FCC has recognized Qwest's monopoly over wholesale inputs
14 relied upon by CLECs. In rejecting Qwest's recent petition for forbearance in the
15 Minneapolis, Denver, Seattle and Phoenix metropolitan statistical areas ("MSAs"), the
16 FCC concluded that "[t]he record does not reflect any significant alternative sources of

¹¹ FCC "Local Telephone Competition: Status as of June 30, 2009" released September 2010 at Table 11 (showing ILEC residential and business market share of 73%).

¹² FCC "Local Telephone Competition: Status as of June 30, 2009" released September 2010 at Table 11. Shows "Non-ILEC Share of Total End-User Switched Access Lines and VoIP Subscriptions" for Washington at 31%.

1 wholesale inputs for carriers in the four MSAs.”¹³ And specifically with respect to

2 Qwest’s serving area in Phoenix, Arizona, in June 2010, the FCC concluded:

3 ...based on the data in the record, Qwest fails to demonstrate that there is
4 sufficient competition to ensure that, if we provide the requested relief,
5 Qwest will be unable to raise prices, discriminate unreasonably, or harm
6 customers. For example, the record reveals that no carrier besides Qwest
7 provides meaningful wholesale services throughout the Phoenix
8 marketplace, and that competitors offering business services largely must
9 rely on inputs purchased from Qwest itself to provide service.¹⁴

10 Importantly, the FCC pointed to the lack of options for wholesale customers as a reason
11 for denying Qwest’s forbearance petition. This market power not only extends to
12 wholesale services such as UNEs, interconnection and collocation required of ILECs
13 pursuant to Section 251(c) of the Act, but also to other wholesale services provided by
14 the ILECs, such as special access,¹⁵ as evidenced by the supracompetitive rates ILECs are
15 currently charging for special access in areas where they have received special access
16 pricing flexibility. The fact is that ILECs and BOCs continue to be entrenched
17 incumbents in their local territories and the competition in those spaces is fragile and
18 depends largely on use of incumbent facilities for its very existence.

¹³ *In the Matter of Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, Memorandum Opinion and Order, WC Docket No. 07-97, FCC 08-174, Released July 25, 2008 (“*Qwest Forbearance Order*”) at ¶ 37.

¹⁴ *In the Matter of Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113, Released June 22, 2010 (“*Qwest Arizona Forbearance Order*”) at ¶ 2.

¹⁵ Wholesale services also includes “commercial agreements,” which “include but are not limited to wholesale metro Ethernet agreements, OCN (SONET) agreements, Local Services Platform (e.g., QLSP) agreements, Dark Fiber agreements, Broadband for Resale agreements, and line sharing agreements.” See, Exhibit __ TJG-9.

1 **C. *Imposition of Costs on CLECs for Interconnection***

2 **Q. HAVE CLECS SPENT LARGE SUMS OF MONEY ESTABLISHING THE**
3 **RATES, TERMS AND CONDITIONS BY WHICH THEY PURCHASE**
4 **NETWORK ELEMENTS, COLLOCATION AND INTERCONNECTION FROM**
5 **ILECS?**

6 A. Absolutely. First, CLECs and ILECs must negotiate those rates, terms and conditions for
7 a period of time. Then, for each issue on which the companies are unable to reach
8 agreement, they must arbitrate that issue before each state commission. It is not
9 uncommon for a CLEC and ILEC to disagree on dozens of issues, each of which must be
10 arbitrated. Once the final agreement is established, it must be submitted to the state
11 commission for approval. I have been involved in dozens of these arbitration cases and
12 can say, first hand, that they consume an enormous amount of time and money for both
13 the CLEC and the ILEC. Indeed, even after a final order from the state commission,
14 there may be appeals that consume substantial additional time and money. On a separate
15 but related note, often cost-based rates that apply to UNEs, interconnection and
16 collocation in an ICA are established in separate generic cost dockets in which CLECs
17 participate to ensure that the resulting rates satisfy the federal TELRIC¹⁶ pricing
18 standards. My firm, QSI, recently participated in generic cost dockets for Qwest in

¹⁶ "TELRIC" stands for Total Element Long Run Incremental Cost and is discussed and defined in the FCC's *Local Competition Order* at ¶¶ 674-703. That pricing methodology is used to price UNEs and interconnection services. The FCC rules which require the ILEC to price its network elements using TELRIC also require the ILEC to provide non-discriminatory access to those same elements as well as interconnection. *See*, 47 C.F.R. § 51 Subpart F (Pricing of Elements) and 47 C.F.R. §§ 51.305, 51.311 and 51.313.

1 Minnesota and Colorado. The Minnesota cost proceeding (Minnesota Docket No. P-
2 421/AM-06-713) lasted for about three years, and it has been about one and one-half
3 years since Qwest filed its initial testimony in the ongoing Colorado proceeding
4 (Colorado Docket No. 07A-211T). During this time, CLECs have expended a significant
5 amount of time and money in an attempt to ensure that Qwest's rates for UNEs,
6 interconnection and collocation comply with the law. Furthermore, CLECs have spent an
7 enormous amount of time and money attempting to ensure that the BOCs comply (and
8 continue to comply) with the obligations set forth in approved ICAs and Sections 251 and
9 271 of the Act.

10 **Q. PLEASE EXPLAIN WHY LITIGATION HAS BEEN REQUIRED TO RESOLVE**
11 **THESE ISSUES?**

12 A. There is much at stake for the ILECs and the CLECs; ILECs want to retain or grow their
13 market share and CLECs want to offer competitively-priced innovative services to gain
14 more customers, which results in reduced ILEC market share. Since ILECs continue to
15 have the largest percentage of local customers in the local exchanges by far, that means
16 that CLECs most often increase market share by converting existing ILEC customers to
17 CLEC services.

18 FCC orders discuss the ILEC incentives in detail and the FCC's observations have
19 proven, over and over again, to be correct. For instance, just after the passage of the Act,
20 the FCC noted in the *Local Competition Order*, that:

1 Given that the incumbent LEC will be providing interconnection to its
2 competitors pursuant to the purpose of the 1996 Act, the LEC has the
3 incentive to discriminate against its competitors by providing them less
4 favorable terms and conditions of interconnection than it provides itself.¹⁷

5 The FCC recognized that one of the goals of the Act, and competition in general, was to
6 eliminate this ILEC incentive and ability to impose financial and operational burdens on
7 CLECs. At paragraph four of the *Local Competition Order* the FCC stated,

8 Competition in local exchange and exchange access markets is desirable,
9 not only because of the social and economic benefits competition will
10 bring to consumers of local services, but also because competition
11 eventually will eliminate the ability of an incumbent local exchange
12 carrier to use its control of bottleneck local facilities to impede free market
13 competition. Under section 251, incumbent local exchange carriers
14 (LECs), including the Bell Operating Companies (BOCs), are mandated to
15 take several steps to open their networks to competition, including
16 providing interconnection, offering access to unbundled elements of their
17 networks, and making their retail services available at wholesale rates so
18 that they can be resold.

19 These incentives have not changed, and indeed, one could argue that in today's more
20 difficult business climate for wireline LECs, the incentive to protect their legacy
21 customer base has increased for ILECs. Thus, ILECs continue to have the ability and
22 incentive to impede competition. One way ILECs have attempted to impede competition
23 is by making it very difficult and costly for CLECs to secure rates, terms and conditions
24 required by federal and state law.

25 **Q. PLEASE PROVIDE AN EXAMPLE.**

¹⁷ *Local Competition Order* at ¶ 218.

1 A. During the 271 approval process for Qwest, one thing the state commissions and FCC did
2 was to require a Statement of Generally Available Terms (“SGAT”). SGATS were to
3 include a baseline offering of UNEs, interconnection and collocation services of the BOC
4 that complied with the 271 obligations, and were offered by the BOCs to CLECs in
5 negotiations. After Qwest received 271 approval, however, it unilaterally withdrew its
6 SGATs, replacing them instead with Qwest’s template proposals as Qwest’s baseline
7 offering in negotiations.

8 **Q. DID THE NEW QWEST TEMPLATE PROPOSAL RESULT IN MORE**
9 **DISPUTES?**

10 A. Yes. Qwest’s template proposals contain *Qwest’s* view of its obligations under the Act
11 and implementing rules, and do not necessarily reflect the terms and conditions that were
12 reviewed and found satisfactory during the 271 process. Not surprisingly, this has
13 created additional disputes, delay and litigation as CLECs are now forced to arbitrate
14 issues where Qwest’s view of its obligations does not comport with CLECs’ view (or the
15 view of various state regulatory agencies when they reviewed Qwest’s SGATs).

16 **Q. CAN YOU PROVIDE SOME OTHER EXAMPLES OF DISPUTES THAT MAY**
17 **ARISE OVER AN ICA?**

18 A. Yes. In addition to the disputes I just mentioned, there are frequently billing disputes
19 over traffic types, jurisdiction of traffic, bills for services rendered or not rendered, etc.
20 There are also disputes over network engineering responsibilities, response times for

1 trouble reports, and quality of service, not to mention issues with submitting orders
2 through the various system interfaces. In addition, I have recently been involved in a
3 number of disputes surrounding the customer acquisition and migration processes that are
4 a component of interconnection agreements between incumbents and competitors (I will
5 discuss several examples of these problems later in my testimony). Further, the legal
6 teams sometimes have disputes over orders and rulings that may or may not apply to
7 services under an ICA.¹⁸ Resolving these types of issues results in additional time and
8 expense for both CLECs and ILECs.

9 **IV. HARM FROM CENTURYLINK'S CONTROL OF QWEST'S WHOLESALE**
10 **OPERATIONS**

11 **A. *CenturyLink's Lack of Experience Provisioning Services On The Scale of***
12 ***Qwest's Wholesale Operations***

13 **Q. CENTURYLINK CLAIMS THAT WHOLESALE ISSUES SHOULD BE OF NO**
14 **CONCERN BECAUSE THE TRANSACTION IS A STOCK-FOR-STOCK,**
15 **PARENT LEVEL TRANSACTION.¹⁹ IS THE COMPANY CORRECT?**

16 **A. No. Regardless of how the transaction is structured, the end result is that Qwest will be**
17 **controlled by CenturyLink if the transaction is approved. CenturyLink acknowledges this**

¹⁸ The legal teams sometimes invoke the "Change of Law" provisions of an ICA to renegotiate a condition or term or to eliminate them altogether.

¹⁹ See, e.g., Joint Comments of CenturyLink and Qwest on Procedural Issues, Minnesota Docket No. P-430/PA-10-456, filed June 1, 2010, at p. 2 ("A key aspect of the transaction, reflected in the Joint Petition, is the fact that all Minnesota Operating Companies will continue to operate as separate entities under their respective certificates of authority after the transaction is completed. Thus, issues and disputes that involve the relationship between the Operating Companies and other carriers need not be part of this proceeding.")

1 in the following statement: “At closing, Qwest will become a direct, wholly-owned
2 subsidiary of CenturyLink and all Qwest subsidiaries, including Qwest Corp., will be
3 indirectly *owned and controlled by CenturyLink...*”²⁰ This means that post-merger,
4 CenturyLink will make the decisions about how Qwest interacts with its wholesale
5 customers, how much Qwest will attempt to charge for its wholesale services, the
6 resources that will be dedicated to wholesale service quality and provisioning, the amount
7 Qwest invests in its network for advanced services, etc.

8 Further, CenturyLink’s claim that the merger will be a non-event has been rejected in the
9 past. The Embarq/CenturyTel merger was a stock-for-stock parent level transaction, like
10 the proposed transaction, yet both the FCC and state commissions found it necessary to
11 impose numerous wholesale-related conditions on the Embarq/CenturyTel merger. That
12 CenturyLink would offer the previously rejected argument as the basis for approval
13 without conditions is an apparent attempt on the Joint Applicants’ part to avoid
14 addressing head-on the legitimate concerns raised by wholesale customers.

15 **Q. DO YOU HAVE CONCERNS ABOUT TURNING OVER THE CONTROL OF**
16 **QWEST’S WHOLESALE OPERATIONS TO CENTURYLINK?**

17 **A.** Yes. Unlike Qwest, CenturyLink is not a BOC in any of its existing territories. As such,
18 CenturyLink has not been required to satisfy the critical market-opening provisions found

²⁰ Direct Testimony of John Jones on behalf of CenturyLink, Washington UTC Docket No. UT-100820, Exhibit JJ-1T, May 21, 2010 (“Jones Washington Direct (CenturyLink Exhibit JJ-1T)”, at p. 5, lines 7-9 (emphasis added).

1 in the 14-point competitive checklist under Section 271 of the Act.²¹ I will explain below
2 why the lack of CenturyLink experience as a BOC is of grave concern to CLECs and
3 should be of paramount concern to the Commission.

4 Traditionally, CenturyLink has operated mostly in rural areas²² (CenturyLink has rural
5 exemptions that limit its section 251 wholesale duties in some of its areas²³), and only
6 recently acquired a few more urban areas through its acquisition of Embarq.
7 CenturyLink recently stated: “The Qwest merger will change the profile of our local
8 exchange markets to include more large urban areas, with which we have limited
9 operating experience.”²⁴ Accordingly, CenturyLink has very little, if any, experience
10 with the types and quantities of wholesale obligations and relationships that are found in
11 Qwest’s BOC territories. Moreover, CenturyLink has provided no commitments that it
12 will maintain or improve the wholesale services, rates and service quality that CLECs
13 experience with Qwest today.

14 **Q. PLEASE ELABORATE ON THE DIFFERENCE BETWEEN QWEST’S AND**
15 **CENTURYLINK’S EXPERIENCE IN THIS REGARD.**

16 A. Since CenturyLink has traditionally operated in rural areas exempt from full competition,
17 it has not been required to handle the same quantities of wholesale customers and

²¹ 47 U.S.C. § 271(c)(2)(B).

²² See, e.g., Jones Washington Direct (CenturyLink Exhibit JJ-1T) at p 5, lines 21-22 (“The CTL Washington ILECs provide service to approximately 200,000 access lines in 110 primarily rural exchanges in Washington.”)

²³ Section 251(f) of the Telecommunications Act of 1996 exempts rural telephone companies from the obligations applicable to ILECs under Section 251(c) of the Act until a state commission lifts the rural exemption.

²⁴ CenturyTel, Inc. 10-Q, filed August 6, 2010, at p. 33 (emphasis added).

1 wholesale orders as Qwest is accustomed to handling. For example, CenturyLink
2 provided data showing that it processed a total of *****BEGIN CONFIDENTIAL** [REDACTED]
3 **END CONFIDENTIAL**²⁵ LNP number ports in Washington in 2009, and
4 *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**²⁶ LNP number
5 ports company-wide in 2009. By comparison, Qwest processed *****BEGIN**
6 **CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**²⁷ ports in Washington and
7 *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**²⁸ company-wide
8 *in the first half of 2010 alone*. Or, in other words, Qwest processes, on average,
9 *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**²⁹ number
10 ports in Washington than does CenturyLink, and *****BEGIN CONFIDENTIAL** [REDACTED]
11 [REDACTED] **END CONFIDENTIAL**²⁹ number ports company-wide than does
12 CenturyLink. Indeed, Qwest processes about *****BEGIN CONFIDENTIAL** [REDACTED]
13 [REDACTED] **END CONFIDENTIAL**²⁹ number ports in Washington alone than does
14 CenturyLink throughout its entire legacy territory.

15 Regarding UNE loops, CenturyLink has stated that in Washington, CLECs purchase
16 *****BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**²⁹ UNE loops from
17 CenturyLink, and company-wide CLECs purchase *****BEGIN CONFIDENTIAL**

²⁵ CenturyLink Response to Integra Washington Data Request #2(i), Confidential Attachment Integra-2a-k.

²⁶ CenturyLink Response to Integra Washington Data Request #2(i), Confidential Attachment Integra-2a-k.

²⁷ Qwest Response to Integra Washington Data Request #1(i), Confidential Attachment D.

²⁸ Qwest Response to Integra Washington Data Request #1(i), Confidential Attachment D.

²⁹ CenturyLink Response to Integra Washington Data Request #2(b), Confidential Attachment Integra-2a-k.

1 █████ END CONFIDENTIAL***³⁰ UNE loops from CenturyLink. By comparison,
2 CLECs purchase ***BEGIN CONFIDENTIAL █████ END CONFIDENTIAL***³¹
3 UNE loops from Qwest in Washington alone. Regarding Enhanced Extended Links
4 (EELs), CenturyLink states that CLECs purchase ***BEGIN CONFIDENTIAL █████
5 END CONFIDENTIAL***³² EEL(s) from CenturyLink in Washington and ***BEGIN
6 CONFIDENTIAL █████ END CONFIDENTIAL***³³ EEL(s) company-wide. By
7 comparison, CLECs purchase ***BEGIN CONFIDENTIAL █████ END
8 CONFIDENTIAL***³⁴ EELs from Qwest in Washington, or ***BEGIN
9 CONFIDENTIAL █████ END CONFIDENTIAL*** EELs than are
10 purchased from CenturyLink throughout CenturyLink's entire legacy territory. In
11 Washington, ***BEGIN CONFIDENTIAL █████ END CONFIDENTIAL***³⁵ CLECs
12 purchase ***BEGIN CONFIDENTIAL █████ END CONFIDENTIAL***³⁶ collocation
13 arrangement(s) from CenturyLink and, company-wide, ***BEGIN CONFIDENTIAL
14 █████ END CONFIDENTIAL***³⁷ CLECs purchase a total of ***BEGIN
15 CONFIDENTIAL █████ END CONFIDENTIAL***³⁸ collocation arrangements from
16 CenturyLink. Qwest sells ***BEGIN CONFIDENTIAL █████ END

³⁰ CenturyLink Response to Integra Washington Data Request #2(b), Confidential Attachment Integra-2a-k.
³¹ Qwest Response to Integra Washington Data Request #1(b), Confidential Attachment.
³² CenturyLink Response to Integra Washington Data Request #2(d), Confidential Attachment Integra-2a-k.
³³ CenturyLink Response to Integra Washington Data Request #2(d), Confidential Attachment Integra-2a-k.
³⁴ Qwest Response to Integra Washington Data Request #1(d), Confidential Attachment.
³⁵ CenturyLink Response to Integra Washington Data Request #2(e), Confidential Attachment Integra-2a-k.
³⁶ CenturyLink Response to Integra Washington Data Request #2(f), Confidential Attachment Integra-2a-k.
³⁷ CenturyLink Response to Integra Washington Data Request #2(e), Confidential Attachment Integra-2a-k.
³⁸ CenturyLink Response to Integra Washington Data Request #2(f), Confidential Attachment Integra-2a-k.

1 **CONFIDENTIAL*****³⁹ collocation arrangements to *****BEGIN CONFIDENTIAL** ■
2 **END CONFIDENTIAL***** CLECs in Washington.⁴⁰ This data shows that CenturyLink
3 will inherit a much larger wholesale operation than it has ever operated to date.

4 **B. *Integration Challenges And The Complete Lack Of Information Regarding That***
5 ***Integration Effort***

6 **Q. CENTURYLINK AND QWEST SUGGEST THAT THE PROPOSED**
7 **TRANSACTION WILL NOT NEGATIVELY AFFECT WHOLESALE**
8 **OPERATIONS POST-MERGER.⁴¹ WHY DOES THAT NOT PROVIDE YOU**
9 **COMFORT ABOUT POST-MERGER WHOLESALE OPERATIONS?**

10 A. My primary concern relates to the integration effort that will take place after the proposed
11 transaction. CenturyLink has estimated \$625 million in synergy savings resulting from
12 the transaction; therefore, the Merged Company will be under intense pressure to meet
13 those savings estimates, post-merger. At the same time the Merged Company is
14 attempting to find synergies, it will be under pressure to produce meaningful dividends,
15 pay down debt and invest in advanced services. In other words, achieving the estimated
16 synergy savings is paramount to meeting shareholder expectations, satisfying retail
17 customers, and keeping the Merged Company solvent. Given these priorities,
18 maintaining wholesale service quality may be low on the Merged Company's priority list,

³⁹ Qwest Response to Integra Washington Data Request #1(f), Confidential Attachment.

⁴⁰ Qwest Response to Integra Washington Data Request #1(e), Confidential Attachment.

⁴¹ See, e.g., Washington Joint Application at p. 13 ("because the Transaction results in no direct change to the operating entities, it is seamless to customers.")

1 or worse yet, wholesale service quality may be targeted for cutbacks in the pursuit of
2 synergy savings.

3 **Q. PLEASE DISCUSS HOW THE MERGED COMPANY WILL ATTEMPT TO**
4 **ACHIEVE SYNERGIES.**

5 A. The Merged Company has indicated that it will seek synergy savings through operating
6 cost savings (*i.e.*, eliminating duplicative functions and systems related to corporate
7 overhead, network and operational, IT, advertising/marketing, increased purchasing
8 power) and capex savings.⁴² All told, the company expects \$575 million in operating
9 cost synergies and \$50 million in capital expense synergies, for a total of \$625 million
10 over a three-to-five year period. The elimination of duplicative functions (or headcount)
11 and systems will impact wholesale (and retail) operations. For example, based on the
12 very high level information provided by CenturyLink about its synergy estimates,⁴³ it
13 expects that *****BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY**
14 **CONFIDENTIAL***** of this amount will be cut from *****BEGIN HIGHLY**
15 **CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL***** and another
16 *****BEGIN HIGHLY CONFIDENTIAL [REDACTED]**
17 **[REDACTED] END HIGHLY CONFIDENTIAL***** from *****BEGIN**

⁴² See, e.g., Direct Testimony of G. Clay Bailey on behalf of CenturyLink, Washington UTC Docket No. UT-100820, May 21, 2010 ("CenturyLink Washington Exhibit GCB-1T"), Exhibit GCB-2, slide 13.

⁴³ CenturyLink Response to Integra Washington Data Request #52(a), Highly Confidential Attachment Integra-52a.

1 **HIGHLY CONFIDENTIAL** [REDACTED] **END**

2 **HIGHLY CONFIDENTIAL***.**

3 **Q. HAS CENTURYLINK PUT CLECS ON NOTICE THAT THEY SHOULD**
4 **EXPECT CHANGES POST-MERGER?**

5 A. Yes. CenturyLink has stated that CLECs can expect changes to occur post-merger.⁴⁴
6 However, CenturyLink has been either unable or unwilling to provide any details about
7 what changes will be made, what CenturyLink will or will not integrate, or what “best
8 practices” will guide the Merged Company going forward.⁴⁵ As a result, the Joint
9 Applicants are asking the Commission to trust that the Merged Company’s pursuit of
10 synergies will not result in decisions that degrade the quality of the current wholesale
11 systems and processes CLECs rely upon and currently experience with Qwest. Such trust
12 must be backed by quantifiable wholesale conditions, however, with meaningful
13 consequences and remedies for failing to meet those conditions.

⁴⁴ CenturyLink’s S-4A, filed July 16, 2010, identifying, among others, the following as transaction-related risks: (1) “substantial expenses in connection with completing the merger and integrating the business, operations, networks, systems, technologies, policies and procedures of Qwest with those of CenturyLink”. *See also*, Direct Testimony of Michael Hunsucker on behalf of CenturyLink, Inc., Oregon Public Utility Commission Docket No. UM 1484, CTL/400, June 22, 2010 (“Hunsucker Oregon Direct”), at p. 8 lines 16-19 (“there will be no immediate changes to Qwest’s or CTL’s Operations Support Systems. The merger is intended to bring about improved efficiencies and practices in all parts of the combined company, so changes could be expected over time.”) Hunsucker Oregon Direct is available at: <http://edocs.puc.state.or.us/efdocs/HTB/um1484htb152954.pdf>

⁴⁵ “Identification of ‘best practices’ associated with the integration of CenturyLink and Qwest operations will be completed as part of the detailed integration planning efforts. Until the integration teams are formed, and the detailed data gathering process can be completed, an analysis regarding the identification and/or adoption of ‘best practices’ is not available.” CenturyLink Response to Integra Washington Data Request #52(g). *See also*, CenturyLink Response to Integra Data Request #52(g) in Arizona (dated 7/20/10), Colorado (dated 7/19/10), Minnesota (dated 7/8/10), Oregon (7/14/10), Utah (7/20/10), and PAETEC Iowa Data Request #52(g) (dated 7/23/10).

1 **Q. DO YOU HAVE AN UNDERSTANDING OF THE MERGED COMPANY'S**
2 **INCENTIVES REGARDING INTEGRATION?**

3 A. Yes. First, as a publicly-traded company, the Merged Company will be under intense
4 pressure to achieve its estimated synergy savings through integrating the two companies.
5 This will be the key to servicing the increased debt load that CenturyLink will inherit
6 from the transaction, issuing dividends that shareholders expect and deploying the
7 advanced services demanded by end users. In other words, the Merged Company will
8 have the strongest incentive to do what it takes to deliver on integration-related synergy
9 savings. Second, as Dr. Ankum explains in more detail, given that the Merged Company
10 is a profit-maximizing firm, its natural incentive is to reduce costs at the expense of
11 competitors; this is where the Merged Company gets most *bang for its buck*. If, for
12 example, the Merged Company cuts back headcount in groups that serve wholesale
13 customers, and wholesale service is degraded as a result, not only has CenturyLink saved
14 money to achieve synergy savings, but it will also make it easier to win back retail
15 customers that will leave the CLEC's service due to the perception (albeit erroneous) that
16 the CLEC's service has declined.⁴⁶ It is well-recognized that when a CLEC's retail end
17 user experiences service troubles due to underlying wholesale service quality problems
18 on the ILEC's end, the end user perceives it as a problem caused by the CLEC and not
19 the ILEC.

⁴⁶ The Joint Applicants state: "A financially stronger company can...compete against...CLECs." Washington Joint Application at p. 15.

1 What's more, there are many ways that the Merged Company can pursue this two-headed
2 incentive (reducing costs and disadvantaging competitors) during integration of the two
3 companies; degrade access to systems by integrating a system with less functionality;
4 integrate alleged "best practices" that results in inferior access; integrate its rate structures
5 such that new rate elements are introduced that were not previously assessed; integrate its
6 negotiations template proposals to reduce or discontinue certain services; and the list goes
7 on. I am not casting aspersions here, I am just stating what economic theory dictates and
8 what the FCC recognized in its *Local Competition Order*: ILECs have a strong incentive
9 to discriminate against CLECs. Moreover, recent experience with other mergers supports
10 the CLEC concerns. Left unchecked, the integration effort that will be undertaken by the
11 Merged Company will be a prime opportunity for the (bigger) ILEC to follow through on
12 its incentive to reduce costs at the expense of CLECs and their end users. Of course,
13 doing so would be bad for competition and the public interest.

14 **Q. ARE YOU SAYING THAT CENTURYLINK LACKS THE INCENTIVE TO**
15 **INTEGRATE THE COMPANIES TO THE BENEFIT OF CLECS AND**
16 **COMPETITION?**

17 A. Yes. The lack of incentive to open up local markets to competition and to keep those
18 markets open is precisely why the Section 271 14-point competitive checklist is so
19 important – it created a "carrot" (*i.e.*, in-region interLATA authority) for the BOCs so
20 that they would open their local areas to competition instead of following their natural
21 incentive as a profit-maximizing firm to keep local competitors out. Since CenturyLink

1 has no experience dealing with 271 obligations, there is no knowledge base from which
2 to discern if and how CenturyLink would abide by 271 obligations post-merger, or if the
3 systems or processes CenturyLink will ultimately utilize will remain 271 compliant in
4 Qwest's territory.

5 **1. CenturyLink's Attempts To Integrate OSS, Or Other Systems Or**
6 **Processes, Will Cause Harm**

7 **Q. ARE OPERATIONS SUPPORT SYSTEMS ("OSS") IMPORTANT FOR CLECs?**

8 A. Yes. The ability of a CLEC to be able to access the ILEC systems and databases to
9 review customer information and submit and review orders is absolutely vital. The
10 systems must be efficient, reliable and accurate. Inefficient systems that require
11 extensive manual intervention, for instance, would make doing business with the ILEC
12 difficult, more costly, and more prone to error because of the increased manual nature of
13 the work.

14 Not surprisingly, OSS was one of the first issues that the FCC had to address in Section
15 271 proceedings. Specifically, the FCC concluded that it:

16 generally must determine whether the access to OSS functions provided
17 by the RBOC to competing carriers sufficiently supports each of the three
18 modes of competitive entry strategies established by the Act:

1 interconnection, unbundled network elements, and services offered for
2 resale.⁴⁷

3 The FCC found that CLECs would be “severely disadvantaged, if not precluded
4 altogether, from fairly competing,” if they did not have nondiscriminatory access to
5 OSS.⁴⁸ Qwest itself has described its existing OSS as playing “a crucial role in the
6 transactions between Qwest and all CLECs”⁴⁹ and “the lifeblood of...Qwest’s wholesale
7 operation...”⁵⁰

8 **Q. WHAT IS OSS?**

9 A. The FCC defines OSS to include five functions: (1) pre-ordering, (2) ordering, (3)
10 provisioning, (4) maintenance and repair, and (5) billing.⁵¹ OSS includes all of the
11 computer systems, databases and personnel that an ILEC uses to perform internal
12 functions necessary for these five functions. The FCC also requires an adequate CMP to
13 handle changes to the OSS systems.⁵²

14 **Q. IS OSS A UNE?**

⁴⁷ *Application of Ameritech Michigan pursuant to § 271 of the Communications Act of 1934, as amended, to provide In-Region, Inter-LATA services in Michigan*, CC Docket 79-137, Memorandum Op. and Order, Released August 19, 1997 (“*Ameritech Michigan 271 Order*”) at ¶ 133.

⁴⁸ *Local Competition Order* at ¶518.

⁴⁹ Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.

⁵⁰ Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at p. 39.

⁵¹ *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, Memorandum Opinion and Order, WC Docket No. 02-314, FCC 02-332, Released December 23, 2002 (“*Qwest 9 State 271 Order*”) at ¶ 33.

⁵² *Qwest 9 State 271 Order* at ¶ 33. See also, 47 C.F.R. §51.319(g).

1 A. Yes. The FCC has determined OSS to be a “network element.”⁵³ Consequently, a CLEC
2 must be permitted nondiscriminatory access to an ILEC’s OSS functions in order to
3 provide pre-order information to potential customers, sign up customers, place orders for
4 services or facilities, track the progress of its orders to completion, obtain relevant billing
5 information from the ILEC, and obtain prompt repair and maintenance services for its
6 customers.

7 **Q. IS THIS DUTY TO PROVIDE OSS FUNCTIONS CONTAINED IN THE**
8 **TELECOM ACT?**

9 A. Yes. The duty to provide access to OSS functions falls squarely within an ILEC’s duties
10 under Section 251(c)(3) to provide UNEs on terms and conditions that are
11 nondiscriminatory, just and reasonable, in accordance with the pricing standards of
12 Section 252, and under Section 251(c)(4) to offer services for resale without imposing
13 any limitations or conditions that are discriminatory or unreasonable.⁵⁴
14 Nondiscriminatory access to OSS is also required under the Section 271 14-point
15 competitive checklist applicable to BOCs.⁵⁵

⁵³ *Local Competition Order* at ¶ 516.

⁵⁴ *Ameritech Michigan 271 Order* at ¶ 130; see also, *Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in South Carolina*, CC Docket No. 97-208, *Memorandum Op. and Order*, Released December 24, 1997, at ¶ 83.

⁵⁵ The FCC states: “Under checklist item 2, a BOC must demonstrate that it provides nondiscriminatory access to the five OSS functions: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing. In addition, a BOC must show that it provides nondiscriminatory access to UNEs and that it has an adequate change management process in place to accommodate changes made to its systems.” *Qwest 9 State 271 Order* at ¶ 34.

1 **Q. IS OSS AN EXAMPLE OF HOW CENTURYLINK COULD INTEGRATE THE**
2 **TWO COMPANIES IN SUCH A WAY AS TO HARM CLECS?**

3 A. Yes. The post-merger integration of OSS is a prime example. OSS impacts all wholesale
4 customers that do business with Qwest and CenturyLink, regardless of whether the CLEC
5 is resale-based, UNE-based, or completely facilities-based. The statements from the FCC
6 above, and Qwest's statement that OSS is the "lifblood" of its wholesale operations,
7 shows that the importance of OSS to competition cannot be exaggerated. Out of the
8 many ways that the Merged Company could integrate the two companies to the detriment
9 of competition, degrading the quality or access to OSS would be the most effective, and
10 could be, if not done through a transparent CMP process, one of the most difficult to
11 detect and remedy.

12 **Q. HOW WILL CLECS BE HARMED BY INTEGRATION OF OSS?**

13 A. First, CenturyLink uses different OSS than Qwest. And, unlike Qwest's OSS, which was
14 extensively tested during the 271 approval process, CenturyLink's OSS has not been
15 third-party tested to determine whether they meet the nondiscriminatory requirements of
16 Section 271. Second, the existing Qwest OSS and its functionality are more well-
17 documented, and preferred by carriers such as Charter that use both of the merging
18 companies' systems, than the existing CenturyLink OSS. Just as carriers in Embarq
19 territory did not want to revert to the more manual processes of CenturyTel in that

1 merger,⁵⁶ CLECs do not want Qwest to backslide from the 271-evaluated systems in
2 Qwest territory to CenturyLink systems that have not been subjected to rigorous third-
3 party testing.⁵⁷ In fact, I would argue that backsliding from using a 271-compliant OSS
4 would be a violation of Qwest's 271 obligations, and, therefore, could subject the Merged
5 Company to complaints and enforcement action under Section 271(d)(6). If the Merged
6 Company is found to be out of compliance with the 271 obligations, it would be subject
7 to sanctions, up to, and including, the possible revocation of the previously granted
8 authority to offer in-region long distance and advanced information services. However,
9 even if a CLEC has the option to file complaints in response to the Merged Company
10 making unilateral changes – post-merger – that contravenes its 271 obligations, this could
11 turn the burden of proof on the CLEC to substantiate its claims against the Merged
12 Company. However, the CLECs have already expended enormous amounts of time and
13 money in their effort to ensure that Qwest's OSS complies with the nondiscriminatory
14 requirement of Section 271 of the Act, and the burden should be on the Merged Company
15 to demonstrate that any post-merger change is consistent with its ongoing 271 obligations
16 in Qwest's legacy territory. Hence, any attempt to integrate CenturyLink's OSS into the
17 legacy Qwest region would be a step in the wrong direction for competitors, competition
18 and potentially even the Merged Company.

⁵⁶ See, e.g., *In the Matter of Applications Filed for Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238, FCC 09-54, Released June 25, 2009 (“FCC Embarq/CenturyTel Merger Order”), Appendix C “Conditions,” at p. 28 (“CenturyTel will integrate, and adopt for CenturyTel CLEC orders, the automated Operation Support Systems (‘OSS’) of Embarq within fifteen months of the transaction’s close.”).

⁵⁷ CenturyLink Response to Integra Washington Data Request #18 (“While CenturyLink has not conducted third-party testing of its systems...”)

1 **Q. HAVE THE CLECS AND STATE COMMISSION STAFFS ATTEMPTED TO**
2 **DETERMINE WHETHER CENTURLINK PLANS TO INTEGRATE**
3 **DIFFERENT OSS INTO QWEST'S LEGACY TERRITORY POST-MERGER?**

4 A. Yes. When the CLECs asked CenturyLink about its post-merger OSS integration plans,
5 it responded as follows:

6 Upon merger closing, CenturyLink does not anticipate any immediate
7 changes to the Qwest CLEC OSS systems. Integration planning is in the
8 early stages and decisions have not been made at this time. However,
9 because the transaction results in the entirety of Qwest, including
10 operations and systems, merging into and operating as a subsidiary of
11 CenturyLink, it will allow a disciplined approach to reviewing systems
12 and practices and will allow integration decisions to proceed in an orderly
13 disciplined manner...⁵⁸

14 When asked by the Washington Utilities and Transportation Commission Staff about
15 post-merger OSS plans, CenturyLink stated:

16 Until the Transaction is complete, and the necessary decisions have been
17 made on how to best integrate the two companies, plans for specific
18 changes to the Qwest or CenturyLink Operations Support Systems (OSS)
19 have not been fully developed.⁵⁹

20 When asked by Oregon PUC Staff whether CenturyLink intends to transition Qwest's
21 OSS to CenturyLink's legacy OSS within the next three to five years, CenturyLink
22 responded:

23 At this time, system integration plans for the proposed transaction with
24 Qwest have not been fully developed. In fact, complete integration plans
25 cannot be developed until the merger is concluded. However, because the
26 transaction results in the entirety of Qwest, including operations and

⁵⁸ CenturyLink Response to Integra Washington Data Request #23.

⁵⁹ CenturyLink Response to Washington UTC Staff Data Request #84 (June 25, 2010). See, Exhibit AA-4 at p. 1.

1 systems, merging into and operating as a subsidiary of CenturyLink, it will
2 allow a disciplined approach to systems and practices integration decisions
3 to proceed in a disciplined manner.⁶⁰

4 When the Oregon Staff probed further to determine potential changes to the Qwest OSS
5 post-merger, CenturyLink, again, responded with a “patented” answer that CenturyLink
6 has given on many questions related to post-merger integration plans:

7 Integration planning is in the early stages and decisions on wholesale OSS
8 systems have not been made at this time. Upon merger closing, there will
9 be no immediate changes to Qwest’s or CenturyLink’s OSS. Any changes
10 will occur only after a thorough and methodical review of both
11 companies’ systems and processes to determine the best system to be used
12 on a go-forward basis. Decisions will be made from both a combined
13 company and a wholesale customer perspective and consistent with the
14 continued provision of quality service to our wholesale customers.⁶¹

15 In sum, CenturyLink’s claims that it cannot respond until the merger is complete,
16 provides the Commission an insufficient basis to evaluate a critical aspect of the merger:
17 OSS integration. While CenturyLink has made vague statements publicly about
18 operations in Qwest territories being unaffected by the proposed transaction, it would
19 seem that issues like the OSS issue would be very easy for the Joint Applicants to put to
20 rest with a straightforward commitment to leave existing Qwest wholesale processes and
21 OSS in place for a significant timeframe, as well as a commitment to follow similar
22 objective, third-party testing if and when changes are made to the system. However, in

⁶⁰ CenturyLink Response to Oregon PUC Staff Data Request #32. *See also*, CenturyLink Response to Integra Washington Data Request #27 (“At this time, system integration plans for the proposed transaction with Qwest have not been fully developed. In fact, complete integration plans cannot be developed until the merger is concluded. However, because the transaction results in the entirety of Qwest, including operations and systems, merging into and operating as a subsidiary of CenturyLink, it will allow a disciplined approach to reviewing systems and practices and will allow integration decisions to proceed in an orderly manner.”)

⁶¹ CenturyLink Response to Oregon PUC Staff Data Request #60. *See also*, Hunsucker Oregon Direct at pp. 8-9.

1 sworn testimony or discovery responses, the Joint Applicants have been unwilling or
2 unable to make that simple commitment or give a straight answer – often refusing to
3 provide a meaningful answer at all. That certainly gives me strong concerns about the
4 Joint Applicants’ intent, and it should concern the Commission as well.

5 **Q. IN ADDITION TO THIS LACK OF DETAILS REGARDING CENTURYLINK’S**
6 **OSS INTEGRATION PLANS, IS THERE ANYTHING ELSE THAT SUPPORTS**
7 **YOUR CONCERN ABOUT CENTURYLINK REPLACING LEGACY QWEST**
8 **OSS WITH OSS THAT HAVE NOT BEEN SHOWN TO BE 271 COMPLIANT?**

9 A. Yes. Discovery responses that CenturyLink and Qwest submitted in Minnesota last week
10 indicate that at least some of Qwest’s CLEC-facing OSS interfaces will be modified or
11 replaced if the proposed transaction is approved. Specifically, CenturyLink states:
12 “...after the systems of the [merged] company have been consolidated after the merger,
13 the company intends to support a [unified ordering model] UOM interface for LSRs.”⁶²
14 At the same time, Qwest states that, “IMA is not UOM compliant. IMA has its own
15 XML Gateway and does accept XML files for LSR order submission...IMA only offers a
16 customer GUI written in java or the custom XML interface mentioned above.”⁶³ These

⁶² CenturyLink Response to Integra Minnesota Data Request #3-9, dated September 23, 2010. Integra asked CenturyLink: “Please indicate whether, after all of the systems of the Merged Company have been consolidated, the interface that the Merged Company will provide will support a UOM interface for LSRs.” Unified Ordering Model (“UOM”) Guidelines Document, established by the Ordering and Billing Forum (“OBF”), are described as follows: “The Unified Ordering Model (UOM) describes a complete set of system documentation using an end-to-end structured methodology. The scope of UOM encompasses business requirements, analysis, design and implementation.” <http://www.atis.org/obf/UOMASRsumm.asp>

⁶³ Qwest Response to Integra Data Request #11, dated September 23, 2010. Integra asked Qwest: “Is the interface that Qwest currently uses to process LSRs for CLECs a UOM interface. If so...”

1 responses necessarily mean that the interface Qwest currently uses to process CLEC
2 LSRs (IMA) will no longer be available in its present form. CenturyLink will either
3 replace it or modify it. If CenturyLink considers its EASE system to be UOM compliant,
4 CenturyLink's response may suggest an intention by CenturyLink to use EASE for LSRs,
5 contrary to the recommendation of the Joint CLECs. In any event, the discovery
6 responses confirm that CenturyLink does not intend to use Qwest IMA as it exists today.
7 Investigation is needed, therefore, into how and when CenturyLink intends to change or
8 replace Qwest's IMA. The Joint CLECs and state commission staffs have attempted to
9 obtain information about CenturyLink's plans through discovery, but until it provided
10 this new information CenturyLink had not even indicated it had such plans much less
11 explain what they mean. CenturyLink still has not provided any explanation as to when
12 or how it will implement its plan to, after systems consolidation, support a UOM
13 compliant system.

14 The following CenturyLink testimony underscores the CLECs' concerns in this regard:

15 [t]he combined company will continue to meet these [271] obligations
16 through its wholesale operations *leveraging* the key resources and
17 expertise of *both entities*.⁶⁴

18 The problem with this statement, beyond its obviously vague nature, is that only *Qwest's*
19 wholesale systems, processes and resources have been shown to satisfy the market-
20 opening and nondiscrimination requirements of Section 271 of the Act – CenturyLink's

⁶⁴ Hunsucker Oregon Direct at pp. 12-13.

1 have (admittedly⁶⁵) not. So, when CenturyLink says that it will integrate at least some of
2 CenturyLink's wholesale resources and expertise into Qwest's territory (such as an OSS
3 interface), it is likely that some of the interfaces and processes that have been deemed as
4 271-compliant would be replaced by interfaces and processes that have not been found to
5 be 271-compliant.

6 **Q. WILL CLECS BE HARMED BY CENTURYLINK MODIFYING OR**
7 **REPLACING QWEST'S EXISTING IMA INTERFACE FOR PROCESSING**
8 **LSRS?**

9 A. Yes. First, CLECs, like PAETEC, have already built internal systems to interface with
10 Qwest's IMA-XML interface for processing LSRs. Integra is in the process of
11 transitioning to IMA-XML and currently plans to cut-over to IMA-XML in first quarter
12 of 2011. Accordingly, CLECs have already expended significant time and money to
13 interface with the Qwest OSS interface that CenturyLink now states it will modify or
14 replace post-merger. Based on CenturyLink's plans, additional CLEC time and money
15 will be required to adapt to CenturyLink's modifications or replacement of IMA-XML.
16 These additional costs are a direct result of the proposed transaction. Second, it is my
17 understanding from CenturyLink's discovery responses that there are functionalities and
18 order types that are currently supported by Qwest's IMA-XML that are not supported by
19 CenturyLink's EASE OSS. So, any attempt by CenturyLink to implement its current

⁶⁵ CenturyLink Response to Integra Washington Data Request #18 ("While CenturyLink has not conducted third-party testing of its systems...") *See also*, Hunsucker Oregon Direct at p. 12, lines 15-17 ("CTL is not a BOC and as such has no similar 271 obligations that apply to its territories nor should there be any 271 obligations placed on the legacy CTL territories...").

1 version of EASE into Qwest's territory would result in inferior functionality. Third,
2 Qwest already looked into UOM during its transition from EDI to XML in 2006. Qwest
3 stated: "we did research taking the UOM approach and when we tried to map there was a
4 lot of overhead and suggested that we continue to use the disclosure worksheet."⁶⁶ If
5 there was "a lot of overhead" associated with the UOM approach back in 2006, then there
6 is certainly "a lot of overhead" associated with it today, for both Qwest and CLECs (who
7 have expended significant time and money to interface with IMA-XML since 2006).

8 **Q. IS THERE ANOTHER REASON WHY THIS CONCERN IS WARRANTED?**

9 A. Yes. CenturyLink has estimated *****BEGIN HIGHLY CONFIDENTIAL** [REDACTED]
10 **END HIGHLY CONFIDENTIAL***** of the total estimated \$575 million in
11 operational synergy savings to come from *****BEGIN HIGHLY CONFIDENTIAL**
12 **END HIGHLY CONFIDENTIAL*****.⁶⁷ Given the
13 magnitude of the estimated savings from this item relative to the overall synergy savings
14 estimate, it is likely that integration efforts will involve OSS. It is also curious that
15 CenturyLink can so precisely calculate savings for this item when, as discussed above, it
16 has stated: "complete integration plans cannot be developed until the merger is
17 concluded."⁶⁸

⁶⁶ CR SCR121305-01 Detail, available at:

http://www.qwest.com/wholesale/cmp/archive/CR_SCR121305-01.html

⁶⁷ CenturyLink Response to Integra Washington Data Request #52(a), Highly Confidential Attachment Integra-52a.

⁶⁸ See, e.g., CenturyLink Responses to Integra Washington Data Requests #27, #30, #82, #83, #84, #108, #118, and #134.

1 **Q. YOU MENTION ABOVE THAT QWEST’S OSS WAS THIRD-PARTY TESTED**
2 **DURING THE 271 APPROVAL PROCESS. PLEASE ELABORATE.**

3 A. Qwest’s existing OSS, CMP and supporting processes and data, were thoroughly tested
4 during the Qwest 271 approval process to ensure that they provided the
5 nondiscriminatory access required by Section 271. According to Qwest, the collaborative
6 OSS test “was the most comprehensive and collaborative of all of the OSS tests
7 conducted to date.”⁶⁹ And referring to the final report of the third-party tester, Qwest
8 said: “This *Final Report* marked the culmination of more than three years of exhaustive
9 and comprehensive effort, *unlike any seen before*, to determine whether Qwest’s OSS
10 meet the standards set forth under Section 271 of the Telecommunications Act of 1996,
11 as those standards have been amplified and applied by the FCC.”⁷⁰ Qwest’s opinion was
12 shared by the state commissions that participated and oversaw the third-party testing,
13 such as the Arizona Corporation Commission which stated:

14 The ACC believes that during the last four years, Qwest systems,
15 processes, and performance measurements have undergone one of the
16 most comprehensive reviews to-date...result[ing] in an extremely rigorous
17 test, resolution of many disputed issues through compromise, and
18 meaningful and effective changes to Qwest’s systems and processes.⁷¹

⁶⁹ Brief of Qwest Corp., WC Docket No. 02-148, June 13, 2002, at p. 111.

⁷⁰ Qwest Verified Comments, Washington Docket No. UT-003022 at pp. 1-2 (emphasis added). Qwest also described the OSS testing as: “years of rigorous fact finding and analysis...” Reply Comments of Qwest Corp., WC Docket No. 02-148 at p. 2.

⁷¹ Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003 (“ACC Evaluation”), at p. 5. The Colorado Public Utilities Commission referred to the testing process as “the epitome of collaborative, open decision making.” Reply Comments of Qwest Corp., WC Docket No. 02-148 at p. 2.

1 The FCC said "...the OSS testing conducted under the auspices of the ROC [Regional
2 Oversight Committee] was broad-based and comprehensive."⁷² Attached to my
3 testimony as Exhibit__TJG-3 is a detailed description of the extensive, three-year
4 process that was undertaken by state regulators, the FCC, Qwest, CLECs and third-party
5 testers to ensure that Qwest's existing OSS, performance metrics, and CMP met the
6 requirements of Section 271. This exhibit also explains that hundreds of issues of
7 concern were identified during third-party testing and resolved through improvements to
8 Qwest's OSS.

9 **Q. YOU MENTIONED THAT THE THIRD-PARTY TEST INVOLVED AN**
10 **EVALUATION OF QWEST'S PERFORMANCE MEASUREMENTS. PLEASE**
11 **ELABORATE.**

12 A. The third-party test included an audit of Qwest's performance assurance plan ("QPAP")
13 (a self-executing remedy plan to ensure Qwest continues to comply with the competitive
14 checklist) and related performance indicators or "PIDs" (which are used in the QPAP to
15 measure Qwest's performance and to determine whether Qwest must make remedy
16 payments to CLECs or the state for substandard wholesale service quality). A coalition
17 was formed – the Regional Oversight Committee ("ROC") Post-Entry Performance Plan
18 ("PEPP") – to discuss and address issues related to Qwest's wholesale performance,
19 including the PAP. Qwest filed its PAP on June 29, 2001, and a multi-state proceeding
20 (conducted by a third-party Facilitator from Liberty Consulting) was initiated to review

⁷² *Qwest 9 State 271 Order* at ¶ 12.

1 Qwest's PAP.⁷³ Qwest's PIDs were developed collaboratively by the ROC for use in the
2 third-party test to measure Qwest's ability to process commercial volumes through its
3 OSS.⁷⁴ Qwest's PIDs measure performance in three ways: retail parity (for measures
4 with retail analogues), benchmark (for measures without retail analogues) and "parity by
5 design" (for measures without retail analogues or benchmarks).⁷⁵ The Master Test Plan
6 directed Liberty Consulting to "develop and perform an audit to insure that all aspects of
7 Qwest's wholesale performance measures and retail parity standards are sound and in
8 compliance with the collaboratively developed ROC PID."⁷⁶

9 Qwest's PAPs and associated PIDs are absolutely essential to ensure that local markets in
10 Qwest's region remain open to competition (*i.e.*, Qwest does not backslide). For
11 instance, the FCC said:

12 As set forth below, we find that the performance assurance plans (PAP)
13 that will be in place...provide assurance that the local market will remain
14 open after Qwest receives section 271 authorization in the nine application
15 states...and are likely to provide incentives that are sufficient to foster
16 post-entry checklist compliance.⁷⁷

⁷³ See, e.g., *In the Matter of the Investigation Into US WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Thirtieth Supplemental Order, Commission Order Addressing Qwest's Performance Assurance Plan, Washington UTC Docket Nos. UT-003022/003040, April 2002 ("*Washington 30th Supplemental Order*") at ¶¶ 10-11.

⁷⁴ *In the Matter of the Investigation Into US WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Thirty-Ninth Supplemental Order, Commission Order Approving SGAT and QPAP, and Addressing Data Verification, Performance Data, OSS Testing, Change Management, and Public Interest, Washington UTC Docket Nos. UT-003022/003040, July 1, 2002 ("*Washington 39th Supplemental Order*") at ¶ 345.

⁷⁵ *Washington 39th Supplemental Order* at ¶ 32.

⁷⁶ *Washington 39th Supplemental Order* at ¶ 33.

⁷⁷ *Qwest 9 State 271 Order* at ¶ 440.

1 It is my understanding that with a few exceptions in the legacy Embarq territory,
2 CenturyLink is not subject to PAPs or PIDs, and certainly not PAPs or PIDs that were
3 extensively tested during the 271 approval process. And since Qwest's PAPs and PIDs
4 go hand-in-hand with Qwest's existing OSS systems, any change to the existing Qwest
5 OSS would likely mean changes for Qwest's PAPs and PIDs. This would have a
6 dramatic negative effect on the ability to identify discriminatory treatment by the Merged
7 Company and would give the Merged Company more opportunity to backslide on its 271
8 obligations in Qwest's legacy territory.

9 **Q. DOES YOUR EXPLANATION AND EXHIBIT REGARDING THE TESTING OF**
10 **QWEST'S OSS UNDERSCORE THE CLEC CONCERNS ABOUT OSS**
11 **INTEGRATION?**

12 A. Yes. Post-merger, CenturyLink may attempt to replace OSS that has been tested under a
13 process "unlike any seen before" with OSS that has not been independently tested at all.
14 Once such changes are made, much if not all of the work by the ROC and FCC during the
15 271 approval process will have been squandered and Qwest can no longer show that it is
16 providing nondiscriminatory access to OSS under 271 of the Act – that is, unless and
17 until the Merged Company demonstrates, using the same stringent testing process that
18 took place during the Qwest 271 approval process, that its new wholesale system or
19 process meets the 271 requirements.

1 **Q. CENTURYLINK APPEARS CONFIDENT THAT ITS WHOLESALE OSS AND**
2 **OPERATIONS, IF INTEGRATED IN QWEST’S LEGACY TERRITORY,**
3 **WOULD COMPLY WITH 271 REQUIREMENTS.⁷⁸ SHOULD THE**
4 **COMMISSION SHARE THIS CONFIDENCE?**

5 A. No. There is absolutely no basis for CenturyLink’s claim. Ironically, Qwest made a
6 similar claim back in 1999 that its OSS and CMP at that time satisfied the Section 271
7 requirements. However, three years of third-party testing under ROC supervision, dozens
8 of “meaningful and effective changes to Qwest’s systems and processes[,]”⁷⁹ and millions
9 of dollars later, it was proven that Qwest’s confident assurances about its OSS and CMP
10 being 271 compliant were baseless. I have provided as Exhibit__TJG-4 the
11 “Assurances Not Met” exhibit which compares the assurances Qwest made in 1999 about
12 its then-flawed OSS and CMP to the assurances CenturyLink is now making. As this
13 exhibit shows, it would be unwise for the Commission to accept CenturyLink’s promises
14 in this regard at face value.

15 **Q. YOU STATE ABOVE THAT CENTURYLINK AND QWEST USE DIFFERENT**
16 **OSS. PLEASE ELABORATE ON THE DIFFERENCES BETWEEN THE TWO**
17 **COMPANIES’ OSS.**

⁷⁸ Hunsucker Oregon Direct at pp. 12-13 (“CTL is not a BOC and as such has no similar 271 obligations that apply to its territories nor should there be any 271 obligations placed on the legacy CTL territories in Oregon post merger closing. However, the legacy Qwest territories will continue to have 271 obligations. The combined company will continue to meet these obligations through its wholesale operations leveraging the key resources and expertise of both entities.”)

⁷⁹ ACC Evaluation at p. 5.

1 A. Take the CLEC-facing OSS interfaces for pre-ordering, ordering and maintenance/repair
2 for example. For pre-ordering, ordering and provisioning of UNEs/resale Local Service
3 Requests (“LSRs”), Qwest uses Interconnect Mediated Access Graphical User Interface
4 (“IMA GUI”) and Interconnect Mediated Access Extensible Markup Language (“IMA
5 XML”) as its CLEC-facing systems. IMA GUI is a web-based electronic interface and
6 IMA XML is a business-to-business electronic interface allowing bilateral information
7 exchange between Qwest and CLEC systems.⁸⁰ These IMA systems interface with
8 Qwest back-office systems and databases in support of queries and transactions.⁸¹ For
9 access services and unbundled dedicated interoffice transport (“UDIT”), Qwest uses
10 Qwest Online Request Application Graphical User Interface (“QORA GUI”), a web-
11 based interface, and QORA Gateway, a company-to-company interface, for CLEC-facing
12 systems.⁸² Though QORA does not provide all of the functionality that IMA provides,
13 like the IMA systems for LSRs, QORA provides for electronic submission of Access

⁸⁰ Qwest Response to Integra Washington Data Request #19. According to Qwest: “The IMA GUI is a user-to-computer interface while IMA XML is a computer-to-computer interface. The Qwest IMA GUI presents the user with a series of browser-based screens. Using these screens the CLEC can process pre-order, order, and post-order IMA transactions. There are no screens associated with XML. All of the information that is exchanged is done so in the form of data files.” IMA XML FAQs Available at: <http://www.qwest.com/wholesale/ima/xml/> See also, Direct Testimony of Christopher Viveros on behalf of Qwest Communications International, Inc., Oregon Public Utility Commission Docket No. UM 1484, Qwest/2, June 22, 2010 (“Viveros Oregon Direct”), at p. 8 (“IMA provides pre-ordering and ordering/provisioning functions for all local competitive products that are ordered via Local Service Requests (‘LSRs’). IMA provides both a Graphical User Interface (‘GUI’) and an application-to-application option using Extensive Markup Language (‘XML’).”) Available at: <http://edocs.puc.state.or.us/efdocs/HTB/um1484htb152122.pdf>

⁸¹ Qwest Response to Integra Washington Data Request #19.

⁸² Qwest Response to Integra Washington Data Request #19. See also, Viveros Oregon Direct at p. 8 (“QORA supports ordering for all wholesale products ordered via an Access Service Request (‘ASR’). QORA provides CLECs with a GUI interface, or CLECs’ systems can submit ASRs via QORA’s Network Data Mover (‘NDM’) and Unified Order Model (‘UOM’) gateways.”)

1 Service Requests (“ASRs”). For maintenance and repair, Qwest uses Customer
2 Electronic Maintenance and Repair (“CEMR”) and Repair Call Expert (“RCE”) as its
3 web-based CLEC-facing systems, and Mediated Access Electronic Bonding Trouble
4 Administration (“MEDIACC-EBTA”) as its business-to-business gateway CLEC-facing
5 system.⁸³

6 By comparison, CenturyLink uses a system called EASE for pre-ordering and ordering
7 for both LSRs and ASRs.⁸⁴ EASE includes both a GUI (web-based) and EDI (business-
8 to-business) version. For trouble reporting, CenturyLink uses “Access Care,” wherein a
9 wholesale customer calls into Special Service Operations (“SSO”) and CenturyLink
10 records the information on a trouble ticket.⁸⁵ In the legacy Embarq territories,
11 CenturyLink also provides the option to use WebRRS, a web-based repair ticket system
12 that allows CLECs to report and track trouble tickets.⁸⁶

⁸³ Qwest Response to Integra Washington Data Request #19. Qwest states: “CEMR and MEDIACC-EBTA are used to mechanically process telephone circuit repair activities including repair ticket generation and MLT (Mechanized Loop Tests).” *See also*, Viveros Oregon Direct at p. 8 (“CEMR is Qwest’s GUI that provides CLECs with maintenance and repair functions for their existing products and services. CEMR allows CLECs to perform trouble administration activities such as creating and editing trouble reports, monitoring trouble report status and reviewing trouble history...MEDIACC EBTA provides CLECs with the ability to perform maintenance and repair functions in their own systems. MEDIACC EBTA is the electronic gateway that CLECs’ systems use to communicate with Qwest’s systems.”)

⁸⁴ CenturyLink Response to Integra Washington Data Request #16. *See also*, Hunsucker Oregon Direct at p. 7 (“CTL utilizes a system called EASE in its legacy Embarq territories. EASE is used to process both access service requests (ASRs) and local service requests (LSRs)...”)

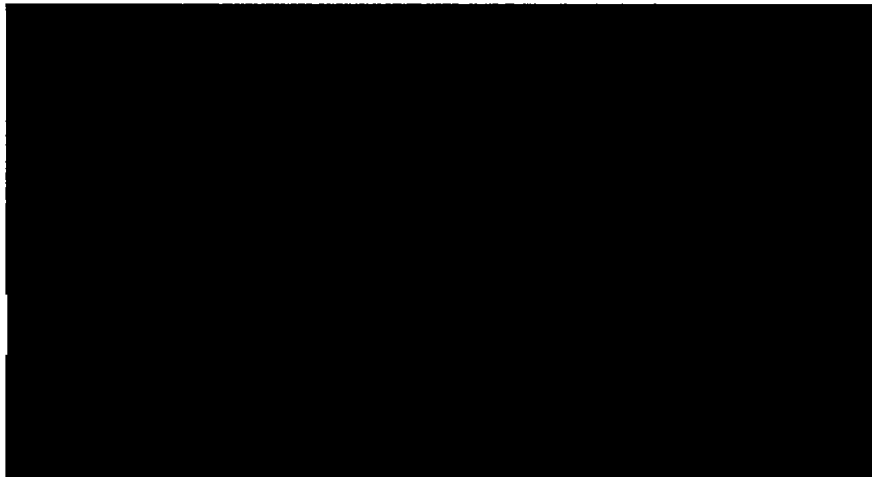
⁸⁵ CenturyLink Response to Integra Washington Data Request #16.

⁸⁶ CenturyLink Response to Washington UTC Staff Data Request #86 (“Relative to maintenance and repair, CenturyLink provides CLECs with access to WebRRS, via the wholesale website, as a means to report and track trouble tickets or CLECs have the option of utilizing ‘800’ access numbers to reach the appropriate repair center.”). *See also*, Hunsucker Oregon Direct at p. 8, lines 6-9 (“Relative to maintenance and repair, CenturyLink provides CLECs with access to WebRRS, via the wholesale website, as a means to report and

1 Q. PLEASE COMPARE THE VOLUMES HANDLED BY QWEST'S OSS VERSUS
2 THE VOLUMES HANDLED BY CENTURYLINK'S OSS.

3 A. Both CenturyLink and Qwest provided data regarding the volumes of Local Service
4 Requests or LSRs submitted by type of OSS (i.e., application-to-application, web-based
5 GUI or fax/email). The following table provides a comparison of CenturyLink's and
6 Qwest's data:

7 ***BEGIN CONFIDENTIAL



8
9 END CONFIDENTIAL***

10 This data shows that, in Washington, Qwest's OSS processes about ***BEGIN
11 CONFIDENTIAL [REDACTED] END CONFIDENTIAL*** LSRs than does
12 CenturyLink's OSS. There is no evidence in the record that would lead to the conclusion
13 that CenturyLink's legacy OSS will be able to handle the volumes experienced in

track trouble tickets or CLECs have the option of utilizing '800' access numbers to reach the appropriate repair center.”)

1 Qwest's legacy region. This data also shows that *****BEGIN CONFIDENTIAL** [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] **END**

5 **CONFIDENTIAL***** Therefore, any changes to Qwest's OSS would have a greater

6 impact on CLECs than changes to CenturyLink's OSS (*****BEGIN CONFIDENTIAL**

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] **END**

10 **CONFIDENTIAL*****).

11 **Q. HOW LONG HAVE THESE VARIOUS CLEC-FACING INTERFACES BEEN IN**
12 **PLACE?**

13 A. Qwest's interfaces were tested during the 271 approval process which took place between
14 1999-2002, which means that Qwest's existing OSS has largely (*i.e.*, with incremental
15 changes made via the CMP process) been in place since 2002. CenturyLink's EASE, on
16 the other hand, was first implemented in legacy CenturyLink (Embarq) territory in May
17 2008 for ASRs and October 2009 for LSRs. In the legacy CenturyTel territory, EASE
18 was introduced for ASRs in January 2010, and CenturyLink is currently in the process of
19 implementing EASE for LSRs in legacy CenturyTel territory. None of these systems
20 recently introduced in legacy CenturyLink territory were subjected to any third party
21 testing. And, prior to the recent introduction of EASE in the legacy CenturyTel territory,

1 CenturyTel's OSS were "largely manual with little if any automated or interactive
2 capabilities."⁸⁷

3 **Q. IF CENTURYLINK WERE TO ATTEMPT TO INTEGRATE OSS POST-
4 MERGER, WOULD IT BE A MATTER OF SIMPLY SWAPPING OUT THE IMA
5 INTERFACE WITH THE EASE INTERFACE?**

6 A. No. The Qwest IMA and CenturyLink EASE interfaces are just the CLEC-facing
7 interfaces. Behind those interfaces are a number of back-office systems, underlying data
8 sets, business processes, product catalogs,⁸⁸ billing systems, business rules, performance
9 metrics, etc., that are all directly fed information received from the interfaces without
10 manual intervention. All of these various pieces work together to provide the five
11 functions of OSS (pre-ordering, ordering, provisioning, maintenance and repair, and
12 billing). This requires systems to be compatible with other systems, recognize certain
13 computer code, and be properly linked to upstream and downstream systems, databases
14 and workgroups. Obviously, it is not possible to simply unplug IMA and plug in EASE
15 (like, for example, swapping out Netscape® Navigator with Internet Explorer as the
16 browser on a personal computer). Changing out CLEC-facing interfaces would create a
17 complete breakdown in the linkages with underlying systems, databases and processes.
18 Given the complexity of Qwest's OSS, such an integration attempt would be an
19 enormous effort just to make sure everything worked, let alone to ensure that the

⁸⁷ FCC *Embarq/CenturyTel Merger Order* at ¶ 22.

⁸⁸ Product catalogs used in this context do not refer to the Qwest on-line documentation of its products and business processes often referred to as Qwest "PCATs."

1 replacement system provides the type of nondiscriminatory access to the full features and
2 functions of the OSS to which CLECs are entitled.

3 **Q. CAN YOU PROVIDE EXAMPLES DEMONSTRATING HOW COMPLEX THIS**
4 **PROCESS WOULD BE?**

5 A. Yes, however, these examples are just the tip of the iceberg – as the complexities of such
6 an effort are virtually endless. The colossal effort that went into testing Qwest’s OSS
7 during the 271 approval process shows how challenging it is to ensure that OSS works
8 properly and provides nondiscriminatory access. One example is data mapping.
9 CenturyLink would require data extracts from Qwest’s systems to populate the new
10 replacement systems. This would require not only great familiarity of the legacy systems
11 and replacement systems, but also an extensive data mapping effort. Another example is
12 product catalogs. Such an integration effort would require that source system product
13 catalogs be remapped to the replacement systems. This process is very complex given
14 that legacy BOC product catalogs reside in multiple systems and include thousands of
15 universal service ordering codes (“USOCs”), USOC identifiers, and feature identifiers.
16 Moreover, the new systems would need to also synch up with all of the underlying data
17 sources such as circuit inventory and loop qualification databases.

18 **Q. WOULD SUCH A CHANGE RESULT IN SIGNIFICANT COST TO THE CLEC?**

19 A. Yes. Not only would CLECs have to expend significant time and money testing the
20 CenturyLink replacement systems, but they would also have to materially modify their

1 own systems. For instance, the CLECs have built their own interfaces to electronically
2 bond directly to the existing Qwest systems. These CLEC systems would need to be
3 modified, at significant expense, by the CLEC to work with the new replacement system.
4 For instance, Qwest's IMA XML exchanges information between the CLEC and Qwest's
5 OSS in data files based on Qwest's standard XML Web Service Definition Languages or
6 "WSDLs." As Qwest explains: "There must be a mechanism to translate data from the
7 proprietary format as it exists in the CLEC system to a format that the receiving
8 organization can understand. This is done using XML translation software."⁸⁹ All of
9 these systems, software, and proprietary formats would need to be changed in both
10 Qwest's and CLECs systems if CenturyLink attempts to replace Qwest's OSS post-
11 merger. The CLEC would then need to test all of these new systems before going "live"
12 to ensure that they work properly (which is the purpose of Qwest's Stand Alone Test
13 Environment or "SATE"), and would also need to test them in a production environment
14 (which is why Qwest offers controlled production testing). CenturyLink has not
15 indicated whether it would provide any of these capabilities if it decides to integrate OSS.

16 Also, like Qwest, some CLECs have integrated their electronic interfaces into their own
17 back end systems. PAETEC's systems, for example, take Qwest line loss data received
18 through the XML interface, and feed that information directly into PAETEC's billing
19 system, which results in the termination of billing for end users for whom the line loss
20 data has been received via the interface without manual intervention. The

⁸⁹ IMA XML FAQs Available at: <http://www.qwest.com/wholesale/ima/xml/>

1 interconnectivity of systems has effectively eliminated the “billing after downgrade”
2 issues that plagued CLECs and end users that existed for a number of years (assuming the
3 line loss data provided by Qwest is accurate). A similar linkage is made by PAETEC
4 between Qwest’s OSS interfaces and the PAETEC’s own systems for directory listings to
5 ensure accurate directory listings for the CLECs’ customers. Another example is for
6 trouble ticket reporting. PAETEC, for example, has established electronic bonding
7 capability with Qwest that allows automated escalation of the trouble ticket, and
8 automated resolution or closing of the trouble ticket and notification to the customer. In
9 other words, by establishing the electronic bonding with Qwest, a CLEC trouble ticket
10 can go from “open” to “closed” with little or no intervention by the CLEC’s technicians.
11 These automated capabilities are possible because the CLEC undertook a substantial
12 effort to develop its own back end systems and processes and then code, test and link
13 those systems and processes to Qwest’s systems and interfaces. These CLEC back end
14 systems would be subject to change if the Merged Company changed Qwest’s legacy
15 OSS post-transaction, and could require CLECs to revert to significantly less efficient
16 manual processes if the modified OSS offered by the Merged Company does not afford
17 CLECs access to the same degree of the Merged Company’s back end systems and data
18 via the electronic interface.

1 During the third-party test of Qwest's OSS, a "pseudo-CLEC" (Hewlett Packard or
2 "HP") was hired to act as a CLEC (or "to live the CLEC experience"⁹⁰). HP was charged
3 with establishing electronic bonding with Qwest, ensuring that Qwest provided the
4 necessary information and tools to electronically interface with Qwest's OSS, and
5 determine whether Qwest's systems were operationally ready to handle the volumes and
6 types of orders CLECs would submit through the business-to-business electronic
7 interfaces. Likewise, KPMG Consulting tested Qwest's testing environments. If
8 CenturyLink attempted to modify the CLEC-facing OSS interfaces in Qwest's territory,
9 all of the work done by the third-party testers during the third-party test, and the work
10 done by CLECs to establish these business-to-business interfaces would be undermined.
11 This work would need to be performed all over again to ensure that the replacement
12 system provides the same functionality and at the same quality as Qwest's system.

13 **Q. COULD THIS TYPE OF INTEGRATION BE DONE IN ONE YEAR?**

14 A. No, not even close. CenturyLink has indicated to the FCC that it intends to operate both
15 companies' OSS for at least one year following transaction approval. One year is
16 insufficient time for such an enormous effort. It took Qwest three years to satisfy third-
17 party testing of its existing OSS, and that was during a time when Qwest faced 271
18 approval as a "carrot" to encourage the company to work with CLECs and regulators to
19 improve its OSS. By contrast, even if CenturyLink abides by its claim to leave Qwest's

⁹⁰ Draft Final Report of KPMG Consulting, Qwest Communications OSS Evaluation, Version 1.1, April 26, 2002 ("KPMG 4/26/02 OSS Report") at p. 10.

1 OSS in place for one year, it will have no incentive to work with CLECs and regulators
2 during the integration to ensure that the access or quality to Qwest's existing OSS are not
3 degraded, because the proposed transaction will already have been approved (*i.e.*, there
4 will be no "carrot").

5 Moreover, the idea that a CenturyLink-Qwest integration can be quick and smooth, or not
6 hinder CLECs, is belied by the petition CenturyLink filed with the FCC, shortly after
7 filing its application for merger, seeking relief from the deadline to implement one-day
8 number porting.⁹¹ In its request for a waiver of the deadline, CenturyLink argued that it
9 was still in the process of integrating the CenturyTel and Embarq systems. Now, before
10 that process is completed and while it is still causing delays in functions like number
11 porting that are critical to competitors, CenturyLink wants to begin yet another
12 integration effort, thereby adding another completely different system to the mix. The
13 Commission should be very concerned about the timing of this proposed transaction
14 given the Embarq merger is, in an operational sense, not finished yet and the end result
15 remains unknown.

16 **Q. IS THERE AN EXAMPLE FROM THE INFORMATION PRESENTED ABOVE**
17 **WHICH SHOWS THAT DIFFERENCES IN THE COMPANIES' OSS LEAD TO**
18 **DIFFERENCES IN FUNCTIONALITIES TO CLECS?**

⁹¹ CenturyLink Petition for Waiver of Deadline, *In re Local Number Portability Interval and Validation Requirements*, WC Dkt. No. 07-244, at 5 (filed June 7, 2010).

1 A. Yes. CenturyLink explains that its “Access Care for trouble reporting system for
2 circuits” entails:

3 [t]he Wholesale customer will call in to the SSO (Special Service
4 Operations) and CenturyLink will record all the pertinent information on
5 the ticket. If SSO has remote test access, SSO will then do a diagnostic
6 test to isolate the trouble. Once it is determined if it is a central office,
7 cable, or premise issue, the SSO will request dispatch to the proper
8 technician to resolve the issue. Once the field technician has fixed the
9 issue, they will call back into SSO to test the circuit to confirm the repair.
10 CenturyLink will then call the reporting party and do acceptance testing, if
11 the circuit is working and they accept it, the ticket is closed.⁹²

12 Also, in legacy Embarq territory, CLECs have the option to submit and track trouble
13 tickets for unbundled loops and features electronically via a web-based repair ticket
14 ordering system (“WebRRS”).

15 Qwest’s MEDIACC-EBTA, by comparison, provides the ability to “mechanically
16 process telephone circuit repair activities including repair ticket generation and MLT
17 (Mechanized Loop Tests).”⁹³ Qwest’s MEDIACC allows for “M&R queries [to be]
18 forwarded directly from the MEDIACC gateway for processing by Loop Maintenance
19 Operations System (LMOS) and Work Force Administration (WFA)”⁹⁴ “without having
20 to go through the Business Process Layer...”⁹⁵ What this comparison demonstrates is
21 that Qwest allows electronic bonding capability for maintenance and repair that permits a

⁹² CenturyLink Response to Integra Washington Data Request #16.

⁹³ Qwest Response to Integra Washington Data Request #19.

⁹⁴ Final Report of the Qwest OSS Test, May 3, 2002, Issued by Cap Gemini Ernst & Young (Third Party Tester), Version 3.0 at p. 247.

⁹⁵ Final Report of the Qwest OSS Test, May 3, 2002, Issued by Cap Gemini Ernst & Young (Third Party Tester), Version 3.0 at p. 251.

1 direct connection between the CLEC's M&R query and the Qwest repair technicians – a
2 capability that is not available through either CenturyLink's Access Care (SSO) process
3 (which requires multiple phone calls and increased manual intervention, with the
4 increased possibility of error) or CenturyLink's web-based WebRRS. Further, based on
5 the information Qwest and CenturyLink have provided to date, it appears that Qwest's
6 web-based maintenance and repair GUI, CEMR, has functionality that CenturyLink's
7 web-based maintenance and repair GUI, WebRRS, does not have. One such example is
8 that CLECs can submit trouble tickets for special access circuits through Qwest's
9 CEMR,⁹⁶ which is not permitted through CenturyLink's WebRRS.⁹⁷

10 **Q. DO YOU HAVE OTHER CONCERNS ABOUT TRYING TO INTEGRATE**
11 **LEGACY CENTURYLINK OSS INTO QWEST'S TERRITORY?**

12 A. Yes. Based on information provided in discovery⁹⁸ CenturyLink's EASE system uses the
13 Virtual Front Office ("VFO"), a platform originally developed by Wisor Telecom Corp, a
14 subsidiary of Synchronoss. This same Synchronoss/Wisor VFO platform was used by
15 FairPoint Communications in its OSS cutover in Northern New England and Frontier
16 Communications in its recent OSS cutover in West Virginia. A competitor in West
17 Virginia that makes extensive use of the Frontier OSS, FiberNet, recently asked the West

⁹⁶ <http://www.qwest.com/wholesale/systems/WebHelp/Introduction.htm>

⁹⁷ See, e.g., A Guide to Embarq Online Wholesale Repair System, available at: http://embarq.centurylink.com/wholesale/docs/webrrs_app.pdf ("For special access circuits or switched access circuits, customers continue to call 888-883-1484 to report trouble.")

⁹⁸ See, e.g., CenturyLink Response to Integra Washington Data Request #17.

1 Virginia Public Service Commission to review problems arising with that platform.

2 FiberNet explained that:

3 Since the cutover to Frontier's Synchronoss VFO [Virtual Front Office]
4 OSS on July 1, 2010, however, FiberNet has experienced significant and
5 ongoing problems with the proper functionality of Frontier's OSS and
6 have unfortunately been compelled to conclude that Frontier's OSS as
7 presently constituted is substantially less sophisticated and far less
8 automated than the former Verizon OSS it was intended to replace.⁹⁹

9 Based on this recent experience, there is a real concern that the same problems
10 experienced by CLECs in Northern New England and now being experienced by CLECs
11 in West Virginia may also occur in Qwest's region post-merger.

12 **Q. ARE YOU CONCERNED ONLY BY THE COMPANY'S ATTEMPT TO**
13 **INTEGRATE CLEC-FACING OSS INTERFACES OR IS YOUR CONCERN**
14 **BROADER THAN THAT?**

15 A. My concern is much broader than CLEC-facing OSS interfaces. As explained above,
16 OSS includes all of the computer systems, databases, personnel and business processes
17 that an ILEC uses to perform internal functions necessary to support the OSS systems
18 interfaces – not just the CLEC-facing interfaces. The third-party test of Qwest's OSS
19 during the 271 approval process went much deeper than just the CLEC-facing interfaces.
20 Rather, the test included an evaluation of Qwest's PIDS,¹⁰⁰ Qwest's PAP,¹⁰¹ Qwest's

⁹⁹ FiberNet LLC Petition to Reopen, July 21, 2010 (filed in West Virginia PSC Docket No. 09-087 1-T-PC), at p. 3.

¹⁰⁰ See, e.g., *Washington UTC 39th Supplemental Order*, ¶ 29 ("The performance measures Qwest uses to report its monthly commercial performance in Washington and other states in its operating territory were collaboratively developed by the Regional Oversight Committee's (ROC) Technical Advisory Group (TAG) to be used in the third-party testing of Qwest's Operations Support Systems (OSS)."); ACC Evaluation at 3 ("As part of the

1 back-office systems, Qwest's business processes,¹⁰² the integrity of Qwest's data,¹⁰³
2 Qwest's SGAT,¹⁰⁴ and Qwest's CMP.¹⁰⁵ Changes in any of these areas will cause Qwest
3 to backslide on its 271 obligations and result in harm for CLECs, and competition
4 generally.

collaborative testing process, the parties worked together to develop a comprehensive set of Performance Indicator Definitions ('PIDs'). These PIDs, with some modification, also formed the basis for the [ROC's] Performance Measurement Evaluation and testing process."). Qwest's PIDs measure performance in three ways: retail parity (for measures with retail analogues), benchmark (for measures without retail analogues) and "parity by design" (for measures without retail analogues or benchmarks). Statistical measures (modified "z-tests") are used for determining whether Qwest satisfies the parity and benchmark performance measures. *See In re Qwest Corp. 's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process et al.*, New Mexico Utility Case Nos. 3269 *et al.*, Final Order Regarding Compliance with Outstanding Section 271 Requirements, 2002 N.M. PUC LEXIS 2, October 8, 2002, at ¶ 65.

¹⁰¹ *See, e.g.*, Comments of the Nebraska Public Service Commission, WC Docket No. 02-148, filed July 3, 2002 ("Nebraska PSC Comments"), at 4 (describing the 12-state ROC Post Entry Performance Plan collaborative's extensive conference calls and multi-day workshops to examine and discuss Qwest's PAP).

¹⁰² The Master Test Plan contained "a description of a comprehensive plan to test Qwest's OSS, interfaces *and processes...*" *Washington 39th Supplemental Order* at ¶ 109, quoting the Master Test Plan. (emphasis added)

¹⁰³ Liberty Consulting was retained to conduct a data reconciliation audit, during which 10,000 orders or trouble tickets were evaluated. Order Regarding Operational Support Systems, ROC OSS Test, and Commercial Performance Data, South Dakota Public Service Commission Docket TC01-165, November 22, 2002 ("South Dakota PSC 271 Order"), at p. 22.

¹⁰⁴ *See, e.g.*, Evaluation of the Colorado Public Utilities Commission, WC Docket No. 02-148, filed July 2, 2002 ("Colorado PUC Evaluation"), at 26 ("This retelling of bringing Qwest's SGAT into compliance with the 14-point competitive checklist only begins to touch on the volume and breath of issues that arose in Colorado's six SGAT workshops.... After evaluating these six staff workshop reports and the enormous record behind these reports, the [Colorado PUC] concluded Qwest's SGAT complies with the 14-point checklist."); *see also* Written Consultation of the Idaho Public Utilities Commission, WC Docket No. 02-148, July 3, 2002, Exhibit A at 3 ("The checklist items were addressed in the context of Qwest's SGAT, and so the focus of the workshops was the SGAT terms required to comply with the checklist items. Qwest accordingly has filed the SGAT with the reports showing the terms as they were developed through the workshops and subsequent reports.")

¹⁰⁵ *See, e.g.* Colorado PUC Evaluation ("Qwest's change management process (CMP) has undergone a complete overhaul during the § 271 process. It is now compliant with the FCC's change management criteria. The [Colorado PUC] staff has closely monitored CMP, and through no small amount of goading, Qwest has brought it into compliance."); *see also Id.* at 45 ("Beginning in July 2001, Qwest, CLECs and [Colorado PUC] staff began meeting in a collaborative effort to redesign Qwest's change management process (CMP). The participants in the redesign process have met for more than 45 days over the past 11 months to discuss every aspect of Qwest's CMP. CLECs and Qwest have made every effort to achieve consensus. As a result, the [Colorado PUC] agrees with Qwest's contention that 'it has in place the most comprehensive, inclusive, and forward-looking change management plan in the nation.'").

1 **Q. ARE YOU SAYING THAT QWEST'S WHOLESALE SYSTEMS AND**
2 **PROCESSES ARE WITHOUT FLAW?**

3 A. No. As explained above, it has taken many years, an enormous amount of industry effort
4 led by the ROC, and many millions of dollars to get Qwest's wholesale OSS, CMP,
5 processes, procedures and practices to where they are today. Qwest's systems and
6 processes are not perfect, but they are much better than they were prior to the 271 process
7 and CLECs have experience with dealing with those systems. By contrast,
8 CenturyLink's OSS has not been through independent third-party testing, and has not
9 been tested for commercial volumes or shown to be operationally ready for Qwest's
10 territory. And, given its relatively recent deployment, CenturyLink's OSS is much less
11 familiar to CLECs.¹⁰⁶ There is a grave concern – grounded in CenturyLink's lack of
12 experience, the lack of information from CenturyLink and Qwest, and recent system
13 integration failures – that OSS performance will get worse after the proposed transaction
14 absent binding conditions/commitments that ensure continued availability of Qwest's
15 OSS and the continuation of PIDs and PAPs to measure the ongoing performance.

¹⁰⁶ Qwest's third-party tested OSS has been in place for about seven years. By contrast, CenturyLink is currently in the process of integrating Embarq's legacy OSS into CenturyLink's legacy territory. *See, e.g.*, Hunsucker Oregon Direct at p. 8 ("At the current time in legacy CenturyTel markets, the actual order processing is then completed via a manual process internal to CenturyLink. Integration efforts are underway and should be completed later this year to migrate legacy CenturyTel markets to the EASE platform.")

1 **2. Integrating CenturyLink’s Local Operating Model Into Qwest’s**
2 **Region Will Cause Harm**

3 **Q. CAN YOU PROVIDE ANOTHER EXAMPLE OF HOW CENTURYLINK’S**
4 **INTEGRATION EFFORTS COULD BE HARMFUL TO NOT ONLY CLECS**
5 **BUT ALSO RETAIL CUSTOMERS AND THE ECONOMIC DEVELOPMENT**
6 **OF THE STATE?**

7 A. Yes. CenturyLink touts its “region-based, local operating model” – or “go-to-market”
8 model – which, according to CenturyLink, determines the amount of network investment
9 that will be deployed in each region of the Merged Company.¹⁰⁷ Since CenturyLink has
10 stated that this model will likely be incorporated into the Qwest region,¹⁰⁸ understanding
11 this model is critical to determining the impacts of integration post-merger.
12 Unfortunately, CenturyLink has provided almost no detail, and what detail has been
13 provided is concerning.

14 **Q. PLEASE EXPLAIN YOUR CONCERNS.**

15 A. The Merged Company’s investment in network maintenance and upgrades is an issue that
16 is critical to wholesale and retail customers (who rely on that network for services) as
17 well as the economic development of the state. However, when asked to provide details

¹⁰⁷ “CenturyLink’s local operating model provides the framework for investment decisions across its operating territory...Upon completion of the merger, it is anticipated that CenturyLink will implement its local operating model in the Qwest operating territories.” CenturyLink Response to Washington UTC Staff Data Request #92.

¹⁰⁸ Direct Testimony of Todd Schafer on behalf of CenturyLink, Exhibit TS-1T, Washington UTC Docket No. UT-100820, May 21, 2010 (“Schafer Washington Direct (CenturyLink Exhibit TS-1T)”) at p. 10, lines 9-11 (“Q. Will that [go-to-market] model be incorporated into the areas of Qwest’s operational structure upon the completion of the Transaction? A. Yes, we anticipate it likely will...”) See also, Washington Joint Application at p. 10.

1 about the go-to-market model, which is said to determine that investment, CenturyLink
2 states: “[d]etailed planning regarding the integration of Qwest areas into CenturyLink’s
3 local operating model has *not* begun.”¹⁰⁹ Indeed, CenturyLink was unable or unwilling
4 to identify the regions or region headquarters that would apply to Qwest’s territory once
5 the go-to-market model is implemented post-merger.¹¹⁰ So, at this point, no one knows
6 how investment decisions will be made in a given state post-merger, who will be making
7 those decisions, what factors will influence those decisions or where those decisions will
8 be made.

9 **Q. DID CLECS ATTEMPT TO GET INFORMATION ABOUT THE “GO-TO-**
10 **MARKET” MODEL?**

11 A. Yes. When Integra asked CenturyLink some very basic questions about the go-to-market
12 model, CenturyLink objected to answering those questions.¹¹¹ Amazingly, CenturyLink

¹⁰⁹ CenturyLink Response to Iowa Office of Consumer Advocate Data Request #1-008C (emphasis added).

¹¹⁰ “While CenturyLink does anticipate its local operating model will be incorporated into the areas of Qwest’s operational structure upon the completion of the Transaction, the detailed analysis and planning associated with identifying specific region headquarters has not taken place. Without regard to the locations of any region headquarters, CenturyLink intends to continue its local market focus, which drives operations and service decision-making closer to the customer. This operating model focuses on empowering local personnel to meet the distinct needs of their markets and places the customer at the center of what the company does.” CenturyLink Response to Washington UTC Staff Data Request #80.

¹¹¹ CenturyLink Objection to Integra Washington Data Request #129. CenturyLink also objected to: describing the “customized back-office support” associated with the go-to-market model that CenturyLink described to the FCC in the Declaration of Karen Puckett in WC Docket No. 10-110. CenturyLink filed a supplemental response to Data Request #129 which states that “CenturyLink’s ‘go-to-market’ service delivery model is geared towards retail customers. This service delivery model has no impact on wholesale customers.” CenturyLink Supplemental Response to Integra Washington Data Request #129(a). CenturyLink’s claim that the go-to-market “has no impact on wholesale customers” does not square with the minimal information CenturyLink has provided about the go-to-market model. For instance, in Iowa, CenturyLink has claimed that a benefit to wholesale customers from the merger is: “a financially stronger, more efficient company” that “promotes stability and thus furthers the goal of having a solid and resilient provider of wholesale services to CLECs and other carriers.” Rebuttal Testimony of Guy Miller, III on behalf of CenturyLink, Inc., Iowa Board Docket No.

1 based its objection, in part, on the claim that the information: “is not relevant to the
2 subject matter of this action and is not reasonably calculated to lead to the discovery of
3 admissible evidence.”¹¹² Contrary to CenturyLink’s claim, the model that will be used to
4 determine how much and what type of investment is made in the state as well as how the
5 Merged Company will conduct “direct response marketing efforts” to stem wireline
6 losses is directly relevant to the public interest.¹¹³

SPU-2010-0006, August 26, 2010, p. 4. At the same time, CenturyLink points to the go-to-market model as a means of becoming financially stronger. (“This more de-centralized local structure enables a leaner, more efficient central corporate operation.” Schafer Washington Direct (CenturyLink Exhibit TS-1T) at p. 9, lines 19-20. *See also*, CenturyLink Washington Exhibit GCB-2 at 13, identifying corporate overhead operating cost synergies resulting from the merger.) In other words, CenturyLink suggests that the go-to-market model will play an integral role in the Merged Company’s attempts to become a financially stronger (i.e., “leaner, more efficient”) company post-merger, and if that is the case, then the go-to-market model will be involved in determining whether the alleged benefit to wholesale customers (i.e., “a financially stronger, more efficient company...a solid and resilient provider of wholesale services to CLECs...”) is realized. Hence, CenturyLink’s claim that the go-to-market model has no impact on wholesale customers directly contradicts CenturyLink’s claim about merger-related benefits to wholesale customers – and I disagree with both claims. CenturyLink’s claim that the go-to-market model has no impact on wholesale customers also ignores CenturyLink’s statement that the go-to-market model determines investment throughout its territory. CenturyLink Response to Washington UTC Staff Data Request #92. Wholesale customers rely on ILEC networks for critical bottleneck elements and interconnection, and as such, decisions by the ILEC about how much to invest in its networks impacts wholesale customers as well as the ILEC’s retail customers. Furthermore, CenturyLink’s claim that the go-to-market model has no impact on wholesale customers ignores the fact that wholesale customers of the ILEC are also competitors of the ILEC. CenturyLink has stated that the go-to-market model involves “direct response marketing efforts on a market-by-market basis.” Jones Washington Direct (CenturyLink Exhibit JJ-1T) at p. 14, line 10. To ensure that these “direct response marketing efforts” did not involve inappropriate use of CLEC information or inappropriate contact with CLEC end-user customers, Integra asked CenturyLink to provide information about that aspect of the model. While CenturyLink objected to answering these questions (see, CenturyLink objection to Integra Washington Data Request #129), this issue is concerning the Joint CLECs because of recent examples of inappropriate marketing activity by Qwest. *See, e.g.*, Exhibit BJJ-20 to the Responsive Testimony of Bonnie Johnson. As the examples in Exhibit BJJ-20 demonstrate, marketing activity most certainly impacts Qwest’s wholesale customers (who are also competitors).

¹¹² CenturyLink Response to Integra Washington Data Requests #129, #130, and #131.

¹¹³ CenturyLink has indicated that the go-to-market model will play an important role in achieving merger synergies. For instance, CenturyLink states: “This more de-centralized local structure enables a leaner, more efficient central corporate operation.” Schafer Washington Direct (CenturyLink Exhibit TS-1T) at p. 9, lines 19-20. CenturyLink has identified corporate overhead as a primary synergy-related operating cost savings (CenturyLink Washington Exhibit GCB-2). Given that the companies’ estimate of synergies funnels directly into the Merged Company’s ability to pay down debt, return to investment grade, satisfy shareholders’ dividend

1 **Q. ARE CONCERNS ABOUT CENTURYLINK’S PLANS TO IMPLEMENT THE**
2 **GO-TO-MARKET MODEL IN QWEST’S REGION WARRANTED?**

3 A. Yes. This is a model that has been applied to primarily rural areas, and there is little, if
4 any, evidence that it can be successfully implemented in the more urban areas served by
5 Qwest. CenturyLink explained this concern in its S-4/A to the Securities Exchange
6 Commission (“SEC”) (at page 17):

7 Prior to the Embarq acquisition, CenturyLink provided local exchange
8 telephone services to predominantly rural areas and small to mid-size
9 cities. Although Embarq’s local exchange markets include Las Vegas,
10 Nevada and suburbs of Orlando and several other large U.S. cities,
11 CenturyLink has operated these more dense markets only since mid-2009.
12 Qwest’s markets include Phoenix, Arizona, Denver, Colorado,
13 Minneapolis — St. Paul, Minnesota, Seattle, Washington, Salt Lake City,
14 Utah, and Portland, Oregon, and, on average, are substantially denser than
15 those traditionally served by CenturyLink. While CenturyLink believes its
16 strategies and operating models developed serving rural and smaller
17 markets can successfully be applied to larger markets, it can not assure
18 you of this. CenturyLink’s business, financial performance and prospects
19 could be harmed if its current strategies or operating models cannot be
20 successfully applied to larger markets following the merger, or are
21 required to be changed or abandoned to adjust to differences in these
22 larger markets.

23 In addition to concerns related to using the go-to-market model in urban areas, there is
24 anecdotal evidence that this model is causing problems in the legacy CenturyLink
25 territory. For instance, Lincoln City, Oregon (the City) recently filed a petition to
26 intervene in Oregon Docket UM 1484 describing problems it has experienced attempting
27 to work with CenturyLink (in the legacy Embarq territory) to get redundant pathways for

expectations and continue to invest in its network, the go-to-market model is a key component of the public interest analysis.

1 telephone service including 911 calls. The City states that despite working with
2 CenturyLink (*i.e.*, legacy Embarq in this instance) for over two years and despite
3 promises from Embarq to fix the problem, Embarq has not kept those promises.¹¹⁴
4 Importantly, it is the City's belief that "[i]n the name of post-merger cost savings,
5 CenturyTel has enlarged its management districts with fewer managers overall, and
6 fewer, local knowledgeable technicians..."¹¹⁵ and "[i]f the pattern following the
7 Embarq/CenturyTel merger continues with the CenturyTel/Qwest merger, fewer and
8 fewer managers and technicians will be responsible for more and more territory."¹¹⁶
9 Based on the City's experience, erratic implementation of CenturyLink's local operating
10 model (or "management districts") in the legacy Embarq territory is causing harm,
11 instead of the benefits touted by the Joint Applicants. Again, because CenturyLink has
12 provided no details about its plans regarding the go-to-market post-merger (other than
13 that CenturyLink plans to import it to Qwest's region), there is no way to tell whether
14 CenturyLink's plans are realistic, whether it can be successful in urban areas, or whether
15 harmful impacts will result in Qwest legacy territory like those described by the City.

¹¹⁴ Petition to Intervene by City of Lincoln City, Oregon PUC Docket UM 1484, July 30, 2010 ("City Petition"), at pp. 3-4.

¹¹⁵ City Petition at p. 4. The City states: "City can prove, if necessary, that the experienced former Embarq technicians and managers who were knowledgeable about the switches and related equipment controlling north Lincoln County and Tillamook County were systematically fired or retired by CenturyTel making the performance of its promises ever more speculative and unlikely."

¹¹⁶ City Petition at p. 4.

1 **3. CenturyLink's Integration Effort May Result in Additional Charges for**
2 **CLECs**

3 **Q. BY PROVIDING THE FOLLOWING EXAMPLES, ARE CLECS ATTEMPTING**
4 **TO RESOLVE ISSUES NOT RELATED TO THE PROPOSED TRANSACTION?**

5 A. No. The examples are meant to show how CenturyLink does business with CLECs, and
6 how integrating CenturyLink's OSS, processes and practices into Qwest territory could
7 result in harm to CLECs.

8 **Q. CAN YOU PROVIDE AN EXAMPLE OF CENTURYLINK WHOLESALE**
9 **PRACTICES THAT UNREASONABLY INCREASE COMPETITORS' COSTS?**

10 A. Yes. Comcast was forced to arbitrate a single issue in numerous states over Embarq's
11 attempt to impose a monthly recurring per subscriber charge for storing and maintaining
12 Comcast's customer directory listing ("DL") information in Embarq's DL databases.¹¹⁷
13 Embarq sought to impose this recurring Directory Listing Storage and Maintenance
14 Charge ("DLSM") charge *in addition* to the high per listing, non-recurring charge for
15 loading Comcast's listings into the DL database in the first place.

16 As I noted in my testimony in those arbitrations on behalf of Comcast, the charge
17 violated Embarq's statutory obligation to provide nondiscriminatory access to directory
18 listing functions.¹¹⁸ Embarq sought to impose the recurring DLSM charge only on

¹¹⁷ See United Telephone Company of the Northwest d/b/a Embarq Response to Comcast Petition in Washington Docket No. U-083025, filed May 27, 2008, at ¶ 10.

¹¹⁸ 47 U.S.C. § 251(b)(3); 47 C.F.R. § 51.217 (a) and (b).

1 facilities-based competitors that utilize their own-last mile facilities as opposed to the
2 unbundled loops and services of Embarq. The Commission ultimately ruled in
3 Comcast's favor, and stated in pertinent part:

4 The record is clear that Embarq does not impose a recurring DLSSM charge
5 on its own retail customers or on other CLECs that purchase resale
6 services or UNE loops from Embarq. Embarq wishes to impose the
7 recurring DLSSM charge only on facilities-based CLECs such as Comcast
8 that do not rely on Embarq's "last-mile" facilities or services to compete
9 within Embarq's service area. Given the expansive language of Section
10 251(b)(3) and the FCC's definition of "nondiscriminatory access", we find
11 it unreasonable and contrary to federal law for Embarq to single out a
12 particular type of competitor, in this case a facilities-based CLEC, to
13 impose a charge related to directory listing only when a carrier does not
14 purchase another service such as resold service or UNE loops.¹¹⁹

15 This type of litigation, where the ILEC attempts to impose anti-competitive charges that
16 recover additional revenue for services for which it has already been compensated, shows
17 the tendencies of CenturyLink and its attitude towards CLECs in general.

18 **Q. ARE THERE OTHER ANTI-COMPETITIVE CHARGES THAT**
19 **CENTURYLINK ASSESSES IN ITS LEGACY TERRITORY OF WHICH YOU**
20 **ARE AWARE?**

21 A. Yes. Over the past few years Charter's telephone affiliates arbitrated numerous issues
22 with CenturyLink in establishing new ICAs. One issue that was particularly
23 objectionable is CenturyLink's continued attempts to charge Charter for access to the
24 customer side of the network interface device ("NID") enclosure.

¹¹⁹ See, Arbitrator's Report and Decision, WUTC Docket No. UT-083025, January 13, 2009, at pp. 11-12.

1 **Q. WHAT IS A NID?**

2 A. The FCC has defined the NID in several orders. As an example, in 1999 the FCC stated,
3 “Specifically, we define the NID to include any means of interconnection of customer
4 premises wiring to the incumbent LEC’s distribution plant, such as a *cross-connect*
5 *device used for that purpose.*”¹²⁰ That “means of interconnection” (again, usually a
6 cross-connect device) is then enclosed in a small gray box, about the size of a shoe box,
7 placed on the side of single family dwellings. The NID and its enclosure will be referred
8 to here, in my testimony, simply as the “NID enclosure.”

9 **Q. WHAT WAS THE ISSUE REGARDING THE NID ENCLOSURE?**

10 A. Recall that Charter, like other cable companies who also provide telephone service, is a
11 facilities-based provider with its own loop facilities, and which does not need or purchase
12 UNEs. When Charter wins a customer, it must disconnect the other carrier’s loop (in this
13 case CenturyLink) prior to connecting its own loop facilities to the customer’s inside
14 wiring. To disconnect the CenturyLink loop, Charter opens the customer side of the NID
15 enclosure and disconnects the jumper. CenturyLink wanted to charge Charter for
16 accessing and “using” the NID enclosure as if it were a UNE.

¹²⁰ See, e.g., *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report And Order And Fourth Further Notice Of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (“*UNE Remand Order*”) at ¶ 233.

1 **Q. WHAT DID STATE COMMISSIONS IN MISSOURI AND WISCONSIN DECIDE**
2 **IN THESE CASES?**¹²¹

3 A. These state commissions ruled that Charter should not be required to compensate
4 CenturyLink for accessing the customer side of the NID enclosure. This was especially
5 true since CenturyLink admitted that its alleged costs were already recovered by other
6 charges. CenturyLink incurs no costs or technical obligations when Charter unplugs the
7 short cross connect between the network side and the customer side of the NID enclosure.
8 In fact, once the end user has been transferred to Charter, CenturyLink no longer has any
9 engineering and service obligations to that customer. In addition, Charter's limited use of
10 the customer side of the NID enclosure to connect its network to the customer's inside
11 wire generally only arises when CenturyLink has installed an enclosure on the customer's
12 premises in a way that blocks any reasonable access to the customer's inside wire.

13 **Q. DOES CENTURYLINK ALSO ATTEMPT TO IMPOSE ANTI-COMPETITIVE**
14 **CHARGES FOR LOCAL NUMBER PORTABILITY?**

15 A. Yes. CenturyLink attempts to assess separate charges on CLECs for local number
16 portability activities that are specifically prohibited under the Act and under the FCC's
17 rules. In arbitration, CenturyLink proposed to charge Charter a service order charge for

¹²¹ See, e.g., *Petition of Charter Fiberlink, LLC for Arbitration of an Interconnection Agreement Between the CenturyTel Rural and Non-Rural Telephone Companies of Wisconsin*, Order Determining Disputed Issues Regarding Arbitration Award, Dockets 5-MA-148, 5-MA-149, 2010 Wis. PUC LEXIS 131 (Wis. PSC Mar. 2010); and *Petition of Charter Fiberlink-Missouri, LLC for Arbitration of Interconnection Rates, Terms, Conditions, And Related Arrangements with the CenturyTel of Missouri, LLC Pursuant to 47 U.S.C. § 252(b)*, Order Adopting Final Arbitrator's Report, Case No. TO-2009-0037, 2009 Mo. PSC LEXIS 559 (Mo. PSC 2010).

1 porting customers. Charter countered that costs for LNP activities, except in very unique
2 circumstances that do not apply to Charter,¹²² are to be recovered from an ILEC's end
3 users. Specifically, the FCC's rule states that ILECs may recover their carrier-specific
4 costs directly related to providing long-term number portability by establishing in tariffs
5 filed with the FCC, certain charges over a five (5) year term assessed against end users.¹²³
6 In other words, to recover their costs associated with number porting, ILECs may assess
7 separate charges on their end users – not competitors. Qwest does not assess similar,
8 separate number porting charges, so there is a genuine risk that the Merged Company
9 may try to import these anti-competitive charges to Qwest's legacy territory as a result of
10 integration efforts because CenturyLink is the acquiring, and controlling, entity and
11 because of the pressures on the Merged Company to show a financial benefit from the
12 transaction. Such an outcome would reflect the integration of worst (not best) practices,
13 would raise competitors' barriers in Qwest's legacy territory and result in harm to the
14 public interest directly related to the proposed transaction.

15 **4. CenturyLink's Attempts to Increase Transaction Costs for CLECs**

16 **Q. DO YOU HAVE ANOTHER EXAMPLE THAT SUGGESTS THAT**
17 **INTEGRATION COULD HARM CLECS?**

¹²² Specifically, FCC rules permit ILECs to assess LNP charges upon other carriers only when other carriers purchase: (a) the ILEC's switching ports as unbundled network elements, (b) Feature Group A access lines; or, when the carrier resells the ILEC's local service. *See* 47 C.F.R. § 52.33(a)(1)(ii). Also, ILECs may assess a LNP "query service" charge when that function is provided to other carriers. *Id.* at § 52.33(a)(3).

¹²³ *See* 47 C.F.R. § 52.33(a)(1)(i) and (a)(3).

1 A. Yes. CenturyLink has demonstrated in these very merger cases either a disregard for
2 CLECs or a desire to drive up the CLECs' transaction costs. A number of CLECs are
3 intervening in multiple state proceedings where CenturyLink and Qwest are seeking
4 approval of the proposed transaction. Since the issues and questions are going to be very
5 similar, if not the same, across all states, the CLECs at the outset asked CenturyLink and
6 Qwest to allow a streamlined discovery process where the CLECs could issue one set of
7 discovery on CenturyLink and Qwest and the public responses to those questions could
8 be used in all states where the CLECs are parties (except for state specific differences).

9 **Q. WHAT WAS CENTURYLINK'S OR QWEST'S REPLY?**

10 A. They refused to accept the CLECs' request. I have attached as Exhibit ___ TJG-5 the
11 refusal letter sent by Qwest and CenturyLink. Despite Qwest and CenturyLink claims
12 that such a streamlined discovery process would "result in an impractical and
13 burdensome process for the Applicants, as well as the potential that the approval
14 proceedings may be unnecessarily delayed" and that there is a "lack of commonality
15 between all the states," the CLECs' follow-up letter (also attached in Exhibit ___ TJG-5)
16 explained that just the opposite is true. The CLECs asked Qwest and CenturyLink to
17 reconsider their refusal, but that request was ignored. And because CenturyLink and
18 Qwest are requesting expedited treatment of the proposed transactions filed in the
19 numerous states,¹²⁴ deadlines were approaching fast, so the CLECs were forced to create

¹²⁴ See, e.g., Direct Testimony of Mark Reynolds on behalf of Qwest Corporation, Exhibit MSR-1T, Washington UTC Docket No. UT-100820, May 21, 2010 ("Reynolds Washington Direct (Qwest Exhibit MSR-1T)"), at p. 6,

1 and serve substantially the same discovery questions for each individual state. This
2 requires the CLECs to track and log responses separately for each state, review those
3 individual responses line-by-line to check for any subtle differences, etc. Furthermore,
4 the reasons provided by Qwest and CenturyLink for refusing the CLECs' request were
5 undermined by CenturyLink's subsequent actions.

6 **Q. SINCE QWEST AND CENTURYLINK REFUSED THE STREAMLINED**
7 **DISCOVERY PROCESS, IS IT FAIR TO ASSUME THAT THEY PROVIDED**
8 **STATE-SPECIFIC INFORMATION IN THEIR RESPONSES?**

9 A. No. Ironically, Qwest and CenturyLink refused to participate in the streamlined
10 discovery process due, in part, to their assertion that it "complicates the drafting and
11 researching of responses unnecessarily." In spite of that assertion, most of the discovery
12 responses they provided to my clients' discovery requests were virtually identical across
13 different states. For example, in the Iowa merger proceeding, PAETEC served a set of
14 discovery on CenturyLink that was substantially the same as discovery served on
15 CenturyLink by Integra here in Washington and other state proceedings, including the
16 merger review proceeding in Colorado. For its responses to PAETEC's discovery in
17 Iowa, CenturyLink inadvertently filed its responses to the similar discovery from
18 Colorado (CenturyLink's initial responses in Iowa referenced the Iowa docket in the
19 heading, but referred to Colorado in the responses). After PAETEC's counsel inquired

lines 11-13 ("Expedited treatment is requested to allow the Joint Applicants to more quickly integrate the companies in order to bring the benefits described in my testimony to consumer, business, and wholesale customers sooner.")

1 about this apparent error, CenturyLink indicated that none of its responses would change
2 whether they apply to Iowa or Colorado. In other words, instead of providing the same
3 response once for multiple states, as CLECs wanted, CenturyLink is apparently “copying
4 and pasting” the same responses from state to state. More evidence of this is found in
5 Exhibit AHA-4 to the testimony of Dr. Ankum, which shows that CenturyLink’s
6 responses to many of the CLECs’ discovery questions have been identical across states.
7 Qwest’s responses across states have also been virtually identical. The facts show that it
8 is the refusal of Qwest and CenturyLink to agree to the CLECs’ streamlined discovery
9 approach that is “complicat[ing] the drafting and researching of responses unnecessarily.”

10 **Q. HAS THE LACK OF A STREAMLINED DISCOVERY PROCESS HAMPERED**
11 **THE ANALYSIS OF THE PROPOSED TRANSACTION IN OTHER WAYS?**

12 A. Yes. The CLECs have to wait for responses to be issued in each individual state before
13 being able to use the discovered data, which creates unnecessary delays and imposes
14 additional costs on CLECs. For example, Qwest and CenturyLink provided certain
15 confidential data in response to identical discovery questions issued in multiple states.
16 However, for some inexplicable reason, they failed to provide that data in response to
17 those questions issued by PAETEC in Iowa (which requests were served on Qwest and
18 CenturyLink in Iowa on July 16, 2010, and responses were due on July 23, 2010). As a
19 result, PAETEC, counsel and QSI had to modify my initial testimony the very day
20 testimony was originally due to delete the discussion of issues that would have likely
21 been supported by the confidential data Qwest and CenturyLink failed to provide in Iowa.

1 To add insult to injury, the day after Qwest and CenturyLink secured an extension of the
2 testimony filing deadline in Iowa, they then provided some of the confidential data
3 PAETEC requested, but provided it to PAETEC's counsel after 5 p.m. on Friday even
4 though the revised testimony deadline was Noon the following Monday. Clearly, the
5 Qwest and CenturyLink approach to discovery for the merger proceedings alone has cost
6 CLECs many extra person-hours and thousands of dollars.

7 **Q. HAS QWEST PREVIOUSLY AGREED TO A STREAMLINED DISCOVERY**
8 **PROCESS LIKE THAT PROPOSED BY THE CLECS IN THESE CASES?**

9 A. Yes. My firm, QSI, recently represented PAETEC (McLeodUSA) in a number of
10 complaints against Qwest regarding collocation power charges before a handful of state
11 commissions. Since the issues in those cases were similar across states, McLeodUSA
12 and Qwest were able to agree that discovery responses issued in one state could be used
13 in another state so as to avoid duplicative requests and responses and save time and
14 money. Indeed, I understand that this arrangement was originally suggested by Qwest's
15 counsel. So, while the companies disagreed on substantive issues in the proceeding, at
16 least Qwest agreed to a logistical process that made the process more efficient and less
17 costly for all involved.

18 **Q. HOW SHOULD THE COMMISSION INTERPRET QWEST'S AND**
19 **CENTURYLINK'S ACTIONS IN THE EXAMPLES YOU JUST PROVIDED?**

1 A. If the recent conduct of Qwest and CenturyLink is how the Merged Company will
2 conduct itself post-merger, I expect the Merged Company to be more difficult for
3 competitors to work with than Qwest. I see this as a significant step backwards. If this
4 litigious, “compartmentalizing” attitude of CenturyLink drives the process of integrating
5 “best practices” post-merger, I expect CLEC transaction costs to significantly increase
6 post-merger – particularly given the patchwork organization of rural and non-rural
7 companies CenturyLink intends to maintain post-merger.

8 *C. Assurances of Integration Success Are Exaggerated and Ignore The Serious*
9 *Challenges Facing CenturyLink Post-merger*

10 **Q. CENTURLINK STATES THAT IT IS AN EXPERIENCED INTEGRATOR**
11 **BASED ON ITS PREVIOUS ACQUISITIONS.¹²⁵ SHOULD THAT PROVIDE**
12 **CLECS AND THE COMMISSION COMFORT ABOUT CENTURLINK’S**
13 **ABILITY TO INTEGRATE QWEST?**

14 A. No. CenturyLink has acknowledged to the SEC that there is a risk of CenturyLink being
15 unable to successfully integrate the two companies, and more specifically, that
16 “performance shortfalls” at one or both of the companies may result from the “diversion
17 of management’s attention caused by completing the merger and integrating the
18 companies’ operations.”¹²⁶ In addition, there are several key differences between past

¹²⁵ See, e.g., Schafer Washington Direct (CenturyLink Exhibit TS-1T) at pp. 5-7 and CenturyLink Washington Exhibit TS-2.

¹²⁶ CenturyLink Form S-4A, filed July 16, 2010, at p. 17.

1 acquisitions and the proposed acquisition of Qwest. Some of those differences are listed
2 below:

- 3 • The magnitude of this acquisition dwarfs all other prior transactions, so CenturyLink
4 could very well be “biting off more than it can chew.” As the investment research
5 company Morningstar stated: “CenturyTel is taking an unnecessary risk with the
6 Qwest merger” and “the timing and scope of the Qwest deal will present far greater
7 challenges” than the Embarq acquisition.¹²⁷
- 8 • The Merged Company is taking on much more debt by acquiring Qwest than it has in
9 past acquisitions. As Integra and others explained to the FCC: “At the conclusion of
10 the transaction, legacy CenturyTel will have *more than quadrupled* its debt load in
11 approximately three years.”¹²⁸
- 12 • No prior CenturyLink acquisitions involved acquiring a BOC (and all BOC-related
13 obligations) like the proposed transaction does.
- 14 • CenturyLink is still in the process of integrating the recent acquisition of Embarq,
15 which raises concerns about the Merged Company spreading its resources too thin in
16 attempting to complete multiple integrations at the same time. Just to put the Merged
17 Company’s integration efforts in perspective, CenturyTel before its acquisition of
18 Embarq in 2009 served “roughly two million telephone access lines.”¹²⁹ In 2009, it
19 acquired “nearly 5.9 million telephone access lines”¹³⁰ when it acquired Embarq –
20 which approximately tripled the size of the company in terms of access lines. With
21 the proposed transaction of Qwest, CenturyLink will acquire another 10.3 million
22 access lines.¹³¹ So, if the transaction is approved, CenturyLink will have grown by
23 nine times its size in just two short years. No matter how experienced the
24 management team at the Merged Company is, an integration effort of this magnitude
25 will be extremely challenging to say the least.¹³²

¹²⁷ Morningstar Report, “CenturyTel is Taking an Unnecessary Risk with the Qwest Merger, in Our View,” May 27, 2010, cited in Comments of Communications Workers of America, WC Docket No. 10-110, July 12, 2010, at pp. 11-12.

¹²⁸ Ned Douthat, *Tough Times on the Way to the Altar for CenturyTel and Qwest*, Forbes, April 26, 2010. Forbes article available at: <http://blogs.forbes.com/greatspeculations/2010/04/26/tough-times-on-the-way-to-the-altar-for-centurytel-and-qwest/>

¹²⁹ FCC *Embarq/CenturyTel Merger Order* at ¶ 4.

¹³⁰ *Id.* at ¶ 3.

¹³¹ Washington Joint Application at p. 7.

¹³² Standard & Poor’s has observed that “integration efforts will be difficult given the size of the combined company and CenturyTel’s integration of previously acquired Embarq will likely not be complete until the end

1 Q. IS THERE INFORMATION THAT SUGGESTS THAT THE EMBARQ
2 INTEGRATION IS HINDERING CENTURYLINK'S ABILITY TO ABIDE BY
3 ITS REGULATORY OBLIGATIONS?

4 A. Yes. Despite CenturyLink's glowing reports of the Embarq integration in its testimony,
5 other information suggests that the integration effort is monopolizing much of the
6 Merged Company's time and efforts. For example, CenturyLink recently requested a
7 waiver of the FCC's one business-day porting interval requirement on the basis that such
8 compliance would disrupt "ongoing system changes related to the [CenturyTel/Embarq]
9 merger" to the point where the integration effort would have to be "suspended, which
10 would create large numbers of problems with retail and carrier customer processes, and
11 lead to service disruptions, delays and errors that would likely cause incalculable
12 additional costs."¹³³ CenturyLink explained that strict adherence to the FCC's
13 requirement could require CenturyLink to "divert resources and implementation activity
14 away from the wholesale systems" and would jeopardize timely completion of its
15 integration of legacy Embarq's wholesale OSS required by the FCC merger conditions.¹³⁴
16 This waiver request not only calls into question the purported seamlessness of the
17 Embarq integration efforts, but also casts serious doubt on the Merged Company's ability

of 2011." CenturyLink Washington Exhibit GCB-5 at p. 3. *See also*, CenturyLink Washington Exhibit GCB-4 at p. 1, wherein Moody's states: "The negative rating outlook for CenturyTel reflects the considerable execution risks in integrating a sizeable company so soon after another large acquisition (Embarq in 2009) while confronting the challenges of a secular decline in the wireline industry."

¹³³ CenturyLink Petition for Waiver of Deadline, CC Docket No. 95-116, WC Docket No. 07-244, June 3, 2010, at p. 5.

¹³⁴ *Id.* at p. 7.

1 to integrate both Embarq and Qwest simultaneously, let alone in an efficient manner.¹³⁵
2 That is, if CenturyLink's efforts to integrate Embarq jeopardize its ability to meet its
3 regulatory obligations, then surely integration of Qwest (which will more than double
4 CenturyLink's size) will similarly jeopardize CenturyLink's ability to abide by regulatory
5 requirements and obligations. CenturyLink has already noted that the simultaneous
6 integration of Qwest and Embarq poses risks:

7 [CenturyLink/Qwest] integration initiatives are expected to be initiated
8 before CenturyLink has completed a similar integration of its business with
9 the business of Embarq, acquired in 2009, which could cause both of these
10 integration initiatives to be delayed or rendered more costly or disruptive
11 than would otherwise be the case.¹³⁶

12 **Q. HAVE THE CLECS REPORTED PROBLEMS WITH EMBARQ OR**
13 **CENTURYTEL SINCE THAT MERGER WAS APPROVED?**

14 A. Yes. Recent experience of CLECs indicates that CenturyLink's integration track record
15 is not as perfect as its testimony seems to suggest. As discussed in the CLEC comments
16 to the FCC, tw telecom and Socket Telecom explained problems they experienced during
17 CenturyLink's transition of wholesale customers in the legacy Embarq territory from one
18 ordering system to another in 2009. I have attached the relevant portion of those
19 comments as Exhibit__TJG-6. As described therein, the CLECs have experienced

¹³⁵ CenturyLink represented in a SEC filing that integration efforts associated with the Qwest acquisition would likely be initiated before the integration of Embarq was complete. CenturyLink Form S-4 at p. 16. See also, CenturyLink Washington Exhibit TS-3, showing overlap between the integration of Embarq and Qwest during 2011.

¹³⁶ CenturyLink Form S-4 at p. 16.

1 system outages (during which time LSRs could not be submitted), could not complete
2 pre-ordering, and experienced slow response times.

3 **Q. HAVE CENTURYLINK'S SYSTEM INTEGRATION EFFORTS ALWAYS BEEN**
4 **ON-TIME AND ON-BUDGET?**

5 A. No. Prior attempts by CenturyLink to integrate systems were neither on-time nor on-
6 budget. CenturyTel stated that this billing system integration effort required
7 "substantially more time and money to develop than originally anticipated" and estimated
8 a cost overrun of between \$50 million and \$60 million.¹³⁷ Furthermore, CenturyTel
9 stated:

10 there is no assurance that the system will be completed in accordance with
11 this schedule or budget, or that the system will function as anticipated. If
12 the system does not function as anticipated, the company may have to
13 write-off part or all of its remaining costs and further explore its other
14 billing and customer care system alternatives.¹³⁸

15 CenturyTel stated in its 2001 10-K that "The Company is in the process of developing an
16 integrated billing and customer care system" and completion ... is expected to occur in
17 early 2003." However, two years later CenturyTel stated in its 2003 10K that "the
18 system remains in the development stage and has required substantially more time and
19 money to develop than originally anticipated. The Company currently expects to
20 complete all phases of the new system no later than mid-2005. In addition, the Company
21 expects to incur additional costs related to completion of the project, including (i)

¹³⁷ *Financial Watch: Integration Costs Loop Over OSS Deployments*, Billing and OSS World, October 1, 2003.

¹³⁸ *Id.*

1 approximately \$15 million of customer service related and data conversion costs.”
2 Therefore CenturyTel’s integrated billing and customer care system implementation was
3 delivered over two years later than planned and additional operational costs were incurred
4 as a result. The same risks are inherent in any system integration CenturyLink may
5 attempt in Qwest’s region post-merger – “there is no assurance” that the integration will
6 be on time, on budget, or function properly. Indeed, it is these types of customer-
7 impacting problems with systems integration that have caused the serious problems
8 associated with recent mergers.

9 **Q. WHAT SPECIFIC KINDS OF CHALLENGES WILL CENTURYLINK FACE**
10 **WHEN ATTEMPTING TO INTEGRATE THE BACK-END SYSTEMS AND**
11 **CLEC-FACING OSS CURRENTLY USED BY QWEST?**

12 A. I discussed some of these major challenges above. The point is that changing CLEC-
13 facing OSS is not just a matter of implementing or migrating a new CLEC-facing system;
14 rather, it involves synching up that new system with all of the underlying back-office
15 systems, billing systems, underlying data sets, business processes, product catalogs,
16 billing systems, business rules, and performance metrics, remapping data extracts, as well
17 as testing those new systems in a standard test environment and in controlled production
18 testing. In other words, replacing Qwest’s existing OSS would have a domino effect that
19 impacts virtually every aspect of the wholesale customer’s relationship with Qwest.
20 Other non-BOC entities such as The Carlyle Group and FairPoint Communications have

1 tried to integrate BOC systems in the past and encountered some of the same challenges I
2 have identified.

3 **Q. DID THE FCC IMPOSE A CONDITION ON ITS APPROVAL OF THE**
4 **EMBARQ/CENTURYTEL MERGER THAT THE MERGED COMPANY**
5 **WOULD HAVE TO SHOW THAT IT WAS CONTINUING TO MAINTAIN ITS**
6 **WHOLESALE SERVICE QUALITY PERFORMANCE TO CLECS IN THE**
7 **FORMER EMBARQ TERRITORIES?**

8 A. Yes. When the FCC approved the CenturyTel-Embarq merger in June 2009, it imposed a
9 series of conditions, including that “[f]or two years after the Transaction Closing Date,
10 the Merged Company will maintain service levels for the Embarq operating companies
11 that are comparable to those Embarq wholesale customers experienced pre-merger.”¹³⁹
12 To help ensure compliance with this condition, the FCC also required the Embarq
13 operating companies to continue to produce and make available wholesale service
14 performance reporting for two years after the closing date.¹⁴⁰ The FCC prescribed that
15 the reporting would include comparison of actual quarterly performance results to a
16 benchmark value, set equal to the 12-month average results achieved from April 1, 2008
17 through March 31, 2009.¹⁴¹ The FCC required that the Embarq operating companies
18 meet a service performance standard of “no less than one standard deviation from the

¹³⁹ FCC *Embarq/CenturyTel Merger Order*, Appendix C (Conditions) at p. 1.

¹⁴⁰ *Id.* at p. 1.

¹⁴¹ *Id.* at p. 2.

1 benchmark value, 90 percent of the time.”¹⁴² The specific metrics applied are as follows:

- 2 • Pre-ordering – average response time to pre-order queries calculated in seconds,
3 which measures the number of seconds from Embarq’s receipt of a query from a
4 CLEC to the time Embarq returns the requested data to the CLEC.
- 5 • Provisioning – average completed interval measured in days, which measures the
6 average number of business days from receipt of a valid, error-free service request to
7 the completion date in the service order entry system for new, move and change
8 service orders, separately for all UNE, resale, and other CLEC services;
- 9 • Repair/Maintenance – customer trouble report rate, which measures the total number
10 of network customer trouble reports received within a calendar month per 100
11 units/UNEs, separately for all UNE, resale, and other CLEC services;
- 12 • Repair/Maintenance – average time to restore (service), which measures the average
13 duration from the receipt of the customer trouble report to the time the trouble is
14 cleared, separately for all UNE, resale, and other CLEC services; and
- 15 • Work Center – center responsiveness, which measures the average time it takes
16 Embarq’s work center to answer a call expressed as the percentage of calls that are
17 answered within 20 seconds.¹⁴³

18 **Q. WHAT DOES CENTURYLINK’S MOST RECENT EMBARQ COMPLIANCE**
19 **FILING WITH THE FCC REVEAL ABOUT ITS WHOLESALE SERVICE**
20 **QUALITY PERFORMANCE IN THE FORMER EMBARQ TERRITORIES?**

21 A. In response to discovery, CenturyLink has provided, as Highly Confidential Information,
22 its most recent wholesale service quality compliance report pursuant to these FCC
23 conditions.¹⁴⁴ It presents the Embarq operating companies’ wholesale performance on
24 the metrics identified above, by state, for each quarter from 3Q 2009 through 2Q 2010.
25 These are compared to the baseline performance average for the period April 1, 2008

¹⁴² *Id.* at p. 2.

¹⁴³ *Id.* at pp. 1-2.

¹⁴⁴ CenturyLink Response to Joint CLECs Data Request #5-63, Highly Confidential Attachment JC-63e and Highly Confidential Attachment Staff 62.

1 through March 31, 2009. *****BEGIN HIGHLY CONFIDENTIAL** [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 [REDACTED]
14 [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] **END HIGHLY CONFIDENTIAL*****

22 **Q. THE DATA YOU PRESENT ABOVE RELATES TO WHOLESALE SERVICE.**
23 **IS THERE OTHER DATA APPLICABLE TO RETAIL SERVICE WHICH**
24 **DEMONSTRATES THAT VERBAL STATEMENTS ABOUT CENTURYLINK'S**

1 **COMMITMENT TO QUALITY SERVICES ARE NOT SUFFICIENT TO**
2 **PREVENT MERGER-RELATED HARM?**

3 A. Yes. Recent JD Power & Associates studies show that retail customers have reasons to
4 be concerned if CenturyLink were to own and control Qwest. On September 15, 2010,
5 JD Power & Associates released its *2010 U.S. Residential Telephone Customer*
6 *Satisfaction Survey*.¹⁴⁵ This study measures customer satisfaction with both local and
7 long distance telephone services in four regions through the United States and covers five
8 factors in determining overall satisfaction: (i) performance and reliability, (ii) cost of
9 service, (iii) billing, (iv) offerings and promotions, (v) and customer service. In the West
10 Region, where results for both Qwest and CenturyLink are reported, Qwest was ranked
11 3rd out of 10 and CenturyLink was ranked 8th out of 10. CenturyLink performed below
12 average, while Qwest performed slightly above average. In the three other regions where
13 CenturyLink's (but not Qwest's) residential customer satisfaction was ranked,
14 CenturyLink ranked 7th out of 9 (East Region), 8th out of 9 (South Region), and 7th out of
15 10 (North Central Region). Regarding business customer satisfaction, JD Power &
16 Associates released its *2010 U.S. Major Provider Business Telecommunications Study –*
17 *Voice Service* on July 15, 2010.¹⁴⁶ This study measures customer satisfaction with
18 providers of landline voice telephone service for businesses, and providers are ranked in
19 three segments: (i) home-based businesses, (ii) small/midsize businesses and (iii) large

¹⁴⁵ The JD Power & Associates press release and summary results for this study are available at:
<http://businesscenter.jdpower.com/JDPACContent/CorpComm/News/content/Releases/pdf/2010184-rtss.pdf>

¹⁴⁶ The JD Power & Associates press release and summary results for this study are available at:
<http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2010111>

1 enterprise businesses. The same five factors listed above are used to determine overall
2 satisfaction. Both Qwest and CenturyLink results are reported for two of the three
3 segments – home-based business and small/midsize business. In the home-based
4 business segment, Qwest performed slightly better than CenturyLink, with both
5 companies performing below the average. In the small/midsize business segment,
6 CenturyLink ranked last (5th out of 5), which is below average, and Qwest ranked slightly
7 above average at 3rd out of 5. With Qwest consistently performing better than
8 CenturyLink in these retail customer satisfaction studies, it is unclear how CenturyLink
9 taking control of Qwest will bring any better service or “best practices” to the legacy
10 Qwest territory. Indeed, just the opposite is true. These studies, along with other data
11 presented in this proceeding, shows that both wholesale and retail customers have good
12 reason to be concerned about CenturyLink taking control of Qwest.

13 **Q. SINCE CLECS ARE COMPETITORS OF CENTURYLINK/QWEST,**
14 **WOULDN'T CLECS BENEFIT FROM RETAIL CUSTOMER**
15 **DISSATISFACTION ABOUT CENTURYLINK'S/QWEST'S RETAIL**
16 **SERVICES?**

17 **A.** Not necessarily. A reduction in retail service quality will likely also translate into a
18 reduction in wholesale service quality. Since Qwest's performance assurance plans
19 generally compares wholesale service quality to retail service quality, as retail service
20 quality declines, there would be no protections for CLECs against a deterioration in
21 wholesale service quality. This, in part, is why the CLECs have recommended condition

1 4.a. regarding the additional performance assurance plan. This condition would protect
2 CLECs in the event of a deterioration in retail service quality.

3 **Q. IN OTHER STATE PROCEEDINGS, CENTURYLINK HAS POINTED TO**
4 **“BEST IN CLASS” AWARDS IT HAS WON AS ALLEGED EVIDENCE OF**
5 **CENTURYLINK’S COMMITMENT TO PROVIDE QUALITY WHOLESALE**
6 **SERVICES.¹⁴⁷ DID CENTURYLINK DISCUSS THOSE AWARDS IN ITS**
7 **TESTIMONY IN WASHINGTON?**

8 A. No. Despite discussing these awards in its merger testimony in other states,¹⁴⁸
9 CenturyLink does not mention them in its testimony here in Washington.

10 **Q. IF CENTURYLINK MENTIONS THESE AWARDS AT SOME POINT HERE IN**
11 **WASHINGTON, DO THESE AWARDS PROVIDE ANY COMFORT ABOUT**
12 **WHOLESALE SERVICE QUALITY POST-MERGER?**

13 A. No. CenturyLink stated in Oregon: “CTL won four ‘Best in Class’ awards based on the
14 2009 Metro Wholesale Carrier Report Card study from Atlantic-ACM. The awards were
15 in four key areas: customer service, sales representatives, provisioning, and billing. CTL
16 has won the award for provisioning for three consecutive years and the award for
17 customer service and sales representatives for two consecutive years.”¹⁴⁹ Based on

¹⁴⁷ Hunsucker Oregon Direct at p. 9, lines 12-20.

¹⁴⁸ See, e.g., Hunsucker Oregon Direct at p. 9. See also, Direct Testimony of John Jones, Minnesota PUC Docket No. P-421, et al./PA-10-456, June 14, 2010, p. 13. Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={56979297-3D21-4FC8-8F2C-341B495F4BD0}&documentTitle=20106-51540-02>

¹⁴⁹ Hunsucker Oregon Direct at p. 9, lines 12-18.

1 information provided by Atlantic-ACM, the Best in Class awards are based on a survey,
2 and for taking the time to respond to the survey, the respondent is entered in a drawing
3 for a 16 GB Apple iPad (WiFi), Amazon Kindle Global Wireless, Garmin Nuvi550, Flip
4 MiniHD camcorder, or cash equivalent. In addition, the surveys are not necessarily
5 provided to the appropriate CLEC representatives and therefore are unlikely to represent
6 the CLEC's overall experience and view point. Further, the companies you vote for
7 sponsor the research, which suggests that not all telecommunications companies are
8 candidates on the survey. While the Atlantic-ACM awards may provide a useful
9 marketing data point for CenturyLink, it is not based on the type of verifiable statistical
10 data on which the Qwest wholesale Performance Indicators ("PIDs") and Performance
11 Assurance Plans ("PAPs") are based, or the type of data used in CenturyLink's wholesale
12 service quality reports submitted to the FCC. In other words, the Atlantic-ACM awards
13 are not based on objective, verifiable performance data.

14 **V. LESSONS FROM RECENT ILEC MERGERS AND ACQUISITIONS**

15 **Q. WHAT LESSONS CAN WE LEARN FROM OTHER RECENT TELECOM**
16 **MERGERS AND/OR ACQUISITIONS?**

17 A. Significant problems have been experienced after recent mergers – problems that could
18 occur after the proposed transaction if it is approved as filed. These examples are further
19 evidence that the Joint Applicants' unsupported assertions about the proposed transaction

1 cannot be taken at face value; failures do occur no matter how well-intentioned the
2 company is and the stakes associated with failure are simply too high.

3 **Q. ARE YOU GENERALLY FAMILIAR WITH THE RECENT MERGERS IN THE**
4 **TELECOMMUNICATIONS INDUSTRY?**

5 A. Yes, I am.

6 **Q. IS THERE ANYTHING TO BE LEARNED BY CONSIDERING THE**
7 **OUTCOMES OF OTHER RECENT MERGERS AND ACQUISITIONS**
8 **INVOLVING ILEC OPERATIONS?**

9 A. Yes, there certainly is. The recent bankruptcies of FairPoint and Hawaiian Telecom, as
10 well as ongoing problems with Frontier's cutover of former Verizon lines, demonstrate
11 the challenges and risks associated with transactions similar to this one, particularly with
12 respect to a smaller LEC's ability to integrate the OSS and other back-office systems of a
13 materially larger organization.

14 These are examples wherein the merging companies' high expectations and promised
15 public benefits regarding the merger failed to be realized, in large part because of
16 problems with integrating the two companies' operations and OSS. In particular, I am
17 referring to:

- 18 • The Carlyle Group's acquisition of Verizon Hawaii (renamed Hawaiian
19 Telcom), which led to Hawaiian Telcom's filing for Chapter 11 bankruptcy
20 protection in 2008;
- 21 • FairPoint's acquisition of Verizon's operations in northern New England
22 (Maine, New Hampshire, and Vermont), which led to FairPoint's Chapter 11

1 bankruptcy filing in October 2009; and

- 2 • The on-going integration difficulties experienced by Frontier as it attempts to
3 absorb former Verizon exchanges acquired in fourteen states.

4 **Q. BEFORE YOU TURN TO THE SPECIFICS OF THESE CASES, CAN YOU**
5 **SUMMARIZE THE LESSONS THAT YOU DRAW FROM THEM?**

6 **A.** Yes. The primary lessons that I draw from these experiences are as follows:

- 7 (1) Mergers and acquisitions involving the transfer and integration of ILEC local
8 telephone operations carry a high degree of risk of failure, even when
9 implemented by purportedly highly-experienced management teams and well-
10 financed companies;
- 11 (2) The integration and/or change-out of ILEC back-office systems and OSS can
12 pose a tremendous challenge, and integration failures can be so costly as to
13 not only eliminate the forecasted transaction cost savings and other synergies,
14 but to place the post-merger company under severe financial pressure; and
- 15 (3) From a public interest standpoint, the outcome of such failed transactions can
16 indeed be an “unmitigated disaster,” including financial instability, service
17 quality deteriorations and dissatisfied customers, curtailed network investment
18 and broadband deployment, and the disruption of wholesale services
19 provisioning and ordering that are crucial to a smoothly-functioning
20 competitive marketplace.
21
22

23 **Q. PLEASE DESCRIBE THE EVENTS THAT LED TO HAWAIIAN TELCOM’S**
24 **BANKRUPTCY FILING AFTER ITS ACQUISITION BY THE CARLYLE**
25 **GROUP.**

26 **A.** In May 2005, the private investment firm The Carlyle Group (“Carlyle”) closed on its
27 purchase of Verizon Hawaii, the franchised ILEC serving most of the state of Hawaii. At
28 the time of that acquisition, Carlyle proclaimed that it “has a track record of successful

1 telecommunications investments, deep knowledge of the local telephony business, and
2 deep understanding of the complex regulatory issues affecting the industry.”¹⁵⁰ Carlyle
3 assembled a highly-experienced management team for the acquired firm (renamed
4 Hawaiian Telcom) that included a former Chairman of the FCC, a former Executive Vice
5 President of Verizon and GTE, and Carlyle’s founder, who is also a former CFO of MCI
6 and Chairman of Nextel Communications.¹⁵¹ Carlyle also committed \$1.65 Billion to
7 purchase the company, and proclaimed that it “...plans to invest significant capital to
8 transition the company to an independent local company in a manner that maintains
9 service quality and is seamless to customers.”¹⁵² Just prior to the acquisition, Carlyle
10 promised that: “In short order we will offer new services to our customers, including
11 expanded broadband, and we expect to add many new jobs after the acquisition.”¹⁵³ The
12 FCC approved the transaction in August 2004, under its streamlined procedures for
13 domestic Section 214 transfers of control.¹⁵⁴ The Hawaii PUC conducted its own review
14 and approved the transaction, subject to certain conditions, on March 16, 2005.¹⁵⁵

15 **Q. DID HAWAIIAN TELCOM EXPERIENCE TROUBLES RELATED TO OSS?**

¹⁵⁰ Carlyle Group press release, “The Carlyle Group to Buy Verizon Hawaii for \$1.65 billion – New Services, Jobs, and Capital Investment Expected with Transition to Locally Managed Company,” May 24, 2004, at page 2.

¹⁵¹ *Id.* at p. 2.

¹⁵² *Id.*

¹⁵³ *Id.* at p. 1.

¹⁵⁴ FCC DA 04-2541, WC 04-234, Streamlined Domestic Section 214 Application Granted, Released August 17, 2004.

¹⁵⁵ *In the Matter of the Application of Paradise Mergersub, Inc., GTE Corporation, Verizon Hawaii Inc. Bell Atlantic Communications, Inc. and Verizon Select Services Inc. for Approval of a Merger Transaction and Related Matters*, Hawaii PUC Docket No. 04-0140, Decision and Order No. 21696, March 16, 2005.

1 A. Yes. One aspect of the transaction was that the transferred company would develop its
2 own back-office and OSS systems and processes to replace those of Verizon. Hawaiian
3 Telcom hired the management and technology consulting company BearingPoint, Inc. to
4 take on the task of designing and implementing those systems by the end of March 2006.
5 The Hawaii PUC required testing of the new systems as a condition to its approval of the
6 transaction,¹⁵⁶ but the scope and rigor of that testing was nowhere near that required of
7 Qwest's systems under the Section 271 regime.¹⁵⁷ In 2007 Hawaiian Telcom made a
8 filing with the FCC seeking a waiver from certain ARMIS reporting requirements. In
9 that filing Hawaiian Telcom described the troubles it was experiencing:

10 The transition from Verizon's systems to the new BearingPoint-designed
11 systems at the end of March, 2006 did not go smoothly. As has been
12 widely reported in the press, see Attachment 1 (representative press
13 clippings), critical BearingPoint-designed systems related to customer
14 care, order management, billing and data collection necessary for various
15 reporting obligations lacked significant functionality, leading to problems
16 with ordering, provisioning, billing and collection.

17 ...

18 These shortcomings therefore affected not only Hawaiian Telcom's ability
19 to collect ARMIS related data, but also its basic ability to bill its
20 customers, collect revenue for services provided, and process payments.¹⁵⁸

21 In February 2007, Hawaiian Telcom reached an settlement with Bearing Point:
22 "According to Hawaiian Telcom, BearingPoint agreed to pay \$52 million in cash on

¹⁵⁶ *Id.* at Ordering Paragraph 1.

¹⁵⁷ Exhibit ___ TJG-3 ("Description of Qwest's OSS Testing in Relation to 271 Authority").

¹⁵⁸ Petition of Hawaiian Telcom, Inc., for Waiver of Sections 43.21(g) and 43.21(j) of the Commission's Rules, 47.C.F.R. §§ 43.21(g) and 43.21(j), CC Docket No. 86-182, filed February 21, 2007 ("Hawaiian Telcom ARMIS Petition"), at p. 2.

1 March 27 and to waive outstanding invoices, bringing the total value of the settlement to
2 \$90 million.”¹⁵⁹ Although Hawaiian Telcom received a cash settlement, it was still left
3 with poorly functioning systems. To try to correct the situation, in February 2007,
4 Hawaiian Telcom entered into a seventeen-month, \$46-million contract with the
5 management consulting and technology services company Accenture. That contract
6 required Accenture to develop and remediate the company’s business support and
7 customer service systems, including the OSS used to interact with CLECs and other
8 wholesale customers.¹⁶⁰ In the interim, Hawaiian Telcom was forced to use costly
9 manual work-arounds, third-party temporary call centers, and other inefficient and
10 expensive processes to undertake basic provisioning and ordering activities.¹⁶¹
11 Numerous retail customers received erroneous bills, including double-billing due to
12 delayed bill processing.¹⁶² Wholesale customers, such as tw telecom, also endured
13 systems failures by Hawaiian Telcom, including (1) missed deadlines for special access
14 circuit orders, (2) delays in porting end user customers' telephone numbers, and (3) lack
15 of a functioning electronic interface (GUI) for wholesale customers to submit and

¹⁵⁹ Pacific Business News, BearingPoint Pays Hawaiian Telcom \$52M, March 29, 2007 Available at: <http://www.bizjournals.com/pacific/stories/2007/03/26/daily36.html>

¹⁶⁰ *Id.* at p. 4, and Carlyle Group press release (issued by portfolio company), “Hawaiian Telcom Contracts with Accenture to Complete Systems Transformation; Firms Sign Agreement for Development, Deployment and Maintenance of Key Customer-Service and Business-Operations Capabilities,” February 8, 2007, at p. 1.

¹⁶¹ *See, e.g.*, Hawaiian Telecom Communications, Inc. Form 10-Q, filed November 14, 2006, at p. 26.

¹⁶² *See*, “Billing woes overwhelm Hawaiian Telcom systems,” Honolulu Star-Bulletin, June 21, 2006; provided in Attachment 1 to the Hawaiian Telcom ARMIS Petition.

1 monitor the status of trouble tickets for the services they received from the company.¹⁶³

2 In five years the Company's reported annual rate of return plummeted from the
3 essentially breakeven level it had at the time of the transaction's close, -0.8%, down to
4 -29.3%.¹⁶⁴ In December 2008, Hawaiian Telcom filed for Chapter 11 bankruptcy
5 protection, "listing \$1.4 billion in assets and \$1.3 billion in debts."¹⁶⁵

6 **Q. WAS HAWAIIAN TELCOM THE ONLY ILEC TO FILE FOR BANKRUPTCY**
7 **AFTER AN ACQUISITION OR MERGER?**

8 A. No, unfortunately not. FairPoint Communications Corp. closed on its acquisition of
9 Verizon's ILEC operations in northern New England (Maine, New Hampshire, and
10 Vermont) in March 2008, with approval from regulators in all three states. Barely a year
11 and a half later, in October 2009, the company filed for Chapter 11 bankruptcy
12 protection. As NASUCA has pointed out in its initial Comments in the FCC's Qwest-
13 CenturyLink merger proceeding, "...the track record is that the FairPoint transaction has
14 turned out to be a virtually unmitigated disaster."¹⁶⁶ In its recent decision rejecting
15 FairPoint's Chapter 11 reorganization plan, the Vermont Public Service Board made the

¹⁶³ *In the Matter of the Public Utilities Commission Instituting a Proceeding Regarding Hawaiian Telcom, Inc 's Service Quality and Performance Levels and Standards in Relation to Its Retail and Wholesale Customers*, Hawaii PUC Docket No. 2006-0400, Time Warner Telecom of Hawaii, L.P., d/b/a Oceanic Communications' Post-Hearing Brief, November 9, 2007, at p. 23.

¹⁶⁴ See Public Utilities Commission of Hawaii, Annual Report for Fiscal Year 2008-2009, Released November 2009, at p. 43, Figure 18 (Verizon Hawaii/Hawaiian Telcom's reported actual annual RoR for past 12 months, for June 2005 and June 2009, respectively).

¹⁶⁵ The Washington Post, "Carlyle Takes Another Hit As Telecom Firm Goes Under," December 2, 2008, at p. 1.

¹⁶⁶ FCC WC Docket No. 10-110, Comments of the National Association of State Utility Consumer Advocates, July 12, 2010, at p. 2.

1 following observations concerning FairPoint's pre-acquisition expectations and
2 commitments, and the ensuing reality:

3 On March 31, 2008, FairPoint consummated its merger and acquisition of
4 Spinco (Verizon's NNE operations) resulting in FairPoint as the surviving
5 entity. Previously, on December 21, 2007, we issued our first order in
6 Docket No. 7270 initially denying FairPoint's request to acquire Spinco.
7 During the course of our proceedings leading up to that decision, FairPoint
8 submitted a substantial amount of testimony and information in support of
9 its argument that it was financially ready to step into Verizon's shoes. In
10 general, FairPoint made the following key assertions:

11 (a) Initial annual line loss of 6.2%, gradually tapering off to 2.3% per year.

12 (b) Line-loss increases will be sufficiently offset by the build-out and sale
13 of DSL service.

14 (c) Cutover to FairPoint's new systems will be achievable within five
15 months of closing.

16 (d) Transition expenses under the Transfer of Service Agreement ("TSA")
17 with Verizon will not exceed \$100 million and will not extend beyond
18 2008.

19 (e) Synergies resulting from new systems integration and replacement of
20 Verizon's higher cost functions will result in additional cost savings of
21 \$65-75 million in 2008.

22 (f) Average year-to-year increases in operating expenses not to exceed
23 1%.

24 (g) Annual reductions in employee count of 4% to 4.5% resulting in
25 additional cost savings for salary and wage expense.

26 (h) Unforeseen increases in operating or capital expenditures will be
27 sufficiently offset by a reduction or elimination of shareholder dividends.

28 (i) Free cash flow will be relatively stable at approximately \$200 to \$220
29 million annually over the first five years after closing.

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1 (j) An annual free cash flow cushion after dividends of \$70 million will be
2 available for unforeseen financial difficulties.
3

4 Based upon the substantial historical record contained in Docket No. 7270,
5 a record which spans FairPoint's progression through the merger
6 transaction, subsequent cutover, and eventual bankruptcy, **it is**
7 **abundantly clear that FairPoint failed to realize any of the above**
8 **forecasts.** Even with the enhancements to FairPoint's financial metrics
9 provided by the revised merger transaction, which we approved on
10 February 15, 2008, those enhancements (reduced purchase price and
11 reduced leverage) were not sufficient to allow FairPoint to achieve its
12 projections. For example, we now know that: (i) line losses were
13 substantially greater than projected for 2008 and 2009; (ii) systems
14 functionality issues delayed cutover for an additional five months resulting
15 in substantial increased operating costs; (iii) FairPoint's suspension of its
16 dividend in March 2009 was not sufficient to assist FairPoint in meeting
17 its debt-servicing requirements; (iv) customer service issues caused
18 FairPoint to staff-up in 2009 as opposed to staffing down; and (v) ongoing
19 systems issues in 2009 resulted in a \$28.8 million increase in operating
20 expenses. **We note that then, like now, FairPoint maintained that its**
21 **projections were reasonable, conservative, and provided for a**
22 **sufficient margin of error.**¹⁶⁷

23 The Vermont Board went on to observe that "FairPoint's actual performance throughout
24 2008 and 2009 turned out to be worse than the Board's most pessimistic assumptions."¹⁶⁸

25 **Q. DID THE VERMONT PUBLIC SERVICE BOARD REACH ANY**
26 **CONCLUSIONS AS TO WHY FAIRPOINT FAILED TO LIVE UP TO ITS PRE-**
27 **TRANSACTION FORECASTS AND ASSURANCES?**

28 A. Yes. The Board concluded that FairPoint's financial crisis was caused in large part by its
29 inability to successfully integrate the legacy Verizon exchanges into its OSS and other
30 back-office systems. As the Board explained in its Order:

¹⁶⁷ Vermont PSB Docket No. 7599, Order Entered June 28, 2010, at pp. 56-57 (footnote omitted, emphasis added).

¹⁶⁸ *Id.* at p. 58.

1 FairPoint has not demonstrated that it can achieve its projected reductions
2 in operating costs or realize additional cost savings from systems
3 improvements and new networks that have yet to be completed. As we
4 have found above, **a major source of these costs have been FairPoint's**
5 **ongoing systems issues which have persisted since cutover and**
6 **contributed greatly to FairPoint's eventual financial downfall.**
7 FairPoint has undertaken a considerable effort, most recently its CDIP
8 initiatives, involving the deployment of significant financial resources and
9 personnel to address these issues. ... **While we accept FairPoint's**
10 **assertion that it has made strides in resolving many of these problems,**
11 **system defects remain and manual workarounds continue to serve as**
12 **temporary solutions until automated processes can be designed and**
13 **implemented. Moreover, we are aware that there have been instances**
14 **where FairPoint assumed a problem to be fixed only to have that**
15 **problem reappear at a later time.we have received no evidence,**
16 **or guarantees from FairPoint, that would lead us to conclude that these**
17 **remediation efforts will not need to be continued beyond 2010 or even**
18 **2011.**¹⁶⁹

19 **Q. AT THE TIME THAT THE VERMONT BOARD APPROVED THE FAIRPOINT-**
20 **VERIZON TRANSACTION, DID IT ADOPT A CONDITION THAT**
21 **FAIRPOINT'S OSS SYSTEMS WOULD BE SUBJECTED TO TESTING IN**
22 **ADVANCE OF THE CUTOVER OF VERIZON'S OPERATIONS?**

23 A. Yes. The Board later stated that it did so specifically because "we were mindful that after
24 Verizon's sale of its Hawaii properties, the last major telecommunications acquisition that
25 required transition to new systems, major problems for wholesale and retail customers
26 occurred that have taken years to correct."¹⁷⁰ Unfortunately, the condition that it adopted
27 – which required a third-party consultant (Liberty Consulting) to monitor the cutover

¹⁶⁹ *Id.* at p. 61-62 (footnotes omitted, emphasis added).

¹⁷⁰ Vermont PSB Docket No. 7270, Order Re: Notice of Cutover Readiness, November 26, 2008, at p. 4.

1 progress and “to evaluate FairPoint’s cutover readiness criteria”¹⁷¹ – did not include
2 independent third-party testing itself.¹⁷² This is dramatically different than the
3 comprehensive third-party testing that Qwest and other BOCs had to undergo to
4 demonstrate that their OSS satisfied the obligations of Section 271.¹⁷³ As a consequence,
5 the Board’s condition, though well-intentioned, was insufficient to prevent FairPoint’s
6 subsequent systems failures.

7 **Q. DID THE VERMONT BOARD FIND THAT FAIRPOINT’S SYSTEMS**
8 **INTEGRATION PROBLEMS HAD ADVERSELY IMPACTED THE QUALITY**
9 **OF ITS SERVICES?**

10 A. Yes. The Vermont Board also made specific findings concerning the negative impacts
11 that FairPoint’s systems failure had on its service quality for retail customers and CLECs.

12 Among the Board’s findings:

- 13 • In 2009, FairPoint failed to meet 10 of the 18 performance standards in the RSQP
14 [Retail Service Quality Plan]. This performance triggered 1470 service quality
15 compensation points and resulted in an obligation to provide service quality
16 compensation of \$10,515,650.¹⁷⁴
- 17 • Other areas of FairPoint's service remain problematic and either do not show
18 signs of significant improvement or early improvements have leveled. These
19 include late orders for retail and wholesale, late disconnects, billing errors and
20 adjustments, and customer complaint escalations.¹⁷⁵

¹⁷¹<http://www.puc.nh.gov/Telecom/Filings/FairPoint/Monthly%20Monitoring%20Reports/FairPoint%20Cutover%20Monitoring%20Monthly%20Report%2012-07-07.pdf>

¹⁷² *Id.* at pp. 4-5.

¹⁷³ Exhibit ___ TJG-3 (“Description of Qwest’s OSS Testing in Relation to 271 Authority”).

¹⁷⁴ Vermont PSB Docket No. 7599, Order Entered June 28, 2010, at pp. 67 (Finding No. 153).

¹⁷⁵ *Id.* at p. 68 (Finding No. 156).

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- Automated flow-through for orders designed to flow-through to provisioning and billing without manual intervention has not improved to acceptable levels and exacerbates other problem areas. Order fall-out requires unplanned manual effort, which reduces the ability of staff to address other issues. It also increases the chance that an order will be late.¹⁷⁶
 - The level of known FairPoint billing errors and billing adjustments are resulting in billing-related customer complaints 400% to 500% higher than during Verizon's operations.¹⁷⁷
 - Some number of the known billing errors and adjustments are likely the result of problems in upstream systems and processes, including faulty service-order data entry, late disconnections, and inconsistent or unsynchronized data as examples.¹⁷⁸

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While the Vermont Board recognized that recently FairPoint had made significant progress on its systems issues, it ultimately rejected FairPoint's reorganization plan on the grounds that it had not demonstrated that the plan would restore its financial soundness.¹⁷⁹ Recently, it has been reported that FairPoint may ask the federal court that is overseeing its bankruptcy and reorganization to overrule the Vermont Board's rejection of its plan.¹⁸⁰

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Q. ARE THERE SOME PARALLELS HERE BETWEEN THE PROGRESS OF FAIRPOINT'S ORIGINAL ACQUISITION PROPOSAL AND ITS REORGANIZATION PLAN?

¹⁷⁶ *Id.* at p. 68 (Finding No. 158).

¹⁷⁷ *Id.* at p. 69 (Finding No. 172).

¹⁷⁸ *Id.* at p. 69 (Finding No. 171).

¹⁷⁹ *Id.* at p. 95.

¹⁸⁰ Vermont Public Radio, "FairPoint May Ask Bankruptcy Court To Overrule Vermont Regulators," August 2, 2010. See http://www.vpr.net/news_detail/88585/

1 A. Yes, I think there are. In a nutshell, the Vermont Board's experience with FairPoint can
2 be recapped as follows:

- 3 (1) In 2007, FairPoint sought approval to purchase Verizon lines in Vermont.
4 Throughout the proceedings, the Board is told they are a hold out and everyone
5 else has approved.¹⁸¹
- 6 (2) In 2008, the Vermont Board approves the transaction with limited conditions;
- 7 (3) By 2009, the cutover is disastrous and greatly affects the financial performance of
8 FairPoint;
- 9 (4) In October 2009, FairPoint declares bankruptcy;
- 10 (5) In February 2010, FairPoint management submits a reorganization plan that the
11 Vermont Board judges to be overly optimistic;
- 12 (6) In June 2010, the Vermont Board rejects FairPoint's reorganization plan;
- 13 (7) In August 2010, once again, the Vermont Board is told they are a hold out and
14 now FairPoint is considering asking the Bankruptcy Court to supersede the PSB's
15 authority.

16 Like the Vermont Board, other state regulators should not be hesitant to exercise their
17 authority when major public interest ramifications are at stake. One important way to do
18 that is to establish meaningful conditions on these types of transactions, as I shall explain
19 later in my testimony.

20 **Q. HOW HAVE THE NEW HAMPSHIRE AND MAINE PUBLIC UTILITY**
21 **COMMISSIONS CHARACTERIZED THE FAIRPOINT TRANSACTION AND**

¹⁸¹ See, e.g., Transcript in West Virginia Docket 09-0871-T-PC at p. 34. On January 12, 2010 Vermont Senator Illuzzi drove to West Virginia to testify regarding the experience in Northern New England with the FairPoint merger. Senator Illuzzi testified: "We were told over and over at the State House, don't be the fly in the ointment; New Hampshire and Maine are ready to approve this deal. Don't be the state that sort of jinxes the whole thing. It turns out they were saying the same thing to New Hampshire. They'd say to New Hampshire, jeez, New Hampshire, don't be the fly in the ointment. Vermont and Maine are preparing to approve the deal. It turns out Maine was the first State that rejected the deal, then the other States followed suit and then came back with the revised proposal...If you have those lingering doubts, don't hesitate to fight that intuitive kind of pressure that you feel, that I feel..."

1 **ITS OUTCOMES?**

2 A. The New Hampshire PUC ultimately approved FairPoint's Chapter 11 reorganization
3 plan, but offered a very critical assessment of the consequences of FairPoint's acquisition
4 of Verizon's operations in northern New England. In its Conclusion to the reorganization
5 approval Order dated July 7, 2010, the New Hampshire Commission found that:

6 FairPoint has failed to meet the obligations it made in 2008 to the states of
7 New Hampshire, Maine and Vermont and their citizens. Among other
8 things, FairPoint made promises about service quality, relations with
9 wholesale competitors and broadband build-out, and committed itself to
10 performance superior to Verizon, whose performance had become an issue
11 of increasing concern in the three states. Due to FairPoint's widespread
12 operational shortcomings arising from its systems cutover, however,
13 residential and business customers, as well as wholesale customers and
14 competitors who rely on FairPoint services, endured even poorer service
15 quality than was the case under Verizon.¹⁸²

16 The Maine PUC also approved FairPoint's Chapter 11 reorganization plan by a two-to-
17 one vote, but the text of the majority decision does not contain any overall
18 characterization of the FairPoint experience as contained in the New Hampshire PUC
19 order.¹⁸³ Maine Commissioner Vafiades, however, offered this assessment in his written
20 dissent appended to that decision:

21 In February of 2008, I voted with my colleagues to approve the sale of
22 Verizon wireline assets to FairPoint Communications. My approval was
23 based on FairPoint's representations that the Company would improve
24 customer service by updating and streamlining its back office systems,
25 replacing and upgrading its deteriorating infrastructure, and operating a
26 competent wholesale customer service operation. Additionally, for at least
27 five years, customers of FairPoint's DSL broadband service would receive

¹⁸² New Hampshire PUC Docket DT 10-025, Order 25,129, July 7, 2010, at p. 75.

¹⁸³ Maine PUC Docket No. 2010-76, Order Approving Reorganization and Regulatory Settlement, July 6, 2010.

1 the benefit of statewide price averaging for that service and customers of
2 FairPoint's telephone services would either receive service quality that
3 satisfies the existing SQI measurements or they would receive rate rebates
4 should FairPoint fail to meet its SQI targets. Finally, FairPoint agreed to
5 system improvements benefiting all customers and made a commitment to
6 expand broadband to meet 90% addressability by 2013.
7

8 Despite FairPoint's early struggles to take control of the wireline assets,
9 provide adequate customer service and modernize the back office systems,
10 the Commission stayed the course and following a number of approvals
11 for cutover extensions authorized cutover from Verizon to FairPoint
12 operating systems in January of 2009. Unfortunately, FairPoint was not
13 competent in managing the extensive back office rebuild, could not get its
14 wholesale business running smoothly despite cooperation from the
15 CLECs, failed to provide basic services to residential and business
16 customers and suffered from competitive business pressure and a faltering
17 economy. FairPoint's financial position became precarious.¹⁸⁴

18 **Q. MR. GATES, WHAT LESSONS DO YOU THINK SHOULD BE DRAWN FROM**
19 **THE HAWAIIAN TELCOM AND FAIRPOINT EXPERIENCES?**

20 A. As stated, the primary lessons that I draw from these two disappointing experiences are
21 the following:

- 22 (1) Mergers and acquisitions involving the transfer and integration of ILEC local
23 telephone operations carry a high degree of risk of failure, even when
24 implemented by purportedly highly-experienced management teams and well-
25 financed companies;
26
27 (2) The integration of two companies' disparate operations and OSS can pose a
28 tremendous challenge, and integration failures can be so costly as to not only
29 eliminate the forecasted transaction cost savings and other synergies, but to
30 place the post-merger company under severe financial pressure; and
31
32 (3) From a public interest standpoint, the outcome of such failed transactions can
33 indeed be an "unmitigated disaster," including financial instability, service
34 quality deteriorations and dissatisfied customers, and the disruption of

¹⁸⁴ *Id.* at p. 21 ("Dissenting Opinion of Commissioner Vafiades").

1 wholesale services provisioning and ordering that are crucial to a smoothly-
2 functioning competitive marketplace.

3 **Q. HOW DOES FRONTIER'S RECENT ACQUISITION OF VERIZON**
4 **EXCHANGES IN FOURTEEN STATES FIT INTO THIS PICTURE?**

5 A. While the worst consequences of the Hawaiian Telcom and FairPoint transactions are
6 (presumably) winding down, the problems besetting Frontier's acquisition of certain
7 Verizon exchanges in fourteen states¹⁸⁵ are occurring right now, as systems cutovers and
8 transitions have been occurring this spring and summer, with an "official" cutover date of
9 July 1, 2010. For thirteen states, Verizon created replicas of its existing wholesale OSS
10 systems that were being operated on an interim basis by Spinco, the temporary corporate
11 entity created to effect the Frontier transaction. These "replicated systems" were then
12 transferred to Frontier on the cutover date, and thereafter serve as Frontier's wholesale
13 OSS, to fulfill orders for UNEs and other wholesale services. In the fourteenth state,
14 West Virginia, Verizon's systems were not replicated, and instead these functions were
15 transferred to Frontier's own OSS system, Synchronoss VFO. As I shall explain, to date
16 both transfers have been beset by systems problems, which are having adverse impacts
17 upon CLECs and their customers. It remains to be seen how serious and long-lasting
18 these problems may ultimately prove to be, and whether they will rise to the nightmarish

¹⁸⁵ As set forth in Verizon's Amended Application, "transaction involves the transfer to Frontier of all of Verizon's local wireline operating territories in Arizona, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia and Wisconsin. In addition, the transaction will include a small number of Verizon's exchanges in California, including those bordering Arizona, Nevada and Oregon." See WC 09-95, Verizon and Frontier's amended and revised "Consolidated Application for Transfer of Control and Assignment of International and Domestic Section 214 Authority," July 30, 2009, at p. 2, footnote 3.

1 levels experienced in the Hawaiian Telcom and FairPoint cases.

2 **Q. WHAT SPECIFIC PROBLEMS HAVE CLECS CONFRONTED DURING**
3 **FRONTIER'S CUTOVER TO THE VERIZON REPLICATED SYSTEMS?**

4 A. In recent comments and *ex parte* filings with the FCC, Integra and PAETEC have
5 provided detailed descriptions of how problems with the transition to the Verizon
6 replicated systems in the thirteen states (excluding West Virginia) have been adversely
7 affecting their operations and the retail customers that they serve.

8 In its May 17, 2010 *ex parte* letter to the FCC, PAETEC explained that, even before the
9 Verizon replicated systems were transferred to Frontier, it "is already encountering
10 serious service deterioration due to lack of adequate (much less adequately trained)
11 personnel at SpinCo [the corporate vehicle for the Frontier transaction]. All of these
12 problems exist even though SpinCo is still under the Verizon umbrella."¹⁸⁶ PAETEC
13 describes a range of problems that it has encountered, including:

- 14 • Increased response times for Access Service Requests ("ASRs"), *i.e.*,
15 PAETEC's electronic orders for access services from Frontier – causing
16 missed due dates or orders that need to be escalated/expedited in order to meet
17 end user customer expectations;
- 18 • Increased Access Ordering system errors, causing delays in submission of
19 ASRs;
- 20 • Hold times of 30 minutes or more when calling Access Order centers to reach
21 an Access Ordering representative; and
22
23
24

¹⁸⁶ Letter from Mark C. Del Bianco, Counsel for PAETEC Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket. No. 09-95, filed May 17, 2010, Attachment A, at p. 6.

- Apparent reduction of Access Ordering staff – Verizon North Central Access Ordering staff have told PAETEC that they were a staff of 50 that was cut to 12 and now they only have 6 individuals working ASRs.¹⁸⁷

Q. HAS INTEGRA ALSO EXPERIENCED PROBLEMS IN ITS USE OF THE VERIZON REPLICATED SYSTEMS?

A. Yes. As documented in its May 13, 2010, *ex parte* letter to the FCC, Integra also has been experiencing the same sorts of problems when using the Verizon replicated systems in Oregon and Washington.¹⁸⁸ Integra’s follow-up *ex parte* letter of May 19, 2010, documented that the performance of the replicated systems was failing to meet the wholesale service quality benchmarks previously applied to Verizon in areas including Order Confirmation Timeliness for ASRs and Completion Notice Interval.¹⁸⁹ In its May 19th letter, Integra explains that these problems are in fact worse than they seem, and that end users are being adversely impacted:

Verizon’s actual performance in the area of timely order completion is obscured in part by the fact that Verizon has been increasingly sending Service Activation Reports (“SARs”) without actually completing the work requested on an order. This was true for orders NM-2556620-DS1, SM-2560987-BDSL, SM-2497851-BDSL, CL-2568000-BDSL, DS-2502748-WASA, and JT-2566473-CHG. This practice negatively impacts Integra’s ability to serve its end-user customers. For example, if Verizon sends Integra a completion notice but has not performed the requested installation, Integra is forced to conduct multiple technician dispatches for a single end-user customer, and delivery of service to that customer is delayed. In addition, if Integra receives an SAR from Verizon, Verizon

¹⁸⁷ *Id.* at p. 6-7.

¹⁸⁸ Letter from Thomas Jones and Nirali Patel, Counsel for Integra Telecom, Inc. et al, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, filed May 13, 2010, at pp. 1-2.

¹⁸⁹ Letter from Thomas Jones, Counsel for Integra Telecom, Inc. et al, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, filed May 19, 2010, at p. 2.

1 begins billing Integra, and Integra may mistakenly begin billing its end-
2 user customer before service is actually delivered to the customer.¹⁹⁰

3 Significantly, Integra personnel found that some of the Verizon representatives answering
4 calls in Verizon call centers were inexperienced or had been inadequately trained.¹⁹¹
5 Integra employees “sometimes found themselves educating Verizon’s representatives on
6 Verizon’s internal processes and the requirements of Verizon’s CLEC-facing systems.”¹⁹²
7 In some cases, the Verizon employees operating the systems themselves told their Integra
8 counterparts that “...they d[id] not know the appropriate workarounds to resolve specific
9 types of problems.”¹⁹³ The full text of Integra’s May 19th letter, which is provided in
10 Exhibit __ TJK-7, also describes additional ordering problems attributable to failures in
11 the Verizon replicated systems.

12 **Q. HAS THE CUTOVER OF FRONTIER’S ACQUIRED VERIZON EXCHANGES**
13 **IN WEST VIRGINIA GONE ANY MORE SMOOTHLY THAN IN THE OTHER**
14 **THIRTEEN STATES?**

15 A. No. In fact, the West Virginia cutover appears worse in certain respects, as it is adversely
16 impacting some retail customers as well as CLECs. In West Virginia, the former Verizon
17 exchanges, which encompass approximately 617,000 access lines in 47 counties, were

¹⁹⁰ *Id.* at pp. 2-3 (footnotes omitted).

¹⁹¹ *Id.* at p. 4.

¹⁹² *Id.*

¹⁹³ *Id.*

1 officially cutover to Frontier on July 1, 2010.¹⁹⁴ Charleston's major newspaper, the
2 *Charleston Daily Mail*, has been monitoring the progress of the cutover since that time,
3 and has reported on the problems confronted by retail customers, including a local
4 pharmacy chain that endured a Frontier service outage that lasted more than 39 hours in
5 their 25 stores, cutting off their on-line systems needed to fulfill prescriptions and
6 rendering them "incapacitated."¹⁹⁵ These types of problems appear to be continuing. On
7 July 28, the *Charleston Daily Mail* reported that Frontier has declared an "emergency and
8 long-term service difficulty," which under its labor contract with CWA, allows Frontier
9 to require unionized employees to work overtime up to 70 hours a week to attempt to
10 resolve its service problems.¹⁹⁶ Notably, CWA has indicated that CenturyLink is
11 currently requiring CWA members to work mandatory overtime to address problems
12 stemming from the integration of CenturyTel and Embarq.¹⁹⁷

13 **Q. WHAT IMPACTS HAS FRONTIER'S WEST VIRGINIA CUTOVER HAD ON**
14 **CLECS OPERATING IN THE STATE?**

¹⁹⁴ *Charleston Daily Mail*, "Phone transition not going smoothly for a few customers," July 1, 2010, at p. 2. This article is reproduced in Exhibit ___ TJJ-8.

¹⁹⁵ *Charleston Daily Mail*, "Local Business Having Major Problems Since Frontier Switch," July 21, 2010. This article is reproduced in Exhibit ___ TJJ-8.

¹⁹⁶ *Charleston Daily Mail*, "Frontier claims overtime is needed: Problems force telecom company to work employees up to 70 hours a week," July 28, 2010. This article is reproduced in Exhibit ___ TJJ-8.

¹⁹⁷ Direct Testimony of Jasper Gurganus on behalf of Communications Workers of America (CWA), Minnesota Docket P-421, et al./PA-10-456, August 19, 2010, at p. 11 ("It also appears that one of CenturyLink's solutions is just to require people to work longer hours to deal with the backlog of work created by improper dispatch, inaccurate information, and inefficient systems. CWA members in Ohio and North Carolina have been placed on mandatory overtime. For example, in North Carolina I&R [Installation and Repair] techs have been on mandatory six-day weeks for two months.") Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={3BAC3216-79EA-4367-B0FD-2C44F6DFDF17}&documentTitle=20108-53661-01>

1 A. CLECs are also experiencing significant wholesale ordering problems relating to the
2 West Virginia cutover. One CLEC operating in that service territory, FiberNet, has
3 petitioned the West Virginia PSC to reopen its proceeding to review the Verizon-
4 FairPoint transaction, claiming that FairPoint has failed to live up to its commitment that
5 its wholesale OSS would be functionally at par with those of Verizon.¹⁹⁸ As expressed
6 by FiberNet in its Petition:

7 Since the cutover to Frontier's Synchronoss VFO OSS on July 1, 2010,
8 however, FiberNet has experienced significant and ongoing problems with
9 the proper functionality of Frontier's OSS and have unfortunately been
10 compelled to conclude that Frontier's OSS as presently constituted is
11 substantially less sophisticated and far less automated than the former
12 Verizon OSS it was intended to replace.

13 FiberNet's Petition identifies fifteen separate types of problems it is experiencing with
14 Frontier's wholesale OSS systems that span the entire range of pre-ordering, ordering,
15 and installation functions that the systems are intended to provide.¹⁹⁹ Some of these
16 issues impede FiberNet's ability to offer its services to West Virginia customers, *e.g.*, the
17 inability to input orders related to the digitally qualified loops necessary for the provision
18 of DSL service, or high-capacity DS-1s.²⁰⁰ Other issues are having a direct impact on the
19 customers themselves, *e.g.*, "several new FiberNet customers have been put out of service
20 because Frontier prematurely processed disconnection orders in its OSS for these
21 migrating customers without simultaneously processing the corresponding order

¹⁹⁸ FiberNet LLC Petition to Reopen, July 21, 2010 (filed in West Virginia PSC Docket No. 09-087 1-T-PC), at p. 3.

¹⁹⁹ *Id.* at Exhibit A.

²⁰⁰ *Id.* at p. 5.

1 necessary to successfully complete the migration of the customer's loop and telephone
2 number to FiberNet."²⁰¹ FiberNet also notes that "Customers with pending orders for
3 new service or additional services have lost patience with the length of time necessary to
4 get their requested service installed, which has resulted in several customers simply
5 cancelling their pending orders with FiberNet."²⁰²

6 **Q. HOW DO THE KINDS OF WHOLESALE-RELATED PROBLEMS BEING**
7 **EXPERIENCED BY INTEGRA, PAETEC, AND FIBERNET IMPACT**
8 **COMPETITORS' ABILITY TO OFFER COMPETITIVE SERVICES AND**
9 **MAINTAIN THEIR CUSTOMER RELATIONSHIPS?**

10 A. As a general matter, when CLECs confront the sorts of delays, errors, and backlogs in
11 wholesale ordering transactions that Integra, PAETEC, and FiberNet have experienced
12 with Frontier, it not only increases their costs of doing business, but it also damages
13 (perhaps irreparably) CLECs' relationships with their end user customers.

14 **Q. DO END USERS UNDERSTAND THAT SUCH PROBLEMS ARE CAUSED BY**
15 **THE ILEC AND NOT THE CLEC?**

16 A. Generally no. End users do not recognize (or care) that the service delays they endure are
17 the fault of the provider of wholesale services (*i.e.*, the ILEC) rather than the CLEC. Of
18 course, this circumstance benefits the ILEC as it can serve those retail customers leaving
19 the CLEC with the ILEC's own retail offerings.

²⁰¹ *Id.*

²⁰² *Id.* at pp. 6-7.

1 VI. **THE PROPOSED TRANSACTION SHOULD BE REJECTED; OR IN THE**
2 **ALTERNATIVE, APPROVED ONLY SUBJECT TO ROBUST CONDITIONS**

3 Q. IS IT YOUR RECOMMENDATION THAT THE PROPOSED TRANSACTION
4 BE DENIED BY THE COMMISSION?

5 A. Yes. The Joint Applicants have failed to demonstrate that the public interest will not be
6 harmed and has failed to substantiate any benefits resulting from the proposed
7 transaction. As it relates to CLECs, the Joint Applicants have not identified (let alone
8 substantiated) any benefits resulting from the proposed transaction; instead, the CLECs
9 are faced with complete uncertainty and potential severe disruption and harm in every
10 aspect of their wholesale relationship with Qwest. If the Commission disagrees with my
11 primary recommendation, however, and is inclined to approve the proposed transaction, it
12 should do so only if the transaction is subject to robust, enforceable conditions.

13 Q. WHAT IS THE GOAL OF THESE CONDITIONS?

14 A. The overall objective of the conditions is to ensure that the proposed transaction does not
15 harm the industry and ultimately serves the public interest. More specifically, however,
16 these conditions are intended to mitigate the harm that is likely to happen (and has
17 occurred elsewhere) if the proposed transaction is approved as filed,²⁰³ primarily by
18 providing the much-needed certainty that CLECs need to continue to operate their
19 businesses and make prudent decisions. These conditions also attempt to ensure that the

²⁰³ The FCC has stated: "it will impose conditions to remedy harms that arise from the transaction..." FCC
Embarq/CenturyTel Merger Order at ¶ 12.

1 Merged Company is not further entrenched as a result of the merger as an
2 overwhelmingly dominant wholesale provider/competitor, to the detriment of
3 competition and the public interest.

4 **Q. IS THERE PRECEDENT FOR APPROVING A PROPOSED TRANSACTION**
5 **SUBJECT TO CONDITIONS?**

6 A. Yes. Both the FCC and state commissions have required conditions (or voluntary
7 enforceable commitments from the merging companies) in exchange for transaction
8 approval in the past. For example, both the FCC and state commissions imposed
9 conditions on the Embarq/CenturyTel merger. Further, Qwest itself proposed conditions
10 for the Iowa Telecom/Windstream merger, which further validates the notion that it is
11 generally accepted that conditions must be imposed on a proposed acquisition to prevent
12 or offset harm.²⁰⁴

13 **Q. WHAT CONDITIONS ARE YOUR CLIENTS PROPOSING?**

14 A. I have attached as Exhibit__TJG-9 to my testimony a list of conditions that my clients
15 are proposing as prerequisites to merger approval, in case the Commission does not reject
16 the proposed transaction outright. These conditions have been carefully and narrowly
17 crafted to address the specific concerns my carrier clients have about the harm that will

²⁰⁴ Qwest asked the Iowa Board to place conditions on the approval of the Iowa Tel/Windstream merger that would “prohibit Windstream from requiring new local service providers to provide Windstream-provided Personal Identification Numbers when porting a customer’s number to the new provider” and “require, as a condition of Board approval, the new company to provide the new local service provider direct access to its resold Customer Service Record information.” Order Canceling Hearing and Terminating Docket, Iowa Utilities Board, April 30, 2010, at p. 26.

1 result from approving the proposed transaction as filed by the Joint Applicants. These
2 conditions are also intended to be enforceable so that the Merged Company abides by
3 them after the merger and so remedies are in place should wholesale service quality
4 degrade following the merger. Recent experience with the FairPoint acquisition of
5 Verizon, wherein FairPoint reneged on its merger conditions, shows that enforceable
6 conditions are necessary.²⁰⁵ CenturyLink should not be allowed to pull the rug out from
7 underneath competitors and consumers after the transaction is approved by reneging on
8 the very commitments that were critical to transaction approval. In addition, because
9 discovery is not yet complete and all testimony has not yet been filed, the list of proposed
10 conditions in Exhibit ___ TJK-9 (as discussed in this testimony below and the testimony of
11 Dr. Ankum) is preliminary and subject to change. Furthermore, all of the conditions are
12 important and no inference regarding priority should be based on the numbering of the
13 conditions, which is for ease of reference only.

²⁰⁵ *FairPoint Wants to Renege on Terms of Verizon Merger*, May 3, 2010. Available at: <http://www.von.com/news/2010/05/fairpoint-wants-to-renege-on-terms-of-verizon-mer.aspx> (“According to reports, the initial deal between FairPoint and regulators called for FairPoint to cut the cost of basic phone service by more than \$4 per month for at least five years; make broadband available to 83 percent of all lines within two years, and 90 percent over five years; and freeze prices for current Verizon 768kbps DSL customers at \$15 a month with a two-year contract, and \$18 with a one-year contract, for at least two years. FairPoint wants to move those deadlines back and lower the percentage of 768kbps DSL-capable lines.”) The Maine Commission approved these adjustments to FairPoint’s merger conditions in June 2010, which is a component of FairPoint’s bankruptcy reorganization plan. Maine Commissioner Vafiades voted against approving the changes to the conditions stating: “FairPoint has made promises to this Commission and to Maine consumers. The Company is using the bankruptcy process to renege on broadband commitments which were a central aspect of approving the FairPoint takeover of the Verizon phone network. These changes were not required by bankruptcy court and are a disservice to rural customers.” Available at: <http://www.maine.gov/tools/whatsnew/index.php?topic=puc-pressreleases&id=102933&v=article08>

1 **Q. SHOULD CENTURYLINK HAVE A PROBLEM ADOPTING THESE**
2 **CONDITIONS AS PREREQUISITES TO TRANSACTION APPROVAL?**

3 A. No. CenturyLink has represented that there will be no “immediate” changes post-merger
4 and “no harm” to existing wholesale processes, systems and service quality post-merger.
5 CenturyLink has also claimed that it is “willing and able to abide by” its 251 and 271
6 obligations post-merger and it is “truly committed to providing quality service to our
7 CLEC customers today and in the future.”²⁰⁶ Given these representations, CenturyLink
8 should have no problem agreeing to conditions that provide protections to prevent or
9 offset harm and ensure that Qwest does not backslide in its obligations as an ILEC and a
10 BOC. In addition, CenturyLink should not be permitted to keep all of the benefits of
11 increased economies and efficiencies for itself;²⁰⁷ rather, the FCC’s *Local Competition*
12 *Order* requires those to be shared with new entrants.²⁰⁸

13 **Q. HAVE THE SAME OR SIMILAR CONDITIONS BEEN ADOPTED BY STATE**
14 **COMMISSIONS OR THE FCC IN RECENT MERGER CASES?**

15 A. Yes. I’ve attached Exhibit__TJG-10 to my testimony, which is the list of conditions
16 that my clients are proposing in this proceeding matched up with some previous FCC or
17 state commission order(s) that adopted a similar condition. Most of the CLEC-proposed

²⁰⁶ Hunsucker Oregon Direct at pp. 13-14.

²⁰⁷ See, e.g., Reynolds Washington Direct (Qwest Exhibit MSR-1T) at pp. 12-13 (“Q. Will the post-merger company be able to take advantage of increased economies of scope and scale? A. Yes. The Transaction will result in a combined enterprise that can achieve greater economies of scale and scope than the two companies operating independently.”)

²⁰⁸ See, e.g., *Local Competition Order* at ¶ 11: “...the local competition provisions of the Act require that these economies be shared with entrants.”

1 conditions are grounded in previous merger conditions, and the few that are not were
2 designed to address specific harms related to this particular proposed transaction.

3 **Q. THE LIST OF PRELIMINARY CONDITIONS DEFINES THE TERM “DEFINED**
4 **TIME PERIOD.” PLEASE EXPLAIN THIS TERM.**

5 A. The Joint Applicants have said that the transaction is expected to create annual operating
6 synergies of \$575 million and annual capital expenditure synergies of \$50 million, and
7 that those synergies will be “fully-recognized over a three-to-five year period following
8 closing.”²⁰⁹ Successful integration does not always occur on-time and/or on-budget, as
9 CenturyLink is aware from prior system projects.²¹⁰ That is particularly true here, when
10 CenturyLink will be attempting to integrate both the Embarq acquisition and Qwest
11 acquisition at the same time. Therefore, the time period during which merger-related
12 activities intended to result in synergies will occur may be longer than the three-to-five
13 year period anticipated by the Joint Applicants.

²⁰⁹ Bailey Washington Direct (CenturyLink Exhibit GCB-1T) at p. 11, line 16.

²¹⁰ See, e.g., *Financial Watch: Integration Costs Loom Over OSS Deployments*, *Billing and OSS World*, October 1, 2003. available at <http://www.billingworld.com/articles/2003/10/financial-watch-integration-costs-loom-over-oss-d.aspx> (“Another example of a vendor-driven project that fell short involves CenturyTel, a Louisiana-based service provider, which in 2000 selected Amdocs for convergent billing. This project has experienced delays due to the project going over budget. According to a 10-Q that CenturyTel recently filed with the Securities and Exchange Commission, this project remains in the development stage and has required ‘substantially more time and money to develop than originally anticipated.’ The 10-Q filing states that CenturyTel expects to complete all phases of the new system no later than mid-2005 at a cost in excess of the previously disclosed estimate of \$180 million. CenturyTel currently believes completion of the project may require it to revise its previously disclosed cost estimate by between \$50 and \$60 million. The company also states that ‘there is no assurance that the system will be completed in accordance with this schedule or budget, or that the system will function as anticipated. If the system does not function as anticipated, the company may have to write-off part or all of its remaining costs and further explore its other billing and customer care system alternatives.’”)

1 Some proposed conditions are to apply for a specific time period, and other conditions
2 (such as continuing BOC/271 obligations in Qwest's legacy territory) do not have an
3 expiration date. The term "Defined Time Period" was developed to specify the effective
4 time period for those conditions that are time-sensitive. "Defined Time Period" is
5 established at either (a) at least 5-7 years after the Closing Date²¹¹ or, (b) at least 42
6 months (3.5 years)²¹² and continuing thereafter until the Merged Company is granted
7 Section 10 forbearance from the condition. The "Defined Time Period" is established
8 based on the facts of this particular transaction²¹³ and designed to ensure that the
9 combined company's pursuit of merger-related savings does not jeopardize wholesale
10 customers or impede competition. At the same time, the "Defined Time Period" grants
11 the combined company flexibility to terminate the merger condition in 3.5 years (shortly
12 after the lower end of the Joint Applicants' expected timeframe) via a forbearance request
13 if the Merged Company's integration efforts prove to be successful.

14 **Q. PLEASE ELABORATE ON WHY THE TIME HORIZONS ASSOCIATED WITH**
15 **THE "DEFINED TIME PERIOD" ARE APPROPRIATE FOR THE PROPOSED**

²¹¹ "Closing Date" is defined as "when used in this list of conditions, refers to the closing date of the transaction for which the Applicants have sought approval from the Federal Communications Commission (FCC) and state commission (the 'transaction')." Exhibit __ TJJ-9.

²¹² In the *AT&T/BellSouth Merger Order*, AT&T proposed that conditions would last 42 months (3.5 years) from the merger closing date unless specified otherwise. *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) ("*AT&T/BellSouth Merger Order*").

²¹³ For example, the lower end of the 5-7 year range is based on Joint Applicants' own expectations regarding how long it will take the combined company to fully recognize merger-related savings, and the upper end is based on the fact that CenturyLink will be straining its resources to simultaneously integrate Embarq and Qwest as well as the fact that not all of CenturyLink's integration efforts have been on-time and/or on-budget.

1 **TRANSACTION WHEN OTHER (SHORTER) TIME HORIZONS HAVE BEEN**
2 **ADOPTED IN THE PAST.**

3 A. This 3.5 year minimum duration is appropriate, given the Joint Applicants' own
4 representation of a minimum three to five-year synergy period. During the time period
5 when the Merged Company is making merger-related changes to achieve synergies,
6 customers and competition should be protected from harm resulting from those changes.
7 In considering the Frontier-Verizon merger, the Oregon Commission required Frontier to
8 honor Verizon wholesale price lists and tariffs and to avoid increases for at least two
9 years after closing.²¹⁴ In that proceeding, unlike here, Frontier did not state that the
10 anticipated synergies would occur over a three-to-five year period. The Joint Applicants'
11 representation regarding the anticipated time period for realizing synergies is specific to
12 this proposed merger and should be considered when establishing needed time periods for
13 this proposed merger.

14 **Q. WHAT TIME PERIOD WAS PROPOSED FOR THE AT&T/BELLSOUTH**
15 **MERGER?**

16 A. In the *AT&T/BellSouth Merger Order*, AT&T proposed that conditions would last 3.5
17 years (42 months) from the merger closing date unless specified otherwise.²¹⁵ The
18 AT&T/BellSouth merger involved an existing BOC (AT&T) covering 13 states acquiring

²¹⁴ *In the Matter of Verizon Communications Inc. and Frontier Communications Corporation Joint Application for an Order Declining to Assert Jurisdiction, or, in the Alternative, to Approve the Indirect Transfer of Control of Verizon Northwest Inc.*, Oregon Public Utility Commission Docket No. UM1431, Order No. 10-067, February 24, 2010, 2010 Ore. PUC LEXIS 64 (“Oregon *Frontier-Verizon Order*”), 2010 Ore. PUC LEXIS 64, *46.

²¹⁵ *AT&T/BellSouth Merger Order*, Appendix F, Conditions at p. 147.

1 an existing BOC (BellSouth) covering 9 states, and the acquiring BOC in that transaction
2 (AT&T) already had experience not only operating as a BOC but also integrating BOC
3 operations during the merger of AT&T and SBC, and before that, the merger of
4 Ameritech and SBC. Further, when seeking approval of the AT&T/BellSouth Merger,
5 AT&T stated that the synergy savings resulting from the AT&T/SBC merger were
6 greater than and achieved more quickly than AT&T's original forecast.²¹⁶ Despite
7 AT&T's past experience in this regard, the FCC conditioned approval of the
8 AT&T/BellSouth merger subject to enforceable conditions that applied for 42 months
9 (3.5 years). By contrast, this proposed transaction involves a non-BOC ILEC – which
10 has traditionally operated primarily as a rural LEC facing little competition – acquiring a
11 BOC spanning 14 states. Though CenturyTel has acquired numerous
12 telecommunications companies in the past, none of them were BOCs and none of them
13 were even close to the size of Qwest. Further, though CenturyTel touts its management's
14 ability as successful integrators²¹⁷ and claims that the ongoing Embarq integration is
15 running smoothly,²¹⁸ similar representations were made by AT&T during the
16 AT&T/BellSouth merger and the FCC still put in place enforceable conditions for a
17 period of 42 months (3.5 years). The point being: acquisition of a BOC raises serious

²¹⁶ AT&T Description of Transaction Public Interest Showing and Related Demonstrations, WC Docket No. 06-74, March 31, 2006, at p. 42, citing *See Id.* ¶ 5; Kahan Decl. ¶¶ 40-42; *see also* AT&T Analyst Conference Presentation, at 51 (Jan. 31, 2006), available at http://library.corporate-ir.net/library/11/113/113088/items/181348/analyst06_b.pdf (noting that synergies are now estimated at \$18 billion vs. \$15 billion).

²¹⁷ *See, e.g.*, Schafer Washington Direct (CenturyLink Exhibit TS-1T) at pp. 5-7 and CenturyLink Washington Exhibit TS-2.

²¹⁸ Schafer Washington Direct (CenturyLink Exhibit TS-1T) at pp. 6-7.

1 concerns than are not present in non-BOC acquisitions, and those concerns necessitate
2 more protection. These concerns are even greater when the BOC is being acquired by a
3 company that is not currently a BOC and has no experience with all of the obligations
4 that come along with being a BOC.

5 The ultimate question is what time period is necessary to protect the public interest.²¹⁹
6 Here, the need for protection is even greater than in the AT&T/BellSouth merger. The
7 latter merger involved two BOCs, both of which have been subject to 271 proceedings
8 and interconnection agreement arbitrations through which they have had to learn and
9 accept wholesale obligations that they may otherwise have had incentives to ignore.
10 Unlike a merger between two BOCs, both well-acquainted with wholesale obligations
11 and 271 requirements, here the Joint Applicants propose the purchase of a BOC by a non-
12 BOC ILEC that has been acting in many cases as primarily a rural carrier claiming
13 exemption from ILEC, much less BOC, obligations. Because the BOC has greater
14 wholesale obligations than an ILEC, and certainly more obligations than an exempt (or,
15 self-proclaimed exempt) rural ILEC, non-BOC, such ILECs lack a long history of
16 fulfilling such commitments. Wholesale customers therefore need protective conditions
17 firmly in place throughout the time that merger-related changes are occurring and the

²¹⁹ *In the Matter of Embarq Corporation and CenturyTel, Inc. Joint Application for Approval of Merger between the Two Companies and Their Regulated Subsidiaries*, Oregon Public Utility Commission Docket No. UM1416, Order No. 09-169, May 11, 2009 (“Oregon Embarq-CenturyTel Merger Order”), 2009 Ore. PUC LEXIS 152, *11 (rejecting the Joint Applicants proposal to reduce various conditions from five years to three years, concluding that the longer five year period “serves to protect customers should a significant negative event occur with the new parent” and “is a more reasonable means to protect customers.”)

1 time during which the results of those changes continue to affect customers and
2 competition.

3 **Q. PLEASE EXPLAIN HOW YOUR TESTIMONY ON PROPOSED CONDITIONS**
4 **IS ORGANIZED?**

5 A. The proposed conditions are grouped into the following categories: (A) Operations
6 Support Systems, (B) Wholesale Service Quality, (C) Wholesale Customer Support, (D)
7 Wholesale Service Availability, (E) Wholesale Rate Stability, and (F) Compliance. In
8 the testimony that follows, I will address: (A) Operations Support Systems, (B)
9 Wholesale Service Quality, (C) Wholesale Customer Support, and (F) Compliance. Dr.
10 Ankum addresses: (D) Wholesale Service Availability and (E) Wholesale Rate Stability.

11 **A. *Operations Support Systems ("OSS")***

12 **Q. PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO OSS.**

13 A. There are two conditions in this category – conditions 19 and 20:

- 14 • Condition 19 (and subparts) states that after the closing date, the Merged Company
15 will use and offer to wholesale customers in the legacy Qwest ILEC territory the
16 legacy Qwest OSS for at least three years, with at least the same level of wholesale
17 service quality, including support, data, functionality, performance, and electronic-
18 bonding provided by Qwest prior to the merger filing date. This condition also
19 requires that after the three-year period the Merged Company will not replace or
20 integrate Qwest systems without first: (a) submitting a detailed plan to the FCC
21 Wireline Competition Bureau and state commissions of affected states, including a
22 detailed description and contingency plan, with opportunity for comment from
23 interested parties (Condition 19(a)); (b) conducting robust third-party testing (similar
24 to what was performed during the 271 approval process) of any system that will
25 replace any Qwest system that was subject to third-party testing to ensure that it

1 provides needed functionality and can handle commercial volumes (Condition 19(b));
2 and (c) coordinated testing with CLECs (Condition 19(c)).

- 3 • Condition 20 states that following the transaction in the CenturyLink legacy territory,
4 the Merged Company will use the wholesale pre-ordering, quoting, ordering,
5 provisioning and maintenance/repair functionalities (including electronic bonding) of
6 the legacy Qwest territory to provide interconnection, UNEs, collocation, and special
7 access services.

8 **Q. WHY ARE THESE CONDITIONS NECESSARY?**

9 A. The FCC has found that CLECs would be “severely disadvantaged, if not precluded
10 altogether, from fairly competing,” if they do not have nondiscriminatory access to
11 OSS.²²⁰ Likewise, Qwest has described its existing OSS as playing “a crucial role in the
12 transactions between Qwest and all CLECs”²²¹ and characterized its OSS as “the
13 lifeblood of...Qwest’s wholesale operation...”²²² I would agree with these statements.
14 So, by all accounts, nondiscriminatory access to OSS is absolutely essential to
15 competition. Unfortunately, the future of Qwest’s OSS is in serious question due to the
16 proposed transaction. All we know at this point in time is that a CenturyLink person (Mr.
17 Bill Cheek) will be in charge of wholesale for the combined company and that no
18 decisions have been made as to systems, staffing or locations of the staff. Given this lack
19 of information, these conditions will provide the much-needed certainty in this area so
20 that wholesale customers can plan their business for the foreseeable future, and will help

²²⁰ *Local Competition Order* at ¶518.

²²¹ Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.

²²² Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at p. 39.

1 ensure that CLECs have nondiscriminatory access to OSS across the Merged Company's
2 footprint.

3 **Q. PLEASE ELABORATE ON YOUR STATEMENT THAT THE FUTURE OF**
4 **QWEST'S OSS IS IN SERIOUS QUESTION.**

5 A. CenturyLink has provided very little information about its post-merger plans for OSS,
6 other than that CLECs should expect change. When asked whether CenturyLink
7 anticipates modifying, integrating or otherwise changing OSS in legacy Qwest service
8 territories, CenturyLink responded:

9 Upon merger closing, CenturyLink does not anticipate any immediate
10 changes to the Qwest CLEC OSS systems. Integration planning is in the
11 early stages and decisions have not been made at this time. However,
12 because the transaction results in the entirety of Qwest, including
13 operations and systems, merging into and operating as a subsidiary of
14 CenturyLink, it will allow a disciplined approach to reviewing systems
15 and practices and will allow integration decisions to proceed in an orderly
16 disciplined manner. To the extent any changes are made, CenturyLink will
17 comply with all applicable state and federal laws and rules, as wells (sic)
18 as the provisions of any applicable interconnection agreements or tariffs,
19 in the same manner as they would apply notwithstanding the merger.²²³

20 Similarly, when asked whether CenturyLink anticipates importing CenturyLink's EASE
21 system into Qwest's legacy territory, the company replied (in part):

22 The merger is intended to bring about improved efficiencies and practices
23 in all parts of the combined company, so changes could be expected over
24 time...any changes will occur only after a thorough and methodical review
25 of both companies' systems and processes to determine the best system to

²²³ CenturyLink Response to Integra Washington Data Request #23.

1 be used on a go-forward basis from both a combined company and a
2 wholesale customer perspective.²²⁴

3 So, in a nutshell, CenturyLink has told wholesale customers that they can expect changes
4 to the “lifeblood” of Qwest’s wholesale operations, but has provided no detail about what
5 changes will be made or when those changes will be made. This simply does not provide
6 wholesale customers with the certainty they need to plan their business going forward.

7 **Q. HAS CENTURYLINK PROVIDED ANY INFORMATION ABOUT HOW LONG**
8 **IT PLANS ON MAINTAINING THE EXISTING OSS IN LEGACY QWEST**
9 **TERRITORY?**

10 A. My clients have asked in every state where they have intervened about CenturyLink’s
11 post-merger plans for OSS, and in every state, CenturyLink has submitted the same
12 answer about anticipating no “immediate changes” but that “changes could be expected
13 over time.” On July 27, 2010, CenturyLink filed its Reply Comments and supporting
14 declarations in the FCC’s review of the proposed transaction (WC Docket No. 10-110).
15 In that filing, the Joint Applicants represented that “[i]t is expected that CenturyLink will
16 operate both CenturyLink (in CenturyLink areas) and Qwest OSS (in Qwest areas) until it
17 completes its evaluation of the best options for all stakeholders. It is expected that
18 CenturyLink will operate both systems for 12 months at the very least.”²²⁵ CenturyLink
19 made similar statements about operating both Qwest and CenturyLink OSS for at least 12

²²⁴ CenturyLink Response to Integra Washington Data Request #35(h).

²²⁵ Declaration of William E. Cheek in Support of Reply Comments of CenturyLink, Inc. and Qwest Communications International, Inc., WC Docket No. 10-110, July 27, 2010.

1 months following the merger in its recent testimony in the Iowa merger review
2 proceeding.²²⁶ While these recent statements are different than what CenturyLink has
3 stated in discovery responses, they provide none of the certainty that wholesale customers
4 need. As an initial matter, 12 months is not a sufficient period of time to provide
5 certainty. Second, continuing to operate the systems does *not* mean that they will
6 continue to meet 271 standards.

7 **Q. WHY IS OPERATING BOTH SYSTEMS FOR “AT LEAST 12 MONTHS”**
8 **INSUFFICIENT?**

9 A. CenturyLink has estimated synergy savings to be achieved over a three-to-five year
10 period, which means that the greatest risk to CLECs of CenturyLink degrading access to
11 OSS is during that three-to-five year window, and even for a period of time after the five
12 years if the combined company does not integrate Qwest on-time and on-budget post-
13 merger. Since one year does not even come close to covering this time period during
14 which wholesale customers and local competition are at the greatest risk due to the
15 merger, it is not satisfactory. In addition, CenturyLink states that it “is expected” to
16 operate both systems for at least 12 months. This is not a firm commitment.
17 CenturyLink’s expectations may change post-merger, and that is why an enforceable
18 commitment/condition to maintain OSS is critical.

²²⁶ See, e.g., Rebuttal Testimony of Guy Miller, III on behalf of CenturyLink, Inc., Iowa Board Docket No. SPU-2010-0006, August 26, 2010, at p. 42 (“In the FCC’s merger review proceeding, the Applicants have provided a sworn statement that CenturyLink plans to continue operating both CenturyLink and Qwest existing OSS uninterrupted for the immediate future until it completes its evaluation of the best options for all stakeholders. This is expected to take 12 months at the very least.”)

1 **Q. SHOULD CENTURYLINK BE ABLE TO UNILATERALLY MAKE CHANGES**
2 **TO QWEST'S OSS POST-MERGER IN THE PURSUIT OF SYNERGY**
3 **SAVINGS?**

4 A. No. Regardless of whether or not CenturyLink performs a “methodical review” or if it
5 takes into account the “wholesale customer perspective”²²⁷ – CenturyLink should not be
6 allowed to make changes to Qwest’s OSS post-merger without extensive analysis as
7 rigorous and extensive as that conducted during the Qwest Section 271 approval process.
8 As explained in Exhibit ___ TJK-3, an extensive third-party test of Qwest’s OSS was
9 conducted over a three-year period for the express purpose of determining whether
10 Qwest’s OSS satisfied the nondiscriminatory access requirement under Section 271 of
11 Act. Despite Qwest claiming at the outset that its OSS and CMP were compliant with
12 Section 271, the third party testing revealed hundreds of problem areas that were resolved
13 through OSS improvements and re-testing. Countless hours and millions of dollars went
14 into this process, and Qwest ultimately received Section 271 authority to provide in-
15 region interLATA services based, in significant part, on this extensive test of its existing
16 OSS. If CenturyLink changes Qwest’s existing OSS post-merger (without the same level
17 of testing that was previously conducted), it will have single-handedly undermined all of

²²⁷ See also, Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 21 (“Whether post-transaction CenturyLink ultimately chooses an existing OSS or selects new systems should be left to be resolved through the ordinary course of business and the need to respond to marketplace conditions.”) Fortunately for CLECs, the state commissions and FCC did not take such this approach when evaluating whether Qwest’s OSS provides nondiscriminatory access required by Section 271 of the Act. CenturyLink’s claim that it should be left up to the Merged Company as to whether Qwest’s OSS should be replaced with different systems raises questions as to whether CenturyLink truly understands and takes seriously the BOC obligations it will inherit in Qwest’s legacy territory if the proposed transaction is approved.

1 the work that was conducted by 14 state commissions, the FCC, third-party testers, Qwest
2 and industry participants.

3 **Q. HAS CENTURYLINK ADMITTED IN DISCOVERY THAT ITS OSS HAS NOT**
4 **BEEN THIRD-PARTY TESTED?**

5 A. Yes. CenturyLink has admitted that its OSS has not been third-party tested,²²⁸ and the
6 FCC has stated that a “third-party test provides an objective means by which to evaluate a
7 BOC’s OSS readiness.”²²⁹ Accordingly, replacing Qwest’s legacy OSS with
8 CenturyLink’s legacy (or new) OSS would cause Qwest to backslide on its 271
9 obligations because Qwest would no longer be providing the nondiscriminatory access to
10 the OSS systems that were approved under the Section 271 process.

11 **Q. ARE THERE OTHER REASONS WHY CENTURYLINK SHOULD NOT BE**
12 **ALLOWED TO CHANGE QWEST’S OSS UNILATERALLY?**

13 A. Yes. As Dr. Ankum explains, CenturyLink has the incentive and ability to direct its
14 synergy savings efforts in areas that are most profitable to the Merged Company. Given
15 that Qwest has referred to OSS as the “lifeblood” of its wholesale operations, making
16 changes to Qwest’s wholesale OSS is obviously an area that would be profitable to the
17 Merged Company. If CenturyLink stopped maintaining and investing in Qwest’s OSS, or
18 started using it incorrectly, CenturyLink would save money (increase synergies) and
19 disadvantage its competitors (again resulting in more revenues for Qwest). If CLECs’

²²⁸ CenturyLink Response to Integra Washington Data Request #18.

²²⁹ *Qwest 9 State 271 Order* at ¶ 49.

1 access to OSS is degraded or melts down altogether due to integration failures, it will
2 give CenturyLink a leg up in competing for end users. In addition, the severe systems
3 integration problems experienced following recent mergers is proof positive that OSS
4 integration failures can wreak havoc post-merger.

5 **Q. THE COMPANY HAS STATED THAT THE INTEGRATION “WILL LARGELY**
6 **INVOLVE THE USE OF EXISTING SYSTEMS RATHER THAN CREATING**
7 **NEW ONES.”²³⁰ DOES THIS ALLAY YOUR CONCERNS?**

8 A. No. If CenturyLink tries to import legacy CenturyLink OSS into Qwest’s legacy territory
9 post-merger, those OSS would be “new” to Qwest’s region, and the same types of
10 problems that have been experienced with other mergers could be experienced in Qwest’s
11 region when the Merged Company attempts to incorporate those new OSS. As just one
12 example, CenturyLink’s legacy OSS has not been tested to handle commercial volumes
13 that would be experienced in Qwest’s legacy territory, and could fail under the strain of
14 attempting to process that higher number of orders.

15 **Q. DO THE CLEC CONDITIONS LOCK-IN CENTURYLINK TO USING QWEST’S**
16 **LEGACY OSS FOREVER?**

17 A. No. After the minimum three-year period, the Merged Company has the opportunity to
18 make changes so long as the Merged Company (a) files a detailed plan with regulators;
19 (b) conducts third-party testing (for Qwest systems that were third-party tested) to ensure

²³⁰ Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 9.

1 that the replacement system provides the needed functionality and can handle commercial
2 volumes in Qwest's legacy territory; and (c) allows for coordinated testing with CLECs.
3 These three requirements are eminently reasonable and were undertaken to ensure that
4 Qwest's existing OSS met the requirements of Section 271.

5 Regulators as well as CLECs have a vested interest in overseeing any changes to Qwest's
6 OSS and ensuring that Qwest does not backslide in carrying out its obligations under
7 Section 271 and does not experience the same types of trouble experienced after recent,
8 similar mergers. Third-party testing will provide an objective means for determining
9 whether the replacement system is at least equal in functionality and capability as the
10 system it is replacing (which was originally third-party tested).

11 **Q. ARE YOU SAYING THAT QWEST'S OSS IS PERFECT?**

12 A. No. What I am saying is that while CLECs have expressed concerns about Qwest's OSS,
13 Qwest's OSS has been third-party tested and received a passing grade by regulators, and
14 CenturyLink's has not. So, replacing Qwest's OSS with CenturyLink's OSS post-merger
15 will result in a step backwards for competition.

16 **Q. PLEASE DISCUSS IN MORE DETAIL CONDITION 20 – OSS IN LEGACY**
17 **CENTURYLINK TERRITORY.**

18 A. Whereas Condition 19 addresses the OSS to be used in legacy Qwest territory post-
19 merger, Condition 20 addresses the OSS to be used in legacy CenturyLink territory post-
20 merger. The existing Qwest OSS and its functionality is more well-documented, and

1 preferred by carriers that use both of the merging companies' systems, than the existing
2 CenturyLink OSS. For example, tw telecom, a carrier that has experience as a wholesale
3 customer of both Qwest and CenturyLink,²³¹ explained that the electronic-bonding
4 capabilities of legacy Embarq's OSS is inferior to the electronic-bonding capabilities of
5 legacy Qwest's OSS.²³² And as discussed above, Qwest's OSS has been tested
6 independently and extensively, while Embarq's legacy OSS has not.²³³

7 **Q. GIVEN THE STATE OF THE VARIOUS OSS YOU JUST DESCRIBED, WOULD**
8 **CENTURYLINK SELECT THE QWEST OSS IF IT WAS PURSUING A "BEST**
9 **PRACTICES" APPROACH TO ITS SYSTEMS?**

10 A. Yes. The integration effort should adopt the best practices and systems, and the only
11 logical conclusion is that Qwest's OSS should be integrated in CenturyLink's legacy
12 ILEC territory post-merger. This is the intent of Condition 20. This will serve the public
13 interest and foster competition in CenturyLink's legacy territory by incorporating OSS
14 that has been more thoroughly tested and is preferred by CLECs who do business in both
15 legacy Qwest and legacy CenturyLink territories.

16 **Q. ARE THERE OTHER REASONS WHY THE QWEST OSS SHOULD BE**
17 **MIGRATED TO SERVE THE LEGACY CENTURYLINK EXCHANGES,**
18 **INCLUDING THE EMBARQ EXCHANGES?**

²³¹ Integra, et al. FCC Comments, WC Docket No. 10-110, July 12, 2010.

²³² *Id.* at pp. 41-42.

²³³ *See*, Exhibit__TJG-3, providing quotes from state commissions and the FCC about the extensive testing that was conducted on Qwest's OSS during the 271 approval process.

1 A. Arguably the enforcement of the stringent nondiscrimination mandated by Section 251(c)
2 might require such a result. Although CenturyLink intimates that it will keep local
3 control, the fact of the matter is that it may ultimately seek to have business customers
4 view CenturyLink as a single global entity. That will allow CenturyLink to market
5 services throughout its bigger footprint. Thus, if CenturyLink evolves its OSS to a single
6 ordering system for retail customers (*i.e.*, a retail customer would only have to submit a
7 single order to have service provisioned in both Qwest and legacy CenturyLink
8 exchanges), the same would be required for wholesale customers.

9 ***B. Wholesale Service Quality***

10 **Q. PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO**
11 **WHOLESALE SERVICE QUALITY.**

12 A. There are three conditions in this category – conditions 4, 5, and 11:

- 13 • Condition 4 states that the Merged Company shall comply with all wholesale
14 performance requirements and associated remedy regimes applicable to Qwest in the
15 legacy Qwest ILEC territory. This includes the Merged Company continuing to
16 comply with all wholesale performance requirements and remedy regimes and
17 continuing to provide to CLECs wholesale performance metrics reports Qwest
18 currently provides. Condition 4(a) states that Qwest will not reduce, eliminate or
19 withdraw any Performance Indicator Definition (PID) or Performance Assurance Plan
20 (PAP) offered or provided as of the merger filing date for a period of at least five
21 years after the closing date, and only then, after the Merged Company obtains
22 approval from the applicable state commission to reduce/eliminate/withdraw it after
23 the minimum 5-year period. Condition 4(a) also states that, for at least the Defined
24 Time Period, the Merged Company shall meet or exceed the average wholesale
25 performance provided by Qwest to each CLEC for one year prior to the merger filing
26 date for each PID, product, and disaggregation. If the Merged Company fails to
27 provide wholesale service as described in the preceding sentence, the Merged

1 Company will also make remedy payments to each affected CLEC in an amount as
2 would be calculated using the methodology in the current PAP for each missed
3 occurrence when comparing pre and post-merger performance. This remedy payment
4 related to pre and post-merger service quality (“Additional PAP”) would apply in
5 addition to the Current PAP, and state commissions/FCC would have the authority to
6 assess additional remedies if the remedies described above are insufficient to bring
7 about satisfactory wholesale service quality. Condition 4(b) states that in the legacy
8 Qwest ILEC territory, for at least the Defined Time Period, the Merged Company will
9 meet or exceed the average monthly performance provided by Qwest to each CLEC
10 for one year prior to the merger filing date for each metric in the CLEC-specific
11 monthly special access performance reports Qwest provides to CLECs as of the
12 merger filing date. For each month that the Merged Company fails to meet Qwest’s
13 average monthly special access performance for each metric, the Merged Company
14 will make remedy payments (calculated on a basis to be determined by the state
15 commission/FCC) on a per-month, per-metric basis to each affected CLEC.

- 16 • Condition 5 states that, for at least the Defined Time Period, in the legacy
17 CenturyLink ILEC territory the Merged Company shall comply with all wholesale
18 performance requirements and associated remedy regimes applicable to legacy
19 CenturyLink as of the merger filing date, and continue to provide to CLECs the
20 wholesale performance metrics that CenturyLink provides to CLECs as of the merger
21 filing date. This condition allows state commissions/FCC to assess additional
22 penalties if the remedy payments are insufficient to bring about quality wholesale
23 service or if the merger conditions are violated. Condition 5(a) states that the Merged
24 Company will provide to CLECs the wholesale special access performance metrics
25 reports Qwest provides as of the merger filing date, and beginning 12 months after
26 the closing date, the requirements in Condition 4(b) shall apply to the Merged
27 Company in the legacy CenturyLink ILEC territory.
- 28 • Condition 11 states that to the extent an ICA is silent as to a provisioning interval for
29 a product or refers to Qwest’s Service Interval Guide (SIG), the applicable interval,
30 after closing date, will be no longer than the interval in Qwest’s SIG as of the merger
31 filing date.

32 **Q. WHY ARE THESE CONDITIONS NECESSARY?**

33 A. These conditions are critical to ensure that wholesale service quality is not degraded post-
34 merger as the Merged Company cuts costs to achieve synergy savings. Condition 4(a),
35 for instance, maintains the current PIDs and PAPs that Qwest currently provides for a

1 period of at least 5 years following the merger. The five year time period corresponds
2 with the upper limit of the Joint Applicants' synergy savings time horizon which is the
3 time during which the risk of merger-related wholesale service quality degradation is
4 greatly amplified. The critical nature of maintaining wholesale service quality post-
5 merger is reflected in the minimum five-year time period in this condition as well as the
6 requirement for the Merged Company to obtain approval of reducing or eliminating the
7 PIDs or PAP. To provide the proper signals to the Merged Company and to discourage it
8 from paying current PAP remedies as a cost of doing business, this condition would
9 require the Merged Company to pay an additional remedy payment for merger-related
10 service quality degradation (Additional PAP). The current PIDs and PAPs are the best
11 available way to identify and root out wholesale service quality degradation – they rely
12 on trusted statistical methods as well as business rules and data that were extensively
13 tested during the 271 approval process.

14 Likewise, these conditions (*e.g.*, Condition 5 and subpart) ensure that the Merged
15 Company adheres to quality performance standards and submits reports on that
16 performance throughout its footprint. CenturyLink is not subject to performance plans
17 and reports in all of its legacy territory, and as such, it would be extremely challenging in
18 these areas to identify any discriminatory conduct of the Merged Company post-merger.
19 Hence, this condition provides public interest benefits by tracking, identifying and
20 eliminating discriminatory conduct in all areas of the Merged Company's territory.

1 **Q. DID CENTURYLINK PROVIDE ANY ASSURANCES REGARDING**
2 **WHOLESALE SERVICE QUALITY POST-MERGER?**

3 A. Not really. When asked specifically whether CenturyLink will comply with Qwest's
4 wholesale performance requirements, continue to provide wholesale performance metrics
5 reports, make reasonable efforts to meet or exceed the average wholesale performance
6 provided by Qwest, and remit remedy payments for substandard performance post-
7 merger, CenturyLink replied that it "intends to comply" with existing Qwest wholesale
8 performance plans and went on to explain that changes could be expected due to
9 integration.²³⁴ "Intend[ing] to comply" and actually complying are two entirely different
10 things as amply demonstrated by history of the Hawaii, FairPoint and Frontier
11 transactions previously discussed – particularly if the proposed transaction is approved as
12 filed and the Merged Company's pre-merger "intentions" are trumped by the Merged
13 Company's efforts to deliver on synergy savings post-merger.

14 **Q. CONDITION 11 ADDRESSES PROVISIONING INTERVALS. PLEASE**
15 **EXPLAIN HOW THIS RELATES TO WHOLESALE SERVICE QUALITY.**

16 A. The longer the wholesale provisioning interval, the longer wholesale customers must wait
17 to serve end user customers (and the longer end users must wait to take advantage of
18 competitive options). Further, the Merged Company, as part of its integration efforts,
19 could attempt to lengthen wholesale provisioning intervals so that it may reduce
20 personnel costs post-merger.

²³⁴ CenturyLink Response to Integra Washington Data Request #61.

1 **Q. WHY IS THIS CONDITION NECESSARY?**

2 A. The reason this condition is needed is that some ICAs with Qwest are either silent or refer
3 to Qwest's SIG for the applicable provisioning interval for a product (*i.e.*, the interval is
4 not specified in the ICA), and as such, the applicable interval can be unilaterally changed
5 by the Merged Company post-merger by changing its SIG. However, CLECs should not
6 be required to wait longer for wholesale services as a result of the proposed transaction,
7 so in cases where the ICA is silent or references the SIG, the standard interval applied at
8 the time of the merger filing date should apply post-merger.

9 **Q. WHAT HAS BEEN QWEST'S POSITION ON HOW SERVICE INTERVALS IN**
10 **THE SIG SHOULD BE MODIFIED?**

11 A. Qwest has opposed including service intervals in ICAs, and instead proposed to leave
12 intervals out of ICAs so that they can be modified through CMP.²³⁵

13 **Q. IS THERE A CONCERN ABOUT SERVICE INTERVALS IN THE SIG BEING**
14 **SUBJECT TO CHANGES IN CMP?**

15 A. Yes. Qwest has in the past made unilateral changes in CMP over CLECs objections.²³⁶

²³⁵ Testimony of Renee Albersheim on behalf of Qwest Corp., Minnesota Docket No. P-5340, 421/IC-06-768, August 25, 2006, at p. 31 ("The effect of Eschelon's language is to take control of service interval management away from its appropriate forum, the CMP, and to give control to Eschelon. Historically, Qwest has modified service intervals through CMP. As I discussed in Section III above, the CMP would be undermined if it was necessary to conduct interconnection agreement amendment negotiations before CMP changes could be implemented.")

²³⁶ For example, Qwest has unilaterally implemented unwanted changes over CLEC objections. *See, e.g., In re Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996* ["Qwest-Eschelon Minnesota ICA Arbitration"], Arbitrators' Report, MPUC Dkt. Nos. P-5340,421/IC-06-768, ¶ 22 (rel. Jan. 16, 2007)

1 **Q. DOES THE SERVICE INTERVAL IMPACT COMPETITION AND**
2 **CONSUMERS?**

3 A. Yes. This condition is critical because it impacts the customers of CLECs directly.
4 CLECs make commitments to customers based on the provisioning intervals agreed upon
5 or as required. Should the Merged Company not meet the provisioning intervals, then
6 CLEC customers will be upset with the CLEC for missing the deadlines. Frustrating
7 consumers and creating tension between a CLEC and its customers may benefit
8 CenturyLink, but it is not consistent with the requirements of the Act or the public
9 interest.

10 **C. *Wholesale Customer Support***

11 **Q. PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO**
12 **WHOLESALE CUSTOMER SUPPORT.**

13 A. There are four conditions in this category – conditions 15, 16, 17 and 18:

- 14 • Condition 15 states that the Merged Company shall provide to wholesale customers at
15 least 30 days prior to the closing date, and maintain on a going-forward basis, up-to-
16 date escalation information, contact lists, and account manager information. For
17 changes to support center location, organizational structure, or contact information,
18 the Merged Company will provide at least 30 days advance written notice to
19 wholesale customers; and will provide reasonable advance notice for other changes.
20 The information and notice will be consistent with the terms of applicable ICAs.
- 21 • Condition 16 states that the Merged Company will make available to wholesale
22 customers the types and level of data, information, and assistance that Qwest made

(“Eschelon has provided convincing evidence that the CMP process does not always provide CLECs with adequate protection from Qwest making important unilateral changes in the terms and conditions of interconnection.”).

1 available as of merger filing concerning wholesale OSS and wholesale business
2 practices and procedures. This includes information on Qwest's wholesale website
3 such as the PCAT, notices, industry letters, the CMP and databases/tools.

- 4 • Condition 17 states that the Merged Company will maintain Qwest's CMP using the
5 terms in the Qwest CMP Document, and will dedicate resources needed to complete
6 pending CLEC change requests in a commercially reasonable time frame.
- 7 • Condition 18 states that the Merged Company will ensure that the legacy Qwest
8 Wholesale and CLEC support centers are sufficiently staffed by adequately trained
9 personnel dedicated to wholesale operations so as to provide service at a level equal
10 to or greater than provided by Qwest prior to the merger (relative to wholesale order
11 volumes), and to protect CLEC information from being used by the Merged
12 Company's retail operations. This condition also states that the total number of
13 employees dedicated to supporting wholesale services for CLECs will be no fewer
14 than employed by legacy Qwest and legacy CenturyLink as of the Merger Filing Date
15 unless the Merged Company obtains a ruling from the applicable regulatory body that
16 wholesale order volumes materially decline or other circumstances warrant
17 corresponding employee reductions.

18 **Q. WHY ARE THESE CONDITIONS NECESSARY?**

19 A. These conditions dovetail with the wholesale service quality conditions and in some
20 respects the OSS conditions discussed above. These conditions are needed to ensure that
21 the transition to the Merged Company runs smoothly for wholesale customers – and by
22 extension their end user customers – and that the Merged Company does not diminish the
23 level of wholesale support currently provided in Qwest's BOC territory when it integrates
24 the two companies and pursues synergy savings.

25 CenturyLink has provided no detail about what wholesale customers should expect other
26 than "change." To ensure that the transition runs smoothly for wholesale customers,
27 Condition 15 requires the Merged Company to provide at least 30 days prior to the
28 closing date (and on a going forward basis) up-to-date escalation information, contact

1 lists, and account manager information, and provides for 30 days notice for changes to
2 support center location, organizational structure, or contact information. These resources
3 are critical to managing the carrier-to-carrier relationship between an ILEC and CLECs,
4 and will likely incur significant changes due to the proposed transaction. Therefore,
5 CLECs must be made aware of these changes in advance so that they can make the
6 appropriate adjustments to their processes and operations and avoid disruption when the
7 change is made. This requirement is particularly important given that when CenturyLink
8 was asked about its plans in this regard post-merger, its response was not specific or
9 instructive.²³⁷

10 **Q. PLEASE ELABORATE ON WHY CONDITIONS 16 AND 17 ARE NECESSARY.**

11 A. These conditions are necessary in order to ensure that Qwest does not backslide in its
12 obligations under the Act. The OSS provided by Qwest to CLECs goes beyond just the
13 CLEC-facing system interfaces, and includes the back-office systems, databases,
14 personnel,²³⁸ as well as associated business processes and up-to-date data maintained in
15 those systems.²³⁹ The third-party test conducted on Qwest's OSS during the 271
16 approval process tested the availability and functionality of the system interfaces as well

²³⁷ CenturyLink Response to Integra Washington Data Request #71. To CenturyLink's credit, it states that "Wholesale customers will be informed of any changes to contact information in advance." CenturyLink Response to Integra Washington Data Request #72. However, CenturyLink does not indicate how far in advance that notice will be given or how the notice will be provided. This is insufficient.

²³⁸ See, e.g., *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, FCC 03-36, August 21, 2003 ("Triennial Review Order") at footnote 822 ("OSS are composed of various 'back office' systems, databases and personnel that an incumbent LEC uses to commercially provision telecommunications services to... purchasers of unbundled network elements.")

²³⁹ *Local Competition Order* at ¶¶ 517-18.

1 as business practices and procedures, data integrity and Qwest's CMP.²⁴⁰ The test
2 involved these components because they are directly related to whether Qwest provides
3 nondiscriminatory access to its OSS under the Act. In other words, the current level of
4 data, current business practices and procedures, and current CMP in Qwest's region are
5 essential components of Qwest complying with the market-opening provisions of 271 of
6 the Act, and these components would be undermined – and the Merged Company would
7 backslide on its 271 obligations – if the Merged Company withdrew or replaced such
8 information, practices and procedures, or CMP, post-merger.

9 **Q. DOES CENTURYLINK SEEM TO UNDERSTAND THE IMPORTANCE OF**
10 **THE QWEST 271 OBLIGATIONS?**

11 A. No. CenturyLink appears to be taking a cavalier attitude towards these obligations in its
12 discovery responses, creating additional uncertainty. For example, in response to a
13 question about whether CenturyLink anticipates seeking modification to Qwest's existing
14 CMP and asking CenturyLink to describe any anticipated changes, CenturyLink
15 responded as follows:

16 The merger is intended to bring about improved efficiencies and practices
17 in all parts of the combined company, so changes [to Qwest's existing

²⁴⁰ See, e.g., Colorado PUC Evaluation ("Qwest's change management process (CMP) has undergone a complete overhaul during the § 271 process. It is now compliant with the FCC's change management criteria. The [Colorado PUC] staff has closely monitored CMP, and through no small amount of goading, Qwest has brought it into compliance."); see also *Id.* at 45 ("Beginning in July 2001, Qwest, CLECs and [Colorado PUC] staff began meeting in a collaborative effort to redesign Qwest's change management process (CMP). The participants in the redesign process have met for more than 45 days over the past 11 months to discuss every aspect of Qwest's CMP. CLECs and Qwest have made every effort to achieve consensus. As a result, the [Colorado PUC] agrees with Qwest's contention that 'it has in place the most comprehensive, inclusive, and forward-looking change management plan in the nation.'").

1 CMP and/or CMP Document] could be expected over time. However, any
2 changes will occur only after a thorough and methodical review of both
3 companies' processes to determine the best process to be used on a go-
4 forward basis from both a combined company and a wholesale customer
5 perspective.²⁴¹

6 Based on this response, CLECs should expect changes, but nothing is known about those
7 changes or how the Merged Company will determine whether to make changes or what
8 changes to make. CenturyLink's vague reference to a "methodical review" falls woefully
9 short of providing any certainty.²⁴² Moreover, the Merged Company should not be
10 allowed to cast away all the work that was conducted to ensure Qwest's OSS provided
11 nondiscriminatory access to OSS; nor should the Merged Company be allowed to
12 unilaterally²⁴³ implement new OSS or modify CMP because it unilaterally determined it
13 was more efficient (in the "combined company['s] perspective"). In fact, that is precisely

²⁴¹ CenturyLink Response to Integra Washington Data Request #118. *See also*, CenturyLink response to Integra Washington Data Request #91. After explaining that changes may be made in the future, CenturyLink states: "Generally, CenturyLink is a proponent of web-based guidelines and materials for wholesale customer usage and is an effective means used by CenturyLink today." This response provides absolutely no commitment to maintain the information Qwest currently makes available on its website, such as its Product Catalogs.

²⁴² CenturyLink was asked in Washington about what it meant by "methodical review" (Integra Washington Data Request #49(a)) and what it meant by "from both a combined company and a wholesale customer perspective" (Integra Washington Data Request #49(b)). CenturyLink responded that it will take into consideration carriers throughout its entire footprint as well as "operational efficiencies for" the Merged Company. CenturyLink Response to Integra Washington Data Request #49. The Merged Company should not be permitted to replace processes, CMP, etc. that were extensively reviewed during the 271 approval process and critical to nondiscriminatory access to OSS with different processes or CMP that have not been tested and which may be more efficient for the Merged Company. This is a prime example of a situation in which the Merged Company could integrate the two companies to the detriment of wholesale customers. Therefore, conditions are warranted.

²⁴³ CenturyLink's statement that it will take into account the "wholesale customer perspective" is a hollow promise. Assuming that the Merged Company even takes into account the wholesale customer perspective when integrating OSS, it could simply ignore that perspective and instead implement changes based on the "combined company...perspective." In fact, Qwest already makes changes through its CMP over CLEC objections, and this problem is sure to worsen as the Merged Company begins overhauling OSS.

1 the type of conduct that the 271 approval process was intended to identify and root out.

2 Yet, that is what could happen if the proposed transaction is approved without conditions.

3 **Q. ARE YOU SAYING THAT QWEST'S BUSINESS PRACTICES AND**
4 **PROCEDURES, LEVEL OF INFORMATION, AND CMP ARE FLAWLESS OR**
5 **SHOULD BE SET IN STONE?**

6 A. No. Regarding the role of Qwest CMP, CLECs including Integra said in their recent
7 FCC Comments in the Qwest-CenturyLink Merger docket that the CMP performs an
8 essential function, even though CLECs have encountered difficulties with Qwest's CMP.
9 As an example, CLECs pointed to Qwest's implementation of unwanted changes over
10 CLEC objections. After reviewing examples Eschelon provided in the Minnesota
11 Eschelon-Qwest arbitration case, the Minnesota Arbitrators, as affirmed by the Minnesota
12 Commission, found that "Eschelon has provided convincing evidence that the CMP
13 process does not always provide CLECs with adequate protection from Qwest making
14 important unilateral changes in the terms and conditions of interconnection."²⁴⁴ In a
15 complaint Eschelon filed against Qwest in Arizona regarding expedites, the Arizona Staff
16 said, "This case is about not only a breach of Eschelon's ICA, but inappropriate use of
17 the CMP to affect a material change to all CLECs' rights under their current ICAs with

²⁴⁴ Minnesota Arbitrators' Report, OAH 3-2500-17369-2/MPUC No. P-5340,421/IC-06-768 at ¶ 22. The Minnesota Commission adopted the Arbitrators' Report in relevant part. See, Order Resolving Arbitration Issues, Requiring Filed Interconnection Agreement, Opening Investigation and Referring Issue to Contested Case Proceeding, *In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996*. ["Minnesota Qwest-Eschelon ICA Arbitration"], OAH No. 3-2500-17369-2; MPUC Docket No. P-5340,421/IC-06-768 (March 30, 2007) ["MN PUC Arbitration Order"].

1 Qwest.”²⁴⁵ Nevertheless, in a relative comparison, Qwest’s CMP, with all of its flaws, is
2 still better than the untested, unknown process that CenturyLink may replace it with post-
3 merger.

4 **Q. DOES LEGACY CENTURLINK HAVE A CHANGE MANAGEMENT**
5 **PROCESS?**

6 A. No. CenturyLink does not have a Change Management Process in either the legacy
7 CenturyTel legacy territory or the legacy Embarq territory, (CenturyLink has separate
8 wholesale processes and wholesale websites for each of the legacy CenturyLink and
9 Embarq territories.) In the legacy CenturyTel territory, there is a “Wholesale Markets
10 Carrier Notification” process²⁴⁶ wherein CenturyTel simply issues a notice informing
11 wholesale customers about a coming change or a change that has already taken place.
12 For example, CenturyTel issued Wholesale Markets Carrier Notification GN122009²⁴⁷ to
13 announce to wholesale customers that CenturyTel was implementing the EASE OSS.
14 Noticeably absent from this notification is any opportunity for input from the affected
15 wholesale customer. Similarly, CenturyTel issues these notices to inform wholesale
16 customers about changes CenturyTel makes to its Service Guide, such as Carrier

²⁴⁵ Arizona Corporation Commission Staff Reply Brief, AZ Docket No. T-03406A-06-0257 at p. 1.

²⁴⁶<http://www.centurylink.com/business/Wholesale/InterconnectionServices/AlertsAndNotifications/generalNotifications.jsp>

²⁴⁷http://www.centurylink.com/business/Wholesale/InterconnectionServices/Library/EASE_Implementation_Notice_07072009.pdf

1 Notification GN102009,²⁴⁸ which informed wholesale customers that CenturyTel had
2 *already* made changes to its Service Guide regarding billing disputes. Again, there is no
3 opportunity for input from the affected wholesale customers in this process.

4 In the legacy Embarq territory, CenturyLink uses a similar notice approach. I have
5 attached as Exhibit___TJG-11 a copy of a recent notice issued by CenturyLink in the
6 legacy Embarq territory, in which CenturyLink announced a change to its WebRRS web-
7 based GUI for maintenance and repair. Like the CenturyTel notice, notably absent from
8 this notice in legacy Embarq territory is any mention of opportunity for input or feedback
9 from the affected wholesale customers, or even the reasonable expectation that a CLEC
10 could get enough notice to communicate the information internally and provide
11 documentation updates and training if needed. Indeed, the notice indicates that the
12 change is effective the day the notice was issued (“Effective today...”).

13 **Q. DID THE CLECS ASK LEGACY EMBARQ ABOUT ITS CMP?**

14 A. Yes. In late 2007, Integra asked its Embarq account manager whether a change
15 management process existed in legacy Embarq territory, and was directed to Embarq’s
16 “CLEC Issue Resolution” process.²⁴⁹ According to Embarq’s wholesale website, the
17 CLEC Issue Resolution process consists of:

18 two different venues for resolving business issues with our CLEC
19 customers: an annual face-to-face meeting (CLEC Forum) and a six month
20 CLEC Forum follow-up conference call (CRM).

²⁴⁸http://www.centurylink.com/business/Wholesale/InterconnectionServices/Library/Service_Guide_Update_07012009.pdf

²⁴⁹http://embarq.centurylink.com/wholesale/clec_forum.html

1 **Customer Relations Meeting (CRM)**

2 This six month follow-up meeting provides an opportunity for
3 CenturyLink to update its CLEC partners on items and issues of interest
4 discussed during the annual CLEC Forum. Meetings will be held six
5 months after the CLEC Forum and participants will interact via conference
6 call.

7 **CLEC Forum**

8 This annual meeting provides an opportunity for face-to-face interaction
9 between CenturyLink and its CLEC partners.²⁵⁰

10 **Q. BASED ON YOUR REVIEW, DOES LEGACY CENTURYLINK HAVE AN**
11 **ADEQUATE CMP?**

12 A. No. After reviewing both legacy CenturyTel and legacy Embarq wholesale websites and
13 based on information provided by the Embarq wholesale customer account manager, the
14 annual CLEC Forum meeting and six month follow up Customer Relations Meeting
15 (“CRM”) is the only process identified for CLEC input, and that is minimal. Nothing
16 about that process manages change. Although CenturyLink has claimed that it has a
17 “streamlined change management process,”²⁵¹ the facts do not support this claim.
18 Although CLECs have encountered difficulties with Qwest’s CMP,²⁵² at the very least,

²⁵⁰ http://embarq.centurylink.com/wholesale/clec_forum.html

²⁵¹ Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 24.

²⁵² For example, Qwest has unilaterally implemented unwanted changes over CLEC objections. *See, e.g., In re Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996* [“Qwest-Eschelon Minnesota ICA Arbitration”], Arbitrators’ Report, MPUC Dkt. Nos. P-5340,421/IC-06-768, ¶ 22 (rel. Jan. 16, 2007) (“Eschelon has provided convincing evidence that the CMP process does not always provide CLECs with adequate protection from Qwest making important unilateral changes in the terms and conditions of interconnection.”).

1 Qwest's CMP is documented,²⁵³ contains an escalation process,²⁵⁴ allows a CLEC the
2 time required to communicate and implement the change (even if Qwest implements the
3 change over CLEC objection), and memorializes a CMP process that was evaluated
4 during the 271 approval process. As the CMP Document developed via the extensive
5 271 process shows,²⁵⁵ notification is only one aspect of a CMP. CenturyLink's
6 notice/alert processes have not been subjected to any such extensive investigation.

7 **Q. HAS THE FCC EMPHASIZED THE IMPORTANCE OF AN ADEQUATE CMP**
8 **PROCESS?**

9 A. Yes. The FCC has found that adequate change management procedures are a critical
10 component to a CLEC's "meaningful opportunity to compete by providing sufficient
11 access to the BOC's OSS."²⁵⁶ The FCC has said that it will evaluate the adequacy of a
12 BOC's CMP according to five factors:

13 (1) that information relating to the change management process is clearly
14 organized and readily accessible to competing carriers; (2) that competing
15 carriers had substantial input in the design and continued operation of the
16 change management process; (3) that the change management plan defines
17 a procedure for the timely resolution of change management disputes; (4)
18 the availability of a stable testing environment that mirrors production;
19 and (5) the efficacy of the documentation the BOC makes available for the
20 purpose of building an electronic gateway.²⁵⁷

²⁵³ <http://www.qwest.com/wholesale/cmp/index.html> Qwest "CMP Document" is attached as Exhibit BJJ-26 to the testimony of Bonnie Johnson.

²⁵⁴ Qwest CMP Document Section 14. See, Exhibit BJJ-26 to the testimony of Bonnie Johnson.

²⁵⁵ Qwest testified in the Qwest-Eschelon Minnesota ICA Arbitration: "The CMP was evaluated as a part of the extensive section 271 investigation." Qwest (Renee Albersheim) Direct Testimony (Aug. 25, 2006), p. 6, line 24.

²⁵⁶ *Qwest 9 State 271 Order* at ¶ 132.

²⁵⁷ *Qwest 9 State 271 Order* at ¶ 132.

1 None of the five factors applies to the legacy CenturyLink processes, and they certainly
2 have not been evaluated in relation to these five factors as Qwest's CMP evaluated during
3 the 271 approval process. This underscores the importance of Condition 17, to maintain
4 Qwest's CMP post-merger, in spite of its flaws, because the CenturyLink alternative is no
5 change management process at all.

6 **Q. WHY IS CONDITION 18 NECESSARY?**

7 A. Yes. Changes to or reductions in employees that service wholesale and CLEC support
8 centers will have a direct impact on the level of wholesale service quality provided post-
9 merger, and is one of the most likely candidates for reductions.²⁵⁸ Again, the little
10 information provided by CenturyLink about future changes and reductions in this
11 headcount heightens those concerns.

12 **Q. PLEASE DESCRIBE HOW CENTURLINK'S INFORMATION HEIGHTENS**
13 **YOUR CONCERN ABOUT FUTURE CUTBACKS IN HEADCOUNT FOR**
14 **WHOLESALE SERVICES?**

15 A. When asked directly about anticipated changes to staffing levels for groups that interface
16 with wholesale customers post-merger, CenturyLink gives its patented answer about no
17 "immediate changes" but that changes can be expected due to integration.²⁵⁹ To

²⁵⁸ CenturyLink has stated that it will achieve synergies through "elimination of duplicative functions and systems." Bailey Washington Direct (CenturyLink Exhibit GCB-1T) at p. 11, lines 1-2. The Merged Company will more than likely have duplicative functions in this area given that both Qwest and CenturyLink must have their own separate wholesale/CLEC support centers today. Further, because cuts in this area will improve CenturyLink's position relative to its competitors, these changes would be profitable to the Merged Company.

²⁵⁹ CenturyLink Response to Integra Washington Data Requests #46 and #136.

1 CenturyLink's credit, it states that "the combined company will continue to employ
2 experienced and dedicated personnel to provide quality service" and "will continue to be
3 managed by knowledgeable and experienced employees dedicated to their local
4 communities" and the "workforce of the combined company will continue to be sufficient
5 to meet customer and business needs and to ensure compliance with all regulatory
6 obligations."²⁶⁰

7 **Q. HAS CENTURYLINK PROVIDED ANY INFORMATION ON HOW IT MIGHT**
8 **LIVE UP TO THESE PROMISES?**

9 A. No. These are merely paper promises because CenturyLink has neither explained how it
10 will live up to these promises nor offered commitments to back them up. These promises
11 should carry no weight given that if the transaction is approved as filed, the Merged
12 Company will be focused on achieving synergies, not on making good on unenforceable
13 statements made to achieve merger approval. These representations do indicate,
14 however, that the Merged Company should have no issue with abiding by the provisions
15 of Condition 18 that requires sufficiently staffed and adequately trained wholesale
16 operations.

17 **Q. CONDITION 18 STATES THAT THE TOTAL NUMBER OF EMPLOYEES**
18 **DEDICATED TO SUPPORTING WHOLESALE SERVICES WILL BE NO**
19 **FEWER THAN AS OF THE MERGER FILING DATE UNLESS THE MERGED**

²⁶⁰ CenturyLink Response to Integra Washington Data Request #136.

1 **COMPANY DEMONSTRATES THAT DECLINING WHOLESALE VOLUMES**
2 **(OR OTHER CIRCUMSTANCES) WARRANT HEADCOUNT REDUCTION**
3 **RELATIVE TO ORDER VOLUMES. WHY IS THIS WARRANTED?**

4 A. The discovery responses indicate that over the past five years in the legacy Qwest service
5 areas, the total number of employees dedicated to supporting wholesale services for
6 CLEC customers dropped by about *****BEGIN CONFIDENTIAL [REDACTED] END**
7 **CONFIDENTIAL*****.²⁶¹ Similarly, the Qwest wholesale total headcount dropped by
8 about *****BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***** during that
9 same time-frame.²⁶² The headcount currently dedicated to serving wholesale customers
10 in Qwest's legacy territory is as low as it has been in the recent past, and reducing this
11 headcount further could very well have a detrimental impact on wholesale customers of
12 Qwest. And, for Qwest Network Technicians who perform both repair and installation
13 functions for Qwest customers, the trend has been similar. Qwest provided data showing
14 that in Washington, the Network Technicians involved in installation and repairing
15 customer services has dropped by about *****BEGIN CONFIDENTIAL [REDACTED] END**
16 **CONFIDENTIAL***** between 2005-2009.²⁶³ So, when the Merged Company is
17 pursuing these synergy savings, it should ensure that whatever changes are made do not
18 reduce the total number of employees dedicated to wholesale customers in Qwest's
19 territory so that wholesale service quality is not degraded post-merger.

²⁶¹ Qwest Response to Integra Washington Data Request #69, Confidential Attachment A.

²⁶² Qwest Response to Integra Washington Data Request #1(m), Confidential Attachment A.

²⁶³ Qwest Response to Integra Washington Data Request #139(a), Confidential Attachment.

1 **Q. CONDITION 18 DISCUSSES PROTECTING CLEC INFORMATION FROM**
2 **BEING USED BY THE MERGED COMPANY’S RETAIL OPERATIONS. IS**
3 **THERE SIGNIFICANT UNCERTAINTY SURROUNDING THIS ISSUE**
4 **RESULTING FROM THE PROPOSED TRANSACTION?**

5 A. Yes. A key aspect of competition is smoothly handling the transfer of a customer from
6 one provider to the other when a customer chooses to switch carriers and keep its
7 number. Over the past several years, we have seen disputes regarding retention
8 marketing activities based on the use of confidential information provided in connection
9 with arranging for number porting, for example.

10 **Q. CAN YOU PROVIDE AN EXAMPLE DEMONSTRATING THE IMPORTANCE**
11 **OF PROTECTING CLEC INFORMATION FROM THE MERGED COMPANY’S**
12 **RETAIL OPERATIONS?**

13 A. Yes, a very recent example. Attached to the testimony of Bonnie Johnson on behalf of
14 Integra is Exhibit BJJ-20 which includes a document entitled “Example: ILEC Improper
15 Marketing Activity”²⁶⁴ which documents an email exchange between an Integra
16 Customer Account Manager and an Integra customer about inappropriate marketing
17 activity by Qwest representatives. In this example, the customer had a full disclosure
18 conversation and shared the customer’s invoice with the representative – all the while
19 thinking the representative was from Integra when the representative was actually from
20 Qwest. The customer reported that the Qwest representative pretended to be from

²⁶⁴ See Exhibit BJJ-20 to the Responsive Testimony of Bonnie Johnson (final page).

1 Integra, and only at the end of the conversation informed the customer that the
2 representative was from Qwest and stated that Qwest could beat Integra's pricing. When
3 the Qwest representative later called the customer again to attempt to get the customer to
4 switch over to Qwest, and was unsuccessful, according to the customer, the Qwest
5 representative stated, "Well, we'll do all we can to get them [Integra] out of business." It
6 is my understanding that Qwest acknowledged to Integra that this problem occurred and
7 has since terminated the employee; however, this is just one example of a number of
8 recent examples that have occurred after announcement of the merger in which Qwest
9 personnel are directing inappropriate marketing activity to CLEC customers. See,
10 Exhibit BJJ-20 to the Responsive Testimony of Bonnie Johnson detailing numerous
11 recent examples of inappropriate marketing activities.

12 **Q. ARE THERE OTHER EXAMPLES THAT STRESS THE IMPORTANCE OF**
13 **PROTECTING CLEC INFORMATION FROM THE ILEC'S RETAIL**
14 **OPERATIONS?**

15 A. Yes. During 2007 and 2008, Verizon and Bright House (along with other cable-affiliated
16 CLECs) engaged in extensive litigation with Verizon regarding Verizon's use of Bright
17 House's (and the other CLECs') confidential customer proprietary network information
18 ("CPNI" or "ordering information").²⁶⁵ Essentially, when Bright House would win a
19 customer and place an order with Verizon to transfer the customer's telephone number

²⁶⁵ See *Bright House Networks, LLC et al. v. Verizon California, Inc., et al., Memorandum Opinion and Order*, 23 FCC Rcd 10704 (2008), *affirmed*, *Verizon California, Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009).

1 and directory listing over to Bright House, Verizon would take that confidential
2 information and use it to immediately try to retain the customer (*i.e.*, prevent the
3 customer from leaving in the first place). Bright House argued that this was a violation
4 of federal law, which requires a carrier receiving confidential information of this sort –
5 here, the specific identities of customers who were leaving Verizon – to use that
6 information *only* for the purpose for which it was supplied – here, to perform the
7 administrative tasks associated with transferring the customer from one carrier to the
8 other.

9 The FCC ruled against Verizon, finding that Verizon violated the statute by using
10 confidential information from Bright House for Verizon’s own marketing purposes.
11 Verizon took its case to federal court on an expedited basis, and received a 3-0 ruling
12 from the D.C. Circuit that the FCC was correct and that Verizon was wrong. Given this
13 example and others, it is clear that the CLECs’ have a valid concern about how
14 information is used during the customer transfer process.

15 **Q. WHAT HAS CENTURYLINK SAID ABOUT THIS?**

16 A. When asked about its plans post-merger to ensure the protection of CLEC information,
17 CenturyLink responded that it “works to ensure” that wholesale customer information is
18 kept away from the retail marketing group and will do so post-merger, but that changes
19 could be expected in Qwest’s legacy territory due to integration decisions. Again, this is
20 simply not satisfactory. There is no information that I am aware of about how

1 CenturyLink protects CLEC data from retail operations in its legacy territory, and if
2 CenturyLink imports its unknown practices into Qwest's region post-merger in the name
3 of "best practices," CLECs are at risk of the Merged Company lessening the protection
4 Qwest currently provides and engaging in anti-competitive conduct.

5 ***D. Compliance***

6 **Q. PLEASE IDENTIFY AND DESCRIBE THE PROPOSED CONDITIONS**
7 **RELATING TO COMPLIANCE.**

8 A. There are eleven conditions in this category – conditions 13, 21, 22, 23, 24, 25, 26, 27,
9 28, 29, and 30:

- 10 • Condition 13 states that the Merged Company will be classified as a BOC in the
11 legacy Qwest ILEC territory post-merger and subject to BOC requirements in the
12 Telecommunications Act, including the 14-point competitive checklist under Section
13 271 and anti-backsliding provisions under Section 272.
- 14 • Condition 21 states that the Merged Company will process orders in compliance with
15 law and applicable ICAs.
- 16 • Condition 22 states that the Merged Company will provide number portability in
17 compliance with law and applicable ICAs; unlock E-911 records at the time of
18 porting (Condition 22(a)); and address trouble reports involving unlocking E-911
19 records within 24 hours (Condition 22(a)). Condition 22(b) states that the Merged
20 Company will not assign a passcode, password or PIN to retail customers in a manner
21 that prevents or delays a change in local service providers. Condition 22(c) states that
22 the Merged Company shall not limit the number of ports that can be processed.
- 23 • Condition 23 states that the Merged Company will provide nondiscriminatory access
24 to directory listings and directory assistance in compliance with law, including being
25 responsible for ensuring that all directory listings submitted by a CLEC are
26 incorporated into the appropriate databases and making the CLEC's subscriber
27 listings equally available to requesting entities.

- 1 • Condition 24 states that states that the merged company shall not assess porting
2 charges (Condition 24(a)), NID access fees (Condition 24(b)), or directory storage
3 and maintenance fees (Condition 24(c)) after the closing date, to the extent that those
4 charges were not charged by legacy Qwest territory based upon commission-
5 approved rates before the closing date.
- 6 • Condition 25 states that the Merged Company will provide routine network
7 modifications in compliance with law and applicable ICAs.
- 8 • Condition 26 states that the Merged Company will engineer and maintain its network
9 in compliance with law and applicable ICAs, which includes not diverting resources
10 from maintenance to merger integration activities. Condition 26(a) states that the
11 Merged Company shall not engineer the transmission capabilities of its network or
12 engage in any policy, practice or procedure that disrupts or degrades access to the
13 local loop. Condition 26(b) requires the Merged Company to abide by law and
14 applicable ICAs when retiring copper, and Condition 26(c) prohibits the Merged
15 Company from engineering/maintaining its network (including routing of traffic) in a
16 manner that results in the application of higher rates for traffic or inefficiencies for
17 wholesale customers.
- 18 • Condition 27 states that the Merged Company will provide conditioned copper loops
19 in compliance with law and Commission-approved rates, and will (when technically
20 feasible) test and report troubles for all features and functions of the copper line and
21 not just for voice transmission only.
- 22 • Condition 28 states that, at the CLEC's option, the Merged Company will
23 interconnect with CLEC at a single point of interconnection per LATA, regardless of
24 whether the merged entity operates in that LATA via multiple operating affiliate
25 companies or a single operating company.
- 26 • Condition 29 states that conditions adopted in this state may be expanded or modified
27 based on conditions adopted by other state commissions or the FCC.
- 28 • Condition 30 states that in the case of a dispute between the parties about merger
29 conditions, either party may seek resolution before the state commission.

30 **Q. WHY ARE THESE CONDITIONS NECESSARY?**

- 31 A. These conditions are designed to ensure that the Merged Company complies with its
32 obligations to wholesale customers under the Act and related FCC's rules post-merger.
33 While CenturyLink has promised in its filings to comply with many of the provisions

1 discussed in these conditions, paper promises are not enough, especially considering
2 CenturyLink's inexperience as a BOC, issues previously addressed in CenturyLink's
3 legacy territory, and problems experienced by wholesale customers following recent
4 mergers. Commission-approved conditions are needed to turn the paper promises into
5 enforceable commitments.

6 **Q. WHY IS IT NOT SELF-EVIDENT THAT THE MERGED COMPANY WILL**
7 **COMPLY WITH STATE AND FEDERAL LAWS AND RULES POST-**
8 **TRANSACTION?**

9 A. As the FCC noted in the CenturyTel/Embarq Merger Order:

10 the merger may result in increased anticompetitive behavior on the part of
11 the Applicants. Consistent with the 'Big Footprint' theory that the
12 Commission addressed in prior BOC mergers, we find that the increase in
13 the size of CenturyTel's study area resulting from the merger may increase
14 its incentive to engage in anticompetitive activity, although we think it is
15 likely to have a lesser effect in the instant case than in the prior BOC
16 mergers. Additionally, to the extent that CenturyTel has been less willing
17 to cooperate with competitors than Embarq – as numerous commenters
18 allege – following the merger, CenturyTel may extend this behavior to the
19 Embarq territories. In order to address these potential harms, the
20 Applicants have proposed a series of voluntary commitments...we
21 therefore make them enforceable conditions of the merger.²⁶⁶

22 The increase in the size of the CenturyTel study area following the proposed transaction
23 is about double (in terms of line counts) the increase in CenturyTel's study area that
24 occurred due to the Embarq/CenturyTel merger. Further, the proposed transaction
25 (unlike the Embarq/CenturyTel merger) involves the acquisition of a BOC by a non-

²⁶⁶ FCC *Embarq/CenturyTel Merger Order* at ¶ 33.

1 BOC. As such, the risk of increased anti-competitive behavior (*i.e.*, non-compliance with
2 the law) following the proposed transaction is greater than the risk posed by the
3 Embarq/CenturyTel merger which was approved subject to enforceable conditions.

4 Providing evidence of a risk of harm that compliance with certain laws may, in particular,
5 be in jeopardy justifies singling out those laws with merger conditions that require
6 compliance. For example, one of the enforceable conditions in the Embarq/CenturyTel
7 merger was that “Orders will be processed in compliance with federal and state law, as
8 well as the terms of applicable interconnection agreements.”²⁶⁷ Though it would seem
9 self-evident that the combined Embarq/CenturyTel company would comply with laws
10 and ICAs when processing orders following the Embarq/CenturyTel merger, the FCC
11 adopted an enforceable condition to the merger requiring them to do so, based on
12 concerns identified by wholesale customers,²⁶⁸ to preserve the public interest and avoid
13 merger-related harm.

14 Likewise, the FCC adopted the following enforceable condition for the
15 Embarq/CenturyTel merger: “When a number is ported from CenturyTel, E-911 records
16 will be unlocked at the time of porting. Trouble reports involving locked E-911 records
17 will be addressed within 24 hours.”²⁶⁹ Though it would also seem self-evident that the

²⁶⁷ FCC *Embarq/CenturyTel Merger Order* at Appendix C, at p. 27.

²⁶⁸ *See, e.g.*, Declaration of D. Anthony Mastando and Kim Sharp on Behalf of DeltaCom, Inc. WC Docket No. 08-238 (Jan. 23, 2009), pp. 3-5; Declaration of R. Matthew Kohly on Behalf of Socket Telecom, WC Docket No. 08-238 (Jan. 8, 2009), at pp. 3-6.

²⁶⁹ FCC *Embarq/CenturyTel Merger Order* at Appendix C, at p. 29.

1 combined Embarq/CenturyTel company would comply with laws and standards
2 regarding unlocking of E911 records, the FCC's approved merger conditions specifically
3 singled out this issue, based on concerns identified by wholesale customers,²⁷⁰ to preserve
4 the public interest and avoid merger-related harm. One of the concerns expressed was
5 that "the record updating process and the accuracy of records will suffer as a result of this
6 acquisition."²⁷¹ CLECs expended the resources to raise and address the issue of
7 unlocking E-911 records with Qwest via Qwest's Change Management Process
8 commencing in 2001 – *nine years* ago.²⁷² Naturally, after reading the concerns raised by
9 CLECs in the Embarq/CenturyTel merger on this issue, CLECs are concerned about
10 going backward to pre-271 workshop days such that the record updating process and the
11 accuracy of records will suffer as a result of this acquisition. Condition 22(a) is proposed
12 to address this concern.

13 The FCC, by adopting these enforceable conditions (and the merging companies, by
14 proposing this as an agreed upon commitment²⁷³), recognized the need to preserve the
15 public interest and protect competitors from merger-related harm by ensuring that the
16 combined Embarq/CenturyTel abides by its obligations under law – even when it would

²⁷⁰ See, e.g., Declaration of R. Matthew Kohly on Behalf of Socket Telecom, WC Docket No. 08-238 (Jan. 8, 2009), at p. 12.

²⁷¹ *Id.*

²⁷² Change Request ("CR") #CR PC122801-1 ("Qwest to document, distribute and train an adhered to process to unlock numbers for 911"), submitted by Eschelon on December 28, 2001 and completed by Qwest on April 17, 2002, available at http://www.qwest.com/wholesale/cmp/archive/CR_PC122801-1.html

²⁷³ Although CenturyLink may argue that these conditions were strictly "voluntary," they cannot show that the merger would have been approved without them. Without the commitments, there is no showing that the merger would do no harm or be in the public interest.

1 otherwise seem self-evident that those obligations apply independently of the merger.
2 These conditions were adopted to ensure that the combined Embarq/CenturyTel company
3 did not follow its increased incentive to engage in anti-competitive conduct or spread
4 existing worst practices throughout its larger service territory post-merger.

5 **Q. HAVE STATE COMMISSIONS ALSO ADOPTED MERGER CONDITIONS**
6 **REQUIRING THE MERGED COMPANY TO COMPLY WITH LAW**
7 **FOLLOWING THE MERGER?**

8 A. Yes. One such example is the South Carolina Commission's decision in the
9 Verizon/Frontier proceeding. In that case, the merging companies made a number of
10 commitments to encourage a finding that the merger was in the public interest, which
11 were adopted as conditions of merger approval, including: "contribut[ing] to the State
12 Universal Service Fund in compliance with Commission Orders" and "comply[ing] with
13 all Commission orders, rules and regulations."²⁷⁴ Also, the Illinois Commerce
14 Commission recently adopted a merger condition for Verizon/Frontier, which states:
15 "Frontier will continue to comply with 83 Ill. Admin. Code 771, Cost Allocation Rules
16 for Large Local Exchange Carriers."²⁷⁵

²⁷⁴ *IN RE: Joint Application of Frontier Communications Corporation, New Communications of the Carolinas Inc., New Communications Online and Long Distance Inc., Verizon South Inc., Verizon Long Distance LLC and Verizon Enterprise Solutions LLC for Approval of the Transfer of Assets, Authority and Certificates*, South Carolina Public Service Commission Docket No. 2009-220-C, Order No. 2009-769, October 29, 2009, 2009 S.C. PUC LEXIS 506, *26.

²⁷⁵ *Frontier Communications Corporation, Verizon Communications, Inc. et al. Joint Application for the Approval of a Reorganization Pursuant to Section 7-204 of the Public Utilities Act*, Order, ICC Docket No. 09-0268, April 21, 2010, Conditions Appendix at p. 4, Condition 4.

1 **Q. MUST THERE BE A PREVIOUS ORDER CONCLUSIVELY FINDING**
2 **COMPLIANCE PROBLEMS FOR THESE TYPES OF CONDITIONS TO BE**
3 **WARRANTED?**

4 A. No. As indicated above, enforceable merger conditions requiring compliance with
5 specified laws have resulted from concerns raised by non-applicants about potential harm
6 of the proposed transactions. When sufficient concerns are raised, it is incumbent upon
7 the Commission to protect the public interest by approving enforceable conditions to
8 protect customers and competition from that harm. After all, the proposed conditions are
9 not burdensome – they commit the merged company to do what it already should do –
10 comply with the law. The Joint Applicants can hardly argue that the Commission does
11 not have the authority to expect and require compliance with the law. To the extent that
12 the Joint Applicants make that claim, concerns about its intent with respect to these laws
13 would be heightened.

14 In the case of the Embarq/CenturyTel Merger Order, the FCC did not make a finding of
15 noncompliance regarding CenturyTel's then-existing order processing or unlocking of E-
16 911 records; rather, wholesale customers identified problems related to these issues and
17 the FCC found that enforceable conditions were necessary to preserve the public interest
18 and avoid merger-related harm. Whether or not the merging companies had or were in
19 fact violating law (or whether the law applies to the individual companies independent of
20 the merger) was not a determining factor as to whether voluntary
21 commitments/enforceable merger conditions were necessary to preserve the public

1 interest and avoid merger-related harm. To expressly require compliance with existing
2 law, it is sufficient that a legitimate basis for concern is raised that, without the condition,
3 compliance with the law will suffer as a result of the acquisition.

4 Despite CLECs identifying important, service-affecting issues that need to be addressed
5 in relation to their business relationships with Qwest and CenturyLink, the Joint
6 Applicants have made no commitments and oppose wholesale merger conditions in
7 relation to the proposed transaction. Yet, the need to preserve the public interest and
8 avoid harm in relation to the proposed transaction is just as important (or more so) than it
9 was in the prior cases wherein the merging companies agreed to enforceable conditions
10 that require compliance with law in exchange for merger approval. For purposes of
11 reviewing the merger, the Commission need not find here that Qwest or CenturyLink
12 acted in an anti-competitive manner in the examples CLECs provide, but instead should
13 take the examples into account when finding that the proposed transaction as filed (*i.e.*,
14 without commitments or enforceable conditions) does not serve the public interest.

15 **Q. HAVE QWEST AND CENTURYLINK ALREADY AGREED TO COMPLY**
16 **WITH THE OBLIGATIONS THAT ARE EMBODIED IN THESE CONDITIONS**
17 **POST-MERGER?**

18 A. For many of them, yes. For example, regarding condition 13, the Merged Company has
19 agreed that it will be classified as a BOC in Qwest legacy territory post-merger and will

1 comply with all Section 271 obligations.²⁷⁶ Similarly, as it relates to condition 21, the
2 Merged Company has agreed to process wholesale orders in compliance with law and
3 applicable ICAs.²⁷⁷ And for condition 22 (and subparts), CenturyLink has agreed to
4 “provide number portability in compliance with federal and state law, as well as the terms
5 of applicable interconnection agreements”²⁷⁸ and to comply with federal and state law
6 and applicable ICAs when unlocking E-911 records and addressing trouble reports
7 related to unlocking E-911 records.²⁷⁹ Likewise, Qwest and CenturyLink have indicated

²⁷⁶ See, e.g., CenturyLink Response to Integra Washington Data Request #3 (“The merger will not change the BOC status of Qwest Corporation nor will it change the non-BOC status of the CenturyLink ILECs in Washington.”); CenturyLink Response to Integra Washington Data Request #4 (“...Qwest Corporation, as a wholly owned subsidiary of CenturyLink, will continue to meet all ongoing 271 obligations in the legacy Qwest service areas that are required.”). See also, Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010 (“And though CenturyLink previously has not operated subject to the requirements of Section 271, it is fully aware of (and has acknowledged) its duty to do so within Qwest’s in-region service areas, and the company will ensure that the resources and expertise required to meet those obligations are in place.”) Notably, Integra asked in Washington Data Request #3 for CenturyLink to “explain what, if any, measures the merged company will put in place to ensure against backsliding on its 271 obligations?” CenturyLink did not answer this portion of the question, thereby making the portion of Condition 13 related to anti-backsliding that much more important.

²⁷⁷ CenturyLink Response to Integra Washington Data Request #102 (“Yes, in all service areas post-merger, CenturyLink will continue to process wholesale orders in compliance with federal and state laws and with applicable terms in interconnection agreements.”)

²⁷⁸ CenturyLink Response to Integra Washington Request #100(a) (“Yes, CenturyLink will provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements.”) Though CenturyLink states that it will provide number portability in accordance with law, the fact that CenturyLink attributed its recent waiver request of the one-day porting requirement to the ongoing integration efforts related to the Embarq merger shows that an enforceable condition is needed to ensure that the integration of the Qwest merger does not similarly impact the Merged Company’s ability to meet number porting requirements.

²⁷⁹ CenturyLink Response to Integra Washington Data Request #100(b) and 100(c). Notably, CenturyLink states that it “has not evaluated or reached any conclusions regarding” the issues of when CenturyLink will unlock E911 records or address trouble reports related to unlocking E911 records. The uncertainty caused by CenturyLink’s vacillation on this issue makes Condition 22(a) that much more important. The Merged Company should have no problem abiding by condition 22(a) given that it offered an identical commitment to the FCC in conjunction with the Embarq/CenturyTel merger and states that “within legacy service areas E911 records are being unlocked at the time of porting in accordance with the FCC’s merger condition.” CenturyLink Response to Integra Washington Data Request # 100(d).

1 that their policies regarding passcodes/PINs would not be disrupted by Condition 22(b)²⁸⁰
2 and that the number of ports that can be processed are not currently limited (Condition
3 22(c)).²⁸¹ For Condition 25, CenturyLink has agreed that “in all service areas post
4 merger, CenturyLink will continue to provide routine network modifications in
5 compliance with federal and state laws and with applicable terms in interconnection
6 agreements.”²⁸² For Condition 26 (and subparts), CenturyLink has repeatedly
7 represented that it will continue to invest in its network post-merger and that it is fully
8 capable of allocating resources to both maintain current operations and to conduct
9 merger-related activities post-merger.²⁸³ CenturyLink has also represented that it will
10 comply with all applicable state and federal laws and rules and ICAs in relation to copper
11 retirement.²⁸⁴ As it relates to Condition 27, “CenturyLink states that it will comply with

²⁸⁰ CenturyLink states that it assigns passwords in some instances such as online access in accordance with CPNI rules and in cases where customers protect their account against unauthorized changes, but otherwise “does not currently assign a passcode or Personal Identification Number (PIN) to retail customers that must be used before the customer may switch to an alternative local service provider.” CenturyLink Response to Integra Washington Data Request #7. Qwest states that “in none of its states does Qwest assign a passcode or Personal Identification Number (PIN)/passcode to retail customers and require that the passcode or PIN be submitted in order for the retail customer to switch to an alternative local service provider.” Qwest Response to Integra Washington Data Request #7. Based on the information provided by Qwest and CenturyLink, this condition would require them to maintain the current policies, not change their policies to accommodate the condition. Notably, Qwest asked the Iowa Board to place a very similar condition on the approval of the Iowa Tel/Windstream merger: “prohibit Windstream from requiring new local service providers to provide Windstream-provided Personal Identification Numbers when porting a customer’s number to the new provider” Order Canceling Hearing and Terminating Docket, Iowa Utilities Board, April 30, 2010, at p. 26.

²⁸¹ CenturyLink Response to Integra Washington Data Request #37 (“CenturyLink does not limit the number of service requests (including number ports) a given CLEC can make.”)

²⁸² CenturyLink Response to Integra Washington Data Request #101.

²⁸³ See, e.g., Washington Joint Application at p. 2 (“It will provide the combined company with greater financial resources and access to capital enabling it to invest in networks...”) and pp. 17-18 (“CenturyLink has a demonstrated ability to acquire and successfully integrate companies and to combine operational systems and practices, while continuing to provide high-quality service to customers.”)

²⁸⁴ CenturyLink Response to Integra Washington Data Request #104.

1 all applicable state and federal laws and rules, as well as the provisions of any applicable
2 interconnection agreements...” for conditioning of copper loops.²⁸⁵ The fact that
3 CenturyLink has agreed to comply with these requirements post-merger shows that it
4 should have no problem with these conditions being adopted in conjunction with any
5 decision approving the proposed transaction. Again, conditions are needed to turn
6 CenturyLink’s paper promises into enforceable commitments.

7 **Q. PLEASE ELABORATE ON WHY IT IS IMPORTANT TO INCLUDE A**
8 **CONDITION THAT THE MERGED COMPANY WILL COMPLY WITH**
9 **SECTION 271 OBLIGATIONS IN QWEST’S BOC TERRITORY POST-**
10 **MERGER (CONDITION 13)?**

11 A. For starters, the company that will be in control of Qwest post-merger has no experience
12 operating as a BOC, so the potential for backsliding on Qwest’s 271 obligations is great
13 (at least greater than prior to the proposed transaction when Qwest was controlled by a
14 company that had more than seven years experience operating as a BOC with 271
15 approval²⁸⁶). Second, to date, Qwest has exploited the lack of clear rules implementing
16 271 obligations to impose excessive, non-negotiable rates for 271 network elements on
17 CLECs.²⁸⁷ The Merged Company should not be allowed to evade its 271 obligations

²⁸⁵ CenturyLink Response to Integra Washington Data Request #106.

²⁸⁶ For example, the FCC order granting Qwest 271 authority in nine states was released on December 23, 2002. See, *Qwest 9-State 271 Order*, WC Docket No. 02-314, FCC 02-332 (12/23/02).

²⁸⁷ See, e.g., Comments of Joint Commenters, WC Docket No. 10-110, July 12, 2010, at pp. 68-69, citing Petition for Modification of McLeodUSA Telecommunications Services, Inc., WC Docket No. 04-223, July 23, 2007, at pp. 4-12.

1 post-merger, and that includes avoiding the requirement to provide 271 network elements
2 on just and reasonable rates, terms and conditions.²⁸⁸

3 **Q. WILL QWEST'S BOC OBLIGATIONS CONTINUE IF THE PROPOSED**
4 **TRANSACTION IS APPROVED?**

5 A. Yes. In its Order approving Qwest's 271 authority in nine states, including Washington,
6 the FCC said:

7 Section 271(d)(6) of the Act requires Qwest to continue to satisfy the
8 "conditions required for . . . approval" of its section 271 application after
9 the Commission approves its application...²⁸⁹

10 Regarding the role of state commissions in monitoring Qwest's continued compliance
11 with Section 271 obligations, the FCC said:

12 Working in concert with the Colorado, Idaho, Iowa, Montana, Nebraska, North
13 Dakota, Utah, Washington, and Wyoming Commissions, we intend to closely
14 monitor Qwest's post-approval compliance for these states to ensure that Qwest
15 does not "cease [] to meet any of the conditions required for [section 271]
16 approval."²⁹⁰

17 The FCC also said: "We are confident that cooperative state and federal oversight and
18 enforcement can address any backsliding that may arise with respect to Qwest's entry
19 into these nine states."²⁹¹

²⁸⁸ Covad Communications Company, PAETEC Communications, Inc., Access Point, Inc. Deltacom, Inc., Granite Telecommunications, LLC, HickoryTech Corporation, Metropolitan Telecommunication, Inc., OrbitCom, Inc., TDS Metrocom, LLC, and TelePacific Communications ("Joint Commenters") have proposed specific conditions related to 271 obligations to the FCC in conjunction with the FCC's review of the proposed transaction. See, Comments of Joint Commenters, WC Docket No. 10-110, July 12, 2010, at pp. 70-71.

²⁸⁹ *Qwest 9 State 271 Order* at ¶ 497.

²⁹⁰ *Qwest 9 State 271 Order* at ¶ 498.

²⁹¹ *Qwest 9 State 271 Order* at ¶ 499. See also, *Id.* at footnote 1598: "We note that in all of the previous applications [for 271 authority] that the Commission has granted to date, the applicant was subject to an

1 Two things are clear from these FCC statements: (1) Qwest must continue to satisfy the
2 conditions required for 271 approval, and (2) the state commissions play an important
3 oversight and enforcement role, in conjunction with the FCC, to address any Qwest
4 backsliding. This is particularly relevant to the proposed transaction because
5 CenturyLink – a non-BOC ILEC which lacks experience with Section 271 obligations –
6 will own and control Qwest²⁹² if the proposed transaction is approved.

7 **Q. WHY IS CONDITION 21 NECESSARY?**

8 A. As explained above, Condition 21, which states that the Merged Company will process
9 orders in compliance with law and applicable ICAs, is the same voluntary commitment
10 Embarq/CenturyTel offered to the FCC to secure approval of the Embarq/CenturyTel
11 merger after concerns were raised by competitors. The FCC adopted this as an
12 enforceable condition because of the potential for increased anti-competitive conduct of
13 the combined Embarq/CenturyTel company and the potential for problems spreading to
14 CenturyTel’s newly-acquired territory. For the same reasons, this condition should be
15 adopted for the proposed transaction. And, because the proposed transaction involves
16 CenturyLink acquiring a BOC as well as a service territory that is double the size
17 (expressed in line counts) of its existing territory (including newly-acquired Embarq), the

enforcement plan administered by the relevant state commission to protect against backsliding after BOC entry into the long-distance market. These mechanisms are generally administered by state commissions and derive from authority the states have under state law or under the federal Act. As such, these mechanisms can serve as critical complements to the Commission’s authority to preserve checklist compliance pursuant to section 271(d)(6).”

²⁹² See, e.g., Jones Washington Direct (CenturyLink Exhibit JJ-1T) at p. 5, lines 7-9 (“At closing, Qwest will become a direct, wholly-owned subsidiary of CenturyLink and all Qwest subsidiaries, including Qwest Corp, will be indirectly owned and controlled by CenturyLink.”)

1 rationale for adopting this condition in relation to the proposed transaction is even more
2 compelling now.

3 **Q. PLEASE DISCUSS CONDITION 22 (AND SUBPARTS).**

4 A. Condition 22 states that the Merged Company: will provide number portability in
5 compliance with law and applicable ICAs; unlock E-911 records at the time of porting
6 (Condition 22(a)); will address trouble reports involving unlocking E-911 records within
7 24 hours (Condition 22(a)); will not assign a passcode, password or PIN to retail
8 customers in a manner that prevents or delays a change in local service providers
9 (Condition 22(b)); and shall not limit the number of ports that can be processed.

10 **Q. WHAT IS CONDITION 22 (AND SUBPARTS) NECESSARY?**

11 A. Condition 22 is necessary to protect CLEC rights under the Act for efficient and
12 nondiscriminatory local number portability (“LNP”). In short, this Condition is
13 necessary to ensure that the Merged Company fulfills its LNP obligations in a
14 competitively neutral manner as prescribed in Sections 251(b)(2) and 251(e)(2) of the
15 Act. As the Act and the FCC have noted, LNP is critical for consumers and competitors
16 and for the efficient functioning of the local telecommunications market.

17 In its most basic form, LNP is important because consumers want to be able to retain
18 their existing telephone numbers when switching providers. Retaining your telephone
19 number is important for obvious reasons: consumers do not want to have to alert their
20 friends and family of new telephone numbers, and change billing statements, stationery,

1 business cards, and other items every time they switch telephone providers. For these
2 reasons (and others), number porting is very important to customers. Indeed, without
3 number portability consumers may choose not to change their providers because of the
4 impact on their personal and business lives.

5 **Q. WHY IS NUMBER PORTING IMPORTANT TO COMPETITORS?**

6 A. As noted above, getting customers to change providers can be difficult. The customer
7 inertia for a service is difficult to overcome in the first place, but without number
8 portability consumers may not even consider an alternative provider. And, getting the
9 porting done in the proper manner and in the proper time frame is also critical. If that is
10 to happen, a competitor cannot erect operational barriers that are intended to delay the
11 process.

12 **Q. SUBPARTS A, B, AND C OF CONDITION 22 INCLUDE REFERENCES TO**
13 **UNLOCKING E-911 RECORDS, PASSCODES AND LIMITS ON PORTING.**
14 **ARE THESE ISSUES IMPORTANT TO CLECS AND CONSUMERS?**

15 A. Absolutely. Once an LNP order is completed the donor company will disconnect and/or
16 migrate the existing E-911 record via a service order. This results in an “unlocked
17 record” in the E-911 Automatic Location Identification (“ALI”) database. The recipient
18 company must then update the E-911 ALI database with a “migrate” order which “locks”
19 the end-user’s record. Any delay in the “unlocking” process will result in an error report
20 in response to the migrate order sent by the recipient provider. Given the importance of

1 E-911 for the safety of the end-user consumer, this requirement is absolute and must be
2 conducted in compliance with federal and state law.

3 Requiring pass codes or PINs may also result in the delay of porting. The Merged
4 Company must not be allowed to require such pass words or PINs unless specifically
5 requested by the end user customer.

6 Finally, artificially limiting the number of ports that may be submitted in a particular time
7 period is anticompetitive and disruptive to the competitive process. The porting process
8 should be largely if not completely automated, so limits on the number of ports is not
9 necessary.

10 **Q. PLEASE EXPLAIN CONDITION 23.**

11 A. Condition 23 is necessary to protect CLEC rights under the Act to nondiscriminatory
12 access to directory listing (“DL”) and directory assistance (“DA”) functions.

13 **Q. WHAT POSITIONS HAS CENTURYLINK TAKEN WITH RESPECT TO DL**
14 **AND DA THAT ARE HARMFUL AND INCONSISTENT WITH THE**
15 **INDUSTRY?**

16 A. CenturyLink has attempted to shift its responsibilities under Section 251(b)(3) of the Act
17 to third parties. CenturyLink refuses to enter into ICAs that include language which
18 ensures that a competitor’s subscribers have the same access to DA and DL databases as
19 CenturyLink provides its own customers. As a result, directory services provided by

1 competitors like Charter may be degraded if CenturyLink, or its vendor, fails to properly
2 maintain these databases in a manner that ensures nondiscriminatory access.

3 **Q. CAN YOU PROVIDE AN EXAMPLE OF THE PROBLEMS CENTURYLINK'S**
4 **DA AND DL POLICIES HAVE CREATED?**

5 A. Yes. As noted above, CenturyLink has attempted to impose a recurring per customer
6 DLSM Charge in numerous states. Other providers, including Verizon, Comcast and
7 Charter, have litigated LNP issues with CenturyLink at great expense over the last few
8 years.²⁹³

9 **Q. OTHER THAN THE LITIGATION EXPENSE, HAS THERE BEEN CUSTOMER**
10 **IMPACTING PROBLEMS AS WELL?**

11 A. Yes. In the recent past, directory listing information of Charter's subscribers was not
12 available to CenturyLink subscribers. Put simply, when a CenturyLink subscriber dialed
13 "4-1-1" and requested listing information on a Charter subscriber, that information was
14 not provided.²⁹⁴ As a result, thousands of Charter subscribers were effectively excluded
15 from the directory assistance database used by CenturyLink. Charter repeatedly sought a
16 remedy and presented several requests for relief to the relevant state commission.
17 CenturyLink acknowledged the problem, but blamed the problem on its vendor, who was

²⁹³ See, e.g., United Telephone Company of the Northwest d/b/a Embarq Response to Comcast Petition in Washington Docket No. U-083025, filed May 27, 2008, at ¶ 10. This is an example of a case in which Comcast opposed Embarq's DLSM charge. Charter has litigated numerous LNP related charges which CenturyLink attempted to impose under the guise of "service order charges."

²⁹⁴ See, e.g., the Direct Testimony of Amy Hankins on behalf Charter Fiberlink-Missouri, LLC, Before the Public Service Commission of the State of Missouri, Case No. TO-2009-0037; dated September 30, 2008.

1 not accessing the proper database. Ultimately the situation was resolved, but
2 CenturyLink's refusal to acknowledge its responsibility to provide nondiscriminatory
3 access to Charter (and its subscribers) under Section 251(b)(3) prolonged a
4 discriminatory and anticompetitive situation. That, in turn, meant that many more
5 subscribers were affected, even after the problem was identified, and isolated, for
6 CenturyLink.

7 **Q. PLEASE PROVIDE SOME BACKGROUND INFORMATION ON THE**
8 **DIRECTORY LISTING FUNCTION IN ORDER TO FRAME THE POSITION**
9 **THAT CENTURYLINK HAS TAKEN.**

10 A. In simple terms, a directory listing is the customer's name, phone number, and address
11 that are published in a directory, such as a telephone book, or included in a directory
12 database, such as that used when a caller dials "411." The FCC's regulations define
13 "Directory listings" as follows:

14 Directory listings. Directory listings are any information:

15
16 (1) Identifying the listed names of subscribers of a telecommunications carrier
17 and such subscriber's telephone numbers, addresses, or primary advertising
18 classifications (as such classifications are assigned at the time of the
19 establishment of such service), or any combination of such listed names,
20 numbers, addresses or classifications; and

21
22 (2) That the telecommunications carrier or an affiliate has published, caused to
23 be published, or accepted for publication in any directory format.²⁹⁵
24

²⁹⁵ 47 C.F.R. § 51.5.

1 In addition, Section 251(b)(3) of the Act requires all local exchange carriers to provide
2 competing providers with “*nondiscriminatory* access to ... directory assistance, and
3 directory listing.”²⁹⁶ The FCC has interpreted the statutory term “directory listing” to
4 mean “the act of placing a customer’s listing information in a directory assistance
5 database or in a directory compilation for external use (such as a white pages).”²⁹⁷
6 Among other things, Section 251(b)(3) and 47 C.F.R. § 51.5 require that LECs “publish
7 competitors’ business customers in ... [their] director[ies] on a nondiscriminatory basis,”
8 regardless of whether LECs own those directories or not.²⁹⁸

9 **Q. IS THERE ANYTHING WRONG WITH USING A THIRD PARTY FOR DL OR**
10 **DA ACTIVITIES?**

11 A. Not necessarily. It is common for LECs to use third-party vendors for directory
12 assistance activities. The problem arises when an ILEC like CenturyLink, with specific
13 requirements under Section 251(b)(3) of the Act, attempts to shift its responsibilities to a
14 third-party, or worse, to claim that it no longer has any such obligations under Section
15 251(b)(3).

16 **Q. PLEASE EXPLAIN.**

²⁹⁶ 47 U.S.C. § 251(b)(3) (emphasis added).

²⁹⁷ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934 [sic], As Amended*, CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, ¶ 160 (1999) (“SLI/DA Order”).

²⁹⁸ *See MCI Telecomm. Corp. v. Michigan Bell Tel. Co.*, 79 F. Supp. 2d 768, 801 (E.D. Mich. 1999); *see also U.S. West Comm., Inc. v. Hix*, 93 F. Supp. 2d 1115, 1132 (D. Colo. 2000) (citing *MCI Telecomm.*).

1 A. The FCC has recognized that carriers may agree to have subscriber listing databases
2 administered by a third party.²⁹⁹ However, the FCC has also recognized that such
3 agreements for third-party administration must still be included in interconnection
4 agreements because entering into a side agreement for access to subscriber listing
5 databases contravenes the FCC requirement that LECs provide directory listing on a
6 nondiscriminatory basis and make such provisions related thereto available to other
7 carriers in interconnection agreements for adoption through the mechanism of Section
8 252 of the Act.³⁰⁰ Therefore, CenturyLink must include rates, terms and conditions of
9 access to its subscriber listing databases within the interconnection agreement despite use
10 of a third-party database administrator or publisher.

11 Condition 23 ensures that CenturyLink will comply with federal and state law with
12 respect to its DL/DA responsibilities. It further ensures that CenturyLink does not shift
13 its responsibilities to a third party vendor and specifically identifies the responsibilities
14 with respect to nondiscriminatory access to DL/DA. CenturyLink's worst practices
15 should not be adopted; instead, the Commission should require the Qwest practices of (1)
16 placing a basic white pages and yellow pages directory listing in its directories without

²⁹⁹ See, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 11 FCC Rcd 19392 at ¶ 144 (1996) ("Local Competition Second Report and Order"), vacated in part, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), rev. on other grounds, *AT&T Corp. v. Iowa Util. Bd.*, 119 S. Ct. 721 (Jan. 25, 1999).

³⁰⁰ *Provision of Directory Listing Information under the Communications Act of 1934, As Amended*, FCC 01-27, 16 FCC Rcd 2736 at ¶ 36 (2001) ("SLI/DA First Report and Order").

1 charge to the CLEC, and (2) ensuring that the ILEC customers are given the CLEC's
2 customers' DA information, when the ILEC's customers dial directory assistance.

3 **Q. PLEASE EXPLAIN CONDITION 24 (AND SUBPARTS).**

4 A. This condition is necessary to ensure that the Merged Company does not extend
5 CenturyLink's anticompetitive practice of imposing unsupported surcharges and fees
6 upon facilities-based competitors at the point of subscriber acquisition and migration. In
7 contrast, Qwest does not impose these separate surcharges upon competitors when no
8 underlying wholesale service is being provided to the competitor. For example, although
9 Qwest may assess a service order charge upon a competitor that orders a UNE loop in
10 conjunction with the acquisition of a new subscriber, it does not assess a separate
11 surcharge when the competitor simply requests that the subscriber's number be ported
12 away in conjunction with the subscriber change process. Because Qwest does not impose
13 the same separate fees upon competitors, any attempt to impose these separate charges in
14 Qwest's legacy territory post-merger would result in the implementation of worst (not
15 best) practices, and, in turn, merger-related harm to competition.

16 **Q. PLEASE IDENTIFY THE SPECIFIC ANTICOMPETITIVE FEES AND**
17 **SURCHARGES THAT CENTURYLINK ASSESSES UPON COMPETITORS**
18 **ADDRESSED IN CONDITION 24.**

19 A. CenturyLink, and its affiliate Embarq, imposes several different surcharges each time that
20 a facilities-based competitor, like Charter, "wins" a new customer from CenturyLink.

1 First, CenturyLink imposes a separate number porting service order charge each time that
2 CenturyLink is asked to port a telephone number to a competitor. Second, CenturyLink
3 assesses “use” or access fees upon competitors each time the competitor attempts to
4 connect its own network facilities to a customer’s inside wire through the customer side
5 of a CenturyLink NID enclosure. Third, CenturyLink’s affiliate, Embarq, imposes
6 “storage” charges upon competitors that submit directory listing information for inclusion
7 in directory listing databases. These charges increase wholesale customers’ (*i.e.*,
8 competitors’) costs of obtaining new subscribers and generating new revenue sources to
9 offset subscriber losses. It is, therefore, more costly (and operationally challenging) for
10 competitors to compete in CenturyLink markets.

11 **Q. PLEASE EXPLAIN YOUR CONCERN WITH THESE SURCHARGES.**

12 A. In an earlier portion of my testimony, Section IV, I provided some background on the
13 second and third type of improper surcharges assessed upon competitors concerning the
14 NID enclosure, and directory storage fees at issue. Let me explain the circumstances
15 surrounding the imposition of the number porting surcharges.

16 Each time that a competitor obtains a new customer that is a former CenturyLink
17 subscriber, and that subscriber wishes to port their telephone number away from
18 CenturyLink, the competitor must pay a surcharge to CenturyLink to effectuate the
19 number port. This surcharge, which ranges from \$13 to over \$20 (depending upon the
20 state) is imposed upon every competitor that obtains wholesale services under

1 CenturyLink interconnection agreements. To date, this is only a CenturyLink practice,
2 and has not been implemented in the Qwest territories. Obviously, if this anticompetitive
3 practice were extended to all of the Merged Company's territories post-merger, merger-
4 related harm would occur and the harm would be substantial.

5 **Q. WHAT ARE THE RULES REGARDING CARRIER FEES FOR NUMBER**
6 **PORTING?**

7 A. In several orders implementing Section 251(e)(2) of the Act, the FCC held that carriers
8 are required to recover their costs of implementing LNP through tariffed end-user
9 charges.³⁰¹ In these orders, the FCC determined that ILECs may recover through *end-*
10 *user charges* their carrier-specific costs directly related to providing number portability.
11 The FCC concluded that this framework for cost recovery (from end users rather than
12 other carriers) best serves the statutory goal of competitive neutrality.

13 **Q. HOW DOES THE CONCEPT OF "COMPETITIVE NEUTRALITY" APPLY TO**
14 **NUMBER PORTING CHARGES?**

15 A. Section 251(e)(2) of the Act requires that the costs of establishing number portability be
16 "borne by all telecommunications carriers on a competitively neutral basis."³⁰² This
17 principle of competitive neutrality is an important component of the FCC's number

³⁰¹ The FCC's rulings were set forth in several orders: *Telephone Number Portability*, Third Report and Order (the "Cost Recovery Order"), 13 FCC Rcd 11701 (1998), *aff'd*, *Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review (the "Cost Recovery Reconsideration Order"), 17 FCC Rcd 2578 (2002); and *Telephone Number Portability Cost Classification Proceeding*, Memorandum Opinion and Order, 13 FCC Rcd 24495 (CCB 1998).

³⁰² 47 U.S.C. § 251(e)(2).

1 porting cost recovery rules. However, CenturyLink's repeated attempts to assess charges
2 on CLECs undermine competition and the competitive neutrality the FCC sought to
3 establish. As the FCC explained, "[i]f the [FCC] ensured the competitive neutrality of
4 only the distribution of costs, carriers could effectively undo this competitively neutral
5 distribution by recovering from other carriers."³⁰³

6 **Q. WHAT ABOUT INTERCONNECTION-BASED NUMBER PORTING CHARGES**
7 **ASSESSED UPON COMPETITORS. HAS THE FCC EVER ADDRESSED THE**
8 **LEGALITY OF SUCH CHARGES?**

9 A. Yes, the FCC has clearly said such charges are prohibited by federal law. That is the
10 most troubling aspect of CenturyLink's wholesale practice, it violates clear policies set
11 forth by the FCC in early number portability cost recovery orders. Specifically, in a 2002
12 Number Portability Cost Reconsideration Order the FCC ruled that:

13 [I]ncumbent LECs may not recover any number portability costs through
14 interconnection charges or add-ons to interconnection charges to their
15 carrier "customers," nor may they recover carrier-specific costs through
16 interconnection charges to other carriers where no number portability
17 functionality is provided.³⁰⁴

18 This language clearly prohibits interconnection-based surcharges on number porting
19 actions like those imposed by CenturyLink. The statement leaves no doubt that the
20 Commission does not permit incumbent LECs to assess charges upon other carriers for
21 number porting. This decision is still valid law, and has never been reversed or modified.

³⁰³ *Cost Recovery Order* at ¶ 39.

³⁰⁴ *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578, at ¶ 62 (2002).

1 **Q. HAVE THOSE RULINGS BEEN CODIFIED INTO THE FCC'S RULES?**

2 A. Yes, the prohibition on such charges is codified at 47 C.F.R. § 52.33, and FCC regulation
3 entitled "Recovery of carrier specific costs directly related to providing long-term
4 number portability."

5 **Q. WHY DO YOU BELIEVE THESE SURCHARGES, AND OTHERS, MAY BE**
6 **ASSESSED UPON COMPETITORS BY THE MERGED COMPANY?**

7 A. These fees are currently assessed upon competitors because CenturyLink is able to
8 leverage its market power to impose these surcharges as a condition of interconnection
9 with CenturyLink. If the proposed transaction is approved, CenturyLink will be the third
10 largest ILEC in the nation, and its market power will span 37 states.³⁰⁵ That is why I
11 expect these surcharges will be assessed by the merged company unless this Commission
12 adopts a condition that prohibits the merged company from doing so.

13 **Q. IS THAT WHY YOU BELIEVE CONDITION 24 IS NECESSARY?**

14 A. Yes. Condition 24 is included to prevent CenturyLink's objectionable charges directed
15 specifically at facilities-based competitors from being applied throughout the Qwest
16 legacy territory post-merger. Even if the Merged Company attempted to introduce these
17 types of separate, distinct charges in Qwest's territory post-merger (but was ultimately
18 unsuccessful), CLECs and state commissions would still have to expend significant time
19 and expense combating the integration of this worst practice.

³⁰⁵ "CenturyLink and Qwest Agree to Merge," Available at:
<http://news.qwest.com/centurylinkqwestmerger>

1 **Q. ARE THERE OTHER FEES AND SURCHARGES THAT CONDITION 24**
2 **ADDRESSES?**

3 A. Yes. This condition also addresses the separate fees and surcharges CenturyLink
4 imposes upon competitors' for accessing the NID enclosure and for "storage" of
5 competitors' customers' directory listings. Each of these separate charges is discussed
6 above in Section IV. These NID enclosure and storage surcharges raise the same
7 concerns with respect to increasing competitors' costs, and are therefore part of
8 Condition 24.

9 **Q. DO YOU HAVE SOME GENERAL CONCERNS REGARDING THE MERGED**
10 **COMPANY NETWORK AS TO CONDITIONS 25 AND 26?**

11 A. Yes. Both of these conditions, in part, address the CLECs' concern regarding ongoing
12 maintenance and investment in the network post-merger. Condition 25 addresses routine
13 network upgrades and modifications and Condition 26 (and subparts) states that the
14 Merged Company will not engage in activities that disrupts or degrades access to the
15 local loop, will follow the law and ICA provisions if it retires copper loops and will not
16 engineer/maintain its network in a way that increases costs for wholesale customers.

17 As the Commission is aware, one of the ways to increase profits is to reduce expenses.
18 Reducing routine network maintenance and modifications will harm CLECs that rely on
19 that network for the exchange of traffic.

1 **Q. HAS THE IMPORTANCE OF THESE REQUIREMENTS TO COMPETITION**
2 **BEEN PREVIOUSLY RECOGNIZED?**

3 A. Yes. The FCC, in its *Triennial Review Order*, addressed and promulgated rules regarding
4 routine network modifications³⁰⁶ to “resolve[] a controversial competitive
5 issue...and...provide competitive carriers with greater certainty as to the availability of
6 unbundled high-capacity loops and other facilities throughout the country.”³⁰⁷ Likewise,
7 Condition 26(a) is grounded in 47 C.F.R. §§ 51.319(a)(8) (engineering policies, practices,
8 and procedures³⁰⁸) and Condition 26(b) is grounded in 47 C.F.R. §51.333 (notice of
9 network changes related to retirement of copper loops or copper subloops).

10 **Q. CAN YOU PROVIDE AN EXAMPLE THAT SHOWS A NEED FOR CONDITION**
11 **26 (AND SUBPARTS)?**

12 A. Yes. Integra has arbitrated the issue of network modernization and maintenance with
13 Qwest in several states. A review of the excerpts in Exhibit BJJ-10 to the Responsive
14 Testimony of Bonnie Johnson shows that the commissions in all five states agreed with
15 Eschelon’s position that Qwest’s network maintenance and modernization activity should
16 not disrupt or degrade service to a CLEC’s end user customers. Ms. Johnson provides

³⁰⁶ Routine network modifications are “those activities that incumbent LECs regularly undertake for their own customers.” *Triennial Review Order* at ¶ 632. This includes attaching electronics to high-capacity loops and line conditioning to ensure that a copper loop is suitable for providing xDSL service. *Triennial Review Order* at ¶¶ 250, 634-635.

³⁰⁷ *Triennial Review Order* at ¶ 632.

³⁰⁸ 47 C.F.R. §§ 51.319(a)(8) (“An incumbent LEC shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to a local loop or subloop, including the time division multiplexing-based features, functions, and capabilities of a hybrid loop, for which a requesting telecommunications carrier may obtain or has obtained access pursuant to paragraph (a) of this section.”)

1 quotes from the various orders to support this condition. In Washington, for instance, the

2 Arbitrator stated:

3 While Qwest should have the discretion to modernize its own network, it
4 should be apparent that ‘modernization’ and ‘maintenance’ efforts should
5 enhance or maintain, not diminish transmission quality.³⁰⁹

6 Ms. Johnson provides an extended discussion of Condition 26(a) in her testimony, and
7 provides in Exhibit BJJ-10 additional excerpts from Qwest-Eschelon interconnection
8 arbitration proceedings on this point.

9 **Q. CAN YOU PROVIDE ANOTHER EXAMPLE THAT SHOWS THE NEED FOR**
10 **CONDITION 26 (AND SUBPARTS)?**

11 A. Yes. PAETEC has had experiences with Qwest where they reported trouble on a Qwest
12 loop. PAETEC submitted a trouble ticket but Qwest reported that there was no trouble
13 and closed the ticket. When PAETEC persisted with its complaint by opening another
14 trouble ticket (based on ongoing trouble with the loop), Qwest refused to go to the site
15 unless PAETEC agreed to a “joint meet.” The “joint meet” makes this a “special
16 request” which would require PAETEC to pay for Qwest’s truck roll even if there is
17 trouble on the Qwest loop. This type of process increases the costs to CLECs who must
18 send a technician to meet Qwest while Qwest investigates its network.

19 **Q. IS CONDITION 26(A) CONSISTENT WITH THE FCC’S UNBUNDLING RULE**
20 **(47 C.F.R. § 51.319(A)(8))?**

³⁰⁹ See, Washington Utilities and Transportation Commission Docket UT-063061, Arbitrator’s Report; Order No. 16 (aff’d), at ¶ 83.

1 A. Yes, it is. That rule states, in pertinent part, “An incumbent LEC shall not engineer the
2 transmission capabilities of its network in a manner, or engage in any policy, practice, or
3 procedure, that disrupts or degrades access to the local loop.” Condition 26 is based on
4 the sound logic in that FCC rule.

5 **Q. SHOULDN'T THE COMMISSION JUST RELY ON THAT RULE AS**
6 **CONTROLLING THE MERGED COMPANY POST-MERGER WITHOUT**
7 **MAKING IT A MERGER CONDITION?**

8 A. No. The language in the rule seems self-evident, but Qwest has forced Eschelon to
9 arbitrate this issue in six states rather than simply abide by those precepts. As the
10 exhibits to Ms Johnson’s Responsive Testimony shows, Qwest is not complying with
11 those arbitration rulings today with respect to conditioned copper loops.³¹⁰

12 Failure to maintain adequate investment and maintenance on the Merged Company
13 network could degrade the network for the Merged Company, the public switched
14 telephone network (“PSTN”) and for CLECs. Such a reduction in the quality of the
15 network and related services, and resulting degradation for CLECs who must rely on that
16 network, is not in the public interest. Condition 26 is meant to prevent inappropriate
17 diversion of resources that would normally be directed to the network.

18 **Q. WHAT PROBLEM DOES CONDITION 27 RELATING TO CONDITIONED**
19 **COPPER LOOPS ADDRESS?**

³¹⁰ See Exhibit BJJ-2 to the Responsive Testimony of Bonnie Johnson.

1 A. Digital subscriber line technology, “commonly referred to as xDSL, permits high speed
2 connections...over ordinary copper loops.”³¹¹ This includes services “such as ISDN,
3 ADSL, HDSL, and DS1-level signals.”³¹² The importance of using copper to provide
4 advanced services is apparent in the FCC’s conclusion that CLECs are “impaired”
5 without access to unbundled “xDSL-capable stand-alone copper loops.”³¹³ As explained
6 by the FCC’s SBC/Ameritech merger order, a merger of this sort will increase the
7 Merged Company’s incentive and ability to discriminate against its competitors with
8 respect to the provision of advanced services:

9 We find that the combined entity is likely to increase the level of
10 discrimination that rivals must overcome to provide retail advanced
11 services, interexchange services, and local exchange services. In the retail
12 market for advanced services, incumbent LECs can engage in
13 discriminatory conduct with respect to competitors’ provision of services
14 such as xDSL by refusing to cooperate with competitors’ requests for the
15 evolving type of interconnection and access arrangements necessary to
16 provide new types of advanced services.³¹⁴

17 There is substantial evidence warranting a concern that the ILEC is already improperly
18 inhibiting CLECs’ provision of advanced services using conditioned copper loops
19 throughout Qwest’s legacy territory, as discussed below and in the testimony of Mr.
20 Denney and Ms. Johnson of Integra. Absent a condition to ensure compliance with the

³¹¹ *Triennial Review Order* at footnote 77 to ¶26.

³¹² *Local Competition Order* at ¶380.

³¹³ *Triennial Review Order* at ¶ 642. Unbundling of the local loop includes “two and four-wire loops conditioned to transmit the digital signals needed to provide xDSL service.” *Triennial Review Order* at ¶ 249.

³¹⁴ *In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules, Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279, October 8, 1999 (“FCC SBC/Ameritech Merger Order”) at ¶ 196. (footnotes omitted)*

1 laws regarding conditioned copper loops, the proposed transaction will further entrench
2 the company's discriminatory conduct and potentially spread this discriminatory
3 treatment throughout the Merged Company's territory.

4 Condition 27 will help ensure that the Merged Company does not implement its increased
5 incentive to engage in anti-competitive conduct or spread worst practices throughout its
6 larger service territory post-merger. It states:

7 The Merged Company will provide conditioned copper loops in
8 compliance with federal and state law and at rates approved by the
9 applicable state commission. Line conditioning is the removal from a
10 copper loop of any device that could diminish the capability of the loop to
11 deliver xDSL. Such devices include bridge taps, load coils, low pass
12 filters, and range extenders. Insofar as it is technically feasible, the
13 Merged Company shall test and report troubles for all the features,
14 functions and capabilities of conditioned copper lines, and may not restrict
15 its testing to voice transmission only. If the Merged Company seeks to
16 change rates approved by a state commission for conditioning, the Merged
17 Company will provide conditioned copper loops in compliance with the
18 relevant law at the current commission-approved rates unless and until a
19 different rate is approved.

20 In this condition, the second sentence reflects the definition of line conditioning in 47
21 C.F.R. §51.319(a)(1)(iii)(A).³¹⁵ The third sentence reflects the requirements of 47 C.F.R.
22 §51.319(a)(1)(iii)(C).³¹⁶ The final sentence recognizes that, in each state in Qwest's
23 territory, the Commission has already established rates (either non-recurring charges or

³¹⁵ In 47 C.F.R. §51.319(a)(1)(iii)(A), line conditioning is defined as "the removal from a copper loop of any device that could diminish the capability of the loop to deliver xDSL. Such devices include bridge taps, load coils, low pass filters, and range extenders." Loops must be "stripped of accretive devices." *Triennial Review Order* at ¶ 643.

³¹⁶ "Insofar as it is technically feasible, the incumbent LEC shall test and report troubles for all the features, functions and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only." 47 C.F.R. §51.319(a)(1)(iii)(C).

1 recovery via recurring charges) for line conditioning and therefore the Merged Company
2 must either charge that rate or seek state commission approval to charge a different rate.
3 As I discussed earlier with respect to compliance with the law generally, though it would
4 seem self-evident that the Merged Company would comply with these laws and cost
5 orders, an enforceable merger condition is needed when concerns are raised by wholesale
6 customers sufficient to justify singling out compliance with specific laws in merger
7 conditions to preserve the public interest and avoid merger-related harm.

8 **Q. WHAT CONCERNS DO WHOLESALE CUSTOMERS RAISE REGARDING**
9 **QWEST ENGAGING IN DISCRIMINATORY CONDUCT WITH RESPECT TO**
10 **COMPETITORS' PROVISION OF SERVICES SUCH AS xDSL?**

11 A. Integra, PAETEC and other competitors have raised concerns that Qwest's region-wide
12 policies violate legal and contractual obligations with respect to conditioned copper loops
13 used for providing advanced services, including: (a) Qwest refusing digital level signals
14 via conditioned copper loops; (b) Qwest restricting testing to voice transmission; (c)
15 Qwest refusing digital signals for two-wire loops; (d) Qwest denying access to ADSL
16 capable loops based on improper grandparenting of ADSL; and (e) Qwest refusing to
17 repair/restore service to data/digital levels, leaving customer adversely affected; (f)
18 Qwest refusing to remove certain devices, including bridge tap.³¹⁷ CLECs have provided
19 documentation, including Qwest-prepared communications and admissions, showing that

³¹⁷ See Exhibit BJJ-2 to the Responsive Testimony of Bonnie Johnson.

1 Qwest's stated region-wide position or practice violates legal and contractual obligations
2 in each of these areas.³¹⁸

3 For example, when installing and repairing loops, Qwest refuses to test unbundled
4 conditioned copper loops to digital levels to ensure that they will support the type of
5 xDSL service (e.g., HDSL2) ordered by the CLEC, even though the federal rule clearly
6 states that the ILEC "may not restrict its testing to voice transmission only."³¹⁹ Rather
7 than undertake industry-standard tests to ensure that an unbundled copper loop will
8 support certain levels of digital signal,³²⁰ Qwest maintains that it will test only to voice-
9 related parameters.³²¹ Without proper testing and trouble isolation, CLECs cannot
10 effectively provide advanced services without placing their end-user customers' services
11 at risk. Qwest's policies do not provide CLECs with a meaningful opportunity to
12 compete. Additional examples and documentation are provided in the exhibits to the
13 testimony of Ms. Johnson.

14 **Q. DO THE FCC'S RULES PROVIDE QWEST THIS TYPE OF DISCRETION TO**
15 **DISCRIMINATE IN THE PROCESS OF LOOP CONDITIONING?**

³¹⁸ See Exhibit BJJ-4 to the Responsive Testimony of Bonnie Johnson (Matrix – Legal Authority Compared to Qwest Position: xDSL Capable Copper Loops) and supporting documentation cited in the Matrix and found in Exhibit BJJ-5 (Johnson) through Exhibit BJJ-18 (Johnson) and Exhibit BJJ-22 (Johnson) through Exhibit BJJ-25 (Johnson).

³¹⁹ See 47 C.F.R. §51.319(a)(1)(iii)(C) (quoted in footnote above).

³²⁰ See ANSI Standard T1-417, quoted in Qwest's own technical publications (Qwest Technical Publication 77384, pg. 1-1) describing the characteristics of its unbundled loops.

³²¹ See Row Nos. 1-2, Exhibit BJJ-4 to the Responsive Testimony of Bonnie Johnson (Attachment A to *Joint CLEC Initial Comments*, November 24, 2009, MN PUC Docket No. P-421/CI-09-1066); see also Attachment B, p. 11 at Exhibit BJJ-5 to the Responsive Testimony of Bonnie Johnson.

1 A. No, as the federal rules cited above in support of condition 27 show, Qwest does not have
2 that discretion. The documentation provided by CLECs makes clear that Qwest has
3 policies in place that impede the ability of CLECs to deliver innovative xDSL-based
4 advanced services to small and medium-sized businesses.

5 **Q. WOULD YOU EXPECT THE MERGED COMPANY TO ADOPT QWEST'S**
6 **PRACTICES IN THIS REGARD FOR THE COMPANY AS A WHOLE, ABSENT**
7 **A MERGER CONDITION REQUIRING COMPLIANCE WITH THESE LAWS?**

8 A. Yes. As explained by the FCC's *SBC/Ameritech Merger Order*, the Merged Company
9 will have an increased incentive and ability to discriminate against its competitors with
10 respect to the provision of advanced services.³²² This incentive will militate in favor of
11 expanding discriminatory practices to the company as a whole. Consistent with this
12 incentive, when given an opportunity in discovery to clarify that CenturyLink would
13 comply with 47 C.F.R. §51.319(a)(1)(iii)(C), CenturyLink declined to do so.³²³ That
14 CenturyLink did not immediately confirm that it would not restrict testing for conditioned
15 copper loops to voice transmission only, when the requirements of the rule are so clear,
16 supports the need for Condition 27 to confirm what CenturyLink would not regarding its
17 compliance with the law.

³²² FCC *SBC/Ameritech Merger Order* at ¶ 196. (footnotes omitted)

³²³ For example, when asked whether CenturyLink would test and report troubles for all features, functions and capabilities of conditioned copper loops or restrict its testing to voice transmission only for conditioned copper loops post-transaction, CenturyLink replied: "CenturyLink has not made any determination on this issue at this time." CenturyLink Response to Integra Washington Data Request #106.

1 The proposed transaction is contrary to the public interest if a merging party (Qwest in
2 this example) is rewarded for violating the law. Condition 27 must be included to ensure
3 that the public interest is not harmed post-transaction by requiring the Merged Company
4 to condition loops in compliance with law and Commission-approved rates, including
5 testing and reporting troubles for all features and functionalities of the copper loops,³²⁴
6 and using the FCC's definition of line conditioning.³²⁵ In other words, this condition
7 requires the Merged Company to comply with existing law post-transaction.³²⁶ Although
8 the Merged Company should be expected to comply with the law in any event, a
9 condition specific to this issue is needed based on Qwest's conduct to date.

10 **Q. PLEASE EXPLAIN CONDITION 28.**

11 A. Condition 28 relates to the CLECs' right to interconnect with the Merged Company at a
12 single point of interconnection ("POI") per local access and transport area ("LATA").

13 **Q. WHY IS CONDITION 28 NECESSARY?**

14 A. In the past, CenturyLink has argued against the established right of CLECs to a single
15 POI in arbitration proceedings. Specifically, CenturyLink has stated that because it is not

³²⁴ 47 C.F.R. § 51.319(a)(1)(iii)(C).

³²⁵ 47 C.F.R. § 51.319(a)(1)(iii)(A).

³²⁶ This is particularly important in light of the National Broadband Plan which seeks to foster broadband deployment and competition. The National Broadband Plan states: "Competitive carriers are currently using copper to provide SMBs with a competitive alternative for broadband services. Incumbent carriers are required to share (or 'unbundle') certain copper loop facilities, which connect a customer to the incumbent carrier's central office" and that "[b]y leasing these copper loops and connecting them to their own DSL or Ethernet over copper equipment that is collocated in the central office, competitive carriers are able to provide their own set of integrated broadband, voice and even video services to consumers and small businesses." National Broadband Plan, Chapter 4 at p. 48.

1 a BOC, the concepts of LATA and single POI do not apply to CenturyLink. CenturyLink
2 has also argued that a single POI per LATA would be technically infeasible and would
3 result in “superior” interconnection agreements in violation of the FCC’s rules. There is
4 a genuine risk that the Merged Company will incorporate this legacy CenturyLink
5 mindset into legacy Qwest territory post-merger, which would increase CLECs’ costs of
6 interconnection with the Merged Company and allow the Merged Company to enjoy a
7 competitive advantage over CLECs. Condition 28 is necessary to ensure that this “worst
8 practice” is not incorporated by the Merged Company.

9 **Q. IS THERE A DISTINCTION BETWEEN BOCS AND OTHER ILECS RELATED**
10 **TO INTERCONNECTION OBLIGATIONS UNDER SECTION 251 OF THE**
11 **ACT?**

12 A. No. Section 251(c) of the Act is entitled “Additional Obligations of Incumbent Local
13 Exchange Carriers” and requires, among other things, all ILECs – not just BOCs – to
14 provide interconnection “at any technically feasible point within the carrier’s network”
15 and “that is at least equal in quality to that provided by the local exchange carrier to itself
16 or any subsidiary, affiliate, or any other party to which the carrier provides
17 interconnection.” So, the fact that CenturyLink is an ILEC and Qwest is both an ILEC
18 and a BOC should have no bearing on whether CLECs should be permitted to

1 interconnect with the Merged Company at a single POI per LATA. Furthermore, the goal
2 of the Act was to open local markets to competition for all ILECs, not just the BOCs.³²⁷

3 **Q. DOES THE DATA SHOW THAT INCREASED EFFICIENCIES COULD BE**
4 **ACHIEVED BY ESTABLISHING A SINGLE POI PER LATA WITH THE**
5 **MERGED COMPANY POST-MERGER?**

6 A. Yes. If the merger is consummated, the Merged Company will not only have a larger
7 footprint, but also will have many legacy CenturyLink exchanges that are adjacent or in
8 close proximity to legacy Qwest exchanges. For example, CenturyLink provided a map
9 of Qwest and CenturyLink exchanges in Washington³²⁸ which shows that out of a total of
10 118 CenturyLink legacy exchanges in Washington, all but about six (6) are either
11 adjacent to a legacy Qwest exchange or directly interconnected with a Qwest exchange
12 through other adjacent CenturyLink exchange(s).³²⁹ This means that 95% of the
13 CenturyLink exchanges in Washington are either directly adjacent to a Qwest exchange
14 or are interconnected with a Qwest exchange through CenturyLink-owned facilities in
15 other CenturyLink exchanges.³³⁰ Further, many of these exchanges reside in the same
16 LATA. The 195 total exchanges that the Merged Company would operate in Washington

³²⁷ *Local Competition Order* at ¶ 4 (Emphasis added.)

³²⁸ CenturyLink Response to Integra Washington Data Request #15, Attachment Integra-15. This map is attached to this testimony as Exhibit__TJG-12.

³²⁹ Exhibit__TJG-12 at page 1. Page 2 of Exhibit__TJG-12 lists 118 legacy CenturyLink exchanges in Washington. A visual inspection of the map shows that CenturyLink exchanges 9 (Blakely Island), 19 (Clearwater), 28 (East Sound), 36 (Friday Harbor), 53 (Lake Quinault), and 57 (Lopez) are the CenturyLink exchanges that are not either directly adjacent to a Qwest exchange or interconnected to a Qwest exchange through adjacent CenturyLink exchange(s).

³³⁰ Qwest Response to WUTC Staff Data Request #62 indicates that there are 43 Qwest exchanges in Washington that are adjacent to 55 CenturyLink exchanges in Washington.

1 post-merger reside in four LATAs: 672, 674, 676, and 960.³³¹ It is this larger, more
2 interconnected footprint of the Merged Company that the Company attributes a number
3 of the benefits it says will result from the proposed transaction.³³² For instance, Qwest's
4 witness testifies that:

5 The Transaction will result in a combined enterprise that can achieve
6 greater economies of scale and scope than the two companies operating
7 independently. It is readily apparent that the areas served by Qwest and
8 CenturyLink in Washington are generally complementary, and that the
9 combination of the serving areas will provide for increased economies of
10 scope and/or scale. In many cases the networks are adjacent or within
11 close proximity to one another, and this will make it easier to implement
12 operating efficiencies and infrastructure improvements. The combination
13 of these networks will allow the combined company to optimize network
14 capacity, benefiting both companies' customers through the deployment of
15 additional bandwidth-intensive services such as broadband service and
16 advanced business products.³³³

17 This excerpt confirms that the Merged Company expects benefits to itself and its end user
18 customers from the increased scale resulting from its larger, interconnected footprint, but

³³¹http://www.latamaps.com/Telecom_Maps/Regional_LATA_maps/Northwest_LATA_Map_-_Maponics.pdf This map shows a very small area of eastern Washington served by LATA 960.

³³² See, e.g., Jones Washington Direct (CenturyLink Exhibit JJ-1T) at p. 8, lines 8-11 ("As a combined company with complementary strengths and operating footprints, we will have greater potential to effectively reach more types of customers with a broader range of products, services and connectivity solutions than either company could standing alone.") See also, Schafer Washington Direct (CenturyLink Exhibit TS-1T) at 12, lines 13-16 ("The Transaction brings together two leading communications companies with complementary networks and operating footprints. By building on each company's operational and network strengths, the combined company will have an impressive national presence with the local depth that will allow it to better serve all of its customers."); Jones Washington Direct (CenturyLink Exhibit JJ-1T) at 9, lines 8-9 ("A key benefit will come from leveraging each company's operational and network strengths, resulting in a company with an impressive national presence and local depth.")

³³³ Reynolds Washington Direct (Qwest Exhibit MSR-1T) at 13. See also, Qwest Response to WUTC Staff Data Request #62, which states in part: "it will be easier to achieve network operating efficiencies and infrastructure improvements for networks that are geographically contiguous as opposed to networks that are separated by other companies' operating territories or unserved areas. Adjacent or contiguous networks will allow the combined companies to more efficiently staff, house, and deploy network technicians and equipment (i.e., trucks and tools) to maintain, repair, and administer to the combined network, including new infrastructure deployment."

1 is notably silent about new entrants sharing in those benefits. One way these benefits
2 should flow through to the benefit of the public interest is by allowing CLECs
3 interconnecting with the Merged Company, at the CLECs' option, to do so at a single
4 point per LATA.³³⁴ This would lower barriers to entry for competitors by capitalizing on
5 the increased scale and efficiencies of the Merged Company – benefits that the Act and
6 FCC require to be shared with CLECs.³³⁵ Given the contiguous and interconnected
7 exchanges of Qwest and CenturyLink, particularly in Washington, efficiencies can be
8 achieved by routing traffic to and from the Merged Company at a single POI per LATA,
9 as opposed to allowing the Merged Company to require CLECs to have separate
10 interconnections for legacy Qwest and legacy CenturyLink entities. While the Merged
11 Company may want to continue its corporate organizational structure that exists today
12 post-merger, CLECs should not have to pay more to interconnect with the Merged
13 Company's operating entities because of it.

³³⁴ See, e.g., *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 at ¶ 87 (2005) (reaffirming that "[u]nder section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA") (emphasis added). See also *Petition of WorldCom, Inc., et al., Pursuant to § 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Comm'n*, Memorandum Opinion and Order, 17 FCC Rcd 27039 at ¶ 52 (2002) (emphasis added). The Fourth Circuit has affirmed that the Bureau's decision is entitled to the same deference that would normally be granted to a decision of the full Commission. *MCI Metro Access Transmission Servs. v. BellSouth Telecomms., Inc.* 352 F.3d 872, n. 8 (4th Cir. 2003).

³³⁵ See, e.g., *Local Competition Order* at ¶ 11, in pertinent part: "Congress addressed these problems in the 1996 Act by mandating that the most significant economic impediments to efficient entry into the monopolized local market must be removed. The incumbent LECs have economies of density, connectivity, and scale; traditionally, these have been viewed as creating a natural monopoly. As we pointed out in our NPRM, the local competition provisions of the Act require that these economies be shared with entrants."

1 **Q. OTHER THAN TECHNICAL FEASIBILITY AND THE LOCATION OF THE**
2 **INTERCONNECTION, ARE ILECS ALLOWED TO REFUSE AN**
3 **INTERCONNECTION PROPOSAL, SUCH AS SINGLE POI?**

4 A. No. That is why Qwest and CenturyLink are required to provide a single POI per LATA
5 today. The promotion of efficient markets dictates that CLECs only be required to
6 interconnect in a specific area where its own assessment of traffic volumes, customer
7 demand, and available technology justify investment in facilities needed to reach that
8 area.

9 Nevertheless, after the merger, an objection to a single POI interconnection would be
10 even less persuasive given the claimed benefits of the transaction. The Merged Company
11 claims it will be more efficient and able to respond to competition, but it should not
12 accomplish those goals at the expense of its competitors.

13 Given these claimed benefits it would be wrong to further disadvantage competitors by
14 arguing against an efficient interconnection method that has been used, and approved, for
15 more than a decade.

16 **Q. PLEASE EXPLAIN CONDITION 29.**

17 A. Condition 29 states that conditions imposed in this proceeding may be expanded or
18 modified as a result of other decision in other states. This would also include decisions
19 based on settlements reached in proceedings.

1 **Q. HOW WILL THIS CONDITION BENEFIT THE PUBLIC INTEREST?**

2 A. This will provide a degree of consistency and spread “best practices” across the Merged
3 Company’s service territory, while at the same time likely lowering the Merged
4 Company’s cost of post-merger compliance activities. A similar condition was adopted
5 by the Oregon Commission in the Frontier/Verizon merger proceeding,³³⁶ wherein the
6 Oregon Commission concluded that this type of condition “benefit[s] the various
7 stakeholders in Oregon while, at the same time, allow[ing] applicants to promptly
8 conclude the regulatory approval process.”³³⁷ This is particularly appropriate to the
9 proposed transaction given that the Joint Applicants have requested expedited approval of
10 the proposed transaction.³³⁸

11 **Q. PLEASE EXPLAIN CONDITION 30.**

12 A. Condition 30 addresses disputes that may arise with respect to any pre-closing or post-
13 closing conditions. Specifically, this condition would allow either party to seek
14 resolution of the dispute by filing a petition with a state commission.

15 **Q. WHY DO CLECS NEED THE ABILITY TO BRING DISPUTES ABOUT**
16 **MERGER CONDITION COMPLIANCE TO THE STATE COMMISSION?**

³³⁶ Order No. 10-067 at Appendix A, page 12 of 12 (Docket UM 1431, February 24, 2010).

³³⁷ Order 10-167 at 23.

³³⁸ *See, e.g.,* Reynolds Washington Direct (Qwest Exhibit MSR-1T) at p. 6, lines 11-13 (“Expedited treatment is requested to allow the Joint Applicants to more quickly integrate the companies in order to bring the benefits described in my testimony to consumer, business, and wholesale customers sooner.”)

1 A. Since a number of these conditions expire after a certain period of time, it is important
2 that the CLECs have a way to quickly and efficiently resolve disputes related to merger
3 condition compliance – otherwise, the Merged Company could just drag disputes out
4 until some of the conditions expire or argue over the proper forum for addressing these
5 types of disputes. This is a condition that the CLECs have included based on past
6 experience. AT&T has repeatedly argued (an argument that has been repeatedly rejected)
7 that state commissions do not have authority to enforce merger commitments related to
8 ICAs.³³⁹ CLECs should not have to fight these same types of battles after the proposed
9 transaction at significant cost and delay.

10 **Q. DOES THIS CONCLUDE YOUR RESPONSIVE TESTIMONY?**

11 A. Yes, it does.

³³⁹ See, e.g., Comments of Cox Communications and Charter Communications, Inc., WC Docket No. 10-110, July 12, 2010, at pp. 11-12.