

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application of )  
 )  
QWEST COMMUNICATIONS )  
INTERNATIONAL INC. AND ) DOCKET NO. UT-100820  
CENTURYTEL, INC. )  
 )  
For Approval of Indirect Transfer of Control of )  
Qwest Corporation, Qwest Communications )  
Company LLC, and Qwest LD Corp. )

**RESPONSIVE TESTIMONY OF**

**DOUGLAS DENNEY**

**ON BEHALF OF**

**INTEGRA TELECOM**

**September 27, 2010**

1 **I. INTRODUCTION**

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

3 A. My name is Douglas Denney. I work at 1201 Lloyd Blvd, Suite 500 in Portland, Oregon.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Integra Telecom, Inc., as Integra's Director of Costs and Policy. My  
6 job duties include negotiating interconnection agreements, monitoring, reviewing and  
7 analyzing the wholesale costs Integra or its subsidiaries pay to carriers such as Qwest,  
8 and representing Integra and its affiliates on regulatory issues. I am also involved in  
9 Integra's review of ILEC performance assurance plans.

10 Integra Telecom, Inc. has 7 affiliated companies in Washington. These companies are:  
11 Electric Lightwave, LLC, Eschelon Telecom of Washington Inc., Advanced TelCom, Inc,  
12 OCG Telecomm Limited, Shared Communications Services, Inc., Oregon Telecom Inc.,  
13 and United Communications, Inc. For convenience, I will generally refer to Integra  
14 Telecom, Inc. and its affiliates as Integra. I will refer specifically to Eschelon when  
15 discussing events specific to Eschelon prior to Integra's purchase of Eschelon.

16 **Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL**  
17 **BACKGROUND.**

18 A. I received a B.S. degree in Business Management from Phillips University in 1988. I  
19 spent three years doing graduate work at the University of Arizona in Economics, and  
20 then I transferred to Oregon State University where I have completed all the requirements

1 for a Ph.D. except my dissertation. My field of study was Industrial Organization, and I  
2 focused on cost models and the measurement of market power. I taught a variety of  
3 economics courses at the University of Arizona and Oregon State University. I was hired  
4 by AT&T in December 1996 and spent most of my time with AT&T analyzing cost  
5 models. In December 2004, I was hired by Eschelon Telecom, Inc. (“Eschelon”).  
6 Eschelon was purchased by Integra in August 2007. I am presently employed by Integra.

7 I have participated in over 50 proceedings in the Integra operating territory. Much of my  
8 prior testimony involved cost models — including the HAI Model, BCPM, GTE’s ICM,  
9 U S WEST’s UNE cost models, and the FCC’s Synthesis Model. I have also testified  
10 about issues relating to the wholesale cost of local service — including universal service  
11 funding, unbundled network element pricing, geographic de-averaging, and competitive  
12 local exchange carrier access rates. I testified on a number of issues in the Eschelon /  
13 Qwest arbitrations,<sup>1</sup> and have been involved in the Qwest and Verizon “non-impaired”  
14 wire center lists and related issues. I have also been involved in the performance  
15 assurance plans that impact Integra. This includes negotiations of changes to  
16 performance plans to assure they provide meaningful incentives for wholesale service  
17 quality.

18 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN WASHINGTON?**

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<sup>1</sup> The docket numbers for the Qwest-Eschelon ICA arbitrations are, for Arizona, T-03406A-06-0572; T-01051B-06-0572 (“Arizona arbitration”); for Colorado, 06B-497T (“Colorado arbitration”); for Minnesota, P-5340, 421/IC-06-768 (“Minnesota arbitration”); for Oregon, ARB 775 (“Oregon arbitration”); for Utah, 07-2263-03 (“Utah arbitration”); and for Washington, UT-063061 (“Washington arbitration”).

1 A. Yes. I have been involved in numerous dockets in Washington over the years while  
2 working for AT&T, Eschelon, and Integra. I've participated in multiple UNE cost  
3 dockets in Washington including multiple phases of docket UT-960369 regarding shared  
4 transport and geographic deaveraging. In addition I was involved in all other aspects of  
5 this docket providing witness support and reviewing compliance filings. I filed testimony  
6 again on geographic deaveraging in docket UT-023003 and provided witness support in  
7 that docket on other issues. I filed testimony in docket UT-033044, the original Triennial  
8 Review Order ("TRO") docket, which was suspended in the middle of the hearings when  
9 the D.C. Circuit Court remanded parts of the TRO to the FCC. I've also been involved in  
10 the subsequent Triennial Review Remand Order ("TRRO") docket UT-053025 regarding  
11 the impact of the TRO/TRRO on competition. As part of that docket I was involved in  
12 the "non-impaired" wire center list workshops and following investigations for both  
13 Qwest and Verizon.<sup>2</sup> I've been involved in docket UT-100562 regarding the future of  
14 state universal service and intrastate access rates. I also filed testimony in the Frontier /  
15 Verizon acquisition in docket UT-090842. I testified in docket UT-063061 regarding the  
16 interconnection agreement arbitration between Eschelon and Qwest. In addition, I was  
17 involved in all aspects of the 2007 stipulation regarding changes to Qwest's Performance  
18 Assurance Plan which was approved by this Commission (docket UT-073024) and is the  
19 current performance assurance plan in place in Washington today. I was also involved in  
20 Qwest's AFOR docket, UT-061625, and its subsequent impact on Qwest's wholesale  
21 performance.

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<sup>2</sup> See dockets UT-073033, UT-073035, and UT-083060.

1 **Q. PLEASE DESCRIBE HOW YOUR TESTIMONY IS ORGANIZED.**

2 A. The first section of this testimony introduces this testimony, describes my background  
3 and describes Integra. The second section of my testimony supports Joint CLEC  
4 recommended condition number 4 regarding wholesale service quality. This section  
5 explains how the Commission can simply put into place a self-effectuating mechanism to  
6 help assure that wholesale performance in the legacy Qwest territory does not deteriorate  
7 after the merger. The third section of my testimony supports Joint CLEC recommended  
8 condition numbers 8 and 9. This testimony describes the interconnection agreement  
9 (“ICA”) negotiation process and the time that it takes to negotiate and resolve disputed  
10 issues. The fourth section of my testimony supports condition numbers 18 and 27. This  
11 section verifies the facts set out in Exhibit BJJ-2 and Exhibit BJJ-3. In addition, I  
12 describe why these conditions are important.

13 **Q. ARE THERE ANY EXHIBITS TO YOUR TESTIMONY?**

14 A. Yes. As part of my testimony, I have included the following exhibits:

- 15 • Exhibit DD-2: A copy of an Additional Performance Assurance Plan, calculated using  
16 the methodology in the Current PAP, for use to assure Qwest’s wholesale  
17 performance to CLECs is not impacted by the CenturyLink merger.

18 **Q. PLEASE PROVIDE AN OVERVIEW OF INTEGRAL AND ITS BUSINESS.**

19 A. Integra is a competitive local exchange carrier (“CLEC”) providing communications  
20 services across 33 metropolitan areas in 11 states of the Western United States. We own  
21 (directly or under indefeasible rights to use) and operate backbone fiber networks. These  
22 backbone networks connect to our intercity, interstate data network for a combined 4,900

1 fiber route-mile network in the Western U.S. We provide a comprehensive suite of high-  
2 quality data, broadband and voice services to over 100,000 small-to-medium-sized  
3 business customers and “enterprise” customers.

4 Our network is designed to deliver products such as Ethernet over broadband at speeds of  
5 up to 25 Mbps over a variety of delivery technologies tailored to the unique applications  
6 of our small-to-medium-sized business, enterprise and wholesale customers, including  
7 Ethernet over direct fiber access, Ethernet over copper and Ethernet over next-generation  
8 bonded digital subscriber lines, or DSL. We have 230 unique collocations, 42 in  
9 Washington, positioned across our markets. Providing services to our customers  
10 primarily over our owned switching and transport facilities allows us to control the  
11 quality and reliability of our service offerings and efficiently innovate and provide  
12 advanced products and services. At the same time, we cannot be successful without  
13 access to the last-mile, and Qwest is the only supplier of last-mile facilities within its  
14 territory.

15 While we continue to make large investments in expanding and upgrading our network,  
16 we therefore, remain almost entirely dependent upon the incumbent local exchange  
17 carrier for last mile connections to our customers.

18 **Q. HOW DOES THE SIZE OF INTEGRA COMPARE TO QWEST AND**  
19 **CENTURYLINK?**

20 **A.** Qwest is Integra’s largest competitor, but Integra is relatively small when compared to

1 Qwest and even smaller when compared to a combined Qwest/CenturyLink. A combined  
2 Qwest/CenturyLink will operate in 37 states,<sup>3</sup> compared to 11 for Integra. Further, a  
3 combined Qwest/CenturyLink will have 50,000 employees,<sup>4</sup> compared to 2,300 for  
4 Integra, and the combined Qwest/CenturyLink proforma revenue will be \$19.8 billion,<sup>5</sup>  
5 compared to Integra's 2009 revenue of \$638 million.<sup>6</sup> To put these differences into  
6 perspective, a combined Qwest/CenturyLink will have 22 employees for each Integra  
7 employee and \$31 dollars of revenue for each Integra dollar of revenue. The combined  
8 Qwest/CenturyLink will earn more revenue by the second week in January than Integra  
9 will obtain in a year.

10 **II. WHOLESALE SERVICE QUALITY (JOINT CLEC RECOMMENDED**  
11 **CONDITION NUMBER 4)**

12 **Q. WHAT IS JOINT CLEC RECOMMENDED CONDITION NUMBER 4 AND WHY**  
13 **IS IT NECESSARY?**

14 A. Joint CLEC recommended condition number 4 concerns wholesale service quality for the  
15 Merged Company.<sup>7</sup> The condition requires that the performance assurance plans that  
16 currently exist in the legacy Qwest ILEC territory will remain in place for five years, the  
17 time period over which the Joint Applicants have claimed the synergy savings from the

<sup>3</sup> See <http://www.centurylinkqwestmerger.com/index.php?page=about-the-transaction>

<sup>4</sup> See <http://www.centurylinkqwestmerger.com/index.php?page=about-the-transaction>

<sup>5</sup> See <http://www.centurylinkqwestmerger.com/index.php>

<sup>6</sup> See [http://www.integratelecom.com/about/news/press\\_release\\_articles/2010%20Fastest%20Growing%20Private%20Companies\\_FINAL.pdf](http://www.integratelecom.com/about/news/press_release_articles/2010%20Fastest%20Growing%20Private%20Companies_FINAL.pdf)

<sup>7</sup> The CLEC recommended conditions are attached to the testimony of Mr. Gates as Exhibit TG-9.

1 merger will be accomplished.<sup>8</sup> The condition also establishes a mechanism to assure that  
2 the Merged Company performance in the legacy Qwest ILEC territory does not  
3 deteriorate compared with pre-merger performance. These conditions will help assure  
4 that the Merged Company maintains wholesale service quality at current levels and  
5 creates disincentives for the Merged Company to achieve synergies at the expense of its  
6 competitors through a deterioration of its wholesale market operations. Mr. Gates's  
7 testimony discusses the importance of wholesale service quality conditions in more  
8 detail.

9 Joint CLEC recommended condition number 4 is repeated below in its entirety.

10 In the legacy Qwest ILEC territory, the Merged Company shall comply with all  
11 wholesale performance requirements and associated remedy or penalty regimes for all  
12 wholesale services, including those set forth in regulations, tariffs, interconnection  
13 agreements, and Commercial agreements applicable to legacy Qwest as of the Merger  
14 Filing Date. The Merged Company shall continue to provide to CLECs at least the  
15 reports of wholesale performance metrics that legacy Qwest made available, or was  
16 required to make available, to CLECs as of the Merger Filing Date. The Merged  
17 Company shall also provide these reports to state commission staff or the FCC, when  
18 requested. The state commission and/or the FCC may determine that additional  
19 remedies are required, if the remedies described in this condition do not result in the  
20 required wholesale service quality performance or if the Merged Company violates  
21 the merger conditions.

- 22
- 23 a. No Qwest Performance Indicator Definition (PID) or Performance Assurance  
24 Plan (PAP) that is offered, or provided via contract or Commission approved plan,  
25 as of the Merger Filing Date ("Current PAP") will be reduced, eliminated, or  
26 withdrawn for at least five years after the Closing Date and will be available to all  
27 requesting CLECs until the Merged Company obtains approval from the  
28 applicable state commission, after the minimum 5-year period, to reduce,

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<sup>8</sup> Direct Testimony of G. Clay Bailey, WUTC Docket 100820, May 21, 2010, p. 11, lines 14-16.

1 eliminate, or withdraw it. For at least the Defined Time Period, in the legacy  
2 Qwest ILEC territory, the Merged Company shall meet or exceed the average  
3 wholesale performance provided by Qwest to each CLEC for one year prior to the  
4 Merger Filing Date for each PID, product, and disaggregation. If the Merged  
5 Company fails to provide wholesale performance as described in the preceding  
6 sentence, the Merged Company will also make remedy payments to each affected  
7 CLEC in an amount as would be calculated using the methodology (*e.g.*, modified  
8 Z test, critical Z values, and escalation payments) in the Current PAP, for each  
9 missed occurrence when comparing performance post- and pre- Closing Date  
10 (“Additional PAP”).  
11

- 12 b. In the legacy Qwest ILEC territory, for at least the Defined Time Period, the  
13 Merged Company will meet or exceed the average monthly performance provided  
14 by Qwest to each CLEC for one year prior to the Merger Filing Date for each  
15 metric contained in the CLEC-specific monthly special access performance  
16 reports that Qwest provides, or was required to provide, to CLECs as of the  
17 Merger Filing Date. For each month that the Merged Company fails to meet  
18 Qwest’s average monthly performance for any of these metrics, the Merged  
19 Company will make remedy payments (calculated on a basis to be determined by  
20 the state commission or FCC) on a per-month, per-metric basis to each affected  
21 CLEC.

22 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY WITH RESPECT TO**  
23 **RECOMMENDED CONDITION NUMBER 4?**

24 A. The purpose of this testimony is to explain the additional performance assurance plan  
25 (“APAP”) proposal, as described in part a of Joint CLEC recommended condition  
26 number 4.

27 **Q. PLEASE DESCRIBE THE ADDITIONAL PERFORMANCE ASSURANCE PLAN**  
28 **(“APAP”) PROPOSAL.**

29 A. The APAP is a minimum five year performance assurance plan applicable to the legacy

1 Qwest ILEC territory. This plan is in addition to the existing Washington PAP and does  
2 not alter or change the existing Washington PAP. The APAP would compare the Merged  
3 Company's post-merger ("current performance") monthly performance with the  
4 performance that existed in the twelve months prior ("prior performance") to the Merger  
5 Filing Date (*i.e.*, May 2009 through April 2010). This comparison would be made using  
6 the current Washington Performance Assurance Performance Indicators ("PIDs"),  
7 products and disaggregation, thus no new measures are required to be created. Further,  
8 the data for the year prior to the Merger Filing Date already exists, and thus also would  
9 not need to be created. The APAP would compare the current and prior performance  
10 results using the same statistical methodology that exists in the Washington PAP to  
11 determine whether a statistically significant deterioration in performance exists.<sup>9</sup> If such  
12 deterioration does exist, then the APAP would calculate payments for each missed  
13 occurrence using the methodology from the Washington PAP, including one allowable  
14 miss<sup>10</sup> and escalation payments for consecutive months of below standard performance.<sup>11</sup>

15 **Q. HOW IS THE APAP DIFFERENT FROM THE CURRENT WASHINGTON PAP?**

16 A. In terms of the methodology (*e.g.*, modified Z test, critical Z values, and escalation  
17 payments), not at all. The current Washington PAP, which is a part of many carriers'

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<sup>9</sup> See section 4.0 of the Qwest Washington SGAT Eighth Revision, Twelfth Amended Exhibit K, January 5, 2009 ("WA PAP"), [http://www.qwest.com/about/policy/sgats/SGATSdocs/washington/WA\\_8th\\_revised\\_12th\\_amend\\_Exhibit\\_K\\_010509.pdf](http://www.qwest.com/about/policy/sgats/SGATSdocs/washington/WA_8th_revised_12th_amend_Exhibit_K_010509.pdf)

Note: this document is attached to the interconnection agreements of all CLECs who have opted into the Washington PAP.

<sup>10</sup> See section 3.1.2, WA PAP.

<sup>11</sup> See section 6.2.1, WA PAP.

1 interconnection agreements, compares Qwest's wholesale performance for CLECs to  
2 Qwest's retail performance.<sup>12</sup> In other words, the current Washington PAP is intended to  
3 assure that Qwest does not treat itself more favorably than it treats CLECs, who rely upon  
4 Qwest's wholesale facilities. These plans were put in place when Qwest entered the  
5 interLATA long distance market to help assure that local markets remained opened to  
6 competition. The APAP does not replace the Washington PAP, but works in addition to  
7 the existing PAP. The purpose of the proposed APAP is to compare the current level of  
8 Qwest's wholesale performance to CLECs with a past level of wholesale performance to  
9 CLECs, rather than compare wholesale and retail performance. A plan such as the APAP  
10 would help to assure that wholesale performance does not deteriorate post merger. The  
11 Washington PAP, which was not developed to identify merger-related harm, would not  
12 capture deteriorating performance, if the Merged Company's performance deteriorated  
13 for both wholesale and retail services simultaneously or if wholesale performance  
14 deteriorated, but remained above the minimum benchmarks. The APAP uses the same  
15 methodology but is tailored to the purpose of measuring merger-related performance  
16 issues.

17 **Q. DO YOU HAVE AN EXAMPLE OF A DOCUMENT DESCRIBING THE**  
18 **RECOMMENDED APAP?**

19 **A.** Yes. Exhibit DD-2 is nearly identical in function to the existing PAPs in the Qwest  
20 territory, except that it relies upon a comparison of current and prior wholesale

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<sup>12</sup> In some cases a benchmark is used rather than Qwest's retail performance.

1 performance to CLECs. While at first glance the document may appear complicated, this  
2 is not the case as it is based upon the existing, well-familiar Washington PAP in place  
3 today. The proposed APAP does not create new PIDs, statistical tests, or payment  
4 structures, but instead utilizes the existing structures from the PAPs in place across the  
5 Qwest region. The difference is simply the standard to which performance is compared.

6 **Q. PLEASE PROVIDE AN EXAMPLE OF HOW A CALCULATION FROM THE**  
7 **APAP WOULD WORK AND HOW IT COMPARES TO THE WASHINGTON**  
8 **PAP.**

9 A. Below are two hypothetical examples comparing APAP and Washington PAP payments.  
10 One involves the measure OP-3, Installation Commitments Met, for 2-wire analog loops.  
11 This measures how often Qwest meets its installation commitments and has a benchmark  
12 standard of 90%,<sup>13</sup> which means that as long as Qwest's actual performance is greater  
13 than 90% it does not make Washington PAP payments to CLECs. Qwest's prior  
14 wholesale performance for CLECs is approximately 96.7%.<sup>14</sup> The second example  
15 involves MR-7, Repeat Trouble Reports, for DS1 capable loops. This measures how  
16 often Qwest is called on to repair a circuit with troubles in the Qwest network that it has  
17 already been called on to repair in the past 30 days. This measure is a parity measure and  
18 is compared to how Qwest performs for its DS1 private line circuits. Qwest's prior

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<sup>13</sup> See WA PAP.

<sup>14</sup> This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

1 wholesale performance for CLECs is approximately 16.7%,<sup>15</sup> meaning 16.7% of CLEC  
2 circuits with troubles in the Qwest network, require a second repair from Qwest within 30  
3 days. Qwest's average retail parity performance is 17.3%.<sup>16</sup>

4 The table below shows what happens if Qwest's wholesale performance on installation  
5 commitments falls to 93%, almost doubling the number of commitments missed, as well  
6 as what would happen if both Qwest's retail and wholesale repair repeat rates  
7 deteriorated post merger and climbed to 25%, about 50% greater than the prior rate.

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<sup>15</sup> This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

<sup>16</sup> This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

<b>Hypothetical APAP and QPAP Payment Comparison Examples</b>					
	<b>OP-3 Installation Commitments Met</b>		<b>MR-7 Repair Repeat Rate</b>		<b>APAP Ref</b>
	<b>2-wire analog loop</b>		<b>DS1 Capable Loops</b>		
Average Prior Performance	96.7%		16.7%		
Standard	benchmark	90.0%	parity	17.3%	
Prior Payment	\$0.00		\$0.00		
Post Merger Performance	93.0%		25.0%		
CLEC Observations	250		70		
QPAP Standard	benchmark	90.0%	parity	25.0%	
QPAP Payment	\$0.00		\$0.00		
APAP Standard	96.7%		16.7%		
Z Stat	3.15		1.79		Sec 4.2
Z Table	2.00		1.65		Sec 5.0 Table 1
Calculated Value	94.3%		24.3%		Sec 8.2
Non Conforming Occurances	3		0.49		Sec 8.2
Payment per Occurance	\$150.00		\$150.00		Sec 6.0 Table 2
APAP Payment	\$487.00		\$74.00		Sec 8.2

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As can be seen in the example for OP-3, Installation Commitments Met, even if Qwest’s wholesale performance became worse post merger, Qwest would make no payments under the current Washington PAP so long as Qwest’s performance is above the 90 percent benchmark. However, under the proposed APAP mechanism, a payment would occur to CLECs as a result of the significant deterioration in performance. The “calculated value” in the table above shows how performance would have to deteriorate, for a CLEC with about 250 installations a month, in order for the deterioration to be considered statistically significant and thus require a payment. Another way of looking at

1 the “calculated value,” for this example, is that missed commitments would have to  
2 increase by more than 72.7%<sup>17</sup> before a payment would be triggered under the APAP.<sup>18</sup>

3 Likewise, in the example for repeat troubles, no payment would be made under the  
4 current Washington PAP if both retail and wholesale service deteriorates; however, a  
5 payment would be required under the APAP as a result of a significant deterioration of  
6 wholesale service quality post merger. Again the “calculated value” shows how far  
7 service would have to degrade,<sup>19</sup> for a CLEC with 70 repeat troubles a month, before a  
8 payment would be triggered under the APAP.

9 **Q. THERE APPEARS TO BE A SIGNIFICANT DEGRADATION OF WHOLESALE**  
10 **SERVICE QUALITY BEFORE A PAYMENT WOULD BE TRIGGERED UNDER**  
11 **THE ADDITIONAL PAP. ARE THE PERFORMANCE INCENTIVES LARGE**  
12 **ENOUGH TO PROTECT WHOLESALE SERVICE QUALITY POST MERGER?**

13 A. The question identifies an important concern, because a key factor in performance  
14 assurance plans is not to let poor performance simply become a cost of doing business.  
15 Setting performance payments too low could lead to this result. One method to care for  
16 this potential error is through the use of an escalation provision. An escalation provision  
17 ratchets up the payments that are made for each non-conforming occurrence when the  
18 company misses a performance standard in consecutive months. The current Washington

<sup>17</sup>  $72.7\% = (1 - 94.3\%) / (1 - 96.7\%) - 1$ .

<sup>18</sup> Note that the actual percent will be different for each CLEC depending on both performance and order volumes prior to and after the merger.

<sup>19</sup> Again, in this example, service would have to degrade by 45.5% ( $24.3\% / 16.7\% - 1$ ), before a payment would be triggered under the APAP.

1 PAP contains an escalation provision,<sup>20</sup> and we propose that the same type of provision  
2 be used in the APAP. An escalation provision is crucial to assure that substandard  
3 performance does not simply become a cost of doing business.

4 CenturyLink has professed a commitment to wholesale service quality,<sup>21</sup> thus hopefully  
5 no payment will ever be made under an APAP, and we will never have to find out  
6 whether the payment levels were too low. However, we do propose that the Commission  
7 use the escalation provisions from the current Washington PAP in the APAP. The  
8 escalation provisions increase the non-conforming payment amounts when substandard  
9 performance continues for consecutive months, clearly indicating a problem.  
10 CenturyLink recognizes that “*ensuring that CenturyLink continues to provide high*  
11 *quality service* and customer experience pre- and post-merger is vitally important”<sup>22</sup>  
12 (emphasis added). The APAP helps to ensure this result and the escalation provision is  
13 crucial to assure that substandard performance does not simply become a cost of doing  
14 business.

15 **III. ICA NEGOTIATION PROCESS (JOINT CLEC RECOMMENDED**  
16 **CONDITIONS 8 AND 9)**

<sup>20</sup> See section 6.2.1 and table 2 of the WA PAP.

<sup>21</sup> Direct Testimony of Mark S. Reynolds, WUTC Docket UT-100820, May 21, 2010, p. 26, lines 2-5. See also, Direct Testimony of Michael R. Hunsucker, Oregon Public Utility Commission Docket No. UM 1484, June 22, 2010, CTL/400, Hunsucker/9, lines 9-12 (“Q. Is CenturyLink committed (sic) to providing quality service to its wholesale customers? A. Certainly...”)

<sup>22</sup> Direct Testimony of John Jones, WUTC Docket UT-100820 May 21, 2010, p. 12, lines 17-18.

1 **Q. ARE YOU INVOLVED IN NEGOTIATING INTERCONNECTION**  
2 **AGREEMENTS WITH QWEST?**

3 A. Yes, I participate in multiple entity, multi-state<sup>23</sup> ICA negotiations with Qwest on behalf  
4 of Integra and, before that, I participated in ICA negotiations with Qwest on behalf of  
5 Eschelon. I participate in developing negotiation positions and proposals and in  
6 reviewing and responding to proposals from Qwest. I have taken part in numerous  
7 negotiation sessions with Qwest, along with a number of other company personnel.

8 **Q. PLEASE DESCRIBE THE TIMELINE FOR THE INTERCONNECTION**  
9 **AGREEMENT NEGOTIATIONS BETWEEN QWEST AND INTEGRA.**

10 A. On September 17, 2007, the parties entered into an extension of the statutory arbitration  
11 timeframes under Section 252 of the Act, agreeing upon an arbitration window of  
12 December 31, 2007, through January 25, 2008. As discussed below, at that time, Qwest  
13 and Eschelon had recently completed ICA arbitration hearings. Integra was not in a  
14 position to opt-in to the Eschelon agreements, because Qwest adheres to the “all-or-  
15 nothing” rule, which does not allow a CLEC to opt-in to an ICA if any changes are  
16 needed. Because Integra entities’ business needs differ in some respects from Eschelon’s  
17 business needs (*e.g.*, Integra entities desire reciprocal compensation whereas Eschelon’s  
18 ICAs have bill-and-keep), Integra could not opt-in in all cases to the Eschelon ICA.  
19 Nonetheless, the majority of the Eschelon arbitrated ICA meets Integra’s needs.

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<sup>23</sup> The Qwest-Eschelon ICAs, which I discuss below, were also negotiated in multi-state negotiations, with most of the multi-state negotiations draft containing the same language for several states, with certain sections identified as state-specific language. After conclusion of negotiations, a state-specific draft was then prepared for the state-specific ICA arbitration. Similarly, at the conclusion of the Integra negotiation, a state-specific ICA will be prepared per entity for each state.

1 Therefore, Integra proposed using the recently negotiated and arbitrated Eschelon ICA as  
2 a basis for further discussions. Qwest's position was that it would only negotiate from  
3 the Qwest negotiations template. Qwest took this position even though Qwest and  
4 another CLEC had recently litigated the issue of the basis for negotiations, and the result  
5 was not to negotiate from the Qwest template. Specifically, McLeodUSA (now  
6 PAETEC) had filed a Petition for Section 252(a)(2) Mediation in which it said:

7 McLeodUSA requests the Commission or delegated  
8 Commission staff mediate whether, as McLeodUSA  
9 contends, an existing interconnection agreement ('ICA')  
10 between McLeodUSA and Qwest under which the parties  
11 have been operating for the last nine (9) years is the  
12 appropriate starting point for negotiations for a successor  
13 ICA between the parties, or whether, as Qwest contends,  
14 the starting point should be a 'template' agreement  
15 proposed by Qwest that McLeodUSA was never involved  
16 in creating.<sup>24</sup>

17 Given that McLeodUSA was forced to litigate before it obtained any movement on this  
18 issue from Qwest, Integra attempted to avoid litigation by instead – in response to  
19 Qwest's position that negotiations must begin with Qwest's template – redlining the  
20 Qwest template with a proposal that, after incorporating the Integra redlines, resembled in  
21 large part the terms of the Qwest-Eschelon arbitrated ICA. This was a large undertaking.  
22 The body of the Qwest negotiations template proposal is approximately 400 pages, and  
23 the body of the Qwest-Eschelon ICA is approximately 350 pages. To compare and  
24 redline the two documents to attempt to reconcile most of the language required

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<sup>24</sup> McLeodUSA Petition for Mediation, *In the Matter of Petition of McLeodUSA Telecommunications Services, Inc. for Commission Mediation Pursuant to 47 U.S.C. §252(a)(2) of a Dispute With Qwest*, MPUC Docket No. P-5323,421/M-07-609 (May 9, 2007), p. 1.

1 extensive work, resulting in a redlined document that was 762 pages in length. Integra  
2 provided this negotiations proposal document to Qwest on December 20, 2007.

3 On January 8, 2008, Qwest and Integra entered into an amended extension of the  
4 statutory arbitration timeframes under Section 252 of the Act. Under the amended  
5 extension, Qwest was to respond to all of Integra's proposals by February 25, 2008;  
6 Integra was to reply by March 26, 2008; and the arbitration window would open on April  
7 25, 2008. The amended extension provided that, if Qwest missed the February 25, 2008,  
8 deadline, the start of the arbitration window would automatically extend by a  
9 corresponding amount of time. Qwest still has not provided a complete response to  
10 Integra's proposals. Since February 25, 2008, months have passed with no response from  
11 Qwest. The arbitration window continues to automatically extend as negotiations  
12 continue.

13 Today, while there are important issues in the multi-state draft that remain open for  
14 resolution, the vast majority of the body of the multi-state draft contains closed (agreed  
15 upon) language. And, the vast majority of that language is the same as the language from  
16 Qwest-Eschelon ICAs that, in 2007, Integra had proposed to use as a basis for  
17 negotiations, in light of all the work Eschelon and Qwest had already done in those  
18 negotiations and arbitrations. In short, after a significant expenditure of additional  
19 resources and time, the parties are pretty much where they could have been almost three  
20 years ago, had Qwest not used its template as the basis for negotiations. The negotiations

1 are not yet concluded. As I discuss in my next responses, arbitrations can then add years  
2 to the process before a final compliance filing of an ICA is approved in each state.

3 **Q. PLEASE DESCRIBE THE TIMELINE FOR THE INTERCONNECTION**  
4 **AGREEMENT NEGOTIATIONS BETWEEN QWEST AND ESCHELON.**

5 A. Eschelon initiated negotiations with Qwest in early 2001 in anticipation of the expiration  
6 of the interconnection agreements that were then in effect between the parties, which  
7 were set to expire and go into “evergreen” status beginning March 17, 2002.  
8 Negotiations went into hiatus on more than one occasion. For example, between six  
9 months and a year negotiations were not held while Qwest worked on its multi-state  
10 arbitration template. Negotiations also lapsed due to *Triennial Review Order/Triennial*  
11 *Review Remand Order (or TRO/TRRO)* developments. Eschelon and Qwest continued to  
12 operate under the terms and conditions of the existing agreement in evergreen status  
13 while they negotiated a successor agreement. The process involved numerous  
14 negotiation sessions, email exchanges, and the exchange of red-lined drafts of proposed  
15 language. Eschelon became concerned regarding the tenor of the proceedings and asked  
16 the Minnesota Commission to act as a mediator in an attempt to move the parties to  
17 resolution on the issues. Qwest in turn then asked the Minnesota Department of  
18 Commerce (the Department) to observe or participate in the sessions but not to mediate.  
19 Representative(s) of the Department took part in the parties’ negotiation conference calls  
20 after May of 2004. When negotiations were in session, the parties held numerous

1 telephone conference calls, most frequently twice a week and lasting two hours per  
2 session.

3 The negotiation process took a number of years, from March of 2001 through mid-2006,  
4 when arbitrations commenced, as described below. Eschelon devoted substantial  
5 resources to the negotiation process, including the efforts of legal counsel and  
6 administrative staff in Eschelon's law and policy department, carrier relations and cost  
7 and policy personnel, and subject matter experts working in a variety of areas within  
8 Eschelon who provided information and analysis needed to support the negotiation effort.  
9 Executives from Eschelon's network and finance organizations participated regularly in  
10 negotiation sessions.

11 **Q. DID THE NEGOTIATIONS RESULT IN A RESOLUTION OF ALL ISSUES?**

12 A. No. Although the parties were able to close the vast majority of the contract language,  
13 the parties negotiated to impasse on a number of issues and, thereafter, submitted those  
14 issues to arbitration before the state commissions in Arizona, Colorado, Minnesota,  
15 Oregon, Utah, and Washington.

16 **Q. DID YOU PARTICIPATE IN THE ARBITRATION PROCEEDINGS?**

17 A. Yes, I was a witness in all six states, as was my colleague, Bonnie Johnson. In addition,  
18 Eschelon's arbitration effort was supported by its in-house legal team and subject matter  
19 experts. Eschelon also retained outside counsel and outside experts who assisted with the  
20 arbitrations.

1 **Q. PLEASE DESCRIBE THE STATUS OF THE VARIOUS ARBITRATION**  
2 **PROCEEDINGS IN WHICH YOU PARTICIPATED.**

3 A. The arbitration proceedings occurred from mid-2006 through hearings in early to mid-  
4 2007. In each case, the parties submitted multiple rounds of extensive written testimony  
5 and exhibits, participated in evidentiary hearings before an administrative law judge(s),  
6 and provided briefing of their legal positions. In all but one state, commission orders  
7 approving the arbitration agreements were issued in 2008 (with a follow-up order in  
8 Arizona in 2009). The agreements in the five states, based on negotiations that  
9 commenced in March of 2001, went into effect between March of 2008 and December of  
10 2009. In Colorado, the parties are yet awaiting a decision. Relevant state by state details  
11 are as follows:

- 12 • Arizona: *In the Matter of the Petition of Eschelon Telecom, Inc., for Arbitration with*  
13 *Qwest Corporation, Pursuant to 47 U.S.C. Section 252(b) of the Federal*  
14 *Telecommunications Act of 1996, Docket Nos. T-03406A-06-0572 and T-01051B-06-*  
15 *0572 – A petition for arbitration was filed on September 7, 2006, and the*  
16 *interconnection agreement was approved to be effective on December 8, 2009.*
- 17 • Colorado: *In the Matter of the Petition of Qwest Corporation for Arbitration with*  
18 *Eschelon Telecom, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal*  
19 *Telecommunications Act of 1996, Docket No. 06B-497T – A petition for arbitration*  
20 *was filed on September 8, 2006, an evidentiary hearing was held before the ALJ on*  
21 *April 17 and 18, 2007, and the parties submitted post-hearing briefing on May 22,*  
22 *2007. A decision is pending.*
- 23 • Minnesota: *In re the Matter of the Joint Application for Approval of an Arbitrated*  
24 *Agreement for Terms and Conditions for Interconnection, Unbundled Network*  
25 *Elements, Ancillary Services, and Resale of Telecommunications Services Between*  
26 *Eschelon Telecom of Minnesota, Inc., and Qwest Corporation, Docket No. P-5340,*  
27 *421/IC-06-768 – A petition for arbitration was filed on May 26, 2006, and the*  
28 *Commission approved the parties’ interconnection agreement to be effective March*  
29 *24, 2008. In its order resolving the disputed issues, the Minnesota Commission*  
30 *referred certain interconnection terms and conditions for arbitration issues relating to*

1 conversions of UNEs to non-UNEs and to commingling of UNEs and non-UNEs to a  
2 separate, generic docket, in which Eschelon, through its parent, Integra, actively  
3 participated. Although the Commission has issued an order in that matter, Qwest's  
4 motion for reconsideration of that order is still pending.

- 5 • Oregon: *In the Matter of Eschelon Telecom of Oregon, Inc. Petition for Arbitration*  
6 *of an Interconnection Agreement with Qwest Corporation Pursuant to Section 252(b)*  
7 *of the Telecommunications Act, ARB 775* – A petition for arbitration was filed on  
8 October 6, 2006, and the Commission approved an interconnection agreement to be  
9 effective November 7, 2008.
- 10 • Utah: *In the Matter of the Petition of Eschelon Telecom of Utah, Inc. for Arbitration*  
11 *with Qwest Corporation Pursuant to 47 U.S.C. Section 252 of the Federal*  
12 *Telecommunications Act of 1996, Docket No. 07-2263-03* – A petition for arbitration  
13 was filed on April 27, 2007, the Commission issued its order resolving the arbitrated  
14 issues on July 11, 2008, and issued its order on reconsideration on September 11,  
15 2008. The interconnection agreement was effective on November 13, 2008.
- 16 • Washington: *In the Matter of the Petition of Qwest Corporation for Arbitration with*  
17 *Eschelon Telecom, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal*  
18 *Telecommunications Act of 1996, Docket No. UT-063061* – A petition for arbitration  
19 was filed on August 9, 2006, and the Commission approved the interconnection  
20 agreement to be effective on April 2, 2009. Qwest subsequently appealed from the  
21 portion of the Commission's order regarding terms and conditions for conversion of  
22 UNEs to non-UNEs and commingling of UNEs and non-UNEs and the Federal  
23 District Court for the District of Washington recently affirmed the Washington  
24 Commission's decision. It is not known whether Qwest will appeal that decision.

25 **Q. WHAT IS THE SIGNIFICANCE OF INTEGRA'S AND ESCHELON'S**  
26 **EXPERIENCE IN THE NEGOTIATION AND ARBITRATION PROCESS FOR**  
27 **THE ISSUES TO BE DETERMINED BY THE COMMISSION IN THIS**  
28 **PROCEEDING?**

29 **A.** The Commission must decide whether the proposed transaction is in the public interest  
30 and whether customers and competition will be harmed. As part of that assessment, the  
31 Commission needs to consider the status of ICAs, how long existing agreements should  
32 remain in place, and the starting document for negotiations of replacement ICAs. As

1 further discussed by Dr. Ankum in his testimony regarding interconnection rights and  
2 responsibilities under the Act, the ILEC's wholesale customers need to know that the  
3 terms and conditions currently available, will continue to be available and that service  
4 will at least be constant if not improve, and that the Merged Company will not backslide  
5 with respect to its obligations, including OSS obligations, that were developed initially in  
6 271 proceedings and later incorporated in ICAs. The experience of Integra and Eschelon  
7 with the negotiation and arbitration process sheds light on the length of time protections  
8 from merger-related harm need to remain in place.

9 Proposed Joint CLEC recommended condition number 8 is that the Merged Company be  
10 required to allow requesting carriers to extend existing interconnection agreements,  
11 whether or not the initial or current term has expired and is in "evergreen" status.

12 Proposed Joint CLEC recommended condition number 9 addresses negotiation of the  
13 subsequent interconnection agreement, stating:

14 The Merged Company shall allow a requesting competitive carrier to use its pre-  
15 existing interconnection agreement, including agreements entered into with  
16 Qwest, as the basis for negotiating a new replacement interconnection agreement.  
17 If Qwest and a requesting competitive carrier are in negotiations for a replacement  
18 interconnection agreement before the Closing Date, the Merged Company will  
19 allow the requesting carrier to continue to use the negotiations draft upon which  
20 negotiations prior to the Closing Date have been conducted as the basis for  
21 negotiating a replacement interconnection agreement. In the latter situation  
22 (ongoing negotiations), after the Closing Date, the Merged Company will not  
23 substitute a negotiations template interconnection agreement proposal of any  
24 legacy CenturyLink operating company for the negotiations proposals made  
25 before the Closing Date by legacy Qwest.

1 As the preceding discussion of the Qwest-Integra negotiations and the Qwest-Eschelon  
2 negotiations and arbitrations shows, the negotiation and arbitration process is an  
3 extremely resource-intensive, time-consuming process that is exacerbated by the ILEC's  
4 insistence on use of its template negotiations proposal. As a practical matter, the length  
5 of time necessary for negotiations and arbitration means that parties may operate under  
6 an expired agreement in evergreen status for an extended period of time while they  
7 negotiate and arbitrate a new agreement. That does not mean, however, that the  
8 agreement is static in the meantime. The existing agreements have been amended on  
9 multiple occasions over time, including amendments to reflect changes in law.

10 CenturyLink and Qwest have sponsored testimony in support of CenturyLink's  
11 application that asserts that "All prices, terms and conditions" of the interconnection  
12 agreements between Qwest and CLECs "will remain in effect until such time as they are  
13 renegotiated or expire by their own terms."<sup>25</sup> For agreements already in evergreen status,  
14 this is no time at all. For agreements that will expire and go into evergreen status in the  
15 Spring or Fall of 2011,<sup>26</sup> this is also little or no time, particularly as the closing date of  
16 the transaction may be after at least the Spring date. After carriers raised concerns about  
17 this issue with the FCC, the Joint Applicants filed Reply Comments with the FCC in  
18 which they said:

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<sup>25</sup> Direct Testimony of Mark S. Reynolds, WUTC Docket UT-100820 May 21, 2010, p. 9, lines 24-25.

<sup>26</sup> The Minnesota Qwest-Eschelon ICA went into effect on March 24, 2008, with a three-year term before it goes into evergreen status. For other CLECs with this ICA term in Minnesota, see Exhibit BJJ-11 to the testimony of Ms. Johnson. The Qwest-Eschelon ICAs in Arizona, Oregon, Utah, and Washington also have a three-year term before they go into evergreen status.

1 CenturyLink plans to continue operating both CenturyLink  
2 and Qwest existing OSS uninterrupted for the immediate  
3 future until it completes its evaluation of the best options  
4 for all stakeholders. This is expected to take 12 months at  
5 the very least...[T]he immediate plan is to maintain both  
6 companies' separate OSS and continue operations as  
7 usual."<sup>27</sup>

8 The statement is noncommittal, particularly as to interconnection agreements. To the  
9 extent that "continue operations as usual" suggests that the Merged Company may  
10 operate under existing interconnection agreements for 12 months after the closing date of  
11 the transaction, this plan offers little comfort to carriers, like Eschelon, that have spent  
12 years negotiating and arbitrating with the ILEC to obtain an interconnection agreement.  
13 Assuming the current pace of negotiations, one year is insufficient time to complete  
14 negotiations much less obtain an arbitrated resolution of remaining impasse issues. And,  
15 if the Merged Company insists upon negotiations based on a new or revised template  
16 after the closing date, not only will the amount of time needed to obtain an effective ICA  
17 be extended, but also literally years of effort and extensive use of resources will be lost.

18 **Q. WHY DO JOINT CLECS PROPOSE BOTH CONDITIONS 8 AND 9 TO**  
19 **ADDRESS THIS PROBLEM?**

20 A. Joint CLECs' proposed condition number 8 deals with extending existing ICAs, while  
21 proposed condition number 9 relates to negotiation of new ICAs. Based on the  
22 experience of Integra and Eschelon to-date regarding the length of time needed for  
23 negotiations and arbitrations, even an extension of existing ICAs that would be the

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<sup>27</sup> Applicants' FCC Reply Comments, WC Docket No. 10-110 (July 27, 2010), p. 20.

1 equivalent of one three-year term would not be sufficient to address the time period  
2 needed to fully negotiate and arbitrate a new ICA. Only if existing ICAs are extended for  
3 the longer requested period of seven years would the time period of the extension begin  
4 to cover the time period of the Qwest-Eschelon negotiations starting in March of 2001  
5 through the Arizona effective date of December of 2009. And, in Colorado, for which no  
6 ruling has been issued, or Minnesota, for which the conversions and commingling issue  
7 raised in negotiations has not yet resulted in final ICA language, the time period would be  
8 longer.

9 In any event, whenever a new ICA is needed, the issue will remain as to the starting point  
10 for those negotiations and whether the Merged Company may force carriers to negotiate  
11 from an ILEC template instead of the carrier's existing agreement or pre-closing date  
12 negotiations draft. Providing business certainty now will avoid disputes later and protect  
13 customers and competition from harm caused by the post-merger company backsliding  
14 from existing ICA terms and conditions. At the same time, the Merged Company will be  
15 protected going forward, as the existing ICAs contain provisions for dealing with changes  
16 in law.

17 **IV. UNE PROVISIONING AND MARKETING PRACTICES DOCKET (JOINT**  
18 **CLEC RECOMMENDED CONDITIONS 18 AND 27)**

19 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY WITH RESPECT TO**  
20 **CONDITION NUMBERS 18 AND 27?**

1 A. The purpose of my testimony relating to these conditions is to discuss Exhibit -2 and  
2 Exhibit BJJ-3, collectively Exhibit BJJ-2, which are attached to the Direct Testimony of  
3 Ms. Johnson, and explain how Exhibit BJJ-2 is relevant to the issues to be determined by  
4 the Commission. The testimony of Mr. Gates addresses in detail the necessity of  
5 condition numbers 18 and 27.

6 **Q. WHAT IS THE JOINT CLEC RECOMMENDED CONDITION NUMBER 18?**

7 A. Condition number 18 requires that the Merged Company maintain sufficient, adequately-  
8 trained staff to assure that service provided to wholesale customers is equal to or greater  
9 than the level of wholesale service provided by Qwest before the Merger Filing Date,  
10 including maintaining staffing necessary to protect against the misuse of CLEC  
11 information in the Merged Company's retail operations and improper marketing  
12 activities. Condition number 18 provides as follows:

13 The Merged Company shall ensure that the legacy Qwest Wholesale and CLEC  
14 support centers are sufficiently staffed, relative to wholesale order volumes, by  
15 adequately trained personnel dedicated exclusively to wholesale operations so as  
16 to provide a level of service that is equal to or superior to that which was provided  
17 by Qwest prior to the Merger Filing Date and to ensure the protection of CLEC  
18 information from being used for the Merged Company's retail operations or  
19 marketing purposes of any kind. The Merged Company will employ people who  
20 are dedicated to the task of meeting the needs of CLECs and other wholesale  
21 customers. The total number of the Merged Company's employees dedicated to  
22 supporting wholesale services for CLEC customers will be no fewer than the  
23 number of such employees (including agents and contractors) employed by legacy  
24 Qwest and legacy CenturyLink as of the Merger Filing Date, unless the Merged  
25 Company obtains a ruling from the applicable regulatory body that wholesale  
26 order volumes materially decline or other circumstances warrant corresponding  
27 employee reductions.

28 **Q. WHAT IS THE JOINT CLEC RECOMMENDED CONDITION NUMBER 27?**

1 A. Condition number 27 concerns the Merged Company's obligations with respect to  
2 conditioned copper loops. Condition number 27 provides as follows:

3 The Merged Company will provide conditioned copper loops in compliance with  
4 federal and state law and at rates approved by the applicable state commission.  
5 Line conditioning is the removal from a copper loop of any device that could  
6 diminish the capability of the loop to deliver xDSL. Such devices include bridge  
7 taps, load coils, low pass filters, and range extenders. Insofar as it is technically  
8 feasible, the Merged Company shall test and report troubles for all the features,  
9 functions and capabilities of conditioned copper lines, and may not restrict its  
10 testing to voice transmission only. If the Merged Company seeks to change rates  
11 approved by a state commission for conditioning, the Merged Company will  
12 provide conditioned copper loops in compliance with the relevant law at the  
13 current commission-approved rates unless and until a different rate is approved.

14 Mr. Gates' testimony lays out the federal rules upon which this condition is based in his  
15 testimony.

16 **Q. PLEASE DESCRIBE EXHIBIT BJJ-2.**

17 A. Exhibit BJJ-2 consists of comments submitted on behalf of a coalition of CLECs in *In the*  
18 *Matter of a Commission Investigation into Qwest Corporation's Provision of Network*  
19 *Elements to CLECs and into Related Marketing Practices Targeting CLEC Customers*  
20 *("UNE Provisioning and Marketing Practices Docket")*, MPUC Docket No. P-421/CI-  
21 09-1066. Exhibit BJJ-3 is a corrected (errata) version of the table of contents to Exhibit  
22 BJJ-2 (showing corrected page numbers to reflect the correct corresponding pages of  
23 Exhibit BJJ-2. Exhibit BJJ-4 through Exhibit BJJ-19 and Exhibit BJJ-21 include  
24 attachments that were filed with the initial comments at that time. In this testimony, I  
25 will sometimes refer to these documents collectively as the "Joint CLEC Comments."  
26 The Joint CLEC Comments were submitted to the Minnesota Public Utilities

1 Commission on behalf of Integra Telecom of Minnesota, Inc., Eschelon Telecom of  
2 Minnesota, Inc., Popp.Com, Velocity Telephone, Inc., US Link, Inc., d/b/a TDS  
3 Metrocom, and McLeodUSA Telecommunications Services, Inc., a PAETEC company.

4 **Q. HAVE YOU VERIFIED THE INFORMATION IN THE JOINT CLEC**  
5 **COMMENTS?**

6 A. Yes. I have reviewed the information filed in these comments. In addition, I have been  
7 involved with many of these issues on behalf of Integra and participated in the  
8 preparation of these initial comments.

9 **Q. ARE THE CLECS SEEKING IN THIS CASE TO LITIGATE THE SAME ISSUES**  
10 **AS ARE BEING ADDRESSED IN THE *UNE PROVISIONING AND MARKETING***  
11 ***PRACTICES DOCKET?***

12 A. No. In this docket, merger conditions are sought to ensure that, following the merger, the  
13 new combined entity complies with applicable UNE provisioning laws. As the above-  
14 quoted condition 27 shows, the condition creates an enforceable commitment to comply  
15 with the law, but does not further address implementation of the law. These conditions  
16 do not ask the Commission to rule on the appropriateness of any Qwest policy or  
17 practice. In contrast, the *UNE Provisioning and Marketing Practices Docket* was  
18 established in Minnesota to determine whether Qwest is violating certain laws and to  
19 adjudicate, in a contested case, proper implementation of aspects of those laws. In other  
20 words, the requested end result in this docket (confirm duty to comply with the law) is  
21 just the starting point of that docket (where those laws are in place but disputes have

1 arisen pertaining to those laws). The recommended merger condition does not go farther  
2 than the current law (which is quoted almost verbatim in the condition), so Applicants  
3 cannot reasonably argue that a new or different standard will be applied in that case as a  
4 result of this docket.

5 Unlike the high-level nature of recommended condition 27, resolution of the *UNE*  
6 *Provisioning and Marketing Practices Docket* may involve detailed implementation  
7 issues, and ultimately, resolution of the issues in that docket could include more granular  
8 solutions. For example, the Minnesota Commission could order the parties to draft ICA  
9 language that incorporates processes required to comply with the Commission's orders,  
10 as occurred in the Conversions and Commingling docket.<sup>28</sup> Additionally, or  
11 alternatively, the Commission could require Qwest to file compliance filings and, if those  
12 are not accepted, file additional compliance filings, as occurred in a Minnesota docket  
13 relating to improper contacts between Qwest wholesale and Qwest retail.<sup>29</sup> The  
14 Commission need not do any of that here to simply require compliance with existing  
15 laws. Recommended condition 27, as a means to address conditioned copper loops to  
16 avoid merger-related harm, is in no way redundant of those efforts.

17 The Joint CLECs are proposing merger conditions to ensure that the post-merger entity  
18 fully complies with the law. The Merged Company should have no issue with a

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<sup>28</sup> *Order Resolving Interconnection Issues and Requiring Compliance Filing*, In the Matter of Qwest Corporation's Conversion of UNEs to Non-UNEs and In the Matter of Qwest's Corporation's Arrangements for Commingled Elements, Docket Nos. P-421/C-07-370 and P-421/C-07-371, May 24, 2010.

<sup>29</sup> See Exhibit BJJ-27, July 31, 2003, and November 12, 2003, Orders from *In The Matter of a Request by Eschelon Telecom for an Investigation Regarding Customer Conversion by Qwest and Regulatory Procedures*, Minnesota PUC Docket P-4211C-03-616 ("MN 616 orders").

1 condition that it comply with the law unless its intent is to not comply. To the extent the  
2 Merged Company refuses to accept such a condition, this should be a red flag for the  
3 Commission.

4 Moreover, the proposed merger conditions are also intended to ensure that adequate  
5 resources are devoted to wholesale customers in the face of the otherwise strong  
6 incentive the merged entity will have to achieve synergy savings at the expense of  
7 providing reliable, quality services to its CLEC competitors.

8 **Q. ARE THE ISSUES ADDRESSED IN THE JOINT CLEC COMMENTS UNIQUE**  
9 **TO MINNESOTA?**

10 A. No. The issues, and the facts supporting those issues, are not limited to Minnesota. They  
11 have been raised in Minnesota because only the Minnesota Commission has commenced  
12 an investigation regarding these issues. The Qwest policies and practices that are the  
13 subject of the attachments to Ms. Johnson's testimony are not state-specific, nor are the  
14 legal requirements relating to those policies and practices state-specific. However, a  
15 decision by the Minnesota Commission will be state-specific, as well as entity-specific.  
16 A Minnesota decision will not be binding on Qwest in any other state or on the other  
17 operating entity in any other state.

18 I am aware of other instances in which a state commission has ordered Qwest to remedy  
19 certain region-wide Qwest conduct, and Qwest has taken the position that the remedy the  
20 commission ordered only applied in that state. For example, in Minnesota, as the result

1 of the complaint brought by Eschelon concerning a Qwest service error that caused  
2 Eschelon to lose a large business customer, the Commission issued an order<sup>30</sup> that  
3 required Qwest to adopt procedures to promptly acknowledge and take responsibility for  
4 mistakes that impacted Eschelon's customers. In subsequent arbitration proceedings in  
5 other states, Qwest took the position that it should not be required to implement the  
6 process for promptly acknowledging mistakes in any state other than Minnesota and also  
7 took the position that the process would not be made available to CLECs other than  
8 Eschelon. Similarly, although Eschelon prevailed in five of five states on its challenge of  
9 a region-wide Qwest process for jeopardy notices (Arbitration Issue Nos. 12-71 – 12-73)  
10 in the Qwest-Eschelon ICA arbitrations, Qwest did not implement this process for any  
11 other state or carrier.<sup>31</sup>

12 **Q. IF THE JOINT CLECS OBTAIN THE REMEDY THAT THEY SEEK IN THE**  
13 ***UNE PROVISIONING AND MARKETING PRACTICES DOCKET*, WON'T THAT**  
14 **ELIMINATE THE NEED FOR THE MERGER CONDITIONS RELATING TO**  
15 **CONFIDENTIAL CLEC INFORMATION AND LOOP CONDITIONING?**

16 **A.** No. First, as discussed above, the *UNE Provisioning and Marketing Practices Docket* is  
17 an investigation initiated by the Minnesota Commission concerning Qwest, and not the  
18 legacy CenturyLink entities. In contrast, an enforceable merger condition would apply in

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<sup>30</sup> *MN 616 Order.*

<sup>31</sup> See for example, Utah PSC Docket No. 07-2263-03, Report and Order on Arbitration of Interconnection Agreement, July 11, 2008, p. 89. The docket numbers for the Qwest-Eschelon ICA arbitrations decisions are, for Arizona, T-03406A-06-0572; T-01051B-06-0572 ("Arizona arbitration"); for Minnesota, P-5340, 421/IC-06-768 ("Minnesota arbitration"); for Oregon, ARB 775 ("Oregon arbitration"); for Utah, 07-2263-03; ("Utah arbitration"); and for Washington, UT-063061 ("Washington arbitration").

1 each state where it is adopted and would apply to all of the Merged Company's operating  
2 companies. In addition, given the importance of these issues, the Commission should be  
3 clear about its expectation that the Merged Company will not misuse CLEC information  
4 in its marketing efforts and will comply with its legal obligations regarding conditioning  
5 of copper loops. Setting forth a clear expectation and commitment on these issues is  
6 essential to ensure that the merger is consistent with the public interest as required by  
7 law. The obligation to ensure that this merger is in the public interest requires conditions  
8 that address areas of potential harm, including potential harm to competitors and  
9 competition from noncompliance with laws that provide for the network access  
10 competitors' needs to provide competitive services. As such, it is common practice for  
11 merger conditions to refer to compliance with the law, particularly when there have been  
12 disputes regarding compliance issues, as further discussed by Mr. Gates.

13 The evidence contained in the attachments to Ms. Johnson's testimony reflects that there  
14 is, at the very least, reason for concern about these issues. Putting the Merged Company  
15 on notice of the Commission's expectation through the adoption of these conditions may  
16 eliminate the necessity for CLECs to bring complaints in the future regarding these  
17 issues. Such complaints not only consume the Commission's resources, they are  
18 extremely expensive and time-consuming for CLECs and a distraction from the CLECs'  
19 core mission of serving their customers and competing to provide service to new  
20 customers.

21 Finally, there is an issue of timing. Under the current schedule, the Minnesota

1 Commission will not make a decision in the *UNE Provisioning and Marketing Practices*  
2 *Docket* until after the date anticipated for a decision in this case.

3 **V. CONCLUSION**

4 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

5 **A. Yes.**