- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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 Corporation	)))))))	DOCKET NO. 10-049-16 DPU Exhibit 1.0 Direct Testimony of Casey J. Coleman

DIVISION OF PUBLIC UTILITIES
DEPARTMENT OF COMMERCE

August 30, 2010

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS ADDRESS.

A. My name is Casey J. Coleman. I am employed by the Division of Public Utilities ("Division") for the State of Utah. My business address is 160 East 300 South Salt Lake City, UT 84114.

Q. BRIEFLY OUTLINE YOUR EMPLOYMENT BACKGROUND.

A. Before working for the Division, I was employed by a telecommunications consulting firm as a Financial Analyst. Then for approximately three years I worked for the Division as a Utility Analyst and now work as a Technical Consultant for the Division.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I received a Bachelor of Science degree from Weber State University in 1996 and a Masters of Business Administration from Utah State University in 2001.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE UTAH PUBLIC SERVICE COMMISSION?

A. Yes. I testified before the Commission as an expert witness in Docket Nos. 01-2383-01, 02-2266-02, 02-049-82, 03-049-49, 03-049-50, 05-053-01, 05-2302-01 07-2476-01, 08-2469-01 and most recently in Docket 09-2511-01.

II. SUMMARY

Q. PLEASE SUMMARIZE AND DESCRIBE THE PURPOSE OF YOUR TESTIMONY.

A. Qwest Communications International, Inc. ("QCII") and CenturyTel, Inc ("CenturyLink") filed a Petition May 19, 2010 requesting that the Utah Public Service Commission ("Commission") approve the indirect transfer of control of QCII's operating subsidiaries, Qwest Corporation ("Qwest Corp"), Qwest LD Corporation ("QLDC") and Qwest Communications Company LLC ("QCC") (collectively "Qwest") to CenturyLink.

Qwest and CenturyLink ("Joint Applicants") state in their petition that the merger will "result in a combined company with greater network and financial resources to provide voice, broadband data, and other advanced communications services to its customers." Additionally both petitioners suggest the combined entities will "result in a company that will have the national breadth and local depth to provide a compelling array of products and services to its customers."[1]

My testimony will focus on the application filed by the Joint Applicants and whether its petition to merge the companies meets the requirements outlined in Utah Code Ann. §§ 54-4-28, 54-4-29 and 54-4-30. The other expert witness from the Division, Mr. Oman will be testifying on the financial transaction, the structure of the merged company, and what benefits or impacts there will be with the merger. My analysis looks at the merged companies to determine if the potential benefits of merging offset the

[1] Joint Application filed with the Utah Public Service Commission dated May 19, 2010 pages 1-3.

negative impacts with retail and wholesale customers, therefore making the transaction in the public interest. Specifically my testimony examines (1) utility regulation and the objectives of regulators in a merger between companies, (2) the current market conditions for retail and wholesale customers in Utah for telecommunications services, and (3) the impact to the marketplace with the merger of Qwest and CenturyLink,.

Finally, my testimony recommends requirements that the Commission should order to be met by the Joint Applicants as conditions for approving the application. Because Qwest is considered a Bell Operating Company ("BOC") or Regional Bell Operating Company ("RBOC"), it is in a unique situation where it is competing for customers against many of the same companies that are also wholesale customers of Qwest. This dynamic makes telecommunications regulation different than most regulated entities, therefore, the Commission should proceed cautiously and judiciously with this merger.

The conditions suggested by the Division will allow parties to monitor the integration of both Qwest and CenturyLink to ensure that the estimated synergies occur. Additionally, the conditions will allow the Division the ability to monitor service quality to ensure that customers within the state of Utah are receiving the same level of service post-merger that Qwest was providing pre-merger.

III. UTILITY REGULATION AND THE OBJECTIVE OF REGULATORS

Q. WHAT PRIMARY ATTRIBUTES FORM THE FOUNDATION OF PUBLIC UTILITY REGULATION?

A. Two primary attributes form the foundation for public utility regulation: "(1) special public importance or necessity, and (2) the possession of specific physical and human assets like utility plants, distribution networks, and technical expertise that lead almost inevitably to monopoly or at least to ineffective forms of competition."[2] Utility regulation addresses concerns about monopoly or ineffective competition. A broader range of regulatory responsibilities emanates from the concept that the service is a "necessity"—including ensuring service availability, service quality, and the financial stability of the utility. At times, social goals also are superimposed on regulatory frameworks and expand the scope of what is considered to be the public interest.

Q. HOW DOES THAT DEFINITION OF UTILITY REGULATION APPLY IN THE QWEST / CENTURYLINK MERGER?

A. Telecommunications regulation is similar to other forms of utility regulation in that it involves entities that affect many industries that consumers today would consider to have a "special public importance and necessity". Broadband services, landline infrastructure, wireless communications, and basic communications have become a necessity in everyday life. Because of this fact, Qwest as the BOC in the state of Utah plays a variety of roles in each of these areas making it possible for people to access the internet, complete calls both locally and out of state, and even to a certain extent, providing the backbone to transport cellular calls and complete the transfer of data and voice messages.

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[2] James C. Bonbright, Albert L. Danielsen, David R. Kamerschen, *Principles of Public Utility Rates*, Public Utilities Reports, Inc. (1988), pp. 14-15.

Without a healthy, innovative company fulfilling these various roles, consumers in Utah could be affected negatively.

Q THE DEFINITION OF REGULATION MENTIONED ABOVE ALSO DISCUSSES MONOPOLIES OR LACK OF EFFECTIVE COMPETITION AS ANOTHER DISTINGUISHING FEATURE OF UTILITY REGULATION. WITH QWEST AND THEIR SERVICES IN UTAH, DO YOU BELIEVE THERE IS A LACK OF EFFECTIVE COMPETITION?

A. When looking at Qwest and the Utah marketplace it is important to remember that Qwest has two very important but different responsibilities. The first area that Qwest is providing service is on a retail basis. Qwest as a company provides a variety of telecommunications services to individuals and business within the state of Utah. Consumers in Utah have many different options when deciding how to best meet their telecommunications needs. As a result of the variety of choices, competition in the retail market is robust.

The second area where competition is not as robust is in the wholesale market. A number of Competitive Local Exchange Carriers ("CLECs") are dependent on Qwest's infrastructure to be able to offer service. Without the network elements sold by Qwest many CLECs would find it difficult to compete effectively in the marketplace.

To understand if there is a "lack of effective competition" in the marketplace it is helpful to review the significant changes that have occurred in the telecommunication market. Since the U S West / Qwest merger, the way consumers use telecommunication services is simply different. Technology that was not even contemplated a decade ago is the expected norm now. Retail customers, who primarily had the RBOC as their source for telecommunications needs, now can choose instead from the Incumbent Local Exchange provider ("ILEC"), CLECs, Voice over Internet Protocol ("VoIP"), or wireless telecommunications providers. Because of this evolving marketplace, consumers have a variety of choices, which means in some instances that the BOC may not be the monopoly provider of services.

Understanding that the retail telecommunications market is competitive, the Commission and state legislature have allowed Qwest to operate with a minimal amount of regulation in this segment of Qwest's business. Generally, the lighter regulation does not deal with price and rate setting like traditional utility regulation but instead focuses on service quality issues.

However, there is another function or segment of Qwest's business operations, that without regulation, the potential for a significant lack of competition is a realistic possibility. Because Qwest was the ILEC and BOC for a number of decades, it was able to develop and deploy a vast telecommunications infrastructure that covers much of the state of Utah. Estimates provided by Qwest put the value of the network at approximately $3 billion. This network is used by CLECs, VoIP providers, Internet service providers ("ISP"), wireless telecommunications companies, and others to provide services to citizens within the state of Utah. The success of the wholesale market depends almost entirely on Qwest providing a network that is open and available for all parties to use with rates that compensate the ILEC fairly for the use of the infrastructure. In addition, the terms and conditions for using the network need to be just and reasonable for both Qwest and for the CLECs leasing portions of Qwest's network.

The Commission has the responsibility, when looking at the public interest as outlined in Utah Code Ann. §§ 54-4-28, 54-4-29 and 54-4-30, to ensure that this proposed merger will provide a public benefit to both retail and wholesale customers of Qwest and post-merger CenturyLink.

IV. RETAIL MARKET CONDITIONS IN UTAH

Q. HOW WOULD YOU DEFINE QWEST'S RETAIL MARKET?

A. Basically, for the purpose of this merger, the Division is considering retail to encompass those services and products that Qwest offers to consumers directly that are not to be resold, but will be used directly by the person or entity purchasing them.

Q. WHAT IS YOUR ASSESSMENT OF THE RETAIL TELECOMMUNICATIONS MARKET IN UTAH?

A. For a number of years the Division has seen an increase in competition in the retail market. Consumers in the state of Utah have a variety of services and providers available from which to choose. Like other portions of the country, Utah's marketplace has benefitted as other companies have entered the market with competitively priced packages for telecommunication services, increased internet download and upload speeds, and innovative features.

Years ago, the state legislature recognized this changing competitive landscape when it modified the statutes regulating Qwest, allowing for less regulation and greater flexibility in meeting customer's demands in the retail market. Today, the Commission primarily looks at service quality when regulating the retail market and does not regulate service rates or terms service.

Q. DOES THE COMMISSION HAVE SPECIFIC RULES DEALING WITH RETAIL SERVICE QUALITY?

A. Yes. The first service quality rules specific to telecommunications were R746-240 Utah Service Rules for Telecommunications Corporations. These rules were adopted November 1, 1989 with the objective of assuring the adequate provision of residential and business telecommunications service, restricting unreasonable termination of or refusal to provide residential and business telecommunications service, providing functional alternatives to termination or refusal to provide residential or business telecommunications service, and establishing and enforcing fair and equitable procedures governing eligibility, deposits, account billing, termination and deferred payment agreements.

During the early 1990's the telecommunications market was experiencing substantial growth. Sometimes this growth and other factors lead to service quality issues at U S West. With the proposed Qwest / US West merger interested parties suggested, as conditions to accepting the merger additional retail service quality requirements. Eventually the items stipulated were accepted as the Commission's rules R746-340. These rules established minimum service quality standards applicable to Qwest in the following areas:

- Installations
- Repairs

- Billing Requirements
- Disconnection of Service Requirements
- Incoming Repair and Office Calls

One major difference in these newer rules from R746-340 is a requirement to file with the Commission quarterly a report showing the service quality for each of the metrics. Another significant difference of the rule is the automatic credits paid by Qwest to retail customers when failing to miss many commitments included in the rule.

Q. WHAT IS YOUR OBSERVATION WITH REGARDS TO QWEST AND THE SERVICE QUALITY REPORTS?

A. For more than five years, one of the responsibilities I have been assigned is to review the Quarterly Service Quality Reports from Qwest. As a general statement, Qwest has exceeded the minimum service quality standards required in the Commission rules. Over the last couple of years, the norm has been for Qwest to achieve 100% or close to 100% in all of the metrics.

These reports demonstrate that Qwest has been exhibiting a high level of customer services over the last few years. If the transaction will primarily be a stock transfer as implied by the Joint Applicants, therefore implying that no changes would occur to day to day operations of Qwest, the Division would expect that consumers in Utah should see the same level of service quality after the merger.

The Division believes that the existing rules for retail service quality are adequate to ensure a high level of customer service post-merger. As a corporation with more the 30,000 access lines in the state of Utah, CenturyLink will be required to follow the same rules as Qwest did once the merger is consummated. After the merger, to help monitor service quality and whether the merger affected service quality, the Division recommends the Commission place additional reporting conditions on the merged companies. Those conditions, as well as conditions dealing with other areas of service quality and performance, are listed in Attachment 1 of my testimony in the section labeled Service Quality. These conditions will allow the Division the ability to monitor the retail service quality and ensure that it is "business as usual" as implied by CenturyLink.

Q. ARE THERE OTHER CONDITIONS YOU BELIEVE THE COMMISSION SHOULD PLACE ON THE MERGER THAT DEALS WITH THE RETAIL MARKET?

A. Yes. Part of the requirement for approval of the merger is the concept that there needs to be a public benefit or interest that would offset any negative impacts of the merger. One area that would benefit consumers in Utah is expansion of broadband availability. In Attachment 1 under the heading of Broadband, the Division has proposed some recommendations that the Commission should adopt that would promote greater download speeds than Qwest is currently offering in the marketplace. The proposed conditions require reports to be filed by CenturyLink outlining the broadband plan and capital expenditures dealing with broadband infrastructure. Additionally, the Division believes the Commission should adopt a minimum download speed that mirrors the FCC standard set in the Sixth Broadband Deployment Report issued July 20, 2010. That report took the overdue step of raising the minimum speed threshold services from 200 kbps and adopts the minimum speed threshold of the national broadband availability target proposed in the National Broadband Plan. The National Broadband Plan recommends as a national broadband availability target that every household in America have access to affordable broadband service offering actual download speeds of at least 4 Mbps and actual upload speeds of 1 Mbps. This target was derived from analysis of user behavior, the demands this level of usage places on the network, and recent experience in network evolution.[3]

The Division has also recommended conditions dealing with long distance and slamming rules. These conditions help to ensure there is a period of time during which consumers will be able to evaluate the services provided by CenturyLink post-merger and decide whether those services are similar to the ones provided to Qwest today. As with the other conditions, the long distance conditions are listed in Attachment 1 under the heading of Long Distance.

V. WHOLESALE MARKET CONDITIONS IN UTAH

Q. WHAT IS THE DIVISION'S ASSESSMENT OF THE WHOLESALE MARKET IN THE STATE OF UTAH?

A. The Division believes that Qwest is providing access to the company's infrastructure that allows CLECs to compete within the state of Utah. Currently, Utah has over 90 companies that have been granted certificates of

[3] See National Broadband Plan at 21, 25 n. 50, 135-36.

public convenience and necessity ("CPCN") to operate as telecommunications providers. Over the last 12 months, a dozen companies have filed and been granted CPCNs. These numbers show that companies are developing business plans that enable them to service a segment of the marketplace.

Another metric that can be used to assess the state of Utah's market is Qwest's Performance Assurance Plan ("QPAP"). A significant component of that plan is the requirements for payments by Qwest for below-parity performance. When the QPAP was first established, those payments in the state were significant, but for the last couple of years, those payments have dropped to marginal levels. For example, Qwest has decreased the amount of payments from easily over $100,000 to monthly payments amount ranging from $2000 - $5000. This decrease is a result of Qwest meeting the requirements outlined in the QPAP so no payments are required to CLECs. Inherently, when payments are going down, Qwest is providing a network that is in parity or better.

Q. THE DIVISION BELIEVES THE WHOLESALE MARKET IS FUNCTIONING ADEQUATELY. DOES THE DIVISION BELIEVE THE SAME MARKET CONDITIONS WILL EXIST POST-MERGER?

A. Although CenturyLink has indicated that everything should be "business as usual" after both companies have merged, the Division sees a variety of potential challenges that could affect the wholesale marketplace. It is possible that CenturyLink will be able to integrate various systems seamlessly, and the impact to the wholesale market would be non-existent. Unfortunately, there is no guarantee, and CenturyLink or Qwest have provided no proof, that integration will be flawless. With the wholesale providers being such a vital cog in the competitive telecommunications market here in Utah, the Division recommends the Commission follow the tenet "hope for the best and plan for the worst". Therefore the Division has recommended some conditions be placed on the merged companies that will allow the Division to monitor the integration and keep abreast of how seamlessly the integration is proceeding.

VI. POTENTIAL CHALLENGES

Q. WHAT AREAS COULD POSE SIGNIFICANT CHALLENGES?

A. The biggest threat to CLECs and the wholesale market is with Qwest's Operations Support Systems ("OSS"). CLECs consider it "vital to be able to access the ILEC systems and databases to review customer information and submit and review orders. The systems must be efficient, reliable and accurate. Inefficient systems that require extensive manual intervention, would make doing business with the ILEC difficult and more costly"[4]

The FCC has found that CLECs would be "severely disadvantaged, if not precluded altogether, from fairly competing," if they did not have nondiscriminatory access to OSS[5]. Qwest itself has described its existing OSS

[4] Direct Tesimony of Timothy J. Gates on behalf of McLeodUSA Telecommunications Services, Inc. Iowa Docket No. SPU-2010-0006, August 16, 2010 at p. 27

[5] *Local Competition Order* at ¶518.

as playing "a crucial role in the transactions between Qwest and all CLECs"[6] and "the lifeblood of…Qwest's wholesale operation…"[7]

Q. WHAT ARE OSS?

A. The FCC defines OSS to include five functions: (1) pre-ordering, (2) ordering, (3) provisioning, (4) maintenance and repair, and (5) billing.[8] OSS includes all of the computer systems, databases and personnel that an ILEC uses to perform internal functions necessary for these five functions. The FCC also requires an adequate change management process (CMP) to handle changes to the OSS systems.[9]

Q. IS OSS AN UNBUNDLED NETWORK ELEMENT ("UNE")?

A. Yes. The FCC has determined OSS to be a "network element."[10] Consequently, a CLEC must be permitted nondiscriminatory access to an ILEC's OSS functions in order to provide pre-order information to potential customers, sign up customers, place orders for services or facilities, track the progress of its

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[6] Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.

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

[8] *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, December 23, 2002 ("*Qwest 9 State 271 Order*") at ¶ 33.

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

[10] *Local Competition Order* at ¶ 516.

orders to completion, obtain relevant billing information from the ILEC, and obtain prompt repair and maintenance services for its customers.

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

A. Yes. The duty to provide access to OSS functions falls squarely within an ILEC's duties under Section 251(c)(3) to provide UNEs on terms and conditions that are nondiscriminatory, just and reasonable, in accordance with the pricing standards of Section 252, and under Section 251(c)(4) to offer services for resale without imposing any limitations or conditions that are discriminatory or unreasonable.[11]

Nondiscriminatory access to OSS is also one of the checklist items on the 14-point competitive checklist applicable to BOCs under Section 271 of the Act.

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

A. Yes. OSS impacts all wholesale customers that do business with Qwest and CenturyLink, regardless of whether the CLEC is resale-based, UNE-based, or completely facilities-based. The statements from the FCC above and Qwest's statement that OSS is the "lifeblood" of its wholesale operations shows that the importance of OSS to competition cannot be exaggerated. Degrading the

[11] 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) 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.

quality of, or access to, the OSS would significantly damage competition in the state.

Q. HOW COULD CLECS BE HARMED BY POOR INTEGRATION OF OSS?

A. First, CenturyLink uses a different OSS than Qwest. Unlike Qwest's OSS which was extensively tested during the 271 approval process, CenturyLink's OSS has not been tested to determine whether it meets the nondiscriminatory requirements of Section 271. Second, the existing Qwest OSS and its functionality are well-documented and as suggested in Mr. Gates testimony, preferred by carriers such as Charter and PAETEC[12] that use both of the merging companies' systems. Similarly, carriers in Embarq territory did not want to revert to the OSS processes of CenturyTel in that merger,[13] CLECs do not want the merged company to backslide from the 271-evaluated systems in Qwest territory to CenturyLink systems that have not been subjected to rigorous third party testing.[14] Hence, any attempt to integrate CenturyLink's OSS into the legacy Qwest region could be a step in the wrong direction.

Q. WHAT IS THE DIVISION'S POSITION IN REGARD TO QWEST'S OSS SYSTEM?

A. The Division believes that changing the OSS system could be one of the ways

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[12] Direct Tesimony of Timothy J. Gates on behalf of McLeodUSA Telecommunications Services, Inc. Iowa Docket No. SPU-2010-0006, August 16, 2010 at p. 30.

[13] *See, e.g.*, 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.").

[14] CenturyLink response to PAETEC Iowa Data Request #18 ("While CenturyLink has not conducted thirdparty testing of its systems…")

an ILEC could drastically harm the business and viability of CLECs. Understanding the playing field and the rules of the game are essential for executing a business plan. With one business decision, CenturyLink could significantly harm the wholesale market and the ability of CLECs to compete within the state of Utah. There is cause for the Commission to be cautious.

The Division does not feel quite as adamantly as CLECs about integrating a CenturyLink system into a Qwest system. Integrating from Qwest's OSS to CenturyLink's Oss could quite possibly be a step in the "wrong direction", conversely, integrating OSS systems so they are functional for all of CenturyLink's entities might be what is needed to cut costs and create the synergies contemplated by the merger application.

The choice of what is best should ultimately be made by CenturyLink with significant input from CLECs, regulators, and other interested parties to ensure that, whichever OSS system is adopted, it will still allow for a robust, thriving wholesale market. Even though the decision should be made by CenturyLink as to what OSS system it eventually uses for its wholesale services, the Division recommends requiring CenturyLink to use Qwest's Legacy OSS for a period of three years. This three year time period will allow CLECs time to prepare and transition for any changes that might occur while not immediately impacting existing business plans. Additionally, the three years provides CenturyLink time to evaluate and understand Qwest's current system and analyze whether Qwest's legacy system would still be the best option or if changes need to be made.

As the evaluation and integration process occurs, the Division has recommended some conditions that the Commission should adopt that would provide information on the progress of integration. Those conditions are found in Attachment 1 under Operations Support Systems (OSS).

Q. IS THERE ANOTHER AREA THAT COULD AFFECT THE WHOLESALE MARKETPLACE?

A. Yes. Since approximately 2002, Qwest has followed a performance plan or QPAP. This plan provides information to CLECs and also regulators detailing how Qwest is performing in a variety of measurement indicators. This plan essentially is a report card on how open Qwest's network is for other companies.

As stated earlier in my testimony, an OSS system and access to ILEC's telecommunications network is an absolute necessity for a healthy wholesale market. A performance assurance plan creates guidelines with which to measure a network's openness, as well as providing a self-executing remedy that ensures Qwest continues to comply with 271 requirements.

Q. WHAT IS THE DIVISION'S CONCERN DEALING WITH THE CURRENT QPAP?

A. Specifically, because CenturyLink has never been an RBOC it has not had to deal with any of the network infrastructure requirements placed on an RBOC. The Division would expect CenturyLink to keep and apply the years of experience that Qwest has accrued in this area. The Division believes that the Commission should adopt conditions requiring CenturyLink to follow Qwest's PAP. Without those conditions in place, there is no assurance that

CenturyLink will keep the QPAP and thereby maintain the health of the wholesale market. The Division's conditions are listed in Attachment 1 of my testimony under Wholesale Services.

Q. WHY IS IT NECESSARY TO KEEP THE SAME QPAP IN PLACE? COULDN'T CENTURYLINK ADOPT ANY PERFORMANCE PLAN THAT WOULD MEASURE HOW OPEN THE NETWORK IS?

A. Keeping the same performance plan has a variety of benefits. The first benefit is that it would allow CLECs and regulators to compare "apples to apples". The Commission, Division and other parties have spent much time defining and refining the QPAP and the performance indicators ("PIDs") used in the current QPAP. Third party audits, requested by the Commission, have been conducted to examine the usefulness of the QPAP in today's marketplace. Additionally, there are years of data that have been compiled using the current PIDs. All of this information is useful in understanding how open Qwest's network is for wholesale customers. By keeping the same QPAP in place for a time after the merger, the Commission is allowing regulators and telecommunications companies the ability to determine how well CenturyLink is performing at keeping the wholesale marketplace open and functioning. Post-merger data can be compared against pre-merger data to see any trends that might be surfacing.

A second benefit is the simple fact that Qwest's current PAP has been tested, reviewed, and modified to ensure that it is Section 271 compliant. The State of Utah has been an active participant in the development of the QPAP. The QPAP has also been the subject of subsequent audits by Liberty Consulting.

Many resources have been expended in an effort to create a PAP that meets both the needs of Qwest and CLECs. If the Commission allowed CenturyLink to institute another PAP, all those efforts could be lost.

Finally, by keeping the same PAP for a period of time, the Commission is providing certainty to the companies who are dependent on the PAP. CLECs are dependent on Qwest, or any ILEC, to provide information on the availability of trunks, installation times, cross-cuts, etc. necessary to service the CLEC. Much of this information is obtained from the ILEC via the OSS system. By keeping this system in place the Commission is allowing CLECs to have a short time period of certainty while looking at potential changes in the marketplace. These proposed conditions will allow companies certainty to execute their business plan in the short term, while making any long term adjustments they see if CenturyLink begins to institute a different OSS system.

Q. IF THE COMMISSION DOES NOT FEEL A PERFORMANCE ASSURANCE PLAN IS NECESSARY AS A CONDITION FOR THIS MERGER, IS THERE ANY OTHER ALTERNATIVES?

A. Yes. The Commission has wholesale rules that already exist separate from the QPAP. They are found in Utah Code Ann. §§ R746-365. These rules could be the standard that is required instead of a PAP.

However, the Division believes using these rules without a PAP could pose the potential for problems. As stated above, extensive time and effort has been devoted to creating a PAP that is measurable and functional. In the current

PAP there are measures attached to every single performance indicator. Those measures allow the Division and CLECs to evaluate the openness of Qwest's network. Using the rules could be starting from the beginning, as far as measuring Qwest's network openness, without a level of comfort on how the rules would continue to achieve a competitive, open, wholesale marketplace. The existing Commission rules do not have the extensive measurement requirements and PIDs in place that allow for analysis of the network.

VII. MARKET IMPACTS RESULTING FROM THE MERGER

Q. WHAT MARKET IMPACTS WILL RESULT FROM THE PROPOSED MERGER?

A. Most of the early impacts will be financial, dealing with market capitalization, debt ratios, gross net revenues and earnings, etc. Mr. Oman in his pre-filed direct testimony for the Division discusses the financial implications of the merger.

The least likely market to be impacted by the merger is the retail market. If CenturyLink does not handle the merger smoothly and continue the standard of customer service customers are accustomed to with Qwest, it is highly likely CenturyLink will see a decrease in customers and as a result reduced revenues. Competition from CLEC, wireless, and VOIP providers gives CenturyLink every incentive to maintain Qwest's level of retail service quality.

Wholesale markets, because of the almost monopolistic nature of the incumbent's infrastructure, could see great changes because of the merger. If CenturyLink changes the OSS system, or adopts a PAP vastly different than the current QPAP, retail competition could be damaged through harm in the wholesale market to other retail providers. The Commission and the Division, in setting public policy have tried to follow the statutory mandate in Utah Code Ann. §§ 54-8.b-1.1which:

> (3)[E]ncourages the development of competition as a means of providing wider customer choices for public telecommunications services and
>
> (6)[E]ncourages competition by facilitating the sale of essential telecommunications facilities and services on a reasonably unbundled basis.

Because the Division sees a variety of areas where competition could be harmed by CenturyLink integrating the Qwest's assets, the Division has recommended a variety of reporting and operational conditions that the Commission should adopt dealing with the wholesale market. The Division believes these conditions will help to keep the wholesale market competitive and functioning. The specific conditions recommended by the Division can be found in Attachment 1 under the heading Wholesale Services and Records/Rates/Tariffs/Access to Books.

VIII. CONCLUSION

Q. WHAT IS THE DIVISION'S RECOMMENDATION FOR THIS PETITION?

A. The Division recommends that the Commission approve the merger of Qwest and CenturyLink however, the merger should be conditioned on CenturyLink following the QPAP, using Qwest's Legacy OSS system or allowing regulators and CLECs the ability to test any other OSS system contemplated by CenturyLink, deploying Broadband to customers at 4.0 Mmbps download speed, and providing reports to the Commission on integration of the companies and service quality.

Q. Does this conclude your testimony?

A. Yes it does.