

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

DIRECT TESTIMONY OF

TIMOTHY J GATES

ON BEHALF OF

tw telecom of Utah llc; McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services; Integra Telecom of Utah, Inc., Electric Lightwave, LLC, and Eschelon Telecom of Utah, Inc.; and Level 3 Communications, LLC

Exhibit Joint CLECs 2

PUBLIC VERSION

CONFIDENTIAL AND HIGHLY CONFIDENTIAL DATA HAS BEEN REDACTED

August 30, 2010

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1 **I. INTRODUCTION**

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

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

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

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

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
14 **WORK EXPERIENCE.**

15 A. I received a Bachelor of Science degree from Oregon State University and a
16 Master of Management degree, with an emphasis in Finance and Quantitative
17 Methods, from Willamette University's Atkinson Graduate School of
18 Management. Since I received my Masters, I have taken additional graduate-level
19 courses in statistics and econometrics. I have also attended numerous courses and

1 seminars specific to the telecommunications industry, including both the National
2 Association of Regulatory Utility Commissioners (“NARUC”) Annual and
3 NARUC Advanced Regulatory Studies Programs.

4 Prior to joining QSI, I was a Senior Executive Staff Member at MCI WorldCom,
5 Inc. (“MWC.COM”). I was employed by MCI and/or MWC.COM for 15 years in
6 various public policy positions. While at MWC.COM I managed various functions,
7 including tariffing, economic and financial analysis, competitive analysis, witness
8 training and MWC.COM’s use of external consultants. Prior to joining MWC.COM, I
9 was employed as a Telephone Rate Analyst in the Engineering Division at the
10 Texas Public Utility Commission and earlier as an Economic Analyst at the
11 Oregon Public Utility Commission. Exhibit Joint CLECs 2.1 contains a complete
12 summary of my work experience and education.

13 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE UTAH PUBLIC**
14 **SERVICE COMMISSION (“COMMISSION”)?**

15 A. Yes, on several occasions. I testified as an expert witness in the following
16 Commission dockets: 03-999-04, 00-999-05, 97-049-08, 96-095-01, 83-999-11,
17 and 97-049-05. In addition, I have testified more than 200 times in 45 states and
18 Puerto Rico, and filed comments with the Federal Communications Commission
19 (FCC) on various public policy issues including costing, pricing, local entry,

1 competition, universal service, strategic planning, mergers and network issues.

2 *See*, Exhibit Joint CLECs 2.1.

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

5 A. Yes. While at MCI I was involved in several mergers. I have also observed the
6 consolidation in the telecommunications industry over the last ten years or so.
7 Over the course of my career, I have investigated and/or testified on virtually
8 every issue that defines the wholesale relationship between a Bell Operating
9 Company (“BOC”) or incumbent local exchange carrier (“ILEC”) and their
10 competitive local exchange carrier (“CLEC”) customers/competitors. Further, I
11 have experience assisting CLECs in their wholesale relationships with both
12 companies involved in the proposed transaction. For instance, I have participated
13 in dozens of arbitrations since the 1996 amendments to the Communications Act
14 of 1934 (“Act”)¹ were enacted, including arbitrations and other proceedings
15 involving Qwest and CenturyLink (and/or their predecessors).

16 I am knowledgeable about the interconnection and business practice issues
17 addressed in this testimony as well as the potential impacts the proposed
18 transaction may have on the market, competitors and consumers. Further, I have

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

1 reviewed the Petition filed by Qwest and CenturyLink in this proceeding² and the
2 associated documentation.

3 **Q. ON WHOSE BEHALF ARE YOU FILING THIS DIRECT TESTIMONY?**

4 A. My testimony is being filed on behalf of a number of CLECs: tw telecom of Utah
5 llc; McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business
6 Services; Integra Telecom of Utah, Inc., Electric Lightwave, LLC, and Eschelon
7 Telecom of Utah, Inc.; and Level 3 Communications, LLC.

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

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

10 A. The purpose of my testimony is to demonstrate that the proposed transaction
11 should be rejected, or in the alternative, approved only subject to robust,
12 enforceable commitments or conditions necessary to protect the public interest.
13 The information (or lack thereof) provided by the Joint Applicants to date is
14 woefully insufficient to demonstrate that the proposed transaction is in the public
15 interest, and in fact, that sparse information shows that there is substantial harm
16 that could befall competition and competitors, their end users and ultimately the
17 public interest.

² See, Joint Application for Expedited Approval of Indirect Transfer of Control, Utah Docket No. 10-049-16, May 19, 2010 (“Utah Joint Application”). For the purposes of this testimony, I will use CenturyLink (as opposed to CenturyTel) to refer to the company seeking to acquire Qwest, unless referring specifically to the legacy CenturyTel company that existed prior to the merger with Embarq.

1 At this point, there is only one thing certain about the proposed transaction:
2 uncertainty. The Joint Applicants have put the parties on notice that material
3 changes are coming post-transaction, but has been unable or unwilling to provide
4 any detail about those material changes – i.e., what will and will not change, when
5 changes will occur, how the changes will or will not impact consumers and/or
6 competitors, or why those changes will be made. The significant commercial and
7 regulatory uncertainty surrounding the proposed transaction, in and of itself, is
8 harmful because it provides the Merged Company³ the opportunity to operate to
9 the detriment of competitors and the public. Such uncertainty and the very real
10 potential for harm to the public interest must be addressed by either rejecting the
11 transaction or putting in place enforceable conditions/commitments to prevent or
12 offset this harm. Likewise, as Dr. Ankum explains, the alleged benefits touted by
13 the Joint Applicants amount to nothing more than unsupported, vague statements
14 made to secure transaction approval, and are not verifiable benefits on which the
15 Commission should rely. As a result, the future of telecommunications markets,
16 telecommunication competition upon which consumers rely, and economic
17 development in the state is in serious question due to the proposed transaction.

18 Further, I place this proposed transaction in context by identifying significant
19 problems that have occurred following similar, recent mergers, including the

³ “Merged Company” as used in this testimony is defined in Exhibit Joint CLECs 2.8 as: “the post-merger company (CenturyLink and its Operating Companies, collectively, after the Closing Date).”

1 systems meltdown following the FairPoint acquisition of Verizon properties.
2 These examples provide the Commission and competitors an indication of the
3 problems that could be anticipated in Qwest's territory post-transaction, and
4 should give the Commission serious pause when evaluating the Joint Applicants'
5 unsupported claims – particularly in the absence of any true measureable
6 commitments from the Joint Applicants that benefits will result.

7 Finally, to the extent the Commission does not reject the transaction outright, my
8 testimony describes and recommends conditions that the Commission should
9 adopt or enforceable commitments the Commission should obtain from the Joint
10 Applicants as prerequisites to transaction approval to prevent or offset the harm
11 that would result if the transaction is approved as filed by the Joint Applicants.

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

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

- 14 • Section III discusses the requirements and obligations related to
15 interconnection, UNEs and collocation, as well as the significant efforts (and
16 costs) expended by CLECs to get ILECs to live up to these requirements and
17 obligations so that CLECs can secure interconnection, UNEs and collocation
18 on terms, rates and conditions that are just, reasonable and nondiscriminatory.
- 19 • Section IV discusses the harm to CLECs related to CenturyLink taking control
20 of Qwest's wholesale operations, including the challenges of integrating the
21 two companies as well as examples from this very proceeding showing that
22 the Merged Company is attempting to increase transaction costs and
23 undermine CLECs' ability to protect themselves from merger-related harm.
- 24 • Section V discusses the lessons learned from recent, similar transactions.
25 These examples show that the post-transaction integration process in recent
26 mergers caused significant harm to CLECs and retail customers, despite the

1 merging companies in those cases making the same types of unsupported
2 statements about merger benefits that the Joint Applicants have made in this
3 proceeding.

- 4 • Section VI discusses certain commitments/conditions that the Commission
5 should impose upon the Joint Applicants if the Commission is inclined to
6 approve the proposed transaction. Other commitments/conditions are
7 discussed in the testimony of Dr. Ankum. These commitments/conditions are
8 critical to prevent or offset the harms the proposed transaction will cause for
9 the market, CLECs and consumers.

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

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

12 **Q. PLEASE DESCRIBE THE INTERCONNECTION REQUIREMENTS**
13 **UNDER THE TELECOM ACT.**

14 A. The FCC and state regulatory bodies have recognized that the various subsections
15 of Section 251 of the Act impose escalating interconnection obligations on
16 carriers depending upon their classifications (i.e., telecommunications carrier,
17 LEC, or ILEC). These classifications are based upon their market power,
18 economic position (e.g., monopoly) and attendant public obligations (e.g.,
19 common carrier obligations).

20 Section 251(a) of the Act identifies the general duties of telecommunications
21 carriers to “interconnect directly or indirectly with the facilities and equipment of
22 other telecommunications carriers.” Section 251(b) of the Act identifies the
23 general duties of all LECs which include number portability, dialing parity, and

1 reciprocal compensation. Section 251(c) imposes additional obligations and
2 specific interconnection duties on ILECs, including the duty to negotiate an
3 interconnection agreement (“ICA”) in good faith, provide interconnection on
4 more specific rates, terms and conditions, provide unbundled network elements
5 (“UNEs”), offer services for resale at wholesale rates, provide notice of network
6 changes and provide collocation when requested. The FCC’s *Local Competition*
7 *Order*⁴ at paragraph 1241 describes these additional obligations as follows:

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

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

16 **Q. ARE ALL ILECS SUBJECT TO THE SAME REQUIREMENTS UNDER**
17 **THE ACT?**

18 A. All ILECs are subject to the requirements of Section 251(c) of the Act. However,
19 some ILECs –such as Qwest – are both ILECs *and* Bell Operating Companies (or
20 BOCs) under the Act. The Act requires BOCs to comply not only with Section
21 251(c) of the Act, but also Section 271 of the Act. Section 271 requires BOCs to

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

1 demonstrate compliance with the 14-point competitive checklist before they are
2 allowed to provide in-region interLATA services. The FCC granted Qwest 271
3 authority throughout its 14-state BOC territory in the 2002-2003 timeframe. Non-
4 BOC ILECs, such as CenturyLink, are not required to comply with Section 271
5 requirements.

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

8 A. The state commissions have jurisdiction over approving ICAs and related disputes
9 (e.g., arbitrations) pursuant to Section 252 of the Act⁵ and numerous provisions of
10 state law. State commissions also establish the rates ILECs are permitted to
11 charge for UNEs, interconnection and collocation under Sections 251 and 252,
12 applying the FCC's total element long-run incremental cost methodology
13 ("TELRIC"). State commissions also determine whether certain ILEC central
14 offices meet the federal standards for "delisting" UNE loops or transport as a
15 Section 251 unbundled network element. In addition, states provided consultation
16 to the FCC in relation to the BOCs' applications for Section 271 approval. As
17 explained below, in this role, the state commissions conducted several years'
18 worth of fact-finding, hearings, and testing, and issued extensive
19 recommendations to the FCC regarding the BOCs' adherence to the 14-point

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

1 competitive checklist. Many states have continued their role in monitoring
2 Qwest's 271 compliance by monitoring the Change Management Process
3 ("CMP") and Qwest's wholesale performance indicators and associated
4 performance remedy plans. Furthermore, states have an important role in
5 determining whether a telecommunications company should be relieved of its
6 duties under Section 251 based upon the rural status of that company.

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

8 **Q. DID THE ACT MANDATE A PARTICULAR ENTRY STRATEGY FOR**
9 **COMPETITION?**

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

15 The Act contemplates three paths of entry into the local market --
16 the construction of new networks, the use of unbundled elements
17 of the incumbent's network, and resale. The 1996 Act requires us
18 to implement rules that eliminate statutory and regulatory barriers
19 and remove economic impediments to each. We anticipate that
20 some new entrants will follow multiple paths of entry as market
21 conditions and access to capital permit. Some may enter by
22 relying at first entirely on resale of the incumbent's services and
23 then gradually deploying their own facilities.⁶

⁶ *Local Competition Order* at ¶ 12.

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

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

17 A. Yes. Putting aside the normal competitive risks of any business, a CLEC faces
18 the “Catch 22” of obtaining essential elements of its productive resource –
19 material pieces of its local network – from its principal competitor. For this
20 competitive model to work, the business, technical and operational terms by
21 which the bottleneck elements are available and by which networks are

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

⁷ *Local Competition Order* at ¶ 10.

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

⁹ *Id.* at ¶ 315.

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

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

16 Because of this unusual but unavoidable continuing interaction among providers,
17 for local telecommunications competition to work, competing providers must
18 cooperate behind-the-scenes, even though they are rivals, and even though their
19 economic incentive (as profit-maximizing firms) is to undermine – not help – the
20 other provider's ability to compete for end user customers. As a result, no matter
21 how much retail competition there might be, regulation is needed to make sure

1 that the critical behind-the-scenes cooperation actually occurs. This is the essence
2 and purpose of Sections 251 and 271 of the Act. Because ILECs and BOCs enjoy
3 a significant advantage over CLECs in terms of determining whether the
4 wholesale relationship between them is successful, Sections 251 and 271 (and
5 continued enforcement and compliance with those sections) are absolutely critical
6 to ensuring that ILECs and BOCs continue to cooperate with CLECs.

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

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

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

19 A. Absolutely. Not only are the CLECs concerned about the potential to pass
20 through costs of the proposed transaction in rates, they are also concerned with

1 the ongoing stability and viability of the companies. As customers, they also
2 want to know that the services currently purchased will continue to be available
3 and that the quality and features will at least be constant, if not improve. Further,
4 if this transaction is approved they want to ensure that the Merged Company does
5 not continue to impose certain anti-competitive wholesale practices on
6 competitors. Qwest and CenturyLink should not be rewarded with merger
7 approval for past violations or noncompliance with regulatory requirements, and
8 the Merged Company should not be allowed to continue anti-competitive
9 practices going forward. The proposed transaction is contrary to the public
10 interest if a merging party is violating the law. The proposed transaction could
11 make this problem worse in each of the states at issue by increasing the Merged
12 Company's incentive to engage in or continue anticompetitive conduct and efforts
13 to achieve the enormous synergy savings projected by the Joint Applicants.
14 Finally, integration has been difficult in many mergers that Dr. Ankum and I
15 discuss in our testimonies and the CLECs need enforceable, written
16 conditions/commitments that the best systems of the merging companies will be
17 in place following the proposed transaction, and that the integration of the
18 merging companies will not negatively impact the competitors' operations and
19 ability to compete.

1 **Q. PLEASE CONTINUE WITH YOUR DISCUSSION OF THE UNIQUE**
2 **CONDITIONS IN TELECOMMUNICATIONS AS OPPOSED TO OTHER**
3 **INDUSTRIES.**

4 A. There is a phenomenon referred to in the industry as “network effects,” or,
5 sometimes, as “Metcalfe’s Law.” The basic idea is that a network becomes more
6 and more valuable as more and more people are connected to it. A telephone
7 “network” with only one phone attached is useless. A network with two phones is
8 useful, a thousand phones is better, and a million is even better. To state the
9 obvious, the value of a service is maximized if the customer can contact any other
10 person on the network. In competitive terms, though, this means that, other things
11 being equal, whichever network is the biggest will be the most valuable, and the
12 one to which consumers will want to be connected.

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

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

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

1 As long as the existing, incumbent network is bigger than a competing network,
2 the competing network will not be able to attract any customers – unless those
3 customers can call, and be called by, the people connected to the existing
4 network. Additionally, as the incumbent’s network gets bigger, it is able to
5 spread its costs over a larger customer base – resulting in efficiencies and
6 economies of scale and scope. Competition simply cannot develop if competitors
7 do not have clear and stable terms, conditions and rates for connecting to, and
8 exchanging traffic with, the existing incumbent network. Similarly, competition
9 would not develop if the ILEC is able to keep the benefits of its economies of
10 scale and scope, and associated efficiencies for itself and provide competitors
11 access to critical bottleneck elements of the local network on a more costly or less
12 efficient basis. Again, Sections 251 and 271 of the Act are designed to ensure
13 that CLECs are on an equal footing with the ILEC and the benefits accrued by the
14 ILEC due to network effects and economies of scale and scope are realized by the
15 local telecommunications market as a whole, including CLECs.

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

1 A. No. The latest FCC reports, even when adding in interconnected VoIP offerings,
2 still show the ILECs with more than 70 percent of the market.¹⁰ And, the results
3 are similar in Utah, where the ILECs' share of total end-user switched access lines
4 and VoIP subscriptions was 74% as of the FCC's most recent Local Telephone
5 Competition Report.¹¹ Further, the FCC has recognized Qwest's monopoly over
6 wholesale inputs relied upon by CLECs. In rejecting Qwest's recent petition for
7 forbearance in the Minneapolis, Denver, Seattle and Phoenix metropolitan
8 statistical areas ("MSAs"), the FCC concluded that "[t]he record does not reflect
9 any significant alternative sources of wholesale inputs for carriers in the four
10 MSAs."¹² And specifically with respect to Qwest's serving area in Phoenix,
11 Arizona, in June 2010, the FCC concluded:

12 ...based on the data in the record, Qwest fails to demonstrate that
13 there is sufficient competition to ensure that, if we provide the
14 requested relief, Qwest will be unable to raise prices, discriminate
15 unreasonably, or harm customers. For example, the record reveals
16 that no carrier besides Qwest provides meaningful wholesale
17 services throughout the Phoenix marketplace, and that competitors

¹⁰ FCC "Local Telephone Competition: Status as of December 31, 2008" released June 2010 at Figure 2 (showing ILEC residential and business market share of 73%).

¹¹ FCC "Local Telephone Competition: Status as of December 31, 2008" released June 2010 at Table 11. Shows "Non-ILEC Share of Total End-User Switched Access Lines and VoIP Subscriptions" for Utah at 26%. If non-ILEC share is 26%, then ILEC share is 74%.

¹² *In the Matter of Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, Memorandum Opinion and Order, WC Docket No. 07-97, FCC 08-174, Released July 25, 2008 ("*Qwest Forbearance Order*") at ¶ 37.

1 offering business services largely must rely on inputs purchased
2 from Qwest itself to provide service.¹³

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

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

14 **Q. HAVE CLECS SPENT LARGE SUMS OF MONEY ESTABLISHING THE**
15 **RATES, TERMS AND CONDITIONS BY WHICH THEY PURCHASE**
16 **NETWORK ELEMENTS, COLLOCATION AND INTERCONNECTION**
17 **FROM ILECS?**

¹³ *In the Matter of Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113, Released June 22, 2010 (“*Qwest Arizona Forbearance Order*”) at ¶ 2.

¹⁴ Wholesale services also includes “commercial agreements,” which “include but are not limited to wholesale metro Ethernet agreements, OCN (SONET) agreements, Local Services Platform (*e.g.*, QLSP) agreements, Dark Fiber agreements, Broadband for Resale agreements, and line sharing agreements.” *See*, Exhibit Joint CLECs 2.8.

1 A. Absolutely. First, CLECs and ILECs must negotiate those rates, terms and
2 conditions for a period of time. Then, for each issue on which the companies are
3 unable to reach agreement, they must arbitrate that issue before each state
4 commission. It is not uncommon for a CLEC and ILEC to disagree on dozens of
5 issues, each of which must be arbitrated. Once the final agreement is established,
6 it must be submitted to the state commission for approval. I have been involved
7 in dozens of these arbitration cases and can say, first hand, that they consume an
8 enormous amount of time and money for both the CLEC and the ILEC. Indeed,
9 even after a final order from the state commission, there may be appeals that
10 consume substantial additional time and money. On a separate but related note,
11 often cost-based rates that apply to UNEs, interconnection and collocation in an
12 ICA are established in separate generic cost dockets in which CLECs participate
13 to ensure that the resulting rates satisfy the federal TELRIC¹⁵ pricing standards.
14 My firm, QSI, recently participated in generic cost dockets for Qwest in
15 Minnesota and Colorado. The Minnesota cost proceeding lasted for about three
16 years, and it has been about one and one-half years since Qwest filed its initial
17 testimony in the ongoing Colorado proceeding. During this time, CLECs have
18 expended a significant amount of time and money in an attempt to ensure that

¹⁵ “TELRIC” stands for Total Element Long Run Incremental Cost and is discussed and defined in the FCC’s *Local Competition Order* at ¶¶ 674-703. That pricing methodology is used to price UNEs and interconnection services. The FCC rules which require the ILEC to price its network elements using TELRIC also require the ILEC to provide non-discriminatory access to those same elements as well as interconnection. *See*, 47 C.F.R. § 51 Subpart F (Pricing of Elements) and 47 C.F.R. §§ 51.305, 51.311 and 51.313.

1 Qwest's rates for UNEs, interconnection and collocation comply with the law.
2 Furthermore, CLECs have spent an enormous amount of time and money
3 attempting to ensure that the BOCs comply (and continue to comply) with the
4 obligations set forth in approved ICAs and Sections 251 and 271 of the Act.

5 **Q. PLEASE EXPLAIN WHY LITIGATION HAS BEEN REQUIRED TO**
6 **RESOLVE THESE ISSUES?**

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

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

16 Given that the incumbent LEC will be providing interconnection to
17 its competitors pursuant to the purpose of the 1996 Act, the LEC
18 has the incentive to discriminate against its competitors by
19 providing them less favorable terms and conditions of
20 interconnection than it provides itself.¹⁶

¹⁶ *Local Competition Order* at ¶ 218.

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

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

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

23 **Q. PLEASE PROVIDE AN EXAMPLE.**

24 A. During the 271 approval process for Qwest, one thing the state commissions and
25 FCC did was to require a Statement of Generally Available Terms ("SGAT").
26 SGATS were to include a baseline offering of UNEs, interconnection and

1 collocation services of the BOC that complied with the 271 obligations, and were
2 offered by the BOCs to CLECs in negotiations. After Qwest received 271
3 approval, however, it unilaterally withdrew its SGATs, replacing them instead
4 with Qwest's template proposals as Qwest's baseline offering in negotiations.

5 **Q. DID THE NEW QWEST TEMPLATE PROPOSAL RESULT IN MORE**
6 **DISPUTES?**

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

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

16 A. Yes. In addition to the disputes I just mentioned, there are frequently billing
17 disputes over traffic types, jurisdiction of traffic, bills for services rendered or not
18 rendered, etc. There are also disputes over network engineering responsibilities,
19 response times for trouble reports, and quality of service, not to mention issues
20 with submitting orders through the various system interfaces. In addition, I have

1 recently been involved in a number of disputes surrounding the customer
2 acquisition and migration processes that are a component of interconnection
3 agreements between incumbents and competitors (I will discuss several examples
4 of these problems later in my testimony). Further, the legal teams sometimes
5 have disputes over orders and rulings that may or may not apply to services under
6 an ICA.¹⁷ Resolving these types of issues results in additional time and expense
7 for both CLECs and ILECs.

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

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

12 **Q. CENTURYLINK CLAIMS THAT WHOLESALE ISSUES SHOULD BE OF**
13 **NO CONCERN BECAUSE THE TRANSACTION IS A STOCK-FOR-**
14 **STOCK, PARENT LEVEL TRANSACTION.¹⁸ IS THE COMPANY**
15 **CORRECT?**

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

¹⁷ The legal teams sometimes invoke the "Change of Law" provisions of an ICA to renegotiate a condition or term or to eliminate them altogether.

¹⁸ See, e.g., Joint Comments of CenturyLink and Qwest on Procedural Issues, Minnesota Docket No. P-430/PA-10-456, filed June 1, 2010, at p. 2 ("A key aspect of the transaction, reflected in the Joint Petition, is the fact that all Minnesota Operating Companies will continue to operate as separate entities under their respective certificates of authority after the transaction is completed. Thus, issues and disputes that involve the relationship between the Operating Companies and other carriers need not be part of this proceeding.")

1 acknowledges this in the following statement: “At closing, Qwest will become a
2 direct, wholly-owned subsidiary of CenturyLink and all Qwest subsidiaries,
3 including QC, will be indirectly *owned and controlled by CenturyLink...*”¹⁹

4 This means that post-merger, CenturyLink will make the decisions about how
5 Qwest interacts with its wholesale customers, how much Qwest will attempt to
6 charge for its wholesale services, the resources that will be dedicated to wholesale
7 service quality and provisioning, the amount Qwest invests in its network for
8 advanced services, etc.

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

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

¹⁹ Direct Testimony of Jeremy Ferkin on behalf of CenturyLink, Inc., Utah PSC Docket No. 10-049-16, May 27, 2010 (“Ferkin Utah Direct”), at page 5, lines 1-3.

1 A. Yes. Unlike Qwest, CenturyLink is not a BOC in any of its existing territories.
2 As such, CenturyLink has not been required to satisfy the critical market-opening
3 provisions found in the 14-point competitive checklist under Section 271 of the
4 Act.²⁰ I will explain below why the lack of CenturyLink experience as a BOC is
5 of grave concern to CLECs and should be of paramount concern to the
6 Commission.

7 Traditionally, CenturyLink has operated mostly in rural areas²¹ (CenturyLink has
8 rural exemptions that limit its section 251 wholesale duties in some of its areas²²),
9 and only recently acquired a few more urban areas through its acquisition of
10 Embarq. Accordingly, CenturyLink has very little, if any, experience with the
11 types and quantities of wholesale obligations and relationships that are found in
12 Qwest's BOC territories. Moreover, CenturyLink has provided no commitments
13 that it will maintain or improve the wholesale services, rates and service quality
14 that CLECs experience with Qwest today.

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

²⁰ 47 U.S.C. § 271(c)(2)(B).

²¹ See, e.g., Direct Testimony of Jerry Fenn on behalf of Qwest Communications International, Inc. Utah PSC Docket No. 10-049-16, May 27, 2010 ("Fenn Utah Direct"), at p. 13 ("CenturyLink's distinctive expertise in serving smaller, rural areas...")

²² Section 251(f) of the Telecommunications Act of 1996 exempts rural telephone companies from the obligations applicable to ILECs under Section 251(c) of the Act until a state commission lifts the rural exemption.

1 A. Since CenturyLink has traditionally operated in rural areas exempt from full
2 competition, it has not been required to handle the same quantities of wholesale
3 customers and wholesale orders as Qwest is accustomed to handling. For
4 example, CenturyLink provided data showing that it processed a total of
5 *****BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY**
6 **CONFIDENTIAL*****²³ LNP number ports in Utah in 2009, and *****BEGIN**
7 **HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL*****²⁴
8 LNP number ports company-wide in 2009. By comparison, Qwest processed
9 *****BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY**
10 **CONFIDENTIAL*****²⁵ ports in Utah and *****BEGIN HIGHLY**
11 **CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL*****²⁶ ports
12 company-wide *in the first half of 2010 alone*. Or, in other words, Qwest
13 processes, on average, *****BEGIN HIGHLY CONFIDENTIAL [REDACTED]**
14 **END HIGHLY CONFIDENTIAL***** number ports in Utah than does
15 CenturyLink throughout its entire legacy territory. On a company-wide basis,
16 Qwest processes *****BEGIN HIGHLY CONFIDENTIAL [REDACTED] END**
17 **HIGHLY CONFIDENTIAL***** number ports than does CenturyLink.
18 Regarding UNE loops, CenturyLink has stated that in Utah, CLECs purchase

²³ CenturyLink Response to Integra Utah Data Request #1-2(i), Confidential Attachment Integra-2.

²⁴ CenturyLink Response to Integra Utah Data Request #1-2(i), Confidential Attachment Integra-2.

²⁵ Qwest Response to Integra Utah Data Request #1-1(i), Confidential Attachment A.

²⁶ Qwest Response to Integra Utah Data Request #1-1(i), Confidential Attachment A.

1 *****BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY**
2 **CONFIDENTIAL*****²⁷ UNE loops from CenturyLink, and company-wide
3 CLECs purchase *****BEGIN HIGHLY CONFIDENTIAL [REDACTED] END**
4 **HIGHLY CONFIDENTIAL*****²⁸ UNE loops from CenturyLink. By
5 comparison, CLECs purchase *****BEGIN HIGHLY CONFIDENTIAL [REDACTED]**
6 **END HIGHLY CONFIDENTIAL*****²⁹ UNE loops from Qwest in Utah alone.
7 Regarding Enhanced Extended Links (EELs), CenturyLink states that CLECs
8 purchase *****BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY**
9 **CONFIDENTIAL*****³⁰ EEL(s) from CenturyLink in Utah and *****BEGIN**
10 **HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL*****³¹
11 EEL(s) company-wide. By comparison, CLECs purchase *****BEGIN HIGHLY**
12 **CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL*****³² EELs from
13 Qwest in Utah, or *****BEGIN HIGHLY CONFIDENTIAL [REDACTED]**
14 **END HIGHLY CONFIDENTIAL***** the number of EELs purchased from
15 CenturyLink throughout CenturyLink's entire legacy territory. In Utah,
16 *****BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY**

²⁷ CenturyLink Response to Integra Utah Data Request #1-2(b), Confidential Attachment Integra-2.

²⁸ CenturyLink Response to Integra Utah Data Request #1-2(b), Confidential Attachment Integra-2.

²⁹ Qwest Response to Integra Utah Data Request #1-1(b), Confidential Attachment A.

³⁰ CenturyLink Response to Integra Utah Data Request #1-2(d), Confidential Attachment Integra-2.

³¹ CenturyLink Response to Integra Utah Data Request #1-2(d), Confidential Attachment Integra-2.

³² Qwest Response to Integra Utah Data Request #1-1(d), Confidential Attachment A.

1 **CONFIDENTIAL***³³** CLECs purchase *****BEGIN HIGHLY**
2 **CONFIDENTIAL** ■ **END HIGHLY CONFIDENTIAL***³⁴** collocation
3 arrangement(s) from CenturyLink and, company-wide, *****BEGIN HIGHLY**
4 **CONFIDENTIAL** ■ **END HIGHLY CONFIDENTIAL***³⁵** CLECs purchase
5 a total of *****BEGIN HIGHLY CONFIDENTIAL** ■ **END HIGHLY**
6 **CONFIDENTIAL***³⁶** collocation arrangements from CenturyLink. Qwest
7 sells *****BEGIN HIGHLY CONFIDENTIAL** ■ **END HIGHLY**
8 **CONFIDENTIAL***³⁷** collocation arrangements to *****BEGIN HIGHLY**
9 **CONFIDENTIAL** ■ **END HIGHLY CONFIDENTIAL***** CLECs in Utah.³⁸

10 This data shows that CenturyLink will inherit a much larger wholesale operation
11 than it has operated to date.

12 **Q. CENTURYLINK HAS, IN OTHER STATE PROCEEDINGS, POINTED**
13 **TO “BEST IN CLASS” AWARDS IT HAS WON AS ALLEGED**
14 **EVIDENCE OF CENTURYLINK’S COMMITMENT TO PROVIDE**
15 **QUALITY WHOLESALE SERVICES.³⁹ DID CENTURYLINK DISCUSS**
16 **THOSE AWARDS IN UTAH?**

³³ CenturyLink Response to Integra Utah Data Request #1-2(e), Confidential Attachment Integra-2.

³⁴ CenturyLink Response to Integra Utah Data Request #1-2(f), Confidential Attachment Integra-2.

³⁵ CenturyLink Response to Integra Utah Data Request #1-2(e), Confidential Attachment Integra-2.

³⁶ CenturyLink Response to Integra Utah Data Request #1-2(f), Confidential Attachment Integra-2.

³⁷ Qwest Response to Integra Utah Data Request #1-1(f), Confidential Attachment A.

³⁸ Qwest Response to Integra Utah Data Request 1-1(e), Confidential Attachment A.

³⁹ Hunsucker Oregon Direct at p. 9, lines 12-20.

1 A. No. Despite discussing these awards in its merger testimony in other states,⁴⁰
2 CenturyLink does not mention them in its testimony here in Utah.

3 **Q. IF CENTURYLINK SHOULD MENTION THESE AWARDS IN FUTURE**
4 **FILINGS IN UTAH, DO THESE AWARDS PROVIDE ANY COMFORT**
5 **ABOUT WHOLESALE SERVICE QUALITY POST-MERGER?**

6 A. No. CenturyLink stated in Oregon: "CTL won four 'Best in Class' awards based
7 on the 2009 Metro Wholesale Carrier Report Card study from Atlantic-ACM. The
8 awards were in four key areas: customer service, sales representatives,
9 provisioning, and billing. CTL has won the award for provisioning for three
10 consecutive years and the award for customer service and sales representatives for
11 two consecutive years."⁴¹ Based on information provided by Atlantic-ACM, the
12 Best in Class awards are based on a survey, and for taking the time to respond to
13 the survey, the respondent is entered in a drawing for a 16 GB Apple iPad (WiFi),
14 Amazon Kindle Global Wireless, Garmin Nuvi550, Flip MiniHD camcorder, or
15 cash equivalent. In addition, the surveys are not necessarily provided to the
16 appropriate CLEC representatives and therefore are unlikely to represent the
17 CLEC's overall experience and view point. Further, the companies you vote for
18 sponsor the research, which suggests that not all telecommunications companies
19 are candidates on the survey. While the Atlantic-ACM awards may provide a

⁴⁰ See, e.g., Hunsucker Oregon Direct at p. 9, and Direct Testimony of John Jones, Minnesota PUC Docket No. P-421, et al./PA-10-456, June 14, 2010, p. 13.

⁴¹ Hunsucker Oregon Direct at p. 9.

1 useful marketing data point for CenturyLink, it is not based on the type of
2 verifiable statistical data on which the Qwest wholesale Performance Indicators
3 (“PIDs”) and Performance Assurance Plans (“PAPs”) are based. In other words,
4 it is not based on objective performance data and is not representative of the
5 volumes associated with Qwest’s regions.

6 ***B. Integration Challenges And The Complete Lack Of Information***
7 ***Regarding That Integration Effort***

8 **Q. CENTURLINK AND QWEST SUGGEST THAT THE PROPOSED**
9 **TRANSACTION WILL NOT NEGATIVELY AFFECT WHOLESALE**
10 **OPERATIONS POST-MERGER.⁴² WHY DOES THAT NOT PROVIDE**
11 **YOU COMFORT ABOUT POST-MERGER WHOLESALE**
12 **OPERATIONS?**

13 A. My primary concern relates to the integration effort that will take place after the
14 proposed transaction. CenturyLink has estimated \$625 million in synergy savings
15 resulting from the transaction; therefore, the Merged Company will be under
16 intense pressure to meet those savings estimates, post-merger. At the same time
17 the Merged Company is attempting to find synergies, it will be under pressure to
18 produce meaningful dividends, pay down debt and invest in advanced services. In
19 other words, achieving the estimated synergy savings is paramount to meeting

⁴² See, e.g., Utah Joint Application at p. 13 (“because the Transaction results in no direct change to the operating entities, it is transparent to customers.”) See also, Fenn Utah Direct at p. 4, line 17 (“the Transaction will be transparent to customers...”).

1 shareholder expectations, satisfying retail customers, and keeping the Merged
2 Company solvent. Given these priorities, maintaining wholesale service quality
3 may be low on the Merged Company's priority list, or worse yet, wholesale
4 service quality may be targeted for cutbacks in the pursuit of synergy savings.

5 **Q. PLEASE DISCUSS HOW THE MERGED COMPANY WILL ATTEMPT**
6 **TO ACHIEVE SYNERGIES.**

7 A. The Merged Company has indicated that it will seek synergy savings through
8 operating cost savings (i.e., eliminating duplicative functions and systems related
9 to corporate overhead, network and operational, IT, advertising/marketing,
10 increased purchasing power) and capex savings.⁴³ All told, the company expects
11 \$575 million in operating cost synergies and \$50 million in capital expense
12 synergies, for a total of \$625 million over a three-to-five year period. The
13 elimination of duplicative functions (or headcount) and systems will impact
14 wholesale (and retail) operations.

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

⁴³ See, e.g., Direct Testimony of Jeff Glover on behalf of CenturyLink, Inc., Utah PSC Docket No. 10-049-16, May 27, 2010 ("Glover Utah Direct"), Exhibit JSG-1, slide page number 13.

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

11 **Q. DO YOU HAVE AN UNDERSTANDING OF THE MERGED**
12 **COMPANY’S INCENTIVES REGARDING INTEGRATION?**

13 A. Yes. First, as a publicly-traded company, the Merged Company will be under
14 intense pressure to achieve its estimated synergy savings through integrating the

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

⁴⁵ “Identification of ‘best practices’ associated with the integration of CenturyLink and Qwest operations will be completed as part of the detailed integration planning efforts. Until the integration teams are formed, and the detailed data gathering process can be completed, an analysis regarding the identification and/or adoption of ‘best practices’ is not available.” CenturyLink Response to Integra Utah Data Request #52(g). *See also*, CenturyLink Response to Integra Data Request #52(g) in Arizona (dated 7/20/10), Colorado (dated 7/19/10), Minnesota (dated 7/8/10), Oregon (7/14/10), Washington (dated 7/16/10), and PAETEC Iowa Data Request #52(g) (dated 7/23/10).

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

17 What's more, there are many ways that the Merged Company can pursue this two-
18 headed incentive (reducing costs and disadvantaging competitors) during
19 integration of the two companies; degrade access to systems by integrating a

⁴⁶ CenturyLink has stated that: "A financially stronger company can...compete against....CLECs." Utah Joint Application at p. 14.

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

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

16 A. Yes. The lack of incentive to open up local markets to competition and to keep
17 those markets open is precisely why the Section 271 14-point competitive
18 checklist is so important – it created a “carrot” (i.e., in-region interLATA
19 authority) for the BOCs so that they would open their local areas to competition
20 instead of following their natural incentive as a profit-maximizing firm to keep
21 local competitors out. Since CenturyLink has no experience dealing with 271

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

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

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

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

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

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

1 by the Act: interconnection, unbundled network elements, and
2 services offered for resale.⁴⁷

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

8 **Q. WHAT IS OSS?**

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

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

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

⁴⁸ *Local Competition Order* at ¶518.

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

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

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

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

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

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

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

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

⁵³ *Local Competition Order* at ¶ 516.

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

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

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

12 A. First, CenturyLink uses different OSS than Qwest. And, unlike Qwest's OSS,
13 which was extensively tested during the 271 approval process, CenturyLink's
14 OSS has not been third-party tested to determine whether they meet the
15 nondiscriminatory requirements of Section 271. Second, the existing Qwest OSS
16 and its functionality are more well-documented, and preferred by carriers such as
17 Charter that use both of the merging companies' systems, than the existing
18 CenturyLink OSS. Just as carriers in Embarq territory did not want to revert to
19 the more manual processes of CenturyTel in that merger,⁵⁵ CLECs do not want

⁵⁵ See, e.g., *In the Matter of Applications Filed for Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238, FCC 09-54, Released June 25, 2009 ("FCC

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

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.”).

⁵⁶ CenturyLink Response to Integra Utah Request #18 (“While CenturyLink has not conducted third-party testing of its systems...”)

1 be a step in the wrong direction for competitors, competition and potentially even
2 the Merged Company.

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

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

9 Until the Transaction is complete, and the necessary decisions have
10 been made on how to best integrate the two companies, plans for
11 specific changes to the Qwest or CenturyLink Operations Support
12 Systems (OSS) have not been fully developed.⁵⁷

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

16 At this time, system integration plans for the proposed transaction
17 with Qwest have not been fully developed. In fact, complete
18 integration plans cannot be developed until the merger is

⁵⁷ CenturyLink Response to Integra Data Request #23 in Arizona, Colorado, and Washington. *See also*, CenturyLink Response to PAETEC Data Request #23 in Iowa. In Oregon, Utah and Minnesota CenturyLink states: "Upon merger closing, CenturyLink does not anticipate any immediate changes to the Qwest CLEC OSS systems. Integration planning is in the early stages and decisions have not been made at this time. However, because the transaction results in the entirety of Qwest, including operations and systems, merging into and operating as a subsidiary of CenturyLink, it will allow a disciplined approach to reviewing systems and practices and will allow integration decisions to proceed in an orderly disciplined manner. To the extent any changes are made, CenturyLink will comply with all applicable state and federal laws and rules, as wells (sic) as the provisions of any applicable interconnection agreements or tariffs, in the same manner as they would apply notwithstanding the merger." CenturyLink Response to Integra Data Request #23 in Utah and Minnesota, and CenturyLink Response to Joint CLEC Oregon Data Request #27.

1 concluded. However, because the transaction results in the entirety
2 of Qwest, including operations and systems, merging into and
3 operating as a subsidiary of CenturyLink, it will allow a
4 disciplined approach to systems and practices integration decisions
5 to proceed in a disciplined manner.⁵⁸

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

10 Integration planning is in the early stages and decisions on wholesale
11 OSS systems have not been made at this time. Upon merger closing,
12 there will be no immediate changes to Qwest’s or CenturyLink’s
13 OSS. Any changes will occur only after a thorough and methodical
14 review of both companies’ systems and processes to determine the
15 best system to be used on a go-forward basis. Decisions will be made
16 from both a combined company and a wholesale customer perspective
17 and consistent with the continued provision of quality service to our
18 wholesale customers.⁵⁹

19 In sum, CenturyLink’s claims that it cannot respond until the merger is complete,
20 provides the Commission an insufficient basis to evaluate a critical aspect of the
21 merger: OSS integration. While CenturyLink has made vague statements publicly
22 about operations in Qwest territories being unaffected by the proposed
23 transaction, it would seem that issues like the OSS issue would be very easy for

⁵⁸ CenturyLink Response to Oregon PUC Staff Data Request #32. *See also*, CenturyLink Response to Integra Utah Data Request #27 (“At this time, system integration plans for the proposed transaction with Qwest have not been fully developed. However, because the transaction results in the entirety of Qwest, including operations and systems, merging into and operating as a subsidiary of CenturyLink, it will allow a disciplined approach to reviewing systems and practices and will allow integration decisions to proceed in an orderly manner.”)

⁵⁹ CenturyLink Response to Oregon PUC Staff Data Request #60. *See also*, Hunsucker Oregon Direct at pp. 8-9.

1 the Joint Applicants to put to rest with a straightforward commitment to leave
2 existing Qwest wholesale processes and OSS in place for a significant timeframe,
3 as well as a commitment to follow similar objective, third-party testing if and
4 when changes are made to the system. However, in sworn testimony or discovery
5 responses, the Joint Applicants have been unwilling or unable to make that simple
6 commitment or give a straight answer – often refusing to provide a meaningful
7 answer at all. That certainly gives me strong concerns about the Joint Applicants’
8 intent, and it should concern the Commission as well.

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

14 A. Yes. The following CenturyLink testimony underscores this concern:

15 [t]he combined company will continue to meet these [271]
16 obligations through its wholesale operations *leveraging* the key
17 resources and expertise of *both entities*.⁶⁰

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

⁶⁰ Hunsucker Oregon Direct at pp. 12-13.

1 – CenturyLink’s have (admittedly⁶¹) not. So, when CenturyLink says that it will
2 integrate at least some of CenturyLink’s wholesale resources and expertise into
3 Qwest’s territory (such as an OSS interface), it is likely that some of the interfaces
4 and processes that have been deemed as 271-compliant would be replaced by
5 interfaces and processes that have not been found to be 271-compliant.

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

9 A. Qwest’s existing OSS, CMP and supporting processes and data, were thoroughly
10 tested during the Qwest 271 approval process to ensure that they provided the
11 nondiscriminatory access required by Section 271. According to Qwest, the
12 collaborative OSS test “was the most comprehensive and collaborative of all of
13 the OSS tests conducted to date.”⁶² And referring to the final report of the third-
14 party tester, Qwest said: “This *Final Report* marked the culmination of more than
15 three years of exhaustive and comprehensive effort, *unlike any seen before*, to
16 determine whether Qwest’s OSS meet the standards set forth under Section 271 of
17 the Telecommunications Act of 1996, as those standards have been amplified and

⁶¹ Hunsucker Oregon Direct at p. 12.

⁶² Brief of Qwest Corp., WC Docket No. 02-148, June 13, 2002, at p. 111.

1 applied by the FCC.”⁶³ Qwest’s opinion was shared by the state commissions that
2 participated and oversaw the third-party testing, such as the Arizona Corporation
3 Commission which stated:

4 The ACC believes that during the last four years, Qwest systems,
5 processes, and performance measurements have undergone one of
6 the most comprehensive reviews to-date...result[ing] in an
7 extremely rigorous test, resolution of many disputed issues through
8 compromise, and meaningful and effective changes to Qwest’s
9 systems and processes.⁶⁴

10 The FCC said “...the OSS testing conducted under the auspices of the ROC
11 [Regional Oversight Committee] was broad-based and comprehensive.”⁶⁵
12 Attached to my testimony as Exhibit Joint CLECs 2.2 is a detailed description of
13 the extensive, three-year process that was undertaken by state regulators, the FCC,
14 Qwest, CLECs and third-party testers to ensure that Qwest’s existing OSS,
15 performance metrics, and CMP met the requirements of Section 271. This exhibit
16 also explains that hundreds of issues of concern were identified during third-party
17 testing and resolved through improvements to Qwest’s OSS.

⁶³ Qwest Verified Comments, Washington Docket No. UT-003022 at pp. 1-2 (emphasis added). Qwest also described the OSS testing as: “years of rigorous fact finding and analysis...” Reply Comments of Qwest Corp., WC Docket No. 02-148 at p. 2.

⁶⁴ Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003 (“ACC Evaluation”), at p. 5. The Colorado Public Utilities Commission referred to the testing process as “the epitome of collaborative, open decision making.” Reply Comments of Qwest Corp., WC Docket No. 02-148 at p. 2.

⁶⁵ *Qwest 9 State 271 Order* at ¶ 12.

1 **Q. YOU MENTIONED THAT THE THIRD-PARTY TEST INVOLVED AN**
2 **EVALUATION OF QWEST’S PERFORMANCE MEASUREMENTS.**
3 **PLEASE ELABORATE.**

4 A. The third-party test included an audit of Qwest’s performance assurance plan
5 (“QPAP”) (a self-executing remedy plan to ensure Qwest continues to comply
6 with the competitive checklist) and related performance indicators or “PIDs”
7 (which are used in the QPAP to measure Qwest’s performance and to determine
8 whether Qwest must make remedy payments to CLECs or the state for
9 substandard wholesale service quality). A coalition was formed – the Regional
10 Oversight Committee (“ROC”) Post-Entry Performance Plan (“PEPP”) – to
11 discuss and address issues related to Qwest’s wholesale performance, including
12 the PAP. Qwest filed its PAP on June 29, 2001, and a multi-state proceeding
13 (conducted by a third-party Facilitator from Liberty Consulting) was initiated to
14 review Qwest’s PAP.⁶⁶ Qwest’s PIDs were developed collaboratively by the
15 ROC for use in the third-party test to measure Qwest’s ability to process
16 commercial volumes through its OSS.⁶⁷ Qwest’s PIDs measure performance in
17 three ways: retail parity (for measures with retail analogues), benchmark (for

⁶⁶ See, e.g., *In the Matter of the Investigation Into US WEST Communications, Inc.’s Compliance with Section 271 of the Telecommunications Act of 1996*, Thirtieth Supplemental Order, Commission Order Addressing Qwest’s Performance Assurance Plan, Washington UTC Docket Nos. UT-003022/003040, April 2002 (“Washington 30th Supplemental Order”) at ¶¶ 10-11.

⁶⁷ *In the Matter of the Investigation Into US WEST Communications, Inc.’s Compliance with Section 271 of the Telecommunications Act of 1996*, Thirty-Ninth Supplemental Order, Commission Order Approving SGAT and QPAP, and Addressing Data Verification, Performance Data, OSS Testing, Change Management, and Public Interest, Washington UTC Docket Nos. UT-003022/003040, July 1, 2002 (“Washington 39th Supplemental Order”) at ¶ 345.

1 measures without retail analogues) and “parity by design” (for measures without
2 retail analogues or benchmarks).⁶⁸ The Master Test Plan directed Liberty
3 Consulting to “develop and perform an audit to insure that all aspects of Qwest’s
4 wholesale performance measures and retail parity standards are sound and in
5 compliance with the collaboratively developed ROC PID.”⁶⁹

6 Qwest’s PAPs and associated PIDs are absolutely essential to ensure that local
7 markets in Qwest’s region remain open to competition (i.e., Qwest does not
8 backslide). For instance, the FCC said:

9 As set forth below, we find that the performance assurance plans
10 (PAP) that will be in place...provide assurance that the local
11 market will remain open after Qwest receives section 271
12 authorization in the nine application states...and are likely to
13 provide incentives that are sufficient to foster post-entry checklist
14 compliance.⁷⁰

15 It is my understanding that with a few exceptions in the legacy Embarq territory,
16 CenturyLink is not subject to PAPs or PIDs, and certainly not PAPs or PIDs that
17 were extensively tested during the 271 approval process. And since Qwest’s
18 PAPs and PIDs go hand-in-hand with Qwest’s existing OSS systems, any change
19 to the existing Qwest OSS would likely mean changes for Qwest’s PAPs and
20 PIDs. This would have a dramatic negative effect on the ability to identify
21 discriminatory treatment by the Merged Company and would give the Merged

⁶⁸ *Washington 39th Supplemental Order* at ¶ 32.

⁶⁹ *Washington 39th Supplemental Order* at ¶ 33.

⁷⁰ *Qwest 9 State 271 Order* at ¶ 440.

1 Company more opportunity to backslide on its 271 obligations in Qwest’s legacy
2 territory.

3 **Q. DOES YOUR EXPLANATION AND EXHIBIT REGARDING THE**
4 **TESTING OF QWEST’S OSS UNDERSCORE THE CLEC CONCERNS**
5 **ABOUT OSS INTEGRATION?**

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

15 **Q. CENTURYLINK APPEARS CONFIDENT THAT ITS WHOLESALE OSS**
16 **AND OPERATIONS, IF INTEGRATED IN QWEST’S LEGACY**
17 **TERRITORY, WOULD COMPLY WITH 271 REQUIREMENTS.⁷¹**
18 **SHOULD THE COMMISSION SHARE THIS CONFIDENCE?**

⁷¹ Hunsucker Oregon Direct at pp. 12-13 (“CTL is not a BOC and as such has no similar 271 obligations that apply to its territories nor should there be any 271 obligations placed on the legacy CTL territories in Oregon post merger closing. However, the legacy Qwest territories will continue to have 271

1 A. No. There is absolutely no basis for CenturyLink’s claim. Ironically, Qwest
2 made a similar claim back in 1999 that its OSS and CMP at that time satisfied the
3 Section 271 requirements. However, three years of third-party testing under ROC
4 supervision, dozens of “meaningful and effective changes to Qwest’s systems and
5 processes[,]”⁷² and millions of dollars later, it was proven that Qwest’s confident
6 assurances about its OSS and CMP being 271 compliant were baseless. I have
7 provided as Exhibit Joint CLECs 2.3 the “Assurances Not Met” exhibit which
8 compares the assurances Qwest made in 1999 about its then-flawed OSS and
9 CMP to the assurances CenturyLink is now making. As this exhibit shows, it
10 would be unwise for the Commission to accept CenturyLink’s promises in this
11 regard at face value.

12 **Q. YOU STATE ABOVE THAT CENTURYLINK AND QWEST USE**
13 **DIFFERENT OSS. PLEASE ELABORATE ON THE DIFFERENCES**
14 **BETWEEN THE TWO COMPANIES’ OSS.**

15 A. Take the CLEC-facing OSS interfaces for pre-ordering, ordering and
16 maintenance/repair for example. For pre-ordering, ordering and provisioning of
17 UNEs/resale Local Service Requests (“LSRs”), Qwest uses Interconnect
18 Mediated Access Graphical User Interface (“IMA GUP”) and Interconnect
19 Mediated Access Extensible Markup Language (“IMA XML”) as its CLEC-

obligations. The combined company will continue to meet these obligations through its wholesale operations leveraging the key resources and expertise of both entities.”)

⁷² ACC Evaluation at p. 5.

1 facing systems. IMA GUI is a web-based electronic interface and IMA XML is a
2 business-to-business electronic interface allowing bilateral information exchange
3 between Qwest and CLEC systems.⁷³ These IMA systems interface with Qwest
4 back-office systems and databases in support of queries and transactions.⁷⁴ For
5 access services and UDITs, Qwest uses Qwest Online Request Application
6 Graphical User Interface (“QORA GUI”), a web-based interface, and QORA
7 Gateway, a company-to-company interface, for CLEC-facing systems.⁷⁵ Though
8 QORA does not provide all of the functionality that IMA provides, like the IMA
9 systems for LSRs, QORA provides for electronic submission of Access Service
10 Requests (“ASRs”). For maintenance and repair, Qwest uses Customer Electronic
11 Maintenance and Repair (“CEMR”) and Repair Call Expert (“RCE”) as its web-
12 based CLEC-facing systems, and Mediated Access Electronic Bonding Trouble

⁷³ Qwest Response to Integra Utah Data Request #19. According to Qwest: “The IMA GUI is a user-to-computer interface while IMA XML is a computer-to-computer interface. The Qwest IMA GUI presents the user with a series of browser-based screens. Using these screens the CLEC can process pre-order, order, and post-order IMA transactions. There are no screens associated with XML. All of the information that is exchanged is done so in the form of data files.” IMA XML FAQs Available at: <http://www.qwest.com/wholesale/ima/xml/>. See also, Direct Testimony of Christopher Viveros on behalf of Qwest Communications International, Inc., Oregon Public Utility Commission Docket No. UM 1484, Qwest/2, June 22, 2010 (“Viveros Oregon Direct”), at p. 8 (“IMA provides pre-ordering and ordering/provisioning functions for all local competitive products that are ordered via Local Service Requests (‘LSRs’). IMA provides both a Graphical User Interface (‘GUI’) and an application-to-application option using Extensive Markup Language (‘XML’).”)

⁷⁴ Qwest Response to Integra Utah Data Request #19.

⁷⁵ Qwest Response to Integra Utah Data Request #19. See also, Viveros Oregon Direct at p. 8 (“QORA supports ordering for all wholesale products ordered via an Access Service Request (‘ASR’). QORA provides CLECs with a GUI interface, or CLECs’ systems can submit ASRs via QORA’s Network Data Mover (‘NDM’) and Unified Order Model (‘UOM’) gateways.”)

1 Administration (“MEDIACC-EBTA”) as its business-to-business gateway CLEC-
2 facing system.⁷⁶

3 By comparison, CenturyLink uses a system called EASE for pre-ordering and
4 ordering for both LSRs and ASRs.⁷⁷ EASE includes both a GUI (web-based) and
5 EDI (business-to-business) version. For trouble reporting, CenturyLink uses
6 “Access Care,” wherein a wholesale customer calls into Special Service
7 Operations (“SSO”) and CenturyLink records the information on a trouble
8 ticket.⁷⁸ In the legacy Embarq territories, CenturyLink also provides the option to
9 use WebRRS, a web-based repair ticket system that allows CLECs to report and
10 track trouble tickets.⁷⁹

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

13 A. Qwest’s interfaces were tested during the 271 approval process which took place
14 between 1999-2002, which means that Qwest’s existing OSS has largely (i.e.,

⁷⁶ Qwest Response to Integra Utah Data Request #19. Qwest states: “CEMR and MEDIACC-EBTA are used to mechanically process telephone circuit repair activities including repair ticket generation and MLT (Mechanized Loop Tests).” *See also*, Viveros Oregon Direct at p. 8 (“CEMR is Qwest’s GUI that provides CLECs with maintenance and repair functions for their existing products and services. CEMR allows CLECs to perform trouble administration activities such as creating and editing trouble reports, monitoring trouble report status and reviewing trouble history...MEDIACC EBTA provides CLECs with the ability to perform maintenance and repair functions in their own systems. MEDIACC EBTA is the electronic gateway that CLECs’ systems use to communicate with Qwest’s systems.”)

⁷⁷ CenturyLink Response to Integra Utah Data Request #16. *See also*, Hunsucker Oregon Direct at p. 7 (“CTL utilizes a system called EASE in its legacy Embarq territories. EASE is used to process both access service requests (ASRs) and local service requests (LSRs)...”)

⁷⁸ CenturyLink Response to Integra Utah Data Request #16.

⁷⁹ CenturyLink Response to Washington UTC Staff Data Request #86. *See also*, Hunsucker Oregon Direct at p. 8.

1 with incremental changes made via the CMP process) been in place since 2002.
2 CenturyLink's EASE, on the other hand, was first implemented in legacy
3 CenturyLink (Embarq) territory in May 2008 for ASRs and October 2009 for
4 LSRs. In the legacy CenturyTel territory, EASE was introduced for ASRs in
5 January 2010, and CenturyLink is currently in the process of implementing EASE
6 for LSRs in legacy CenturyTel territory. None of these systems recently
7 introduced in legacy CenturyLink territory were subjected to any third party
8 testing. And, prior to the recent introduction of EASE in the legacy CenturyTel
9 territory, CenturyTel's OSS were "largely manual with little if any automated or
10 interactive capabilities."⁸⁰

11 **Q. IF CENTURLINK WERE TO ATTEMPT TO INTEGRATE OSS POST-**
12 **MERGER, WOULD IT BE A MATTER OF SIMPLY SWAPPING OUT**
13 **THE IMA INTERFACE WITH THE EASE INTERFACE?**

14 A. No. The Qwest IMA and CenturyLink EASE interfaces are just the CLEC-facing
15 interfaces. Behind those interfaces are a number of back-office systems,
16 underlying data sets, business processes, product catalogs,⁸¹ billing systems,
17 business rules, performance metrics, etc., that are all directly fed information
18 received from the interfaces without manual intervention. All of these various
19 pieces work together to provide the five functions of OSS (pre-ordering, ordering,

⁸⁰ FCC *Embarq/CenturyTel Merger Order* at ¶ 22.

⁸¹ Product catalogs used in this context do not refer to the Qwest on-line documentation of its products and business processes often referred to as Qwest "PCATs."

1 provisioning, maintenance and repair, and billing). This requires systems to be
2 compatible with other systems, recognize certain computer code, and be properly
3 linked to upstream and downstream systems, databases and workgroups.
4 Obviously, it is not possible to simply unplug IMA and plug in EASE (like, for
5 example, swapping out Netscape® Navigator with Internet Explorer as the
6 browser on a personal computer). Changing out CLEC-facing interfaces would
7 create a complete breakdown in the linkages with underlying systems, databases
8 and processes. Given the complexity of Qwest's OSS, such an integration attempt
9 would be an enormous effort just to make sure everything worked, let alone to
10 ensure that the replacement system provides the type of nondiscriminatory access
11 to the full features and functions of the OSS to which CLECs are entitled.

12 **Q. CAN YOU PROVIDE EXAMPLES DEMONSTRATING HOW COMPLEX**
13 **THIS PROCESS WOULD BE?**

14 A. Yes, however, these examples are just the tip of the iceberg – as the complexities
15 of such an effort are virtually endless. The colossal effort that went into testing
16 Qwest's OSS during the 271 approval process shows how challenging it is to
17 ensure that OSS works properly and provides nondiscriminatory access. One
18 example is data mapping. CenturyLink would require data extracts from Qwest's
19 systems to populate the new replacement systems. This would require not only
20 great familiarity of the legacy systems and replacement systems, but also an
21 extensive data mapping effort. Another example is product catalogs. Such an

1 integration effort would require that source system product catalogs be remapped
2 to the replacement systems. This process is very complex given that legacy BOC
3 product catalogs reside in multiple systems and include thousands of universal
4 service ordering codes (“USOCs”), USOC identifiers, and feature identifiers.
5 Moreover, the new systems would need to also synch up with all of the
6 underlying data sources such as circuit inventory and loop qualification databases.

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

9 A. Yes. Not only would CLECs have to expend significant time and money testing
10 the CenturyLink replacement systems, but they would also have to materially
11 modify their own systems. For instance, the CLECs have built their own
12 interfaces to electronically bond directly to the existing Qwest systems. These
13 CLEC systems would need to be modified, at significant expense, by the CLEC to
14 work with the new replacement system. For instance, Qwest’s IMA XML
15 exchanges information between the CLEC and Qwest’s OSS in data files based on
16 Qwest’s standard XML Web Service Definition Languages or “WSDLs.” As
17 Qwest explains: “There must be a mechanism to translate data from the
18 proprietary format as it exists in the CLEC system to a format that the receiving
19 organization can understand. This is done using XML translation software.”⁸²
20 All of these systems, software, and proprietary formats would need to be changed

⁸² IMA XML FAQs Available at: <http://www.qwest.com/wholesale/ima/xml/>

1 in both Qwest's and CLECs systems if CenturyLink attempts to replace Qwest's
2 OSS post-merger. The CLEC would then need to test all of these new systems
3 before going "live" to ensure that they work properly (which is the purpose of
4 Qwest's Stand Alone Test Environment or "SATE"), and would also need to test
5 them in a production environment (which is why Qwest offers controlled
6 production testing). CenturyLink has not indicated whether it would provide any
7 of these capabilities if it decides to integrate OSS.

8 Also, like Qwest, some CLECs have integrated their electronic interfaces into
9 their own back end systems. PAETEC's systems, for example, take Qwest line
10 loss data received through the XML interface, and feed that information directly
11 into PAETEC's billing system, which results in the termination of billing for end
12 users for whom the line loss data has been received via the interface without
13 manual intervention. The interconnectivity of systems has effectively eliminated
14 the "billing after downgrade" issues that plagued CLECs and end users that
15 existed for a number of years (assuming the line loss data provided by Qwest is
16 accurate). A similar linkage is made by PAETEC between Qwest's OSS
17 interfaces and the PAETEC's own systems for directory listings to ensure
18 accurate directory listings for the CLECs' customers. Another example is for
19 trouble ticket reporting. PAETEC, for example, has established electronic
20 bonding capability with Qwest that allows automated escalation of the trouble
21 ticket, and automated resolution or closing of the trouble ticket and notification to

1 the customer. In other words, by establishing the electronic bonding with Qwest,
2 a CLEC trouble ticket can go from “open” to “closed” with little or no
3 intervention by the CLEC’s technicians. These automated capabilities are
4 possible because the CLEC undertook a substantial effort to develop its own back
5 end systems and processes and then code, test and link those systems and
6 processes to Qwest’s systems and interfaces. These CLEC back end systems
7 would be subject to change if the Merged Company changed Qwest’s legacy OSS
8 post-transaction, and could require CLECs to revert to significantly less efficient
9 manual processes if the modified OSS offered by the Merged Company does not
10 afford CLECs access to the same degree of the Merged Company’s back end
11 systems and data via the electronic interface.

12 During the third-party test of Qwest’s OSS, a “pseudo-CLEC” (Hewlett Packard
13 or “HP”) was hired to act as a CLEC (or “to live the CLEC experience”⁸³). HP
14 was charged with establishing electronic bonding with Qwest, ensuring that
15 Qwest provided the necessary information and tools to electronically interface
16 with Qwest’s OSS, and determine whether Qwest’s systems were operationally
17 ready to handle the volumes and types of orders CLECs would submit through the
18 business-to-business electronic interfaces. Likewise, KPMG Consulting tested
19 Qwest’s testing environments. If CenturyLink attempted to modify the CLEC-

⁸³ Draft Final Report of KPMG Consulting, Qwest Communications OSS Evaluation, Version 1.1, April 26, 2002 (“KPMG 4/26/02 OSS Report”) at p. 10.

1 facing OSS interfaces in Qwest’s territory, all of the work done by the third-party
2 testers during the third-party test, and the work done by CLECs to establish these
3 business-to-business interfaces would be undermined. This work would need to
4 be performed all over again to ensure that the replacement system provides the
5 same functionality and at the same quality as Qwest’s system.

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

7 A. No, not even close. CenturyLink has indicated to the FCC that it intends to
8 operate both companies’ OSS for at least one year following transaction approval.
9 One year is insufficient time for such an enormous effort. It took Qwest three
10 years to satisfy third-party testing of its existing OSS, and that was during a time
11 when Qwest faced 271 approval as a “carrot” to encourage the company to work
12 with CLECs and regulators to improve its OSS. By contrast, even if CenturyLink
13 abides by its claim to leave Qwest’s OSS in place for one year, it will have no
14 incentive to work with CLECs and regulators during the integration to ensure that
15 the access or quality to Qwest’s existing OSS are not degraded, because the
16 proposed transaction will already have been approved (i.e., there will be no
17 “carrot”).

18 Moreover, the idea that a CenturyLink-Qwest integration can be quick and
19 smooth, or not hinder CLECs, is belied by the petition CenturyLink filed with the
20 FCC, shortly after filing its application for merger, seeking relief from the

1 deadline to implement one-day number porting.⁸⁴ In its request for a waiver of
2 the deadline, CenturyLink argued that it was still in the process of integrating the
3 CenturyTel and Embarq systems. Now, before that process is completed and
4 while it is still causing delays in functions like number porting that are critical to
5 competitors, CenturyLink wants to begin yet another integration effort, thereby
6 adding another completely different system to the mix. The Commission should
7 be very concerned about the timing of this proposed transaction given the Embarq
8 merger is, in an operational sense, not finished yet and the end result remains
9 unknown.

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

13 A. Yes. CenturyLink explains that its "Access Care for trouble reporting system for
14 circuits" entails:

15 [t]he Wholesale customer will call in to the SSO (Special Service
16 Operations) and CenturyLink will record all the pertinent
17 information on the ticket. If SSO has remote test access, SSO will
18 then do a diagnostic test to isolate the trouble. Once it is determined if
19 it is a central office, cable, or premise issue, the SSO will request
20 dispatch to the proper technician to resolve the issue. Once the field
21 technician has fixed the issue, they will call back into SSO to test the
22 circuit to confirm the repair. CenturyLink will then call the reporting

⁸⁴ CenturyLink Petition for Waiver of Deadline, *In re Local Number Portability Interval and Validation Requirements*, WC Dkt. No. 07-244, at 5 (filed June 7, 2010).

1 party and do acceptance testing, if the circuit is working and they
2 accept it, the ticket is closed.⁸⁵

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

6 Qwest’s MEDIACC-EBTA, by comparison, provides the ability to “mechanically
7 process telephone circuit repair activities including repair ticket generation and
8 MLT (Mechanized Loop Tests).”⁸⁶ Qwest’s MEDIACC allows for “M&R
9 queries [to be] forwarded directly from the MEDIACC gateway for processing by
10 Loop Maintenance Operations System (LMOS) and Work Force Administration
11 (WFA)”⁸⁷ “without having to go through the Business Process Layer...”⁸⁸ What
12 this comparison demonstrates is that Qwest allows electronic bonding capability
13 for maintenance and repair that permits a direct connection between the CLEC’s
14 M&R query and the Qwest repair technicians – a capability that is not available
15 through either CenturyLink’s Access Care (SSO) process (which requires
16 multiple phone calls and increased manual intervention, with the increased
17 possibility of error) or CenturyLink’s web-based WebRRS. Further, based on the
18 information Qwest and CenturyLink have provided to date, it appears that

⁸⁵ CenturyLink Response to Integra Utah Data Request #16.

⁸⁶ Qwest Response to Integra Utah Data Request #19.

⁸⁷ Final Report of the Qwest OSS Test, May 3, 2002, Issued by Cap Gemini Ernst & Young (Third Party Tester), Version 3.0 at p. 247.

⁸⁸ Final Report of the Qwest OSS Test, May 3, 2002, Issued by Cap Gemini Ernst & Young (Third Party Tester), Version 3.0 at p. 251.

1 Qwest's web-based maintenance and repair GUI, CEMR, has functionality that
2 CenturyLink's web-based maintenance and repair GUI, WebRRS, does not have.
3 One such example is that CLECs can submit trouble tickets for special access
4 circuits through Qwest's CEMR,⁸⁹ which is not permitted through CenturyLink's
5 WebRRS.⁹⁰

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

8 A. Yes. Based on information provided in discovery⁹¹ CenturyLink's EASE system
9 uses the Virtual Front Office ("VFO"), a platform originally developed by Wisor
10 Telecom Corp, a subsidiary of Synchronoss. This same Synchronoss/Wisor VFO
11 platform was used by FairPoint Communications in its OSS cutover in Northern
12 New England and Frontier Communications in its recent OSS cutover in West
13 Virginia. A competitor in West Virginia that makes extensive use of the Frontier
14 OSS, FiberNet, recently asked the West Virginia Public Service Commission to
15 review problems arising with that platform. FiberNet explained that:

16 Since the cutover to Frontier's Synchronoss VFO [Virtual Front
17 Office] OSS on July 1, 2010, however, FiberNet has experienced
18 significant and ongoing problems with the proper functionality of
19 Frontier's OSS and have unfortunately been compelled to conclude
20 that Frontier's OSS as presently constituted is substantially less

⁸⁹ <http://www.qwest.com/wholesale/systems/WebHelp/Introduction.htm>

⁹⁰ See, e.g., A Guide to Embarq Online Wholesale Repair System, available at:
http://embarq.centurylink.com/wholesale/docs/webrrs_app.pdf ("For special access circuits or
switched access circuits, customers continue to call 888-883-1484 to report trouble.")

⁹¹ See, e.g., CenturyLink Response to Integra Utah Data Request #17.

1 sophisticated and far less automated than the former Verizon OSS
2 it was intended to replace.⁹²

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

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

9 A. My concern is much broader than CLEC-facing OSS interfaces. As explained
10 above, OSS includes all of the computer systems, databases, personnel and
11 business processes that an ILEC uses to perform internal functions necessary to
12 support the OSS systems interfaces – not just the CLEC-facing interfaces. The
13 third-party test of Qwest's OSS during the 271 approval process went much
14 deeper than just the CLEC-facing interfaces. Rather, the test included an
15 evaluation of Qwest's PIDS,⁹³ Qwest's PAP,⁹⁴ Qwest's back-office systems,

⁹² FiberNet LLC Petition to Reopen, July 21, 2010 (filed in West Virginia PSC Docket No. 09-087 1-T-PC), at p. 3.

⁹³ See, e.g., *Washington UTC 39th Supplemental Order*, ¶ 29 ("The performance measures Qwest uses to report its monthly commercial performance in Washington and other states in its operating territory were collaboratively developed by the Regional Oversight Committee's (ROC) Technical Advisory Group (TAG) to be used in the third-party testing of Qwest's Operations Support Systems (OSS)."); ACC Evaluation at 3 ("As part of the collaborative testing process, the parties worked together to develop a comprehensive set of Performance Indicator Definitions ('PIDs'). These PIDs, with some modification, also formed the basis for the [ROC's] Performance Measurement Evaluation and testing process."). Qwest's PIDs measure performance in three ways: retail parity (for measures with retail analogues), benchmark (for measures without retail analogues) and "parity by design" (for measures without retail analogues or benchmarks). Statistical measures (modified "z-tests") are used for determining whether Qwest satisfies the parity and benchmark performance measures. See *In re Qwest*

1 Qwest's business processes,⁹⁵ the integrity of Qwest's data,⁹⁶ Qwest's SGAT,⁹⁷
2 and Qwest's CMP.⁹⁸ Changes in any of these areas will cause Qwest to backslide
3 on its 271 obligations and result in harm for CLECs, and competition generally.

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

Corp. 's Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process et al., New Mexico Utility Case Nos. 3269 *et al.*, Final Order Regarding Compliance with Outstanding Section 271 Requirements, 2002 N.M. PUC LEXIS 2, October 8, 2002, at ¶ 65.

⁹⁴ See, e.g., Comments of the Nebraska Public Service Commission, WC Docket No. 02-148, filed July 3, 2002 ("Nebraska PSC Comments"), at 4 (describing the 12-state ROC Post Entry Performance Plan collaborative's extensive conference calls and multi-day workshops to examine and discuss Qwest's PAP).

⁹⁵ The Master Test Plan contained "a description of a comprehensive plan to test Qwest's OSS, interfaces *and processes...*" *Washington 39th Supplemental Order* at ¶ 109, quoting the Master Test Plan. (emphasis added)

⁹⁶ Liberty Consulting was retained to conduct a data reconciliation audit, during which 10,000 orders or trouble tickets were evaluated. Order Regarding Operational Support Systems, ROC OSS Test, and Commercial Performance Data, South Dakota Public Service Commission Docket TC01-165, November 22, 2002 ("South Dakota PSC 271 Order"), at p. 22.

⁹⁷ See, e.g., Evaluation of the Colorado Public Utilities Commission, WC Docket No. 02-148, filed July 2, 2002 ("Colorado PUC Evaluation"), at 26 ("This retelling of bringing Qwest's SGAT into compliance with the 14-point competitive checklist only begins to touch on the volume and breath of issues that arose in Colorado's six SGAT workshops.... After evaluating these six staff workshop reports and the enormous record behind these reports, the [Colorado PUC] concluded Qwest's SGAT complies with the 14-point checklist."); see also Written Consultation of the Idaho Public Utilities Commission, WC Docket No. 02-148, July 3, 2002, Exhibit A at 3 ("The checklist items were addressed in the context of Qwest's SGAT, and so the focus of the workshops was the SGAT terms required to comply with the checklist items. Qwest accordingly has filed the SGAT with the reports showing the terms as they were developed through the workshops and subsequent reports.")

⁹⁸ See, e.g. Colorado PUC Evaluation ("Qwest's change management process (CMP) has undergone a complete overhaul during the § 271 process. It is now compliant with the FCC's change management criteria. The [Colorado PUC] staff has closely monitored CMP, and through no small amount of goading, Qwest has brought it into compliance."); see also *id.* at 45 ("Beginning in July 2001, Qwest, CLECs and [Colorado PUC] staff began meeting in a collaborative effort to redesign Qwest's change management process (CMP). The participants in the redesign process have met for more than 45 days over the past 11 months to discuss every aspect of Qwest's CMP. CLECs and Qwest have made every effort to achieve consensus. As a result, the [Colorado PUC] agrees with Qwest's contention that 'it has in place the most comprehensive, inclusive, and forward-looking change management plan in the nation.'").

1 A. No. As explained above, it has taken many years, an enormous amount of
2 industry effort led by the ROC, and many millions of dollars to get Qwest's
3 wholesale OSS, CMP, processes, procedures and practices to where they are
4 today. Qwest's systems and processes are not perfect, but they are much better
5 than they were prior to the 271 process and CLECs have experience with dealing
6 with those systems. By contrast, CenturyLink's OSS has not been through
7 independent third-party testing, and has not been tested for commercial volumes
8 or shown to be operationally ready for Qwest's territory. And, given its relatively
9 recent deployment, CenturyLink's OSS is much less familiar to CLECs.⁹⁹ There
10 is a grave concern – grounded in CenturyLink's lack of experience, the lack of
11 information from CenturyLink and Qwest, and recent system integration failures
12 – that OSS performance will get worse after the proposed transaction absent
13 binding conditions/commitments that ensure continued availability of Qwest's
14 OSS and the continuation of PIDs and PAPs to measure the ongoing performance.

⁹⁹ Qwest's third-party tested OSS has been in place for about seven years. By contrast, CenturyLink is currently in the process of integrating Embarq's legacy OSS into CenturyLink's legacy territory. *See, e.g.,* Hunsucker Oregon Direct at p. 8 ("At the current time in legacy CenturyTel markets, the actual order processing is then completed via a manual process internal to CenturyLink. Integration efforts are underway and should be completed later this year to migrate legacy CenturyTel markets to the EASE platform.")

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

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

7 A. Yes. CenturyLink touts its “region-based, local operating model” – or “go-to-
8 market” model – which, according to CenturyLink, determines the amount of
9 network investment that will be deployed in each region of the Merged
10 Company.¹⁰⁰ Since CenturyLink has stated that this model will likely be
11 incorporated into the Qwest region,¹⁰¹ understanding this model is critical to
12 determining the impacts of integration post-merger. Unfortunately, CenturyLink
13 has provided almost no detail, and what detail has been provided is concerning.

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

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

¹⁰⁰ “CenturyLink’s local operating model provides the framework for investment decisions across its operating territory...Upon completion of the merger, it is anticipated that CenturyLink will implement its local operating model in the Qwest operating territories.” CenturyLink Response to Washington UTC Staff Data Request #92.

¹⁰¹ Ferkin Utah Direct at p. 18, lines 18-21 (“Q. Will that [go-to-market] model be incorporated into the areas of Qwest’s operational structure upon the completion of the transaction? A. Yes, we anticipate it likely will...”) See also, Utah Joint Application at p. 10.

1 asked to provide details about the go-to-market model, which is said to determine
2 that investment, CenturyLink states: “[d]etailed planning regarding the integration
3 of Qwest areas into CenturyLink’s local operating model has *not* begun.”¹⁰²
4 Indeed, CenturyLink was unable or unwilling to identify the regions or region
5 headquarters that would apply to Qwest’s territory once the go-to-market model is
6 implemented post-merger.¹⁰³ So, at this point, no one knows how investment
7 decisions will be made in a given state post-merger, who will be making those
8 decisions, what factors will influence those decisions or where those decisions
9 will be made.

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

12 A. Yes. When Integra asked CenturyLink some very basic questions about the go-
13 to-market model, CenturyLink objected to answering those questions.¹⁰⁴
14 Amazingly, CenturyLink based its objection, in part, on the claim that the
15 information: “is not relevant to the subject matter of this action and is not

¹⁰² CenturyLink Response to Iowa Office of Consumer Advocate Data Request #1-008C (emphasis added).

¹⁰³ “While CenturyLink does anticipate its local operating model will be incorporated into the areas of Qwest’s operational structure upon the completion of the Transaction, the detailed analysis and planning associated with identifying specific region headquarters has not taken place. Without regard to the locations of any region headquarters, CenturyLink intends to continue its local market focus, which drives operations and service decision-making closer to the customer. This operating model focuses on empowering local personnel to meet the distinct needs of their markets and places the customer at the center of what the company does.” CenturyLink Response to Washington UTC Staff Data Request #80.

¹⁰⁴ CenturyLink Objection to Integra Utah Data Request #129. CenturyLink also objected to: describing the “customized back-office support” associated with the go-to-market model that CenturyLink described to the FCC in the Declaration of Karen Puckett in WC Docket No. 10-110.

1 reasonably calculated to lead to the discovery of admissible evidence.”¹⁰⁵

2 Contrary to CenturyLink’s claim, the model that will be used to determine how
3 much and what type of investment is made in the state as well as how the Merged
4 Company will conduct “direct response marketing efforts” to stem wireline losses
5 is directly relevant to the public interest.¹⁰⁶

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

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

12 Prior to the Embarq acquisition, CenturyLink provided local
13 exchange telephone services to predominantly rural areas and
14 small to mid-size cities. Although Embarq’s local exchange
15 markets include Las Vegas, Nevada and suburbs of Orlando and
16 several other large U.S. cities, CenturyLink has operated these
17 more dense markets only since mid-2009. Qwest’s markets include
18 Phoenix, Arizona, Denver, Colorado, Minneapolis — St. Paul,
19 Minnesota, Seattle, Washington, Salt Lake City, Utah, and
20 Portland, Oregon, and, on average, are substantially denser than
21 those traditionally served by CenturyLink. While CenturyLink

¹⁰⁵ CenturyLink Response to Integra Utah Data Request #129, 130, and 131.

¹⁰⁶ CenturyLink has indicated that the go-to-market model will play an important role in achieving merger synergies. For instance, CenturyLink states: “This more de-centralized local structure enables a leaner, more efficient central corporate operation.” Ferkin Utah Direct at p. 18, lines 8-9. CenturyLink has identified corporate overhead as a primary synergy-related operating cost savings (Glover Utah Direct, Exhibit JSG-1). Given that the companies’ estimate of synergies funnels directly into the Merged Company’s ability to pay down debt, return to investment grade, satisfy shareholders’ dividend expectations and continue to invest in its network, the go-to-market model is a key component of the public interest analysis.

1 believes its strategies and operating models developed serving
2 rural and smaller markets can successfully be applied to larger
3 markets, it can not assure you of this. CenturyLink's business,
4 financial performance and prospects could be harmed if its current
5 strategies or operating models cannot be successfully applied to
6 larger markets following the merger, or are required to be changed
7 or abandoned to adjust to differences in these larger markets.

8 In addition to concerns related to using the go-to-market model in urban areas,
9 there is anecdotal evidence that this model is causing problems in the legacy
10 CenturyLink territory. For instance, Lincoln City, Oregon (the City) recently
11 filed a petition to intervene in Oregon Docket UM 1484 describing problems it
12 has experienced attempting to work with CenturyLink (in the legacy Embarq
13 territory) to get redundant pathways for telephone service including 911 calls.
14 The City states that despite working with CenturyLink (i.e., legacy Embarq in this
15 instance) for over two years and despite promises from Embarq to fix the
16 problem, Embarq has not kept those promises.¹⁰⁷ Importantly, it is the City's
17 belief that "[i]n the name of post-merger cost savings, CenturyTel has enlarged its
18 management districts with fewer managers overall, and fewer, local
19 knowledgeable technicians..."¹⁰⁸ and "[i]f the pattern following the
20 Embarq/CenturyTel merger continues with the CenturyTel/Qwest merger, fewer
21 and fewer managers and technicians will be responsible for more and more

¹⁰⁷ Petition to Intervene by City of Lincoln City, Oregon PUC Docket UM 1484, July 30, 2010 ("City Petition"), at pp. 3-4.

¹⁰⁸ City Petition at p. 4. The City states: "City can prove, if necessary, that the experienced former Embarq technicians and managers who were knowledgeable about the switches and related equipment controlling north Lincoln County and Tillamook County were systematically fired or retired by CenturyTel making the performance of its promises ever more speculative and unlikely."

1 territory.”¹⁰⁹ Based on the City’s experience, erratic implementation of
2 CenturyLink’s local operating model (or “management districts”) in the legacy
3 Embarq territory is causing harm, instead of the benefits touted by the Joint
4 Applicants. Again, because CenturyLink has provided no details about its plans
5 regarding the go-to-market post-merger (other than that CenturyLink plans to
6 import it to Qwest’s region), there is no way to tell whether CenturyLink’s plans
7 are realistic, whether it can be successful in urban areas, or whether harmful
8 impacts will result in Qwest legacy territory like those described by the City.

9 **3. CenturyLink’s Integration Effort May Result in Additional Charges**
10 **for CLECs**

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

14 A. No. The examples are meant to show how CenturyLink does business with
15 CLECs, and how integrating CenturyLink’s OSS, processes and practices into
16 Qwest territory could result in harm to CLECs.

17 **Q. CAN YOU PROVIDE AN EXAMPLE OF CENTURYLINK WHOLESALE**
18 **PRACTICES THAT UNREASONABLY INCREASE COMPETITORS’**
19 **COSTS?**

¹⁰⁹ City Petition at p. 4.

1 A. Yes. Comcast was forced to arbitrate a single issue in numerous states over
2 Embarq's attempt to impose a monthly recurring per subscriber charge for storing
3 and maintaining Comcast's customer directory listing ("DL") information in
4 Embarq's DL databases.¹¹⁰ Embarq sought to impose this recurring Directory
5 Listing Storage and Maintenance Charge ("DLSM") charge *in addition* to the
6 high per listing, non-recurring charge for loading Comcast's listings into the DL
7 database in the first place.

8 As I noted in my testimony in those arbitrations on behalf of Comcast, the charge
9 violated Embarq's statutory obligation to provide nondiscriminatory access to
10 directory listing functions.¹¹¹ Embarq sought to impose the recurring DLSM
11 charge only on facilities-based competitors that utilize their own-last mile
12 facilities as opposed to the unbundled loops and services of Embarq. The
13 Washington Commission, for example, which ultimately ruled in Comcast's
14 favor, stated in pertinent part:

15 The record is clear that Embarq does not impose a recurring
16 DLSM charge on its own retail customers or on other CLECs that
17 purchase resale services or UNE loops from Embarq. Embarq
18 wishes to impose the recurring DLSM charge only on facilities-
19 based CLECs such as Comcast that do not rely on Embarq's "last-
20 mile" facilities or services to compete within Embarq's service
21 area. Given the expansive language of Section 251(b)(3) and the
22 FCC's definition of "nondiscriminatory access", we find it
23 unreasonable and contrary to federal law for Embarq to single out

¹¹⁰ See United Telephone Company of the Northwest d/b/a Embarq Response to Comcast Petition in Washington Docket No. U-083025, filed May 27, 2008, at ¶ 10.

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

1 a particular type of competitor, in this case a facilities-based
2 CLEC, to impose a charge related to directory listing only when a
3 carrier does not purchase another service such as resold service or
4 UNE loops.¹¹²

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

9 **Q. ARE THERE OTHER ANTI-COMPETITIVE CHARGES THAT**
10 **CENTURYLINK ASSESSES IN ITS LEGACY TERRITORY OF WHICH**
11 **YOU ARE AWARE?**

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

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

17 A. The FCC has defined the NID in several orders. As an example, in 1999 the FCC
18 stated, "Specifically, we define the NID to include any means of interconnection
19 of customer premises wiring to the incumbent LEC's distribution plant, such as a

¹¹² See, Arbitrator's Report and Decision, WUTC Docket No. UT-083025, January 13, 2009, at pp. 11-12.

1 *cross-connect device used for that purpose.*¹¹³ That “means of interconnection”
2 (again, usually a cross-connect device) is then enclosed in a small gray box, about
3 the size of a shoe box, placed on the side of single family dwellings. The NID
4 and its enclosure will be referred to here, in my testimony, simply as the “NID
5 enclosure.”

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

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

15 **Q. WHAT DID STATE COMMISSIONS IN MISSOURI AND WISCONSIN**
16 **DECIDE IN THESE CASES?¹¹⁴**

¹¹³ See, e.g., *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report And Order And Fourth Further Notice Of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (“UNE Remand Order”) at ¶233.

¹¹⁴ See, e.g., *Petition of Charter Fiberlink, LLC for Arbitration of an Interconnection Agreement Between the CenturyTel Rural and Non-Rural Telephone Companies of Wisconsin*, Order Determining Disputed Issues Regarding Arbitration Award, Dockets 5-MA-148, 5-MA-149, 2010 Wis. PUC LEXIS 131 (Wis. PSC Mar. 2010); and *Petition of Charter Fiberlink-Missouri, LLC for Arbitration of Interconnection Rates, Terms, Conditions, And Related Arrangements with the CenturyTel of Missouri*,

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

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

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

1 activities, except in very unique circumstances that do not apply to Charter,¹¹⁵ are
2 to be recovered from an ILEC's end users. Specifically, the FCC's rule states that
3 ILECs may recover their carrier-specific costs directly related to providing long-
4 term number portability by establishing in tariffs filed with the FCC, certain
5 charges over a five (5) year term assessed against end users.¹¹⁶ In other words, to
6 recover their costs associated with number porting, ILECs may assess separate
7 charges on their end users – not competitors. Qwest does not assess similar,
8 separate number porting charges, so there is a genuine risk that the Merged
9 Company may try to import these anti-competitive charges to Qwest's legacy
10 territory as a result of integration efforts because CenturyLink is the acquiring,
11 and controlling, entity and because of the pressures on the Merged Company to
12 show a financial benefit from the transaction. Such an outcome would reflect the
13 integration of worst (not best) practices, would raise competitors' barriers in
14 Qwest's legacy territory and result in harm to the public interest directly related to
15 the proposed transaction.

¹¹⁵ Specifically, FCC rules permit ILECs to assess LNP charges upon other carriers only when other carriers purchase: (a) the ILEC's switching ports as unbundled network elements, (b) Feature Group A access lines; or, when the carrier resells the ILEC's local service. *See* 47 C.F.R. § 52.33(a)(1)(ii). Also, ILECs may assess a LNP "query service" charge when that function is provided to other carriers. *Id.* at § 52.33(a)(3).

¹¹⁶ *See* 47 C.F.R. § 52.33(a)(1)(i) and (a)(3).

1 **4. CenturyLink’s Attempts to Increase Transaction Costs for CLECs**

2 **Q. DO YOU HAVE ANOTHER EXAMPLE THAT SUGGESTS THAT**
3 **INTEGRATION COULD HARM CLECS?**

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

13 **Q. WHAT WAS CENTURYLINK’S OR QWEST’S REPLY?**

14 A. They refused to accept the CLECs’ request. I have attached as Exhibit Joint
15 CLECs 2.4 the refusal letter sent by Qwest and CenturyLink. Despite Qwest and
16 CenturyLink claims that such a streamlined discovery process would “result in an
17 impractical and burdensome process for the Applicants, as well as the potential
18 that the approval proceedings may be unnecessarily delayed” and that there is a
19 “lack of commonality between all the states,” the CLECs’ follow-up letter (also
20 attached as Exhibit Joint CLECs 2.4) explained that just the opposite is true. The

1 CLECs asked Qwest and CenturyLink to reconsider their refusal, but that request
2 was ignored. And because CenturyLink and Qwest are requesting expedited
3 treatment of the proposed transactions filed in the numerous states,¹¹⁷ deadlines
4 were approaching fast, so the CLECs were forced to create and serve substantially
5 the same discovery questions for each individual state. This requires the CLECs
6 to track and log responses separately for each state, review those individual
7 responses line-by-line to check for any subtle differences, etc. Furthermore, the
8 reasons provided by Qwest and CenturyLink for refusing the CLECs' request
9 were undermined by CenturyLink's subsequent actions.

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

13 A. No. Ironically, Qwest and CenturyLink refused to participate in the streamlined
14 discovery process due, in part, to their assertion that it “complicates the drafting
15 and researching of responses unnecessarily[;]” nevertheless, most of the discovery
16 responses they provided to my clients' discovery requests were virtually identical
17 across different states. For example, in the Iowa merger proceeding, PAETEC
18 served a set of discovery on CenturyLink that was substantially the same as
19 discovery served on CenturyLink by Integra here in Utah and other state

¹¹⁷ See, e.g., Fenn Utah Direct at p. 6, lines 15-17 (“Expedited treatment is requested to allow the Applicants to more quickly integrate the companies in order to bring the benefits described in my testimony to consumer, business and wholesale customers sooner.”)

1 proceedings, including Colorado. For its responses to PAETEC’s discovery in
2 Iowa, CenturyLink inadvertently filed its responses to the similar discovery from
3 Colorado (CenturyLink’s initial responses in Iowa referenced the Iowa docket in
4 the heading, but referred to Colorado in the responses). After PAETEC’s counsel
5 inquired about this apparent error, CenturyLink indicated that none of its
6 responses would change whether they apply to Iowa or Colorado. In other words,
7 instead of providing the same response once for multiple states, as CLECs
8 wanted, CenturyLink is apparently “copying and pasting” the same responses
9 from state to state. More evidence of this is found in Exhibit Joint CLECs 1.3
10 (Ankum), which shows that CenturyLink’s responses to many of the CLECs’
11 discovery questions have been identical across states. Qwest’s responses across
12 states have also been virtually identical. The facts show that it is the refusal of
13 Qwest and CenturyLink to agree to the CLECs’ streamlined discovery approach
14 that is “complicat[ing] the drafting and researching of responses unnecessarily.”
15 To make matters worse, CenturyLink refused to answer a discovery question in
16 *this* proceeding in Utah about statements the Joint Applicants made in another
17 state such as Oregon.¹¹⁸ As a result, the CLECs had to comb through each

¹¹⁸ For example, CenturyLink filed testimony in this Oregon proceeding UM1484 that, to my knowledge, has not been filed in other state commission proceedings related to the proposed transaction. Accordingly, some of the CLECs’ discovery questions in other states, including Utah, pertained to testimony CenturyLink submitted in Oregon that had not been submitted in other states. None of the additional Oregon testimony addressed Oregon-specific issues and the CLEC questions about the additional Oregon testimony were not Oregon-specific, yet, CenturyLink objected to answering questions related to this additional Oregon testimony in its discovery responses in other states,

1 individual state filing by Qwest and CenturyLink (some of which was not word-
2 searchable) to match up state-specific cites for the discovery questions.

3 **Q. HAS THE LACK OF A STREAMLINED DISCOVERY PROCESS**
4 **HAMPERED THE ANALYSIS OF THE PROPOSED TRANSACTION IN**
5 **OTHER WAYS?**

6 A. Yes. The CLECs have to wait for responses to be issued in each individual state
7 before being able to use the discovered data, which creates unnecessary delays
8 and imposes additional costs on CLECs. For example, Qwest and CenturyLink
9 provided certain confidential data in response to identical discovery questions
10 issued in multiple states. However, for some inexplicable reason, they failed to
11 provide that data in response to those questions issued by PAETEC in Iowa
12 (which requests were served on Qwest and CenturyLink in Iowa on July 16, 2010,
13 and responses were due on July 23, 2010). As a result, PAETEC, counsel and
14 QSI had to modify my initial testimony the very day testimony was originally due
15 to delete the discussion of issues that would have likely been supported by the
16 confidential data Qwest and CenturyLink failed to provide in Iowa. To add insult
17 to injury, the day after Qwest and CenturyLink secured an extension of the
18 testimony filing deadline in Iowa, they then provided some of the confidential
19 data PAETEC requested, but provided it to PAETEC's counsel after 5 p.m. on

including Utah, because "this testimony was not submitted in [the state] and therefore is not relevant to this proceeding." *See, e.g.,* CenturyLink Objection to Integra Utah Data Request #78.

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HIGHLY CONFIDENTIAL DATA HAS BEEN REDACTED

1 Friday even though the revised testimony deadline was Noon the following
2 Monday, again causing PAETEC, counsel and QSI to expend time, money and
3 effort, developing supplemental testimony for Iowa. Clearly, the Qwest and
4 CenturyLink approach to discovery for the merger proceedings alone has cost
5 CLECs many extra person-hours and thousands of dollars.

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

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

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

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

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

10 **Q. CENTURLINK STATES THAT IT IS AN EXPERIENCED**
11 **INTEGRATOR BASED ON ITS PREVIOUS ACQUISITIONS.¹¹⁹**
12 **SHOULD THAT PROVIDE CLECS AND THE COMMISSION**
13 **COMFORT ABOUT CENTURLINK’S ABILITY TO INTEGRATE**
14 **QWEST?**

15 A. No. CenturyLink has acknowledged to the SEC that there is a risk of
16 CenturyLink being unable to successfully integrate the two companies, and more
17 specifically, that “performance shortfalls” at one or both of the companies may
18 result from the “diversion of management’s attention caused by completing the

¹¹⁹ See, e.g., Glover Utah Direct at p. 12, lines 8-11, and Ferkin Utah Direct at pp. 14-17 and Exhibit JF-1.

1 merger and integrating the companies' operations."¹²⁰ In addition, there are
2 several key differences between past acquisitions and the proposed acquisition of
3 Qwest. Some of those differences are listed below:

- 4 • The magnitude of this acquisition dwarfs all other prior transactions, so
5 CenturyLink could very well be "biting off more than it can chew." As the
6 investment research company Morningstar stated: "CenturyTel is taking an
7 unnecessary risk with the Qwest merger" and "the timing and scope of the
8 Qwest deal will present far greater challenges" than the Embarq
9 acquisition.¹²¹
- 10 • The Merged Company is taking on much more debt by acquiring Qwest than
11 it has in past acquisitions. As Integra and others explained to the FCC: "At
12 the conclusion of the transaction, legacy CenturyTel will have *more than*
13 *quadrupled* its debt load in approximately three years."¹²²
- 14 • No prior CenturyLink acquisitions involved acquiring a BOC (and all BOC-
15 related obligations) like the proposed transaction does.
- 16 • CenturyLink is still in the process of integrating the recent acquisition of
17 Embarq, which raises concerns about the Merged Company spreading its
18 resources too thin in attempting to complete multiple integrations at the same
19 time. Just to put the Merged Company's integration efforts in perspective,
20 CenturyTel before its acquisition of Embarq in 2009 served "roughly two
21 million telephone access lines."¹²³ In 2009, it acquired "nearly 5.9 million
22 telephone access lines"¹²⁴ when it acquired Embarq – which approximately
23 tripled the size of the company in terms of access lines. With the proposed
24 transaction of Qwest, CenturyLink will acquire another 10.3 million access
25 lines.¹²⁵ So, if the transaction is approved, CenturyLink will have grown by
26 nine times its size in just two short years. No matter how experienced the

¹²⁰ CenturyLink Form S-4A, filed July 16, 2010, at p. 17.

¹²¹ Morningstar Report, "CenturyTel is Taking an Unnecessary Risk with the Qwest Merger, in Our View," May 27, 2010, cited in Comments of Communications Workers of America, WC Docket No. 10-110, July 12, 2010, at pp. 11-12.

¹²² Ned Douthat, *Tough Times on the Way to the Altar for CenturyTel and Qwest*, Forbes, April 26, 2010. Forbes article available at: <http://blogs.forbes.com/greatspeculations/2010/04/26/tough-times-on-the-way-to-the-altar-for-centurytel-and-qwest/>

¹²³ FCC *Embarq/CenturyTel Merger Order* at ¶ 4.

¹²⁴ *Id.* at ¶ 3.

¹²⁵ Utah Joint Application at p. 7.

1 management team at the Merged Company is, an integration effort of this
2 magnitude will be extremely challenging to say the least.¹²⁶

3 **Q. IS THERE INFORMATION THAT SUGGESTS THAT THE EMBARQ**
4 **INTEGRATION IS HINDERING CENTURLINK'S ABILITY TO ABIDE**
5 **BY ITS REGULATORY OBLIGATIONS?**

6 A. Yes. Despite CenturyLink's glowing reports of the Embarq integration in its
7 testimony, other information suggests that the integration effort is monopolizing
8 much of the Merged Company's time and efforts. For example, CenturyLink
9 recently requested a waiver of the FCC's one business-day porting interval
10 requirement on the basis that such compliance would disrupt "ongoing system
11 changes related to the [CenturyTel/Embarq] merger" to the point where the
12 integration effort would have to be "suspended, which would create large
13 numbers of problems with retail and carrier customer processes, and lead to
14 service disruptions, delays and errors that would likely cause incalculable
15 additional costs."¹²⁷ CenturyLink explained that strict adherence to the FCC's
16 requirement could require CenturyLink to "divert resources and implementation
17 activity away from the wholesale systems" and would jeopardize timely

¹²⁶ Standard & Poor's has observed that "integration efforts will be difficult given the size of the combined company and CenturyTel's integration of previously acquired Embarq will likely not be complete until the end of 2011." Glover Utah Direct, Exhibit JSG-4 at p. 3. *See also*, Glover Utah Direct, Exhibit JSG-3, at p. 1, wherein Moody's states: "The negative rating outlook for CenturyTel reflects the considerable execution risks in integrating a sizeable company so soon after another large acquisition (Embarq in 2009) while confronting the challenges of a secular decline in the wireline industry."

¹²⁷ CenturyLink Petition for Waiver of Deadline, CC Docket No. 95-116, WC Docket No. 07-244, June 3, 2010, at p. 5.

1 completion of its integration of legacy Embarq's wholesale OSS required by the
2 FCC merger conditions.¹²⁸ This waiver request not only calls into question the
3 purported seamlessness of the Embarq integration efforts, but also casts serious
4 doubt on the Merged Company's ability to integrate both Embarq and Qwest
5 simultaneously, let alone in an efficient manner.¹²⁹ That is, if CenturyLink's
6 efforts to integrate Embarq jeopardize its ability to meet its regulatory obligations,
7 then surely integration of Qwest (which will more than double CenturyLink's
8 size) will similarly jeopardize CenturyLink's ability to abide by regulatory
9 requirements and obligations. CenturyLink has already noted that the
10 simultaneous integration of Qwest and Embarq poses risks:

11 [CenturyLink/Qwest] integration initiatives are expected to be
12 initiated before CenturyLink has completed a similar integration of
13 it business with the business of Embarq, acquired in 2009, which
14 could cause both of these integration initiatives to be delayed or
15 rendered more costly or disruptive than would otherwise be the
16 case.¹³⁰

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

19 A. Yes. Recent experience of CLECs indicates that CenturyLink's integration track
20 record is not as perfect as its testimony seems to suggest. As discussed in the

¹²⁸ *Id.* at p. 7.

¹²⁹ CenturyLink represented in a SEC filing that integration efforts associated with the Qwest acquisition would likely be initiated before the integration of Embarq was complete. CenturyLink Form S-4 at p. 16. See also, Exhibit JFG-2 to the Ferkin Utah Direct, showing overlap between the integration of Embarq and Qwest during 2011.

¹³⁰ CenturyLink Form S-4 at p. 16.

1 CLEC comments to the FCC, tw telecom and Socket Telecom explained problems
2 they experienced during CenturyLink’s transition of wholesale customers in the
3 legacy Embarq territory from one ordering system to another in 2009. I have
4 attached the relevant portion of those comments as Exhibit Joint CLECs 2.5. As
5 described therein, the CLECs have experienced system outages (during which
6 time LSRs could not be submitted), could not complete pre-ordering, and
7 experienced slow response times.

8 **Q. HAVE CENTURYLINK’S SYSTEM INTEGRATION EFFORTS ALWAYS**
9 **BEEN ON-TIME AND ON-BUDGET?**

10 A. No. Prior attempts by CenturyLink to integrate systems were neither on-time nor
11 on-budget. CenturyTel stated that this billing system integration effort required
12 “substantially more time and money to develop than originally anticipated” and
13 estimated a cost overrun of between \$50 million and \$60 million.¹³¹ Furthermore,
14 CenturyTel stated:

15 there is no assurance that the system will be completed in
16 accordance with this schedule or budget, or that the system will
17 function as anticipated. If the system does not function as
18 anticipated, the company may have to write-off part or all of its
19 remaining costs and further explore its other billing and customer
20 care system alternatives.¹³²

¹³¹ *Financial Watch: Integration Costs Loop Over OSS Deployments*, Billing and OSS World, October 1, 2003.

¹³² *Id.*

1 CenturyTel stated in its 2001 10-K that “The Company is in the process of
2 developing an integrated billing and customer care system” and completion ... is
3 expected to occur in early 2003.” However, two years later CenturyTel stated in
4 its 2003 10K that “the system remains in the development stage and has required
5 substantially more time and money to develop than originally anticipated. The
6 Company currently expects to complete all phases of the new system no later than
7 mid-2005. In addition, the Company expects to incur additional costs related to
8 completion of the project, including (i) approximately \$15 million of customer
9 service related and data conversion costs.” Therefore CenturyTel’s integrated
10 billing and customer care system implementation was delivered over two years
11 later than planned and additional operational costs were incurred as a result. The
12 same risks are inherent in any system integration CenturyLink may attempt in
13 Qwest’s region post-merger – “there is no assurance” that the integration will be
14 on time, on budget, or function properly. Indeed, it is these types of customer-
15 impacting problems with systems integration that have caused the serious
16 problems associated with recent mergers.

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

20 A. I discussed some of these major challenges above. The point is that changing
21 CLEC-facing OSS is not just a matter of implementing or migrating a new CLEC-

1 facing system; rather, it involves synching up that new system with all of the
2 underlying back-office systems, billing systems, underlying data sets, business
3 processes, product catalogs, billing systems, business rules, and performance
4 metrics, remapping data extracts, as well as testing those new systems in a
5 standard test environment and in controlled production testing. In other words,
6 replacing Qwest's existing OSS would have a domino effect that impacts virtually
7 every aspect of the wholesale customer's relationship with Qwest. Other non-
8 BOC entities such as The Carlyle Group and FairPoint Communications have
9 tried to integrate BOC systems in the past and encountered some of the same
10 challenges I have identified.

11 **Q. DID THE FCC IMPOSE A CONDITION ON ITS APPROVAL OF THE**
12 **EMBARQ/CENTURYTEL MERGER THAT THE MERGED COMPANY**
13 **WOULD HAVE TO SHOW THAT IT WAS CONTINUING TO**
14 **MAINTAIN ITS WHOLESALE SERVICE QUALITY PERFORMANCE**
15 **TO CLECS IN THE FORMER EMBARQ TERRITORIES?**

16 A. Yes. When the FCC approved the CenturyTel-Embarq merger in June 2009, it
17 imposed a series of conditions, including that "[f]or two years after the
18 Transaction Closing Date, the Merged Company will maintain service levels for
19 the Embarq operating companies that are comparable to those Embarq wholesale

1 customers experienced pre-merger.”¹³³ To help ensure compliance with this
2 condition, the FCC also required the Embarq operating companies to continue to
3 produce and make available wholesale service performance reporting for two
4 years after the closing date.¹³⁴ The FCC prescribed that the reporting would
5 include comparison of actual quarterly performance results to a benchmark value,
6 set equal to the 12-month average results achieved from April 1, 2008 through
7 March 31, 2009.¹³⁵ The FCC required that the Embarq operating companies meet
8 a service performance standard of “no less than one standard deviation from the
9 benchmark value, 90 percent of the time.”¹³⁶ The specific metrics applied are as
10 follows:

- 11 • Pre-ordering – average response time to pre-order queries calculated in
12 seconds, which measures the number of seconds from Embarq’s receipt of a
13 query from a CLEC to the time Embarq returns the requested data to the
14 CLEC.
- 15 • Provisioning – average completed interval measured in days, which measures
16 the average number of business days from receipt of a valid, error-free service
17 request to the completion date in the service order entry system for new, move
18 and change service orders, separately for all UNE, resale, and other CLEC
19 services;
- 20 • Repair/Maintenance – customer trouble report rate, which measures the total
21 number of network customer trouble reports received within a calendar month
22 per 100 units/UNEs, separately for all UNE, resale, and other CLEC services;
- 23 • Repair/Maintenance – average time to restore (service), which measures the
24 average duration from the receipt of the customer trouble report to the time

¹³³ FCC *Embarq/CenturyTel Merger Order*, Appendix C (Conditions) at p. 1.

¹³⁴ *Id.* at p. 1.

¹³⁵ *Id.* at p. 2.

¹³⁶ *Id.* at p. 2.

1 the trouble is cleared, separately for all UNE, resale, and other CLEC
2 services; and

- 3 • Work Center – center responsiveness, which measures the average time it
4 takes Embarq’s work center to answer a call expressed as the percentage of
5 calls that are answered within 20 seconds.¹³⁷

6 **Q. WHAT DOES CENTURYLINK’S MOST RECENT EMBARQ**
7 **COMPLIANCE FILING WITH THE FCC REVEAL ABOUT ITS**
8 **WHOLESALE SERVICE QUALITY PERFORMANCE IN THE FORMER**
9 **EMBARQ TERRITORIES?**

10 A. In response to discovery, CenturyLink has provided its most recent wholesale
11 service quality compliance report pursuant to these FCC conditions.¹³⁸ It presents
12 the Embarq operating companies’ wholesale performance on the metrics
13 identified above, by state, for each quarter from 3Q 2009 through 2Q 2010.
14 These are compared to the baseline performance average for the period April 1,
15 2008 through March 31, 2009. *****BEGIN HIGHLY CONFIDENTIAL**

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

END HIGHLY

¹³⁷ *Id.* at pp. 1-2.

¹³⁸ CenturyLink Response to Integra Utah Data Request #59(e), Confidential Attachment Integra 59(e).

1 **CONFIDENTIAL*****

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

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

5 A. Significant problems have been experienced after recent mergers – problems that
6 could occur after the proposed transaction if it is approved as filed. These
7 examples are further evidence that the Joint Applicants’ unsupported assertions
8 about the proposed transaction cannot be taken at face value; failures do occur no
9 matter how well-intentioned the company is and the stakes associated with failure
10 are simply too high.

11 **Q. ARE YOU GENERALLY FAMILIAR WITH THE RECENT MERGERS**
12 **IN THE TELECOMMUNICATIONS INDUSTRY?**

13 A. Yes, I am.

14 **Q. IS THERE ANYTHING TO BE LEARNED BY CONSIDERING THE**
15 **OUTCOMES OF OTHER RECENT MERGERS AND ACQUISITIONS**
16 **INVOLVING ILEC OPERATIONS?**

17 A. Yes, there certainly is. The recent bankruptcies of FairPoint and Hawaiian
18 Telecom, as well as ongoing problems with Frontier’s cutover of former Verizon
19 lines, demonstrate the challenges and risks associated with transactions similar to

1 this one, particularly with respect to a smaller LEC's ability to integrate the OSS
2 and other back-office systems of a materially larger organization.

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

- 7 • The Carlyle Group's acquisition of Verizon Hawaii (renamed
8 Hawaiian Telcom), which led to Hawaiian Telcom's filing for Chapter
9 11 bankruptcy protection in 2008;
- 10 • FairPoint's acquisition of Verizon's operations in northern New
11 England (Maine, New Hampshire, and Vermont), which led to
12 FairPoint's Chapter 11 bankruptcy filing in October 2009; and
- 13 • The on-going integration difficulties experienced by Frontier as it
14 attempts to absorb former Verizon exchanges acquired in fourteen
15 states.

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

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

- 19 (1) Mergers and acquisitions involving the transfer and integration of
20 ILEC local telephone operations carry a high degree of risk of failure,
21 even when implemented by purportedly highly-experienced
22 management teams and well-financed companies;
- 23
24 (2) The integration and/or change-out of ILEC back-office systems and
25 OSS can pose a tremendous challenge, and integration failures can be
26 so costly as to not only eliminate the forecasted transaction cost
27 savings and other synergies, but to place the post-merger company
28 under severe financial pressure; and

1
2 (3) From a public interest standpoint, the outcome of such failed
3 transactions can indeed be an “unmitigated disaster,” including
4 financial instability, service quality deteriorations and dissatisfied
5 customers, curtailed network investment and broadband deployment,
6 and the disruption of wholesale services provisioning and ordering that
7 are crucial to a smoothly-functioning competitive marketplace.

8 **Q. PLEASE DESCRIBE THE EVENTS THAT LED TO HAWAIIAN**
9 **TELCOM’S BANKRUPTCY FILING AFTER ITS ACQUISITION BY**
10 **THE CARLYLE GROUP.**

11 A. In May 2005, the private investment firm The Carlyle Group (“Carlyle”) closed
12 on its purchase of Verizon Hawaii, the franchised ILEC serving most of the state
13 of Hawaii. At the time of that acquisition, Carlyle proclaimed that it “has a track
14 record of successful telecommunications investments, deep knowledge of the
15 local telephony business, and deep understanding of the complex regulatory
16 issues affecting the industry.”¹³⁹ Carlyle assembled a highly-experienced
17 management team for the acquired firm (renamed Hawaiian Telcom) that
18 included a former Chairman of the FCC, a former Executive Vice President of
19 Verizon and GTE, and Carlyle’s founder, who is also a former CFO of MCI and
20 Chairman of Nextel Communications.¹⁴⁰ Carlyle also committed \$1.65 Billion to
21 purchase the company, and proclaimed that it “...plans to invest significant

¹³⁹ Carlyle Group press release, “The Carlyle Group to Buy Verizon Hawaii for \$1.65 billion – New Services, Jobs, and Capital Investment Expected with Transition to Locally Managed Company,” May 24, 2004, at page 2.

¹⁴⁰ *Id.* at p. 2.

1 capital to transition the company to an independent local company in a manner
2 that maintains service quality and is seamless to customers.”¹⁴¹ Just prior to the
3 acquisition, Carlyle promised that: “In short order we will offer new services to
4 our customers, including expanded broadband, and we expect to add many new
5 jobs after the acquisition.”¹⁴² The FCC approved the transaction in August 2004,
6 under its streamlined procedures for domestic Section 214 transfers of control.¹⁴³
7 The Hawaii PUC conducted its own review and approved the transaction, subject
8 to certain conditions, on March 16, 2005.¹⁴⁴

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

11 A. Yes. One aspect of the transaction was that the transferred company would
12 develop its own back-office and OSS systems and processes to replace those of
13 Verizon. Hawaiian Telcom hired the management and technology consulting
14 company BearingPoint, Inc. to take on the task of designing and implementing
15 those systems by the end of March 2006. The Hawaii PUC required testing of the
16 new systems as a condition to its approval of the transaction,¹⁴⁵ but the scope and

¹⁴¹ *Id.*

¹⁴² *Id.* at p. 1.

¹⁴³ FCC DA 04-2541, WC 04-234, Streamlined Domestic Section 214 Application Granted, Released August 17, 2004.

¹⁴⁴ *In the Matter of the Application of Paradise Mergersub, Inc., GTE Corporation, Verizon Hawaii Inc. Bell Atlantic Communications, Inc. and Verizon Select Services Inc. for Approval of a Merger Transaction and Related Matters*, Hawaii PUC Docket No. 04-0140, Decision and Order No. 21696, March 16, 2005.

¹⁴⁵ *Id.* at Ordering Paragraph 1.

1 rigor of that testing was nowhere near that required of Qwest's systems under the
2 Section 271 regime.¹⁴⁶ In 2007 Hawaiian Telcom made a filing with the FCC
3 seeking a waiver from certain ARMIS reporting requirements. In that filing
4 Hawaiian Telcom described the troubles it was experiencing:

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

13 ...

14 These shortcomings therefore affected not only Hawaiian Telcom's
15 ability to collect ARMIS related data, but also its basic ability to
16 bill its customers, collect revenue for services provided, and
17 process payments.¹⁴⁷

18 In February 2007, Hawaiian Telcom reached an settlement with Bearing Point:
19 "According to Hawaiian Telcom, BearingPoint agreed to pay \$52 million in cash
20 on March 27 and to waive outstanding invoices, bringing the total value of the
21 settlement to \$90 million."¹⁴⁸ Although Hawaiian Telcom received a cash
22 settlement, it was still left with poorly functioning systems. To try to correct the
23 situation, in February 2007, Hawaiian Telcom entered into a seventeen-month,

¹⁴⁶ Exhibit Joint CLECs 2.2 ("Description of Qwest's OSS Testing in Relation to 271 Authority").

¹⁴⁷ Petition of Hawaiian Telcom, Inc., for Waiver of Sections 43.21(g) and 43.21(j) of the Commission's Rules, 47.C.F.R. §§ 43.21(g) and 43.21(j), CC Docket No. 86-182, filed February 21, 2007 ("Hawaiian Telcom ARMIS Petition"), at p. 2.

¹⁴⁸ Pacific Business News, BearingPoint Pays Hawaiian Telcom \$52M, March 29, 2007 Available at: <http://www.bizjournals.com/pacific/stories/2007/03/26/daily36.html>

1 \$46-million contract with the management consulting and technology services
2 company Accenture. That contract required Accenture to develop and remediate
3 the company's business support and customer service systems, including the OSS
4 used to interact with CLECs and other wholesale customers.¹⁴⁹ In the interim,
5 Hawaiian Telecom was forced to use costly manual work-arounds, third-party
6 temporary call centers, and other inefficient and expensive processes to undertake
7 basic provisioning and ordering activities.¹⁵⁰ Numerous retail customers received
8 erroneous bills, including double-billing due to delayed bill processing.¹⁵¹
9 Wholesale customers, such as tw telecom, also endured systems failures by
10 Hawaiian Telecom, including (1) missed deadlines for special access circuit orders,
11 (2) delays in porting end user customers' telephone numbers, and (3) lack of a
12 functioning electronic interface (GUI) for wholesale customers to submit and
13 monitor the status of trouble tickets for the services they received from the
14 company.¹⁵²

¹⁴⁹ *Id.* at p. 4, and Carlyle Group press release (issued by portfolio company), "Hawaiian Telecom Contracts with Accenture to Complete Systems Transformation; Firms Sign Agreement for Development, Deployment and Maintenance of Key Customer-Service and Business-Operations Capabilities," February 8, 2007, at p. 1.

¹⁵⁰ *See, e.g.*, Hawaiian Telecom Communications, Inc. Form 10-Q, filed November 14, 2006, at p. 26.

¹⁵¹ *See* "Billing woes overwhelm Hawaiian Telecom systems," Honolulu Star-Bulletin, June 21, 2006; provided in Attachment 1 to the Hawaiian Telecom ARMIS Petition.

¹⁵² *In the Matter of the Public Utilities Commission Instituting a Proceeding Regarding Hawaiian Telecom, Inc 's Service Quality and Performance Levels and Standards in Relation to Its Retail and Wholesale Customers*, Hawaii PUC Docket No. 2006-0400, Time Warner Telecom of Hawaii, L.P., d/b/a Oceanic Communications' Post-Hearing Brief, November 9, 2007, at p. 23.

1 In five years the Company's reported annual rate of return plummeted from the
2 essentially breakeven level it had at the time of the transaction's close, -0.8%,
3 down to -29.3%.¹⁵³ In December 2008, Hawaiian Telcom filed for Chapter 11
4 bankruptcy protection, "listing \$1.4 billion in assets and \$1.3 billion in debts."¹⁵⁴

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

7 A. No, unfortunately not. FairPoint Communications Corp. closed on its acquisition
8 of Verizon's ILEC operations in northern New England (Maine, New Hampshire,
9 and Vermont) in March 2008, with approval from regulators in all three states.
10 Barely a year and a half later, in October 2009, the company filed for Chapter 11
11 bankruptcy protection. As NASUCA has pointed out in its initial Comments in
12 the FCC's Qwest-CenturyLink merger proceeding, "...the track record is that the
13 FairPoint transaction has turned out to be a virtually unmitigated disaster."¹⁵⁵ In
14 its recent decision rejecting FairPoint's Chapter 11 reorganization plan, the
15 Vermont Public Service Board made the following observations concerning
16 FairPoint's pre-acquisition expectations and commitments, and the ensuing
17 reality:

¹⁵³ See Public Utilities Commission of Hawaii, Annual Report for Fiscal Year 2008-2009, Released November 2009, at p. 43, Figure 18 (Verizon Hawaii/Hawaiian Telcom's reported actual annual RoR for past 12 months, for June 2005 and June 2009, respectively).

¹⁵⁴ The Washington Post, "Carlyle Takes Another Hit As Telecom Firm Goes Under," December 2, 2008, at p. 1.

¹⁵⁵ FCC WC Docket No. 10-110, Comments of the National Association of State Utility Consumer Advocates, July 12, 2010, at p. 2.

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

10
11 (a) Initial annual line loss of 6.2%, gradually tapering off to 2.3%
12 per year.

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

16
17 (c) Cutover to FairPoint's new systems will be achievable within
18 five months of closing.

19
20 (d) Transition expenses under the Transfer of Service Agreement
21 ("TSA") with Verizon will not exceed \$100 million and will not
22 extend beyond 2008.

23
24 (e) Synergies resulting from new systems integration and
25 replacement of Verizon's higher cost functions will result in
26 additional cost savings of \$65-75 million in 2008.

27
28 (f) Average year-to-year increases in operating expenses not to
29 exceed 1%.

30
31 (g) Annual reductions in employee count of 4% to 4.5% resulting
32 in additional cost savings for salary and wage expense.

33
34 (h) Unforeseen increases in operating or capital expenditures will
35 be sufficiently offset by a reduction or elimination of shareholder
36 dividends.

37
38 (i) Free cash flow will be relatively stable at approximately \$200 to
39 \$220 million annually over the first five years after closing.

40
41 (j) An annual free cash flow cushion after dividends of \$70 million
42 will be available for unforeseen financial difficulties.

1
2 Based upon the substantial historical record contained in Docket
3 No. 7270, a record which spans FairPoint's progression through the
4 merger transaction, subsequent cutover, and eventual bankruptcy,
5 **it is abundantly clear that FairPoint failed to realize any of the**
6 **above forecasts.** Even with the enhancements to FairPoint's
7 financial metrics provided by the revised merger transaction,
8 which we approved on February 15, 2008, those enhancements
9 (reduced purchase price and reduced leverage) were not sufficient
10 to allow FairPoint to achieve its projections. For example, we now
11 know that: (i) line losses were substantially greater than projected
12 for 2008 and 2009; (ii) systems functionality issues delayed
13 cutover for an additional five months resulting in substantial
14 increased operating costs; (iii) FairPoint's suspension of its
15 dividend in March 2009 was not sufficient to assist FairPoint in
16 meeting its debt-servicing requirements; (iv) customer service
17 issues caused FairPoint to staff-up in 2009 as opposed to staffing
18 down; and (v) ongoing systems issues in 2009 resulted in a \$28.8
19 million increase in operating expenses. **We note that then, like**
20 **now, FairPoint maintained that its projections were**
21 **reasonable, conservative, and provided for a sufficient margin**
22 **of error.**¹⁵⁶

23 The Vermont Board went on to observe that "FairPoint's actual performance
24 throughout 2008 and 2009 turned out to be worse than the Board's most
25 pessimistic assumptions."¹⁵⁷

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

29 A. Yes. The Board concluded that FairPoint's financial crisis was caused in large

¹⁵⁶ Vermont PSB Docket No. 7599, Order Entered June 28, 2010, at pp. 56-57 (footnote omitted, emphasis added).

¹⁵⁷ *Id.* at p. 58.

1 part by its inability to successfully integrate the legacy Verizon exchanges into its

2 OSS and other back-office systems. As the Board explained in its Order:

3 FairPoint has not demonstrated that it can achieve its projected
4 reductions in operating costs or realize additional cost savings
5 from systems improvements and new networks that have yet to be
6 completed. As we have found above, **a major source of these**
7 **costs have been FairPoint's ongoing systems issues which have**
8 **persisted since cutover and contributed greatly to FairPoint's**
9 **eventual financial downfall.** FairPoint has undertaken a
10 considerable effort, most recently its CDIP initiatives, involving
11 the deployment of significant financial resources and personnel to
12 address these issues. ... **While we accept FairPoint's assertion**
13 **that it has made strides in resolving many of these problems,**
14 **system defects remain and manual workarounds continue to**
15 **serve as temporary solutions until automated processes can be**
16 **designed and implemented. Moreover, we are aware that there**
17 **have been instances where FairPoint assumed a problem to be**
18 **fixed only to have that problem reappear at a later time. ...**
19 ...we have received no evidence, or guarantees from FairPoint,
20 that would lead us to conclude that these remediation efforts will
21 not need to be continued beyond 2010 or even 2011.¹⁵⁸

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

27 A. Yes. The Board later stated that it did so specifically because “we were mindful
28 that after Verizon's sale of its Hawaii properties, the last major
29 telecommunications acquisition that required transition to new systems, major

¹⁵⁸ *Id.* at p. 61-62 (footnotes omitted, emphasis added).

1 problems for wholesale and retail customers occurred that have taken years to
2 correct.”¹⁵⁹ Unfortunately, the condition that it adopted – which required a third-
3 party consultant (Liberty Consulting) to monitor the cutover progress and “to
4 evaluate FairPoint’s cutover readiness criteria”¹⁶⁰ – did not include independent
5 third-party testing itself.¹⁶¹ This is dramatically different than the comprehensive
6 third-party testing that Qwest and other BOCs had to undergo to demonstrate that
7 their OSS satisfied the obligations of Section 271.¹⁶² As a consequence, the
8 Board’s condition, though well-intentioned, was insufficient to prevent
9 FairPoint’s subsequent systems failures.

10 **Q. DID THE VERMONT BOARD FIND THAT FAIRPOINT’S SYSTEMS**
11 **INTEGRATION PROBLEMS HAD ADVERSELY IMPACTED THE**
12 **QUALITY OF ITS SERVICES?**

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

- 16 • In 2009, FairPoint failed to meet 10 of the 18 performance standards in the
17 RSQP [Retail Service Quality Plan]. This performance triggered 1470
18 service quality compensation points and resulted in an obligation to
19 provide service quality compensation of \$10,515,650.¹⁶³

¹⁵⁹ Vermont PSB Docket No. 7270, Order Re: Notice of Cutover Readiness, November 26, 2008, at p. 4.

¹⁶⁰ <http://www.puc.nh.gov/Telecom/Filings/FairPoint/Monthly%20Monitoring%20Reports/FairPoint%20Cutover%20Monitoring%20Monthly%20Report%2012-07-07.pdf>

¹⁶¹ *Id.* at pp. 4-5.

¹⁶² Exhibit Joint CLECs 2.2 (“Description of Qwest’s OSS Testing in Relation to 271 Authority”).

¹⁶³ Vermont PSB Docket No. 7599, Order Entered June 28, 2010, at pp. 67 (Finding No. 153).

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- Other areas of FairPoint's service remain problematic and either do not show signs of significant improvement or early improvements have leveled. These include late orders for retail and wholesale, late disconnects, billing errors and adjustments, and customer complaint escalations.¹⁶⁴
 - Automated flow-through for orders designed to flow-through to provisioning and billing without manual intervention has not improved to acceptable levels and exacerbates other problem areas. Order fall-out requires unplanned manual effort, which reduces the ability of staff to address other issues. It also increases the chance that an order will be late.¹⁶⁵
 - The level of known FairPoint billing errors and billing adjustments are resulting in billing-related customer complaints 400% to 500% higher than during Verizon's operations.¹⁶⁶
 - Some number of the known billing errors and adjustments are likely the result of problems in upstream systems and processes, including faulty service-order data entry, late disconnections, and inconsistent or unsynchronized data as examples.¹⁶⁷

23 While the Vermont Board recognized that recently FairPoint had made significant
24 progress on its systems issues, it ultimately rejected FairPoint's reorganization
25 plan on the grounds that it had not demonstrated that the plan would restore its
26 financial soundness.¹⁶⁸ Recently, it has been reported that FairPoint may ask the
27 federal court that is overseeing its bankruptcy and reorganization to overrule the

¹⁶⁴ *Id.* at p. 68 (Finding No. 156).

¹⁶⁵ *Id.* at p. 68 (Finding No. 158).

¹⁶⁶ *Id.* at p. 69 (Finding No. 172).

¹⁶⁷ *Id.* at p. 69 (Finding No. 171).

¹⁶⁸ *Id.* at p. 95.

1 Vermont Board's rejection of its plan.¹⁶⁹

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

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

- 7 (1) In 2007, FairPoint sought approval to purchase Verizon lines in Vermont.
8 Throughout the proceedings, the Board is told they are a hold out and
9 everyone else has approved.¹⁷⁰
- 10 (2) In 2008, the Vermont Board approves the transaction with limited
11 conditions;
- 12 (3) By 2009, the cutover is disastrous and greatly affects the financial
13 performance of FairPoint;
- 14 (4) In October 2009, FairPoint declares bankruptcy;
- 15 (5) In February 2010, FairPoint management submits a reorganization plan
16 that the Vermont Board judges to be overly optimistic;
- 17 (6) In June 2010, the Vermont Board rejects FairPoint's reorganization plan;
- 18 (7) In August 2010, once again, the Vermont Board is told they are a hold out
19 and now FairPoint is considering asking the Bankruptcy Court to
20 supersede the PSB's authority.

¹⁶⁹ Vermont Public Radio, "FairPoint May Ask Bankruptcy Court To Overrule Vermont Regulators," August 2, 2010. See http://www.vpr.net/news_detail/88585/

¹⁷⁰ See, e.g., Transcript in West Virginia Docket 09-0871-T-PC at p. 34. On January 12, 2010 Vermont Senator Illuzzi drove to West Virginia to testify regarding the experience in Northern New England with the FairPoint merger. Senator Illuzzi testified: "We were told over and over at the State House, don't be the fly in the ointment; New Hampshire and Maine are ready to approve this deal. Don't be the state that sort of jinxes the whole thing. It turns out they were saying the same thing to New Hampshire. They'd say to New Hampshire, jeez, New Hampshire, don't be the fly in the ointment. Vermont and Maine are preparing to approve the deal. It turns out Maine was the first State that rejected the deal, then the other States followed suit and then came back with the revised proposal...If you have those lingering doubts, don't hesitate to fight that intuitive kind of pressure that you feel, that I feel..."

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

5 **Q. HOW HAVE THE NEW HAMPSHIRE AND MAINE PUBLIC UTILITY**
6 **COMMISSIONS CHARACTERIZED THE FAIRPOINT TRANSACTION**
7 **AND ITS OUTCOMES?**

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

13 FairPoint has failed to meet the obligations it made in 2008 to the
14 states of New Hampshire, Maine and Vermont and their citizens.
15 Among other things, FairPoint made promises about service
16 quality, relations with wholesale competitors and broadband build-
17 out, and committed itself to performance superior to Verizon,
18 whose performance had become an issue of increasing concern in
19 the three states. Due to FairPoint's widespread operational
20 shortcomings arising from its systems cutover, however,
21 residential and business customers, as well as wholesale customers
22 and competitors who rely on FairPoint services, endured even
23 poorer service quality than was the case under Verizon.¹⁷¹

24 The Maine PUC also approved FairPoint's Chapter 11 reorganization plan by a

¹⁷¹ New Hampshire PUC Docket DT 10-025, Order 25,129, July 7, 2010, at p. 75.

1 two-to-one vote, but the text of the majority decision does not contain any overall
2 characterization of the FairPoint experience as contained in the New Hampshire
3 PUC order.¹⁷² Maine Commissioner Vafiades, however, offered this assessment
4 in his written dissent appended to that decision:

5 In February of 2008, I voted with my colleagues to approve the
6 sale of Verizon wireline assets to FairPoint Communications. My
7 approval was based on FairPoint's representations that the
8 Company would improve customer service by updating and
9 streamlining its back office systems, replacing and upgrading its
10 deteriorating infrastructure, and operating a competent wholesale
11 customer service operation. Additionally, for at least five years,
12 customers of FairPoint's DSL broadband service would receive the
13 benefit of statewide price averaging for that service and customers
14 of FairPoint's telephone services would either receive service
15 quality that satisfies the existing SQI measurements or they would
16 receive rate rebates should FairPoint fail to meet its SQI targets.
17 Finally, FairPoint agreed to system improvements benefiting all
18 customers and made a commitment to expand broadband to meet
19 90% addressability by 2013.

20
21 Despite FairPoint's early struggles to take control of the wireline
22 assets, provide adequate customer service and modernize the back
23 office systems, the Commission stayed the course and following a
24 number of approvals for cutover extensions authorized cutover
25 from Verizon to FairPoint operating systems in January of 2009.
26 Unfortunately, FairPoint was not competent in managing the
27 extensive back office rebuild, could not get its wholesale business
28 running smoothly despite cooperation from the CLECs, failed to
29 provide basic services to residential and business customers and
30 suffered from competitive business pressure and a faltering
31 economy. FairPoint's financial position became precarious.¹⁷³

32 **Q. MR. GATES, WHAT LESSONS DO YOU THINK SHOULD BE DRAWN**

¹⁷² Maine PUC Docket No. 2010-76, Order Approving Reorganization and Regulatory Settlement, July 6, 2010.

¹⁷³ *Id.* at p. 21 ("Dissenting Opinion of Commissioner Vafiades").

1 **FROM THE HAWAIIAN TELCOM AND FAIRPOINT EXPERIENCES?**

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

4 (1) Mergers and acquisitions involving the transfer and integration of
5 ILEC local telephone operations carry a high degree of risk of failure,
6 even when implemented by purportedly highly-experienced
7 management teams and well-financed companies;

8
9 (2) The integration of two companies' disparate operations and OSS can
10 pose a tremendous challenge, and integration failures can be so costly
11 as to not only eliminate the forecasted transaction cost savings and
12 other synergies, but to place the post-merger company under severe
13 financial pressure; and

14
15 (3) From a public interest standpoint, the outcome of such failed
16 transactions can indeed be an "unmitigated disaster," including
17 financial instability, service quality deteriorations and dissatisfied
18 customers, and the disruption of wholesale services provisioning and
19 ordering that are crucial to a smoothly-functioning competitive
20 marketplace.

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

23 A. While the worst consequences of the Hawaiian Telcom and FairPoint transactions
24 are (presumably) winding down, the problems besetting Frontier's acquisition of
25 certain Verizon exchanges in fourteen states¹⁷⁴ are occurring right now, as

¹⁷⁴ As set forth in Verizon's Amended Application, "transaction involves the transfer to Frontier of all of Verizon's local wireline operating territories in Arizona, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia and Wisconsin. In addition, the transaction will include a small number of Verizon's exchanges in California, including those bordering Arizona, Nevada and Oregon." See WC 09-95, Verizon and Frontier's amended and revised "Consolidated Application for Transfer of Control and Assignment of International and Domestic Section 214 Authority," July 30, 2009, at p. 2, footnote 3.

1 systems cutovers and transitions have been occurring this spring and summer,
2 with an “official” cutover date of July 1, 2010. For thirteen states, Verizon
3 created replicas of its existing wholesale OSS systems that were being operated
4 on an interim basis by Spinco, the temporary corporate entity created to effect the
5 Frontier transaction. These “replicated systems” were then transferred to Frontier
6 on the cutover date, and thereafter serve as Frontier’s wholesale OSS, to fulfill
7 orders for UNEs and other wholesale services. In the fourteenth state, West
8 Virginia, Verizon’s systems were not replicated, and instead these functions were
9 transferred to Frontier’s own OSS system, Synchronoss VFO. As I shall explain,
10 to date both transfers have been beset by systems problems, which are having
11 adverse impacts upon CLECs and their customers. It remains to be seen how
12 serious and long-lasting these problems may ultimately prove to be, and whether
13 they will rise to the nightmarish levels experienced in the Hawaiian Telcom and
14 FairPoint cases.

15 **Q. WHAT SPECIFIC PROBLEMS HAVE CLECS CONFRONTED DURING**
16 **FRONTIER’S CUTOVER TO THE VERIZON REPLICATED SYSTEMS?**

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

1 In its May 17, 2010 *ex parte* letter to the FCC, PAETEC explained that, even
2 before the Verizon replicated systems were transferred to Frontier, it “is already
3 encountering serious service deterioration due to lack of adequate (much less
4 adequately trained) personnel at SpinCo [the corporate vehicle for the Frontier
5 transaction]. All of these problems exist even though SpinCo is still under the
6 Verizon umbrella.”¹⁷⁵ PAETEC describes a range of problems that it has
7 encountered, including:

- 8 • Increased response times for Access Service Requests (“ASRs”), i.e.,
9 PAETEC’s electronic orders for access services from Frontier –
10 causing missed due dates or orders that need to be escalated/expedited
11 in order to meet end user customer expectations;
- 12 • Increased Access Ordering system errors, causing delays in
13 submission of ASRs;
- 14 • Hold times of 30 minutes or more when calling Access Order centers
15 to reach an Access Ordering representative; and
- 16 • Apparent reduction of Access Ordering staff – Verizon North Central
17 Access Ordering staff have told PAETEC that they were a staff of 50
18 that was cut to 12 and now they only have 6 individuals working
19 ASRs.¹⁷⁶

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

25 A. Yes. As documented in its May 13, 2010, *ex parte* letter to the FCC, Integra also
26 has been experiencing the same sorts of problems when using the Verizon

¹⁷⁵ Letter from Mark C. Del Bianco, Counsel for PAETEC Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket. No. 09-95, filed May 17, 2010, Attachment A, at p. 6.

¹⁷⁶ *Id.* at p. 6-7.

1 replicated systems in Oregon and Washington.¹⁷⁷ Integra's follow-up *ex parte*
2 letter of May 19, 2010, documented that the performance of the replicated
3 systems was failing to meet the wholesale service quality benchmarks previously
4 applied to Verizon in areas including Order Confirmation Timeliness for ASRs
5 and Completion Notice Interval.¹⁷⁸ In its May 19th letter, Integra explains that
6 these problems are in fact worse than they seem, and that end users are being
7 adversely impacted:

8 Verizon's actual performance in the area of timely order
9 completion is obscured in part by the fact that Verizon has been
10 increasingly sending Service Activation Reports ("SARs") without
11 actually completing the work requested on an order. This was true
12 for orders NM-2556620-DS1, SM-2560987-BDSL, SM-2497851-
13 BDSL, CL-2568000-BDSL, DS-2502748-WASA, and JT-
14 2566473- CHG. This practice negatively impacts Integra's ability
15 to serve its end-user customers. For example, if Verizon sends
16 Integra a completion notice but has not performed the requested
17 installation, Integra is forced to conduct multiple technician
18 dispatches for a single end-user customer, and delivery of service
19 to that customer is delayed. In addition, if Integra receives an SAR
20 from Verizon, Verizon begins billing Integra, and Integra may
21 mistakenly begin billing its end-user customer before service is
22 actually delivered to the customer.¹⁷⁹

23 Significantly, Integra personnel found that some of the Verizon representatives
24 answering calls in Verizon call centers were inexperienced or had been

¹⁷⁷ Letter from Thomas Jones and Nirali Patel, Counsel for Integra Telecom, Inc. et al, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, filed May 13, 2010, at pp. 1-2.

¹⁷⁸ Letter from Thomas Jones, Counsel for Integra Telecom, Inc. et al, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, filed May 19, 2010, at p. 2.

¹⁷⁹ *Id.* at pp. 2-3 (footnotes omitted).

1 inadequately trained.¹⁸⁰ Integra employees “sometimes found themselves
2 educating Verizon’s representatives on Verizon’s internal processes and the
3 requirements of Verizon’s CLEC-facing systems.”¹⁸¹ In some cases, the Verizon
4 employees operating the systems themselves told their Integra counterparts that
5 “...they d[id] not know the appropriate workarounds to resolve specific types of
6 problems.”¹⁸² The full text of Integra’s May 19th letter, which is provided in
7 Exhibit Joint CLECs 2.6, also describes additional ordering problems attributable
8 to failures in the Verizon replicated systems.

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

12 A. No. In fact, the West Virginia cutover appears worse in certain respects, as it is
13 adversely impacting some retail customers as well as CLECs. In West Virginia,
14 the former Verizon exchanges, which encompass approximately 617,000 access
15 lines in 47 counties, were officially cutover to Frontier on July 1, 2010.¹⁸³
16 Charleston’s major newspaper, the *Charleston Daily Mail*, has been monitoring
17 the progress of the cutover since that time, and has reported on the problems
18 confronted by retail customers, including a local pharmacy chain that endured a

¹⁸⁰ *Id.* at p. 4.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Charleston Daily Mail*, “Phone transition not going smoothly for a few customers,” July 1, 2010, at p. 2.
This article is reproduced in Exhibit Joint CLECs 2.7.

1 Frontier service outage that lasted more than 39 hours in their 25 stores, cutting
2 off their on-line systems needed to fulfill prescriptions and rendering them
3 “incapacitated.”¹⁸⁴ These types of problems appear to be continuing. On July 28,
4 the *Charleston Daily Mail* reported that Frontier has declared an “emergency and
5 long-term service difficulty,” which under its labor contract with CWA, allows
6 Frontier to require unionized employees to work overtime up to 70 hours a week
7 to attempt to resolve its service problems.¹⁸⁵

8 **Q. WHAT IMPACTS HAS FRONTIER’S WEST VIRGINIA CUTOVER HAD**
9 **ON CLECS OPERATING IN THE STATE?**

10 A. CLECs are also experiencing significant wholesale ordering problems relating to
11 the West Virginia cutover. One CLEC operating in that service territory,
12 FiberNet, has petitioned the West Virginia PSC to reopen its proceeding to review
13 the Verizon-FairPoint transaction, claiming that FairPoint has failed to live up to
14 its commitment that its wholesale OSS would be functionally at par with those of
15 Verizon.¹⁸⁶ As expressed by FiberNet in its Petition:

16 Since the cutover to Frontier’s Synchronoss VFO OSS on July 1,
17 2010, however, FiberNet has experienced significant and ongoing
18 problems with the proper functionality of Frontier’s OSS and have

¹⁸⁴ *Charleston Daily Mail*, “Local Business Having Major Problems Since Frontier Switch,” July 21, 2010. This article is reproduced in Exhibit Joint CLECs 2.7.

¹⁸⁵ *Charleston Daily Mail*, “Frontier claims overtime is needed: Problems force telecom company to work employees up to 70 hours a week,” July 28, 2010. This article is reproduced in Exhibit Joint CLECs 2.7.

¹⁸⁶ FiberNet LLC Petition to Reopen, July 21, 2010 (filed in West Virginia PSC Docket No. 09-087 1-T-PC), at p. 3.

1 unfortunately been compelled to conclude that Frontier’s OSS as
2 presently constituted is substantially less sophisticated and far less
3 automated than the former Verizon OSS it was intended to replace.

4 FiberNet’s Petition identifies fifteen separate types of problems it is experiencing
5 with Frontier’s wholesale OSS systems that span the entire range of pre-ordering,
6 ordering, and installation functions that the systems are intended to provide.¹⁸⁷

7 Some of these issues impede FiberNet’s ability to offer its services to West
8 Virginia customers, *e.g.*, the inability to input orders related to the digitally
9 qualified loops necessary for the provision of DSL service, or high-capacity DS-
10 1s.¹⁸⁸ Other issues are having a direct impact on the customers themselves, *e.g.*,

11 “several new FiberNet customers have been put out of service because Frontier
12 prematurely processed disconnection orders in its OSS for these migrating
13 customers without simultaneously processing the corresponding order necessary
14 to successfully complete the migration of the customer’s loop and telephone
15 number to FiberNet.”¹⁸⁹ FiberNet also notes that “Customers with pending orders
16 for new service or additional services have lost patience with the length of time
17 necessary to get their requested service installed, which has resulted in several
18 customers simply cancelling their pending orders with FiberNet.”¹⁹⁰

19 **Q. HOW DO THE KINDS OF WHOLESALE-RELATED PROBLEMS BEING**

¹⁸⁷ *Id.* at Exhibit A.

¹⁸⁸ *Id.* at p. 5.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at pp. 6-7.

1 **EXPERIENCED BY INTEGRA, PAETEC, AND FIBERNET IMPACT**
2 **COMPETITORS' ABILITY TO OFFER COMPETITIVE SERVICES AND**
3 **MAINTAIN THEIR CUSTOMER RELATIONSHIPS?**

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

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

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

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

18 **Q. IS IT YOUR RECOMMENDATION THAT THE PROPOSED**
19 **TRANSACTION BE DENIED BY THE COMMISSION?**

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

10 **Q. WHAT IS THE GOAL OF THESE CONDITIONS?**

11 A. The overall objective of the conditions is to ensure that the proposed transaction
12 does not harm the industry and ultimately serves the public interest. More
13 specifically, however, these conditions are intended to mitigate the harm that is
14 likely to happen (and has occurred elsewhere) if the proposed transaction is
15 approved as filed,¹⁹¹ primarily by providing the much-needed certainty that
16 CLECs need to continue to operate their businesses and make prudent decisions.
17 These conditions also attempt to ensure that the Merged Company is not further
18 entrenched as a result of the merger as an overwhelmingly dominant wholesale
19 provider/competitor, to the detriment of competition and the public interest.

¹⁹¹ The FCC has stated: “it will impose conditions to remedy harms that arise from the transaction...” FCC
Embarq/CenturyTel Merger Order at ¶ 12.

1 **Q. IS THERE PRECEDENT FOR APPROVING A PROPOSED**
2 **TRANSACTION SUBJECT TO CONDITIONS?**

3 A. Yes. Both the FCC and state commissions have required conditions (or voluntary
4 enforceable commitments from the merging companies) in exchange for
5 transaction approval in the past. For example, both the FCC and state
6 commissions imposed conditions on the Embarq/CenturyTel merger. Further,
7 Qwest itself proposed conditions for the Iowa Telecom/Windstream merger,
8 which further validates the notion that it is generally accepted that conditions
9 must be imposed on a proposed acquisition to prevent or offset harm.¹⁹²

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

11 A. I have attached as Exhibit Joint CLECs 2.8 to my testimony a list of conditions
12 that my clients are proposing as prerequisites to merger approval, in case the
13 Commission does not reject the proposed transaction outright. These conditions
14 have been carefully and narrowly crafted to address the specific concerns my
15 carrier clients have about the harm that will result from approving the proposed
16 transaction as filed by the Joint Applicants. These conditions are also intended to
17 be enforceable so that the Merged Company abides by them after the merger and
18 so remedies are in place should wholesale service quality degrade following the

¹⁹² Qwest asked the Iowa Board to place conditions on the approval of the Iowa Tel/Windstream merger that would “prohibit Windstream from requiring new local service providers to provide Windstream-provided Personal Identification Numbers when porting a customer’s number to the new provider” and “require, as a condition of Board approval, the new company to provide the new local service provider direct access to its resold Customer Service Record information.” Order Canceling Hearing and Terminating Docket, Iowa Utilities Board, April 30, 2010, at p. 26.

1 merger. Recent experience with the FairPoint acquisition of Verizon, wherein
2 FairPoint reneged on its merger conditions, shows that enforceable conditions are
3 necessary.¹⁹³ CenturyLink should not be allowed to pull the rug out from
4 underneath competitors and consumers after the transaction is approved by
5 reneging on the very commitments that were critical to transaction approval. In
6 addition, because discovery is not yet complete and all testimony has not yet been
7 filed, the list of proposed conditions in Exhibit Joint CLECs 2.8 (as discussed in
8 this testimony below and the testimony of Dr. Ankum) is preliminary and subject
9 to change. Furthermore, all of the conditions are important and no inference
10 regarding priority should be based on the numbering of the conditions, which is
11 for ease of reference only.

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

¹⁹³ *FairPoint Wants to Renege on Terms of Verizon Merger*, May 3, 2010. Available at: <http://www.von.com/news/2010/05/fairpoint-wants-to-renege-on-terms-of-verizon-mer.aspx> (“According to reports, the initial deal between FairPoint and regulators called for FairPoint to cut the cost of basic phone service by more than \$4 per month for at least five years; make broadband available to 83 percent of all lines within two years, and 90 percent over five years; and freeze prices for current Verizon 768kbps DSL customers at \$15 a month with a two-year contract, and \$18 with a one-year contract, for at least two years. FairPoint wants to move those deadlines back and lower the percentage of 768kbps DSL-capable lines.”) The Maine Commission approved these adjustments to FairPoint’s merger conditions in June 2010, which is a component of FairPoint’s bankruptcy reorganization plan. Maine Commissioner Vafiades voted against approving the changes to the conditions stating: “FairPoint has made promises to this Commission and to Maine consumers. The Company is using the bankruptcy process to renege on broadband commitments which were a central aspect of approving the FairPoint takeover of the Verizon phone network. These changes were not required by bankruptcy court and are a disservice to rural customers.” Available at: <http://www.maine.gov/tools/whatsnew/index.php?topic=puc-pressreleases&id=102933&v=article08>

1 A. No. CenturyLink has represented that there will be no “immediate” changes post-
2 merger and “no harm” to existing wholesale processes, systems and service
3 quality post-merger. CenturyLink has also claimed that it is “willing and able to
4 abide by” its 251 and 271 obligations post-merger and it is “truly committed to
5 providing quality service to our CLEC customers today and in the future.”¹⁹⁴
6 Given these representations, CenturyLink should have no problem agreeing to
7 conditions that provide protections to prevent or offset harm and ensure that
8 Qwest does not backslide in its obligations as an ILEC and a BOC. In addition,
9 CenturyLink should not be permitted to keep all of the benefits of increased
10 economies and efficiencies for itself;¹⁹⁵ rather, the FCC’s *Local Competition*
11 *Order* requires those to be shared with new entrants.¹⁹⁶

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

14 A. Yes. I’ve attached Exhibit Joint CLECs 2.9 to my testimony, which is the list of
15 conditions that my clients are proposing in this proceeding matched up with some
16 previous FCC or state commission order(s) that adopted a similar condition. Most
17 of the CLEC-proposed conditions are grounded in previous merger conditions,

¹⁹⁴ Hunsucker Oregon Direct at pp. 13-14.

¹⁹⁵ See, e.g., Fenn Utah Direct at p. 12, lines 7-10 (“Q. Will the post-merger company be able to take advantage of increased economies of scope and scale? A. Yes. The Transaction will result in a combined enterprise that can achieve greater economies of scale and scope than the two companies operating independently.”)

¹⁹⁶ See, e.g., *Local Competition Order* at ¶ 11: “...the local competition provisions of the Act require that these economies be shared with entrants.”

1 and the few that are not were designed to address specific harms related to this
2 particular proposed transaction.

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

5 A. The Joint Applicants have said that the transaction is expected to create annual
6 operating synergies of \$575 million and annual capital expenditure synergies of
7 \$50 million, and that those synergies will be “fully-recognized over a three-to-five
8 year period following closing.”¹⁹⁷ Successful integration does not always occur
9 on-time and/or on-budget, as CenturyLink is aware from prior system projects.¹⁹⁸
10 That is particularly true here, when CenturyLink will be attempting to integrate
11 both the Embarq acquisition and Qwest acquisition at the same time. Therefore,
12 the time period during which merger-related activities intended to result in

¹⁹⁷ Glover Utah Direct at p. 11, lines 10-11.

¹⁹⁸ See, e.g., *Financial Watch: Integration Costs Loom Over OSS Deployments, Billing and OSS World*, October 1, 2003, available at <http://www.billingworld.com/articles/2003/10/financial-watch-integration-costs-loom-over-oss-d.aspx> (“Another example of a vendor-driven project that fell short involves CenturyTel, a Louisiana-based service provider, which in 2000 selected Amdocs for convergent billing. This project has experienced delays due to the project going over budget. According to a 10-Q that CenturyTel recently filed with the Securities and Exchange Commission, this project remains in the development stage and has required ‘substantially more time and money to develop than originally anticipated.’ The 10-Q filing states that CenturyTel expects to complete all phases of the new system no later than mid-2005 at a cost in excess of the previously disclosed estimate of \$180 million. CenturyTel currently believes completion of the project may require it to revise its previously disclosed cost estimate by between \$50 and \$60 million. The company also states that ‘there is no assurance that the system will be completed in accordance with this schedule or budget, or that the system will function as anticipated. If the system does not function as anticipated, the company may have to write-off part or all of its remaining costs and further explore its other billing and customer care system alternatives.’”)

1 synergies will occur may be longer than the three-to-five year period anticipated
2 by the Joint Applicants.

3 Some proposed conditions are to apply for a specific time period, and other
4 conditions (such as continuing BOC/271 obligations in Qwest's legacy territory)
5 do not have an expiration date. The term "Defined Time Period" was developed
6 to specify the effective time period for those conditions that are time-sensitive.
7 "Defined Time Period" is established at either (a) at least 5-7 years after the
8 Closing Date¹⁹⁹ or, (b) at least 42 months (3.5 years)²⁰⁰ and continuing thereafter
9 until the Merged Company is granted Section 10 forbearance from the condition.
10 The "Defined Time Period" is established based on the facts of this particular
11 transaction²⁰¹ and designed to ensure that the combined company's pursuit of
12 merger-related savings does not jeopardize wholesale customers or impede
13 competition. At the same time, the "Defined Time Period" grants the combined
14 company flexibility to terminate the merger condition in 3.5 years (shortly after

¹⁹⁹ "Closing Date" is defined as "when used in this list of conditions, refers to the closing date of the transaction for which the Applicants have sought approval from the Federal Communications Commission (FCC) and state commission (the 'transaction')." Exhibit Joint CLECs 2.8.

²⁰⁰ In the *AT&T/BellSouth Merger Order*, AT&T proposed that conditions would last 42 months (3.5 years) from the merger closing date unless specified otherwise. *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) ("*AT&T/BellSouth Merger Order*").

²⁰¹ For example, the lower end of the 5-7 year range is based on Joint Applicants' own expectations regarding how long it will take the combined company to fully recognize merger-related savings, and the upper end is based on the fact that CenturyLink will be straining its resources to simultaneously integrate Embarq and Qwest as well as the fact that not all of CenturyLink's integration efforts have been on-time and/or on-budget.

1 the lower end of the Joint Applicants' expected timeframe) via a forbearance
2 request if the Merged Company's integration efforts prove to be successful.

3 **Q. PLEASE ELABORATE ON WHY THE TIME HORIZONS ASSOCIATED**
4 **WITH THE "DEFINED TIME PERIOD" ARE APPROPRIATE FOR THE**
5 **PROPOSED TRANSACTION WHEN OTHER (SHORTER) TIME**
6 **HORIZONS HAVE BEEN ADOPTED IN THE PAST.**

7 A. This 3.5 year minimum duration is appropriate, given the Joint Applicants' own
8 representation of a minimum three to five-year synergy period. During the time
9 period when the Merged Company is making merger-related changes to achieve
10 synergies, customers and competition should be protected from harm resulting
11 from those changes. In considering the Frontier-Verizon merger, the Oregon
12 Commission required Frontier to honor Verizon wholesale price lists and tariffs
13 and to avoid increases for at least two years after closing.²⁰² In that proceeding,
14 unlike here, Frontier did not state that the anticipated synergies would occur over
15 a three-to-five year period. The Joint Applicants' representation regarding the
16 anticipated time period for realizing synergies is specific to this proposed merger
17 and should be considered when establishing needed time periods for this proposed
18 merger.

²⁰² *In the Matter of Verizon Communications Inc. and Frontier Communications Corporation Joint Application for an Order Declining to Assert Jurisdiction, or, in the Alternative, to Approve the Indirect Transfer of Control of Verizon Northwest Inc.*, Oregon Public Utility Commission Docket No. UM1431, Order No. 10-067, February 24, 2010, 2010 Ore. PUC LEXIS 64 ("Oregon Frontier-Verizon Order"), 2010 Ore. PUC LEXIS 64, *46.

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

3 A. In the *AT&T/BellSouth Merger Order*, AT&T proposed that conditions would last
4 3.5 years (42 months) from the merger closing date unless specified otherwise.²⁰³

5 The AT&T/BellSouth merger involved an existing BOC (AT&T) covering 13
6 states acquiring an existing BOC (BellSouth) covering 9 states, and the acquiring
7 BOC in that transaction (AT&T) already had experience not only operating as a
8 BOC but also integrating BOC operations during the merger of AT&T and SBC,
9 and before that, the merger of Ameritech and SBC. Further, when seeking
10 approval of the AT&T/BellSouth Merger, AT&T stated that the synergy savings
11 resulting from the AT&T/SBC merger were greater than and achieved more
12 quickly than AT&T's original forecast.²⁰⁴ Despite AT&T's past experience in
13 this regard, the FCC conditioned approval of the AT&T/BellSouth merger subject
14 to enforceable conditions that applied for 42 months (3.5 years). By contrast, this
15 proposed transaction involves a non-BOC ILEC – which has traditionally
16 operated primarily as a rural LEC facing little competition – acquiring a BOC
17 spanning 14 states. Though CenturyTel has acquired numerous
18 telecommunications companies in the past, none of them were BOCs and none of

²⁰³ *AT&T/BellSouth Merger Order*, Appendix F, Conditions at p. 147.

²⁰⁴ AT&T Description of Transaction Public Interest Showing and Related Demonstrations, WC Docket No. 06-74, March 31, 2006, at p. 42, citing *See id.* ¶ 5; Kahan Decl. ¶¶ 40-42; *see also* AT&T Analyst Conference Presentation, at 51 (Jan. 31, 2006), available at http://library.corporate-ir.net/library/11/113/113088/items/181348/analyst06_b.pdf (noting that synergies are now estimated at \$18 billion vs. \$15 billion).

1 them were even close to the size of Qwest. Further, though CenturyTel touts its
2 management's ability as successful integrators²⁰⁵ and claims that the ongoing
3 Embarq integration is running smoothly,²⁰⁶ similar representations were made by
4 AT&T during the AT&T/BellSouth and the FCC still put in place enforceable
5 conditions for a period of 42 months (3.5 years). The point being: acquisition of a
6 BOC raises serious concerns than are not present in non-BOC acquisitions, and
7 those concerns necessitate more protection. These concerns are even greater
8 when the BOC is being acquired by a company that is not currently a BOC and
9 has no experience with all of the obligations that come along with being a BOC.

10 The ultimate question is what time period is necessary to protect the public
11 interest.²⁰⁷ Here, the need for protection is even greater than in the
12 AT&T/BellSouth merger. The latter merger involved two BOCs, both of which
13 have been subject to 271 proceedings and interconnection agreement arbitrations
14 through which they have had to learn and accept wholesale obligations that they
15 may otherwise have had incentives to ignore. Unlike a merger between two
16 BOCs, both well-acquainted with wholesale obligations and 271 requirements,

²⁰⁵ Ferkin Utah Direct at pp. 14-17.

²⁰⁶ *Id.* at p. 15, lines 28-29.

²⁰⁷ *In the Matter of Embarq Corporation and CenturyTel, Inc. Joint Application for Approval of Merger between the Two Companies and Their Regulated Subsidiaries*, Oregon Public Utility Commission Docket No. UM1416, Order No. 09-169, May 11, 2009 (“Oregon Embarq-CenturyTel Merger Order”), 2009 Ore. PUC LEXIS 152, *11 (rejecting the Joint Applicants proposal to reduce various conditions from five years to three years, concluding that the longer five year period “serves to protect customers should a significant negative event occur with the new parent” and “is a more reasonable means to protect customers.”)

1 here the Joint Applicants propose the purchase of a BOC by a non-BOC ILEC
2 that has been acting in many cases as primarily a rural carrier claiming exemption
3 from ILEC, much less BOC, obligations. Because the BOC has greater wholesale
4 obligations than an ILEC, and certainly more obligations than an exempt (or, self-
5 proclaimed exempt) rural ILEC, non-BOC, such ILECs lack a long history of
6 fulfilling such commitments. Wholesale customers therefore need protective
7 conditions firmly in place throughout the time that merger-related changes are
8 occurring and the time during which the results of those changes continue to
9 affect customers and competition.

10 **Q. PLEASE EXPLAIN HOW YOUR TESTIMONY ON PROPOSED**
11 **CONDITIONS IS ORGANIZED?**

12 A. The proposed conditions are grouped into the following categories: (A)
13 Operations Support Systems, (B) Wholesale Service Quality, (C) Wholesale
14 Customer Support, (D) Wholesale Service Availability, (E) Wholesale Rate
15 Stability, and (F) Compliance. In the testimony that follows, I will address: (A)
16 Operations Support Systems, (B) Wholesale Service Quality, (C) Wholesale
17 Customer Support, and (F) Compliance. Dr. Ankum addresses: (D) Wholesale
18 Service Availability and (E) Wholesale Rate Stability.

1 A. *Operations Support Systems (“OSS”)*

2 **Q. PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO**
3 **OSS.**

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

- 5 • Condition 19 states that after the closing date, the Merged Company will use
6 and offer to wholesale customers in the legacy Qwest ILEC territory the
7 legacy Qwest OSS for at least three years, with at least the same level of
8 wholesale service quality, including support, data, functionality, performance,
9 and electronic-bonding provided by Qwest prior to the merger filing date.
10 This condition also requires that after the three-year period the Merged
11 Company will not replace or integrate Qwest systems without first: (a)
12 submitting a detailed plan to the FCC Wireline Competition Bureau and state
13 commissions of affected states, including a detailed description and
14 contingency plan, with opportunity for comment from interested parties; (b)
15 conducting robust third-party testing (similar to what was performed during
16 the 271 approval process) of any system that will replace any Qwest system
17 that was subject to third-party testing to ensure that it provides needed
18 functionality and can handle commercial volumes; and (c) coordinated testing
19 with CLECs.
- 20 • Condition 20 states that following the transaction in the CenturyLink legacy
21 territory, the Merged Company will use the wholesale pre-ordering, quoting,
22 ordering, provisioning and maintenance/repair functionalities (including
23 electronic bonding) of the legacy Qwest territory to provide interconnection,
24 UNEs, collocation, and special access services.

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

26 A. The FCC has found that CLECs would be “severely disadvantaged, if not
27 precluded altogether, from fairly competing,” if they do not have
28 nondiscriminatory access to OSS.²⁰⁸ Likewise, Qwest has described its existing
29 OSS as playing “a crucial role in the transactions between Qwest and all

²⁰⁸ *Local Competition Order* at ¶518.

1 CLECs”²⁰⁹ and characterized its OSS as “the lifeblood of...Qwest’s wholesale
2 operation...”²¹⁰ I would agree with these statements. So, by all accounts,
3 nondiscriminatory access to OSS is absolutely essential to competition.
4 Unfortunately, the future of Qwest’s OSS is in serious question due to the
5 proposed transaction. All we know at this point in time is that a CenturyLink
6 person (Mr. Bill Cheek) will be in charge of wholesale for the combined company
7 and that no decisions have been made as to systems, staffing or locations of the
8 staff. Given this lack of information, these conditions will provide the much-
9 needed certainty in this area so that wholesale customers can plan their business
10 for the foreseeable future, and will help ensure that CLECs have
11 nondiscriminatory access to OSS across the Merged Company’s footprint.

12 **Q. PLEASE ELABORATE ON YOUR STATEMENT THAT THE FUTURE**
13 **OF QWEST’S OSS IS IN SERIOUS QUESTION.**

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

18 Upon merger closing, CenturyLink does not anticipate any
19 immediate changes to the Qwest CLEC OSS systems. Integration
20 planning is in the early stages and decisions have not been made at

²⁰⁹ Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.

²¹⁰ Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03,
August 10, 2007, at p. 39.

1 this time. However, because the transaction results in the entirety
2 of Qwest, including operations and systems, merging into and
3 operating as a subsidiary of CenturyLink, it will allow a
4 disciplined approach to reviewing systems and practices and will
5 allow integration decisions to proceed in an orderly disciplined
6 manner. To the extent any changes are made, CenturyLink will
7 comply with all applicable state and federal laws and rules, as
8 wells (sic) as the provisions of any applicable interconnection
9 agreements or tariffs, in the same manner as they would apply
10 notwithstanding the merger.²¹¹

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

13 The merger is intended to bring about improved efficiencies and
14 practices in all parts of the combined company, so changes could
15 be expected over time...any changes will occur only after a
16 thorough and methodical review of both companies' systems and
17 processes to determine the best system to be used on a go-forward
18 basis from both a combined company and a wholesale customer
19 perspective.²¹²

20 So, in a nutshell, CenturyLink has told wholesale customers that they can expect
21 changes to the "lifeblood" of Qwest's wholesale operations, but has provided no
22 detail about what changes will be made or when those changes will be made.
23 This simply does not provide wholesale customers with the certainty they need to
24 plan their business going forward.

25 **Q. HAS CENTURLINK PROVIDED ANY INFORMATION ABOUT HOW**
26 **LONG IT PLANS ON MAINTAINING THE EXISTING OSS IN LEGACY**
27 **QWEST TERRITORY?**

²¹¹ CenturyLink Response to Integra Utah Data Request #23.

²¹² CenturyLink Response to Integra Utah Data Request #35(h).

1 A. My clients have asked in every state where they have intervened about
2 CenturyLink's post-merger plans for OSS, and in every state, CenturyLink has
3 submitted the same answer about anticipating no "immediate changes" but that
4 "changes could be expected over time." On July 27, 2010, CenturyLink filed its
5 Reply Comments and supporting declarations in the FCC's review of the
6 proposed transaction (WC Docket No. 10-110). In that filing, the Joint
7 Applicants represented that "[i]t is expected that CenturyLink will operate both
8 CenturyLink (in CenturyLink areas) and Qwest OSS (in Qwest areas) until it
9 completes its evaluation of the best options for all stakeholders. It is expected
10 that CenturyLink will operate both systems for 12 months at the very least."²¹³
11 While this recent statement is different than what has been submitted in the state
12 proceedings to date, it still provides none of the certainty that wholesale
13 customers need. As an initial matter, 12 months is not a sufficient period of time
14 to provide certainty. Second, continuing to operate the systems does not mean
15 that they will continue to meet 271 standards.

16 **Q. WHY IS OPERATING BOTH SYSTEMS FOR "AT LEAST 12 MONTHS"**
17 **INSUFFICIENT?**

18 A. CenturyLink has estimated synergy savings to be achieved over a three-to-five
19 year period, which means that the greatest risk to CLECs of CenturyLink

²¹³ Declaration of William E. Cheek in Support of Reply Comments of CenturyLink, Inc. and Qwest Communications International, Inc., WC Docket No. 10-110, July 27, 2010.

1 degrading access to OSS is during that three-to-five year window, and even for a
2 period of time after the five years if the combined company does not integrate
3 Qwest on-time and on-budget post-merger. Since one year does not even come
4 close to covering this time period during which wholesale customers and local
5 competition are at the greatest risk due to the merger, it is not satisfactory. In
6 addition, CenturyLink states that it “is expected” to operate both systems for at
7 least 12 months; however, expectations can change post-merger, and that is why
8 an enforceable commitment/condition to maintain OSS is critical.

9 **Q. SHOULD CENTURYLINK BE ABLE TO UNILATERALLY MAKE**
10 **CHANGES TO QWEST’S OSS POST-MERGER IN THE PURSUIT OF**
11 **SYNERGY SAVINGS?**

12 A. No. Regardless of whether CenturyLink performs a “methodical review” or if it
13 takes into account the “wholesale customer perspective” or not²¹⁴ – CenturyLink
14 should not be allowed to make changes to Qwest’s OSS post-merger without
15 extensive analysis like that conducted during the Qwest Section 271 approval
16 process. As explained in Exhibit Joint CLECs 2.2, an extensive third-party test of

²¹⁴ See also, Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 21 (“Whether post-transaction CenturyLink ultimately chooses an existing OSS or selects new systems should be left to be resolved through the ordinary course of business and the need to respond to marketplace conditions.”) Fortunately for CLECs, the state commissions and FCC did not take such this approach when evaluating whether Qwest’s OSS provides nondiscriminatory access required by Section 271 of the Act. CenturyLink’s claim that it should be left up to the Merged Company as to whether Qwest’s OSS should be replaced with different systems raises questions as to whether CenturyLink truly understands and takes seriously the BOC obligations it will inherit in Qwest’s legacy territory if the proposed transaction is approved.

1 Qwest's OSS was conducted over a three-year period for the express purpose of
2 determining whether Qwest's OSS satisfied the nondiscriminatory access
3 requirement under Section 271 of Act. Despite Qwest claiming at the outset that
4 its OSS and CMP were compliant with Section 271, the third party testing
5 revealed hundreds of problems areas that were resolved through OSS
6 improvements and re-testing. Countless hours and millions of dollars went into
7 this process, and Qwest ultimately received Section 271 authority to provide in-
8 region interLATA services based, in significant part, on this extensive test of its
9 existing OSS. If CenturyLink changes Qwest's existing OSS post-merger
10 (without the same level of testing that was previously conducted), it will have
11 single-handedly undermined all of the work that was conducted by 14 state
12 commissions, the FCC, third-party testers, Qwest and industry participants.

13 CenturyLink has admitted that its OSS has not been third-party tested,²¹⁵ and the
14 FCC has stated that a "third-party test provides an objective means by which to
15 evaluate a BOC's OSS readiness."²¹⁶ Accordingly, replacing Qwest's legacy
16 OSS with CenturyLink's legacy (or new) OSS would cause Qwest to backslide on
17 its 271 obligations because Qwest would no longer be providing the
18 nondiscriminatory access to OSS that was a quid pro quo for 271 approval.

²¹⁵ CenturyLink Response to Integra Utah Data Request #18.

²¹⁶ *Qwest 9 State 271 Order* at ¶ 49.

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

3 A. Yes. As Dr. Ankum explains, CenturyLink has the incentive and ability to direct
4 its synergy savings efforts in areas that are most profitable to the Merged
5 Company. Given that Qwest has referred to OSS as the “lifeblood” of its
6 wholesale operations, making changes to Qwest’s wholesale OSS is obviously an
7 area that would be profitable to the Merged Company. If CenturyLink stopped
8 maintaining and investing in Qwest’s OSS, or started using it incorrectly,
9 CenturyLink would save money (increase synergies) and disadvantage its
10 competitors (again resulting in more revenues for Qwest). If CLECs’ access to
11 OSS is degraded or melts down altogether due to integration failures, it will give
12 CenturyLink a leg up in competing for end users. In addition, the severe systems
13 integration problems experienced following recent mergers is proof positive that
14 OSS integration failures can wreak havoc post-merger.

15 **Q. THE COMPANY HAS STATED THAT THE INTEGRATION “WILL**
16 **LARGELY INVOLVE THE USE OF EXISTING SYSTEMS RATHER**
17 **THAN CREATING NEW ONES.”²¹⁷ DOES THIS ALLAY YOUR**
18 **CONCERNS?**

19 A. No. If CenturyLink tries to import legacy CenturyLink OSS into Qwest’s legacy
20 territory post-merger, those OSS would be “new” to Qwest’s region, and the same

²¹⁷ Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 9.

1 types of problems that have been experienced with other mergers could be
2 experienced in Qwest's region when the Merged Company attempts to
3 incorporate those new OSS. As just one example, CenturyLink's legacy OSS has
4 not been tested to handle commercial volumes that would be experienced in
5 Qwest's legacy territory, and could fail under the strain of attempting to process
6 that higher number of orders.

7 **Q. DO THE CLEC CONDITIONS LOCK-IN CENTURYLINK TO USING**
8 **QWEST'S LEGACY OSS FOREVER?**

9 A. No. After the minimum three-year period, the Merged Company has the
10 opportunity to make changes so long as the Merged Company (a) files a detailed
11 plan with regulators; (b) conducts third-party testing (for Qwest systems that were
12 third-party tested) to ensure that the replacement system provides the needed
13 functionality and can handle commercial volumes in Qwest's legacy territory; and
14 (c) allows for coordinated testing with CLECs. These three requirements are
15 eminently reasonable and were undertaken to ensure that Qwest's existing OSS
16 met the requirements of Section 271.

17 Regulators as well as CLECs have a vested interest in overseeing any changes to
18 Qwest's OSS and ensuring that Qwest does not backslide in carrying out its
19 obligations under Section 271 and does not experience the same types of trouble
20 experienced after recent, similar mergers. Third-party testing will provide an

1 objective means for determining whether the replacement system is at least equal
2 in functionality and capability as the system it is replacing (which was originally
3 third-party tested).

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

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

9 **Q. PLEASE DISCUSS IN MORE DETAIL CONDITION 20 – OSS IN**
10 **LEGACY CENTURYLINK TERRITORY.**

11 A. Whereas Condition 19 addresses the OSS to be used in legacy Qwest territory
12 post-merger, Condition 20 addresses the OSS to be used in legacy CenturyLink
13 territory post-merger. The existing Qwest OSS and its functionality is more well-
14 documented, and preferred by carriers that use both of the merging companies'
15 systems, than the existing CenturyLink OSS. For example, tw telecom, a carrier
16 that has experience as a wholesale customer of both Qwest and CenturyLink,²¹⁸
17 explained that the electronic-bonding capabilities of legacy Embarq's OSS is
18 inferior to the electronic-bonding capabilities of legacy Qwest's OSS.²¹⁹ And as

²¹⁸ Integra, et al. FCC Comments, WC Docket No. 10-110, July 12, 2010.

²¹⁹ *Id.* at pp. 41-42.

1 discussed above, Qwest's OSS has been tested independently and extensively,
2 while Embarq's legacy OSS has not.²²⁰

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

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

13 **Q. ARE THERE OTHER REASONS WHY THE QWEST OSS SHOULD BE**
14 **MIGRATED TO SERVE THE LEGACY CENTURYLINK EXCHANGES,**
15 **INCLUDING THE EMBARQ EXCHANGES?**

16 A. Arguably the enforcement of the stringent nondiscrimination mandated by Section
17 251(c) might require such a result. Although CenturyLink intimates that it will
18 keep local control, the fact of the matter is that it may ultimately seek to have
19 business customers view CenturyLink as a single global entity. That will allow

²²⁰ See, Exhibit Joint CLECs 2.2, providing quotes from state commissions and the FCC about the extensive testing that was conducted on Qwest's OSS during the 271 approval process.

1 CenturyLink to market services throughout its bigger footprint. Thus, if
2 CenturyLink evolves its OSS to a single ordering system for retail customers (*i.e.*,
3 a retail customer would only have to submit a single order to have service
4 provisioned in both Qwest and legacy CenturyLink exchanges), the same would
5 be required for wholesale customers.

6 ***B. Wholesale Service Quality***

7 **Q. PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO**
8 **WHOLESALE SERVICE QUALITY.**

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

- 10 • Condition 4 states that the Merged Company shall comply with all wholesale
11 performance requirements and associated remedy regimes applicable to Qwest
12 in the legacy Qwest ILEC territory. This includes the Merged Company
13 continuing to comply with all wholesale performance requirements and
14 remedy regimes and continuing to provide to CLECs wholesale performance
15 metrics reports Qwest currently provides. This condition also states that
16 Qwest will not reduce, eliminate or withdraw any Performance Indicator
17 Definition (PID) or Performance Assurance Plan (PAP) offered or provided as
18 of the merger filing date for a period of at least five years after the closing
19 date, and only then, after the Merged Company obtains approval from the
20 applicable state commission to reduce/eliminate/withdraw it after the
21 minimum 5-year period. This condition also states that, for at least the
22 Defined Time Period, the Merged Company shall meet or exceed the average
23 wholesale performance provided by Qwest to each CLEC for one year prior to
24 the merger filing date for each PID, product, and disaggregation. If the
25 Merged Company fails to provide wholesale service as described in the
26 preceding sentence, the Merged Company will also make remedy payments to
27 each affected CLEC in an amount as would be calculated using the
28 methodology in the current PAP for each missed occurrence when comparing
29 pre and post-merger performance. This remedy payment related to pre and
30 post-merger service quality (“Additional PAP”) would apply in addition to the

1 Current PAP, and state commissions/FCC would have the authority to assess
2 additional remedies if the remedies described above are insufficient to bring
3 about satisfactory wholesale service quality. This condition also states that in
4 the legacy Qwest ILEC territory, for at least the Defined Time Period, the
5 Merged Company will meet or exceed the average monthly performance
6 provided by Qwest to each CLEC for one year prior to the merger filing date
7 for each metric in the CLEC-specific monthly special access performance
8 reports Qwest provides to CLECs as of the merger filing date. For each
9 month that the Merged Company fails to meet Qwest's average monthly
10 special access performance for each metric, the Merged Company will make
11 remedy payments (calculated on a basis to be determined by the state
12 commission/FCC) on a per-month, per-metric basis to each affected CLEC.

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

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

31 A. These conditions are critical to ensure that wholesale service quality is not
32 degraded post-merger as the Merged Company cuts costs to achieve synergy
33 savings. Condition 4, for instance, maintains the current PIDs and PAPs that
34 Qwest currently provides for a period of at least 5 years following the merger.

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

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

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

3 A. Not really. When asked specifically whether CenturyLink will comply with
4 Qwest’s wholesale performance requirements, continue to provide wholesale
5 performance metrics reports, make reasonable efforts to meet or exceed the
6 average wholesale performance provided by Qwest, and remit remedy payments
7 for substandard performance post-merger, CenturyLink replied that it “intends to
8 comply” with existing Qwest wholesale performance plans and went on to explain
9 that changes could be expected due to integration.²²¹ “Intend[ing] to comply” and
10 actually complying are two entirely different things as amply demonstrated by
11 history of the Hawaii, FairPoint and Frontier transactions previously discussed –
12 particularly if the proposed transaction is approved as filed and the Merged
13 Company’s pre-merger “intentions” are trumped by the Merged Company’s
14 efforts to deliver on synergy savings post-merger.

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

18 A. The longer the wholesale provisioning interval, the longer wholesale customers
19 must wait to serve end user customers (and the longer end users must wait to take
20 advantage of competitive options). Further, the Merged Company, as part of its

²²¹ CenturyLink Response to Integra Utah Data Request #61.

1 integration efforts, could attempt to lengthen wholesale provisioning intervals so
2 that it may reduce personnel costs post-merger.

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

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

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

14 A. Qwest has opposed including service intervals in ICAs, and instead proposed to
15 leave intervals out of ICAs so that they can be modified through CMP.²²²

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

²²² Testimony of Renee Albersheim on behalf of Qwest Corp., Minnesota Docket No. P-5340, 421/IC-06-768, August 25, 2006, at p. 31 ("The effect of Eschelon's language is to take control of service interval management away from its appropriate forum, the CMP, and to give control to Eschelon. Historically, Qwest has modified service intervals through CMP. As I discussed in Section III above, the CMP would be undermined if it was necessary to conduct interconnection agreement amendment negotiations before CMP changes could be implemented.")

1 A. Yes. Qwest has in the past made unilateral changes in CMP over CLECs
2 objections.²²³

3 **Q. DOES THE SERVICE INTERVAL IMPACT COMPETITION AND**
4 **CONSUMERS?**

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

12 **C. Wholesale Customer Support**

13 **Q. PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO**
14 **WHOLESALE CUSTOMER SUPPORT.**

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

²²³ For example, Qwest has unilaterally implemented unwanted changes over CLEC objections. *See, e.g., In re Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996* [“Qwest-Eschelon Minnesota ICA Arbitration”], Arbitrators’ Report, MPUC Dkt. Nos. P-5340,421/IC-06-768, ¶ 22 (rel. Jan. 16, 2007) (“Eschelon has provided convincing evidence that the CMP process does not always provide CLECs with adequate protection from Qwest making important unilateral changes in the terms and conditions of interconnection.”).

- 1 • Condition 15 states that the Merged Company shall provide to wholesale
2 customers at least 30 days prior to the closing date, and maintain on a going-
3 forward basis, up-to-date escalation information, contact lists, and account
4 manager information. For changes to support center location, organizational
5 structure, or contact information, the Merged Company will provide at least
6 30 days advance written notice to wholesale customers; and will provide
7 reasonable advance notice for other changes. The information and notice will
8 be consistent with the terms of applicable ICAs.
- 9 • Condition 16 states that the Merged Company will make available to
10 wholesale customers the types and level of data, information, and assistance
11 that Qwest made available as of merger filing concerning wholesale OSS and
12 wholesale business practices and procedures. This includes information on
13 Qwest's wholesale website such as the PCAT, notices, industry letters, the
14 CMP and databases/tools.
- 15 • Condition 17 states that the Merged Company will maintain Qwest's CMP
16 using the terms in the Qwest CMP Document, and will dedicate resources
17 needed to complete pending CLEC change requests in a commercially
18 reasonable time frame.
- 19 • Condition 18 states that the Merged Company will ensure that the legacy
20 Qwest Wholesale and CLEC support centers are sufficiently staffed by
21 adequately trained personnel dedicated to wholesale operations so as to
22 provide service at a level equal to or greater than provided by Qwest prior to
23 the merger (relative to wholesale order volumes), and to protect CLEC
24 information from being used by the Merged Company's retail operations.
25 This condition also states that the total number of employees dedicated to
26 supporting wholesale services for CLECs will be no fewer than employed by
27 legacy Qwest and legacy CenturyLink as of the Merger Filing Date unless the
28 Merged Company obtains a ruling from the applicable regulatory body that
29 wholesale order volumes materially decline or other circumstances warrant
30 corresponding employee reductions.

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

32 A. These conditions dovetail with the wholesale service quality conditions and in
33 some respects the OSS conditions discussed above. These conditions are needed
34 to ensure that the transition to the Merged Company runs smoothly for wholesale
35 customers – and by extension their end user customers – and that the Merged

1 Company does not diminish the level of wholesale support currently provided in
2 Qwest's BOC territory when it integrates the two companies and pursues synergy
3 savings.

4 CenturyLink has provided no detail about what wholesale customers should
5 expect other than "change." To ensure that the transition runs smoothly for
6 wholesale customers, Condition 15 requires the Merged Company to provide at
7 least 30 days prior to the closing date (and on a going forward basis) up-to-date
8 escalation information, contact lists, and account manager information, and
9 provides for 30 days notice for changes to support center location, organizational
10 structure, or contact information. These resources are critical to managing the
11 carrier-to-carrier relationship between an ILEC and CLECs, and will likely incur
12 significant changes due to the proposed transaction. Therefore, CLECs must be
13 made aware of these changes in advance so that they can make the appropriate
14 adjustments to their processes and operations and avoid disruption when the
15 change is made. This requirement is particularly important given that when
16 CenturyLink was asked about its plans in this regard post-merger, its response
17 was not specific or instructive.²²⁴

²²⁴ CenturyLink Response to Integra Utah Data Request #71. To CenturyLink's credit, it states that "Wholesale customers will be informed of any changes to contact information in advance." CenturyLink Response to Integra Utah Data Request #72. However, CenturyLink does not indicate how far in advance that notice will be given or how the notice will be provided. This is insufficient.

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

3 A. These conditions are necessary in order to ensure that Qwest does not backslide in
4 its obligations under the Act. The OSS provided by Qwest to CLECs goes
5 beyond just the CLEC-facing system interfaces, and includes the back-office
6 systems, databases, personnel,²²⁵ as well as associated business processes and up-
7 to-date data maintained in those systems.²²⁶ The third-party test conducted on
8 Qwest's OSS during the 271 approval process tested the availability and
9 functionality of the system interfaces as well as business practices and procedures,
10 data integrity and Qwest's CMP.²²⁷ The test involved these components because
11 they are directly related to whether Qwest provides nondiscriminatory access to
12 its OSS under the Act. In other words, the current level of data, current business
13 practices and procedures, and current CMP in Qwest's region are essential

²²⁵ See, e.g., *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, FCC 03-36, August 21, 2003 ("*Triennial Review Order*") at footnote 822 ("OSS are composed of various 'back office' systems, databases and personnel that an incumbent LEC uses to commercially provision telecommunications services to...purchasers of unbundled network elements.")

²²⁶ *Local Competition Order* at ¶¶ 517-18.

²²⁷ See, e.g., Colorado PUC Evaluation ("Qwest's change management process (CMP) has undergone a complete overhaul during the § 271 process. It is now compliant with the FCC's change management criteria. The [Colorado PUC] staff has closely monitored CMP, and through no small amount of goading, Qwest has brought it into compliance."); see also *id.* at 45 ("Beginning in July 2001, Qwest, CLECs and [Colorado PUC] staff began meeting in a collaborative effort to redesign Qwest's change management process (CMP). The participants in the redesign process have met for more than 45 days over the past 11 months to discuss every aspect of Qwest's CMP. CLECs and Qwest have made every effort to achieve consensus. As a result, the [Colorado PUC] agrees with Qwest's contention that 'it has in place the most comprehensive, inclusive, and forward-looking change management plan in the nation.'").

1 components of Qwest complying with the market-opening provisions of 271 of
2 the Act, and these components would be undermined – and the Merged Company
3 would backslide on its 271 obligations – if the Merged Company withdrew or
4 replaced such information, practices and procedures, or CMP, post-merger.

5 **Q. DOES CENTURYLINK SEEM TO UNDERSTAND THE IMPORTANCE**
6 **OF THE QWEST 271 OBLIGATIONS?**

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

12 The merger is intended to bring about improved efficiencies and
13 practices in all parts of the combined company, so changes [to
14 Qwest’s existing CMP and/or CMP Document] could be expected
15 over time. However, any changes will occur only after a thorough
16 and methodical review of both companies’ processes to determine
17 the best process to be used on a go-forward basis from both a
18 combined company and a wholesale customer perspective.²²⁸

19 Based on this response, CLECs should expect changes, but nothing is known
20 about those changes or how the Merged Company will determine whether to
21 make changes or what changes to make. CenturyLink’s vague reference to a

²²⁸ CenturyLink Response to Integra Utah Data Request #118. *See also*, CenturyLink response to Integra Utah Data Request #91. After explaining that changes may be made in the future, CenturyLink states: “Generally, CenturyLink is a proponent of web-based guidelines and materials for wholesale customer usage and is an effective means used by CenturyLink today.” This response provides absolutely no commitment to maintain the information Qwest currently makes available on its website, such as its Product Catalogs.

1 “methodical review” falls woefully short of providing any certainty.²²⁹ Moreover,
2 the Merged Company should not be allowed to cast away all the work that was
3 conducted to ensure Qwest’s OSS provided nondiscriminatory access to OSS; nor
4 should the Merged Company be allowed to unilaterally²³⁰ implement new OSS or
5 modify CMP because it unilaterally determined it was more efficient (in the
6 “combined company[‘s] perspective”). In fact, that is precisely the type of
7 conduct that the 271 approval process was intended to identify and root out. Yet,
8 that is what could happen if the proposed transaction is approved without
9 conditions.

10 **Q. ARE YOU SAYING THAT QWEST’S BUSINESS PRACTICES AND**
11 **PROCEDURES, LEVEL OF INFORMATION, AND CMP IS FLAWLESS**
12 **OR SHOULD BE SET IN STONE?**

²²⁹ CenturyLink was asked in Utah about what it meant by “methodical review” (CenturyLink Response to Integra Utah Data Request #49) and what it meant by “from both a combined company and a wholesale customer perspective” (CenturyLink Response to Integra Utah Data Request #49(b)), but CenturyLink objected to the questions because the quoted testimony was submitted in the Oregon merger proceeding and not submitted in the Utah merger proceeding. When these questions were asked in the Oregon proceeding, CenturyLink responded that it will take into consideration carriers throughout its entire footprint as well as “operational efficiencies for” the Merged Company. *Id.* The Merged Company should not be permitted to replace processes, CMP, etc. that were extensively reviewed during the 271 approval process and critical to nondiscriminatory access to OSS with different processes or CMP that have not been tested and which may be more efficient for the Merged Company. This is a prime example of a situation in which the Merged Company could integrate the two companies to the detriment of wholesale customers. Therefore, conditions are warranted.

²³⁰ CenturyLink’s statement that it will take into account the “wholesale customer perspective” is a hollow promise. Assuming that the Merged Company even takes into account the wholesale customer perspective when integrating OSS, it could simply ignore that perspective and instead implement changes based on the “combined company...perspective.” In fact, Qwest already makes changes through its CMP over CLEC objections, and this problem is sure to worsen as the Merged Company begins overhauling OSS.

1 A. No. Regarding the role of Qwest CMP, CLECs including Integra said in their
2 recent FCC Comments in the Qwest-CenturyLink Merger docket that the CMP
3 performs an essential function, even though CLECs have encountered difficulties
4 with Qwest's CMP. As an example, CLECs pointed to Qwest's implementation
5 of unwanted changes over CLEC objections. After reviewing examples Eschelon
6 provided in the Minnesota Eschelon-Qwest arbitration case, the Minnesota
7 Arbitrators, as affirmed by the Minnesota Commission, found that "Eschelon has
8 provided convincing evidence that the CMP process does not always provide
9 CLECs with adequate protection from Qwest making important unilateral changes
10 in the terms and conditions of interconnection."²³¹ In a complaint Eschelon filed
11 against Qwest in Arizona regarding expedites, the Arizona Staff said, "This case
12 is about not only a breach of Eschelon's ICA, but inappropriate use of the CMP to
13 affect a material change to all CLECs' rights under their current ICAs with
14 Qwest."²³² Nevertheless, in a relative comparison, Qwest's CMP, with all of its
15 flaws, is still better than the untested, unknown process that CenturyLink may
16 replace it with post-merger.

²³¹ Minnesota Arbitrators' Report, OAH 3-2500-17369-2/MPUC No. P-5340,421/IC-06-768 at ¶ 22. The Minnesota Commission adopted the Arbitrators' Report in relevant part. See, Order Resolving Arbitration Issues, Requiring Filed Interconnection Agreement, Opening Investigation and Referring Issue to Contested Case Proceeding, *In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996*. ["Minnesota Qwest-Eschelon ICA Arbitration"], OAH No. 3-2500-17369-2; MPUC Docket No. P-5340,421/IC-06-768 (March 30, 2007) ["MN PUC Arbitration Order"].

²³² Arizona Corporation Commission Staff Reply Brief, AZ Docket No. T-03406A-06-0257 at p. 1.

1 **Q. DOES LEGACY CENTURYLINK HAVE A CHANGE MANAGEMENT**
2 **PROCESS?**

3 A. No. CenturyLink does not have a Change Management Process in either the
4 legacy CenturyTel legacy territory or the legacy Embarq territory, (CenturyLink
5 has separate wholesale processes and wholesale websites for each of the legacy
6 CenturyLink and Embarq territories.) In the legacy CenturyTel territory, there is
7 a “Wholesale Markets Carrier Notification” process²³³ wherein CenturyTel
8 simply issues a notice informing wholesale customers about a coming change or a
9 change that has already taken place. For example, CenturyTel issued Wholesale
10 Markets Carrier Notification GN122009²³⁴ to announce to wholesale customers
11 that CenturyTel was implementing the EASE OSS. Noticeably absent from this
12 notification is any opportunity for input from the affected wholesale customer.
13 Similarly, CenturyTel issues these notices to inform wholesale customers about
14 changes CenturyTel makes to its Service Guide, such as Carrier Notification
15 GN102009,²³⁵ which informed wholesale customers that CenturyTel had *already*
16 made changes to its Service Guide regarding billing disputes. Again, there is no
17 opportunity for input from the affected wholesale customers in this process.

²³³<http://www.centurylink.com/business/Wholesale/InterconnectionServices/AlertsAndNotifications/generaINotifications.jsp>

²³⁴http://www.centurylink.com/business/Wholesale/InterconnectionServices/Library/EASE_Implementation_Notice_07072009.pdf

²³⁵http://www.centurylink.com/business/Wholesale/InterconnectionServices/Library/Service_Guide_Update_07012009.pdf

1 In the legacy Embarq territory, CenturyLink uses a similar notice approach. I
2 have attached as Exhibit Joint CLECs 2.10 a copy of a recent notice issued by
3 CenturyLink in the legacy Embarq territory, in which CenturyLink announced a
4 change to its WebRRS web-based GUI for maintenance and repair. Like the
5 CenturyTel notice, notably absent from this notice in legacy Embarq territory is
6 any mention of opportunity for input or feedback from the affected wholesale
7 customers, or even the reasonable expectation that a CLEC could get enough
8 notice to communicate the information internally and provide documentation
9 updates and training if needed. Indeed, the notice indicates that the change is
10 effective the day the notice was issued (“Effective today...”).

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

12 A. Yes. In late 2007, Integra asked its Embarq account manager whether a change
13 management process existed in legacy Embarq territory, and was directed to
14 Embarq’s “CLEC Issue Resolution” process.²³⁶ According to Embarq’s
15 wholesale website, the CLEC Issue Resolution process consists of:

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

19 **Customer Relations Meeting (CRM)**

20 This six month follow-up meeting provides an opportunity for
21 CenturyLink to update its CLEC partners on items and issues of
22 interest discussed during the annual CLEC Forum. Meetings will

²³⁶ http://embarq.centurylink.com/wholesale/clec_forum.html

1 be held six months after the CLEC Forum and participants will
2 interact via conference call.

3 **CLEC Forum**

4 This annual meeting provides an opportunity for face-to-face
5 interaction between CenturyLink and its CLEC partners.²³⁷

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

8 A. No. After reviewing both legacy CenturyTel and legacy Embarq wholesale
9 websites and based on information provided by the Embarq wholesale customer
10 account manager, the annual CLEC Forum meeting and six month follow up
11 Customer Relations Meeting (“CRM”) is the only process identified for CLEC
12 input, and that is minimal. Nothing about that process manages change.
13 Although CenturyLink has claimed that it has a “streamlined change management
14 process,”²³⁸ the facts do not support this claim. Although CLECs have
15 encountered difficulties with Qwest’s CMP,²³⁹ at the very least, Qwest’s CMP is
16 documented,²⁴⁰ contains an escalation process,²⁴¹ allows a CLEC the time

²³⁷ http://embarq.centurylink.com/wholesale/clec_forum.html

²³⁸ Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 24.

²³⁹ For example, Qwest has unilaterally implemented unwanted changes over CLEC objections. *See, e.g., In re Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996* [“Qwest-Eschelon Minnesota ICA Arbitration”], Arbitrators’ Report, MPUC Dkt. Nos. P-5340,421/IC-06-768, ¶ 22 (rel. Jan. 16, 2007) (“Eschelon has provided convincing evidence that the CMP process does not always provide CLECs with adequate protection from Qwest making important unilateral changes in the terms and conditions of interconnection.”).

²⁴⁰ <http://www.qwest.com/wholesale/cmp/index.html> . Qwest “CMP Document” is attached as Exhibit Integra 2.25 to the testimony of Bonnie Johnson.

²⁴¹ Qwest CMP Document Section 14. *See*, Exhibit Integra 2.25 (Johnson).

1 required to communicate and implement the change (even if Qwest implements
2 the change over CLEC objection), and memorializes a CMP process that was
3 evaluated during the 271 approval process. As the CMP Document developed via
4 the extensive 271 process shows,²⁴² notification is only one aspect of a CMP.
5 CenturyLink's notice/alert processes have not been subjected to any such
6 extensive investigation.

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

9 A. Yes. The FCC has found that adequate change management procedures are a
10 critical component to a CLEC's "meaningful opportunity to compete by providing
11 sufficient access to the BOC's OSS."²⁴³ The FCC has said that it will evaluate the
12 adequacy of a BOC's CMP according to five factors:

13 (1) that information relating to the change management process is
14 clearly organized and readily accessible to competing carriers; (2)
15 that competing carriers had substantial input in the design and
16 continued operation of the change management process; (3) that
17 the change management plan defines a procedure for the timely
18 resolution of change management disputes; (4) the availability of a
19 stable testing environment that mirrors production; and (5) the
20 efficacy of the documentation the BOC makes available for the
21 purpose of building an electronic gateway.²⁴⁴

²⁴² Qwest testified in the Qwest-Eschelon Minnesota ICA Arbitration: "The CMP was evaluated as a part of the extensive section 271 investigation." Qwest (Renee Albersheim) Direct Testimony (Aug. 25, 2006), p. 6, line 24.

²⁴³ *Qwest 9 State 271 Order* at ¶ 132.

²⁴⁴ *Qwest 9 State 271 Order* at ¶ 132.

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

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

7 A. Yes. Changes to or reductions in employees that service wholesale and CLEC
8 support centers will have a direct impact on the level of wholesale service quality
9 provided post-merger, and is one of the most likely candidates for reductions.²⁴⁵
10 Again, the little information provided by CenturyLink about future changes and
11 reductions in this headcount heightens those concerns.

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

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

²⁴⁵ CenturyLink has stated that it will achieve synergies through "elimination of duplicative functions and systems." Glover Utah Direct at p. 10, lines 18-19. The Merged Company will more than likely have duplicative functions in this area given that both Qwest and CenturyLink must have their own separate wholesale/CLEC support centers today. Further, because cuts in this area will improve CenturyLink's position relative to its competitors, these changes would be profitable to the Merged Company.

1 integration.²⁴⁶ To CenturyLink’s credit, it states that “the combined company will
2 continue to employ experienced and dedicated personnel to provide quality
3 service” and “will continue to be managed by knowledgeable and experienced
4 employees dedicated to their local communities” and the “workforce of the
5 combined company will continue to be sufficient to meet customer and business
6 needs and to ensure compliance with all regulatory obligations.”²⁴⁷

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

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

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

²⁴⁶ CenturyLink Response to Integra Utah Data Requests #46 and #136.

²⁴⁷ CenturyLink Response to Integra Utah Data Request #136.

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

5 A. The discovery responses indicate that over the past five years in the legacy Qwest
6 service areas, the total number of employees dedicated to supporting wholesale
7 services for CLEC customers dropped by about *****BEGIN HIGHLY**
8 **CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL*****.²⁴⁸ Similarly,
9 the Qwest wholesale total headcount dropped by about *****BEGIN HIGHLY**
10 **CONFIDENTIAL [REDACTED] END HIGHLY CONFIDENTIAL***** during that
11 same time-frame.²⁴⁹ The headcount currently dedicated to serving wholesale
12 customers in Qwest's legacy territory is as low as it has been in the recent past,
13 and reducing this headcount further could very well have a detrimental impact on
14 wholesale customers of Qwest. And, for Qwest Network Technicians who
15 perform both repair and installation functions for Qwest customers, the trend has
16 been similar. Qwest provided data showing that in Utah, the Network
17 Technicians involved in installation and repairing customer services has dropped
18 by about *****BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY**
19 **CONFIDENTIAL***** between 2005-2009.²⁵⁰ So, when the Merged Company is

²⁴⁸ Qwest Response to Integra Utah Data Request #1-69, Confidential Attachment A.

²⁴⁹ Qwest Response to Integra Utah Data Request #1-1(m), Confidential Attachment A.

²⁵⁰ Qwest Response to Integra Utah Data Request #1-139, Confidential Attachment A.

1 pursuing these synergy savings, it should ensure that whatever changes are made
2 do not reduce the total number of employees dedicated to wholesale customers in
3 Qwest's territory so that wholesale service quality is not degraded post-merger.

4 **Q. CONDITION 18 DISCUSSES PROTECTING CLEC INFORMATION**
5 **FROM BEING USED BY THE MERGED COMPANY'S RETAIL**
6 **OPERATIONS. IS THERE SIGNIFICANT UNCERTAINTY**
7 **SURROUNDING THIS ISSUE RESULTING FROM THE PROPOSED**
8 **TRANSACTION?**

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

14 **Q. CAN YOU PROVIDE AN EXAMPLE DEMONSTRATING THE**
15 **IMPORTANCE OF PROTECTING CLEC INFORMATION FROM THE**
16 **MERGED COMPANY'S RETAIL OPERATIONS?**

17 A. Yes, a very recent example. Attached to the testimony of Bonnie Johnson on
18 behalf of Integra is Exhibit Integra 2.19 which includes a document entitled
19 "Example: Qwest Improper Marketing Activity"²⁵¹ which documents an email

²⁵¹ See Exhibit 2.19 (final page).

1 exchange between an Integra Customer Account Manager and an Integra
2 customer about inappropriate marketing activity by Qwest representatives. In this
3 example, the customer had a full disclosure conversation and shared the
4 customer's invoice with the representative – all the while thinking the
5 representative was from Integra when the representative was actually from Qwest.
6 The customer reported that the Qwest representative pretended to be from Integra,
7 and only at the end of the conversation informed the customer that the
8 representative was from Qwest and stated that Qwest could beat Integra's pricing.
9 When the Qwest representative later called the customer again to attempt to get
10 the customer to switch over to Qwest, and was unsuccessful, according to the
11 customer, the Qwest representative stated, "Well, we'll do all we can to get them
12 [Integra] out of business." It is my understanding that Qwest acknowledged to
13 Integra that this problem occurred and has since terminated the employee;
14 however, this is just one example of a number of recent examples that have
15 occurred after announcement of the merger in which Qwest personnel are
16 directing inappropriate marketing activity to CLEC customers. *See*, Exhibit
17 Integra 2.19 (Johnson) detailing numerous recent examples of inappropriate
18 marketing activities.

19 **Q. ARE THERE OTHER EXAMPLES THAT STRESS THE IMPORTANCE**
20 **OF PROTECTING CLEC INFORMATION FROM THE ILEC'S RETAIL**
21 **OPERATIONS?**

1 A. Yes. During 2007 and 2008, Verizon and Bright House (along with other cable-
2 affiliated CLECs) engaged in extensive litigation with Verizon regarding
3 Verizon's use of Bright House's (and the other CLECs') confidential customer
4 proprietary network information ("CPNI" or "ordering information").²⁵²
5 Essentially, when Bright House would win a customer and place an order with
6 Verizon to transfer the customer's telephone number and directory listing over to
7 Bright House, Verizon would take that confidential information and use it to
8 immediately try to retain the customer (*i.e.*, prevent the customer from leaving in
9 the first place). Bright House argued that this was a violation of federal law,
10 which requires a carrier receiving confidential information of this sort – here, the
11 specific identities of customers who were leaving Verizon – to use that
12 information *only* for the purpose for which it was supplied – here, to perform the
13 administrative tasks associated with transferring the customer from one carrier to
14 the other.

15 The FCC ruled against Verizon, finding that Verizon violated the statute by using
16 confidential information from Bright House for Verizon's own marketing
17 purposes. Verizon took its case to federal court on an expedited basis, and
18 received a 3-0 ruling from the D.C. Circuit that the FCC was correct and that
19 Verizon was wrong. Given this example and others, it is clear that the CLECs'

²⁵² See Bright House Networks, LLC *et al.* v. Verizon California, Inc., *et al.*, *Memorandum Opinion and Order*, 23 FCC Rcd 10704 (2008), *affirmed*, *Verizon California, Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009).

1 have a valid concern about how information is used during the customer transfer
2 process.

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

4 A. When asked about its plans post-merger to ensure the protection of CLEC
5 information, CenturyLink responded that it “works to ensure” that wholesale
6 customer information is kept away from the retail marketing group and will do so
7 post-merger, but that changes could be expected in Qwest’s legacy territory due to
8 integration decisions. Again, this is simply not satisfactory. There is no
9 information that I am aware of about how CenturyLink protects CLEC data from
10 retail operations in its legacy territory, and if CenturyLink imports its unknown
11 practices into Qwest’s region post-merger in the name of “best practices,” CLECs
12 are at risk of the Merged Company lessening the protection Qwest currently
13 provides and engaging in anti-competitive conduct.

14 **D. Compliance**

15 **Q. PLEASE IDENTIFY AND DESCRIBE THE PROPOSED CONDITIONS**
16 **RELATING TO COMPLIANCE.**

17 A. There are eleven conditions in this category – conditions 13, 21, 22, 23, 24, 25,
18 26, 27, 28, 29, and 30:

- 19 • Condition 13 states that the Merged Company will be classified as a BOC in
20 the legacy Qwest ILEC territory post-merger and subject to BOC

1 requirements in the Telecommunications Act, including the 14-point
2 competitive checklist under Section 271 and anti-backsliding provisions under
3 Section 272.

- 4 • Condition 21 states that the Merged Company will process orders in
5 compliance with law and applicable ICAs.
- 6 • Condition 22 states that the Merged Company will provide number portability
7 in compliance with law and applicable ICAs; unlock E-911 records at the time
8 of porting; and address trouble reports involving unlocking E-911 records
9 within 24 hours. This condition states that the Merged Company will not
10 assign a passcode, password or PIN to retail customers in a manner that
11 prevents or delays a change in local service providers. And this condition
12 states that the Merged Company shall not limit the number of ports that can be
13 processed.
- 14 • Condition 23 states that the Merged Company will provide nondiscriminatory
15 access to directory listings and directory assistance in compliance with law,
16 including being responsible for ensuring that all directory listings submitted
17 by a CLEC are incorporated into the appropriate databases and making the
18 CLEC's subscriber listings equally available to requesting entities.
- 19 • Condition 24 states that states that the merged company shall not assess
20 porting charges, NID access fees, or directory storage and maintenance fees
21 after the closing date, to the extent that those charges were not charged by
22 legacy Qwest territory based upon commission-approved rates before the
23 closing date.
- 24 • Condition 25 states that the Merged Company will provide routine network
25 modifications in compliance with law and applicable ICAs.
- 26 • Condition 26 states that the Merged Company will engineer and maintain its
27 network in compliance with law and applicable ICAs, which includes not
28 diverting resources from maintenance to merger integration activities and not
29 engineering the network in such a way that disrupts or degrades access to the
30 local loop. This condition also requires the Merged Company to abide by law
31 and applicable ICAs when retiring copper and prohibits the Merged Company
32 from engineering/maintaining its network (including routing of traffic) in a
33 manner that results in the application of higher rates for traffic or
34 inefficiencies for wholesale customers.
- 35 • Condition 27 states that the Merged Company will provide conditioned copper
36 loops in compliance with law and Commission-approved rates, and will (when
37 technically feasible) test and report troubles for all features and functions of
38 the copper line and not just for voice transmission only.

- 1 • Condition 28 states that, at the CLEC's option, the Merged Company will
2 interconnect with CLEC at a single point of interconnection per LATA,
3 regardless of whether the merged entity operates in that LATA via multiple
4 operating affiliate companies or a single operating company.
- 5 • Condition 29 states that conditions adopted in this state may be expanded or
6 modified based on conditions adopted by other state commissions or the FCC.
- 7 • Condition 30 states that in the case of a dispute between the parties about
8 merger conditions, either party may seek resolution before the state
9 commission.

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

11 A. These conditions are designed to ensure that the Merged Company complies with
12 its obligations to wholesale customers under the Act and related FCC's rules post-
13 merger. While CenturyLink has promised in its filings to comply with many of
14 the provisions discussed in these conditions, paper promises are not enough,
15 especially considering CenturyLink's inexperience as a BOC, issues previously
16 addressed in CenturyLink's legacy territory, and problems experienced by
17 wholesale customers following recent mergers. Commission-approved conditions
18 are needed to turn the paper promises into enforceable commitments.

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

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

23 the merger may result in increased anticompetitive behavior on the
24 part of the Applicants. Consistent with the 'Big Footprint' theory
25 that the Commission addressed in prior BOC mergers, we find that

1 the increase in the size of CenturyTel's study area resulting from
2 the merger may increase its incentive to engage in anticompetitive
3 activity, although we think it is likely to have a lesser effect in the
4 instant case than in the prior BOC mergers. Additionally, to the
5 extent that CenturyTel has been less willing to cooperate with
6 competitors than Embarq – as numerous commenters allege –
7 following the merger, CenturyTel may extend this behavior to the
8 Embarq territories. In order to address these potential harms, the
9 Applicants have proposed a series of voluntary commitments...we
10 therefore make them enforceable conditions of the merger.²⁵³

11 The increase in the size of the CenturyTel study area following the proposed
12 transaction is about double (in terms of line counts) the increase in CenturyTel's
13 study area that occurred due to the Embarq/CenturyTel merger. Further, the
14 proposed transaction (unlike the Embarq/CenturyTel merger) involves the
15 acquisition of a BOC by a non-BOC. As such, the risk of increased anti-
16 competitive behavior (*i.e.*, non-compliance with the law) following the proposed
17 transaction is greater than the risk posed by the Embarq/CenturyTel merger which
18 was approved subject to enforceable conditions.

19 Providing evidence of a risk of harm that compliance with certain laws may, in
20 particular, be in jeopardy justifies singling out those laws with merger conditions
21 that require compliance. For example, one of the enforceable conditions in the
22 Embarq/CenturyTel merger was that "Orders will be processed in compliance
23 with federal and state law, as well as the terms of applicable interconnection

²⁵³ FCC *Embarq/CenturyTel Merger Order* at ¶ 33.

1 agreements.”²⁵⁴ Though it would seem self-evident that the combined
2 Embarq/CenturyTel company would comply with laws and ICAs when
3 processing orders following the Embarq/CenturyTel merger, the FCC adopted an
4 enforceable condition to the merger requiring them to do so, based on concerns
5 identified by wholesale customers,²⁵⁵ to preserve the public interest and avoid
6 merger-related harm.

7 Likewise, the FCC adopted the following enforceable condition for the
8 Embarq/CenturyTel merger: “When a number is ported from CenturyTel, E-911
9 records will be unlocked at the time of porting. Trouble reports involving locked
10 E-911 records will be addressed within 24 hours.”²⁵⁶ Though it would also seem
11 self-evident that the combined Embarq/CenturyTel company would comply with
12 laws and standards regarding unlocking of E911 records, the FCC’s approved
13 merger conditions specifically singled out this issue, based on concerns identified
14 by wholesale customers,²⁵⁷ to preserve the public interest and avoid merger-
15 related harm. One of the concerns expressed was that “the record updating
16 process and the accuracy of records will suffer as a result of this acquisition.”²⁵⁸

²⁵⁴ FCC *Embarq/CenturyTel Merger Order* at Appendix C, at p. 27.

²⁵⁵ *See, e.g.*, Declaration of D. Anthony Mastando and Kim Sharp on Behalf of DeltaCom, Inc. WC Docket No. 08-238 (Jan. 23, 2009), pp. 3-5; Declaration of R. Matthew Kohly on Behalf of Socket Telecom, WC Docket No. 08-238 (Jan. 8, 2009), at pp. 3-6.

²⁵⁶ FCC *Embarq/CenturyTel Merger Order* at Appendix C, at p. 29.

²⁵⁷ *See, e.g.*, Declaration of R. Matthew Kohly on Behalf of Socket Telecom, WC Docket No. 08-238 (Jan. 8, 2009), at p. 12.

²⁵⁸ *Id.*

1 CLECs expended the resources to raise and address the issue of unlocking E-911
2 records with Qwest via Qwest's Change Management Process commencing in
3 2001 – *nine years* ago.²⁵⁹ Naturally, after reading the concerns raised by CLECs
4 in the Embarq/CenturyTel merger on this issue, CLECs are concerned about
5 going backward to pre-271 workshop days such that the record updating process
6 and the accuracy of records will suffer as a result of this acquisition. Condition
7 22(a) is proposed to address this concern.

8 The FCC, by adopting these enforceable conditions (and the merging companies,
9 by proposing this as an agreed upon commitment²⁶⁰), recognized the need to
10 preserve the public interest and protect competitors from merger-related harm by
11 ensuring that the combined Embarq/CenturyTel abides by its obligations under
12 law – even when it would otherwise seem self-evident that those obligations apply
13 independently of the merger. These conditions were adopted to ensure that the
14 combined Embarq/CenturyTel company did not follow its increased incentive to
15 engage in anti-competitive conduct or spread existing worst practices throughout
16 its larger service territory post-merger.

²⁵⁹ Change Request (“CR”) #CR PC122801-1 (“**Qwest to document, distribute and train an adhered to process to unlock numbers for 911**”), submitted by Eschelon on December 28, 2001 and completed by Qwest on April 17, 2002, available at http://www.qwest.com/wholesale/cmp/archive/CR_PC122801-1.html

²⁶⁰ Although CenturyLink may argue that these conditions were strictly “voluntary,” they cannot show that the merger would have been approved without them. Without the commitments, there is no showing that the merger would do no harm or be in the public interest.

1 **Q. HAVE STATE COMMISSIONS ALSO ADOPTED MERGER**
2 **CONDITIONS REQUIRING THE MERGED COMPANY TO COMPLY**
3 **WITH LAW FOLLOWING THE MERGER?**

4 A. Yes. One such example is the South Carolina Commission’s decision in the
5 Verizon/Frontier proceeding. In that case, the merging companies made a number
6 of commitments to encourage a finding that the merger was in the public interest,
7 which were adopted as conditions of merger approval, including: “contribut[ing]
8 to the State Universal Service Fund in compliance with Commission Orders” and
9 “comply[ing] with all Commission orders, rules and regulations.”²⁶¹ Also, the
10 Illinois Commerce Commission recently adopted a merger condition for
11 Verizon/Frontier, which states: “Frontier will continue to comply with 83 Ill.
12 Admin. Code 771, Cost Allocation Rules for Large Local Exchange Carriers.”²⁶²

13 **Q. MUST THERE BE A PREVIOUS ORDER CONCLUSIVELY FINDING**
14 **COMPLIANCE PROBLEMS FOR THESE TYPES OF CONDITIONS TO**
15 **BE WARRANTED?**

16 A. No. As indicated above, enforceable merger conditions requiring compliance
17 with specified laws have resulted from concerns raised by non-applicants about

²⁶¹ *IN RE: Joint Application of Frontier Communications Corporation, New Communications of the Carolinas Inc., New Communications Online and Long Distance Inc., Verizon South Inc., Verizon Long Distance LLC and Verizon Enterprise Solutions LLC for Approval of the Transfer of Assets, Authority and Certificates*, South Carolina Public Service Commission Docket No. 2009-220-C, Order No. 2009-769, October 29, 2009, 2009 S.C. PUC LEXIS 506, *26.

²⁶² *Frontier Communications Corporation, Verizon Communications, Inc. et al. Joint Application for the Approval of a Reorganization Pursuant to Section 7-204 of the Public Utilities Act*, Order, ICC Docket No. 09-0268, April 21, 2010, Conditions Appendix at p. 4, Condition 4.

1 potential harm of the proposed transactions. When sufficient concerns are raised,
2 it is incumbent upon the Commission to protect the public interest by approving
3 enforceable conditions to protect customers and competition from that harm.
4 After all, the proposed conditions are not burdensome – they commit the merged
5 company to do what it already should do – comply with the law. The Joint
6 Applicants can hardly argue that the Commission does not have the authority to
7 expect and require compliance with the law. To the extent that the Joint
8 Applicants make that claim, concerns about its intent with respect to these laws
9 would be heightened.

10 In the case of the Embarq/CenturyTel Merger Order, the FCC did not make a
11 finding of noncompliance regarding CenturyTel’s then-existing order processing
12 or unlocking of E-911 records; rather, wholesale customers identified problems
13 related to these issues and the FCC found that enforceable conditions were
14 necessary to preserve the public interest and avoid merger-related harm. Whether
15 or not the merging companies had or were in fact violating law (or whether the
16 law applies to the individual companies independent of the merger) was not a
17 determining factor as to whether voluntary commitments/enforceable merger
18 conditions were necessary to preserve the public interest and avoid merger-related
19 harm. To expressly require compliance with existing law, it is sufficient that a
20 legitimate basis for concern is raised that, without the condition, compliance with
21 the law will suffer as a result of the acquisition.

1 Despite CLECs identifying important, service-affecting issues that need to be
2 addressed in relation to their business relationships with Qwest and CenturyLink,
3 the Joint Applicants have made no commitments and oppose wholesale merger
4 conditions in relation to the proposed transaction. Yet, the need to preserve the
5 public interest and avoid harm in relation to the proposed transaction is just as
6 important (or more so) than it was in the prior cases wherein the merging
7 companies agreed to enforceable conditions that require compliance with law in
8 exchange for merger approval. For purposes of reviewing the merger, the
9 Commission need not find here that Qwest or CenturyLink acted in an anti-
10 competitive manner in the examples CLECs provide, but instead should take the
11 examples into account when finding that the proposed transaction as filed (i.e.,
12 without commitments or enforceable conditions) does not serve the public
13 interest.

14 **Q. HAVE QWEST AND CENTURYLINK ALREADY AGREED TO**
15 **COMPLY WITH THE OBLIGATIONS THAT ARE EMBODIED IN**
16 **THESE CONDITIONS POST-MERGER?**

17 A. For many of them, yes. For example, regarding condition 13, the Merged
18 Company has agreed that it will be classified as a BOC in Qwest legacy territory
19 post-merger and will comply with all Section 271 obligations.²⁶³ Similarly, as it

²⁶³ See, e.g., CenturyLink Response to Integra Utah Data Request #3 (“The merger will not change the BOC status of Qwest Corporation in Utah.”); CenturyLink Response to Integra Utah Data Request #4

1 relates to condition 21, the Merged Company has agreed to process wholesale
2 orders in compliance with law and applicable ICAs.²⁶⁴ And for condition 22,
3 CenturyLink has agreed to “provide number portability in compliance with
4 federal and state law, as well as the terms of applicable interconnection
5 agreements”²⁶⁵ and to comply with federal and state law and applicable ICAs
6 when unlocking E-911 records and addressing trouble reports related to unlocking
7 E-911 records.²⁶⁶ Likewise, Qwest and CenturyLink have indicated that their

(“...Qwest Corporation, as a wholly owned subsidiary of CenturyLink, will continue to meet all ongoing 271 obligations in the legacy Qwest service areas that are required.”). *See also*, Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010 (“And though CenturyLink previously has not operated subject to the requirements of Section 271, it is fully aware of (and has acknowledged) its duty to do so within Qwest’s in-region service areas, and the company will ensure that the resources and expertise required to meet those obligations are in place.”) Notably, Integra asked in Utah Data Request #3 for CenturyLink to “explain what, if any, measures the merged company will put in place to ensure against backsliding on its 271 obligations?” CenturyLink did not answer this portion of the question, thereby making the portion of Condition 13 related to anti-backsliding that much more important.

²⁶⁴ CenturyLink Response to Integra Utah Data Request #102 (“Yes, in all service areas post-merger, CenturyLink will continue to process wholesale orders in compliance with federal and state laws and with applicable terms in interconnection agreements.”)

²⁶⁵ CenturyLink Response to Integra Utah Request #100(a) (“Yes, CenturyLink will provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements.”) Though CenturyLink states that it will provide number portability in accordance with law, the fact that CenturyLink attributed its recent waiver request of the one-day porting requirement to the ongoing integration efforts related to the Embarq merger shows that an enforceable condition is needed to ensure that the integration of the Qwest merger does not similarly impact the Merged Company’s ability to meet number porting requirements.

²⁶⁶ CenturyLink Response to Integra Utah Data Request #100(b) and 100(c). Notably, CenturyLink states that it “has not evaluated or reached any conclusions regarding” the issues of when CenturyLink will unlock E911 records or address trouble reports related to unlocking E911 records. The uncertainty caused by CenturyLink’s vacillation on this issue makes Condition 22 that much more important. The Merged Company should have no problem abiding by condition 22(a) given that it offered an identical commitment to the FCC in conjunction with the Embarq/CenturyTel merger and states that “within legacy service areas E911 records are being unlocked at the time of porting in accordance with the FCC’s merger condition.” CenturyLink Response to Integra Utah Data Request # 100(d).

1 policies regarding passcodes/PINs would not be disrupted by Condition 22²⁶⁷ and
2 that the number of ports that can be processed are not currently limited.²⁶⁸ For
3 Condition 25, CenturyLink has agreed that “in all service areas post merger,
4 CenturyLink will continue to provide routine network modifications in
5 compliance with federal and state laws and with applicable terms in
6 interconnection agreements.”²⁶⁹ For Condition 26, CenturyLink has repeatedly
7 represented that it will continue to invest in its network post-merger and that it is
8 fully capable of allocating resources to both maintain current operations and to
9 conduct merger-related activities post-merger.²⁷⁰ CenturyLink has also
10 represented that it will comply with all applicable state and federal laws and rules
11 and ICAs in relation to copper retirement.²⁷¹ As it relates to Condition 27,

²⁶⁷ CenturyLink states that it assigns passwords in some instances such as online access in accordance with CPNI rules and in cases where customers protect their account against unauthorized changes, but otherwise “does not currently assign a passcode or Personal Identification Number (PIN) to retail customers that must be used before the customer may switch to an alternative local service provider.” CenturyLink Response to Integra Utah Data Request #7. Qwest states that “in none of its states does Qwest assign a passcode or Personal Identification Number (PIN)/passcode to retail customers and require that the passcode or PIN be submitted in order for the retail customer to switch to an alternative local service provider.” Qwest Response to Integra Utah Data Request #7. Based on the information provided by Qwest and CenturyLink, this condition would require them to maintain the current policies, not change their policies to accommodate the condition. Notably, Qwest asked the Iowa Board to place a very similar condition on the approval of the Iowa Tel/Windstream merger: “prohibit Windstream from requiring new local service providers to provide Windstream-provided Personal Identification Numbers when porting a customer’s number to the new provider” Order Canceling Hearing and Terminating Docket, Iowa Utilities Board, April 30, 2010, at p. 26.

²⁶⁸ CenturyLink Response to Integra Utah Data Request #37 (“CenturyLink does not limit the number of service requests (including number ports) a given CLEC can make.”)

²⁶⁹ CenturyLink Response to Integra Utah Data Request #101.

²⁷⁰ See, e.g., Utah Joint Application at p. 2 (“It will provide the combined company with greater financial resources and access to capital enabling it to invest in networks...”) and p. 16 (“CenturyLink has a demonstrated ability to acquire and successfully integrate companies, and to combine operational systems and practices, while continuing to provide high-quality service to customers.”)

²⁷¹ CenturyLink Response to Integra Utah Data Request #104.

1 “CenturyLink states that it will comply with all applicable state and federal laws
2 and rules, as well as the provisions of any applicable interconnection
3 agreements...” for conditioning of copper loops.²⁷² The fact that CenturyLink has
4 agreed to comply with these requirements post-merger shows that it should have
5 no problem with these conditions being adopted in conjunction with any decision
6 approving the proposed transaction. Again, conditions are needed to turn
7 CenturyLink’s paper promises into enforceable commitments.

8 **Q. PLEASE ELABORATE ON WHY IT IS IMPORTANT TO INCLUDE A**
9 **CONDITION THAT THE MERGED COMPANY WILL COMPLY WITH**
10 **SECTION 271 OBLIGATIONS IN QWEST’S BOC TERRITORY POST-**
11 **MERGER (CONDITION 13)?**

12 A. For starters, the company that will be in control of Qwest post-merger has no
13 experience operating as a BOC, so the potential for backsliding on Qwest’s 271
14 obligations is great (at least greater than prior to the proposed transaction when
15 Qwest was controlled by a company that had more than seven years experience
16 operating as a BOC with 271 approval²⁷³). Second, to date, Qwest has exploited
17 the lack of clear rules implementing 271 obligations to impose excessive, non-

²⁷² CenturyLink Response to Integra Utah Data Request #106.

²⁷³ For example, the FCC order granting Qwest 271 authority in nine states was released on December 23, 2002. See, *Qwest 9-State 271 Order*, WC Docket No. 02-314, FCC 02-332 (12/23/02).

1 negotiable rates for 271 network elements on CLECs.²⁷⁴ The Merged Company
2 should not be allowed to evade its 271 obligations post-merger, and that includes
3 avoiding the requirement to provide 271 network elements on just and reasonable
4 rates, terms and conditions.²⁷⁵

5 **Q. WHY IS CONDITION 21 NECESSARY?**

6 A. As explained above, Condition 21, which states that the Merged Company will
7 process orders in compliance with law and applicable ICAs, is the same voluntary
8 commitment Embarq/CenturyTel offered to the FCC to secure approval of the
9 Embarq/CenturyTel merger after concerns were raised by competitors. The FCC
10 adopted this as an enforceable condition because of the potential for increased
11 anti-competitive conduct of the combined Embarq/CenturyTel company and the
12 potential for problems spreading to CenturyTel's newly-acquired territory. For
13 the same reasons, this condition should be adopted for the proposed transaction.
14 And, because the proposed transaction involves CenturyLink acquiring a BOC as
15 well as a service territory that is double the size (expressed in line counts) of its
16 existing territory (including newly-acquired Embarq), the rationale for adopting

²⁷⁴ See, e.g., Comments of Joint Commenters, WC Docket No. 10-110, July 12, 2010, at pp. 68-69, citing Petition for Modification of McLeodUSA Telecommunications Services, Inc., WC Docket No. 04-223, July 23, 2007, at pp. 4-12.

²⁷⁵ Covad Communications Company, PAETEC Communications, Inc., Access Point, Inc. Deltacom, Inc., Granite Telecommunications, LLC, HickoryTech Corporation, Metropolitan Telecommunication, Inc., OrbitCom, Inc., TDS Metrocom, LLC, and TelePacific Communications ("Joint Commenters") have proposed specific conditions related to 271 obligations to the FCC in conjunction with the FCC's review of the proposed transaction. See, Comments of Joint Commenters, WC Docket No. 10-110, July 12, 2010, at pp. 70-71, available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020522259>

1 this condition in relation to the proposed transaction is even more compelling
2 now.

3 **Q. PLEASE DISCUSS CONDITION 22.**

4 A. Condition 22 states that the Merged Company will provide number portability in
5 compliance with law and applicable ICAs; unlock E-911 records at the time of
6 porting; and address trouble reports involving unlocking E-911 records within 24
7 hours. This condition states that the Merged Company will not assign a passcode,
8 password or PIN to retail customers in a manner that prevents or delays a change
9 in local service providers. And this condition states that the Merged Company
10 shall not limit the number of ports that can be processed.

11 **Q. WHAT IS CONDITION 22 NECESSARY?**

12 A. Condition 22 is necessary to protect CLEC rights under the Act for efficient and
13 nondiscriminatory local number portability (“LNP”). In short, this Condition is
14 necessary to ensure that the Merged Company fulfills its LNP obligations in a
15 competitively neutral manner as prescribed in Sections 251(b)(2) and 251(e)(2)
16 of the Act. As the Act and the FCC have noted, LNP is critical for consumers and
17 competitors and for the efficient functioning of the local telecommunications
18 market.

19 In its most basic form, LNP is important because consumers want to be able to
20 retain their existing telephone numbers when switching providers. Retaining your

1 telephone number is important for obvious reasons: consumers do not want to
2 have to alert their friends and family of new telephone numbers, and change
3 billing statements, stationery, business cards, and other items every time they
4 switch telephone providers. For these reasons (and others), number porting is
5 very important to customers. Indeed, without number portability consumers may
6 choose not to change their providers because of the impact on their personal and
7 business lives.

8 **Q. WHY IS NUMBER PORTING IMPORTANT TO COMPETITORS?**

9 A. As noted above, getting customers to change providers can be difficult. The
10 customer inertia for a service is difficult to overcome in the first place, but
11 without number portability consumers may not even consider an alternative
12 provider. And, getting the porting done in the proper manner and in the proper
13 time frame is also critical. If that is to happen, a competitor cannot erect
14 operational barriers that are intended to delay the process.

15 **Q. THE CONDITION INCLUDES REFERENCES TO UNLOCKING E-911**
16 **RECORDS, PASSCODES AND LIMITS ON PORTING. ARE THESE**
17 **ISSUES IMPORTANT TO CLECS AND CONSUMERS?**

18 A. Absolutely. Once an LNP order is completed the donor company will disconnect
19 and/or migrate the existing E-911 record via a service order. This results in an
20 “unlocked record” in the E-911 Automatic Location Identification (“ALI”)

1 database. The recipient company must then update the E-911 ALI database with a
2 “migrate” order which “locks” the end-user’s record. Any delay in the
3 “unlocking” process will result in an error report in response to the migrate order
4 sent by the recipient provider. Given the importance of E-911 for the safety of the
5 end-user consumer, this requirement is absolute and must be conducted in
6 compliance with federal and state law.

7 Requiring pass codes or PINs may also result in the delay of porting. The Merged
8 Company must not be allowed to require such pass words or PINs unless
9 specifically requested by the end user customer.

10 Finally, artificially limiting the number of ports that may be submitted in a
11 particular time period is anticompetitive and disruptive to the competitive process.
12 The porting process should be largely if not completely automated, so limits on
13 the number of ports is not necessary.

14 **Q. PLEASE EXPLAIN CONDITION 23.**

15 A. Condition 23 is necessary to protect CLEC rights under the Act to
16 nondiscriminatory access to directory listing (“DL”) and directory assistance
17 (“DA”) functions.

1 **Q. WHAT POSITIONS HAS CENTURYLINK TAKEN WITH RESPECT TO**
2 **DL AND DA THAT ARE HARMFUL AND INCONSISTENT WITH THE**
3 **INDUSTRY?**

4 A. CenturyLink has attempted to shift its responsibilities under Section 251(b)(3) of
5 the Act to third parties. CenturyLink refuses to enter into ICAs that include
6 language which ensures that a competitor’s subscribers have the same access to
7 DA and DL databases as CenturyLink provides its own customers. As a result,
8 directory services provided by competitors like Charter may be degraded if
9 CenturyLink, or its vendor, fails to properly maintain these databases in a manner
10 that ensures nondiscriminatory access.

11 **Q. CAN YOU PROVIDE AN EXAMPLE OF THE PROBLEMS**
12 **CENTURYLINK’S DA AND DL POLICIES HAVE CREATED?**

13 A. Yes. As noted above, CenturyLink has attempted to impose a recurring per
14 customer DLSM Charge in numerous states. Other providers, including Verizon,
15 Comcast and Charter, have litigated LNP issues with CenturyLink at great
16 expense over the last few years.²⁷⁶

17 **Q. OTHER THAN THE LITIGATION EXPENSE, HAS THERE BEEN**
18 **CUSTOMER IMPACTING PROBLEMS AS WELL?**

²⁷⁶ See, e.g., United Telephone Company of the Northwest d/b/a Embarq Response to Comcast Petition in Washington Docket No. U-083025, filed May 27, 2008, at ¶ 10. This is an example of a case in which Comcast opposed Embarq’s DLSM charge. Charter has litigated numerous LNP related charges which CenturyLink attempted to impose under the guise of “service order charges.”

1 A. Yes. In the recent past, directory listing information of Charter's subscribers was
2 not available to CenturyLink subscribers. Put simply, when a CenturyLink
3 subscriber dialed "4-1-1" and requested listing information on a Charter
4 subscriber, that information was not provided.²⁷⁷ As a result, thousands of
5 Charter subscribers were effectively excluded from the directory assistance
6 database used by CenturyLink. Charter repeatedly sought a remedy and presented
7 several requests for relief to the relevant state commission. CenturyLink
8 acknowledged the problem, but blamed the problem on its vendor, who was not
9 accessing the proper database. Ultimately the situation was resolved, but
10 CenturyLink's refusal to acknowledge its responsibility to provide
11 nondiscriminatory access to Charter (and its subscribers) under Section 251(b)(3)
12 prolonged a discriminatory and anticompetitive situation. That, in turn, meant
13 that many more subscribers were affected, even after the problem was identified,
14 and isolated, for CenturyLink.

15 **Q. PLEASE PROVIDE SOME BACKGROUND INFORMATION ON THE**
16 **DIRECTORY LISTING FUNCTION IN ORDER TO FRAME THE**
17 **POSITION THAT CENTURYLINK HAS TAKEN.**

18 A. In simple terms, a directory listing is the customer's name, phone number, and
19 address that are published in a directory, such as a telephone book, or included in

²⁷⁷ See, e.g., the Direct Testimony of Amy Hankins on behalf Charter Fiberlink-Missouri, LLC, Before the Public Service Commission of the State of Missouri, Case No. TO-2009-0037; dated September 30, 2008.

1 a directory database, such as that used when a caller dials “411.” The FCC’s
2 regulations define “Directory listings” as follows:

3 Directory listings. Directory listings are any information:

4
5 (1) Identifying the listed names of subscribers of a telecommunications
6 carrier and such subscriber’s telephone numbers, addresses, or primary
7 advertising classifications (as such classifications are assigned at the
8 time of the establishment of such service), or any combination of such
9 listed names, numbers, addresses or classifications; and

10
11 (2) That the telecommunications carrier or an affiliate has published,
12 caused to be published, or accepted for publication in any directory
13 format.²⁷⁸

14
15 In addition, Section 251(b)(3) of the Act requires all local exchange carriers to
16 provide competing providers with “*nondiscriminatory* access to ... directory
17 assistance, and directory listing.”²⁷⁹ The FCC has interpreted the statutory term
18 “directory listing” to mean “the act of placing a customer’s listing information in
19 a directory assistance database or in a directory compilation for external use (such
20 as a white pages).”²⁸⁰ Among other things, Section 251(b)(3) and 47 C.F.R. §
21 51.5 require that LECs “publish competitors’ business customers in ... [their]

²⁷⁸ 47 C.F.R. § 51.5.

²⁷⁹ 47 U.S.C. § 251(b)(3) (emphasis added).

²⁸⁰ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934 [sic], As Amended*, CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, ¶ 160 (1999) (“SLI/DA Order”).

1 director[ies] on a nondiscriminatory basis,” regardless of whether LECs own
2 those directories or not.²⁸¹

3 **Q. IS THERE ANYTHING WRONG WITH USING A THIRD PARTY FOR**
4 **DL OR DA ACTIVITIES?**

5 A. Not necessarily. It is common for LECs to use third-party vendors for directory
6 assistance activities. The problem arises when an ILEC like CenturyLink, with
7 specific requirements under Section 251(b)(3) of the Act, attempts to shift its
8 responsibilities to a third-party, or worse, to claim that it no longer has any such
9 obligations under Section 251(b)(3).

10 **Q. PLEASE EXPLAIN.**

11 A. The FCC has recognized that carriers may agree to have subscriber listing
12 databases administered by a third party.²⁸² However, the FCC has also recognized
13 that such agreements for third-party administration must still be included in
14 interconnection agreements because entering into a side agreement for access to
15 subscriber listing databases contravenes the FCC requirement that LECs provide
16 directory listing on a nondiscriminatory basis and make such provisions related

²⁸¹ See *MCI Telecomm. Corp. v. Michigan Bell Tel. Co.*, 79 F. Supp. 2d 768, 801 (E.D. Mich. 1999); see also *U.S. West Comm., Inc. v. Hix*, 93 F. Supp. 2d 1115, 1132 (D. Colo. 2000) (citing *MCI Telecomm.*).

²⁸² See, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 11 FCC Rcd 19392 at ¶ 144 (1996) “Local Competition Second Report and Order”, vacated in part, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), rev. on other grounds, *AT&T Corp. v. Iowa Util. Bd.*, 119 S. Ct. 721 (Jan. 25, 1999).

1 thereto available to other carriers in interconnection agreements for adoption
2 through the mechanism of Section 252 of the Act.²⁸³ Therefore, CenturyLink
3 must include rates, terms and conditions of access to its subscriber listing
4 databases within the interconnection agreement despite use of a third-party
5 database administrator or publisher.

6 Condition 23 ensures that CenturyLink will comply with federal and state law
7 with respect to its DL/DA responsibilities. It further ensures that CenturyLink
8 does not shift its responsibilities to a third party vendor and specifically identifies
9 the responsibilities with respect to nondiscriminatory access to DL/DA.
10 CenturyLink's worst practices should not be adopted; instead, the Commission
11 should require the Qwest practices of (1) placing a basic white pages and yellow
12 pages directory listing in its directories without charge to the CLEC, and (2)
13 ensuring that the ILEC customers are given the CLEC's customers' DA
14 information, when the ILEC's customers dial directory assistance.

15 **Q. PLEASE EXPLAIN CONDITION 24.**

16 A. This condition is necessary to ensure that the Merged Company does not extend
17 CenturyLink's anticompetitive practice of imposing unsupported surcharges and
18 fees upon facilities-based competitors at the point of subscriber acquisition and
19 migration. In contrast, Qwest does not impose these separate surcharges upon

²⁸³ *Provision of Directory Listing Information under the Communications Act of 1934, As Amended*, FCC 01-27, 16 FCC Rcd 2736 at ¶ 36 (2001) ("SLI/DA First Report and Order").

1 competitors when no underlying wholesale service is being provided to the
2 competitor. For example, although Qwest may assess a service order charge upon
3 a competitor that orders a UNE loop in conjunction with the acquisition of a new
4 subscriber, it does not assess a separate surcharge when the competitor simply
5 requests that the subscriber's number be ported away in conjunction with the
6 subscriber change process. Because Qwest does not impose the same separate
7 fees upon competitors, any attempt to impose these separate charges in Qwest's
8 legacy territory post-merger would result in the implementation of worst (not
9 best) practices, and, in turn, merger-related harm to competition.

10 **Q. PLEASE IDENTIFY THE SPECIFIC ANTICOMPETITIVE FEES AND**
11 **SURCHARGES THAT CENTURYLINK ASSESSES UPON**
12 **COMPETITORS ADDRESSED IN CONDITION 24.**

13 A. CenturyLink, and its affiliate Embarq, imposes several different surcharges each
14 time that a facilities-based competitor, like Charter, "wins" a new customer from
15 CenturyLink. First, CenturyLink imposes a separate number porting service order
16 charge each time that CenturyLink is asked to port a telephone number to a
17 competitor. Second, CenturyLink assesses "use" or access fees upon competitors
18 each time the competitor attempts to connect its own network facilities to a
19 customer's inside wire through the customer side of a CenturyLink NID
20 enclosure. Third, CenturyLink's affiliate, Embarq, imposes "storage" charges
21 upon competitors that submit directory listing information for inclusion in

1 directory listing databases. These charges increase wholesale customers' (i.e.,
2 competitors') costs of obtaining new subscribers and generating new revenue
3 sources to offset subscriber losses. It is, therefore, more costly (and operationally
4 challenging) for competitors to compete in CenturyLink markets.

5 **Q. PLEASE EXPLAIN YOUR CONCERN WITH THESE SURCHARGES.**

6 A. In an earlier portion of my testimony, Section IV, I provided some background on
7 the second and third type of improper surcharges assessed upon competitors
8 concerning the NID enclosure, and directory storage fees at issue. Let me explain
9 the circumstances surrounding the imposition of the number porting surcharges.

10 Each time that a competitor obtains a new customer that is a former CenturyLink
11 subscriber, and that subscriber wishes to port their telephone number away from
12 CenturyLink, the competitor must pay a surcharge to CenturyLink to effectuate
13 the number port. This surcharge, which ranges from \$13 to over \$20 (depending
14 upon the state) is imposed upon every competitor that obtains wholesale services
15 under CenturyLink interconnection agreements. To date, this is only a
16 CenturyLink practice, and has not been implemented in the Qwest territories.
17 Obviously, if this anticompetitive practice were extended to all of the Merged
18 Company's territories post-merger, merger-related harm would occur and the
19 harm would be substantial.

1 **Q. WHAT ARE THE RULES REGARDING CARRIER FEES FOR NUMBER**
2 **PORTING?**

3 A. In several orders implementing Section 251(e)(2) of the Act, the FCC held that
4 carriers are required to recover their costs of implementing LNP through tariffed
5 end-user charges.²⁸⁴ In these orders, the FCC determined that ILECs may recover
6 through *end-user charges* their carrier-specific costs directly related to providing
7 number portability. The FCC concluded that this framework for cost recovery
8 (from end users rather than other carriers) best serves the statutory goal of
9 competitive neutrality.

10 **Q. HOW DOES THE CONCEPT OF “COMPETITIVE NEUTRALITY”**
11 **APPLY TO NUMBER PORTING CHARGES?**

12 A. Section 251(e)(2) of the Act requires that the costs of establishing number
13 portability be “borne by all telecommunications carriers on a competitively
14 neutral basis.”²⁸⁵ This principle of competitive neutrality is an important
15 component of the FCC’s number porting cost recovery rules. However,
16 CenturyLink’s repeated attempts to assess charges on CLECs undermine
17 competition and the competitive neutrality the FCC sought to establish. As the
18 FCC explained, “[i]f the [FCC] ensured the competitive neutrality of only the

²⁸⁴ The FCC’s rulings were set forth in several orders: *Telephone Number Portability*, Third Report and Order (the “Cost Recovery Order”), 13 FCC Rcd 11701 (1998), *aff’d*, *Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review (the “Cost Recovery Reconsideration Order”), 17 FCC Rcd 2578 (2002); and *Telephone Number Portability Cost Classification Proceeding*, Memorandum Opinion and Order, 13 FCC Rcd 24495 (CCB 1998).

²⁸⁵ 47 U.S.C. § 251(e)(2).

1 distribution of costs, carriers could effectively undo this competitively neutral
2 distribution by recovering from other carriers.”²⁸⁶

3 **Q. WHAT ABOUT INTERCONNECTION-BASED NUMBER PORTING**
4 **CHARGES ASSESSED UPON COMPETITORS. HAS THE FCC EVER**
5 **ADDRESSED THE LEGALITY OF SUCH CHARGES?**

6 A. Yes, the FCC has clearly said such charges are prohibited by federal law. That is
7 the most troubling aspect of CenturyLink’s wholesale practice, it violates clear
8 policies set forth by the FCC in early number portability cost recovery orders.
9 Specifically, in a 2002 Number Portability Cost Reconsideration Order the FCC
10 ruled that:

11 [I]ncumbent LECs may not recover any number portability costs
12 through interconnection charges or add-ons to interconnection
13 charges to their carrier “customers,” nor may they recover carrier-
14 specific costs through interconnection charges to other carriers
15 where no number portability functionality is provided.²⁸⁷

16 This language clearly prohibits interconnection-based surcharges on number
17 porting actions like those imposed by CenturyLink. The statement leaves no
18 doubt that the Commission does not permit incumbent LECs to assess charges
19 upon other carriers for number porting. This decision is still valid law, and has
20 never been reversed or modified.

²⁸⁶ *Cost Recovery Order* at ¶ 39.

²⁸⁷ *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578, at ¶ 62 (2002).

1 **Q. HAVE THOSE RULINGS BEEN CODIFIED INTO THE FCC'S RULES?**

2 A. Yes, the prohibition on such charges is codified at 47 C.F.R. § 52.33, and FCC
3 regulation entitled "Recovery of carrier specific costs directly related to providing
4 long-term number portability."

5 **Q. WHY DO YOU BELIEVE THESE SURCHARGES, AND OTHERS, MAY**
6 **BE ASSESSED UPON COMPETITORS BY THE MERGED COMPANY?**

7 A. These fees are currently assessed upon competitors because CenturyLink is able
8 to leverage its market power to impose these surcharges as a condition of
9 interconnection with CenturyLink. If the proposed transaction is approved,
10 CenturyLink will be the third largest ILEC in the nation, and its market power
11 will span 37 states.²⁸⁸ That is why I expect these surcharges will be assessed by
12 the merged company unless this Commission adopts a condition that prohibits the
13 merged company from doing so.

14 **Q. IS THAT WHY YOU BELIEVE CONDITION 24 IS NECESSARY?**

15 A. Yes. Condition 24 is included to prevent CenturyLink's objectionable charges
16 directed specifically at facilities-based competitors from being applied throughout
17 the Qwest legacy territory post-merger. Even if the Merged Company attempted
18 to introduce these types of separate, distinct charges in Qwest's territory post-
19 merger (but was ultimately unsuccessful), CLECs and state commissions would

²⁸⁸ "CenturyLink and Qwest Agree to Merge," Available at:
<http://news.qwest.com/centurylinkqwestmerger>

1 have to still have to expend significant time and expense combating the
2 integration of this worst practice.

3 **Q. ARE THERE OTHER FEES AND SURCHARGES THAT CONDITION 24**
4 **ADDRESSES?**

5 A. Yes. This condition also addresses the separate fees and surcharges CenturyLink
6 imposes upon competitors' for accessing the NID enclosure and for "storage" of
7 competitors' customers' directory listings. Each of these separate charges is
8 discussed above in Section IV. These NID enclosure and storage surcharges raise
9 the same concerns with respect to increasing competitors' costs, and are therefore
10 part of Condition 24.

11 **Q. DO YOU HAVE SOME GENERAL CONCERNS REGARDING THE**
12 **MERGED COMPANY NETWORK AS TO CONDITIONS 25 AND 26?**

13 A. Yes. Both of these conditions, in part, address the CLECs' concern regarding
14 ongoing maintenance and investment in the network post-merger. Condition 25
15 addresses routine network upgrades and modifications and Condition 26 states, at
16 least in part, that the Merged Company will not engage in activities that disrupts
17 or degrades access to the local loop.

18 As the Commission is aware, one of the ways to increase profits is to reduce
19 expenses. Reducing routine network maintenance and modifications will harm
20 CLECs that rely on that network for the exchange of traffic.

1 **Q. HAS THE IMPORTANCE OF THESE REQUIREMENTS TO**
2 **COMPETITION BEEN PREVIOUSLY RECOGNIZED?**

3 A. Yes. The FCC, in its Triennial Review Order, addressed and promulgated rules
4 regarding routine network modifications²⁸⁹ to “resolve[] a controversial
5 competitive issue...and...provide competitive carriers with greater certainty as to
6 the availability of unbundled high-capacity loops and other facilities throughout
7 the country.”²⁹⁰ Likewise, Condition 26 is grounded in 47 C.F.R. §§ 51.319(a)(8)
8 (engineering policies, practices, and procedures²⁹¹) and 47 C.F.R. §51.333 (notice
9 of network changes related to retirement of copper loops or copper subloops).

10 **Q. CAN YOU PROVIDE AN EXAMPLE THAT SHOWS A NEED FOR**
11 **CONDITION 26?**

12 A. Yes. Integra has arbitrated the issue of network modernization and maintenance
13 with Qwest in several states. A review of the excerpts in Exhibit Integra 2.9
14 shows that the commissions in all five states agreed with Eschelon’s position that
15 Qwest’s network maintenance and modernization activity should not disrupt or
16 degrade service to a CLEC’s end user customers. Ms. Johnson provides quotes

²⁸⁹ Routine network modifications are “those activities that incumbent LECs regularly undertake for their own customers.” *Triennial Review Order* at ¶ 632. This includes attaching electronics to high-capacity loops and line conditioning to ensure that a copper loop is suitable for providing xDSL service. *Triennial Review Order* at ¶¶ 250, 634-635.

²⁹⁰ *Triennial Review Order* at ¶ 632.

²⁹¹ 47 C.F.R. §§ 51.319(a)(8) (“An incumbent LEC shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to a local loop or subloop, including the time division multiplexing-based features, functions, and capabilities of a hybrid loop, for which a requesting telecommunications carrier may obtain or has obtained access pursuant to paragraph (a) of this section.”)

1 from the various orders to support this condition. In Washington, for instance, the

2 Arbitrator stated:

3 While Qwest should have the discretion to modernize its own
4 network, it should be apparent that ‘modernization’ and
5 ‘maintenance’ efforts should enhance or maintain, not diminish
6 transmission quality.²⁹²

7 Ms. Johnson provides an extended discussion of Condition 26(a) in her testimony
8 and in Exhibit Integra 2.9 (Johnson) provides additional excerpts from Qwest-
9 Eschelon interconnection arbitration proceedings on this point.

10 **Q. CAN YOU PROVIDE ANOTHER EXAMPLE THAT SHOWS THE NEED**
11 **FOR CONDITION 26?**

12 A. Yes. PAETEC has had experiences with Qwest where they reported trouble on a
13 Qwest loop. PAETEC submitted a trouble ticket but Qwest reported that there
14 was no trouble and closed the ticket. When PAETEC persisted with its complaint
15 by opening another trouble ticket (based on ongoing trouble with the loop), Qwest
16 refused to go to the site unless PAETEC agreed to a “joint meet.” The “joint
17 meet” makes this a “special request” which would require PAETEC to pay for
18 Qwest’s truck roll even if there is trouble on the Qwest loop. This type of process
19 increases the costs to CLECs who must send a technician to meet Qwest while
20 Qwest investigates its network.

²⁹² See, Washington Utilities and Transportation Commission Docket UT-063061, Arbitrator’s Report; Order No. 16 (aff’d), at ¶ 83.

1 **Q. IS CONDITION 26(A) CONSISTENT WITH THE FCC’S UNBUNDLING**
2 **RULE (47 C.F.R. § 51.319(A)(8))?**

3 A. Yes, it is. That rule states, in pertinent part, “An incumbent LEC shall not
4 engineer the transmission capabilities of its network in a manner, or engage in any
5 policy, practice, or procedure, that disrupts or degrades access to the local loop.”
6 Condition 26 is based on the sound logic in that FCC rule.

7 **Q. SHOULDN’T THE COMMISSION JUST RELY ON THAT RULE AS**
8 **CONTROLLING THE MERGED COMPANY POST-MERGER**
9 **WITHOUT MAKING IT A MERGER CONDITION?**

10 A. No. The language in the rule seems self-evident, but Qwest has forced Eschelon
11 to arbitrate this issue in six states rather than simply abide by those precepts. As
12 the exhibits to Ms Johnson’s Direct Testimony shows, Qwest is not complying
13 with those arbitration rulings today with respect to conditioned copper loops.²⁹³

14 Failure to maintain adequate investment and maintenance on the Merged
15 Company network could degrade the network for the Merged Company, the
16 public switched telephone network (“PSTN”) and for CLECs. Such a reduction
17 in the quality of the network and related services, and resulting degradation for
18 CLECs who must rely on that network, is not in the public interest. Condition 26

²⁹³ See Exhibit Integra 2.1 (Johnson).

1 is meant to prevent inappropriate diversion of resources that would normally be
2 directed to the network.

3 **Q. WHAT PROBLEM DOES CONDITION 27 RELATING TO**
4 **CONDITIONED COPPER LOOPS ADDRESS?**

5 A. Digital subscriber line technology, “commonly referred to as xDSL, permits high
6 speed connections . . . over ordinary copper loops.”²⁹⁴ This includes services
7 “such as ISDN, ADSL, HDSL, and DS1-level signals.”²⁹⁵ The importance of
8 using copper to provide advanced services is apparent in the FCC’s conclusion
9 that CLECs are “impaired” without access to unbundled “xDSL-capable stand-
10 alone copper loops.”²⁹⁶ As explained by the FCC’s SBC/Ameritech merger order,
11 a merger of this sort will increase the Merged Company’s incentive and ability to
12 discriminate against its competitors with respect to the provision of advanced
13 services:

14 We find that the combined entity is likely to increase the level of
15 discrimination that rivals must overcome to provide retail
16 advanced services, interexchange services, and local exchange
17 services. In the retail market for advanced services, incumbent
18 LECs can engage in discriminatory conduct with respect to
19 competitors’ provision of services such as xDSL by refusing to
20 cooperate with competitors’ requests for the evolving type of

²⁹⁴ *Triennial Review Order* at footnote 77 to ¶26.

²⁹⁵ *Local Competition Order* at ¶380.

²⁹⁶ *Triennial Review Order* at ¶ 642. Unbundling of the local loop includes “two and four-wire loops conditioned to transmit the digital signals needed to provide xDSL service.” *Triennial Review Order* at ¶ 249.

1 interconnection and access arrangements necessary to provide new
2 types of advanced services.²⁹⁷

3 There is substantial evidence warranting a concern that the ILEC is already
4 improperly inhibiting CLECs' provision of advanced services using conditioned
5 copper loops throughout Qwest's legacy territory, as discussed below and in the
6 testimony of Mr. Denney and Ms. Johnson of Integra. Absent a condition to
7 ensure compliance with the laws regarding conditioned copper loops, the
8 proposed transaction will further entrench the company's discriminatory conduct
9 and potentially spread this discriminatory treatment throughout the Merged
10 Company's territory.

11 Condition 27 will help ensure that the Merged Company does not implement its
12 increased incentive to engage in anti-competitive conduct or spread worst
13 practices throughout its larger service territory post-merger. It states:

14 The Merged Company will provide conditioned copper loops in
15 compliance with federal and state law and at rates approved by the
16 applicable state commission. Line conditioning is the removal
17 from a copper loop of any device that could diminish the capability
18 of the loop to deliver xDSL. Such devices include bridge taps,
19 load coils, low pass filters, and range extenders. Insofar as it is
20 technically feasible, the Merged Company shall test and report
21 troubles for all the features, functions and capabilities of
22 conditioned copper lines, and may not restrict its testing to voice
23 transmission only. If the Merged Company seeks to change rates
24 approved by a state commission for conditioning, the Merged

²⁹⁷ *In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279, October 8, 1999 ("FCC SBC/Ameritech Merger Order") at ¶ 196. (footnotes omitted)

1 Company will provide conditioned copper loops in compliance
2 with the relevant law at the current commission-approved rates
3 unless and until a different rate is approved.

4 In this condition, the second sentence reflects the definition of line conditioning in
5 47 C.F.R. §51.319(a)(1)(iii)(A).²⁹⁸ The third sentence reflects the requirements of
6 47 C.F.R. §51.319(a)(1)(iii)(C).²⁹⁹ The final sentence recognizes that, in each
7 state in Qwest's territory, the Commission has already established rates (either
8 non-recurring charges or recovery via recurring charges) for line conditioning and
9 therefore the Merged Company must either charge that rate or seek state
10 commission approval to charge a different rate. As I discussed earlier with
11 respect to compliance with the law generally, though it would seem self-evident
12 that the Merged Company would comply with these laws and cost orders, an
13 enforceable merger condition is needed when concerns are raised by wholesale
14 customers sufficient to justify singling out compliance with specific laws in
15 merger conditions to preserve the public interest and avoid merger-related harm.

16 **Q. WHAT CONCERNS DO WHOLESALE CUSTOMERS RAISE**
17 **REGARDING QWEST ENGAGING IN DISCRIMINATORY CONDUCT**

²⁹⁸ In 47 C.F.R. §51.319(a)(1)(iii)(A), line conditioning is defined as "the removal from a copper loop of any device that could diminish the capability of the loop to deliver xDSL. Such devices include bridge taps, load coils, low pass filters, and range extenders." Loops must be "stripped of accretive devices." *Triennial Review Order* at ¶ 643.

²⁹⁹ "Insofar as it is technically feasible, the incumbent LEC shall test and report troubles for all the features, functions and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only." 47 C.F.R. §51.319(a)(1)(iii)(C).

1 **WITH RESPECT TO COMPETITORS' PROVISION OF SERVICES**

2 **SUCH AS xDSL?**

3 A. Integra, PAETEC and other competitors have raised concerns that Qwest's
4 region-wide policies violate legal and contractual obligations with respect to
5 conditioned copper loops used for providing advanced services, including: (a)
6 Qwest refusing digital level signals via conditioned copper loops; (b) Qwest
7 restricting testing to voice transmission; (c) Qwest refusing digital signals for
8 two-wire loops; (d) Qwest denying access to ADSL capable loops based on
9 improper grandparenting of ADSL; and (e) Qwest refusing to repair/restore
10 service to data/digital levels, leaving customer adversely affected; (f) Qwest
11 refusing to remove certain devices, including bridge tap.³⁰⁰ CLECs have
12 provided documentation, including Qwest-prepared communications and
13 admissions, showing that Qwest's stated region-wide position or practice violates
14 legal and contractual obligations in each of these areas.³⁰¹

15 For example, when installing and repairing loops, Qwest refuses to test unbundled
16 conditioned copper loops to digital levels to ensure that they will support the type
17 of xDSL service (*e.g.*, HDSL2) ordered by the CLEC, even though the federal
18 rule clearly states that the ILEC "may not restrict its testing to voice transmission

³⁰⁰ See Exhibit Integra 2.1 (Johnson).

³⁰¹ See Exhibit Integra 2.3 (Johnson) (Matrix – Legal Authority Compared to Qwest Position: xDSL Capable Copper Loops) and supporting documentation cited in the Matrix and found in Exhibit Integra 2.4 (Johnson) through Exhibit Integra 2.17 (Johnson) and Exhibit Integra 2.21 (Johnson) through Exhibit Integra 2.24 (Johnson).

1 only.”³⁰² Rather than undertake industry-standard tests to ensure that an
2 unbundled copper loop will support certain levels of digital signal,³⁰³ Qwest
3 maintains that it will test only to voice-related parameters.³⁰⁴ Without proper
4 testing and trouble isolation, CLECs cannot effectively provide advanced services
5 without placing their end-user customers’ services at risk. Qwest’s policies do
6 not provide CLECs with a meaningful opportunity to compete. Additional
7 examples and documentation are provided in the exhibits to the testimony of Ms.
8 Johnson.

9 **Q. DO THE FCC’S RULES PROVIDE QWEST THIS TYPE OF**
10 **DISCRETION TO DISCRIMINATE IN THE PROCESS OF LOOP**
11 **CONDITIONING?**

12 A. No, as the federal rules cited above in support of condition 27 show, Qwest does
13 not have that discretion. The documentation provided by CLECs makes clear that
14 Qwest has policies in place that impede the ability of CLECs to deliver innovative
15 xDSL-based advanced services to small and medium-sized businesses.

16 **Q. WOULD YOU EXPECT THE MERGED COMPANY TO ADOPT**
17 **QWEST’S PRACTICES IN THIS REGARD FOR THE COMPANY AS A**

³⁰² See 47 C.F.R. §51.319(a)(1)(iii)(C) (quoted in footnote above).

³⁰³ See ANSI Standard T1-417, quoted in Qwest’s own technical publications (Qwest Technical Publication 77384, pg. 1-1) describing the characteristics of its unbundled loops.

³⁰⁴ See Row Nos. 1-2, Exhibit Integra 2.3 (Johnson) (Attachment A to *Joint CLEC Initial Comments*, November 24, 2009, MN PUC Docket No. P-421/CI-09-1066); see also Attachment B, p. 11 at Exhibit Integra 2.4 (Johnson).

1 **WHOLE, ABSENT A MERGER CONDITION REQUIRING**
2 **COMPLIANCE WITH THESE LAWS?**

3 A. Yes. As explained by the FCC's *SBC/Ameritech Merger Order*, the Merged
4 Company will have an increased incentive and ability to discriminate against its
5 competitors with respect to the provision of advanced services.³⁰⁵ This incentive
6 will militate in favor of expanding discriminatory practices to the company as a
7 whole. Consistent with this incentive, when given an opportunity in discovery to
8 clarify that CenturyLink would comply with 47 C.F.R. §51.319(a)(1)(iii)(C),
9 CenturyLink declined to do so.³⁰⁶ That CenturyLink did not immediately confirm
10 that it would not restrict testing for conditioned copper loops to voice
11 transmission only, when the requirements of the rule are so clear, supports the
12 need for Condition 27 to confirm what CenturyLink would not regarding its
13 compliance with the law.

14 The proposed transaction is contrary to the public interest if a merging party
15 (Qwest in this example) is rewarded for violating the law. Condition 27 must be
16 included to ensure that the public interest is not harmed post-transaction by
17 requiring the Merged Company to condition loops in compliance with law and
18 Commission-approved rates, including testing and reporting troubles for all

³⁰⁵ FCC *SBC/Ameritech Merger Order* at ¶ 196. (footnotes omitted)

³⁰⁶ For example, when asked whether CenturyLink would test and report troubles for all features, functions and capabilities of conditioned copper loops or restrict its testing to voice transmission only for conditioned copper loops post-transaction, CenturyLink replied: "CenturyLink has not made any determination on this issue at this time." CenturyLink Response to Integra Utah Data Request #106.

1 features and functionalities of the copper loops,³⁰⁷ and using the FCC’s definition
2 of line conditioning.³⁰⁸ In other words, this condition requires the Merged
3 Company to comply with existing law post-transaction.³⁰⁹ Although the Merged
4 Company should be expected to comply with the law in any event, a condition
5 specific to this issue is needed based on Qwest’s conduct to date.

6 **Q. PLEASE EXPLAIN CONDITION 28.**

7 A. Condition 28 relates to the CLECs’ right to interconnect with the Merged
8 Company at a single point of interconnection (“POI”) per local access and
9 transport area (“LATA”).

10 **Q. WHY IS CONDITION 28 NECESSARY?**

11 A. In the past, CenturyLink has argued against the established right of CLECs to a
12 single POI in arbitration proceedings. Specifically, CenturyLink has stated that
13 because it is not a BOC, the concepts of LATA and single POI do not apply to
14 CenturyLink. CenturyLink has also argued that a single POI per LATA would be
15 technically infeasible and would result in “superior” interconnection agreements

³⁰⁷ 47 C.F.R. § 51.319(a)(1)(iii)(C).

³⁰⁸ 47 C.F.R. §51.319(a)(1)(iii)(A).

³⁰⁹ This is particularly important in light of the National Broadband Plan which seeks to foster broadband deployment and competition. The National Broadband Plan states: “Competitive carriers are currently using copper to provide SMBs with a competitive alternative for broadband services. Incumbent carriers are required to share (or ‘unbundle’) certain copper loop facilities, which connect a customer to the incumbent carrier’s central office” and that “[b]y leasing these copper loops and connecting them to their own DSL or Ethernet over copper equipment that is collocated in the central office, competitive carriers are able to provide their own set of integrated broadband, voice and even video services to consumers and small businesses.” National Broadband Plan, Chapter 4 at p. 48.

1 in violation of the FCC’s rules. There is a genuine risk that the Merged Company
2 will incorporate this legacy CenturyLink mindset into legacy Qwest territory post-
3 merger, which would increase CLECs’ costs of interconnection with the Merged
4 Company and allow the Merged Company to enjoy a competitive advantage over
5 CLECs. Condition 28 is necessary to ensure that this “worst practice” is not
6 incorporated by the Merged Company.

7 **Q. IS THERE A DISTINCTION BETWEEN BOCS AND OTHER ILECS**
8 **RELATED TO INTERCONNECTION OBLIGATIONS UNDER SECTION**
9 **251 OF THE ACT?**

10 A. No. Section 251(c) of the Act is entitled “Additional Obligations of Incumbent
11 Local Exchange Carriers” and requires, among other things, all ILECs – not just
12 BOCs – to provide interconnection “at any technically feasible point within the
13 carrier’s network” and “that is at least equal in quality to that provided by the
14 local exchange carrier to itself or any subsidiary, affiliate, or any other party to
15 which the carrier provides interconnection.” So, the fact that CenturyLink is an
16 ILEC and Qwest is both an ILEC and a BOC should have no bearing on whether
17 CLECs should be permitted to interconnect with the Merged Company at a single
18 POI per LATA. Furthermore, the goal of the Act was to open local markets to
19 competition for all ILECs, not just the BOCs.³¹⁰

³¹⁰ *Local Competition Order* at ¶ 4 (Emphasis added.)

1 **Q. DOES THE DATA SHOW THAT INCREASED EFFICIENCIES COULD**
2 **BE ACHIEVED BY ESTABLISHING A SINGLE POI PER LATA WITH**
3 **THE MERGED COMPANY POST-MERGER?**

4 A. Yes. If the merger is consummated, the Merged Company will have not only
5 have a larger footprint, but also will have many legacy CenturyLink exchanges
6 that are adjacent or in close proximity to legacy Qwest exchanges. Though
7 CenturyLink has stated that it has no ILEC exchanges in Utah,³¹¹ it has touted the
8 benefits that will accrue to the Merged Company in Utah due to the larger, more
9 interconnected footprint of the combined company. For instance, Qwest says:

10 The Transaction will result in a combined enterprise that can
11 achieve greater economies of scale and scope than the two
12 companies operating independently. As described above,
13 CenturyLink does not currently have significant operations in
14 Utah. However, both Qwest and CenturyLink currently operate in
15 many states, and in these states the areas served by Qwest and
16 CenturyLink are generally complementary. In many cases, the
17 networks are adjacent or within close proximity to one another,
18 and this will make it easier to implement operating efficiencies and
19 infrastructure improvements. The increased size of the combined
20 entity is also likely to enhance the purchasing power of the
21 company, which may lead to a reduction in some input costs. Thus,
22 the combination of the serving areas will provide for increased
23 economies of scale that will benefit customers not only in those
24 states, but in other states like Utah that will indirectly benefit from
25 the increased efficiencies of the company as a whole.³¹²

³¹¹ In the Oregon merger proceeding, I explained that about 92% of the CenturyLink exchanges in Oregon are either adjacent to or directly interconnected with Qwest exchanges through another adjacent CenturyLink exchange, and the 155 total exchanges that the Merged Company would operate in Oregon post-merger reside in just four LATAs: 670, 672, 652, and 676.

³¹² Fenn Utah Direct at p. 12, lines 9-21.

1 It is this larger, more interconnected footprint of the Merged Company that the
2 Company attributes a number of the benefits it says will result from the proposed
3 transaction.³¹³ Hence, the Merged Company expects benefits to itself and its
4 customers (presumably retail customers, since the Joint Applicants have been
5 unable to point to one benefit that will accrue to CLECs as a result of the
6 proposed transaction), but is notably silent about sharing those benefits with new
7 entrants. One way these benefits should flow through to the benefit of the public
8 interest is by allowing CLECs interconnecting with the Merged Company, at the
9 CLECs' option, to do so at a single point per LATA.³¹⁴ This would lower barriers
10 to entry for competitors by capitalizing on the increased scale and efficiencies of
11 the Merged Company – benefits that the Act and FCC require to be shared with

³¹³ See, e.g., Ferkin Utah Direct at p. 7, lines 17-21 (“As a combined company, with complementary strengths and operating footprints, we will have greater potential to effectively reach more types of customers with a broader range of competitive products and connectivity solutions than either company could standing alone.”) See also, Ferkin Utah Direct at p. 21, lines 3-7 (“The Transaction brings together two leading communications companies with complementary networks and operating footprints. By building on each company’s operational and network strengths, the combined company will have an impressive national presence with the local depth that will allow it to better serve all of its customers.”); Ferkin Utah Direct at p. 8, lines 11-13 (“A key benefit will come from leveraging each company’s operational and network strengths, resulting in a company with an impressive national presence and local depth.”)

³¹⁴ See, e.g., *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 at ¶ 87 (2005) (reaffirming that “[u]nder section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA”) (emphasis added). See also *Petition of WorldCom, Inc., et al., Pursuant to § 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Comm’n*, Memorandum Opinion and Order, 17 FCC Rcd 27039 at ¶ 52 (2002) (emphasis added). The Fourth Circuit has affirmed that the Bureau’s decision is entitled to the same deference that would normally be granted to a decision of the full Commission. *MCI Metro Access Transmission Servs. v. BellSouth Telecomms., Inc.* 352 F.3d 872, n. 8 (4th Cir. 2003).

1 CLECs.³¹⁵ Given the contiguous and interconnected exchanges of Qwest and
2 CenturyLink, efficiencies can be achieved by routing traffic to and from the
3 Merged Company at a single POI per LATA, as opposed to having separate
4 interconnections for legacy Qwest and legacy CenturyLink. While the Merged
5 Company may want to continue its corporate organizational structure that exists
6 today post-merger, CLECs should not have to pay more to interconnect with the
7 Merged Company because of it.

8 **Q. OTHER THAN TECHNICAL FEASIBILITY AND THE LOCATION OF**
9 **THE INTERCONNECTION, ARE ILECS ALLOWED TO REFUSE AN**
10 **INTERCONNECTION PROPOSAL, SUCH AS SINGLE POI?**

11 A. No. That is why Qwest and CenturyLink are required to provide a single POI per
12 LATA today. The promotion of efficient markets dictates that CLECs only be
13 required to interconnect in a specific area where its own assessment of traffic
14 volumes, customer demand, and available technology justify investment in
15 facilities needed to reach that area.

16 Nevertheless, after the merger, an objection to a single POI interconnection would
17 be even less persuasive given the claimed benefits of the transaction. The Merged

³¹⁵ See, e.g., *Local Competition Order* at ¶ 11: “Congress addressed these problems in the 1996 Act by mandating that the most significant economic impediments to efficient entry into the monopolized local market must be removed. The incumbent LECs have economies of density, connectivity, and scale; traditionally, these have been viewed as creating a natural monopoly. As we pointed out in our NPRM, the local competition provisions of the Act require that these economies be shared with entrants.”

1 Company claims it will be more efficient and able to respond to competition, but
2 it should not accomplish those goals at the expense of its competitors.

3 Given these claimed benefits it would be wrong to further disadvantage
4 competitors by arguing against an efficient interconnection method that has been
5 used, and approved, for more than a decade.

6 **Q. PLEASE EXPLAIN CONDITION 29.**

7 A. Condition 29 states that conditions imposed in this proceeding may be expanded
8 or modified as a result of other decision in other states. This would also include
9 decisions based on settlements reached in proceedings.

10 **Q. HOW WILL THIS CONDITION BENEFIT THE PUBLIC INTEREST?**

11 A. This will provide a degree of consistency and spread “best practices” across the
12 Merged Company’s service territory, while at the same time likely lowering the
13 Merged Company’s cost of post-merger compliance activities. A similar
14 condition was adopted by the Oregon Commission in the Frontier/Verizon merger
15 proceeding,³¹⁶ wherein the Oregon Commission concluded that this type of
16 condition “benefit[s] the various stakeholders in Oregon while, at the same time,
17 allow[ing] applicants to promptly conclude the regulatory approval process.”³¹⁷

³¹⁶ Order No. 10-067 at Appendix A, page 12 of 12 (Docket UM 1431, February 24, 2010).

³¹⁷ Order 10-167 at 23.

1 This is particularly appropriate to the proposed transaction given that the Joint
2 Applicants have requested expedited approval of the proposed transaction.³¹⁸

3 **Q. PLEASE EXPLAIN CONDITION 30.**

4 A. Condition 30 addresses disputes that may arise with respect to any pre-closing or
5 post-closing conditions. Specifically, this condition would allow either party to
6 seek resolution of the dispute by filing a petition with a state commission.

7 **Q. WHY DO CLECS NEED THE ABILITY TO BRING DISPUTES ABOUT**
8 **MERGER CONDITION COMPLIANCE TO THE STATE COMMISSION?**

9 A. Since a number of these conditions expire after a certain period of time, it is
10 important that the CLECs have a way to quickly and efficiently resolve disputes
11 related to merger condition compliance – otherwise, the Merged Company could
12 just drag disputes out until some of the conditions expire or argue over the proper
13 forum for addressing these types of disputes. This is a condition that the CLECs
14 have included based on past experience. AT&T has repeatedly argued (an
15 argument that has been repeatedly rejected) that state commissions do not have
16 authority to enforce merger commitments related to ICAs.³¹⁹ CLECs should not
17 have to fight these same types of battles after the proposed transaction at
18 significant cost and delay.

³¹⁸ See, e.g., Fenn Utah Direct at p. 6, lines 15-17 (“Expedited treatment is requested to allow the Applicants to more quickly integrate the companies in order to bring the benefits described in my testimony to consumer, business and wholesale customers sooner.”)

³¹⁹ See, e.g., Comments of Cox Communications and Charter Communications, Inc., WC Docket No. 10-110, July 12, 2010, at pp. 11-12.

1 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

2 **A. Yes, it does.**