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

REBUTTAL TESTIMONY

OF

ROBERT BRIGHAM

QWEST COMMUNICATIONS INTERNATIONAL, INC.

September 30, 2010

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I. IDENTIFICATION OF WITNESS

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH QWEST.

A. My name is Robert H. Brigham. My business address is 1801 California Street, Denver, Colorado, and I am currently employed by Qwest Corporation ("QC") as a Staff Director in the Public Policy department. I am testifying on behalf of Qwest Communications International, Inc. ("QCII").

Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?

A. No.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND EMPLOYMENT EXPERIENCE.

A. In 1983, I received a Master of Business Administration (MBA) degree from the University of Colorado in Denver, Colorado. My area of emphasis was financial analysis. I received a Bachelor of Arts degree in 1974 from Stetson University.

I began my employment with Qwest (formerly Mountain Bell and U S WEST) in 1976. Between 1976 and 1980, I held various positions in the Mountain Bell Commercial (marketing) department. In 1980, I accepted the position of Analyst in the Cost, Rates and Regulatory Matters department, working primarily on the development of embedded cost data. In June 1987, I accepted the position of Manager in the U S WEST Service Cost organization, with responsibility for economic analysis and the development of incremental costing methodologies. In September 1992, I accepted the position of Director- Product Cost Specialist, and assumed responsibility for developing and supporting U S WEST cost studies in formal regulatory proceedings, and representing U S WEST in costing and pricing workshops sponsored by various regulatory commissions in the U S WEST region. Between May 1994 and June 1997, I served as Director- Product and Market Issues. In that position, I managed competitive and local interconnection issues, supporting U S WEST's interconnection negotiation and arbitration efforts. In June, 1997, I rejoined the U S WEST cost organization as Director- Service Costs, where I was responsible for managing cost issues, developing cost methods and representing Qwest in proceedings before regulatory commissions. I held this position until April 2004, when I assumed my present responsibilities. In my current role, I represent Qwest on issues concerning pricing, competition and regulatory issues.

Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE UTAH COMMISSION?

A. Yes. I have previously presented testimony in Docket No. 01-049-85, Docket No. 00-049-105, Docket No. 00-049-106, Docket No. 94-999-01, Docket No. 93-049-T22, Docket No. 92-049-05, Docket No. 90-049-05, Docket Nos. 90-049-03/90-049-06 and Docket No. 88-049-07.

Q. HAVE YOU TESTIFIED BEFORE OTHER STATE REGULATORY COMMISSIONS?

A. Yes. I have presented testimony before commissions in Arizona, Colorado, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota and Wyoming.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my rebuttal testimony is to address certain aspects of the testimonies of Dr. August Ankum and Mr. Timothy Gates filed on behalf of the *Joint CLECs,*[1] the testimony of Mr. Charles King filed on behalf of the Department of Defense ("DOD"), and the testimony of Casey Coleman filed on behalf of the Division of Public Utilities ("DPU"). My rebuttal testimony, which complements the rebuttal testimonies of Mr. Jeremy Ferkin and Mr. Michael Hunsucker filed on behalf of CenturyLink and the rebuttal testimonies of Mr. Jerry Fenn, Ms. Karen Stewart and Mr. Mike Williams filed on behalf Qwest, demonstrates that the Utah telecommunications market is extremely competitive, and that the merger between CenturyLink and Qwest (the "Transaction") will cause no competitive harm in the state. In fact, the Transaction will enhance competition and will provide many benefits to Utah consumers and businesses. Therefore, the Transaction is in the public interest and should be approved.

III. COMPETITIVE IMPACT OF THE MERGER

A. Intervenor Claims of Competitive "Harm"

Q. MR. GATES AND DR. ANKUM CLAIM THAT THERE ARE NUMEROUS COMPETITIVE "HARMS" THAT "COULD" RESULT FROM THE MERGER. PLEASE COMMENT.

A. I am struck by the highly-speculative and unsupported nature of Dr. Ankum's and Mr. Gates' testimony regarding how this merger will impact the competitive

[1] The *Joint CLECs* include 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.

landscape in Utah. Throughout their testimonies, they refer to the "harms" that "could" occur if the merger is approved (without onerous conditions), and the alleged "incentives" of the combined company to thwart competition, act in a discriminatory non-competitive manner, or otherwise harm CLECs. Yet these witnesses provide no evidence suggesting that these claims are likely to become a reality in Utah as a result of this transaction. As described below, Mr. Gates and Dr. Ankum speculate that the proposed transaction will harm competition, but this speculation is not supported by any evidence.

Q. CAN YOU PROVIDE AN EXAMPLE OF THIS LACK OF EVIDENCE?

A. Yes. Both Mr. Gates and Dr. Ankum (and Mr. King) provide a lengthy discussion of previous mergers and acquisitions.[2] Mr. Gates and Dr. Ankum repeatedly present these mergers as "lessons" of the awful things that "could" happen in this transaction. For example, Mr. Gates allegedly puts the Transaction in "context" by identifying the "significant problems that have occurred" following allegedly "similar" mergers, including the recent FairPoint acquisition of Verizon properties in New England and the investment firm Carlyle Group's acquisition of Verizon properties in Hawaii.[3] He states that "[s]ignificant problems have been experienced after recent mergers – problems that could occur after the proposed transaction if it is approved as filed."[4] However, as described in Mr. Ferkin's rebuttal testimony, the FairPoint transaction, as well as other recent transactions (including the Hawaiian Telecom transaction), bear little resemblance to the proposed merger of

[2] In this discussion, Mr. Gates and Dr. Ankum focus solely on a couple of less-successful transactions, while fully ignoring many other more-successful transactions.

[3] Direct Testimony of Timothy J. Gates ("Gates Direct"), pp. 5-6.

[4] Gates Direct, p. 88.

CenturyLink and Qwest.[5] There is no reason to assume that the problems experienced during these very different transactions would somehow translate into harmful consequences for the competitive telecommunications market in Utah after approval of this merger. The Commission should not place any reliance on references to these non-comparable transactions, as they provide no evidentiary basis to reject this transaction or impose significant onerous conditions.

B. Merger Synergies and Competition

Q. ACCORDING TO DR. ANKUM, HOW WILL THE MERGER IMPACT CLECs AND COMPETITION IN UTAH?

A. Dr. Ankum testifies that the Transaction represents a predominantly *horizontal* merger of companies that are generally in the same line of business in different geographic service areas.[6] While touting the possible benefits of *vertical* mergers,[7] he argues that the horizontal combination of these allegedly "struggling" companies with a "shrinking landline base" is unlikely to provide substantial merger benefits,[8] and will instead yield a riskier company that may never even recoup the upfront costs of integration.[9] According to Dr. Ankum, "a major concern is that, under the

[5] As Mr. Ferkin explains, FairPoint and Hawaiian Telcom experienced financial distress that can be traced directly to their inability to create functioning Operational Support Systems ("OSS") "from scratch." However, in ILEC transactions where there has not been the need to create new OSS—as is the case with the proposed Transaction—there is a long track record of successful integrations resulting in improved combined operations, including numerous transactions involving CenturyLink.

[6] Direct Testimony of August H. Ankum, Ph.D. ("Ankum Direct"), p. 39.

[7] A *horizontal* merger is a merger between companies producing similar goods or offering similar services. A *vertical* merger is a merger between two companies producing different goods or services for one specific finished product. In this instance, a company may purchase a supplier or customer to obtain upstream and downstream market benefits.

[8] Ankum Direct, p. 42.

[9] *Id*.

pressure of its debt load, the promises of merger savings to shareholders and regulators, and significant integration costs, CenturyLink will be forced to cut costs when integrating the two companies, leading to a degradation of services to wholesale customers and harm to competition."[10] He claims that the post-merger company will have the "incentive" to decrease wholesale service quality in order to reduce costs, and to improve its competitive positioning in the retail market against CLECs.[11]

Q. DOES MR. GATES MAKE SIMILAR CLAIMS?

A. Yes. Mr. Gates claims that "[o]ut of the many ways that the Merged Company could integrate the two companies to the detriment of competition, degrading the quality or access to OSS [Operational Support Systems] would be the most effective."[12] In addition, Mr. Coleman surmises that the combined company "could integrate the two companies in such a way as to harm CLECs,"[13] and that "changing the OSS system could be one of the ways an ILEC could drastically harm the business and viability of CLECs."[14]

Q. IS THERE ANY BASIS FOR THESE CLAIMS?

A. No. Dr. Ankum and Mr. Gates list various negative competitive impacts that "could" occur based on the merger, but they provide no evidence that their asserted

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[10] Ankum Direct, p. 46.

[11] Ankum Direct, p. 13, stating: "Further, CLECs compete with CenturyLink and Qwest for business and residential customers, which creates a perverse incentive structure in which CenturyLink and Qwest may have disincentives to provide CLECs with quality, reasonably priced, nondiscriminatory wholesale services and network access."

[12] Gates Direct, p. 39.

[13] Coleman Direct, p. 15.

[14] *Id*., pp. 16-17.

scenarios would occur or that the merger is likely to have any negative impact on competition. It is true that the post-merger company seeks to take advantage of synergies that the merger will provide, and to capitalize on the strengths of each company, as described in the testimonies of Mr. Ferkin and Mr. Fenn. However, there is no basis to assume that the combined company will cut costs in a manner that harms CLECs—who will remain major customers of the post-merger company. As competitive options from other facilities-based providers such as cable and wireless companies (who may serve customers without use of the Qwest or CenturyLink facilities) continue to grow, the post-merger company will have every incentive to meet CLECs' needs with high-quality service and OSS in order to keep wholesale providers—and their retail customers—on the combined company's network. The post-merger company cannot afford, and has no incentive, to degrade OSS or offer inferior service quality because customers—including CLECs—have competitive options. Importantly, the synergies realized by the merger will reduce costs by eliminating duplicative functions and increasing economies of scale and scope. However, the actual functions needed to provide outstanding service will *not* be eliminated or compromised. As described in the testimonies of Mr. Ferkin, Mr. Hunsucker and Mr. Williams, the combined company will offer high-quality wholesale service and OSS after the Transaction is completed, just as Qwest and CenturyLink do today.

Furthermore, the arguments of Dr. Ankum, Mr. Gates and Mr. Coleman regarding OSS and service quality are red herrings because, even after the merger, wholesale services that the Qwest subsidiary provides will remain subject to current Interconnection Agreements ("ICAs"), tariffs and/or other existing contractual obligations. For example, the provision of Unbundled Network Elements ("UNEs") will still be regulated under Section 251 of the Telecommunications Act, and the Commission will retain the authority to approve or deny changes to interconnection agreements that provide for CLEC access to UNEs. In addition, the Performance Assurance Plan ("PAP") that applies today to Qwest is reflected in the vast majority of ICAs, and as such, will still apply after the merger is completed, as described by Mr. Williams. Every contractual and legal protection available to CLECs today will still be available after the merger is completed.

Q. DO YOU AGREE WITH DR. ANKUM'S CHARACTERIZATION OF THE TRANSACTION AS A DESPERATE MERGER OF "STRUGGLING" COMPANIES?

A. No. Qwest and CenturyLink are clearly experiencing competitive pressures from CLECs, cable providers, VoIP providers and wireless carriers, and like all companies, are navigating through a difficult economic environment. However, it is not fair to say that Qwest and CenturyLink are "struggling" today, and that this is a merger of desperate companies. In fact, it is interesting that Dr. Ankum characterizes the companies as "struggling," while at the same time arguing that the companies are able to dominate the market and exercise "market power" to thwart competition. Dr. Ankum is unable to reconcile this contradiction. In reality, despite a challenging competitive and economic environment, Qwest and CenturyLink have maintained high-quality service and continued to invest in their networks, while effectively managing costs and earning a profit. The key point is that the merger will result in a company that is better able to meet future challenges than each company would be on its own.

Q. HAS QWEST PROVIDED OUTSTANDING WHOLESALE SERVICE QUALITY OVER THE PAST SEVERAL YEARS IN UTAH?

A. Yes. Qwest has been providing outstanding service quality to CLECs over the past several years, even as it has been carefully monitoring and reducing its costs and improving its balance sheet. On the wholesale side, Qwest payments based on the QPAP have generally declined in Utah over the years, as described by Mr. Williams. This high level of service quality has occurred at the same time that Qwest's total headcount has declined from approximately 41,000 in December 2004 to approximately 30,000 in December 2009.[15] The bottom line is that pressures to reduce costs and operate efficiently are not new phenomena resulting from the merger; like every company, Qwest has always been under pressure to keep costs as low as possible. Even so, Qwest has continued to improve wholesale service quality while pursuing all available efficiencies. Given past performance and the legal and contractual protections that CLECs already possess, the Joint CLECs' claims that any synergies realized by the combined company and any potential future headcount reductions will harm wholesale service quality are unfounded and represent nothing more than speculation.

C. <u>The Competitive Environment in Utah</u>

Q. ACCORDING TO MR. GATES AND DR. ANKUM, IS THE UTAH TELECOMMUNICATIONS MARKET SUFFICIENTLY COMPETITIVE TODAY?

A. No. Mr. Gates and Dr. Ankum argue that the Utah telecommunications market is not sufficiently competitive, and that Qwest and CenturyLink possess a level of

[15] See Qwest Quarterly Earnings reports, Fourth Quarter 2004 and Fourth Quarter 2009, at http://investor.qwest.com/earningsarchive.

market power that allows them to dominate the wholesale and retail telecommunications market in the state today. According to Mr. Gates and Dr. Ankum, the merger will harm competition by conferring the merged company with additional market power, which would allegedly allow the company to act in an anti-competitive manner to the detriment of retail and wholesale customers and the public interest in Utah. According to Dr. Ankum: "It is in the Joint Applicants' interests to strengthen their already dominant market positions in order to realize benefits that justify the merger."[16] These "interests" would allegedly lead to anti-competitive actions by the merged company.

Q. DO YOU AGREE WITH THIS ASSESSMENT?

A. No. First, this assessment appears to ignore the fact that CenturyLink today has almost no presence in Utah. As stated in the Joint Application: "In Utah, CenturyLink does not provide any local exchange services, with the exception of service provided by CenturyLink of Eagle (Colorado) to nine (9) lines in San Juan County along the border with Colorado."[17] Thus, the post-merger company in Utah will cover virtually the same footprint and serve the same customers that Qwest serves today. It makes no sense to claim that the combined company will somehow have increased "market power" in Utah.

In addition, as described below and in Mr. Fenn's direct testimony, the Utah telecommunications market is extremely competitive today. Because of this high level of competition, and the ability for customers to take advantage of competitive

[16] Ankum Direct, pp. 21-22.

[17] Joint Application for Expedited Approval of Indirect Transfer of Control, Filed May 19, 2010, Page 2.

alternatives, Qwest and CenturyLink (who has no meaningful presence in Utah today) do not have "already dominant positions" that would allow the merged company to take advantage of undue "market power" in the Utah retail and wholesale markets. While the Transaction should result in a post-merger company that is stronger and more competitive than the two companies standing alone, there is no basis for Dr. Ankum's assumption that the merged company will take advantage of synergies and increased financial strength to threaten the "viability of competition."[18] The "market power" claims of Dr. Ankum and Mr. Gates are based entirely on speculation, are not fact-based, and ignore the realities of the market.

1. The Retail Market

Q. DO MR. GATES AND DR. ANKUM CLAIM THAT ILECs DOMINATE THE RETAIL LOCAL EXCHANGE MARKET IN UTAH?

A. Yes. Mr. Gates claims that ILECs, including Qwest and CenturyLink, dominate the retail telecommunications market in Utah, and that ILECs today have "70% of the market" based on the latest FCC *Local Competition Report*.[19] Dr. Ankum claims that freedom of choice does not exist for "captive" retail customers, who he claims are totally dependent on Qwest and CenturyLink.[20] According to Mr. Gates and Dr. Ankum, since Qwest and CenturyLink have a large market share, they possess significant retail market power and an incentive—and the ability—to act in an anti-competitive manner to the detriment of consumers and businesses. They argue that this situation will only be exacerbated by the merger.

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[18] Ankum Direct, p. 22.

[19] Gates Direct, p. 18.

[20] Ankum Direct, pp. 8-9: "Specifically, retail customers in captive segments of retail markets have little or no choice . . . ."

Q. IS THIS A PROPER CHARACTERIZATION OF THE UTAH RETAIL TELECOMMUNICATIONS MARKET TODAY?

A. No. As Mr. Fenn describes in his direct testimony, and as Mr. Coleman describes in his direct testimony, the Utah retail telecommunications market is very competitive today. Mr. Coleman observes: "Consumers in Utah have many different options when deciding how to best meet their telecommunications needs. As a result of the variety of choices, competition in the retail market is robust."[21] As described in Mr. Fenn's and Mr. Coleman's direct testimonies, consumers and businesses have multiple voice and broadband service options from CLECs, cable companies, wireless providers and VoIP-based service providers.[22] Further, as Mr. Coleman noted, because of this competitive environment, "the Commission and state legislature have allowed Qwest to operate with a minimal amount of regulation in this segment of Qwest's business."[23] The Utah telecommunications market is becoming more competitive every day, and there is no reason to conclude that this explosion of competitive alternatives will subside as new technologies are developed and customer preferences evolve. Just as Qwest's "market power" is constrained by competition today, the market power of the combined company will be constrained by increasing competition in the future. Furthermore, since CenturyLink has virtually no presence in Utah today, it is absurd to claim that the merger will somehow harm the competitive environment in the state.

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[21] Coleman Direct, p. 5.

[22] Direct Testimony of Jerry Fenn (Fenn Direct"), pp. 16-21 and Direct Testimony of Casey J. Coleman ("Coleman Direct"), p. 6. Mr. Coleman states: "Retail customers, who primarily had the RBOC as their source for telecommunications needs, now can choose instead from the Incumbent Local Exchange provider ("ILEC"), CLECs, Voice over Internet Protocol ("VoIP"), or wireless telecommunications providers."

[23] Coleman Direct, p. 6.

Q. PLEASE DESCRIBE THE FLAWS IN MR. GATES' "MARKET SHARE" ANALYSIS.

A. Mr. Gates' competitive "market share" analysis is flawed in large part because he ignores wireless competition and relies on measures of historical market share that do not account for market trends. The latest version of the FCC report cited by Mr. Gates shows that the ILECs' combined share[24] of the *wireline and VoIP* voice telephone market in Utah as of June 2009 was 68%.[25] However, this measure does not account for wireless competition from companies such as AT&T, Verizon, Sprint and T-Mobile. Mr. Gates ignores wireless service, even though it is clear that many Utahans are substituting wireless service for wireline service today, and that wireless serves as a price-constraining substitute for wireline services. As described in Mr. Fenn's direct testimony, 25% of Americans had already "cut the cord" in the second half of 2009 and no longer had a wireline phone, while another 15% had a landline yet received all or almost all calls on wireless telephones.[26] According to the latest FCC data, ILEC wirelines represented *only 25%* of all wireline, VoIP and wireless connections in Utah, and wireline and VoIP access lines (ILEC and non-ILEC) accounted for less than 35% of all wireline/wireless

[24] The ILEC market share includes Qwest access lines, but no meaningful quantity of CenturyLink access lines.

[25] Mr. Gates cites the FCC's Local Competition Report released in June, 2010, which provides data for December 2008. He also cites *national* data from Figure 2 of this report rather than *Utah-specific* data found in Table 8 of the report. The latest Local Competition Report, released in September 2010, reflects June 2009 data. According to this report, total ILEC share of "Total End-User Switched Access Lines and VoIP Subscriptions" (without wireless) *in Utah* is 68%, while total CLEC share is 32%. See *Local Telephone Competition: Status as of June 30, 2009*, Industry Analysis and Technology Division, Wireline Competition Bureau, September 2010, Table 8. In addition, the ILEC market share in the FCC's report includes all ILECs in the state, not just Qwest. It is likely that the share for Qwest is lower than the state average because Qwest provides service in the most competitive urban areas in the state.

[26] Centers for Disease Control and Prevention, National Center for Health Statistics, Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2009, released May 12. 2010, p. 1.

connections in the state.[27] The impact of wireless services on the local exchange market in Utah cannot be ignored in any reasonable competitive analysis.

Q. DO HISTORICAL MARKET SHARE MEASURES PROVIDE A GOOD INDICATOR OF A FIRM'S MARKET POWER?

A. No. Even if wireless services are properly included in the analysis, it is important to understand that the Commission should not rely on historical local exchange market share measures to draw inferences regarding market power, for several reasons.[28] First, the relationship between "market share" and "market power" is likely to be particularly misleading in a regulated environment where rates have been set by regulators to meet policy objectives (such as, for example, universal service) rather than by market forces. Second, any measure of market share is necessarily static, based on some historical time period. In that sense, market share does not provide an indicator of where the market is headed, or what competitive alternatives are available to customers. That is particularly true when one provider, such as Qwest or CenturyLink, started out with 100% of the market in its ILEC territory, but is now subject to competition from many directions, and is experiencing declining market share. Third, it is important to understand that competitive *capacity* provides a better indicator of market power than market share. If competitive *capacity* exists, a high historical market share is not determinative that the firm has a high level of market power. For example, if a cable company

[27] *Local Telephone Competition: Status as of June 30, 2009*; Industry Analysis and Technology Division, Wireline Competition Bureau, September 2010, Tables 8 and 17. For Utah, this report shows 0.725 million ILEC lines, 0.336 million CLEC lines, and 2.1 million wireless connections.

[28] See, for example: *Principles of Competition and Regulation for The Design of Telecommunications Policy*, Dennis Weisman and Timothy Tardiff, filed with Qwest's Reply Comments (Exhibit 1s) in FCC Docket WC Docket No. 09-135, *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, October 21, 2009, pp. 21-26.

enters an ILEC market with voice service, it may appear initially that the ILEC has a dominant market share since the cable company has not *yet* gained a significant number of customers. However, the significant factor is that the cable service is *available* to the ILEC customers, and thus the share of *capacity* is closer to 50% for each provider.[29]

For these reasons, the Commission should not rely on historical market share in isolation as a measure of the level of Qwest or CenturyLink market power—before or after the merger. Even so, the fact that ILECs now have less than 25% of the combined wireline and wireless connections in Utah (based on the aforementioned FCC data) demonstrates the lack of market power these firms possess. And importantly, Qwest's market share continues to decline as customers move to CLEC, cable telephony, wireless and VoIP alternatives that are available throughout its Utah serving area. As described in Mr. Fenn's direct testimony, Qwest faces significant wireline competition in Utah from cable companies such as Comcast, CLECs (including Integra, PAETEC/McLeod, Level 3, XO and many others), VoIP providers (including Google, Vonage, MagicJack and many others), and wireless carriers (including AT&T, Verizon, Sprint and T-Mobile). Utah consumers and businesses have numerous alternatives to meet their local voice calling and broadband needs.

[29] Dr. Dennis Weisman and Dr. Timothy Tardiff provide an example: "Consider, for example, a particular market in which the ILEC and a cable company compete. Suppose the cable company quickly garners 5 percent of the customers and the ILEC files for deregulation. There may be a tendency to conclude that the ILEC continues to maintain market power since it has 95 percent of the customers. And yet, if capacity is truly the relevant measure of market share, and both the ILEC and the cable company are able to address 100 percent of the customers, the ILEC's market share is actually only 48.72 percent (95/(95 + 100))" See: *Principles Of Competition And Regulation For The Design Of Telecommunications Policy*, Dennis Weisman and Timothy Tardiff, filed with Qwest's Reply Comments (Exhibit 1s) in FCC Docket WC Docket No. 09-135, *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, October 21, 2009, pp. 23-24.

Q. DOES MR. KING AGREE THAT COMPETITION IS FIERCE IN THE RESIDENTIAL RETAIL SERVICES MARKET?

A. Yes. Mr. King acknowledges that the residential voice market in Utah is very competitive, and that Qwest today and the post-merger company in the future, face increasing competition that constrains prices. He states: "In light of the fierce competition for these services, it is unlikely that Qwest could sustain significant rate increases either for its residential wireline service or its residential multi-service bundles." [30]

Q. DO YOU AGREE WITH MR. KING'S ASSESSMENT OF THE RESIDENTIAL RETAIL MARKET?

A. Yes. As noted elsewhere in this testimony and in the Direct Testimony of Mr. Fenn, there is clearly a significant level of competition in the residential voice market that constrains Qwest's retail pricing.

Q. HOW DOES MR. KING CHARACTERIZE THE MARKET FOR BUSINESS TELECOMMUNICATIONS SERVICES IN UTAH?

A. Mr. King claims that businesses in Utah are "heavily dependent on the conventional telephone."[31] He argues that while cable TV companies market service to businesses, they are "somewhat less of a competitive threat" than in the residence market,[32] and that while CLECs have provided "some competition . . . that competition is shrinking."[33] On page 14 of his testimony, he provides a table that

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[30] Direct Testimony of Charles W. King ("King Direct"), p. 13.

[31] *Id*.

[32] *Id*., p. 14.

[33] *Id*.

purports to show the ILEC and CLEC share of the business telecommunications market in Utah. His table alleges that the CLEC share of the Utah wireline market, based on the FCC's *Local Competition Report* data, has declined to only 14.7% as of December 2008.

Q. DO YOU AGREE WITH MR. KING'S ASSESSMENT OF THE BUSINESS TELECOMMUNICATIONS MARKET IN UTAH?

A. No. Mr. King has not accurately characterized the level of competition from CLECs and other providers in the Utah business market today, and he has misapplied the FCC's *Local Competition Report* data.

First, Table 8 of the FCC's *Local Competition Report* identifies "Total End-User Switched Access Lines and VoIP Subscriptions by State as of December 31, 2008" for ILECs and non-ILECs. In his "CLEC" line count, Mr. King identifies 134,000 non-ILEC switched access lines as listed in Table 8 of the FCC report, but fails to identify 135,000 non-ILEC lines listed on the table that utilize VoIP technology.[34] Thus, while Mr. King claims that the CLEC share of the wireline market is 14.7%, this share completely ignores VoIP-based competition that the FCC has identified. The FCC's *Local Competition Report* specifically states that the non-ILEC share of the wireline market in Utah as of December 31, 2008 is 26%.[35]

Second, the FCC data used by Mr. King shows the CLEC share of *total* wirelines, including business *and residence* lines. He fails to observe that of the 910,000

[34] *Local Telephone Competition: Status as of December 31, 2008*; Industry Analysis and Technology Division, Wireline Competition Bureau, June 2010, Table 8.

[35] *Id*.

switched access lines he identifies in his table, 529,000 of these lines—or 58%—are residential lines that are not relevant to an analysis of the business market. To evaluate wireline competition in the business market, we need to look at the trends of non-ILEC *business* lines in the Utah—which are separately identified in Table 10 of the FCC's *Local Competition Report.* According to the FCC, as of December 2008, there were 398,000 business "End-User Switched Access Lines and VoIP Subscriptions" in Utah, and 123,000 of these were classified as non-ILEC—representing a non-ILEC share of 31%.[36]

Finally, Mr. King does not use the most recent FCC data. The latest FCC *Local Competition Report* shows that as of June 2009, the number of *business* non-ILEC "End-User Switched Access Lines and VoIP Subscriptions" increased from 123,000 to 181,000—*an increase of almost 50%*— in only six months.[37] In fact, even if VoIP-based services are not included in the analysis, the FCC data show that non-ILEC business switched access lines increased from 108,000 in December 2008 to 164,000 in June 2009—an increase of 52%.[38] At the same time, the number of ILEC business access lines declined from 275,000 to 257,000.[39] Thus, according to the latest FCC data, *non-ILECs now serve 41%* of business "Total End-User Switched Access Lines and VoIP Subscriptions" *and 39%* of business "Switched Access Lines" in Utah, and this share is growing rapidly.[40] These data clearly

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[36] *Local Telephone Competition: Status as of December 31, 2008*; Industry Analysis and Technology Division, Wireline Competition Bureau, June 2010, Table 10.

[37] *Local Telephone Competition: Status as of June 30, 2009*; Industry Analysis and Technology Division, Wireline Competition Bureau, September 2010, Table 10.

[38] *Id.*

[39] *Id.*

[40] *Id.*

demonstrate that Mr. King's claim of a "shrinking" CLEC presence in the Utah business market is incorrect.

The reality is that in Utah, there are numerous CLECs, including Integra, PAETEC, XO, Granite and others that are focused *solely* on serving the business market, and these CLECs market services to small, medium and enterprise business customers. The competitive presence of these providers is increasing, not decreasing.

Q. DOES MR. KING PROPOSE A FREEZE ON BUSINESS RATES FOR THE POST-MERGER COMPANY?

A. Yes. Due to the allegedly declining competition from CLECs, Mr. King concludes that the post-merger company "will probably seek additional revenues from the small business market." He states: "That additional revenue is likely to take the form of unilateral rate increases,"[41] and would be "motivated by the need to raise revenue to implement the merger."[42] Mr. King argues that in the business market "Qwest's successor company can exert sufficient market power to allow it to raise prices without major market share losses."[43] In order to address this "problem" Mr. King recommends that the Commission impose a three year price cap for most business services, including single and multiple line rates, PBX, Centrex and Special Access services.[44]

[41] *Id.*

[42] *Id*., p. 15.

[43] *Id*., p. 16.

[44] *Id*., p. 15.

Q. IS THERE ANY BASIS FOR A FREEZE ON BUSINESS RATES AS RECOMMENDED BY MR. KING.

A. No. Mr. King's recommendation is based on an erroneous evaluation of the level of competition in the business telecommunications market in Utah, as described above. Contrary to Mr. King's assertions, the business market for business telecommunications services is highly competitive in Utah, and competition from CLECs, cable companies, VoIP providers is growing rapidly, as demonstrated by the FCC *Local Competition Report* data. In addition, competition from wireless services is increasing. This competition allows the market to constrain Qwest's rates today, and will do the same in the future after the Transaction is completed. Thus, there is no justification for a merger condition that would regulate the post-merger company's business rates.

Q. BASED ON THE LEVEL OF COMPETITION IN THE RETAIL MARKET, IS THERE ANY JUSTIFICATION FOR THE RETAIL "PRICE FREEZE" MERGER CONDITIONS THAT MR. COLEMAN PROPOSES?

A. No. While Mr. Coleman describes the retail telecommunications market as robustly competitive, he still proposes certain merger conditions. However, in a competitive market, prices are constrained by market forces, and price freezes are unnecessary to protect consumers. As described in Mr. Fenn's rebuttal testimony, the Commission should not adopt these proposed conditions.

Q. WILL THE POST-MERGER COMPANY ENJOY SIGNIFICANT MARKET POWER IN THE ENTERPRISE MARKET?

A. No. The intervenor witnesses cannot reasonably argue that the combined company will be able to harm competition by increasing concentration in the enterprise market, especially since CenturyLink does not even serve the Utah enterprise market today. In addition, As Mr. Fenn described in his direct testimony, Qwest's presence in the enterprise business market today is dwarfed by other national providers, including AT&T and Verizon. Mr. Fenn noted that "[f]or total year 2009, Qwest *total* Business Markets Group revenues were $4.09 billion, compared to business revenues of $14.74 billion for AT&T and $14.99 billion for Verizon.[45] He continues that "[i]n terms of business revenues for 10 of its top competitors,[46] Qwest's share of that business market is less than 10%, compared to 33% each for AT&T and Verizon."[47]

Q. WILL THE POST-MERGER COMPANY ENJOY SIGNIFICANT MARKET POWER IN THE BROADBAND MARKET?

A. No. The intervenors' claim that the merger will cause harmful concentration in the broadband market is not reasonable. CenturyLink does not provide broadband services in Utah, and Qwest clearly does not "dominate" the broadband market today. Based on the FCC's latest *Internet Access Services Report*, DSL broadband connections—like those offered by Qwest—represent less than 33% of the total broadband connections in the state.[48] Thus, the combined company will hardly "dominate" the broadband market in Utah. Instead, the merger will provide the

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[45] *See* 2009 10K reports for Qwest at http://qwest.investorroom.com/qcii-sec-filings, Verizon at http://investor.verizon.com/sec/index.aspx and AT&T at http://phx.corporate-ir.net/phoenix.zhtml?c=113088&p=irol-sec&control_selectgroup=Show%20All. The revenues provided represent total company business revenues from corporate reports, and are not limited to Utah.

[46] Includes AT&T, Verizon, Sprint, Cbeyond, Cogent, Global Crossing, Level 3, PAETEC, tw telecom and XO Communications.

[47] Fenn Direct, p. 14.

[48] *Internet Access Services Status as of June 30, 2009*, Industry Analysis and Technology Division, Wireline Competition Bureau, September 2010, Table 14. As of June 30, 2009, the FCC reported 280,000 ADSL connections, 244,000 cable modem connections and 269,000 mobile broadband connections out of a total of 852,000 million (at least 200kbps in one direction) in Utah.

combined company with the financial and operational resources to invest in broadband networks, and to better compete against cable modem and wireless broadband options. This is clearly in the public interest, and will benefit Utah consumers, businesses and wholesale customers.

Q. DOES DR. ANKUM CLAIM THAT THE MERGER WILL SIGNIFICANTLY IMPACT COMPETITION, TO THE DETRIMENT OF THE PUBLIC INTEREST?

A. Yes. Dr. Ankum argues that:

> A merger of CenturyLink and Qwest reduces competition in areas and for services in which the companies compete. While, for the most part, the companies operate in their own separate service areas, there are significant instances in which they do compete. Clearly, a merger would eliminate this competition, and in doing so harm the public interest.[49]

Dr. Ankum also claims that Qwest and CenturyLink serve "large numbers of exchanges that are adjacent," and that "the merger will eliminate any incentive" for competition between the two companies.[50] Thus, according to Dr. Ankum, the merger would present significant competitive harms.

Q. ARE THESE LEGITIMATE CONCERNS?

A. No. As described above, CenturyLink has a very minimal presence in Utah today, serving only a few customers in southeast Utah that are served out of a Colorado exchange. Dr. Ankum is wrong when he claims that "there are significant instances in which they [CenturyLink and Qwest] do compete" and that there are "large numbers of exchanges that are adjacent" in Utah. In reality, there is no current

[49] Ankum Direct, p. 47.

[50] *Id.*

competitor "eliminated" by the merger and no basis to conclude that the combination of the companies would have a negative impact on competition or harm the public interest.

Q. AFTER THE TRANSACTION IS COMPLETED, WILL THE UTAH TELECOMMUNICATIONS MARKET HAVE ROBUST COMPETITION?

A. Yes. After the Transaction is completed, all of the same providers that compete against Qwest and CenturyLink today—as described above and in Mr. Fenn's direct testimony—will still be competing with the combined company in Utah. In fact, it is likely that the impact of competition will continue to grow as alternative providers continue to attract new customers. There is, therefore, no basis to conclude, as Dr. Ankum and Mr. Gates do, that the merger will somehow harm competition in the state.

Q. HAS U. S. THE DEPARTMENT OF JUSTICE (DOJ) AND THE FEDERAL TRADE COMMISSION (FTC) DETERMINED THAT THE MERGER IS NOT A RISK FROM AN ANTITRUST PERSPECTIVE?

A. Yes. On July 15, 2010, Qwest and CenturyLink received notification from the DOJ and the FTC that their merger reviews received "early termination" under the Hart-Scott-Rodino Act. Thus, the proposed merger of Qwest and CenturyLink has received clearance from an antitrust perspective,[51] as the DOJ and FTC have determined that there will not be a significant erosion of competition resulting from the merger. There are very few overlapping areas served by the two companies in the U.S., and the DOJ expressed little concern regarding the existence of adjacent

[51] See Form 425 filed with SEC on July 22, 2010, available at http://investor.qwest.com/qcii-sec-filings.

Qwest-CenturyLink exchanges in any state. Significantly, the DOJ specifically evaluated overlaps and adjacencies in all states and determined that these overlaps and adjacencies do not pose concerns that would warrant further review.

2. <u>The Wholesale Market</u>

Q. DOES DR. ANKUM CLAIM THAT THE MERGER WILL "UPSET THE WHOLESALE RELATIONSHIP BETWEEN ILECs AND CLECs AND HARM COMPETITION IN UTAH."[52]

A. Yes. Dr. Ankum claims that "without reasonable, reliable and nondiscriminatory access to Qwest's and CenturyLink's networks, CLECs cannot get access to customers."[53] Thus, he implies that the merger will somehow eliminate Qwest's requirement to provide CLEC access to its network, and that downstream retail residence and business customers will be harmed.

Q. IS THIS A LEGITIMATE CLAIM?

A. No. After the merger transaction is consummated, the Qwest subsidiary (QC) will still be subject to Sections 251, 252 and 271 of the Telecommunications Act, just as Qwest is today. Thus, UNE loops will be available to CLECs at TELRIC-based prices[54] in all wire centers except those that this Commission has declared "non-impaired" based on the FCC's Triennial Review Remand Order ("TRRO")

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[52]Ankum Direct, p. 8.

[53] Ankum Direct, p. 8.

[54] TELRIC (Total Element Long Run Incremental Cost) assumes the long-run incremental forward-looking costs of providing an element based on the least-cost most efficient technologies that could be deployed. These costs represent the theoretical costs that would be incurred to replace the network using least-cost technologies. TELRIC pricing is required per 47 C.F.R. Section 51.

criteria.[55] In Utah, only one wire center—Salt Lake City Main—has been declared non-impaired for DS3 loops, and *no* wire centers have been declared non-impaired for DS1 loops.[56] Thus, CLECs may purchase DS1 unbundled loops at TELRIC-based prices in every single wire center in Utah, and may purchase DS3 loops at TELRIC-based prices in every wire center except Salt Lake City Main,[57] where they can purchase DS3 loops at just, reasonable and not unduly discriminatory (non-TELRIC-based) rates per Section 271 of the Telecommunications Act.[58] Thus, the merger poses no risk that "last mile" facilities will not be available in Utah at reasonable rates post-merger. This fact demonstrates that the CLECs' claims of the merger's "competitive harm" are without merit and should be given no weight in this proceeding.

It is also interesting that Dr. Ankum refers to the "market power" that Qwest and CenturyLink allegedly enjoy, while at the same time admitting that regulatory constraints would prevent the post-merger company from exercising such power in

[55] See *In the Matter of Unbundled Access to Network Elements and Review of Section 251 Unbundling Obligations*, Order on Remand, 20 FCC Rcd 2533 (2005). In determining that a CLEC is not impaired without access to a UNE, the FCC has specifically found that CLECs are no longer impaired without access to that element, and that cost-based TELRIC rates are no longer necessary. With regard to DS1 and DS3 services, when the FCC determined in the *TRRO* that either DS1/DS3 loops or transport in a particular wire center are non-impaired, it specifically determined that market conditions are such that a CLEC is highly likely to have alternatives to Qwest DS1 and DS3 services.

[56] See Qwest Wholesale web site at http://www.qwest.com/wholesale/downloads/2010/100111/Non_Impaired_Wire_Center_12_23_09.xls.

[57] Per the *TRRO*, other wire centers have been determined to be "Tier 1" or "Tier 2." In Tier 1 wire centers, CLECs are not impaired without access to DS1 and DS3 transport (interoffice) facilities, and in Tier 2 wire centers, CLECs are not impaired without access to DS3 transport.

[58] Rates for elements subject to Section 271 must be just, reasonable and not unreasonably discriminatory. See *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order, 17 FCC Rcd 16978 (2003); ¶¶ 656, 659.

the wholesale market.[59] As described above, Qwest is required by law to provide access to its network based on Sections 251 and 271 today, and the Qwest subsidiary will be required to do the same after the merger, which constrains Qwest's and the post-merger company's market power.

Q. MR. GATES CLAIMS THAT QWEST HAS A "MONOPOLY OVER WHOLESALE INPUTS RELIED UPON BY CLECs," AND THAT THERE ARE NO ALTERNATIVE SOURCES OTHER THAN QWEST FOR WHOLESALE INPUTS.[60] MR. COLEMAN STATES THAT "A NUMBER OF COMPETITIVE LOCAL EXCHANGE CARRIERS ("CLECs") ARE DEPENDENT ON QWEST'S INFRASTRUCTURE TO BE ABLE TO OFFER SERVICE."[61] PLEASE COMMENT.

A. I do not agree that Qwest has a "monopoly" over wholesale services; in many areas, CLECs have competitive alternatives to Qwest service, including the option of self-provisioning. Certain wire centers in Utah have been declared to be "non-impaired" for unbundled loops and/or transport, based on the FCC's *TRRO* non-impairment criteria. When a wire center is determined to be non-impaired, *it means that CLECs have competitive wholesale options and are clearly not "captive customers" of Qwest*.[62] Mr. Gates cannot reasonably claim that CLECs do not have

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[59] As Dr. Ankum states, "economically efficient access by CLECs to the ILECs' network elements serves to constrain the ILECs' ability to exploit market power in wholesale markets to the detriment of competition in downstream, retail markets." Ankum Direct , page 46-47.

[60] Gates Direct, p. 18.

[61] Coleman Direct, p. 5.

[62] According to the FCC: This Order [*TRRO*] imposes unbundling obligations only in those situations where we find that carriers genuinely are impaired without access to particular network elements and where unbundling does not frustrate sustainable, facilities-based competition. This approach satisfies the guidance of courts to weigh the costs of unbundling, and ensures that our rules provide the right incentives for both incumbent and competitive LECs to invest rationally in the telecommunications market in the way that best allows for innovation and sustainable competition. *In the Matter of Unbundled Access*

competitive alternatives in areas where it has been determined that CLECs are not "impaired" without access to a network element.[63]

In addition, along the Wasatch Front, there are numerous competitive *fiber networks* in place today. Companies with fiber networks in this area include American Fiber Systems ("AFS"), Integra, Level 3, PAETEC, tw telecom, XO, AT&T and Verizon. Some fiber providers with networks in the Salt Lake City area, such as AFS,[64] specifically market fiber services to carriers as an alternative to Qwest.[65] In addition, municipal broadband providers such as UTOPIA,[66] which was just awarded $16 million in federal stimulus funding,[67] operate in Qwest's serving area in Utah. UTOPIA specifically makes its network available to CLECs and lists, for example, Integra as a provider using the UTOPIA network.[68] UTOPIA states that "[o]ur open access model means that the cities of UTOPIA provide the physical fiber-optic infrastructure, but private-sector telecommunications companies use the network to offer you light-speed Internet, digital phone, crystal-clear HDTV, and other services."[69] CLECs also have the option to obtain access from *fixed wireless* providers.

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to Network Elements and Review of Section 251 Unbundling Obligations, Order on Remand, 20 FCC Rcd 2533 (2005), ¶ 2. (Footnotes omitted.)

[63] The FCC has spent more than a decade addressing Section 251 issues and has issued several rulings specifically addressing the issue of non-impairment, as noted above. If the CLECs have concerns over the FCC's criteria for non-impairment, these concerns must be addressed in an appropriate FCC UNE proceeding.

[64] AFS has agreed to be purchased by Zayo, another company that markets fiber services to CLECs and other carriers.

[65] See http://www.americanfibersystems.com/.

[66] According the UTOPIA web site: "Sixteen Utah cities that have joined together to create one of the nation's largest, fastest, most robust fiber-optic networks." See http://utopianet.org/why-utopia.

[67] See http://utopianet.org/blogs/news/utopia-awarded-stimulus.

[68] See http://utopianet.org/utopia-providers.

[69] *Id*.

Q. WHAT DO YOU CONCLUDE?

A. The competitive issues that the CLECs raise in this proceeding represent nothing more than "noise" that is designed to distract the Commission from the real issue in this case—whether the proposed merger of CenturyLink and Qwest is in the public interest under the Commission's "no harm" standard. As described above, and in the testimonies of Mr. Hunsucker and Ms. Stewart, existing wholesale obligations will continue to be in place after the merger is completed. The post-merger QC entity will still be subject to Sections 251, 252, and 271 of the Telecommunications Act, and will provide unbundled DS1 loops at regulated TELRIC-based rates in every Qwest wire center in Utah, and DS3 loops at regulated TELRIC rates in all wire centers except Salt Lake City Main. In geographic areas where CLECs "rely" on Qwest, they will continue to be able to do so after the merger is consummated with the same rates, terms, and conditions contained in the existing tariffs and interconnection agreements. Nothing about the merger changes these obligations. In addition, in the "non-impaired" wire centers, CLECs have the option to utilize alternative networks or to self-provision using their own networks. Thus, there is no basis to assume that the merger will negatively impact the competitive market or harm the interests of Utah consumers, businesses or CLECs.

3. Summary of Competitive Impact

Q. IN SUM, IS THERE ANY BASIS FOR THE CLAIMS BY MR. GATES AND DR. ANKUM THAT THE MERGER WILL HARM COMPETITION AND WILL NOT SERVE THE PUBLIC INTEREST?

A. No. Dr. Ankum states that the Commission should not succumb to the belief that the "invisible hand" of the marketplace will safeguard the public interest in this merger."[70] While CenturyLink and Qwest have demonstrated the significant benefits of this merger, in fact, the competitive nature of the market, along with the continued regulation of retail and wholesale services, *will* protect customers and the public interest once the merger is completed. In this environment, the post-merger company has every incentive to provide high-quality innovative services to retail and wholesale customers.

D. <u>Merger Benefits</u>

Q. DR. ANKUM ARGUES THAT THE BENEFITS OF THE MERGER WILL ONLY ACCRUE TO SHAREHOLDERS AND THAT OTHER "STAKEHOLDERS" WILL NOT BENEFIT. PLEASE COMMENT.

A. Dr. Ankum argues that the Commission should balance the benefits of the merger to shareholders with the harmful effects that will allegedly be borne by other stakeholders, such as customers.[71] He implies that shareholders will benefit at the expense of consumers, businesses, and wholesale customers.

This advocacy is misplaced because the merger is likely to benefit shareholders *and* other stakeholders. The Transaction will create a financially-strong and stable provider that has an enhanced ability to invest in local and national networks, deploy broadband and other advanced services, and provide outstanding service quality to its customers, large and small, as Mr. Ferkin further describes. The combined CenturyLink-Qwest entity will be stronger and more stable from a financial perspective than either company would be on its own. As a result, the

[70] Ankum Direct, p. 23.

[71] Ankum Direct, p. 9.

combined company will have access to the necessary capital to invest in a network capable of providing enhanced products and services. Rather than harming customers/stakeholders, this transaction will provide benefits to customers and will serve the public interest. In this and any other industry, in order to provide benefits to shareholders, a company must also serve and benefit its customers.

Q. DR. ANKUM ARGUES THAT THE MERGER INVOLVES SIGNIFICANT "UNCERTAINTIES" AND "RISKS," AND THAT THESE "RISKS AND GAINS ARE UNEVENLY DIVIDED BETWEEN SHAREHOLDERS AND THE BROADER PUBLIC INTEREST, INCLUDING CAPTIVE CUSTOMERS, SUCH AS CLECs."[72] PLEASE COMMENT.

A. Essentially, Dr. Ankum and Mr. Gates argue that the merger has a risk of failure, and therefore, the Commission should deny the merger or impose onerous conditions. Of course, as Mr. Ferkin describes in his testimony, Dr. Ankum and Mr. Gates overstate the risk of this transaction by comparing it with several previous transactions that have experienced problems, such as the FairPoint purchase of access lines from Verizon or an investment firm's purchase of Verizon properties in Hawaii. Based on an apples-to-oranges discussion of a select group of less-successful transactions that are not even remotely comparable with this transaction in most respects, they imply that the risk of this transaction is simply too great. Dr. Ankum then argues that stakeholders (customers) are much more "at risk" from the merger transaction than shareholders, and that this is a reason to deny the merger or impose onerous conditions.

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[72] Ankum Direct, p. 37.

This CLEC testimony represents a flawed assignment of risk. If the merger were to fail—which is highly unlikely—the losses to shareholders would be substantial and would likely exceed any negative impact on other stakeholders, especially since shareholders could potentially lose all of their investment. To give but one example, when WorldCom—which had purchased MCI—went bankrupt, shareholders lost their entire investment. Conversely, customer services were generally not interrupted or degraded, and the surviving company was ultimately acquired by Verizon. It is wrong to conclude that a merger presents less risk to stockholders than to other stakeholders.

IV. <u>CONCLUSION</u>

Q. WHAT ACTION SHOULD THE COMMISSION TAKE IN THIS PROCEEDING?

A. The Commission should approve the Transaction, without the onerous, unreasonable and unnecessary conditions proposed by other parties. As described above, the Utah telecommunications market is very competitive, and the merger of CenturyLink and Qwest will cause no competitive harm in the state. Contrary to the claims of the CLECs in this proceeding, the Transaction will provide many benefits to Utah consumers and businesses, as described in Mr. Fenn's direct and rebuttal testimony, as well as in the direct testimony of Mr. Glover and the direct and rebuttal testimonies of Mr. Ferkin. In addition, as Mr. Ferkin and Mr. Hunsucker describe in their rebuttal testimonies, CLECs will not be harmed by the Transaction.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.