

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

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QWEST CORPORATION

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1 **IDENTIFICATION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND CURRENT**
3 **POSITION.**

4 A. My name is Michael Williams. My business address is 1801 California Street, Denver,
5 Colorado 80202. I am a Senior Director of Public Policy for Qwest.

6 **Q. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THIS**
7 **COMMISSION?**

8 A. Yes. In Docket No. 00-049-08, I testified in support of Qwest's application for approval
9 to offer interLATA services under Section 271 of the federal Telecommunications Act of
10 1996 ("the Act") and in the related matters establishing Qwest's performance assurance
11 plan ("QPAP") in Utah. I was also the Qwest declarant for commercial service quality
12 before the FCC in support of Qwest's application that included Utah. In 1998, I testified
13 in the Commission's intercarrier (wholesale) service quality rulemaking, Docket No. 98-
14 R365-01. Otherwise, I have testified in a variety of other dockets before this
15 Commission, as far back as 1987.

16 **Q. PLEASE STATE YOUR BACKGROUND AND QUALIFICATIONS.**

17 A. I hold an MBA degree from the University of Utah, 1985, and a Bachelor's of Science
18 degree in electrical engineering from Brigham Young University, 1976. Since 1981,
19 I have worked for Qwest or its predecessors in various management positions, including
20 engineering, technical sales, regulatory, new technologies, international cellular joint

1 venture leadership, wholesale interconnection operations and regulatory finance. My
2 responsibilities have included service quality-related metrics and payments since 1997.
3 In Qwest's Section 271 application with states and the FCC, I was the service quality
4 witness. I have held my current responsibilities since July 2005. Specifically, I am
5 responsible for Qwest's policies and compliance associated with regulatory retail and
6 wholesale service quality requirements. I have submitted testimony and participated in
7 workshops in each of the 14 states in Qwest's local services region.

8 **PURPOSE**

9 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

10 A. My testimony responds to the direct testimonies of Casey Coleman of the Utah Division
11 of Public Utilities ("Division"), Douglas Denney of Integra Telecom ("Integra"), and
12 Timothy Gates on behalf of multiple CLECs ("Joint CLECs"), on the topics of wholesale
13 performance assurance, generally, and Mr. Denney's proposed "Additional Performance
14 Assurance Plan" ("APAP"), specifically. Overall, these witnesses' statements about
15 wholesale service performance issues are irrelevant to this merger proceeding, especially
16 because sufficient and significant market pressures, provisions in the QPAP, and Utah
17 Commission rules exist and will continue to address any legitimate concerns there may
18 be on these issues, and the merger transaction does nothing to change that.

1 **WHOLESALE SERVICE PERFORMANCE ASSURANCE**

2 **Background and Purpose of the QPAP**

3 **Q. IN THEIR TESTIMONY, BOTH MR. DENNEY OF INTEGRA AND MR.**
4 **COLEMAN OF THE DIVISION REFER TO THE UTAH “PAP.” WHAT IS THE**
5 **UTAH PAP?**

6 A. The Utah PAP or QPAP is a self-executing plan based on Qwest's level of wholesale
7 service quality performance under a variety of metrics called “PIDs” (“performance
8 indicator definitions”). The PIDs are measurements of specific dimensions of Qwest’s
9 wholesale service performance. For example, PIDs cover the areas of pre-order/order,
10 billing, provisioning, maintenance and repair, network performance, and so forth. PID
11 results for Utah are reported on an individual CLEC basis, as well as on an aggregate-
12 CLEC basis, statewide.

13 The PIDs have three types of standards: “parity,” “benchmark,” or “diagnostic.” Parity
14 standards compare Qwest’s performance for CLECs to its performance for its own retail
15 customers or operations, while benchmark standards compare Qwest’s performance to
16 specified fixed performance levels. Diagnostic standards designate that the PID results
17 are for monitoring purposes. QPAP payments to CLECs (so called “Tier 1 payments”)
18 and payments to states (“Tier 2 payments”) are triggered as provided in the QPAP for
19 Qwest’s non-conformance with the standards only by measurements with parity or
20 benchmark standards in the PIDs, and as further delineated in the body of the QPAP.

1 **Q. WHAT IS THE PURPOSE OF THE QPAP?**

2 A. Qwest obtained approval of the QPAP in conjunction with obtaining interLATA long
3 distance approval from the Federal Communications Commission (“FCC”) under Section
4 271 of the Telecommunications Act of 1996 (“the Act”). The FCC looked for assurances
5 that wholesale markets would remain open after the requirements of Section 271 had
6 been met, and interLATA freedom had been granted to the Bell Operating Companies
7 (“BOCs”) such as Qwest. While it accepted performance assurance plans (“PAPs”) for
8 this purpose, the FCC noted at the time that it could not require such plans. Instead, the
9 FCC stated it would deem a properly-designed plan as “probative evidence that the BOC
10 will continue to meet its Section 271 obligations after a grant of such authority.”¹

11 **Q. HOW DOES THE QPAP RELATE TO INTERCONNECTION AGREEMENTS**
12 **BETWEEN QWEST AND CLECs?**

13 A. If adopted by a CLEC, the QPAP becomes part of the CLEC’s interconnection agreement
14 (“ICA”) in the form of two exhibits. Exhibit B sets forth the measurement definitions
15 and standards, and Exhibit K sets forth the payment framework. Thus, Qwest cannot
16 make unilateral changes to the QPAP because it is part of a contractual agreement.

17 **Q. PLEASE DESCRIBE THE PROCESS OF HOW THE QPAP CAME INTO**
18 **EXISTENCE.**

19 A. Overall, the PIDs and the QPAPs were developed through a process of multiple years of
20 negotiations with numerous CLECs and commission staffs, involving a number of

1 frequent forums, including business-to-business negotiations, commission-facilitated
2 collaboratives, and operational support systems (“OSS”) testing – most on a multi-state
3 basis.² These activities took place, generally, from 1998 through 2003, when Qwest
4 obtained Section 271 approvals, and then afterward in the form of audits, reviews, and
5 further negotiations.

6 The PIDs were selected and defined, with lengthy attention to large volumes of minute
7 details. Statistical methods were discussed exhaustively, involving Ph.D-level
8 statisticians from multiple parties. Then, QPAP workshops of various types took place
9 and, finally, each state commission considered the resulting PAPs, and sometimes made
10 state-specific modifications. In the years since then, further modifications have been
11 made, as negotiated among interested parties and as approved by commissions.
12 Generally, these latter modifications consisted of changes to PIDs or refinements in
13 standards.

14 All of this activity took place in connection with Section 271 requirements, and not as a
15 result of an issue raised by a self-interested CLEC as a condition for a merger. Further,
16 no state commission has ordered additional PAPs in any previous merger to the best of
17 my knowledge.

¹ *Qwest 9 State 271 FCC Order*, at ¶ 453.

² Arizona began the process with its own PID workshops. OSS testing workshops began later and continued with the PID development. The remaining 13 states held a collaborative OSS test (under the auspices of the “Regional Oversight Committee” (or “ROC”), which included PID and statistical workshops and third-party validation of PID mechanisms. Later, “Post-entry Performance Plan” (“PEPP”) workshops were hosted by some of the states of the ROC (with all states but Arizona, Colorado, Minnesota, and Washington participating), which were later folded back into the ROC workshops.

1 **Q. WHAT LIGHT DOES THIS EXTENSIVE PROCESS OF QPAP DEVELOPMENT**
2 **SHED ON MR. DENNEY’S PROPOSAL TO ESTABLISH AN “ADDITIONAL**
3 **PAP” (“APAP”)?**

4 A. This background and context highlight how improper it is for a CLEC to use a merger
5 proceeding to attempt to establish a completely new overlay that is designed to obtain
6 more payments from the post-merger company. At the outset, before addressing the
7 numerous fatal flaws of the APAP, it is clear that a merger proceeding is not the place for
8 such an endeavor.

9 This is particularly clear when considering the extensive CLEC involvement in
10 developing the QPAP and the PIDs, including Integra and its subsidiary predecessors
11 (e.g., Eschelon), and considering that the APAP sets off in a direction that Mr. Denney
12 admits is different from that addressed by the current QPAP. Thus, even though the
13 APAP purports to be based on the PIDs of the current Utah QPAP, its purpose is entirely
14 different from the QPAP’s purpose, as I explain in more detail later.

15 Also, the current QPAP is already robustly comprehensive and is not going away in the
16 foreseeable future. The merger transaction does not diminish the fact that the QPAP will
17 continue to be in force, post-merger, and that any material changes would need
18 Commission approval, along with Staff and CLEC input, before they could be
19 implemented.

20 Finally, there are *due process* concerns relative to the CLECs trying to force onto Qwest
21 and CenturyLink an additional PAP, based on only about six pages of testimony and one

1 exhibit, which deal with very complex issues and potentially-significant amounts of
2 money, without anything remotely resembling a full record. The CLEC APAP proposal,
3 if it were to be adopted in any form here, would make a mockery out of the appropriate
4 process – a process that had its origins more than seven years ago in the Section 271
5 proceedings regionwide, which in Utah was Docket No. 00-049-08.

6 **The Current QPAP**

7 **Q. PLEASE DESCRIBE THE UTAH QPAP, INCLUDING HOW IT WORKS**
8 **GENERALLY AND THE TYPES OF MEASUREMENTS, OR METRICS, THAT**
9 **IT TRACKS.**

10 A. As I mentioned, the Utah QPAP consists of PIDs in Exhibit B and payment provisions in
11 Exhibit K of interconnection agreements in which it resides. The payment provisions use
12 PID results as the self-executing basis for triggering payments when service performance
13 is nonconforming to parity or benchmark standards set forth in the PIDs. The PIDs
14 contain what can be called “business rules” that define what is to be included, and what is
15 to be excluded, from the measurements in order to properly and accurately account for
16 Qwest’s wholesale service quality performance, while striving to minimize the effects of
17 external factors that parity standards or benchmark allowances may not necessarily
18 account for.

19 **Q. WHY ARE THERE BOTH PARITY AND BENCHMARK STANDARDS?**

20 A. At the lowest (most detailed) level of disaggregation, each PID with a parity or
21 benchmark standard has only one or the other: a parity standard or a benchmark standard.

1 The nondiscrimination standard of the Act calls for a comparison between an ILEC's
2 wholesale and retail service quality performance. However, precisely comparable retail
3 services do not always exist. If there were truly comparable retail services available for
4 all wholesale services and elements measured by the PIDs, there would be only parity
5 standards in the PIDs. Strictly speaking, "parity" is not an explicit requirement of the
6 Act, but it is a factor in evaluating nondiscrimination. Accordingly, in the original
7 collaborative proceedings in which the PIDs were developed, the parties agreed to use
8 parity as the primary basis for setting standards. For unbundled elements where precise
9 apples-to-apples comparisons with retail "analogues" were not available,³ proxies were
10 selected that were as close as possible to the measured elements, such as for specific
11 types of unbundled loops. For other elements, there were no retail analogues, and no
12 reasonable proxies for such analogues, and thus benchmark standards were adopted
13 through negotiations in the various proceedings that pre-dated the Qwest Section 271
14 FCC applications. Benchmarks were also used to evaluate the "pre-order" processes
15 where, for example, CLECs submit local service requests ("LSRs") and trouble reports
16 through interfaces that do not exist in the retail context.

17 All of these considerations were heavily influenced by the purposes at hand – namely,
18 addressing whether service performance was nondiscriminatory. As I point out later, this
19 is in stark contrast with the purposes of Mr. Denney's APAP.

³ For example, there are no retail "unbundled loops" with which to compare wholesale unbundled loops that Qwest provides to CLECs.

1 **Q. HOW ARE PAYMENT AMOUNTS DETERMINED UNDER THE QPAP?**

2 A. Payment amounts are determined by the extent to which Qwest's PID results do not
3 conform to or meet the applicable standards. Specifically, the difference between a PID
4 result and the applicable standard is translated into a number of occurrences (e.g., orders
5 or tickets) that do not meet the relevant standard, which number is then multiplied by the
6 applicable "per-occurrence" payment level to calculate the payment amount due for that
7 PID result.

8 The QPAP defines two categories of payments: Tier 1 and Tier 2. Tier 1 payments are
9 made to individual CLECs, and Tier 2 payments are placed into an escrow account for
10 the State, the disbursements from which are directed by the Commission. The QPAP also
11 defines other payment-affecting procedures, such as payment escalations (where there are
12 consecutive nonconforming months) and minimum payments (where the low volumes of
13 small CLECs generate small payments).

14 **Q. HOW DOES THIS CONTRAST WITH THE APAP'S APPROACH?**

15 A. The current QPAP triggers payments on a "self-executing" basis according to business
16 rules that, after extensive negotiations, testing, and audits, Qwest voluntarily agreed to
17 accept in connection with obtaining Section 271 relief. In contrast, the APAP has not had
18 the benefit of such extensive consideration, does not have Qwest's acceptance, and a
19 merger proceeding is not the proper place for such to occur. Further, as I explain later,
20 the goals of the QPAP and the proposed APAP are not the same.

1 **RESPONSE TO MR. COLEMAN OF THE DIVISION**

2 **Q. BEGINNING ON PAGE 13 OF HIS DIRECT TESTIMONY, MR. COLEMAN**
3 **LISTS “POTENTIAL CHALLENGES.” WHAT IS YOUR RESPONSE?**

4 A. Mr. Coleman’s list of potential challenges on pages 13 through 17 deals with operational
5 support systems (OSS). Mr. Michael Hunsucker of CenturyLink will address specific
6 details about OSS. My comment is that what “could” happen and what is “likely” to
7 happen are two significantly different things. No party has brought forth any factual
8 evidence to indicate that any of the “potential challenges” are likely. In any event, the
9 QPAP that exists in Utah today extensively measures OSS dimensions that have been
10 established since the beginning of the QPAP. Further, as I explain above, the QPAP
11 cannot be unilaterally changed or eliminated without Commission involvement, since it is
12 a part of contractual agreements (i.e., interconnection agreements with CLECs).

13 **Q. ALSO ON PAGE 13, MR. COLEMAN RECOMMENDS FOLLOWING THE**
14 **TENET, “HOPE FOR THE BEST AND PLAN FOR THE WORST.” SHOULD**
15 **THAT APPLY HERE?**

16 A. Overall, there is a clear framework set forth in Utah statutes that provides the proper
17 guidance to the Commission. While the quoted tenet might be appropriate in some
18 instances, I respectfully disagree that it applies here – for at least two reasons. First, good
19 public policy must be based on facts and evidence, not driven by fears of what “could”
20 happen. Second, the QPAP already addresses a wide range of possibilities, originating in
21 the earlier time period when competition in the telecommunications market was not

1 nearly as developed or robust. However, as Qwest's Utah President Jerry Fenn testified
2 in his direct testimony, at pages 14 to 21, and as Qwest witness Robert Brigham also
3 discusses in his rebuttal testimony, in addition to the existing QPAP there are significant
4 and increasing market pressures, which I assert are more than sufficient to insure that the
5 post-merger company continues to provide high quality service.

6 **Q. ON PAGES 18-19, MR. COLEMAN STATES THAT, WITHOUT CONDITIONS**
7 **REQUIRING THE SAME QPAP TO BE KEPT IN PLACE, "...THERE IS NO**
8 **ASSURANCE THAT CENTURYLINK WILL KEEP THE QPAP AND THEREBY**
9 **MAINTAIN THE HEALTH OF THE WHOLESALE MARKET." DO YOU**
10 **AGREE?**

11 A. The facts say otherwise. First, as I mentioned, Qwest, which will remain the operating
12 local company in Utah, cannot unilaterally change or remove the QPAP. It exists as a
13 part of interconnection agreements that have the force of contracts, and the Commission
14 has authority over interconnection agreements, which thus provides assurance that the
15 QPAP cannot go away without Commission approval. Second, there is absolutely no
16 evidence that the QPAP is necessary to "maintain the health of the wholesale market."
17 Finally, again, market pressures are immense and will provide the most direct,
18 independent assurance – far from "no assurance." I explain this in more detail later in
19 this testimony.

20 **Q. WHAT IS YOUR RESPONSE TO MR. COLEMAN'S ASSERTION (PAGE 19)**
21 **THAT THE "SAME QPAP" NEEDS TO STAY IN PLACE FOR THREE YEARS**

1 **AFTER THE MERGER?**

2 This proposed condition presents a totally unnecessary constraint on a process that is
3 already in place, will stay in place under Commission direction, and has worked well.
4 Even though market pressures provide the far greater assurances, the QPAP continues to
5 exist and will do so until the Commission approves otherwise. There is no basis for
6 taking away the provisions built into the QPAP that allow CLECs, Qwest, or the
7 Commission to initiate improvements in the form of changes to the QPAP.

8 **RESPONSE TO MR. DENNEY OF INTEGRA**

9 **The CLECs' Proposal for an "APAP" is Unnecessary, Inappropriate, and Unreasonable**

10 1. **The APAP is Unnecessary**

11 **Q. ON PAGE 47 OF HIS DIRECT TESTIMONY, MR. GATES STATES THAT**
12 **"QWEST'S PAPs AND ASSOCIATED PIDs ARE ABSOLUTELY ESSENTIAL**
13 **TO ENSURE THAT LOCAL MARKETS IN QWEST'S REGION REMAIN OPEN**
14 **TO COMPETITION (I.E., QWEST DOES NOT BACKSLIDE)." DO YOU**
15 **AGREE?**

16 **A.** No, and Mr. Gates provides no evidence whatsoever to support his claim. Instead, he
17 merely quotes an FCC statement⁴ out of context, and he ignores the dramatic changes
18 that have taken place in the telecommunications industry since the FCC made that
19 statement in 2002.

⁴ Mr. Gates' reference to the FCC statement is not correct. He refers to the *Qwest 9 State 271 Order*, at paragraph 440. However, the statement he discusses is actually at paragraph 453. This is important, as I point out,

1 First, Mr. Gates loses sight (as does Mr. Denney) that there is already a comprehensive
2 and robust PAP in place in Utah today that Qwest, numerous CLECs, and this
3 Commission and its Staff labored hard for many years to develop. There is absolutely no
4 basis, or need, to try to cram several years' worth of work, by hundreds of people and
5 stakeholders, into this merger docket in order to develop a new, additional plan,
6 especially considering that the proposal is based on only few pages of testimony and an
7 exhibit. Adopting such a plan here, in any form, would effectively undermine the
8 extensive work done that this Commission and the numerous parties and stakeholders did
9 years ago in the various Section 271 dockets, including Docket Number 00-049-08 here.

10 Second, contrary to Mr. Gates' assertion that a performance plan is "absolutely
11 essential," the FCC went on to say later in the same quoted paragraph that a performance
12 assurance plan is not a requirement for the authority of a BOC like Qwest to provide
13 interLATA toll services under Section 271, but merely that a PAP would be "probative
14 evidence" that a BOC will continue to meet its Section 271 obligations.⁵

15 Third, in acknowledging that a PAP was not required but could constitute "probative
16 evidence," the FCC thus recognized that there are other ways to show that a BOC will
17 continue to meet its obligations. In this vein, Mr. Gates ignores the fact that, nearly eight
18 years after the FCC issued that order, telecommunications market conditions have
19 changed dramatically. When the FCC originally made that statement, there was

because that paragraph makes clear that a performance assurance plan is not a requirement for Section 271 approval or compliance.

⁵ *Qwest 9 State 271 Order*, at ¶ 453.

1 relatively little other evidence available. The local telecommunications market was only
2 on the brink of being determined by the FCC to be open, and there was certainly no
3 crystal ball that could assure that the market would remain open. However, now, eight
4 years later, the evidence is clear that the market has not only remained open, but that it is
5 robustly open, and that it will continue to be so, with or without a PAP.

6 Again, it bears repeating that there is already a PAP, and thus there is no need for an
7 “additional” PAP. The CLECs’ proposal for an APAP appears to be merely a self-
8 interested attempt to saddle the post-merger company with additional regulatory
9 obligations, with their concomitant financial (penalty) costs, perhaps because Qwest’s
10 payments under the Utah QPAP have decreased so dramatically in recent years as shown
11 below. In other words, this APAP concept is completely unnecessary, and is really
12 nothing more than a punitive attempt to extract additional “remedies” or “benefits” in the
13 form of APAP penalties.

14 **Q. ON WHAT DO YOU BASE YOUR STATEMENT THAT THE LOCAL MARKET**
15 **IS “ROBUSTLY OPEN”?**

16 A. First, I base that statement in part on the fact that as of the end of 2009, 46 CLECs in
17 Utah have opted into interconnection agreements (“ICAs”) that contain the QPAP. On
18 pages 11 and 12 of his direct testimony, addressing competitive carriers, Mr. Coleman
19 states: “Currently, Utah has over 90 companies that have been granted certificates of
20 public convenience and necessity (‘CPCN’) to operate as telecommunications providers.”
21 He goes on to say: “Over the last 12 months, a dozen companies have filed and been

1 granted CPCNs.” Thus, having started from zero (i.e., at the point in time before the
2 Telecommunications Act when there were no CLECs), this number represents a
3 significant increase and a continuing presence and growth of CLECs in the market in
4 Utah. I also base it on the competitive data and analysis that Mr. Fenn provides in his
5 direct testimony and Mr. Brigham discusses in his rebuttal testimony. The FCC found the
6 market to be open, the market is still robustly open, and it will continue to be so through
7 and beyond the merger.⁶

8 **Q. DOES THE DECREASING TREND IN QWEST’S QPAP PAYMENT LEVELS**
9 **INDICATE THAT QWEST’S SERVICE LEVELS SUPPORT A ROBUST**
10 **MARKET?**

11 A. Absolutely. Despite this large number of CLECs having the QPAP in their ICAs,
12 Qwest’s payments under the QPAP have been declining significantly over the past
13 several years. For example, in the first full year (2004) of QPAP operation, Qwest paid
14 almost \$290,000 in payments in Utah. In contrast, in 2009, Qwest’s QPAP payments in
15 Utah amounted to less than \$55,000 for the entire year – less than 20% of its payment
16 levels in 2004.

17 **Q. ARE THERE OTHER FACTORS THAT SUPPORT YOUR ASSERTION THAT**
18 **THE MARKET REMAINS ROBUSTLY OPEN?**

19 A. Yes. Again, as Mr. Fenn testified in his direct testimony, at pages 14-21, and Mr.

⁶ Mr. Coleman, on page 12 of his direct testimony, also states: “The Division believes the wholesale market is functioning adequately.”

1 Brigham also discusses in his rebuttal testimony, there are intense competitive pressures
2 on Qwest in Utah, and they are increasing rapidly. Specifically, the immense market
3 forces, which are reflected in the significant line losses that Mr. Fenn and Mr. Brigham
4 enumerate, and the competition from cable telephony, wireless, VOIP, and CLECs, are
5 both expanding. While all wireline carriers (including CLECs) are generally losing lines
6 to wireless providers, the only competitive alternatives that offer Qwest the opportunity
7 to retain customers on its wireline network are those same CLECs who purchase Qwest's
8 wholesale services and elements in order to provide the services they offer to their
9 customers. Accordingly, Qwest values CLECs, and recognizes them as extremely
10 important in helping to keep customers on Qwest's wireline network. It is this robust
11 local market that provides the meaningful incentives that will assure CLECs that Qwest
12 (and thus CenturyLink) will continue to provide a high level of wholesale service quality,
13 regardless of the existence of the current merger transaction.

14 **Q. IS THERE ANOTHER, UTAH-SPECIFIC REASON THAT THE PROPOSED**
15 **APAP IS UNNECESSARY?**

16 A. Yes, on January 13, 1999, the Commission's intercarrier service quality rules⁷ went into
17 effect in Utah, after more than a year of development. These rules took effect before the
18 QPAP did, and they serve as an additional protection – and, Qwest observes, no longer
19 necessary given the overriding assurances of market forces – for wholesale service
20 quality, independent of the parity evaluations of the QPAP.

1 **Q. MR. COLEMAN IS CONCERNED THAT, ABSENT A CONDITION**
2 **REQUIRING THE QPAP TO CONTINUE, THE EXISTING UTAH**
3 **WHOLESALE RULES “DO NOT HAVE EXTENSIVE MEASUREMENT**
4 **REQUIREMENTS” (PAGES 20 TO 21). HOW DO YOU RESPOND?**

5 A. As I have stated, the QPAP is not going away in the foreseeable future, with or without a
6 merger condition. Accordingly, as I explain in more detail below, the QPAP
7 measurements will also continue.

8 **2. The Proposed “APAP” is Inappropriate**

9 **Q. BEGINNING ON PAGE 8 OF HIS DIRECT TESTIMONY, MR. DENNEY**
10 **PROVIDES DETAILS OF HIS APAP TO IMPLEMENT THE JOINT CLECs’**
11 **CONDITION NUMBER 4. WHAT DOES THE APAP REPRESENT?**

12 A. The “APAP” concept that Mr. Denney proposes represents an additional, extensive set of
13 standards, above and beyond the standards already in place in the QPAP that is more than
14 sufficient and working well today. I characterize the proposed APAP as “extensive”
15 because the APAP concept – which I do not believe any other state regulatory
16 commission has implemented, and certainly not in any merger proceeding to my
17 knowledge – would apply additional standards, as well as the associated evaluations and
18 calculations, to each and every measurement that is in the QPAP today. The APAP
19 would also apply to additional measurements that are not even currently in the QPAP
20 (pursuant to its “reinstatement/removal” process that removed measurements where

⁷ Utah Public Service Commission Rule R746-365, *Intercarrier Service Quality*.

1 performance had been consistently penalty-free).

2 **Q. ON WHAT DO YOU BASE YOUR EARLIER ASSERTION THAT THE APAP IS**
3 **INAPPROPRIATE?**

4 A. First, the APAP is inappropriate because Mr. Denney loses sight of the fact that, as I said
5 before, there is already a comprehensive and robust PAP in place in Utah today that
6 Qwest, numerous CLECs, and the Commission and its Staff labored hard for many years
7 to develop to ensure wholesale service quality. Accordingly, I reiterate that there is
8 absolutely no need to try to cram several years' worth of work, by hundreds of people
9 and stakeholders, in order to develop a new, additional plan, based on few pages of
10 testimony in a merger docket, to implement a new plan.

11 The APAP concept is further inappropriate because, in addition to being unreasonable, as
12 I describe later, the appropriate standard to apply to wholesale service performance is
13 “nondiscrimination,” and not simply “performance degradation.” In the proposed APAP,
14 “performance degradation” in reality would simply mean that Qwest’s performance in the
15 future might be lower than its superb results at the present time, even though those results
16 continue to meet the various standards in the QPAP. As I explain in more detail below,
17 Mr. Denney’s improperly-defined concept of “performance degradation” is problematic,
18 especially because it holds Qwest to a much higher standard than the PAP, in part
19 because Qwest’s service quality performance in recent years has been outstanding and far
20 higher than required under the QPAP. Further, while Mr. Denney attempts to justify his

1 APAP concept by arguing that it focuses on “merger-related harm,”⁸ it is not appropriate
2 to attempt to redress alleged but unspecified potential harm in an involuntary, self-
3 executing manner. The APAP cannot distinguish between normal variations in
4 performance that could occur, with or without the merger, from variations that might be
5 alleged to be merger-related.

6 **Q. HAS THE QUESTION OF THE APPROPRIATENESS OF SELF-EXECUTING**
7 **PENALTIES OUTSIDE OF A VOLUNTARY MECHANISM LIKE THE QPAP**
8 **BEEN ADDRESSED BY THE COURTS?**

9 A. I am not aware of any such case in Utah. However, in 2005, the State of Minnesota
10 Supreme Court concluded that the Minnesota Commission could not levy self-executing
11 consequences for reasons that I believe also exist in Utah. Specifically, the Minnesota
12 Supreme Court stated:

13 For the reasons discussed above, we conclude that the MPUC does not have
14 statutory authority, either express or implied, to impose the self-executing
15 payments as an enforcement mechanism and therefore hold that the MPUC
16 exceeded its statutory authority in ordering Qwest to make such payments for
17 failure to comply with the wholesale service quality standards.⁹

18 Although this is not a Utah ruling, my understanding is that Utah statutes also contain no
19 express or implied authority for the Commission to impose self-executing payments for
20 failure to comply with wholesale service quality standards.

⁸ Direct Testimony of Douglas Denney, Integra Telecom, August 30, 2010, p. 9.

⁹ Opinion, *In the Matter of Qwest's Wholesale Service Quality Standards*, Case A03-1409, State of Minnesota Supreme Court, August 18, 2005.

1 **3. The APAP is Unreasonable**

2 **Q. EVEN IF THE COMMISSION WERE TO CONSIDER THE APAP CONCEPT, IN**
3 **WHAT WAYS IS THE APAP UNREASONABLE?**

4 A. Even if the Commission *were* inclined to consider the APAP concept here, there are
5 many reasons that the proposed APAP itself is unreasonable. Chief among these reasons
6 are that (1) the APAP requires no proof of merger-related harm before involving
7 monetary payments, (2) it creates an improper definition of “performance degradation,”
8 and (3) it triggers consequences based on comparisons with prior performance levels that
9 were already far better, on the whole, than what has been required in the QPAP. In other
10 words, Qwest would be essentially *punished* by being held to a higher standard going
11 forward simply because its performance under the QPAP in recent years has been much
12 better than is required in the QPAP. In addition, the APAP is seriously flawed as a
13 performance plan – in part because it purports to be based on QPAP PIDs and provisions.
14 The goals of the QPAP and the APAP are different, however, and PIDs and QPAP
15 provisions simply are not designed to support the APAP’s self-executing goals.

16 ***a. The APAP Requires No Proof of Merger-Related Harm***

17 **Q. PLEASE EXPLAIN YOUR POINT ABOUT PROOF OF MERGER-RELATED**
18 **HARM. WHY IS THE APAP UNREASONABLE IN NOT REQUIRING PROOF**
19 **OF HARM?**

20 A. This issue is really a matter of fairness. The CLECs’ purported concern appears to be
21 that current market forces and the QPAP may not be sufficient to address wholesale

1 service performance issues after the merger. As I have stated, however, this concern is
2 irrelevant because the merger transaction does nothing to change the market forces, the
3 QPAP, the Utah rules, or the Commission's authority or involvement in the future of the
4 QPAP and its own rules. Further, the merger does not diminish the contractual
5 dimension of the QPAP in the CLECs' interconnection agreements with Qwest or the
6 Commission's authority over these matters.

7 That said, it is important to remember that the QPAP is a *voluntary* commitment on
8 Qwest's part in the context of Section 271 approval, while the APAP would not be
9 voluntary. The reason this is important revolves around necessity for proof of harm, in
10 light of the fact that Qwest already has been providing consistently very-high levels of
11 performance. The fact that Qwest is providing such high levels of service quality has
12 nothing to do with harm that CLECs might allege in the future, and it has nothing to do
13 with any future performance decrease being associated with the merger. Therefore, as
14 regards the APAP, if CLECs believe they have been harmed by issues beyond those that
15 the QPAP addresses, such as alleged merger-related harm, it would only be proper that
16 they would have the burden to bring forth any confirming evidence. The mere
17 "degradation of performance" from already-superb service quality levels would not
18 automatically translate into harm, nor could it magically quantify any alleged harm.

19 **Q. DID THE MINNESOTA SUPREME COURT OPINION WHICH YOU CITED**
20 **EARLIER ALSO ADDRESS THIS ASPECT OF THE ISSUE?**

21 **A.** Yes, in denying the Minnesota Commission the authority to levy self-executing payments

1 related to its wholesale service quality rules, the Minnesota Supreme Court stated:
2 “Because the payments here are not restricted to compensation for losses resulting from
3 Qwest’s failure to comply with the standards, they go beyond the scope of permissible
4 liquidated damages.”¹⁰ Mr. Denney’s proposal purports to be based on “merger-related
5 harm,” and as such, would essentially be an ill-conceived attempt to receive *liquidated*
6 *damages* on the same basis as that the Minnesota Supreme Court denied – namely,
7 payments that were not tied to any actual damage or harm suffered by CLECs or their
8 customers. A self-executing approach is not capable of allowing payments to be tied to
9 actual damage or harm.

10 ***b. The APAP Creates an Improper Definition of “Performance Degradation”***

11 **Q. IN WHAT WAYS DOES THE PROPOSED APAP CREATE AN IMPROPER**
12 **DEFINITION OF “PERFORMANCE DEGRADATION”?**

13 A. In purporting to address “merger-related harm,” the APAP glosses over immense gaps in
14 attempting to define “performance degradation,” and it makes no attempt to link
15 performance trends to any CLEC harm.¹¹ The mere existence of lower performance
16 levels that might be observed – particularly when compared to already-superior
17 performance – cannot necessarily be characterized as Qwest’s performance degradation,

¹⁰ Opinion, *In the Matter of Qwest's Wholesale Service Quality Standards*, Case No A03-1409, State of Minnesota Supreme Court, August 18, 2005.

¹¹ These “gaps” include (1) ignoring that seasonal, external factors can cause lower performance in a given month when compared to the average of a prior year, (2) giving no consideration of other factors that might explain or mitigate observed differences between performance in a given month, and the prior annual average performance, and (3) using a method for quantifying “merger-related” harm that is completely without evidence to support any connection to the magnitude of harm.

1 nor can it be properly translated automatically into any level of CLEC harm, and it
2 certainly cannot be ascribed automatically to the merger.

3 **Q. PLEASE GIVE SOME OTHER EXAMPLES OF THE OTHER FACTORS YOU**
4 **MENTIONED THAT COULD EXPLAIN OR MITIGATE OBSERVED**
5 **DIFFERENCES IN PERFORMANCE IN A GIVEN MONTH AGAINST THE**
6 **PRIOR ANNUAL AVERAGE PERFORMANCE?**

7 A. Numerous factors that are not related to Qwest-driven impacts on performance levels can
8 affect service performance levels. In virtually all cases, it is not feasible to identify these
9 factors in advance, or in a mechanized way, in order to make it possible to exclude them
10 from any reporting measurements. Further, even if such factors could be identified and
11 excluded, the PIDs in the QPAP are not designed in any way that would permit
12 identifying whether any observed differences in performance are merger-related.
13 Nevertheless, these other factors include such things as weather-related impacts, changes
14 in CLECs' underlying customer bases, changes in CLEC operating practices, and
15 comparing a current month's performance against a past average annual performance.¹²

16 *c. The APAP Unfairly Triggers Payments Based on Superior Prior-year*
17 *Performance Levels*

18 **Q. YOU HAVE MENTIONED THE SUPERB LEVELS OF QWEST'S 2009**

¹² On this last point, Qwest notes that it is entirely possible for performance that is actually improving, overall, to appear to be deteriorating in individual months of a current year, in comparison with average performance of the previous year. For example, performance levels across many months rarely, if ever, produce straight lines on a graph of results. Rather, the results range higher or lower, with or without seasonal effects, around a trend line. Thus, if compared against a 12-month average, any of the monthly results that are "worse" than the improving trend line would be judged, standing alone, as degradation when, in reality, they could be part of an improving trend.

1 **PERFORMANCE UNDER THE QPAP. WHY IS THE APAP MEASURE THAT**
2 **IS BASED ON THE PAST 12 MONTHS PRIOR TO THE MERGER AN**
3 **UNREASONABLE STANDARD FOR DEFINING PERFORMANCE**
4 **DEGRADATION OR IDENTIFYING MERGER-RELATED HARM?**

5 A. Apart from the problems that I have already mentioned with the proposed APAP, the
6 question whether and how much merger-related harm might occur becomes even more
7 absurd when considering that only 0.9% of Utah QPAP performance metrics actually
8 triggered payments in 2009. In contrast, in the same year, 25.0% percent of the Utah
9 performance metrics that are based on “parity” had performance results that were
10 significantly *better* than the parity standard. Even if performance were to degrade below
11 these superior levels, while still remaining nondiscriminatory, there would be no basis for
12 automatically claiming harm.

13 **QPAP PIDs Are Not, and Cannot Be, Designed to Support the APAP’s Goals**

14 **Q. PLEASE EXPLAIN YOUR ASSERTION THAT THE QPAP PIDs ARE NOT**
15 **DESIGNED TO SUPPORT THE APAP’S GOALS.**

16 A. As I have stated, the QPAP’s goals are different from the APAP’s goals. Mr. Denney
17 effectively admits this on pages 9-10 of his direct testimony, where he states, “[t]he Utah
18 PAP, which was not developed to identify merger-related harm, would not capture
19 deteriorating performance....” Earlier on page 9 of his testimony, Mr. Denney points out
20 that the QPAP “is intended to assure that Qwest does not treat itself more favorably than
21 it treats CLECs....” Then, three sentences later, he states, “[t]he purpose of the proposed

1 APAP is to compare the current level of Qwest’s wholesale performance to CLECs with
2 a past level of wholesale performance to CLECs” In other words, the QPAP focuses
3 on satisfying “parity” or established benchmarks, whereas the APAP focuses on defining
4 allegedly merger-related “performance degradation.” This is one of the many fatal flaws
5 of APAP: the PIDs were defined to measure performance against parity or fixed
6 benchmarks, not to properly identify “performance degradation” by some simplistic
7 definition, and certainly not to automatically imply merger-related harm.

8 **Q. WHAT DO THE PIDs LACK IN BEING ABLE TO INDEPENDENTLY AND**
9 **AUTOMATICALLY SUPPORT A DEFINITIVE CONCLUSION THAT**
10 **PERFORMANCE DEGRADATION EXISTS?**

11 A. In short, the PIDs cannot automatically account for or explain the reasons for an observed
12 trend or difference in performance levels. There are many factors – including many that
13 are not caused by Qwest, as I have already explained – that can cause the performance
14 levels in a given month, post-merger, to be different from the APAP’s proposed
15 comparisons with annual average levels of pre-merger Qwest performance. Further, it is
16 not possible for the PIDs to be defined and implemented in a manner that would permit
17 them to account for all such factors. Thus, the PID results cannot support automatic
18 conclusions that merger-related performance degradation has occurred, much less that
19 such degradation actually represents harm.

20 **The QPAP is Sufficient to Provide Post-Merger Performance Monitoring**

21 **Q. NEVERTHELESS, DOES THE QPAP PROVIDE SUFFICIENT VISIBILITY TO**

1 **DETECT TRENDS IN SERVICE PERFORMANCE LEVELS, POST-MERGER?**

2 A. Certainly. I believe the fact that Mr. Denney bases his APAP concept on the QPAP's
3 PIDs is an implicit admission that the QPAP would continue to detect trends in
4 performance levels post-merger. What is problematic about Mr. Denney's proposal is the
5 APAP's ill-conceived attempt to automatically link reported QPAP performance results
6 with an improper definition of performance degradation, and to automatically conclude
7 that these results would constitute merger-related harm. Nevertheless, the QPAP
8 performance results do produce monthly "indications" of performance levels (as the
9 "PID" acronym for "performance *indicator* definitions" implies). Thus, as it does now,
10 QPAP data can continue to be used by any party to identify trends in Qwest's wholesale
11 service quality performance.

12 **Q. WHY ARE THE CURRENT PID RESULTS A REASONABLE ALTERNATIVE**
13 **TO THE PROPOSED APAP APPROACH IN MONITORING POST-MERGER**
14 **PERFORMANCE TRENDS?**

15 A. In a nutshell, using the PID-generated performance results to monitor performance trends
16 is more complete and fair than focusing on single-point comparisons of one current
17 month's results with a 12-month average of past performance results. The approach of
18 using PID performance results to monitor trends also allows for examining the causes of
19 trends, if necessary. As I stated above, the 12-month APAP approach could conclude
20 there was "performance degradation" when, in fact, the trend in service levels was
21 improving. The QPAP's PID results, on the other hand, give visibility to the significant

1 trends are over time, which trends can then be examined further. This broader, more-
2 holistic approach is more reasonable in helping to identify whether a valid question might
3 exist about post-merger performance levels. Still, given the dynamic nature of the
4 environment in which Qwest's network exists, as well as the many external factors that
5 can affect performance levels – independent of the merger or of Qwest's actions – the
6 actual conditions that exist across the entire relevant time period must be considered.
7 This consideration of trends supports a proactive approach toward resolving problems,
8 regardless of their causes, rather than merely arguing about whether penalties or damages
9 should be assessed, and on what basis. At the same time, neither the merger nor this
10 approach of providing continued visibility to performance levels takes anything away
11 from any party that wishes to raise a concern about service quality.

12 **CONCLUSION**

13 **Q. HAVE MR. COLEMAN OR THE CLECs PROVIDED ANY BASIS FOR THE**
14 **COMMISSION TO CONSIDER MERGER CONDITIONS RELATED TO THE**
15 **QPAP?**

16 **A.** No. The merger does nothing to change or jeopardize the existing provisions found in the
17 QPAP and in Utah Commission rules that address wholesale service quality. As
18 importantly, the wholesale market remains robustly open, and the post-merger company
19 will face the same immense market pressures that Qwest faces today in its operating
20 territories. These pressures will continue to provide incentives and protections far greater
21 than the QPAP or the rules in assuring that the post-merger company will continue to

1 provide the necessary attention to wholesale service quality. As for as the CLECs'
2 purported concerns about “merger-related harm” that allegedly might be caused by some
3 kind of performance degradation, there is simply no appropriate way to define, identify,
4 quantify, or penalize such harm or degradation, if any occurs at all, on an automatic basis.
5 The APAP is particularly ill-equipped to attempt such alleged remedies, as I have
6 explained, and the QPAP is sufficient to provide continued visibility to trends in Qwest’s
7 wholesale service quality performance, without bypassing the essential tenets of due
8 process.

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

10 **A. Yes.**