

**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**

**KAREN A. STEWART**

**QWEST COMMUNICATIONS INTERNATIONAL, INC.**

**SEPTEMBER 30, 2010**

**TABLE OF CONTENTS**

<b>I.</b>	<b>IDENTIFICATION OF WITNESS .....</b>	<b>1</b>
<b>II.</b>	<b>INTRODUCTION.....</b>	<b>2</b>
<b>III.</b>	<b>CURRENT CLEC SAFEGUARDS.....</b>	<b>4</b>
<b>IV.</b>	<b>PROPOSED MERGER CONDITIONS.....</b>	<b>9</b>

1                                   **I.     IDENTIFICATION OF WITNESS**

2   **Q.     PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION**  
3   **WITH QWEST CORPORATION.**

4   A.     My name is Karen A. Stewart and my business address is 310 SW Park Avenue, 11th  
5           Floor, Portland, Oregon 97205. I am employed by Qwest Corporation (“Qwest”) as a  
6           Director – Legal Issues in the Law Department.

7  
8   **Q.     PLEASE REVIEW YOUR PRESENT RESPONSIBILITIES.**

9   A.     In my current position, I am responsible for regulatory compliance activities, as well  
10           as preparing testimony and testifying on Qwest’s behalf in a variety of regulatory  
11           proceedings, predominantly about Qwest’s wholesale services.

12  
13   **Q.     PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**  
14   **EMPLOYMENT EXPERIENCE.**

15   A.     I received a Bachelors of Science degree in Business Administration from Portland  
16           State University in 1980, and a Masters degree in Business Administration from the  
17           University of Oregon in July 1994. I have been employed by Qwest and its  
18           predecessor companies since 1981. I have held a variety of positions in Qwest,  
19           including sales, product management, E911 project management and technical  
20           design, regulatory affairs manager, and regulatory compliance.

21           I represented Qwest in a number of workshops conducted under Section 271 of the  
22           Telecommunications Act of 1996 (“the Act”) related to Qwest’s provisioning of

1 unbundled network elements (“UNEs”) region-wide and specifically in the Multi-  
2 State collaborative docket that included Utah.

3 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THIS**  
4 **COMMISSION?**

5 A. Yes. I have appeared before the Public Service Commission of Utah (“Commission”)  
6 in connection with various dockets, including the Qwest/Covad Arbitration in Docket  
7 No. 04-2277-02 and the Qwest/Eschelon Arbitration in Docket No. 07-2263-03.

8 **Q. HAVE YOU TESTIFIED BEFORE OTHER STATE REGULATORY**  
9 **COMMISSIONS?**

10 A. Yes. I have also testified in the states of Arizona, Colorado, Idaho, Iowa, Minnesota,  
11 Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota,  
12 Washington, and Wyoming.

13 **II. INTRODUCTION**

14 **Q. ON WHICH PARTY’S BEHALF ARE YOU FILING TESTIMONY IN THIS**  
15 **PROCEEDING?**

16 A. My rebuttal testimony is prepared on behalf of Qwest’s parent company, Qwest  
17 Communications International, Inc. (“QCII”), which is one of the two applicants  
18 (collectively with CenturyLink, Inc., “the Joint Applicants”) in this proceeding.

19 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**  
20 **PROCEEDING?**

21 A. No.

1 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

2 A. The purpose of my rebuttal testimony is to respond to the testimony and various  
3 conditions<sup>1</sup> proposed in the Direct Testimony of Mr. Timothy J. Gates, filed on behalf  
4 of the *Joint CLECs*,<sup>2</sup> the Direct Testimony of Douglas Denney, on behalf of Integra,  
5 and the testimony and numerous proposed conditions identified in the Direct  
6 Testimony of Richard E. Thayer, on behalf of Level 3 Communications, LLC (“Level  
7 3”).<sup>3</sup> To the extent that Mr. Thayer’s proposed conditions overlap those of the Joint  
8 CLECs, my testimony is meant to address the similar Level 3 proposed conditions as  
9 well. I separately address the unique Level 3 proposed conditions later in my  
10 testimony. I also briefly respond to the Direct Testimony of Casey J. Coleman, on  
11 behalf of the Division of Public Utilities (“DPU”).

12 My rebuttal testimony demonstrates to the Commission that a number of these  
13 conditions pertain to issues that have nothing to do with this merger review  
14 proceeding and thus are not appropriate here, and that such issues can be addressed in  
15 interconnection agreements (“ICAs”), interconnection enforcement complaints, or  
16 other Commission proceedings.

17 **Q. ARE OTHER WITNESSES OFFERING TESTIMONY ON THE PROPOSED**  
18 **WHOLESALE CONDITIONS?**

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<sup>1</sup> Direct Testimony of Timothy J. Gates (“Gates Direct”), at Exhibit Joint CLECs 2.8.

<sup>2</sup> 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.

<sup>3</sup> Direct Testimony of Richard Thayer (“Thayer Direct”), pp. 2-4.

1 A. Yes. CenturyLink witness Mr. Michael R. Hunsucker provides testimony in response  
2 to many of the proposed wholesale-related conditions and demonstrates that the post-  
3 merger company will have the expertise and ability to manage any on-going  
4 wholesale obligations. In addition, the testimony of Qwest witness Mr. Michael G.  
5 Williams will address the proposed conditions specific to the wholesale performance  
6 measurements and the Qwest Performance Assurance Plan (“QPAP”), including  
7 Integra witness Douglas Denney’s proposal of an “Additional” Performance  
8 Assurance Plan (“APAP”).

9 **III. CURRENT CLEC SAFEGUARDS**

10 **Q. WHAT IS THE BASIS FOR QWEST’S WHOLESALE OBLIGATIONS?**

11 A. Because Qwest is an Incumbent Local Exchange Carrier (“ILEC”) in Utah, the  
12 majority of the wholesale obligations that are of interest to this Commission are a  
13 result of the Telecommunications Act of 1996 (“the Telecom Act” or “the Act”) and  
14 the Federal Communications Commission’s (“FCC’s”) implementing orders and  
15 decisions that apply to Qwest. Qwest’s wholesale obligations also include various  
16 obligations applicable to Bell Operating Companies (“BOCs”) such as Qwest, as a  
17 result of Section 271 of the Act which were put in place to open up the local markets  
18 to competition.

19 **Q. PRIOR TO ADDRESSING ANY SPECIFIC CONDITIONS, DO YOU HAVE**  
20 **ANY GENERAL STATEMENTS REGARDING THE SAFEGUARDS THAT**  
21 **ARE CURRENTLY IN PLACE FOR COMPETITIVE LOCAL EXCHANGE**  
22 **CARRIERS (“CLECs”)?**

1 A. Yes. The consortium of CLECs known as “the Joint CLECs” have expressed  
2 purported concerns regarding the potential future conduct of the Qwest entity and  
3 CenturyLink post-merger. It is almost as if the CLECs are assuming the merger  
4 would result in complete deregulation of both companies, and that neither would be  
5 required to comply with any current rules, laws, regulations or interconnection  
6 agreements (“ICAs”). Nothing could be further from the truth. The merged company  
7 will continue to be subject to all of the Commission rules and regulations to which  
8 pre-merger Qwest is subject, and it will continue to meet all of the applicable rules,  
9 laws, regulations and their numerous contractual obligations.

10 The merger will have no impact on the combined company’s obligations under the  
11 Act. The Act ensures that the local telecommunications market is open to  
12 competition. For example, the Act requires that post-merger Qwest will continue to  
13 negotiate ICAs with CLECs in good faith and that this Commission will continue to  
14 have oversight over those agreements in Utah. Therefore, all of the obligations  
15 placed upon Qwest under the Act will remain, and this merger will not impact or  
16 impair any of the substantive or procedural protections afforded CLECs.

17 **Q. BEFORE YOU RESPOND TO THE SPECIFICS OF MR. GATES’ AND MR.**  
18 **THAYER’S TESTIMONY, PLEASE DESCRIBE THE QWEST CHANGE**  
19 **MANAGEMENT PROCESS (“CMP”) THAT MR. GATES HAS TESTIFIED**  
20 **ABOUT?**

21 A. Yes. Mr. Gates in his testimony made several references to the Qwest Change  
22 Management Process (or “CMP”). It is important, however, to understand the

1           significance of this formal process in addressing purported concerns that CLECs may  
2           have about changes that may impact them.

3           The CMP is a business-relation process that is intended to facilitate a discussion  
4           between CLECs and Qwest about product, process or Operational Support Systems  
5           (“OSS”) Interface release changes, release life cycles, release notifications and  
6           communication through regularly-scheduled meetings. Team Members of the CMP  
7           process include CLEC and Qwest representatives, who gather to review Change  
8           Requests (“CRs”) initiated by CLECs and/or Qwest and to discuss Qwest  
9           notifications.

10          Since 1999, Qwest and CLECs have jointly participated in a CMP forum for  
11          managing changes related to Qwest’s products, processes, and systems that support  
12          the five categories of OSS functionality (pre-ordering, ordering, provisioning,  
13          maintenance and repair, and billing). This process is used to communicate to CLECs  
14          any changes to Qwest’s OSS interfaces and to products and processes that are within  
15          the scope of CMP. The CMP also provides CLECs with the opportunity to have input  
16          into Qwest-proposed changes and to propose changes of their own. CLECs and  
17          Qwest meet collaboratively at least once per month to consider these CRs. Minutes  
18          from these meetings are posted on Qwest’s CMP website,<sup>4</sup> and are distributed to  
19          participating CLECs regularly.

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<sup>4</sup> Qwest’s CMP website can be found at <http://www.qwest.com/wholesale/cmp>. Minutes of CMP team meetings are available at <http://www.qwest.com/wholesale/cmp/teammeetings.html>.

1 **Q. ARE THE CHANGE MANAGEMENT REQUIREMENTS DEFINED IN THE**  
2 **ACT?**

3 A. No. As the FCC evaluated Section 271 applications for a BOC's entry into the  
4 interLATA toll market in the early part of the decade, it recognized that OSS systems  
5 are not static and would change over time. As a result, the FCC amplified its  
6 requirements in recognition that, once it granted a BOC Section 271 relief, a  
7 mechanism was needed to manage OSS changes. That mechanism was a change  
8 management process (or CMP) that met specific FCC requirements.

9 **Q. DO QWEST'S INTERCONNECTION AGREEMENTS TYPICALLY**  
10 **IDENTIFY AND INCLUDE THE CMP PROCESS?**

11 A. Yes. CMP is described and included in Qwest's interconnection agreements. The  
12 Qwest negotiation template ICA identifies the CMP process at Section 12.2.6.  
13 Specific language varies from agreement to agreement, but the Qwest negotiation  
14 template provides an accurate description of CMP:

15 12.2.6 Change Management. Qwest agrees to maintain a change  
16 management process, known as (CMP), that is consistent with or exceeds  
17 industry guidelines, standards and practices to address Qwest's OSS, products  
18 and processes. The CMP shall include, but not be limited to, utilization of the  
19 following: (i) a forum for CLEC and Qwest to discuss CLEC and Qwest  
20 change requests (CR), CMP notifications, systems release life cycles, and  
21 communications; (ii) provide a forum for CLECs and Qwest to discuss and  
22 prioritize CRs, where applicable pursuant to the CMP Document; (iii) a  
23 mechanism to track and monitor CRs and CMP notifications; (iv) established  
24 intervals where appropriate in the process; (v) processes by which CLEC  
25 impacts that result from changes to Qwest's OSS, products or processes can  
26 be promptly and effectively resolved; (vi) processes that are effective in  
27 maintaining the shortest timeline practicable for the receipt, development and  
28 implementation of all CRs; (vii) sufficient dedicated Qwest processes to  
29 address and resolve in a timely manner CRs and other issues that come before  
30 the CMP body; (viii) processes for OSS Interface testing; (ix) information that

1 is clearly organized and readily accessible to CLECs, including the  
2 availability of web-based tools; (x) documentation provided by Qwest that is  
3 effective in enabling CLECs to build an electronic gateway; and (xi) a process  
4 for changing CMP that calls for collaboration among CLECs and Qwest and  
5 requires agreement by the CMP participants. Pursuant to the scope and  
6 procedures set forth in the CMP Document, Qwest will submit to CLECs  
7 through the CMP, among other things, modifications to existing products and  
8 technical documentation available to CLECs, introduction of new products  
9 available to CLECs, discontinuance of products available to CLECs,  
10 modifications to pre-ordering, ordering/provisioning, maintenance/repair or  
11 billing processes, introduction of pre-ordering, ordering/provisioning,  
12 maintenance/repair or billing processes, discontinuance of pre-ordering,  
13 ordering/provisioning, maintenance/repair or billing processes, modifications  
14 to existing OSS interfaces, introduction of new OSS interfaces, and retirement  
15 of existing OSS interfaces. Qwest will maintain as part of CMP an escalation  
16 process so that CMP issues can be escalated to a Qwest representative  
17 authorized to make a final decision and a process for the timely resolution of  
18 disputes. The governing document for CMP, known as the "Change  
19 Management Process" Document is the subject of ongoing negotiations  
20 between Qwest and CLECs in the ongoing CMP. The CMP Document will  
21 continue to be changed through those discussions. The CMP Document  
22 reflects the commitments Qwest has made regarding maintaining its CMP and  
23 Qwest commits to implement agreements made in the CMP process as soon as  
24 practicable after they are made. The CMP Document will be subject to  
25 change through the CMP, as set forth in the CMP Document. Qwest will  
26 maintain the most current version of the CMP Document on its wholesale web  
27 site.

28  
29 12.2.6.1 In the course of establishing operational ready system interfaces  
30 between Qwest and CLEC to support local service delivery, CLEC and Qwest  
31 may need to define and implement system interface specifications that are  
32 supplemental to existing standards. CLEC and Qwest will submit such  
33 specifications to the appropriate standards committee and will work towards  
34 their acceptance as standards.

35  
36 12.2.6.2 Release updates will be implemented pursuant to the CMP.

37  
38 **Q. GIVEN THAT CMP IS IN CLECs' ICAS, WILL CMP CONTINUE TO BE IN-**  
39 **PLACE POST-MERGER?**

1 A. Yes. Because CMP is par of virtually all Qwest ICAs, and this Commission has  
2 approved all ICAs in Utah, CMP will be in place post-merger to govern the processes  
3 for changes to Qwest wholesale-related products, processes or OSS in the future.

4 **IV. PROPOSED MERGER CONDITIONS**

5 **Q. CAN YOU PLEASE IDENTITY THE PROPOSED MERGER CONDITIONS**  
6 **YOU WILL ADDRESS IN YOUR TESTIMONY?**

7 A. Yes. I provide background information on Conditions 2, 3, 7, 11, 14, 15, 19b and  
8 19c, 20, 25, 26, and 27 as identified in Exhibit Joint CLECs 2.8 attached to the Direct  
9 Testimony of Timothy Gates.

10 **Q. PLEASE IDENTITY THE FIRST GROUP OF CLEC CONDITIONS YOU**  
11 **WILL ADDRESS.**

12 A. Yes. Below are the Joint CLECs' proposed merger conditions that all appear to be  
13 rate-related.

14 2. The Merged Company will not recover, or seek to recover, through  
15 wholesale service rates or other fees paid by CLECs, and will hold wholesale  
16 customers harmless for, one-time transfer, branding, or any other transaction-  
17 related costs. For purposes of this condition, "transaction related costs" shall  
18 be construed broadly and, for example, shall not be limited in time to costs  
19 incurred only through the Closing Date.

20 3. The Merged Company will not recover, or seek to recover, through  
21 wholesale service rates or other fees paid by CLECs, and will hold wholesale  
22 customers harmless for, any increases in overall management costs that result  
23 from the transaction, including those incurred by the Operating Companies.

24 7. Rates charged by legacy CenturyLink and rates charged by legacy  
25 Qwest (including those described in condition 6) for tandem transit service,  
26 any interstate special access tariffed or non-tariffed and commercial offerings,  
27 any intrastate wholesale tariffed offering, and any service for which prices are  
28 set pursuant to Sections 252(c)(2) and Section 252(d) of the Communications

1 Act shall not be increased for at least the Defined Time Period. The Merged  
2 Company will not create any new rate elements or charges for distinct  
3 facilities or functionalities that are already provided under rates as of the  
4 Closing Date.

5 a. The Merged Company shall continue to offer any term and volume  
6 discount plans offered as of the Merger Announcement Date, for at least  
7 the Defined Time Period, without any changes to the rates, terms, or  
8 conditions of such plans. The Merged Company will honor any existing  
9 contracts for services on an individualized term pricing plan arrangement  
10 for the duration of the contracted term.

11  
12 **Q. DOES THE COMMISSION ALREADY HAVE A PROCESS IN PLACE TO**  
13 **ADDRESS RATES FOR SECTION 251-RELATED SERVICES, AS**  
14 **IDENTIFIED IN THE PROPOSED CONDITIONS?**

15 A. Yes. The Commission typically conducts cost dockets and interconnection  
16 arbitrations to establish rates for services that ILECs provide to CLECs pursuant to  
17 Section 251 of the Act. In fact, the Act requires that rates for products and services  
18 subject to Section 251 be priced at Total Element Long Run Incremental Cost  
19 (“**TELRIC**”). Thus, Qwest cannot unilaterally alter existing **TELRIC**-established  
20 rates. Changing of rates or a rate structure would require ICA amendment  
21 negotiations or Commission approval through a **TELRIC** cost docket. Any CLEC  
22 concerns can be addressed through the opportunity to participate in Commission cost  
23 proceedings, or through amendment negotiations. Thus, no unique merger conditions  
24 are necessary to address these theoretical rate issues.

25 **Q. BASED ON THE FACT THAT THE COMMISSION GENERALLY**  
26 **APPROVES SECTION 251 RATES, AND THAT A CLEC CAN REQUEST**  
27 **THAT COMMISSION-APPROVED RATES BE ESTABLISHED, IS THERE**

1           **ANY NEED FOR MERGER CONDITIONS THAT SPEAK TO HOW RATES**  
2           **WILL BE ESTABLISHED POST-MERGER?**

3    A.    No. To the extent that CLECs have any concerns regarding Section 251-related rates  
4           which are subject to Commission approval, there are ample safeguards for CLECs to  
5           express any future cost model concerns in the appropriate cost proceeding.

6    **Q.    PLEASE IDENTIFY THE NEXT PROPOSED CONDITION YOU ARE**  
7           **ADDRESSING.**

8    A.    The next proposed condition I will address is Joint CLECs' proposed Condition 11:

9                   11. To the extent that an interconnection agreement is silent as to an  
10                   interval for the provision of a product, service or functionality or refers to  
11                   Qwest's website or Service Interval Guide (SIG), the applicable interval, after  
12                   the Closing Date, shall be no longer than the interval in Qwest's SIG as of the  
13                   Merger Filing Date.

14  
15   **Q.    PROPOSED CONDITION 11 POTENTIALLY REQUESTS THAT THE**  
16           **COMMISSION ESTABLISH LIMITATIONS ON INSTALLATION**  
17           **INTERVALS FOR POTENTIALLY ALL QWEST WHOLESALE**  
18           **PRODUCTS, SERVICES AND "FUNCTIONALITY."<sup>5</sup> IS THIS**  
19           **APPROPRIATE?**

20   A.    No. The issue of installation intervals involves a number of very complicated legal,  
21           factual and practical issues. The proposed condition would impose a broad-brush  
22           restriction on installation intervals without any factual support. Qwest's installation  
23           intervals are established based on a variety of reasons, including underlying  
24           technology, which can be subject to change over time. In addition, "functionality" is

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<sup>5</sup> Gates Direct, pp. 134-136.

1 not clearly defined, so Qwest would not even know which wholesale products or  
2 services this installation interval limitation is intended to apply. Qwest has developed  
3 and implemented separate and distinct procedures and provisioning intervals for  
4 Unbundled Network Elements (“UNEs”), combinations of UNEs, commercial  
5 products and services, retail local exchange services, and tariffed private line services,  
6 to name a few. These installation intervals should not be artificially limited due to the  
7 same CLECs’ desires to control this key component of the Qwest provisioning  
8 process for all its products and services.

9 **Q. ARE INSTALLATION INTERVALS FOR UNEs THAT CLECs USE TO**  
10 **COMPETE WITH QWEST IN THE LOCAL EXCHANGE MARKET**  
11 **INCLUDED IN CURRENT QWEST ICAs?**

12 A. While service installation intervals are included in many CLECs’ ICAs, more  
13 recently, numerous CLECs have agreed with Qwest to make reference to the Qwest  
14 Service Interval Guide (“SIG”).

15 **Q. IF QWEST MAKES A CHANGE IN THE INSTALLATION INTERVAL OF A**  
16 **PRODUCT OR SERVICE, IS THERE A MECHANISM IN PLACE TO**  
17 **NOTIFY CLECs IN ADVANCE, AND THUS GIVE THEM AMPLE TIME TO**  
18 **PREPARE FOR ANY CHANGE IN AN INTERVAL?**

19 A. Yes. Qwest follows the CMP notification intervals to provide advance notice of SIG  
20 changes, and specific reseller notices are issued, when appropriate, to advise resellers  
21 of changes in applicable retail intervals. Clearly, there are safeguards in place to keep  
22 CLECs informed regarding any interval changes in Qwest’s retail and wholesale

1 products and services, and thus there is no need for the Commission to establish any  
2 artificial limitations that would only serve to restrict the merged company from  
3 having the flexibility to manage its operations in response to changes in the  
4 marketplace. Existing requirements to provide CLECs with non-discriminatory  
5 access to provisioning, coupled with the notice obligations contained in the CMP, are  
6 sufficient. For the foregoing reasons, and those contained in Mr. Hunsucker's  
7 rebuttal testimony, the Commission should reject the CLECs' proposed Condition 11.

8 **Q. PLEASE IDENTIFY THE NEXT PROPOSED CONDITION THAT YOU**  
9 **WILL ADDRESS.**

10 A. Below is the Joint CLECs' proposed Condition 14:

11 14. For at least the Defined Time Period, the Merged Company will not  
12 seek to reclassify as "non-impaired" any wire centers for purposes of Section  
13 251 of the Communications Act, nor will the Merged Company file any new  
14 petition under Section 10 of the Communications Act seeking forbearance  
15 from any Section 251 or 271 obligation or dominant carrier regulation in any  
16 wire center.

17 **Q. IS PROPOSED CONDITION 14 (WHICH PROPOSES LIMITATIONS ON**  
18 **QWEST'S ABILITY SEEK "NON-IMPAIRED" STATUS FOR NEW WIRE**  
19 **CENTERS) CONSISTENT WITH STATE AND FEDERAL ORDERS?**

20 A. No, it is not. First, CLECs have no legal basis to require Qwest to waive any rights it  
21 has under federal law, nor does the Commission have authority to do so. Further, my  
22 understanding is that the rules and guidelines that the FCC established in the  
23 *Triennial Review Remand Order* ("TRRO") are not subject to change simply  
24 because of an ILEC merger proceeding, and I am not aware that any state utility  
25 commission has ever required an ILEC to waive rights it has under federal law to

1 seek non-impairment status of its wire centers. Moreover, filings for non-  
2 impaired status are based on the competitive marketplace and the alternatives that  
3 CLECs have in that marketplace to buy (or self-provision) network elements that  
4 they need to compete.

5 In addition, this proposed condition ignores the extensive work that Qwest and a  
6 representative body of CLECs (many of which are intervenors here) have already  
7 done to establish clear and consistent procedures for future wire center  
8 reclassification petitions.<sup>6</sup> Finally, the CLECs' proposed condition ignores their  
9 own agreement regarding the process that would be used for addressing  
10 reclassification petitions.

11 Specifically, several of the Joint CLECs and Qwest worked cooperatively in 2006 and  
12 2007 to develop and stipulate to the process and procedures to be used when Qwest  
13 would request that future wire centers be added to the non-impaired wire center list.  
14 The stipulation that the Commission approved in Docket No. 06-049-40 includes the  
15 following section:

16 **Settlement Section VI: Future Qwest Filings to Request Commission**  
17 **Approval of Non-Impairment Designations and Additions to the**  
18 **Commission-Approved Wire Center List**  
19

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<sup>6</sup> See July 31, 2007 Report and Order in Docket No. 06-049-401 (Commission approval of stipulation and settlement agreement between Qwest and numerous CLECs, including several of the Joint CLECs). See also September 11, 2006 Report and Order in Docket No. 06-049-40 (Commission approval of non-impairment of six Qwest centers as Tier 1 facilities for dedicated transport and non-impairment of Salt Lake City Main wire center for DS1 and DS3 loops); October 1, 2007 Report and Order in Docket No. 07-049-29 (Commission approval of non-impairment of Midvale wire center), November 20, 2007 Report and Order in Docket No. 07-049-29 (Commission approval of non-impairment of Orem wire center); September 29, 2008 Report and Order in Docket No. 08-049-29 (Commission approval of Tier 2 non-impairment of Draper wire center); and September 1, 2010 Errata Report and Order in Docket No. 10-049-22 (Commission approval of Tier 1 non-impairment of Salt Lake City West wire center and Tier 2 non-impairment of Salt Lake City East wire center).

1           This section summarizes the Parties' agreement regarding how Qwest can  
2           request Commission approval of non-impairment designations and additions  
3           to the Commission approved non-impaired wire center list in the future (i.e.,  
4           future additions to the initial Commission-approved list).<sup>7</sup>

5   **Q.    DID THE COMMISSION REVIEW AND APPROVE THIS STIPULATION?**

6   A.    Yes. On July 31, 2007, the Utah Commission approved the stipulation:

7           Having reviewed the terms of the Settlement Agreement, as well as the  
8           Division's recommendation, we find and conclude that said terms are in  
9           substantial accord with our September 2006 order and that said Settlement  
10          Agreement is just and reasonable in providing a global resolution of the issues  
11          raised in this docket. We therefore conclude that approval of said Settlement  
12          Agreement is in the public interest and approve the same as a just and  
13          reasonable settlement of the issues in this docket.<sup>8</sup>

14   **Q.    HAS THE SETTLEMENT AGREEMENT THAT THE COMMISSION**  
15   **APPROVED BEEN TERMINATED IN UTAH?**

16   A.    No, it has not.

17   **Q.    DOES THE MERGER TRANSACTION AT ISSUE IN THIS PROCEEDING**  
18   **IMPACT THE LEGAL STANDARD OR THE FACTUAL ANALYSIS**  
19   **ASSOCIATED WITH WIRE CENTER RECLASSIFICATIONS?**

20   A.    No. This is simply another of the CLECs' numerous attempts to extract or leverage a  
21          legal or operational concession from CenturyLink and Qwest for their own self-  
22          interest, despite that there is no connection between the merger approval process and  
23          this issue. The condition also attempts to supersede and invalidate an otherwise

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<sup>7</sup> See July 31, 2007 Report and Order in Docket No. 06-049-401 (Commission approval of stipulation and settlement agreement between Qwest and numerous CLECs, including several of the Joint CLECs), p. 5.

<sup>8</sup> *Id.*, p. 5.

1 lawful order of the Commission approving the stipulation. Thus, the Commission  
2 should therefore reject this inappropriate proposal.

3 **Q. DO YOU HAVE ANY COMMENTS REGARDING JOINT CLECs'**  
4 **PROPOSED CONDITION 15?**

5 A. Yes. The Joint CLECs' proposed Condition 15 reads as follows:

6 15. The Merged Company shall provide to wholesale carriers, and  
7 maintain and make available to wholesale carriers on a going-forward basis,  
8 up-to-date escalation information, contact lists, and account manager  
9 information at least 30 days prior to the Closing Date. For changes to support  
10 center location, organizational structure, or contact information, the Merged  
11 Company will provide at least 30 days advance written notice to wholesale  
12 carriers. For other changes, the Merged Company will provide reasonable  
13 advanced notice of the changes. The information and notice provided shall be  
14 consistent with the terms of applicable interconnection agreements.

15  
16 This proposed condition is simply not necessary, especially given the notice  
17 requirements of the CMP.

18 **Q. WHY ARE THESE PROPOSED CONDITIONS UNNECESSARY GIVEN THE**  
19 **NOTICE REQUIREMENTS OF CMP?**

20 A. CMP requires Qwest to notify CLECs of any changes that the CMP has determined  
21 may impact CLECs. The CMP guidelines define various levels of Qwest-originated  
22 product/process changes, and these guidelines are what Qwest has consistently  
23 followed to originate and implement changes that may impact CLECs. Here are two  
24 examples of changes that may impact CLECs and for which the CMP requires certain  
25 notice by Qwest:

26 • Changes in escalation information, such as a change to a telephone  
27 number or fax number, is considered a Level 2 CMP change and has a  
28 standard notice interval of 21 days.

- 1
- 2       •       A change to documented hours of operation for a center is a Level 3 CMP
- 3       change, which typically requires 45 days notice be given to CLECs.

4       Further, this proposed condition fails to account for the varying notice periods already

5       defined in CMP. The Joint CLECs have advocated for the merged company to

6       commit to continue the CMP while at the same time proposing conditions contrary to

7       some of its terms. This proposed condition should not be adopted.

8       **Q.     WILL YOU BE ADDRESSING ALL OF THE JOINT CLECs' PROPOSED**

9       **CONDITION NUMBER 19?**

10      A.     No. Mr. Hunsucker's testimony addresses proposed Condition 19 overall, and I will

11      be addressing proposed Condition 19b, which would require expensive and

12      unnecessary third-party testing of any new proposed Operations Support Systems

13      (OSS), and proposed Condition 19c, which is unnecessary because Qwest ICAs

14      already include a commitment to train CLECs on OSS changes.

15                 19b. For any Qwest system that was subject to third party testing (e.g., as part

16                 of a Section 271 process), robust, transparent third party testing will be

17                 conducted for the replacement system to ensure that it provides the needed

18                 functionality and can appropriately handle existing and continuing wholesale

19                 services in commercial volumes. The types and extent of testing conducted

20                 during the Qwest Section 271 proceedings will provide guidance as to the

21                 types and extent of testing needed for the replacement systems. The Merged

22                 Company will not limit CLEC use of, or retire, the existing system until after

23                 third party testing has been successfully completed for the replacement

24                 system.

25                 19c. Before implementation of any replacement or to be integrated system, the

26                 Merged Company will allow for coordinated testing with CLECs, including a

27                 stable testing environment that mirrors production and, when applicable,

28                 controlled production testing. The Merged Company will provide the

29                 wholesale carriers training and education on any wholesale OSS implemented

30                 by the Merged Company without charge to the wholesale carrier.

1 **Q. ACCORDING TO MR. GATES, SECTION 271 OF THE ACT REQUIRES**  
2 **NON-DISCRIMINATORY ACCESS TO OSS.<sup>9</sup> DO YOU AGREE?**

3 A. Mr. Gates' testimony and the testimony of Casey J. Coleman<sup>10</sup> on behalf of the  
4 Division of Public Utilities ("DPU") allude to a separate and distinct Section 271  
5 checklist requirement specifically for OSS. However, there is no such requirement  
6 beyond the Sections 251 and 252 requirements, and accompanying regulations,  
7 applicable to *all ILECs* to provide non-discriminatory access to UNEs and the resale  
8 of telecommunication services. The 14-point competitive checklist found in Section  
9 271(c)(2)(B) requires, in pertinent part:

10 (ii) Non-discriminatory access to network elements in accordance with the  
11 requirements of *sections 251(c)(3) and 252(d)(1)*, and

12  
13 (xiv) Telecommunications services are available for resale in accordance with  
14 the requirements of *sections 251(c)(4) and 252(d)(3)*. (Emphasis added.)

15  
16 In summary, Section 271 requires non-discriminatory access to *all* Section 251  
17 UNEs, of which OSS is but one. However, access to OSS is not unique to Qwest as a  
18 Bell Operating Company ("BOC") that sought interLATA long distance authority  
19 (i.e., Section 271 approval), but rather, is required of *all ILECs*.

20 **Q. DOES THE ACT REQUIRE THAT A BOC'S OSS UNDERGO THIRD-**  
21 **PARTY TESTING?**

22 A. No. Code of Federal Regulations ("CFR") § 51.319(g), which defines OSS  
23 obligations, does not require third-party testing:

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<sup>9</sup> Gates Direct, p. 38.

<sup>10</sup> Direct Testimony of Casey J. Coleman, p. 15.

1 (g) Operations support systems. An incumbent LEC shall provide a  
2 requesting telecommunications carrier with nondiscriminatory access to  
3 operations support systems on an unbundled basis, in accordance with section  
4 251(c)(3) of the Act and this part. Operations support system functions  
5 consist of pre-ordering, ordering, provisioning, maintenance and repair, and  
6 billing functions supported by an incumbent LEC's databases and  
7 information. An incumbent LEC, as part of its duty to provide access to the  
8 pre-ordering function, shall provide the requesting telecommunications carrier  
9 with nondiscriminatory access to the same detailed information about the loop  
10 that is available to the incumbent LEC.

11  
12 **Q. BEYOND THE OSS UNE DEFINITION, DOES SECTION 271 REQUIRE**  
13 **THAT A BOC'S OSS UNDERGO THIRD-PARTY TESTING TO BE**  
14 **"SECTION 271 COMPLIANT"?**

15 A. No. There is nothing in Section 271 that obligates a BOC to conduct third-party  
16 testing in order to satisfy the Section 271 competitive checklist. The competitive  
17 checklist merely requires a BOC to provide non-discriminatory access to UNEs,  
18 including OSS as defined in CFR § 51.319(g). Third-party testing is simply not a  
19 requirement for any ILEC, including a BOC.

20 **Q. MR. GATES CONTENDS THAT ABSENT THIRD-PARTY TESTING, ANY**  
21 **REPLACEMENT SYSTEM WILL CAUSE HARM. DO YOU AGREE?**

22 A. No. Mr. Gates provides no evidence, but merely speculation, that an existing  
23 interface that is handling commercial volumes today, such as CenturyLink's OSS  
24 does today,<sup>11</sup> cannot be modified and adapted to function as well as (or better than) an  
25 existing interface.

---

<sup>11</sup> CenturyLink's OSS is estimated to handle approximately 1 million orders in 2010, based on January – May year to date volumes. See Rebuttal Testimony of Mr. Hunsucker.

1 **Q. IS THERE EVIDENCE THAT CONTRADICTS MR. GATES' TESTING**  
2 **DEMAND?**

3 A. Yes. The Qwest systems and processes that were third-party tested more than eight  
4 years ago during the Section 271 approval process are *not the same systems and*  
5 *processes* that Qwest utilizes in its territory today. Since the conclusion of the third-  
6 party tests, there have been hundreds, if not thousands, of changes implemented to  
7 Qwest's OSS. These changes include the retirement of the third-party tested  
8 Interconnect Mediated Access – Electronic Data Interchange (“IMA-EDI”) interface,  
9 and the introduction of a replacement interface, Interconnect Mediated Access –  
10 Extensible Mark-up Language (“IMA-XML”).<sup>12</sup>

11 **Q. WERE THESE CHANGES ALL QWEST-INITIATED CHANGES?**

12 A. No. Some of these changes were Qwest-initiated, while others were CLEC-initiated,  
13 including the migration to the IMA-XML interface. However, all of these changes  
14 were managed successfully through the Qwest CMP, without third-party testing.

15 **Q. DO QWEST ICAs COMMIT TO IMPLEMENTING OSS CHANGES VIA THE**  
16 **CMP?**

17 A. Yes. For example, in the current Utah ICA between Qwest and Eschelon, effective  
18 October 20, 2008, at section 12.1.1.1 , Qwest commits to use the CMP for OSS  
19 system improvements. Moreover, the Qwest template also makes this commitment  
20 for all new ICAs:

---

<sup>12</sup> The IMA-XML interface was first made available in October 2006, with the first CLEC migrations occurring in April 2007.

1 12.1.1 Qwest has developed and shall continue to provide Operational  
2 Support System (OSS) interfaces using electronic gateways and manual  
3 processes. These gateways act as a mediation or control point between  
4 CLEC's and Qwest's OSS. These gateways provide security for the interfaces,  
5 protecting the integrity of the Qwest OSS and databases. Qwest's OSS  
6 interfaces have been developed to support Pre-ordering, Ordering and  
7 Provisioning, Maintenance and Repair and Billing. This section describes the  
8 interfaces and manual processes that Qwest has developed and shall provide  
9 to CLEC. Additional technical information and details shall be provided by  
10 Qwest in training sessions and documentation and support, such as the  
11 "Interconnect Mediated Access User's Guide." Qwest will continue to make  
12 improvements to the electronic interfaces as technology evolves, Qwest's  
13 legacy systems improve, or CLEC needs require. Qwest shall provide  
14 notification to CLEC consistent with the provisions of the Change  
15 Management Process (CMP) set forth in Section 12.2.6.

16  
17 The use of the CMP provides a forum for Qwest or CLECs to explain any proposed  
18 system changes and a formalized process for CMP participants to voice any concerns  
19 they may have about any proposed change.

20 **Q. THE JOINT CLECs' PROPOSED CONDITION 19C PROPOSES THAT**  
21 **CLECs HAVE AN OPPORTUNITY TO PERFORM TESTING WITH ANY**  
22 **NEW OSS SYSTEM, AND THAT THE MERGED COMPANY WOULD**  
23 **PROVIDE TRAINING FOR CLECs ON THE NEW SYSTEM. IS THIS ISSUE**  
24 **ADDRESSED IN CURRENT ICAs?**

25 A. Yes, it is. The Qwest ICA commits to training CLECs on its OSS systems, and initial  
26 training on systems will be at no charge to the CLEC: Specifically, Sections  
27 12.1.3.2.1 and 12.1.3.2.2 of the standard Qwest ICA provides as follows:

28 12.1.3.2.1 Qwest shall provide assistance for CLEC to understand how to  
29 implement and use all of the available OSS functions. Qwest shall provide  
30 CLEC sufficient electronic and manual interfaces to allow CLEC equivalent  
31 access to all of the necessary OSS functions. Through its web site, training,  
32 disclosure documentation and development assistance, as available, Qwest  
33 shall disclose to CLEC any internal business rules, specifications, test cases,

1 mapping examples and other formatting information necessary to ensure that  
2 CLEC's requests and orders are processed efficiently and necessary to enable  
3 CLEC to design its own systems. Qwest will provide information to CLEC in  
4 writing. Qwest will post such information, including business rules regarding  
5 out-of-hours Provisioning, on Qwest's web site. If Qwest fails to provide  
6 such information or provides inaccurate information, Qwest will remedy the  
7 situation within Qwest systems. Qwest shall provide training to enable CLEC  
8 to devise its own course work for its own employees. Through its  
9 documentation available to CLEC, Qwest will identify how its interface  
10 differs from national guidelines or standards.

11  
12 12.1.3.2.2 Additional technical information and details about Qwest's OSS  
13 shall be provided by Qwest to CLEC in training sessions and documentation  
14 and support, such as Qwest's "Interconnect Mediated Access User's Guide."  
15 Qwest shall maintain its Interconnect Mediated Access User's Guide on  
16 Qwest's wholesale web site. Qwest shall offer introductory training on  
17 procedures that CLEC must use to access Qwest's OSS at no cost to CLEC. If  
18 CLEC asks Qwest personnel to travel to CLEC's location to deliver training,  
19 CLEC will pay Qwest's reasonable travel related expenses unless the Parties  
20 agree otherwise.

21 **Q. DO QWEST ICAs ALSO DISCUSS EXTENSIVE TESTING OPTIONS THAT**  
22 **QWEST WILL PROVIDE FOR CLECs WHEN THERE ARE OSS SYSTEM**  
23 **CHANGES AND UPDATES?**

24 **A.** Yes. Beginning at Section 12.2.9.3 of Qwest's standard ICA, Qwest make several  
25 pages of testing commitments to CLEC for its OSS systems:

26 12.2.9.3 Qwest will provide CLEC with access to a stable testing  
27 environment that mirrors production to certify that its OSS will be capable of  
28 interacting smoothly and efficiently with Qwest's OSS. Qwest has  
29 established the following test processes to assure the implementation of a  
30 solid interface between Qwest and CLEC:

31 Subsections 12.2.9.3.1, 12.2.9.3.2, 12.2.9.3.3, and 12.2.9.3.4 of the ICA specify  
32 various processes, including Connectivity Testing, Stand-Alone Testing Environment  
33 (SATE) regression testing, SATE progression testing, and Controlled Production.

1 **Q. SHOULD THE COMMISSION ADOPT THE JOINT CLECs' PROPOSED**  
2 **CONDITIONS 19b AND 19c?**

3 A. No. The Joint CLECs have failed to identify any legitimate reason to subject the  
4 merged company to costs for testing that was never required. The FCC repeatedly  
5 affirmed in Section 271 approvals that actual commercial use was the most persuasive  
6 evidence of satisfactory OSS. That, coupled with all the components of proposed  
7 Condition 19c, already being a contractual obligation that will remain intact post-  
8 merger, calls for rejection of these proposed conditions.

9 **Q. PLEASE IDENTIFY THE NEXT PROPOSED CONDITIONS YOU WILL**  
10 **ADDRESS.**

11 A. Below are identified the CLECs' proposed Conditions 25, 26 and 27:

12 25. The Merged Company will provide routine network modifications in  
13 compliance with federal and state law, as well as the terms of applicable  
14 interconnection agreements.

15  
16 26. After the Closing Date, the Merged Company will engineer and  
17 maintain its network in compliance with federal and state law, as well as the  
18 terms of applicable interconnection agreements. Resources will not be  
19 diverted to merger-related activities at the expense of maintaining the Merged  
20 Company's network.

21  
22 a. The Merged Company shall not engineer the transmission capabilities  
23 of its network in a manner, or engage in any policy, practice, or procedure,  
24 that disrupts or degrades access to the local loop.

25  
26 b. The Merged Company will retire copper in compliance with federal and  
27 state law, as well as the terms of applicable interconnection agreements  
28 and as required by a change of law.

29  
30 c. The Merged Company will not engineer or maintain the network  
31 (including routing of traffic) in a manner that results in the application of  
32 higher rates for traffic or inefficiencies for wholesale customers.  
33

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

14 **Q. SEVERAL CLECs PROVIDE TESTIMONY REGARDING PROPOSED**  
15 **CONDITIONS 25, 26 AND 27. DO YOU HAVE ANY GENERAL**  
16 **COMMENTS TO THIS TESTIMONY?**

17 A. Yes. Despite CLEC claims to the contrary,<sup>13</sup> these proposed conditions attempt to  
18 litigate issues in this merger approval proceeding that can be addressed in other, more  
19 appropriate and focused Commission proceedings.

20 **Q. DO YOU BELIEVE IT IS APPROPRIATE TO ADDRESS PROPOSED**  
21 **CONDITIONS THAT CAN BE ADDRESSED IN OTHER MORE**  
22 **APPROPRIATE AND FOCUSED PROCEEDINGS?**

23 A. No, I do not. These are very complex issues and disputes that have no place in this  
24 merger approval docket. To ask this Commission to take a position on these  
25 proposed conditions, potentially setting some precedent for issues which are complex  
26 telecommunications industry issues and which may be, and should be, considered in  
27 other proceedings, is inappropriate.

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<sup>13</sup> Direct Testimony of Douglas Denney (“Denney Direct”), pp. 27-29, Direct Testimony of Bonnie Johnson (“Johnson Direct”), pp. 5.

1 **Q. MR. DENNEY IMPLIES THAT PROPOSED CONDITIONS 25, 26, AND 27**  
2 **ARE NECESSARY TO INSURE THAT THE CLEC DESIRED OUTCOME OF**  
3 **THE DISPUTED ISSUES IN THE MINNESOTA COMMISSION DOCKET**  
4 **NO. P-421/CI-09-1066 EXTEND TO THE CENTURYLINK PRE-MERGER**  
5 **ENTITIES.<sup>14</sup> IS THIS APPROPRIATE?**

6 A. No. Minnesota Commission Docket No. P-421/CI-09-1066 is specific to Qwest  
7 product offerings, ICAs and interconnection obligations in Minnesota. While I am  
8 not an attorney, and Qwest will cover this issue in its post-hearing briefs, it does not  
9 make logical sense that the outcome of a Minnesota docket, such as Docket No. P-  
10 421/CI-09-1066, would extend to Qwest in Utah, much less extend to CenturyLink  
11 when it has a different set of products and ICAs, and because CenturyLink ILEC  
12 entities (of which there are none in Utah) have not been, and post-merger will not be,  
13 BOCs, and thus they have different sets of interconnection obligations. In his  
14 testimony, Mr. Hunsucker demonstrates that none of the CenturyLink entities are  
15 BOCs for purposes of interconnection obligations.

16 **Q. DOES MR. DENNEY AGREE WITH YOU THAT THE RESULTS OF A**  
17 **MINNESOTA DOCKET SHOULD BE NOT BE BINDING IN UTAH OR ON**  
18 **CENTURYLINK'S ENTITIES?**

19 A. Yes, Mr. Denney states:

---

<sup>14</sup> Denney Direct, pp. 31-32.

1                   However, a decision by the Minnesota Commission will be state-specific, as  
2                   well as entity-specific. A Minnesota decision will not be binding on Qwest in  
3                   any other state or on the other operating entities in any other state.<sup>15</sup>

4   **Q.   WHAT WOULD BE THE APPROPRIATE PROCESS IF INTEGRA HAS A**  
5                   **CONCERN REGARDING THE PRODUCTS AND/OR TERMS AND**  
6                   **CONDITIONS OF ITS UTAH ICA?**

7   A.   If Integra has a concern regarding any Qwest product or term or condition in its Utah  
8                   ICA, it should use the dispute resolution process spelled out in their ICA to resolve  
9                   any issues or concerns and not expect this Commission to rule on proposed conditions  
10                  in this proceeding.

11 **Q.   MR. DENNEY IMPLIES THAT TO ADDRESS ANY CONCERNS**  
12                   **REGARDING ITS ICA IN UTAH WOULD BE A LENGTHY PROCESS. DO**  
13                   **YOU AGREE?**

14 A.   No. In Utah, CLECs requested, and legislators agreed, that statutes should be put in  
15                  place regarding the need for an expedited dispute resolution process specifically for  
16                  ICA related disputes. This resulted in Rule 54-8b-17 that allows for expedited  
17                  treatment of ICA disputes between CLECs and ILECs.

18 **Q.   MR. DENNEY STATES THAT CENTURYLINK AND QWEST SHOULD**  
19                   **HAVE NO ISSUE WITH THESE PROPOSED MERGER CONDITIONS,**  
20                   **BECAUSE THE PROPOSED CONDITIONS ARE INTENDED TO GO NO**

---

<sup>15</sup> Denney Direct, p. 30.

1           **FURTHER THAN THE CURRENT LAW.<sup>16</sup> WHAT IS YOUR RESPONSE TO**  
2           **THESE STATEMENTS?**

3       A.     If that was the sole intent of the CLECs, these issues would be moot, as the ICAs  
4           already obligate Qwest to be compliant with current law and address the process to  
5           negotiate changes in existing laws.<sup>17</sup> However, as discussed in more detail in Mr.  
6           Hunsucker’s rebuttal testimony, these proposed conditions demand much more than  
7           compliance with existing law, which CenturyLink and Qwest are already obligated to  
8           follow, and which they do follow. In fact, both companies make clear in their ICAs  
9           that their contractual obligations are based on current federal and state law. Examples  
10          of such requirements in the Qwest ICAs include:<sup>18</sup>

- 11           • Section 1.3 . . . Qwest shall provide such Interconnection, UNEs,  
12           Ancillary Services and Telecommunications Services on rates, terms, and  
13           conditions that are just, reasonable, and nondiscriminatory in accordance  
14           with the terms and conditions of this Agreement and the requirements of  
15           the Act and state law and the rules and regulations promulgated there  
16           under.
- 17           • Section 2.2 The provisions in this Agreement are intended to be in  
18           compliance with and based on the existing state of the law, rules,  
19           regulations and interpretations thereof, including but not limited to state  
20           rules, regulations, and laws, as of March 11, 2005 (the Existing Rules). . .  
21           .To the extent that the Existing Rules are vacated, dismissed, stayed or  
22           materially changed or modified, then this Agreement shall be amended to  
23           reflect such legally binding modification or change of the Existing Rules.  
24           Where the Parties fail to agree upon such an amendment within sixty (60)  
25           Days after notification from a Party seeking amendment due to a  
26           modification or change of the Existing Rules or if any time during such  
27           sixty (60) Day period the Parties shall have ceased to negotiate such new  
28

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<sup>16</sup> Denney Direct, p. 28-29.

<sup>17</sup> Moreover, Qwest and CenturyLink are required to comply with applicable laws, rules, regulations, and contractual obligations in any event, even without Section 251 ICAs.

<sup>18</sup> Eschelon Utah ICA, approved October 20, 2008.

1 terms for a continuous period of fifteen (15) Days, it shall be resolved in  
2 accordance with the Dispute resolution provision of this Agreement.  
3

- 4 • Section 5.19.1 This Agreement is offered by Qwest and accepted by CLEC  
5 in accordance with applicable federal law and the state law of Utah. It  
6 shall be interpreted solely in accordance with applicable federal law and  
7 the state law of Utah.

8 Specifically, as to the issue of retirement and replacement of copper loops (proposed  
9 Condition 26), there is an extensive section in the ICA (Section 9.2.1.2.3) that  
10 addresses that issue. The same holds true regarding Local Number Portability  
11 (“LNP”), which has a provision (Section 10.2.2.1) addressing this issue.

12 In summary, there is absolutely no reason to adopt these proposed conditions,  
13 especially since the current ICAs ensure the intent and contractual obligation of  
14 Qwest, today and in the future, to be compliant with current state and federal laws.

15 **Q. ARE THERE ANY SPECIFIC LEVEL 3-PROPOSED CONDITIONS THAT**  
16 **YOU WOULD LIKE TO ADDRESS?**

17 A. Yes. In this testimony, I address Level 3’s proposed Conditions 1c, 2, 8 and 9.

18 **Q. DO YOU AGREE WITH LEVEL 3’S PROPOSED CONDITION 1c THAT**  
19 **THE COMMISSION REQUIRE QWEST TO HAVE A STATEMENT OF**  
20 **GENERALLY AVAILABLE TERMS (“SGAT”) ON FILE WITH THE**  
21 **COMMISSION FOR FIVE YEARS?**

22 A. No. At the time that Qwest began its effort to obtain Section 271 relief, it elected to  
23 obtain state approval using a collaborative workshop process to explore and resolve  
24 the literally hundreds of issues relating to specific provisions of Qwest’s then-Section

1 271-related obligations. In the Section 271 collaborative workshop process, Qwest,  
2 CLECs, and Commission Staff members worked through proposed contract language  
3 that would serve to implement the Section 271 requirements as they were developed.  
4 At the time, the SGAT was the document that provided a single, common vehicle for  
5 these collaborative workshops with CLECs and state commissions to assure that  
6 Qwest's agreements met the Section 271 14-point checklist requirements.

7 Despite the SGAT's utility as a reference for the provisions incorporated during the  
8 collaborative workshop phase of the Section 271 process, the SGAT itself was not the  
9 basis for Qwest's successful multi-state Section 271 application to the FCC. The Act  
10 provides two paths by which BOCs could seek approval to enter new markets:

- 11 • 271(c)(1)(A) provides that "A Bell operating company meets the  
12 requirements of this subparagraph if it has entered into one or more binding  
13 agreements that have been approved under section 252 specifying the terms  
14 and conditions under which the Bell operating company is providing access  
15 and interconnection to its network facilities for the network facilities of one  
16 or more unaffiliated competing providers of telephone exchange  
17 service...."
- 18 • 271(c)(1)(B) provides that "A Bell operating company meets the  
19 requirements of this subparagraph if, after 10 months after the date of  
20 enactment of the Telecommunications Act of 1996, no such provider has  
21 requested the access and interconnection described in subparagraph  
22 (A)...and a statement of the terms and conditions that the company  
23 generally offers to provide such access and interconnection has been  
24 approved or permitted to take effect by the State commission under section  
25 252(f)."  
26

27  
28 The path provided under subsection 271(c)(1)(A) is known as "Track A," while the  
29 path provided under subsection 271(c)(1)(B) is referred to as "Track B." In  
30 requesting relief under Section 271 in Utah, Qwest followed the Track A path, relying  
31 on the binding agreements it had with CLECs that the Commission had approved

1 under Section 252 of the Act. Qwest did not rely on its SGAT, or pursue the Track B  
2 alternative.

3 **Q. DID THIS COMMISSION FIND THAT QWEST SATISFIED THE**  
4 **REQUIREMENTS FOR TRACK A?**

5 A. Yes. In the Commission's Report on Track A in Docket No. 00-049-08, this  
6 Commission found:

7 We conclude that Qwest has met all four prongs of the Track A requirements,  
8 47 U.S.C. § 271(c)(1)(A) with respect to business services. We conclude that  
9 with respect to residential service Qwest meets all four aspects of the Track A  
10 requirements even though that service is limited in the state.<sup>19</sup>

11 **Q. DOES THE TELECOM ACT REQUIRE THAT AN SGAT BE MAINTAINED?**

12 A. No. There is no provision in the Act that requires that an SGAT be in place or be  
13 maintained. For example, in Maine, several CLECs attempted to argue that the lack  
14 of a SGAT or tariff precluded a finding that Verizon was meeting its Section 251  
15 obligations. The FCC, however, looked at the multiple interconnection agreements  
16 that Verizon had entered into with Maine CLECs, and the ability of other CLECs to  
17 opt into agreements, as evidence of continuing Section 251 compliance.<sup>20</sup> The FCC  
18 paid particular emphasis to the fact that Section 252(f)(1) states that a BOC "may"  
19 file a SGAT, and not that it must file one.<sup>21</sup>

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<sup>19</sup> Docket No. 00-049-08, Report on Track A, issued March 12, 2002, at p. 9.

<sup>20</sup> *In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services In Maine*, CC Docket No. 02-61, 17 FCC Rcd 11659, 11687-11688 (June 19, 2002).

<sup>21</sup> *Id.* at 11688, n. 185.

1 Furthermore, Qwest is not required to continue to make the SGAT available simply  
2 because it was the basis of previously-approved interconnection agreements. The fact  
3 that Qwest maintains multiple interconnection agreements in Utah demonstrates that  
4 Qwest continues to meet its Section 251 requirements.

5 To facilitate the process of entering into an ICA, Qwest makes available a “template”  
6 interconnection agreement (“Template Agreement”). The Template Agreement  
7 serves as Qwest’s initial ICA offer to CLECs, and it can be adopted as their ICA. As  
8 Qwest’s initial contract offer, if the Template Agreement does not meet all of a  
9 CLEC’s business needs, it serves as a starting point for subsequent negotiations and,  
10 if necessary, arbitrations, of ICAs that are ultimately submitted to the state  
11 commission for approval.

12 In addition, CLECs may “opt in” to existing agreements between Qwest and other  
13 carriers that have been recently negotiated (or arbitrated) and approved by the  
14 Commission under its Section 252 authority. Therefore, the absence of a SGAT in no  
15 way diminishes the Commission’s role in overseeing and approving the terms and  
16 conditions of Section 252 agreements. Qwest submits every agreement containing  
17 Section 251 terms (including rates associated with those products and services) to the  
18 Commission for review and approval pursuant to the requirements of Section 252.

19 As a final safeguard, the Commission maintains its authority under Section 252 to  
20 serve as the arbitrator, and thus to render the final decisions on disputed  
21 interconnection agreement terms and conditions between Qwest and CLECs. The  
22 Commission also maintains its authority to reject any agreement or amendment if:

1 a) it is found to discriminate against a telecommunications carrier not a party to the  
2 agreement; b) the implementation of such agreement or portion is not consistent with  
3 the public interest, convenience and necessity; or, c) the agreement does not meet the  
4 requirements of Section 251.

5 In Idaho, for example, Qwest petitioned to the Idaho Commission specifically to  
6 withdraw its outdated SGAT, and the Commission noted in its order approving the  
7 withdrawal:

8 It is equally undisputed that the Act does not mandate that an SGAT be  
9 maintained, nor has this Commission ordered Qwest to file and maintain an  
10 SGAT. Thus, although the Intervenors discuss numerous advantages to an  
11 SGAT, they do not identify a legal requirement in this state that an SGAT  
12 remain in effect. On this record, the Commission grants Qwest's motion to  
13 allow it to withdraw its SGAT in Idaho.<sup>22</sup>  
14

15 Moreover, it is not an inconvenience to CLECs if an SGAT is withdrawn. Given the  
16 numerous changes of law, arbitrations and wholesale updates since the SGAT process  
17 was concluded, it is an outdated document that would not make a reasonable starting  
18 document for negotiating a new interconnection agreement. Nor is it reasonable to  
19 require, on a going-forward basis, that an SGAT be filed and kept current. Many  
20 CLECs will often seek to review and consider adopting an agreement that has been  
21 tailored to meet their needs, and not a generic SGAT document.

22 **Q. PLEASE IDENTIFY THE NEXT PROPOSED LEVEL 3 CONDITIONS YOU**  
23 **WILL ADDRESS.**

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<sup>22</sup> In the Matter of the Petition of Qwest Corporation Requesting Authorization to Withdraw its Statement of Generally Available Terms and Conditions, Case No. QWE- 08-T-08-04, Order No. 30750, Idaho PUC (March 17, 2009).

1 A. Level 3 proposed the following conditions:

2 2 a. The Combined Entity shall compensate terminating carriers at the  
3 appropriate rate for ISP-bound traffic and that ISP-bound traffic shall include  
4 traffic provisioned using virtual NXX codes; and  
5

6 2 b. The Combined Entity shall treat all locally-dialed ISP-bound traffic  
7 including virtual NXX traffic, as telecommunications traffic in the calculation  
8 of relative use factors for purposes of 51 C.F.R. §703(b).

9 **Q. ARE THERE ANY ASPECTS OF LEVEL 3'S PROPOSED CONDITION 2**  
10 **THAT YOU WOULD LIKE TO ADDRESS?**

11 A. Yes. In Condition 2a, Level 3 seeks to impose an obligation for the merged company  
12 to pay a reciprocal compensation rate for all Internet Service Provider ("ISP")-bound  
13 traffic inclusive of Virtual NXX ("VNXX") calls. In Condition 2b, Level 3 proposes  
14 that all locally-dialed ISP-bound traffic would be utilized in the calculation of  
15 Relative Use Factors ("RUFs"). These are both extremely complicated issues that  
16 have been extensively litigated thought-out many states. This merger proceeding is  
17 certainly not the proper forum for re-litigating these issues.

18 **Q. IN HIS TESTIMONY, MR. THAYER MENTIONS SEVERAL FEDERAL**  
19 **DOCKETS TO SUPPORT PROPOSED CONDITION 2A. DO YOU AGREE**  
20 **WITH HIS INTERPRETATIONS OF FINDINGS IN THESE DOCKETS?**

21 A. No. Mr. Thayer takes the position that all ISP traffic is subject to reciprocal  
22 compensation pursuant to FCC and Court decisions.<sup>23</sup> This interpretation is incorrect.  
23 While I am not an attorney, and cannot specifically address the inaccurate legal  
24 interpretations that Mr. Thayer has made, I do know that the orders that he cites did

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<sup>23</sup> Thayer Direct at p. 11.

1 not find that calls to ISPs' Virtual NXX numbers are calls that would require a local  
2 exchange carrier ("LEC") like Qwest to pay reciprocal compensation.

3 **Q. DOES THE CURRENT QWEST AND LEVEL 3 COMMISSION-APPROVED**  
4 **INTERCONNECTION-AGREEMENT (ICA) IN UTAH ADDRESS**  
5 **RECIPROCAL COMPENSATION FOR ISP TRAFFIC?**

6 A. Yes. Section 7.3.6, "ISP-Bound Traffic," specifically addresses reciprocal  
7 compensation for ISP bound traffic.

8 **Q. DOES QWEST SPECIALLY AGREE TO APPLY COMPENSATION**  
9 **CONSISTENT WITH THE FEDERAL ISP ORDER?**

10 A. Yes. Section 7.3.6.1 of Qwest's ICA with Level 3 provides that Qwest will pay  
11 reciprocal compensation for calls to ISPs located within the caller's local calling area  
12 at the rate provided for in the FCC's *ISP Remand Order*. Specifically:

13 7.3.6.1 The Parties shall exchange ISP-bound traffic pursuant to the  
14 compensation mechanism set forth in the FCC ISP Order.<sup>24</sup>

15 **Q. IF LEVEL 3 IS CONCERNED THAT QWEST IS NOT PAYING**  
16 **COMPENSATION CONSISTENT WITH FCC ORDERS, DOES IT HAVE**  
17 **ANY RECOURSE FOR THAT CONCERN?**

18 A. Absolutely. Level 3 can invoke Section 5.18 of its ICA that addresses dispute  
19 resolution. Thereafter, if Level 3 has exhausted that provision, it can proceed with a  
20 complaint with the Commission, or an action in court. Indeed, Level 3 has availed  
21 itself of that process in other states, including previous interconnection enforcement

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<sup>24</sup> Qwest/Level 3 Utah ICA, approved February 20, 2004.

1 complaints and federal court petitions for judicial review, on issues such as  
2 compensation for VNXX traffic. In Utah, the Commission has a specific rule, R54-  
3 8B-17, that a CLEC can use for an expedited interconnection complaint.

4 **Q. ARE YOU AWARE IF THIS COMMISSION HAS ALREADY RULED ON**  
5 **THE ISSUE IN PROPOSED CONDITION 2B?**

6 A. Yes, my understanding is that this Commission specifically addressed this issue in  
7 Docket 02-2266-02, and that it clearly adopted the Qwest positions and ICA language  
8 on these issues. Specifically, the Commission stated as follows:

9 Level 3's proposed language would result in Qwest bearing all of the costs of  
10 the interconnection facilities. We agree with Qwest's assertion that such a  
11 result would violate the requirements under the Act; that ILECs receive just  
12 and reasonable compensation for interconnection. *Level 3 paying nothing*  
13 *toward the interconnection facilities is not a just and reasonable rate.*<sup>25</sup>  
14 (Emphasis added.)

15  
16 Level 3's argument relies on Rule 51.703(b), adopted pursuant to section  
17 251(b)(5) and dealing with reciprocal compensation, and the TSR Wireless  
18 [footnote omitted] decision applying that rule. That reliance is misplaced.<sup>26</sup>

19  
20 . . . We agree with the reasoning of the U.S. District court in Level 3  
21 Communications, LLC vs. Public Utilities Commission of Colorado, Civil  
22 Action No. 01-N-2455 (CBS), Colorado District, U.S. District Court,  
23 December 11, 2003, *that 47 C.F.R. § 51.703(b) does not apply.*<sup>27</sup> (Emphasis  
24 added.)

25  
26 Qwest's proposed language regarding the calculation of relative use is  
27 adopted.<sup>28</sup>  
28

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<sup>25</sup> Docket No. 02-2266-02, Report and Order issued February 2, 2004, p. 7.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*, p. 8.

<sup>28</sup> *Id.*, p. 10.

1 In summary, this Commission has already clearly ruled on this issue, and the  
2 Commission should reject Level 3's attempt to use proposed Condition 2b in a  
3 merger proceeding to back door a different decision from this Commission..

4 **Q. LEVEL 3'S PROPOSED CONDITION 8 IMPLIES THAT QWEST HAS**  
5 **UNLAWFUL BILLING DISPUTE PROCESSES. DO YOU AGREE?**

6 A. No. Qwest follows its established billing processes, and to the extent that specific  
7 billing terms and conditions are identified in ICAs, tariffs or other agreements, Qwest  
8 honors the identified conditions. To the extent that a wholesale service or product is  
9 silent specifically to the treatment of disputed claims, as identified in Level 3's  
10 proposed condition 8, Qwest is in the process of negotiating agreements that will  
11 provide more explicit guidelines. To the extent that Level 3 is concerned about its  
12 specific billing terms and conditions, Qwest will address those directly with Level 3.  
13 It is inappropriate to use this merger docket to address Level 3's specific issues and  
14 disputes that are not relevant to the Commission's determination whether this merger  
15 is in the public interest and thus should be approved. The Commission should  
16 therefore reject Level 3's proposed Condition 8.

17 **Q. LEVEL 3'S PROPOSED CONDITION 9 IMPLIES THAT QWEST DOES NOT**  
18 **FOLLOW ITS INTERSTATE AND INTRASTATE TARIFFS AS TO THE**  
19 **BILLING OF RATE ELEMENTS. IS THIS ACCURATE?**

20 A. No. Qwest follows its established rates, terms and conditions as identified in its  
21 tariffs. Specifically, Qwest does not inappropriately borrow rates from its interstate  
22 tariffs to establish intrastate rates, as this condition implies. Mr. Thayer's testimony

1 was general and not specific enough to address the testimony factually. Moreover,  
2 Mr. Thayer's testimony appears to imply that Qwest is not using an interstate rate in  
3 error, but rather, Mr. Thayer appears to object to the fact that the tariffed intrastate  
4 rate structure does not match the interstate expanded interconnection rate structure.  
5 To the extent that Level 3 has any concerns with the billing of its tariffed services,  
6 Qwest has and will continue to address those concerns directly with Level 3, and  
7 Level 3 has recourse under the dispute resolution provisions of its ICA with Qwest. It  
8 is not appropriate, however, for Level 3 to attempt to use proposed merger conditions  
9 as leverage against Qwest to address specific issues between the two carriers. Level  
10 3's dispute is not affected in any manner by this merger, and it is not relevant to this  
11 merger proceeding. The Commission should therefore reject Level 3's proposed  
12 Condition 9.

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

14 **A. Yes.**