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(The previous exhibits and related testimony  
were prefiled and are part of the PSC record  
and filed at the Commission.)

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1 NOVEMBER 4, 2010

9:02 A.M.

2 P R O C E E D I N G S

3 CHAIRMAN BOYER: We're back on the record in  
4 Docket No. 10-049-16. In the Matter of the Joint  
5 Application of Qwest Communications International,  
6 Inc. and CenturyTel for Approval of Indirect Transfer  
7 of Control of Qwest Corporation, Qwest Communications  
8 Company, LLC, and Qwest LD Corporation.

9 We've reviewed the prehearing conference  
10 report and the proposed schedule. And we've also read  
11 all of the pleadings that were filed. The most recent  
12 several inches of pleadings. We understand that there  
13 is a little bit of business to take care of with  
14 respect to Mr. Oman's prefiled written testimony.

15 But let's first of all take appearances, and  
16 then we'll talk a little bit about the process --  
17 schedule. Let's just begin on the right and work our  
18 way across.

19 MR. ZARLING: Good morning, Commissioners.  
20 This is Kevin K. Zarling, representing CenturyLink.

21 MR. DUARTE: Good morning, your Honors. Alex  
22 Duarte from Qwest.

23 MS. SCHMID: Patricia Schmid, with the  
24 Attorney General's Office, on behalf of the Division  
25 of Public Utilities.

1 CHAIRMAN BOYER: Ms. Schmid.

2 MR. MERZ: Good morning, Commissioners. Greg  
3 Merz, representing the Joint CLECs. And I'm kind of a  
4 gang of one today, so if there's no objection  
5 Mr. Gates is gonna join me here at counsel table.

6 CHAIRMAN BOYER: No, that's fine. And is  
7 anyone on the telephone with us? Has anyone called  
8 in?

9 It seemed that we heard that Mr. Spann was  
10 going to, but then I just heard somebody say we won't  
11 need phones, one of our staffers, so. I guess they'll  
12 let us know if they wish to participate.

13 So we're generally fine with the report on  
14 the prehearing conference. However, we noticed that  
15 there is no time allocated for Commission questions.  
16 So we may just interrupt you and play through, as is  
17 our prerogative.

18 Are there any other preliminary matters we  
19 need to deal with before we address Mr. Coleman's  
20 written testimony?

21 MR. MERZ: Mr. Chair, I did have one issue  
22 that I wanted to raise.

23 CHAIRMAN BOYER: Or Mr. Oman, I guess it is.  
24 Yes, Mr. Merz.

25 MR. MERZ: In the testimony that was filed

1 Monday night an issue was raised by the Joint  
2 Applicants regarding the lack of the attachment of the  
3 HSR documents that Mr. Gates refers to in his  
4 testimony to his testimony.

5 We were frankly surprised to see that as an  
6 issue because we've been fighting in a number of  
7 states about the confidentiality of that information.  
8 And we believed that it would be Joint Applicants'  
9 preference to minimize the extent to which those  
10 documents got filed, to minimize the extent to which  
11 they were circulated.

12 But in order to avoid any issue, we certainly  
13 have nothing to hide with respect to those documents  
14 or our -- the way in which we've used those documents.  
15 So our suggestion would be that the parties jointly  
16 supplement the record with the HSR documents that  
17 Mr. Gates relied on in his testimony -- or  
18 documents -- HSR documents that they may have relied  
19 on in their testimony.

20 MR. DUARTE: Your Honor?

21 CHAIRMAN BOYER: Mr. Duarte.

22 MR. DUARTE: Alex Duarte for Qwest. A couple  
23 things. It is true that those documents were  
24 documents that we opposed having to produce. However,  
25 once they were produced -- and certainly there's a

1 process in this Commission to file things under  
2 highly-confidential protections, and so that's exactly  
3 what we did.

4 So we were surprised that Mr. Gates, in his  
5 testimony, made references to documents that your  
6 Honors wouldn't even have to be able to look at. I  
7 mean, you don't have the documents so how could you be  
8 able to do that?

9 So that was our criticism. That after all  
10 that discussion and much ado about those documents  
11 they didn't even attach even the pages that were  
12 cited. Therefore, in Mr. Fenn's testimony we do, in  
13 fact, cite to pertinent pages that were cited.

14 We also offered in one of the footnotes to  
15 lodge all of those documents that were cited -- some  
16 of them are up to 140 pages long. We have them here  
17 if the Commissioners want to look at them. We can  
18 certainly lodge them with the Commission for, you  
19 know, to look at the entire pages -- the entire  
20 documents.

21 But nevertheless, we do have basically the  
22 cover page and the page that Mr. Gates cited in his  
23 testimony as highly confidential exhibits on pink  
24 paper, per the protective order that we filed with our  
25 testimony.



1 appeared the parties had no questions for him, with  
2 the Commission's permission we would just like to move  
3 Mr. Oman's testimony in the record and do what we've  
4 commonly called as "spread the testimony on the  
5 record."

6 CHAIRMAN BOYER: Are there any objections to  
7 the admission of Mr. Oman's prefiled written  
8 testimony?

9 (The parties respond in the negative.)

10 CHAIRMAN BOYER: It is admitted then.

11 (Clair Oman Direct Testimony and attached  
12 exhibit was admitted.)

13 CHAIRMAN BOYER: All right, let's turn to the  
14 first Division witness, Mr. Coleman.

15 Mr. Coleman, remind me. Have you been sworn  
16 in the -- we've had so many hearings I don't know  
17 who's in and who's out. Have you been sworn in this  
18 particular proceeding?

19 MR. COLEMAN: No, I have not.

20 (Mr. Coleman was sworn.)

21 CHAIRMAN BOYER: Thank you, please be seated.  
22 Ms. Schmid?

23 MS. SCHMID: Thank you.

24 CHAIRMAN BOYER: And I guess we're gonna  
25 stick with these two-minute summaries, right?

1 MS. SCHMID: Yes, we are.

2 CHAIRMAN BOYER: Okay.

3 CASEY J. COLEMAN,

4 called as a witness, having been duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. SCHMID:

8 Q. Mr. Coleman, could you please state your  
9 name, place of employment, and position for the  
10 record?

11 A. Yes. My name is Casey J. Coleman. I work  
12 for the Division of Public Utilities. And I -- what  
13 else did you want to know? I don't remember already.

14 Q. Your position with the Division?

15 A. Right. I'm the utility technical consultant.

16 Q. Did you cause to be prepared and filed what's  
17 been labelled as Exhibit No. CJC-1.0, your prefiled  
18 direct, with accompanying Exhibit -- DPU Exhibit  
19 No. CJC-1.2, 1.1R (sic), which is your rebuttal, with  
20 1.1R, your exhibit, and then 2.OSR?

21 A. Yes.

22 Q. Thank you. Do you have any corrections or  
23 changes to those?

24 A. Yes, there's two minor corrections. On my  
25 direct testimony, page 9, line 189? I had, I had said

1 in there one of the major differences in these newer  
2 rules from R746-340, and that should be changed to  
3 R746-240. Those are the older service quality rules,  
4 and that's what I was meaning instead of 340.

5 The second correction, in my rebuttal  
6 testimony? Will be on page 6, line No. 129. It goes:  
7 The ISP-bound traffic should be included in the  
8 relative use factor? That word actually should be  
9 changed to "excluded" to further or better reflect  
10 what the Commission's order stated.

11 Q. Would these corrections, if asked the same  
12 questions today, would your answers be the same?

13 A. Yes.

14 MS. SCHMID: With that, the Division moves  
15 for the admission of Mr. Coleman's direct, rebuttal  
16 and surrebuttal testimony, as identified.

17 CHAIRMAN BOYER: Thank you. Any objection to  
18 the admission of Mr. Coleman's prefiled testimony?

19 MR. MERZ: No objections.

20 MS. SCHMID: And the Division will gladly  
21 relinquish a couple of minutes of its time later in  
22 the hearing, so -- because we forgot to add time for  
23 the witness qualification and admission of exhibits  
24 when we did ours.

25 CHAIRMAN BOYER: Okay. Well, thank you. All

1 right, it is admitted then. The testimony is  
2 admitted.

3 (Casey J. Coleman Direct Testimony and  
4 attached exhibit was admitted.)

5 Q. (By Ms. Schmid) Mr. Coleman, do you have a  
6 brief summary?

7 A. Yes, I do.

8 Q. Two minutes, here you go.

9 A. I'll try to talk slow so we can take up the  
10 full two minutes. Over the past couple of months, as  
11 I reviewed the testimony filed by each party and  
12 listened to expert witnesses explain their positions  
13 in this docket, one common theme has surfaced:  
14 Keeping things status quo.

15 CLECs want to be able to compete and have  
16 access to the Joint Applicants' network, while the  
17 Joint Applicants want to remain nimble enough to  
18 respond to a competitive telecommunications  
19 marketplace.

20 As regulators, the Division wants the same as  
21 both the CLECs and the Joint Applicants: A healthy,  
22 vibrant telecommunications market.

23 As first suggested in my direct testimony,  
24 repeated in my rebuttal testimony, and confirmed in  
25 the supplemental rebuttal testimony filed in this

1 docket, the Division believes the best way to achieve  
2 this balance is by requiring conditions on the Joint  
3 Applicants that keep the status quo desired by all  
4 parties.

5           The negotiated settlement between the  
6 Division of Public Utilities and Joint Applicants  
7 provides certainty in operational support systems,  
8 interconnection agreements, performance assurance  
9 plans, protection against any new rates or tariff  
10 changes, change management process, FCC obligations,  
11 status as a BOC, and service quality.

12           With those commitments in place the Division  
13 believes many of the most important concerns raised by  
14 CLECs have been addressed, and stability post-merger  
15 has been provided for a reasonable period of time. In  
16 addition, the negotiated settlement provides a benefit  
17 to retail customers within the State of Utah by  
18 ensuring that at least 25 million over five years is  
19 invested in broadband infrastructure.

20           The negotiated settlement is in the public  
21 interest because it provides benefits to retail  
22 customers that citizens would not have absent a  
23 settlement. Additionally, providing certainty and  
24 stability for the wholesale marketplace, that impacts  
25 all 95 CLECs in the state, is in the public interest.

1           In closing, the Division believes the  
2 Commission should approve the merger of the Joint  
3 Applicants and accept the agreement between the  
4 Division and Joint Applicants. The agreement provides  
5 the best framework to keep the market environment --  
6 sorry.

7           The agreement provides the best framework to  
8 keep the market environment consistent for all  
9 parties, while preventing the death by 1,000 cuts of a  
10 healthy telecommunications marketplace in the State of  
11 Utah.

12           A vibrant telecommunications market will  
13 continue to persist as CLECs, Qwest, and other  
14 companies are financially healthy and able to adapt to  
15 the changing dynamic marketplace.

16           MS. SCHMID: Thank you.

17           Mr. Coleman is now available for cross  
18 examination and questions from the Commissioners.

19           CHAIRMAN BOYER: I noticed also on the  
20 schedule there's no time for redirect. How are we  
21 gonna handle that?

22           MR. DUARTE: Your Honor, this is Alex Duarte.  
23 I think we contemplated that within the time period  
24 that each side had that would include Commissioner  
25 questions, redirect. It wasn't just to have the cross

1 examination.

2 CHAIRMAN BOYER: Okay, very well. Cross  
3 examination, I guess, of the Division witnesses will  
4 just be by you, Mr. Merz?

5 MR. MERZ: That's correct.

6 CHAIRMAN BOYER: Okay. You may proceed,  
7 Mr. Merz.

8 CROSS EXAMINATION

9 BY MR. MERZ:

10 Q. Good morning, sir.

11 A. Good morning, Mr. Merz.

12 Q. Do you have a copy of the settlement  
13 agreement in front of you there?

14 (The reporter asked Counsel to speak up.)

15 THE WITNESS: Yes, I do.

16 Q. (By Mr. Merz) I want to start with some  
17 questions about broadband, which you discuss in your  
18 supplemental testimony at pages 2 through 7.

19 The commitment that's been made in the  
20 settlement agreement is that the combined company  
21 would spend \$25 million over five years, and  
22 15 percent of that would be spent in underserved and  
23 underserved areas, correct?

24 A. Unserved and underserved, yes.

25 Q. And so if you would just go to your

1 supplemental testimony, at page 4. Line -- I'm  
2 looking specifically at line 100. Well, line 99. And  
3 you say there --

4 A. Okay.

5 Q. -- that:

6 "Qwest without any Commission  
7 ordered commitments to invest has spent  
8 significant amounts to remain a viable  
9 broadband competitor."

10 Correct?

11 A. Yes.

12 Q. And then a little bit later on that page, at  
13 page 111 (sic), you say that:

14 "The Division believes that Qwest or  
15 the combined entity must continue to  
16 invest in broadband infrastructure to  
17 survive in today's marketplace."

18 Correct?

19 A. Yes.

20 Q. You're aware that broadband plays a very  
21 large role in the merged Company's future plans, not  
22 only for Utah but around the country?

23 A. Yes.

24 Q. You are aware as well that, for example, the  
25 Company has announced plans to begin offering IPTV,

1 Internet protocol television, in certain markets,  
2 correct?

3 A. Yes. I believe they said they'll do that in  
4 certain markets.

5 Q. And that is something that will require  
6 additional investment in broadband; is that right?

7 A. Yes.

8 Q. Given that background, what reason does the  
9 Division have to believe that the combined company  
10 would not have spent at least \$25 million over the  
11 next five years on broadband in Utah?

12 A. I don't know anywhere in my testimony that  
13 I've said that they wouldn't invest that amount. What  
14 I talk about is, in fact, that the Company, and  
15 because of the competitive marketplace we have here,  
16 has made choices to respond to that marketplace by  
17 investing certain dollar amounts within the State of  
18 Utah.

19 And so my testimony was that we believe that  
20 Qwest, you know, to survive, like I said there, needs  
21 to -- or the combined entity needs to continue to  
22 invest in infrastructure probably to meet many of the  
23 demands that you talked about. To be able to do IPTV  
24 and the other elements of it.

25 Q. And I guess my question is, is there any

1 reason to think that, regardless of this commitment,  
2 the Company wouldn't be spending at least that much,  
3 if not a lot more, in Utah over the course of the next  
4 five years?

5 A. Obviously marketplaces change. And what  
6 happens within the environment can change drastically.  
7 There is a possibility that they may decide that  
8 they've invested enough within -- because of what  
9 they've done previously, that they don't feel that any  
10 future investment needs to happen.

11 Q. That's a possibility. But based on what you  
12 know today the most likely outcome is that, with or  
13 without this commitment, the Company would end up  
14 spending \$25 million, or perhaps much more, in Utah  
15 over the course of the next five years?

16 MS. SCHMID: Objection, asked and answered.

17 CHAIRMAN BOYER: Response, Mr. Merz?

18 MR. MERZ: What he's saying is that it's  
19 possible that they might spend less money. The  
20 question really goes to what's the most likely thing  
21 based on the information that he has today. So I  
22 think it's a different question.

23 CHAIRMAN BOYER: I don't know if he can  
24 answer that, but let's see.

25 Can you answer that? Do you know, or do you

1 have any sort of premonition as to what they might  
2 have?

3 THE WITNESS: I can give you what my hope is.  
4 I don't know if that'll get to the answer, but.

5 CHAIRMAN BOYER: Yeah. I think Ms. Schmid's  
6 objection is well taken.

7 Q. (By Mr. Merz) The 300 and -- the 15 percent  
8 that's to be spent on underserved and under --  
9 underserved and unserved areas, can you tell me, how  
10 is "areas" intended to be defined in this agreement?  
11 What's an "area"?

12 A. I don't know that we went to that level of  
13 speci -- you know, that specific as far as an area.  
14 We did do our review as far as a wire center level,  
15 when we were looking at trying to come up with a  
16 broadband commitment that we felt would be  
17 understandable but also enforceable.

18 But we didn't specifically define in the  
19 settlement what an area would be.

20 Q. Were you aware in Minnesota that the parties  
21 entered into a subsequent clarification of the  
22 settlement agreement that defined areas as living  
23 units?

24 A. Yes. I mean, I reviewed the testimony of  
25 Minnesota. And ultimately, with what we looked at

1 here in this state, we also looked at living units as  
2 the common denominator. I mean, that's what we were  
3 looking at to determine, you know, of Qwest's area,  
4 how many individuals had certain Internet speeds.

5 Q. What percentage of exchanges in Utah are  
6 unserved, as that phrase is used in the settlement  
7 agreement?

8 A. I don't know an exact number. When we did an  
9 analysis, you know, I believe the numbers that were  
10 talked about was somewhere in the range of like 7 to  
11 9 percent.

12 Q. And then what percentage of exchanges in Utah  
13 are underserved, as that term is used in the  
14 settlement agreement?

15 A. I don't have an exact amount. And again,  
16 that would also have to determine what you considered  
17 underserved. Because in the settlement agreement  
18 there were discussions where we had originally said  
19 4 megabits per second download speed is what we were  
20 looking at. I know that in the agreement I believe it  
21 says 1.5 megabits per second as well, so.

22 Q. That's something you compromised on, I take  
23 it?

24 A. I don't know if it was compromised.

25 MS. SCHMID: And if I could just perhaps

1 interject and remind my witness that settlement  
2 discussions are covered by privilege.

3 MR. MERZ: Actually, they're not. Settlement  
4 discussions aren't privileged.

5 MS. SCHMID: I object to that, and I disagree  
6 with that contention.

7 CHAIRMAN BOYER: We typically don't admit  
8 evidence as to the negotiating positions people take  
9 during settlement conferences. But, you know, the  
10 result of those discussions, what they've -- the  
11 stipulation contains I think is fair game. He can ask  
12 about that.

13 MS. SCHMID: Thank you.

14 Q. (By Mr. Merz) And so just to get back to my  
15 question. You don't know what percentage of exchanges  
16 in Utah are underserved, as that term is used in this  
17 settlement agreement?

18 A. An exact figure off the top of my head, no, I  
19 don't.

20 Q. Do you have even a ballpark number?

21 MS. SCHMID: Again, asked and answered.

22 CHAIRMAN BOYER: Well, he's, he's just asked  
23 if he has a ballpark figure. And Mr. Coleman is  
24 deciding whether he does or doesn't.

25 THE WITNESS: Well I'm, in my mind, trying to

1 remember what we put together. A rough estimate would  
2 be, you know, 60 to 75 percent, potentially. But  
3 again, that's going off of a spreadsheet that I looked  
4 at for a period of time, and I -- those numbers could  
5 be drastically wrong.

6 Q. (By Mr. Merz) Okay. Underserved areas, as  
7 that term is used in the settlement agreement, would  
8 include areas where there's already one or more  
9 broadband providers, correct?

10 A. Yes.

11 Q. And under the settlement agreement Qwest  
12 would be entitled to spend its entire commitment, the  
13 15 percent commitment, in an underserved area; is that  
14 right?

15 A. That's a possibility, yes.

16 Q. If you go to your surrebuttal at page 6,  
17 line -- that can't be right. Your supplemental  
18 testimony.

19 MS. SCHMID: Do you mean supplemental?

20 MR. MERZ: Yeah, I'm -- I don't understand  
21 this reference that I have here, so I'm just gonna ask  
22 you this question.

23 Q. (By Mr. Merz) It's your testimony that there  
24 may be areas that are uneconomical for Qwest to invest  
25 in broadband infrastructure, correct?

1 A. Yes.

2 Q. And you would not expect that Qwest would  
3 make its expenditures under this settlement agreement  
4 to, satisfy these commitments, uneconomically, would  
5 you?

6 MS. SCHMID: Calls for -- objection, calls  
7 for speculation. Mr. Coleman does not know what Qwest  
8 would or would not do, or intends.

9 CHAIRMAN BOYER: Sustained. You don't have  
10 to answer that, Mr. Coleman.

11 Q. (By Mr. Merz) Go to your supplemental  
12 testimony, at page 6.

13 A. Okay.

14 Q. And I'm looking at line 151?

15 A. Okay.

16 Q. Where you say:

17 "A condition that required the  
18 combined entity to invest only in  
19 unserved areas might prove to be a  
20 financial burden...and limit the  
21 profitability of the investment."

22 And that was your testimony, correct?

23 A. Yes.

24 Q. As you envision this settlement agreement  
25 operating you would not -- you do not understand the

1 agreement to require Qwest to spend money in areas  
2 where it wouldn't realize a profit on that investment?

3 A. I'm sorry, I don't understand that question.

4 Q. Well, go to page 7 of your testimony.

5 A. Okay. I'm -- supplemental rebuttal  
6 testimony?

7 Q. All of my questions are gonna be about your  
8 supplemental.

9 A. Okay, that's fine.

10 Q. I'm looking at line 156.

11 A. Okay.

12 Q. And you talk about meeting the goal of  
13 getting better broadband speeds while avoiding  
14 unprofitable investment commitments solely to meet a  
15 regulatory condition.

16 A. Uh-huh.

17 Q. And what I understood you to be saying there  
18 was that this commitment would not, as you understand  
19 it, require Qwest to spend in areas where it wouldn't  
20 realize a profit on that investment. Did I  
21 misunderstand your testimony?

22 A. That, that's what I was saying with that  
23 testimony. That's accurate.

24 Q. Let's talk now about the OSS commitments.  
25 And you refer to those or discuss those in your

1 supplemental surrebuttal -- your supplemental  
2 testimony at pages 7 through 9?

3 A. Okay.

4 Q. Would you agree with me that a change in  
5 ownership of Qwest makes the likelihood of a change in  
6 Qwest's OSS greater?

7 MS. SCHMID: Objection, lack of foundation.  
8 Mr. Coleman has not been qualified as an expert on  
9 post-merger things.

10 CHAIRMAN BOYER: I'm not sure if that's the  
11 right objection, but it does call for speculation on  
12 the part of Mr. Coleman.

13 Q. (By Mr. Merz) Let me ask this question. The  
14 Division entered into a commitment that would require  
15 that OSS not be discontinued -- wholesale OSS not be  
16 discontinued for a minimum of 24 months, correct?

17 A. Correct.

18 Q. What was the reason why the Division believed  
19 that that commitment would further the public  
20 interest?

21 A. Initially when the Joint Applicants filed  
22 their petition -- or application with the Commission  
23 their position was that there was no need for any  
24 commitment or any conditions on the application.

25 As we at the Division reviewed the

1 information provided, and as I said in my summary  
2 here, our expectation and what we are trying to do as  
3 a Division is to try to provide a status quo. To keep  
4 the marketplace the same for CLECs and also for the  
5 Joint Applicants or combined entities after the  
6 merger.

7           The reason why we felt that keeping the OSS  
8 in place for 24 months after reading the testimony of  
9 Mr. Gates and other individuals, as a Division we  
10 recognized that keeping some level of certainty and an  
11 OSS system that they're familiar with for a period of  
12 time makes sense.

13           And so we felt that this would at least allow  
14 CLECs to have a period of time where they would know  
15 that they're gonna be able to still interact and  
16 interface with the OSS, that they're familiar and  
17 comfortable with, in the State of Utah and in Qwest's  
18 region, which was the Qwest OSS system.

19           And so absent of no conditions, and looking  
20 at what would be best for companies who were trying to  
21 compete in Qwest's territory, we felt that getting a  
22 commitment where CenturyLink and/or whatever the  
23 combined entity will be has to still use that system  
24 for a period of time would be in the public interest.

25           Q. If you go to the first paragraph under the

1 No. 1, Operational Support Systems, on page 3 of the  
2 settlement agreement?

3 A. Okay. Line 196 of my testimony, is that what  
4 you?

5 Q. No, I'm actually looking at the settlement  
6 agreement itself now.

7 A. Okay.

8 Q. So if you'll just flip to that?

9 A. Give me a second, I'll get there.

10 Q. Sure.

11 A. Okay. OSS -- first paragraph?

12 Q. Yes. It says there that Qwest will not  
13 discontinue its wholesale operations support systems.  
14 Do you see that?

15 A. Yes.

16 Q. Why is that condition limited to wholesale  
17 operations support systems?

18 A. The nomenclature that, as a Division that we  
19 dealt with is -- and it may be, you know, slightly  
20 different. But we look at retail as far as what Qwest  
21 is gonna be providing to the end user. And then we  
22 look at wholesale as far as their network, their  
23 infracture, and the other elements as far as what  
24 they're doing with kind of the business-to-business  
25 element of it.

1           And so for the wholesale operations support  
2 system we kept it in there, or it was in there, kind  
3 of to come back to, you know, the operating system  
4 that's gonna be used by companies.

5           Q.    Is there some public interest that's served  
6 by allowing the Company to change OSS used to serve  
7 retail customers immediately after the merger?

8           A.    My original review, that would be no.  
9 Although I, again, I'm not an OSS expert, but just  
10 taking from a practical standpoint. I wouldn't  
11 understand how Qwest would be able to change how it  
12 interfaces with it's retail customers, as far as OSS  
13 and billing and different things, and how that would  
14 be drastically different than what would be happening  
15 with their business customers or the wholesale side of  
16 it as well.

17          Q.    Were there people involved in this settlement  
18 on behalf of DPU who are OSS experts?

19          A.    I'm probably as close as we would get as far  
20 as the Division. And, you know, as I've said, I'm not  
21 an OSS expert. I have some understanding of it  
22 because of projects that have been worked on. But for  
23 better or for worse, I'm it. And I was involved in  
24 it, so.

25          Q.    Does Qwest have systems that serve both

1 retail and wholesale? When I mean "systems" I mean  
2 OSS that serve both retail and wholesale.

3 A. My understanding is that they do.

4 Q. How would this provision that prohibits  
5 discontinuing wholesale OSS for a minimum of 24 months  
6 apply to a Qwest system that serves both retail and  
7 wholesale?

8 A. I am not a legal expert, and so obviously I  
9 wouldn't know the legal aspect of it. My  
10 understanding is if it somehow changed the wholesale  
11 system. That's what it says in there, and so that  
12 would not be allowed by law. That's my understanding.

13 Q. And my -- what I'm really getting at is what  
14 the DPU had in mind when it entered into that  
15 settlement agreement.

16 A. Sure. Okay.

17 Q. And that's what you're telling me?

18 A. Okay. Yeah, that's.

19 Q. Go to the second paragraph, where it says:

20 "In the event that any Qwest OSS is  
21 subsequently changed or retired...."

22 Do you see that?

23 A. Uh-huh. Yes.

24 Q. What's the word "subsequently" referring to?  
25 Subsequently to what?

1           A.    Again, with the idea being that we're trying  
2   to keep things status quo and things as they are  
3   today, you know, pre- versus post-merger.  The way  
4   that I would read "subsequently" in that situation is  
5   that, if they were going to subsequently change  
6   Qwest's OSS post-merger to what it is today, then they  
7   would need to go through that change management  
8   process that's been established and agreed to by CLECs  
9   and also Qwest.

10          Q.    The "subsequently" doesn't refer to  
11   subsequent to this 24-month period following closing?

12                MS. SCHMID:  I would say objection if we're  
13   going to get to -- this verges on -- or calls for a  
14   legal conclusion --

15                CHAIRMAN BOYER:  Well, we can ask him -- or  
16   Mr. Merz can ask him what his understanding of that  
17   term is.

18                THE WITNESS:  I'm sorry --

19          Q.    (By Mr. Merz)  And I think I can ask the  
20   question --

21          A.    Will you ask the question again for me,  
22   please?

23          Q.    Certainly.  Was it your understanding that  
24   "subsequently," as used in the first sentence of  
25   paragraph two, refers to subsequent to the 24-month

1 period that's referred to in the first paragraph of  
2 that section of the agreement?

3 A. And I'm just gonna ask for clarification to  
4 make sure I'm answering your question properly.

5 Q. Sure.

6 A. So what you're saying is subsequently would  
7 be after the 24 months if that change happened, versus  
8 during the 24-month time period?

9 Q. Let me -- I'll just ask a more direct  
10 question.

11 A. Okay.

12 Q. Is it your understanding that under this  
13 agreement Qwest would be free to make changes to its  
14 OSS that are short of actually discontinuing that OSS  
15 before 24 months after the closing?

16 A. Yeah. Simple answer to that is yes. And  
17 having -- and the foundation for that, again, if it's  
18 a major shift, you know, going say to the CenturyLink  
19 versus a Qwest one, obviously we believe that that  
20 wouldn't be allowed in this stipulation.

21 But today, understanding OSS and how it  
22 happens, there are times that a CLEC will come to  
23 Qwest and say, Look, we want to change how we  
24 interface with the OSS. Or Qwest may come back and  
25 say, We need to make these changes. My hope is that

1 it's to make it better for both parties and stuff like  
2 that.

3 But we believe that Qwest and/or the CLECs  
4 have the ability to do that over the normal course of  
5 the process. We don't believe that that precludes  
6 Qwest or the CLECs from having the ability to fine  
7 tune or tweak the OSS if it's needed over that  
8 24-month period.

9 I think that's why the term "subsequently"  
10 was used because, you know, some minor changes may be  
11 necessary and it may be agreed upon by both.

12 But if it was a drastic change, something  
13 that, you know, someone -- the Commission, the  
14 Division, CLECs, or anyone else would say, Wow, that  
15 seems like a pretty big change, you know, that -- the  
16 way that I'm interpreting that is that, you know, that  
17 wouldn't be allowed for the first 24-month period.

18 And then -- so -- sorry, that was a pretty  
19 wordy answer. But yes, we believe there would be the  
20 ability for minor tweaks over that time period.

21 Q. What is it about the agreement that you  
22 believe would distinguish between minor tweaks and  
23 drastic changes? Is there something that we would  
24 look to in the language of the agreement that we would  
25 say, Minor tweaks, you can do that, but drastic

1 changes you can't?

2 A. In my reading of this -- the agreement, I  
3 don't know that there is specifically in here what  
4 would be considered a minor or a major change. I  
5 guess the premise that we went off of is that, is that  
6 that maybe is discussed more extensively in the OSS  
7 and how that has been involved. And so parties would  
8 know what may be considered a minor change or a  
9 subsequent change.

10 Q. Are you familiar with what are sometimes  
11 referred to as "back-end systems"?

12 A. I did read the testimony by Mr. Gates and  
13 that dealing with back-end systems.

14 Q. Do you know whether all changes under CMP --  
15 all changes to back-end systems have to go through  
16 CMP?

17 A. I don't know that, no.

18 Q. Do you know whether changes to back-end  
19 systems can have an impact on CLECs?

20 A. My gut reaction is I would believe that they  
21 would. Because that would change how they interact  
22 with CenturyLink or Qwest.

23 Q. Go to your supplemental testimony at page 9.

24 A. Okay.

25 Q. And I'm looking at line 227, where you quote

1 the Colorado Commission telecommunications section  
2 chief. Do you see that?

3 A. Yes.

4 Q. And you agree, I take it, with the statement  
5 that:

6 "Although Qwest is the larger entity  
7 and has more experience in the wholesale  
8 market, any changes made by CenturyLink  
9 to Qwest's back-office systems, to  
10 Qwest's business processes, to Qwest's  
11 interconnection negotiation template, or  
12 to Qwest's CMP increase the possibility  
13 of uncertainty among the interconnecting  
14 carriers. This uncertainty will in turn  
15 effect (sic) competition in general."

16 Do you agree with those statements?

17 A. Yes.

18 Q. And was avoiding the kinds of changes that  
19 are described in what I just read, was that at least  
20 part of the goal of entering into the settlement  
21 agreement?

22 A. Sure. What we were trying to provide was the  
23 ability for CLECs to have a certain level of  
24 confidence so they know how business is gonna proceed  
25 post-merger. And that that would allow them to be

1 able to execute business plans that they have in place  
2 and also to continue to compete in the marketplace.

3 Which is, you know, what we believe is  
4 healthy for the marketplace. And also is a goal and a  
5 statutory requirement that we have, and also the  
6 Commission has, is to help foster competition.

7 Q. Do you believe the settlement agreement would  
8 prevent any changes made by CenturyLink to Qwest's  
9 back-office systems?

10 A. Again, not being an OSS expert, I, you know,  
11 I don't know the level of changes that would be  
12 involved with that. And again, what we were trying to  
13 portray with this settlement, and what the hope is, is  
14 to keep things as they are today for a period of time  
15 post-merger as well.

16 Q. Do you believe that the settlement agreement  
17 prohibits changes to Qwest's business processes?

18 A. I don't know that business processes was  
19 included in the OSS.

20 Q. Or any other part of the agreement. I'm not  
21 necessarily limiting myself now to the OSS provisions.

22 A. I guess my original answer to that would be  
23 Qwest today has the ability to change some of its  
24 business processes to adapt to a competitive  
25 marketplace.

1           We, again, in trying to craft this was to try  
2 to provide some level of certainty for CLECs. And  
3 balance out what Qwest and, you know, the entity going  
4 forward has as far as the freedoms and flexibilities  
5 that the Commission has allowed them that they've got  
6 through a regulatory process.

7           And so can Qwest change business processes  
8 today? I believe that they can. Should they be  
9 allowed to do that post-merger? For a period of time,  
10 you know, we've said that there needs to be some  
11 certainty.

12           But, you know, ultimately they'll probably  
13 have the ability, as they do today, to change business  
14 processes as they see fits their business needs.

15           Q. And the quote that we just read together a  
16 minute ago refers to changes made by CenturyLink to  
17 certain of Qwest's systems and processes, correct?

18           A. Correct.

19           Q. Today CenturyLink doesn't have the ability to  
20 change Qwest's systems and business processes?

21           A. Correct.

22           Q. And so is there anything about the settlement  
23 agreement, that you are aware of, that prevents  
24 CenturyLink from making changes to Qwest's business  
25 processes?

1           A.     Yeah. I mean, if you look at, for example  
2 the interconnection agreements, they're not allowed to  
3 change that for a period of time. If you look at OSS,  
4 they're not allowed to change for a period of time  
5 what is currently in place for that.

6                     If you're looking at the performance  
7 assurance plans, they've agreed through the  
8 negotiation process that they're gonna follow those  
9 type of requirements that are there as well.

10                    So in my belief, that would be commitments  
11 that they've made that would mean that they're not  
12 able to change those elements of their business  
13 process for those periods of time that were agreed to.

14           Q.     And then is there anything in the settlement  
15 agreement that you believe prevents CenturyLink from  
16 making changes to Qwest's CMP?

17           A.     Again, I -- not knowing the nuances of CMP,  
18 but what the first blush would be with that is that  
19 Qwest -- sorry. CenturyLink or the combined entity  
20 would need to follow the change management process  
21 that was negotiated and put into place if they wanted  
22 to do major changes to OSS.

23                    And again, I don't know exactly all the  
24 places that CMP comes into play. But we believe that  
25 would be a process that they would need to follow,

1 according to what's already been established in the  
2 contract with the change management process.

3 Q. Were you here last week when Mr. Hunsucker  
4 was testifying?

5 A. I did listen to it through the stream that  
6 the Division -- or sorry, the Commission provides. So  
7 yes.

8 Q. Do you recall a discussion that I had with  
9 Mr. Hunsucker about whether OSS interfaces are  
10 considered to be part of OSS?

11 A. I do remember that there was some discussion  
12 back and forth about that.

13 Q. Is it your understanding that the OSS  
14 commitment contained in the settlement agreement would  
15 apply to OSS interfaces?

16 A. You know, I, again, I don't know that we went  
17 to that minute detail of what would be involved in OSS  
18 and what wouldn't. You know, generally we believe  
19 that whatever is included in OSS today should be what  
20 would be included in OSS, you know, post-merger as  
21 well.

22 And that's why we did the condition with  
23 that. But, you know, the level of each detail, as far  
24 as this is what was involved with it, you know, we  
25 didn't specifically discuss that.

1 Q. The six-month notice provision that's  
2 contained in the OSS commitment --

3 A. Uh-huh.

4 Q. -- applies only to retirement of systems; is  
5 that right?

6 A. That's my understanding, yes.

7 Q. What is your understanding of how retirement  
8 of a Qwest OSS would affect CLECs?

9 A. I, I mean, as was shown in the testimony both  
10 by Mr. Gates and also quoted by myself, you know, if  
11 there was a changed OSS, that could potentially impact  
12 CLECs and also impact other individuals.

13 Q. Do you know what CLECs would have to do on  
14 their end if a Qwest OSS were to be retired?

15 A. No.

16 Q. What that would involve, per se?

17 A. I mean, I can guess, knowing what happened  
18 with the 271 proceeding and the number of elements  
19 that was involved with that to understand the OSS, you  
20 know. I'm sure that there is work that's gonna be  
21 required with that. But what is completely involved  
22 with that I can't say.

23 Q. Based on your understanding, do you believe  
24 that would be a significant amount of effort for  
25 CLECs?

1           A.    I don't know the level of effort for CLECs  
2           because, you know, not being involved with it. There  
3           will be work involved. The level I, I can't speak to.  
4           I'm sure a CLEC would be able to.

5           Q.    What's your basis for believing that six  
6           months is an adequate amount of notice for retirement  
7           of OSS?

8           A.    The belief there is that there needed to be a  
9           time period that the companies would have the ability  
10          to know that a change was coming.

11                  Having said that, we believe that six months  
12          gives the ability for CLECs to start evaluating and  
13          looking at the process. And, you know, with change  
14          management is, is involved in there what the  
15          understanding would be is that they could start  
16          looking to test and to see if the changes are gonna  
17          work with that.

18                  And it would also give them adequate time, if  
19          there were challenges or issues with that, to be able  
20          to come back to a regulatory body -- the Commission or  
21          whatever else -- and potentially make those concerns  
22          known.

23                  So six months was a time period that seemed  
24          reasonable to allow, on the flip side, a company like  
25          CenturyLink to notify those who are gonna be using

1 that that a change could be coming. But also provide  
2 a time period for CLECs or anybody else involved to  
3 evaluate it and say, This is why it works or this is  
4 why it doesn't work, and have that be heard by a  
5 regulatory body.

6 Q. Under the settlement agreement Qwest would be  
7 able to give notice of retirement 18 months after  
8 closing, and then retire its OSS 24 months after  
9 closing, correct?

10 A. They have the latitude to do that if they  
11 choose to.

12 Q. How do the OSS commitments relating to notice  
13 of retirement apply to interfaces, if you know?

14 A. I don't know.

15 Q. Have you made any effort to compare the  
16 functionality of CenturyLink and Qwest's OSS?

17 A. All I know as far as testimony that was filed  
18 by different parties. I mean, I did review that and I  
19 did understand some of the concerns raised. I think  
20 that's also part of the reason why at the Division we  
21 tried to put in place some commitments to leave  
22 Qwest's OSS there.

23 Q. Do you have -- have you performed any  
24 analysis of the degree of flow through provided by  
25 CenturyLink's OSS as compared with that of Qwest's?

1 A. No.

2 Q. You heard Mr. Hunsucker testify about  
3 CenturyLink's lack of information regarding flow  
4 through for its wholesale OSS, correct?

5 A. I know that was part of his testimony, yes.

6 Q. Did that give you any cause for concern with  
7 respect to whether the OSS issues are adequately dealt  
8 with in the settlement agreement?

9 A. I guess the way that I can answer that is we  
10 got the impression from CLECs -- and we tend to agree  
11 with the position -- that initially CenturyLink's OSS  
12 is different than what CLECs are working with now, and  
13 their preference would be for Qwest's OSS system.

14 Does that, does that mean that, you know,  
15 eventually something better couldn't be proposed? You  
16 know, I don't know that, you know, today as I sit  
17 here. But I -- we didn't want to preclude that option  
18 from the parties as far as having that opportunity to  
19 come and to be brought forth as well.

20 Q. The CLECs' concern is not about something  
21 better in terms of OSS it's about something worse,  
22 right?

23 A. Uh-huh.

24 Q. That's what you understand?

25 A. Well, yeah. I mean, they would want to keep

1 the ability to access the competitors' network and  
2 have that interface happen so that they can continue  
3 to compete. So they would want to keep that -- if I  
4 was a CLEC I would want to keep that at a level that  
5 I'm comfortable with or understand as well.

6 Q. The OSS commitment talks about the ability to  
7 test a proposed replacement OSS; you are aware of  
8 that?

9 A. Yes.

10 Q. Do you know what such testing would involve?

11 A. I don't think it was specifically detailed in  
12 the settlement.

13 Q. The settlement doesn't require that there be  
14 testing that would confirm the system's ability to  
15 handle production level of work, does it?

16 A. Testing isn't a specific requirement of the  
17 settlement, no.

18 Q. You heard Mr. Hunsucker testify about  
19 CenturyLink's recent implementation of an e-bonding  
20 solution for LSRs, correct?

21 A. Yes.

22 Q. You heard him say that there were no CLECs  
23 using that system, although it was available?

24 A. I heard that as part of the testimony, yes.

25 Q. Did that give you any cause for concern?

1           A.     Again, if we were comparing CenturyLink's OSS  
2 versus Qwest's OSS, the CLECs did a -- were able to  
3 put forth their testimony as far as showing that  
4 there's differences between those two.

5                     But I think that also comes back to why, as a  
6 Division, we wanted to have a commitment in place  
7 where Qwest's OSS was going to be what was used -- or  
8 Qwest legacy, or whatever appropriate terminology  
9 is -- for a period of time so there would be some  
10 certainty there.

11                    So by us agreeing to a condition that keeps  
12 Qwest's OSS in place I think was trying to mitigate  
13 some of the concerns that the CLECs raised of one OSS  
14 versus another. And I think we achieved that by being  
15 able to get a commitment to where an OSS that was  
16 perceived by the CLECs to be better is one that's  
17 gonna be used for a period of time.

18           Q.     You are aware that the Minnesota proposed  
19 settlement includes a requirement that testing be  
20 allowed in a time frame that's no less than the time  
21 frame provided under CMP? You're aware of that,  
22 correct?

23           A.     Again, I did review some of the information  
24 in -- you know, I -- of the Minnesota proceedings. I  
25 don't know if I was aware of that specific thing. But

1 I, I mean, I know that it was, that it was there.

2 I should say I know that the Minnesota  
3 proceedings happened. Because my last statement was  
4 very vague and ambiguous, so.

5 MR. MERZ: Your Honor, I have the Minnesota  
6 stipulation and agreement, and I'd like to mark that  
7 and offer it as a cross examination exhibit.

8 CHAIRMAN BOYER: Very well. And I'm not  
9 going to restrict how you use your allocated time, but  
10 you're doing 20 percent of the witnesses and  
11 two-thirds of the time.

12 MR. MERZ: Yes.

13 (Pause.)

14 MR. MERZ: Can you tell me how this has been  
15 marked?

16 CHAIRMAN BOYER: I don't have my notes from  
17 the prior hearing. But let's --

18 Ms. Schmid, do you know how many?

19 MS. SCHMID: I'm sorry, no.

20 CHAIRMAN BOYER: Let's just put this as a  
21 Joint CLECs --

22 MS. SCHMID: We could always use the  
23 alphabet.

24 MR. DUARTE: Let's just say November 4  
25 Exhibit 1?

1 CHAIRMAN BOYER: November 4 Exhibit 1.

2 Q. (By Mr. Merz) Mr. Coleman, you have in front  
3 of you the stipulation and agreement that was entered  
4 into in Minnesota; is that right?

5 A. Yes.

6 Q. You've seen this document before, I take it?

7 A. Yes.

8 Q. The language that is contained in the  
9 settlement agreement that the DPU entered into is, in  
10 many respects, identical to the language of the  
11 Minnesota agreement, correct?

12 MS. SCHMID: Objection. Mr. Coleman said  
13 that he has seen it, he did not say that he has done a  
14 comparison. So I think that the question assumes  
15 facts not in evidence.

16 MR. MERZ: If he doesn't know he can say he  
17 doesn't know.

18 MR. DUARTE: Your Honor --

19 CHAIRMAN BOYER: Why don't you ask the direct  
20 question, Mr. Merz, have you compared the two.

21 Q. (By Mr. Merz) Have you compared this  
22 agreement and the -- the Minnesota agreement and the  
23 agreement that the DPU entered into?

24 A. Extensively, no.

25 Q. In any degree?

1           A.    I read this once, and then I, I was familiar  
2 with what our agreement has been.  So that would be  
3 the level of review.

4           Q.    Did you see the Minnesota agreement for the  
5 first time before or after the DPU entered into its  
6 agreement?

7           A.    Before.

8           MR. MERZ:  Your Honor, the Joint CLECs offer  
9 Joint CLECs November 4th Exhibit 1.

10           CHAIRMAN BOYER:  Any objection to the  
11 admission of that exhibit?

12           MR. DUARTE:  Your Honor, we have no  
13 objections.  But we're wondering, I don't think the  
14 actual DPU settlement is -- we've -- it was filed,  
15 obviously, with the Commission, but it's not an  
16 exhibit to any of the testimony.

17           So I'm wondering in all fairness, so that the  
18 Commission, if it wants to compare both settlements,  
19 we might want to have that one as a cross exhibit  
20 or -- as an exhibit for today as well.

21           CHAIRMAN BOYER:  Well, why don't we do as  
22 Mr. Merz is going to do with the HSR documents and  
23 have Ms. Schmid supplement the record with that.

24           MS. SCHMID:  Okay.

25           CHAIRMAN BOYER:  It is in the docket already,

1 but.

2 MR. DUARTE: Sure.

3 MR. MERZ: Has this been admitted, then, your  
4 Honor?

5 CHAIRMAN BOYER: It has been admitted, yes.  
6 I'm sorry.

7 (Joint CLECs November 4 Exhibit 1 was  
8 admitted.)

9 Q. (By Mr. Merz) Mr. Coleman, if you'll refer  
10 to page 3 of the Minnesota settlement?

11 A. Okay.

12 Q. And I'm looking at the second paragraph on  
13 page 3, the second sentence, that says:

14 "In the event that any CenturyLink  
15 OSS is introduced, changed, or retired,  
16 CenturyLink will provide 6 months  
17 advance notification to the affected  
18 interconnecting carriers."

19 Do you see that?

20 A. Yes.

21 Q. Do you know why that -- well, let me ask you  
22 first. That provision does not appear in the DPU  
23 settlement?

24 A. That specific language is not in our  
25 settlement.

1 Q. The OSS commitment that is in the DPU  
2 settlement is one that applies region wide for Qwest;  
3 is that right?

4 A. Yeah. And my understanding is Qwest isn't  
5 able to have an OSS for Utah, one for Minnesota, one  
6 for Washington. It's got to be regionally done.

7 Q. I want to ask you some questions now about  
8 the provisions relating to the interconnection  
9 agreement extension, which you discuss on  
10 supplemental -- in your supplemental testimony at  
11 pages 9 through 11.

12 A. Okay.

13 Q. In your supplemental testimony at page 10?

14 A. Yes.

15 Q. Line 256, you say that the Division believes  
16 that most ICAs in Utah will fall within the first  
17 band, where the agreement will be extended for  
18 36 months. Can you tell me what the basis for that  
19 belief is?

20 A. Sure. As part of my duties in the Division  
21 of Public Utilities over the various few years I had  
22 the responsibility of reviewing interconnection  
23 agreements that were entered in with CLECs and also  
24 with Qwest. Specifically during the time when the  
25 TRRO happened, and for a couple of years after that.

1           So I didn't look at every single CLEC in our  
2 state to see if they had filed. But my understanding,  
3 and just from personal experience, is that most of the  
4 interconnection agreements with most of the CLECs  
5 within the state were amended or had changed to  
6 reflect the TRRO and some of those other elements of  
7 it.

8           So I know that looking at that situation,  
9 where I knew, I knew that those interconnection  
10 agreements had been worked on, that was the basis that  
11 I used to say that probably most of our  
12 interconnection agreements are gonna fall within that  
13 36-month time frame.

14         Q. Do you know how many agreements fall within  
15 the second band, the 24-month extension?

16         A. I don't have exact numbers, so I don't know.

17         Q. And the third you don't know?

18         A. I don't know that. I mean, I would believe  
19 that the third band is gonna be a very small subset of  
20 the total population.

21         Q. The second band applies to agreements that  
22 have been amended to include Qwest's TRRO language; is  
23 that right?

24         A. That's what the settlement says, yes.

25         Q. Can you tell me why it's limited to Qwest's

1 TRRO language?

2 A. I don't know that it was specifically where  
3 it was meant to be just Qwest's testimony. I -- or  
4 sorry, Qwest's TRRO language.

5 I believe what it meant in -- as far as the  
6 Division was, if those agreements had been filed to  
7 reflect the TRRO language which was agreed upon  
8 between different parties, then at that point as a  
9 Division we felt that, you know, they had gone through  
10 that process with it as well.

11 Because it was an agreement between Qwest and  
12 the Division, you know, Qwest's TRRO language was  
13 probably interjected with that as well.

14 Q. You're aware that there's CLECs that have  
15 TRRO language that's not Qwest's language?

16 A. Sure.

17 Q. And do you believe that this 24-month  
18 extension should apply to those agreements?

19 A. Again, if a company had filed to have  
20 their -- the amendments changed with Qwest as far as  
21 being involved in that process if it was, you know,  
22 CLECs' TRRO language.

23 But if, if in the interconnection agreement  
24 there was some language that reflects what was in the  
25 Tri-Annual Review Remand Order that, that allowed

1 Qwest the ability for the non-impaired wire centers  
2 and other elements of it I would -- you know, my  
3 opinion, not being a legal, you know, attorney, but my  
4 opinion would be that those would, would be included  
5 as something that had been amended.

6 Q. Go back to your supplemental testimony at  
7 page 17.

8 A. Okay.

9 Q. At line 257 you say:

10 "It is the opinion of the Division  
11 that any amendment filed by Qwest and  
12 agreed to by CLECs would be a  
13 non-expired agreement."

14 Do you see that?

15 A. Sorry, you said page 17 --

16 Q. I'm sorry, I misspoke. Page 10.

17 A. Okay.

18 Q. Line 257.

19 MS. SCHMID: Page 11?

20 THE WITNESS: Page 11?

21 Q. (By Mr. Merz) Well, I have page 10.

22 A. Okay.

23 Q. Line 257.

24 A. Line 257, okay.

25 Q. You say there:

1                    "It is the opinion of the Division  
2                    that any amendment filed by Qwest and  
3                    agreed to by CLECs would be a  
4                    non-expired agreement."

5                    Do you see that?

6                    A.    Yes.

7                    Q.    I'm trying to understand how that would work.  
8                    Are you saying that if an expired agreement has been  
9                    amended, then the agreement is treated as not expired  
10                    for purposes of this commitment in the settlement  
11                    agreement?

12                    A.    Yeah. My understanding, and kind of what the  
13                    Division's position is, is that if there's been  
14                    amendments or different elements that have been filed  
15                    with that -- maybe let me take a step back and kind of  
16                    explain what our premise was with the Division. And  
17                    kind of what the different bands meant.

18                    You know, we kind of felt that if a company  
19                    had been working with Qwest and/or CenturyLink and had  
20                    been in negotiations and had been trying to have an  
21                    interconnection agreement that was in effect, we felt  
22                    that they needed -- or what would be fair was to give  
23                    them a certain amount of time where they would be able  
24                    to have certainty. And that's, you know, what the  
25                    first band was.

1           Looking at the third, third band, you know,  
2 we knew that there were instances -- for example, the  
3 Commission will recall that Qwest and First Digital  
4 recently had had troubles with interconnection  
5 agreements, as far as getting them to come to the  
6 table.

7           We felt that there may be some outliers out  
8 there that, for whatever reason, hadn't been  
9 negotiating in good faith with Qwest. And so they  
10 maybe needed a shorter time period of only 12 months  
11 so that -- so what really was allowed by law would be  
12 able to be in effect with that as well.

13           And so that's kind of where we fell as far  
14 as, Okay, what's the different bands. Where does it  
15 make sense. What's fair for CLECs on, on the side  
16 of -- and also the side of CenturyLink.

17           Now, to answer kind of as far as the  
18 amendments. What -- as to the Division and my  
19 position is that, if there had been some negotiations,  
20 some discussions, and some agreements that happened  
21 within, you know, the last period of time that was  
22 talked about in there, then those agreements should be  
23 given that level of certainty of the 36 months.

24           Q.    So if you had an old expired agreement that  
25 was recently amended, that would -- the 36 months

1 would apply to that, as you understand it?

2 A. That, that's my understanding that's how  
3 it -- now again, there may be specific elements within  
4 each contract where terminology could be different.  
5 And I don't know every individual interconnection  
6 agreement.

7 I mean, I, again, I review them, but I don't  
8 know the legal elements of that. And so I'm not  
9 saying that what the contract says, you know, or  
10 elements of it, that my opinion would preclude that.

11 But, you know, just as a general statement,  
12 if I believe that the Companies have worked together  
13 and, you know, there was an amendment that was there  
14 that was agreed upon, barring some specific language  
15 in the interconnection agreement, they should have  
16 that level of protection of the extended 36 months.

17 Q. I'm gonna go to the next provision, just  
18 because I'm running out of time, relating to the  
19 protection against new rates or tariff changes?

20 A. Okay.

21 Q. That's No. 3 under the wholesale conditions  
22 on page 5 of the settlement agreement?

23 A. Okay.

24 Q. This is not one that you talk about in your  
25 testimony, correct?

1 A. Correct.

2 Q. My only question about this one is, the very  
3 first sentence of that section says: "Qwest  
4 Corporation agrees"; correct?

5 A. Sorry, let me get there.

6 Q. Sure.

7 A. Remind me again where we're at on the  
8 settlement.

9 Q. Yeah, number -- paragraph 3, in the  
10 protection against new rates or tariff changes?

11 A. Okay. Okay, Qwest Corporation agrees, yes.

12 Q. And I'm contrasting that with the OSS  
13 condition that applies to Qwest Corporation or any  
14 successor entity?

15 A. Uh-huh.

16 Q. Can you tell me the reason for that  
17 difference?

18 A. No. I mean, I don't know that there was a  
19 specific reason why it was limited only to Qwest  
20 Corporation. I don't recall that in the negotiations  
21 or the discussions going back and forth.

22 Q. In the second sentence of that section it  
23 talks about there won't be new wholesale changes for  
24 service order processing, including but not limited  
25 to, and then it lists a bunch of stuff. Do you see

1 that?

2 A. Uh-huh.

3 Q. Yes?

4 A. Yes. Yes, I do.

5 Q. I'm focussing on the "including but not  
6 limited to." What other kinds of things does the  
7 Division understand would fall within the scope of the  
8 prohibition that's set out in this section of the  
9 agreement?

10 A. You know, I don't -- not knowing all the  
11 nuances of each individual company I don't know  
12 specifically. I can't say, Well, here's one, and  
13 here's another one, and stuff like that. I think it  
14 was just language that didn't want to limit it just to  
15 those few items that were listed there.

16 Q. How would the Division go about deciding  
17 whether a new charge would fall within the scope of  
18 this prohibition?

19 A. I guess what we would do is we would look at,  
20 you know, a tariff rate or a price list that was filed  
21 by Qwest, you know, now, or the combined entities  
22 post-merger. And then look and see if we felt that it  
23 was in, you know, the categories talked about here or  
24 something that was, you know, precluded specifically  
25 in this settlement agreement.

1 Q. Let's go to the provision related to the  
2 UPAP?

3 A. Okay.

4 Q. Which is the next one. This provision  
5 precludes discontinuing of the UPAP but would permit  
6 any changes, correct?

7 A. Yes.

8 Q. In your supplemental testimony, at page 12?

9 A. Okay.

10 Q. Line 313, you say that it's the belief of the  
11 Division that elimination of any PAP must be agreed by  
12 the Commission. Do you see that?

13 A. Yes.

14 Q. Did you mean PID or PAP?

15 A. My understanding from how it is with the  
16 negotiation with the QPAP that we have now, there is  
17 no sunset period. And, you know, the Commission  
18 basically has to approve the elimination or subsequent  
19 major changes of the current performance assurance  
20 plan as it is now.

21 And where CenturyLink was agreeing for a  
22 period of time to, in essence, still have that same  
23 PAP, as it is existing today, to be in force, we would  
24 believe that, you know, it would require a Commission  
25 ruling or order, however terminology you want to use,

1 to have a -- the PAP completely go away.

2 Q. Let's talk about the change management  
3 process?

4 A. Okay.

5 Q. Are you -- do you know whether CenturyLink  
6 has what would be the equivalent of Qwest's CMP?

7 A. CenturyLink hasn't really been an active  
8 participant in our state, and so I don't know if they  
9 do have or not.

10 Q. Under Qwest's CMP as it exists today does  
11 Qwest have the right to terminate that -- does Qwest  
12 have the right to terminate the CMP?

13 A. Again, I don't know the extent if they do or  
14 not.

15 Q. Do you understand if the CMP commitment  
16 contained in the settlement agreement is a region-wide  
17 commitment?

18 A. Again, that would be my belief, is it would  
19 be applicable throughout all states.

20 Q. Let's talk about the FCC obligations?

21 A. Uh-huh.

22 Q. It says there that any terms contained in the  
23 FCC's order will be automatically incorporated and  
24 supersede the terms of this agreement, except to the  
25 extent it is state specific. Do you see that?

1           A.    We're now at the stipulation again; is that  
2 right?

3           Q.    Yes, I'm sorry.  Page 6 of the stipulation,  
4 looking at paragraph 6.

5           A.    Okay.

6           Q.    It talks about --

7           A.    Okay.

8           Q.    -- how an FCC order will interact with this  
9 agreement.

10          A.    Correct.

11          Q.    And it says: "...to the extent it is  
12 state-specific."  What's the "it" there?  Is it the  
13 FCC order, or is it this agreement?

14          A.    My belief is that it would be the FCC order.

15          Q.    Then finally -- or almost finally anyway, the  
16 compliance section?

17          A.    Yes.

18          Q.    Which is found at page 8?

19          A.    Uh-huh.

20          Q.    There's a general commitment there that the  
21 Company will comply with all applicable federal and  
22 Utah laws and regulations, correct?

23          A.    Yes.

24          Q.    You heard Mr. Hunsucker's testimony regarding  
25 conditions proposed by the CLECs with respect to

1 specific laws and regulations that the CLECs were  
2 concerned about?

3 A. Yes.

4 Q. And you heard Mr. Hunsucker say that  
5 CenturyLink would not agree to those conditions,  
6 correct?

7 A. I think what I heard Mr. Hunsucker say is  
8 they would agree to no conditions, because their  
9 original premise was they don't believe they needed  
10 any conditions.

11 Q. Do you have any concern, given CenturyLink's  
12 agreement set out on page 8 of the settlement  
13 agreement regarding compliance with laws, and given  
14 the testimony Mr. Hunsucker gave about CLEC conditions  
15 relating to compliance with laws, do you have any  
16 concern about how that testimony can be reconciled?

17 A. Do I have a concern about how it can be  
18 reconciled? No. Here's the reason why I don't think  
19 there's concern with that. Originally CenturyLink and  
20 the joint parties said that there should be no  
21 conditions or obligations with this agreement.

22 Through the settlement discussions and  
23 through, you know, different aspects of it and things  
24 that were brought up with the Division they were able  
25 to agree to commit that they're gonna follow all

1 applicable laws and regulations as they need to today,  
2 Qwest and/or CenturyLink, pre-merger/post-merger.

3           Again, I'm not an attorney. I don't know,  
4 you know, all the differences between what is gonna be  
5 approved in law. I have been around long enough to  
6 realize that there's usually two sides of a legal  
7 interpretation. And then a body like the Commission  
8 or the FCC gets to determine what that legal  
9 interpretation may be.

10           But as far as the Division, we felt  
11 comfortable in the fact that CenturyLink was  
12 committing, in this stipulation, that they were gonna  
13 follow all applicable laws and regulations. Just like  
14 Qwest has to today, that they're going to have -- you  
15 know, that they would need to follow that as well.

16           Is there a difference in interpretation?  
17 Always. But we felt that that's what that commit was  
18 getting at, and that made us a little more  
19 comfortable.

20           Q. And then finally, was any consideration given  
21 to including the most favored nations provisions part  
22 of this agreement?

23           MS. SCHMID: Again, I object to the extent  
24 that it would -- the answer would involve settlement  
25 discussions themselves.

1           CHAIRMAN BOYER: Yeah, I think that's well  
2 taken. The stipulation speaks for itself. It doesn't  
3 have one.

4           MR. MERZ: I have nothing further, sir.  
5 Thank you very much.

6           CHAIRMAN BOYER: Commissioner Allen, any  
7 questions for Mr. Coleman?

8           COMMISSIONER ALLEN: Quick question about  
9 incentives in the OSS, because we're talking about the  
10 regulatory environment and there's some concerns  
11 expressed here.

12           If there were a poorly-run OSS as a result of  
13 some merger that could be approved, who does it harm?  
14 Is it asymmetrical? Does it only harm the CLECs?  
15 Or would a poorly-run OSS also harm the Joint  
16 Applicants in terms of maybe lost wholesale revenue,  
17 or?

18           What's your take on it? Is it symmetrical,  
19 asymmetrical? Does it harm one party more than the  
20 other if it's not functioning properly?

21           THE WITNESS: I don't know that it would be  
22 asymmetrical. But what my belief is, is because we  
23 have a competitive marketplace here in Utah, if the  
24 OSS wasn't working properly for the CLECs they'll  
25 definitely be harmed.

1           But the flip side is that, if the OSS wasn't  
2 working for Qwest or CenturyLink, the possibility is  
3 that another company could come in and take some of  
4 the customers through, you know, bad service quality.  
5 They're not happy or whatever.

6           And so CenturyLink and/or Qwest could be  
7 impacted with that as well. You know, a competitor  
8 like Comcast could come in and take away retail  
9 customers because their OSS isn't functioning, they're  
10 not getting their bills out right, people aren't happy  
11 with that type of thing.

12           Would it impact CLECs more? Probably. But I  
13 think that the threat of losing a customer is just as  
14 real for a CLEC as it is for Qwest because of the  
15 competitive marketplace that we have today. And so I  
16 believe that there are market pressures that are out  
17 there that will, will help to incent Qwest and/or  
18 CenturyLink, whatever the combined entity is, to try  
19 to take care of those problems.

20           COMMISSIONER ALLEN: Thank you.

21           CHAIRMAN BOYER: Commissioner Campbell?

22           COMMISSIONER CAMPBELL: On page 4 of your  
23 testimony, line 99.

24           THE WITNESS: Is this the direct testimony?

25           COMMISSIONER CAMPBELL: Supplemental

1 rebuttal.

2 THE WITNESS: Okay.

3 COMMISSIONER CAMPBELL: I think you were  
4 already asked about this. I guess my question is, on  
5 line 99, does the Commission have the authority to  
6 order Qwest to invest in broadband?

7 THE WITNESS: No.

8 COMMISSIONER CAMPBELL: Do you see any  
9 possible regulatory pitfalls in the Commission  
10 ordering actions in which it doesn't have legal  
11 authority granted to it by the legislature?

12 THE WITNESS: Again, I'm not an attorney, so  
13 I don't know all those elements of it. There could be  
14 potential pitfalls with that.

15 What we were looking at with the settlement  
16 was to try to figure out, if I'm sitting across the  
17 table from my neighbors and they hear that CenturyLink  
18 and Qwest are gonna merge, and they're like, Well,  
19 what benefit do I get as far as a customer?

20 You know, I would like to be able to say,  
21 Well, you know, here's something tangible that you're  
22 gonna get. Qwest has committed to invest 25 million  
23 over the next five years with that as well.

24 Do we recognize that the Commission doesn't  
25 have the authority to require that? Yeah, we are

1 understanding of that. As part of the settlement  
2 negotiations was this something that Qwest put forward  
3 and we thought made sense? Yes.

4 And so that's partly why you see it in the  
5 settlement negotiations.

6 MS. SCHMID: Settlement --

7 THE WITNESS: Or settlement agreement, sorry.  
8 Not negotiations, agreement.

9 CHAIRMAN BOYER: Okay. Thank you,  
10 Mr. Coleman.

11 Any redirect, Ms. Schmid?

12 MS. SCHMID: Very limited.

13 REDIRECT EXAMINATION

14 BY MS. SCHMID:

15 Q. You were asked some questions about wholesale  
16 rates and charges as they apply to the stipulation.  
17 And I believe that Mr. Merz was referring to  
18 paragraph 3 on page 5 of the settlement.

19 A. Okay.

20 Q. Do you recall those questions?

21 A. Yeah.

22 Q. So does this paragraph apply to any new  
23 wholesale charges or service order processes? Can you  
24 talk about the scope of this paragraph?

25 A. As you're asking that can I ask a clarifying

1 question with that?

2 Q. Uh-huh.

3 A. And I guess I'm --

4 Q. And it might be easier if you turn to the  
5 settlement agreement itself.

6 A. Sure. I guess what I'm trying to understand  
7 though is when you say "new," would this be like a  
8 service that had never been tariffed, or never been  
9 applicable as far as price lists or tariffs before?  
10 And the reason I'm ask --

11 Q. Well, I'm sorry, I misspoke.

12 A. All right.

13 Q. Again, if we turn to the settlement agreement  
14 itself I think that will clear up my --

15 A. Okay.

16 Q. -- the confusion I caused. It talks about  
17 not seek approval for new rates or new wholesale  
18 charges.

19 A. Okay.

20 Q. Can you speak to the scope of this?

21 A. Yeah. My belief is that we have in place  
22 right now tariff rates, and charges, and different  
23 things. And the way that this has been established is  
24 that Qwest won't, for those specific, you know, or  
25 whatever rates, tariff rates, price lists that are out

1 there, for 36 months they're not gonna come in and  
2 file to ask for those rates to be changed.

3 Q. Thank you. Also, Commissioner Allen asked  
4 you some questions about interactions between Qwest  
5 and the CLECs. You spoke about incentives to  
6 encourage good behavior. Do you have any comments on  
7 how the QPAP affects that relationship?

8 A. Yes. We believe, as far as the Division, and  
9 we believe that it's been working fairly well in the  
10 state, that there are monetary incentives or payments  
11 that Qwest has to make if they don't meet certain  
12 commitments.

13 We believe that those incentives are  
14 providing a clear signal to Qwest that service quality  
15 and being able to keep the network open is important  
16 so the CLECs can be able to continue to survive. We  
17 believe that those have been effective and have worked  
18 well at this current time.

19 And the hope and part of the reason why we  
20 stayed with recommending the QPAP was to leave those  
21 same type of incentives in place. That if there is  
22 some deterioration or degradation in the service  
23 quality there's some financial ramifications because  
24 of that.

25 And so we believe that there needs to be some

1 proper incentives for Qwest -- or, you know, if you  
2 wanted to use the CLECs' terminology, penalty.  
3 Which -- however, you know, terminology you want to  
4 put in there. To help make sure that they do provide  
5 good service to CLECs and/or customers throughout the  
6 state.

7           And that's what we're trying to get at as a  
8 Division.

9           Q. You were asked mostly questions about the  
10 CLEC relationship, although there were a couple of  
11 retail questions sort of worked in. When the Division  
12 decided to approve the settlement did it look at  
13 things just from the perspective of the CLECs, or does  
14 the Division have a broader perspective?

15           A. With the settlement our perspective was  
16 definitely broad, which is what our view is. We need  
17 to look at and we try in all instances to look at all  
18 customers that are out there: Retail, wholesale, you  
19 know.

20           And our settlement I believe speaks to that,  
21 that we were trying to look at it from a broad  
22 perspective. And that's what we were hoping to  
23 achieve, and I think we did achieve, is a balance  
24 that's out there for all consumers in the State of  
25 Utah.

1 Q. Thank you. And a final question. Actually  
2 probably a couple final questions. You're not a  
3 lawyer, right?

4 A. No, I never have -- no.

5 Q. Many of us here are wondering about the  
6 wisdom of our career choices right now. But anyway,  
7 that aside. As a non-lawyer, your interpretation of  
8 how the provisions of the settlement will work with  
9 respect to the other provisions of the settlement and  
10 law, they're your lay opinions, correct?

11 A. Correct.

12 Q. Not legal interpretations?

13 A. Definitely no legal interpretations. That's  
14 my regulatory and public policy understanding, I guess  
15 is how you can say it.

16 MS. SCHMID: Thank you very much.

17 CHAIRMAN BOYER: Okay. Thank you,  
18 Mr. Coleman, you're excused.

19 So we've got a challenge on our hands now,  
20 Mr. Merz. We have -- in fairness, we have to let the  
21 four remaining witnesses in this first section give  
22 their summaries on the record for sure. Let's start  
23 with Mr. Powlick.

24 MR. MERZ: And your Honor, I have now very  
25 limited questions for Mr. Powlick. I may have some

1 questions for Mr. Hunsucker. I won't have time to do  
2 any questioning of the other two witnesses.

3 CHAIRMAN BOYER: Okay.

4 MS. SCHMID: The Division calls Dr. Phil  
5 Powlick to the stand. I embarrass my witnesses when  
6 they have Ph.D.s, I'm proud of them. Could he please  
7 be sworn?

8 (Dr. Powlick was sworn.)

9 CHAIRMAN BOYER: Please be seated.

10 PHILIP POWLICK, Ph.D.,  
11 called as a witness, having been duly sworn,  
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. SCHMID:

15 Q. Could you please state your name, by whom you  
16 are employed, and your position?

17 A. My name is Philip Powlick, P-o-w-l-i-c-k. I  
18 am the director of the Division of Public Utilities.

19 Q. Did you prepare and cause to be filed what is  
20 identified as DPU Exhibit No. 3.0, the supplemental  
21 rebuttal testimony of Philip Powlick?

22 A. I did.

23 Q. Do you have any changes or corrections to  
24 that?

25 A. Yes. I found when you have very few days to

1 prepare testimony you have sloppy typos, so I will  
2 correct two that I found this morning in reviewing.  
3 On page 4, at line 67. In the middle of the line,  
4 between the words "that" and "more" should be the word  
5 "a."

6 And on line 75, same page. In the middle of  
7 the line, between the words "settlement" and "been"  
8 should be the word "had."

9 Q. With those corrections, would your answers to  
10 your prewritten testimony be the same today as when  
11 submitted?

12 A. Yes.

13 MS. SCHMID: The Division moves the  
14 admittance of the previously-identified DPU Exhibit  
15 No. 3.0, the supplemental rebuttal testimony of  
16 Dr. Philip Powlick.

17 CHAIRMAN BOYER: Any objection to the  
18 admission of Dr. Powlick's supplemental rebuttal  
19 testimony?

20 MR. MERZ: No objection.

21 CHAIRMAN BOYER: It is admitted.

22 (Philip Powlick Supplemental Rebuttal  
23 Testimony was admitted.)

24 Q. (By Ms. Schmid) Do you have a briefest  
25 summary?



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CROSS EXAMINATION

BY MR. MERZ:

Q. Good morning, Doctor.

A. Good morning.

Q. Have you done a comparison of the Minnesota and -- the Minnesota settlement agreement and the Division settlement agreement?

A. I saw the specific document for the first time this morning when you handed it around.

Q. In your supplemental testimony at page 4, line 75, you say -- and I'm paraphrasing here -- that, We were aware of the settlement in Minnesota, but not that the CLECs were challenging that settlement, correct?

A. At the -- that was my understanding at the time. I didn't, yes.

Q. When did you first become aware of the Minnesota settlement?

A. When staff informed me of it. And I couldn't say specifically when that was.

Q. Was it before or after the Division entered into the settlement in this case?

A. It was before.

Q. Did you ask whether the CLECs were supporting that settlement?

1 A. I did not specifically, no.

2 Q. When did you first become aware that there  
3 were objections that had been made by the CLECs to the  
4 settlement?

5 A. I personally became aware when I read  
6 Mr. Gates's testimony.

7 Q. You were -- well, let me ask you this. Who  
8 was --

9 A. Having said that -- let me finish that --  
10 that doesn't mean that our staff weren't aware of  
11 that.

12 Q. Do you believe staff were aware? You just  
13 don't know?

14 A. I can't say.

15 Q. Who was the lead negotiator for DPU?

16 A. Hard to say who would be lead. I spoke a  
17 lot.

18 Q. Who else for DPU was involved?

19 A. Mr. Coleman, Mr. Duncan, Mr. Oman,  
20 Ms. Schmid, were the entire team.

21 Q. At the time the discussions were going on  
22 with the Joint Applicants was there consideration  
23 given to asking the CLECs to participate in those  
24 discussions?

25 MS. SCHMID: Objection, calls to settlement

1 discussions.

2 CHAIRMAN BOYER: Yeah, I don't think that's  
3 relevant.

4 MR. MERZ: I have nothing further, thank you.

5 CHAIRMAN BOYER: Commissioner Allen? And I  
6 have no questions.

7 Thank you, Dr. Powlick.

8 Mr. Fenn. Will this be by Mr. Duarte, or?

9 MR. DUARTE: Qwest calls Jerry Fenn to the  
10 witness stand, please.

11 MR. FENN: I've already been sworn.

12 CHAIRMAN BOYER: Mr. Fenn? You've been sworn  
13 in this case already?

14 MR. FENN: (Moves head up and down.)

15 JERRY FENN,

16 called as a witness,

17 having previously been duly sworn,

18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. DUARTE:

21 Q. Good morning, Mr. Fenn. Please state your  
22 full name and business address for the record.

23 A. Jerry Fenn. And my business address is  
24 250 Bell Plaza, Salt Lake City, Utah.

25 Q. And Mr. Fenn, who do you work for and what is

1 your position?

2 A. I work for Qwest, as the president of the  
3 Company for the State of Utah.

4 Q. Now Mr. Fenn, did you previously file direct  
5 and rebuttal prefiled testimony, and later testify  
6 before this Commission on October 26, 2010?

7 A. I did.

8 Q. And Mr. Fenn, did you more recently prepare  
9 supplemental response testimony that was filed on  
10 Tuesday, November 2nd?

11 A. I did.

12 Q. Does your supplemental response testimony  
13 have any exhibits?

14 A. It does.

15 Q. How many?

16 A. I think it's A through H.

17 Q. That's correct. Are any of these exhibits  
18 confidential or highly confidential?

19 A. I believe they're all highly confidential.

20 Q. And do you have any confidential or highly-  
21 confidential testimony in your supplemental response  
22 testimony?

23 A. I do, on pages 24 through 26.

24 Q. Do you have any corrections to make to any of  
25 your supplemental response testimony?

1 A. I do not.

2 Q. Mr. Fenn, are all of your answers in your  
3 supplemental response testimony true and correct, to  
4 the best of your knowledge?

5 A. They are.

6 Q. And finally Mr. Fenn, if I were to ask you  
7 the same questions here as those in your supplemental  
8 response testimony, would your answers be  
9 substantially the same?

10 A. They would be substantially the same.

11 MR. DUARTE: Your Honors, we have marked  
12 Mr. Fenn's supplemental response testimony as Qwest  
13 Exhibit JA Exhibit Highly Confidential Sup R1. And we  
14 also will pass out a list of all of our exhibits. And  
15 we've also marked the exhibits, which were Highly  
16 Confidential Exhibits A through H, we are now marking  
17 them as Exhibits HC Sup R1.1 through R1.8.

18 And with those clarifications, your Honors,  
19 Qwest now moves for admission into the evidence in the  
20 record of this proceeding both the supplemental  
21 response testimony of November 2nd, and the eight  
22 Highly Confidential Exhibits R1.1 through R1.8.

23 CHAIRMAN BOYER: Any objection to the  
24 admission of Mr. Fenn's testimony and the highly-  
25 confidential exhibits?

1 MR. MERZ: No objections.

2 CHAIRMAN BOYER: They are admitted.

3 (Jerry Fenn Highly Confidential Supplemental  
4 Response Testimony and attached exhibits were  
5 admitted.)

6 Q. (By Mr. Duarte) Mr. Fenn, do you have a  
7 summary of your testimony?

8 A. I do.

9 Q. Can you please present that now?

10 A. Gladly. Commissioners, I appreciate the  
11 opportunity to appear before you today. And I just  
12 want to say briefly that the settlements reached with  
13 the Division of Public Utilities, the Office of  
14 Consumer Services, and the Salt Lake Community Action  
15 Program, of which I was involved in negotiating, were  
16 freely entered into arms-length negotiations.

17 And I think they reflect the parties'  
18 viewpoint that the merger is in the public interest  
19 and it should be approved.

20 The Commission, I think, should reject the  
21 CLECs' arguments about process. They make much ado  
22 about nothing, and overstate the rule. The rule is  
23 permissive. And if you read the rule, it contains the  
24 word "may."

25 And frankly I think that, with respect to

1 participation in settlement discussions, the Joint  
2 CLECs have participated and continue to participate  
3 with the Joint Applicants in settlement discussions.

4 And frankly, I think that in this case  
5 they're -- it's fair what the Commission is doing now.  
6 They're allowing them to have their objections noted  
7 and giving them adequate due process. And the  
8 Commission can give whatever weight it determines is  
9 necessary to their arguments.

10 I think the settlement strikes a balance,  
11 Commissioners. I think that there are major  
12 compromises in the settlement process. And that the  
13 settlement itself benefits and provides stability and  
14 protection to all 95 CLECs in the State of Utah on the  
15 major issues.

16 What we've committed to as the Joint  
17 Applicants is significant and extensive: The  
18 agreements to invest in broadband, to continue OSS for  
19 a period of time, the commitments on CMB -- CMP,  
20 extension of interconnection agreements, protection  
21 against new rates or wholesale charges, continuation  
22 of the PAP, and also on pricing stability for  
23 low-income customers, all further demonstrate that  
24 this merger is in the public interest.

25 I want to say something about the agreement

1 to invest \$25 million in broadband. I think that is a  
2 significant commitment. And Mr. Gates is flat out  
3 wrong in asserting that our commitment in Utah is  
4 significantly less than the commitment in Minnesota  
5 based on a per-access-line basis.

6 In fact, he failed to include the CenturyLink  
7 143,600 lines in his analysis. So actually if you do  
8 that, the commitment in Utah is at least as generous  
9 as the one in Minnesota based on the number of access  
10 lines.

11 But moreover the \$25 million commitment,  
12 coupled with the agreement to allocate a part of that  
13 to deployment and unserved and underserved areas, is  
14 an unequivocal commitment.

15 I don't have a crystal ball to determine what  
16 the economy is gonna do, what competition will do,  
17 whether capital will dry up, or what other market  
18 forces will do.

19 Even though we feel that our investment  
20 strategy should not be managed by a regulatory process  
21 we nevertheless, in the spirit of compromise, are  
22 willing to, irrespective of the uncertainties in the  
23 market, to make a firm commitment to invest.

24 This settlement is fair --

25 MR. MERZ: Mr. Chair, it has been more than

1 two minutes now.

2 THE WITNESS: -- and we think it's in the  
3 public interest.

4 MR. MERZ: And I did manage to think of a  
5 couple questions that I could ask Mr. Fenn in just a  
6 couple minutes.

7 MR. DUARTE: Your Honor, we'll be willing to  
8 take an extra two minutes off of our time if that will  
9 satisfy Mr. Merz.

10 CHAIRMAN BOYER: Go ahead, Ms. Schmid.

11 MS. SCHMID: As will the Division.

12 CROSS EXAMINATION

13 BY MR. MERZ:

14 Q. Mr. Fenn, if you would turn to Exhibit G to  
15 your testimony? Your supplemental response testimony?

16 A. Okay.

17 Q. I know that this is highly-confidential  
18 information. Can you tell me the name of the  
19 moderator of this particular call highly-confidential  
20 information?

21 A. The name of the moderator I don't believe is  
22 highly confidential.

23 Q. Okay. And so that's Mr. Robert Tregemba?

24 A. Tregemba, that's correct.

25 Q. T-r-e-g-e-m-b-a?

1 A. Right.

2 Q. He's a Qwest employee?

3 A. Right.

4 MR. MERZ: Nothing further, thank you.

5 THE WITNESS: That's it?

6 MR. MERZ: That's it.

7 CHAIRMAN BOYER: Commissioner Allen?

8 COMMISSIONER ALLEN: Real quickly, Mr. Fenn.

9 Since you manage a multi-state area, multi-state  
10 company, I'm just curious, is it this Commission's  
11 charge, or has it been over the years, to try to  
12 coordinate our orders or our concerns with other state  
13 activities or other stipulations in other states?

14 Is it our charge or is it our practice, that  
15 you can speak to?

16 THE WITNESS: Well, I suspect that the  
17 Commission communicates regularly with other  
18 commissions and staffs in the country. I know  
19 particularly, being part of the -- of different  
20 organizations, that you would, I suspect, in  
21 performing your duties and doing your own due  
22 diligence would have those communications.

23 I assume it's a practice, but I can't speak  
24 to having personal knowledge of that fact.

25 COMMISSIONER ALLEN: If there were

1 differences in the different states' handling of this  
2 existing request for a merger, is there a great  
3 opportunity for harm or unintended consequences? Or  
4 do you think that the Joint Applicants could manage  
5 differences in stipulations and settlements between  
6 states, from your view as where things are at this  
7 point in time?

8 THE WITNESS: Well, we have to remember,  
9 Commissioner Allen, that we still have an FCC process.  
10 And the FCC order may have some applicability across  
11 states, which may mitigate some of your concerns that  
12 you've just identified.

13 But I think that the process can be managed.  
14 There are complexities in any process like this. But  
15 I think they can be managed, and managed quite well.

16 COMMISSIONER ALLEN: Thank you.

17 CHAIRMAN BOYER: Mr. Fenn, the Joint CLECs  
18 have expressed some concern in their testimony that  
19 some of the Qwest processes, the OSS and other  
20 processes might be actually more efficient and more  
21 effective than those currently used by CenturyLink.  
22 And also expressed concerns about the prior Embarq  
23 merger, and so on, and so forth.

24 If we were to approve this transaction should  
25 we be concerned that the Joint Applicants, after --

1 the combined entity might, after the time frames in  
2 the various stipulations and so on expire, that the  
3 joint operators of the combined entity might fix  
4 things that aren't broke?

5 Replace effective systems with less-effective  
6 systems? Should we be concerned about that as  
7 Commissioners?

8 THE WITNESS: Mr. Chairman, I respectfully  
9 don't think you should be concerned about that.  
10 Because I think one of the things we should not lose  
11 sight of here is that it is in the interest of the  
12 Joint Applicants to have their wholesale business  
13 prosper and grow.

14 And we have relationships at Qwest with  
15 CLECs. CenturyLink has relationships with CLECs. And  
16 I think as part of this merger and integration,  
17 this -- we have very capable men and women involved in  
18 this combined company who will be carefully making  
19 decisions going forward. Keeping in mind that one of  
20 the objectives we have is to be profitable.

21 And one of the objectives we have is to serve  
22 our customers. And it just so happens that CLECs,  
23 while they are our competitors, they are also our  
24 customers. And so I think that there isn't a reason  
25 to be concerned that somehow that process will be

1 flawed.

2 CHAIRMAN BOYER: So you think that  
3 self-interest will be sufficient to see that that  
4 happens?

5 THE WITNESS: Well, self-interest as you  
6 define it by seeking a return on your investment and  
7 growing your business, I think that that's correct.

8 CHAIRMAN BOYER: Okay, thank you.

9 Mr. Duarte, any redirect?

10 MR. DUARTE: No, your Honor.

11 CHAIRMAN BOYER: Okay. Thank you, Mr. Fenn,  
12 you are excused.

13 Mr. Williams?

14 We're gonna -- I mean, we're running over a  
15 little bit, but we're gonna get these two witnesses on  
16 before we break. Is that okay with you, Kelly? Okay.  
17 Our reporter is ready, willing, and able to go.

18 Mr. Williams, you're already sworn in this  
19 proceeding?

20 MR. WILLIAMS: Yes.

21 \*\*\*

22 MICHAEL G. WILLIAMS,

23 called as a witness,

24 having previously been duly sworn,

25 was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. DUARTE:

Q. Good morning, Mr. Williams.

A. Good morning.

Q. Please state your full name and business address for the record?

A. My name is Michael Williams. And my business address is 1801 California Street, Denver, Colorado.

Q. Mr. Williams, who do you work for and what is your position?

A. I work for Qwest, and I'm a senior director in public policy.

Q. Mr. Williams, did you previously file rebuttal testimony, and later testify before this commission on October 26, 2010?

A. Yes.

Q. And Mr. Williams, did you recently -- more recently prepare supplemental response testimony that was filed on Tuesday, November 2, 2010?

A. Yes, I did.

Q. Does your supplemental response testimony have any exhibits?

A. Yes, two exhibits. They're labelled MGW-S1 and MGW-S2.

Q. Are any of these two exhibits confidential or

1 highly confidential?

2 A. No.

3 Q. Do you have any confidential or highly-  
4 confidential testimony in your supplemental response  
5 testimony?

6 A. No, I do not.

7 Q. Mr. Williams, do you have any corrections to  
8 make to any of your supplemental response testimony?

9 A. To one of the exhibits. Late last night we  
10 discovered that the exhibit that contains the  
11 transcript pages, we'd gotten the correct pages but we  
12 took them from the wrong date. We took them from the  
13 26th of October, and it should have been from the 27th  
14 because we were referring to Mr. Denney's testimony.

15 And so we replaced those pages with the  
16 correct pages from October 27th.

17 MR. DUARTE: Your Honors, for the record, and  
18 I do have and I will pass out those replacement pages.  
19 And if you want, we can certainly file an errata with  
20 the Commission later this afternoon. But I thought it  
21 would be helpful just to pass out those pages.

22 And for the record, they are from the rough  
23 draft transcript. And as we've mentioned in  
24 Mr. Williams' testimony, the court reporter was  
25 gracious enough to let us use a rough draft, even

1     though obviously it was a quick turned around, and  
2     allowed us to use it for very limited purposes.

3             And the pages that we have, for the record,  
4     are pages 17 and 18, 40 and 41, 57 and 58, and 60 and  
5     61. And it's all regarding either the oral summary of  
6     Mr. Denney or the cross examination of Mr. Denney.  
7     I'll just pass that out now. I'll have Mr. -- my  
8     co-counsel do that for me. Thank you.

9             CHAIRMAN BOYER: I was going volunteer him  
10    for you.

11            MR. DUARTE: Since we are on a tight time  
12    frame.

13            Q.     (By Mr. Duarte) Mr. Williams, with that  
14    correction about the -- your second exhibit, are all  
15    of the answers in your supplemental response testimony  
16    and in your exhibits true and correct, to the best of  
17    your knowledge?

18            A.     Yes, they are.

19            Q.     And finally Mr. Williams, with the correction  
20    you've just discussed, if I were to ask you the same  
21    questions here as those in your supplemental response  
22    testimony would your answers be substantially the  
23    same?

24            A.     Yes.

25            MR. DUARTE: Your Honor, we have marked

1 Mr. Williams' supplemental response testimony as Qwest  
2 Exhibit J -- I'm sorry, not Qwest. It would be JA  
3 Exhibit Sup R3. And it's two exhibits would now be  
4 marked as Exhibits Sup R3.1 and Sup R3.2. And we move  
5 for admission into the evidence in the record those --  
6 that testimony and those two exhibits.

7 CHAIRMAN BOYER: Any objection to the  
8 admission of Mr. Williams' testimony and the exhibits,  
9 including this rough draft of certain pages?

10 MR. MERZ: Yes. The Joint CLECs object to  
11 Mr. Williams' testimony beginning at page 6, line 13,  
12 through the end, and the exhibits cited therein.

13 The basis for our objection is it's beyond  
14 the scope of what was intended to be provided in this  
15 round of testimony. It's not responsive to Mr. Gates,  
16 it's responsive to oral testimony the Commission heard  
17 last week. And so we object on that basis.

18 MR. DUARTE: Your Honor --

19 CHAIRMAN BOYER: Have you anything to say  
20 about that, Mr. Duarte?

21 MR. DUARTE: Yes, I do, your Honor. We need  
22 to be fair here, your Honor. And what's good for the  
23 goose is good for the gander. This simply is not fair  
24 for Mr. Gates and the Joint CLECs to continually make  
25 their arguments, and object when the Joint Applicants

1 call them on it with competent evidence.

2 Now your Honors, Mr. Gates in his  
3 supplemental testimony devotes 10 full pages -- from  
4 pages 71 through 81 -- in which he goes on and on  
5 about that the UPAP is not sufficient to maintain  
6 wholesale service quality post-merger. And why he  
7 believes the DPU settlement is insufficient and  
8 inadequate because it does not contain an APAP  
9 condition. And thus why this Commission should not  
10 adopt -- or should adopt the Joint CLECs' APAP concept  
11 and reject the settlement.

12 Mr. Williams' testimony responds directly to  
13 Mr. Gates' claims starting at the bottom of page 71 of  
14 his supplemental testimony that the APAP, which is  
15 notably absent in the DPU settlement, would help  
16 assure that the merged company maintains full  
17 wholesale service quality at current levels and  
18 creates disincentives for the merged company to  
19 achieve synergies at the expense of competitors.

20 It is Mr. Williams' testimony and contention  
21 that the APAP does not accomplish these goals, and in  
22 fact that the APAP goes far beyond those goals.  
23 Mr. Williams' response is directly to Mr. Gates'  
24 testimony to prove these points, and he provides a  
25 specific calculation that backs this up.

1 I also find it highly ironic, your Honor,  
2 that on the witness stand here last Monday Mr. Denney  
3 apparently felt it was okay to change his APAP, and to  
4 try to come up with what the CLECs now call a  
5 "solution" by recalibrating the APAP on the fly.  
6 Somehow the CLECs believe that this new evidence is  
7 okay.

8 But when Qwest tried to defend itself with  
9 real-world calculations to debunk the APAP and the  
10 unfairness of the attempts to essentially what we  
11 think is slip a fast one by this Commission, somehow  
12 we can't do that.

13 Your Honor, they had a copy of that exhibit  
14 that was stricken from the record last Wednesday.  
15 They've had it now for a week. They've been able to  
16 see it, analyze it, and they can certainly cross  
17 examine Mr. Williams today on that exhibit. And  
18 Mr. Williams is obviously prepared to answer those  
19 questions.

20 Finally, your Honor, the Joint CLECs are  
21 always fond of citing the Minnesota transcript and  
22 that proceeding. I should also note that Mr. Merz  
23 made the same objection just last Monday in Minnesota,  
24 in St. Paul, and the Administrative Law Judge  
25 overruled Mr. Merz's objection.

1           So your Honor, I think that in all fairness  
2 for a complete record this exhibit should be allowed.

3           MR. MERZ: Your Honor, can I be heard?

4           CHAIRMAN BOYER: Please.

5           MR. MERZ: The portion of Mr. Williams'  
6 testimony that I am talking about now has nothing to  
7 do with his spreadsheet, has nothing to do with the  
8 testimony that was offered in Minnesota. It begins on  
9 line 6 -- I'm sorry, page 6, line 13, where he talks  
10 about what Mr. Denney testified to at the hearing.

11           Now, Qwest didn't object to Mr. Denney's  
12 testimony at that time. They could have, and we would  
13 have hashed it out at that time. But I don't think  
14 it's appropriate to be providing responsive testimony  
15 here, because I think it's beyond the scope of what we  
16 intended this round would be about.

17           MR. DUARTE: Mr. -- excuse me, your Honor.  
18 Mr. Gates here is sitting in place of Mr. Denney. He  
19 devotes 10 of his 98 pages of his supplemental  
20 testimony to the APAP concept. Even to the point  
21 where he gets into the HSR documents to make his  
22 points.

23           Again, we feel that those are unfair attacks  
24 about the, you know, the UPAP, and try to bolster the  
25 APAP. And they've opened the door, your Honor. And

1 so it's very fair for Mr. Williams to be able to rebut  
2 those with real-world calculations based on the  
3 numbers that they provided.

4 CHAIRMAN BOYER: Have Counsel had an  
5 opportunity to review these rough draft transcript  
6 pages?

7 MR. MERZ: The ones that were just handed  
8 out?

9 CHAIRMAN BOYER: Just handed out, yeah.

10 MR. MERZ: No.

11 CHAIRMAN BOYER: All right. I'm frankly more  
12 concerned about that than the other.

13 Okay, this is what we're gonna do. We're  
14 going to admit the testimony into evidence, but we're  
15 going to deliberate over how much weight we give them.

16 MR. DUARTE: Sure.

17 CHAIRMAN BOYER: In the interest of fairness.  
18 But we don't have time to sort through page by page,  
19 line by line, at this point in time.

20 (Michael G. Williams Supplemental Response  
21 Testimony and attached exhibits were  
22 admitted.)

23 MR. DUARTE: Thank you, your Honor.

24 Q. (By Mr. Duarte) With that we would ask,  
25 Mr. Williams, do you have a brief summary of your

1 testimony?

2 A. Yes, I do. My supplemental response  
3 testimony addresses Mr. Gates' supplemental testimony  
4 in which he finds fault with the DPU's settlement  
5 because it does not contain the APAP. He argues that  
6 CLECs' Condition 4, which contains the APAP, is  
7 "notably absent."

8 In response I've offered Exhibit MGW-S1,  
9 which is based on real-world data that demonstrates  
10 why the APAP has no place in any settlement discussion  
11 or in any condition associated with the merger because  
12 it would significantly penalize the Company, even when  
13 post-merger performance levels were exactly the same  
14 as pre-merger.

15 As that exhibit shows, based on 2009 data the  
16 APAP would have penalized the Company almost \$390,000,  
17 over seven times what the QPAP was -- charged Qwest  
18 for 2009.

19 And then Mr. Denney's on-stand modification,  
20 just to make it clear that that doesn't solve this  
21 problem and somehow make it appropriate for a  
22 settlement or for a condition. I used the same  
23 analysis and looked at that modification and it would  
24 still have charged a penalty of \$300,000. Even  
25 though, again, there was no difference in post-merger

1 performance and pre-merger performance in that  
2 analysis.

3           So the fundamental problem beyond -- the APAP  
4 goes beyond what the law requires, which is more of a  
5 nondiscrimination requirement, is that it's fatally  
6 flawed in the way it attempts to automatically  
7 penalize merger-related performance degradation,  
8 without any provisions that define, specifically,  
9 performance degradation or even define a merger  
10 connection. Other than the coincidence of time. And  
11 without providing any opportunity to look behind the  
12 data to understand the true causes.

13           So in short, the APAP is a bad plan that is  
14 beyond repair and has no place in any settlement or as  
15 a condition in a merger.

16           MR. DUARTE: Your Honors, I have no further  
17 questions of Mr. Williams and we would tender  
18 Mr. Williams for any cross examination or questions of  
19 the Commissioners.

20           CHAIRMAN BOYER: Mr. Merz, you said you  
21 weren't going to ask questions of this witness?

22           MR. MERZ: I see that I'm out of time so I  
23 will waive my cross examination of Mr. Williams.

24           CHAIRMAN BOYER: Commissioner Allen?  
25 Commissioner Campbell? Okay, I have none either.

1 Thank you, Mr. Williams, you are excused.

2 Mr. Hunsucker?

3 MR. ZARLING: Joint Applicants call Mr. Mike  
4 Hunsucker.

5 CHAIRMAN BOYER: Mr. Merz, we will give you a  
6 couple of minutes to cross examine Mr. Hunsucker.

7 MR. MERZ: Thank you.

8 CHAIRMAN BOYER: -- as you originally  
9 indicated.

10 Mr. Hunsucker, you're still under oath from  
11 the prior hearing.

12 MR. HUNSUCKER: Okay.

13 MICHAEL R. HUNSUCKER,

14 called as a witness,

15 having previously been duly sworn,

16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. ZARLING:

19 Q. Morning Mr. Hunsucker. Would you state your  
20 full name and business address for the record, please?

21 A. It's Michael Hunsucker, 5454 West  
22 110th Street, Overland Park, Kansas 66211.

23 Q. And how are you employed and what is your  
24 position?

25 A. Director of CLEC management. I'm employed by

1 CenturyLink.

2 Q. Okay. Did you cause to be filed in this  
3 proceeding on November 2nd supplemental response  
4 testimony?

5 A. Yes, I did.

6 Q. Okay. And does that supplemental response  
7 testimony have any exhibits to it?

8 A. No, I believe it does not.

9 Q. Actually, I think if you check you'll find  
10 that you do have.

11 A. I do? Okay. Well, I don't have the exhibits  
12 in front of me, but okay, it does.

13 Q. Okay. And do you recall HSR documents  
14 perhaps being attached?

15 A. Yes, that's correct.

16 Q. Okay. Now, are those exhibits confidential  
17 or highly confidential?

18 A. Yes.

19 Q. Okay. Do you happen to recall how many  
20 exhibits you had?

21 A. No.

22 Q. Okay. I'll provide the court reporter with  
23 the information. There were three exhibits to your  
24 testimony. And let me ask, as to your supplemental  
25 response testimony do you -- are there any highly-

1 confidential portions of your supplemental response  
2 testimony?

3 A. Yes, there is some highly-confidential  
4 portions.

5 Q. Now, as to your supplemental response  
6 testimony and highly-confidential exhibits, were those  
7 prepared by you or at your direction?

8 A. Yes, they were.

9 Q. And do you have any changes to your  
10 supplemental response testimony?

11 A. No, I do not.

12 Q. And if I asked you the same questions that  
13 are in your supplemental response testimony today  
14 would your answers be substantially the same?

15 A. Yes, they would.

16 Q. And are those answers true and correct, to  
17 the best of your knowledge and belief?

18 A. Yes.

19 Q. Okay. With that, your Honors, we would move  
20 for admission of what we've marked as JA Exhibit HC  
21 Sup R2. That's the highly confidential supplemental  
22 response testimony of Michael R. Hunsucker. And he  
23 does have three exhibits, which have been marked  
24 Exhibit HC Sup R2.1 through R2.3.

25 CHAIRMAN BOYER: Thank you. Any objection to

1 the admission of Mr. Hunsucker's testimony together  
2 with the exhibits?

3 MR. MERZ: No objections.

4 CHAIRMAN BOYER: They are admitted.

5 (Michael Hunsucker Highly Confidential  
6 Supplemental Response Testimony and attached  
7 exhibits were admitted.)

8 Q. (By Mr. Zarling) And Mr. Hunsucker, do you  
9 have a brief summary of your supplemental response  
10 testimony?

11 A. Yes, I do.

12 Q. Would you present that, please?

13 A. Sure. Good morning Commissioners. In my  
14 supplemental response testimony I responded to the  
15 Joint CLEC supplemental testimony of Mr. Gates. As  
16 Mr. Fenn has already stated, the proposed merger is in  
17 the public interest, and therefore CenturyLink  
18 believes that no wholesale conditions are warranted.

19 However, CenturyLink values its relationships  
20 with CLECs here in Utah and across the country. And  
21 in an effort to provide the certainty to Joint CLECs  
22 the Company has agreed to certain wholesale conditions  
23 with the Division of Public Utilities.

24 The Joint CLECs have stated that the  
25 settlement is unsatisfactory and insufficient, and we

1 strongly disagree with that characterization. I'm not  
2 gonna take the time to go through the seven areas, but  
3 there were seven key areas where we made commitments  
4 as part of the settlement with the DPU.

5 In addition, I have provided examples in my  
6 testimony where Mr. Gates has misconstrued statements  
7 in the HSR documents in an effort to create the  
8 impression of possible harm by characterizing such  
9 harm as a logical conclusion of the statements in the  
10 HSR documents.

11 While one may attempt to draw logical  
12 conclusions from the documents, Mr. Gates would have  
13 the Commission believe that he knows more about  
14 CenturyLink's intent of the statements that are  
15 compared in there than the Company knows about the  
16 intent of the documents, and we were the author of  
17 those documents.

18 I pointed to several examples in my testimony  
19 where Mr. Gates has jumped to unsupportable  
20 conclusions and where I explain the true intent behind  
21 the documents.

22 In summary, the merger is in the public  
23 interest. And CenturyLink stands ready, willing, and  
24 able to live up to the conditions in the settlement  
25 agreement with the Department of Public Utilities.

1 That concludes my summary.

2 MR. ZARLING: And Mr. Hunsucker is available  
3 for cross.

4 CHAIRMAN BOYER: Thank you, Mr. Hunsucker.  
5 Mr. Merz, briefly?

6 MR. MERZ: Very briefly.

7 CROSS EXAMINATION

8 BY MR. MERZ:

9 Q. Mr. Hunsucker, if you would refer to your  
10 supplemental testimony at page 7?

11 A. Okay.

12 Q. And I'm looking at line 12, where you talk  
13 about this situation in North Carolina. And we had  
14 some discussion about that when we last met; correct?

15 A. Don't think you had any discussion with me, I  
16 think you had some discussion with Mr. Ferkin.

17 Q. In all events, you recall that there was some  
18 testimony at the last hearing on this subject?

19 A. Yes.

20 Q. And you are aware that this North Carolina  
21 situation is something that arose in June,  
22 thereabouts?

23 A. That's the way I remember it, yes. That's  
24 correct.

25 Q. And you are aware that it's not yet been

1 fully remedied, correct?

2 A. It's my understanding that the majority of  
3 that has been remedied. And actually, when you look  
4 at our current results year over year, that we've  
5 actually shown improvement --

6 Q. And my question --

7 A. -- in North Carolina.

8 Q. -- is different. You are aware that that  
9 situation has not been fully remedied? All of the  
10 devices that the records were loaded improperly, all  
11 of those devices have not been fixed, correct?

12 A. I'm not sure I know what you mean by  
13 "devices." But I personally have no knowledge if  
14 every situation has been fixed, but what I do know is  
15 that service has improved.

16 Q. Okay. And you are also aware that there was  
17 an issue that arose when CenturyLink converted its  
18 billing and operational systems in Tennessee,  
19 Virginia, New Jersey, and Nevada, correct?

20 A. I'm not aware what you're referring to there.

21 MR. MERZ: Your Honor, I have a document I'd  
22 like to mark.

23 CHAIRMAN BOYER: Let's mark this one as Joint  
24 CLECs November 4th Exhibit 2.

25 Q. (By Mr. Merz) Mr. Hunsucker, do you have in

1 front of you the document that we've marked as Joint  
2 CLECs November 4th Exhibit 2?

3 A. Yes.

4 Q. And I'll represent to you that this is a  
5 supplemental discovery response provided by  
6 CenturyLink in Oregon. Does it look like that's what  
7 this is?

8 A. That's the heading on the top of the page,  
9 correct.

10 Q. And I will, for your counsel's benefit and  
11 the Commission's benefit, let you know that the reason  
12 I'm using this Oregon response is I don't believe that  
13 there's been a supplemental response provided in Utah.

14 But in all events, can you confirm that this  
15 is, in fact, an accurate -- well, let me refer you to  
16 this second supplemental response, the date is dated  
17 October 28th?

18 A. Okay, I see that.

19 Q. You would not have any basis to dispute what  
20 Mr. Felz has set forth there with respect to the  
21 information regarding the North Carolina, Tennessee,  
22 Virginia, New Jersey, and Nevada situations, would  
23 you?

24 A. I would have no reason to dispute. This is  
25 the first time I've seen this document, so I have no

1 ability to agree or dis -- or dispute it. I would  
2 assume it's correct.

3 Q. Mr. Felz is a person who would be in a  
4 position to know this information, correct?

5 A. Yes. I mean, he is the sponsor of this  
6 interrogatory, so that would be an accurate  
7 representation.

8 MR. MERZ: Your Honor, the Joint CLECs offer  
9 Joint CLECs November 4th Exhibit 2.

10 CHAIRMAN BOYER: Any objection, Mr. Zarling?

11 MR. ZARLING: I'm gonna object. Mr. Felz is  
12 not a witness here. And although Mr. Hunsucker says  
13 he may be an individual that would be responsible  
14 here, he's not a witness. He's not sworn.

15 I don't know under what conditions these data  
16 requests were provided in Oregon -- the data request  
17 responses, so I don't think there's really a  
18 foundation for introducing this particular response.

19 MR. MERZ: Well, and this same response has  
20 been provided in a number of jurisdictions. I have no  
21 idea why it hasn't been provided in Utah. The  
22 information would be the same in every state.

23 MR. DUARTE: Your Honor, I think we've been a  
24 little bit busy since October 28th. I mean, that was  
25 the day after the hearing, so. And, you know,

1 preparing testimony. So I don't know what aspersions  
2 he's trying to cast, but I think that would be my  
3 response.

4 MR. MERZ: I'm not casting any aspersions.  
5 I'm just saying that we received this in at least  
6 three different jurisdictions.

7 CHAIRMAN BOYER: Well, I don't think we have  
8 a proper foundation for it, but we'll let it in and  
9 give it appropriate weight. So it is admitted.

10 (Joint CLECs November 4 Exhibit 2 was  
11 admitted.)

12 Q. (By Mr. Merz) In your supplemental testimony  
13 at lines 7 -- I'm sorry, page 17, line 20? You say  
14 that Mr. Gates -- I'm sorry line 18. You say that  
15 Mr. Gates offers no evidence of why elimination of  
16 duplicative functions would have an impact, correct?

17 A. Correct.

18 Q. Qwest and CenturyLink have their own ICA  
19 negotiations teams; is that right?

20 A. That's correct.

21 Q. Those are duplicative functions, correct?

22 A. They are duplicative to the extent that we  
23 would be negotiating with the same set of carriers,  
24 yes.

25 Q. Qwest and CenturyLink both have regional

1 centers that serve CLECs, correct?

2 A. That's correct.

3 Q. Those would be duplicative functions,  
4 correct?

5 A. They would be duplicative in some instances,  
6 yes.

7 Q. And Qwest and CenturyLink each have their own  
8 OSS?

9 A. Correct.

10 Q. And it is the Company's desire to get -- to  
11 have only one OSS ultimately, correct?

12 A. The Company desires to move to one OSS for  
13 our CLEC customers, that would be a correct statement.

14 MR. MERZ: I have nothing further. Thank  
15 you, sir.

16 And I appreciate the Commission's allowing me  
17 to have an additional bit of time.

18 COMMISSIONER BOYER: Thank you,  
19 Mr. Hunsucker.

20 Questions, Commissioner Allen? Me neither.  
21 Any redirect, Mr. Zarling?

22 MR. ZARLING: None, thank you.

23 CHAIRMAN BOYER: Okay. Thank you,  
24 Mr. Hunsucker, you are excused.

25 We'll take a ten-minute recess and then we'll

1 hear from Mr. Gates.

2 MR. DUARTE: Your Honor, I won't have the  
3 entire allotted 70 minutes, so if you want to take  
4 15 minutes that would be fine with us.

5 CHAIRMAN BOYER: Okay, very well.

6 MR. DUARTE: We'll still be finished before  
7 noon.

8 CHAIRMAN BOYER: Let's take 15 minutes.

9 (A recess was taken from 10:53 to 11:09 a.m.)

10 CHAIRMAN BOYER: Okay, we are back on the  
11 record. And we're gonna hear now from Mr. Gates.

12 MR. MERZ: Yes. Joint CLECs would call  
13 Timothy Gates to the stand.

14 CHAIRMAN BOYER: Mr. Gates, you're still  
15 under oath.

16 MR. GATES: Yes, thank you.

17 CHAIRMAN BOYER: You may proceed, Mr. Merz.

18 TIMOTHY GATES,

19 called as a witness,

20 having previously been duly sworn,

21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. MERZ:

24 Q. Sir, you are the Timothy Gates that has --

25 (The reporter asked Counsel to speak up.)

1 Q. (By Mr. Merz) Mr. Gates, you're the Timothy  
2 Gates that has previously appeared in this proceeding;  
3 is that right?

4 A. Yes, I am.

5 Q. And you prepared supplemental testimony  
6 that's been filed in this proceeding, correct?

7 A. Correct.

8 Q. That testimony has been marked as Exhibit  
9 Joint CLECs-2SP; is that correct?

10 A. Yes.

11 Q. And that includes as exhibits, Exhibit Joint  
12 CLECs-2SP.1 through Exhibit Joint CLECs-2SP.4; is that  
13 correct?

14 A. Yes.

15 Q. And there are both public and confidential  
16 versions of that testimony; is that correct?

17 A. That's correct.

18 Q. Do you have any corrections to your  
19 testimony?

20 A. No, I do not.

21 Q. Is the information contained in your  
22 testimony true and accurate, to the best of your  
23 knowledge?

24 A. Yes, it is.

25 MR. MERZ: Your Honor, the Joint CLECs offer

1 Exhibit Joint CLECs 2SP, and 2SP.1 through 2SP.4.

2 CHAIRMAN BOYER: Thank you. Are there any  
3 objections to the admission of Mr. Gates' testimony,  
4 together with exhibits?

5 (Multiple parties respond in the negative.)

6 CHAIRMAN BOYER: Okay, it is admitted then.

7 (Timothy Gates Supplemental Testimony and  
8 attached exhibits were admitted.)

9 Q. (By Mr. Merz) Mr. Gates, have you prepared a  
10 brief summary of your testimony today?

11 A. Yes, I have.

12 Q. Would you please provide that now?

13 A. Yes, thank you. Good morning.

14 CHAIRMAN BOYER: Good morning.

15 THE WITNESS: My testimony shows that the  
16 proposed settlement between the Division and the Joint  
17 Applicants is not in the public interest. The  
18 settlement does not address all of the potential harms  
19 that could come from the merger.

20 And what few conditions are included are  
21 woefully inadequate. And do not protect, let alone  
22 maintain, the public interest. The settlement does  
23 not also maintain the status quo, or provide the  
24 certainty that competitive carriers and their  
25 customers need in the marketplace.

1 My testimony shows the problems with the  
2 various sections in the settlement agreement and  
3 provides information from hearings in Minnesota on  
4 those very same provisions. And I also recommend ways  
5 to resolve those problems in my testimony.

6 There's no point to a semantic argument about  
7 status quo. To the Joint Applicants' customers, the  
8 CLECs, the status quo is simply the ability to have  
9 the same services at the same prices and the same  
10 service quality and systems as they have today with  
11 Qwest.

12 That's what the proposed conditions are meant  
13 to accomplish. And your Honors, more than a third of  
14 the proposed conditions simply require the Joint  
15 Applicants to abide by existing laws, rules, and  
16 regulations.

17 But the Applicants claim that the Joint CLECs  
18 are trying to change the status quo. That is not  
19 true. They begin those statements with comments like,  
20 Absent this merger. Or, If we take this merger out of  
21 the equation. Then they continue, The companies would  
22 remain subject to the same regulatory obligations and  
23 laws as today.

24 I completely agree with that, but we can't  
25 take this merger out of the equation. The one thing

1 in this proceeding that affects the status quo is this  
2 merger. The proposed conditions are meant to provide  
3 stability and continuity in the face of the  
4 integration period where all these changes are gonna  
5 take place over the next few years.

6 The Joint CLECs are seeking a period of  
7 stability and certainty in the availability, quality,  
8 and provision of wholesale services. And they depend  
9 on those services to provide these competitive  
10 services in Utah.

11 Finally, my testimony addresses the HSR  
12 documents. And I have them here, they will be in the  
13 record. And these documents support the CLEC  
14 conditions and show that the conditions are absolutely  
15 necessary. They provide insights into the impacts on  
16 the wholesale segment of the merged company, on their  
17 operations, on the intentions of the merged company.

18 And there are statements in there about head  
19 count, revenues, OSS, integration planning, customer  
20 retention, and strategic focus in these HSR documents.  
21 And all of those comments and statements support the  
22 CLECs' conditions.

23 Unfortunately, but not surprisingly, this  
24 proposed settlement does not solve all of those  
25 problems. And that concludes my summary. Thank you.

1 MR. MERZ: Thank you, Mr. Gates.

2 The witness is now available for questioning.

3 CHAIRMAN BOYER: Okay. Thank you, Mr. Gates.

4 Which of you will be conducting the cross  
5 examination?

6 MR. DUARTE: Well, I will for the Joint  
7 Applicants, but Ms. Schmid will go first.

8 CHAIRMAN BOYER: Okay. Ms. Schmid?

9 MS. SCHMID: I have very few questions, in  
10 light of the time.

11 CROSS EXAMINATION

12 BY MS. SCHMID:

13 Q. Good morning.

14 A. Good morning.

15 Q. By whom are you hired to give testimony in  
16 this proceeding?

17 A. By the Joint CLECs.

18 Q. Do you know that the Division has broader  
19 responsibilities than just to CLECs, but has  
20 responsibilities to retail customers and others as  
21 well?

22 A. Absolutely.

23 Q. Do you know if broadband is under the  
24 jurisdiction of the Utah Commission?

25 A. I don't believe it is.

1 Q. Thank you. So then you would agree with me  
2 that the Utah Commission, on its own, could not just  
3 order -- absent an agreement could not just order  
4 Qwest/CenturyLink to invest in broadband in Utah?

5 A. I think that would require a legal conclusion  
6 on my part. But from a lay perspective, I would  
7 agree. The point of our testimony is simply that the  
8 agreement is woefully inadequate and falls short of  
9 what they would do in any case.

10 Q. But you don't work for Qwest or CenturyLink  
11 so you don't know exactly what their plans in the  
12 future would be; is that correct?

13 A. I don't know exactly. That's why we've had  
14 to depend on discovery in these HSR documents to try  
15 to understand. We've certainly asked, and asked, and  
16 asked. And we're always -- we always get the same  
17 response: We haven't made those decisions yet. We  
18 don't know. I don't have a crystal ball.

19 Those sorts of answers. So we're all kind of  
20 in the dark. And that's why conditions are absolutely  
21 necessary to protect against the disasters we've seen  
22 in the Northeast with FairPoint, and Hawaiian Tell,  
23 and Frontier, et cetera, et cetera.

24 Q. Does a settlement between the DPU and the  
25 Joint Applicants prohibit a settlement with the CLECs

1 and the Joint Applicants?

2 A. Again, that might require a legal  
3 distinction, but I don't think it would. Although I  
4 think the DPU settlement prohibits further  
5 negotiations of the parties.

6 For instance, when I saw the settlement I  
7 thought, Okay, this might be a good starting point,  
8 you know, to get in there and provide some input had  
9 the Division asked CLECs to be involved. But the  
10 agreement, as written, prohibits that.

11 Q. But the agreement does not prohibit the Joint  
12 Applicants and the CLECs from continuing to talk, does  
13 it?

14 A. It doesn't prohibit it. But what it does,  
15 your Honors, is it puts a thumb on the scale. It  
16 changes the negotiation metrics. It takes away  
17 incentives to negotiate with the CLECs. And our  
18 concerns about the settlement is that it's just --  
19 it's terribly inefficient. It's very vague.

20 And I think we heard this morning, I'm not  
21 sure the Division understands completely what it's  
22 even meant to accomplish. So trying to enforce  
23 something like that is going to be difficult at best.

24 MS. SCHMID: I think that his answer is going  
25 far beyond the scope of the question.

1 CHAIRMAN BOYER: Well, it does seem  
2 responsive to me.

3 MS. SCHMID: Those are all my questions.

4 CHAIRMAN BOYER: Thank you.

5 Mr. Duarte?

6 MR. DUARTE: Yes, your Honor.

7 CROSS EXAMINATION

8 BY MR. DUARTE:

9 Q. Morning, Mr. Gates.

10 A. Good morning.

11 Q. Sir, you personally have not been involved in  
12 the settlement negotiations between the Joint  
13 Applicants and the Joint CLECs on behalf of your  
14 clients; is that correct?

15 A. I have not been involved personally, no.

16 Q. Would you agree with me that there have been  
17 numerous formal settlement conferences in various  
18 states between the Joint Applicants and the companies  
19 that are known as the Joint CLECs, correct?

20 A. I understand there have been meetings that  
21 have been overseen by commissions, and some informal  
22 ones as well.

23 Q. And sir, you do understand that in Oregon,  
24 for example, that there have been at least five formal  
25 settlement conferences?

1 A. I don't know that.

2 Q. Have you heard that?

3 A. I'm not sure. I know there have been  
4 settlement conferences, I'm not aware of the number.

5 Q. And have you heard whether the settlement  
6 conferences, for example, started as early as August,  
7 this past summer?

8 A. I don't have a time frame in mind for those.

9 Q. You haven't heard anything like that at all?

10 A. No, I'm not aware of the dates for those  
11 conferences.

12 Q. And you would agree with me that so far there  
13 have been no settlements as a result of those  
14 settlement conferences that have been moderated by the  
15 various commission staffs; is that correct?

16 A. You mean a physical -- I mean actual  
17 settlements that have derived from those?

18 Q. Yes, sir.

19 A. I'm not aware of any.

20 Q. Okay. And you agree with me that, without  
21 naming names, the Joint Applicants have met  
22 face-to-face with some of your CLEC clients  
23 individually to negotiate settlement issues?

24 A. I don't know that.

25 Q. Well, have you heard that from your

1 discussions with your clients?

2 A. I'm aware that there have been discussions in  
3 hallways, and back offices, and meetings, airports.

4 I, I don't know.

5 Q. Okay. Again, sir, without naming names, you  
6 have heard that there's been individual, face-to-face  
7 meetings that have taken place at some of your  
8 clients' headquarters; isn't that correct?

9 A. I've heard testimony to that effect, that  
10 there were some meetings where people dropped in and  
11 had discussions.

12 Q. And in fact you've heard discussions from  
13 various sources that some of these sessions have  
14 actually been multiple-day settlement meetings at  
15 company headquarters; is that correct?

16 A. I don't know that.

17 Q. You may not know that, but have you heard  
18 that from any of your clients, in all of your  
19 discussions here in your various activities on this  
20 merger?

21 A. No, I have never heard of multiple-day  
22 settlement meetings. Not that that would surprise me,  
23 I just haven't heard that.

24 Q. Okay. And you wouldn't be surprised if  
25 discussions are ongoing even as of today, for example?

1           A.    What I've found is that settlement  
2 negotiations occur with or without good faith  
3 intentions to settle because it looks like the right  
4 thing to do.

5           And as I mentioned before, by having these  
6 agreements in Iowa, Minnesota, and Utah, that it puts  
7 the finger on the scale and takes away incentives for  
8 the Joint Applicants to be more reasonable in their  
9 conditions.

10          Q.    And sir, you would agree with me, then, that  
11 the Joint Applicants have actually settled with at  
12 least some CLECs, correct?

13          A.    Yes.

14          Q.    And, for example, they've settled with the  
15 CLECs in Iowa?

16          A.    Some of the CLECs that were involved in that  
17 case.

18          Q.    Certainly. And you agree with me that the  
19 Iowa Utilities Board recently approved that settlement  
20 and approved the merger application; is that correct?

21          A.    I don't know that.

22          Q.    You don't know, okay. And you agree with me  
23 that the CLEC known as 360networks settled with the  
24 Joint Applicants throughout the entire Qwest ILEC  
25 region; is that correct?

1 A. Yes, I've heard that.

2 Q. And 360 was one of the so-called "Joint  
3 CLECs"?

4 A. I'm not certain it was.

5 Q. So you don't know what companies you have  
6 represented in the past?

7 A. Let me -- well, there's a list. And -- are  
8 you talking specifically about Iowa?

9 Q. I'm talking about 360.

10 A. I know. In which case?

11 Q. 360 throughout the Qwest ILEC region was my  
12 question.

13 A. Oh. Well, that -- then I guess that's a good  
14 question, because the way this is done not all CLECs  
15 have operations in every state. So some of our  
16 clients are involved in some states and not others.  
17 Charter, for instance, was involved in four. Integra  
18 was involved in, I think six or seven. PAETEC in two  
19 or three.

20 So I'm not --

21 Q. Who's --

22 A. -- sure which states 360 was involved in.

23 Q. Okay. I'm not trying to make this  
24 complicated, sir. All I'm asking is for you to agree  
25 with me that 360 has been denominated as at least one

1 of the Joint CLECs that you've represented, not  
2 necessarily in Utah, but throughout your work on this  
3 merger; is that correct?

4 A. And that's what I'm saying, I'm not certain  
5 without looking at my Iowa testimony.

6 Q. Okay. But 360 actually intervened in more  
7 than just Iowa; is that correct?

8 A. I'm not certain.

9 Q. So you just don't know if you ever  
10 represented 360 as part of your Joint CLEC activity?

11 A. That's right.

12 Q. Okay.

13 A. And if -- because they settled, you know,  
14 relatively quickly in Iowa, I'm not certain if they  
15 were on that piece of testimony or not.

16 Q. Not to beat a dead horse here, but they  
17 settled more than just Iowa, right? They settled  
18 throughout the Qwest region? I just want to make --  
19 the record to be clear.

20 A. Oh, 360?

21 Q. Yes.

22 A. Yes. They had very limited concerns and  
23 settled nationally, if you will.

24 Q. Okay. Now sir, at page 6 of your  
25 supplemental testimony you opined that the DPU may

1 have reached a settlement because it did not want to  
2 file rebuttal. Do you remember that testimony?

3 A. On page 6, where I say it's likely that  
4 negotiating a settlement at the same time as  
5 developing testimony may have been a pressing issue  
6 for the Division, like it apparently was for  
7 Minnesota? Yes, that's my testimony.

8 Q. Okay. And you read Mr. Powlick's testimony  
9 that he was offended by such a suggestion and that  
10 such a suggestion is insulting. Did you read that?

11 A. I read some -- I read those comments in his  
12 testimony. But then again, had we had the hearings  
13 last week when we were here we would have had  
14 information, perhaps, about that settlement process  
15 that we could have addressed.

16 I think it's interesting that both in  
17 Minnesota and in Utah the parties reached agreement on  
18 the very day that testimony was due. On the very same  
19 terms and conditions. And so we just don't know.

20 Q. So --

21 A. And we weren't allowed to ask any questions,  
22 so we just don't know.

23 Q. So now that you've heard from Mr. Powlick you  
24 would agree with me that you don't have any evidence  
25 to support that claim, correct?

1 A. I think we don't know.

2 Q. My question is, do you have any evidence to  
3 support that, sir.

4 A. Well, I said "may." May have been a pressing  
5 issue. Knowing how busy the Commission staffs are,  
6 having to file testimony and review all this record is  
7 pressing. I don't know if that had any impact on  
8 their willingness to settle with the Joint Applicants  
9 or not.

10 Q. And that's why, sir, I'm asking you the  
11 question that you don't have any evidence to support  
12 that supposition; is that correct?

13 A. That's right. I don't think there's  
14 anything -- that's correct.

15 Q. Okay, thank you. At page 8 of your  
16 supplemental you state that you expect the Joint  
17 Applicants were telling the DPU that the Joint CLECs  
18 were being difficult. Do you recall that testimony?

19 A. Yes, I see that at the bottom on page 9.

20 Q. And Mr. Powlick has testified that was not  
21 the case; is that correct?

22 A. I believe that's true. Although -- and  
23 again, I don't know. I wasn't there.

24 Q. Okay.

25 A. But I saw that testimony, yes.

1 Q. And you don't have any reason to doubt  
2 Mr. Powlick telling the truth?

3 A. No. I don't, I don't think he addressed  
4 specifically what I was addressing here. But, you  
5 know, I accept his comments for what they are. That  
6 gentleman was there, and Dr. Powlick should know what  
7 occurred.

8 Q. So your comment about that you suspect that  
9 they were -- you expect that the Applicants were  
10 telling the DPU that the CLECs were being difficult  
11 was based on your just pure speculation; is that  
12 correct?

13 A. It's not based on speculation at all, its  
14 based on the record in Minnesota.

15 Q. But we're not in Minnesota, are we, sir?

16 A. No, we're not. But we have the almost exact  
17 same settlement agreement in Utah as we had in  
18 Minnesota, which was based on Iowa, which was -- I  
19 mean, I see the strain here. If you take those two  
20 documents and put them next to each other, they're  
21 almost identical.

22 Q. So that's sufficient for you to then  
23 speculate that that is exactly what happened, that the  
24 Joint Applicants told the DPU the CLECs were being  
25 difficult; is that correct?

1           A.    I did not say that's exactly what happened.  
2    I was making the suggestion that that may have  
3    happened because that is what happened in other  
4    states.

5           Q.    Okay.  But you don't have any evidence that  
6    that did happen in fact?

7           A.    No.  No, I don't.

8           Q.    The evidence is contrary, correct?

9           A.    No.  We didn't have the hearing last week, so  
10   we weren't able to get involved in that.  And also  
11   today we weren't allowed to do any cross on the  
12   negotiation, so we have no way to prove that up.

13          Q.    Well, I think we can disagree as to whether  
14   you were allowed.  I think there was a time  
15   constraint, but that was of your own doing.

16                    But sir, will you agree with me then that, at  
17   least as to the DPU's concerns, that they have been  
18   met, based on the testimony of Mr. Coleman and  
19   Mr. Powlick, that their concerns that they raised in  
20   their rebuttal testimony and surrebuttal testimony --  
21   or the rebuttal testimony have been met through this  
22   settlement, correct?

23          A.    Well, of course.  I mean, they -- that's why  
24   they signed off on it.  But that doesn't mean the  
25   settlement is in the public interest --

1 Q. That was not my question, sir.

2 A. -- or actually takes care of the concerns --

3 MR. DUARTE: Your Honor.

4 THE WITNESS: -- raised by other parties.

5 CHAIRMAN BOYER: Yeah, I think --

6 MR. DUARTE: It's getting to the point

7 where --

8 CHAIRMAN BOYER: -- we understand where  
9 you're going, Mr. Gates. But if you would just  
10 confine your answers to the question asked, it would  
11 be very helpful. Mr. Merz will have an opportunity to  
12 redirect.

13 MR. DUARTE: Thank you, your Honor.

14 Q. (By Mr. Duarte) Now, you discuss quite a bit  
15 the fact that there are many similarities between the  
16 Minnesota DOC settlement and the Utah settlement. But  
17 you don't have any evidence to show that the DPU  
18 simply rubber-stamped the Minnesota DOC settlement,  
19 correct?

20 A. I don't know what you mean by "rubber-  
21 stamped," but the language is almost identical. Right  
22 down to the numbering of the paragraphs, the  
23 punctuation, the verbiage. Other than the few nuances  
24 I mention in my testimony, it's almost identical.

25 So to suggest that the DPU and the Joint

1 Applicants came up with this out of whole cloth and  
2 just kind of -- amazingly it became exactly the same,  
3 almost exactly the same as Minnesota? No, I don't, I  
4 don't accept that.

5 Q. But you accept the fact that the issues are  
6 very similar that have been raised by testimony that,  
7 in fact, has been copied and pasted throughout the  
8 ILEC region. And, therefore, that those concerns that  
9 were addressed in Minnesota were the kind of concerns  
10 that the DPU would be concerned about, correct?

11 A. Yes, that's correct.

12 Q. And in fact, just to be fair, we don't have  
13 an exhibit which is the actual Utah settlement before  
14 you, so -- I think Ms. Schmid was gonna go ahead and  
15 mark that.

16 I do have a signed copy. And I thought that,  
17 just for fairness and for a complete record, and to  
18 avoid Ms. Schmid having to file it supplemental later  
19 on, we'll just go ahead and pass it out. Just so that  
20 you have -- everybody has the actual settlement. It  
21 has been filed with the Commission but has not been  
22 admitted into the testimony.

23 MS. SCHMID: And so while he's doing that, I  
24 had prepared an exhibit of the stipulation. However,  
25 that can be ignored and this used in its stead,

1 please. And that's what you will find on your desks  
2 in front of you.

3 (Pause.)

4 CHAIRMAN BOYER: What would you like to call  
5 this, Mr. Duarte?

6 MR. DUARTE: We will call this Joint  
7 Applicants November 4 Exhibit 1.

8 Q. (By Mr. Duarte) Now sir, you've reviewed  
9 both the Minnesota settlement and the Utah settlement,  
10 correct?

11 A. Yes.

12 Q. And you agree with me that there's evidence  
13 that the DPU negotiated changes to the settlement  
14 agreement in the DPU settlement from the Minnesota  
15 settlement?

16 A. Yes, there are some differences.

17 Q. Now, at page 9 of your supplemental testimony  
18 you say that -- you argue that the Iowa agreement  
19 states that it cannot be cited as in evidence in other  
20 proceedings; is that correct?

21 A. Yes.

22 Q. Now, without getting into a debate as to what  
23 that really means, you do agree with me that DPU has  
24 itself has never cited the Iowa settlement as  
25 supportive of its settlement here in Utah, correct?

1           A.    I, I believe that's true.  Although we have,  
2           in the testimony, awareness of the Iowa settlement.

3           Q.    My question wasn't about awareness.  My  
4           question, sir, if you could just follow my question,  
5           is you agree with me that the DPU has never cited the  
6           Iowa settlement as supportive of its settlement here  
7           in Utah?

8           A.    That's true.  And I don't think they cited  
9           the Minnesota settlement either.  That doesn't change  
10          the fact.

11          Q.    Sir, let's talk for a little bit about  
12          broadband.  Now, you agree with Mr. Coleman that the  
13          DPU needs to balance the interest of both the Joint  
14          CLECs and the Joint Applicants, correct?

15          A.    Well, I certainly don't disagree with his  
16          understanding of their mission, so.  I believe they  
17          have an important balancing act, yes.

18          Q.    So if you don't disagree, can we say that  
19          then you agree?

20          A.    Well, your statement was general.  I don't  
21          disagree with his understanding of their duty to the  
22          state.

23          Q.    Okay.  Well, you agree with me that the DPU  
24          is the keeper of the public interest here in Utah,  
25          correct?

1 A. Yes.

2 Q. Okay. They don't have any economic  
3 self-interest here, do they?

4 A. No.

5 Q. But you agree that the CLECs have their own  
6 economic self-interest; wouldn't you agree with that?

7 A. Yes, all the parties would have a private  
8 interest.

9 Q. Now, you agree with Mr. Coleman at pages 4  
10 and 5 of his testimony that because the broadband  
11 market in Utah is competitive, Qwest, without  
12 Commission-ordered commitments to invest, has spent  
13 significant amounts to remain a viable broadband  
14 competitor, correct?

15 A. I do agree with him, and that's what  
16 contradicts the validity of the settlement.

17 Q. Okay. Well, you agree with me, sir, that  
18 absent a commitment or a condition in this merger  
19 proceeding Qwest is not obligated to make any  
20 particular broadband investment, correct?

21 A. It's not obligated to. But as Mr. Coleman  
22 stated -- and I agree with him completely -- it must  
23 make those investments, investments to survive, I  
24 think is the --

25 Q. Sir, I think we can agree -- I'm sorry, I

1 didn't mean to interrupt.

2 A. If I could finish? So those investments are  
3 going to occur, and I believe at a much higher level  
4 than what the Division has agreed to.

5 MR. DUARTE: Your Honor, he's doing it again.  
6 I asked him to agree that Qwest is not obligated. We  
7 all can agree that Qwest needs to do that to be --  
8 remain economically viable in the competitive  
9 marketplace.

10 But my question to him was, is Qwest  
11 obligated. And instead of answering my question he  
12 has to then give his own speech. And I just object to  
13 that kind of -- he did it last week, and I just -- at  
14 this point I think it's not appropriate.

15 CHAIRMAN BOYER: Mr. Duarte has a good point  
16 here. If you could just restrict yourself to the  
17 question asked.

18 And then, just as a way of editorial comment  
19 from myself. We understand you are a vigorous  
20 advocate and so on. But it actually, from a finder of  
21 fact perspective, it actually diminishes credibility  
22 when one continues to editorialize farther. At least  
23 in my humble opinion.

24 Mr. Duarte?

25 MR. DUARTE: Yes, sir. Thank you, your

1 Honor.

2 Q. (By Mr. Duarte) And the Commission cannot  
3 force or compel Qwest to make any particular broadband  
4 investment, correct?

5 A. That's a legal issue, but that's my  
6 understanding generally.

7 Q. And the Commission can't force or compel  
8 Qwest to make any particular -- to expend any  
9 particular amount; is that correct?

10 A. Yeah, I think my answer would be the same.

11 Q. Or to invest in unserved or unserved (sic)  
12 areas; is that correct?

13 A. Yes. Those are all subparts of the same  
14 question.

15 Q. Sir, let's talk a little bit about copper  
16 retirement. You made a comment on page 30, lines 3  
17 and 5 of your testimony. And you say that:

18 "At the same time, there is nothing  
19 to prevent the merged company from  
20 continuing to retire copper loops, thus  
21 further reducing the availability of  
22 network facilities that CLECs rely upon  
23 to provide competitive broadband  
24 services."

25 I kind of slowed down so I could hopefully be

1 able to have the court reporter do it. That is a  
2 correct quotation; is that correct?

3 A. Yes, it is.

4 Q. Thank you. Now, you're not suggesting by  
5 this statement that Qwest is not complying with the  
6 FCC sections in the Code of Federal Regulations when  
7 it retires copper, are you?

8 A. No.

9 Q. Okay. And you are aware that when Qwest  
10 retires copper Qwest posts to a website a notification  
11 to the CLECs, as required by the FCC?

12 A. I'm aware of notifications.

13 Q. And you are aware that Qwest posts it on a  
14 public website?

15 A. I don't know that.

16 Q. Okay. And you are aware that Qwest sends a  
17 certification of public notice of network changes to  
18 the FCC; is that correct?

19 A. I'm not certain.

20 Q. Will you agree with me, sir, that if a CLEC  
21 has an issue or a complaint with any particular copper  
22 retirement it has the right to file a complaint with  
23 the FCC, correct?

24 A. Yes. Although I'm not familiar with all the  
25 process.

1 Q. And sir, you don't know whether when Qwest  
2 retires copper it's a result of either a mandated  
3 relocation of facilities, such as by -- triggered by a  
4 road project, or to mitigate a maintenance problem  
5 where the copper might have deteriorated. You don't  
6 know that at all, do you?

7 A. I wouldn't know why Qwest would retire copper  
8 in a particular area.

9 Q. Okay. And sir, you are aware that the  
10 federal rules that you cite are specific to copper  
11 retirement related to fiber to the home and fiber to  
12 the curb?

13 A. Which rules, sir?

14 Q. Actually, I guess you didn't cite that. For  
15 the record, I will cite to 54 CFR Sections 51.325 to  
16 51.335. Are you familiar with those rules?

17 A. I don't have them in front of me and I didn't  
18 have them in my testimony, so I'm only generally aware  
19 of them. So I don't know.

20 Q. Now, let's talk briefly about the QPAP. You  
21 agree with me, sir, that the DPU has supported the  
22 notion of eliminating QPAP Tier 2 payments, correct?

23 A. Yes.

24 Q. And you agree with me that your client,  
25 Integra, has agreed to the elimination of Tier 2

1 payments in the State of Idaho?

2 A. I don't know that.

3 Q. Do you know -- are you aware that the Idaho  
4 Commission recently approved Qwest's petition to  
5 eliminate Tier 2 payments in Idaho?

6 A. No.

7 Q. Let's talk a little bit about ICA extensions,  
8 or interconnection agreement extensions. You agree  
9 with Mr. Coleman -- and I will refer to page 12,  
10 lines 272 and 273, although from previous discussions  
11 with Mr. Merz I'm not sure if maybe there might be a  
12 page difference. But I believe the line difference --  
13 line references are correct. Mr. Coleman says that:

14 "As of today, Qwest has the ability  
15 to negotiate ICAs with CLECs as they  
16 expire."

17 You agree with that statement, don't you?

18 A. I'm just looking for that statement.

19 Q. Sure. I'll give you time.

20 A. Did you say page 12?

21 Q. I have it as page 12, 272 and 273 for the  
22 lines.

23 MR. MERZ: And I think the lines are probably  
24 correct.

25 MR. DUARTE: The Lines I think are, the page

1 might be different.

2 THE WITNESS: Mine's the same as yours.

3 Q. (By Mr. Duarte) Okay. So you agree with  
4 Mr. Coleman's statement that:

5 "As of today, Qwest has the ability  
6 to negotiate ICAs with CLECs as they  
7 expire"?

8 A. Yes.

9 Q. And you criticize the various, I'll call them  
10 "buckets," or I think we call them "bands," of 12, 24,  
11 and 36 months for ICA extensions, don't you?

12 A. Yes. I think we could have come up with a --  
13 just one time frame. That's a criticism in general.

14 Q. Okay. But you agree with me that, absent any  
15 commitment or condition in this merger, Qwest can seek  
16 to terminate an ICA that's already in evergreen status  
17 today, correct?

18 A. It could. And the CLEC could as well.

19 Q. Okay. And you agree that Qwest has the legal  
20 right to terminate an ICA whether or not a merger  
21 takes place, absent some kind of voluntary commitment  
22 or a forced condition?

23 A. I would defer to the ICA conditions, but I  
24 believe that's common in all of them.

25 Q. Okay. And sir, Qwest could decide to

1 terminate an ICA for one company with an evergreen  
2 ICA, and yet decide not to seek to terminate an  
3 evergreen ICA of another company, correct?

4 A. It could do that, yes.

5 Q. Okay. Now sir, you -- also in the conditions  
6 that you have attached to your testimony you've  
7 advocated for a five-to-seven-year term for ICA  
8 extensions. But you'll agree with me that you've  
9 never seen an ICA with an express term of seven years,  
10 have you?

11 A. I have not.

12 Q. Okay.

13 A. I don't know if one exists, but I haven't  
14 seen one.

15 Q. And we've already established that you've  
16 testified that three years for ICA extensions is  
17 reasonable, correct?

18 A. Are you referring to Nebraska, where I said  
19 at least three years in that legislative proceeding?

20 Q. Yes, sir. And I believe you also testified  
21 to it last week, but I just want to make sure that you  
22 agree with me for the record.

23 A. Well, I stand by my testimony. But yes, at  
24 least three years, absolutely.

25 MR. DUARTE: That's all I have, your Honor,

1 thank you.

2 CHAIRMAN BOYER: Thank you.

3 Commissioner Allen? Commissioner Campbell?

4 Let me just ask you a question or two if I  
5 might, Mr. Gates. You were here this morning when I  
6 asked Mr. Fenn about, well, a question regarding the  
7 Joint CLECs' concerns about what might happen if this  
8 merger were approved, and after the time frame  
9 stipulated to expire in terms of replacing systems and  
10 processes with some that may or may not be as  
11 efficient as those currently used by Qwest.

12 And Mr. Fenn answered that it was in -- it  
13 would be in the combined entity's interest to operate  
14 efficiently and properly -- not exactly those words --  
15 but what do you say to that? Is that a sufficient  
16 motivation to make sure that they use the optimal  
17 processes and systems available to them?

18 THE WITNESS: I believe they do have an  
19 incentive to be efficient, but not necessarily for  
20 things that are required of them by their competitors.

21 So the wholesale OSS, do they really care  
22 whether that is efficient? No. Not necessarily.  
23 Because it benefits them if they don't update, and  
24 expand, and improve the wholesale system? It saves  
25 them money, first of all. And on the other side of

1 the coin, it disadvantages competitors.

2 So that's why any changes required should go  
3 through CMP and should be third-party tested. And  
4 it's not so much changing the system, your Honor, that  
5 we're concerned about. We just want to make sure that  
6 whatever they change to is, indeed, better. And has  
7 been tested. To make sure that there aren't any  
8 customer-impacting problems.

9 CHAIRMAN BOYER: Okay, thank you. Now, do  
10 you disagree, then, with the testimony that has been  
11 given, well, at least in the earlier part of this case  
12 last week --

13 Well, I think you've already answered the  
14 question. Okay, thank you very much.

15 THE WITNESS: Thank you.

16 CHAIRMAN BOYER: Redirect, Mr. Merz?

17 MR. MERZ: I don't have any redirect  
18 questions, thank you.

19 CHAIRMAN BOYER: Okay, thank you.

20 THE WITNESS: Thank you.

21 CHAIRMAN BOYER: Mr. Gates, you are excused.

22 Now, are there any other matters that we need  
23 to attend to before we adjourn?

24 MR. DUARTE: Your Honor, I think we do want  
25 to discuss post-hearing briefs. And I think we --

1 Mr. Merz and I have sort of a general understanding,  
2 but I understand from Ms. Schmid that she has concerns  
3 about what we sort of are ready to propose. And so I  
4 just wanted to get that on the record and have some  
5 guidance from the Commissioners.

6 We -- Mr. Merz and I think Ms. Schmid is okay  
7 with one simultaneous brief, but I think it's the  
8 timing. And, you know, as you know, your Honors, we  
9 really have been trying to expedite this process, and  
10 hope -- we've asked to get an order by the end of the  
11 year.

12 And so we would like to have the -- "we"  
13 meaning the Joint Applicants -- certainly filed before  
14 Thanksgiving, because that will give the Commission a  
15 month or more -- whatever time it needs to render its  
16 decision.

17 Mr. Merz and I had agreed to Friday, two  
18 weeks from tomorrow, but apparently Ms. Schmid has  
19 some concerns about that.

20 MR. MERZ: And your Honor, just for my own  
21 part. I agree with what Mr. Duarte has just said, but  
22 November 19th would be the earliest that we believe  
23 that we could put together a brief that would be  
24 useful.

25 I don't -- I haven't talked with Ms. Schmid

1 directly about the timing of this. But to the extent  
2 they feel they need more time, we would be supportive  
3 of that as well. And believe we would probably  
4 benefit from more time also.

5 CHAIRMAN BOYER: Ms. Schmid -- by the way,  
6 Ms. Schmid, has Mr. Ginsberg's replacement been hired  
7 yet?

8 MS. SCHMID: Yes, he has, and he is on  
9 vacation at the moment. He will begin his employment  
10 with the Division on the 15th. His name is John  
11 Zidow. We poached him from the DOT Attorney General  
12 group. And we're very much looking forward to having  
13 him aboard.

14 CHAIRMAN BOYER: All right. Let's hear your  
15 concerns on the -- I should say at the outset that we  
16 typically don't ask for post-hearing briefs. But  
17 we -- but if you think it's useful, it may, because  
18 this is fairly complicated and the record is quite  
19 voluminous at this point in time. So we're at least  
20 open to talking about it.

21 MR. DUARTE: Your Honor, and that's one  
22 reason why we decided -- or talked about just having  
23 one simultaneous. I mean, the record is pretty  
24 extensive. We sort of know what each other is gonna  
25 say.

1           We think that we can do it in one -- and we  
2 would actually propose some page limits, if that would  
3 be helpful for the Commission.

4           CHAIRMAN BOYER: Yeah, let's talk about pages  
5 right now first, and then that may help Ms. Schmid.

6           MR. DUARTE: Well, we were thinking 25,  
7 30 pages. To be concise and really force the parties  
8 to kind of get their high points in. We have 1,200  
9 pages in the record, and that's quite a bit. It's  
10 bigger than any case I've ever handled in regulatory  
11 law. So we think that perhaps the Commissioners will  
12 want us to get to the point.

13           CHAIRMAN BOYER: Ms. Schmid, the timing?

14           MS. SCHMID: Timing, I believe it would be  
15 helpful to have the transcript from today's hearing  
16 available. And I know that the court reporter has  
17 been involved in many hearings. And I do not know her  
18 schedule, but I believe that November 19th is too  
19 soon. At least for me.

20           With the upcoming MPA hearings that have been  
21 scheduled for the -- December 6th and I believe the  
22 next week, the earliest I could commit to having a  
23 brief -- and I recognize the Division's brief will be  
24 much more limited in scope because of the settlement  
25 than perhaps other parties' -- would be December 5th.

1           And that would be contingent upon having the  
2 transcript for perhaps a week before that. And I am  
3 sensitive to the parties' needs to get it done  
4 quickly. However, while the Division does have a  
5 second attorney coming on board, he's not here yet,  
6 and he has not practiced this kind of law.

7           CHAIRMAN BOYER: Let's ask our reporter.  
8 Kelly, what would your timing be on transcribing the  
9 record in this case? Because I know you have some  
10 other cases because I've seen you there typing away  
11 for the last few weeks.

12           (The reporter asked to go off the record.)

13           CHAIRMAN BOYER: Let's go off the record and  
14 talk about your schedule.

15           (A discussion was held off the record.)

16           CHAIRMAN BOYER: We're back on the record.  
17 We've had a side-bar conversation with the court  
18 reporter and the transcription of this record will not  
19 be available until about the 18th or -- about the 18th  
20 of November or 19th of November.

21           And Ms. Schmid has indicated that she'd like  
22 to see the transcript before preparing a brief. I  
23 think that makes sense to all of us.

24           MR. DUARTE: Your Honor, we're very sensitive  
25 to both the court reporter and Ms. Schmid's agency and

1 her schedule. The only comment I would make is, you  
2 know, for the most part, based on the briefs that I  
3 filed after hearings, you know 80 to 90 percent of  
4 what you're gonna cite anyway is gonna be from the  
5 prefiled testimony.

6 You also can get a rough draft. And Kelly  
7 has been great about getting us rough drafts of the  
8 testimony from the first two days. And so it would  
9 seem to me that, that we shouldn't have to wait too  
10 long -- too much longer after the official transcript  
11 has been transcribed.

12 And so we would hope that you would take that  
13 as a consideration because we do think that, you know,  
14 with the rough drafts, with knowing what went on, with  
15 the prefiled testimony, I think you can probably  
16 prepare most of your brief and then plug in the page  
17 cites, you know, when they come in.

18 MR. MERZ: And could I just be heard? I  
19 mean, I think we need the final transcript in order to  
20 prepare the brief, otherwise it just adds an  
21 additional layer of work.

22 And so, you know, if we get the transcript on  
23 the 19th, the next week is Thanksgiving. And then  
24 Ms. Schmid is saying that I think somewhere toward the  
25 end of the next week.

1           You know, there's a hearing scheduled in  
2 Washington in the first week in January. They're  
3 looking to close their merger by the first of June.

4           The difference between the 19th of November  
5 and the 5th of December is insignificant in the grand  
6 scheme of this. But for purposes of getting a brief  
7 done that will be useful to you, it's very  
8 significant.

9           MS. SCHMID: And the Division, to get the  
10 brief done by December 5th, will make -- and  
11 Division's counsel will make some substantial  
12 sacrifices. And we are willing to do that. However,  
13 a date before then is quite impracticable, just to be  
14 blunt. And I'm sorry to be blunt, but here we go.

15           CHAIRMAN BOYER: All right. Well, let's do  
16 this then. We will accept simultaneous post-hearing  
17 briefs in this case. Page limited to -- the  
18 suggestion was 25 or 30. I was thinking 25 pages, but  
19 there's not much difference between that and 30.

20           Anyone have strong feelings one way or  
21 another on Mr. Duarte's --

22           MR. MERZ: I was gonna ask for 50, so 30  
23 would be better than 25.

24           CHAIRMAN BOYER: Thirty pages.

25           MR. DUARTE: Thirty is fine with us.

1 CHAIRMAN BOYER: Okay, so 30 pages, due the  
2 end of business on December 5th.

3 MS. SCHMID: Thank you.

4 MR. DUARTE: Your Honor, December 5th is a  
5 Sunday, so should we do the 3rd -- Friday the 3rd?

6 MS. SCHMID: No. I would prefer to have the  
7 weekend to work.

8 CHAIRMAN BOYER: Let's do it Monday the 6th.

9 MR. DUARTE: The 6th. We're fine with that,  
10 your Honor.

11 CHAIRMAN BOYER: Okay, anything else?

12 MR. MERZ: Nothing further.

13 CHAIRMAN BOYER: Well, thank you all for your  
14 professional manner in which you conducted yourselves,  
15 and thanks to the witnesses. We are adjourned.

16 (A discussion was held off the record.)

17 CHAIRMAN BOYER: I adjourned, let's  
18 un-adjourn for a moment. Did we put into evidence the  
19 stipulation?

20 MR. DUARTE: You know --

21 CHAIRMAN BOYER: Joint Applicants November 4  
22 Exhibit --

23 MR. DUARTE: I think we distributed it.  
24 That's my fault, your Honor. If we can go back on the  
25 record and just --



C E R T I F I C A T E

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF SALT LAKE         )

This is to certify that the foregoing proceedings were taken before me, KELLY L. WILBURN, a Certified Shorthand Reporter and Registered Professional Reporter in and for the State of Utah.

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting. And that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, numbered 486 through 634, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

SIGNED ON THIS 17th DAY OF November, 2010.

Kelly L. Wilburn, CSR, RPR  
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