BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC and Qwest LD Corporation	DOCKET NO. 10-049-16

POST HEARING BRIEF OF MCLEODUSA TELECOMMUNICATIONS SERVICES INC. D/B/A PAETEC BUSINESS SERVICES

PUBLIC VERSION

TABLE OF CONTENTS

INTRODUCTION 1

DISCUSSION 2

I. STANDARD OF REVIEW: THE JOINT APPLICANTS MUST SHOW THAT THE TRANSACTION WILL BENEFIT THE PUBLIC 2

II. THE PROPOSED MERGER POSES SUBSTANTIAL RISKS OF HARM TO WHOLESALE CUSTOMERS AND LOCAL COMPETITION IN UTAH 3

A. Recent History Demonstrates That ILEC Mergers Such As The Proposed Merger In This Case Pose Substantial Risks of Failure And Harm To Customers 3

B. CenturyLink's Recent Acquisition of Embarq Further Underscores And Increases The Risks Associated With Its Acquisition Of Qwest 7

C. The Proposed Merger's Risks Are Further Accentuated by CenturyLink's Lack of Wholesale Experience At Volumes Comparable to Qwest's And The Absence of Any Experience With Qwest's BOC Obligations...10

III. THE PROPOSED MERGER'S RISKS FALL PRIMARILY ON QWEST'S WHOLESALE CUSTOMERS AND COMPETITION......................14

IV. ADDITIONAL CONDITIONS ARE NEEDED TO PROTECT AGAINST DETERIORATION OF CLEC ACCESS TO, AND FUNCTIONALITY OF, QWEST'S OPERATIONS SUPPORT SYSTEMS ("OSS" 16

A. High Quality OSS Is Critical To The Ability Of CLECs To Provide Competitive Local Services...16

B. The Record Establishes A High Risk Of OSS Degradation Following The Merger 18

C. Additional Conditions are Necessary...24

INTRODUCTION

McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services ("PAETEC") respectfully submits its Position Statement regarding the Joint Application of Qwest Communications International, Inc. and CenturyLink, Inc. (collectively, the "Joint Applicants") for approval of a proposed merger under which CenturyLink will assume control of the Qwest operating companies.

Soon after the close of the evidentiary hearing in this case, Joint Applicants entered into a settlement with Integra under which they agreed to certain commitments regarding the operations of the post-merger company. The commitments reflected in those settlements address a number of the concerns that PAETEC has about the proposed merger and PAETEC agrees that those commitments are necessary to protect the public interest. Accordingly, PAETEC urges the Commission to adopt the commitments set forth in the Integra Settlement as conditions to approval of the Proposed Merger.

However, in at least one important area – regarding Operations Support Systems ("OSS") – those commitments fall short. In particular, the Integra Settlement permits the merged company, subject to certain restrictions, to replace Qwest's OSS, upon which PAETEC and other CLECs rely to provide service to their end user customers, after only 24 months following the closing of the transaction. This time period, which is less than the three to five year period over which the company expects to cut costs in order to realize an anticipated $575 million in operating synergies, is insufficient to protect CLECs against deterioration of access to, and functionality of, Qwest's OSS, thus exposing CLECs, as well as competition, to substantial risk of harm.

In order to assure that competition is adequately protected, PAETEC urges the Commission to condition approval of the Proposed Merger on the following additional commitments regarding OSS:

(1) a commitment to maintain Qwest's existing OSS for at least three years to match the Joint Applicants' 3-5 year synergy period;

(2) a commitment to meet specific operational thresholds for any successor OSS to ensure that there are no disputes over the standard in the Integra Settlement precluding functionality "materially less" than the Qwest OSS; and

(3) a commitment to meet specific benchmarks to ensure that specific components of wholesale OSS service quality, including support, data, billing, functionality, performance, electronic flow through and electronic bonding, are not degraded.

DISCUSSION

I. STANDARD OF REVIEW: THE JOINT APPLICANTS MUST SHOW THAT THE TRANSACTION WILL BENEFIT THE PUBLIC

Utah Code § 54-4-28 required approval of the Public Utilities Commission for any merger or consolidation of public utilities. Such approval may be given only in a finding that the merger or consolidation is in the public interest.[1] The Commission has interpreted this public interest standard as requiring that parties seeking approval of a transaction show that the transaction provide a net benefit of the public[2] In other words, it is not enough that a transaction not cause harm to the public interest, rather, Joint Applicants must establish the existence of an affirmative public benefit. Here, absent conditions that are necessary to protect the ability of CLECs such as PAETEC to continue to compete effectively in the local telecommunications market, competition, and therefore, the public interest, will be harmed.

[1] Utah Code § 54-4-28.

[2] *In the Matter of the Merger of the Parent Corporations of Qwest Communications Corporation, LCI International Telecom Corp. and US West Communications, Inc.*, Docket No. 99-049-41, Report and Order at 11 (June 9, 2000).

II. THE PROPOSED MERGER POSES SUBSTANTIAL RISKS OF HARM TO WHOLESALE CUSTOMERS AND LOCAL COMPETITION IN UTAH

All mergers create uncertainty and carry with them the risk of failure and harm to not only shareholders, but also customers. However, the risks associated with the Proposed Merger are substantially greater than most in light of: (a) the documented problems and failures of recent similar mergers between ILECs; (b) CenturyLink's acquisition of another much larger company, Embarq, only a year ago and CenturyLink's as-yet uncompleted integration efforts relating to that transaction; (c) the significant integration problems CenturyLink has experienced with Embarq, particularly relating to systems conversions; and (d) CenturyLink's lack of experience with anything close to Qwest's much larger wholesale service volumes and unique BOC responsibilities. These risks fall primarily on CLECs, which will depend on the merged company for essential wholesale facilities they need to provide competitive local service.

A. Recent History Demonstrates That ILEC Mergers Such As The Proposed Merger In This Case Pose Substantial Risks of Failure And Harm To Customers.

Mergers and acquisitions are inherently risky and unpredictable.[3] As Dr. August Ankum, an expert economist testifying on behalf of the Joint CLECs, explained, most mergers fail to successfully achieve their expected benefits and many result in, or are followed by, serious problems that harm both shareholders and customers.[4] Indeed, the majority of mergers (two out of three) fail, according to both the testimony of Dr. Ankum and the academic literature.[5] Mergers between ILECs in the telecommunications industry have proven to be particularly risky, as illustrated by three recent ILEC mergers

[3] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at p. 5, lines 6-9.
[4] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at p. 5, line 9 – p. 6, line 5.
[5] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at p. 5, line 9 – p. 6, line 5, fn. 4.

similar to the Proposed Merger in this case: (1) Hawaiian Telecom's acquisition of Hawaii's BOC, Verizon Hawaii; (2) FairPoint's acquisition of Verizon operations in northern New England; and (3) Frontier's acquisition of 4.8 million Verizon lines in 14 states. Dr. Ankum's testimony documents substantial post-merger problems with these transactions and an "enormous gulf between the anticipated benefits claimed by company management and . . . ensuing realities."[6]

Rather than achieving the benefits projected by management, these mergers resulted in an array of serious problems, including severe service quality declines and OSS failures.[7] Hawaiian Telecom, for example, experienced significant slow-downs in call answer and handling times in its customer service centers as well as (a) billing errors; (b) missed deadlines for special access circuit orders; (c) delays porting telephone numbers; and (d) lack of a functioning electronic interface for wholesale customers to submit and monitor trouble tickets following its merger.[8] The Vermont Public Service Board found that Hawaiian Telecom's acquisition resulted in "major problems for wholesale and retail customers . . . that have taken years to correct."[9]

Similar to the Hawaiian Telecom transaction, FairPoint experienced "widespread disruptions to wholesale customers due to OSS system failures, order fall-outs, and manual processing work-arounds" following its acquisition of Verizon exchanges.[10] In addition, FairPoint's retail service declined to a point that triggered maximum payments under Vermont's retail service quality plan.[11] Prior to securing regulatory approval of its

[6] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at p. 28, lines 12-14; Ex. 1.2.
[7] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at p. 28, line 19 – p. 30, line 2.
[8]Exhibit Joint CLECs 1 (Ankum Direct Testimony) at p. 29, lines 12-14; Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 92, line 2-p. 94, line 8.
[9] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 98, line 13-17.
[10] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at p. 29, lines 15-18.
[11] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at p. 29, lines 15-16.

transaction, Fairpoint offered a long list of expectations, assurances and commitments related to expected synergies, integration costs, cash flow and services.[12] A little over two years following closure of the FairPoint transaction, the Vermont Public Service Board stated that: "it is abundantly clear that FairPoint failed to realize any of [its] forecasts."[13] The New Hampshire Public Utilities Commission concluded similarly that:

> Fairpoint has failed to meet the obligations it made in 2008 to the states of New Hampshire, Maine and Vermont and their citizens. Among other things, FairPoint made promises about service quality, relations with wholesale competitors and broadband build-out, and committed itself to performance superior to Verizon . . .. Due to FairPoint's widespread operational shortcomings arising from its systems cutover, however, residential and business customers, as well as wholesale customers and competitors who rely on FairPoint services, endured even poorer service quality than was the case under Verizon.[14]

Like Hawaiian Telecom and FairPoint, Frontier has also experienced "wholesale OSS failures, ordering delays, understaffed access order centers [and] trouble report backlogs" following its acquisition of Verizon exchanges.[15]

These examples provide compelling illustrations of the risks and uncertainties associated with ILEC mergers such as the one in this case. They also demonstrate that claims of synergy savings are notoriously unreliable and are often overtaken by operational problems and unexpectedly high integration costs. For example, FairPoint expected to realize $60-75 million in annual net cost savings through efficiency improvements in back-office and OSS systems. Contrary to the company's pre-merger claims, those synergies never materialized. Instead, FairPoint experienced severe operational difficulties and cost over-runs during its post-transaction efforts to integrate

[12] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 95, line 12-p. 96, line 26.
[13] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 96, lines 28-32.
[14] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 102, lines 5-15.
[15] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at Exhibit Joint CLECs A1.2, p. 2.

the legacy Verizon exchanges.[16] As disclosed in FairPoint's 10-K Report three years after its merger, rather than achieve its anticipated $60-75 million dollars in annual synergy savings, FairPoint incurred nearly $30 million in cost over-runs while experiencing operational problems that "required significant staff and senior management attention diverting their focus from other efforts."[17]

Similarly, Hawaiian Telecom expected to realize operational efficiencies by creating new back office systems to replace Verizon's legacy systems just as CenturyLink is likely to do following its acquisition of Qwest.[18] Far from achieving its anticipated synergies, Hawaiian Telecom's deployment of those new systems produced over $33 million in cost-overruns. As Dr. Ankum observed, Hawaiian Telecom's deployment of its new systems, rather than produce efficiencies, actually "contributed to the financial downfall of the company."[19] The Hawaiian Telecom example not only illustrates the common failure of merged companies to achieve expected merger benefits, but also demonstrates the extent to which mergers can harm the companies they were expected to benefit. Even in the short time since closing on its acquisition of Verizon exchanges, Frontier is experiencing some of the same problems as FairPoint and Hawaiian Telecom, indicating that Frontier does not appear to be on track to realize its projected 500 million dollars in annual operating expect savings.[20]

Ultimately, post merger problems and failures drove both Hawaiian Telecom and FairPoint to file Chapter 11 bankruptcy petitions.[21] Hawaiian Telecom's Chapter 11

---

[16] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 35, lines 3-13; Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 97, line 10-p. 98, line 7.
[17] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 35, lines 13-20.
[18] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 33, lines 11-13.
[19] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 33, lines 22-p. 34, line 18.
[20] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 36, lines 1-18.
[21] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 29, line 26-p. 30, line 2.

filing reported a negative 29.3% rate of return.[22] Facing similar financial distress, FairPoint's Chapter 11 reorganization plan included cut-backs to its broadband commitments and the elimination of a cap on DSL rates that FairPoint had agreed to as part of its merger.[23] In both instances, the mergers were preceded by claims of expected efficiencies and synergies. Yet those synergies never materialized and were, instead, eclipsed by operational problems and high integration costs that ultimately led both merged companies to file Chapter 11 petitions.

Like the Hawaiian Telecom and FairPoint mergers, the Proposed Merger in this case involves a smaller ILEC purchasing a much larger one based on lofty but vague claims of expected synergies, efficiencies and other benefits. However, the documented failure and experiences of these two recent mergers serves as a warning with respect to the public interest implications of the Proposed Merger in this case. Those two mergers illustrate plainly that the risks of the Proposed Merger are not theoretical and pose a serious threat to Utah consumers and local competition.

B. CenturyLink's Recent Acquisition of Embarq Further Underscores And Increases The Risks Associated With Its Acquisition Of Qwest

CenturyLink touts its alleged track record of acquisitions, asserting that "In each instance, the integration has been successful in terms of customer service improvements and sound operating results, and there have been no meaningful failures or complaints as far as the Company knows."[24] The evidence, however, tells a different story. In fact, CenturyLink has already demonstrated a record of post-merger integration problems in the short time following its acquisition of Embarq. The challenges of integrating Embarq

---

[22] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 29, lines 27-28.
[23] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 29, lines 5-10.
[24] Exhibit JA-R6 (Ferkin Rebuttal Testimony) at p. 10, lines 17-20.

led CenturyLink, soon after the completion of the Embarq merger, to request a waiver of the FCC's one business day number porting requirement on the ground that compliance would disrupt the ongoing systems changes related to the CenturyTel/Embarq merger. In support of that request, CenturyLink asserted that complying with the porting requirement would require integration efforts to be suspended, resulting in service disruptions, delays and errors causing – according to CenturyLink – "incalculable additional costs."[25]

CenturyLink has also experienced serious post-merger problems with its Embarq systems integration in North Carolina. As reported by the Communications Workers of America ("CWA") and acknowledged by CenturyLink, the Embarq transaction resulted in a number of serious operational, service-affecting problems in North Carolina, including:

> …workers being dispatched to incorrect locations for service; workers reported being dispatched for service with insufficient or incorrect information; longer out of service periods and longer delays in initiating service; differing and confusing software that dispatches/assigns technicians; the systems do not appear to be interconnected or coordinated; negative impacts on work flow; inefficiencies in the new systems; and consumer frustration about installation and service appointments not being met and long hold times.[26]

The CWA also reported "insufficient training or resources provided to former Embarq employees about the new systems."[27] CenturyLink admits that these problems in North Carolina were caused by the "differences between the old and new systems," and "a lack

[25] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 81, lines 8-15.
[26] Exhibit Joint CLECs 2SR (Gates Surrebuttal Testimony) at p. 18, lines 1-9, citing Minnesota Direct Testimony of Jasper Gurganus, pp. 4-10.
[27] Exhibit Joint CLECs 2SR (Gates Surrebuttal Testimony) at p. 20, lines 1-3, citing Minnesota Direct Testimony of Jasper Gurganus, p. 4, lines 4-9.

of familiarity with the new systems."[28] These problems, which would not have occurred but for the system integration,[29] reduced CenturyLink's service quality under its self-reported customer service metrics.[30]

CenturyLink's record of integration problems in the Embarq acquisition further underscores the risks inherent in its acquisition of Qwest. The challenges associated with Embarq acquisition pale in comparison to the challenges associated with CenturyLink's acquisition of Qwest, which is over twice the size of Embarq and subject to unique additional BOC responsibilities CenturyLink and Embarq have never had.[31] As Dr. Ankum observed:

> To be sure, the challenge of integrating and running Qwest, with its unique BOC obligations, comparatively enormous customer based, substantial wholesale responsibilities, and complex set of operational support systems, is particularly daunting and far beyond anything CenturyLink has faced to date.[32]

Even more troubling is the fact that the Qwest acquisition comes immediately after the Embarq transaction and before the Embarq integration has been completed. CenturyLink's acquisition of Qwest immediately following its acquisition of Embarq is the largest in a rapid series of ever-larger CenturyLink acquisitions. As Dr. Ankum testified, this "presents disturbing similarities to the experience of WorldCom and other failed acquisitions."[33] Indeed, Moody's Rating Service gave CenturyLink a negative rating outlook based on the risks associated with CenturyLink's effort to acquire Qwest immediately following its acquisition of Embarq, stating:

---

[28] Exhibit Joint CLECs 2SR (Gates Surrebuttal Testimony) at p. 23, lines 12-14; see also Joint CLECs Cross Examination Exhibit 2.
[29] Transcript, Vol. 1, p. 220, line 23 – pp. 221, line 6. (Testimony of J. Ferkin)
[30] Exhibit Joint CLECs 2SR (Gates Surrebuttal Testimony) at p. 41, lines 9-12.
[31]Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 80, line 4-p. 81, line 2.
[32] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 11, line 14-page 12, line 1.
[33] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 10, lines 13-15.

> The negative rating outlook . . . reflects the considerable execution risks in integrating a sizeable company so soon after another large acquisition [Embarq in July 2009].[34]

CenturyLink recognized these risks associated with the Embarq transaction in it own S-4 filing with the SEC, stating:

> [CenturyLink/Qwest] integration initiatives are expected to be initiated before CenturyLink has completed a similar integration of its business with the business of Embarq, acquired in 2009, which could cause both of these integration initiatives to be delayed or rendered more costly or disruptive than would otherwise be the case.[35]

Therefore, the Embarq transaction not only serves an example of problems CenturyLink is likely to have with the Proposed Merger; it also increases the risk of problems with the Proposed Merger given the short time between the two transactions.

C. The Proposed Merger's Risks Are Further Accentuated by CenturyLink's Lack of Wholesale Experience At Volumes Comparable to Qwest's And The Absence of Any Experience With Qwest's BOC Obligations.

The merger risks noted above are further accentuated by the fact that CenturyLink lacks anything close to Qwest's experience in providing wholesale services to CLECs -- either at Qwest's wholesale volumes or under Qwest's special BOC obligations. As Dr. Ankum testified:

> I have already noted that most mergers are not successful, even as measured by the ultimate impact of the merger on shareholders. Yet more troubling in this case is the fact that CenturyTel is seeking to acquire a much larger Bell Operating Company ("BOC") while it is still integrating the recently acquire Embarq, a company that was already about four times larger than the original CenturyTel. If the successful outcome of mergers is generally in question, the outcome of this one is particularly so.[36]

---

[34] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 45, footnote 71.
[35] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 82, lines 11-16, quoting CenturyLink Form S-4 at p. 16.
[36] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 9, line 23-p. 10, line 5.

CenturyLink's traditional focus of operations on less densely populated areas[37] means that it has not faced the level of competition and wholesale service demand that ILECs such as Qwest have faced operating in larger metropolitan areas. Collectively, this lack of experience and exposure to the operational needs of wholesale customers with high volume of transactions raises profound doubts about the company's ability to meet the demands of wholesale customers operating in more densely populated urban and suburban areas served by Qwest. CenturyLink's acquisition of a much larger ILEC and lack of experience with Qwest's wholesale volumes and responsibilities magnify the risks otherwise inherent in ILEC mergers such as this one.

CenturyLink's lack of experience and exposure to wholesale customers at anything close to the levels experienced by Qwest is well established. As Joint CLEC witness, Mr. Gates, explained, data produced by the Joint Applicants shows that by a number of different variables, CenturyLink's wholesale experience is significantly less than Qwest's. For example, CenturyLink processed a total of *****BEGIN HIGHLY CONFIDENTIAL ███ END HIGHLY CONFIDENTIAL***** number porting requests from competitors in Utah in 2009[38] and *****BEGIN HIGHLY CONFIDENTIAL ███ █████ END HIGHLY CONFIDENTIAL***** number porting requests from competitors company-wide (i.e., legacy Embarq plus legacy CenturyTel) during 2009.[39] In contrast, Qwest processed *****BEGIN HIGHLY CONFIDENTIAL █████ END HIGHLY CONFIDENTIAL***** number porting requests from competitors in Utah

---

[37] Exhibit Joint CLECs 2 (Gates Direct Testimony) at page 26, lines 7-10.
[38] Exhibit Joint CLECs 2 (Gates Direct Testimony) (Highly Confidential) at p. 27, lines 4-6.
[39] Exhibit Joint CLECs 2 (Gates Direct Testimony) (Highly Confidential) at p. 27, lines 4-7.

BEGIN HIGHLY CONFIDENTIAL ██████ **END HIGHLY CONFIDENTIAL** ports company-wide *in the first half of 2010 alone*.[40]

In other words, Qwest processes, on average, ***BEGIN HIGHLY CONFIDENTIAL █ END HIGHLY CONFIDENTIAL*** times more number porting requests in Utah alone than CenturyLink does throughout its entire territory nationwide.[41] On a company-wide basis, Qwest processes **BEGIN HIGHLY CONFIDENTIAL** ██ ███████ **END HIGHLY CONFIDENTIAL** number ports than does CenturyLink.[42] As the Commission knows, number porting is essential for competition because consumers expect to retain their telephone numbers when they switch from the ILEC to a competitive provider. If consumers cannot retain their phone number or ensure that their telephone numbers will transfer immediately and seamlessly when changing providers, then consumers will be reluctant to change providers. Therefore, if CenturyLink and Qwest cannot process number porting requests quickly, and efficiently, following the merger, competitors and competition will suffer.

Most competitors also rely upon the incumbent for wholesale facilities, including unbundled network elements and other wholesale products, that enable them to reach end-user customers. Without these facilities, competitors cannot offer competitive services. Unfortunately, CenturyLink also lacks experience provisioning these facilities. Mr. Gates testified that CLECs purchase a total of ***BEGIN HIGHLY CONFIDENTIAL ███ END HIGHLY CONFIDENTIAL*** UNE loops from CenturyLink in Utah,[43] and ***BEGIN HIGHLY CONFIDENTIAL ████ END**

[40] Exhibit Joint CLECs 2 (Gates Direct Testimony) (Highly Confidential) at p. 27, lines 8-12.
[41] Exhibit Joint CLECs 2 (Gates Direct Testimony) (Highly Confidential) at p. 27, lines 12-15.
[42] Exhibit Joint CLECs 2 (Gates Direct Testimony)(Highly Confidential) p. 27, lines 4-7.
[43] Exhibit Joint CLECs 2 (Gates Direct Testimony) (Highly Confidential) at 27, line 18-p. 28, line 2.

HIGHLY CONFIDENTIAL*** from CenturyLink nationally.[44] In contrast, CLECs purchase *****BEGIN HIGHLY CONFIDENTIAL ████ END HIGHLY CONFIDENTIAL***** UNE loops from Qwest in Utah alone.[45]

Similar data also shows that CenturyLink processes far fewer requests for enhanced extended links (EELs)[46] and collocation[47] than Qwest. Collectively, these data show that CenturyLink does not currently process anything close to the same volume of orders from wholesale customers or competitors that Qwest currently processes. As such, CenturyLink will soon be controlling an exponentially larger wholesale operation than it has operated to date.

Further, CenturyLink will be acquiring Utah's BOC, which has wholesale responsibilities and obligations with which CenturyLink has no experience. In particular, BOCs are held to additional duties under Sections 271 and 272 of the Act which underlie their legal right to operate in the interLATA market. The obligations under sections 271 and 272 include a number of provisions that support competition, and which cannot be ignored if this transaction is approved. However, that is precisely what may happen.

As Mr. Gates testified, in large part because of its duties as a BOC, Qwest has operated for many years in a manner that satisfies its state-approved performance assurance plans (or otherwise pay penalties for failing to do so) and allows it to continue providing interLATA services pursuant to authority granted

[44] Exhibit Joint CLECs 2 (Gates Direct Testimony) (Highly Confidential) at p. 27, line 18-p. 28, line 4.
[45]Exhibit Joint CLECs 2 (Gates Direct Testimony) (Highly Confidential) at p. 28, lines 4-6.
[46] Exhibit Joint CLECs 2 (Gates Direct Testimony) (Highly Confidential) at p. 28, lines 7-15.
[47] Exhibit Joint CLECs 2 (Gates Direct Testimony) (Highly Confidential) at p. 28, line 15-p. 29, line 9.

under section 271.[48] In contrast, CenturyLink has ***never*** had to perform to those standards.

III. THE PROPOSED MERGER'S RISKS FALL PRIMARILY ON QWEST'S WHOLESALE CUSTOMERS AND COMPETITION

Any merger has, as its ultimate objective, the goal of increasing shareholder value.[49] However, private shareholder interests do not necessarily align with the public interest that the Commission is obligated to protect in its review of telecommunications mergers. To the contrary, as Dr. Ankum observed, "an ILEC's pursuit of profit and increased shareholder value through the acquisition of another ILEC inherently conflicts in many ways with the Commission's mandate to promote the public interest and competition."[50] As Dr. Ankum explains, "[T]he risks and gains of a merger are not evenly distributed among all stakeholders,"[51] rather, a merger's risks fall disproportionately on captive customers, such as CLECs, that have no alternatives for essential facilities they need to compete:

> CenturyLink's and Qwest's shareholders, for example, can sell their shares if they anticipate that things will go awry, or alternatively hold on to their shares to recoup whatever benefits they may anticipate: It is a risk-return tradeoff each shareholder is free to either assume or walk away from. However, this freedom of choice does not exist for other captive stakeholders. Specifically, retail customers in captive segments of retail markets have little or no choice and neither do wholesale customers, such as CLECs, who critically depend on the Joint Petitioners for interconnection, loops, transport, collocation and a variety of other wholesale network inputs. That is, captive retail and wholesale customers will not only reap no gains if the proposed transaction is successful, they may experience great harm when things go awry (as they have in so many of these ventures).[52]

---

[48] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 38, lines 7-15; p. 39, line 11-p. 41, line 2; p. 44, line 6-p.49, line 11.
[49] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 91, lines 11-12.
[50] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 21, lines 15-17.
[51] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at p. 18, lines 16-17.
[52] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at page 8, line 18-page 9, line 6; see also Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 18, lines 9-10 ("In rejecting Qwest's recent petition for

As Mr. Gates explained, Qwest's "market power not only extends to wholesale services such as UNEs, interconnection and collocation required of ILECs pursuant to Section 251(c) of the Act, but also to other wholesale services provided by the ILECs, such as special access, as evidenced by supracompetitive rates ILECs are currently charging for special access in areas where they have received special access pricing flexibility."[53]

In this case, the merged company's pursuit of over $600 million in synergies, at the same time it faces substantial post-merger integration costs and inevitable merger-related operational problems, creates a substantial risk to the public interest -- particularly to wholesale customers and local competition. All businesses strive to minimize their costs, increase their market share and maximize their revenues. However, the merged company's pursuit of an aggressive synergy target in the face of substantial integration costs will place enormous additional pressure on the merger company to achieve these ends. Further, the merged company will have a strong incentive to realize these synergies through cuts in the wholesale services that the company provides to the CLECs, with whom the merged company will compete. To that end, the FCC noted in its *Local Competition Order*, "An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to the incumbent LEC's

---

forbearance in the Minneapolis, Denver, Seattle, and Phoenix metropolitan statistical areas ('MSAs'), the FCC concluded that '[t]he record does not reflect any significant alternative sources of wholesale inputs for carriers in the four MSAs.'").

[53] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 19, lines 4-9.

subscribers."[54] With respect to the operation of these incentives on the post-merger company, Dr. Ankum has observed:

> Trimming wholesale costs not only saves money on services that are not subject to significant competition, it does so without the likelihood of revenue repercussions: *i.e.*, the cost savings directly improve the bottom line. That is, there are added incentives to cut costs in segments of the companies' operations that are not subject to competitive pressures: most notably, the wholesale business charged with meeting the Section 251 and Section 271 obligations under the Telecommunications Act of 1996. In sum, this dynamic places post-merger CenturyLink at odds with captive CLEC wholesale customers.[55]

As an ILEC and as Utah's BOC, Qwest owns and controls the vast majority of the State's core telecommunications infrastructure, which is ubiquitously deployed and ultimately connected to every residence and business throughout Qwest's broad service area. That infrastructure not only provides the platform for Qwest's service to its own retail customers, but also serves as the network platform on which competitive providers -- i.e., CLECs -- depend for access to their end-user retail customers.

IV. ADDITIONAL CONDITIONS ARE NEEDED TO PROTECT AGAINST DETERIORATION OF CLEC ACCESS TO, AND FUNCTIONALITY OF, QWEST'S OPERATIONS SUPPORT SYSTEMS ("OSS")

A. High Quality OSS Is Critical To The Ability Of CLECs To Provide Competitive Local Services

The FCC defines OSS to include five functions: (1) pre-ordering, (2) ordering, (3) provisioning, (4) maintenance and repair, and (5) billing.[56] OSS includes all of the computer systems, databases and personnel that an ILEC uses to perform internal

---

[54] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; First Report and Order, CC Docket No. 96-98, FCC 96-325, Released August 8, 1996 ("*Local Competition Order")* at ¶ 10; *see also* Transcript Vol. 1, p. 201, lines 2-11 (retail service more possible than wholesale service)(testimony of M. Williams).

[55] Exhibit Joint CLECs 1 (Ankum Direct Testimony) at p. 42, line 19-p. 43, line 6.

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

functions necessary for these five functions.[57] The ability of a CLEC to be able to access the ILEC systems and databases on a nondiscriminatory basis to review customer information and submit and review orders is absolutely vital to the efficient operation of the industry. The systems must be efficient, reliable and accurate. Inefficient systems that require extensive manual intervention, for instance, would make doing business with the ILEC difficult, more costly, and more prone to error because of the increased manual nature of the work.[58]

The FCC has determined OSS to be a "network element."[59] Consequently, a CLEC must be permitted nondiscriminatory access to an ILEC's OSS functions in order to provide pre-order information to potential customers, sign up customers, place orders for services or facilities, track the progress of its orders to completion, obtain relevant billing information from the ILEC, and obtain prompt repair and maintenance services for its customers.[60] Further, OSS was one of the first issues that the FCC had to address in Section 271 proceedings. Specifically, the FCC concluded that it:

> [G]enerally must determine whether the access to OSS functions provided by the RBOC to competing carriers sufficiently supports each of the three modes of competitive entry strategies established by the Act: interconnection, unbundled network elements, and services offered for resale.[61]

The FCC found that CLECs would be "severely disadvantaged, if not precluded altogether, from fairly competing," if they did not have nondiscriminatory access to

---

[57] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 37, lines 9-10.
[58] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 37, lines 10-12.
[59] *Local Competition Order* at ¶ 516.
[60] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 38 lines 1-6.
[61] *Application of Ameritech Michigan pursuant to § 271 of the Communications Act of 1934, as amended, to provide In-Region, Inter-LATA services in Michigan*, CC Docket 79-137, Memorandum Op. and Order, Released August 19, 1997 ("*Ameritech Michigan 271 Order*") at ¶ 133.

OSS.[62] Qwest itself has described its existing OSS as playing "a crucial role in the transactions between Qwest and all CLECs"[63] and "the lifeblood of…Qwest's wholesale operation…"[64] The FCC also requires an adequate CMP to handle changes to the OSS systems.[65]

B. The Record Establishes A High Risk Of OSS Degradation Following The Merger

Joint Applicants have provided no concrete detail regarding their plans with respect to the integration of the CenturyLink and Qwest systems.[66] The evidence that has been provided on this issue, however, gives the Commission ample reason for concern that the merger will have an adverse impact on the OSS functionalities and capabilities available to CLECs who currently use Qwest's systems. The evidence shows that the Joint Applicants expect to reduce expenses by $575 million in operating costs synergies to be realized over a period of three to five years following the merger.[67] Further, it is undisputed that the company intends to realize synergies as a result of eliminating duplicate OSS as it moves to a "single system."[68]

The elimination of duplicative functions (or headcount) and systems will impact wholesale operations. [***HIGHLY CONFIDENTIAL BEGINS

---

[62] *Local Competition Order* at ¶518.
[63] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 37, lines 5-7, citing Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.
[64] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 37, lines 5-7, citing Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at p. 39.
[65] *Qwest 9 State 271 Order* at ¶ 33. *See also*, 47 C.F.R. §51.319(g).
[66] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 41, line 3-page 43, line 8.
[67] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 32, lines 7-12.
[68] Transcript Vol. 1, p. 81, lines 9-16 (Testimony of M. Hunsucker); see also Transcript Vo. 1, p. 194, line 18-p. 196, line 8 (Testimony of M. Williams); Transcript Vol. 1, p. 210, lines 9-24 (Testimony of J. Ferkin).

HIGHLY CONFIDENTIAL ENDS*]**[69]

The evidence further shows that to replace Qwest OSS with CenturyLink OSS would cause substantial harm to CLECs' ability to effectively compete. First, only Qwest's OSS has a track record of handling the commercial volumes in Qwest's legacy territory. Significantly, Qwest, unlike CenturyLink, went through the Section 271 approval process and, as part of that process, Qwest's OSS, CMP and supporting processes and data, were thoroughly tested to ensure that they provided the nondiscriminatory access.[70] According to Qwest, the collaborative OSS test "was the most comprehensive and collaborative of all of the OSS tests conducted to date."[71] CenturyLink's OSS comes with nothing approaching the degree of scrutiny that Qwest's OSS has had.

Moreover, the existing Qwest OSS and its functionality are more well-documented, and preferred by carriers that use both of the merging companies' systems, than the existing CenturyLink OSS.[72] As discussed in the testimony of Bonnie Johnson,

---

[69] Exhibit Joint CLECs 2 SR (Gates Surrebuttal Testimony) (Highly Confidential) at p. 43, lines 1-12.
[70] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 44, line 6-p. 48, line 2 (describing in detail third party testing of Qwest's OSS)
[71] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 44, lines 11-13, citing Brief of Qwest Corp., WC Docket No. 02-148, June 13, 2002, at p. 111.
[72] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 39, lines 15-19.

the more limited functionality of CenturyLink's OSS, as compared with the functionality available through Qwest's OSS, is demonstrated by the Joint Applicants' discovery responses.[73] As Ms. Johnson notes, one important difference between the two systems is the loop qualification information that is available before an order is placed:

> The key difference is that, with Qwest's IMA, the CLEC has access to the information ***before*** ordering (i.e, ***pre***-order). With EASE, the CLEC has to ***submit an order*** to ***obtain*** the information. This delays delivery of service to the customer and requires a CLEC to submit an additional LSR (one LSR for the "pre-qualification" and another for the circuit) for a single customer request.[74]

The deficiencies of CenturyLink's OSS are also illustrated by a comparison of the Qwest and CenturyLink CLEC-facing OSS interfaces for maintenance/repair.[75] CenturyLink explains that its "Access Care for trouble reporting system for circuits" entails:

> [t]he Wholesale customer will call in to the SSO (Special Service Operations) and CenturyLink will record all the pertinent information on the ticket. If SSO has remote test access, SSO will then do a diagnostic test to isolate the trouble. Once it is determined if it is a central office, cable, or premise issue, the SSO will request dispatch to the proper technician to resolve the issue. Once the field technician has fixed the issue, they will call back into SSO to test the circuit to confirm the repair. CenturyLink will then call the reporting party and do acceptance testing, if the circuit is working and they accept it, the ticket is closed.[76]

Also, in legacy Embarq territory, CLECs have the option to submit and track trouble tickets for unbundled loops and features electronically via a web-based repair ticket ordering system ("WebRRS").[77]

---

[73] Exhibit Joint CLECs 2SR (Johnson Surrebuttal Testimony), p. 10, line 4- p. 19, line 12,; Exhibit 2SR.1.
[74] Exhibit Joint CLECs 2SR (Johnson Surrebuttal Testimony), p. 17, lines 3-7 (emphasis in original).
[75] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 49, line 12-p. 52, line 10.
[76] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 58, line 13-p. 59, line 2, citing CenturyLink Response to Integra Utah Data Request #16.
[77] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 59, lines 3-5.

Qwest's trouble reporting system – called MEDIACC-EBTA -- by comparison, provides the ability to "mechanically process telephone circuit repair activities including repair ticket generation and MLT (Mechanized Loop Tests)."[78] Qwest's MEDIACC allows for "M&R queries [to be] forwarded directly from the MEDIACC gateway for processing by Loop Maintenance Operations System (LMOS) and Work Force Administration (WFA)"[79] "without having to go through the Business Process Layer…"[80] What this comparison demonstrates is that Qwest allows electronic bonding capability for maintenance and repair that permits a direct connection between the CLEC's M&R query and the Qwest repair technicians – a capability that is not available through either CenturyLink's Access Care (SSO) process (which requires multiple phone calls and increased manual intervention, with the increased possibility of error) or CenturyLink's web-based WebRRS. Further, based on the information Qwest and CenturyLink have provided to date, it appears that Qwest's web-based maintenance and repair GUI, CEMR, has functionality that CenturyLink's web-based maintenance and repair GUI, WebRRS, does not have. One such example is that CLECs can submit trouble tickets for special access circuits through Qwest's CEMR,[81] which is not permitted through CenturyLink's WebRRS.[82]

A decrease in functionality available from Qwest's systems would have a profoundly adverse impact on CLECs. Not only would CLECs have to expend

---

[78] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 59, lines 6-8, citing Qwest Response to Integra Utah Data Request #19.
[79] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 59, 8-11, citing Final Report of the Qwest OSS Test, May 3, 2002, Issued by Cap Gemini Ernst & Young (Third Party Tester), Version 3.0 at p. 247.
[80] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 59, lines 8-11, citing Final Report of the Qwest OSS Test, May 3, 2002, Issued by Cap Gemini Ernst & Young (Third Party Tester), Version 3.0 at p. 251.
[81] http://www.qwest.com/wholesale/systems/WebHelp/Introduction.htm
[82] *See, e.g.*, A Guide to Embarq Online Wholesale Repair System, available at: http://embarq.centurylink.com/wholesale/docs/webrrs_app.pdf ("For special access circuits or switched access circuits, customers continue to call 888-883-1484 to report trouble.")

significant time and money testing the CenturyLink replacement systems, but they would also have to materially modify their own systems. For instance, the CLECs have built their own interfaces to electronically bond directly to the existing Qwest systems. These CLEC systems would need to be modified, at significant expense, by the CLEC to work with the new replacement system. For instance, Qwest's IMA XML exchanges information between the CLEC and Qwest's OSS in data files based on Qwest's standard XML Web Service Definition Languages or "WSDLs." As Qwest explains: "There must be a mechanism to translate data from the proprietary format as it exists in the CLEC system to a format that the receiving organization can understand. This is done using XML translation software."[83] All of these systems, software, and proprietary formats would need to be changed in both Qwest's and CLECs systems if CenturyLink attempts to replace Qwest's OSS post-merger. The CLEC would then need to test all of these new systems before going "live" to ensure that they work properly (which is the purpose of Qwest's Stand Alone Test Environment or "SATE"), and would also need to test them in a production environment (which is why Qwest offers controlled production testing). CenturyLink has not indicated whether it would provide any of these capabilities if it decides to integrate OSS.[84]

Also, like Qwest, some CLECs have integrated their electronic interfaces into their own back end systems. PAETEC's systems, for example, take Qwest line loss data received through the XML interface, and feed that information directly into PAETEC's billing system, which results in the termination of billing for end users for whom the line loss data has been received via the interface without manual intervention. The

---

[83] IMA XML FAQs Available at: http://www.qwest.com/wholesale/ima/xml/
[84] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 54, line 20-p. 55, line 7.

interconnectivity of systems has effectively eliminated the "billing after downgrade" issues that plagued CLECs and end users that existed for a number of years (assuming the line loss data provided by Qwest is accurate). A similar linkage is made by PAETEC between Qwest's OSS interfaces and the PAETEC's own systems for directory listings to ensure accurate directory listings for the CLECs' customers.[85]

Trouble ticket reporting is another example. PAETEC, for example, has established electronic bonding capability with Qwest that allows automated escalation of the trouble ticket, and automated resolution or closing of the trouble ticket and notification to the customer. In other words, by establishing the electronic bonding with Qwest, a CLEC trouble ticket can go from "open" to "closed" with little or no intervention by the CLEC's technicians. These automated capabilities are possible because the CLEC undertook a substantial effort to develop its own back end systems and processes and then code, test and link those systems and processes to Qwest's systems and interfaces. These CLEC back end systems would be subject to change if the merged company changed Qwest's legacy OSS post-transaction, and could require CLECs to revert to significantly less efficient manual processes if the modified OSS offered by the merged company does not afford CLECs access to the same degree of the merged company's back end systems and data via the electronic interface.[86]

During the third-party testing of Qwest's OSS, a "pseudo-CLEC" (Hewlett Packard or "HP") was hired to act as a CLEC (or "to live the CLEC experience"[87]). HP was charged with establishing electronic bonding with Qwest, ensuring that Qwest

---

[85] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 55, lines 8-18.
[86] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 55, line 18-p. 56, line 11.
[87] Draft Final Report of KPMG Consulting, Qwest Communications OSS Evaluation, Version 1.1, April 26, 2002 ("KPMG 4/26/02 OSS Report") at p. 10.

provided the necessary information and tools to electronically interface with Qwest's OSS, and determine whether Qwest's systems were operationally ready to handle the volumes and types of orders CLECs would submit through the business-to-business electronic interfaces. Likewise, KPMG Consulting tested Qwest's testing environments. If CenturyLink attempted to modify the CLEC-facing OSS interfaces in Qwest's territory, all of the work done by the third-party testers during the third-party test, and the work done by CLECs to establish these business–to-business interfaces would be undermined. This work would need to be performed all over again to ensure that the replacement system provides the same functionality and at the same quality as Qwest's system.[88]

C. Additional Conditions are Necessary

Although the Integra Settlement addresses the merged company's continued use of the Qwest's OSS, it does not adequately address the OSS risks associated with the Proposed Merger in several important respects. Therefore, the Commission should adopt additional protections to address three critical issues. To ensure that the post-merger OSS and performance levels do not deteriorate, approval of the Proposed Merger should be conditioned, in addition to the commitments contained in the Integra Settlement, on the following additional commitments:

(4) a commitment to maintain Qwest's existing OSS for at least three years to match the Joint Petitioners' 3-5 year synergy period;

(5) a commitment to meet specific operational thresholds for any successor OSS to ensure that there are no disputes over the standard in the Integra Settlement precluding functionality "materially less" than the Qwest OSS; and

(6) a commitment to meet specific benchmarks to ensure that specific components of wholesale OSS service quality, including support, data, billing, functionality, performance, electronic flow through and electronic bonding, are not degraded.

[88] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 56, line 12-p. 57, line 5.

> Without a benchmark to current standards, the Joint Petitioners commitment to Integra that such functionalities will not be degraded in the future is essentially meaningless.

The Commission must direct the merged company to add at least a year to the time period in the Integra Settlement by which the merged company will continue to use and offer the Qwest OSS, such that the OSS will be used and offered for at least three years. Mr. Gates explained that because CenturyLink has estimated synergy savings to be achieved over a three-to-five year period, evidence in the record shows that the greatest risk to CLECs of CenturyLink degrading access to OSS is during that three-to-five year window.[89] And the risk remains after that period of time if the combined company does not integrate Qwest on-time and on-budget post-merger.[90]

Recognizing that Qwest has referred to OSS as the "lifeblood" of its wholesale operations,[91] modifying or degrading Qwest's wholesale OSS is one way in which the merged company may attempt to find synergy savings. If CenturyLink failed to maintain and invest in Qwest's OSS, or deliberately degraded certain aspects of those systems, CenturyLink could save money (increase synergies) and disadvantage its competitors that rely upon these critical systems. Of course, this would also result in harm to competition as well as the public's interest in a competitive local telecommunications market.

As the record demonstrates, if CLEC access to OSS is degraded due to integration failures or attempts to find synergy savings, competitors will be disadvantaged in attempting to compete with CenturyLink. Indeed, the systems integration problems experienced following recent mergers is evidence of the problems

[89] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 125, lines 7-18.
[90] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 125, lines 11-13.
[91] Exhibit Joint CLECs 2 (Gates Direct Testimony) at p. 36, lines 4-5, citing Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at p. 39.

that OSS integration failures can have on competitors, and ultimately end user customers.[92] A commitment to continue operating the Qwest OSS for *less than* three years – or less than the time period during which CenturyLink will be aggressively pursuing synergy cost savings – significantly increases the potential that the merged company target OSS systems, processes, and support relied upon by CLECs for elimination. For this reason the Commission should add an additional time commitment to the Integra Settlement and require that in the legacy Qwest ILEC service territory, after the Closing Date, the merged company will use and offer to wholesale customers the legacy Qwest OSS for at least three years after closing.

The Integra Settlement requires the merged company provide a level of wholesale service quality following the discontinuance of the Qwest OSS that is "not materially less" than that provided by Qwest prior to the closing date.[93] This "not materially less than" standard will apply to "support, data, functionality, performance, electronic flow through, and electronic bonding."[94] PAETEC's concern is that the standard by which these functions will be provided –"not materially less than" – is imprecise and ambiguous. There are obvious concerns with this standard, including insufficient information to determine what constitutes a "material" variance in service, and which party would make that determination. Disagreements over these basic questions, and others, would likely lead to informal and formal disputes between the merged company and competitors in Utah in the future. More troubling, the language seemingly provides the merged company the leeway to explore ways in which it may provide certain

[92] Exhibit Joint CLECs 1 (Ankum Direct Testimony), pp. 26-37 and Exhibit Joint CLECs 2 (Gates Direct Testimony), pp. 88-111.
[93] Integra Settlement at § 12.
[94] Integra Settlement at § 12.

functionality (i.e., support, data, functionality, performance, electronic flow through, and electronic bonding) on post-Qwest OSS in a manner that is "less than" that provided by Qwest today.

A degradation of the levels of service provided under the Qwest OSS today would represent a significant step backwards. Qwest's OSS was subjected to an extensive third-party test conducted over a three-year period for the express purpose of determining whether Qwest's OSS satisfied the nondiscriminatory access requirement under Section 271 of Act.[95] That third party testing revealed hundreds of problems that were addressed, and later resolved, through OSS improvements and re-testing. Millions of dollars of investment and countless person hours went into this process.[96] Ultimately, because of those investments and the continued review and oversight of state commissions like this one, Qwest ultimately received 271 authority to provide in-region interLATA services.

In contrast, CenturyLink's OSS has not been third-party tested,[97] nor has it handled actual commercial volumes in Qwest's region. Replacing Qwest's legacy OSS with CenturyLink's legacy (or new) OSS would lead to backsliding on Qwest's 271 obligations because Qwest would no longer be providing the nondiscriminatory access to OSS that was a quid pro quo for 271 approval. As discussed above, the evidence shows that when CenturyLink's existing OSS are compared to Qwest's existing OSS, CenturyLink's OSS: have inferior functionality, do not support as many services, have not been third-party tested, and have never processed the commercial volumes experienced in Qwest's legacy territory.

---

[95] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 126, lines 8-11, and Exhibit Joint CLECs 2.2.
[96] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 126, lines 14-17.
[97] Exhibit Joint CLECs 2 (Gates Direct Testimony), p. 127, line 4, citing CenturyLink Response to Integra Utah Data Request #18.

The risks associated with replacing Qwest's OSS following the merger are compelling and must be met with equally compelling safeguards beyond those in the Integra Settlement. Therefore, at a minimum, it is essential that any changes in OSS following the three year period (or two-year period in the Integra Settlement) be subject to the same third party testing at commercial volumes that was used to ensure the adequacy of the current Qwest OSS.

Finally, in order to provide a mechanism to enforce the stronger service standard requested by PAETEC here (service levels *equivalent to* those provided by Qwest prior to the closing date), the Commission should order the merged company to benchmark current performance metrics related to the functionalities set forth in the Integra Settlement. Specifically, the Commission should order benchmarking for current Qwest OSS functionality related to support, data, functionality, performance, electronic flow through, and electronic bonding. In addition to these functions, the Commission should also include billing functionality to ensure that the merged company does not degrade wholesale billing standards.

Establishing a benchmark in this way will provide a set of specific, verifiable criteria by which future performance can be measured against current performance standards. Notably, these benchmarks would not require the merged company to improve, or enhance, functionality in any way. Instead, they would simply set the baseline for operational standards that exist today. In this way, there can be no claim by the Joint Applicants that the benchmarking process is burdensome, or otherwise unreasonable. To the contrary, because the current Qwest OSS have been developed in the collaborative manner that was shown to satisfy 271 standards, anything less than the

current standards would be unacceptable. Further, backsliding on current functionality would be inconsistent with the merged company's ongoing obligations to operate as a BOC in the Qwest legacy territory, which the merged company has committed to do.[98]

Dated: December 6, 2010

____
Gregory Merz
500 IDS Center
80 South Eight Street
Minneapolis, MN 55402
Telephone: 612-632-3257
Fax: 612-632-4257
Gregory.merz@gpmlaw.com
(Admitted pro hac vice)

Counsel for McLeodUSA
Telecommunications Services, Inc. d/b/a
PAETEC Business Services

GP:2891935 v1

[98] Integra Settlement at § 7.