

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

DIRECT TESTIMONY

OF

DOUGLAS DENNEY

ON BEHALF OF

INTEGRA TELECOM

EXHIBIT INTEGRA 1

August 30, 2010

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Douglas Denney. I work at 1201 Lloyd Blvd, Suite 500 in Portland, Oregon.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Integra Telecom, Inc., as Integra's Director of Costs and Policy. My
6 job duties include negotiating interconnection agreements, monitoring, reviewing and
7 analyzing the wholesale costs Integra or its subsidiaries pay to carriers such as Qwest,
8 and representing Integra and its affiliates on regulatory issues. I am also involved in
9 Integra's review of ILEC performance assurance plans.

10 Integra Telecom, Inc. has 3 affiliated companies in Utah. These companies are: Electric
11 Lightwave, LLC, Eschelon Telecom of Utah, Inc., and Integra Telecom of Utah, Inc. For
12 convenience, I will generally refer to Integra Telecom, Inc. and its affiliates as Integra. I
13 will refer specifically to Eschelon when discussing events specific to Eschelon prior to
14 Integra's purchase of Eschelon.

15 **Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL**
16 **BACKGROUND.**

17 A. I received a B.S. degree in Business Management from Phillips University in 1988. I
18 spent three years doing graduate work at the University of Arizona in Economics, and
19 then I transferred to Oregon State University where I have completed all the requirements
20 for a Ph.D. except my dissertation. My field of study was Industrial Organization, and I

1 focused on cost models and the measurement of market power. I taught a variety of
2 economics courses at the University of Arizona and Oregon State University. I was hired
3 by AT&T in December 1996 and spent most of my time with AT&T analyzing cost
4 models. In December 2004, I was hired by Eschelon Telecom, Inc. (“Eschelon”).
5 Eschelon was purchased by Integra in August 2007. I am presently employed by Integra.

6 I have participated in over 50 proceedings in the Integra operating territory. Much of my
7 prior testimony involved cost models — including the HAI Model, BCPM, GTE’s ICM,
8 U S WEST’s UNE cost models, and the FCC’s Synthesis Model. I have also testified
9 about issues relating to the wholesale cost of local service — including universal service
10 funding, unbundled network element pricing, geographic de-averaging, and competitive
11 local exchange carrier access rates. I testified on a number of issues in the Eschelon /
12 Qwest arbitrations,¹ and have been involved in the Qwest and Verizon “non-impaired”
13 wire center lists and related issues. I have also been involved in the performance
14 assurance plans that impact Integra. This includes negotiations of changes to
15 performance plans to assure they provide meaningful incentives for wholesale service
16 quality.

17 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN UTAH?**

18 A. Yes. I have been involved in numerous dockets in Utah over the years while working for
19 AT&T, Eschelon, and Integra. I filed testimony in numerous dockets in Utah relating to

¹ The docket numbers for the Qwest-Eschelon ICA arbitrations are, for Arizona, T-03406A-06-0572; T-01051B-06-0572 (“Arizona arbitration”); for Colorado, 06B-497T (“Colorado arbitration”); for Minnesota, P-5340, 421/IC-06-768 (“Minnesota arbitration”); for Oregon, ARB 775 (“Oregon arbitration”); for Utah, 07-2263-03 (“Utah arbitration”); and for Washington, UT-063061 (“Washington arbitration”).

1 the pricing of Unbundled Network Elements (“UNEs”) and Universal Service (dockets
2 01-049-85, 00-049-105 and 94-999-01 3B and 3C). In addition I participated in a number
3 of workshops with the Division, other parties and the Commission pertaining to
4 Universal Service, the FCC Synthesis Model, Unbundled Network Elements, and
5 Collocation. I also filed testimony in the Triennial Review Order (“TRO”) proceeding
6 (docket 03-999-04) which was suspended after the D.C. Circuit Court ruling remanding
7 certain portions of the TRO back to the FCC. I’ve also been involved in the subsequent
8 Triennial Review Remand Order (“TRRO”) dockets such as 06-049-40, 07-049-30, 08-
9 049-29 and the just completed 10-049-22. In addition, I testified on numerous issues in
10 docket 07-2263-03 regarding the interconnection agreement arbitration between Eschelon
11 and Qwest. I was also involved in all aspects of the 2007 stipulation regarding changes
12 to Qwest’s Performance Assurance Plan which is the current performance assurance plan
13 in place in Utah today. I was also involved in the recent discussions regarding Qwest’s
14 performance assurance plan that took place as part of docket 09-049-60.

15 **Q. PLEASE DESCRIBE HOW YOUR TESTIMONY IS ORGANIZED.**

16 A. The first section of this testimony introduces this testimony, describes my background
17 and describes Integra. The second section of my testimony supports Joint CLEC
18 recommended condition number 4 regarding wholesale service quality. This section
19 explains how the Commission can simply put into place a self-effectuating mechanism to
20 help assure that wholesale performance in the legacy Qwest territory does not deteriorate
21 after the merger. The third section of my testimony supports Joint CLEC recommended
22 condition numbers 8 and 9. This testimony describes the interconnection agreement

1 (“ICA”) negotiation process and the time that it takes to negotiate and resolve disputed
2 issues. The fourth section of my testimony supports condition numbers 18 and 27. This
3 section verifies the facts set out in Exhibit Integra 2.1 and Exhibit Integra 2.2. In
4 addition, I describe why these conditions are important.

5 **Q. ARE THERE ANY EXHIBITS TO YOUR TESTIMONY?**

6 A. Yes. As part of my testimony, I have included the following exhibits:

- 7 • Exhibit Integra 1.1: A copy of an Additional Performance Assurance Plan, calculated
8 using the methodology in the Current PAP, for use to assure Qwest’s wholesale
9 performance to CLECs is not impacted by the CenturyLink merger.

10 **Q. PLEASE PROVIDE AN OVERVIEW OF INTEGRAL AND ITS BUSINESS?**

11 A. Integra is a competitive local exchange carrier (“CLEC”) providing communications
12 services across 33 metropolitan areas in 11 states of the Western United States. We own
13 (directly or under indefeasible rights to use) and operate backbone fiber networks. These
14 backbone networks connect to our intercity, interstate data network for a combined 4,900
15 fiber route-mile network in the Western U.S. We provide a comprehensive suite of high-
16 quality data, broadband and voice services to over 100,000 small-to-medium-sized
17 business customers and “enterprise” customers.

18 Our network is designed to deliver products such as Ethernet over broadband at speeds of
19 up to 25 Mbps over a variety of delivery technologies tailored to the unique applications
20 of our small-to-medium-sized business, enterprise and wholesale customers, including
21 Ethernet over direct fiber access, Ethernet over copper and Ethernet over next-generation
22 bonded digital subscriber lines, or DSL. We have 230 unique collocations, 20 in Utah,

1 positioned across our markets. Providing services to our customers primarily over our
2 owned switching and transport facilities allows us to control the quality and reliability of
3 our service offerings and efficiently innovate and provide advanced products and
4 services. At the same time, we cannot be successful without access to the last-mile, and
5 Qwest is the only supplier of last-mile facilities within its territory.

6 While we continue to make large investments in expanding and upgrading our network,
7 therefore, we remain almost entirely dependent upon the incumbent local exchange
8 carrier for last mile connections to our customers.

9 **Q. HOW DOES THE SIZE OF INTEGRA COMPARE TO QWEST AND**
10 **CENTURYLINK?**

11 A. Qwest is Integra's largest competitor, but Integra is relatively small when compared to
12 Qwest and even smaller when compared to a combined Qwest/CenturyLink. A combined
13 Qwest/CenturyLink will operate in 37 states,² compared to 11 for Integra. Further, a
14 combined Qwest/CenturyLink will have 50,000 employees,³ compared to 2,300 for
15 Integra and the combined Qwest/CenturyLink proforma revenue will be \$19.8 billion,⁴
16 compared to Integra's 2009 revenue of \$638 million.⁵ To put these differences into
17 perspective, a combined Qwest/CenturyLink will have 22 employees for each Integra
18 employee and \$31 dollars of revenue for each Integra dollar of revenue. The combined

2 See <http://www.centurylinkqwestmerger.com/index.php?page=about-the-transaction>

3 See <http://www.centurylinkqwestmerger.com/index.php?page=about-the-transaction>

4 See <http://www.centurylinkqwestmerger.com/index.php>

5 See

http://www.integratelecom.com/about/news/press_release_articles/2010%20Fastest%20Growing%20Private%20Companies_FINAL.pdf

1 Qwest/CenturyLink will earn more revenue by the second week in January than Integra
2 will obtain in a year.

3 **II. WHOLESALE SERVICE QUALITY (JOINT CLEC RECOMMENDED**
4 **CONDITION NUMBER 4)**

5 **Q. WHAT IS JOINT CLEC RECOMMENDED CONDITION NUMBER 4 AND WHY**
6 **IS IT NECESSARY?**

7 A. Joint CLEC recommended condition number 4 concerns wholesale service quality for the
8 Merged Company.⁶ The condition requires that the performance assurance plans that
9 currently exist in the legacy Qwest ILEC territory will remain in place for five years, the
10 time period over which the Joint Applicants have claimed the synergy savings from the
11 merger will be accomplished.⁷ The condition also establishes a mechanism to assure that
12 the Merged Company performance in the legacy Qwest ILEC territory does not
13 deteriorate compared with pre-merger performance. These conditions will help assure
14 that the Merged Company maintains wholesale service quality at current levels and
15 creates disincentives for the Merged Company to achieve synergies at the expense of its
16 competitors through a deterioration of its wholesale market operations. Mr. Gates's
17 testimony (Exhibit Joint CLECs 2) discusses the importance of wholesale service quality
18 conditions in more detail.

19 Joint CLEC recommended condition number 4 is repeated below in its entirety.

⁶ The CLEC recommended conditions are attached to the testimony of Mr. Gates (Exhibit Joint CLECs 2) as Exhibit Joint CLECs 2.8.

⁷ Direct Testimony of Jeff Glover, Utah PSC Docket No. 10-049-16, May 27, 2010, p. 11, lines 9-11.

1 In the legacy Qwest ILEC territory, the Merged Company shall comply with all
2 wholesale performance requirements and associated remedy or penalty regimes for all
3 wholesale services, including those set forth in regulations, tariffs, interconnection
4 agreements, and Commercial agreements applicable to legacy Qwest as of the Merger
5 Filing Date. The Merged Company shall continue to provide to CLECs at least the
6 reports of wholesale performance metrics that legacy Qwest made available, or was
7 required to make available, to CLECs as of the Merger Filing Date. The Merged
8 Company shall also provide these reports to state commission staff or the FCC, when
9 requested. The state commission and/or the FCC may determine that additional
10 remedies are required, if the remedies described in this condition do not result in the
11 required wholesale service quality performance or if the Merged Company violates
12 the merger conditions.

13
14 a. No Qwest Performance Indicator Definition (PID) or Performance Assurance
15 Plan (PAP) that is offered, or provided via contract or Commission approved plan,
16 as of the Merger Filing Date (“Current PAP”) will be reduced, eliminated, or
17 withdrawn for at least five years after the Closing Date and will be available to all
18 requesting CLECs until the Merged Company obtains approval from the
19 applicable state commission, after the minimum 5-year period, to reduce,
20 eliminate, or withdraw it. For at least the Defined Time Period, in the legacy
21 Qwest ILEC territory, the Merged Company shall meet or exceed the average
22 wholesale performance provided by Qwest to each CLEC for one year prior to the
23 Merger Filing Date for each PID, product, and disaggregation. If the Merged
24 Company fails to provide wholesale performance as described in the preceding
25 sentence, the Merged Company will also make remedy payments to each affected
26 CLEC in an amount as would be calculated using the methodology (*e.g.*, modified
27 Z test, critical Z values, and escalation payments) in the Current PAP, for each
28 missed occurrence when comparing performance post- and pre- Closing Date
29 (“Additional PAP”).

30
31 b. In the legacy Qwest ILEC territory, for at least the Defined Time Period, the
32 Merged Company will meet or exceed the average monthly performance provided
33 by Qwest to each CLEC for one year prior to the Merger Filing Date for each
34 metric contained in the CLEC-specific monthly special access performance
35 reports that Qwest provides, or was required to provide, to CLECs as of the
36 Merger Filing Date. For each month that the Merged Company fails to meet
37 Qwest’s average monthly performance for any of these metrics, the Merged
38 Company will make remedy payments (calculated on a basis to be determined by

1 the state commission or FCC) on a per-month, per-metric basis to each affected
2 CLEC.

3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY WITH RESPECT TO**
4 **RECOMMENDED CONDITION NUMBER 4?**

5 A. The purpose of this testimony is to explain the additional performance assurance plan
6 (“APAP”) proposal, as described in part a, of Joint CLEC recommended condition
7 number 4.

8 **Q. PLEASE DESCRIBE THE ADDITIONAL PERFORMANCE ASSURANCE PLAN**
9 **(“APAP”) PROPOSAL.**

10 A. The APAP is a minimum five year performance assurance plan applicable to the legacy
11 Qwest ILEC territory. This plan is in addition to the existing Utah PAP and does not
12 alter or change the existing Utah PAP. The APAP would compare the Merged
13 Company’s post-merger (“current performance”) monthly performance with the
14 performance that existed in the twelve months prior (“prior performance”) to the Merger
15 Filing Date (*i.e.*, May 2009 through April 2010). This comparison would be made using
16 the current Utah Performance Assurance Performance Indicators (“PIDs”), products and
17 disaggregation, thus no new measures are required to be created. Further, the data for the
18 year prior to the Merger Filing Date already exists, and thus also would not need to be
19 created. The APAP would compare the current and prior performance results using the
20 same statistical methodology that exists in the Utah PAP to determine whether a

1 statistically significant deterioration in performance exists.⁸ If such deterioration does
2 exist, then the APAP would calculate payments for each missed occurrence using the
3 methodology from the Utah PAP, including one allowable miss⁹ and escalation payments
4 for consecutive months of below standard performance.¹⁰

5 **Q. HOW IS THE APAP DIFFERENT FROM THE CURRENT UTAH PAP?**

6 A. In terms of the methodology (*e.g.*, modified Z test, critical Z values, and escalation
7 payments), not at all. The current Utah PAP, which is a part of many carriers'
8 interconnection agreements, compares Qwest's wholesale performance for CLECs to
9 Qwest's retail performance.¹¹ In other words, the current Utah PAP is intended to assure
10 that Qwest does not treat itself more favorably than it treats CLECs, who rely upon
11 Qwest's wholesale facilities. These plans were put in place when Qwest entered the
12 interLATA long distance market to help assure that local markets remained opened to
13 competition. The APAP does not replace the Utah PAP, but works in addition to the
14 existing PAP. The purpose of the proposed APAP is to compare the current level of
15 Qwest's wholesale performance to CLECs with a past level of wholesale performance to
16 CLECs, rather than compare wholesale and retail performance. A plan such as the APAP
17 would help to assure that wholesale performance does not deteriorate post merger. The
18 Utah PAP, which was not developed to identify merger-related harm, would not capture

⁸ See section 4.0 of the Qwest Utah SGAT Seventh Revision, Exhibit K, February 4, 2009 ("UT PAP"),
[http://www.qwest.com/about/policy/sgats/SGATSdocs/utah/UT_7th_revised_6th_amend_Exhibit_K_020409.p
df](http://www.qwest.com/about/policy/sgats/SGATSdocs/utah/UT_7th_revised_6th_amend_Exhibit_K_020409.pdf) Note: this document is attached to the interconnection agreements of all CLECs who have opted into the
Utah PAP.

⁹ See section 3.1.2, UT PAP.

¹⁰ See section 6.2.1, UT PAP.

¹¹ In some cases a benchmark is used rather than Qwest's retail performance.

1 deteriorating performance, if the Merged Company's performance deteriorated for both
2 wholesale and retail services simultaneously or if wholesale performance deteriorated,
3 but remained above the minimum benchmarks. The APAP uses the same methodology
4 but is tailored to the purpose of measuring merger-related performance issues.

5 **Q. DO YOU HAVE AN EXAMPLE OF A DOCUMENT DESCRIBING THE**
6 **RECOMMENDED APAP?**

7 A. Yes. Exhibit Integra 1.1 is nearly identical in function to the existing PAPs in the Qwest
8 territory, except that it relies upon a comparison of current and prior wholesale
9 performance to CLECs. While at first glance the document may appear complicated, this
10 is not the case as it is based upon the existing, well-familiar Utah PAP in place today.
11 The proposed APAP does not create new PIDs, statistical tests, or payment structures, but
12 instead utilizes the existing structures from the PAPs in place across the Qwest region.
13 The difference is simply the standard to which performance is compared.

14 **Q. PLEASE PROVIDE AN EXAMPLE OF HOW A CALCULATION FROM THE**
15 **APAP WOULD WORK AND HOW IT COMPARES TO THE QPAP.**

16 A. Below are two hypothetical examples comparing APAP and QPAP payments. One
17 involves the measure OP-3, Installation Commitments Met, for 2-wire analog loops. This
18 measures how often Qwest meets its installation commitments and has a benchmark
19 standard of 90%,¹² which means that as long as Qwest's actual performance is greater
20 than 90% it does not make Utah PAP payments to CLECs. Qwest's prior wholesale

¹² See UT PAP.

1 performance for CLECs is approximately 96.7%.¹³ The second example involves MR-7,
2 Repeat Trouble Reports, for DS1 capable loops. This measures how often Qwest is
3 called on to repair a circuit with troubles in the Qwest network that it has already been
4 called on to repair in the prior 30 days. This measure is a parity measure and is compared
5 to how Qwest performs for its DS1 private line circuits. Qwest's prior wholesale
6 performance for CLECs is approximately 16.7%,¹⁴ meaning 16.7% of CLEC circuits
7 with troubles in the Qwest network, require a second repair from Qwest within 30 days.
8 Qwest's average retail parity performance is 17.3%.¹⁵

9 The table below shows what happens if Qwest's wholesale performance on installation
10 commitments falls to 93%, almost doubling the number of commitments missed as well
11 as what would happen if both Qwest's retail and wholesale repair repeat rates
12 deteriorated post merger and climbed to 25%, about 50% greater than the prior rate.

¹³ This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

¹⁴ This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

¹⁵ This number is used for this hypothetical example, but represents Qwest's actual region-wide performance for this measure from May 2009 through April 2010.

Hypothetical APAP and QPAP Payment Comparison Examples				
	OP-3 Installation Commitments Met		MR-7 Repair Repeat Rate	APAP Ref
	2-wire analog loop		DS1 Capable Loops	
Average Prior Performance	96.7%		16.7%	
Standard	benchmark	90.0%	parity	17.3%
Prior Payment	\$0.00		\$0.00	
Post Merger Performance	93.0%		25.0%	
CLEC Observations	250		70	
QPAP Standard	benchmark	90.0%	parity	25.0%
QPAP Payment	\$0.00		\$0.00	
APAP Standard	96.7%		16.7%	
Z Stat	3.15		1.79	Sec 4.2
Z Table	2.00		1.65	Sec 5.0 Table 1
Calculated Value	94.3%		24.3%	Sec 8.2
Non Conforming Occurances	3		0.49	Sec 8.2
Payment per Occurance	\$150.00		\$150.00	Sec 6.0 Table 2
APAP Payment	\$487.00		\$74.00	Sec 8.2

As can be seen in the example for OP-3, Installation Commitments Met, even if Qwest's wholesale performance became worse post merger, Qwest would make no payments under the current Utah PAP so long as Qwest's performance is above the 90 percent benchmark. However, under the proposed APAP mechanism, a payment would occur to CLECs as a result of the significant deterioration in performance. The "calculated value" in the table above shows how performance would have to deteriorate, for a CLEC with about 250 installations a month, in order for the deterioration to be considered statistically significant and thus require a payment. Another way of looking at the "calculated value," for this example, is that missed commitments would have to increase

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1 by more than 72.7%¹⁶ before a payment would be triggered under the APAP.¹⁷

2 Likewise, in the example for repeat troubles, no payment would be made under the
3 current Utah PAP if both retail and wholesale service deteriorates; however, a payment
4 would be required under the APAP as a result in a significant deterioration of wholesale
5 service quality post merger. Again the “calculated value” shows how far service would
6 have to degrade,¹⁸ for a CLEC with 70 repeat troubles a month, before a payment would
7 be triggered under the APAP.

8 **Q. THERE APPEARS TO BE A SIGNIFICANT DEGRADATION OF WHOLESALE**
9 **SERVICE QUALITY BEFORE A PAYMENT WOULD BE TRIGGERED UNDER**
10 **THE ADDITIONAL PAP. ARE THE PERFORMANCE INCENTIVES LARGE**
11 **ENOUGH TO PROTECT WHOLESALE SERVICE QUALITY POST MERGER?**

12 A. The question identifies an important concern, because a key factor in performance
13 assurance plans is not to let poor performance simply become a cost of doing business.
14 Setting performance payments too low could lead to this result. One method to care for
15 this potential error is escalation provisions. Escalation provisions ratchet up the
16 payments that are made for each non-conforming occurrence when the company misses a
17 performance standard in consecutive months. The current Utah PAP contains an
18 escalation provision,¹⁹ and we propose that the same type of provision be used in the

¹⁶ $72.7\% = (1 - 94.3\%) / (1 - 96.7\%) - 1$.

¹⁷ Note that the actual percent will be different for each CLEC depending on both performance and order volumes prior to and after the merger.

¹⁸ Again, in this example, service would have to degrade by 45.5% ($24.3\% / 16.7\% - 1$), before a payment would be triggered under the APAP.

¹⁹ See section 6.2.1 and table 2 of the UT PAP.

1 APAP. An escalation provision is crucial to assure that substandard performance does
2 not simply become a cost of doing business.

3 CenturyLink has professed a commitment to wholesale service quality,²⁰ thus hopefully
4 no payment will ever be made under an APAP, and we will never have to find out
5 whether the payment levels were too low. However, we do propose that the Commission
6 use the escalation provisions from the current Utah PAP in the APAP. The escalation
7 provisions increase the non-conforming payment amounts when substandard performance
8 continues for consecutive months, clearly indicating a problem. The escalation provision
9 is crucial to assure that substandard performance does not simply become a cost of doing
10 business.

11 **III. ICA NEGOTIATION PROCESS (JOINT CLEC RECOMMENDED**
12 **CONDITIONS 8 AND 9)**

13 **Q. ARE YOU INVOLVED IN NEGOTIATING INTERCONNECTION**
14 **AGREEMENTS WITH QWEST?**

15 A. Yes, I participate in multiple entity, multi-state²¹ interconnection agreement (“ICA”)
16 negotiations with Qwest on behalf of Integra and, before that, I participated in ICA
17 negotiations with Qwest on behalf of Eschelon. I participate in developing negotiation

²⁰ Direct Testimony of Jerry Fenn, Utah PSC Docket No. 10-049-16, May 27, 2010, p. 12, lines 2-3. See also, Direct Testimony of Michael R. Hunsucker, Oregon Public Utility Commission Docket No. UM 1484, June 22, 2010, CTL/400, Hunsucker/9, lines 9-12 (“Q. Is CenturyLink committed (sic) to providing quality service to its wholesale customers? A. Certainly...”)

²¹ The Qwest-Eschelon ICAs, which I discuss below, were also negotiated in multi-state negotiations, with most of the multi-state negotiations draft containing the same language for several states, with certain sections identified as state-specific language. After conclusion of negotiations, a state-specific draft was then prepared for the state-specific ICA arbitration. Similarly, at the conclusion of the Integra negotiation, a state-specific ICA will be prepared per entity for each state.

1 positions and proposals and in reviewing and responding to proposals from Qwest. I
2 have taken part in numerous negotiations sessions with Qwest, along with a number of
3 other company personnel.

4 **Q. PLEASE DESCRIBE THE TIMELINE FOR THE INTERCONNECTION**
5 **AGREEMENT NEGOTIATIONS BETWEEN QWEST AND INTEGRA.**

6 A. On September 17, 2007, the parties entered into an extension of the statutory arbitration
7 timeframes under Section 252 of the Act, agreeing upon an arbitration window of
8 December 31, 2007, through January 25, 2008. As discussed below, at that time, Qwest
9 and Eschelon had recently completed ICA arbitration hearings. Integra was not in a
10 position to opt-in to the Eschelon agreements, because Qwest adheres to the “all-or-
11 nothing” rule, which does not allow a CLEC to opt-in to an ICA if any changes are
12 needed. Because Integra entities’ business needs differ in some respects from Eschelon’s
13 business needs (*e.g.*, Integra entities desire reciprocal compensation whereas Eschelon’s
14 ICAs have bill-and-keep), Integra could not opt-in in all cases to the Eschelon ICA.
15 Nonetheless, the majority of the Eschelon arbitrated ICA meets Integra’s needs.
16 Therefore, Integra proposed using the recently negotiated and arbitrated Eschelon ICA as
17 a basis for further discussions. Qwest’s position was that it would only negotiate from
18 the Qwest negotiations template. Qwest took this position even though Qwest and
19 another CLEC had recently litigated the issue of the basis for negotiations, and the result
20 was not to negotiate from the Qwest template. Specifically, McLeodUSA (now
21 PAETEC) had filed a Petition for Section 252(a)(2) Mediation in which it said:
22 “McLeodUSA requests the Commission or delegated Commission staff mediate whether,

1 as McLeodUSA contends, an existing interconnection agreement ('ICA') between
2 McLeodUSA and Qwest under which the parties have been operating for the last nine (9)
3 years is the appropriate starting point for negotiations for a successor ICA between the
4 parties, or whether, as Qwest contends, the starting point should be a 'template'
5 agreement proposed by Qwest that McLeodUSA was never involved in creating.”²²

6 Given that McLeodUSA was forced to litigate before it obtained any movement on this
7 issue from Qwest, Integra attempted to avoid litigation by instead – in response to
8 Qwest’s position that negotiations must begin with Qwest’s template – redlining the
9 Qwest template with a proposal that, after the Integra redlines, resembled in large part the
10 terms of the Qwest-Eschelon arbitrated ICA. This was a large undertaking. The body of
11 the Qwest negotiations template proposal is approximately 400 pages, and the body of the
12 Qwest-Eschelon ICA is approximately 350 pages. To compare and redline the two
13 documents to attempt to reconcile most of the language required extensive work,
14 resulting in a redlined document that was 762 pages in length. Integra provided this
15 negotiations proposal to Qwest on December 20, 2007.

16 On January 8, 2008, Qwest and Integra entered into an amended extension of the
17 statutory arbitration timeframes under Section 252 of the Act. Under the amended
18 extension, Qwest was to respond to all of Integra’s proposals by February 25, 2008;
19 Integra was to reply by March 26, 2008; and the arbitration window would open on April

²² McLeodUSA Petition for Mediation, *In the Matter of Petition of McLeodUSA Telecommunications Services, Inc. for Commission Mediation Pursuant to 47 U.S.C. §252(a)(2) of a Dispute With Qwest*, MPUC Docket No. P-5323,421/M-07-609 (May 9, 2007), p. 1.

1 25, 2008. The amended extension provided that, if Qwest missed the February 25, 2008,
2 deadline, the start of the arbitration window would automatically extend by a
3 corresponding amount of time. Qwest still has not provided a complete response to
4 Integra's proposals. Since February 25, 2008, there have been times when months have
5 passed with no response from Qwest. The arbitration window continues to automatically
6 extend as negotiations continue.

7 Today, while there are important issues in the multi-state draft that remain open for
8 resolution, the vast majority of the body of the multi-state draft contains closed (agreed
9 upon) language. And, the vast majority of that language is the same as the language from
10 Qwest-Eschelon ICAs that, in 2007, Integra had proposed to use as a basis for
11 negotiations, in light of all the work Eschelon and Qwest had already done in those
12 negotiations and arbitrations. In short, after a significant expenditure of additional
13 resources and time, the parties are pretty much where they could have been almost three
14 years ago, had Qwest not used its template as the basis for negotiations. The negotiations
15 are not yet concluded. As I discuss in my next responses, arbitrations can then add years
16 to the process before a final compliance filing of an ICA is approved in each state.

17 **Q. PLEASE DESCRIBE THE TIMELINE FOR THE INTERCONNECTION**
18 **AGREEMENT NEGOTIATIONS BETWEEN QWEST AND ESHELON.**

19 A. Eschelon initiated negotiations with Qwest in early 2001 in anticipation of the expiration
20 of the interconnection agreements that were then in effect between the parties, which
21 were set to expire and go into "evergreen" status beginning March 17, 2002.

1 Negotiations went into hiatus on more than one occasion. For between six months and a
2 year, negotiations were not held while Qwest worked on its multi-state arbitration
3 template. Negotiations also lapsed due to *Triennial Review Order/Triennial Review*
4 *Remand Order (or TRO/TRRO)* developments. Eschelon and Qwest continued to operate
5 under the terms and conditions of the existing agreement in evergreen status while they
6 negotiated a successor agreement. The process involved numerous negotiations sessions,
7 email exchanges, and the exchange of red-lined drafts of proposed language. Eschelon
8 became concerned regarding the tenor of the proceedings and asked the Minnesota
9 Commission to act as a mediator in an attempt to move the parties to resolution on the
10 issues. Qwest in turn then asked the Minnesota Department of Commerce (the
11 Department) to observe or participate in the sessions but not to mediate.
12 Representative(s) of the Department took part in the parties' negotiation conference calls
13 after May of 2004. When negotiations were in session, the parties held numerous
14 telephone conference calls, most frequently twice a week and lasting two hours per
15 session.

16 The negotiations process took a number of years, from March of 2001 through mid-2006,
17 when arbitrations commenced, as described below. Eschelon devoted substantial
18 resources to the negotiation process, including the efforts of legal counsel and
19 administrative staff in Eschelon's law and policy department, carrier relations and cost
20 and policy personnel, and subject matter experts working in a variety of areas within
21 Eschelon who provided information and analysis needed to support the negotiation effort.

1 Executives from Eschelon's network and finance organizations participated regularly in
2 negotiations sessions.

3 **Q. DID THE NEGOTIATIONS RESULT IN A RESOLUTION OF ALL ISSUES?**

4 A. No. Although the parties were able to close the vast majority of the contract language,
5 the parties negotiated to impasse on a number of issues and, thereafter, submitted those
6 issues to arbitration before the state commissions in Arizona, Colorado, Minnesota,
7 Oregon, Utah, and Washington.

8 **Q. DID YOU PARTICIPATE IN THE ARBITRATION PROCEEDINGS?**

9 A. Yes, I was a witness in all six states, as was my colleague, Bonnie Johnson. In addition,
10 Eschelon's arbitration effort was supported by its in-house legal team and subject matter
11 experts. Eschelon also retained outside counsel and outside experts who assisted with the
12 arbitrations.

13 **Q. PLEASE DESCRIBE THE STATUS OF THE VARIOUS ARBITRATION**
14 **PROCEEDINGS IN WHICH YOU PARTICIPATED.**

15 A. The arbitration proceedings occurred from mid-2006 through hearings in early to mid-
16 2007. In each case, the parties submitted multiple rounds of extensive written testimony
17 and exhibits, participated in evidentiary hearings before an administrative law judge(s),
18 and provided briefing of their legal positions. In all but one state, commission orders
19 approving the arbitration agreements were issued in 2008 (with a follow up order in
20 Arizona in 2009). The agreements in the five states, based on negotiations that
21 commenced in March of 2001, went into effect between March of 2008 and December of

1 2009. In Colorado, the parties are yet awaiting a decision. Relevant state by state details
2 are as follows:

- 3 • Oregon: *In the Matter of Eschelon Telecom of Oregon, Inc. Petition for Arbitration*
4 *of an Interconnection Agreement with Qwest Corporation Pursuant to Section 252(b)*
5 *of the Telecommunications Act, ARB 775* – A petition for arbitration was filed on
6 October 6, 2006, and the Commission approved an interconnection agreement to be
7 effective November 7, 2008.
- 8 • Arizona: *In the Matter of the Petition of Eschelon Telecom, Inc., for Arbitration with*
9 *Qwest Corporation, Pursuant to 47 U.S.C. Section 252(b) of the Federal*
10 *Telecommunications Act of 1996, Docket Nos. T-03406A-06-0572 and T-01051B-06-*
11 *0572* – A petition for arbitration was filed on September 7, 2006, and the
12 interconnection agreement was approved to be effective on December 8, 2009.
- 13 • Colorado: *In the Matter of the Petition of Qwest Corporation for Arbitration with*
14 *Eschelon Telecom, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal*
15 *Telecommunications Act of 1996, Docket No. 06B-497T* – A petition for arbitration
16 was filed on September 8, 2006, an evidentiary hearing was held before the ALJ on
17 April 17 and 18, 2007, and the parties submitted post-hearing briefing on May 22,
18 2007. A decision is pending.
- 19 • Minnesota: *In re the Matter of the Joint Application for Approval of an Arbitrated*
20 *Agreement for Terms and Conditions for Interconnection, Unbundled Network*
21 *Elements, Ancillary Services, and Resale of Telecommunications Services Between*
22 *Eschelon Telecom of Minnesota, Inc., and Qwest Corporation, Docket No. P-5340,*
23 *421/IC-06-768* – A petition for arbitration was filed on May 26, 2006, and the
24 Commission approved the parties' interconnection agreement to be effective March
25 24, 2008. In its order resolving the disputed issues, the Minnesota Commission
26 referred certain interconnection terms and conditions for arbitration issues relating to
27 conversions of UNEs to non-UNEs and to commingling of UNEs and non-UNEs to a
28 separate, generic docket, in which Eschelon, through its parent, Integra, actively
29 participated. Although the Commission has issued an order in that matter, Qwest's
30 motion for reconsideration of that order is still pending.
- 31 • Utah: *In the Matter of the Petition of Eschelon Telecom of Utah, Inc. for Arbitration*
32 *with Qwest Corporation Pursuant to 47 U.S.C. Section 252 of the Federal*
33 *Telecommunications Act of 1996, Docket No. 07-2263-03* – A petition for arbitration
34 was filed on April 27, 2007, the Commission issued its order resolving the arbitrated
35 issues on July 11, 2008, and issued its order on reconsideration on September 11,
36 2008. The interconnection agreement was effective on November 13, 2008.
- 37 • Washington: *In the Matter of the Petition of Qwest Corporation for Arbitration with*
38 *Eschelon Telecom, Inc., Pursuant to 47 U.S.C. Section 252 of the Federal*

1 *Telecommunications Act of 1996*, Docket No. UT-063061 – A petition for arbitration
2 was filed on August 9, 2006, and the Commission approved the interconnection
3 agreement to be effective on April 2, 2009. Qwest subsequently appealed from the
4 portion of the Commission’s order regarding terms and conditions for conversion of
5 UNEs to non-UNEs and commingling of UNEs and non-UNEs and the Federal
6 District Court for the District of Washington recently affirmed the Washington
7 Commission’s decision. It is not known whether Qwest will appeal that decision.

8 **Q. WHAT IS THE SIGNIFICANCE OF INTEGRA’S AND ESCHELON’S**
9 **EXPERIENCE IN THE NEGOTIATION AND ARBITRATION PROCESS FOR**
10 **THE ISSUES TO BE DETERMINED BY THE COMMISSION IN THIS**
11 **PROCEEDING?**

12 A. The Commission must decide whether the proposed transaction is in the public interest
13 and whether customers and competition will be harmed. As part of that assessment, the
14 Commission needs to consider the status of interconnection agreements, how long
15 existing agreements should remain in place, and the starting document for negotiations of
16 replacement ICAs. As further discussed by Dr. Ankum in his testimony (Exhibit Joint
17 CLECs 1) regarding interconnection rights and responsibilities under the Act, the ILEC’s
18 wholesale customers need to know that the terms and conditions currently available, will
19 continue to be available and that service will at least be constant if not improve, and that
20 the Merged Company will not backslide with respect to its obligations, including OSS
21 obligations, that were developed initially in 271 proceedings and later incorporated in
22 interconnection agreements. The experience of Integra and Eschelon with the negotiation
23 and arbitration process sheds light on the length of time protections from merger-related
24 harm need to remain in place.

1 Proposed Joint CLEC recommended condition number 8 is that the Merged Company be
2 required to allow requesting carriers to extend existing interconnection agreements,
3 whether or not the initial or current term has expired and is in “evergreen” status.
4 Proposed Joint CLEC recommended condition number 9 addresses negotiation of the
5 subsequent interconnection agreement, stating:

6 The Merged Company shall allow a requesting competitive carrier to use its pre-
7 existing interconnection agreement, including agreements entered into with
8 Qwest, as the basis for negotiating a new replacement interconnection agreement.
9 If Qwest and a requesting competitive carrier are in negotiations for a replacement
10 interconnection agreement before the Closing Date, the Merged Company will
11 allow the requesting carrier to continue to use the negotiations draft upon which
12 negotiations prior to the Closing Date have been conducted as the basis for
13 negotiating a replacement interconnection agreement. In the latter situation
14 (ongoing negotiations), after the Closing Date, the Merged Company will not
15 substitute a negotiations template interconnection agreement proposal of any
16 legacy CenturyLink operating company for the negotiations proposals made
17 before the Closing Date by legacy Qwest.

18 As the preceding discussion of the Qwest-Integra negotiations and the Qwest-Eschelon
19 negotiations and arbitrations shows, the negotiation and arbitration process is an
20 extremely resource-intensive, time-consuming process that is exacerbated by the ILEC’s
21 insistence on use of its template negotiations proposal. As a practical matter, the length
22 of time necessary for negotiations and arbitration means that parties may operate under
23 an expired agreement in evergreen status for an extended period of time while they
24 negotiate and arbitrate a new agreement. That does not mean, however, that the
25 agreement is static in the meantime. The existing agreements have been amended on
26 multiple occasions over time, including amendments to reflect changes in law.

1 CenturyLink and Qwest have sponsored testimony in support of CenturyLink's
2 application that asserts that "All prices, terms and conditions" of the interconnection
3 agreements between Qwest and CLECs "will remain in effect until such time as they are
4 renegotiated or expire by their own terms."²³ For agreements already in evergreen status,
5 this is no time at all. For agreements that will expire and go into evergreen status in the
6 Spring or Fall of 2011,²⁴ this is also little or no time, particularly as the closing date of
7 the transaction may be after at least the Spring date. After carriers raised concerns about
8 this issue with the FCC, the Joint Applicants filed Reply Comments with the FCC in
9 which they said: "CenturyLink plans to continue operating both CenturyLink and Qwest
10 existing OSS uninterrupted for the immediate future until it completes its evaluation of
11 the best options for all stakeholders. This is expected to take 12 months at the very
12 least...[T]he immediate plan is to maintain both companies' separate OSS and continue
13 operations as usual."²⁵ The statement is noncommittal, particularly as to interconnection
14 agreements. To the extent that "continue operations as usual" suggests that the Merged
15 Company may operate under existing interconnection agreements for 12 months after the
16 closing date of the transaction, this plan offers little comfort to carriers, like Eschelon,
17 that have spent years negotiating and arbitrating with the ILEC to obtain an
18 interconnection agreement. Assuming the current pace of negotiations, one year is
19 insufficient time to complete negotiations much less obtain an arbitrated resolution of

²³ Direct Testimony of Jerry Fenn, Utah PSC Docket No. 10-049-16, May 27, 2010, p. 9, lines 7-8.

²⁴ The Minnesota Qwest-Eschelon ICA went into effect on March 24, 2008, with a three-year term before it goes into evergreen status. For other CLECs with this ICA term in Minnesota, see Exhibit Integra 2.10 to the testimony of Ms. Johnson (Exhibit Integra 2). The Qwest-Eschelon ICAs in Arizona, Oregon, Utah, and Washington also have a three-year term before they go into evergreen status.

²⁵ Applicants' FCC Reply Comments, WC Docket No. 10-110 (July 27, 2010), p. 20.

1 remaining impasse issues. And, if the Merged Company insists upon negotiations based
2 on a new or revised template after the closing date, not only will the amount of time
3 needed to obtain an effective ICA be extended but also literally years of effort and
4 extensive use of resources will be lost.

5 **Q. WHY DO JOINT CLECS PROPOSE BOTH CONDITIONS 8 AND 9 TO**
6 **ADDRESS THIS PROBLEM?**

7 A. Joint CLECs' proposed condition number 8 deals with extending existing ICAs, while
8 proposed condition number 9 relates to negotiation of new ICAs. Based on the
9 experience of Integra and Eschelon to date regarding the length of time needed for
10 negotiations and arbitrations, even an extension of existing ICAs that would be the
11 equivalent of one three-year term would not be sufficient to address the time period
12 needed to fully negotiate and arbitrate a new ICA. Only if existing ICAs are extended for
13 the longer requested period of 7 years would the time period of the extension begin to
14 cover the time period of the Qwest-Eschelon negotiations starting in March of 2001
15 through the Arizona effective date of December of 2009. And, in Colorado, for which no
16 ruling has been issued, or Minnesota, for which the conversions and commingling issue
17 raised in negotiations has not yet resulted in final ICA language, the time period would be
18 longer.

19 In any event, whenever a new ICA is needed, the issue will remain as to the starting point
20 for those negotiations and whether the Merged Company may force carriers to negotiate
21 from an ILEC template instead of the carrier's existing agreement or pre-closing date

1 negotiations draft. Providing business certainty now will avoid disputes later and protect
2 customers and competition from harm caused by the post-merger company backsliding
3 from existing ICA terms and conditions. At the same time, the Merged Company will be
4 protected going forward, as the existing ICAs contain provisions for dealing with changes
5 in law.

6 **IV. UNE PROVISIONING AND MARKETING PRACTICES DOCKET (JOINT**
7 **CLEC RECOMMENDED CONDITIONS 18 AND 27)**

8 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY WITH RESPECT TO**
9 **CONDITIONS NUMBERS 18 AND 27?**

10 A. The purpose of my testimony relating to these conditions is to discuss Exhibit Integra 2.1
11 and Exhibit Integra 2.2, collectively Exhibit Integra 2.1, which are attached to the Direct
12 Testimony of Ms. Johnson (Exhibit Integra 1), and explain how Exhibit Integra 2.1 and
13 Exhibit Integra 2.2 are relevant to the issues to be determined by the Commission. Mr.
14 Gates testimony (Exhibit Joint CLECs 2) addresses in detail the necessity of conditions
15 numbers 18 and 27.

16 **Q. WHAT IS THE JOINT CLEC RECOMMENDED CONDITION NUMBER 18?**

17 A. Condition number 18 requires that the Merged Company maintain sufficient, adequately
18 trained staff to assure that service provided to wholesale customers is equal to or greater
19 than the level of wholesale service provided by Qwest before the Merger Filing Date,
20 including maintaining staffing necessary to protect against the misuse of CLEC

1 information in the Merged Company's retail operations and improper marketing
2 activities. Condition number 18 provides as follows:

3 The Merged Company shall ensure that the legacy Qwest Wholesale and CLEC
4 support centers are sufficiently staffed, relative to wholesale order volumes, by
5 adequately trained personnel dedicated exclusively to wholesale operations so as
6 to provide a level of service that is equal to or superior to that which was provided
7 by Qwest prior to the Merger Filing Date and to ensure the protection of CLEC
8 information from being used for the Merged Company's retail operations or
9 marketing purposes of any kind. The Merged Company will employ people who
10 are dedicated to the task of meeting the needs of CLECs and other wholesale
11 customers. The total number of the Merged Company's employees dedicated to
12 supporting wholesale services for CLEC customers will be no fewer than the
13 number of such employees (including agents and contractors) employed by legacy
14 Qwest and legacy CenturyLink as of the Merger Filing Date, unless the Merged
15 Company obtains a ruling from the applicable regulatory body that wholesale
16 order volumes materially decline or other circumstances warrant corresponding
17 employee reductions.

18 **Q. WHAT IS THE JOINT CLEC RECOMMENDED CONDITION NUMBER 27?**

19 A. Condition number 27 concerns the Merged Company's obligations with respect to
20 conditioned copper loops. Condition number 27 provides as follows:

21 The Merged Company will provide conditioned copper loops in compliance with
22 federal and state law and at rates approved by the applicable state commission.
23 Line conditioning is the removal from a copper loop of any device that could
24 diminish the capability of the loop to deliver xDSL. Such devices include bridge
25 taps, load coils, low pass filters, and range extenders. Insofar as it is technically
26 feasible, the Merged Company shall test and report troubles for all the features,
27 functions and capabilities of conditioned copper lines, and may not restrict its
28 testing to voice transmission only. If the Merged Company seeks to change rates
29 approved by a state commission for conditioning, the Merged Company will
30 provide conditioned copper loops in compliance with the relevant law at the
31 current commission-approved rates unless and until a different rate is approved.

32 Mr. Gates testimony (Exhibit Joint CLECs 2) lays out the federal rules upon which this
33 condition is based in his testimony.

1 **Q. PLEASE DESCRIBE EXHIBIT INTEGRA 2.1.**

2 A. Exhibit Integra 2.1 consists of comments submitted on behalf of a coalition of CLECs in
3 *In the Matter of a Commission Investigation into Qwest Corporation's Provision of*
4 *Network Elements to CLECs and into Related Marketing Practices Targeting CLEC*
5 *Customers ("UNE Provisioning and Marketing Practices Docket"), MPUC Docket No.*
6 *P-421/CI-09-1066.* Exhibit Integra 2.2 is a corrected (errata) version of the table of
7 contents to Exhibit Integra 2.1 (showing corrected page numbers to reflect the correct
8 corresponding pages of Exhibit Integra 2.1. Exhibit Integra 2.3 through Exhibit Integra
9 2.18 and Exhibit Integra 2.20 include attachments that were filed with the initial
10 comments at that time. In this testimony, I will sometimes refer to these documents
11 collectively as the "Joint CLEC Comments." The Joint CLEC Comments were submitted
12 to the Minnesota Public Utilities Commission on behalf of Integra Telecom of
13 Minnesota, Inc., Eschelon Telecom of Minnesota, Inc., Popp.Com, Velocity Telephone,
14 Inc., US Link, Inc., d/b/a TDS Metrocom, and McLeodUSA Telecommunications
15 Services, Inc., a PAETEC company.

16 **Q. HAVE YOU VERIFIED THE INFORMATION IN THE JOINT CLEC**
17 **COMMENTS?**

18 A. Yes. I have reviewed the information filed in these comments. In addition, I have been
19 involved with many of these issues on behalf of Integra and participated in the
20 preparation of these initial comments.

21 **Q. ARE THE CLECS SEEKING IN THIS CASE TO LITIGATE THE SAME ISSUES**

1 **AS ARE BEING ADDRESSED IN THE *UNE PROVISIONING AND MARKETING***
2 ***PRACTICES DOCKET?***

3 A. No. In this docket, merger conditions are sought to ensure that, following the merger, the
4 new combined entity complies with applicable UNE provisioning laws. As the above-
5 quoted condition 27 shows, the condition creates an enforceable commitment to comply
6 with the law but does not further address implementation of the law. These conditions do
7 not ask the Commission to rule on the appropriateness of any Qwest policy or practice.
8 In contrast, the *UNE Provisioning and Marketing Practices Docket* was established in
9 Minnesota to determine whether Qwest is violating certain laws and to adjudicate, in a
10 contested case, proper implementation of aspects of those laws. In other words, the
11 requested end result in this docket (confirm duty to comply with the law) is just the
12 starting point of that docket (where those laws are in place but disputes have arisen
13 pertaining to those laws). The recommended merger condition does not go farther than
14 the current law (which is quoted almost verbatim in the condition), so Applicants cannot
15 reasonably argue that a new or different standard will be applied in that case as a result of
16 this docket.

17 Unlike the high-level nature of recommended condition 27, resolution of the *UNE*
18 *Provisioning and Marketing Practices Docket* may involve detailed implementation
19 issues, and ultimately, resolution of the issues in that docket could include more granular
20 solutions. For example, the Minnesota Commission could order the parties to draft ICA
21 language that incorporates processes required to comply with the Commission's orders,

1 as occurred in the Conversions and Commingling docket.²⁶ Additionally, or
2 alternatively, the Commission could require Qwest to file compliance filings and, if those
3 are not accepted, file additional compliance filings, as occurred in a Minnesota docket
4 relating to improper contacts between Qwest wholesale and Qwest retail.²⁷ The
5 Commission need not do any of that here to simply require compliance with existing
6 laws. Recommended condition 27, as a means to address conditioned copper loops to
7 avoid merger-related harm, is in no way redundant of those efforts.

8 The Joint CLECs are proposing merger conditions to ensure that the post-merger entity
9 fully complies with the law. The Merged Company should have no issue with a
10 condition that it comply with the law unless its intent is to not comply. To the extent the
11 Merged Company refuses to accept such a condition, this should be a red flag for the
12 Commission.

13 Moreover, the proposed merger conditions are also intended to ensure that adequate
14 resources are devoted to wholesale customers in the face of the otherwise strong
15 incentive the merged entity will have to achieve synergy savings at the expense of
16 providing reliable, quality services to its CLEC competitors.

17 **Q. ARE THE ISSUES ADDRESSED IN THE JOINT CLEC COMMENTS UNIQUE**
18 **TO MINNESOTA?**

²⁶ *Order Resolving Interconnection Issues and Requiring Compliance Filing*, In the Matter of Qwest Corporation's Conversion of UNEs to Non-UNEs and In the Matter of Qwest's Corporation's Arrangements for Commingled Elements, Docket Nos. P-421/C-07-370 and P-421/C-07-371, May 24, 2010.

²⁷ See Exhibit Integra 2.26, July 31, 2003, and November 12, 2003, Orders from *In The Matter of a Request by Eschelon Telecom for an Investigation Regarding Customer Conversion by Qwest and Regulatory Procedures*, Minnesota PUC Docket P-4211C-03-616 ("MN 616 orders").

1 A. No. The issues, and the facts supporting those issues, are not limited to Minnesota. They
2 have been raised in Minnesota because only the Minnesota Commission has commenced
3 an investigation regarding these issues. The Qwest policies and practices that are the
4 subject of the attachments to Ms. Johnson's testimony (Exhibit Integra 2) are not state-
5 specific, nor are the legal requirements relating to those policies and practices state-
6 specific. However, a decision by the Minnesota Commission will be state-specific, as
7 well as entity-specific. A Minnesota decision will not be binding on Qwest in any other
8 state or on the other operating entities in any other state.

9 I am aware of other instances in which a state commission has ordered Qwest to remedy
10 certain region-wide Qwest conduct, and Qwest has taken the position that the remedy the
11 commission ordered only applied in that state. For example, in Minnesota, as the result
12 of the complaint brought by Eschelon concerning a Qwest service error that caused
13 Eschelon to lose a large business customer, the Commission issued an order²⁸ that
14 required Qwest to adopt procedures to promptly acknowledge and take responsibility for
15 mistakes that impacted Eschelon's customers. In subsequent arbitration proceedings in
16 other states, Qwest took the position that it should not be required to implement the
17 process for promptly acknowledging mistakes in any state other than Minnesota and also
18 took the position that the process would not be made available to CLECs other than
19 Eschelon. Similarly, although Eschelon prevailed in five of five states, including Utah,
20 on its challenge of a region-wide Qwest process for jeopardy notices (Arbitration Issue
21 Nos. 12-71 – 12-73) in the Qwest-Eschelon ICA arbitrations, Qwest did not implement

²⁸ MN 616 Order.

1 this process for any other state or carrier.²⁹

2 **Q. IF THE JOINT CLECS OBTAIN THE REMEDY THAT THEY SEEK IN THE**
3 ***UNE PROVISIONING AND MARKETING PRACTICES DOCKET*, WON'T THAT**
4 **ELIMINATE THE NEED FOR THE MERGER CONDITIONS RELATING TO**
5 **CONFIDENTIAL CLEC INFORMATION AND LOOP CONDITIONING?**

6 A. No. First, as discussed above, the *UNE Provisioning and Marketing Practices Docket* is
7 an investigation initiated by the Minnesota Commission concerning Qwest, and not the
8 legacy CenturyLink entities. In contrast, an enforceable merger condition would apply in
9 each state where it is adopted and would apply to all of the Merged Company's operating
10 companies. In addition, given the importance of these issues, the Commission should be
11 clear about its expectation that the Merged Company will not misuse CLEC information
12 in its marketing efforts and will comply with its legal obligations regarding conditioning
13 of copper loops. Setting forth a clear expectation and commitment on these issues is
14 essential to ensure that the merger is consistent with the public interest as required by
15 law. The obligation to ensure that this merger is in the public interest requires conditions
16 that address areas of potential harm, including potential harm to competitors and
17 competition from noncompliance with laws that provide for the network access
18 competitors need to provide competitive services. As such, it is common practice for
19 merger conditions to refer to compliance with the law, particularly when there have been

²⁹ See, Utah PSC Docket No. 07-2263-03, Report and Order on Arbitration of Interconnection Agreement, July 11, 2008, p. 89. The docket numbers for the Qwest-Eschelon ICA arbitrations decisions are, for Arizona, T-03406A-06-0572; T-01051B-06-0572 ("Arizona arbitration"); for Minnesota, P-5340, 421/IC-06-768 ("Minnesota arbitration"); for Oregon, ARB 775 ("Oregon arbitration"); for Utah, 07-2263-03; ("Utah arbitration"); and for Washington, UT-063061 ("Washington arbitration").

1 disputes regarding compliance issues, as further discussed by Mr. Gates (Exhibit Joint
2 CLECs 2).

3 The evidence contained in the attachments to Ms. Johnson's testimony (Exhibit Integra 2)
4 reflects that there is, at the very least, reason for concern about these issues. Putting the
5 Merged Company on notice of the Commission's expectation through the adoption of
6 these conditions may eliminate the necessity for CLECs to bring complaints in the future
7 regarding these issues. Such complaints not only consume the Commission's resources,
8 they are extremely expensive and time-consuming for CLECs and a distraction from the
9 CLECs' core mission of serving their customers and competing to provide service to new
10 customers.

11 Finally, there is an issue of timing. Under the current schedule, the Minnesota
12 Commission will not make a decision in the *UNE Provisioning and Marketing Practices*
13 *Docket* until after the date anticipated for a decision in this case.

14 **V. CONCLUSION**

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

16 **A.** Yes.