

STATE OF UTAH
BEFORE THE UTAH PUBLIC SERVICE COMMISSION

Joint Application of Qwest Communications
International, Inc. and CenturyTel, Inc. for
Approval of Indirect Transfer of Control of
Qwest Corporation, Qwest Communications
Company, LLC, and Qwest LD Corporation

DOCKET NO. 10-049-16

REBUTTAL TESTIMONY OF
MICHAEL R. HUNSUCKER
DIRECTOR, CLEC MANAGEMENT,
CENTURYLINK, INC.

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

2 A. My name is Michael R. Hunsucker. My business address is 5454 W. 110th Street,
3 Overland Park, Kansas 66211.

4 **Q. ON WHOSE BEHALF ARE YOU SUBMITTING REBUTTAL TESTIMONY?**

5 A. I am submitting rebuttal testimony on behalf of CenturyLink, Inc., referred to herein as
6 “CenturyLink.”

7 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

8 A. I am currently employed by CenturyLink as Director-CLEC Management. I was named
9 to the position in April 2008 in legacy Embarq, and have continued in the same capacity
10 after the CenturyTel/Embarq merger.

11

12 **Q. WHAT ARE YOUR RESPONSIBILITIES AS DIRECTOR-CLEC**
13 **MANAGEMENT?**

14 A. I and my team manage CenturyLink’s Section 251/252 interconnection agreement (ICA)
15 negotiations, the implementation of ICAs, and all account management relations with our
16 CLEC customers. My group is also responsible for managing revenue assurance, reciprocal
17 compensation/access expense, wholesale service performance reporting and dispute
18 resolution.

19

20 **Q. WHAT POSITION DID YOU HOLD BEFORE BECOMING DIRECTOR-CLEC**
21 **MANAGEMENT?**

1 A. I was Embarq's State Executive for Texas from 2002 and for Tennessee from 2007 until
2 I accepted my current position. As State Executive, I managed Embarq's relationship with
3 public utility commissions and state legislatures. I also managed Embarq's public affairs
4 activities in the two states. Prior to being named to that position, I was Director-Policy for
5 Sprint Corporation from 1992 until 2002. As Director-Policy, I developed regulatory and
6 legislative policy for the corporation and provided written and oral testimony before state
7 regulatory commissions for Sprint and its operating subsidiaries, including its incumbent
8 local exchange carriers ("ILECs"), and interexchange/competitive local exchange carrier
9 ("IXC"/"CLEC"). Prior to being named Director-Policy, I held a variety of management
10 positions with Sprint and its predecessor companies, primarily dealing with regulatory
11 matters. I began my telecommunications career in 1979.

12

13 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE ANY STATE AGENCY?**

14 A. Yes. I have testified before regulatory agencies in Florida, North Carolina, South Carolina,
15 Tennessee, Virginia, Pennsylvania, Ohio, Illinois, Maryland, Nebraska, Georgia, Texas and
16 Nevada.

17 .

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

19 The purpose of my testimony is two-fold. First, it shows that the CLEC testimony does
20 not accurately reflect current or post-merger operations of the Joint Applicants and
21 demands self-serving conditions. Second, my testimony explains the positions of
22 CenturyLink and Qwest regarding the proposed merger conditions and related assertions
23 made in the testimony of certain CLECs. Finally, by its comprehensive treatment of the

1 wholesale and interconnection-related issues that have been raised by the CLECs and the
2 Division of Public Utilities (“DPU”), my testimony demonstrates that where such issues
3 are concerned, the acquisition of Qwest by CenturyLink is in the public interest. I am not
4 an attorney, but I will reference applicable law in my testimony to the best of my ability,
5 and explain my understanding of the law based on my experiences with implementing
6 and interpreting it from a business perspective on a daily basis.

7
8 **Q. THE TESTIMONY SUBMITTED BY THE CLECs ASSERTS THAT THE**
9 **COMMISSION SHOULD PLACE SEVERAL CONDITIONS ON ITS APPROVAL**
10 **OF THIS TRANSACTION SO IT “DOES NOT HARM THE INDUSTRY.”¹ DO**
11 **YOU AGREE WITH THIS ASSERTION?**

12 A. No. There are several reasons why the conditions proposed by the CLECs are
13 unnecessary to protect the CLEC industry. First, the existing Qwest operating entity will
14 stay in place post-merger, so the relationships between the companies will remain status
15 quo and there will be none of the impacts that CLECs might encounter with a completely
16 new incumbent entity. Next, CLECs have significant legal protections in place today.
17 These protections include the provisions and obligations of the federal
18 Telecommunications Act (“Act”), Utah Statutes² and the Utah Public Service
19 Commission (Commission) rules,³ Federal and State orders, interconnection agreements
20 (“ICAs”), tariffs, and Qwest’s Section 271 protections, Performance Assurance Plans,

¹ Gates Direct at 110.

² See e.g., Utah Code Ann., § 54-8b-2.2 (Interconnection), Utah Code Ann., § 54-8b-16 (Commission authority to enforce interconnection service quality standards and interconnection agreements); Utah Code Ann., § 54-8b-17 (Procedures for enforcement of interconnection service quality, and penalties for violations).

³ See e.g., R746-365 (Intercarrier Service Quality) and R746-348 (Interconnection).

1 and Change Management Process commitments. Additionally, the Commission loses
2 none of its jurisdiction, but will continue to have oversight of interconnection terms and
3 the ability to resolve disputes related to the same. As further explained in the rebuttal
4 testimony of Jerry Fenn, the Commission has existing safeguards already in place to
5 ensure that the combined company will continue to meet all of its regulatory and legal
6 obligations to the CLECs.

7 Furthermore, I believe CLECs will benefit from the merger without imposition of
8 their requested conditions. A financially-stronger company promotes stability, and thus
9 furthers the goal of having a solid and resilient provider of wholesale services to CLECs
10 and other carriers. CenturyLink already has a very robust and experienced Wholesale
11 Operations team in place and this team is only expected to be stronger post-merger. The
12 combined company will be able to draw upon the best wholesale and interconnection
13 practices and capabilities of each entity, thereby continuing to provide quality service to
14 interconnecting carriers. Thus, the premise that this Transaction would cause harm to the
15 industry is false.

16
17 **Q. HAS THE COMPANY MADE ANY RECENT STAFFING DECISIONS IN**
18 **REGARDS TO POST-MERGER WHOLESALE OPERATIONS, AND IF SO,**
19 **PLEASE DESCRIBE THE DECISIONS AND THE IMPACT ON CLECs?**

20 A. Yes, there was an internal announcement on Monday, September 20, 2010, regarding the
21 Tier 2 leaders, including Wholesale Operations, effective with the close of the merger
22 Transaction. Specifically, in regards to Wholesale Operations, Bill Cheek, President-
23 Wholesale Operations, announced the wholesale structure and Tier 2 leaders as follows:

1 Eric Bozich, Vice President-Product and Marketing who is currently Vice
2 President-Product Management for Qwest.

3
4 Paul Cooper, Director-National Public Access who is currently Director-Public
5 Access for CenturyLink.

6
7 Craig Davis, Vice President-Sales and Account Management who is currently
8 Vice President-Wholesale Sales and Account Management for CenturyLink.

9
10 Warren Mickens, Vice President-Wholesale Operations who is currently Vice
11 President-Customer Service Operations for Qwest.

12
13 Finally, I have been named as Vice President-Wholesale Services and Support.

14
15 This leadership team represents leaders from both CenturyLink and Qwest and represents
16 experienced employees (in excess of 100 years of experience in the telecom industry)
17 who are not only well-equipped to provide quality service, but also committed to
18 continuing to provide quality service to wholesale customers. As I stated earlier in my
19 testimony, the provision of quality service to wholesale customers is a priority at
20 CenturyLink, and will remain so after the merger closing. The CLECs and the DPU have
21 expressed concerns regarding CenturyLink's decision to have a CenturyLink executive at
22 the top of the wholesale organization, but this announcement demonstrates that
23 CenturyLink understands the need to have experienced personnel from both CenturyLink
24 and Qwest. In fact, in the Wholesale Operations organization, CenturyLink will be
25 retaining the same Qwest executives in the areas of wholesale operations, including OSS
26 and product development, that are currently responsible for the Qwest systems and
27 products that the CLECs are most concerned with.

28

1 **Q. IS CENTURYLINK COMMITTED TO PROVIDING QUALITY SERVICE TO ITS**
2 **WHOLESALE CUSTOMERS?**

3 A. Yes. CenturyLink's Wholesale Operations organization is sufficiently staffed with
4 experienced employees who are well-equipped to provide quality service to wholesale
5 customers. CenturyLink has a long-standing history of and commitment to providing
6 quality wholesale services. The provision of quality service to wholesale customers is a
7 priority at CenturyLink, and will remain so after the merger closing.

8
9 **Q. DOES CENTURYLINK HAVE THE REQUISITE EXPERIENCE AND**
10 **EXPERTISE TO CONTINUE TO PROVIDE QUALITY WHOLESALE SERVICE**
11 **IN THE COMBINED COMPANY?**

12 A. Absolutely. As stated above, CenturyLink has a very highly skilled and experienced
13 employee base in the wholesale organization. As regards CenturyLink's pre-merger
14 expertise and capabilities, the facts speak for themselves; 1) CenturyLink currently has
15 almost 2,000 active CLEC interconnection and resale agreements, and in excess of 500
16 interconnection agreements with wireless carriers, across its 33-state region, 2) based on
17 May 2010 year-to-date order volumes, CenturyLink is on pace to process almost one
18 million Access Service records ("ASRs") and Local Service Records ("LSRs") in 2010,
19 with volumes in excess of one million orders in prior years, and 3) CenturyLink
20 demonstrates its quality of service commitment through a CLEC performance assurance
21 plan in its largest CLEC market, Las Vegas, Nevada. In addition, CenturyLink maintains
22 a system called CSPRS (CLEC Service Performance Reporting System; currently
23 available in the legacy Embarq territories), which provides all CLECs with access to the

1 service performance reports on the service provided to their respective companies.
2 Access to the system is provided upon request from the CLEC. Providing high-quality
3 service to CLEC customers is not new to CenturyLink; the company has the requisite
4 experience and expertise and will acquire similar experience and expertise from Qwest
5 upon closing. Simply put, high-quality wholesale service is a priority at CenturyLink
6 today and will continue to be a high priority in the future.

7 Further, CenturyLink has a proven track record of successful integrations.⁴ The
8 integration of Embarq is on track, with the majority of the integration already done in a
9 manner that far exceeds the progress and timelines recently undertaken by other carriers
10 in recent transactions.⁵ Finally, the integration of Qwest will largely involve the use of
11 existing systems rather than creating new ones. The operational conditions of this merger
12 therefore distinguish it from other transactions in which merging companies experienced
13 significant integration difficulties.

14
15 **Q. HOW HAS CENTURYLINK LEVERAGED ITS PREVIOUS ACQUISITION**
16 **EXPERIENCE TO BENEFIT ITS WHOLESALE CUSTOMERS?**

17 A. CenturyLink in recent years has completed significant upgrades to its billing, wholesale,
18 financial, and human resources systems in order to successfully accommodate its growth
19 and future growth opportunities. To date, much of the systems integration that
20 CenturyLink planned as part of its integration of Embarq has been completed on or ahead

⁴ Prior to its Embarq acquisition, CenturyLink has engaged in successful transactions going back more than 15 years, including, among others, its successful acquisition of Pacific Telecom, Inc. that doubled the size of the company, acquisitions of more than one million access lines from GTE and Verizon, KMC Telecom Holdings, and Madison River Communications, plus key fiber network acquisitions from Digital Teleport, Inc. and Level 3.

⁵ Reply Comments of CenturyLink, FCC Docket No. 10-110, as filed on July 27, 2010.

1 of schedule. This real-world experience puts CenturyLink in the best position to assess
2 and address impacts to its wholesale customers that may result from this transaction.
3

4 **Q. YOU EARLIER STATED THAT THE CLECs' TESTIMONY DOES NOT**
5 **ACCURATELY REFLECT CURRENT OR POST-MERGER OPERATIONS.**
6 **CAN YOU PROVIDE EXAMPLES?**

7 A. Yes. A significant portion of the testimony consists of general comments about industry
8 issues that do *not* relate to CenturyLink or Qwest but are offered merely to imply that
9 these issues *could* apply to the Joint Applicants. This Commission should not base its
10 decision on speculation, but rather on its reasonable judgment based on the facts
11 presented as a part of the record. Moreover, the CLECs offer no convincing evidence to
12 suggest their concerns are reasonable as applied to this transaction.

13 A statement made by Mr. Gates shows the proper context needed when
14 scrutinizing the relevance and applicability of the CLECs' testimony. As Mr. Gates
15 noted, the CLECs and the Joint Applicants "are rivals, and ... their economic incentive
16 (as profit-maximizing firms) is to undermine – not help – the other provider's ability to
17 compete for end user customers..."⁶ I believe that is exactly what the CLECs are hoping
18 to achieve by arguing for the conditions they propose – competitive advantages that
19 existing interconnection agreements, commission-approved processes and other accepted
20 practices do not currently provide or apparently not to the degree desired by the CLECs.
21

⁶ Gates Direct at 13.

1 **Q. MR. GATES FIRST ADDRESSES OSS SYSTEMS. DOES HE FAIRLY**
2 **ACCOUNT FOR THE OSS CAPABILITIES OF THE POST-MERGER**
3 **COMPANY?**

4 A. No. A considerable portion of Mr. Gates' testimony is related to intermittent discussion
5 of OSS issues. Mr. Gates begins this discussion with a reference to Qwest's Section 271
6 compliance requirement and circles back to that topic several more times. In Mr. Gates'
7 opinion, because CenturyLink's OSS systems have not been subject to regulatory
8 litigation under Section 271, he believes CenturyLink has no experience with Section 271
9 obligations.⁷ To Mr. Gates, it follows that the post-merger systems may not remain
10 Section 271 compliant.⁸ Mr. Gates is misconstruing Section 271. Under the
11 Telecommunications Act, under which CenturyLink has been performing for years, the
12 obligations to provide OSS are the same as they are under Section 271. Qwest did
13 undergo testing of its systems in order to obtain approval to provide long-distance
14 services, while CenturyLink did not undergo that process because it was never restricted
15 from providing inter-LATA services, but there is no evidence that its systems do not meet
16 the requirements of the Act. Qwest witness Karen Stewart will address Section 271
17 issues in greater detail in her rebuttal testimony.

18 Mr. Gates' speculation regarding post-merger OSS degradation is also unfounded.
19 As stated previously, CenturyLink is not merely acquiring territory from Qwest, but
20 instead is acquiring the entire company with its existing systems, personnel and
21 documented policies and processes. The Qwest experience and OSS knowledge will still

⁷ Gates Direct at 26.

⁸ Gates Direct at 36 and 44.

1 reside in the post-merger company, and Mr. Gates' speculation that Section 271
2 compliant systems might just "disappear" is nonsense.

3 As regards the future OSS to be used by the merged company, the Joint
4 Applicants have publicly stated that they are each dedicated to having strong OSS for
5 wholesale operations, that they have met their obligations to wholesale customers in the
6 past and will continue to do so. The merged company will have the option to retain
7 Qwest's existing Section 271 compliant systems or to choose an OSS that better
8 addresses the provision of service to the merged company's entire customer base.
9 Having said that, nothing about the transaction will excuse the merged company from its
10 important ICA and Section 251 obligations, as well as the obligations under Section 271
11 where those apply.

12
13 **Q. A COMMON THEME IN THE CLEC TESTIMONY IS A COMPLAINT**
14 **REGARDING CENTURLINK NOT PROVIDING DETAILED**
15 **DOCUMENTATION OF ITS FUTURE PLANS AND INTENT. HOW DO YOU**
16 **RESPOND?**

17 **A.** As Mr. Jeremy Ferkin testifies, it is unreasonable to believe that the Joint Applicants
18 should have conducted a thorough operating capabilities and operating expense review of
19 the legacy systems and practices by this point in time. It is also incorrect to assume that
20 the merged company has made the decisions regarding which systems and practices will
21 be used post-merger.

1 This transaction is not like other acquisitions that were cited in CLEC testimony.
2 Because the immediate plan is to maintain both companies' separate OSS and continue
3 operations as usual, there was no need for the Joint Applicants to have rushed to decide
4 OSS integration issues so early in the process. Since Qwest will be the only post-merger
5 CenturyLink affiliate that operates in Utah, wholesale customers will not face immediate
6 changes in their existing systems interfaces and existing OSS arrangements will not be
7 disrupted. This stands in stark contrast to the FairPoint and Hawaiian Telcom
8 transactions cited by the CLECs, both of which involved the creation of entirely new
9 OSS. The ILECs involved in those acquisitions had to quickly develop integration plans
10 because they had to operate under new systems and processes on Day One after the
11 acquisition closed. Unlike those ILECs, CenturyLink will have legacy systems,
12 processes and experienced personnel in place post-merger so CenturyLink can undertake
13 a highly-disciplined process to convert systems and processes as necessary for smooth
14 integration. Accordingly, CenturyLink will take a deliberate and thorough approach to
15 considering how it will operate in the future. CenturyLink wants to ensure that it makes
16 its operational decisions based on a) sound quality of service and fiscal responsibility
17 principles; that also b) meets the needs of its entire customer base. The CLECs should
18 want no less.

19 The Joint Applicants recognize that any future changes to OSS will require
20 significant advance planning by wholesale customers, and CenturyLink pledges to give
21 its CLEC customers ample and adequate notice of any future changes in compliance with
22 all rules and terms of the interconnection agreements and accepted business practices.
23 Additionally, CenturyLink acknowledges that any future CenturyLink changes must

1 comply with state and federal laws and rules and with other formal obligation such as
2 Qwest's Performance Indicator Definitions and Performance Assurance Plans.⁹ As Mr.
3 Ferkin states in his rebuttal testimony, it is to benefit of all of the Joint Applicants' retail
4 and wholesale customers for CenturyLink to conduct a thorough review of the legacy
5 systems and to make decisions regarding the systems and practices to be used post-
6 merger in a timely manner.

7
8 **Q. CAN YOU PROVIDE THE COMMISSION WITH SOME INSIGHT INTO THE**
9 **INTEGRATION ACTIVITIES THE COMPANY IS CONDUCTING?**

10 A. Yes. CenturyLink is leveraging key learnings from its Embarq systems evaluation,
11 selection and implementation, as well as more than 20 years of successful integration
12 experience with other acquisitions. An in-depth analysis will be conducted on systems
13 capabilities, skill sets required for operation, and overall business processes before any
14 decisions are made. Senior level management will then review and approve all core
15 system selections and implementation plans. The critical systems migration criteria
16 CenturyLink is using include:

- 17 - Minimal impact to customers,
- 18 - Systems scalability,
- 19 - Ease of operation,
- 20 - Overall support of key business needs,

⁹ Qwest witness Michael Williams will provide greater insight into the provisions of the Performance Indicator Definitions and Performance Assurance Plans.

- 1 - IT systems infrastructure simplification where possible,
- 2 - Meeting legal and contractual obligations, and
- 3 - Meeting all State and Federal notification requirements.

4 As I previously stated, CLECs will continue to operate with Qwest post-merger as
5 they do today and, when the necessary determinations have been made that would cause a
6 change in that operation, CenturyLink will provide appropriate notice and the required
7 information and training. Having said that, CenturyLink should not be required to
8 provide business plan information that affords the CLECs advantages in the marketplace
9 and to which CLECs are not entitled under applicable law.

10
11 **Q. DO THE CLECs SEEK ANY POST-MERGER PLANNING INFORMATION**
12 **THAT HAS NO RELEVANCE TO THE PUBLIC INTEREST INQUIRY IN THIS**
13 **CASE?**

14 A. Yes. As an example, Mr. Gates wants to know about the post-merger company's "direct
15 response marketing efforts."¹⁰ This seeks information about retail operations and goes
16 beyond the bounds of issues in which CLECs have a legitimate interest. CLECs should
17 not be given insight into CenturyLink's retail marketing strategies, given that they will be
18 competitors as well as customers after this transaction closes.

19
20 **Q. DO YOU HAVE ANY INITIAL COMMENTS THAT YOU WOULD LIKE TO**
21 **MAKE REGARDING THE LISTED CLEC PROPOSED CONCESSIONS?**

¹⁰ Gates at 66.

1 A. Yes. Both CenturyLink and Qwest take very seriously their wholesale provisioning
2 obligations and opportunities. Serving their wholesale customers is important to each
3 company, and is crucial to the future financial success of the combined company.
4 Between that recognition and the protections the CLECs already have under applicable
5 law, ICA terms and other existing commitments, the proposed conditions are not
6 necessary to promote the public interest in Utah.

7 Further, the Commission should not permit CLECs to use this proceeding to
8 attempt to obtain concessions that substantially modify the existing, lawful terms the
9 CLECs agreed to or arbitrated, and that have been approved as consistent with the public
10 interest by the Commission. The Commission should also not allow the CLECs to
11 bypass the good faith negotiations called for by Sections 251 and 252 for further
12 agreements. To the extent that the CLECs believe they have legitimate disputes over the
13 quality or availability of wholesale services, the Joint Applicants will continue to work
14 with these wholesale customers to expeditiously resolve those disputes.

15
16 **Q. THE CLECs BELIEVE CENTURYLINK SHOULD HAVE NO PROBLEM**
17 **ADOPTING THEIR PROPOSED CONDITIONS BECAUSE CENTURYLINK**
18 **REPRESENTED “NO IMMEDIATE CHANGES POST-MERGER AND NO**
19 **HARM TO EXISTING WHOLESALE PROCESSES, SYSTEMS AND SERVICE**
20 **QUALITY POST-MERGER.”¹¹ CAN YOU RESPOND TO THAT CLAIM?**

¹¹ Gates Direct at 113-114.

1 A. The CLECs' characterization of the transaction only serves to demonstrate that the CLEC
2 proposed conditions are unnecessary. If there are no immediate changes post-merger and
3 no harm to existing processes, systems and service quality, then everything is status quo
4 for the CLECs and the CLECs' competitive and financial outlook. No concessions are
5 needed. If the Commission were to grant concessions under these conditions, the
6 concessions would only serve to increase CLECs' profits by pushing CLECs' costs of
7 doing business onto CenturyLink or otherwise hobbling CenturyLink's ability to compete
8 fairly.

9
10 **Q. TO AID THE COMMISSION'S UNDERSTANDING, IS IT POSSIBLE TO**
11 **ASSOCIATE THE CLECs' PROPOSED CONDITIONS INTO RELATED**
12 **GROUPS?**

13 A. Yes. I will first begin with the proposed conditions that are interconnection related.
14 These are proposed Conditions 6, 8, 9, 10, 12, 14, 15, 21, 22, 23, 24, 25, 26, 27 and 28.
15 To assist the Commission, I will reproduce the CLECs' proposed conditions in Exhibit A
16 to this testimony.

17 Before beginning, I would like to note two things. First, the CLECs' proposed
18 conditions often reference "legacy CenturyLink operating areas." There are no legacy
19 CenturyLink operating areas in Utah; the only post-merger CenturyLink operating
20 company that currently provides service to Utah CLECs is Qwest. I therefore will not
21 address any of the proposed CLEC conditions in regards to legacy CenturyLink, but only
22 to CenturyLink and its Qwest operating affiliate post-merger. My references to
23 CenturyLink can primarily be read to mean CenturyLink as the post-merger owner of the

1 Qwest operating company in Utah. Second, Level 3 submitted its own separate list of
2 proposed conditions. To the extent Level 3's proposed conditions overlap those of the
3 other CLECs, my testimony is meant to address the similar Level 3 proposed conditions
4 as well. I will separately address any unique Level 3 proposed conditions later in this
5 testimony.

6
7 **Q. IS THERE A GENERAL THEME IN THE INTERCONNECTION CONTRACT**
8 **RELATED CONDITIONS?**

9 A. Yes. The CLECs' proposed conditions alter the established terms and conditions
10 negotiated by the contracting parties and approved by this Commission under Sections
11 251 and 252 of the Act. They therefore deny CenturyLink's right to negotiate new terms
12 and to operate under existing approved Qwest ICA terms pursuant to that law. In other
13 words, granting the proposed conditions would unilaterally extract new interconnection
14 terms that are above and beyond the ILEC obligations required by the Act or otherwise
15 negotiated in good faith.

16 Once again, Mr. Gates' own words provide the context for these demands: the
17 CLECs "are [the Joint Applicants'] rivals, and ... their economic incentive (as profit-
18 maximizing firms) is to undermine – not help – the other provider's ability to compete for
19 end user customers..."¹² The CLECs proposed conditions undermine CenturyLink's
20 ability to compete fairly and may not be terms the CLECs would obtain in the negotiation
21 and arbitration process contemplated under applicable law. Further, the proposed

¹² Gates Direct at 13.

1 interconnection-related conditions are not required to protect the public interest from any
2 alleged harm arising from the transaction, or have already been addressed through
3 existing laws or contracts, thus this proceeding is not the proper forum to explore and
4 adjudicate any of these issues.

5
6 **Q. THE CLECs ARE CONCERNED ABOUT THE “LARGE SUMS OF MONEY”**
7 **THEY HAVE SPENT TO GET INTERCONNECTION TERMS FROM**
8 **INCUMBENT LOCAL EXCHANGE CARRIERS (“ILECs”) SUCH AS THE**
9 **JOINT APPLICANTS.¹³ WOULD THIS CHARACTERIZATION BE EQUALLY**
10 **APPLICABLE TO CENTURYLINK?**

11 A. Yes, as CenturyLink likewise spends considerable resources of time and money on the
12 interconnection process, but I take exception to Mr. Gates’ assertion that CLECs must
13 spend “enormous amounts of time and money attempting to ensure that the BOCs comply
14 (and continue to comply) with the obligations set forth in approved ICAs and Sections
15 251 and 271 of the Act.”¹⁴ CenturyLink takes its obligations of law and contract very
16 seriously and there is no evidence to the contrary. To imply that CenturyLink does so
17 only because the CLECs spend “enormous amounts of time and money” to force us to do
18 so is wrong.

19
20 **Q. IN PROPOSED CONDITION 6, THE CLECs WANT THE MERGED COMPANY**
21 **TO ASSUME OR TAKE ASSIGNMENT OF OBLIGATIONS UNDER QWEST’S**

¹³ Gates Direct at 19-20.

¹⁴ Gates Direct at 21.

1 **INTERCONNECTION AGREEMENTS, TARIFFS, COMMERCIAL**
2 **AGREEMENTS AND ARRANGEMENTS AND ALTERNATIVE FORM OF**
3 **REGULATION PLANS WITHOUT REQUIRING WHOLESALE CUSTOMERS**
4 **TO EXECUTE ANY DOCUMENTS(S) TO EFFECTUATE THE MERGED**
5 **COMPANY’S ASSUMPTION. IS THIS PROPOSED CONDITION**
6 **NECESSARY?**

7 A. No. This proposed condition is unnecessary given the structure of this transaction – a
8 complete acquisition of a corporate entity and all of its existing obligations under law and
9 contracts. The post-merger Qwest affiliate will continue to be the provider of service to
10 the CLECs under the terms of their current contracts. Thus, it would be an inaccurate
11 identification of the named parties to the contracts for CenturyLink as a corporate holding
12 company to assume the Qwest wholesale contracts.

13
14 **Q. THE CLECs ALSO SUGGEST THAT AGREEMENTS SHOULD NOT BE**
15 **TERMINATED OR CHANGED DURING THE UNEXPIRED TERM OF ANY**
16 **ASSUMED AGREEMENT OR UP TO A MAXIMUM “DEFINED TIME**
17 **PERIOD,” WHICH MAY BE UP TO SEVEN YEARS. IS THIS REASONABLE?**

18 A. No. The CLECs’ Defined Time Period of up to seven years under which they argue that
19 certain merger conditions should last, is unreasonable and unprecedented. CLECs have
20 voluntarily negotiated and consented to the terms contained within existing ICAs. It is
21 not appropriate for competitors to use the merger process to unilaterally seek to enforce a
22 lengthy extension. Furthermore, the CLECs have not offered any evidence that such a
23 unilateral condition would even *be* appropriate under federal law, let alone necessary to

1 protect the public interest. A unilateral ability for CLECs to extend an ICA is an
2 outcome not contemplated within the context of the bilateral negotiations ordered by
3 Congress. It is contrary to the Act and should be rejected.

4 Accordingly, as regards the rest of the concessions demanded in Condition 6, such
5 CenturyLink's post-merger Qwest affiliate offering commercial agreements at prices no
6 higher, and for time periods no shorter, than those currently offered in the legacy Qwest
7 ILEC territory, the existing negotiated and approved contract terms govern, and
8 CenturyLink will abide by those contractual terms. The CLECs willingly negotiated and
9 agreed to those same contractual conditions. The CLECs must abide by those contracts,
10 including the stated term, just as CenturyLink must abide by them.

11 Proposed Condition 8, extending existing interconnection agreements in
12 "evergreen" status, for at least the Defined Time Period, falls into the same category as
13 Condition 6. There are very good reasons all ICAs have a designated term. Agreements
14 become outdated within a short span of time. And changes to the industry and
15 marketplace fuel more and more disputes over what is and is not covered in the ICAs,
16 and how existing terms should be interpreted in new situations that have arisen since the
17 terms were negotiated.¹⁵ I know from personal experience that disputes can be
18 exponentially more costly and time intensive as compared to normal negotiations.
19 Further, the Act places an emphasis upon company to company negotiations to promote
20 agreements that address the business concerns of both parties. It is simply unwise to

¹⁵ For example, many LECs, including CenturyLink, are currently engaged in interpretation disputes over the application of existing ICA terms to new IP-based services. Amendment negotiations have not borne fruit in many of these disputes. CLECs moving to or adding a wholesale business model under existing ICA terms is another example of an interpretation issue that is so comprehensive, it does not lend itself to an ICA amendment.

1 unilaterally impose artificial time extensions on the terms of contracts and an effective
2 ban upon contract negotiations. Existing laws that require bilateral negotiations, change-
3 of-law provisions, and term provisions are proven vehicles for keeping a contractual
4 relationship current and balanced – arbitrary unilaterally imposed extensions of contract
5 terms are not and may have unintended and unanticipated consequences.

6 For all the reasons already stated, CLECs should not be allowed to unilaterally
7 change the contract terms to extend existing ICAs for as much as seven years.
8 Agreements should continue in “evergreen” status only as permitted by the term and
9 termination clauses that the CLECs negotiated and willingly agreed to.

10 **Q. MR. ADAMS DISCUSSES AMENDING ICAs RATHER THAN NEGOTIATING**
11 **NEW ICAs. DOES CENTURYLINK EVER AGREE TO AMEND AN ICA?¹⁶**

12 A. Yes, of course. If CenturyLink concurs that the type of situation exists that Mr. Adams
13 describes in his testimony, then it also would seek to amend a current Qwest ICA rather
14 than negotiate a new one. The issue here is not whether amendment vs. complete
15 replacement of terms is appropriate for any specific situation,¹⁷ the issue is about
16 universally sustaining terms that may be not be appropriate because the terms hamper
17 contract administration and fair competition, rather than promote them. Enforced
18 adherence to older terms negotiated in a different competitive and operating environment
19 is not in Utah customers’ best interests.

¹⁶ Adams Direct at 9-10.

¹⁷ It must also be pointed out that as multiple amendments are added to an ICA, it becomes increasingly more difficult for both parties to properly administer the ICA.

1 **Q. AS CONDITION 9, THE CLECs WANT TO USE PRE-EXISTING**
2 **INTERCONNECTION AGREEMENTS AS THE BASIS FOR NEGOTIATING A**
3 **NEW REPLACEMENT INTERCONNECTION AGREEMENTS. IS THIS**
4 **PROPOSED CONDITION NECESSARY?**

5 A. No. Both parties to an interconnection negotiation, ILECs as well as CLECs, have the
6 right to propose the terms they think are most appropriate for an interconnection
7 agreement. If CLECs want to propose an existing ICA as the starting point they are free
8 to do so. CenturyLink, however, has the right to propose its suggested structure as well,
9 and should not be constrained before the fact from doing so.

10 Notwithstanding the above, if the question is whether the combined company will
11 consider the use of existing terms and operations in a renegotiation process, the answer is
12 “of course.” The existing terms came about for a reason, whether due to legal obligations
13 or as a result of bilateral negotiations. However, as we just discussed regarding
14 extensions of existing agreements, any renegotiation must consider changes of law,
15 updating of processes and capabilities that make the relationship function more smoothly,
16 and competitive industry issues and conditions that did not exist at the time of the first
17 negotiation. It would be inappropriate, for example, for the Commission to in effect pre-
18 approve agreements that may have been negotiated or arbitrated ten or more years ago as
19 complying with the Act in 2010 or beyond. Again, negotiations are covered and
20 encouraged under Sections 251 and 252; it is inconsistent with applicable law and
21 underlying policies to impose restraints upon the negotiation process.

22

1 **Q. MR. DENNEY BELIEVES IT IS ACCEPTABLE TO USE EXISTING ICAs AS**
2 **THE STARTING POINT FOR REPLACEMENT ICA NEGOTIATIONS**
3 **BECAUSE THE MERGED COMPANY WILL BE PROTECTED BY**
4 **INCORPORATED CHANGE OF LAW PROVISIONS.¹⁸ IS THIS TRUE?**

5 A. Only to a point. Change of law provisions only cover changes of law. Such provisions
6 do not address interpretation deficiencies within an existing ICA that were only
7 discovered *after* ICA implementation or that arose pursuant to technology or other
8 changes within the industry. In my experience, most ICA disputes are caused by the
9 parties asserting differing interpretations of specific or interrelated ICA terms. It is to
10 both parties' benefit to minimize disputes by renegotiating terms that do not lend
11 themselves to more than one interpretation.

12
13 **Q. DOES PROPOSED CONDITION 9 ALSO ADDRESS ATTEMPTS TO INSERT A**
14 **NEW TEMPLATE INTO ICA NEGOTIATIONS THAT ARE ALREADY**
15 **UNDERWAY?**

16 A. Yes. Regarding negotiations for a replacement ICA that are in progress before the
17 Closing Date, CenturyLink has no plans to terminate and restart negotiations with a
18 different template. In any event, no condition or restriction on this issue is needed
19 because CenturyLink could not unilaterally impose new provisions or terms on CLECs.
20 CLECs retain the right to arbitrate if they disagree with any proposal made during the
21 negotiation process, and the Commission will retain the jurisdiction to determine the
22 appropriate resolution of any such disagreement through the existing Section 252

¹⁸ Denney Direct at 25.

1 arbitration process and applicable legal standards. Because the CLECs have the
2 protection of applicable law, no concession is needed.

3
4 **Q. PROPOSED CONDITION 10 WOULD PERMIT CLECs TO OPT INTO ANY**
5 **QWEST AGREEMENT EVEN IF THAT QWEST AFFILIATE IS LOCATED IN**
6 **ANOTHER STATE. DOES THIS CONDITION COMPORT WITH THE**
7 **CIRCUMSTANCES UNDER WHICH THE ICAs WERE NEGOTIATED AND**
8 **APPROVED?**

9 A. No, and that proposed condition is neither necessary nor appropriate for this transaction.
10 The CLECs are asking for the right to unilaterally terminate contracts that they
11 voluntarily negotiated and signed with Qwest, and to “cherry pick” the best ICA terms
12 from the non-Utah Qwest agreements for themselves outside of the standard negotiation
13 process. The CLECs attempt to get terms they may perceive as more accommodating,
14 without having to negotiate and arbitrate whether the other terms are even appropriate for
15 Utah or whether the contract on balance is one both parties would agree upon.

16 Not all negotiated terms can technically and logically be applied to all
17 jurisdictions, or to Utah specifically.¹⁹ All sorts of questions abound about how state-
18 specific terms for another state would apply in Utah. For example, other state
19 commissions have made differing substantive rulings to address competitive conditions
20 specific to those states. Importing terms from another state could allow the CLECs to

¹⁹ For example, a carrier may port a Qwest agreement with Section 271 obligations (e.g., performance penalty plans and change management process). Such a condition would allow a carrier to place Section 271 obligations on CenturyLink’s territories which are not required by law.

1 effectively ignore or inappropriately modify Utah rulings on specific issues. Accordingly
2 this proposal ignores prior Commission decisions in this area.

3 Because the issue before this Commission is the impact of the merger on the
4 public interest in Utah, it is unreasonable and unnecessary to take terms directed to
5 operations in another state and impose them on CenturyLink's Qwest operations in Utah.
6 Further, it is not rational, reasonable, or required by Section 251 for the Commission to
7 order the Joint Applicants to allow competitors to cherry-pick the best ICA terms for
8 themselves outside of the standard negotiation process, merely because the Joint
9 Applicants are engaging in a merger. Even if one can get past some of the logistical and
10 practical questions of which non-Utah conditions could theoretically be applied to
11 CenturyLink's Qwest affiliate in Utah, there still remains the fundamental problem of the
12 lack of fairness in simply imposing such a broad condition under the facts of this
13 particular transaction and under the statutory standard of review.

14
15 **Q. SEVERAL OF THE PROPOSED CONDITIONS, SPECIFICALLY 21, 23, 26, AND**
16 **27, SPEAK TO REQUIRING CENTURYLINK TO COMPLY WITH**
17 **APPLICABLE LAW AND AGREEMENT TERMS. MR. DENNEY THINKS THE**
18 **MERGED COMPANY SHOULD NOT HAVE ANY ISSUE WITH AGREEING**
19 **TO THIS TYPE OF CONDITION.²⁰ WHY IS AGREEING TO COMPLY WITH**
20 **THE LAW AN ISSUE FOR CENTURYLINK?**

²⁰ Denney Direct at 29.

1 A. If the requested conditions stopped at wanting compliance with applicable law and
2 agreement terms, then the conditions would be entirely acceptable for CenturyLink. Of
3 course, if the conditions merely required compliance with the law, it really is a non-issue
4 that would not require any Commission order since CenturyLink must comply with the
5 law regardless. What the CLECs have done, however, is much more than ask for
6 compliance with applicable law and agreement terms. They want to establish substantive
7 terms and conditions that are not required by applicable law and can be or have been
8 subject to negotiation or arbitration. These issues -- 911, LNP, network construction and
9 maintenance and the provision of copper loops -- all have specific requirements in 47
10 CFR Section 51, and are also covered within the ICAs that the CLECs have voluntarily
11 negotiated and signed, or that have already been arbitrated and approved by the
12 Commission. Once again, the Commission should not permit the CLECs to add new
13 obligations, and unilaterally impose conditions that are more expansive than those
14 required by the law or contractual terms.

15

16 **Q. MR. KING (OF THE DEPARTMENT OF DEFENSE) WANTS TO BE SURE**
17 **COMPETITORS HAVE THE OPPORTUNITY TO ACCESS FEDERAL**
18 **INSTALLATIONS ON A FAIR AND REASONABLE BASIS THROUGH**
19 **CENTURYLINK FACILITIES, AND THAT CENTURYLINK BE ABLE TO**
20 **RENDER SERVICE TO FEDERAL LOCATIONS EVEN OUTSIDE OF ITS**

1 **SERVICE TERRITORIES.²¹ CAN YOU REASSURE MR. KING THAT THIS**
2 **WILL BE THE CASE?**

3 A. Applicable law obligates CenturyLink to provide unbundled and other services to
4 competitors for their use in servicing customers. Since the law contains sufficient
5 specificity on the provision and pricing of services, and also provides for Commission
6 oversight, no valid argument can be made that CenturyLink’s compliance with the law
7 does not translate into anything except “fair and reasonable.” Regarding the reverse
8 situation, that of CenturyLink providing service outside of its territory in Utah, the
9 combined company would only be able to do so consistent with all applicable state and
10 federal laws. I cannot presume to speak for the CLECs in regards to their agreement to
11 facilitate this outcome where permitted, but I do note that applicable law does require the
12 CLECs to make their retail and wholesale services reciprocally available to CenturyLink.

13
14 **Q. CONDITIONS 12 AND 14 WANT CENTURYLINK TO WAIVE ALL 251(f)**
15 **RURAL EXEMPTIONS AND NOT CHANGE THE STATUS OF ANY IMPAIRED**
16 **CENTRAL OFFICES. DO THESE TOPICS EVEN APPLY TO UTAH?**

17 A. No. Since there are no legacy rural CenturyLink affiliates in Utah, these proposed
18 conditions are meaningless. Qwest is a non-rural BOC and will remain and non-rural
19 BOC with all of its associated obligations post-merger.

20
21 **Q. ALSO BROUGHT UP IN THE CONTEXT OF THE LEGACY RURAL STATUS**
22 **OF SOME CENTURYLINK AFFILIATES, ON PAGES 15 AND 16 OF HIS**

²¹ King Direct at 3.

1 **DIRECT TESTIMONY, MR. THAYER DISCUSSES TRAFFIC PUMPING.**
2 **WHAT RELEVANCE IS THIS TESTIMONY TO THE MERGER**
3 **PROCEEDING?**

4 A. None. CenturyLink does not engage in such practices, and Mr. Thayer admits this is the
5 case.²² Furthermore, it is my understanding Qwest continues its pursuit of cases against
6 LECs in Minnesota, Iowa, South Dakota, and is vigorously contesting before the FCC
7 any and all forms of traffic pumping, despite the existence of the merger.²³ This
8 testimony is unfounded speculation that is meant to suggest an unnecessary condition
9 needs to be imposed when the facts show to the contrary that no condition is needed.

10
11 **Q. CONDITION 24 APPEARS TO DENY CENTURYLINK THE ABILITY TO**
12 **CHARGE FOR PROVIDING CERTAIN SERVICES TO THE CLECs. IS THAT**
13 **APPROPRIATE?**

14 A. No. As an initial matter, setting charges for services provided to CLECs is an extremely
15 complex and fact-intensive process. It has nothing to do with mergers and is raised
16 merely to be a distraction. Second, independent of the proposed merger, these very
17 issues have already been arbitrated in other state venues, and the rates at issue as

²² Thayer Direct at 15.

²³ See *In the Matter of the Complaint by Qwest Communications Company, LLC against Tekstar Communications, Inc. regarding Traffic Pumping*, MPUC Docket No. P-5096, 5542/C-09-265; *Qwest Communications Company LLC v. Tekstar Communications, Inc., Free Conferencing Corp. and Audiocom, LLC*, USDC Case No. 10-cv-490-MJD-SRN; *Qwest Communications Corporation v. Superior Telephone Cooperative, et al.*, IUB Docket No. FCU-07-2.

1 contained in interconnection agreements have been approved by those state commissions
2 as non-discriminatory, complaint with the Telecom Act, and in the public interest.²⁴

3 Having said that, the existing Qwest ICAs will remain as their terms dictate post-
4 merger so only the compensation terms of future ICAs would be affected by this
5 proposed condition. The CLECs seek to avoid negotiations and arbitration and have their
6 proposed outcome imposed upon CenturyLink in an unrelated proceeding. A merger
7 transaction approval proceeding is not the proper forum for raising these issues.

8
9 **Q. ARE THE CLECs ATTEMPTING TO IMPOSE CONDITIONS THAT ARE**
10 **CONTRARY TO APPLICABLE LAW?**

11 Based on the facts as I understand them, yes. The crux of the NID rate issue, for
12 example, is whether a CLEC can unilaterally use CenturyLink's NIDs for free, or
13 whether a CLEC must submit an order to CenturyLink and compensate CenturyLink for
14 the use of its unbundled NID element to house all or a portion of the interconnection with
15 a customer who elects to obtain telephone service from a CLEC rather than from
16 CenturyLink. I will not provide a complete discussion of this issue such as would be
17 made in an ICA arbitration setting but, in brief, CenturyLink does not dispute a CLEC's
18 right to access the customer access side of the NID for the purpose of disconnecting the
19 customer's inside wire from CenturyLink's local loop. Further, CenturyLink does not

²⁴ See, e.g., AAA Case No. 51 494 Y 00524-07; *Petition of Charter Fiberlink TX-CCO, LLC for Arbitration of an Interconnection Agreement with CenturyTel of Lake Dallas, Inc.*, Texas Public Utility Commission, Docket 35869; *In the Matter of a Petition for Arbitration by Sprint Communications Company LP vs. CenturyTel of Mountain Home, Inc.*, Arkansas Public Service Commission, Docket 08-031-U; *In the Matter of Sprint Communications Company LP's Petition for Arbitration with CenturyTel of Eagle, Inc.*, Colorado Public Utilities Commission, Docket C08-1059; *In the Matter of Sprint Communications Company LP Petition For Arbitration of an Interconnection Agreement with CenturyTel of Oregon, Inc.*, Oregon Public Utility Commission, Docket ARB 830.

1 seek any compensation from a CLEC with regard to such access or disconnection
2 activity. However, if a CLEC places its facilities in CenturyLink's NID and thus uses the
3 CenturyLink NID as an unbundled network element, compensation is properly payable to
4 CenturyLink.

5
6 **Q. WHAT IS THE BENEFIT TO A CLEC OF ATTACHING ITS FACILITIES TO**
7 **THE PREMISE INSIDE WIRING WITHIN THE CENTURYLINK NID?**

8 A. By using CenturyLink's property, the CLEC avoids the cost of purchasing and installing
9 its own NID.

10
11 **Q. DOES A CLEC HAVE ANY OTHER CONNECTION OPTIONS BESIDES**
12 **INSTALLING ITS OWN NID OR USING CENTURYLINK'S NID UNE?**

13 A. Yes. Except for very unusual wiring installations, a CLEC can connect to the inside
14 wiring at any location within the premises, such as the jack nearest the placement of the
15 cable modem for most cable CLECs.

16
17 **Q. IS THERE ANY APPLICABLE RULE THAT ADDRESSES THIS POINT?**

18 A. Yes. For example, 47 CFR Section 51.319(c), addresses the NID as a UNE:

19 ...an incumbent LEC also shall provide nondiscriminatory access to the network
20 interface device *on an unbundled basis*, in accordance with section 251(c)(3) of
21 the Act and this part. The *network interface device element is a stand-alone*
22 *network element* and is defined as any means of interconnection of customer
23 premises wiring to the incumbent LEC's distribution plant, such as a cross-
24 connect device used for that purpose. An incumbent LEC shall permit a
25 requesting telecommunications carrier *to connect its own loop facilities to on-*

1 *premises wiring through the incumbent LEC's network interface device*, or at
2 any other technically feasible point. [Emphasis added.]

3 Section 51.307(c) indicates that any use of a UNE whatsoever is included in the UNE
4 definition:

5 . . . access to an unbundled network element, along with *all of the unbundled*
6 *network element's features, functions, and capabilities*, in a manner that allows
7 the requesting telecommunications carrier to provide any telecommunications
8 service that can be offered by means of that network element. [Emphasis added.]

9 And finally, Section 51.509(h) indicates that there is a price for the stand alone NID
10 UNE:

11 An incumbent LEC must establish a *price* for the network interface device when
12 that unbundled network element is purchased on a stand-alone basis pursuant to
13 Sec. 51.319(c). [Emphasis added.]

14

15 **Q. IN THEIR PROPOSED CONDITIONS, THE CLECs ALSO REFERENCE**
16 **ELIMINATING DIRECTORY LISTING CHARGES. IS THIS ISSUE SIMILAR**
17 **TO THE OTHER SERVICE ORDER CHARGES THAT THEY SEEK TO**
18 **AVOID?**

19 A. Yes, the directory listing fees are independent of and irrelevant to this Petition. It is
20 instructive to know, however, that the CLECs seeking to use CenturyLink's services
21 without cost already have an option to submit directory listings directly to the same third-
22 party directory publishers and DA providers that are used by CenturyLink, with no
23 involvement of CenturyLink in the process, and therefore no charges assessed by
24 CenturyLink. And, like other rate issues for specific services, this issue is best left to the
25 Section 251 negotiations and arbitration process that is specifically established in the Act

1 for just such an obligation and through which the issues can be fully developed and
2 explored.

3
4 **Q. DO WE NEED TO ADDRESS THE SINGLE POINT OF INTERCONNECTION**
5 **(“POI”) PER LATA FOR TRAFFIC EXCHANGE WITH ALL CENTURYLINK**
6 **AFFILIATES IN THAT LATA (PROPOSED CONDITION 28)?**

7 A. No. This is a relatively complex issue that has a lengthy and complicated body of
8 decisions but given that Qwest is the only prospective affiliate in Utah, the existing
9 interconnection arrangements between the CLECs and Qwest will remain as required by
10 ICA terms. No merger condition is needed or applicable for Utah.

11
12 **Q. IS PROPOSED CONDITION 15, ASKING FOR CONTACT INFORMATION, A**
13 **SIMPLE AND STRAIGHTFORWARD REQUEST?**

14 A. No. Providing and updating the contact information is not an issue. This already occurs
15 today under Qwest’s existing CMP processes. Once again, however, the CLECs attempt
16 to go beyond a simple issue and impose new requirements. In this condition, the CLECs
17 want imposed timeframes. The subjects of contact information provision and notice are
18 already covered in ICA terms and those terms will govern any required timeframes. The
19 CLECs should not be permitted to impose new conditions that modify negotiated
20 agreements that are already in place, and to do so without clear and compelling evidence
21 that this protects the public interest from a probable and real harm.

22

1 **Q. WHAT IS THE NEXT GROUP OF PROPOSED CLEC CONDITIONS THAT**
2 **YOU WILL ADDRESS?**

3 A. I will address the CLECs' proposed OSS conditions, which are 16, 19, and 20. I have
4 already touched upon OSS earlier in my testimony, but I will now explore this topic in
5 more detail.

6
7 **Q. IN PROPOSED CONDITIONS 16, 19, AND 20, THE CLECs SEEK TO BIND THE**
8 **POST-MERGER COMPANY TO A LITANY OF OSS OBLIGATIONS. ARE**
9 **THESE REASONABLE REQUESTS?**

10 A. No. The transaction itself will not change any of the rights or obligations of any party,
11 and the Joint Applicants will abide by their OSS obligations. As previously stated, no
12 harm to CLECs will result from the transaction, and it is unreasonable to impose an
13 arbitrary moratorium upon potential integration practices that could otherwise provide
14 compliant services to CLECs and result in efficiencies for the combined company.

15 As an initial matter, both CenturyLink and Qwest take very seriously their
16 wholesale provisioning obligations and opportunities. Wholesale provisioning is
17 governed by a comprehensive array of existing regulations, laws, and contracts, and the
18 Commission should not impose conditions that change the legal obligations or voluntary
19 agreements that the parties have previously entered into. Beyond legal obligations,
20 however, serving wholesale customers is important to each company and is crucial to the
21 future of the combined company. The Joint Applicants are each dedicated to having
22 strong OSS for wholesale operations, and they have long satisfied their various legal

1 obligations. There is no reason to assume that they will suddenly abandon their
2 responsibilities following the close of this transaction.

3 The merger is intended to bring about improved efficiencies and practices in all
4 parts of the combined company, so changes could be expected over time. However, any
5 changes will occur only after a thorough and methodical review of both companies'
6 systems and processes to determine the best system to be used on a going-forward basis
7 from both a combined company and a wholesale customer perspective. And,
8 importantly, any changes will comply with the companies' respective legal obligations,
9 including the obligation to coordinate such changes in advance through the Change
10 Management Process (CMP).

11 In the FCC's merger review proceeding, the Joint Applicants have provided a
12 sworn statement that CenturyLink plans to continue operating both CenturyLink and
13 Qwest existing OSS uninterrupted for the immediate future until it completes its
14 evaluation of the best options for all stakeholders. This is expected to take 12 months at
15 the very least. It is reasonable and appropriate from a regulatory, business, and
16 operational perspective for the Joint Applicants to evaluate the strengths and weaknesses
17 of Qwest's and CenturyLink's respective OSS, to consider the desires of the broad, multi-
18 state base of CLEC customers, and to analyze the logistical and economic factors that
19 bear on whether or how to migrate to a single OSS platform for all states. Wholesale
20 customers in Utah will not face immediate changes in their existing systems interfaces
21 and existing OSS arrangements will not be disrupted. The post-merger entities will

1 continue to comply with existing requirements of the Act and any reporting and testing
2 obligations under law.

3 The CLECs claim that the CenturyLink OSS is inferior to the Qwest OSS, but
4 provide no support for their claim. Likewise, the CLECs imply CenturyLink does not
5 have equal OSS experience to that of Qwest. As the Joint Applicants explained in their
6 Reply Comments in the FCC proceeding,²⁵ allegations about performance “differences”
7 between the Qwest and CenturyLink OSS are false, and the alleged limitations of the
8 CenturyLink OSS do not exist. Once again, the CLECs’ testimony reveals that their
9 proposed conditions are not directed toward protecting against some verifiable potential
10 public interest harm in Utah. The proposed Transaction will not change any operations in
11 the near term or obligations of any of the CLECs or of the Joint Applicants, so there is no
12 new and likely harm which merits such a condition.

13 In the longer term, post-merger CenturyLink is dedicated to having industry-
14 leading OSS. Whether post-transaction CenturyLink ultimately chooses an existing OSS
15 or selects new systems should be left to be resolved through a refined analysis and the
16 need to respond to marketplace conditions, governed and controlled by existing laws and
17 contracts. For example, the geographic location of the CLEC may have an impact on
18 which system a particular CLEC desires. If a CLEC only provides service in the
19 southeastern part of the country (where Qwest does not operate), it might prefer the
20 CenturyLink OSS system. Likewise a CLEC in the southwest that only provides service
21 in Qwest’s territory may want to continue to use the Qwest system. Moreover, if each

²⁵ *In the Matter of Application Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer of Control*; WC Docket No. 10-110.

1 state commission approving the merger were to impose a condition regarding the future
2 OSS system, there could be conflicting, state-specific mandates which would impede
3 proper selections of the most efficient and productive systems. These are just some of the
4 numerous factors that must be considered when making a decision on the future of any
5 OSS system. Accordingly, the Joint Applicants recognize that any future changes to
6 OSS, if and when they occur, would require significant advance planning with wholesale
7 customers, and CenturyLink pledges to give its CLEC customers ample and adequate
8 notice of any future changes, consistent with its legal obligations and accepted business
9 practices.

10 Further, CenturyLink contends that it is wrong for CLECs to require onerous
11 reporting requirements, including those above and beyond anything required by current
12 law or regulation, and it is wrong to require new and special review by the FCC and
13 Commission. In a competitive world, CenturyLink's competitors should not have the
14 ability to decide what systems and functionalities are acceptable for CenturyLink
15 operations so long as CenturyLink's system complies with all requirements. This
16 condition might simply delay system and process upgrades that would provide a benefit
17 to the entire post-merger CenturyLink customer base, without addressing any issue that is
18 a merger-related harm. Accordingly, the CLECs' OSS proposed conditions are not
19 reasonable or pragmatic under all the facts and circumstances.

20
21 **Q. THE CLECs SEEM CONCERNED THAT THE MERGED COMPANY MAY**
22 **NOT MAINTAIN CURRENT WHOLESALE SERVICE QUALITY, THAT**
23 **WHOLESALE SERVICE QUALITY MAY BE A LOW PRIORITY, AND THAT**

1 **THERE MAY BE CUTBACKS.²⁶ CAN YOU EXPLAIN WHY CENTURYLINK**
2 **WILL NOT PERMIT SUCH OUTCOMES?**

3 A. Yes. The CLECs speculate that the merged company may integrate systems with less
4 functionality than now exists and will discontinue services or provide inferior access.²⁷
5 None of these assertions explains how CenturyLink might chart such a path in defiance of
6 applicable law and binding contractual terms.

7 Further, the operating efficiencies for both CenturyLink and the CLECs are not
8 mutually exclusive. CenturyLink is committed to maximizing its internal efficiencies
9 associated with providing quality service to CLECs which also means that the CLECs
10 benefit from this efficiency. Thus, these efficiencies will inure to the benefit of both
11 CenturyLink and the CLECs.

12
13 **Q. IS THERE ANY OTHER CATEGORY UNDER WHICH YOU CAN GROUP**
14 **PROPOSED CLEC CONDITIONS?**

15 A. Yes. Several of the proposed CLEC conditions appear to be related to products and
16 services. These are proposed Conditions 1, 2, 3, and 7.

17
18 **Q. OTHER THAN THE BEING RELATED TO THE RATES THAT CLECs WOULD**
19 **PAY FOR ILEC SERVICES, IS THERE ANY OTHER COMMONALITY TO**
20 **THIS SET OF CONDITIONS?**

²⁶ Gates Direct at 32.

²⁷ Gates Direct at 35.

1 A. Yes. The CLECs propose several rate-associated conditions that are improper and are
2 plainly designed to give them competitive advantages rather than to address any
3 legitimate merger-related concerns. First, each of these rates should be carefully
4 determined in independent proceedings and are inappropriate for resolution here. The
5 Iowa Utilities Board recently made this same determination in the Windstream/Iowa
6 Telecom merger.²⁸ As far as I am aware, this Commission has not imposed wholesale
7 rate changes as a part of any merger review in Utah.

8 Next, the CLECs once again argue that certain merger conditions should last an
9 unprecedented seven years. The term is unreasonable, and the effect would be
10 irresponsible in a competitive market. The combined company will continue to face
11 substantial competition, including from much larger carriers, which will discipline its
12 pricing and market conduct. To hobble a company's ability to make important financial
13 business decisions for seven years would not preserve or promote competition, but is
14 more likely to hamper competition substantially by placing an unnecessary
15 anticompetitive burden on one of the market players.

16 All of these rate-related conditions are unnecessary. The CLECs do not seriously
17 attempt to portray these conditions as legitimate merger concerns and, in any event, rate-
18 setting rules, including proper review and oversight, are already well established in
19 applicable law and Commission rules,²⁹ and thus no conditions related to rates are

²⁸ Order Granting Motion To Strike, In Part, Denying Motion To Strike, In Part, And Requesting Additional Information, *In Re: Windstream Corporation And Minnesota Telecommunications Services, Inc., D/B/A Iowa Telecom*, Docket No. SPU-2009-00010, p. 10 (2010) (“ . . . the Board has consistently declined to decide rate-related issues in the context of a reorganization proceeding”).

²⁹ The Commission should note that through Mr. Adams' testimony, the CLECs question the ability of the Commission to provide proper oversight of any prospective tariff changes. “Similarly, honoring the tariff until the

1 necessary. These proposed conditions appear to be attempts to circumvent applicable law
2 and rules to increase CLEC profitability through terms that CLECs are unlikely to gain
3 under the current regulatory reviews and processes.

4
5 **Q. WOULD YOU PLEASE SUMMARIZE FOR THE COMMISSION YOUR**
6 **CONCLUSIONS ABOUT THE PRICING TERMS SOUGHT BY**
7 **CENTURYLINK'S COMPETITORS IN THIS PROCEEDING?**

8 A. Yes. Each of the pricing issues raised by the CLECs can be reduced to a common theme.
9 The proposed conditions would allow the CLECs to improve their profit margins by
10 shifting their legitimate costs of doing business onto CenturyLink. Each and every
11 condition places a cost on CenturyLink. If the CLECs request work to be performed or
12 want to use CenturyLink property to avoid purchasing their own property, the Act
13 compels compensation for what is requested or used. If the CLECs believe that there are
14 any legitimate concerns regarding the charges to be levied, the proper forum for
15 investigating them is through negotiations and arbitration of ICA terms, not in the context
16 of a merger approval proceeding.

17
18 **Q PROPOSED CONDITION 11 SEEKS TO SET PROVISIONING INTERVALS.**
19 **CAN YOU COMMENT ON THIS DEMAND?**

merger closes does not mean that the Merged Company will not soon thereafter seek to increase or change rates, terms or conditions for private line services upon which providers such as 360networks rely; it simply means that *the Merged Company plans to follow the existing processes to change rates.*" Adams Direct at 8. [Emphasis added.]

1 A. CLEC provisioning intervals reflect retail provisioning intervals for the same or like
2 services because federal law requires a carrier to treat all customers at parity. The
3 CLECs want priority for their needs over those of CenturyLink's end-user subscribers
4 and wholesale tariff customers.

5 I previously discussed how the Qwest OSS and other processes will remain in
6 place for a period of time post-merger, so this condition is a non-issue for Utah.

7

8 **Q. CAN THE MERGED COMPANY BE CLASSIFIED AS A BOC AS THE CLECs**
9 **DEMAND IN PROPOSED CONDITION 13?**

10 A. No. The definition of "BOC" is a matter of federal law, and a state agency like the
11 Commission is not able to alter that definition. As CenturyLink witness Mr. Ferkin
12 explains in his testimony, the merged company will not be a BOC. Qwest Corporation is
13 a BOC as the successor to US West, and it remains a BOC, but the legacy CenturyLink
14 ILECs in other states are not BOCs, and they will not become BOCs after this
15 transaction. This is a non-issue in Utah.

16

17 **Q. IN PROPOSED CONDITIONS 17 AND 18, THE CLECs SEEK TO DICTATE**
18 **THE NUMBER OF WHOLESALE EMPLOYEES ON THE CENTURYLINK**
19 **PAYROLL AND ALSO, IN CONDITION 17, DICTATE CERTAIN PROCESSES.**
20 **SHOULD THEY BE ALLOWED TO DO THAT?**

21 A. No. After arguing for the greatest and best automation of processes, the CLECs now
22 suggest the combined company cannot be allowed to reduce its costs through attrition of
23 employees whose functions have been automated or are redundant, and that it must retain

1 some legacy processes rather than determine if the processes can be automated or
2 improved to benefit both the company and the CLECs. Qwest witness Robert Brigham
3 also notes that Qwest has been reducing its headcount in wholesale operations, even as
4 the company has grown more effective, and as the Qwest penalty payments in Utah on its
5 Performance Assurance Plan (“QPAP”) have declined sharply.³⁰ There is simply no
6 rationale for this demand, other than not allowing the merged company the opportunity to
7 control its costs appropriately, and therefore, ensure the company has a more difficult
8 time competing financially.

9
10 **Q. PROPOSED CONDITION 29 SEEMS TO BE A “MOST FAVORED NATION”**
11 **(“MFN”) CATCHALL. IS AN MFN CONDITION ACCEPTABLE TO**
12 **CENTURYLINK?**

13 A. No. An MFN condition is neither necessary nor appropriate for this transaction. FCC
14 conditions, if any, that are *generally* applicable to the post-merger CenturyLink’s
15 operations will automatically apply to CenturyLink’s operations in Utah, even in the
16 absence of an MFN clause in this Commission’s Order. However, not all possible FCC-
17 imposed conditions would automatically apply to all jurisdictions, as not all conditions
18 can logically or legally be applied to all jurisdictions, or to Utah specifically. This
19 limitation on a condition’s universal applicability is equally true for conditions that may
20 be imposed by another state.

³⁰ This is demonstrated in the rebuttal testimony of Qwest witness Michael Williams.

1 For example, hypothetically, pursuant to the Department of Defense's ("DOD's")
2 concerns, another state commission that is reviewing this merger might order a condition
3 that requires CenturyLink to commit to serving all DOD facilities in the state, including
4 those located out-of-territory. Importing such a condition into Utah would set up a direct
5 conflict with the Utah rural exemption statute where DOD facilities exist in exchanges of
6 less than 5,000 lines. Again, the issue before this Commission is essentially about the
7 impact of the merger on the public interest in Utah, under Utah law, so it is unreasonable
8 to take conditions imposed on CenturyLink operations in another state and impose them
9 on Qwest operations in Utah.

10 Second, conditions imposed, or negotiated and agreed to, in other states result
11 from a myriad of different circumstances and considerations. And, if another state
12 imposed a condition that may have been practical under its circumstances, but impractical
13 in another, an MFN clause could result in the imposition of a condition that makes no
14 sense for the state of Utah.

15 Even if one can get past some of the legal, logistical and practical questions of
16 which conditions could theoretically be applied to Qwest in Utah, there still remains the
17 fundamental problem of the lack of fairness in simply imposing such a broad condition
18 under the facts of this particular transaction and the Utah statutory standard of review.

19 Finally, an MFN condition restricts the incentive for both parties to negotiate
20 state-specific terms in Utah and elsewhere, because the resulting terms may be imposed
21 in states where the conditions are impractical, overly costly, or unnecessary. So, to the

1 extent parties seek to negotiate terms that acknowledge state-specific needs, issues and
2 conditions, such negotiations would be stymied by such an MFN provision.

3
4 **Q. PLEASE COMMENT ON CONDITION 30, THE CLEC PROPOSAL FOR**
5 **ALLOWING DISPUTES TO BE BROUGHT BEFORE THE COMMISSION.**

6 A. This condition is unnecessary. Every Utah interconnection agreement already contains
7 language allowing a party to seek resolution of disputes before the Commission at any
8 time.³¹

9
10 **Q. THE CLECs ASSERT THAT THE JOINT APPLICANTS WANT TO**
11 **DELIBERATELY DRIVE UP THE TRANSACTION-RELATED COSTS FOR**
12 **THE CLECs. MR. GATES CITES THE JOINT APPLICANTS' REFUSAL TO**
13 **AGREE TO A STREAMLINED DISCOVERY PROCESS AS AN EXAMPLE.³²**
14 **CAN YOU COMMENT?**

15 A. Yes. First, I believe it makes no sense to equate litigation discovery disputes to the actual
16 operation of a business, and there were legitimate reasons to disagree with this request, as
17 the reply letter from CenturyLink and Qwest attorneys explained. But importantly, the
18 actual question asked of Mr. Gates that resulted in his testimony on the streamlined
19 discovery process was: “Do you have another example that suggests that *integration*
20 could harm CLECs?” [Emphasis added.] The pre-merger approval discovery process

³¹ The Qwest QPAP contains its own dispute resolution provisions. CLECs who freely adopted the QPAP must not be permitted to change the terms of the QPAP.

³² Gates Direct at 74-78.

1 has nothing to do with any *harm* that could be caused by CenturyLink's operations under
2 applicable law *post-merger*.

3
4 **Q. ARE THERE ANY SPECIFIC LEVEL 3-PROPOSED CONDITIONS THAT**
5 **HAVE NOT BEEN SUFFICIENTLY COVERED IN THE DISCUSSION OF THE**
6 **OTHER PROPOSED MERGER CONDITIONS?**

7 A. Yes. Level 3 seeks to impose an obligation for the merged company to pay a reciprocal
8 compensation rate for all ISP-bound traffic inclusive of Virtual NXX. This is a topic
9 better addressed in a comprehensive arbitration proceeding. For example, the Minnesota
10 Commission has already ruled on this precise dispute and rejected Level 3's position.
11 Karen Stewart's testimony addresses that history.

12 Further, Mr. Thayer incorrectly states that CenturyLink has agreed to pay
13 reciprocal compensation for *all* ISP-bound traffic.³³ The legacy CenturyTel affiliates do
14 not pay reciprocal compensation to Level 3 for such traffic pursuant to ICA terms that
15 were negotiated between the parties.

16 What Mr. Thayer neglected to mention in his testimony regarding the legacy
17 Embarq ICA terms is that Embarq agreed to this payment because Level 3 agreed to POI
18 terms that favored Embarq, agreed to a lower rate than that set in the FCC's *ISP Remand*
19 *Order*, and also agreed to use the lower rate in *all* of Embarq's states; including those
20 where Embarq had opted in to the higher *ISP Remand Order* rate. In other words, the

³³ Thayer Direct at 11.

1 parties negotiated holistic terms that reflected a give-and-take balancing of interests, just
2 as Congress intended would occur under the Act.

3 Qwest and Level 3 already have an existing ICA that covers any compensation
4 obligations for such traffic. The Commission should not change the terms of the ICA just
5 because Level 3 seeks a better deal than it agreed to in negotiations or received in
6 arbitrations.

7
8 **Q. LEVEL 3 CLAIMS LEGACY EMBARQ ENGAGES IN 8YY ACCESS**
9 **ARBITRAGE.³⁴ IS THIS TRUE?**

10 A. No. First, there are no rules that require a carrier to use the closest tandem, without
11 consideration of tandem ownership, for required database dips. The genesis of this issue
12 dates back to when Embarq was not a standalone ILEC, but was a division of Sprint
13 Corporation. When a Sprint wireless subscriber made a call to an 800 number, Sprint's
14 management wanted the call to be dipped in the database owned by Sprint's local entities.
15 Some limited transport charges do apply to this transited traffic, but Mr. Thayer is
16 incorrect in asserting Embarq charges for "all the transport from the point of picking up
17 the call...and back..."³⁵ This is traffic that is sent to Embarq for handling and, like all
18 carriers, Embarq does charge for its services. Level 3 seeks to use Embarq to collect this
19 traffic, but then have Embarq "pass it on" to a lower cost provider for further handling so
20 that Level 3 can optimize its costs. As I stated, this is not required by any law or industry
21 rules. Given that this issue predates the CenturyTel acquisition of Embarq, if this is valid

³⁴ Thayer Direct at 18.

³⁵ *Id.*

1 concern for Level 3, it is instructive to note that Level 3 never raised the issue in that past
2 merger.

3
4 **Q. MR. THAYER GETS INTO A DISCUSSION OF BILLING DISPUTE ISSUES TO**
5 **JUSTIFY A LEVEL 3 PROPOSED MERGER CONDITION.³⁶ IS THERE ANY**
6 **CREDENCE TO HIS TESTIMONY?**

7 A. No. Mr. Thayer's testimony on billing disputes, regarding its purported fear that
8 CenturyLink could leverage existing billing disputes with one ILEC affiliate to slow or
9 refuse to provision new services by another ILEC affiliate, falls into the same category
10 that we have seen with other CLEC testimony; that is, Mr. Thayer speculates what *might*
11 happen instead of relating any specific facts. Mr. Thayer also fails to state how the
12 merged company would engage in this speculative behavior in defiance of ICA terms that
13 legally dictate the operating relationship between Level 3 and a single CenturyLink
14 affiliate.

15
16 **Q. MR. COLEMAN OF THE DIVISION OF PUBLIC UTILITIES HAS INCLUDED**
17 **A LIST OF PROPOSED WHOLESALE MERGER CONDITIONS IN HIS**
18 **TESTIMONY. ARE THESE PROPOSED CONDITIONS REQUIRED FOR THE**
19 **MERGER TO MEET THE PUBLIC INTEREST IN UTAH?**

20 A. No. The Utah standard for approval of this transaction is whether it is in the public
21 interest. As I have previously discussed, given the Joint Applicants' acknowledgement of
22 the value they place upon their wholesale customers and the protections the CLECs

³⁶ Thayer Direct at 20 regarding Level 3 proposed Condition 6.

1 already have under applicable law, ICA terms and other existing commitments, Mr.
2 Coleman's proposed conditions are not required to meet the public interest standard in
3 Utah. If the Commission has any concerns regarding any of the topics included in the
4 proposed conditions, it can explore these topics in depth in other, more appropriate
5 proceedings.

6 In his testimony, Mr. Coleman focuses on potential, albeit unfounded, harms to
7 CLECs, but apparently he did not factor in the harms to customers if the Commission
8 restricts too severely the rights the merged incumbent has under applicable law and
9 existing agreement terms. The telecommunications market is highly-competitive, and
10 conditions that favor some providers over others have the potential for harm to the
11 competitive forces.

12 Further, the existing, lawful terms that the CLECs agreed to or arbitrated have
13 been approved by this Commission as consistent with the public interest by the
14 Commission. As regards new or amended terms, bypassing the requirement for good
15 faith negotiations called for by Sections 251 and 252 of the Act is directly contrary to the
16 intent of that law and the Commission should not sanction such a short cut by the CLECs.

17
18 **Q. IN THE DPU'S PROPOSED WHOLESALE CONDITIONS 1 AND 2, MR.**
19 **COLEMAN WANTS THE MERGED COMPANY TO ASSUME OR TAKE**
20 **ASSIGNMENT OF OBLIGATIONS UNDER QWEST'S INTERCONNECTION**
21 **AGREEMENTS AND TARIFFS, AND TO MAINTAIN THE SAME**
22 **UNCHANGED FOR SPECIFIED PERIODS OF TIME. SIMILARLY, THE**

1 **DPU’S PROPOSED CONDITION 5 REGARDING RECORDS, RATES, TARIFFS**
2 **AND ACCESS TO BOOKS SEEKS THE SAME FOR OTHER AGREEMENTS**
3 **AND CONTRACTS FOR THEIR RESPECTIVE TERMS. ARE THESE**
4 **CONDITIONS NECESSARY?**

5 A. No. As I testified in regard to the similar CLEC proposed conditions, these conditions
6 are unnecessary given the structure of this transaction – a complete acquisition of a
7 corporate entity and all of its existing obligations under law and contracts. The post-
8 merger Qwest affiliate will continue to be the provider of service to the CLECs, and to
9 other customers and service recipients, under the terms of their current contracts.

10 As regards an artificial extension of ICA terms, the CLECs have voluntarily
11 negotiated and consented to the terms contained within existing ICAs. It is not
12 appropriate for a merger process to be used to mandate a lengthy extension that would
13 not be appropriate under federal law, let alone necessary to protect the public interest.

14 As regards tariffs and price lists, no party in this proceeding can predict what
15 future changes might be necessary to serve the public interest. The Commission and the
16 post-merger Qwest affiliate must all retain the flexibility to work within the established
17 rules, rather than be constrained from addressing regulatory and competitive needs in an
18 appropriate manner.

19
20 **Q. THE DPU’S PROPOSED WHOLESALE CONDITIONS 3 AND 4 SEEK TO**
21 **SUSTAIN CERTAIN EXISTING SERVICES IN AN UNCHANGED FASHION.**
22 **DO THESE CONDITIONS SERVE THE PUBLIC INTEREST?**

1 A. No. As we just discussed in regards to the tariffs and price lists, no party in this
2 proceeding can predict what future changes might be necessary to serve the public
3 interest. The post-merger Qwest affiliate must retain the flexibility to address market
4 needs in an appropriate manner and as permitted under applicable law and regulation.

5

6 **Q. THE DPU'S PROPOSED WHOLESALE CONDITION 4 SEEKS TO SUSTAIN**
7 **QWEST AS A BOC POST-MERGER. IS THIS AN ISSUE?**

8 A. No. As I have previously testified, the definition of "BOC" is a matter of federal law,
9 and a state agency like the Commission is not able to alter that definition. As
10 CenturyLink witness Mr. Ferkin explains in his testimony, Qwest Corporation is a BOC
11 as the successor to US West, and it remains a BOC with all BOC obligations. This is a
12 non-issue in Utah.

13

14 **Q. THE DPU PROPOSES MAINTAINING A NUMBER OF EXISTING QWEST**
15 **PERFORMANCE AND CHANGE MANAGEMENT REQUIREMENTS IN**
16 **PROPOSED CONDITIONS 6, 7, AND 10, WITH THE ONLY CAVEAT A**
17 **COMMITTED TIME FRAME FOR QPAPs. ARE THESE CONDITIONS**
18 **NECESSARY?**

19 A. No. As already discussed, the post-merger company intends to adhere to the terms of
20 existing regulatory and contractual requirements and plans pursuant to the obligations of
21 those regulations and contracts, inclusive of any time-bound terms. The post-merger
22 Qwest affiliate must retain the ability to seek modifications as permitted under
23 regulations and applicable law to address future wholesale needs in an appropriate

1 manner. For example, the artificial extension of a plan could constrain Qwest from
2 proposing an overall improvement that would benefit the wholesale customers, but could
3 not be accommodated if another plan requirement was sustained unchanged.
4

5 **Q. THE DPU'S PROPOSED WHOLESALE CONDITION 8 REQUIRES**
6 **PROVIDING AND MAINTAINING CONTACT AND SUPPORT**
7 **INFORMATION. WOULDN'T CENTURYLINK DO THIS REGARDLESS OF**
8 **AN IMPOSED CONDITION?**

9 A. Within appropriate parameters, yes. Providing and updating contact and support
10 information is not an issue. This already occurs today under CenturyLink's and Qwest's
11 existing CMP processes. Further, the subjects of contact information provision and
12 notice are already covered in ICA terms and those terms will govern any required
13 timeframes. No conditions need be imposed to cover obligations that already exist in
14 contracts or regulatory requirements. Further, no conditions should be imposed that do
15 not take into account unforeseen circumstances that may prevent adherence. For
16 example, should a designated contact employee leave the company suddenly, or a support
17 center be temporarily closed due to an Act of God, advance notice to the CLECs is not
18 possible.

19 **Q. THE ONGOING PROVISION OF INFORMATION RELATED TO OSS AND**
20 **BUSINESS PRACTICES AND PROCEDURES IS THE SUBJECT OF THE DPU'S**
21 **PROPOSED CONDITION 9. WHAT ASSURANCES CAN YOU GIVE THE**
22 **COMMISSION ON THIS TOPIC?**

1 A. Because the immediate plan is to maintain Qwest's OSS and continue operations as usual
2 post-merger, and because in-place ICAs will continue pursuant to their terms, wholesale
3 customers in Utah will not face immediate changes in their existing operations with the
4 post-merger affiliates. The Joint Applicants recognize that any future changes to OSS or
5 business practices and procedures will require significant advance planning by wholesale
6 customers, and CenturyLink pledges to give its CLEC customers ample and adequate
7 notice of any future changes in compliance with all rules and terms of the interconnection
8 agreements and accepted business practices. Additionally, CenturyLink acknowledges
9 that any future CenturyLink changes must comply with state and federal laws and rules
10 and with other formal obligation such as Qwest's Performance Indicator Definitions and
11 Performance Assurance Plans. With these existing obligations in place, no condition is
12 necessary.

13

14 **Q. THE DPU'S PROPOSED CONDITION 11 GENERALLY OBLIGATES THE**
15 **MAINTENANCE OF AN EXISTING QUALITY OF SERVICE STANDARD FOR**
16 **WHOLESALE OPERATIONS. SHOULD THERE BE ANY CONCERN THAT**
17 **THIS IS NOT ALREADY A CENTURYLINK PRIORITY?**

18 A. No, there should not be any such concern. No imposed condition will affect the priority
19 that CenturyLink already maintains in this area. Earlier in this testimony, I went into
20 some detail regarding CenturyLink's Wholesale Operations, its expertise, and its
21 commitment to excellence. As the continuing head of this organization, Mr. Bill Cheek
22 has already made clear to his organization the company's ongoing commitment to service
23 quality. CenturyLink has a long-standing history of and commitment to providing quality

1 wholesale services. The provision of quality service to wholesale customers is a priority
2 and will remain so after the merger closing.
3

4 **Q. IN THE DPU'S PROPOSED CONDITION 3 REGARDING RECORDS, RATES,**
5 **TARIFFS AND ACCESS TO BOOKS, MR. COLEMAN REFERENCES**
6 **QWEST'S UNE COST DOCKET AND COMMISSION APPROVAL FOR ANY**
7 **PROPOSED CHANGES. DOES THIS CONDITION CHANGE ANY**
8 **OBLIGATION THAT ALREADY EXISTS?**

9 A. No. Qwest and CenturyLink have already stated that the merger does not change the
10 existing regulatory rules and requirements. For example, if the merged company wants
11 to change UNE pricing, it is required to seek Commission approval. The company's
12 compliance with existing rules and requirements is an ongoing obligation without this
13 condition.
14

15 **Q. THE DPU WANTS THE POST-MERGER COMPANY TO RETAIN SPECIFIED**
16 **QWEST OSS FOR THREE YEARS. THE DPU ALSO WANTS THE COMPANY**
17 **TO AGREE TO GET COMMISSION APPROVAL SIX MONTHS IN ADVANCE**
18 **OF ANY CHANGE WITH VERY SPECIFIC DETAILS TO BE PROVIDED. ARE**
19 **THESE REASONABLE REQUESTS?**

20 A. No, for the same reasons I have discussed in regards to the similar CLEC proposal. The
21 Joint Applicants do value their wholesale customers and seek to provide and maintain a
22 strong OSS for wholesale operations. The proposed Transaction will not change any

1 operations for at least an expected 12 months, or any obligations of the CLECs or of the
2 Joint Applicants, so there is no new or likely harm which merits such a condition.

3 When evaluating future OSS plans, CenturyLink must consider the desires of the
4 broad, multi-state base of CLEC customers, and to analyze the logistical and economic
5 factors that bear on whether or how to migrate to a single OSS platform for all states, not
6 just Utah. If each state commission approving the merger were to impose a condition
7 regarding the future OSS system, there could be conflicting, state-specific mandates
8 which would impede proper selections of the most efficient and productive systems. This
9 condition could simply delay system and process upgrades that would provide a benefit
10 to the entire post-merger CenturyLink customer base, without addressing any issue that is
11 a merger-related harm to Utah.

12 The Joint Applicants recognize that any future changes to OSS, if and when they
13 occur, would require significant advance planning with wholesale customers, and
14 CenturyLink pledges to give its CLEC customers ample and adequate notice of any
15 future changes, consistent with its legal obligations and accepted business practices.
16 Further, any changes would comply with the companies' respective legal obligations,
17 including the obligation to coordinate such changes in advance through the Change
18 Management Process ("CMP").

19
20 **Q. DO YOU HAVE ANY FINAL THOUGHTS TO BRING TO THE**
21 **COMMISSION'S ATTENTION?**

1 A. Yes. The CLECs are attempting to use a merger approval proceeding to impose new and
2 specialized interconnection obligations upon CenturyLink and Qwest, obligations which
3 are not authorized by law, and which have not been obtained through good faith
4 negotiations or arbitrations under Sections 251 and 252 of the Act. The Commission
5 should not permit CLECs to dictate terms different than those already negotiated and
6 approved by the Commission. For the foregoing reasons, and for the reasons stated in the
7 Petition, the Commission should promptly approve the proposed transfer of control
8 without any conditions.

9

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

11 A. Yes.

EXHIBIT A- PROPOSED CLEC MERGER CONDITIONS

Proposed CLEC Interconnection Related Conditions

6. *As of the Closing Date, the Merged Company will assume or take assignment of all obligations under Qwest's interconnection agreements, interstate tariffs (including the Annual Incentive contract tariff), and intrastate tariffs, Commercial agreements, and other existing arrangements with wholesale customers ("Assumed Agreements"). The Merged Company will assume or take assignment of all obligations under Qwest alternative form of regulation plans. The Merged Company shall not require wholesale customers to execute any documents(s) to effectuate the Merged Company's assumption or taking assignment of these obligations.*
 - a. *The Merged Company shall make available to requesting CLECs and shall not terminate or change the rates, terms or conditions of any Assumed Agreements during the unexpired term of any Assumed Agreement or for at least the Defined Time Period, whichever occurs later, unless requested by CLEC, or required by a change of law.*
 - b. *In the legacy CenturyLink ILEC territory, the Merged Company will offer Commercial agreements (including those offered pursuant to condition 7), at prices no higher, and for time periods no shorter, than those offered in the legacy Qwest ILEC territory.*
8. *The Merged Company will allow requesting carriers to extend existing interconnection agreements, whether or not the initial or current term has expired or is in "evergreen" status, for at least the Defined Time Period or the date of expiration in the agreement, whichever is later.*
9. *The Merged Company shall allow a requesting competitive carrier to use its pre-existing interconnection agreement, including agreements entered into with Qwest, as the basis for negotiating a new replacement interconnection agreement. If Qwest and a requesting competitive carrier are in negotiations for a replacement interconnection agreement before the Closing Date, the Merged Company will allow the requesting carrier to continue to use the negotiations draft upon which negotiations prior to the Closing Date have been conducted as the basis for negotiating a replacement interconnection agreement. In the latter situation (ongoing negotiations), after the Closing Date, the Merged Company will not substitute a negotiations template interconnection agreement proposal of any legacy CenturyLink operating company for the negotiations proposals made before the Closing Date by legacy Qwest.*
10. *In the legacy CenturyLink ILEC territory, the Merged Company will permit a requesting carrier to opt into any interconnection agreement to which Qwest is a party in the same state, including agreements in evergreen status. If there is no Qwest ILEC in a state, the Merged Company will permit a requesting carrier to opt into any interconnection*

agreement to which Qwest is a party in any state in which Qwest is an ILEC. Agreements subject to the opt-in rights described in this condition will apply in full, without modification and subject to the other conditions set forth herein. To the extent that the Merged Company seeks to modify agreements subject to the opt-in rights described in this condition, the Merged Company will permit the opt-in and the agreement shall become effective, subject to the Merged Company's right to subsequently seek from the applicable state commission an order modifying the agreement. The state commission may require modification of the agreement to the extent that the commission determines that the Merged Company has established that (1) it is not Technically Feasible for the Merged Company to comply with one or more provisions of the agreement or (2) the price(s) set forth in the agreement are inconsistent with TELRIC-based prices in the state in question. More consistency in interconnection agreement offerings will provide more consistency for wholesale customers dealing with CenturyLink in multiple states, and will enable the industry to rely on interconnection agreement terms from the pre-closing entity that both has been through Section 271 approval proceedings and has the greater volume of CLEC wholesale business.

a. "CenturyLink ILEC territory," as used in this condition, excludes any CenturyLink ILEC for which a state commission has granted CenturyLink a rural exemption pursuant to Section 251(f) of the Federal Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. (the Communications Act") before the Merger Filing Date.

b. Nothing in this condition precludes a regulatory body from determining that any operating company of the Merged Company, which as of the Merger Closing Date operates under a Section 251(f) exemption or a 251(f)(2) suspension or modification, must cease to do so. In the event that such a ruling is made, this condition would then apply to the applicable operating company as well.

- 12. The Merged Company will not seek to avoid any of the obligations of CenturyLink under the Assumed Agreements on the grounds that CenturyLink is not an incumbent local exchange carrier ("ILEC") under the Communications Act. The Merged Company will waive its right to seek the exemption for rural telephone companies under Section 251(f)(1) and its right to seek suspensions and modifications for rural carriers under Section 251(f)(2) of the Communications Act.*
- 14. For at least the Defined Time Period, the Merged Company will not seek to reclassify as "non-impaired" any wire centers for purposes of Section 251 of the Communications Act, nor will the Merged Company file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 or 271 obligation or dominant carrier regulation in any wire center.*
- 15. The Merged Company shall provide to wholesale carriers, and maintain and make available to wholesale carriers on a going-forward basis, up-to-date escalation information, contact lists, and account manager information at least 30 days prior to the Closing Date. For changes to support center location, organizational structure, or*

contact information, the Merged Company will provide at least 30 days advance written notice to wholesale carriers. For other changes, the Merged Company will provide reasonable advanced notice of the changes. The information and notice provided shall be consistent with the terms of applicable interconnection agreements.

21. *The Merged Company will process orders in compliance with federal and state law, as well as the terms of applicable interconnection agreements.*
22. *The Merged Company will provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements.*
 - a. *When a number is ported from the Merged Company, E-911 records will be unlocked at the time of porting. Trouble reports involving locked E-911 records will be addressed within 24 hours.*
 - b. *The Merged Company will not assign any pass code, password or Personal Identification Number (PIN) to retail customer accounts in a manner that will prevent or delay a change in local service providers. The Merged Company will require only pass codes that an end user customer requests for the purpose of limiting or preventing activity and changes to their account. The Merged Company will not require that a new local service provider provide, on a service request, a password or PIN that the end user customer uses or used to access its account information on-line [including Customer Proprietary Network Information (CPNI)].*
 - c. *The Merged Company shall not limit the number of ports that can be processed.*
23. *The Merged Company will provide nondiscriminatory access to directory listings and directory assistance in compliance with federal and state law. Specifically, the Merged Company will be responsible for ensuring that all directory listings submitted by CLECs for inclusion in directory assistance or listings databases are properly incorporated into such databases (whether such databases are maintained by the Merged Company or a third party vendor). Further the Merged Company will ensure that CLECs' subscriber listings are accessible to any requesting person on the same terms and conditions that the Merged Company's subscriber listings are available to any requesting person.*
24. *After the Closing Date, the Merged Company shall not assess any fees, charges, surcharges or other assessments upon CLECs for activities that arise during the subscriber acquisition and migration process other than any fees, charges, surcharges or other assessments that were approved by the applicable commission and charged by Qwest in the legacy Qwest ILEC territory before the Closing Date. This condition prohibits the Merged Company from charging fees, charges, surcharges or other assessments, including:*
 - a. *Service order charges assessed upon CLECs submitting local service requests ("LSRs") for number porting;*

- b. Access or “use” fees or charges assessed upon CLECs that connect a competitor’s own self-provisioned loop, or last mile facility, to the customer side of the Merged Company’s network interface device (“NID”) enclosure or box; and*
- c. “Storage” or other related fees, rents or service order charges assessed upon a CLECs’ subscriber directory listings information submitted to the Merged Company for publication in a directory listing or inclusion in a directory assistance database.*
25. *The Merged Company will provide routine network modifications in compliance with federal and state law, as well as the terms of applicable interconnection agreements.*
26. *After the Closing Date, the Merged Company will engineer and maintain its network in compliance with federal and state law, as well as the terms of applicable interconnection agreements. Resources will not be diverted to merger-related activities at the expense of maintaining the Merged Company’s network.*
- a. The Merged Company shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop.*
- b. The Merged Company will retire copper in compliance with federal and state law, as well as the terms of applicable interconnection agreements and as required by a change of law.*
- c. The Merged Company will not engineer or maintain the network (including routing of traffic) in a manner that results in the application of higher rates for traffic or inefficiencies for wholesale customers.*
27. *The Merged Company will provide conditioned copper loops in compliance with federal and state law and at rates approved by the applicable state Commission. Line conditioning is the removal from a copper loop of any device that could diminish the capability of the loop to deliver xDSL. Such devices include bridge taps, load coils, low pass filters, and range extenders. Insofar as it is technically feasible, the Merged Company shall test and report troubles for all the features, functions and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only. If the Merged Company seeks to change rates approved by a state Commission for conditioning, the Merged Company will provide conditioned copper loops in compliance with the relevant law at the current Commission approved rates unless and until a different rate is approved.*
28. *At CLEC’s option, the Merged Company will interconnect with CLEC at a single point of interconnection per LATA, regardless of whether the Merged Company provides service in such LATA via multiple operating company affiliates or a single operating company.*

Proposed CLEC OSS Conditions

16. *The Merged Company will make available to each wholesale carrier the types and level of data, information, and assistance that Qwest made available as of the Merger Filing Date concerning wholesale Operational Support Systems functions and wholesale business practices and procedures, including information provided via the wholesale web site (which Qwest sometimes refers to as its Product Catalog or “PCAT”), notices, industry letters, the change management process, and databases/tools (loop qualification tools, loop make-up tool, raw loop data tool, ICONN database, etc.).*

19. *In legacy Qwest ILEC territory, after the Closing Date, the Merged Company will use and offer to wholesale customers the legacy Qwest Operational Support Systems (OSS) for at least three years and provide at least the same level of wholesale service quality, including support, data, functionality, performance, and electronic bonding, provided by Qwest prior to the Merger Filing Date. After the minimum three-year period, the Merged Company will not replace or integrate Qwest systems without first complying with the following procedures:*
 - a. *The Merged Company will prepare and submit a detailed plan to the Wireline Competition Bureau of the FCC and the state commission of any affected state before replacing or integrating Qwest system(s). The Merged Company’s plan will describe the system to be replaced or integrated, the surviving system, and why the change is being made. The plan will describe steps to be taken to ensure data integrity is maintained. The plan will describe CenturyLink’s previous experience with replacing or integrating systems in other jurisdictions, specifying any problems that occurred during that process and what has been done to prevent those problems in the planned transition for the affected states. The Merged Company’s plan will also identify planned contingency actions in the event that the Merged Company encounters any significant problems with the planned transition. The plan submitted by the Merged Company will be prepared by information technology professionals, retained at the Merged Company’s expense, with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. Interested carriers will have the opportunity to comment on the Merged Company’s plan.*

 - b. *For any Qwest system that was subject to third party testing (e.g., as part of a Section 271 process), robust, transparent third party testing will be conducted for the replacement system to ensure that it provides the needed functionality and can appropriately handle existing and continuing wholesale services in commercial volumes. The types and extent of testing conducted during the Qwest Section 271 proceedings will provide guidance as to the types and extent of testing needed for the replacement systems. The Merged Company will not limit CLEC use of, or retire, the existing system until after third party testing has been successfully completed for the replacement system.*

c. Before implementation of any replacement or to be integrated system, the Merged Company will allow for coordinated testing with CLECs, including a stable testing environment that mirrors production and, when applicable, controlled production testing. The Merged Company will provide the wholesale carriers training and education on any wholesale OSS implemented by the Merged Company without charge to the wholesale carrier.

20. *In the legacy CenturyLink ILEC territory, as soon as reasonably possible, the Merged Company will use the wholesale pre-ordering, quoting, ordering, provisioning, and maintenance and repair functionalities (including electronic bonding) of the legacy Qwest territory to provide interconnection, Unbundled Network Elements, and special access services in the legacy CenturyLink ILEC territory. Specifically, in the legacy CenturyLink ILEC territory, the Merged Company will use the legacy Qwest IMA (GUI and XML), CORA, DLIS, CEMR, MEDIAC, Q. pricer, and Qwest Control systems for those services and functionalities for which Qwest provides wholesale services through these systems as of the Merger Filing Date.*

Proposed CLEC Product and Service Related Conditions

1. *Any wholesale service offered to competitive carriers at any time between the Merger Filing Date up to and including the Closing Date will be made available and will not be discontinued for at least the Defined Time Period, except as approved by the Commission.*
2. *The Merged Company will not recover, or seek to recover, through wholesale service rates or other fees paid by CLECs, and will hold wholesale customers harmless for, one-time transfer, branding, or any other transaction-related costs. For purposes of this condition, "transaction related costs" shall be construed broadly and, for example, shall not be limited in time to costs incurred only through the Closing Date.*
3. *The Merged Company will not recover, or seek to recover, through wholesale service rates or other fees paid by CLECs, and will hold wholesale customers harmless for, any increases in overall management costs that result from the transaction, including those incurred by the Operating Companies.*
4. *In the legacy Qwest ILEC territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy Qwest as of the Merger Filing Date. The Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy Qwest made available, or was required to make available, to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to state commission staff or the FCC, when requested. The state commission and/or the FCC may determine that additional remedies are required, if the*

remedies described in this condition do not result in the required wholesale service quality performance or if the Merged Company violates the merger conditions.

- a. *No Qwest Performance Indicator Definition (PID) or Performance Assurance Plan (PAP) that is offered, or provided via contract or Commission approved plan, as of the Merger Filing Date ("Current PAP") will be reduced, eliminated, or withdrawn for at least five years after the Closing Date and will be available to all requesting CLECs until the Merged Company obtains approval from the applicable state commission, after the minimum 5-year period, to reduce, eliminate, or withdraw it. For at least the Defined Time Period, in the legacy Qwest ILEC territory, the Merged Company shall meet or exceed the average wholesale performance provided by Qwest to each CLEC for one year prior to the Merger Filing Date for each PID, product, and disaggregation. If the Merged Company fails to provide wholesale performance as described in the preceding sentence, the Merged Company will also make remedy payments to each affected CLEC in an amount as would be calculated using the methodology (e.g., modified Z test, critical Z values, and escalation payments) in the Current PAP, for each missed occurrence when comparing performance post- and pre- Closing Date ("Additional PAP").*
 - b. *In the legacy Qwest ILEC territory, for at least the Defined Time Period, the Merged Company will meet or exceed the average monthly performance provided by Qwest to each CLEC for one year prior to the Merger Filing Date for each metric contained in the CLEC-specific monthly special access performance reports that Qwest provides, or was required to provide, to CLECs as of the Merger Filing Date. For each month that the Merged Company fails to meet Qwest's average monthly performance for any of these metrics, the Merged Company will make remedy payments (calculated on a basis to be determined by the state commission or FCC) on a per-month, per-metric basis to each affected CLEC.*
5. *For at least the Defined Time Period, in the legacy CenturyLink ILEC territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy CenturyLink as of the Merger Filing Date. The Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy CenturyLink made available, or was required to make available, to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to state commission staff or the FCC, when requested. The state commission and/or the FCC may determine that additional remedies are required, if the remedies described in this condition do not result in the required wholesale service quality performance or if the Merged Company violates the merger conditions.*
- a. *The Merged Company shall provide to CLECs the reports of wholesale special access performance metrics that Qwest provides, or was required to provide, to*

CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to the Commission staff, when requested. Beginning 12 months after the Closing Date, the requirements set forth in condition 4(b) shall apply to the Merged Company in the legacy CenturyLink ILEC territory, thereby requiring the Merged Company's average monthly performance in providing special access services in the legacy CenturyLink ILEC territory to meet or exceed the Merged Company's average monthly performance for each CLEC in the legacy Qwest ILEC territory for one year prior to the Merger Filing Date.

7. *Rates charged by legacy CenturyLink and rates charged by legacy Qwest (including those described in condition 6) for tandem transit service, any interstate special access tariffed or non-tariffed and commercial offerings, any intrastate wholesale tariffed offering, and any service for which prices are set pursuant to Sections 252(c)(2) and Section 252(d) of the Communications Act shall not be increased for at least the Defined Time Period. The Merged Company will not create any new rate elements or charges for distinct facilities or functionalities that are already provided under rates as of the Closing Date.*

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

b. In the legacy CenturyLink territory, the Merged Company will comply with its statutory obligations pursuant to Section 251(c), and will provide tandem transit services to CLECs in interconnection agreements established pursuant to Sections 251 and 252, at rates no greater than any cost-based rate approved by the state commission for the Qwest ILEC territories, or current tandem transit rate, whichever is lower.

Miscellaneous Proposed CLEC Conditions

11. *To the extent that an interconnection agreement is silent as to an interval for the provision of a product, service or functionality or refers to Qwest's website or Service Interval Guide (SIG), the applicable interval, after the Closing Date, shall be no longer than the interval in Qwest's SIG as of the Merger Filing Date.*
13. *In the legacy Qwest ILEC territory, the Merged Company shall be classified as a Bell Operating Company ("BOC"), pursuant to Section 3(4)(A)-(B) of the Communications Act and shall be subject to all requirements applicable to BOCs, including but not limited to the "competitive checklist" set forth in Section 271(c)(2)(B) and the obligation to*

ensure there is no backsliding, and the nondiscrimination requirements of Section 272(e) of the Communications Act.

17. *After the Closing Date, the Merged Company will maintain the Qwest Change Management Process (“CMP”), utilizing the terms and conditions set forth in the CMP Document, including those terms and conditions governing changes to the CMP Document. The Merged Company will dedicate the resources needed to complete pending CLEC change requests in a commercially reasonable time frame.*
18. *The Merged Company shall ensure that the legacy Qwest Wholesale and CLEC support centers are sufficiently staffed, relative to wholesale order volumes, by adequately trained personnel dedicated exclusively to wholesale operations so as to provide a level of service that is equal to or superior to that which was provided by Qwest prior to the Merger Filing Date and to ensure the protection of CLEC information from being used for the Merged Company’s retail operations or marketing purposes of any kind. The Merged Company will employ people who are dedicated to the task of meeting the needs of CLECs and other wholesale customers. The total number of the Merged Company’s employees dedicated to supporting wholesale services for CLEC customers will be no fewer than the number of such employees (including agents and contractors) employed by legacy Qwest and legacy CenturyLink as of the Merger Filing Date, unless the Merged Company obtains a ruling from the applicable regulatory body that wholesale order volumes materially decline or other circumstances warrant corresponding employee reductions.*
29. *All Conditions herein may be expanded or modified as a result of regulatory decisions concerning the proposed transaction in other states, including decisions based upon settlements, that impose conditions or commitments related to the transaction. CenturyLink agrees that the state commission of any state may adopt any commitments or conditions from other states or the FCC that are adopted after the final order in that state.*
30. *In the event a dispute arises between the parties with respect to any of the pre-closing and post-closing conditions herein, either party may seek resolution of the dispute by filing a petition with the state commission at any time. Alternative dispute resolution provisions in an interconnection agreement shall not prevent any party from filing a petition with the state commission at any time.*

EXHIBIT B- MERGER CONDITIONS PROPOSED BY MR. COLEMAN OF THE DPU

Wholesale Services

1. *CenturyLink will honor, assume or take assignment of all obligations under Qwest's existing interconnection agreements. CenturyLink will not terminate, change the conditions of (with the exception of those governing termination), or increase the rates in, any effective interconnection agreement during the unexpired term of the agreement, or for a period of two years from the Closing Date, whichever occurs later, unless requested by the non-ILEC interconnecting party and approved by the Commission, or required by a change of law.*
2. *CenturyLink will honor or assume all obligations in effect as of the Merger Filing Date under Qwest's current intrastate tariffs, including those for access services, and price lists for wholesale services. CenturyLink will not increase rates for such services for a period of at least two years from the Closing Date.*
3. *CenturyLink will continue to provide intrastate transit service in all ILEC territories subject to the same rates, terms, and conditions that were provided as of the Merger Filing Date unless approved or directed otherwise by the Commission.*
4. *No Qwest wholesale intrastate service offered to competitive carriers as of the Merger Filing Date will be discontinued for two years after closing of the transaction except as approved by the Commission.*
5. *After the close of the transaction the legacy Qwest ILEC territory shall continue to be classified as a Bell Operating Company ("BOC"), pursuant to Section 3(4)(A)-(B) of the Communications Act and shall be subject to all requirements applicable to BOCs,*

including but not limited to the “competitive checklist” set forth in Section 271(c)(2)(B) of the Act.

6. *In the legacy Qwest ILEC territory, CenturyLink shall comply with all wholesale performance requirements for all wholesale services, including those set forth in regulations, tariffs, and interconnection agreements applicable to legacy Qwest as of the Merger Filing Date.*
7. *Following the Closing Date, CenturyLink shall continue to comply with the provisions of Qwest Performance Assurance Plan (QPAP) that are in effect as of the Merger Filing Date for at least three years following the Closing Date, or such period as negotiated by any other party in this docket, whichever is longer. CenturyLink shall provide the monthly reports of wholesale performance metrics that Qwest currently provides to Commission Staff and to each CLEC.*
8. *After the Closing Date of the transaction, CenturyLink shall provide and maintain updated escalation information, contact lists and account manager information that are in place at least 30 days prior to the transaction close date. For changes to support center location, organizational structure, or contact information, CenturyLink will provide at least 30 days advance written notice to all CLECs and Commission Staff.*
9. *CenturyLink will continue to make available to each wholesale carrier in Utah the types of information that Qwest made available as of the Merger Filing Date concerning wholesale Operational Support Systems functions and wholesale business practices and*

procedures, including information provided via the wholesale web site, notices, industry letters, the change management process, and databases/tools.

10. *CenturyLink will maintain the current Qwest Change Management Process (“CMP”), utilizing the terms and conditions set forth in the CMP Document. Pending CLEC Change Requests shall be completed in a commercially reasonable time frame.*
11. *CenturyLink shall ensure that the legacy Qwest Wholesale and CLEC support centers are sufficiently staffed by adequately trained personnel dedicated exclusively to wholesale operations so as to provide a level of service that is comparable to that which was provided by Qwest prior to the transaction and to ensure the protection of CLEC information from being used for CenturyLink’s retail operations.*

Records/Rates/Tariffs/Access to Books (Wholesale-Related)

3. *CenturyLink shall follow the terms and conditions of Qwest’s UNE Cost Docket No. 01-049-85. Any proposed changes to the approved price plan must receive Commission approval. Within 60 days following any branding or administrative changes to Qwest’s Utah rates, rules, and regulations, CenturyLink will file with the Commission updated Utah rates, rules, and regulations that show the branding change.*
4. *CenturyLink will not seek to recover through wholesale service rates one-time transaction, branding or transition costs and will hold retail and wholesale customers harmless for increases in overall management costs that result from the transaction.*

5. *All Qwest existing agreements with wholesale customers, retail customers, and utility operators and licensees for services provided in Utah including, but not limited to interconnection agreements, commercial agreements, line sharing commercial agreements, and special access discount and/or term plan agreements will be assigned to or assumed by CenturyLink or its subsidiary and will be honored by the Company for the respective terms of each agreement.*

Operations Support Systems (OSS)

1. *CenturyLink commits to the following OSS actions:*

Operations support systems included in this requirement will include:

- a. *Systems used to monitor cable and pair information and operation*
- b. *Systems used to track or monitor in-service circuit equipment information*
- c. *Systems used to track or monitor switch components*
- d. *Billing systems, and*
- e. *Systems used for customer pre-ordering, ordering, provisioning, maintenance, and repair operations.*

This requirement applies to both wholesale and retail systems.

CenturyLink will keep Qwest's legacy operations support systems intact for a minimum of three years after the closing of the transaction.

Prior to modifying or integrating existing Qwest/CenturyLink operations support systems, CenturyLink will request approval from the Commission 6 months in advance of

the proposed action. Notification will consist of a description of the systems involved, the action to be taken, the proposed work schedule, a description of the company's and customers' activities that will be affected, and a list of status reports to be provided to the Commission.