

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

DOCKET NO. 10-049-16

SURREBUTTAL TESTIMONY OF

TIMOTHY J GATES

ON BEHALF OF

tw telecom of utah llc; McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services; Integra Telecom of Utah, Inc., Electric Lightwave, LLC, and Eschelon Telecom of Utah, Inc.; and Level 3 Communications, LLC

Exhibit Joint CLECs 2SR

PUBLIC VERSION

CONFIDENTIAL AND HIGHLY CONFIDENTIAL DATA HAS BEEN REDACTED

October 14, 2010

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Exhibits

Exhibit Joint CLECs 2SR.1 – Issues Matrix summarizing both Applicants’ Position Statements and Joint CLECs’ Position Statements for each issue presented by the Joint CLEC list of recommended conditions (Exhibit Joint CLECs 2.8) for resolution in this matter.

Exhibit Joint CLECs 2SR.2 – Excerpt from the FCC *Local Competition Order*.

Exhibit Joint CLECs 2SR.3 – Excerpt from the FCC *Qwest 9-State 271 Order*.

Exhibit Joint CLECs 2SR.4 – Excerpt from Qwest’s online Product Catalog called “Pre-Ordering Overview” containing a Qwest table reflecting how Qwest back-end service order processing (“SOP”) systems process CLEC orders differently depending on Qwest Region (Central, East, or West).

Exhibit Joint CLECs 2SR.5 – Systems flow diagram (Confidential).

1 **I. INTRODUCTION**

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

3 A. My name is Timothy J Gates. My business address is QSI Consulting, 10451
4 Gooseberry Court, Trinity, Florida 34655.

5 **Q. ARE YOU THE SAME TIMOTHY GATES WHO FILED DIRECT**
6 **TESTIMONY IN THIS PROCEEDING ON AUGUST 30, 2010?**

7 A. Yes.

8 **Q. ON WHOSE BEHALF ARE YOU FILING THIS SURREBUTTAL**
9 **TESTIMONY?**

10 A. My testimony is being filed on behalf of a number of CLECs: **tw telecom of utah**
11 **llc**; McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business
12 Services; Integra Telecom of Utah, Inc., Electric Lightwave, LLC, and Eschelon
13 Telecom of Utah, Inc.; and Level 3 Communications, LLC. (hereafter collectively
14 referred to in my testimony as “Joint CLECs”).

15 **II. PURPOSE OF TESTIMONY**

16 **Q. PLEASE EXPLAIN THE PURPOSE OF YOUR TESTIMONY.**

17 A. The purpose of my testimony is to respond to the Rebuttal Testimony of
18 CenturyLink and Qwest (collectively referred to in my testimony as “Joint
19 Applicants”), which was filed on September 30, 2010. Specifically, I will

1 respond to the Rebuttal Testimony of the following CenturyLink witnesses: Jerry
2 Fenn,¹ Jeremy Ferkin,² and Michael Hunsucker.³ I will also respond to the
3 Rebuttal Testimony of the following Qwest witnesses: Robert Brigham,⁴ Karen
4 Stewart,⁵ and Michael Williams.⁶ I will also briefly respond to the Rebuttal
5 Testimony of Division of Public Utilities (“DPU”) witness Casey Coleman.

6 **Q. DO YOU HAVE ANY PRELIMINARY COMMENTS ABOUT THE JOINT**
7 **APPLICANTS’ REBUTTAL TESTIMONY?**

8 A. The Joint Applicants have gone to great lengths in their Rebuttal Testimony to
9 disagree with the conditions proposed by the Joint CLECs (including misstating
10 what the conditions actually say). The Joint Applicants refuse *all* conditions,
11 even though most of them merely maintain the status quo, reflect what the Joint
12 Applicants say they will do if the proposed transaction is approved (albeit without
13 any commitments), and reflect conditions that have been approved by the Federal
14 Communications Commission (“FCC”) and state commissions in the past. The
15 Joint Applicants’ across-the-board rejection of the Joint CLECs’ proposed

¹ Rebuttal Testimony of Jerry Fenn on behalf of CenturyLink, Inc., Utah Public Service Commission Docket No. 10-049-16, September 30, 2010 (“Fenn Rebuttal”).

² Rebuttal Testimony of Jeremy Ferkin on behalf of CenturyLink, Inc., Utah Public Service Commission Docket No. 10-049-16, September 30, 2010 (“Ferkin Rebuttal”).

³ Rebuttal Testimony of Michael Hunsucker on behalf of CenturyLink, Inc., Utah Public Service Commission Docket No. 10-049-16, September 30, 2010 (“Hunsucker Rebuttal”).

⁴ Rebuttal Testimony of Robert Brigham on behalf of Qwest Communications International, Inc., Utah Public Service Commission Docket No. 10-049-16, September 30, 2010 (“Brigham Rebuttal”).

⁵ Rebuttal Testimony of Karen Stewart on behalf of Qwest Communications International, Inc., Utah Public Service Commission Docket No. 10-049-16, September 30, 2010 (“Stewart Rebuttal”).

⁶ Rebuttal Testimony of Michael Williams on behalf of Qwest Corp., Utah Public Service Commission Docket No. 10-049-16, September 30, 2010 (“Williams Rebuttal”).

1 conditions contradicts claims that they are “commit[ed] to providing quality
2 wholesale services”⁷ and “value[] CLECs, and recognize[] them as extremely
3 important...”⁸ If the Joint Applicants truly valued CLECs as important
4 customers, it is logical to conclude that they would be willing to work with
5 CLECs to address concerns and ensure that the transition caused by the proposed
6 transaction runs as smoothly as possible for their valued customers.

7 At the same time, Joint Applicants’ Rebuttal Testimony further supports the Joint
8 CLECs’ concerns about merger-related harm. Not only do the Joint Applicants
9 provide no further details about their post-merger plans to overcome the severe
10 uncertainty caused by the proposed transaction, they also describe service-
11 impacting problems that have occurred during CenturyLink’s systems integration
12 effort related to the merger with Embarq – problems that could be devastating to
13 wholesale and retail customers if they occurred in Qwest’s region. This only
14 heightens the systems integrations concerns I discussed in my Direct Testimony,
15 particularly when CenturyLink has recently referred to systems integration
16 following a merger as “necessary”⁹ and problems that arise during those
17 integration efforts as “inevitabl[e].”¹⁰

⁷ Hunsucker Rebuttal at p. 6, lines 5-6. *See also*, Hunsucker Rebuttal at p. 7, lines 5-6.

⁸ Williams Rebuttal at p. 16, lines 9-10.

⁹ Rebuttal Testimony of Duane Ring on behalf of CenturyLink, Inc., Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010 (“Ring Minnesota Rebuttal Testimony”), at p. 4, lines 13-15 (“Q. Why is it necessary to integrate the CenturyTel and Embarq systems? A. The systems need to be integrated so that all employees are working off the same platform and using the same processes.”) Available at:

1 In an apparent recognition of the lack of facts for their claims that the proposed
2 transaction is in the public interest, the Joint Applicants claim that the Joint
3 CLECs' positions are unfounded and paint the Joint CLECs as seeking unfair
4 advantage. These claims cannot be supported given the evidence that Dr. Ankum
5 and I provided in our Direct Testimony. They ignore, among other things, the
6 data provided about CenturyLink's wholesale service quality performance
7 following the Embarq merger,¹¹ the examples provided about the differences in
8 functionalities between Qwest's Operations Support Systems ("OSS") and
9 CenturyLink's OSS,¹² the data comparing the size of the existing wholesale
10 operations of Qwest and CenturyLink,¹³ and the data in Dr. Ankum's Exhibit
11 Joint CLECs 1.3 and Exhibit Joint CLECs 1.4 which demonstrate (through
12 information collected during the discovery process) that significant uncertainty
13 surrounds the proposed transaction and alleged benefits have not been
14 substantiated by Joint Applicants. The Joint Applicants also erroneously claim
15 that the Joint CLECs are seeking unfair competitive advantages and a *cut* of the
16 expected synergy savings. That is not accurate. A fair reading of the testimony
17 shows that the Joint CLECs seek to maintain the status quo of Qwest's wholesale

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

¹⁰ Ring Minnesota Rebuttal Testimony at p. 4, lines 3-4 ("...every system conversion or integration inevitably is going to have some issues.") Available at:

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

¹¹ Direct Testimony of Timothy Gates on behalf of Joint CLECs, Exhibit Joint CLECs 2, Utah Docket No. 10-049-16, August 30, 2010, ("Gates Direct"), at pp. 85-87 (Highly Confidential Version).

¹² Exhibit Joint CLECs 2 (Gates Direct) at pp. 58-60.

¹³ Exhibit Joint CLECs 2 (Gates Direct) at pp. 26-29.

1 services and products, wholesale systems, wholesale support, wholesale service
2 quality and their competitive position vis-à-vis the Bell Operating Company
3 (“BOC”) and incumbent LECs (“ILECs”).

4 It appears that the Joint Applicants have forgotten that they are the companies
5 asking for approval of the proposed transaction, and that it is their responsibility
6 to provide information to demonstrate that the proposed transaction is in the
7 public interest. Joint Applicants have not provided such information in this
8 proceeding, and as a result, the proposed transaction should be denied. If the
9 Utah Commission is inclined to approve the proposed transaction despite the
10 uncertainties, lessons learned from other mergers, and likely harms that would
11 result, then the Commission should adopt the conditions proposed by Joint
12 CLECs, as well as any additional conditions, such as retail conditions, that the
13 Commission determines are needed to permit a finding that the proposed
14 transaction is in the public interest. The Joint CLEC conditions are designed to
15 address the harms to CLECs and competition that would occur from this
16 particular transaction. Adopting conditions to protect and foster competition is a
17 reasonable alternative to merger denial, as it allows the Commission to render a
18 decision approving the merger on an expedited basis (as requested by Joint
19 Applicants), which allows the Joint Applicants to move forward with the
20 transaction, while affording CLECs a degree of certainty to plan their business

1 going forward, and providing CLECs and their customers some degree of
2 protection to avoid or offset merger-related harms.

3 **III. THE JOINT APPLICANTS' ATTEMPTS TO DEFLECT JOINT CLEC**
4 **CONCERNS ABOUT MERGER-RELATED HARM ARE**
5 **UNPERSUASIVE.**

6 *A. Joint Applicants' attempts to trivialize the Joint CLECs' concerns is not*
7 *indicative of a true commitment to maintaining and providing high*
8 *quality service to their CLEC wholesale customers.*

9 **Q. JOINT APPLICANTS HAVE TESTIFIED THAT CLECS' CONCERNS**
10 **“ABOUT WHOLESALE SERVICE PERFORMANCE ARE IRRELEVANT**
11 **TO THIS MERGER PROCEEDING”¹⁴ AND “COMPETITIVE ISSUES**
12 **THAT THE CLECS RAISE IN THIS PROCEEDING REPRESENT**
13 **NOTHING MORE THAN ‘NOISE’...”¹⁵ DOES THIS HEIGHTEN YOUR**
14 **CONCERNS ABOUT MERGER-RELATED HARM TO CLECS AND**
15 **COMPETITION?**

16 *A. Yes. These statements demonstrate a complete disregard of the Joint Applicants'*
17 *wholesale customers who have spent a great deal of time, effort and expense*
18 *intervening in these merger review proceedings to voice their legitimate concerns*
19 *to the Commission.*

¹⁴ Williams Rebuttal at p. 2, lines 14-15.

¹⁵ Brigham Rebuttal at p. 28, lines 2-3.

1 Further, these statements call into question CenturyLink’s claims that: (i)
2 “CenturyLink is committed to providing high-quality wholesale service to all of
3 its customers[,]”¹⁶ (ii) wholesale customers are a priority for CenturyLink and
4 will remain so post-merger,¹⁷ (iii) “[b]oth CenturyLink and Qwest take very
5 seriously their wholesale provisioning obligations and opportunities”¹⁸ and (iv)
6 wholesale customers are “crucial to the future financial success of the combined
7 company.”¹⁹ This rhetoric, which is designed to secure approval of the
8 transaction, is belied by the Joint Applicants’ refusal to provide facts or to
9 consider the reasonable conditions of the Joint CLECs. It is simply not good
10 business for a service provider to belittle its customers’ concerns as “noise.” And
11 in other industries with competitive markets, that type of attitude would likely
12 lead to failure (as customers would leave that service provider for other service
13 providers that value customers’ opinions and concerns). For example, if

¹⁶ Ferkin Rebuttal at p. 22, lines 9-10. *See also*, Hunsucker Rebuttal at pp. 6-7. Mr. Hunsucker claims that the “facts” demonstrating CenturyLink’s ability to continue to provide quality wholesale service if the proposed transaction is approved include the following: (1) almost two thousand active CLEC interconnection and resale agreements, (2) about 1 million ASRs and LSRs CenturyLink is expected to process in 2010, and (3) “a CLEC performance assurance plan in its largest CLEC market, Las Vegas, Nevada” and “a system called CSPRS (CLEC Service Performance Reporting System; currently available in the legacy Embarq territories), which provides all CLECs with access to the service performance reports on the service provided to their respective companies.” Because these “facts” relate to a wholesale operation that CenturyLink recently inherited due to its acquisition of Embarq in the last year, it is a stretch for Mr. Hunsucker to claim that they support CenturyLink’s “long-standing history of and commitment to providing quality wholesale services.” Hunsucker Rebuttal at p. 6, lines 5-6. Moreover, Mr. Hunsucker fails to provide any comparison of the magnitude of its legacy wholesale operations to the legacy wholesale operations of Qwest. I provided such a comparison at pages 26-29 of the highly confidential version of my Direct Testimony which shows that Qwest’s wholesale operations are significantly larger than CenturyLink’s wholesale operations.

¹⁷ Hunsucker Rebuttal at p. 5, lines 19-20; p. 6, lines 6-7; and p. 7, lines 5-6.

¹⁸ Hunsucker Rebuttal at p. 14, lines 1-2. *See also*, Hunsucker Rebuttal at p. 32, lines 15-16.

¹⁹ Hunsucker Rebuttal at p. 14, lines 2-3.

1 customers of McDonald's raised concerns about long waiting times in the drive-
2 thru because of a reduction in employees, and McDonald's dismissed these
3 concerns as "noise," the chances are good that customers would *vote with their*
4 *feet* and go to Arby's or Hardees instead. Unfortunately, the CLECs do not have
5 the same option when it comes to the products and services they purchase from
6 Qwest or CenturyLink, and the need to exchange traffic to maintain the efficient
7 operation of the Public Switched Telephone Network ("PSTN"). The Joint
8 Applicants' dismissive statements show a complete disregard for their wholesale
9 customers.²⁰ I am not aware of the Joint Applicants dismissing concerns about
10 retail service quality and other retail concerns in the merger review proceedings as
11 "irrelevant" or "noise."

12 **Q. DOES VERIFIABLE DATA EXIST WHICH SHOWS THAT BOTH**
13 **WHOLESALE AND RETAIL CUSTOMERS OF THE JOINT**
14 **APPLICANTS HAVE REASON TO BE CONCERNED ABOUT THE**
15 **SERVICE QUALITY THEY WILL RECEIVE FROM THE MERGED**
16 **COMPANY IF THE TRANSACTION IS APPROVED?**

17 A. Yes. At pages 84-87 of my Direct Testimony, I provided an analysis of the
18 wholesale service quality data which shows the wholesale service quality

²⁰ Mr. Williams states at page 16, lines 9-10 of his Rebuttal Testimony: "Qwest values CLECs, and recognizes them as extremely important in helping to keep customers on Qwest's wireline network." The dismissive statements made by Joint Applicants about the Joint CLEC proposed conditions are not indicative of a service provider that values its customers. Mr. Williams fails to mention that Qwest competes with CLECs in local retail markets, and has economic incentives to serve an end user customer with its retail services rather than permit a CLEC wholesale customer to serve that end user customer using Qwest's wholesale services.

1 provided by CenturyLink following the Embarq/CenturyTel merger. Those
2 results show that the CLECs' concerns are valid and that conditions are necessary.
3 In addition, since I submitted my pre-filed Direct Testimony in Utah,
4 CenturyLink has provided additional information which serves to heighten my
5 concerns about post-merger wholesale service quality. CenturyLink has indicated
6 that it will seek synergy savings through operating cost savings (*i.e.*, eliminating
7 duplicative functions and systems related to corporate overhead, network and
8 operational, IT, advertising/marketing, increased purchasing power) and capex
9 savings.²¹ All told, the company expects \$575 million in operating cost synergies
10 and \$50 million in capital expense synergies, for a total of \$625 million over a
11 three-to-five year period. The elimination of duplicative functions (or headcount)
12 and systems will impact wholesale (and retail) operations. For example, based on
13 the very high level information provided by CenturyLink about its synergy
14 estimates,²² it expects that *****BEGIN HIGHLY CONFIDENTIAL [REDACTED]**
15 **[REDACTED] END HIGHLY CONFIDENTIAL***** of this amount will be cut from
16 *****BEGIN HIGHLY CONFIDENTIAL [REDACTED] END HIGHLY**
17 **CONFIDENTIAL***** and another *****BEGIN HIGHLY CONFIDENTIAL**
18 **[REDACTED] END**
19 **HIGHLY CONFIDENTIAL***** from *****BEGIN HIGHLY**

²¹ See, e.g., Direct Testimony of Jeff Glover, Utah Docket No. 10-049-16, May 27, 2010, Exhibit JSG-1 at p. 13.

²² CenturyLink Response to Integra Utah Data Request #52(a), Highly Confidential Attachment Integra-52a.

1 **CONFIDENTIAL** [REDACTED] **END**

2 **HIGHLY CONFIDENTIAL*****. The cutbacks in these items will likely have
3 impacts on wholesale customers and the service quality they receive from the
4 Merged Company, and the Joint CLECs' conditions are designed to ensure that
5 these cutbacks do not harm their meaningful opportunity to compete and the
6 public interest.

7 Recent customer satisfaction studies show that retail customers also have reasons
8 to be concerned if the Commission allows CenturyLink to acquire and control
9 Qwest. Specifically, on September 15, 2010, JD Power & Associates released its
10 *2010 U.S. Residential Telephone Customer Satisfaction Survey*.²³ This study
11 measures customer satisfaction with both local and long distance telephone
12 services in four regions through the United States and covers five factors in
13 determining overall satisfaction: (i) performance and reliability, (ii) cost of
14 service, (iii) billing, (iv) offerings and promotions, (v) and customer service. In
15 the West Region, where results for both Qwest and CenturyLink are reported,
16 Qwest was ranked 3rd out of 10 and CenturyLink was ranked 8th out of 10.
17 CenturyLink performed below average, while Qwest performed slightly above
18 average. In the three other regions where CenturyLink's (but not Qwest's)
19 residential customer satisfaction was ranked, CenturyLink ranked 7th out of 9

²³ The JD Power & Associates press release and summary results for this study are available at:
<http://businesscenter.jdpower.com/JDPAContent/CorpComm/News/content/Releases/pdf/2010184-rtss.pdf>

1 (East Region), 8th out of 9 (South Region), and 7th out of 10 (North Central
2 Region).

3 **Q. WERE THE RESULTS SIMILAR FOR RETAIL BUSINESS**
4 **CUSTOMERS?**

5 A. Yes. Regarding business customer satisfaction, JD Power & Associates released
6 its *2010 U.S. Major Provider Business Telecommunications Study – Voice Service*
7 on July 15, 2010.²⁴ This study measures customer satisfaction with providers of
8 landline voice telephone service for businesses, and providers are ranked in three
9 segments: (i) home-based businesses, (ii) small/midsize businesses and (iii) large
10 enterprise businesses. The same five factors listed above are used to determine
11 overall satisfaction. Both Qwest and CenturyLink results are reported for two of
12 the three segments – home-based business and small/midsize business. In the
13 home-based business segment, Qwest performed slightly better than CenturyLink,
14 with both companies performing below the average. In the small/midsize
15 business segment, CenturyLink ranked last (5th out of 5), below average, and
16 Qwest ranked slightly above average at 3rd out of 5. With Qwest consistently
17 performing better than CenturyLink in these retail customer satisfaction studies, it
18 is unclear how CenturyLink taking control of Qwest will bring any better service
19 to the legacy Qwest territory, particularly as CenturyLink has refused to agree to
20 conditions requiring CenturyLink to continue certain Qwest practices. Indeed,

²⁴ The JD Power & Associates press release and summary results for this study are available at:
<http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2010111>

1 just the opposite is true. These studies, along with other data presented in this
2 proceeding, confirm that both wholesale and retail customers have good reason to
3 be concerned about CenturyLink taking control of Qwest.

4 **Q. AS CLECS ARE COMPETITORS OF CENTURYLINK/QWEST,**
5 **WOULDN'T CLECS BENEFIT FROM RETAIL CUSTOMER**
6 **DISSATISFACTION ABOUT CENTURYLINK'S/QWEST'S RETAIL**
7 **SERVICES?**

8 A. Unfortunately, it does not work that way when the CLEC's competitor is also the
9 CLEC's sole wholesale vendor for essential network facilities. Absent
10 enforceable conditions that require CenturyLink to maintain wholesale service
11 quality levels, a reduction in retail service quality will invariably translate into a
12 reduction in wholesale service quality as the merged company alters its workforce
13 (e.g., reductions, replacement of experienced employees). At that point,
14 CenturyLink may argue "parity" – that it is ok when wholesale service declines
15 because retail service is declining as well, so there is no discrimination.
16 Deterioration in service quality under these circumstances, however, is a merger-
17 related harm that should be prevented, whether discriminatory to competitors or
18 not. After all, the merger is supposed to be in the public interest and not result in
19 degraded service to retail or wholesale customers.

20 Because Qwest's performance assurance plans (PAPs) generally compare
21 wholesale service quality to retail service quality, as retail service quality

1 declines, there would be no protections for CLECs and their customers against
2 deterioration in wholesale service quality. This, in part, is why the Commission
3 should adopt condition 4.a. regarding the additional performance assurance plan
4 (“APAP”).²⁵ The APAP would compare the merged company’s post merger
5 monthly performance with the performance that existed in the twelve months
6 prior to the merger filing date. In the event of deterioration in retail service
7 quality, the APAP would capture service deterioration that is not captured under
8 the current PAP’s parity provisions but which needs to be captured to measure
9 and help remedy merger-related service deterioration.

10 *B. CenturyLink’s description of its prior integration efforts glosses over*
11 *problems and merger-related harms.*

12 **Q. HAS ADDITIONAL EVIDENCE BEEN COLLECTED SINCE YOU FILED**
13 **YOUR DIRECT TESTIMONY THAT FURTHER DEMONSTRATES**
14 **THAT THE JOINT CLECS’ CONCERNS ABOUT MERGER-RELATED**
15 **HARM ARE RELEVANT AND CONDITIONS ARE NEEDED IF THE**
16 **PROPOSED TRANSACTION IS APPROVED?**

17 A. Yes.

18 **Q PLEASE ELABORATE.**

²⁵ See, Exhibit Joint CLECs 2 (Gates Direct) at pp. 131-134 and Exhibit Integra 1 (Denney Direct) at pp. 6-14.

1 A. On August 19, 2010, the Communications Workers of America (“CWA”) filed
2 the Direct Testimony of Jasper Gurganus in the Minnesota PUC proceeding
3 reviewing the proposed transaction (Minnesota Docket No. P-421, et al./PA-10-
4 456),²⁶ which describes problems CenturyLink experienced during its integration
5 of Embarq in North Carolina. It is worth noting that CWA members are the
6 employees who are actually performing the integration activities. CenturyLink
7 filed the Rebuttal Testimony of Duane Ring on September 13, 2010, in the
8 Minnesota proceeding to respond to Mr. Gurganus’ testimony. In his Rebuttal
9 Testimony, CenturyLink witness Mr. Ring acknowledged the problems discussed
10 by Mr. Gurganus. CenturyLink’s acknowledgement of these integration problems
11 was surprising given that CenturyLink has referred to the ongoing Embarq
12 integration as running “smooth and successful.”²⁷ Another reason this was
13 surprising was that Joint CLECs have raised concerns about CenturyLink’s
14 integration of Qwest in each state proceeding in which they are involved– with
15 some of those concerns being very similar to the types of problems CenturyLink
16 has experienced in North Carolina. However, until the CWA brought forward its
17 evidence (evidence to which only CWA and CenturyLink would have reasonable

²⁶ Pre-Filed Direct Testimony of Jasper Gurganus on behalf of CWA, Minnesota Docket No. P-421, et al./PA-10-456, August 19, 2010. Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPop&documentId={3BAC3216-79EA-4367-B0FD-2C44F6DFDF17}&documentTitle=20108-53661-01>

²⁷ See, e.g., Ferkin Rebuttal at p. 15, lines 28-29.

1 access), CenturyLink failed to mention any problems regarding its integration of
2 Embarq until its Rebuttal Testimony in the Minnesota proceeding.²⁸

3 **Q. DID CENTURYLINK MENTION ANY INTEGRATION PROBLEMS IN**
4 **ITS TESTIMONY HERE IN UTAH?**

5 A. No. Apparently because the CWA did not file testimony in this merger review
6 proceeding, CenturyLink chose not to inform the Utah Commission about the
7 problems it has experienced – and continues to experience – while integrating
8 Embarq. Instead, the Joint Applicants have chosen to characterize the Joint
9 CLECs’ concerns as “irrelevant” and “noise” in Utah while submitting testimony
10 in another state which shows that the Joint CLECs concerns are warranted.

11 **Q. DID CENTURYLINK HAVE AN OBLIGATION TO PROVIDE THIS**
12 **EVIDENCE IN UTAH?**

13 A. Yes. On July 1, 2010, Integra served discovery requests upon Joint Applicants in
14 which Integra referenced the Direct Testimony of Mr. Ferkin regarding
15 integration efforts undertaken by the company for CenturyTel’s acquisition of
16 Embarq and Mr. Ferkin’s claims that they have been successful, and asked
17 CenturyLink to: (1) “Describe in detail the integration efforts undertaken by the
18 company for CenturyTel’s acquisition of Embarq” and specifically to answer
19 fourteen sub-questions, including “Description of problems the company

²⁸ For example, Joint Applicants filed their Rebuttal Testimony in the Iowa merger review proceeding on August 26, 2010, and did not mention any integration problems. Moreover, Joint Applicants failed to mention these problems in their September 30, 2010, Rebuttal Testimony filed here in Utah.

1 experienced (or is experiencing) during integration;²⁹ and (2) Provide a detailed
2 description of these conversions, including “how the company determined that the
3 integration efforts ‘have been successful.’”³⁰ As part of its information requests
4 on July 1, 2010, Integra included an instruction stating that the information
5 requests are intended to be continuing in nature and indicating that the
6 respondents should supplement the responses promptly.³¹ CenturyLink
7 responded to these Integra Information Requests on July 20, 2010.

8 In response, CenturyLink stated that the integrations were proceeding as planned,
9 without disclosing any of the problems that CenturyLink has acknowledged only
10 after CWA brought them to light in testimony. In both responses, CenturyLink
11 represented that the conversion to CenturyLink’s retail end user billing system is
12 proceeding as planned “without customer disruption.”³² CenturyLink’s
13 affirmative statement appears inconsistent with the problems described in the
14 Minnesota Testimony of CWA witness Mr. Gurganus, as well as CenturyLink’s
15 own recent testimony that the problems encountered in North Carolina have
16 caused CenturyLink “to produce lower service level metrics than desired since
17 conversion.”³³ While continuing to pursue expedited treatment of this matter and

²⁹ Integra Utah Information Request Number 41(j) to Joint Applicants.

³⁰ Integra Utah Information Request Number 42 to Joint Applicants.

³¹ Integra Utah Information Requests to Joint Applicants. p. 2.

³² CenturyLink’s Response to Integra Utah Data Request #41.

³³ Ring Minnesota Rebuttal Testimony, at p. 5, lines 16-18. Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPop&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

1 continuing to oppose scheduling adjustments in light of discovery issues,
2 CenturyLink has allowed the time during which these problems could have been
3 investigated – i.e., between CenturyLink’s July 20, 2010, non-responsive
4 discovery answer and CenturyLink’s admissions in its September 13, 2010,
5 Minnesota Rebuttal Testimony – to lapse without disclosing this requested
6 relevant information.

7 With top executives at Qwest expected to receive multi-millions of dollars upon
8 closing³⁴ and CenturyLink estimating over \$600 million in synergy savings if the
9 transaction is approved, it is clear why Qwest and CenturyLink are in a hurry.
10 However, it becomes less and less clear what public interest may be served by not
11 inquiring into and adequately investigating these problems, particularly when
12 CenturyLink delayed proper investigation into these issues by not disclosing
13 required information in discovery.

14 **Q. PLEASE BRIEFLY DESCRIBE THE INTEGRATION-RELATED**
15 **PROBLEMS CWA AND CENTURYLINK HAVE REPORTED.**

16 A. CenturyLink witness Mr. Ring states that, during the conversion in North
17 Carolina to CenturyLink billing and operational systems, outside plant records
18 were loaded incorrectly, which caused the problems described in CWA’s

³⁴ See, e.g., Windfall for Qwest top execs, by Andy Vuong, *The Denver Post*, 7/18/2010. http://www.denverpost.com/search/ci_15536725 . The article notes: “Seven top executives at Qwest stand to reap more than **\$110 million in cash and stock** from the Denver-based company’s proposed merger with CenturyLink, according to a new regulatory filing.” (Emphasis added.)

1 testimony.³⁵ Some of the problems that the CWA described in its testimony
2 include: “workers...being dispatched to incorrect locations for service”;³⁶
3 “workers reported being dispatched for service with insufficient or incorrect
4 information”;³⁷ longer out of service periods and longer delays in initiating
5 service;³⁸ differing and confusing software that dispatches/assigns technicians;³⁹
6 “the systems do not appear to be interconnected or coordinated”;⁴⁰ negative
7 impacts on work flow;⁴¹ “inefficiencies in the new systems”;⁴² and consumer
8 frustration about installation and service appointments not being met and long
9 hold times.⁴³

10 **Q. DID CENTURYLINK ACKNOWLEDGE THAT THESE PROBLEMS**
11 **HAVE NEGATIVELY IMPACTED SERVICE QUALITY?**

³⁵ Ring Minnesota Rebuttal Testimony at p. 2, lines 6-12. Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

³⁶ Gurganus Minnesota Direct Testimony at p. 4, lines 19-20. Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={3BAC3216-79EA-4367-B0FD-2C44F6DFDF17}&documentTitle=20108-53661-01>

³⁷ Gurganus Minnesota Direct Testimony at p. 5, lines 6-7. Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={3BAC3216-79EA-4367-B0FD-2C44F6DFDF17}&documentTitle=20108-53661-01>

³⁸ Gurganus Minnesota Direct Testimony at pp. 4-5.

³⁹ Gurganus Minnesota Direct Testimony at p. 5.

⁴⁰ Gurganus Minnesota Direct Testimony at p. 6, lines 8-12.

⁴¹ Gurganus Minnesota Direct Testimony at p. 7.

⁴² Gurganus Minnesota Direct Testimony at p. 8, line 3. *See also*, Gurganus Minnesota Direct Testimony at p. 9 (“I also received a report that the new CenturyLink systems are so inefficient (improper orders, bad tickets, delays from being on hold while calling in for information that should have been included on the work orders) that tasks that should take a tech one hour to complete are taking as long as three hours...some of the new systems require a lot of manual override.”)

⁴³ Gurganus Minnesota Direct Testimony at p. 10.

1 A. Yes. In Mr. Ring's Rebuttal Testimony in Minnesota, he acknowledges the
2 existence of problems during CenturyLink's integration of Embarq in North
3 Carolina. Importantly, he states that these problems have "caused CenturyLink to
4 produce lower service level metrics than desired since conversion",⁴⁴ or in other
5 words, these integration problems have caused service quality to suffer. When Mr.
6 Ring refers to "service level metrics," I presume he is referring to the monthly
7 service quality metrics CenturyLink is required to report for the two Embarq
8 operating companies, Carolina Telephone and Telegraph Company and Central
9 Telephone Company, as required by North Carolina Docket P-100, Sub 99A.
10 These service quality metrics report CenturyLink's performance related to
11 servicing residential and business customers. If the integration problems have
12 resulted in less than desired service metrics, the problems must be widespread
13 given that CenturyLink serves about one million access lines in North Carolina.

14 **Q. HAS CENTURYLINK DISCUSSED SOME OF THE CAUSES OF THESE**
15 **PROBLEMS?**

16 A. Yes. CenturyLink witness Mr. Ring states that a number of these problems are
17 caused by differences between the old and new systems.⁴⁵ He also points to a

⁴⁴ Ring Minnesota Rebuttal Testimony at p. 5, lines 16-18. Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPop&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

⁴⁵ Ring Minnesota Rebuttal Testimony at p. 2, lines 21-22. Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPop&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

1 “lack of familiarity with the new systems”⁴⁶ as a source of problems. Further,
2 CWA witness Mr. Gurganus describes “insufficient training or resources -
3 provided to former Embarq employees about the new systems.”⁴⁷ Mr. Gurganus
4 also states:

5 Some of the problems might be avoided with adequate training of
6 the workers. For example, one tech I spoke to in Ohio reported that
7 he received training two months before the new systems were in
8 place. There was no other follow up or refresher. Not surprisingly,
9 by the time the systems were available for him to use, he and his
10 co-workers had forgotten most of the information from the training
11 session.⁴⁸

12 **Q. DID THE CWA PROVIDE ADDITIONAL INFORMATION ABOUT THE**
13 **PROBLEMS BEING EXPERIENCED DURING CENTURYLINK’S**
14 **INTEGRATION OF EMBARQ?**

15 A. Yes. On October 1, 2010, CWA witness Mr. Gurganus submitted pre-filed
16 Surrebuttal Testimony in the Minnesota merger review proceeding which
17 provided more information about CenturyLink’s integration problems Mr.
18 Gurganus’ testimony clarified that the integration problems are not limited just to
19 North Carolina, but are also occurring in Ohio:

20 The Leaders in Ohio, where Embarq systems were converted to
21 CenturyLink systems beginning in October of 2009, responded that
22 they still were not back to the level of efficiency they had before

⁴⁶ Ring Minnesota Rebuttal Testimony at p. 3.

⁴⁷ Gurganus Minnesota Direct Testimony at p. 4, lines 4-9. Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPop&documentId={3BAC3216-79EA-4367-B0FD-2C44F6DFDF17}&documentTitle=20108-53661-01>

⁴⁸ Gurganus Minnesota Direct Testimony at p. 12, lines 10-15. Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPop&documentId={3BAC3216-79EA-4367-B0FD-2C44F6DFDF17}&documentTitle=20108-53661-01>

1 the cutover. That is to say, even after a year, they are still
2 experiencing so-called transition problems. In particular, they
3 report continued problems with missing or incomplete order
4 information so that they must ask the customers what they ordered
5 and hope that they have the necessary equipment on hand to
6 complete the order.

7 One tech in Ohio described arriving at an attorney's office this
8 week with an incomplete order. When the tech asked the customer
9 what services and equipment they wanted, the customer berated
10 him, saying he spent three hours on the phone trying to place the
11 order and he wasn't going to spend anymore time repeating
12 himself."⁴⁹

13 Mr. Gurganus also provided an update on the integration problems in North
14 Carolina in his Minnesota Surrebuttal Testimony. He states that the wait time for
15 techs to get calls answered by service centers has recently improved (likely
16 because of recent hires of new service reps), but otherwise, he states that "our
17 North Carolina techs report that nothing has really improved."⁵⁰ He reports that
18 problems are still occurring regarding "missing or incomplete information on
19 orders[.]" "techs in North Carolina are struggling to complete orders on time[.]"
20 and "employees are still working overtime trying to complete tasks."⁵¹

21 **Q. WHAT SHOULD THE COMMISSION TAKE FROM CENTURYLINK'S**
22 **MINNESOTA REBUTTAL TESTIMONY (AS WELL AS THE CWA**
23 **TESTIMONY TO WHICH CENTURYLINK RESPONDS)?**

⁴⁹ Pre-Filed Surrebuttal Testimony of Jasper Gurganus on behalf of the Communications Workers of America (CWA), Minnesota Docket No. P-421, et al./PA-10-456, October 1, 2010 ("Gurganus Minnesota Surrebuttal Testimony"), at p. 2, lines 5-17. Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPop&documentId={DC87A4D2-0C00-417A-8A4E-01B408BE6CE9}&documentTitle=201010-55078-01>

⁵⁰ Gurganus Minnesota Surrebuttal Testimony at pp. 2-3.

⁵¹ Gurganus Minnesota Surrebuttal Testimony at p. 3, lines 6-10.

1 A. This testimony is additional evidence that reinforces the Joint CLECs' concerns
2 related to CenturyLink's integration of Qwest if the proposed transaction is
3 approved, and undermines the Joint Applicants' attempts to dismiss the Joint
4 CLECs' concerns and conditions.

5 **Q. PLEASE EXPLAIN HOW CENTURYLINK'S TESTIMONY REGARDING**
6 **ITS INTEGRATION PROBLEMS UNDERMINES THE JOINT**
7 **APPLICANTS' ATTEMPTS TO DISMISS THE CLEC CONCERNS AND**
8 **CONDITIONS?**

9 A. CenturyLink testified in its Direct Testimony that "CenturyLink is confident
10 that...the execution of this integration [of Qwest] will be as smooth and
11 successful as the Embarq integration and others have been in the past."⁵²
12 CenturyLink also testified in its Direct Testimony that there are no "potential
13 harms that could result from the [Qwest] merger."⁵³ However, in its Minnesota
14 Rebuttal Testimony, CenturyLink testifies that the types of problems experienced
15 in North Carolina during the integration of Embarq are to be expected with every
16 merger; he states: "[a]s with any integration of large, complex systems, there are
17 may be [sic] some issues that arise."⁵⁴ He goes even further, stating that, "every
18 system conversion or integration *inevitably* is going to have some issues."⁵⁵ In

⁵² Ferkin Direct at p. 15, lines 26-29.

⁵³ Ferkin Direct at p. 12, lines 19-22.

⁵⁴ Ring Minnesota Rebuttal Testimony at p. 1, lines 20-23. Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPop&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

⁵⁵ Ring Minnesota Rebuttal Testimony at p. 4, lines 3-4 (emphasis added).

1 CenturyLink’s Direct Testimony in Utah, CenturyLink claimed that there are no
2 potential harms that could result from the proposed transaction, but in its Rebuttal
3 Testimony in Minnesota, it now states that problems are “inevitable” in every
4 merger (and has admitted that these problems led to service quality deterioration).
5 CenturyLink’s “flip-flop” should not go unnoticed, particularly when
6 CenturyLink has neither identified the “inevitable” problems that it experienced
7 during other transactions in the past, nor sufficiently addressed the prior
8 CenturyLink integration problems that I discussed in my Direct Testimony.⁵⁶

9 **Q. DOES CENTURLINK’S MINNESOTA TESTIMONY UNDERMINE**
10 **THE JOINT APPLICANTS’ ATTEMPTS TO DISMISS CLEC**
11 **CONCERNS IN OTHER WAYS?**

12 A. Yes. As explained above, CenturyLink states in Minnesota that the causes of the
13 problems experienced in North Carolina include differences between old systems
14 and new systems, and unfamiliarity with the new systems. However, Mr.
15 Hunsucker testifies here in Utah that: “Mr. Gates’ speculation that Section 271
16 compliant systems might just ‘disappear’ is nonsense.”⁵⁷ Despite Mr.
17 Hunsucker’s unsupported claims about post-merger integration plans, the

⁵⁶ See, e.g., Exhibit Joint CLECs 2 (Gates Direct) at pp. 83-84, discussing integration problems CenturyLink experienced in the past that resulted in a cost overrun of between \$50 million and \$60 million and was delivered over two years later than planned. Surprisingly, CenturyLink claims that this integration effort, which ran tens of millions of dollars over budget and delivered more than two years late, “has been a success story for CenturyLink.” CenturyLink Supplemental Response to Integra Minnesota Data Request #38. Given CenturyLink’s definition of a “success story,” it is difficult to imagine what would have to happen for CenturyLink to deem a systems integration effort as unsuccessful.

⁵⁷ Hunsucker Rebuttal at p. 10, lines 1-2.

1 testimony from Minnesota about the Embarq integration problems in North
2 Carolina shows that Embarq system functionality did just “disappear.” CWA
3 witness Mr. Gurganus testified in Minnesota that:

4 Prior to the merger between Embarq and CenturyLink, if a
5 concentrator went down, the business office would issue an outage
6 ticket that would alert people throughout the system that there is a
7 known outage in a specific area. That meant when customers
8 called to report the outage, the customer service representatives
9 would be able to tell them the company knew about the outage,
10 that it was being worked on, and even an estimated time the
11 service would be restored. Under the new system, the business
12 office can take a trouble report, but it is not issued as an outage
13 report, so our customers cannot be told that we may already be
14 working on the problem or when their service might be restored.⁵⁸

15 A comparison of actual, recent experience in North Carolina to Mr. Hunsucker’s
16 claim suggests that Mr. Hunsucker’s statement is geared more towards securing
17 transaction approval than accurately reflecting what will transpire during post-
18 merger integration.

19 Furthermore, CenturyLink testified in the Minnesota proceeding reviewing the
20 proposed transaction that it is “necessary” to integrate Embarq and CenturyTel
21 systems “so that all employees are working off the same platform and using the
22 same processes.”⁵⁹ Though he is talking about the CenturyTel/Embarq merger in
23 this instance, this is the clearest indication yet in Joint Applicants’ testimony that

⁵⁸ Gurganus Minnesota Direct Testimony at p. 8, lines 13-22. Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={3BAC3216-79EA-4367-B0FD-2C44F6DFDF17}&documentTitle=20108-53661-01>

⁵⁹ Ring Minnesota Rebuttal Testimony at p. 4.
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

1 CenturyLink will undertake a significant systems integration effort if the proposed
2 transaction is approved.⁶⁰ If CenturyLink views all employees working off the
3 same platform and using the same processes as “necessary,” there is no reason to
4 believe the Merged Company⁶¹ would not undertake such a systems integration
5 effort after acquiring Qwest. As Dr. Ankum and I explained in our Direct
6 Testimony, the Joint Applicants have provided no details about their post-merger
7 systems integration plans. While CenturyLink has indicated that “changes could
8 be expected over time,”⁶² CenturyLink’s testimony in Minnesota is a clear
9 indication that the Joint CLECs’ concerns about post-merger integration impacts
10 are warranted and conditions are necessary.

11 **Q. DID JOINT APPLICANTS RECENTLY INDICATE THAT OSS WILL**
12 **CHANGE POST-MERGER?**

13 A. Yes. On August 13, 2010, CenturyLink responded to discovery questions from the
14 Arizona Corporation Commission related to OSS integration plans post-merger.
15 CenturyLink stated: “CenturyLink anticipates improved wholesale customer
16 service over time through consolidation of OSS and billing systems and sales and

⁶⁰ CenturyLink also stated in response to a data request from the Arizona Corporation Commission Staff: “CenturyLink anticipates...the consolidation of OSS and billing systems and sales and account management teams.” CenturyLink Response to Arizona Corporation Commission Staff Data Request STF 7.15.

⁶¹ “Merged Company” refers to the post-merger company (CenturyLink and its Operating Companies, collectively, after the Closing Date). *See*, Exhibit Joint CLECs 2.8

⁶² Hunsucker Rebuttal at p. 33, lines 3-4.

1 account management teams.”⁶³ While no specific details are provided, this is a
2 clear indication that the Merged Company’s OSS will change post-merger. This
3 response was recently confirmed by information the Joint Applicants recently
4 provided in Utah. *****BEGIN HIGHLY CONFIDENTIAL** [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] **END**

11 **HIGHLY CONFIDENTIAL*****

12 This point is further supported by the Joint Applicants’ synergies estimate.
13 CenturyLink has estimated *****BEGIN HIGHLY CONFIDENTIAL** [REDACTED]
14 [REDACTED] **END HIGHLY CONFIDENTIAL***** of the total estimated
15 \$575 million in operational synergy savings to come from *****BEGIN HIGHLY**
16 **CONFIDENTIAL** [REDACTED] **END HIGHLY**
17 **CONFIDENTIAL*****.⁶⁴ Given the magnitude of the estimated savings from this

⁶³ CenturyLink Responses to Arizona Corporation Commission Staff’s Seventh Set of Data Requests to CenturyLink, ACC Docket Nos. T-01051B-10-0194 et al., at 9 (dated Aug. 13, 2010) (response to Arizona Corporation Commission Staff Data Request 7.15 by Mark Harper, Director of Regulatory Operations and Policy for CenturyLink).

⁶⁴ CenturyLink Response to Integra Utah Data Request #52(a), Highly Confidential Attachment Integra - 52a.

1 item relative to the overall synergy savings estimate, it is highly likely that
2 integration efforts will involve OSS.

3 **Q. HAS CENTURYLINK PROVIDED CONFLICTING INFORMATION IN**
4 **UTAH ABOUT ITS PLANS TO CONSOLIDATE OSS POST-MERGER?**

5 A. Yes. On October 1, 2010, in response to Integra's data requests #162 and #163 in
6 Utah, CenturyLink said: "No decisions have been made regarding the potential
7 consolidation of wholesale OSS systems after the merger."⁶⁵ This response
8 stands in stark contrast to the response CenturyLink provided to the Arizona
9 Corporation Commission Staff and the other more recent information submitted in
10 Utah. This is another example of the Joint Applicants failing to provide forthright
11 information about its post-merger integration plans, and another example of the
12 significant uncertainty facing CLECs with regard to the "lifblood"⁶⁶ of their
13 relationship with Qwest.

14 **Q. DESPITE CENTURYLINK'S FLIP-FLOP ON THE ISSUE OF OSS**
15 **CONSOLIDATION IN UTAH, DID JOINT APPLICANTS RECENTLY**
16 **INDICATE THAT CENTURYLINK HAS DECIDED TO CHANGE**
17 **QWEST'S EXISTING OSS POST-MERGER?**

18 A. Yes. Recent discovery responses that CenturyLink and Qwest submitted indicate
19 that at least Qwest's CLEC-facing OSS interface for Local Service Requests

⁶⁵ CenturyLink response to Integra Utah Data Requests #162 and #163 (sponsor: Melissa Cloz, Director Wholesale Operations for CenturyLink).

⁶⁶ Exhibit Joint CLECs 2 (Gates Direct) at p. 37, lines 6-7, quoting Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at p. 39.

1 (“LSRs”) will be modified or replaced if the proposed transaction is approved.

2 This particular OSS interface is used to place orders for most unbundled network
3 elements used by CLECs to provide local service. Integra asked CenturyLink in
4 Utah and other states to: “Please indicate whether, after all of the systems of the
5 Merged Company have been consolidated, the interface that the Merged
6 Company will provide will support a UOM [Unified Ordering Model] interface
7 for LSRs.”⁶⁷ In response to this question in Minnesota, CenturyLink states:
8 “...after the systems of the [merged] company have been consolidated after the
9 merger, the company intends to support a [unified ordering model] UOM
10 interface for LSRs.”⁶⁸ At the same time, Qwest states that, “IMA is not UOM
11 compliant...”⁶⁹ These responses necessarily mean that the interface Qwest
12 currently uses to process CLEC LSRs (Interconnect Mediated Access or “IMA”)
13 will no longer be available in its present form. CenturyLink will either replace it
14 or modify it. Further, if CenturyLink considers its EASE system to be UOM
15 compliant, then CenturyLink’s response strongly suggests an intention by

⁶⁷ Integra Utah Data Request #163. Unified Ordering Model (“UOM”) Guidelines Document, established by the Ordering and Billing Forum (“OBF”), are described as follows: “The Unified Ordering Model (UOM) describes a complete set of system documentation using an end-to-end structured methodology. The scope of UOM encompasses business requirements, analysis, design and implementation.” <http://www.atis.org/obf/UOMASRsumm.asp>

⁶⁸ CenturyLink Response to Integra Minnesota Data Request #3-9, dated September 23, 2010. Again, CenturyLink provided a different response to this question in Utah, where CenturyLink states: “No decisions have been made regarding the potential consolidation of wholesale OSS systems after the merger.”

⁶⁹ Qwest Response to Integra Utah Data Request 2-165. *See also*, Qwest Response to Integra Minnesota Data Request #11, dated September 23, 2010. Integra asked Qwest: “Is the interface that Qwest currently uses to process LSRs for CLECs a UOM interface. If so...” Qwest also indicated in its response: “IMA has its own XML Gateway and does accept XML files for LSR order submission...IMA only offers a custom GUI written in java or the custom XML interface mentioned above.”

1 CenturyLink to use EASE for LSRs, contrary to the recommendation of the Joint
2 CLECs.⁷⁰

3 **Q. HAVE YOU REVIEWED OTHER INFORMATION WHICH SHOWS**
4 **THAT CENTURYLINK INTENDS TO INTEGRATE CENTURYLINK'S**
5 **LEGACY SYSTEMS INTO QWEST'S REGION IF THE PROPOSED**
6 **TRANSACTION IS APPROVED?**

7 A. Yes. *****BEGIN HIGHLY CONFIDENTIAL** [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] **END HIGHLY**

13 **CONFIDENTIAL***** In any event, the Joint Applicants' discovery responses
14 confirm that CenturyLink does not intend to use Qwest IMA as it exists today.
15 Investigation is needed, therefore, into how and when CenturyLink intends to
16 change or replace Qwest's IMA. CenturyLink still has not provided any

⁷⁰ The Joint Applicants have said: (1) they intend for the OSS interface for LSRs of the Merged Company will be UOM-compliant, (2) Qwest's existing OSS interface for handling LSRs is not UOM-compliant, (3) CenturyLink's existing OSS interface for handling LSRs is UOM-compliant, and (4) the post-merger integration will not involve new systems. The only logical conclusion to be drawn from the Joint Applicants' claims is that CenturyLink will attempt to replace Qwest's IMA-XML OSS interface with CenturyLink's EASE OSS interface if the proposed transaction is approved. Regarding the increased functionality of Qwest's OSS versus EASE, *see, e.g.*, Exhibit Integra 2SR.1 to the Surrebuttal Testimony of Ms. Johnson (Exhibit Integra 2SR).

1 explanation as to when or how it will implement its plan to, after systems
2 consolidation, support a UOM compliant system.

3 **Q. JOINT APPLICANTS STATE THAT ANY CHANGES TO OSS “WILL**
4 **OCCUR ONLY AFTER A THOROUGH AND METHODOICAL REVIEW**
5 **OF BOTH COMPANIES’ SYSTEMS AND PROCESSES TO DETERMINE**
6 **THE BEST SYSTEM TO BE USED ON A GOING-FORWARD BASIS**
7 **FROM BOTH A COMBINED COMPANY AND A WHOLESALE**
8 **CUSTOMER PERSPECTIVE.”⁷¹ DOES THIS PROVIDE ANY**
9 **ASSURANCE THAT CLECS AND THEIR CUSTOMERS WILL NOT BE**
10 **HARMED BY ATTEMPTS TO INTEGRATE SYSTEMS POST-**
11 **TRANSACTION?**

12 A. No. I explained in my Direct Testimony why the Joint Applicants’ claims about a
13 “methodical review” and taking into account the “wholesale customer
14 perspective” provide no assurances.⁷² Since I submitted my Direct Testimony, I
15 have reviewed additional information that heightens my concerns about
16 CenturyLink making changes to Qwest’s OSS and selecting the “best” system to
17 be used if the proposed transaction is approved. *****BEGIN HIGHLY**

18 **CONFIDENTIAL** [REDACTED]
19 [REDACTED]
20 [REDACTED]

⁷¹ Hunsucker Rebuttal at p. 33, lines 4-7.

⁷² Exhibit Joint CLECs 2 (Gates Direct) at pp. 122-123, 125-127 and footnotes 229 and 230.

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[REDACTED]

[REDACTED] **END**

HIGHLY CONFIDENTIAL***

1 **Q. DO YOU HAVE OTHER CONCERNS ABOUT CENTURYLINK'S PLANS**
2 **REGARDING POST-MERGER OSS INTEGRATION?**

3 A. Yes. Ambiguity leads to business uncertainty. Operations Support Systems or
4 "OSS" are of critical importance, and yet it is unclear what CenturyLink considers
5 to be Operations Support Systems or "OSS." For example, CenturyLink provided

6 *****BEGIN CONFIDENTIAL** [REDACTED]

7 [REDACTED]
8 **END CONFIDENTIAL***** This diagram is provided as

9 Confidential Exhibit Joint CLECs 2SR.5 and raises a number of questions and
10 concerns.

11 **Q. PLEASE EXPLAIN THE QUESTIONS AND CONCERNS ASSOCIATED**
12 **WITH THE CENTURYLINK OSS DIAGRAM.**

13 A. *****BEGIN CONFIDENTIAL** [REDACTED]

14 [REDACTED] **END**

15 **CONFIDENTIAL***** As I explained at page 37 of my Direct Testimony, the
16 FCC defines OSS to include five functions: (1) pre-ordering, (2) ordering, (3)
17 provisioning, (4) maintenance and repair, and (5) billing.⁷³ OSS also includes all
18 of the computer systems, data maintained in those systems, and personnel that an

⁷³ *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, Memorandum Opinion and Order, WC Docket No. 02-314, FCC 02-332, Released December 23, 2002 ("*Qwest 9 State 271 Order*") at ¶ 33.

1 ILEC uses to perform internal functions necessary for these five functions.⁷⁴ The
2 FCC also requires an adequate CMP to handle changes to the OSS systems.⁷⁵
3 Based on my reading of the FCC's definition of OSS – which includes billing
4 functions as well as the computer systems, databases and personnel used to
5 perform the internal functions necessary to support billing – *****BEGIN**

6 **CONFIDENTIAL** [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] **END**

11 **CONFIDENTIAL***** The CMP Document contains language on every page
12 which states:

13 Throughout this document, OSS interfaces are defined as existing
14 or new gateways (including application-to-application interfaces
15 and Graphical User Interfaces), connectivity and system functions
16 *that support or affect* the pre-order, order, provisioning,
17 maintenance and repair, and billing capabilities for local services
18 (local exchange services) provided by CLECs to their end users.⁷⁶

19 Based on the CMP Document, *****BEGIN CONFIDENTIAL** [REDACTED]

20 [REDACTED]

⁷⁴ See *Local Competition First Report and Order*, 11 FCC Rcd at 15763-64, ¶¶ 517-18 (emphasis added).

⁷⁵ *Qwest 9 State 271 Order* at ¶ 33. See also, 47 C.F.R. §51.319(g).

⁷⁶ Exhibit Integra 2.25 to the Direct Testimony of Bonnie Johnson, footnote on pages 1-113 (emphasis added). A second footnote on each page states: "Throughout this document, the term "include(s)" and "including" mean "including, but not limited to." *Id.*

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[REDACTED] END

CONFIDENTIAL***

Q. ARE THERE ASPECTS OF THE DIAGRAM THAT RAISE QUESTIONS?

A. *BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED]

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This increased risk of human error is a key reason why the FCC, when evaluating a BOC's 271 capabilities, evaluates the amount of electronic flow through offered by the BOC. Generally, the more orders electronically flow through, the less manual intervention. The FCC has looked to order flow through as a potential indicator of a wide range problems that underlie a determination of whether a BOC provides nondiscriminatory access to its OSS.⁷⁷ The FCC has concluded that, to meet a BOC's ongoing 271 obligations, the BOC must show that its OSS are capable of flowing through orders in a manner that affords competing carriers a meaningful opportunity to compete and its OSS are capable of flowing through orders in substantially the same time and manner as for retail orders.⁷⁸ Also important to the analysis of whether a BOC is providing access to ordering functions in a nondiscriminatory manner is the BOC's ability to return timely order confirmation and reject notices, accurately process manually handled orders, and scale its system.⁷⁹

⁷⁷ See FCC Memorandum Opinion and Order, WC Docket No. 02-314 (FCC 02-332), December 23, 2002 ("Qwest 9 State 271 Order"), ¶85.
⁷⁸ See Qwest 9-State 271 Order, WC Docket No. 02-314, FCC 02-332 (12/23/02), ¶106.
⁷⁹ See Qwest 9-State 271 Order, WC Docket No. 02-314, FCC 02-332 (12/23/02), ¶¶85 & 106.

1 Despite the significance of flow through, CenturyLink has indicated that it *does*
2 *not even track* the number of orders that flow through systems without manual
3 intervention.⁸⁰ In contrast, Qwest “routinely provides” flow through information
4 on its website.⁸¹ The FCC said that it expects “flow through rates will *improve*
5 over time.”⁸² Any deterioration in flow through *****BEGIN CONFIDENTIAL**
6 **[REDACTED]** **END CONFIDENTIAL***** would
7 reflect serious merger-related harm, as well as backsliding with respect to the
8 Company’s BOC obligations.

9 **Q. DOES THE DIAGRAM RAISE OTHER CONCERNS?**

10 A. *****BEGIN CONFIDENTIAL** **[REDACTED]**

11 **[REDACTED]**

12 **[REDACTED]**

13 **[REDACTED]**

14 **[REDACTED]**

15 **[REDACTED]**

16 **[REDACTED]**

17 **[REDACTED]** **END CONFIDENTIAL*****

⁸⁰ CenturyLink response to Integra information request number 25(f).

⁸¹ Qwest response to Integra information request number 25(g).

⁸² See Qwest 9 State 271 Order, ¶111 (emphasis added).

1 **Q. REGARDING THE EMBARQ INTEGRATION PROBLEMS IN NORTH**
2 **CAROLINA, CENTURYLINK HAS STATED THAT THEY ARE**
3 **MANAGEABLE AND SHOULD NOT RECUR.⁸³ PLEASE RESPOND.**

4 A. What CenturyLink ignores is that a problem that may be manageable in North
5 Carolina may not be manageable in Utah. Since CenturyLink has served
6 primarily rural areas, it has no experience with the volumes and types of orders,
7 complexity of systems, etc. that it will have to manage in Qwest's BOC territory
8 if the proposed transaction is approved. As such, there is no evidence that
9 CenturyLink could manage problems that may arise during its efforts to integrate
10 Qwest if the proposed transaction is approved. And because Qwest has
11 significantly larger wholesale operations in Utah (and elsewhere) than does
12 CenturyLink, the risk to wholesale customers is higher in Utah. Problems in
13 loading outside plant records is just one out of many problems that could occur if
14 CenturyLink attempted to replace Qwest's OSS with CenturyLink's OSS post-
15 merger. CenturyLink describes the root cause of the problems with the Embarq
16 North Carolina conversion as:

17 some of the outside plant records were loaded incorrectly. The way
18 in which plant was constructed in the legacy Embarq areas was not
19 consistent between areas and not consistent with the legacy
20 CenturyTel areas. As a result, records for some of the devices
21 initially did not load correctly in the conversion. This led to certain
22 problems that Mr. Gurganus cites in his testimony.⁸⁴

⁸³ Ring Minnesota Rebuttal Testimony at p. 2. Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPop&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

⁸⁴ Ring Minnesota Rebuttal Testimony at p. 2, lines 7-12. . Available at:

1 Data inconsistencies are not uncommon in legacy systems. As reported by
2 Liberty Consulting in its FairPoint Post-Cutover Status Report on April 1, 2009,
3 in regards to the FairPoint conversion: “data problems have affected a large
4 number of accounts. These unexpected problems have included such issues and
5 incorrect data mapping and misinterpretation of Verizon data, and have had a
6 major impact on such critical function as loop qualification, validation of
7 customer addresses, assignment of telephone numbers, and identification of
8 serving wire centers for customers.”

9 CenturyLink and Qwest have provided no evidence that such data inconsistencies,
10 and the resulting conversion problems, are any less likely with the proposed
11 transaction with Qwest. To the contrary, there is ample evidence that data within
12 Qwest’s systems and processes varies by region and thus such inconsistencies and
13 related data integrity conversion issues are likely to occur in any Qwest-
14 CenturyLink integration. At least some of the Qwest regional differences stem
15 from the legacy companies of Mountain Bell (now known as Qwest Central
16 Region), Pacific Bell (now known as Qwest West Region), and Northwestern Bell
17 (now known as Qwest Eastern Region) that later became part of US West and
18 then Qwest. Therefore, this transaction presents not only the risk of data
19 inconsistencies between CenturyLink legacy areas and Qwest legacy areas, but
20 also between and among each of the legacy Qwest Regions. Evidence of regional

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

1 differences include, for example, Qwest implementing system business rules that
2 vary by Qwest Region;⁸⁵ Qwest periodically sending notices to CLECs indicating
3 that it is unable to process orders in one or more (but not all) of the three Qwest
4 Regions;⁸⁶ and Qwest implementing a change request to access Customer Service
5 Records for VoIP first in the Central and Eastern Qwest Regions and later in the
6 West Region, because of complexities unique to the Qwest West Region.⁸⁷
7 Attached to my testimony as Exhibit Joint CLECs 2SR.4 is an excerpt from

⁸⁵ See Local Service Ordering Guide (LSOG), at <http://www.qwest.com/wholesale/clecs/lsog.html> (with links to forms which identify Qwest Regional Differences). For example, for Exchange Company Circuit ID (ECCKT), the Qwest LSOG (on page 24 of the Loop Services form and on page 24 of the Loop Service With Number Portability form) requires CLECs to use different formats for circuit identification depending on the Qwest Region. In fact, the last two alpha characters of the ECCKT indicate which Qwest Region (with MS being Central, PN being Western, and NW being Eastern). Another example reflects differences in Qwest's Service Order Processor (SOP) by Region. In the Qwest LSOG (on page 20 of Pending Service Order Notification Form), Qwest informs CLECs of action taken by Qwest differently depending on regional SOP. For Eastern and Western Qwest Regions, Qwest provides an action code ("R") to CLECs to show that, for existing information, Qwest has "recapped" that information on the PSON sent to CLEC. For the Central Region, the same information is provided by not populating the action code. The Qwest back-end systems (SOP) handle the Qwest Regions differently, so the information is presented to CLECs differently. There are dozens of such regional differences noted in the Qwest LSOG.

⁸⁶ See, e.g., Qwest Systems Notification Event **Ticket Number:** 4697877 (Aug. 14, 2010), stating: "**Description of Trouble:** IMA pre-order function 'Validate Address' was not available in the Eastern region; **Business Impact:** You may have received an error when attempting this Pre-Order function. Your LSR could have been submitted but may have to be manually processed resulting in delayed FOC's (Firm Order Confirmations)." <http://systemevents.qwestapps.com/notices/1433>. The same problem occurred in 2007, but for the Qwest Central Region. See Event Ticket Number 3171819 (Sept. 25, 2007), available at <http://systemevents.qwestapps.com/notices/775>. See, e.g., Qwest Systems Notification Event **Ticket Number:** 4697877 (Aug. 14, 2010), stating: "**Description of Trouble:** IMA pre-order function 'Validate Address' was not available in the Eastern region; **Business Impact:** You may have received an error when attempting this Pre-Order function. Your LSR could have been submitted but may have to be manually processed resulting in delayed FOC's (Firm Order Confirmations)." <http://systemevents.qwestapps.com/notices/1433>. The same problem occurred in 2007, but for the Qwest Central Region. See Event Ticket Number 3171819 (Sept. 25, 2007), available at <http://systemevents.qwestapps.com/notices/775>.

⁸⁷ See Qwest CR # SCR042108-01, Qwest May 5, 2009, CMP Meeting Minutes, stating: "Mark Coyne-Qwest said that this CR deployed on 4/20/09 with the IMA 25.0 Release. Mark reminded everyone that partial CSRs for VOIP DID numbers will not be available in the Western Region until 6/22/09. Mark said this was communicated on the original release notice and will be sending out a subsequent notice later this week." See http://www.qwest.com/wholesale/cmp/archive/CR_SCR042108-01.html.

1 Qwest’s online Product Catalog called “Pre-Ordering Overview.” Exhibit Joint
2 CLECs 2SR.4 contains a Qwest table that describes how customer (“CUS”) codes
3 “may change during the bill posting process after a Completion Notice (“CN”) is
4 issued. The changes to the CUS Code are based upon service order activity,
5 product, and region.”⁸⁸ The table contains a complex description that reflects
6 how Qwest’s back-end service order processing (“SOP”) systems process CLEC
7 orders differently depending on the Qwest Region (Central, East, or West).

8 Further, I do not know how CenturyLink defines a “manageable” problem,⁸⁹ but
9 given that the problems in North Carolina “produce[d] lower service level metrics
10 than desired since conversion[,]”⁹⁰ CenturyLink did not manage the problems
11 sufficiently to avoid a decrease in service quality. Again, if these types of service
12 quality declines occurred during CenturyLink’s attempts to integrate Qwest, the
13 problems would have a more widespread impact on both wholesale and retail
14 customers.

15 Also, CWA witness Mr. Gurganus has testified that “CWA members in Ohio and
16 North Carolina have been placed on mandatory overtime...in North Carolina I&R
17 techs have been on mandatory six-day weeks for two months.”⁹¹ So, apparently,

⁸⁸ <http://www.qwest.com/wholesale/clecs/preordering.html>.

⁸⁹ Ring Minnesota Rebuttal Testimony at p. 2, line 16. Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

⁹⁰ Ring Minnesota Rebuttal Testimony at p. 5, lines 16-18.

⁹¹ Gurganus Minnesota Direct Testimony at p. 11. Available at:

1 one of the ways in which CenturyLink has attempted to “manage” the problems is
2 to force employees to work longer hours. CenturyLink has provided no evidence
3 demonstrating that the workforce in Qwest’s region would be capable of handling
4 problems by working more hours. Indeed, the available evidence shows that the
5 number of Qwest employees (including employees in Qwest’s wholesale
6 operations) has decreased over the past few years.⁹² As explained in my Direct
7 Testimony at page 108, mandatory overtime was also invoked by Frontier in an
8 attempt to resolve its service problems after Frontier declared an “emergency and
9 long-term service difficulty.”⁹³

10 **Q. HAVE YOU REVIEWED NEW INFORMATION THAT RAISES**
11 **FURTHER QUESTIONS ABOUT THE MERGED COMPANY’S ABILITY**
12 **TO “MANAGE” PROBLEMS THAT IMPACT WHOLESALE**
13 **CUSTOMERS DURING INTEGRATION OF QWEST BY FORCING**
14 **EMPLOYEES TO WORK LONGER HOURS?**

15 A. Yes. ***BEGIN HIGHLY CONFIDENTIAL [REDACTED]

16 [REDACTED]

17 [REDACTED]

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={3BAC3216-79EA-4367-B0FD-2C44F6DFDF17}&documentTitle=20108-53661-01>

⁹² See, e.g., Hunsucker Rebuttal at p. 40, line 3 (“Qwest has been reducing its headcount in wholesale operations...”) See also, Brigham Rebuttal at p. 9, lines 7-9 (“This high level of service quality has occurred at the same time that Qwest total headcount has declined from approximately 41,000 in December 2004 to approximately 30,000 in December 2009.”) This equates to a decrease in Qwest headcount of 27% over five years. See also, Exhibit Joint CLECs 2 (Gates Direct) at pp. 147-150.

⁹³ Exhibit Joint CLECs 2 (Gates Direct) at p. 108 and Exhibit Joint CLECs 2.7 (“Frontier claims overtime is needed: Problems force telecom company to work employees up to 70 hours a week.”)

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[REDACTED] **END HIGHLY CONFIDENTIAL*****

Q. CENTURLINK SAYS THAT IT CHOSE TO INTEGRATE EMBARQ ON A PHASED BASIS INSTEAD OF A “FLASH CUT” OF ALL EMBARQ CUSTOMERS AT ONCE TO MINIMIZE SYSTEM-WIDE PROBLEMS AND MITIGATE POSSIBLE NEGATIVE IMPACTS ON CUSTOMERS AND EMPLOYEES.⁹⁴ HAS THIS BEEN SUCCESSFUL IN AVOIDING ALL PROBLEMS?

A. No, as evidenced by CenturyLink’s Minnesota Rebuttal Testimony discussing Embarq integration problems in North Carolina. CenturyLink has still experienced problems during its Embarq integration – problems that have led to service quality deterioration, all of which were glossed over in his direct

⁹⁴ Ferkin Rebuttal at p. 11, lines 15-20. *See also*, Ring Minnesota Rebuttal Testimony at p. 5. Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

1 testimony and discovery responses. This is important because one of the
2 overarching themes of CenturyLink’s Rebuttal Testimony is that concerns about
3 the Qwest integration are not warranted because there will be no “flash cut” in the
4 sense that all states will be converted at one time.⁹⁵ CenturyLink’s Minnesota
5 testimony shows that even with a phased state-by-state approach, material
6 service-impacting problems can and likely will still occur. And even if a phased
7 approach decreases problems for states that are converted in later phases,⁹⁶ this
8 provides little comfort for those states that are converted in early phases and will
9 serve as the test cases. In addition, this means that CLECs will be forced to
10 accommodate the phase-in on a state-by-state basis, which will require CLECs
11 operating in multiple Qwest states to themselves use different platforms to
12 interact with CenturyLink depending on the state. CenturyLink has not provided
13 any plans about the phases it would use to integrate Qwest or where Utah would
14 fit into the phased conversion schedule. Furthermore, CenturyLink has provided
15 no details regarding its “go/no go criteria,” or in other words, the criteria for
16 determining if the conversion should move ahead as scheduled or should be
17 delayed until issues such as data validation efforts or testing can take place. The
18 fact that the Embarq North Carolina conversion experienced the problems
19 CenturyLink notes calls into question what CenturyLink’s “go/no go criteria” is

⁹⁵ See, e.g., Ferkin Rebuttal at p. 41, lines 14-15.

⁹⁶ CenturyLink has said: “CenturyLink takes what was learned from each previous market conversion and applies those learnings to future conversions.” Ring Minnesota Rebuttal Testimony at pp. 4-5. Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

1 and what testing is taking place prior to conversion. The fact that CenturyLink
2 did not provide adequate training to its employees on using new systems is
3 apparently also not adequately accounted for in the “go/no go” decision.
4 CenturyLink’s “go/no go” criteria is very important because once the decision is
5 made to covert to new OSS, it is not generally possible to revert back to the old
6 OSS again.⁹⁷

7 **Q. DO YOU HAVE OTHER EXAMPLES OF CENTURYLINK FAILING TO**
8 **PROVIDE A COMPLETE PICTURE OF ITS INTEGRATION**
9 **EXPERIENCE?**

10 A, Yes. CenturyLink points to exchanges it has acquired from two BOCs – Verizon
11 and Ameritech – to “demonstrate that CenturyLink has in fact integrated
12 operations and personnel in exchanges previously managed by BOCs.”⁹⁸ Mr.
13 Ferkin states: “CenturyLink acquired 89,000 lines from Ameritech in 1998, 1.2
14 million lines in Arkansas, Missouri and Wisconsin from Verizon in 2000, and
15 another 654,000 lines in Missouri and Alabama in 2002.”⁹⁹

⁹⁷ Testimony of a FairPoint executive responsible for Billing and OSS in a New Hampshire Commission proceeding likened the cutover to new OSS to launching the space shuttle: “a good analogy used in Vermont was to compare this to the launching of the space shuttle. You know, you prepare yourself and you’re ready to push the button. Once you push that button, you’re going...we’ve got to be that prepared, to be able to push that button and not look back.” New Hampshire Docket DT 07-011, Hearing Transcript, Day 1, October 22, 2007, at p. 149 (Haga). Available at: [http://www.puc.nh.gov/Telecom/Filings/DT07-011/Transcript%20of%20hearing%20held%20on%20Oct%2022%202007%20\(25\).pdf](http://www.puc.nh.gov/Telecom/Filings/DT07-011/Transcript%20of%20hearing%20held%20on%20Oct%2022%202007%20(25).pdf)

⁹⁸ Ferkin Rebuttal at p. 46, lines 1-2.

⁹⁹ Ferkin Rebuttal at p. 46, footnote 73. Note that the reference to 1.2 million lines in Arkansas is incorrect. As shown on Exhibit JF-1 to the testimony of Mr. Ferkin, CenturyLink acquired 490,000 access lines from GTE in Arkansas, Missouri, and Wisconsin in 2000.

1 **Q. IS IT FAIR TO ASSUME THAT THESE PRIOR TRANSACTIONS GAVE**
2 **CENTURYLINK THE *BOC EXPERIENCE* OR PROVIDED**
3 **CENTURYLINK WITH THE TYPE OF EXPERIENCE IT NEEDS TO**
4 **SUCCESSFULLY INTEGRATE QWEST’S BOC OPERATIONS, AS MR.**
5 **FERKIN SEEMS TO SUGGEST?**

6 A. No. These acquisitions involved primarily rural exchanges, which are not
7 representative of all the exchanges CenturyLink would acquire in the proposed
8 transaction. Based on the available data, the exchanges acquired from Ameritech
9 in 1998 had, on average, 4,684 lines per exchange,¹⁰⁰ and CenturyTel stated that
10 these exchanges reside in “predominantly rural communities in Wisconsin.”¹⁰¹
11 Regarding the lines acquired from Verizon in Arkansas, Missouri and Wisconsin
12 in 2000, the exchanges in Arkansas had an average of 2,179 lines per exchange,
13 the exchanges in Missouri had an average of 1,187 lines per exchange, and the
14 exchanges in Wisconsin had an average of 1,679 lines per exchange.¹⁰² In the
15 same 10K filing in which it described these transactions, the company stated that
16 it “conducts its telephone operations in rural, suburban and small urban
17 communities...” and that “[c]ompetition...has thus far affected large urban areas
18 to a greater extent than rural, suburban and small urban areas such as those in

¹⁰⁰ CenturyLink 10K, YE 12/31/08: “...the Company acquired the assets of certain of Ameritech’s telephone operations and related telephone directories in 19 telephone exchanges covering 21 communities in northern and central Wisconsin...” 89,000/19 = 4,684 lines per exchange.

¹⁰¹ CenturyTel 10K, YE 12/31/00.

¹⁰² CenturyLink’s 10K for year-ending 2000 states: “the Company purchased approximately 231,000 telephone access lines...comprising 106 exchanges throughout Arkansas...purchased approximately 127,000 telephone access lines...comprising 107 exchanges throughout Missouri...purchased approximately 70,500 telephone access lines...comprising 42 exchanges throughout Wisconsin...”

1 which the Company's operations are located." Regarding the lines acquired in
2 Missouri and Alabama in 2002, CenturyLink referred to these exchanges as
3 "predominantly rural markets."¹⁰³

4 The sizes of the exchanges involved in these prior acquisitions are much smaller
5 than some of the exchanges CenturyLink would acquire under the proposed
6 transaction. For example, Qwest reports that there are 34,460 residential and
7 business network access lines in the Salt Lake City-Main exchange
8 (SLKCUTMA).¹⁰⁴ This means that Qwest's Utah Salt Lake City-Main exchange
9 is at least 7 times the size of the exchanges acquired from Ameritech in 1998, and
10 between 15 times and 29 times the size of the exchanges acquired from Verizon in
11 2000 (measured in line counts). Other Qwest exchanges in Utah are similar to the
12 Salt Lake City-Main exchange, containing access lines substantially in excess of
13 the number of access lines in the exchanges that CenturyLink acquired from
14 Ameritech and Verizon.¹⁰⁵

15 CenturyLink's own words indicate that these access line acquisitions were small,
16 sparsely populated exchanges that reside in rural communities. These
17 acquisitions did not provide CenturyLink with a similar experience as a BOC,

¹⁰³ CenturyTel 10K, YE 12/31/02.

¹⁰⁴ http://www.qwest.com/cgi-bin/iconn/iconn_centraloffice.pl

¹⁰⁵ For example, Qwest reports that the St. George exchange (STGRUTMA) has 26,961 residential and business network access lines, Murray exchange (MRRYUTMA) has 27,562 residential and business network access lines, Kearns exchange (KRNSUTMA) has 28,972 residential and business network access lines, and Midvale exchange (MDVAUTMA) has 25,142 residential and business network access lines. See, http://www.qwest.com/cgi-bin/iconn/iconn_centraloffice.pl

1 which also operates in large, densely populated exchanges. Nor does the
2 integration of these primarily rural properties give CenturyLink a similar
3 experience as would occur in an attempt to integrate Qwest. That Mr. Ferkin
4 would even suggest that these previous transactions somehow give CenturyLink
5 the experience it needs to integrate an entire BOC raises questions about how
6 seriously CenturyLink is taking its BOC obligations.

7 **Q. CENTURYLINK HAS MADE NUMEROUS STATEMENTS ABOUT THE**
8 **STATUS QUO BEING MAINTAINED AFTER THE PROPOSED**
9 **TRANSACTION. DID CENTURYTEL MAINTAIN THE STATUS QUO**
10 **AFTER IT ACQUIRED THESE PRIMARILY RURAL EXCHANGES?**

11 A. No. In Wisconsin, CenturyTel raised rates after acquiring the Wisconsin
12 properties – and did so without Commission approval and in violation of
13 Wisconsin statutes.

14 **Q. PLEASE ELABORATE ON THE CENTURYTEL RATE INCREASES**
15 **FOLLOWING THE ACQUISITION OF WISCONSIN EXCHANGES.**

16 A. After CenturyTel acquired the 19 exchanges in Wisconsin in 1998, it converted
17 those exchanges from price-cap regulation to rate-of-return regulation, and then
18 raised rates for local services and access services.

19 Regarding CenturyLink’s access rate increase, the Wisconsin Commission found
20 that CenturyTel “increased its access rates on December 1, 1998, *without a*

1 *hearing and Commission approval*, and that such action was a violation of Wis.
2 Stat. § 196.20(2m).”¹⁰⁶ The Wisconsin Commission ordered CenturyTel to issue
3 refunds, but it took complaints from competitive carriers to initiate an
4 investigation of the increases, and about two years of litigation. It took
5 CenturyTel about two and one-half years from the time of its unauthorized and
6 unilateral rate increases to make refunds to affected competitive carriers.

7 Regarding local rates, about two years after acquiring the Wisconsin exchanges,
8 CenturyTel sought interim price increases for local and access services pending
9 the approval of permanent price increases. After conducting a rate-of-return rate
10 case, the Wisconsin Commission found that CenturyTel’s interim rates were too
11 high and required rate decreases from the interim level as well as refunds to
12 CenturyTel’s customers.¹⁰⁷ Also, during the Wisconsin Commission’s
13 investigation of CenturyTel’s rate increase request, it found that CenturyTel “has
14 charged rates that are not in compliance with its tariffs” and required an audit of
15 CenturyTel’s billing system.¹⁰⁸

16 **Q. SHOULD THESE EXAMPLES OF CENTURYLINK’S CONDUCT GIVE**
17 **THE UTAH COMMISSION PAUSE WITH REGARD TO THE**
18 **PROPOSED TRANSACTION?**

¹⁰⁶ Wisconsin Public Service Commission Docket No. 2815-TI-101, Final Decision, April 18, 2001.
http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=3117 (emphasis added)

¹⁰⁷ Wisconsin Public Service Commission Docket No. 2815-TR-103, Final Decision, October 31, 2001.
http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=3812

¹⁰⁸ Wisconsin Public Service Commission Docket No. 2815-TR-103, Final Decision, October 31, 2001.
http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=3812

1 A. Yes. First, these are examples of merger-related harm. Rates were increased after
2 the merger, and more specifically, rates were raised to supracompetitive levels on
3 competitive carriers without a hearing, without commission approval and in
4 violation of state statutes. Further, competitive carriers had to expend
5 considerable time and resources filing a complaint with the Commission,
6 litigating the complaint, and waiting for more than two years to get refunds for the
7 unilateral rate increases CenturyLink had instituted.

8 Second, CenturyLink's conduct in Wisconsin casts doubt on its statements that it
9 will maintain the status quo following the proposed transaction. CenturyLink has
10 claimed in this proceeding that it will maintain the status quo if the proposed
11 transaction is approved,¹⁰⁹ but with no enforceable assurance as to how long.
12 CenturyLink also claims that sufficient protections are currently in place and that
13 the Merged Company will abide by applicable rules, regulations and contracts
14 post-merger.¹¹⁰ It is for these reasons CenturyLink contends that the Joint CLEC
15 proposed conditions are unnecessary. However, in the example from Wisconsin,
16 CenturyTel certainly did not maintain the status quo. In fact, it completely re-
17 vamped the regulatory framework of the exchanges it acquired from an alternative
18 regulation plan (which provides incentives for incumbent LECs to become more
19 efficient, usually due to competitive pressures, while providing protections,

¹⁰⁹ Hunsucker Rebuttal at p. 3, lines 13-16 and p. 15, lines 2-4.

¹¹⁰ See, e.g., Stewart Rebuttal at p. 5; Brigham Rebuttal at p. 8, lines 6-7; and Hunsucker Rebuttal at p. 3, line 16-p. 4, line 6 and p. 14, lines 4-6 and pp. 45-46.

1 oftentimes “price caps” for regulated rates) to a rate-of-return regulation plan
2 (which is traditionally used for telephone companies in rural areas not subject to
3 competition and provide a return on, and return of, investment). Furthermore, the
4 existing protections in Wisconsin (which included the authority of the Wisconsin
5 Commission, state statutes, the federal Act and applicable rules) did not prevent
6 CenturyTel from unilaterally raising rates for competitive carriers, from charging
7 rates not in compliance with its tariffs, or from attempting to charge higher rates
8 than allowed after a thorough rate investigation.

9 **Q. HAVE YOU REVIEWED NEW DATA THAT RAISES FURTHER**
10 **CONCERNS REGARDING CENTURLINK’S CLAIMS ABOUT**
11 **COMPLYING WITH EXISTING LAWS, RULES AND ICAS POST-**
12 **MERGER?**

13 A. Yes. *****BEGIN HIGHLY CONFIDENTIAL** [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

1 [REDACTED]
2 **END HIGHLY CONFIDENTIAL***¹¹¹**

3 *C. Joint Applicants’ attempts to distinguish the proposed transaction from*
4 *recent troubled mergers relies upon distinctions without differences.*

5 **Q. MR. FERKIN STATES THAT YOU AND OTHERS FAILED TO**
6 **“ANALYZE WITH APPROPRIATE DILIGENCE OR PRESENT FACTS**
7 **REGARDING WHETHER SIMILAR PROBLEMS” THAT OCCURRED**
8 **IN RECENT MERGERS “ARE LIKELY IN THE INSTANT**
9 **TRANSACTION.”¹¹² IS THIS TRUE?**

10 **A.** No. One only needs to read Section V of my Direct Testimony, including Exhibit
11 Joint CLECs 2.6 and Exhibit Joint CLECs 2.7, and to review Dr. Ankum’s
12 Exhibit Joint CLECs 1.2 to see that this claim is inaccurate. Ample analysis and
13 facts were provided that show that the same types of problems that occurred in the
14 Hawaiian Telcom and FairPoint transactions could occur after the proposed
15 transaction. The fact that the Joint Applicants have failed to provide any useful
16 information about its post-merger OSS integration plans makes it impossible to
17 precisely analyze post-merger impacts on CLECs; yet, that is not a failing of the
18 CLECs, as Mr. Ferkin suggests. There can be no question that the CLECs made
19 best attempts to analyze the Merged Company’s plans with regard to systems

¹¹¹ See, e.g., Hunsucker Rebuttal at p. 15, lines 6-8. Mr. Hunsucker claims that “the concessions would only serve to increase CLECs’ profits by pushing CLECs’ costs of doing business onto CenturyLink or otherwise hobbling CenturyLink’s ability to compete fairly.”

¹¹² Ferkin Rebuttal at p. 35, lines 18-20.

1 integration during the discovery process, and at every turn, CenturyLink stated
2 that plans could not be provided until after the proposed transaction was
3 approved.¹¹³

4 Moreover, the evidence regarding problems during the conversion of Embarq to
5 CenturyLink OSS in North Carolina confirms that the problems that occurred in
6 recent mergers are likely in the instant transaction. As I discussed earlier, data in
7 the three Qwest Regions (East, West, Central) contain inconsistencies, and
8 CenturyLink cannot show that data in any or all of these three Qwest regions are
9 consistent with the legacy CenturyLink areas. For example, Qwest and
10 CenturyLink provided no evidence that outside plant was constructed over time
11 consistently in all three Qwest Regions or consistent with the CenturyLink areas.
12 Just as some of the outside plant records were loaded incorrectly in the Embarq-
13 CenturyTel integration because the way in which plant was constructed in the
14 legacy Embarq areas was not consistent between areas and not consistent with the
15 legacy CenturyTel areas,¹¹⁴ the outside plant records may be loaded incorrectly in
16 this transaction due to the way in which the plant was constructed, or other
17 differences, in each of the three Qwest regions, and due to differences from the
18 CenturyLink areas. The identical problem may occur for the same reason, and

¹¹³ See, e.g., Exhibit Joint CLECs 1.3 at pp. 1-6 to the Direct Testimony of Dr. Ankum.

¹¹⁴ Ring Minnesota Rebuttal Testimony at p. 2, lines 7-12 (quoted above). Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

1 additional data integrity problems may occur because of the regional differences
2 among the Qwest West, Qwest, East, and Qwest Central Regions.

3 **Q. SINCE SUBMITTING YOUR PRE-FILED DIRECT TESTIMONY, HAVE**
4 **YOU OBTAINED ANY NEW INFORMATION THAT UNDERMINES**
5 **THE JOINT APPLICANTS' CLAIM THAT RECENT TROUBLED**
6 **MERGERS ARE IRRELEVANT TO THE PROPOSED TRANSACTION?**

7 A. Yes. ***BEGIN HIGHLY CONFIDENTIAL [REDACTED]
8 [REDACTED]
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10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **END HIGHLY**

CONFIDENTIAL***

Q. CENTURLINK STATES THAT THE HAWAIIAN TELCOM AND FAIRPOINT TRANSACTIONS ARE DISTINGUISHABLE FROM THE PROPOSED TRANSACTION BECAUSE THOSE OTHER TRANSACTIONS INVOLVED CREATING ENTIRELY NEW OSS AND A “FLASH CUT.”¹¹⁵ ARE THESE RELEVANT DISTINCTIONS?

¹¹⁵ Ferkin Rebuttal at pp. 37-38 and 41. *See also*, Ferkin Rebuttal at p. 11, lines 16-17 (“provides CenturyLink the ability to operate using dual systems for as long as management believes that is

1 A. No. First of all, the Joint Applicants have not provided details about their post-
2 merger systems integration plans, so the claim that the proposed transaction will
3 not involve any new OSS and will be conducted in a phased fashion is not
4 supported by any facts or any enforceable commitments. What is a fact, however,
5 is that Qwest and CenturyLink use entirely different OSS and back-office systems
6 today. As such, if CenturyLink integrates its legacy CenturyLink systems into
7 Qwest's BOC territory after the merger closes, those systems would be entirely
8 new to the Qwest region exchanges, and system development would be required.
9 CenturyLink's legacy systems have not been developed or tested for use in
10 Qwest's BOC territory (where volumes and automated flow through rates are
11 substantially higher) any more than any entirely new OSS that may be available.
12 The same types of problems could occur in Qwest's region from integrating
13 legacy CenturyLink systems as could occur from integrating entirely new OSS.

14 Further, CenturyLink's attempts to integrate Embarq systems in North Carolina
15 did not include any new systems; yet, service-impacting problems still occurred.
16 Moreover, North Carolina is one of the first states in the phased conversion. As
17 CenturyLink begins to convert lines in Embarq states that contain major markets
18 such as Las Vegas, Tallahassee and Orlando, it can be anticipated that the
19 complexity of the integration and potential for what CenturyLink calls inevitable
20 problems will increase as well.

prudent...") *See also*, Hunsucker Rebuttal at p. 7, lines 10-11 ("the integration of Qwest will largely involve the use of existing systems rather than creating new ones.")

1 According to CenturyLink's own words, the problems in North Carolina were
2 caused by "outside plant records [that] were loaded incorrectly"¹¹⁶ and "caused by
3 differences between the old and new systems"¹¹⁷ and these types of integration
4 issues are "inevitable" for "every systems conversion or integration."¹¹⁸

5 **Q. DOES CENTURYLINK'S FOCUS ON A "FLASH CUT" FARE ANY**
6 **BETTER?**

7 A. No. The claim that Hawaiian Telcom and FairPoint transactions involved a "flash
8 cut" is misleading. Both the Hawaiian Telcom and FairPoint transactions closed,
9 and the new company remained on Verizon's OSS for 9 to 12 months under a
10 transition services agreement. If CenturyLink intends to continue to utilize Qwest
11 systems post-merger and migrate to new systems at a later date (12 months after,
12 for example), the situation in Qwest's region would be virtually the same as in the
13 prior mergers (except that CenturyLink would not have to pay Qwest for using its
14 OSS through a transaction services agreement). In the case of Hawaiian Telcom
15 and FairPoint, Verizon was contractually obligated to maintain their systems
16 during the transition services agreement. In this case, CenturyLink must ensure
17 that knowledgeable Qwest systems and process personnel are retained during the
18 transition. CenturyLink, however, has made no commitment to do so.

¹¹⁶ Ring Minnesota Rebuttal Testimony at p. 2, lines 7-8. Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPop&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

¹¹⁷ Ring Minnesota Rebuttal Testimony at p. 2, lines 21-22.

¹¹⁸ Ring Minnesota Rebuttal Testimony at p. 4, lines 3-4.

1 In addition, CenturyLink is using a “phased” approach instead of a flash cut for
2 the Embarq integration,¹¹⁹ but service-impacting problems are occurring. It is
3 important to consider what CenturyLink considers to be a “flash cut.”
4 CenturyLink refers to a “flash cut” as integrating/converting a company’s entire
5 service territory or customer base for all states at once, as opposed to a “phased”
6 approach which integrates/converts certain markets in a staggered fashion by state
7 (a state-by-state approach). In the case of the Hawaiian Telcom, there was only
8 one state involved – Hawaii – which means that there was no need for a “phased”
9 state-by-state approach. The FairPoint transactions discussed in my Direct
10 Testimony involved three relatively small states – Maine, New Hampshire and
11 Vermont – which shows that a “phased” approach like that being used for the
12 Embarq integration would likely not have avoided or limited FairPoint’s problems
13 that occurred after its acquisitions. Likewise, the Joint Applicants’ claim that
14 problems will not occur under its “phase-in” is contradicted by the problems
15 experienced in Frontier’s integration of Verizon exchanges in West Virginia. As I
16 discussed in my Direct Testimony, those problems were significant and they
17 involved a single state integration, not what CenturyLink describes as a “flash
18 cut” (i.e., multi-state) integration. These examples illustrate that CenturyLink’s
19 claim that integration problems of the type discussed in my testimony are limited
20 to flash cut transitions is inaccurate.

¹¹⁹ Ferkin Rebuttal at p. 11, lines 15-20. *See also*, Ring Minnesota Rebuttal Testimony at p. 5. Available at: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={A48DAA86-7AD1-4E97-84AB-69E1D1DEACCE}&documentTitle=20109-54401-01>

1 **Q. WAS INDEPENDENT THIRD-PARTY SYSTEMS TESTING REQUIRED**
2 **IN THESE OTHER PROBLEMATIC TRANSACTIONS IN AN ATTEMPT**
3 **TO MAKE SURE THAT SYSTEMS WOULD WORK PROPERLY POST-**
4 **INTEGRATION?**

5 A. No. Although systems testing was required,¹²⁰ this testing was not conducted by
6 an independent third-party at commercial volumes. Therefore, the testing was not
7 sufficient to avoid the systems meltdowns that subsequently occurred. The
8 independent third-party testing requirement recommended by Joint CLECs'
9 Condition 19(b) is needed to avoid a similar customer-affecting meltdown in
10 Utah.

11 ***D. The continued lack of details about the Joint Applicants' integration***
12 ***plans creates significant uncertainty.***

13 **Q. CENTURYLINK STATES THAT IT IS UNREASONABLE TO EXPECT**
14 **THE JOINT APPLICANTS TO HAVE INTEGRATION PLANS AT THIS**
15 **POINT.¹²¹ IS THIS AN UNREASONABLE EXPECTATION?**

16 A. No. In fact, the Joint Applicants have released details about their integration
17 planning that they have not divulged in testimony, suggesting that the Joint
18 Applicants, while pressing for expedited consideration of the transaction, are
19 slow-rolling the release of details about their integration plans in the regulatory

¹²⁰ See, e.g., Exhibit Joint CLECs 2 (Gates Direct) at pp. 91-92 and 97-98.

¹²¹ Fenn Rebuttal at p. 11, lines 17-18 and Hunsucker Rebuttal at p. 10, lines 17-19.

1 proceedings. For example, on July 22, 2010, CenturyLink-Qwest released

2 “CenturyLink-Qwest Update #4” that explained:

3 Three consulting firms also are assisting with this [integration]
4 process. Bain & Company is assisting with organization design,
5 Hewitt Associates is assisting with compensation and
6 Pricewaterhouse Coopers is assisting with overall integration
7 coordination.¹²²

8 In their August 10, 2010, CenturyLink-Qwest Update #5,¹²³ the Joint Applicants
9 listed these three consulting firms as “Additional Leaders/Consultants” related to
10 the Joint Applicants’ integration planning. It has been almost three months since
11 the Joint Applicants announced they had hired these three consulting firms, but to
12 date, they have provided no details about those ongoing efforts. This is despite
13 the fact that Joint Applicants know full well that the Joint CLECs and others are
14 keenly interested in learning what the integration plans are when they become
15 available, and that the Joint Applicants have a duty to supplement discovery
16 responses as new or different information becomes available.

17 While the Joint Applicants have recently contended that it is inappropriate to
18 request information on “what advice outside consultants are providing to the
19 companies during the merger process,”¹²⁴ the FCC, in the Frontier-Verizon
20 merger review proceeding, sought *exactly that type of information*. For instance,

¹²² <http://www.centurylinkqwestmerger.com/downloads/key-materials/CenturyLink-Qwest%20Update%204.pdf>

¹²³ <http://www.centurylinkqwestmerger.com/downloads/key-materials/CenturyLink-Qwest%20Update%205.pdf>

¹²⁴ Letter from Karen Brinkmann, Counsel for CenturyLink, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 10-110 (filed Sept. 22, 2010) at p. 1.

1 the FCC sought copies of documents prepared either internally or “by outside
2 advisors” regarding “the development and refining” of Frontier’s “long-term
3 plans for post-merger OSS.”¹²⁵ In any event, in this matter, CLECs have no
4 alternative other than to ask about plans made in association with consultants, as
5 CenturyLink has not provided information in response to more general discovery
6 requests. Obviously, the Joint Applicants have not hired three consulting firms
7 and developed specific integration teams in order for them to remain idle until the
8 proposed transaction is approved.

9 Furthermore, the Joint Applicants’ claim that it is unreasonable to expect them to
10 have integration plans at this point is inconsistent with the Joint Applicants’ push
11 to expedite completion of the proposed transaction. Qwest has said that the Joint
12 Applicants are seeking expedited approval of the proposed transaction so that they
13 can “more quickly integrate the companies in order to bring the benefits...to
14 consumer, business and wholesale customers sooner.”¹²⁶ It makes little sense to
15 expedite approval of the proposed transaction and not also expedite the
16 integration planning process that CenturyLink expects to produce the claimed

¹²⁵ See FCC Wireline Competition Bureau Frontier Verizon Information Request, at 4 (Request III.A.5.); see also *id.* at 3 (Requests III.A.1.b. & III.A.1.c.) (requesting documents prepared either internally or “by outside advisors” regarding the Applicants’ OSS cutover planning for West Virginia); *id.* (Requests III.A.2.a. & III.A.2.b.) (requesting documents prepared either internally or “by outside advisors” regarding “the development of the formal process governing the West Virginia [OSS] conversion” and “refinements or revisions” to the “formal conversion process”); *id.* at 4 (Request III.A.3.d.) (requesting documents prepared either internally or “by outside advisors” regarding the Applicants’ plans for OSS testing prior to the cutover in the 13 legacy GTE territories).

¹²⁶ Direct Testimony of Jerry Fenn, Utah Docket No. 10-049-16, May 27, 2010 (“Fenn Direct”), at p. 6, lines 15-17.

1 benefits of the transaction. The Utah Commission should investigate whether
2 integration planning work is being performed and decisions being made that the
3 Joint Applicants are not divulging in the merger review proceedings.

4 **Q. ARE THERE OTHER REASONS WHY IT IS REASONABLE TO**
5 **EXPECT THE JOINT APPLICANTS TO HAVE INTEGRATION PLANS**
6 **AVAILABLE FOR REVIEW AT THIS POINT?**

7 A. Yes. One reason is that, when compared to CenturyLink's acquisition of Embarq,
8 CenturyLink had specific integration plans available at this point in the merger
9 review process. CenturyTel and Embarq announced their merger in October
10 2008, and in March 2009 (five months later), they stated that they would migrate
11 Embarq to CenturyLink's legacy Ensemble system,¹²⁷ as well as utilize
12 CenturyTel's SAP (Systems, Applications, and Products) accounting system, and
13 utilize Embarq's EASE (Embarq Administration and Service Order Exchange)
14 system for LSRs and ASRs.¹²⁸ It has now been almost six months since
15 CenturyLink and Qwest announced the proposed transaction,¹²⁹ but the Joint
16 Applicants have provided no detail about its integration plans similar to that

¹²⁷ "As evidence of progress since our initial filing and in response to Dr. Roycroft's testimony, I note the following: we now plan that Embarq's operations will migrate to CenturyTel's Ensemble billing and customer care system. CenturyTel's Ensemble back-office software (the product of an investment of over \$200 million) is a highly-centralized and flexible system that integrates and automates customer care and other provisioning services in a cost-effective manner." Rebuttal Testimony of G. Clay Bailey on behalf of CenturyTel, Inc., Washington UTC Docket No. UT-082119, March 18, 2009. Available at:
<http://webcache.googleusercontent.com/search?q=cache:SZWIm2byAOMJ:wutc.wa.gov/rms2.nsf/177d98baa5918c7388256a550064a61e/34a43dc9c6ee474b8825757d007a668b!OpenDocument+centurytel+embarq+will+utilize+Ensemble&cd=8&hl=en&ct=clnk&gl=us>

¹²⁸ *Id.*

¹²⁹ *See*, Exhibit Joint CLECs 2.8, "Merger Announcement Date" refers to April 21, 2010.

1 which was provided around this same point in time during the review of the
2 Embarq/CenturyTel merger.

3 A further example is found in Mr. Ferkin's statement that, "[o]n the day of closing
4 [of the Embarq transaction], the company had its five-region 'go-to-market'
5 concept in place and operational."¹³⁰ If CenturyLink had its "go-to-market" up
6 and running the day the Embarq merger closed, as Mr. Ferkin states, then
7 CenturyLink must have performed some extensive integration planning prior to
8 the transaction being approved. However, when asked to provide details about its
9 plans for implementing the "go-to-market" model in Qwest's BOC territory post-
10 merger, CenturyLink responded that detailed planning had not begun and plans
11 could not be finalized until the merger was completed.¹³¹

12 **Q. HAS CENTURYLINK RECOGNIZED FRUSTRATION RESULTING**
13 **FROM THE LACK OF INFORMATION REGARDING THE JOINT**
14 **APPLICANTS' INTEGRATION PLANS?**

15 A. Yes, however, CenturyLink does nothing about it. Mr. Ferkin notes in his
16 Rebuttal Testimony that CenturyLink "understand[s]" that there is frustration of
17 "several parties" with the "lack of details."¹³² However, he does not respond to
18 that frustration with any meaningful information. Instead, he reiterates the
19 CenturyLink mantra about what might happen in the future and blames the

¹³⁰ Ferkin Direct at p. 17, lines 20-21.

¹³¹ See, e.g., Joint CLEC Exhibit 1.4 to the Direct Testimony of Dr. Ankum at p. 4.

¹³² Ferkin Rebuttal at p. 13, lines 7-12.

1 CLECs for speculating,¹³³ despite the fact that it is the Joint Applicants who have
2 failed to provide useful details about the proposed transaction. The burden is
3 clearly on CenturyLink and Qwest to clearly articulate the public interest benefits
4 of this transaction. Unfortunately, to date, all that the Joint Applicants have
5 articulated are unsupported statements designed to secure transaction approval
6 without any substantiation.

7 *E. The recent conduct of the Joint Applicants demonstrates that the*
8 *Merged Company will be more difficult to work with if the proposed*
9 *transaction is approved.*

10 **Q. YOU DISCUSSED IN YOUR DIRECT TESTIMONY CIRCUMSTANCES**
11 **REGARDING THE JOINT APPLICANTS REFUSING TO STREAMLINE**
12 **THE DISCOVERY PROCESS. DID CENTURYLINK RESPOND TO THIS**
13 **EXAMPLE?**

14 A. Yes. In my Direct Testimony (pages 74-79), I described the circumstances of the
15 Joint Applicants refusing to streamline the discovery process and the additional
16 costs imposed on CLECs. I explained that one of my CLEC clients and Qwest
17 had previously used a similar streamlined discovery approach at Qwest's urging,
18 and the Joint Applicants' refusal to do so here is a sign that the Merged Company
19 would be more difficult to work with than Qwest. Mr. Hunsucker takes issue with

¹³³ Ferkin Rebuttal at p. 9, lines 13-14.

1 this example; he says this example “has nothing to do with any *harm* that could be
2 caused by CenturyLink’s operations under applicable law *post-merger*.”¹³⁴

3 **Q. IS MR. HUNSUCKER CORRECT?**

4 A. No. It is perfectly reasonable to analyze conduct of the Joint Applicants since
5 announcement of the merger as an indication of how the Merged Company may
6 operate post-merger. This is particularly true in this instance where the Joint
7 Applicants refused to participate in a streamlined discovery process that Qwest
8 previously participated in with (and actually proposed to) CLECs. Another
9 example is the level of protection that the Joint Applicants have sought in
10 discovery. In numerous states, the Joint Applicants have sought a special, higher
11 level of protection for certain data (referred to as “Staff Eyes Only” or “SEO”).
12 My firm, QSI Consulting, Inc., has participated in many cases on behalf of
13 competitive carriers involving Qwest in the past, and to my knowledge, Qwest has
14 not previously sought this so-called SEO protection for its data before the state
15 commissions. This new approach by the Joint Applicants has increased the CLEC
16 costs associated with the proposed transaction by forcing CLECs to litigate this
17 issue before numerous state commissions, and has made it more difficult and
18 time-consuming to analyze the proposed transaction under the compressed time
19 frame sought by Joint Applicants. The early indications are that the Merged
20 Company could be more difficult to work with than Qwest in some areas, and the

¹³⁴ Hunsucker Rebuttal at p. 43, lines 1-2 (emphasis in original).

1 CLECs can expect their transaction costs to increase. These are examples of
2 merger-related harms.

3 **Q. HAVE YOU RECEIVED NEW INFORMATION SINCE YOUR PRE-**
4 **FILED DIRECT TESTIMONY WAS SUBMITTED THAT VALIDATES**
5 **YOUR CONCERN ABOUT THE MERGED COMPANY BEING MORE**
6 **DIFFICULT TO WORK WITH THAN QWEST IN SOME AREAS?**

7 A. Yes. ***BEGIN HIGHLY CONFIDENTIAL [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] END HIGHLY CONFIDENTIAL***

16 **IV. THE JOINT CLEC PROPOSED CONDITIONS SHOULD BE ADOPTED**

17 **Q. HAVE THE JOINT APPLICANTS AGREED TO ANY OF THE JOINT**
18 **CLEC PROPOSED CONDITIONS?**

19 A. No. The Joint Applicants did not identify one Joint CLEC proposed condition
20 that was acceptable to them. Even though most conditions would maintain the

1 status quo during the Merged Company's integration efforts, the Joint Applicants
2 go to great lengths to make Joint CLEC conditions appear unreasonable, and in
3 numerous instances, misconstrue the Joint CLEC conditions in the process.

4 **Q. HOW IS THIS SECTION OF YOUR TESTIMONY ORGANIZED?**

5 A. I will first address the Joint Applicants' broad criticisms of the Joint CLEC
6 proposed conditions, and then address the concerns raised about specific Joint
7 CLEC proposed conditions. I have attached an Issues Matrix as Exhibit Joint
8 CLECs 2SR.1 to my testimony that summarizes Joint Applicants' Position
9 Statements (directly quoted from Joint Applicants' discovery responses) and Joint
10 CLECs' Position Statements for each issue presented by the Joint CLEC list of
11 recommended conditions (Exhibit Joint CLECs 2.8) for resolution in this matter.

12 A. *Joint Applicants' claim broadly that Joint CLEC proposed conditions*
13 *are unnecessary but provides no basis for rejecting them.*

14 **Q. CENTURYLINK ARGUES THAT CONDITIONS ARE NOT NEEDED**
15 **BECAUSE "THERE ARE NO IMMEDIATE CHANGES POST-**
16 **MERGER."¹³⁵ WHAT REASON DOES CENTURYLINK GIVE FOR**
17 **REFUSING TO AGREE TO CONDITIONS THAT MAINTAIN THE**
18 **STATUS QUO IN SPITE OF CENTURYLINK'S CLAIM THAT IT IS**
19 **PLANNING TO MAINTAIN THE STATUS QUO?**

¹³⁵ Hunsucker Rebuttal at p. 15, lines 2-3.

1 A. Mr. Hunsucker states: “If the Commission were to grant concessions under these
2 conditions, the concessions would only serve to increase CLECs’ profits by
3 pushing CLECs’ costs of doing business onto CenturyLink or otherwise hobbling
4 CenturyLink’s ability to compete fairly.”¹³⁶ Mr. Hunsucker also claims that
5 “Each and every condition places a cost on CenturyLink.”¹³⁷

6 **Q. DO YOU AGREE THAT MAINTAINING THE STATUS QUO AND**
7 **REQUIRING COMPLIANCE WITH EXISTING LAWS INCREASES**
8 **CLEC PROFITS AND CENTURYLINK’S COSTS?**

9 A. No, that claim is absurd to say the least. Maintaining the status quo means to
10 maintain things as they are. If the status quo is maintained – such that for an
11 established time period CLECs in Qwest territory may use the OSS, CMP, ICAs,
12 *etc.*, that they use today – CLECs’ costs and CLECs’ expenses, remain the same.
13 There is no change. Therefore, there are no CLEC costs to “push” to
14 CenturyLink. On the other hand, if CenturyLink is not required through
15 conditions to maintain the status quo for a set period of time, CenturyLink has
16 many opportunities to “push” costs to its CLEC competitors to benefit itself at the
17 CLECs’ expense. For example, by requiring CLECs to perform more manual
18 steps, CenturyLink may push work to CLECs that currently is performed
19 automatically or by Qwest personnel and may also result in increased service
20 delivery errors or delay that further drive up CLEC costs.

¹³⁶ Hunsucker Rebuttal at p. 15, lines 5-8.

¹³⁷ Hunsucker Rebuttal at p. 38, lines 10-11.

1 If Joint Applicants are, as they claim, complying with existing laws today, then
2 requiring them to continue to comply with the law also maintains the status quo
3 and requires no change. Mr. Hunsucker, in claiming that each and every
4 condition places a cost on CenturyLink, does not explain the source of these costs
5 for conditions requiring legal compliance, unless CenturyLink must take steps to
6 bring itself into legal compliance. Given that CenturyLink denies it is out of
7 compliance, then there are no such steps to take, and no costs associated with
8 these conditions.

9 In fact, the entire thrust of Mr. Hunsucker's testimony in this respect is troubling.
10 If satisfying commitments that simply maintain the status quo (*i.e.*, obligating
11 CenturyLink to retain existing service levels provided by Qwest, existing OSS,
12 existing wholesale staffing, etc.) will impose "costs" on CenturyLink, then the
13 only logical conclusion from that claim is that CenturyLink intends not to satisfy
14 those commitments post-merger if the proposed transaction is approved.

15 **Q. MR. HUNSUCKER POINTS TO SEVERAL REASONS WHY**
16 **CENTURLINK ASSERTS THE JOINT CLEC CONDITIONS ARE**
17 **UNNECESSARY. WHAT ARE THESE REASONS AND WHAT ARE**
18 **YOUR RESPONSES?**

19 A. At pages 3-4 of his Rebuttal Testimony, Mr. Hunsucker points to three reasons
20 why CenturyLink believes the Joint CLEC proposed conditions are unnecessary:

- 1 1. “First, the existing Qwest operating entity will stay in place post-
2 merger, so the relationships between the companies will remain status
3 quo and there will be none of the impacts that CLECs might encounter
4 with a completely new incumbent entity.”¹³⁸
- 5 2. “CLECs have significant legal protections in place today” including
6 “the provisions and obligations of the federal Telecommunications
7 Act...Utah Statutes and Utah Public Service Commission
8 (Commission) rules, Federal and State orders, interconnection
9 agreements (‘ICAs’), tariffs, and Qwest’s Section 271 protections,
10 Performance Assurance Plans, and Change Management Process
11 commitments.”¹³⁹
- 12 3. “CLECs will benefit from the merger without imposition of their
13 requested conditions.”¹⁴⁰

14 I addressed the first reason in my Direct Testimony (pages 24-25). As I indicated,
15 CenturyLink plainly ignores the fact that Qwest will be owned and controlled by a
16 new entity post-merger. Separate entities on an organizational chart or not, the
17 fact is that Qwest will be “owned and controlled by CenturyLink”¹⁴¹ if the
18 proposed transaction is approved. This means that CenturyLink will be *calling*
19 *the shots* for Qwest post-merger. I also explain in my Direct Testimony (pages
20 122-126, 147-148) and again elsewhere in this testimony that CenturyLink’s
21 claims about “no immediate changes” and “status quo” for wholesale customers
22 post-merger are hollow promises that are not supported by the facts presented in
23 this case or enforceable conditions/commitments. After all, if CenturyLink

¹³⁸ Hunsucker Rebuttal at p. 3, lines 13-16. *See also*, Hunsucker Rebuttal at p. 11, lines 4-7 (“Since Qwest will be the only post-merger CenturyLink affiliate that operates in Utah, wholesale customers will not face immediate changes in their existing systems interfaces and existing OSS arrangements will not be disrupted.”) *See also*, Hunsucker Rebuttal at p. 33, lines 19-21 (“Wholesale customers in Utah will not face immediate changes in their existing systems interfaces and existing OSS arrangements will not be disrupted.”).

¹³⁹ Hunsucker Rebuttal at pp. 3-4.

¹⁴⁰ Hunsucker Rebuttal at p. 4, lines 7-8.

¹⁴¹ Exhibit Joint CLECs 2 at p. 25, quoting Fenn Direct at p. 5, lines 1-3.

1 intended to make no changes and maintain the status quo for a predetermined
2 period of time, there would be no reason for CenturyLink to reject conditions
3 documenting that fact. CenturyLink is clearly reserving to itself a right to make
4 changes, including immediate changes.

5 **Q. WHAT IS YOUR RESPONSE TO CENTURYLINK'S CLAIM THAT**
6 **CLEC CONDITIONS ARE UNNECESSARY BECAUSE PROTECTIONS**
7 **ARE ALREADY IN PLACE?**

8 A. As I explained above in the example regarding CenturyTel's acquisition of
9 Wisconsin exchanges, the protections that were in place – including state statutes,
10 the federal Act, and applicable rules – did not prevent CenturyTel from increasing
11 rates it charged to competitive carriers. The Joint CLEC conditions are designed
12 to ensure that adherence to applicable obligations are not undermined during
13 CenturyLink's difficult task of integrating a company much larger than either
14 CenturyTel or Embarq, which integration still is not complete.

15 Further, the FCC and state commissions have time and again found that merger
16 conditions are necessary in order to avoid or offset harm related to a merger
17 involving incumbent LECs or BOCs. In each of those instances, the FCC and
18 state commissions have routinely rejected the notion that existing state and federal
19 rules and regulations and applicable ICAs are sufficient by themselves to address
20 potential harms to the public interest resulting from a merger involving an ILEC
21 or BOC.

1 **Q. DO YOU HAVE ADDITIONAL CONCERNS ASSOCIATED WITH**
2 **RELYING ON POST-CLOSING ENFORCEMENT OF LAW AND**
3 **INTERCONNECTION AGREEMENT TERMS AND CONDITIONS?**

4 A. Yes, relying on what would amount to ad hoc enforcement of the 96 Telecom Act
5 and Utah state law or individual ICAs could easily result in different CLECs
6 operating in different environments. That is, if one CLEC successfully brings a
7 complaint action, it may get relief, and other CLECs would not get the same
8 relief. Moreover, Qwest has previously claimed that an individual CLEC should
9 not be permitted to bring a complaint when other CLECs may be affected. The
10 public interest consideration should compel the Commission to adopt conditions
11 that will protect the competitive environment by ensuring that all competitors are
12 operating under these same critical conditions.

13 **Q. WILL CLECS BENEFIT FROM THE PROPOSED TRANSACTION**
14 **WITHOUT IMPOSITION OF THEIR REQUESTED CONDITONS, AS**
15 **MR. HUNSUCKER CLAIMS?**

16 A. No. Dr. Ankum explained at pages 59-65 of his Direct Testimony (and Exhibit
17 Joint CLECs 1.4) that the Joint Applicants have not identified a single benefit that
18 would accrue to CLECs. Mr. Hunsucker attempts to buttress the Joint Applicants'
19 claim in this regard in his Rebuttal Testimony, stating: “[a] financially stronger
20 company promotes stability, and thus furthers the goal of having a solid and

1 resilient provider of wholesale services to CLECs and other carriers.”¹⁴² Again,
2 this statement does not identify a benefit to CLECs; Mr. Hunsucker does not
3 explain how a financially stronger Merged Company with a larger, more
4 interconnected footprint, translates into benefits for CLECs. The Joint Applicants
5 have not agreed to reflect the Merged Company’s increased efficiencies in its
6 relationships with its wholesale customers or even to maintain the products,
7 services or rates that CLECs purchase from Qwest today. Qwest’s current
8 wholesale operations are much larger than CenturyLink’s wholesale operations,
9 and Mr. Hunsucker failed to provide a single benefit or “best practice” that
10 CenturyLink’s wholesale operations have to offer.

11 **Q. HAS CENTURYLINK PREVIOUSLY INDICATED THAT A**
12 **FINANCIALLY STRONGER MERGED ENTITY COULD WORK**
13 **AGAINST CLECS INSTEAD OF IN THEIR BEST INTEREST?**

14 A. Yes. In the Utah Joint Petition, the Joint Applicants state: “One of the
15 Transaction’s key benefits is the resulting financial condition of the combined
16 company. *A financially stronger company can continue to...compete against*
17 *cable telephony providers...and CLECs...*”¹⁴³

¹⁴² Hunsucker Rebuttal at p. 4, lines 8-10.

¹⁴³ Joint Application for Expedited Approval of Indirect Transfer of Control, May 19, 2010 (“Utah Joint Petition”), at p. 14 (emphasis added).

1 **Q. CENTURLINK POINTS TO STATES WHERE THE APPROVAL**
2 **PROCESS IS NOW FAVORABLY CONCLUDED.¹⁴⁴ WERE THE**
3 **REVIEWS OF THE PROPOSED TRANSACTION IN THOSE OTHER**
4 **STATES COMPARABLE TO THE REVIEW BEING CONDUCTED IN**
5 **UTAH?**

6 A. No. Mr. Ferkin lists the following states in his rebuttal testimony: California,
7 Hawaii, Louisiana, Maryland, Mississippi, Georgia, Virginia, West Virginia, New
8 York and Ohio, as well as the District of Columbia. None of the jurisdictions
9 listed by CenturyLink are states in which Qwest operates as a BOC or ILEC.
10 Further, CenturyLink is not an ILEC in Hawaii, Maryland, West Virginia, New
11 York, or the District of Columbia. There are significant public interest concerns
12 surrounding a proposed acquisition of an BOC or ILEC that do not apply to a
13 transaction involving the acquisition of a non-ILEC telecommunications
14 company.

15 The states in which CenturyLink (but not Qwest) is an ILEC – California,
16 Georgia, Ohio, Louisiana, Mississippi, and Virginia – are distinguishable from
17 Utah in terms of the process and standard of review. For example, in California
18 (where CenturyLink owns 100 access lines), the proposed transaction was filed
19 via an Advice Letter on May 14, 2010, and deemed approved one month later (on

¹⁴⁴ Ferkin Rebuttal at p. 4, lines 3-8.

1 June 14, 2010).¹⁴⁵ This Advice Letter was processed by the Telecommunications
2 Division and apparently not evaluated by the California Commission under any
3 type of public interest standard.¹⁴⁶ CenturyLink filed in Georgia on May 25,
4 2010, and the Georgia Commission closed the docket two months later on July
5 28, 2010, via a one-page letter from the Director of Telecommunications to
6 Qwest's counsel.¹⁴⁷ Likewise, the Ohio Public Utilities Commission closed the
7 approval docket one month after it was filed via a one page "Case Status Form."
8 The Mississippi Commission order indicates that "[n]o party moved to intervene"
9 in the merger review proceeding in that state.¹⁴⁸ Louisiana (where CenturyLink's
10 headquarters is currently located and where the Merged Company's headquarters
11 will reside) issued an order of non-opposition three months after approval was
12 sought. In that order, the Louisiana Public Service Commission explained that
13 there was only one intervener Louisiana Cable & Telecommunications
14 Association (LCTA) in the case (after Cox withdrew) and that the issue was
15 addressed at the Staff level rather than being assigned to the Commission's
16 Administrative Hearings Division.¹⁴⁹ The order states: "Based on the comments

¹⁴⁵ <http://www.centurylinkwestmerger.com/index.php?page=regulatory-information>

¹⁴⁶ Memo from Telecommunications Division PAL Coordinator to Telecommunications Carrier Filing Advice Letter regarding Status of Advice Letter 172, effective date June 14, 2010 ("The Telecommunications Division of the California Public Utilities Commission has processed your recent Advice Letter (AL) filing and is returning an AL status certificate for your records.")

¹⁴⁷ Letter from Leon Bowles, Director of Telecommunications for the Georgia Public Service Commission to Terri Lyndall, regarding docket numbers 6543, 10664, 5043, and 6094, dated July 28, 2010. *See also*, <http://www.centurylinkwestmerger.com/index.php?page=regulatory-information>

¹⁴⁸ Mississippi Public Service Commission Docket No. 2010-UA-218, Order, September 14, 2010.

¹⁴⁹ Louisiana Public Service Commission, Docket No. u-31379, Order Number U-31379, September 17, 2010, at p. 1.

1 received from the Applicants...and the lack of comments filed by the lone
2 Intervenor, the LCTA, Staff recommended that the Commission...issue its non-
3 opposition to the transaction as proposed, with the standard language placed on all
4 statements of non-opposition..."¹⁵⁰ Notably, the Louisiana Commission entered
5 its order of non-opposition based on the following condition:

6 The Applicants shall provide notice to the LPSC of any condition
7 imposed upon the merger, or agreed to in other jurisdictions, for
8 the Commission's review and possible adoption if deemed in the
9 public interest.

10 The Joint Applicants have rejected Joint CLECs' proposed Condition 29,¹⁵¹
11 stating that it is "neither necessary nor appropriate for this transaction"¹⁵² and
12 "unreasonable"¹⁵³ and "restricts the incentive for both parties to negotiate state-
13 specific terms..."¹⁵⁴; yet, CenturyLink's home state of Louisiana has imposed a
14 very similar condition on the merger that would allow the state commission to
15 adopt conditions for the merger after the decision permitting the proposed
16 transaction has been entered. The bottom line is that there are numerous concerns
17 that must be considered in the public interest evaluation in Utah, where Qwest

¹⁵⁰ Louisiana Public Service Commission, Docket No. u-31379, Order Number U-31379, September 17, 2010, at p. 2.

¹⁵¹ Condition 29 states: "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." Exhibit Joint CLECs 2.8 at p. 12.

¹⁵² Hunsucker Rebuttal at p. 40.

¹⁵³ Hunsucker Rebuttal at p. 41, line 7.

¹⁵⁴ Hunsucker Rebuttal at p. 41, lines 19-20.

1 operates as an ILEC/BOC, and CenturyLink is *not* acquiring any Qwest ILEC or
2 BOC exchanges in any of the states that have approved the transaction to date.

3 ***B. Increased economies of scale of the Merged Company should benefit***
4 ***competition.***

5 **Q. CENTURYLINK TAKES ISSUE WITH THE STATEMENT IN YOUR**
6 **DIRECT TESTIMONY THAT CLECS SHOULD SHARE IN THE**
7 **INCREASED ECONOMIES OF THE ILEC. CENTURYLINK CLAIMS**
8 **THAT YOU “SELECTIVELY” QUOTED FROM PARAGRAPH 11 OF**
9 **THE FCC’S *LOCAL COMPETITION ORDER*.¹⁵⁵ IS THIS**
10 **CHARACTERIZATION OF YOUR TESTIMONY WARRANTED?**

11 **A.** No, and to confirm that I did not mischaracterize what the FCC said at paragraph
12 11 of the *Local Competition Order*, I have attached the entire paragraph 11 as
13 Exhibit Joint CLECs 2SR.2 to my testimony.

14 The Joint Applicants have identified increases in economies of scale for the
15 Merged Company as a merger-related benefit.¹⁵⁶ The Joint Applicants have also
16 stated that this increase in economies of scale would result in efficiencies and
17 lower per-unit costs for the Merged Company.¹⁵⁷ The purpose of the reference to
18 the *Local Competition Order* at ¶ 11 in my Direct Testimony is to explain that one

¹⁵⁵ Ferkin Rebuttal at p. 33, footnote 57.

¹⁵⁶ Joint CLECs Exhibit 2 (Gates Direct) at p. 191, quoting Fenn Direct at p. 12, lines 9-21.

¹⁵⁷ CenturyLink states: “greater economies of scale result in lower overhead costs per customer, or per access line” and “increased product availability and decreased per unit cost for a given service...” CenturyLink Response to Colorado Office of Consumer Counsel Data Request #1-15(a) and (b).

1 of the cornerstones of the 1996 Act is that competitive LECs should share in the
2 economies of the ILEC so as to overcome the “significant economic impediments
3 to efficient entry into the monopolized local market[.]” As such, if the Merged
4 Company is able to achieve significant increased economies of scale due to the
5 merger and those economies are not shared with the CLECs, then the economic
6 impediments to efficient entry into the local market have been raised (*e.g.*, the
7 Merged Company enjoys a cost advantage over its competitors). This is a direct
8 impact of the proposed transaction.

9 CenturyLink’s claim that “[n]owhere does the FCC’s Order suggest that there
10 should be a sharing of economic benefits resulting from a merger”¹⁵⁸ entirely
11 misses the point. The FCC said that “economies of density, connectivity, and
12 scale...have been viewed as creating a natural monopoly[.]” and, as a result,
13 required these economies to be shared with CLECs. This requirement exists
14 independent of a merger. My point, however, is that the Joint Applicants have
15 touted significant increases in its economies of scale due to the proposed
16 transaction, and if these efficiencies are not shared with CLECs as the FCC
17 requires, it will further entrench the Merged Company in relation to the very
18 factors that have been viewed as creating a “natural monopoly.” Such a result
19 would be contrary to the public interest, including the public’s interest in robust
20 competition.

¹⁵⁸ Ferkin Rebuttal at p. 33, footnote 57.

1 **Q. CENTURLINK GOES ON TO STATE THAT CLECS WANT TO**
2 **“‘SHARE’ DIRECTLY IN THE COST SAVINGS TO BE REALIZED**
3 **THROUGH THE MERGER.”¹⁵⁹ IS THAT WHAT CLECS ARE**
4 **SEEKING?**

5 A. No. The Joint Applicants have estimated approximately \$575 million in annual
6 operating expense synergies and \$50 million of annual capital expenditure
7 synergies, for a total of \$625 million in annual operating and capital synergies.¹⁶⁰
8 The Joint CLECs do not want a cut of that estimated synergy savings, as
9 CenturyLink suggests. The Joint Applicants have not provided one example of a
10 CLEC condition that seeks part of the estimated synergy savings, or any examples
11 of a condition proposed by the Joint CLECs that would prevent Joint Applicants
12 from achieving their estimated synergy savings. If the Joint Applicants were to
13 claim that the Joint CLECs’ proposed conditions prevented the Joint Applicants
14 from achieving their synergy savings, then serious questions would be raised
15 about the Joint Applicants’ integration plans, given that the Joint CLEC
16 conditions largely maintain the status quo. Public interest benefits can accrue to
17 the CLECs and competition from the proposed merger without the Merged
18 Company flowing through any of the \$650 million in estimated synergy savings.
19 For example, the increased economies that the Joint Applicants expect from the
20 Merger could be shared with wholesale customers by allowing a requesting

¹⁵⁹ Ferkin Rebuttal at p. 34, lines 16-18.

¹⁶⁰ Direct Testimony of Jeff Glover, Utah Docket No. 10-049-16 at p. 11, lines 9-13.

1 carrier to opt into an ICA that is available elsewhere in the Merged Company's
2 larger, more interconnected footprint (Condition 11), or agreeing not to raise
3 wholesale rates given that the Joint Applicants expect lower per-unit costs due to
4 the increased economies of scale¹⁶¹ (Condition 7). The Joint CLECs are not
5 seeking any special advantage or windfall related to the Merged Company's
6 synergy savings as CenturyLink suggests; rather, the Joint CLECs want to make
7 sure that potential merger-related harm to CLECs and their customers is offset or
8 avoided, and that CLECs are not worse off from a competitive standpoint vis-à-
9 vis the larger incumbent LEC if the proposed transaction is approved.

10 *C. The objective of the Joint CLEC proposed conditions is to offset harm*
11 *related to the proposed transaction, not to undermine the Joint*
12 *Applicants' ability to compete.*

13 **Q. MR. HUNSUCKER CLAIMS THAT THE JOINT CLEC CONDITIONS**
14 **ARE DESIGNED TO UNDERMINE THE MERGED COMPANY'S**
15 **ABILITY TO COMPETE. IS THIS A FAIR CHARACTERIZATION?**

16 A. No. Mr. Hunsucker's mischaracterization of my testimony leads him to an
17 incorrect conclusion. Mr. Hunsucker states:

18 A statement made by Mr. Gates shows the proper context needed
19 when scrutinizing the relevance and applicability of the CLECs'
20 testimony. As Mr. Gates noted, the CLECs and the Joint
21 Applicants "are rivals, and...their economic incentive (as profit-
22 maximizing firms) is to undermine – not help – the other

¹⁶¹ CenturyLink states: "greater economies of scale result in lower overhead costs per customer, or per access line" and "increased product availability and decreased per unit cost for a given service..." CenturyLink Response to Colorado Office of Consumer Counsel Data Request #1-15(a) and (b).

1 provider's ability to compete for end user customers..." I believe
2 that is exactly what the CLECs are hoping to achieve by arguing
3 for the conditions they propose – competitive advantages that
4 existing interconnection agreements, commission-approved
5 processes and other accepted practices do not currently provide or
6 apparently not to the degree desired by the CLECs.¹⁶²

7 To show how Mr. Hunsucker takes my testimony out of context, I have provided
8 below the entire paragraph from my testimony (at pages 13-14) with Mr.
9 Hunsucker's selective quote in bold/underlined text:

10 Because of this unusual but unavoidable continuing interaction
11 among providers, for local telecommunications competition to
12 work, competing providers must cooperate behind-the-scenes, even
13 though they **are rivals, and** even though **their economic incentive**
14 **(as profit-maximizing firms) is to undermine – not help – the**
15 **other provider's ability to compete for end user customers.** As
16 a result, no matter how much retail competition there might be,
17 regulation is needed to make sure that the critical behind-the-
18 scenes cooperation actually occurs. This is the essence and purpose
19 of Sections 251 and 271 of the Act. Because ILECs and BOCs
20 enjoy a significant advantage over CLECs in terms of determining
21 whether the wholesale relationship between them is successful,
22 Sections 251 and 271 (and continued enforcement and compliance
23 with those sections) are absolutely critical to ensuring that ILECs
24 and BOCs continue to cooperate with CLECs.

25 Read in proper context, my testimony explains that compliance with and
26 enforcement of Sections 251 and 271 of the Act are critical to ensure that ILECs
27 and BOCs to do not exploit their natural economic incentives to discriminate
28 against competitors who also purchase critical bottleneck elements from them,
29 which is a natural incentive that the FCC explicitly discussed in its *Local*
30 *Competition Order*. It is no secret that ILECs/BOCs and CLECs are rivals in the

¹⁶² Hunsucker Rebuttal at p. 8, lines 13-20.

1 local telecommunications market, and it is also no secret that ILECs/BOCs and
2 CLECs are profit-maximizing firms that compete for end user customers. The big
3 difference, however, is that ILECs/BOCs have control over critical inputs to the
4 services CLECs offer to end user customers, which gives them the *means* (in
5 addition to the incentive) to undermine the CLECs ability to compete for end user
6 customers. Accordingly, Section 251(c) of the Act applies to *incumbent* local
7 exchange carriers and not competitive local exchange carriers. Likewise, Section
8 271 of the Act applies to BOCs and not CLECs. Mr. Hunsucker's claim distorts
9 the obvious point of my testimony and ignores this important distinction between
10 ILECs/BOCs and CLECs.

11 **Q. ARE CLECS HOPING TO UNDERMINE THE JOINT APPLICANTS'**
12 **ABILITY TO COMPETE BY PROPOSING CONDITIONS IN**
13 **CONJUNCTION WITH APPROVAL OF THE PROPOSED**
14 **TRANSACTION?**

15 A. No. Mr. Hunsucker's claim makes no sense. The primary thrust of the Joint
16 CLECs' proposed conditions is to ensure that the "existing interconnection
17 agreements, commission-approved processes and other accepted [Qwest]
18 practices" referred to by Mr. Hunsucker are continued if the proposed transaction
19 is approved, and not materially changed during the time period at which the

1 likelihood of merger-related harm is at its highest – the time it takes CenturyLink
2 and Qwest to complete post-merger integration.¹⁶³

3 For instance, Joint CLEC Condition #8 would allow requesting carriers to extend
4 existing interconnection agreements (including evergreen ICAs) for at least the
5 Defined Time Period or the date of expiration, whichever is later.¹⁶⁴ These ICAs
6 have defined their wholesale relationship for many years (some for about a
7 decade) and have been updated over the years to accommodate changes in laws.
8 They contain approved processes and accepted practices, and parties are familiar
9 with them.

10 Despite these facts, Mr. Hunsucker claims that this condition would “undermine
11 CenturyLink’s ability to compete fairly and may not be the terms the CLECs
12 would obtain in the negotiation and arbitration process...”¹⁶⁵ CLECs cannot
13 achieve “competitive advantages” or impair CenturyLink’s ability to compete
14 fairly by extending the same ICAs because the extension simply maintains what
15 Qwest provides to CLECs today. What’s more, Mr. Hunsucker’s reference to
16 making changes to these accepted processes during the negotiation and arbitration
17 process in order for CenturyLink to “compete fairly” is further evidence that the
18 Merged Company intends to attempt to materially change the existing terms and

¹⁶³ See Exhibit Joint CLECs 2 (Gates Direct) at p. 32, lines 10-12, stating that the Joint Applicants expect to achieve estimated synergy savings over a three to five year period.

¹⁶⁴ Exhibit Joint CLECs 2.8 at p. 5.

¹⁶⁵ Hunsucker Rebuttal at p. 16, lines 19-21.

1 conditions of ICAs post-merger to the detriment of CLECs (particularly when
2 Qwest has been able to compete fairly under the existing ICAs for years).

3 Another example is Joint CLEC proposed condition #17, which requires the
4 Merged Company to maintain the Qwest Change Management Process (“CMP”)
5 after the Closing Date, utilizing the terms and conditions set forth in the CMP
6 Document.¹⁶⁶ The Change Management Process was established during the 271
7 review process and the CMP Document contains accepted practices. No
8 competitive advantages will be conferred upon CLECs if this condition is adopted
9 because it ensures that the status quo is maintained. Indeed, many CLECs have
10 pointed out over the years that that the existing Qwest CMP process enables
11 Qwest to make changes over the objections of CLECs. There is no legitimate
12 basis for a claim that continuing a process that already favors the ILEC will
13 hamper CenturyLink’s ability to compete in the future. While CenturyLink may
14 not think the Qwest CMP is one-sided enough for its liking, that is not a
15 reasonable basis to eliminate it.

16 **Q. WHAT ARE CLECS HOPING TO ACHIEVE WITH THEIR PROPOSED**
17 **CONDITIONS?**

18 A. The Joint CLECs’ proposed conditions have been carefully and narrowly crafted
19 to address the specific harms raised by the proposed transaction. The overall
20 objective of the conditions is to ensure that the proposed transaction does not

¹⁶⁶ Exhibit Joint CLECs 2.8 at p. 8.

1 harm competitors and competition, and ultimately serves the public interest. More
2 specifically, however, these conditions are intended to mitigate the harm that is
3 likely to happen (and has occurred elsewhere) if the proposed transaction is
4 approved as filed, primarily by providing much-needed certainty that CLECs need
5 to continue to operate their businesses and make prudent decisions. These
6 conditions also attempt to ensure that the Merged Company does not use its
7 overwhelming size or resources as the dominant incumbent service provider to the
8 detriment of competitors and the public interest.

9 ***D. The “Defined Time Period” is merger-specific and is an important***
10 ***component of offsetting merger-related harm in some conditions.***

11 **Q. WHAT IS THE “DEFINED TIME PERIOD”?**

12 A. I discussed the “Defined Time Period” at pages 115-117 of my Direct Testimony.
13 This term is defined in the Joint CLEC conditions list, attached to my Direct
14 Testimony as Exhibit Joint CLECs 2.8 as follows:

15 “Defined Time Period,” when used in this list of conditions, refers to a
16 time period of at least 5-7 years after the Closing Date or, alternatively, a
17 time period that is a minimum of 42 months (*i.e.*, 3.5 years) and continues
18 thereafter until the Applicants are granted Section 10 forbearance from the
19 condition. With respect to agreements, the Defined Time Period applies
20 whether or not the initial or current term of an agreement has expired
21 (“evergreen” status).”

22 **Q. IN REFERRING TO THE “DEFINED TIME PERIOD,” MR.**
23 **HUNSUCKER STATES THAT THE “THE CLECS ONCE AGAIN ARGUE**
24 **THAT CERTAIN MERGER CONDITIONS SHOULD LAST AN**

1 **UNPRECEDENTED SEVEN YEARS.”¹⁶⁷ IS THIS A FAIR DESCRIPTION**
2 **OF THE DEFINED TIME PERIOD?**

3 A. No. Mr. Hunsucker ignores relevant portions of the definition of this term (shown
4 above). The definition speaks for itself, but Mr. Hunsucker fails to mention that
5 the Defined Time Period would be 42 months (or 3.5 years) under certain
6 circumstances, which is the same amount of time the AT&T/BellSouth FCC
7 merger conditions applied.¹⁶⁸ He also fails to mention that the definition of
8 Defined Time Period is flexible in that it is designed to provide protections from
9 merger-related harm (based on the Joint Applicants’ own time estimates), while
10 also allowing the Merged Company to terminate the merger conditions subject to
11 the Defined Time Period sooner by demonstrating that the integration effort is
12 running smoothly. This condition, therefore, strikes a balance between the desire
13 of the Joint Applicants to have the proposed transaction approved on an expedited
14 basis (and in the absence of any useful facts about the Merged Company’s
15 integration plans) while providing a certain degree of protection for CLECs and
16 their customers in relation to certain time-sensitive conditions.

¹⁶⁷ Hunsucker Rebuttal at p. 37, lines 8-9. *See also*, Hunsucker Rebuttal at p. 18, lines 18-19 (“The CLECs’ Defined Time Period of up to seven years under which they argue that certain merger conditions should last, is unreasonable and unprecedented.”)

¹⁶⁸ Gates Direct at pp. 118-120.

1 ***E. Joint Applicants' criticisms of the Joint CLEC proposed conditions***
2 ***should be rejected and the conditions adopted.***

3 **Q. HAVE THE JOINT APPLICANTS SUMMARIZED THEIR POSITION**
4 **WITH RESPECT TO EACH OF THE JOINT CLECS' PROPOSED**
5 **CONDITIONS?**

6 A. Yes. In Minnesota, the Joint Applicants provided Position Statements for each
7 condition in response to discovery by the Minnesota Department of Commerce
8 (DOC). Joint CLECs, in turn, responded with Position Statements of their own.
9 These Position Statements appear, in order of the Joint CLEC conditions listed in
10 Exhibit Joint CLECs 2.8, in Exhibit Joint CLECs 2SR.1 to this Surrebuttal
11 Testimony. By asking each party to summarize their positions, the Minnesota
12 DOC has assisted the parties in creating an issues list, in Exhibit Joint CLECs
13 2SR.1, for the issues raised by Joint CLECs through their list of recommended
14 conditions. I believe the issues list that was developed in Minnesota is also
15 informative for Utah, and have therefore, submitted it as Exhibit Joint CLECs
16 2SR.1. Because the parties have referred to the Joint CLEC conditions
17 throughout the testimony by the number assigned in Exhibit Joint CLECs 2.8, the
18 Issues Matrix is organized in the same manner, for ease of reference to the
19 corresponding condition.

20 **Q. JOINT APPLICANTS STATE THAT A NUMBER OF JOINT CLECS'**
21 **PROPOSED CONDITIONS ARE NOT NECESSARY BECAUSE**

1 **CENTURYLINK HAS NO LEGACY ILEC TERRITORIES IN UTAH.¹⁶⁹**

2 **PLEASE RESPOND.**

3 A. Both CenturyLink and the Joint CLECs are participating in proceedings like this
4 one in multiple states in Qwest territory. Using the same recommended
5 conditions list for the Joint CLECs across these states helps avoid confusion and
6 offers consistency when addressing these issues, which introduces at least some
7 efficiencies. For example, the Joint Applicants do not have to compare lists state-
8 to-state for differences and modify all of their responses accordingly. Also, there
9 is no downside to including conditions that apply to legacy CenturyLink ILEC
10 territories in the conditions adopted in Arizona because they will not require the
11 Merged Company to do anything.

12 **Q. DIVISION OF PUBLIC UTILITIES (“DPU”) WITNESS COLEMAN**
13 **ATTACHES TO HIS TESTIMONY A JOINT MOTION FOR APPROVAL**
14 **OF SETTLEMENT BETWEEN QWEST/CENTURYLINK AND CERTAIN**
15 **INTERVENERS FROM IOWA DOCKET SPU-2010-0006 AND STATES,**
16 **“THE DIVISION FEELS THAT THIS AGREEMENT...PROVIDES A**
17 **SOLID FOUNDATION THAT THE COMMISSION CAN WORK FROM**
18 **TO BEGIN CRAFTING SIMILAR CONDITIONS FOR UTAH.”¹⁷⁰ WHAT**
19 **IS YOUR RESPONSE?**

¹⁶⁹ See, Hunsucker Rebuttal at p. 15, lines 17-22; p. 26, lines 14-19; p. 31, lines 4-10. See also, Brigham Rebuttal at pp. 10, 12, and 22-23.

¹⁷⁰ Coleman Rebuttal at p. 8, lines 169-178.

1 A. To the extent Mr. Coleman, by using the term “foundation” suggests that the Iowa
2 settlement may serve as one starting point for broader settlement discussions, that
3 may be true. To the extent that there is a suggestion that the Iowa settlement may
4 be used in evidence or that an agreement similar to the Iowa agreement is
5 sufficient to support a finding that the proposed transaction is in the public
6 interest in Utah, however, I disagree. Indeed, it appears that actions by the Joint
7 Applicants in advocating use of the Iowa settlement – contrary to the agreement’s
8 own terms – may have led Mr. Coleman to believe that those conditions may be
9 used for this purpose, when the agreement has express provisions to the
10 contrary.¹⁷¹ Instead, the parties should be working from the proposed conditions
11 that are in evidence in this case as Exhibit Joint CLECs 2.8. Also, Exhibit Joint
12 CLECs 2SR.1 to my surrebuttal testimony is an Issues Matrix that summarizes
13 Joint Applicants’ Position Statements (directly quoted from Joint Applicants’
14 public discovery responses in Minnesota) and Joint CLECs’ Position Statements
15 for each issue presented by the Joint CLECs’ list of recommended conditions
16 (Exhibit Joint CLECs 2.8) for resolution in this proceeding.

17 **Q. DOES THE IOWA SETTLEMENT RESOLVE THE JOINT CLECS**
18 **CONCERNS THAT ARE DISCUSSED IN YOUR TESTIMONY?**

¹⁷¹ As explained in PAETEC’s Motion to Enforce Settlement in Iowa Docket No. SPU-2010-0006, the Joint Applicants erroneously reported to the FCC that “[t]he Iowa settlement resolved all of the CLEC intervenors’ concerns...” According to PAETEC’s motion, the Joint Applicants’ misleading statement to the FCC violates the express terms of the Iowa Agreement which precludes a party from using the Iowa settlement as evidence of any other party’s position. PAETEC’s Motion to Enforce Settlement, Iowa Docket No. SPU-2010-0006, October 1, 2010.

1 A. No, absolutely not. In fact, the Iowa settlement states that it was specifically
2 developed to resolve issues in the Iowa docket and that “[t]he parties agree that
3 the schedule, the governing law, and the market conditions in Iowa are
4 unique.”¹⁷² It was these unique characteristics in Iowa that left the CLECs in that
5 state with little choice but to access a settlement that does not address, or
6 addresses inadequately, the numerous problems that must be addressed in order
7 for the proposed transaction to be consistent with the public interest. For
8 example, the Iowa settlement does not require that the Merged Company provide
9 at least the same level of wholesale service quality as legacy Qwest or subject the
10 Merged Company to remedy payments for merger-related service quality
11 degradation (Joint CLECs’ proposed condition 4 and subparts), require that the
12 Merged Company provide CLECs with conditioned copper loops in compliance
13 with applicable ICAs and law (Joint CLECs’ proposed condition 27), or preclude
14 the Merged Company from seeking to recover transaction-related costs from
15 CLECs (Joint CLECs’ proposed condition 2).

16 **Q. DOES THE IOWA SETTLEMENT REPRESENT THE CONCERNS**
17 **RAISED BY ALL THE CLECS IN UTAH?**

18 A. No. Of the CLECs in this proceeding, only PAETEC was involved in Iowa. So
19 as noted above, the settlement was unique to the circumstances and law in Iowa,

¹⁷² Coleman Rebuttal, Attachment 1 at p. 1.

1 and it also was not considered by other CLECs impacted by the proposed
2 transaction.

3 **1. Conditions 4 and 11**

4 **Q. IN REFERENCE TO CONDITION 4(A), WHICH ADDRESSES QWEST**
5 **PERFORMANCE ASSURANCE PLANS (“PAPS”) AND PERFORMANCE**
6 **INDICATORS (“PIDS”), MR. WILLIAMS CLAIMS THAT YOU**
7 **PROVIDE “NO EVIDENCE WHATSOEVER TO SUPPORT” YOUR**
8 **CLAIM THAT QWEST’S PAPS AND PIDS ARE ESSENTIAL TO**
9 **ENSURE THAT LOCAL MARKETS IN QWEST’S REGION REMAIN**
10 **OPEN TO COMPETITION.¹⁷³ IS HE CORRECT?**

11 A. No. My testimony addressing PAPS and PIDS provided very detailed support for
12 their importance to keeping markets open to competition. (see Joint CLECs
13 Exhibit 2 (Gates Direct) at pages 46-48). Additionally, Mr. Denney of Integra
14 addressed these issues at pages 6-14 of his Direct Testimony (Exhibit Integra 1).
15 I also provided Exhibit Joint CLECs 2.2, which provided a detailed description
16 (with dozens of cites to authority) of the Qwest 271 review process that developed
17 and tested the PAPS and PIDS and their importance to ensuring that local markets
18 remain open to competition. Rather than rebut the facts provided in my direct
19 testimony, Mr. Williams simply ignores them. As further support regarding the

¹⁷³ Williams Rebuttal at p. 12, line 16.

1 importance of the PAPs and PIDs, the Colorado Commission, when approving the
2 PAP in its state, summed up the importance and significance of the PAP, stating:

3 We regard the CPAP, or Colorado Performance Assurance Plan, *as*
4 *the single most important innovation of this § 271 process*. On a
5 *going-forward basis*, the CPAP provides meaningful incentives for
6 Qwest to meet its wholesale unbundling obligations, compensates
7 CLECs for harm suffered, and provides flexibility to adapt to
8 changing market conditions.¹⁷⁴

9 The Colorado Commission said that "the CPAP is the *most vital element* in
10 Qwest's application on a *going-forward basis*" and that "the regulatory regime it
11 established will remain *a crucial legacy* of the § 271 process."¹⁷⁵ Additionally,
12 Liberty Consulting has said:

13 [T]he PAP incentives *continue to be important* in helping ensure
14 that Qwest's performance level does not deteriorate, because
15 Qwest's wholesale services *remain critical* for the CLECs still
16 relying on them. Recent *experiences in Hawaii and northern*
17 *New England demonstrate the severe impact on competitors*
18 *when an incumbent local company fails to provide adequate*
19 *wholesale performance, despite the best intentions and*
20 *preparations*. The circumstances of those cases are very different
21 from what the CLECs face in Qwest's operating territory.
22 However, they illustrate conditions that can arise in extreme cases
23 without adequate protections. The Qwest PAPs help ensure that
24 the correct incentives are in place to prevent such conditions from
25 occurring.¹⁷⁶

¹⁷⁴ Evaluation of the Colorado Public Utilities Commission, filed in *In the Matter of Application by Qwest Communications International, Inc., for Provision Of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota*, WC Docket No. 02 - 148, p. 3 (emphasis added).

¹⁷⁵ *Id.* p. 54 (emphasis added).

¹⁷⁶ Liberty Consulting Analysis of Qwest's Performance Assurance Plans Final Report, Prepared for Regional Oversight Committee (June 30, 2009) ["Liberty June 2009 Final Report"], p. 4, available at <http://www.puc.idaho.gov/internet/cases/tele/QWE/QWET0804/staff/20090817LIBERTY%20FINAL%20REPORT.PDF> (emphasis added; footnote omitted).

1 Although Liberty Consulting said the circumstances of Hawaii and northern New
2 England were “very different”¹⁷⁷ in June of 2009 when Liberty Consulting wrote
3 its report, those circumstances have changed in the relatively short time since
4 then. Today, Qwest’s operating territory is subject to similar circumstances in
5 which a merger, if approved, will also prompt system consolidation and company
6 integration. The PIDs and PAP are even more essential now than before.

7 **Q. MR. WILLIAMS CLAIMS THAT YOU QUOTE “AN FCC STATEMENT**
8 **OUT OF CONTEXT” TO SUPPORT YOUR CLAIM THAT PAPS AND**
9 **PIDS ARE ESSENTIAL.¹⁷⁸ IS THIS CRITICISM WARRANTED?**

10 A. No. At footnote 4 of Mr. Williams’ Rebuttal Testimony, he claims that I
11 misquoted the FCC’s *Qwest 9 State 271 Order*,¹⁷⁹ Mr. Williams states:

12 Mr. Gates’ reference to the FCC statement is not correct. He refers
13 to the *Qwest 9 State 271 Order*, at paragraph 440. However, the
14 statement he discusses is actually at paragraph 453. This is
15 important, as I point out, because that paragraph makes clear that a
16 performance assurance plan is not a requirement for Section 271
17 approval or compliance.¹⁸⁰

18 Mr. Williams is wrong. The exact quote from page 47 of my Direct Testimony
19 that I attributed to paragraph 440 of the *Qwest 9 State 271 Order* states:

¹⁷⁷ Liberty June 2009 Final Report, p. 4.

¹⁷⁸ Williams Rebuttal at p. 12, line 17 and footnote 4.

¹⁷⁹ *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, Memorandum Opinion and Order, WC Docket No. 02-314, FCC 02-332, Released December 23, 2002 (“*Qwest 9 State 271 Order*”).

¹⁸⁰ Williams Rebuttal at pp. 12-13, footnote 4.

1 As set forth below, we find that the performance assurance plans
2 (PAP) that will be in place...provide assurance that the local
3 market will remain open after Qwest receives section 271
4 authorization in the nine application states...and are likely to
5 provide incentives that are sufficient to foster post-entry checklist
6 compliance.

7 To prove that paragraph 440 of the *Qwest 9 State 271 Order* contains this quote,
8 I have attached the entire paragraph 440 to my Rebuttal Testimony as Exhibit
9 Joint CLECs 2SR.3. And to prove that paragraph 453 does not contain this
10 language as Mr. Williams claims, I have also included the entire paragraph 453
11 from the *Qwest 9 State 271 Order* in Exhibit Joint CLECs 2SR.3 While on the
12 surface, it may appear that Mr. Williams is simply correcting what he sees as an
13 error in a footnote, his observation that the purported error is
14 “important...because that paragraph makes clear that a performance assurance
15 plan is not a requirement for Section 271 approval or compliance” appears to
16 assign intent to the purported error. That is incorrect. There was no error to
17 begin with, and Exhibit Joint CLECs 2SR.3 confirms that the order says exactly
18 what I said in my Direct Testimony.

19 **Q. MR. WILLIAMS SUGGESTS THAT PAPS AND PIDS ARE NO LONGER**
20 **ESSENTIAL BECAUSE “THE MARKET HAS NOT ONLY REMAINED**
21 **OPEN, BUT THAT IT IS ROBUSTLY OPEN, AND THAT IT WILL**

1 **CONTINUE TO BE SO, WITH OR WITHOUT A PAP.”¹⁸¹ IS THERE**
2 **ANY BASIS FOR THIS STATEMENT?**

3 A. No. Mr. Williams asserts that the wholesale market is robustly open to
4 competition.¹⁸² However, this assertion was rejected by the FCC as recently as
5 about four months ago.

6 **Q. PLEASE ELABORATE.**

7 A. In June 2010, the FCC denied Qwest’s petition for forbearance in the Phoenix
8 Arizona Metropolitan Statistical Area (“MSA”). In doing so, the FCC said:

9 First, the Commission has long recognized that a vertically
10 integrated firm with market power in one market—here upstream
11 wholesale markets where, as discussed below, Qwest remains
12 dominant—may have the incentive and ability to discriminate
13 against rivals in downstream retail markets or raise rivals’ costs.
14 Second, because Qwest was the sole provider of wholesale
15 facilities and services, there is no reason to expect it to offer such
16 services at “competitive” rates. Rather, assuming that Qwest is
17 profit-maximizing, we would expect it to exploit its monopoly
18 position as a wholesaler and charge supracompetitive rates,
19 especially given that (absent regulation) Qwest may have the
20 incentive to foreclose competitors from the market altogether.
21 Moreover, there is little evidence, either in the record or of which
22 we otherwise are aware, that the BOCs or incumbent LECs have
23 voluntarily offered wholesale services at competitive prices once
24 regulatory requirements governing wholesale prices were
25 eliminated. For example, other than Cox, McLeodUSA was the
26 only other competitor of significant size cited by the Commission
27 in the *Qwest Omaha Forbearance Order*. The record indicates
28 that subsequent to the *Qwest Omaha Forbearance Order*, Qwest,
29 with one exception, was not spurred to offer McLeodUSA any
30 wholesale alternatives to UNEs that were not already offered prior
31 to the grant of forbearance. Moreover, the record indicates that

¹⁸¹ Williams Rebuttal at p. 14, lines 4-5.

¹⁸² Williams Rebuttal at p. 27, lines 17-18 and p. 14, lines 3-5 and p. 15, lines 6-7.

1 McLeodUSA has removed most of its employees from the Omaha
2 marketplace, has limited its operations primarily to serving its
3 existing customer base, and has ceased sales of residential and
4 nearly all business services in Omaha. This suggests that
5 McLeodUSA likewise no longer should be considered a significant
6 competitor in the Omaha marketplace. We also note record
7 evidence that Integra, which had been contemplating entry into the
8 Omaha market, abandoned its plans to do so after the Commission
9 issued the *Qwest Omaha Forbearance Order*.¹⁸³

10 The FCC specifically concluded that Qwest had market power in the upstream
11 wholesale market, and this market power provides Qwest the incentive and ability
12 to discriminate against CLECs in downstream retail markets. The Qwest PAPs
13 and PIDs are *essential* because they attempt to ensure that Qwest does not use its
14 market power over wholesale inputs to discriminate against CLECs in relation to
15 Qwest's own retail operations.

16 **Q. MR. BRIGHAM REFERS TO “NUMEROUS COMPETITIVE FIBER**
17 **NETWORKS TODAY” IN THE WASATCH FRONT AREA TO SUPPORT**
18 **JOINT APPLICANTS’ CLAIM THAT THE WHOLESALE MARKET IS**
19 **ROBUSTLY OPEN.¹⁸⁴ SHOULD THIS CLAIM BE GIVEN ANY**
20 **WEIGHT?**

21 A. No. Qwest recently made similar claims to the FCC in pursuit of forbearance of
22 dominant carrier regulations in the Phoenix Metropolitan Statistical Area (MSA).
23 In denying Qwest's petition for forbearance, the FCC said: “the record reveals

¹⁸³ *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113, released June 22, 2010 (“Qwest Phoenix Forbearance Order”), ¶ 34.

¹⁸⁴ Brigham Rebuttal at p. 27. (emphasis in original).

1 that no carrier besides Qwest provides meaningful wholesale services throughout
2 the Phoenix marketplace, and that competitors offering business services largely
3 must rely on inputs purchased from Qwest itself to provide service.”¹⁸⁵ There is
4 no reason to believe that there are any more wholesale options for CLECs in Utah
5 markets (i.e., areas where Qwest has not pursued forbearance) than in Phoenix,
6 Arizona (where Qwest has pursued forbearance and had its petition rejected due,
7 in part, to lack of alternatives for the wholesale bottleneck elements Qwest
8 provides to CLECs.

9 In addition, Qwest recently made a similar claim in Minnesota about the
10 wholesale market being robustly open because of competitive fiber networks in
11 the Minneapolis-St. Paul area.¹⁸⁶ This claim just one month after Qwest withdrew
12 its petitions for forbearance from dominant carrier regulations in four MSAs,
13 including the Minneapolis-St. Paul MSA. Qwest filed the petitions in June 2007
14 and the FCC denied those petitions. Qwest appealed the FCC Order denying its
15 forbearance petitions and the case was remanded to the FCC.¹⁸⁷ The fact that
16 Qwest withdrew its forbearance petition for the Minneapolis-St. Paul MSA casts
17 serious doubt on Joint Applicants’ claims that the wholesale market is robustly
18 open, because if the facts supported this claim it is logical to assume that Qwest

¹⁸⁵ *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113, June 22, 2010, ¶ 2.

¹⁸⁶ Rebuttal Testimony of Robert Brigham, Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010, at p. 27.

¹⁸⁷ FCC Regulatory Monitoring Bulletin, August 23, 2010, available at: <http://www.tminc.com/uploads/FC20100823.pdf>

1 would have continued to pursue forbearance in the Minneapolis-St. Paul MSA.
2 Qwest's recent claim about the wholesale market in Minnesota being robustly
3 open was also recently rejected by the Minnesota PUC:

4 The evidence presented to the MNPUC as part of its investigation
5 demonstrates that Competitive Local Exchange Carriers
6 ("CLECs") rely on Qwest's wholesale facilities to enable them to
7 offer telecommunications customers effective competitive
8 alternatives to Qwest's services, and that for a large portion of the
9 market it is infeasible for the CLECs to duplicate Qwest's facilities
10 ... facilities constructed by Qwest over decades under the
11 regulatory protection of the MNPUC.¹⁸⁸

12 Likewise, in spite of Qwest's claims in Docket No. P-421/CI-05-1996 that CLECs
13 have alternatives to Qwest in the form of "competitive fiber networks," the
14 Commission adopted the Administrative Law Judges' finding that "the CLECs'
15 provision of service to medium-sized business customers is highly depending on
16 the use of [Qwest's] §251 UNEs and that there are few realistic alternatives to the
17 use of Qwest facilities for this customer type."¹⁸⁹

18 **Q. MS. STEWART STATES THAT CONDITION 11 IS A "BROAD BRUSH**
19 **RESTRICTION ON INSTALLATION INTERVALS WITHOUT ANY**

¹⁸⁸ *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Minneapolis/St. Paul Metropolitan Statistical Area*, MPUC Docket No. P-421/CI-07-661, Ex Parte Comments of the Minnesota Public Utilities Commission (February 8, 2008), at pp. 2-3.

¹⁸⁹ *In the Matter of a Potential Proceeding to Investigate the Wholesale Rates Charged by Qwest Corporation*, MPUC Docket No. P-421/C-05-1996, OAH Docket No. 12-2500-17246-2, Findings of Fact, Conclusions and Recommendation (October 14, 2009), at p. 6.

1 **FACTUAL SUPPORT.”¹⁹⁰ IS THIS A FAIR CHARACTERIZATION OF**
2 **CONDITION 11?**

3 A. No. First, the condition applies to ICAs that are either silent as to an interval or
4 refer to Qwest’s website or Standard Interval Guide (“SIG”), and second, it states
5 that these intervals will be no longer than the interval in Qwest’s SIG as of the
6 Merger Filing Date. Therefore, it is targeted to apply to intervals that the Merged
7 Company may attempt to lengthen unilaterally, and it simply ensures that the
8 Merged Company will not increase these intervals from those in Qwest’s SIG at
9 the time the Joint Applicants announced the proposed transaction. Qwest found
10 these intervals acceptable prior to the proposed transaction (as evidenced by the
11 fact that they were in Qwest’s SIG on the Merger Filing Date¹⁹¹), and any attempt
12 by the Merged Company to increase these intervals after the announcement of the
13 merger would be a harm to CLECs resulting directly from the merger.

14 **Q. HAVE YOU PROVIDED FACTUAL SUPPORT FOR CONDITION 11?**

15 A. Yes. Please refer to pages 134-136 of my Direct Testimony, where I explained
16 the importance of service intervals to competition, as well as the fact that Qwest
17 has in the past attempted to leave service intervals out of ICAs so that they can be
18 lengthened unilaterally.

¹⁹⁰ Stewart Rebuttal at p. 11, lines 21-22.

¹⁹¹ “Merger Filing Date” is defined in Exhibit Joint CLECs 2.8, “refers to May 10, 2010, which is the date on which Qwest and CenturyLink made their merger filing with the FCC.”

1 **Q. MS. STEWART STATES THAT THE TERM “FUNCTIONALITY” IS**
2 **NOT CLEARLY DEFINED IN CONDITION 11.¹⁹² IS THE MEANING OF**
3 **FUNCTIONALITY AS USED IN CONDITION 11 UNCLEAR?**

4 A. No. Ms. Stewart states that because there is no specific definition of the term
5 “functionality,” “Qwest would not even know which wholesale products or
6 services this installation interval limitation is intended to apply.”¹⁹³ She is
7 making much ado about nothing. Condition 11 states:

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

13 Obviously, the products, services or functionalities to which Condition 11 applies
14 are those that are currently in Qwest’s SIG as of the Merger Filing Date. For
15 example, Qwest’s SIG includes: under collocation, intervals for “quotations” and
16 “feasibility;” and, under Multi-Tenant Environment (MTE), intervals to
17 “determine who owns the cable at the MTE site” and “inventory of CLEC
18 cable.”¹⁹⁴ The merged company should not be able to avoid the terms of
19 Condition 11 by claiming that such items are not products or services. The word
20 “functionality” ensures that, whether the merged company calls them products or
21 services, or some function related to products and services, items that are included

¹⁹² Stewart Rebuttal at pp. 11-12.

¹⁹³ Stewart Rebuttal at p. 12, lines 1-2.

¹⁹⁴ Qwest’s SIG is available at: <http://www.qwest.com/wholesale/guides/sig/>

1 in Qwest's SIG remain covered by Condition 11. Since they are in Qwest's SIG,
2 Qwest is aware of what is included.

3 **Q. MR. HUNSUCKER STATES THAT "CLEC PROVISIONING**
4 **INTERVALS REFLECT RETAIL PROVISIONING INTERVALS FOR**
5 **THE SAME OR LIKE SERVICES BECAUSE FEDERAL LAW**
6 **REQUIRES A CARRIER TO TREAT ALL CUSTOMERS AT PARITY."¹⁹⁵**
7 **DOES HIS TESTIMONY VALIDATE THE CONCERN UNDERLYING**
8 **CONDITION 11?**

9 A. Yes. Nondiscrimination is an important requirement of Sections 251 and 271 of
10 the Act. The nondiscrimination requirement, however, does not mean, as Mr.
11 Hunsucker's testimony suggests, that CenturyLink may lengthen a wholesale
12 interval post-closing by lengthening its retail interval and then arguing the
13 wholesale interval must be the same.

14 **Q. ARE THERE REASONS WHY WHOLESALE INTERVALS SHOULD**
15 **NOT BE LENGTHENED TO MATCH A RETAIL INTERVAL?**

16 A. Yes. An interval for a wholesale customer (*e.g.*, a CLEC) establishes the due date
17 upon which Qwest will deliver the service to the CLEC. For unbundled network
18 element ("UNE") loops, there is still more work that the CLEC needs to do after
19 Qwest delivers the UNE loop to make service work for the CLEC's end user

¹⁹⁵ Hunsucker Rebuttal at p. 39, lines 1-2.

1 customer.¹⁹⁶ Accordingly, in these instances, the CLEC needs to receive the UNE
2 loop in sufficient time to perform the additional work required and still be able to
3 deliver retail services to end user customers in the same time frame as the ILEC.
4 If the ILEC wholesale and retail intervals are the same in these instances, the
5 ILEC would always have an advantage by being able to deliver services to retail
6 end user customers more quickly than its competitors.

7 One example of this is DS1 UNE loops (1-8 lines): Qwest's wholesale interval in
8 the SIG for Utah and other states is 5 days, compared to a 9 day Qwest retail
9 interval. Qwest does not perform the end user retail functions for a wholesale
10 service. Qwest has the full nine days of the interval to prepare for service
11 provisioning on the due date for its End User Customers. CLECs receive the loop
12 from Qwest on Day 5 and then are allowed time to perform the additional work a
13 CLEC needs to do to make the service operate for CLEC's end user customer.

14 **Q. HAVE STATE COMMISSIONS REJECTED QWEST'S PREVIOUS**
15 **ATTEMPTS TO LENGTHEN WHOLESALE INTERVALS BY**
16 **LENGTHENING RETAIL INTERVALS AND THEN ARGUING THAT**
17 **THE WHOLESALE INTERVAL SHOULD BE THE SAME?**

¹⁹⁶ See, e.g., Hrg. Ex. Q-2 (Qwest Albersheim Rebuttal), p. 5, lines 8-11, *In re. Complaint of Eschelon Telecom of Arizona, Inc. Against Qwest Corporation*, ACC Docket No. T-01051B-06-0257, T-03406A-06-0257 (Jan. 30, 2007) (Ms. Albersheim testified that the Arizona Commission has found, given that the interval for retail customers is nine days, a five-day interval for CLEC DS1 capable loop orders is appropriate).

1 A. Yes. This argument was rejected during the 271 proceedings. When Qwest
2 previously tried to move from a 5-day to a 9-day loop interval by simultaneously
3 lengthening the interval for its retail customers, the Minnesota Commission
4 rejected Qwest's argument and found that the 5-day loop interval allowed
5 competitors a meaningful opportunity to compete.¹⁹⁷ The Minnesota Commission
6 found that Qwest cannot make intervals "unreasonable by lengthening the
7 intervals for provision of retail service."¹⁹⁸

8 **Q. HAS ANY OTHER STATE COMMISSION RECOGNIZED THE**
9 **POTENTIALLY HARMFUL EFFECTS OF QWEST LENGTHENING**
10 **PROVISIONING INTERVALS?**

11 A. Yes. The Washington Commission recognized this in the context of its review of
12 Qwest's request for Section 271 authorization. In that case, Qwest proposed an
13 interval for DS1 loops that was longer than the interval that the Washington
14 Commission had established when it approved US WEST's merger with Qwest,
15 and the Washington Commission directed that the proposed interval be reduced to
16 that which the Commission had previously approved.¹⁹⁹ In another proceeding,

¹⁹⁷ Findings of Fact, Conclusions of Law and Recommendations, *In the Matter of a Commission Investigation into Qwest's Compliance with Section 271(c)(2)(B) of the Telecommunications Act of 1996; Checklist Items 1,2,4,5,6,11,13, and 14*, Docket No. P-421/CI-01-1371 (Sept. 16, 2003) ("MN ALJ 271 Order"), ¶125.

¹⁹⁸ Findings of Fact, Conclusions of Law and Recommendations, *In the Matter of a Commission Investigation into Qwest's Compliance with Section 271(c)(2)(B) of the Telecommunications Act of 1996; Checklist Items 1,2,4,5,6,11,13, and 14*, Docket No. P-421/CI-01-1371 (Sept. 16, 2003) ("MN ALJ 271 Order") at ¶125.

¹⁹⁹ Twentieth Supplemental Order, Initial Order (Workshop Four): Checklist Item No. 4; Emerging Services, General Terms and Conditions, Public Interest, Track A, and Section 272, *In the Matter of the Investigation into US WEST COMMUNICATIONS, INC.'s Compliance with Section 271 of the*

1 the Washington Commission found it appropriate to include an interval in an ICA
2 to protect both ILEC and CLECs “from unnecessary delay and
3 gamesmanship.”²⁰⁰ Condition 11 only applies in situations when the ICA is silent
4 on an interval or refers to Qwest’s website or SIG – *i.e.*, situations when the
5 specific interval is not spelled out in the ICA – and would provide protection from
6 the “unnecessary delay and gamesmanship” discussed by the Washington
7 Commission.

8 **Q. IS CONDITION 11 INDICATIVE OF CLECS “WANT[ING] PRIORITY**
9 **FOR THEIR NEEDS OVER THOSE OF CENTURYLINK’S END USER**
10 **SUBSCRIBERS AND WHOLESALE TARIFF CUSTOMERS”²⁰¹ AS MR.**
11 **HUNSUCKER CLAIMS?**

12 A. No. The opposite is true. If the ILEC wholesale and retail intervals are the same
13 in the instances described above, the ILEC would always have an advantage by
14 being able to deliver services to retail end user customers more quickly than its
15 competitors. As discussed above, in some cases there is work that CLECs need to
16 perform after the wholesale interval in order to deliver their services to end user
17 customers. Condition 11 is not about CLECs wanting priority of their needs, but

Telecommunications Act of 1996 and In the Matter of US WEST COMMUNICATIONS INC.’s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996. Washington Docket Nos. UT-003022 and UT-003040 (November 14, 2001) (“WA 271 Order”), ¶ 125.

²⁰⁰ *In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of Verizon Northwest Inc. with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington Pursuant to 47 U.S.C. Section 252(b) and the Triennial Review Order,* Docket No. UT-043013, Order No. 18, September 22, 2005, at ¶ 114.

²⁰¹ Hunsucker Rebuttal at p. 39, lines 2-4.

1 rather attempting to ensure that the proposed transaction does not harm their
2 meaningful opportunity to compete. When competition is harmed, end user
3 customers and the public interest are harmed.

4 Furthermore, Condition 11 would simply maintain Qwest's current intervals in
5 the SIG post-merger for those ICAs that are silent or reference the Qwest SIG for
6 intervals. In other words, it is a condition that, for intervals, merely maintains the
7 "status quo,"²⁰² and the Joint Applicants have stated (albeit without any
8 commitment) that the status quo will be maintained post-merger. More than that,
9 Mr. Hunsucker has asserted in Minnesota that the company "*cannot change*
10 *existing provisioning intervals* for its separate operating subsidiaries without
11 significant process or systems improvements."²⁰³ Per CenturyLink, the company
12 neither will nor can change intervals, but still CenturyLink refuses to agree to a
13 condition indicating it will not change intervals. There is no rational basis for this
14 position, particularly coming from a company that is before the Commission to
15 gain approval to receive all the claimed benefits of this merger and on an
16 expedited schedule. Agreeing to reasonable conditions would expedite the
17 proceedings considerably. Mr. Hunsucker identifies himself as being in charge of
18 ICA negotiations with CLECs.²⁰⁴ If CenturyLink takes similar positions in

²⁰² See, e.g., Hunsucker Rebuttal at p. 15, line 3.

²⁰³ Rebuttal Testimony of Michael Hunsucker, Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010, at p. 46, lines 16-17.

²⁰⁴ Regarding Mr. Hunsucker's claims that maintaining the status quo increases CenturyLink's costs and CLECs' profits, see Section IV(A) of this surrebuttal testimony.

1 negotiations – *e.g.*, not agreeing to do something it otherwise planned to do –
2 CLECs have little hope of resolving issues with CenturyLink by negotiation, and
3 this does not bode well for the future.

4 Condition 11 does not require anything of the Merged Company that the Joint
5 Applicants have not already stated will take place post-merger, but it transforms
6 the Joint Applicants’ paper promises into an enforceable commitment.

7 **2. Condition 13**

8 **Q. CENTURLINK STATES THAT CONDITION 13 REGARDING BOC**
9 **STATUS AND SECTION 271 OBLIGATIONS IS UNNECESSARY**
10 **BECAUSE BOC ISSUES ARE “AN FCC MATTER.”²⁰⁵ DOES THIS**
11 **CLAIM ELIMINATE THE NEED FOR JOINT CLEC PROPOSED**
12 **CONDITION 13?**

13 A. No. Joint CLEC proposed Condition 13 states:

14 13. In the legacy Qwest ILEC territory, the Merged Company shall
15 be classified as a Bell Operating Company (“BOC”), pursuant to
16 Section 3(4)(A)-(B) of the Communications Act and shall be
17 subject to all requirements applicable to BOCs, including but not
18 limited to the “competitive checklist” set forth in Section
19 271(c)(2)(B) and the obligation to ensure there is no backsliding,
20 and the nondiscrimination requirements of Section 272(e) of the
21 Communications Act.

22 Condition 13 simply states that Qwest will continue to be a BOC in the legacy
23 Qwest ILEC territories and subject to existing BOC obligations post-merger. This

²⁰⁵ Ferkin Rebuttal at p. 48, line 9.

1 merger condition is particularly important to the proposed transaction because this
2 is the first time a non-BOC ILEC has attempted to acquire an entire BOC and all
3 the obligations that go along with it. In its Order approving Qwest's 271
4 authority in nine states, the FCC said:

5 Section 271(d)(6) of the Act requires Qwest to continue to satisfy
6 the "conditions required for . . . approval" of its section 271
7 application after the Commission approves its application...²⁰⁶

8 CenturyLink's claims that BOC issues are an "FCC matter" which should be of
9 no concern to state commissions, ignores the long, established history of state
10 commission involvement and interest in Qwest's BOC obligations under the
11 federal Act.

12 As explained in Exhibit Joint CLECs 2.2, the state commissions throughout
13 Qwest's 14-state BOC territory played a crucial role in testing and improving
14 Qwest's OSS and CMP, and determining the extent to which Qwest had met the
15 requirements of the 271 14-point checklist. The FCC stated as follows in the FCC
16 order approving Qwest's 271 authority in Utah:

17 2. Approval of this application, the first one granted for states in
18 the Qwest region, would not have been possible without the
19 extraordinary dedication and creativity displayed by the Colorado
20 Public Utilities Commission ("Colorado Commission"), the Idaho
21 Public Utilities Commission, ("Idaho Commission"), the Iowa
22 Utilities Board ("Iowa Board"), the Montana Public Service
23 Commission ("Montana Commission"), the Nebraska Public
24 Service Commission ("Nebraska Commission"), the North Dakota
25 Public Service Commission ("North Dakota Commission"), the
26 Public Service Commission of Utah ("Utah Commission"), the

²⁰⁶ Qwest 9 State 271 Order at ¶ 497.

1 Washington Utilities and Transportation Commission
2 (“Washington Commission”), and the Wyoming Public Service
3 Commission (“Wyoming Commission”) (collectively “state
4 commissions” or “commissions of the nine application states”).
5 We recognize their outstanding commitment to the section 271
6 process and commend their hard work in bringing the benefits of
7 competition to consumers in their states.
8

9
10 3. The Colorado Commission, Idaho Commission, Iowa Board,
11 Montana Commission, Nebraska Commission, North Dakota
12 Commission, Utah Commission, Washington Commission, and the
13 Wyoming Commission each devoted a significant portion of their
14 resources to this process over a number of years. These states, as
15 well as others in the Qwest region, also undertook unprecedented
16 steps to pool resources and work collaboratively in addressing
17 section 271 issues. In particular, the Regional Oversight
18 Committee (“ROC”), a group of state regulatory commissions in
19 the Qwest region, including all nine states covered by this
20 application, worked together on the design and execution of
21 regional operations support systems (“OSS”) testing. In addition,
22 Idaho, Iowa, Montana, North Dakota, Utah and Wyoming worked
23 with a number of other states in the Multistate Collaborative
24 Process (“MCP”) to address other section 271 issues. Moreover, in
25 a number of instances, regulators in these states have been able to
26 build on the work done by their fellow commissioners in other
27 states to address issues such as pricing, for example, in an efficient
28 manner through individual state proceedings.

29 ***

30 6. We are confident that the hard work of the state commissions in
31 conjunction with Qwest to ensure that the local exchange markets
32 in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota,
33 Utah, Washington and Wyoming are open to competition will
34 benefit consumers by making increased competition in all
35 telecommunications service markets possible in these states. We
36 are also confident that the state commissions, as they address
37 allegations of past violations of the statute and consider any future
38 problems that may develop, will continue to ensure that Qwest
meets its statutory obligations.²⁰⁷

²⁰⁷ *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska,*

1 It is clear from this excerpt that BOC issues extend well beyond “FCC matters.”
2 State commissions have long been involved in BOC matters that impact their
3 respective states, with the explicit appreciation of the FCC. Further, the FCC
4 states that it expects state commissions to continue to ensure that these obligations
5 are met.

6 Regarding the role of state commissions in monitoring Qwest’s continued
7 compliance with Section 271 obligations, the FCC said:

8 Working in concert with the Colorado, Idaho, Iowa, Montana,
9 Nebraska, North Dakota, Utah, Washington, and Wyoming
10 Commissions, we intend to closely monitor Qwest’s post-approval
11 compliance for these states to ensure that Qwest does not “cease []
12 to meet any of the conditions required for [section 271]
13 approval.”²⁰⁸

14 The FCC also said: “We are confident that cooperative state and federal oversight
15 and enforcement can address any backsliding that may arise with respect to
16 Qwest’s entry into these nine states.”²⁰⁹

17 Two things are clear from these FCC statements: (1) Qwest must continue to
18 satisfy the conditions required for 271 approval, and (2) the state commissions

North Dakota, Utah, Washington and Wyoming, Memorandum Opinion and Order, WC Docket No. 02-314, FCC 02-332, December 23, 2002 (“Qwest 9-State 271 Order”), ¶¶ 2-3, 6.

²⁰⁸ *Qwest 9 State 271 Order* at ¶ 498.

²⁰⁹ *Qwest 9 State 271 Order* at ¶ 499. *See also, Id.* at footnote 1598: “We note that in all of the previous applications [for 271 authority] that the Commission has granted to date, the applicant was subject to an enforcement plan administered by the relevant state commission to protect against backsliding after BOC entry into the long-distance market. These mechanisms are generally administered by state commissions and derive from authority the states have under state law or under the federal Act. As such, these mechanisms can serve as critical complements to the Commission’s authority to preserve checklist compliance pursuant to section 271(d)(6).”

1 play an important oversight and enforcement role, in conjunction with the FCC, to
2 address any Qwest backsliding. This is particularly relevant to the proposed
3 transaction because CenturyLink – a non-BOC ILEC which lacks experience with
4 Section 271 obligations – will own and control Qwest²¹⁰ if the proposed
5 transaction is approved.

6 **Q. MR. FERKIN STATES THAT “THE NON-QWEST OPERATIONS ARE**
7 **NOT BOC PROPERTIES” AND “NO NON-BOC PROPERTY HAS BEEN**
8 **CONVERTED INTO A BOC UP TO THIS TIME.”²¹¹ ARE THE CLECS**
9 **PROPOSING TO CHANGE THE BOC STATUS OF ANY OPERATING**
10 **COMPANY?**

11 A. No. Mr. Ferkin mischaracterizes Condition 13 by claiming it would change the
12 BOC status of the Merged Company’s operating companies.²¹² As shown above
13 and in Exhibit Joint CLECs 2.8, Condition #13 begins with the words: “In the
14 legacy Qwest ILEC territory...” This means that the Merged Company would be
15 classified as a BOC only in the legacy Qwest ILEC territory where Qwest is a
16 BOC today, and not in the “non-Qwest operations” or “non-BOC property,” as

²¹⁰ See, e.g., Ferkin Direct at p. 5, lines 1-3 (“At closing, Qwest will become a direct, wholly-owned subsidiary of CenturyLink and all Qwest subsidiaries, including QC, will be indirectly owned and controlled by CenturyLink”)

²¹¹ Ferkin Rebuttal at p. 48, lines 12-14.

²¹² Hunsucker Rebuttal at p. 39, lines 8-10 (“Q. Can the Merged Company be classified as a BOC as the CLECs demand in Condition 13? A. No...”)

1 Mr. Ferkin asserts. As CenturyLink’s own witness has testified, “the legacy
2 Qwest territories will continue to have 271 obligations.”²¹³

3 **3. Condition 15**

4 **Q. THE JOINT APPLICANTS STATE THAT CONDITON 15 REGARDING**
5 **WHOLESALE SUPPORT INFORMATION IS UNNECESSARY**
6 **BECAUSE OF THE EXISTING NOTICE REQUIREMENTS OF CMP**
7 **AND ICAS.²¹⁴ DO THE CMP AND ICAS PROVIDE SUFFICIENT**
8 **PROTECTION FOR CLECS AND THEIR CUSTOMERS REGARDING**
9 **THIS ISSUE?**

10 A. No. As explained in my Direct Testimony, Qwest has in the past made unilateral
11 changes through CMP against the objections of CLECs. Therefore, the existing
12 CMP provisions cited by Joint Applicants could be changed post-merger against
13 the objections of CLECs. Further, the fact that the Joint Applicants have refused
14 to adopt Joint CLEC proposed Condition 17, which requires the Merged
15 Company to maintain Qwest’s CMP using the terms and conditions of the CMP
16 Document, calls into serious question whether the Joint Applicants intend to
17 continue Qwest’s CMP post-merger. Ms. Stewart made a similar claim about
18 CMP and the ICAs with respect to OSS-related conditions, and I address this
19 claim further in my discussion below of Conditions 16, 19, and 20.

²¹³ Supplemental Direct Testimony of Michael Hunsucker in Oregon Docket No. UM 1484, p. 12, lines 18-19 (June 22, 2010). Available at: <http://edocs.puc.state.or.us/efdocs/HTB/um1484htb152954.pdf>

²¹⁴ Stewart Rebuttal at pp. 16-17 and Hunsucker Rebuttal at p. 31.

1 Mr. Hunsucker's claim that Condition 15 would "modify negotiated agreements
2 that are already in place"²¹⁵ is not supported by any actual examples or other
3 evidence. Mr. Hunsucker's testimony is also contrary to the language of
4 Condition 15 itself, which expressly provides that "the information and notice
5 provided shall be consistent with the terms of applicable interconnection
6 agreements." An express condition is needed to address the substantial changes
7 that may occur to escalation information, contact lists, account manager
8 information, etc., due to the restructuring associated with the proposed
9 transaction. When the terms of the ICAs were negotiated, they were intended to
10 address the normal day-to-day changes Qwest may make to this information in the
11 normal course of business; these provisions could not have addressed (or even
12 considered) the magnitude of changes that would take place if Qwest was
13 acquired by a different company and the wholesale operations of Qwest were
14 integrated with the wholesale operations of another company. Undoubtedly, the
15 merger will create many changes in personnel, which makes ready access to up-
16 to-date information particularly important. Problems of the scale and type that
17 occurred with the Hawaiian Telcom and FairPoint transactions, if they occur, will
18 only be compounded if it is not already known whom to contact and how to
19 escalate such issues. Condition 15 is designed to address harm related to the
20 proposed transaction.

²¹⁵ Hunsucker Rebuttal at p. 31, lines 19-20.

1 **4. Conditions 17 and 18**

2 **Q. HAS CENTURYLINK FAIRLY DESCRIBED JOINT CLECS' PROPOSED**
3 **CONDITION 17 RELATING TO CMP AND CONDITION 18 RELATING**
4 **TO WHOLESALE SUPPORT?**

5 A. No. Mr. Hunsucker claims that Joint CLEC Conditions #17 and #18 would
6 prevent the Merged Company from “reduc[ing] its costs through attrition of
7 employees whose functions have been automated or are redundant, and that it
8 must retain some legacy processes rather than determine if the processes can be
9 automated or improved to benefit both the company and the CLECs.”²¹⁶ Mr.
10 Hunsucker refers to these conditions as CLECs attempting to “dictate the number
11 of wholesale employees on the CenturyLink payroll and...dictate certain
12 processes.”²¹⁷ First, Condition #17 simply maintains the Qwest CMP process,
13 using the terms and conditions in the existing CMP Document. The Joint
14 Applicants’ claim that this condition attempts to “dictate certain processes” makes
15 no sense given that this process already exists and that the Joint Applicants have
16 proclaimed their intent to maintain Qwest’s CMP post-merger.²¹⁸

17 **Q. ARE CLECS DICTATING THE NUMBER OF WHOLESALE**
18 **EMPLOYEES ON THE CENTURYLINK PAYROLL UNDER**
19 **CONDITION 18, AS MR. HUNSUCKER CLAIMS?**

²¹⁶ Hunsucker Rebuttal at pp. 39-40.

²¹⁷ Hunsucker Rebuttal at p. 39, lines 17-21.

²¹⁸ Stewart Rebuttal at pp. 8-9.

1 A. No. A fair reading of Condition 18 shows that wholesale volumes or other
2 circumstances warranting employee reductions will dictate the number of
3 CenturyLink/Qwest wholesale employees post-merger – not CLECs. Under
4 Condition 18, the Merged Company has the opportunity to demonstrate to the
5 state commission that conditions warrant further headcount reductions in
6 wholesale operations. It would be the Merged Company and the state
7 commission determining whether such conditions exist under Condition 18, not
8 CLECs.

9 **Q. JOINT APPLICANTS STATE THAT QWEST HAS BEEN REDUCING**
10 **HEADCOUNT AT THE SAME TIME AS IT HAS BEEN INCREASING**
11 **EFFICIENCY AND REDUCING QWEST QPAP PENALTY**
12 **PAYMENTS.²¹⁹ DOES THIS SHOW THAT CONDITIONS 17 AND 18**
13 **ARE UNNECESSARY?**

14 A. No. Qwest’s prior performance is not indicative of how the Merged Company
15 will operate if the proposed transaction is approved as filed. The control of
16 Qwest’s wholesale operations will be taken over by CenturyLink – a company
17 that has a substantially smaller legacy wholesale operations than Qwest (due to
18 CenturyLink primarily serving rural areas in the past), and has no experience with
19 Qwest’s systems, processes or BOC obligations. As I explained in my Direct

²¹⁹ Hunsucker Rebuttal at p. 40, lines 2-5 (“Qwest witness Robert Brigham also notes that Qwest has been reducing its headcount in wholesale operations, even as the company has grown more effective, and as the Qwest penalty payments in Utah on its Performance Assurance Plan (“QPAP”) have declined sharply.”)

1 Testimony (at pages 148-150) and confirmed in Joint Applicants' Rebuttal
2 Testimony,²²⁰ Qwest's headcount, including wholesale headcount, has been
3 decreasing in recent years. There is no evidence that CenturyLink fully
4 understands or appreciates the resources that will be needed in Qwest's legacy
5 territory post-merger to sufficiently handle the significantly larger volumes than it
6 is accustomed to handling – particularly at a time when it is attempting to
7 integrate a company that is double its current size. And Qwest's prior
8 performance was not during a time when Qwest was pursuing merger-related
9 synergy savings through the integration of systems, platforms and personnel.
10 Therefore, Qwest's prior performance is not a reliable indicator concerning the
11 merger-related harms Conditions 17 and 18 are designed to address.

12 **Q. IS THE JOINT APPLICANTS' RELIANCE ON QWEST'S PRIOR QPAP**
13 **PAYMENTS SIMILARLY FLAWED?**

14 A. Yes. The QPAP payments Qwest has made between the years 2004 and 2009²²¹
15 has nothing to do with the proposed transaction, which was announced in April
16 2010. Again, Qwest's wholesale operations will be under the control of
17 CenturyLink if the proposed transaction is approved, and that new management
18 has not had to deal with a BOC's wholesale service quality performance reporting
19 or associated penalty payments. Indeed, CenturyLink has no track record of

²²⁰ See, e.g., Hunsucker Rebuttal at p. 40, lines 2-4 ("Qwest witness Robert Brigham also notes that Qwest has been reducing its headcount in wholesale operations, even as the company has grown more effective...")

²²¹ Williams Rebuttal at p. 15.

1 compliance with and implementation of such wholesale performance assurance
2 provisions. Mr. Hunsucker states that CenturyLink has a CLEC performance
3 assurance plan in just one legacy CenturyLink market.²²² Further, Qwest was not
4 pursuing merger-related synergy savings or integrating the wholesale operations
5 of another company between 2004 and 2009. A more relevant reference point
6 about how a CenturyLink acquisition can impact wholesale service quality is the
7 service quality reports CenturyLink has been providing under the FCC's
8 Embarq/CenturyTel merger conditions. I discussed these data at pages 85-87 of
9 my Direct Testimony (Highly Confidential version).

10 **Q. MR. HUNSUCKER CLAIMS THAT CONDITIONS 17 AND 18 ARE AN**
11 **ATTEMPT TO MAKE IT MORE DIFFICULT FOR THE MERGED**
12 **COMPANY TO COMPETE.²²³ WHAT IS YOUR RESPONSE?**

13 A. Mr. Hunsucker's logic is flawed, that is unless he means that it will be more
14 difficult for CenturyLink to compete if CenturyLink cannot create synergies for
15 itself at the expense of its CLEC competitors. Certainly, it would be easier for
16 CenturyLink to compete if it could disadvantage its competitors by making
17 changes to its systems, process and products that have a "major effect on existing
18 CLEC operating procedures"²²⁴ without using the CMP procedures continued by

²²² Hunsucker Rebuttal at p. 6, lines 19-21.

²²³ Hunsucker Rebuttal at pp. 39-40.

²²⁴ Exhibit Integra 2.25, CMP Document, §5.45.

1 Condition 17 and if it could “eliminat[e] . . .duplicate functions”²²⁵ with no
2 requirement to maintain wholesale services at existing performance levels (Condition
3 18). In the Utah Joint Petition, Joint Applicants state: “A financially stronger
4 company can continue to...compete against cable telephony providers...and
5 CLECs...”²²⁶ Conditions 17 and 18 are needed to help ensure that the stronger
6 company with a larger footprint, and substantially greater bargaining power, does
7 not create synergies for itself at the expense of its CLEC competitors.

8 Condition 17 maintains the existing Qwest CMP and CMP Document and
9 Condition 18 maintains the level of wholesale support that CLECs receive from
10 Qwest today. The existence of the Qwest CMP and the current level of support
11 for wholesale services have not impeded Qwest’s ability to compete with CLECs
12 to date, and there is no reason to believe that maintaining Qwest’s CMP and
13 current level of wholesale support would impede Qwest’s ability to compete with
14 CLECs post-merger.

²²⁵ Joint Applicants’ FCC Joint Application at p. 21.

²²⁶ Joint Application for Expedited Approval of Indirect Transfer of Control, May 19, 2010 (“Utah Joint Petition”), at p. 14.

1 **5. Conditions 16, 19 and 20**

2 **Q. HAVE YOU REVIEWED MR. HUNSUCKER’S STATED CONCERNS**
3 **ABOUT CONDITIONS 16, 19 (AND SUBPARTS) AND 20 RELATING TO**
4 **OSS²²⁷?**

5 A. Yes. The concerns Mr. Hunsucker asserts about the OSS-related conditions
6 include the following: (1) they “change the legal obligations or voluntary
7 agreements”;²²⁸ (2) “[t]here is no reason to assume that [Joint Applicants] will
8 suddenly abandon their responsibilities following the close of this transaction;”²²⁹
9 (3) “any changes will occur only after a thorough and methodical
10 review...coordinate[d]...in advance through the Change Management Process
11 (CMP)”;²³⁰ (4) the Merged Company will operate Qwest’s OSS for at least 12
12 months post-merger;²³¹ and (5) “CLECs claim that the CenturyLink OSS is
13 inferior to the Qwest OSS” is false and unsupported.²³²

14 **Q. WHAT ARE YOUR RESPONSES TO THESE CRITICISMS?**

15 A. First, Mr. Hunsucker does not, and cannot, explain how the requirements of
16 Conditions 19 and 16 to maintain the existing OSS, including associated support
17 (e.g., types and level of data, online information, industry notices, etc.), that

²²⁷ OSS include manual, computerized, and automated systems, together with associated business processes and the up-to-date data maintained in those systems. See *Local Competition First Report and Order*, 11 FCC Rcd at 15763-64, ¶¶517-18.

²²⁸ Hunsucker Rebuttal at p. 32, lines 18-19.

²²⁹ Hunsucker Rebuttal at p. 33, lines 1-2.

²³⁰ Hunsucker Rebuttal at p. 33, lines 4-10.

²³¹ Hunsucker Rebuttal at p. 33, lines 11-15.

²³² Hunsucker Rebuttal at p. 34, lines 3-4.

1 Qwest provides CLECs today will somehow change its legal obligations or
2 voluntary agreements. It is pursuant to those legal obligations and agreements
3 that Qwest provides OSS today.

4 Second, Mr. Hunsucker's claim that CenturyLink will not "abandon" its
5 responsibilities ignores that CenturyLink has never had the same BOC obligations
6 that it will have going forward in legacy Qwest territory. CenturyLink cannot
7 give up what it has not had. This concern is at the heart of these OSS conditions.
8 It is precisely because CenturyLink has not had these BOC obligations and has
9 not undergone the extensive 271 review completed by Qwest that these
10 Conditions are necessary, as I explained in my Direct Testimony (at pages 42-49).

11 Third, CenturyLink's claims about making changes after a "methodical review"
12 are addressed in my Direct Testimony (at pages 123-125 and 140-141) and I will
13 not repeat those arguments here. Although CenturyLink claims that changes will
14 be coordinated in advance through CMP, Joint Applicants have refused to provide
15 a commitment in this regard by adopting Joint CLEC proposed Condition 17.

16 Fourth, I also explained in my Direct Testimony (at pages 124-125) why
17 CenturyLink's statement that it is "expected" to operate Qwest's OSS for at least
18 12 months following merger approval is insufficient to avoid merger-related harm
19 to CLECs.

1 Finally, CLECs' evidence that Qwest's OSS have superior functionality to that of
2 CenturyLink's OSS²³³ has been bolstered by discovery responses received from
3 CenturyLink in which CenturyLink admits that its OSS for processing Local
4 Service Requests ("LSRs") does not have certain functionality, as further
5 described by Ms. Johnson of Integra in her Surrebuttal Testimony.²³⁴

6 **Q. WHAT IS YOUR RESPONSE TO MR. HUNSUCKER'S CLAIM THAT**
7 **CLECS "PROVIDE NO SUPPORT FOR THEIR CLAIM" THAT**
8 **CENTURYLINK OSS IS INFERIOR TO THE QWEST OSS?**²³⁵

9 A. He is wrong, and has ignored the evidence I provided. At pages 58-60 of my
10 Direct Testimony, I described functionalities that are available through Qwest's
11 OSS that are not available through CenturyLink's OSS. I also explained at pages
12 60-61 that CenturyLink's legacy EASE OSS uses the same Virtual Front Office
13 ("VFO") platform as was used by FairPoint Communications in its problematic
14 OSS cutover in Northern New England and by Frontier in West Virginia. To
15 date, the Joint Applicants have ignored these examples and did not address them
16 in their Rebuttal Testimony. In Minnesota, CWA also described systems features
17 and functionalities that were previously available in legacy Embarq territory in

²³³ See, e.g., Exhibit Joint CLECs 2 (Gates Direct), at pp. 39-40, 58-60, and 129-130 and Exhibit Joint CLECs 2.5.

²³⁴ See also Exhibit Integra 2SR.1 to the Surrebuttal Testimony of Ms. Johnson (Exhibit Integra 2SR).

²³⁵ Hunsucker Rebuttal at p. 34, lines 3-4.

1 North Carolina that are no longer available after CenturyLink’s system integration
2 efforts.²³⁶

3 Furthermore, the Joint Applicants ignore my Direct Testimony stating that, “[t]he
4 existing Qwest OSS and its functionality is more well-documented, and preferred
5 by carriers that use both of the merging companies’ systems, than the existing
6 CenturyLink OSS.”²³⁷ There could hardly be a better source of information
7 related to the capabilities of Qwest’s and CenturyLink’s wholesale OSS than
8 competitive carriers who currently use both companies’ OSS. In the opinion of
9 those carriers – i.e., CenturyLink’s future customers if the merger is approved –
10 Qwest’s OSS is preferred and should be used as the Merged Company’s OSS
11 platform going forward. If Joint Applicants “value their wholesale customers and
12 seek to provide and maintain a strong OSS for wholesale operations[,]”²³⁸ they
13 would take this strongly expressed preference into account and provide their
14 customers with the measure of business certainty they need to continue to provide
15 quality services to their end user customers.

16 **Q. REGARDING CONDITION 19 (AND SUBPARTS), THE JOINT**
17 **APPLICANTS STATE THAT YOUR SUGGESTION THAT THERE IS A**

²³⁶ Gurganus Minnesota Direct Testimony at pp. 5-6 and 8-9. Available at:
<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={3BAC3216-79EA-4367-B0FD-2C44F6DFDF17}&documentTitle=20108-53661-01>

²³⁷ Exhibit Joint CLECs 2 (Gates Direct) at p. 129, lines 13-15. *See also*, Exhibit Integra 2SR.2 to the Surrebuttal Testimony of Ms. Johnson (Exhibit Integra 2SR), listing certain OSS functions and order types that are not supported by CenturyLink’s legacy OSS. *See also*, Exhibit Integra 2SR.1 comparing the functionality of CenturyLink’s OSS for LSRs to the functionality of Qwest’s OSS for LSRs.

²³⁸ Hunsucker Rebuttal at p. 51, lines 20-22.

1 **“SEPARATE DISTINCT SECTION 271 CHECKLIST REQUIREMENT**
2 **SPECIFICALLY FOR OSS” IS INCORRECT.²³⁹ IS THE JOINT**
3 **APPLICANTS’ CRITICISM WARRANTED?**

4 A. No. At page 38 of my Direct Testimony, I state: “Nondiscriminatory access to
5 OSS is also one of the checklist items on the 14-point competitive checklist
6 applicable to BOCs under Section 271 of the Act.” Consistent with this, the FCC
7 states:

8 Under checklist item 2, a BOC must demonstrate that it provides
9 nondiscriminatory access to the five OSS functions: (1) pre-
10 ordering; (2) ordering; (3) provisioning; (4) maintenance and
11 repair; and (5) billing. In addition, a BOC must show that it
12 provides nondiscriminatory access to UNEs and that it has an
13 adequate change management process in place to accommodate
14 changes made to its systems.²⁴⁰

15 The Joint Applicants suggestion that there is not a separate requirement under
16 Section 271 of the Act applicable to OSS is wrong. While both sections 251 and
17 271 require nondiscriminatory access to OSS, Congress and the FCC have a two-
18 prong requirement related to OSS for BOCs (Sections 251 and 271) and a single-
19 prong requirement related to OSS for non-BOC ILECs (Section 251).
20 Accordingly, there is an OSS requirement under Section 271 that applies to BOCs
21 that does not apply to non-BOC ILECs; BOCs must not only satisfy Section 251
22 but also must demonstrate and maintain ongoing Section 271 compliance in order
23 to provide and continue providing in-region interLATA services.

²³⁹ Stewart Rebuttal at p. 18, lines 3-8.

²⁴⁰ *Qwest 9 State 271 Order* at ¶ 34.

1 **Q. DOES THIS MEAN THAT IF CENTURYLINK’S OSS IS SUBJECT TO**
2 **THE SECTION 251 REQUIREMENT THAT IT ALSO SATIFIES THE 271**
3 **REQUIREMENT THAT APPLIES TO BOCS?**

4 A. No. The Joint Applicants’ implication that CenturyLink’s OSS is 271 compliant
5 simply because it has operated with its legacy OSS under Section 251 is incorrect.
6 Certainly the state commissions, the FCC and the Regional Oversight Committee
7 would not have performed three years worth of testing on Qwest’s OSS during the
8 271 review process if operating under Section 251 was all that was required.
9 Further, until just recently, CenturyTel’s legacy OSS consisted largely of manual
10 processes instead of automated systems. CenturyTel can hardly claim that
11 replacing Qwest’s automated OSS systems with these manual processes would
12 have met Qwest’s obligations as a BOC under Section 271 – yet, according to
13 CenturyLink, these manual processes met legacy CenturyTel’s obligations under
14 Section 251. Notwithstanding that CenturyLink is currently integrating more
15 automated systems in legacy CenturyLink territory, these systems have been
16 designed for CenturyLink (and for CenturyLink’s volumes), and even if
17 (assuming for the sake of argument) that this OSS satisfies CenturyLink’s
18 obligations under Section 251 of the Act, this says nothing about whether this
19 OSS would satisfy Qwest’s obligations under Section 271 of the Act.

20 **Q. MR. HUNSUCKER STATES THAT “THERE IS NO EVIDENCE THAT**
21 **[CENTURYLINK’S] SYSTEMS DO NOT MEET THE REQUIREMENTS**

1 **OF THE ACT.”²⁴¹ SHOULD THIS ASSERTION BE GIVEN ANY**
2 **WEIGHT?**

3 A. No. This appears to be a vague suggestion that CenturyLink’s OSS would satisfy
4 Qwest’s requirements under Sections 251 and 271 if the Merged Company
5 decided to replace Qwest’s OSS with CenturyLink’s OSS. However, and this is
6 critical, there is absolutely no evidence regarding CenturyLink’s legacy OSS
7 being able to be used in Qwest’s legacy territory. Instead of providing any details
8 about the Joint Applicants’ post-merger OSS plans so that systems experts can
9 explore the viability of the plan and potential impact, the Joint Applicants blame
10 others for not providing evidence that can be provided only by the Joint
11 Applicants. This is an effort to place the burden on CLECs when, as the
12 petitioning parties, the Joint Applicants bear the burden in this case.

13 Moreover, evidence in the record calls into question the ability of CenturyLink’s
14 OSS to meet the requirements of the Act in Qwest’s legacy territory. The largely
15 manual nature of CenturyTel’s legacy OSS would not meet the requirements of
16 the Act in Qwest’s legacy territory. CenturyTel’s legacy OSS did not even pass
17 muster in the non-BOC CenturyTel-Embarq merger, in which the FCC required
18 that wholesale OSS be provided through Embarq’s systems.²⁴² A manually-
19 intensive OSS cannot efficiently process the volume and types of wholesale
20 orders experienced in Qwest’s BOC territory, particularly since Qwest has

²⁴¹ Hunsucker Rebuttal at p. 9, lines 15-16.

²⁴² CenturyTel-Embarq merger, FCC 09-54, Appendix C, p. 28.

1 reduced headcount in recent years. I also described in my Direct Testimony
2 functionalities that are available through Qwest's OSS that are not available
3 through CenturyLink's OSS.²⁴³ My point is that there is ample (and mounting)
4 evidence which calls into question the ability of CenturyLink's OSS to be
5 integrated in Qwest's BOC territory without a decrease in functionality or service
6 quality.

7 Furthermore, it is objectionable that Mr. Hunsucker would criticize a lack of
8 evidence about the ability of the Merged Company's OSS to provide
9 nondiscriminatory access in Qwest's territory, post-merger, when the Joint
10 Applicants have provided no useful information about its plans for systems
11 integration, and particularly about OSS integration, post-merger. The absence of
12 such information makes it even more critical to adopt CLEC Condition 19 (and
13 subparts). This condition protects wholesale customers, end user customers, and
14 competition from the significant risk caused by the Joint Applicants' currently-
15 undefined OSS integration plans, while at the same time providing the Merged
16 Company the ability to modify its OSS after three years in a similar way to how
17 Qwest's OSS was determined to be acceptable under Section 271 of the Act. This
18 strikes a reasonable balance between protecting the wholesale competitive market
19 from harm and allowing the Merged Company to pursue integration efficiencies.

²⁴³ Exhibit Joint CLECs 2 (Gates Direct) at pp. 58-60. Also, in Utah, Integra asked CenturyLink in Data Request 174: "Does the system called EASE as currently implemented by CenturyLink, prepopulate information in the LSR?" CenturyLink responded "No, the prepopulation function is currently not available in EASE." See also, Exhibit Joint CLECs 2.5 at p. 30. This functionality is available via Qwest's OSS.

1 **Q. MS. STEWART CRITICIZES THE THIRD-PARTY TESTING**
2 **REQUIREMENT OF CONDITION 19(B). SHE SAYS THAT THIRD**
3 **PARTY TESTING IS NOT REQUIRED BY THE ACT.²⁴⁴ DOES THIS**
4 **TELL THE WHOLE STORY?**

5 A. No. As described in detail in my Exhibit Joint CLECs 2.2, Qwest’s OSS
6 underwent extensive third-party testing during the 271 review process. The fact
7 that there is no explicit mention of independent third party testing in the Act did
8 not prevent regulators from requiring third party testing then, and it should not
9 prevent it now. Third party testing is a mechanism used to determine compliance
10 with the Act’s requirements. This set a “bar” of sorts for these OSS systems in
11 relation to needed functionality and their ability to handle commercial volumes in
12 Qwest’s territory. Joint CLEC proposed Condition 19(b) requires that third-party
13 testing be conducted “[f]or any Qwest system that was subject to third party
14 testing (*e.g.*, as part of a Section 271 process)...” In other words, Condition 19(b)
15 would ensure that if the Merged Company replaces a system that was originally
16 subject to third-party testing, the replacement system would undergo similar third-
17 party testing. If the Merged Company is allowed to replace Qwest systems that
18 have been third-party tested with systems that have not undergone similar third-
19 party testing, the “bar” would be effectively lowered for these systems as a result
20 of the merger. The Joint Applicants should not undermine all of the work that
21 was conducted to test Qwest’s OSS systems because they want to merge.

²⁴⁴ Stewart Rebuttal at p. 18, lines 20-22.

1 **Q. PLEASE ELABORATE ON THE ROLE OF INDEPENDENT, THIRD-**
2 **PARTY TESTING FOR TESTING OSS COMMERCIAL READINESS.**

3 A. The FCC has previously concluded that the most probative evidence that OSS
4 functions are operationally ready is actual commercial usage. To date, there is no
5 evidence that CenturyLink's legacy OSS is capable of handling the actual
6 commercial usage that it would be required to handle in Qwest's legacy territory
7 if the proposed transaction is approved. Without this actual commercial usage
8 experience, the second-best option is independent, third-party testing. The FCC
9 said:

10 The most probative evidence that OSS functions are operationally
11 ready is actual commercial usage. Absent sufficient and reliable
12 data on commercial usage, the Commission will consider the
13 results of carrier-to-carrier testing, independent third-party testing,
14 and internal testing in assessing the commercial readiness of a
15 BOC's OSS. Although the Commission does not require OSS
16 testing, a persuasive test will provide us with an objective means
17 by which to evaluate a BOC's OSS readiness where there is little
18 to no evidence of commercial usage, or may otherwise strengthen
19 an application where the BOC's evidence of actual commercial
20 usage is weak or is otherwise challenged by competitors. *The*
21 *persuasiveness of a third-party review, however, is dependent*
22 *upon the qualifications, experience and independence of the*
23 *third party and the conditions and scope of the review itself. If*
24 *the review is limited in scope or depth or is not independent and*
25 *blind, the Commission will give it minimal weight.*²⁴⁵

26 Internal OSS testing that is not independent and blind is inferior to a truly
27 independent third-party test in determining a BOC's OSS commercial readiness.

28 Though CenturyLink claims that it extensively tests its own OSS, it has admitted

²⁴⁵ *Qwest 9 State 271 Order*, Appendix K "Statutory Requirements" at p. K-16 (emphasis added).

1 that this testing does not involve third-party testing. This means that
2 CenturyLink's OSS testing is not independent or blind, and would therefore, be a
3 step backwards for Qwest OSS that has undergone years of extensive and
4 verifiable third-party testing. The FCC has found that independent, third-party
5 testing is crucial for determining the commercial readiness of a BOC's OSS (at
6 least when no actual commercial usage experience is available).

7 **Q. MS. STEWART STATES: "MR. GATES PROVIDES NO EVIDENCE, BUT**
8 **MERELY SPECULATION, THAT AN EXISTING INTERFACE THAT IS**
9 **HANDLING COMMERCIAL VOLUMES TODAY, SUCH AS**
10 **CENTURYLINK'S OSS DOES TODAY, CANNOT BE MODIFIED AND**
11 **ADAPTED TO FUNCTION AS WELL AS (OR BETTER THAN) AN**
12 **EXISTING INTERFACE."**²⁴⁶ **IS THIS A VALID CRITICISM?**

13 A. No. Again, Joint Applicants attempt to reverse the burden of proof. It is the Joint
14 Applicants that have provided insufficient evidence to show that an existing
15 interface is handling commercial volumes today or that it could or should be
16 modified to do so. Though Ms. Stewart does not clearly identify what "existing
17 interface" would be replaced, presumably she is talking about replacing an
18 existing *Qwest* interface with an existing CenturyLink interface. This is an unfair
19 criticism given that, according to the Joint Applicants, no such evidence exists.
20 As explained in the FCC excerpt above, whether or not an OSS can handle

²⁴⁶ Stewart Rebuttal at p. 19, lines 22-25.

1 commercial volumes is best determined through commercial usage, and if no
2 commercial usage exists, then third-party testing should be undertaken. There is
3 no commercial usage data of CenturyLink's OSS handling commercial volumes
4 in Qwest's region because the two companies use different OSS today. And there
5 is no testing results (third-party or otherwise) showing the extent to which
6 CenturyLink's legacy OSS could or could not handle Qwest's commercial
7 volumes. Indeed, the Joint Applicants have purportedly not even made any
8 decisions about the OSS the Merged Company intends to use in Qwest's territory
9 post-merger.²⁴⁷ This evidence resides with the Joint Applicants, and they have
10 elected to not even attempt to meet their burden in this respect. That is why
11 Condition 19(b) is critical: it would ensure that after at least three years, if the
12 Merged Company decides to replace an existing OSS interface that has been
13 third-party tested, verifiable and independent evidence would be collected and
14 evaluated to determine whether the replacement interface could handle legacy
15 Qwest's commercial volumes.

16 **Q. PLEASE COMPARE THE VOLUMES HANDLED BY QWEST'S OSS**
17 **VERSUS THE VOLUMES HANDLED BY CENTURYLINK'S OSS.**

18 A. Both CenturyLink and Qwest provided data regarding the volumes of Local
19 Service Requests or LSRs submitted by type of OSS (i.e., application-to-
20 application, web-based Graphical User Interface ("GUI") or fax). ***BEGIN

²⁴⁷ See, e.g., Exhibit Joint CLECs 1.3 to the Direct Testimony of Dr. Ankum at pp. 1-6.

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[REDACTED] **END CONFIDENTIAL*****.²⁴⁸

Q. MS. STEWART STATES THAT THE SYSTEMS AND PROCESSES THAT WERE THIRD PARTY TESTED MORE THAN EIGHT YEARS AGO ARE NOT THE SAME SYSTEMS AND PROCESSES BEING

²⁴⁸ CenturyLink Confidential Attachment Integra Supplemental-77 and Qwest Confidential Attachment Integra-77.

1 **UTILIZED IN THE QWEST TERRITORY TODAY.²⁴⁹ PLEASE**
2 **RESPOND.**

3 A. Qwest’s IMA was subject to third-party testing. Ms. Stewart suggests that
4 because IMA-EDI was transitioned to IMA-XML, the OSS that was third-party
5 tested has changed and would not require third-party testing under Condition 19.
6 That is incorrect. Qwest Change Request (“CR”) #SCR121305-01²⁵⁰ (regarding
7 the change from IMA-EDI to IMA-XML) indicates that the Business Process
8 Layer (“BPL”) did not change in the transition to XML and indicates that the CR
9 just changes how information is passed and how the connection is made.²⁵¹ In
10 other words, the functionality did not change. This is different from changing
11 systems, as when CenturyLink changed from CenturyTel’s IRES to Embarq’s
12 EASE, and CLECs lost the previously available functionality of the system
13 populating a CLEC’s LSR with information (*e.g.*, the end-user’s customer address
14 from the pre-order validation form).²⁵² It is also different from changing from
15 Qwest’s IMA-XML to CenturyLink’s EASE system, which has different
16 functionality. For example, CenturyLink’s responses to Integra’s Third Set of
17 Information Requests in Utah indicate that EASE does not have pre-order
18 functions that Qwest IMA has. These pre-order functions include Meet Point

²⁴⁹ Stewart Rebuttal at p. 20, lines 1-10.

²⁵⁰ Available at: http://www.qwest.com/wholesale/cmp/archive/CR_SCR121305-01.html

²⁵¹ For example, Qwest-prepared CMP meeting minutes from a 1/25/06 Ad Hoc CMP Meeting which state: “Comcast - said that it would helpful if Qwest could provide a document on the order flow. Connie Winston - Qwest said that the flow is not changing and that with EDI all validation is the BPL. Connie said that layer will enforce the same business rules with XML.” *Id.*

²⁵² Exhibit Joint CLECs 2.5 at p. 30.

1 Query Validation, Raw Loop Data Validation, Telephone Number Reservation,
2 Loop Qualification, and Appointment Scheduling.²⁵³

3 The very fact that Joint Applicants are suggesting that the Merged Company
4 should be allowed to replace Qwest's existing IMA-XML OSS interface with
5 CenturyLink's EASE, without independent third-party testing, suggests that
6 CenturyLink intends to move away from Qwest's OSS (IMA-XML, in this
7 example) and to do so without such third-party testing. This testimony further
8 supports the need for Joint CLEC proposed Condition 19 (and subparts) to avoid
9 merger-related harm.

10 **Q. MS. STEWART CLAIMS THAT PROTECTIONS ARE ALREADY IN**
11 **PLACE BECAUSE CHANGES TO QWEST OSS WOULD BE HANDLED**
12 **THROUGH CMP AND SUBJECT TO ICAS.²⁵⁴ DOES THIS OBVIATE**
13 **THE NEED FOR CONDITION 19(B)?**

14 A. No. The Joint Applicants have refused to adopt Joint CLEC proposed Condition
15 17 that would assure the Qwest CMP and CMP Document are maintained, and
16 have refused to adopt Joint CLEC proposed Condition 8 that would allow existing
17 ICAs to be extended. If the Joint Applicants are going to rely on the existing
18 Qwest CMP and ICAs as the basis for its claim that sufficient protections already
19 exist, then it seems logical that the Joint Applicants would agree to Joint CLEC

²⁵³ See Johnson Surrebuttal (Exhibit Integra 2SR), Exhibit Integra 2SR.1 and Exhibit Integra 2SR.2.

²⁵⁴ Stewart Rebuttal at pp. 20-22.

1 proposed conditions 8 and 17 and commit to leaving the existing CMP and ICAs
2 in place post-merger. To date, the Joint Applicants have rejected all of the Joint
3 CLEC proposed conditions.

4 In any event, CMP and the ICAs alone are not enough to prevent merger-related
5 harm due to replacement of independent third-party tested systems with systems
6 that have not been third-party tested.

7 **Q. ARE THERE PROCEDURES IN QWEST’S CMP DOCUMENT THAT**
8 **ADDRESS THE INTRODUCTION AND RETIREMENT OF AN**
9 **EXISTING OSS INTERFACE AND, IF SO, WHY DO YOU SAY THEY**
10 **ARE NOT ENOUGH BY THEMSELVES?**

11 A. Yes. Section 7.0 of the CMP Document addresses “Introduction of a new OSS
12 interface” and Section 9.0 addresses “Retirement of an existing OSS interface.”²⁵⁵
13 An OSS migration or integration involves significant back-end systems²⁵⁶ work,
14 as well as potential changes to CLEC-facing interfaces. If a change to a back-end
15 system is not intended to impact CLECs, the change may not be handled in CMP.
16 But, as the experiences in other mergers have shown, merger-related changes to
17 back-end systems and migration of data from one back-end system to another can
18 result in significant retail and wholesale customer impacting problems.

²⁵⁵ The CMP Document is Exhibit Integra 2.25 to the Direct Testimony of Ms. Johnson.

²⁵⁶ Unlike EASE or IMA (CLEC-facing interfaces in that CLECs interact with them for pre-ordering and ordering), billing systems are back-end systems that CLECs do not interact with directly but, when changes to the billing system occur, the changes may also impact CLECs and their customers.

1 While the CMP Document has tools to address introduction and retirement of
2 OSS interfaces, as well as periodic modification of OSS, those procedures are
3 suited for the types of systems modifications for which it has been used over the
4 years, and not for the type of major migration of data that would occur if
5 CenturyLink integrated its legacy OSS into Qwest's territory. Qwest maintains
6 extensive data in its systems, including customer-identifying information, retail
7 and wholesale customer account information, billing and repair records, telephone
8 number assignments, identification of serving wire centers for customers, network
9 information regarding the design and configuration of the network, and
10 information indicating where and how CLECs connect with Qwest's network, *etc.*
11 Changes to, or misinterpretation of, data has the potential to impact 911 response,
12 the routing of local and long distance calls, billing, directory listings, dispatching
13 of technicians during service outages, and other customer services.

14 Data integrity is, therefore, a key issue in merger-initiated OSS migrations or
15 conversions, as I discuss below and in my earlier discussion of the Embarq North
16 Carolina conversion (in which data mapping errors were at the heart of many
17 problems). No other acquisition of this magnitude involving Qwest, much less of
18 an entire BOC by a non-BOC incumbent LEC, has occurred during the history of
19 Qwest CMP. If CenturyLink integrates its legacy OSS into Qwest's territory or
20 makes significant changes to Qwest's OSS, a *combination* of maintaining OSS
21 for a defined time period for a measure of stability during company upheaval,

1 ensuring readiness and a smooth transition afterward through oversight and third
2 party testing, and notifying and involving CLECs through CMP will be required.
3 Together, Joint CLECs' recommended conditions work to address all of these
4 needs.

5 **Q. ARE THERE OTHER CONCERNS ABOUT CMP IF CENTURYLINK**
6 **DECIDES TO OVERHAUL QWEST'S EXISTING OSS OR INTEGRATE**
7 **ITS LEGACY OSS INTO QWEST'S TERRITORY?**

8 A. Yes. CMP is designed to address change requests introduced by Qwest as well as
9 submitted by CLECs. If the CMP is jammed up due to CenturyLink's decision to
10 replace Qwest's existing OSS, the backlog of CLEC-requested change requests
11 would quickly grow, leading to significant delay for systems enhancements that
12 CLECs desire, or blockage of CLEC-initiated change requests altogether. This
13 would undermine the purpose of the CMP and harm CLEC access to Qwest's
14 OSS.

15 **Q. ARE THERE EXAMPLES THAT SUGGEST THAT THE USUAL**
16 **CHANNELS MIGHT GET OVERLOADED?**

17 A. Yes. In the case of the recent FairPoint systems cutover, over 800 "issues" (or
18 problems) have been raised since February 2009, many of which are major (not
19 minor) issues.²⁵⁷ And there are still significant problems as CRC

²⁵⁷ FairPoint's log of issues is available at:
http://www.fairpoint.com/wholesale/customer_resources/change_management.jsp

1 Communications of Maine, Inc., explained to the New Hampshire Public Utilities

2 Commission:

3 CLECs continue to experience significant problems with wholesale
4 provisioning and billing issues despite the fact that more than 15
5 months have passed since the cutover from Verizon's back office
6 systems...The record before the Commission is quite clear - there
7 are still significant problems with basic systems functionality that
8 need to be remediated...the Liberty List of Continuing CLEC
9 Issues - contains over 109 issues that *currently* impact CLECs and
10 their customers.²⁵⁸

11 All of these problems have occurred despite the fact that FairPoint is utilizing its
12 Wholesale User Forum "Change Management" process.²⁵⁹ CLECs have also
13 conducted weekly and bi-weekly meetings with FairPoint to attempt to resolve
14 problems:

15 Unfortunately, despite all of the hard work on both sides of the
16 table and the fact that FairPoint has acknowledged the validity of
17 our concerns and claims, its personnel are severely limited by
18 FairPoint's internal billing systems and are unable to permanently
19 correct the underlying problems with the software that generate the
20 erroneous bills. FairPoint's inability to make permanent fixes or to
21 get long-standing issues addressed causes frustration for both
22 FairPoint and CRC because it means that the same billing errors
23 reoccur month after month, generating a continued need for our bi-
24 weekly meetings and significant manual work by both sides.²⁶⁰

²⁵⁸ Post Hearing Brief of CRC Communications of Maine, Inc., New Hampshire PUC Docket No. DT-10-025, at pp. 2-3.

²⁵⁹ http://www.fairpoint.com/wholesale/customer_resources/change_management.jsp ("OSS Interface Change Management").

²⁶⁰ Testimony of Ed Tisdale on behalf of CRC Communications of Maine, Inc., New Hampshire PUC Docket No. DT 10-025, April 19, 2010, at p. 3.

1 It is clear that FairPoint's use of its change management process to implement its
2 OSS cutover, as well as additional frequent meetings, have not been successful in
3 avoiding hundreds of problems, some of which are continuing.

4 To put FairPoint's problems in perspective, I have compared FairPoint's log of
5 incidents (or problems) to Qwest's CMP log for systems change requests.²⁶¹
6 Since 2003, Qwest has had 780 systems change requests, compared to 818
7 "incidents" logged by FairPoint since February 2009. In other words, FairPoint
8 has logged more systems problems (things that are broken) in the last year and
9 one-half than systems change requests (where Qwest or a CLEC is introducing a
10 systems modification) submitted in Qwest's CMP in the past seven years.

11 **Q. DID FAIRPOINT PROVIDE ANY ASSURANCES PRIOR TO THE**
12 **APPROVAL OF ITS MERGER WITH VERIZON THAT ITS EXISTING**
13 **PROCESSES WERE SUFFICIENT TO ADDRESS THE OSS CHANGES**
14 **THAT WOULD OCCUR POST-MERGER?**

15 A. Yes. FairPoint testified as follows in May 2007:²⁶²

16 Our intention is to collaborate with carriers and make the transition
17 to FairPoint as smooth and seamless as reasonably possible.

18 CenturyLink testifies in this case:

19 the Transaction will be seamless to customers.²⁶³

²⁶¹ http://www.qwest.com/wholesale/cmp/archive/crnumber_system_index.html

²⁶² Direct Testimony of Michael Haga on behalf of FairPoint Communications, Inc., New Hampshire PUC Docket No. DT 07-11, March 23, 2007, at p. 16.

²⁶³ Ferkin Rebuttal at p. 6, line 2.

1 FairPoint’s prediction about a “seamless” transition certainly proved inaccurate,
2 and there is no reason to believe that CenturyLink’s claim will be any more
3 accurate. *See also*, Exhibit Joint CLECs 1.2 to the Direct Testimony of Dr.
4 Ankum.

5 **6. Conditions 21, 23, 26 and 27**

6 **Q. MR. HUNSUCKER STATES THAT CONDITIONS 21, 23, 26 (AND**
7 **SUBPARTS) AND 27 REGARDING COMPLIANCE WITH THE LAW**
8 **WOULD BE “ENTIRELY ACCEPTABLE FOR CENTURYLINK” IF**
9 **THEY “STOPPED AT WANTING COMPLIANCE WITH APPLICABLE**
10 **LAW” BUT THEY DO “MUCH MORE THAN ASK FOR COMPLIANCE**
11 **WITH APPLICABLE LAW AND AGREEMENT TERMS.”²⁶⁴ IS HE**
12 **CORRECT?**

13 **A.** No. To demonstrate that these conditions do not expand obligations beyond what
14 is required today, I have provided the conditions in their entirety below:

15 21. The Merged Company will process orders in compliance with federal
16 and state law, as well as the terms of applicable interconnection
17 agreements.

18
19 23. The Merged Company will provide nondiscriminatory access to
20 directory listings and directory assistance in compliance with federal and
21 state law. Specifically, the Merged Company will be responsible for
22 ensuring that all directory listings submitted by CLECs for inclusion in
23 directory assistance or listings databases are properly incorporated into
24 such databases (whether such databases are maintained by the Merged
25 Company or a third party vendor). Further the Merged Company will

²⁶⁴ Hunsucker Rebuttal at p. 25, lines 1-6.

1 ensure that CLECs' subscriber listings are accessible to any requesting
2 person on the same terms and conditions that the Merged Company's
3 subscriber listings are available to any requesting person.
4

5 26. After the Closing Date, the Merged Company will engineer and
6 maintain its network in compliance with federal and state law, as well as
7 the terms of applicable interconnection agreements. Resources will not be
8 diverted to merger-related activities at the expense of maintaining the
9 Merged Company's network.

10 a. The Merged Company shall not engineer the transmission
11 capabilities of its network in a manner, or engage in any policy,
12 practice, or procedure, that disrupts or degrades access to the local
13 loop.

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

17 c. The Merged Company will not engineer or maintain the network
18 (including routing of traffic) in a manner that results in the
19 application of higher rates for traffic or inefficiencies for wholesale
20 customers.
21

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

35 All of these conditions expressly refer to applicable law and ICAs, and Mr.
36 Hunsucker did not provide a single example of a "new" or "more expansive"²⁶⁵
37 obligation that is required by them. For example, on its face, Condition 21

²⁶⁵ Hunsucker Rebuttal at p. 25, lines 12-14.

1 requires “compliance with federal and state law, as well as the terms of applicable
2 interconnection agreements,” but Mr. Hunsucker does not explain why it is not
3 therefore “entirely acceptable to CenturyLink.”²⁶⁶ The same is true of the other
4 conditions, which mirror language from the law. Condition 26(a), for example,
5 reflects C.F.R. § 51.319(A)(8), which states: “An incumbent LEC shall not
6 engineer the transmission capabilities of its network in a manner, or engage in any
7 policy, practice, or procedure, that disrupts or degrades access to the local loop.”

8 **7. Condition 24**

9 **Q. MR. HUNSUCKER OPPOSES CONDITION 24 RELATING TO**
10 **SURCHARGES AND OTHER FEES.²⁶⁷ WHAT IS CONDITION 24?**

11 A. Condition 24 applies to the anticompetitive practices and policies that
12 CenturyLink has engaged in its serving territories. The language of Condition 24
13 is as follows:

14 After the Closing Date, The Merged Company shall not assess any
15 fees, charges, surcharges or other assessments upon CLECs for
16 activities that arise during the subscriber acquisition and migration
17 process other than any fees, charges, surcharges or other assessments
18 that were approved by the applicable commission and charged by
19 Qwest in the legacy Qwest ILEC territory before the Closing Date.
20 This condition prohibits the Merged Company from charging fees,
21 charges, surcharges or other assessments, including:

22 (a) Service order charges assessed upon CLECs submitting local
23 service requests (“LSRs”) for number porting;

²⁶⁶ Hunsucker Rebuttal at p. 25, line 2.

²⁶⁷ Hunsucker Rebuttal at pp. 27-31.

1 (b) Access or “use” fees or charges assessed upon CLECs that
2 connect a competitor’s own self-provisioned loop, or last mile
3 facility, to the customer side of the Merged Company’s network
4 interface device (“NID”) enclosure or box; and,

5 (c) “Storage” or other related fees, rents or service order charges
6 assessed upon a CLECs’ subscriber directory listings information
7 submitted to the Merged Company for publication in a directory
8 listing or inclusion in a directory assistance database.

9 **Q. PLEASE RESPOND TO MR. HUNSUCKER’S TESTIMONY**
10 **REGARDING CONDITION 24.**

11 A. Mr. Hunsucker incorrectly suggests that the anticompetitive practices that
12 are prohibited by Condition 24 are a “distraction” and that CLECs are
13 simply trying to litigate issues in the merger that are best resolved in
14 arbitrations.²⁶⁸ He ignores, however, that these charges are not currently
15 imposed by Qwest. Condition 24 is meant to prevent CenturyLink from
16 importing these “worst practices” into the Qwest region should the
17 transaction be approved.

18 **Q. DOES QWEST CHARGE CLECS FOR LNP ONLY ORDERS?**

19 A. No.

20 **Q. DO THE FCC ORDERS SPECIFICALLY PRECLUDE CARRIERS FROM**
21 **IMPOSING LNP COSTS ON OTHER CARRIERS?**

²⁶⁸ Hunsucker Rebuttal at p. 27, lines 15-17.

1 A. Yes. In its Third Report and Order, the FCC concluded that Section 251(e)(2) of
2 the Act requires ILECs to bear the costs to meet the obligations imposed by
3 Section 251(b)(2) on a competitively-neutral basis. In so holding, the FCC
4 determined that the costs of establishing number portability include: (1) costs
5 associated with the creation of the regional databases to support number
6 portability; (2) costs associated with the initial upgrading of the public switched
7 telephone network; and (3) “ongoing costs of providing number portability, such
8 as the costs involved in transferring a telephone number to another carrier...”²⁶⁹

9 In explaining the basis for its decision, the FCC has made several statements
10 concerning the proper way to distinguish carrier-specific costs directly related to
11 providing number portability (which must be recovered through end user
12 charges), from those carrier-specific costs that are not directly related to providing
13 number portability (which can be recovered via other means). For example, the
14 FCC has defined costs directly related to providing number portability in the
15 following manner:

16 we conclude that the costs of establishing number portability
17 include not just the costs associated with the creation of the
18 regional databases and initial physical upgrading of the public
19 switched telephone network for the provision of number
20 portability, ***but also the continuing costs necessary to provide***
21 ***number portability.***²⁷⁰

22 The FCC also explained that the costs of number portability include:

²⁶⁹ *Telephone Number Portability*, Third Report and Order (the “Cost Recovery Order”), 13 FCC Rcd 11701 (1998), ¶ 38.

²⁷⁰ *Id.*, ¶ 8 (emphasis added).

1 the costs that a carrier incurs to make it possible to transfer a
2 telephone number to another carrier.²⁷¹

3 Based upon this, and other statements, the FCC concluded that “carrier-specific
4 costs directly related to providing number portability are limited to costs carriers
5 incur specifically in the provision of number portability services, *such as ... the*
6 *porting of telephone numbers from one carrier to another.*”²⁷²

7 **Q. SO WHEN THE FCC USES THE TERM “PORTING OF TELEPHONE**
8 **NUMBERS FROM ONE CARRIER TO ANOTHER,” IT SPECIFICALLY**
9 **INCLUDES THE COSTS ASSOCIATED WITH TRANSMITTING AND**
10 **RECEIVING PORT REQUESTS (VIA THE LSR FORM)?**

11 A. Yes. In paragraph 14 of the Cost Classification Order, the FCC specifically
12 explained that when it used the phrase “porting telephone numbers from one
13 carrier to another” in the definition of carrier-specific costs directly related to
14 number porting, it intended to refer to certain systems used to transmit local
15 routing number information, and to the *act of* “transmitting porting orders
16 between carriers.”²⁷³ This statement tells us that the FCC expected that carriers
17 would incur “ongoing costs” associated with porting telephone numbers to other
18 carriers, and that such costs included the costs associated with “transmitting
19 porting orders” between carriers.

²⁷¹ *Id.*, ¶ 36.

²⁷² *Id.*, ¶ 72. (emphasis added)

²⁷³ Cost Classification Order, 13 FCC Rcd 24995, ¶ 14.

1 **Q. DID THE FCC CONTEMPLATE THAT CARRIERS MAY INCUR**
2 **ADDITIONAL COSTS IN FULFILLING THEIR LNP OBLIGATIONS?**

3 A. Yes. The FCC specifically contemplated that its cost classification decisions
4 would “cause some carriers, including small and rural LECs, to incur costs that
5 they would not ordinarily have incurred in providing telecommunications
6 service.”²⁷⁴ The FCC made this decision because it is required, by Section
7 252(e)(2), to establish cost distribution and recovery rules in a manner that is
8 “competitively neutral.”

9 **Q. HAS THE FCC EXPLAINED WHETHER RECOVERING COSTS FROM**
10 **OTHER CARRIERS IS CONSISTENT WITH THE COMPETITIVE**
11 **NEUTRALITY PRINCIPLE?**

12 A. Yes, the FCC has made it clear that recovery of costs through other carriers would
13 *not* be consistent with the principles of competitive neutrality. For example, the
14 FCC explained that if the Commission did not use a competitive neutrality
15 standard, or only used that standard for the distribution (but not recovery) of
16 costs, then “carriers could effectively undo this competitively neutral distribution
17 by recovering from other carriers.”²⁷⁵ That is why the FCC reaffirmed this
18 finding in its *2002 Reconsideration Order*, when it ruled that carriers “*may not*
19 *recover number portability costs from other carriers through interconnection*

²⁷⁴ Cost Recovery Order, ¶ 73.

²⁷⁵ *Id.*, ¶ 39.

1 *charges.*²⁷⁶ The FCC was very clear that assessing number porting charges on
2 other carriers is not competitively neutral.

3 **Q. MR. HUNSUCKER ALSO ARGUES THAT CARRIERS LIKE CHARTER**
4 **ARE USING THE NETWORK INTERFACE DEVICE (OR NID) AS A**
5 **UNE.²⁷⁷ IS THIS CORRECT?**

6 A. No. Mr. Hunsucker is correct that NIDs are UNEs, but carriers who have their
7 own last-mile facilities do not need or use a NID UNE (i.e., the cross connect
8 device connecting the ILEC's network wire with the customer's inside wire).
9 These CLECs normally connect to the consumers inside wire within the premises
10 and, in very limited circumstances, they need to connect to the inside wire within
11 the customer's side of the NID enclosure. This is not "use" of the NID. In that
12 situation, the CLEC does not use the cross-connect feature (i.e., the actual NID
13 within the enclosure), does not use the grounding, the testing functionality, or the
14 posts associated with the NID. As such, the NID is not used.

15 **Q. DOES QWEST CHARGE CARRIERS FOR ACCESSING THE**
16 **CUSTOMER SIDE OF THE NID ENCLOSURE AS YOU DESCRIBED**
17 **ABOVE?**

18 A. No. To the best of my knowledge, only the legacy CenturyTel companies and
19 Windstream attempt to charge for this activity. The other ILECs, including

²⁷⁶ *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578, ¶ 62 (2002) ("2002 Cost Recovery Reconsideration Order"), ¶ 7 (emphasis added).

²⁷⁷ Hunsucker Rebuttal at pp. 28-30.

1 AT&T, Verizon and Qwest do not. Since these NID costs are already recovered
2 by the ILEC in local rates, and there is no cost associated with the connection that
3 occurs within the NID enclosure, there is no cost-basis for such a charge. As I
4 noted in my Direct Testimony at pages 71 through 72, the Missouri and
5 Wisconsin commissions have concluded that carriers should not be required to
6 compensate CenturyLink for accessing the customer side of the NID enclosure.

7 **Q. DOES MR. HUNSUCKER ADDRESS THE THIRD ASPECT OF**
8 **CONDITION 24, REGARDING STORAGE CHARGES FOR DIRECTORY**
9 **LISTINGS?**

10 A. He makes vague references to the issue, but doesn't address it specifically. I
11 address the directory listing storage and maintenance ("DLSM") charge that the
12 legacy Embarq companies have proposed at pages 69 to 70 of my Direct
13 Testimony. This is another example of an anticompetitive charge that
14 CenturyLink attempts to impose in its legacy ILEC territories that is specifically
15 prohibited by the FCC's rules. Specifically, CenturyLink does not impose them
16 on its own customers or CLECs who purchase UNEs or engage in resale. As
17 such, the rates are discriminatory, have no demonstrable basis in cost, and are
18 anticompetitive. To the best of my knowledge, all states (except Indiana) that
19 have addressed this charge have rejected it.

20 **Q. DOES QWEST IMPOSE THE DLSM CHARGE IN ITS TERRITORY?**

1 A. No. Again, Condition 24 is meant to prevent CenturyLink from implementing
2 this “worst practice” throughout its larger service territory post-merger.

3 **8. Condition 28**

4 **Q. WHAT IS CONDITION 28?**

5 A. Condition 28 applies to a single point of interconnection (“SPOI”):

6 28. At CLEC’s option, the Merged Company will interconnect with CLEC
7 at a single point of interconnection per LATA, regardless of whether the
8 Merged Company provides service in such LATA via multiple operating
9 company affiliates or a single operating company.

10 **Q. MR. HUNSUCKER STATES CONDITION 28 – SINGLE POINT OF**
11 **INTERCONNECTION (“POI”) PER LATA – DOES NOT NEED TO BE**
12 **ADDRESSED BECAUSE QWEST IS THE ONLY PROSPECTIVE**
13 **AFFILIATE IN UTAH AND QWEST WILL REMAIN SUBJECT TO**
14 **EXISTING ICAS.²⁷⁸ DO YOU AGREE?**

15 A. No. The language of Condition 28 states that it applies “regardless of whether the
16 Merged Company provides service in such LATA via multiple operating
17 company affiliates or a single operating company.” Therefore, Condition 28 was
18 designed to apply to situations like in Utah where Qwest is the only affiliate.
19 And, if the Merged Company decides to change the organization structure of any
20 of the operating entities in Utah post-merger, CLECs would be able to continue to
21 interconnect with the Merged Company at a single point per LATA.

²⁷⁸ Hunsucker Rebuttal at p. 31, lines 4-10.

1 In addition, CenturyLink has long maintained that it is not required to allow a
2 single POI in its legacy territory because it is not a BOC, and even recently
3 referred to a single POI as “technically infeasible” and a “superior” form of
4 interconnection.²⁷⁹ At the same time, CenturyLink has rejected Joint CLECs’
5 proposed Condition 13 which would make clear that the Merged Company will
6 remain a BOC and subject to BOC obligations in Qwest’s legacy territory post-
7 merger, and rejected Joint CLECs’ proposed Condition 28 which would allow
8 CLECs to, at their option, to establish a single POI per LATA with the Merged
9 Company even when there is a single operating entity in the LATA.
10 CenturyLink’s prior refusal to allow CLECs to establish a single POI per LATA
11 in legacy CenturyLink territory coupled with CenturyLink’s refusal to adopt
12 reasonable conditions that would help ensure that CLECs can continue to
13 interconnect at a single POI in Qwest legacy territory shows that Condition 28 is
14 warranted.

15 **9. Condition 29**

16 **Q. HAVE YOU REVIEWED CENTURYLINK’S CONCERNS ABOUT**
17 **CONDITION 29?**

18 A. Yes. CenturyLink alleges a number of concerns about Condition 29, including:
19 “neither necessary nor appropriate for this transaction”;²⁸⁰ not all conditions are

²⁷⁹ Rebuttal Testimony of Michael Hunsucker, Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010, at pp. 37-38.

²⁸⁰ Hunsucker Rebuttal at p. 40, line 13.

1 universally applicable;²⁸¹ there are “myriad of different circumstances and
2 considerations”;²⁸² “restricts the incentive for both parties to negotiate state-
3 specific terms in Utah and elsewhere”;²⁸³ and “not tailored to avoid any
4 specifically identified harm.”²⁸⁴

5 **Q. WHAT ARE YOUR RESPONSES TO THESE CONCERNS?**

6 A. CenturyLink reads too much into Condition 29. Condition 29 states:

7 All Conditions herein *may be* expanded or modified as a result of
8 regulatory decisions concerning the proposed transaction in other
9 states, including decisions based upon settlements, that impose
10 conditions or commitments related to the transaction. CenturyLink
11 agrees that the state commission of any state *may adopt* any
12 commitments or conditions from other states or the FCC that are
13 adopted after the final order in that state.

14 Contrary to CenturyLink’s attempt to make it appear as if this condition would
15 require every single merger condition adopted by the FCC and other state
16 commissions to be implemented here in Utah, a fair reading of Condition 29
17 shows that whether or not to expand or modify the conditions in Utah based on
18 conditions adopted by other regulatory commissions is left up to the Utah
19 Commission – *i.e.*, there is not automatic or universal applicability as
20 CenturyLink suggests. Accordingly, any differences in circumstances or
21 considerations would be taken into account. The Joint Applicants have requested

²⁸¹ Hunsucker Rebuttal at p. 40, line 19.

²⁸² Hunsucker Rebuttal at p. 41, lines 11.

²⁸³ Hunsucker Rebuttal at p. 41, lines 19-20.

²⁸⁴ Ferkin Rebuttal at p. 49, line 16-17.

1 expedited approval of the proposed transaction, and this condition allows the Utah
2 Commission to review the proposed transaction in an expedited fashion as
3 requested by Joint Applicants, while ensuring that public interest benefits that
4 may arise for stakeholders as a result of conditions agreed to by Joint Applicants
5 in other jurisdictions (proceedings that may not be progressing as quickly as the
6 Utah merger review proceeding) can also be brought to Utah. While CenturyLink
7 claims that such a condition would restrict incentives to negotiate state-specific
8 terms in Utah and elsewhere, it provides no reason why any public interest
9 benefits related to the merger should not be realized by stakeholders in Utah just
10 because another state commission established a longer procedural schedule.

11 **10. Condition 30**

12 **Q. CENTURYLINK STATES THAT CONDITION 30²⁸⁵ IS UNNECESSARY**
13 **BECAUSE ICAS CONTAIN LANGUAGE ALLOWING A PARTY TO**
14 **SEEK RESOLUTION OF DISPUTES BEFORE THE COMMISSION.²⁸⁶**
15 **DOES THIS OBLVIATE THE NEED FOR CONDITION 30?**

16 A. No. Condition 30 states:

17 30. In the event a dispute arises between the parties with respect to
18 any of the pre-closing and post-closing conditions herein, either
19 party may seek resolution of the dispute by filing a petition with

²⁸⁵ Condition 30 states: "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." See Exhibit Joint CLECs 2.8.

²⁸⁶ Hunsucker Rebuttal at p. 42 and Ferkin at p. 50.

1 the state commission at any time. Alternative dispute resolution
2 provisions in an interconnection agreement shall not prevent any
3 party from filing a petition with the state commission at any time.

4 Condition 30 applies specifically to disputes that may arise “with respect to any of
5 the pre-closing and post-closing conditions” resulting from the proposed
6 transaction. Condition 30 provides that these disputes can be taken to the state
7 commission for resolution. While Joint Applicants suggest that this ability
8 already exists, Condition 30 removes any doubt, which will help streamline
9 disputes about merger conditions if they arise. If customer-impacting problems of
10 the types experienced in other mergers occur due to issues relating to compliance
11 with a merger condition, for example, parties should be able to bring those issues
12 to the Commission expeditiously, without having to first litigate their right to take
13 such disputes to the Commission. The last sentence of Condition 30 deals with
14 this need for expeditious handling of merger condition related disputes, by
15 providing that alternative dispute resolution provisions in an ICA shall not
16 prevent either party to the agreement from filing a petition with the state
17 commission at any time. If, for example, end user customers are experiencing
18 service outages due to non-compliance with a merger condition, parties will not
19 be delayed from filing with the Commission by an ICA provision that otherwise
20 first requires AAA arbitration or some lengthy negotiation period.

21 **Q. ARE THERE OTHER REASONS WHY CENTURYLINK’S**
22 **CRITICISMS ABOUT CONDITION 30 SHOULD BE REJECTED?**

1 A. Yes. Other mergers have been subject to a substantially similar merger condition.
2 *See*, Exhibit Joint CLECs 2.9 at p. 12. Other state commissions have found that a
3 specific merger condition relating to disputes specifically about merger conditions
4 (much like Joint CLEC proposed Condition 30) was in the public interest.²⁸⁷

5 Mr. Ferkin’s allegation that this would somehow “encourage frivolous or
6 duplicative dispute resolution processes that potentially waste the resources of the
7 companies or the Commission”²⁸⁸ is no reason to reject this condition. To my
8 knowledge, the other state commissions that have approved mergers subject to a
9 similar condition have not found that this condition wastes their resources.
10 Moreover, this Commission is fully able to address frivolous or wasteful
11 complaints in this area, just as it would address any other frivolous or wasteful
12 complaint. Given that a party bringing a frivolous or wasteful complaint risks
13 those consequences, as well as expends time and money to raise an issue, the
14 probability that a frivolous complaint would be brought, and the Commission’s
15 ability to address it if brought, must be weighed against the merger-related harm
16 that would occur if violations of merger-related conditions are occurring after the
17 Merged Company has received the benefit of this Commission’s approval of the
18 merger, if approved. The Commission’s ability to enforce its orders, and the
19 public interest in preventing merger-related harm, outweighs the claimed risk of
20 frivolous complaints.

²⁸⁷ Exhibit Joint CLECs 2.9 at p. 12.

²⁸⁸ Ferkin Rebuttal at p. 50, lines 8-9.

1 Finally, as explained at page 195 of my Direct Testimony, many of the Joint
2 CLEC conditions apply for a limited time period following the merger, so it is
3 important to have a clear, efficient process for addressing disputes related to
4 merger conditions at the outset. Otherwise, any disputes about the proper venue
5 could drag out compliance for so long that these merger conditions are essentially
6 rendered useless due to expiration.

7 **Q. MR. FERKIN STATES THAT “THERE APPEARS TO BE NO SPECIFIC**
8 **HARM...THAT WILL BE AVOIDED AS A RESULT OF”²⁸⁹ CONDITION**
9 **30. IS THIS CRITICISM ON POINT?**

10 A. No. Condition 30 will help ensure that the Merged Company complies with Joint
11 CLEC proposed conditions in a timely fashion. The Joint CLEC proposed
12 conditions are tailored to avoiding and offsetting harm brought about by the
13 proposed transaction, and as such, it is critical that the Merged Company complies
14 with these conditions post-merger – otherwise, the harms the conditions are
15 intended to address will prevail.

16 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

17 A. Yes, it does.

²⁸⁹ Ferkin Rebuttal at p. 50, lines 10-11.