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

AUGUST H. ANKUM, PH.D.

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 1SR

October 14, 2010

TABLE OF CONTENTS

Exhibits

Exhibit Joint CLECs 1SR.1	Integra's May 13, 2010 Ex Parte filing in FCC WC Dkt. No. 09-95.

I. PURPOSE AND SUMMARY

Q. ARE YOU THE SAME DR. AUGUST H. ANKUM WHO PROVIDED PREFILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. The purpose of my surrebuttal testimony is to respond to certain portions of the Rebuttal Testimony offered by CenturyLink and Qwest (collectively, the "Joint Applicants" or "the Companies"), particularly those which were directed at my August 30, 2010, Direct Testimony. Specifically, I address portions of the Rebuttal Testimony of CenturyLink's witnesses Michael Hunsucker[1] and Jeremy Ferkin,[2] and Qwest's witnesses Robert Brigham,[3] Jerry Fenn,[4] and Karen Stewart.[5] Mr. Gates is also submitting Surrebuttal Testimony to respond to other aspects of the Joint Applicants' Rebuttal Testimony.

Q. BEFORE SUMMARIZING YOUR TESTIMONY, DO YOU HAVE SOME PRELIMINARY OBSERVATIONS?

---

1 Rebuttal Testimony of Michael Hunsucker on behalf of CenturyLink, Inc., Utah PSC Docket No. 10-049-16, September 30, 2010 ("Hunsucker Rebuttal").

2 Rebuttal Testimony of Jeremy Ferkin on behalf of CenturyLink, Inc., Utah PSC Docket No. 10-049-16, September 30, 2010 ("Ferkin Rebuttal").

3 Rebuttal Testimony of Robert Brigham on behalf of Qwest Corp., Utah PSC Docket No. 10-049-16, September 30, 2010 ("Brigham Rebuttal").

4 Rebuttal Testimony of Jerry Fenn on behalf of Qwest Corp., Utah PSC Docket No. 10-049-16, September 30 , 2010 ("Fenn Rebuttal").

5 Rebuttal Testimony of Karen Stewart on behalf of Qwest Corp., Utah PSC Docket No. 10-049-16, September 30, 2010 ("Stewart Rebuttal").

A. Yes. Notwithstanding the Joint Applicants' incorrect testimony claiming that the Joint CLECs have not demonstrated that the proposed transaction may result in harmful effects and warrants the imposition of merger conditions, the Joint Applicants themselves testify here and elsewhere to the following:

- They admit that there are few if any detailed plans on how to merge the companies' operations.[6]
- They acknowledge that the financial status of the post-merger firm may deteriorate.[7]
- They admit that after the first twelve months, the post-merger firm may, and is in fact likely to, modify or change its operations support systems (OSS).[8]
- They admit that modifications of or changes to its OSS are likely to result in errors and service disruptions.[9]
- They fail to recognize the difference between CenturyLink's Section 251 OSS obligations and Qwest's Section 271 OSS obligations.[10]
- They fail to acknowledge that the post-merger firm's competitive interests do not coincide with those of its wholesale CLEC customers.[11]

In view of the above, it is clear that the Joint CLECs' proposed merger conditions are justified and necessary to protect the interests of CLECs, their end users and the public interest in promoting competition.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

---

6 Hunsucker Rebuttal, at p. 10.

7 *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, Before the Minnesota Public Utility Commission, Docket No. P-421, et al./PA-10-456, Gast Rebuttal, at pp. 4-5.

8 Hunsucker Rebuttal, at p. 13.

9 *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, Before the Minnesota Public Utility Commission, Docket No. P-421, et al./PA-10-456, Ring Rebuttal, at p. 1.

10 Hunsucker Rebuttal, at p. 9.

11 Brigham Rebuttal, at pp. 10-11.

A. I respond to the Joint Applicants' specific rebuttals to my Direct Testimony concerning merger-driven uncertainty, the merger's potential benefits and risks, and the Commission's standard of review. I demonstrate that the Joint Applicants' witnesses:

- Acknowledge that merger-driven uncertainty is harmful to the public interest;
- Misconstrue and fail to rebut my testimony addressing merger outcomes and risks, and the Commission's appropriate standard of review; and
- Disregard the fact that the concerns that they characterize as "CLEC speculations" are grounded in comprehensive and in-depth analysis.

I respond next to the general claims advanced by Mr. Fenn and Mr. Brigham that the Joint CLECs' proposed conditions are irrelevant or unnecessary. I demonstrate that, contrary to Mr. Fenn's and Mr. Brigham's claims, Qwest's continued domination of wholesale markets within its service territory compels adoption of the proposed conditions to protect the public interest in competition.

I then turn to the claims of the Joint Applicants' witnesses concerning the specific Joint CLEC conditions supported within my Direct Testimony, and explain that:

- Contrary to Ms. Stewart's suggestion, the Commission cannot rely upon its existing rate-setting and complaint procedures to ensure that the safeguards contemplated in Wholesale Rate Stability Conditions 2, 3, and 7 are actually achieved;
- Mr. Hunsucker fails to acknowledge my Direct Testimony that explained why Conditions 2, 3, and 7 are necessary in the context of the merger and are not attempts to circumvent existing law and rules; and
- Their rebuttals to the proposed Wholesale Service Availability Conditions, Numbers 1, 6, 8, 9, 10, 12, 14 and 28, are similarly erroneous and do not undermine my Direct Testimony, which explains why the conditions are essential protections for the Commission to adopt if it approves the merger.

Q. HAS THE REBUTTAL TESTIMONY OF THE JOINT APPLICANTS CAUSED YOU TO CHANGE YOUR TESTIMONY OR RECOMMENDATIONS?

A. No. None of the Companies' Rebuttal testimony concerning the Joint CLECs' proposed merger conditions causes me to alter my prior analysis or recommendations. I continue to recommend that, if the Commission approves the proposed merger, it should impose all of the Joint CLEC conditions that I have recommended, as well as those supported by Mr. Gates.

II. RESPONSE TO JOINT APPLICANTS' TESTIMONY CONCERNING MERGER-DRIVEN UNCERTAINTY, POTENTIAL BENEFITS AND RISKS, AND THE COMMISSION'S STANDARD OF REVIEW.

A. The Joint Applicants' witnesses acknowledge that merger-driven uncertainty is harmful to the public interest.

Q. DOES THE JOINT APPLICANTS' REBUTTAL TESTIMONY RELIEVE ANY OF YOUR CONCERNS REGARDING THE UNCERTAINTY CREATED BY THE PROPOSED MERGER AND THE RESULTING HARM TO CLECS?

A. No, unfortunately it does not. My Direct Testimony and accompanying Exhibit Joint CLECs 1.3 have demonstrated how the proposed merger has created substantial uncertainty for CLECs with respect to:

- Systems and operations integration;

- Change Management Process;
- Performance Assurance Plan;
- Wholesale rates and services;
- Wholesale customer service; and
- Network investment.

As I explained in my Direct Testimony,[12] these are all critical, customer-impacting areas which this Commission should carefully evaluate before determining whether the proposed transaction will cause "no harm." The Joint Applicants provide no facts that address the merger's impact in these areas. Instead, they simply continue to assert that "[i]t is not possible or appropriate to subject a pending transaction to a scrutiny that requires detailed plans."[13] That position is inconsistent with the long-standing approach taken by this Commission and other regulators with similar approval authority, under which regulators look at a proposed merger's potentially harmful impacts and impose conditions as necessary to address those potential impacts. As my Exhibit Joint CLECs 1.3 demonstrates, the information supplied to date by the Joint Applicants concerning those key issues is woefully incomplete, and clearly insufficient to support the kind of fact-based evaluation that the Commission should make.

Q. HAVE THE JOINT APPLICANTS ACKNOWLEDGED THAT UNCERTAINTY RELATING TO THE PROPOSED MERGER IS HIGHLY UNDESIRABLE AND CONTRARY TO THE PUBLIC INTEREST?

[12] Ankum Direct at pp. 58-59.

[13] Jones Rebuttal at p. 13, lines 15-16.

A. Yes. Mr. Jones opposes the suggestion of CWA witness Mr. Barber to delay the merger's approval pending more fully-defined plans, on the grounds that such a delay's effects on the individual Companies would be "profoundly negative due to the uncertainty created by the proposal."[14] Mr. Jones proceeds to declare that "the clear effect of uncertainty in the financial markets and in the competitive market environment is negative." He specifically concludes that "the uncertainties for customers—retail and wholesale would be extended—likely resulting in harm to the public interest, as the ILEC is the backbone communications provider to its wholesale and retail customers." Of course, from the ILEC customers' point of view – particularly the CLEC wholesale customers – the harm from uncertainties will persist long after the merger transaction closes, unless this Commission takes appropriate action.

Q. HOW CAN THE COMMISSION APPROVE THE MERGER WITHOUT PROTRACTED DELAY, YET ALSO MITIGATE THE HARMS CAUSED BY UNCERTAINTY IF MORE DEFINITE POST-MERGER PLANS ARE NOT FORTHCOMING?

A. For the reasons I discussed in my Direct Testimony,[15] I recommend that the Commission deny the merger as proposed. In the alternative, the Commission could approve the transaction with conditions designed to substantially reduce the harmful uncertainties and other potential harmful impacts of the merger on competition and CLECs. The Joint CLECs' proposed conditions, which are set

[14] Jones Rebuttal at p. 29.

[15] Ankum Direct at pp. 65-66.

forth in Mr. Gates' Exhibit TJG-8 and explained in the Direct Testimony that Mr. Gates and I have provided, remain the best means to do this, and I continue to recommend their adoption. Thus, adoption of those conditions would allow the Commission to act in a timely manner, yet also mitigate those harms.

Q. SHOULD THE COMMISSION SIMPLY APPROVE THE MERGER AS PROPOSED, WITHOUT CONDITIONS, AND ADDRESS FUTURE MERGER-RELATED CHANGES AND DISPUTES AS THEY ARISE, AS RECOMMENDED BY THE JOINT APPLICANTS?

A. No. There are many reasons to reject that approach. First, such a "wait-and-see" approach would indefinitely prolong the uncertainty that CLECs will experience. Applying conditions to any approval would avoid an extended period of uncertainty and also limit the Merged Company's opportunities for abusive practices aimed at handicapping CLECs, by more clearly delineating its post-merger wholesale service and interconnection obligations that CLECs depend on.

Second, this proceeding is the opportune time (and possibly, the only time) for the Commission to consider the merger's impact on competitors in a systematic and comprehensive fashion. If the Commission refrains from adopting the Joint CLECs' proposed conditions now, it may have to address many (perhaps all) of the same issues later, in piecemeal fashion, consuming even more resources of the Commission and the parties involved. This is particularly likely with respect to the proposed conditions addressing interconnection agreements: unilateral actions by the Merged Company that contravene the intent of the relevant conditions

could result in disputes in multiple ICA negotiations that the Commission would then be compelled to arbitrate, possibly *in seriatim*.

Third, Commission action to address these issues after the merger through complaint proceedings would fail to provide a timely remedy for merger harm. Of course wholesale customers can file complaints with the Commission, but the delay associated with resolving such complaints could allow harms to wholesale customers and competition to go unchecked. Indeed, the Commission's approval authority is a pre-merger authority: companies are required to obtain Commission approval ***before*** consummating mergers or acquisitions. The point of this authority is to ensure that the public interest is protected before the merger takes effect.

Finally, it is in no one's interest, including the Joint Applicants, to have the merger approved on the basis of a cursory, incomplete review, and then later bogged down by a succession of Commission investigations to resolve those key issues that were not addressed earlier. Clearly, the best way forward is to address the key issues now, and establish sufficient conditions and protections to avoid uncertainty and protracted disputes and investigations in the future.

B. The Joint Applicants' witnesses misconstrue and fail to rebut my testimony addressing merger outcomes and risks, and concerning the Commission's appropriate standard of review.

Q. MR. FERKIN ASSERTS THAT YOU "TESTIF[Y] VAGUELY THAT 'MOST MERGERS ARE NOT SUCCESSFUL'" AND THAT YOUR

"TESTIMONY PROVIDES NO DATA OR REFERENCES TO VERIFY THE STATEMENT ABOUT 'MOST MERGERS.'"[16] IS THIS CORRECT?

A. No, it is not. The line of my Direct Testimony to which he refers (page 9, line 21) actually reads "***I have already noted that*** most mergers are not successful" (emphasis added). Inexplicably, Mr. Jones has overlooked the discussion of merger success and failure supplied at pages 5-6 of my Direct Testimony, which provides a detailed citation to the academic literature on the subject,[17] in support of the general observation that about two out of three mergers are not successful. This observation was offered not to object to this particular merger, but rather as a word of caution and further reason for careful scrutiny of the proposed transaction. Moreover, this record of merger failure, well documented in my testimony and unrebutted by the Companies' witnesses, underscores the need for and importance of merger conditions to protect the Companies' wholesale customers and the public interest in competition.

Q. HAS MR. FERKIN ALSO MISCONSTRUED YOUR TESTIMONY CONCERNING THE RELATIONSHIP BETWEEN THE COMMISSION'S STANDARD OF REVIEW AND THE JOINT APPLICANTS' SHOWING OF BENEFITS FROM THE MERGER?

A. Yes. Mr. Ferkin alleges that Mr. Gates and I "seek to set a higher threshold for approval of the transaction" by "requiring that the Joint Applicants prove affirmative benefits flowing from the transaction" and by "requiring

[16] Ferkin Rebuttal at p. 37, fn. 61.

[17] See Ankum Direct at page 6, fn. 4.

that…wholesale customers…realize direct financial benefits from the merger."[18] In fact, contrary to Mr. Ferkin's allegation, the "threshold" or standard of review that I believe is applicable in the instant case is the same "definable net benefit" standard previously applied by the Commission, that the Joint Applicants expressly acknowledged as applicable in their Joint Application. [19]

This is thoroughly explained in pages 14-19 of my Direct Testimony, where I point out that when previously reviewing a transaction of this kind, the Commission has determined that the transaction needs to provide a "definable net benefit" in order to be found to be in the public interest.[20] Of course, a proper Commission review of the instant transaction will necessarily evaluate the quality and credibility of the evidence in the record. If the Joint Applicants are unable or unwilling to substantiate their claims of merger benefits with specific plans or other empirical information, then, in the Commission's evaluation, the Commission should afford those unsubstantiated claims the weight they deserve. As I demonstrated in my Direct Testimony[21] and Exhibit Joint CLECs 1.4, the weight to be properly afforded those unsupported claims turns out to be little or none, as so often they are little more than rhetoric and empty promises.

---

18 Ferkin Rebuttal at p. 31.

19 CenturyTel, Inc. and Qwest Communications International, Inc. Joint Application for Expedited Approval of Indirect Transfer of Control, filed May 19, 2010 ("Joint Application"), at p. 9 ("In approving this Transaction, the Commission must consider whether the Transaction is in the public interest, and thus whether there is a definable net benefit to the Transaction.").

20 Ankum Direct at p.15.

21 *Id.* at Section VI (pages 59-65).

Furthermore, contrary to Mr. Ferkin's allegation, I have not stated that the Commission's applicable standard of review ***requires*** that wholesale customers realize direct financial benefits from the merger. Instead, I have pointed out that the Joint Applicants ***could*** have committed to flowing through merger-related synergy cost savings (to the extent those synergies are realized) into cost-based rates for the network elements and interconnection leased by CLECs – which the pricing provisions of the Telecommunications Act of 1996 already require – but ***have chosen not to*** make such a commitment.[22] In my view, the absence of this commitment does not in itself violate the applicable Commission review standard, but it is simply another factor that should be taken into account during the Commission's evaluation of the transaction.

Q. MR. BRIGHAM CLAIMS[23] THAT YOUR ANALYSIS OF THE PROPOSED TRANSACTION'S RISKS AND BENEFITS IS FLAWED, AND THAT "IT IS WRONG TO CONCLUDE THAT A MERGER PRESENTS LESS RISK TO STOCKHOLDERS THAN TO OTHER STAKEHOLDERS."[24] IS HE CORRECT?

A. No. Mr. Brigham entirely overlooks the point made in my Direct Testimony that shareholders of the Companies, both pre- and post-merger, are stakeholders ***entirely at their own volition***:

> [They] can sell their shares if they anticipate that things will go awry, or, alternatively, hold on to their shares to reap whatever

[22] Ankum Direct, at pp. 64-65.

[23] Brigham Rebuttal at pages 26-27 and page 30.

[24] *Id.* at page 31, lines 8-9.

> benefits they may anticipate: it is a risk-return tradeoff each shareholder is free to either assume or walk away from.[25]

The circumstance that Mr. Brigham cites, that certain stockholders "lost their entire investment" when the Worldcom-MCI combination went bankrupt,[26] simply reflects those stockholders' willingness to stay in the game and accept the risk of potential losses, as well as potential rewards.[27] If they ultimately incurred large financial losses, that is attributable to their poor judgment (as revealed in hindsight), not to an ***involuntary imposition*** of risks.

As I then explained further, that freedom of choice (i.e., to accept the merger's risks or to exit) does not exist for other, captive stakeholders, most notably CLECs, who depend on the Companies for critical wholesale inputs.[28] I explain this dependence in more detail below (see Section III.A).

Q. DOES THIS LACK OF CHOICE EXTEND TO CERTAIN RETAIL CUSTOMERS OF THE COMPANIES, AS WELL AS CLECS?

A. Yes. My Direct Testimony generally focuses on the circumstances confronted by CLECs operating in the Companies' territory, but I also refer to the fact that there are "retail customers in ***captive segments*** of retail markets [that] have little or no choice."[29] While Mr. Brigham appears to deny the existence of any captive retail

---

[25] Ankum Direct at p. 8, lines 18-21.

[26] Brigham Rebuttal at p. 31, lines 4-6.

[27] For other stakeholders that are set to reap significant returns, see, "Windfall for Qwest Top Execs," by Andy Vuong, *The Denver Post*, 7/18/2010. http://www.denverpost.com/search/ci_15536725. The article notes the following: "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.)

[28] Ankum Direct at pp. 8-9; see also p. 13.

[29] *Id.* at p. 8, line 22 through p. 9, line 2 (emphasis added).

customers,[30] the latest FCC report on local telephone competition[31] indicates that there are still many areas in Utah where there are no alternative landline providers.[32] But even in areas in which alternative landline providers do operate, not all customers, particularly residential customers, are likely to have access to the alternative provider(s). Thus, the FCC report demonstrates that a significant fraction of Utah retail landline consumers remain captive customers of their ILEC.

In any event, whether considering captive wholesale customers (CLECs) or retail customers (those without alternatives to the Companies' wireline services), it is the distinction between voluntary and involuntary participation in the proposed merger's risks that is central to the analysis of various stakeholder groups' risk-return profiles, the point which Mr. Brigham entirely misses. Thus, contrary to Mr. Brigham's erroneous claim, my analysis of the asymmetry in the risk-return profiles between various stakeholders is sound.

Q. ON THE SUBJECT OF RISKS, MR. FERKIN OBSERVES THAT YOU AND OTHER INTERVENORS HAVE CITED TO THE "RISK FACTORS" DISCUSSION CONTAINED IN CENTURYLINK'S SEC FORM 4-A FILED JULY 16, 2010. MR. FERKIN CONTENDS THAT "…THE

---

30 Brigham Rebuttal at pp. 11-12.

31 See, FCC Wireline Competition Bureau, Industry Analysis and Technology Division, Local Telephone Competition: Status as of June 30, 2009, released September 2010 (FCC Local Competition Report).

32 *Id.*, at Table 20 (showing that 8% of zip codes in Utah have no alternative wireline or VOIP service provider). The FCC methodology is highly conservative, in that it counts a zip code as having an alternative supplier if at least one residential or business end user in the zip code is served by a CLEC, and does not consider the geographic reach of the provider within the zip code area. *Id.* at p. 1, fn. 3.

DISCLOSURES ARE NOT INTENDED TO SUGGEST THAT THE RISKS ARE LIKELY OUTCOMES."[33] **DOES THIS MEAN THAT THE COMMISSION CAN SIMPLY DISCOUNT OR IGNORE THOSE IDENTIFIED RISKS?**

A. No. In its Form S-4A filing, CenturyLink identified specific, concrete risks that are associated with the proposed merger,[34] even if it did not assign probabilities of occurrence to them. The fact remains that the "Risk Factors" discussion directly contradicts CenturyLink's claims before this Commission that there are ***no*** potential harms that could result from the merger.[35] Surely, if it is important to forewarn the financial community of potential harms, it is important to forewarn the Commission.

Moreover, the Commission should bear in mind that some of these types of identified risks did in fact come to pass in the cases of the Carlyle-Hawaiian Telcom and FairPoint-Verizon transactions discussed in my Direct Testimony (pages 26-37), and that of Mr. Gates. For example, FairPoint's Form S-4A before the shareholder vote on the FairPoint-Verizon transaction included the following discussion of "Risk Factors":

> The integration of FairPoint's and Spinco's businesses may not be successful. The acquisition of the Spinco [Verizon] business is the

---

[33] Ferkin Rebuttal at p. 47, line 9.

[34] See my Direct Testimony at pp. 53-54, where I list some of the specific risks that CenturyLink described in the Form S-4A filing.

[35] See Ferkin Direct at p. 12; see also, CenturyTel, Inc. and Qwest Communications International, Inc. Joint Application for Expedited Approval of Indirect Transfer of Control, filed May 19, 2010 ("Joint Application"), at p. 9 ("The Transaction…will provide definable net benefits to consumers of the combined company without ***any countervailing harms***." -- emphasis added).

> largest and most significant acquisition FairPoint has undertaken. FairPoint's management will be required to devote a significant amount of time and attention to the process of integrating the operations of FairPoint's business and Spinco's business, which will decrease the time they will have to service existing customers, attract new customers and develop new services or strategies. Due to, among other things, the size and complexity of the Northern New England business and the activities required to separate Spinco's operations from Verizon's, FairPoint may be unable to integrate the Spinco business into its operations in an efficient, timely and effective manner. FairPoint's inability to complete this integration successfully could have a material adverse effect on the combined company's business, financial condition and results of operations.[36]
>
> The integration of FairPoint's and Spinco's businesses may present significant systems integration risks, including risks associated with the ability to integrate Spinco's customer sales, service and support operations into FairPoint's customer care, service delivery and network monitoring and maintenance platforms.[37]

The Direct Testimony offered by Mr. Gates and myself explains the parallels between the FairPoint-Verizon transaction and the proposed CenturyLink-Qwest merger, and describes the harms to consumers and CLECs that were caused as these previously-identified (albeit not quantified) risks did in fact become an unfortunate reality.[38] Accordingly, as I have recommended,[39] the Commission should heed the lessons of the Carlyle-Hawaiian Telcom and FairPoint-Verizon experiences and ensure that appropriate safeguards are adopted in the instant proceeding to ensure that similar harms will not occur in Utah.

---

[36] FairPoint Communications SEC Form S-4A, filed July 10, 2007, at p. 25 (emphasis removed).

[37] *Id.*, at p. 26 (emphasis removed).

[38] See, e.g., my Direct Testimony at pp. 26-38 and Gates Direct at pp. 88-103.

[39] Ankum Direct at pp. 36-37.

Q. MR. HUNSUCKER (PAGE 4) AND MR. BRIGHAM (PAGES 22) CLAIM THAT CLECS WILL BENEFIT FROM A FINANCIALLY STRONGER MERGED COMPANY. DO YOU AGREE?

A. No, I have seen no evidence from the Companies to support this claim – only unsupported assertions. I do acknowledge that CLECs ***could*** benefit from a financially stronger Merged Company, ***but only if*** the greater financial strength were directed to, among other things, improving wholesale services and associated wholesale customer support. However, there is no evidence that the post-merger company, contrary to most merger outcomes, will in fact be stronger. Furthermore, neither witness has offered any explanation of how a financially stronger Merged Company in this instance would confer specific benefits on CLECs. Indeed, the information provided by the Joint Applicants in this proceeding suggests that just the opposite is true. For example, the Joint Petition states that "[a] financially stronger company can…compete against…CLECs…"[40] Again, I do not object to robust competition between the Merged Company and CLECs as long as the competition is fair.[41] However, I cannot see how that purported financial strength benefits CLECs – especially given that, as Mr. Gates explains, the Joint Applicants have not agreed to reflect the Merged Company's increased efficiencies in its relationships with its wholesale customers or even to maintain the products, services or rates that CLECs purchase from Qwest today.

---

[40] Qwest Communications International, Inc., CenturyTel, Inc. et al, Joint Petition for Expedited Approval of Indirect Change of Control, filed May 13, 2010 ("Joint Petition"), at p. 11.

[41] See Ankum Direct at p. 90.

Q. MR. HUNSUCKER CLAIMS[42] THAT CLECS WOULD ALSO BENEFIT FROM THE MERGED COMPANY'S GAINS IN INTERNAL OPERATING EFFICIENCIES ASSOCIATED WITH WHOLESALE SERVICES. IS THAT NECESSARILY TRUE?

A. No. Mr. Hunsucker is once again making a vague assurance without any factual support. Because the Joint Applicants have supplied no plans or commitments with respect to the going-forward treatment of CLEC-oriented wholesale services and associated OSS systems, there is no way for the Commission or anyone else to know what wholesale services operating efficiencies the Merged Company may realize, if any. Indeed, the enormous work that it will require to harmonize and integrate the myriad OSS systems of CenturyLink and Qwest could distract from and defer (or even entirely eliminate) efficiency gains from more straightforward evolutionary improvements to those separate systems that might have been undertaken without the merger transaction.

Clearly, the extent to which CLECs could benefit from such internal operating efficiencies of the Merged Company would vary greatly depending upon the specific process or system affected. Some efficiency improvements in the Companies' OSS systems would clearly have no benefit to the wholesale service performance experienced by the CLECs. For example, if the Merged Company found a much cheaper way to store and access its loop plant records than the status quo, that could reduce its costs and improve its operating efficiencies, but

[42] Hunsucker Rebuttal at p. 36.

without any effect on, or benefit to, the wholesale services as experienced by the CLECs. On the other hand, CLECs could be harmed if the Merged Company should find it more "efficient" and less costly to cut back on the staffing of its wholesale services support centers, slowing responses and increasing CLEC customers' waiting times for customer queries and trouble resolutions. The latter is exactly the kind of wholesale service change that the CLECs are concerned about, and which is addressed by Condition 18 of the Joint CLECs' proposed conditions (see Exhibit Joint CLECs 1SR.1).

C. The Joint Applicants' witnesses ignore the fact that the concerns that they characterize as "CLEC speculations" are grounded in comprehensive and in-depth analysis.

Q. HOW HAVE THE JOINT PETIONERS' WITNESSES CHARACTERIZED YOUR ANALYSIS OF THE POTENTIAL HARMS TO CLECS AND THE PUBLIC INTEREST THAT MAY ARISE FROM THE PROPOSED MERGER?

A. In their Rebuttal Testimony, Mr. Hunsucker on behalf of CenturyLink, and Mr. Brigham on behalf of Qwest, characterize my analysis of potential merger harms as "speculative" and "unsupported."[43] Mr. Brigham declares that he is "struck by the highly speculative and unsupported nature of Dr. Ankum's and Mr. Gates' testimony regarding how this merger will impact the competitive landscape in Utah."[44] He opines that Mr. Gates and I "speculate that competition will be

[43] *Id.* at p. 8, Brigham Rebuttal at pp. 3-4.

[44] Brigham Rebuttal at p. 3, line 22 through p. 4, line 1.

harmed by the proposed transaction, but this speculation is not supported by any evidence."[45]

Q. HOW DO YOU RESPOND TO THESE CHARACTERIZATIONS OF YOUR TESTIMONY?

A. As the Commission can see by reviewing my nearly 160 pages of Direct Testimony and Exhibits in this proceeding, my conclusions concerning the proposed merger's potential harms to CLECs and the public interest are based upon a comprehensive and in-depth analysis. The review and analysis in my direct testimony includes:

- Review of the economic literature concerning merger motivations and success/failure rates;
- Analysis of the unique aspects of telecommunications and ILEC merger transactions;
- Review and assessment of prior telecommunications and ILEC mergers and why they succeeded/failed;
- Evaluation of the specifics of the Joint Applicants' proposed transaction, as much as they have been revealed in the Companies' Joint Petition, prefiled testimony, and discovery responses in Utah and elsewhere;
- Assessment of the Joint Applicants' incentives and abilities to discriminate against the CLECs with which they compete; [46] and
- Review of the Direct Testimony of Mr. Gates, in particular the well-documented evidence it contains concerning past anti-competitive conduct by the Joint Applicants, and how OSS integration failures in the context of prior ILEC mergers demonstrate further potential harms from the Joint Applicants' proposed transaction.

A careful review of my direct testimony shows that my conclusions regarding the potential harm to wholesale customers and competition are well-founded and not

[45] *Id.* at p. 4, lines 6-8.

[46] See Ankum Direct at page 13 and Section V.B, Vertical Effects, pages 42-47.

speculative or unsupported, as suggested by Mr. Hunsucker and Mr. Brigham. To the extent there is uncertainty regarding the impact of this merger, that uncertainty results largely from the Joint Applicants' failure to provide their specific post-merger plans and associated information.

Indeed, it is important to remember that the Joint CLECs' merger conditions have been proposed precisely because of the uncertainties associated with the merger and to prevent or mitigate potential harm from the merger to the extent reasonably possible.

Given the breadth, depth, and detailed nature of the analysis I have presented, the characterization of my testimony by Messrs. Brigham and Hunsucker is clearly unfounded.

III. RESPONSE TO JOINT APPLICANTS' TESTIMONY CONCERNING GENERAL NEED FOR CONDITIONS

A. Contrary to Mr. Fenn's allegation, the Joint CLECs' proposed merger conditions are specifically targeted safeguards intended to mitigate potential harms to competition arising from the merger .

Q. DO YOU AGREE WITH MR. FENN'S SWEEPING CHARACTERIZATION OF THE JOINT CLECS' PROPOSED MERGER CONDITIONS AS REFLECTING "GRIEVANCE[S]" THAT ARE "NOT RELATED TO THE MERGER"[47]?

[47] Fenn Rebuttal at p. 14.

A. No, certainly not. As demonstrated in my Direct Testimony where I explain the need for the proposed conditions relating to Wholesale Services Availability (Section VII.A) and Rate Stability (Section VII.B), each of the Joint CLECs' proposed merger conditions addresses a specific potential harm of the merger and offers a targeted means to mitigate that harm. Later in my Surrebuttal Testimony (at pages 29-30), I provide further explanation of how specific conditions similarly criticized by Mr. Hunsucker as "irrelevant" do in fact target merger-related potential harms. The fact that many different conditions are needed does not mean that the Joint CLECs view the instant proceeding as a "catch-all" proceeding to take up pre-existing grievances, as Mr. Fenn alleges,[48] but instead reflects the fact that the merger has the potential to affect virtually every aspect of the Joint Applicants' business relationship with their CLEC wholesale customers.[49]

B. Mr. Brigham confuses the status of competition in retail vs. wholesale markets and fails to acknowledge that Qwest continues to dominate wholesale markets throughout its service territory.

Q. DR. ANKUM, DO YOU AGREE WITH MR. BRIGHAM'S ASSERTIONS THAT THE "POST MERGER COMPANY CANNOT AFFORD, AND HAS NO INCENTIVE, TO DEGRADE OSS OR OFFER INFERIOR SERVICE

[48] *Id.* at p. 14, lines 11-14.

[49] See the list of wholesale customer-impacting areas that I provided on pages 4-55 of my Surrebuttal Testimony.

QUALITY BECAUSE CUSTOMERS – INCLUDING CLECS – HAVE COMPETITIVE OPTIONS" [50]**?**

A. No. In support of that assertion, Mr. Brigham cites to "competitive options from other facilities-based providers such as cable and wireless companies,"[51] but of course those inter-modal options relate only to ***retail service markets*** (and only in limited circumstances), and do not in any way represent "competitive options" available in the ***wholesale service markets*** upon which CLECs depend. I am not aware of any recent analysis or finding by this Commission concerning the status of competition in Utah for wholesale "last-mile" connectivity and network access. However, I am aware that the Minnesota Public Utilities Commission observed in its December 2009 Order adopting a new AFOR for Qwest that:

> While the 1996 Act has succeeded in introducing a measure of competition into the retail market, ***Qwest remains the dominant provider of wholesale services***. And regardless of the state of competition, each telephone company continues to exercise a monopoly over routing calls over the public switched telecommunications network to its own retail customers - that is, over switched access service. [52]

Even more recently, in March, 2010, the Arizona Corporation Commission ("ACC") filed comments in the FCC's proceeding addressing Qwest's request for

---

[50] Brigham Rebuttal at p. 7, lines 12-14.

[51] *Id. at* p. 7, lines 7-9. While I also reject the view of Mr. Brigham and Mr. Fenn that wireless service is a full "competitive option" to ILEC wireline service, that debate pertains to the retail marketplace only and has nothing to do with the wholesale services market for CLEC inputs.

[52] Minnesota PUC Docket No. P-421/AR-09-790, Order Approving Qwest's Alternative Regulation Plan as Modified (December 23, 2009), at p. 5 (emphasis supplied).

forbearance in the Phoenix MSA.[53] Based on data collected by its Staff, the ACC concluded that viable wholesale alternatives were not yet available in the Phoenix MSA and that "[t]he data collected by the ACC indicates that Qwest is by far the dominant facilities-based carrier yet in the business or enterprise market."[54] The ACC specifically rebutted Qwest's claims with respect to availability of alternative last-mile connections, finding that:

- "[t]he extensive intramodal non-Qwest facilities competition that Qwest cites to in its Petition for the business market is not borne out by the data collected by the ACC;"
- "[N]o carrier other than Qwest has deployed significant last mile connectivity to multi-tenant complexes where many of the business customers are located;" and that
- "No amount of rhetoric can replace the fact that alternative last mile facility providers are not an option yet for much of the Phoenix MSA business community."[55]

If Qwest cannot make the case for significant alternative sources of supply for last-mile connectivity to business/enterprise customers in the largest urbanized area in the Southwest (the Phoenix MSA), where one might expect competition to develop earlier than in other less-concentrated Southwestern regions and markets, then it can hardly support such claims for the entirety of Utah.

The continuing reality of Qwest's wholesale services dominance completely undercuts Mr. Brigham's assertion that the Post Merger Company would have no incentive to diminish its wholesale service quality to CLECs. To the contrary, as

---

53 *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 USC § 160(c) in the Phoenix Metropolitan Statistical Area*, WC Docket No. 09-135, Late-Filed Reply Comments of the Arizona Corporation Commission, March 2, 2010.

54 *Id.* at pp. 23 and 21.

55 *Id.* at pp. 21-22.

I have already explained,[56] the very fact that CLECs operating in the Qwest region are highly dependent upon Qwest's wholesale services to access their customers creates strong disincentives to provide CLECs with quality, reasonably priced, nondiscriminatory wholesale services and network access. In the absence of significant alternative sources of supply for those inputs, CLECs cannot simply migrate away from Qwest's network, as Mr. Brigham suggests,[57] and instead will suffer harms to the extent that there is any decline in the scope, quality or terms of the post-merger wholesale services provided by the merged company.

C. The U.S. Department of Justice's termination of its review of the Companies' merger transaction does not lessen the need for a thorough Commission review of the merger's impacts on CLECs and other affected stakeholders.

Q. MR. BRIGHAM OBSERVES THAT THE DEPARTMENT OF JUSTICE (DOJ) AND FEDERAL TRADE COMMISSION (FTC) HAVE CLEARED THE CENTURYLINK-QWEST MERGER FROM AN ANTITRUST PERSPECTIVE.[58] WHAT SPECIFIC ACTIONS DID THE DOJ UNDERTAKE IN THAT REGARD?

A. At the Joint Applicants' request, the DOJ terminated the waiting period for review of the merger under the Hart Scott Rodino Act. While I am not an attorney offering a legal opinion, my understanding is that the early termination of a

---

56 Ankum Direct at p. 13.

57 Mr. Brigham also confuses retail and wholesale markets when he points to growth in "competitive options from other facilities-based providers such as cable and wireless companies" (Brigham Rebuttal at p. 7)

58 Brigham Rebuttal at pp. 23-24.

merger review is made pursuant to 16 C.F.R. Section 803.11, which requires in totality the following findings by the DOJ: that all required notifications have been filed; no additional information or documentary material will be requested; and a determination by the DOJ that it does not intend to take any further action within the waiting period. Thus Mr. Brigham's conclusion that the termination meant that the DOJ "…determined there will not be a significant erosion of competition resulting from the merger"[59] is an overstatement.

Q. DOES THAT CLEARANCE MEAN THIS COMMISSION HAS NO NEED TO EVALUATE THE PROPOSED MERGER'S POTENTIAL IMPACTS ON CLECS IN UTAH?

A. No. As I pointed out in my Direct Testimony,[60] the DOJ's antitrust review differs from and is narrower than the Commission's public interest evaluation. The DOJ's role in merger proceedings is to investigate a proposed merger to the point that the Assistant Attorney General in charge of the DOJ's Antitrust Division can determine if the evidence warrants prosecution of an antitrust case against the merging entities.[61] My understanding is that nothing in the statutes granting this prosecutorial authority to the DOJ either states, or indicates, that the DOJ's decision should supplant or even guide a regulatory body's public interest determination regarding the proposed merger.

---

59 *Id*. at p. 23, lines 21-23.

60 Ankum Direct at p. 22.

61 15 U.S.C. Sections 18, 18a.

As a general matter, despite the fact that the CenturyLink-Qwest transaction is being scrutinized by multiple government agencies, this Commission should not lose sight of the fact that it is the only government authority specifically tasked with determining whether the proposed merger is in the public interest under Utah law, and thus with due consideration of Utah-specific circumstances. This Commission should not simply defer to other agencies, as Mr. Brigham and Mr. Jones seem to imply,[62] but instead should exercise its independent judgment and authority with respect to the Joint Petition, as it always has in merger proceedings such as this.

IV. RESPONSE TO JOINT APPLICANTS' TESTIMONY CONCERNING SPECIFIC CONDITIONS PROPOSED BY THE JOINT CLECS

A. The specific Joint CLEC proposed conditions explained in my Direct Testimony remain essential protections and are not undermined by the rebuttal testimony offered by the Joint Applicants' witnesses.

Q. DR. ANKUM, HAVE YOU REVIEWED THE REBUTTAL TESTIMONY OFFERED BY THE CENTURYLINK AND QWEST WITNESSES CONCERNING THE SPECIFIC MERGER CONDITIONS THAT YOU ARE RECOMMENDING?

A. Yes, I have. Section VII of my Direct Testimony (pages 63-87) explained the basis for the Joint CLECs' proposed conditions relating to wholesale rate stability

[62] See Ferkin Rebuttal at p. 4 (noting that ten states have approved the CenturyLink-Qwest transaction).

(Conditions number 2, 3, and 7 as numbered in Mr. Gates' Exhibit TJG-8) and the availability of wholesale services (Conditions number 1, 6, 8, 9, 10, 12, 14 and 28). Mr. Hunsucker, on behalf of CenturyLink, and Ms. Stewart, on behalf of Qwest, have addressed some of those particular conditions in their respective Rebuttal Testimony.[63]

Q. DOES THEIR TESTIMONY CHANGE YOUR OPINION THAT THOSE MERGER CONDITIONS SHOULD BE ADOPTED BY THE COMMISSION IF IT DECIDES TO APPROVE THE MERGER?

A. No. None of the Joint Applicants' Rebuttal Testimony causes me to alter my prior recommendations. I continue to recommend that, if the Commission approves the proposed merger, it should impose all of the Joint CLEC conditions that I have recommended, as well as those supported by Mr. Gates.

B. Conditions 2, 3, and 7.

Q. WHAT IS YOUR RESPONSE TO MS. STEWART'S ARGUMENT[64] THAT THERE IS NO NEED FOR THE WHOLESALE RATE STABILITY CONDITIONS (NUMBERS 2, 3, AND 7) BECAUSE THE COMMISSION ALREADY HAS IN PLACE A PROCESS FOR DETERMINING RATES FOR SECTION 251-RELATED SERVICES?

---

[63] See Hunsucker Rebuttal at pp. 17-20 (addressing Conditions 6 and 8), pp. 21-24 (addressing Conditions 9 and 10), p. 26 (addressing Conditions 12 and 14), p. 31 (addressing Condition 28), and pp. 36-38 (addressing Conditions 1, 2, 3, and 7); Stewart Rebuttal at pp. 9-11 (addressing Conditions 2, 3, and 7) and pp. 13-16 (addressing Condition 14).

[64] Stewart Rebuttal at pp. 9-11.

A. As I discussed in my Direct Testimony,[65] there is a serious risk that the Merged Company will attempt to recover merger costs through increases in wholesale rates. To preclude this sort of recovery, a merger commitment that caps rates for a meaningful period following the merger is essential for several reasons. First, recovering merger costs through wholesale rate increases would be inappropriate for the reasons stated in my Direct Testimony. Indeed, regulators have historically rejected any such recovery.[66] Second, post-hearing wholesale rate/UNE cost proceedings are an expensive, time-consuming, and uncertain way of attempting to prevent the Joint Applicants from improperly recovering merger costs from wholesale customers/competitors. Indeed, those merger-related costs could be buried in complex cost-models that allow them to find their way into wholesale rates undetected. Contrary to Ms. Stewart's view, the Commission cannot simply rely upon its existing rate-setting and complaint procedures to ensure that the safeguards contemplated in Conditions 2, 3, and 7 are actually achieved. By refusing to make an up-front commitment to refrain from recovery of merger transaction-related costs from wholesale rates and CLECs, the Joint Applicants would be shifting the burden to the Commission, the Division of Public Utilities, and CLEC intervenors in such proceedings to identify and root out those costs, which as I explained in my Direct Testimony, regulators should not and traditionally have not included in merging ILECs' wholesale or retail rates as a matter of principle. Now is the time for the Commission to implement

[65] Ankum Direct at pp. 44 and 86-87.

[66] *Id.* at pp. 88-89 (see especially fns. 135 and 136 citing decisions by the Illinois CC and Oregon PUC).

this principle by adopting Conditions 2 and 3, not in a future rate proceeding where it can be lost in the myriad of other costing and rate-setting issues.

Moreover, the Merged Company may seek to recover merger-transaction related costs or impose other unwarranted wholesale rate increases or changes in terms outside of the Section 251 rate-setting process referred to by Ms. Stewart. Perhaps the best demonstration of this concern is the recent unilateral change that Qwest made to volume and term discounts for DS1 and DS3 circuits in its Regional Commitment Program (RCP), resulting in terms less favorable to CLECs. None of the Companies' witnesses have responded to (or even acknowledged) my Direct Testimony concerning this change to a non-Section 251 wholesale services agreement.[67] Clearly, however, constraining this type of conduct must go beyond the Commission's existing Section 251-related procedures.

Q. HOW DO YOU RESPOND TO MR. HUNSUCKER'S ASSERTIONS THAT "THE CLECS DO NOT SERIOUSLY ATTEMPT TO PORTRAY THESE CONDITIONS [CONDITIONS 2, 3 AND 7] AS LEGITIMATE MERGER CONCERNS" AND THAT THEY ARE REALLY "ATTEMPTS…TO INCREASE CLEC PROFITABILITY"?[68]

A. These assertions are erroneous. Contrary to Mr. Hunsucker's claim that Conditions 2 and 3 were not presented in my Direct Testimony as "legitimate

[67] Ankum Direct, at pp. 89-90.

[68] Hunsucker Rebuttal at p. 37, lines 16-17 and p. 38, lines 1-2.

merger concerns," my testimony explains clearly that those conditions are specifically targeted at the issue of the Merged Company's recovery of ***merger transaction-related costs.***[69] Similarly, pages 86-91 of my Direct Testimony specifically explain why Conditions 2, 3, and 7 are necessary ***in the context of the merger***.[70] Mr. Hunsucker has failed to acknowledge that testimony.

Mr. Hunsucker also mischaracterizes the intent of Conditions 2, 3, and 7 by alleging that "[t]hese proposed conditions appear to be attempts to circumvent applicable law and rules to increase CLEC profitability through terms CLECs are unlikely to gain under the current regulatory reviews and processes."[71]

To the contrary, as I explained in my Direct Testimony, these conditions are intended to establish ***wholesale rate stability during the merger transition period***, and are not seeking any wholesale rate decreases or any new, favorable wholesale services terms or conditions. As stated in my Direct Testimony:

> Wholesale rates should, if anything, decrease after the merger. Because the company's overall cost structure should decrease to the extent synergy savings are achieved post-merger, wholesale rates – which would be based on the cost structure of the Merged Company – should decrease as well. ***However, at this point, CLECs are not seeking rate reductions, but instead taking the conservative position that rates should not <u>increase</u> for at least the Defined Time Period (Condition 7)***.[72]

---

69 Ankum Direct at p. 87.

70 For example, at p. 87, lines 12-15 of my Direct Testimony, I conclude that Condition 7 "provides a degree of protection for captive wholesale customers that the Merged Company will not seek to increase their rates (or create new rate elements) during the Merged Company's pursuit of synergies and revenue enhancements."

71 Hunsucker Rebuttal at p. 38, lines 1-3.

72 Ankum Direct at p. 87, lines 6-12 (emphasis added).

The same is true for the term and volume discount plans specifically addressed in Condition 7, subpart a. This subpart seeks their continuation "without any changes to the rates, terms, or conditions of such plans"[73] – and does not grant CLECs any new, more favorable terms or conditions, as Mr. Hunsucker implies. The thrust of Condition 7 and its subparts is to maintain the status quo competitive balance between the Joint Applicants and the CLECs they serve throughout the merger transition period. This general goal applies with equal force to the Wholesale Service Availability conditions that I am recommending, as I shall now explain.

C. Conditions 1, 6, 8, 9, 10, 12, 14 and 28

Q. DID YOUR DIRECT TESTIMONY SET FORTH THE JOINT CLECS' PROPOSED CONDITIONS RELATING TO WHOLESALE SERVICE AVAILABILITY AND EXPLAIN WHY THEY SHOULD BE ADOPTED BY THE COMMISSION, IF IT APPROVES THE CENTURYLINK-QWEST MERGER?

A. Yes. The Wholesale Services Availability conditions (Conditions number 1, 6, 8, 9, 10, 12, 14 and 28) were set forth and explained in Section VII-A of my Direct Testimony.[74] As observed therein, these conditions would ensure that the Merged Company will continue to make available the wholesale services that Qwest

[73] Exhibit TJG-8 at p.5.

[74] See Ankum Direct, at pp. 66-86.

currently provides during the merger transition period (as measured by the Defined Time Period set forth in Exhibit TJG-8).

Q. HAVE THE JOINT APPLICANTS' WITNESSES OFFERED ANY RELEVANT REBUTTAL TO CONDITION 1?

A. No. Mr. Hunsucker mistakenly categorized Condition 1, which concerns the continued availability of wholesale services, with the Wholesale Rate Stability conditions.[75] Thus, Mr. Hunsucker's criticism of Condition 1 as a rate-related condition is misplaced and should be disregarded.[76] No other Joint Petitioner witnesses address Condition 1.

Q. WHAT REBUTTAL HAVE THE JOINT APPLICANTS PROFFERED IN RESPONSE TO CONDITION 6, WHICH INVOLVES COMMITMENTS THAT THE MERGED COMPANY WILL ASSUME OR TAKE ASSIGNMENT OF QWEST'S EXISTING OBLIGATIONS UNDER INTERCONNECTION AGREEMENTS (ICAs), TARIFFS, COMMERCIAL AGREEMENTS, ETC.?

A. Mr. Hunsucker asserts that Condition 6 is unnecessary because of the structure of the Joint Applicants' proposed transaction, in which the entire Qwest corporate entity is being acquired.[77]

---

[75] Hunsucker Rebuttal at p. 36, line 13 through p. 37, line 3.

[76] *Id.* at pp. 44-45. I have already rebutted Mr. Hunsucker's claims concerning rate-related conditions in my testimony above.

[77] *Id.* at pp. 17-18.

Q. DOES THE STRUCTURE OF THE TRANSACTION NEGATE THE NEED FOR CONDITION 6?

A. No, not at all. As Mr. Gates and I have already explained in our Direct Testimony, while Qwest will continue to exist and operate as a separate entity as of the day the transaction is consummated, there is no certainty as to the Merged Company's corporate organization beyond that date. Mr. Gates further elaborates on this point in his Surrebuttal Testimony.[78] Consequently, Condition 6 is essential to ensure that CLECs' existing ICAs and other contractual and commercial agreements with Qwest are not disrupted by any future, unilateral changes in the Merged Company's corporate organization.

Q. CAN YOU PROVIDE ANOTHER REAL-WORLD EXAMPLE OF WHY CONDITION 6 IS A NECESSARY PROTECTION IF THE MERGER IS APPROVED?

A. Yes. Condition 6 (exclusive of its subparts) requires the Merged Company to take on the obligations of the Assumed Agreements without requiring wholesale customers to execute any documents to effectuate the assumption. The Joint Applicants have stated that the legacy Qwest entity "will continue to be the provider of service"[79] but CenturyLink does not commit to any specified time period for this to continue. CenturyLink also does not commit to ***not*** requiring such document execution (regardless of whether the obligations are considered

[78] Gates Surrebuttal at pp. 70-71.

[79] Hunsucker Rebuttal, at p. 19.

continuing or assumed).[80] If it will impose no such requirement, then CenturyLink should have no objection to this condition.

While it may appear self-evident that, if an obligation continues or is assumed, the ILEC will not request further document execution, that was not the result in the Verizon-Frontier case. Despite a merger condition that Frontier assume wholesale agreements and not terminate or change their terms, Frontier sent a letter and Adoption Agreement which effectively attempted to impose amendment of the wholesale agreement to reflect certain Frontier processes.[81]

Condition 6 will help avoid such a situation and any associated uncertainty, delays and litigation it may cause. I see no reason why the Companies would not voluntarily agree to this condition.

Q. DO YOU AGREE WITH MR. HUNSUCKER'S CONCLUSION THAT CONDITIONS 6 AND 8 HAVE THE EFFECT OF ALLOWING CLECS TO UNILATERALLY CHANGE THEIR EXISTING CONTRACT TERMS TO EXTEND ICAS, INCLUDING THOSE IN "EVERGREEN" STATUS?[82]

A. No. Mr. Gates' Surrebuttal Testimony explains how Mr. Hunsucker mischaracterizes the Defined Time Period and how it remains the appropriate time period to apply in Conditions 6 and 8 as elsewhere. Moreover, with respect to Condition 8, Mr. Hunsucker ignores the fact that the terms and conditions

---

80 *Id*.

81 See Integra's May 13, 2010 Ex Parte filing in FCC WC Dkt. No. 09-95, which is attached to my testimony as Exhibit Joint CLECs 1SR.1

82 Hunsucker Rebuttal, at pp. 18-19.

under the numerous "evergreen" ICAs between Qwest and CLECs have been acceptable to the signatory companies for extended periods; the fact that Qwest chooses to merge with CenturyLink should not suddenly result in harm to Qwest from their continuance through the merger transition period (the Defined Time Period).[83] This type of condition is not only reasonable, it has been adopted (with slight variations) by the Illinois Commerce Commission, the Public Utilities Commission of Ohio, and the Oregon Public Utilities Commission as a condition of the Frontier/Verizon merger. Moreover, Mr. Gates explains how Mr. Hunsucker mischaracterizes the Defined Time Period and how it remains the appropriate time period to apply in Condition 8 as elsewhere.

Q. IS MR. HUNSUCKER CORRECT THAT CONDITION 9, WHICH COMMITS THE MERGED COMPANY TO ALLOWING CLECS TO USE A PRE-EXISTING ICA AS A BASIS FOR NEGOTIATING A NEW ICA, IS UNNECESSARY?[84]

A. No. Mr. Hunsucker's own testimony underscores why Condition 9 is important. Mr. Hunsucker states that: "CenturyLink, however, has the right to propose its suggested structure as well and should not be constrained before the fact from doing so."[85] This testimony is troubling as it overlooks the multiple, longstanding negotiations being conducted between CLECs and Qwest, which should not be derailed by the proposed transaction.

---

83 Ankum Direct at p. 76.

84 Hunsucker Rebuttal at p. 21.

85 *Id.* at p. 21, lines 8-9.

As discussed in my Direct Testimony, while relatively few CLECs have had cause to invest much time and effort to negotiate an ICA with CenturyLink, CLECs are likely to have invested significant time and financial resources in ICAs and negotiations with Qwest. The proposed transaction should not cause these resources to be wasted, potentially forcing negotiations to start from scratch, perhaps based on an entirely new CenturyLink ICA negotiations proposal. A more complete discussion of the reason that Condition 9 is justified is found in my Direct Testimony.[86]

Again, as noted in my Direct Testimony, this same condition was adopted by the Oregon PUC as a condition of the Frontier/Verizon merger.[87]

Q. HOW DO YOU RESPOND TO MR. HUNSUCKER'S TESTIMONY IN OPPOSITION TO CONDITION 10, WHICH WOULD PERMIT CLECS TO OPT INTO ANY OTHER QWEST ICA IN THE SAME STATE?[88]

A. It is simply not correct, as Mr. Hunsucker claims, that Condition 10 would allow CLECs to "cherry pick" ICA terms.[89] In fact, my Direct Testimony notes that "[t]his condition does not allow a carrier to pick-and-choose ICA terms."[90]

Likewise, Mr. Hunsucker's claim that Condition 10 ignores such issues as differences in technical feasibility, network design and costs between CenturyLink and Qwest[91] is refuted by the explicit language of the condition:

---

86 Ankum Direct at pp. 77-79.

87 2010 Ore. PUC LEXIS 64, 124.

88 Hunsucker Rebuttal at pp. 23-24.

89 Hunsucker Rebuttal at 23.

90 Ankum Direct, at p. 80, line 9..

> The state commission may require modification of the agreement to the extent that the commission determines that the Merged Company has established that (1) it is not Technically Feasible for the Merged Company to comply with one or more provisions of the agreement or (2) the price(s) set forth in the agreement are inconsistent with TELRIC-based prices in the state in question.[92]

Condition 10 simply builds on the Companies' own claims that, in a post-merger environment, CenturyLink and Qwest will be operating as an integrated entity, capitalizing on the synergies of their combined networks and operations.[93] Condition 10, like the other conditions proposed by the Joint CLECs, is consistent with the Joint Applicant's stated intent to operate post merger as "an integrated entity."

As noted in my Direct Testimony, the FCC previously adopted a similar condition in conjunction with the AT&T/BellSouth merger, which required AT&T/BellSouth to make available to any CLEC any ICA (negotiated or arbitrated) to which a AT&T/BellSouth ILEC is a party in any state within the AT&T 22-state footprint, subject to state-specific pricing and technical feasibility.[94]

Q. MR. HUNSUCKER ASSERTS THAT ADOPTING CONDITIONS 12 AND 14, RELATING TO WAIVER OF THE RIGHT TO SEEK RURAL EXEMPTIONS AND RECLASSIFICATION OF WIRE CENTERS AS "NON-IMPAIRED," ARE MEANINGLESS IN UTAH BECAUSE THERE

---

91 Hunsucker Rebuttal at pp. 23-24.

92 Exhibit TJG-8 at p. 6.

93 Jones Direct, at p. 6-9.

94 Ankum Direct, at pp. 79-80.

ARE NO LEGACY CENTURYLINK AFFILIATES IN UTAH.[95] HOW DO YOU RESPOND?

A. I agree that adopting Joint CLEC Conditions 12 and 14 in Utah alone will have no practical impact because CenturyLink does not have any legacy ILEC affiliates in the state. However, Mr. Hunsucker neglects to mention, although he is well aware of the fact, that both CenturyLink and the Joint CLECs are participating in proceedings like this one in multiple states in Qwest territory. Using the same recommended conditions list for the Joint CLECs across these states, including Conditions 12 and 14, helps avoid confusion and offers consistency and greater efficiency when addressing these issues. For example, the Applicants do not have to compare lists state-to-state for differences and modify all of their responses accordingly. In the very few instances in which a condition is inapplicable in a state, the witness can note that fact, as Mr. Hunsucker has done here. Also, there is no downside to including conditions that apply to legacy CenturyLink ILEC territories in the conditions adopted in Utah because they will not require the Merged Company to do anything.

Q. DO YOU AGREE WITH MR. HUNSUCKER THAT CONDITION 28, WHICH WOULD ALLOW CLECS TO INTERCONNECT WITH THE MERGED COMPANY AT A SINGLE POINT OF INTERCONNECTION (POI) PER LATA, IS NOT NEEDED NOR APPLICABLE IN UTAH

[95] Hunsucker Rebuttal at p. 26.

BECAUSE QWEST IS THE ONLY PROSPECTIVE CENTURYLINK AFFILIATE IN UTAH?[96]

A. No. CLECs should have the option of interconnecting at a single POI per LATA in Utah (which is a single LATA state) with the Merged Company regardless of which legacy entity, Qwest or CenturyLink, has been the incumbent LEC in the state. In addition to my prior testimony on the issue,[97] Mr. Gates has already supplied extensive testimony explaining CLECs' general right to interconnect with an ILEC (BOC or non-BOC) at a single Point of Interconnection (POI) per LATA.[98] He has also explained how the Joint Applicants' own data show that increased efficiencies could be achieved by establishing a single POI per LATA with the Merged Company post-merger.[99] Finally, Mr. Gates has thoroughly rebutted Mr. Hunsucker's other objections to Condition 28.[100] I defer to Mr. Gates' testimony on those points, but wish to state further that Condition 28 is not only reasonable, it is in fact closely tied to the impact of the merger in Utah (and elsewhere). The Joint Applicants have repeatedly touted the economic benefits that will result from the merger's combination of the two Companies' networks.[101] Now when it comes to allowing CLECs to share in some of those increased efficiencies, as a single POI per LATA interconnection would afford, the Joint Applicants object. By forcing CLECs to maintain multiple POIs per

---

96 Hunsucker Rebuttal at p. 31.

97 Ankum Direct at pp. 85-86.

98 Gates Direct at pp. 182-185 and 187.

99 *Id.* at pp. 184-186.

100 Gates Surrebuttal at pp. 148-149.

101 See Joint Application at pp. 2, 5, 9, and 16; see also,

LATA, even as the Merged Company begins exploiting increased efficiencies of their combined networks, the Joint Applicants could use the merger to unfairly tilt the competitive balance in their favor. If the Commission determines that the merger should be approved, adopting Condition 28 can play an important role in ensuring that the merger does not result in that harm to CLECs and the competitive marketplace.

V. CONCLUSION

Q. HAVING REVIEWED THE JOINT PETITIONER'S REBUTTAL TESTIMONY, WHAT IS YOUR CONCLUSION?

A. The Joint Applicants' Rebuttal Testimony fails to offer a persuasive basis for approving the merger without the merger conditions proposed by the Joint CLECS. I continue to recommend that, if the Commission approves the proposed merger, it should impose all of the Joint CLEC conditions that I have recommended, as well as those supported by Mr. Gates.

Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

A. Yes, it does.