

**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

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DOCKET NO. 10-049-16

**SUPPLEMENTAL RESPONSE TESTIMONY OF**

**MICHAEL R. HUNSUCKER**

**ON BEHALF OF  
CENUTRYLINK, INC**

**PUBLIC VERSION**

**NOVEMBER 2, 2010**

**PUBLIC VERSION**

**Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION.**

1 A. My name is Michael R. Hunsucker. My business address is 5454 W. 110<sup>th</sup> Street,  
2 Overland Park, Kansas 66211. I am Director of CLEC management for CenturyLink.

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

5 A. I am submitting supplemental response testimony on behalf of CenturyLink, Inc. referred  
6 to herein as "CenturyLink."

7 **Q. ARE YOU THE SAME MICHAEL HUNSUCKER WHO SUBMITTED**  
8 **REBUTTAL AND SURREBUTTAL TESTIMONY IN THIS PROCEEDING?**

9 A. Yes.

10 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL RESPONSE**  
11 **TESTIMONY?**

12 A. The purpose of my testimony is to address certain issues raised by Joint CLEC witness  
13 Timothy Gates in his Supplemental testimony. To the extent particular statements in Mr.  
14 Gates' Supplemental testimony are not addressed in my Supplemental Response  
15 testimony, this does not mean that the Joint Applicants necessarily agree with or  
16 acquiesce in those statements. Rather, I have attempted to focus on the major points  
17 addressed in Mr. Gates' Supplemental testimony and to organize my Supplemental  
18 Response testimony around those points.

1 **DPU SETTLEMENT NEGOTIATIONS**

2 **Q. HOW DO THE JOINT APPLICANTS RESPOND TO MR. GATES' ASSERTION**  
3 **THAT THE DIVISION OF PUBLIC UTILITIES ("DPU") SETTLEMENT FAILS**  
4 **TO ADEQUATELY ADDRESS THE WHOLESALE AND COMPETITION-**  
5 **RELATED RISKS ASSOCIATED WITH THE PROPOSED MERGER?<sup>1</sup>**

6 A. First, let me again state that CenturyLink believes that the record demonstrates that the  
7 proposed merger is in the public interest and therefore no conditions are necessary to  
8 meet the standard for approval in Utah. However, as I stated at the hearing, the Joint  
9 Applicants, in the interests of compromise, believe that the voluntary commitments that  
10 we have made in the Settlement Agreement resolve the issues that need to be resolved in  
11 this proceeding, including the wholesale issues raised by the Joint CLECs. CenturyLink  
12 firmly believes that these commitments address the Joint CLECs' expressed concerns that  
13 there be certainty and stability during and after the merger.

14 **Q. DOES MR. GATES QUESTION THE DPU'S ACTIONS IN REGARD TO THE**  
15 **SETTLEMENT NEGOTIATIONS AND AGREEMENT?**

16 A. Yes. Because the DPU has concluded that the full slate of Joint CLEC-proposed  
17 conditions are not warranted to meet the Utah standard of approval of the merger, Mr.  
18 Gates believes the DPU's agreement to settle with the Joint Applicants is unsatisfactory  
19 and insufficient.<sup>2</sup> Instead, Mr. Gates and the Joint CLECs now assert that they are better

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<sup>1</sup> Supplemental Testimony of Timothy J. Gates ("Gates Supplemental"), page 2.

<sup>2</sup> Gates Supplemental, pages 19-21.

1 arbiters of what is in the public interest for Utah than the neutral state agency charged  
2 with this very task.<sup>3</sup>

3 **Q. WHY DID THE JOINT APPLICANTS ENTER INTO SETTLEMENT**  
4 **DISCUSSIONS WITH THE DPU?**

5 A. The DPU is a state agency entrusted with advocating for the public interest and seeking  
6 to look out for the interests of both utilities and customers. As a demonstration of good  
7 faith and in an effort to more quickly bring the benefits of this transaction to Utah  
8 consumers, the Joint Applicants were willing to offer certain voluntary commitments to  
9 the DPU in order to address their concerns related to ensuring that the transaction would  
10 clearly be in the public interest. In an arms-length negotiation process, the Joint  
11 Applicants and the DPU were able to agree to terms of settlement that addressed the most  
12 important concerns outlined in the rebuttal testimony of Casey Coleman of the DPU. The  
13 Joint Applicants believe the terms and commitments within the DPU Settlement are  
14 reasonable and sufficient to meet these public interest concerns. That the Joint CLECs  
15 continue to argue for their conditions, which demonstrably alter the status quo, is more  
16 illustrative of the Joint CLECs' narrow self-interest than it is of any real concern the Joint  
17 CLECs may have for the public interest in Utah.

18 **Q. MR. GATES' TESTIMONY EMPHASIZES THE NEED TO MAINTAIN "THE**  
19 **STATUS QUO."<sup>4</sup> WHAT DOES MAINTAINING THE STATUS QUO MEAN TO**  
20 **YOU?**

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<sup>3</sup> Gates Supplemental, page 22 and 90-91.

1 A. Maintaining the status quo means ensuring that the merger does not detrimentally affect  
2 the rights and obligation of parties as they currently exist notwithstanding the merger.  
3 Mr. Gates himself acknowledges that “[m]aintaining the status quo means to maintain  
4 things *as they are*.”<sup>5</sup> [Emphasis added.] Joint Applicants believe that the settlement with  
5 the DPU provides exactly that assurance. In contrast, the Joint CLECs’ proposed  
6 conditions imply that “maintaining the status quo” means placing the current Qwest-  
7 CLEC contractual and process-related relationships in a state of suspended animation.<sup>6</sup>  
8 What the Joint CLECs fail to acknowledge is that putting these relationships in a static  
9 state does not *maintain* the status quo; it *changes* the status quo and does so to the Joint  
10 CLECs’ unilateral benefit.

11 Q. **WHY DO THE JOINT APPLICANTS BELIEVE THAT THE JOINT CLECs’**  
12 **PROPOSED CONDITIONS SEEK SOMETHING OTHER THAN THE STATUS**  
13 **QUO?**

14 A. To put the Joint CLECs’ proposed conditions into the correct context, let us take this  
15 merger out of the equation. Both the Joint CLECs and Joint Applicants have rights and  
16 obligations granted under applicable law and set forth in interconnection agreements  
17 (“ICAs”) and in regulatory requirements. None of the Joint CLEC’s existing rights and  
18 obligations will change directly as a result of this merger taking place. None of Qwest’s  
19 or CenturyLink’s existing rights and obligations will change directly as a result of this  
20 merger taking place. Notwithstanding the merger or the commitments made by the Joint

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<sup>4</sup> For example, see Gates Surrebuttal, pages 2 and 4.

<sup>5</sup> Gates Surrebuttal, page 69.

<sup>6</sup> Gates Surrebuttal, pages 69 and 105-106.

1 Applicants in the DPU settlement, these rights and obligations protect the Joint CLECs  
2 from the “complete uncertainty and potential severe disruption and harm in every aspect  
3 of [its] wholesale relationship” that Mr. Gates fears,<sup>7</sup> and ensure “the much-needed  
4 certainty that Joint CLECs need to continue to operate their businesses and make prudent  
5 decisions.”<sup>8</sup>

6 Despite the assurance of certainty created by these regulatory obligations that exist today,  
7 Mr. Gates continues to advocate for the multitude of specific conditions that clearly seek  
8 to change the status quo between the parties, not to maintain it as Mr. Gates asserts.<sup>9</sup> The  
9 Joint CLECs’ testimony also makes clear that the Joint CLECs wish to change the status  
10 quo. For example, Mr. Gates is unhappy that the DPU settlement includes “no discussion  
11 [in the settlement negotiations] about whether . . . [wholesale performance requirements]  
12 *needed to be beefed up* if there was a merger.”<sup>10</sup> [Emphasis added.] Indisputably,  
13 “beefed up” means new obligations imposed upon the ILEC, which means a change to  
14 the status quo.

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17 **SETTLEMENT AGREEMENT OSS COMMITMENTS**

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<sup>7</sup> Gates Direct, page 111.

<sup>8</sup> Gates Direct, page 111.

<sup>9</sup> Gates Supplemental, page 22.

<sup>10</sup> Gates Supplemental, pages 72-73. Proposed CLEC Condition 30 also changes the status quo. As Mr. Gates testifies “[t]he last sentence of Condition 30 deals with this need for expeditious handling of merger condition related disputes, by providing that alternative dispute resolution provisions in an ICA shall not prevent either party to the agreement from filing a petition with the state commission at any time.” Gates Surrebuttal, page 152.

1 **Q. THE JOINT CLECs SEEM CONCERNED THAT THE DPU SETTLEMENT**  
2 **ONLY SAYS QWEST'S OSS WILL NOT BE DISCONTINUED FOR 24 MONTHS**  
3 **BUT DOES NOT PROHIBIT ANY CHANGES TO THE OSS DURING THAT**  
4 **TIME PERIOD.<sup>11</sup> IS THIS A VALID CONCERN?**

5 A. No. Qwest today has the right to make appropriate changes to its OSS, as long as it  
6 complies with the noticing and service quality requirements of its existing ICAs, Change  
7 Management Process ("CMP") and regulatory commitments. Qwest regularly exercises  
8 that right and makes changes to its OSS. This is the status quo. The Joint CLECs say  
9 that maintaining the status quo is their goal and this settlement condition as written  
10 provides that.

11 **Q. TO BOLSTER THEIR ASSERTED CONCERNS ABOUT CENTURYLINK'S**  
12 **OSS, THE JOINT CLECs REFER TO ALLEGED SERVICE QUALITY**  
13 **DETERIORATION IN NORTH CAROLINA AFTER A CENTURYLINK OSS**  
14 **CUTOVER.<sup>12</sup> CAN YOU DESCRIBE WHAT TOOK PLACE AFTER THE**  
15 **NORTH CAROLINA CONVERSION?**

16 A. Yes. First, there is no way to guarantee avoidance of all issues with any system cutover  
17 (including those made by the CLECs and other service providers). During the OSS  
18 conversion of the North Carolina market to the new CenturyLink billing and operational  
19 systems, some of the facilities records were loaded incorrectly.<sup>13</sup> The way in which  
20 facilities records were constructed differed between the legacy CenturyTel and Embarq

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<sup>11</sup> Gates Surrebuttal, page 34.

<sup>12</sup> Gates Supplemental, page 80-81

<sup>13</sup> Joint CLECs' Cross Exhibit 2.

1 areas. As a result, some records initially did not load correctly in the conversion.  
2 CenturyLink immediately researched the problem and learned that approximately 1/6th of  
3 the records did not load correctly. Accordingly, the company took whatever steps were  
4 needed internally to address the issues and minimize any impacts to customers. Three  
5 months after the North Carolina conversion was completed, CenturyLink's service  
6 quality metrics rose on a year over year comparison. Finally, CenturyLink is working to  
7 ensure that this record issue is addressed prior to any future conversions resulting from  
8 the Embarq integration. OSS system upgrades, and transactions such as the proposed  
9 merger, are meant to offer better service quality for customers when they are completed.

10 **Q. MR. GATES CLAIMS THAT CENTURYLINK OBTAINING A TEMPORARY**  
11 **WAIVER OF THE FCC'S DEADLINE FOR IMPLEMENTING A ONE-DAY**  
12 **PORTING REQUIREMENT IS AN EXAMPLE OF MERGER-RELATED**  
13 **ACTIVITIES TAKING PRECEDENCE OVER EXISTING OBLIGATIONS.<sup>14</sup>**  
14 **CAN YOU COMMENT ON THAT CLAIM?**

15 A. CenturyLink is engaged in a rolling cutover to the Embarq OSS in order to assure  
16 continued billing quality for its end users. Meeting the one-day interval effective date  
17 proposed in the FCC's order would require the company to implement changes to a  
18 system that is being discontinued. Contrary to the implication in Mr. Gates' testimony,  
19 the FCC offered a waiver process for just such a situation. CenturyLink applied for and  
20 was granted a waiver under that process. Further, the waiver is only for a specific time  
21 period and will expire in February 2011. CenturyLink will be processing porting orders

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<sup>14</sup> Gates Supplemental, pages 92-93.



1 within a one-day interval long before any OSS integration activities take place in regards  
2 to the Qwest OSS.

3 **Q. MR. GATES BELIEVES THE DPU SETTLEMENT CONDITION RELATING**  
4 **TO THE QWEST CHANGE MANAGEMENT PROCESS (“CMP”) ALLOWS**  
5 **THE MERGED COMPANY TO DISCONTINUE THE CMP AFTER 36 MONTHS**  
6 **CONTRARY TO THE TERMS OF THE CMP.<sup>15</sup> IS THIS CORRECT?**

7 A. No. This condition merely prohibits us from seeking to terminate the current CMP for 36  
8 months. After 36 months, we have the right to seek termination and replace this  
9 document with another CMP consistent with the terms and conditions set forth in the  
10 Qwest CMP document and applicable law. The DPU condition specifically incorporates  
11 the CMP’s terms and conditions, which require Commission approval of termination.

12 **SETTLEMENT AGREEMENT ICA COMMITMENTS**

13 **Q. IN REGARDS TO ICA TERMINATION, MR. GATES QUESTIONS THE**  
14 **DIFFERENCE BETWEEN “CHANGES REQUIRED BY LAW” AND**  
15 **“RELIEVED BY LAW OF A CURRENT WHOLESALE OBLIGATION”<sup>16</sup> CAN**  
16 **YOU EXPLAIN THE MEANING OF THESE PHRASES?**

17 A. “Relieved by law of a current wholesale obligation” means that a legislative or regulatory  
18 authority has determined that an existing obligation is no longer an obligation on a going  
19 forward basis. The FCC’s elimination of the unbundling requirement for mass market  
20 local circuit switching is one example. A “change required by law” does not necessarily

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<sup>15</sup> Gates Supplemental, page 82.

<sup>16</sup> Gates Supplemental, page 52.

1 eliminate the obligation but affects when or how the obligation is mandated. The change  
2 to the obligation to provide unbundled transport by conditioning it upon a classification  
3 of wire centers by tiers is an example of a change required by law.

4 **Q. MR. GATES ALSO ASSERTS THE ICA TERMINATION “TRIGGERING**  
5 **EVENTS” ARE NOT CLEAR.<sup>17</sup> CAN YOU ADDRESS THIS ASSERTION?**

6 A. The DPU settlement states that the company may terminate or change any ICA in the  
7 event of any triggering event *expressly contemplated by the terms of the agreement*.  
8 Therefore, as regards the triggering events and subsequent termination procedures, *the*  
9 *terms of the individual interconnection agreement* specify what constitutes a  
10 termination event and the procedures to be followed. *The terms of the agreement* are  
11 already contractually binding upon the parties under § 252 of the federal  
12 Telecommunications Act and do not need to be reproduced in the settlement. For  
13 example, within CenturyLink interconnection agreements a triggering event can include a  
14 CLEC’s failure to initiate any pre-ordering activities within six months of executing an  
15 interconnection agreement. It is clear from the DPU Settlement that the Joint Applicants  
16 have made a commitment to allow for the extension of ICAs in a manner that the Joint  
17 Applicants are not legally required to permit. This commitment by the Joint Applicants is  
18 one that changes the status quo for the benefit of the Joint CLECs.

19 **Q. MR. GATES MAINTAINS THAT “TAILORING” OF ICAs TO MEET THE**  
20 **SPECIALIZED NEEDS OF CLECs IS NECESSARY FOR CLEC SURVIVAL IN**  
21 **THE COMPETITIVE TELECOMMUNICATIONS MARKETPLACE AND THAT**

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<sup>17</sup> Gates Supplemental, page 53.

1           **THE DPU SETTLEMENT PROVISIONS RELATING TO INTERCONNECTION**  
2           **AGREEMENTS UNDERMINE THIS NEED.<sup>18</sup> WHAT HAVE THE JOINT**  
3           **CLECs FAILED TO APPRECIATE IN THIS REGARD?**

4       A.     First, “tailoring” of ICA terms is exactly what is contemplated under the ICA negotiation  
5           requirements of § 252 of the Act. Nothing about the DPU settlement changes that law.  
6           Further, “tailoring” existing ICAs via an amendment process, as opposed to renegotiating  
7           agreements when they expire, does not address interpretation deficiencies within the  
8           existing ICAs that were only discovered *after* ICA implementation or that arose pursuant  
9           to technology or other changes within the industry. In my experience, most ICA disputes  
10          are caused by the parties asserting differing interpretations of specific or interrelated ICA  
11          terms. It is to both parties’ benefit to minimize disputes by negotiating terms that do not  
12          lend themselves to more than one interpretation.

13       **Q. MR. GATES ASSURES THE COMMISSION THAT MANY ICAs IN QWEST**  
14       **TERRITORY HAVE BEEN AMENDED OVER TIME, UP TO 25 TIMES, AND**  
15       **THAT THIS PROVES THE AMENDMENT PROCESS IS SUFFICIENT TO**  
16       **KEEP ICAs UP TO DATE.<sup>19</sup> DO YOU AGREE THAT THE AMENDMENT**  
17       **PROCESS IS SUFFICIENT?**

18       A.     Not by itself, no. The issue here is not whether amendment versus complete replacement  
19           of terms is appropriate for any specific situation. The issue is about universally  
20           sustaining or maintaining terms that may be not be appropriate because the terms hamper  
21           contract administration and fair competition, rather than promote them. As multiple

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<sup>18</sup> Gates Supplemental, pages 57-58.

<sup>19</sup> Gates Supplemental, page 56.

1 amendments are added to an ICA, it often becomes increasingly more difficult for both  
2 parties to properly administer the ICA and the chance for unintentional operational  
3 problems increases with every amendment. For that very reason, incorporating the  
4 amendments to the existing agreement into the body of the agreement used as the basis  
5 for negotiating successor agreements actually decreases administrative costs and  
6 operational problems and disputes rather than interjecting “expense and time-consuming  
7 work into the process for no valid reason” as the Joint CLECs assert.<sup>20</sup> Consequently,  
8 I believe the DPU Settlement terms on contract extension will bring more efficiency to  
9 the interconnection process and are fair and reasonable for both parties to an  
10 interconnection agreement.

11 **Q. THE JOINT CLECs ARE UNHAPPY THAT THE DPU SETTLEMENT DOES**  
12 **NOT PROHIBIT SO-CALLED “WHOLESALE SURCHARGES.”<sup>21</sup> WHY IS THIS**  
13 **SO?**

14 A. The DPU settlement does prohibit Qwest from changing its interconnection agreements  
15 to include these wholesale charges or imposing these charges through tariffs or other  
16 means for up to 3 years. As far as CenturyLink’s current policies, these issues have been  
17 thoroughly discussed in my Rebuttal testimony.<sup>22</sup> I have shown that not only are the  
18 Joint CLECs’ claims in regards to these issues factually incorrect but that these are issues  
19 that applicable law intends to be addressed in negotiations or arbitration pursuant to the

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<sup>20</sup> Gates Supplemental, page 65.

<sup>21</sup> Gates Supplemental, page 70.

<sup>22</sup> Rebuttal Testimony of Michael R. Hunsucker (“Hunsucker Rebuttal”), pages 27 – 28.

1 Act and not in a merger approval process. Accordingly, they should not be included in  
2 this merger settlement.

3 **EFFECTS OF THE MERGER ON COMPETITION**

4 Q. THE JOINT CLECs ALLEGE THAT THE MERGER WILL HARM  
5 COMPETITION IN UTAH.<sup>23</sup> DO THE FACTS SUPPORT THEIR  
6 ASSERTIONS?

7 A. No. To begin with, I simply disagree with Mr. Gates that the wholesale commitments in  
8 the DPU Settlement are inadequate to protect the Joint CLECs' interest. These  
9 commitments must be considered in the broader context of existing laws and regulations  
10 that also protect the Joint CLECs' interests. However, to be clear, in many instances the  
11 only thing that the Joint CLECs may be entitled to is a process. For example, the Joint  
12 CLECs may be entitled to one-day number porting under an FCC order, but similarly,  
13 under the same order the Joint Applicants were entitled to seek a temporary waiver of the  
14 one-day porting requirement. That waiver request provided the Joint CLECs with a  
15 process to oppose the request. The same is true for virtually all interconnection  
16 obligations - - both the Joint Applicants and the Joint CLECs are interested in certainty,  
17 but today both have the right to seek changes to their interconnection relationship via  
18 appropriate legal and regulatory processes. In the DPU Settlement, the Joint Applicants  
19 have agreed to limit some of their rights.

20 In general, the Joint Applicants have made commitments that will provide a strong  
21 measure of certainty and stability for the Joint CLECs, but that does not mean that the

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<sup>23</sup> See e.g., Gates Supplemental, page 91.

1 entire interconnection relationship will or should remain static, and the commitment to  
2 not change or terminate interconnection agreements comes with qualification that benefit  
3 the Joint CLECs and, to some degree the Joint Applicants. Any CLEC can ask for  
4 changes to its interconnections agreement, and the Joint CLECs and the Joint Applicants  
5 may benefit from the change of law provision in the commitment. I simply see no harm  
6 to competition resulting from this merger, and the Joint CLECs simply oppose the DPU  
7 Settlement because it does not grant the Joint CLECs the absolute control over the  
8 interconnection relationship that they appear to want.

9 Furthermore, the Joint CLECs in this proceeding only serve the business community.  
10 The Joint Applicants understand the importance of providing quality service to business  
11 customers, and the importance those customers have for the overall community.  
12 However, the DPU Settlement takes a broader view of the telecommunications  
13 marketplace than the Joint CLECs do, including the interest of residential consumers.  
14 Once again, I disagree with Mr. Gates' assertions that there are potential harms from this  
15 merger that the DPU Settlement fails to address, but to the extent that the Commission  
16 has any concerns in that regard, those concerns must be considered in the light of the  
17 tangential evidence the Joint CLECs have proffered to support their claims about  
18 potential harm. Furthermore, those concerns must be weighed against the substantial  
19 benefits the merger promises to provide to all Utah consumers.

20 **Q. MR. GATES' ASSERTS ILECS HAVE AN INCENTIVE TO IMPEDE OR HARM**  
21 **THEIR CLEC COMPETITORS.<sup>24</sup> IS THIS TRUE?**

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<sup>24</sup> Gates Supplemental, page 96.

1 A. Mr. Gates appears to equate “lawfully competing with CLECs” with “impeding or  
2 harming their CLEC competitors.” However, CenturyLink is entitled to compete to the  
3 full extent allowed by applicable laws and regulations. Mr. Gates does not and cannot  
4 point to any evidence in the record that CenturyLink has discriminated against, or plans  
5 to unlawfully discriminate against, CLECs.

6 Further, if the merged company were to engage in unlawful activities in violation of  
7 ICAs, PSC rules or state and federal law, there are legal remedies that the Joint CLECs  
8 could pursue to force compliance. Additionally, there is no guarantee that a customer  
9 leaving a CLEC who uses the merged company’s network would then choose service  
10 from the merged company. This “migrating” customer might choose service from  
11 another competitor such as Comcast, which uses its own extensive network instead of  
12 that of CenturyLink or Qwest. The merged company values its relationship with CLECs.  
13 Being valued, however, does not equate to permitting CLECs the ability to dictate  
14 significant aspects of the merged company’s operations.

15 **JOINT CLECs’ ARGUMENTS BASED ON HART-SCOTT-RODINO DOCUMENTS**

16 **Q. HOW WOULD YOU CHARACTERIZE THE JOINT CLECs’ ARGUMENTS IN**  
17 **THEIR SURREBUTTAL AND SUPPLEMENTAL TESTIMONY?**

18 A. The Joint CLECs use unfounded speculation to manufacture “public interest” concerns  
19 where none exist. Mr. Gates consistently takes items out of context, and then  
20 manufactures concerns where no such concern should exist. If one takes Mr. Gates’  
21 surrebuttal and supplemental testimony at face value, for example, that person would  
22 conclude that Mr. Gates knows more about CenturyLink’s true intent than the company’s

1 own executive management team, even when that supposed intent conflicts with  
2 statements the company has made on the record, and including the company's intent  
3 regarding issues the company has not yet begun evaluating.

4 I am not going to attempt to point out every instance of Joint CLEC speculation and  
5 provide countering evidence to expose the speculation for what it is. In the interests of  
6 brevity, I will provide illustrative examples where appropriate. Further, a fair amount of  
7 Mr. Gates' surrebuttal and supplemental testimony has been addressed through testimony  
8 already provided by CenturyLink and Qwest in written Rebuttal testimony and oral  
9 testimony at the hearing.

10 **Q. MR. GATES REFERS TO VARIOUS HART-SCOTT-RODINO ("HSR")**  
11 **DOCUMENTS IN HIS SURREBUTTAL AND SUPPLEMENTAL TESTIMONY.**  
12 **DOES HE ACCURATELY REPRESENT THE MATERIALS IN THOSE HSR**  
13 **DOCUMENTS?**

14 **A.** No, I do not believe that he does. Although I will provide some examples of where I  
15 believe Mr. Gates is misrepresenting the content of the CenturyLink HSR documents  
16 produced by CenturyLink in discovery, I will also point the Commission to the  
17 Supplemental Response testimony of Jerry Fenn that is being contemporaneously filed  
18 with my Supplemental Response testimony. The majority of HSR documents that Mr.  
19 Gates refers to in his Supplemental testimony are HSR documents that Qwest provided to  
20 the U.S. Department of Justice and the Federal Trade Commission as part of the merger  
21 review process under the HSR Act. I believe Mr. Fenn's Supplemental Response



1 testimony provides excellent examples of how Mr. Gates has inaccurately represented  
2 certain HSR documents.

3 **Q. IN ADDITION TO INACCURATE REPRESENTATION, ARE THERE**  
4 **ILLUSTRATIVE EXAMPLES OF HOW MR. GATES ALSO USES UNFOUNDED**  
5 **SPECULATION TO CREATE AN ISSUE WHERE NONE EXISTS?**

6 A. Yes. Mr. Gates uses CenturyLink's HSR documents to assume that consolidation and  
7 elimination of duplicate work functions and wholesale operations systems will have a  
8 major impact on CLECs.<sup>25</sup> In making this unsubstantiated assumption, Mr. Gates focuses  
9 on the word "elimination" but ignores the defining words "consolidation" and  
10 "duplicative" that are used in the HSR documents. He offers no evidence of why the  
11 elimination of *duplicative* functions would have an impact.<sup>26</sup> Because Mr. Gates cannot  
12 provide any actual evidence, he speculates that some harm may occur by claiming that  
13 the HSR document's reference to **[\*\*\*BEGIN HIGHLY-CONFIDENTIAL]**

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

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<sup>25</sup> Gates Supplemental, pages 77-79.

<sup>26</sup> Many duplicative functions will be administrative or "unused capacity" in nature and therefore of no possible impact to the CLECs.

<sup>27</sup> Gates Supplemental, page 78, citing to CenturyLink HSR document 4(c)-29, page 5. Page 5 of this CenturyLink document is attached as Highly-Confidential Exhibit A.

<sup>28</sup> Gates Supplemental, page 87.

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[REDACTED]

[REDACTED]

[REDACTED] [END HIGHLY-CONFIDENTIAL \*\*\*] As I have already explained in my Rebuttal testimony, the assumption pertaining to Qwest’s BOC status completely ignores that the classification of a BOC and subtending obligations are set forth in federal law and may not be set aside at will.<sup>29</sup>

**Q. IS THERE ANOTHER EXAMPLE WHERE THE MR. GATES USES THIS TYPE OF SPECULATION TO CREATE A FALSE ASSUMPTION?**

A. Another example is the Mr. Gates’ claim that since historically CenturyLink has served primarily rural areas then CenturyLink does not have the experience to understand BOC obligations.<sup>30</sup> This statement does not appropriately reflect the current realities of CenturyLink’s wholesale operations as compared to Qwest’s wholesale operations on a national basis. First, the premise is wrong, because CenturyLink is an experienced and effective wholesale provider. CenturyLink has almost two thousand active CLEC agreements on a national basis and in excess of five hundred agreements with wireless carriers across its 33-state region. Based on May 2010 ear –to-date order volumes, CenturyLink is on pace to process almost one million ASRs and LSRs in 2010. The facts are that CenturyLink has more interconnection agreements than Qwest and the volume of orders processed are not dwarfed by the Qwest volumes at all. In addition, CenturyLink has experience with a CLEC performance plan in Nevada that is substantially similar to Qwest’s Performance Assurance Plan. CenturyLink also provides non-obligated services

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<sup>29</sup> Hunsucker Rebuttal, pages 17 and 26.  
<sup>30</sup> See e.g., Gates Surrebuttal, page 115.

1 including line sharing and local wholesale solutions, which is the successor to the  
2 unbundled network element platform (“UNE-P”) product. In an appropriate and relevant  
3 comparison of the CenturyLink and Qwest wholesale operations, CenturyLink compares  
4 quite well.

5 Second, the Joint CLECs falsely assume that Qwest’s experience and systems will vanish  
6 as a result of the merger.<sup>31</sup> The combined company has already named key Qwest  
7 executives at the officer level and will continue to retain key Qwest personnel in  
8 wholesale functions. Qwest’s experience and systems will not be lost, but rather will be  
9 integrated with CenturyLink’s to create better experiences for retail and wholesale  
10 customers alike. The structure of this transaction allows CenturyLink to use and benefit  
11 from the Qwest experience, while also using and benefiting from the ample experience  
12 CenturyLink brings to the table.

13 Further, contrary to the Joint CLECs’ assertion that CenturyLink is “mostly rural”, it  
14 should be noted that on a national basis approximately 85% of CenturyLink’s retail  
15 access lines are not operating under the “rural exemption” and thus have been and will  
16 continue to be subject to the same §§ 251/252 obligations of the Telecom Act as Qwest.  
17 The fact is that CenturyLink is more similar to Qwest in serving wholesale customers  
18 (CLECs and other carriers) than suggested and acknowledged by Mr. Gates and the Joint  
19 CLECs.

20 Q. **[\*\*\*BEGIN HIGHLY-CONFIDENTIAL]** [REDACTED]

21 [REDACTED]

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<sup>31</sup> Gates Surrebuttal, page 29, fn 70, and Gates Supplemental, pages 34-35.

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 A. [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] [END HIGHLY-CONFIDENTIAL\*\*]

13 **Q. MR. GATES USES THE HSR DOCUMENTS TO CRITICIZE CENTURYLINK’S**  
14 **UNWILLINGNESS TO PROVIDE INFORMATION ABOUT ITS “DIRECT**  
15 **RESPONSE MARKETING EFFORTS” AS A CONCERN ABOUT WHETHER**  
16 **THESE EFFORTS WOULD RESULT IN MERGER-RELATED HARM TO**  
17 **COMPETITION.<sup>34</sup> HOW DO YOU RESPOND?**

18 A. To begin with, Mr. Gates makes much ado about CenturyLink’s reluctance to hand over  
19 sensitive information about its retail operations to its competitors. No doubt the Joint

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<sup>32</sup> Gates Supplemental, pages 70-71, (discussing CenturyLink HSR Document 4(c)-15, page 47). Page 47 of CenturyLink HSR Document 4(c)-15 is attached as Highly-Confidential Exhibit B.

<sup>33</sup> Rates for non-obligated wholesale services that are already in the tariff likewise cannot be changed outside of the tariff approval process.

<sup>34</sup> Gates Supplemental, pages 92-94.

1 CLECs would be equally protective of their marketing information. CLECs are not  
2 entitled to review CenturyLink's retail marketing strategies, given that they will be  
3 competitors as well as customers after this transaction closes. However, and more to the  
4 point, Mr. Gates once again provides the Commission with no context by just generally  
5 referring to two CenturyLink HSR documents without any page references or landmarks,  
6 and then he proceeds to inflate the meaning of the documents beyond any reasonable  
7 interpretation.<sup>35</sup> In his discussion of these two CenturyLink HSR documents Mr. Gates  
8 raises a speculative concern about CenturyLink's future compliance with porting  
9 requirements because the documents reveal that CenturyLink in fact tries to prevent  
10 "churn," or loss of customers. Indeed, CenturyLink prospectively tries to induce  
11 customers to stay with CenturyLink, and the result is to prevent the future "porting" of  
12 that customer to another service provider. However, CenturyLink markets its services in  
13 compliance with applicable laws and regulations. Mr. Gates takes a single reference to  
14 "porting" and imputes all forms of malicious intent.<sup>36</sup> Further, if CenturyLink's future  
15 direct marketing efforts are successful in winning customers back to CenturyLink, this is  
16 not "harm to competition;" this is competition in action, just as Congress and the Utah  
17 Legislature intended when they established current laws promoting competition. I find it  
18 remarkable that Mr. Gates would expect this Commission to believe that simply because  
19 an ILEC has marketing efforts in place to win and retain customers it can somehow be  
20 inferred that there is a regulatory harm that needs to be prevented.

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<sup>35</sup> Gates Supplemental, page 93 (discussing CenturyLink HSR Documents 4(c)-16 and 36).

<sup>36</sup> The single page from CenturyLink HSR Document 4(c)-36 that Mr. Gates is apparently referring to at page 93, lines 16 – 17 of his Supplemental testimony is attached as Highly-Confidential Exhibit C.

1   **Q.   WHAT IS YOUR OVERALL RESPONSE TO MR. GATES' ARGUMENTS IN**  
2       **HIS SURREBUTTAL TESTIMONY THAT ARE BASED ON THE HSR**  
3       **DOCUMENTS?**

4   A.   As demonstrated by my discussion of just a few of his arguments in his surrebuttal  
5       testimony, and as demonstrated by my discussion of his arguments based on HSR  
6       documents in his supplemental testimony, Mr. Gates appears willing to interpret the HSR  
7       documents in whatever way he feels is necessary in order to support the Joint CLECs'  
8       unreasonable proposed conditions. This explains, in my opinion, why Mr. Gates has  
9       completely failed to attach the cited HSR documents, or pages, to his testimonies.

10   **Q.   DO YOU HAVE ANY FINAL THOUGHTS TO SHARE WITH THE**  
11       **COMMISSION?**

12   A.   I would like to Commission to note the Joint CLECs' continuing claims that their  
13       proposed conditions are necessary to meet the standard for approval of this merger, yet  
14       McLeod/PAETEC, one of the members of coalition of Joint CLECs arguing against the  
15       DPU settlement, takes the completely opposite position regarding an intervener's  
16       proposed conditions when it is involved as a Joint Applicant in a merger docket. In  
17       Pennsylvania, PAETEC has stated the following in a filed Motion:<sup>37</sup>

18                "...[t]he protest of [another CLEC] in this proceeding does **not** challenge the  
19                statutory requisites of Commission approval of the requested certification.  
20                [Emphasis in the original.] Instead, [the other CLEC's protest] *seeks to inject*  
21                *unrelated private intercarrier compensation disputes with the Joint Applicants*  
22                *into a certification proceeding.* [Emphasis added.] ... for the purpose of deciding

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<sup>37</sup> *Joint Application for All Approvals Under the Pennsylvania Public Utility Code for Indirect Transfer of Control of Talk America, Inc, LDMI Telecommunications, Inc., Cavalier Telephone Mid-Atlantic, LLC and Intellifiber, Networks, LLC to PAETEC Holding Corp.*, Docket No. 1-2010-22200202 (other docket numbers omitted), Motion of Joint Applicants for Judgment on the Pleadings, pp. 5 – 6 (October 27, 2010).

1           this Motion, the Commission may grant the Joint Applicants' request without  
2           interfering with [the other CLEC's] ability to pursue its legal claims elsewhere.

3  
4           This demonstrates that at least one member of the Joint CLECs believes it is  
5           unreasonable to use a merger proceeding to address various interconnection related  
6           concerns that can, and should, be properly addressed in other proceedings. This is  
7           consistent with the Joint Applicants' position that the DPU Settlement and existing  
8           regulations and laws adequately protect the Joint CLECs' interests and that additional  
9           conditions, which in many cases seek remedies or protections that are based on  
10          speculative harms or unrelated disputes, should be rejected.

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

12   **A.    Yes.**