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July 12, 2010

VIA COURIER

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *In the Matter of Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink Application for Transfer of Control Under § 214 of the Communications Act, as Amended, WC Dkt. No. 10-110*

Dear Ms. Dortch:

Please find enclosed for filing two copies of the redacted version of the Comments of Cbeyond, Inc., Integra Telecom, Inc., Socket Telecom, LLC, and tw telecom inc. Pursuant to the May 28, 2010 *Public Notice* in this proceeding,¹ electronic copies of the redacted version of the filing will be sent to Alex Johns of the Competition Policy Division of the Wireline Competition Bureau; Jeff Tobias of the Mobility Division of the Wireline Competition Bureau; David Krech of the Policy Division of the International Bureau; Jim Bird of the Office of General Counsel; and Best Copy and Printing, Inc. The redacted version of the filing will also be filed via ECFS.

Pursuant to the *Protective Order* in the above-referenced proceeding,² one original of the confidential version of this filing is being filed with the Secretary's Office under separate cover today. Also, pursuant to the *Protective Order*, two copies of the confidential version will be provided to Gary Remondino of the Wireline Competition Bureau.

¹ See *Application Filed by Qwest Communications International, Inc. and CenturyTel, Inc., d/b/a CenturyLink for Consent to Transfer of Control*, Public Notice, WC Dkt. No. 10-110, DA 10-993, at 6 (rel. May 28, 2010) ("*Public Notice*").

² See *In re Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink Application for Transfer of Control Under § 214 of the Communications Act, as Amended*, Protective Order, WC Dkt. No. 10-110, DA 10-994 (WCB, rel. May 28, 2010) ("*Protective Order*").

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Please do not hesitate to contact me if you have any questions or concerns about this submission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nirali Patel". The signature is written in a cursive style with a large, stylized initial "N".

Thomas Jones
Jonathan Lechter
Nirali Patel
Shea Wynn

*Attorneys for Cbeyond, Inc., Integra Telecom, Inc.,
Socket Telecom, LLC, and tw telecom, inc.*

Enclosures

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Applications Filed by Qwest Communications) WC Dkt. No. 10-110
International Inc. and CenturyTel, Inc., d/b/a/)
CenturyLink for Consent to Transfer of Control)

**COMMENTS OF
CBEYOND, INTEGRA TELECOM, SOCKET TELECOM, AND TW TELECOM**

WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, D.C. 20006
(202) 303-1000

*Attorneys for Cbeyond, Inc., Integra
Telecom, Inc., Socket Telecom, LLC, and
tw telecom inc.*

July 12, 2010

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International Inc. and CenturyTel, Inc., d/b/a/)
CenturyLink for Consent to Transfer of Control)

COMMENTS OF
CBEYOND, INTEGRA TELECOM, SOCKET TELECOM, AND TW TELECOM

Pursuant to the Commission’s May 28, 2010 Public Notice,¹ Cbeyond, Inc. (“Cbeyond”), Integra Telecom, Inc. (“Integra”), Socket Telecom, LLC (“Socket Telecom”), and tw telecom inc. (“tw telecom”) (collectively, the “Joint Commenters”), through their undersigned counsel, hereby submit these Comments regarding the Application filed by Qwest Communications International Inc. (“Qwest”) and CenturyTel, Inc. d/b/a CenturyLink (“CenturyLink”) (collectively, the “Applicants”) in the above-captioned proceeding.²

I. INTRODUCTION.

The Commission has described the standard of review for determining whether a proposed transfer of control will serve the public interest pursuant to Sections 214(a) and 310(d) of the Act³ as follows:

¹ See *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc., d/b/a/ CenturyLink for Consent to Transfer of Control, Pleading Cycle Established*, Public Notice, DA 10-993, WC Dkt. No. 10-110 (rel. May 28, 2010) (“Public Notice”).

² See *Qwest Communications International Inc., Transferor, and CenturyTel, Inc. d/b/a CenturyLink, Transferee, Application for Transfer of Control Under Section 214 of the Communications Act, as Amended* (filed May 10, 2010) (“Application”).

³ 47 U.S.C. §§ 214(a), 310(d).

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[T]he Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. The Commission then employs a balancing test, weighing any potential public interest harms of the proposed transaction against the potential public interest benefits. The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.⁴

Thus, the Commission's public interest inquiry must include an assessment of whether the proposed transaction will result in the Merged Company's failure to comply with the provisions of the Act needed to sustain and promote local competition. Moreover, the Commission cannot approve the proposed transaction unless the Applicants demonstrate that the benefits yielded by the transfer outweigh the harms.

Given the nature of the proposed transaction, it will be extremely difficult to meet this standard. The Commission has not previously reviewed the proposed acquisition of an entire Bell Operating Company ("BOC") by a non-BOC incumbent LEC.⁵ Because of its status as a non-BOC, CenturyLink has never been required to meet the requirements of Sections 271 and

⁴ *In re Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, 25 FCC Rcd. 5972, ¶ 9 (2010) ("Frontier-Verizon Merger Order"); see also *In re Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd. 8741, ¶ 9 (2009) ("CenturyTel-Embarq Merger Order").

⁵ When the Commission approved the Qwest-US West merger on March 10, 2000, US West had not received authority to provide interLATA services pursuant to Section 271 of the Act in any state in its territory. In approving that merger, the Commission found that, to comply with Section 271, the "Applicants must completely divest Qwest's interLATA business originating in the US WEST region prior to closing the merger." *In re Qwest Communications International Inc. and US WEST, Inc., Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd. 53276, ¶ 3 (2000). See also *id.* ¶¶ 25-27. Later, as discussed further below, the merged company's systems and processes underwent extensive scrutiny in state and federal proceedings before it was granted 271 authority.

272 of the Act⁶ and has largely avoided close regulatory scrutiny of its wholesale offerings. In fact, CenturyLink has very limited experience, expertise or apparent interest in providing wholesale services to competitors in its territory. There is a significant risk that CenturyLink will simply be unable to live up to the obligations of a BOC to meet the “competitive checklist” of Section 271⁷ and the nondiscrimination requirements of Section 272(e).⁸ Moreover, the Merged Company will be highly leveraged and subject to enormous pressure to both lower costs and increase revenues. The most logical means of achieving both of those objectives is to reduce expenses and investment in operations, including wholesale operations. Doing so would allow the Merged Company to reduce costs while creating an unfair competitive advantage in the marketplace. But while the Merged Company may benefit, consumers and businesses would not as they would receive inferior service and would be deprived of competitive choice, leading to higher prices, less innovation and lower quality of service.

These facts alone raise serious concerns about the proposed transaction, but the situation is in fact even more threatening to competition and consumer welfare. To begin with, the increased size of the Merged Company’s network footprint will give it a greater incentive to deny, delay and degrade inputs needed by competitors. Those wholesale inputs are increasingly of the kind that have not yet been sufficiently defined (e.g., largely undeveloped collocation arrangements at remote terminals and wholesale finished Ethernet services). As a result, the Merged Company will have an unusually significant opportunity to deny access to such inputs by claiming, for example, that it is not feasible to comply with competitors’ requests for service. At

⁶ 47 U.S.C. §§ 271, 272.

⁷ *Id.* § 271(c)(2)(B).

⁸ *Id.* § 272(e).

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the same time that the Merged Company's incentives and opportunities to engage in anticompetitive behavior will increase, the merger of the only two significant mid-sized incumbent LECs of their kind will deprive state and federal regulators of the ability to benchmark one company's conduct against the other. This will make it significantly harder for regulators to detect and remedy unlawful conduct.

Degradation of wholesale service has far-reaching implications. The Joint Commenters all rely on wholesale inputs, most importantly loop and transport facilities, in the Qwest territory and, in the case of tw telecom and Socket Telecom, the CenturyLink territory, to serve thousands of primarily small and medium-sized business customers. The Joint Commenters' services deliver lower costs and increased efficiencies for businesses. They do this by, for example, making it possible to perform computing and storage functions in the "cloud" rather than on costly hardware that a business customer would need to buy and maintain. Lower costs and increased efficiencies enable small and medium-sized businesses to focus on investment and job creation, something the American economy desperately needs. But if the Joint Commenters are unable to obtain access to wholesale inputs from the Merged Company on reasonable terms and conditions, they will not be able to compete on an equal footing with the Merged Company. As a result, business customers will almost certainly experience higher costs and receive less efficient service, thereby diminishing their ability to invest, expand and create jobs. The stakes could hardly be higher.

The instant Application does nothing to alleviate these concerns. The Applicants offer few, if any, details on how the proposed transaction can be consummated without running afoul of the market-opening provisions of the Act, let alone any specifics on how the transaction will yield public interest benefits. Testimony and discovery responses provided by the Applicants in

the relevant state commission proceedings also present little information regarding how the Merged Company would fulfill its wholesale obligations. In fact, CenturyLink has confirmed in discovery responses that it has no intention of deciding or disclosing its plans until after the proposed transaction is completed.⁹ For example, CenturyLink has refused to provide any details about its future plans with regard to such critical issues as operations support systems (“OSS”), systems integration, operations integration (e.g., location of personnel and management organization), availability of and rates for wholesale services, wholesale customer service, and network investment.¹⁰ In the relevant state commission review proceedings, the Applicants have also failed to provide any details regarding purported public interest benefits such as broadband and IPTV deployment.¹¹ At the same time, CenturyLink has made it clear that it will make substantial changes at some point in the future.¹² This is unsurprising. As discussed *infra*, the Applicants have stated that the proposed transaction will result in approximately \$575 million in synergies within three to five years following closing. Those promised operating synergies will almost certainly result from, among other things, changes to the Merged Company’s wholesale operations. CenturyLink’s refusal to describe the nature of such changes—a posture which creates huge uncertainties for consumers and competitors—forecloses any conclusion that the

⁹ See generally “Excerpts From The Applicants’ Responses To Data Requests In The Relevant State Commission Review Proceedings” (attached hereto as “Attachment A”).

¹⁰ See *id.*

¹¹ See *id.*

¹² See, e.g., Direct Testimony of Michael Hunsucker On Behalf Of CenturyLink, Inc., Oregon PUC Dkt. UM-1484, at 8 (filed June 22, 2010) (explaining that with respect to Qwest’s and CenturyLink’s OSS, “changes could be expected over time”) (“Hunsucker Oregon PUC Direct Testimony”); see also Attachment A.

Applicants have met their burden of demonstrating that the proposed transaction serves the public interest.

Accordingly, the Commission cannot approve the proposed transaction without imposing a robust set of conditions designed to ensure that the Merged Company's wholesale processes support vibrant competition for all types of customers throughout the Merged Company's territory. As the Commission recently held when it imposed conditions on the merging parties in the *Frontier-Verizon Merger Order*:

Ensuring robust competition not only for American households but also for American businesses requires particular attention to the role of wholesale communications markets, through which providers of broadband and other services secure critical inputs from one another. Well-functioning wholesale markets can help foster retail competition, as it is not economically or practically feasible for competitors to build facilities in all geographic areas. We therefore take seriously allegations that wholesale-related harms will result if the proposed transaction is approved.¹³

The Commission must do the same here.

II. THE PROPOSED TRANSACTION POSES A SERIOUS THREAT TO COMPETITION AND CONSUMER WELFARE.

The proposed transaction will likely result in substantial harm to the public interest for a number of reasons. *First*, given that CenturyLink has never been required to comply with the rigorous review process applicable to Qwest when it sought to enter the long distance market under Section 271, it is unlikely that the Merged Company will be able to provide competitors with wholesale inputs in compliance with Section 271, including the duty to provide nondiscriminatory access to OSS. *Second*, as a non-BOC, the Merged Company will likely be unable to provide special access services on a nondiscriminatory basis under Section 272(e). tw telecom's experience with CenturyLink also raises unanswered questions about whether (1) the

¹³ *Frontier-Verizon Merger Order* ¶ 27.

Merged Company's wholesale service performance for special access will deteriorate; (2) the Merged Company will increase rates for special access; and (3) the Merged Company will continue offering Qwest's special access services. *Third*, in light of the Merged Company's increased debt load, commitment to pay substantial dividends, and significant integration costs, it will have a powerful incentive to attempt to achieve "synergies" by reducing wholesale service quality. *Fourth*, the increase in the Merged Company's network footprint will further increase its incentive to discriminate against competitors. *Fifth*, the loss of Qwest as a firm against which to benchmark CenturyLink's conduct, and vice versa, will diminish regulators' ability to enforce the statutory and regulatory requirements governing the Merged Company's provision of wholesale inputs under Section 251¹⁴ and special access.

A. There Is A Substantial Risk That The Merged Company Will Be Unable To Provision UNEs And Other Wholesale Inputs In Compliance With Section 271 Of The Act.

There is a substantial risk that the Merged Company will be unable to comply with the requirements applicable to BOCs under Section 271 of the Act. To begin with, it is unlikely that the Merged Company will be able to provide competitors with nondiscriminatory access to OSS because, among other things, (1) as a non-BOC, CenturyLink has no experience in providing such access; (2) even with the adoption of the Embarq wholesale OSS, CenturyLink's OSS capabilities, while an improvement over legacy CenturyTel's capabilities, will be more limited than those of Qwest; and (3) CenturyLink has no experience in servicing the wholesale demand experienced by Qwest. In addition, there is a material risk that the Merged Company will be unable to integrate Qwest's OSS given that (1) the Applicants have provided no information on their OSS integration plans; (2) previous incumbent LEC OSS integrations have resulted in

¹⁴ 47 U.S.C. § 251.

substantial harm to competition and consumers; and (3) CenturyLink's attempts to integrate Embarq's OSS are still ongoing.

There is also a substantial risk that wholesale service quality will decline post-transaction because, as a non-BOC, CenturyLink has no experience in establishing a process for managing and communicating changes to its OSS (i.e., a change management process or "CMP") or in adhering to rigorous wholesale service performance measurement (i.e., Performance Indicator Definition or "PID") reporting and self-executing penalty regimes (i.e., Performance Assurance Plans or "PAPs"). Additionally, as a non-BOC, CenturyLink's interconnection agreements are not based on the terms developed during extensive state and federal Section 271 review proceedings (e.g., proceedings concerning Statements of Generally Available Terms or "SGATs"). Moreover, there is an increased likelihood that the Merged Company will not comply with the terms of applicable interconnection agreements because, as discussed further below, the Merged Company will have a greater incentive to engage in anticompetitive conduct and regulators will have a diminished ability to detect such conduct.

1. *As A BOC, Qwest Has Been Subject To The Rigorous Section 271 Review Process.*

As a BOC, Qwest, its systems, and its processes have undergone extensive review, over the course of several years, by multiple third-party experts, state regulators, the Department of Justice, the FCC, and competitors, as part of proceedings regarding Qwest's compliance with Section 271 of the Act. These proceedings addressed, among other things, (1) Qwest's OSS;¹⁵

¹⁵ The Commission defines OSS to include five functions: (1) pre-ordering, (2) ordering, (3) provisioning, (4) maintenance and repair, and (5) billing. See *In re Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, Memorandum Opinion and Order, 17 FCC Rcd. 26303, Appendix K, ¶ 33 (2002) ("*Qwest Nine-State Section 271 Order*"). OSS include manual, computerized, and automated systems, together with associated business processes and the up-to-date data maintained in those

(2) Qwest's management of changes to its systems and processes; (3) Qwest's wholesale service performance measurement and assurance; and (4) Qwest's service offerings and terms.

First, in order to ensure Qwest's compliance with "item 2" (nondiscriminatory access to unbundled network elements) in the competitive checklist contained in Section 271,¹⁶ state commissions required extensive testing of Qwest's OSS. In particular, in 1999, the Regional Oversight Committee ("ROC"), which included participants from 13 of the 14 state commissions (excluding Arizona)¹⁷ from Qwest's incumbent LEC territory, "initiated a collaborative process to design and execute a third-party OSS test to ensure that Qwest's wholesale support systems would be available to competitive LECs in an open and nondiscriminatory manner."¹⁸ The ROC process lasted more than three years,¹⁹ during which time countless conference calls and workshops were held, third-party evaluations, audits, and tests were conducted, and testimony was submitted. All of this information was then addressed in multiple hearings by numerous state commissions and was taken into consideration by the FCC.

Of particular note in the ROC process is the OSS testing conducted by KPMG Consulting ("KPMG") in conjunction with Hewlett Packard ("HP"). In July 2000, the ROC selected KPMG

systems. *See In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and CMRS Providers*, First Report and Order, 11 FCC Rcd. 15499, ¶¶ 517-18 (1996).

¹⁶ *See* 47 U.S.C. § 271(c)(2)(B)(ii).

¹⁷ The Arizona Corporation Commission did not participate in the 13-state ROC, but instead conducted its own OSS test using Cap Gemini Ernst & Young as the OSS third-party tester. *See, e.g.,* Evaluation of the Arizona Corporation Commission, WC Dkt. No. 03-194, at 3 (filed Sept. 24, 2003) ("ACC Evaluation").

¹⁸ *Qwest Nine-State Section 271 Order* ¶ 9.

¹⁹ The Regional Oversight Committee process was initiated in mid-to-late 1999, and the FCC issued its first order addressing Qwest's Section 271 applications in December 2002. *See generally* *Qwest Nine-State Section 271 Order*.

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as the administrator of OSS testing for the Qwest region.²⁰ KPMG, with assistance from the ROC's Technical Advisory Group (which included representatives of Qwest, CLECs, state commission staffs and industry representatives), designed a Master Test Plan to "evaluate the operational readiness, performance and capability of Qwest to provide pre-ordering, ordering, provisioning, maintenance and repair and billing [OSS] documentation, interfaces, and functionality to . . . CLECs."²¹ The ROC also retained HP as the "pseudo-CLEC" for the testing process.²² As a pseudo-CLEC, HP's role was to replicate the conduct of a CLEC interfacing with Qwest's OSS systems to determine if Qwest's OSS was operationally ready to handle the types of orders and transactions CLECs would actually submit in a commercial environment, and to ensure that Qwest's OSS provided the information and tools necessary for a CLEC to interface with Qwest.²³

KPMG subjected Qwest's OSS to two types of testing: (1) a "transaction" test that tested real-world conditions of the pseudo-CLEC (i.e., HP) during which the pseudo-CLEC submitted the types of pre-order, order and repair transactions that a real CLEC would submit (i.e., what

²⁰ See *Qwest Nine-State Section 271 Order* ¶ 10.

²¹ *In re Investigation Into US West Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, 39th Supplemental Order, Washington UTC Dkt. No. UT-003022/UT-003040, ¶ 109 (filed July 1, 2002) ("*Washington UTC 39th Supplemental Order*"). The Master Test Plan required KPMG to test Qwest's OSS in relation to four "domains" (or business functions): (i) Pre-order, Order, and Provisioning (POP), (ii) Maintenance and Repair (M&R), (iii) Billing, and (iv) Relationship Management and Infrastructure. See *id.* ¶ 110. The Master Test Plan identified tests by domain and explained the objective for each test and criteria for passing each test. *Id.*

²² *Qwest Nine-State Section 271 Order* ¶ 10.

²³ For example, HP established electronic bonding with Qwest, translated back and forth between business rule and electronic interface rule formats, created and tracked orders, resolved problems with missing orders and responses, and submitted trouble tickets. See KPMG Consulting, *Qwest Communications OSS Evaluation, Draft Final Report, Evaluation Overview*, at 10 (Apr. 26, 2002) ("KPMG Report").

KPMG referred to as “to live the CLEC experience”²⁴); and (2) an operational analysis test that examined the form, structure, and content of Qwest’s business practices, including Qwest’s day-to-day operations, management practices and operating procedures in relation to regulatory requirements, and “best practices.”²⁵ The OSS testing was designed as “military-style” testing, or a “test until pass” approach, whereby KPMG tested and re-tested until Qwest either satisfied the test or it was determined that further testing or action by Qwest would not be beneficial.²⁶ KPMG’s testing was also designed to address commercial volumes of transactions.²⁷

During the transaction testing, third-party vendors submitted more than 21,000 pre-order transactions, more than 600 pre-order test cases,²⁸ 4,058 Interconnect Mediated Access (“IMA”)-Graphical User Interface (“GUI”) transactions, 17,486 IMA-Electronic Data Interchange transactions,²⁹ 4,300 initial order test scenarios, and more than 3,500 order retest scenarios.³⁰ Overall, KPMG and HP executed a total of 32 tests, consisting of 711 evaluation criteria during

²⁴ *Id.*

²⁵ *Washington UTC 39th Supplemental Order* ¶¶ 111-113; *see also* KPMG Report at 11.

²⁶ *Washington UTC 39th Supplemental Order* ¶ 114; *see also* KPMG Report at 11.

²⁷ KPMG used projected transaction volumes simulating peak (150% of normal) and stress (250% of normal) transaction volume conditions. *See Qwest Nine-State Section 271 Order* ¶ 108.

²⁸ *In re Investigation Into US West Communications, Inc.’s Compliance with Section 271 of the Telecommunications Act of 1996*, Qwest Corp.’s Verified Comments Regarding the ROC Final OSS Test Report, Washington UTC Dkt. No. UT-003022/UT-003040, at 26 (filed June 3, 2002) (“Qwest Washington Comments”).

²⁹ *Id.* at 27.

³⁰ *Id.* at 33. During the transaction testing in the Arizona OSS test, more than 10,000 pre-order transactions were executed, more than 1,700 ordering and provisioning transactions were executed, and more than 80 maintenance and repair transactions were executed. *See* Cap Gemini Ernst & Young, Final Report of the Qwest OSS Test (prepared for Arizona Corporation Commission) at 15 (May 3, 2002).

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the ROC OSS test.³¹ There were 256 “Exceptions” and 242 “Observations” (i.e., issues of concern) identified by KPMG and HP during the testing, which through improvements to systems and retesting were reduced to 14 Exceptions and one Observation.³² In other words, as a result of the testing, hundreds of issues of concern regarding Qwest’s OSS were identified and resolved through OSS improvements and re-testing.

For example, HP determined that Qwest was failing to properly process manually handled orders—a problem that the Idaho Public Utilities Commission described as “an unacceptably high level of human errors in the manual processing of orders.”³³ To address this problem, HP logged Exceptions and Observations to Qwest’s performance related to manually handled orders. Qwest then investigated the causes of the Exceptions and Observations (which revealed Qwest errors) and made improvements such as system upgrades,³⁴ “additional training[,] and revised documentation.”³⁵ After conducting re-testing, KPMG developed, under

³¹ Brief of Qwest Communications International, Inc. in Support of Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska, and North Dakota, WC Dkt. No. 02-148, at 112 (filed June 13, 2002).

³² See *Qwest Nine-State 271 Order* ¶ 12; see also *Washington UTC 39th Supplemental Order* ¶ 115. For the OSS testing conducted in Arizona, Cap Gemini Ernst & Young documented and addressed 399 issues identified during testing. See *In re Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Arizona*, WC Dkt. No. 03-194, Memorandum Opinion and Order, 18 FCC Rcd. 25504, ¶ 17 (2003).

³³ Written Consultation of the Idaho PUC, WC Dkt. No. 02-148, at 6 (filed June 11, 2002) (“Idaho PUC Consultation”).

³⁴ See, e.g., Qwest Washington Comments at 40 (“Qwest will implement an IMA 10.1 enhancement . . . substantially reducing manual processing errors in this area.”).

³⁵ Idaho PUC Consultation at 6; see also Qwest Washington Comments at 40.

the direction of the ROC, modified Qwest performance measurements to ensure adequate performance for manually handled orders.³⁶

Second, during the Section 271 review process, state commissions required Qwest to redesign its CMP.³⁷ According to the Arizona Corporation Commission, “Qwest’s initial Change Management Process was found to have numerous deficiencies and was adjudged to be inadequate.”³⁸ Through collaboration with the staffs of state commissions, CLECs, and third-party vendors, Qwest overhauled its CMP in order to bring it in compliance with the FCC’s five requirements³⁹ for an adequate CMP under Section 271.⁴⁰ As part of this overhaul, Qwest’s

³⁶ See generally KPMG Consulting, Qwest Manual Order Entry Performance Indicator Description Adequacy Study (June 11, 2002).

³⁷ See, e.g., ACC Evaluation at 3 (“At the request of the [Arizona Corporation Commission] Staff and its consultants, Qwest also implemented a comprehensive redesign of its Change Management Process (‘CMP’).”).

³⁸ *Id.* at 12.

³⁹ See *Qwest Nine-State Section 271 Order*, Appendix K, ¶ 42 (“In making this determination, [the Commission] assesses whether the evidence demonstrates: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the change management process; (3) that the change management plan defines a procedure for timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.”).

⁴⁰ See, e.g., Evaluation of the Colorado Public Utilities Commission, WC Dkt. No. 02-148, at 4 (filed July 2, 2002) (“Colorado PUC Evaluation”) (“Qwest’s change management process (CMP) has undergone a complete overhaul during the § 271 process. It is now compliant with the FCC’s change management criteria. The [Colorado PUC] staff has closely monitored CMP, and through no small amount of goading, Qwest has brought it into compliance.”); see also *id.* at 45 (“Beginning in July 2001, Qwest, CLECs and [Colorado PUC] staff began meeting in a collaborative effort to redesign Qwest’s change management process (CMP). The participants in the redesign process have met for more than 45 days over the past 11 months to discuss every aspect of Qwest’s CMP. CLECs and Qwest have made every effort to achieve consensus. As a result, the [Colorado PUC] agrees with Qwest’s contention that ‘it has in place the most comprehensive, inclusive, and forward-looking change management plan in the nation.’”).

redesigned CMP was subject to evaluation and testing by third-party vendors.⁴¹ The redesigned CMP is memorialized in the “Qwest Wholesale Change Management Process Document,” which is available on Qwest’s website.⁴²

Third, the Section 271 review process resulted in the development of wholesale service performance measurements (i.e., PIDs)⁴³ and self-executing remedy plans, (i.e., PAPs), designed to ensure that Qwest continues to comply with the Section 271 competitive checklist. The PIDs were collaboratively developed for use in the third-party testing of Qwest’s OSS.⁴⁴ During an independent audit conducted pursuant to the ROC’s Master Test Plan, Liberty Consulting found

⁴¹ See, e.g., *id.* at 45-46 (“With regard to CMP, the ROC OSS test [by KPMG] examined the adequacy and completeness of procedures for developing, publicizing, evaluating, and implementing changes to Qwest’s wholesale OSS interfaces and business processes. The test also focused on the tracking mechanisms of proposed changes and adherence to established change management intervals.”) (internal citation omitted); see also ACC Evaluation at 12 (“[Cap Gemini Ernest and Young] also undertook an evaluation of Qwest’s Change Management Process, a review deemed necessary by the FCC in prior 271 Orders.”).

⁴² See Qwest Wholesale Change Management Process Document, *available at* <http://www.qwest.com/wholesale/cmp/index.html>.

⁴³ See, e.g., Qwest Oregon SGAT Nineteenth Revised Exhibit B (June 26, 2007) (listing 69 total PIDs), *available at* <http://www.qwest.com/wholesale/clecs/nta.html>.

⁴⁴ See, e.g., *Washington UTC 39th Supplemental Order* ¶ 29 (“The performance measures Qwest uses to report its monthly commercial performance in Washington and other states in its operating territory were collaboratively developed by the Regional Oversight Committee’s (ROC) Technical Advisory Group (TAG) to be used in the third-party testing of Qwest’s Operations Support Systems (OSS).”); ACC Evaluation at 3 (“As part of the collaborative OSS testing process, the parties worked together to develop a comprehensive set of Performance Indicator Definitions (‘PIDs’). These PIDs, with some modification, also formed the basis for the [ROC’s] Performance Measurement Evaluation and OSS testing process.”). Qwest’s PIDs measure performance in three ways: retail parity (for measures with retail analogues), benchmark (for measures without retail analogues) and “parity by design” (for measures without retail analogues or benchmarks). Statistical measures (modified “z-tests”) are used for determining whether Qwest satisfies the parity and benchmark performance measures. See *In re Qwest Corp.’s Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process et al.*, New Mexico Utility Case Nos. 3269 *et al.*, Final Order Regarding Compliance with Outstanding Section 271 Requirements, 2002 N.M. PUC LEXIS 2, ¶ 65 (Oct. 8, 2002).

a number of deficiencies “in Qwest’s measurement and reporting processes and in the PIDs themselves” which, when resolved, resulted in “significant improvements to both the processes used by Qwest and the specificity and clarity of the PID.”⁴⁵ For example, the performance measurement reporting problems discovered during the audit demonstrated the need for Qwest to revise its data collection efforts and provide additional user documentation and training.⁴⁶ After reviewing Qwest’s efforts to correct these problems, Liberty Consulting concluded that “Qwest’s performance reporting accurately and reliably report[s] Qwest’s actual performance.”⁴⁷

The PAPs applicable to Qwest are also the result of extensive state commission review proceedings.⁴⁸ As a result of the ROC Post Entry Performance Plan multi-state collaborative, and at the request of various state commission staffs and CLECs, Qwest made numerous revisions to its original PAP.⁴⁹ For example, because the Arizona Corporation Commission “concluded that an efficient and effective PAP was necessary to assure Qwest’s future compliance with [] market opening measures,” it required Qwest to make revisions “that substantially improve[d] the value of the PAP to this Commission in its efforts to ensure” such

⁴⁵ See *Washington UTC 39th Supplemental Order* ¶¶ 33-34 (internal citation omitted).

⁴⁶ *Id.* ¶ 39.

⁴⁷ *Id.* (internal citation omitted).

⁴⁸ See, e.g., Comments of the Nebraska Public Service Commission, WC Dkt. No. 02-148, at 4 (filed July 3, 2002) (“Nebraska PSC Comments”) (describing the 12-state ROC Post Entry Performance Plan collaborative’s extensive conference calls and multi-day workshops to examine and discuss Qwest’s PAP).

⁴⁹ See *id.*; see also Idaho PUC Consultation, Exhibit D, at 3-4 (discussing revisions to Qwest’s PAP); ACC Evaluation at 24.

compliance.⁵⁰ In addition, Liberty Consulting conducted an independent evaluation of Qwest's PAP as part of a nine-state review proceeding.⁵¹ While the PAPs vary by state, they generally require Qwest to provide CLECs with monthly reports on specific PIDs and to provide CLECs or the state with remedy payments for failure to meet applicable benchmarks.⁵²

Fourth, during the Section 271 review process, state commissions held numerous collaborative workshops to develop SGAT terms that would comply with the Section 271 competitive checklist.⁵³ Qwest made substantial revisions to its SGATs to reflect the terms developed during these extensive proceedings.⁵⁴ Since then, terms from the SGATs have

⁵⁰ ACC Evaluation at 24.

⁵¹ See Nebraska PSC Comments at 4; see also *Washington UTC 30th Supplemental Order* ¶¶ 10-11.

⁵² See, e.g., Qwest Oregon SGAT Nineteenth Revision, Exhibit K, Performance Assurance Plan (June 26, 2007), available at <http://www.qwest.com/wholesale/clecs/nta.html>.

⁵³ See, e.g., Colorado PUC Evaluation at 26 (“This retelling of bringing Qwest’s SGAT into compliance with the 14-point competitive checklist only begins to touch on the volume and breath of issues that arose in Colorado’s six SGAT workshops. . . . After evaluating these six staff workshop reports and the enormous record behind these reports, the [Colorado PUC] concluded Qwest’s SGAT complies with the 14-point checklist.”); see also Idaho PUC Consultation, Exhibit A, at 3 (“The checklist items were addressed in the context of Qwest’s SGAT, and so the focus of the workshops was the SGAT terms required to comply with the checklist items. Qwest accordingly has filed the SGAT with the reports showing the terms as they were developed through the workshops and subsequent reports.”).

⁵⁴ See, e.g., Colorado PUC Evaluation at 2 (“These Track A interconnection agreements are accompanied in this application by the most thorough Statement of Generally Available Terms and Conditions (SGAT) in the country. The SGAT runs some 636 pages, was developed collaboratively by the participants in the § 271 process, and provides CLECs with a concrete and specific legal obligation to provide access to and interconnection with Qwest’s network. Furthermore, the SGAT is a crucial part of Qwest’s compliance with the 14-point competitive checklist from § 271(c)(2)(B).”); see also ACC Evaluation at 19 (“[T]he ACC directed Qwest to submit an SGAT for consideration and deliberation prior to any approval of its request for Section 271 authority. The ACC deemed it prudent to condition all Checklist approvals on verification that the findings made in the [ACC Staff workshop] reports were incorporated into the SGAT before Commission support for any Section 271 application would be granted. On August 29, 2003, Qwest submitted the Fourteenth Revised version of its SGAT.”).

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become part of CLEC interconnection agreements with Qwest.⁵⁵ CLECs have also used Qwest's SGATs (1) "as a key source to help frame interconnection agreement ('ICA') negotiation positions"; (2) "as a resource for attempting to resolve disputes with Qwest such as in [the] billing, carrier relations, and Change Management Process ('CMP') contexts"; and (3) "as an internal resource" to, among other things, confirm state commission-approved terms and filed requirements."⁵⁶

2. *CenturyLink Lacks Experience As A BOC, Thereby Raising Questions About The Merged Company's Ability To Provision Wholesale Inputs In Compliance With Section 271.*

Unlike Qwest, CenturyLink, its systems, and its processes have not undergone the type of substantial review and third-party testing that was conducted during the Section 271 proceedings described above. This differential in regulatory treatment has left CenturyLink with an enormous deficit in operational experience and capabilities. Qwest received its first Section 271 approval in 2002⁵⁷ and has been using Section 271-evaluated systems and processes to process commercial volumes of wholesale orders since that time. CenturyLink's processes during the same time period have been largely manual, and CenturyLink cannot provide evidence of substantial third-party testing or review of its systems and processes, particularly of the nature

⁵⁵ For example, the framework, general numbering scheme, and many sections of the current Qwest-Integra interconnection agreement in Minnesota are substantially similar to Qwest's Minnesota SGAT terms. *Compare* Arbitrated Agreement for Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services Provided by Qwest Corporation for Eschelon Telecom of Minnesota, Inc. in the State of Minnesota, Minnesota PUC Dkt. No. IC-06-768 (Feb. 6, 2008) with Minnesota SGAT Third Revision, § 12 (Mar. 17, 2003), available at <http://www.qwest.com/about/policy/sgats/SGATSDocs/minnesota/MN+3rd+Revised+SGAT+3-17-03+Clean.pdf>.

⁵⁶ Joint CLEC Responses to Staff's First Set of Data Requests, ACC Dkt. No. T-01051B-08-0613, at 2 (Feb. 18, 2009).

⁵⁷ See generally *Qwest Nine-State Section 271 Order*.

and extent of the testing and evaluation performed in the Qwest Section 271 proceedings.⁵⁸

CenturyLink also cannot provide evidence that it has a CMP, PIDs and PAPs, or the equivalent of SGAT terms. CenturyLink's lack of experience in this and other areas raises significant questions about the Merged Company's ability to provide wholesale inputs in compliance with Section 271.

a. Operations Support Systems

The Commission has held that nondiscriminatory access to OSS functions under Section 271 is critical for competitors to have a meaningful opportunity to compete:

The Commission consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition. For example, new entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers. *The Commission has determined that without nondiscriminatory access to the BOC's OSS, a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing," in the local exchange market.*⁵⁹

Because CenturyLink's OSS has not been subject to the same rigorous Section 271 OSS development and testing process as Qwest, it is doubtful that the Merged Company will be able to provide nondiscriminatory access to OSS in compliance with Section 271 in the legacy Qwest territory. For instance, the Commission has held that, under Section 271, "providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in

⁵⁸ Indeed, CenturyLink has admitted that it "has not conducted third-party testing of its systems." See CenturyLink's Response to Integra's Information Request No. 2-18, Minnesota PUC Dkt. Nos. P-421, *et al.*/PA-10-456 (July 8, 2010).

⁵⁹ *Qwest Nine-State Section 271 Order*, Appendix K, ¶ 25 (emphasis added).

the same manner as the BOC.”⁶⁰ Accordingly, Qwest’s IMA system, which “provides pre-ordering and ordering/provisioning functions for all local competitive products that are ordered via Local Service Requests (‘LSRs’),” has “an application-to-application option using Extensible Markup Language (‘XML’)” in addition to a graphical user interface (“GUI”) option.⁶¹ By contrast, it is not clear that CenturyLink offers an application-to-application option for pre-ordering and ordering functions to wholesale customers. Indeed, it appears that CenturyLink’s OSS capabilities are significantly more limited than those of Qwest. For example, according to Qwest, it offers wholesale customers the following electronic options to access its OSS in addition to IMA:

Qwest Online Request Application (“QORA”)

QORA supports ordering for all wholesale products ordered via an Access Service Request (“ASR”). QORA provides CLECs with a GUI interface, or CLECs’ systems can submit ASRs via QORA’s Network Data Mover (“NDM”) and Unified Order Model (“UOM”) gateways.

Customer Electronic Maintenance and Repair (“CEMR”)

CEMR is Qwest’s GUI that provides CLECs with maintenance and repair functions for their existing products and services. CEMR allows CLECs to perform trouble administration activities such as creating and editing trouble reports, monitoring trouble report status and reviewing trouble history.

Mediated Access Electronic Bonding Trouble Administration (“MEDIACC – EBTA”)

MEDIACC EBTA provides CLECs with the ability to perform maintenance and repair functions in their own systems. MEDIACC EBTA is the electronic gateway that CLECs’ systems use to communicate with Qwest’s systems.⁶²

It is doubtful that CenturyLink, whose OSS in the legacy CenturyTel territory were largely manual as of June 2009,⁶³ can provide similar electronic functionalities. The instant Application

⁶⁰ *Id.*, Appendix K, ¶ 34 & n.99.

⁶¹ Direct Testimony of Christopher Viveros, Qwest Communications International, Inc., Oregon PUC Dkt. No. UM 1484, at 8 (filed June 22, 2010) (“Viveros Oregon PUC Direct Testimony”).

⁶² *Id.* at 8.

fails to provide any details about the capabilities of the wholesale customer-facing systems and the back-end systems currently used by CenturyLink, let alone those systems that will be used by the Merged Company. Indeed, CenturyLink has made clear in state commission review proceedings of the proposed transaction that it has no intention of making decisions regarding the systems that will be used by the Merged Company until after closing.⁶⁴

CenturyLink also lacks the experience to support Qwest's extensive wholesale operations. After acquiring Qwest, CenturyLink will face increased wholesale demand and will be required to process substantially higher volumes of wholesale orders than it does today. In the Application, CenturyLink has not offered any details as to how it plans to accommodate this significant increase in wholesale demand.

CenturyLink's acquisition of Embarq does not assuage these concerns. Although the Commission required CenturyTel to adopt Embarq's wholesale OSS in the *CenturyTel-Embarq Merger Order*,⁶⁵ Embarq's OSS has also never been subject to review under Section 271. In addition, even with the acquisition of Embarq, the volume of CLEC orders processed by CenturyLink is far less than that processed by Qwest. Moreover, as discussed further below, the integration of Embarq is still ongoing.

In sum, CenturyLink's status as a non-BOC means that it has an incredibly long way to go before it can support Qwest's systems. Qwest has stated that OSS is the "life blood" of the

⁶³ See *CenturyTel-Embarq Merger Order* ¶¶ 21-26 (discussing some of the problems "resulting from CenturyTel's manual OSS," which "appear to disadvantage competitors in several ways").

⁶⁴ See Attachment A, at 1.

⁶⁵ See *CenturyTel-Embarq Merger Order* ¶ 29 & Appendix C.

wholesale operations that today make competition possible in the Qwest region.⁶⁶ As the Joint Commenters reiterate throughout these Comments, the Commission simply cannot find that the proposed transaction meets the public interest standard unless and until CenturyLink is able to prove that it can and will operate Qwest's OSS in accordance with the requirements of Section 271.

i. Previous Incumbent LEC OSS Integrations Have Resulted In Substantial Harm To Competitors.

Rather than provide a description of the Applicants' plans for integrating their OSS, the Applicants offer only the vague assurances that CenturyLink "has a long history of successful acquisitions,"⁶⁷ a "proven [] ability to acquire and successfully integrate other companies,"⁶⁸ and a "management team [with] some of the longest and most successful tenure in the industry with a proven track record of successful mergers and acquisitions."⁶⁹ In light of wholesale customers' experiences following recent incumbent LEC mergers, however, such bald statements mean nothing.

The damage caused to competition and consumer welfare by recent incumbent LEC mergers has been well documented, so only a brief recitation is necessary here. In 2005 and 2006, the Carlyle Group, led by executives with "a track record of successful

⁶⁶ Surrebuttal Testimony of Renee Albersheim for Qwest Corp., Utah PSC Dkt. No. 07-2263-03, at 39 (filed Aug. 10, 2007).

⁶⁷ Application at 8.

⁶⁸ *Id.* at 9.

⁶⁹ *Id.* at 10.

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telecommunications investments,” including the immediate past Chairman of the FCC,⁷⁰ was unable to successfully integrate the access lines it acquired from Verizon Hawaii. Although the parties to the Hawaiian Telcom (“HawTel”) transaction had a detailed OSS cutover plan in place,⁷¹ the new company’s critical back-office systems still lacked sufficient functionality after cutover.⁷² Wholesale customers, such as tw telecom, experienced numerous problems, including HawTel’s (1) failure to complete special access circuit orders on time; (2) failure to successfully port customers’ phone numbers on time; and (3) failure to provide a GUI repair portal for wholesale customers to submit and monitor the status of trouble tickets.⁷³ In the course of a subsequent investigation conducted by the Hawaii PUC, the Hawaii Consumer Advocate stated as follows:

In view of the large magnitude of the resultant system related problems that occurred after the April 1, 2006 cutover . . . one may question whether Hawaiian Telcom’s initial efforts involved the right people and systems integrating vendor(s), whether [HawTel’s] financial interest may have had a higher priority

⁷⁰ Press Release, The Carlyle Group, *The Carlyle Group to Buy Verizon Hawaii for \$1.65 Billion* (May 21, 2004), available at <http://www.carlyle.com/Media%20Room/News%20Archive/2004/item6698.html>.

⁷¹ For example, the plan included various testing protocols to ensure that HawTel’s systems would function properly following cutover. See *Joint Petition of Verizon New England Inc., d/b/a Verizon Vermont, Certain Affiliates Thereof and FairPoint Communications, Inc. for approval of asset transfer, acquisition of control by merger and associated transactions*, State of Vermont Public Service Board, Dkt. No. 7270, Prefiled Direct Testimony of Michael D. Pelcovits on Behalf of NECTA, Inc. and Comcast Phone of Vermont, LCC, at 19 (filed May 24, 2007).

⁷² See *id.* at 19-20.

⁷³ See *In the Matter of the Public Utilities Commission Instituting a Proceeding Regarding Hawaiian Telcom, Inc.’s Service Quality and Performance Levels and Standards in Relation to Its Retail and Wholesale Customers*, Hawaii PUC Dkt. No. 2006-0400, Time Warner Telecom of Hawaii, L.P., d/b/a Oceanic Communications’ Post-Hearing Brief, at 23 (filed Nov. 9, 2007) (“tw telecom Post-Hearing Brief”). Also, HawTel’s systems deficiencies “had a significant negative impact” on tw telecom, resulting in damage to its reputation in Hawaii, problems for its retail business customers, delayed and lost revenue, and increased costs. *Id.* at 22-23.

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than the immediate impact to customers in decisions made, and whether [HawTel] actually knew or knows how to fix the resultant problems.⁷⁴

In 2008 and 2009, FairPoint Communications, which boasted to the Commission that it had in the past successfully “acquired more than thirty companies,”⁷⁵ was unable to integrate the access lines it acquired from Verizon New England. Following the cutover from Verizon’s legacy OSS to FairPoint’s OSS on February 1, 2009, many of FairPoint’s critical back-office systems did not work. Wholesale customers experienced numerous problems, including: (1) difficulties in creating orders; (2) inconsistencies in processing orders; (3) failures of many pre-ordering transactions, such as requests for customer service records and loop qualifications; (4) unreliable and inaccurate notification messages about order status; (5) poor customer service; and (6) billing errors.⁷⁶ More than nine months after cutover, FairPoint’s consulting firm,

⁷⁴ *In re Public Utilities Commission Instituting a Proceeding Regarding Hawaiian Telcom, Inc.’s Service Quality and Performance Levels and Standards in Relation To Its Retail and Wholesale Customers*, Hawaii PUC Dkt. No. 2006-0400, Consumer Advocacy’s Statement of Position, at 12 (filed June 21, 2007).

⁷⁵ See FairPoint-Verizon Opposition to Petitions to Deny, WC Dkt. No. 07-22, at 8 (filed May 7, 2007); see also *id.* at 29 (stating that none of FairPoint’s “ILEC acquisitions has been anything other than a success”).

⁷⁶ See *FairPoint Cutover Status Report* at 5-7, Liberty Consulting Group (Jan. 14, 2009), available at <http://www.puc.state.nh.us/Telecom/Filings/FairPoint/Monthly%20Monitoring%20Reports/FairPoint%20Cutover%20Monitoring%20Monthly%20Report%2001-14-09.pdf>; see also Letter from Paula W. Foley, One Communications, to Karen Geraghty, Administrative Director, Maine PUC Dkt. Nos. 2007-67 & 2008-108, at 1 (filed July 31, 2009) (“CLECs revenues and operations continue to suffer from FairPoint’s inability to return to the levels of service provided by Verizon’s systems pre-cutover.”); Request of Mid Maine Communications and CRC Communications of Maine, Inc. for Investigation of FairPoint Communications, NNE, State of Maine PUC Dkt. No. 2009-106, at 1-2 (filed Mar. 20, 2009) (arguing that “FairPoint has shown itself incapable of performing even the most basic of wholesale functions, such as porting numbers without causing service interruption for customers,” and that “FairPoint’s failures effectively prevent customers from choosing a competitive telecommunications provider for their service, thereby stifling competition and limiting consumer choice”).

Accenture, reported that “work remains to address the system integration gaps.”⁷⁷ In May 2010, FairPoint’s new Chief Information Officer admitted that the FairPoint-Verizon systems integration “was not adequate”⁷⁸ and stated that FairPoint was planning to implement Accenture’s recommendations to improve, among other things, its IT systems and process.⁷⁹

Most recently, earlier this year, despite promises by Verizon of “a seamless transition of [its] billing, customer account, plant record, and other operational support and network systems” to Frontier,⁸⁰ wholesale customers in the areas being acquired by Frontier experienced significant problems with the “replica” of Verizon’s OSS that would be transferred to Frontier at closing *even before closing*.⁸¹ As Integra explained to the Commission in detail, Integra experienced numerous problems with Verizon’s wholesale service in May 2010 that impacted Integra’s

⁷⁷ Request for Approvals in Connection with the Reorganization Plan of FairPoint Communications, Inc., *et al.*, New Hampshire PUC Dkt. No. 10-025 (filed Feb. 24, 2010), Exhibit VW-3A, Letter from Vicky Weatherwax, VP, Internal Business Solutions, FairPoint, to Meredith A. Hatfield, Esq., Office of Consumer Advocate, New Hampshire, Attachment, at 2 (dated Nov. 30, 2009), *available at* [http://www.puc.nh.gov/Regulatory/CaseFile/2010/10-025/INITIAL%20FILING%20-%20PETITION/10-025%202010-02-24%20Public%20Testimony%20and%20Exhibits-%20FairPoint/Exhibit%20VW-3A%20\(NH\)%20-%20PUBLIC%20\(C0079328\).PDF](http://www.puc.nh.gov/Regulatory/CaseFile/2010/10-025/INITIAL%20FILING%20-%20PETITION/10-025%202010-02-24%20Public%20Testimony%20and%20Exhibits-%20FairPoint/Exhibit%20VW-3A%20(NH)%20-%20PUBLIC%20(C0079328).PDF).

⁷⁸ *See Joint Petition of Northern New England Telephone Operations, LLC Telephone Operating Company of Vermont, LLC, D/B/A FairPoint Communications, Enhanced Communications of Northern New England, Inc., and FairPoint Vermont, Inc.*, Vermont PSB Dkt. No. 7599, Transcript of Technical Hearing, at 39 (filed May 11, 2010).

⁷⁹ *Id.* at 26-28.

⁸⁰ Frontier-Verizon Opposition to Petitions to Deny and Reply to Comments, WC Dkt. No. 09-95 (filed Oct. 13, 2009), Exhibit 2, Declaration of Stephen E. Smith, ¶ 6 (dated Oct. 12, 2009).

⁸¹ In addition, at least one competitor, FiberNet, has experienced substantial problems since the cutover to Frontier’s systems in West Virginia on July 1, 2010. *See* George Hohmann, *Phone Transition Still Poses Problems*, CHARLESTON DAILY MAIL, July 5, 2010, *available at* <http://www.dailymail.com/Business/201007040384> (describing problems experienced by FiberNet since the cutover to Frontier, including a backlog of trouble tickets).

delivery of service to its end-user business customers.⁸² Notably, Integra found that some of the Verizon representatives answering calls in Verizon call centers were inexperienced or had been inadequately trained.⁸³ Integra employees “sometimes found themselves educating Verizon’s representatives on Verizon’s internal processes and the requirements of the CLEC-facing Verizon systems.”⁸⁴ In addition, “[i]n some cases, Verizon representatives operating the Replicated Systems [] also indicated to Integra that they d[id] not know the appropriate workarounds to resolve specific types of problems.”⁸⁵

Here, the Applicants have provided no reason to believe that wholesale customers of the Merged Company will be able to avoid problems similar to those described above. If this were not enough, as Integra learned even before the closing of the Frontier-Verizon transaction, there is no guarantee that the Merged Company will be able to retain the employees with the skills and expertise needed to support its wholesale OSS and wholesale customer service. It is also unclear which business functions will be housed at the Merged Company’s headquarters in Monroe, Louisiana and whether there is a sufficiently large pool of potential employees to support those functions. For all of these reasons, CenturyLink has disclosed to the SEC that it may face the following difficulties, among others, in the integration process:

⁸² See Letter from Thomas Jones, Counsel for Integra Telecom, Inc. *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 09-95, at 1-4 (filed May 19, 2010) (“Integra May 19, 2010 Ex Parte Letter”); Letter from Thomas Jones, Counsel for Integra Telecom, Inc. *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 09-95, at 1-2 (filed May 13, 2010); *see also* Letter from Mark C. Del Bianco, Counsel for PAETEC Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 09-95, Attachment A, at 6-7 (filed May 17, 2010) (describing problems experienced by PAETEC).

⁸³ See Integra May 19, 2010 Ex Parte Letter at 4.

⁸⁴ *Id.*

⁸⁵ *Id.*

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[T]he complexities associated with managing the combined business out of several different locations and integrating personnel from the two companies, while at the same time attempting to provide consistent, high quality products and services under a unified culture;

[T]he additional complexities of combining two companies with different histories, regulatory restrictions, markets and customer bases . . . ; [and]

[T]he failure to retain key employees of either of the two companies⁸⁶

These potential integration problems pose a substantial threat to competition and consumer welfare. The Joint Commenters have expended substantial resources on systems and training to work with Qwest's systems and processes. Failure to continue to utilize the legacy Qwest OSS, failure to continue to operate those OSS to provide service that is at least equal to the level of service (flawed though it has been) provided by legacy Qwest, and the mishandling of any integration of legacy Qwest OSS would be extremely damaging to competitors and their end-user customers.

ii. The Integration Of Embarq's OSS Is Still Ongoing.

Notwithstanding its warnings to investors, CenturyLink implies in the instant Application that there will be a seamless integration of Qwest because its integration of Embarq "has been highly successful."⁸⁷ However, this self-assessment is entirely premature because the integration of the legacy CenturyTel OSS and the legacy Embarq OSS is still ongoing. Indeed, CenturyLink requested a waiver of the August 2, 2010 deadline for compliance with the Commission's one-business-day porting interval requirement on the basis that such compliance would disrupt

⁸⁶ CenturyLink, Inc., SEC Form S-4 Registration Statement Under the Securities Act of 1933, at 17 (filed June 4, 2010) ("CenturyLink Form S-4").

⁸⁷ Application at 10.

“ongoing system changes related to the [CenturyTel-Embarq] merger.”⁸⁸ In its June 7, 2010

Petition for Waiver, CenturyLink stated that:

Unlike other carriers, *CenturyLink is in the process of integrating two separate operational support systems*—those that were used by CenturyTel and Embarq before the merger of the two companies in the middle of last year. CenturyLink is designing the integration operational support system to comply with the Commission’s requirements for one-day porting. *At this time, however, both sets of legacy systems are in place . . .*⁸⁹

CenturyLink further stated that, among other things, it “is [] integrating customer-facing operational systems.”⁹⁰ In particular, CenturyLink explained that it is still converting retail customers in the legacy Embarq territory to CenturyLink’s integrated billing system⁹¹ and that all of the “large customer migrations [which] offer the greatest challenges for the integration” have not yet been completed.⁹² According to CenturyLink’s Application for approval of the instant transaction, all of the billing system conversions will be complete no later than “two years after closing” (i.e., July 1, 2011).⁹³

In its June 7, 2010 Petition for Waiver, CenturyLink also emphasized that it was still working on its “wholesale and carrier-facing system integration.”⁹⁴ CenturyLink explained that strict adherence to the Commission’s deadline for compliance with the one-business-day porting

⁸⁸ CenturyLink Petition for Waiver of Deadline, *In re Local Number Portability Interval and Validation Requirements*, WC Dkt. No. 07-244, at 5 (filed June 7, 2010) (“CenturyLink Petition for Waiver”).

⁸⁹ *Id.* at 5 (emphasis added).

⁹⁰ *Id.* at 7.

⁹¹ *See id.*

⁹² *Id.* at 3.

⁹³ Application at 9.

⁹⁴ CenturyLink Petition for Waiver at 7.

interval rule could jeopardize timely completion of its integration of legacy Embarq's wholesale OSS pursuant to the *CenturyTel-Embarq Merger Order*:

CenturyLink is consolidating its wholesale ordering systems by moving the former CenturyTel operating companies to the wholesale administration and service ordering system, which is already in place for the former Embarq operating companies. CenturyLink is making this significant upgrade to fulfill conditions in the *CenturyTel-Embarq [Merger] Order*, which will improve efficiency and facilitate superior service for CenturyLink's wholesale customers. If CenturyLink is required to meet the August 2, 2010 deadline for one-day porting, it will have to divert resources and implementation activity away from the wholesale systems subject to the merger commitment, which could affect the October 1, 2010 deadline for complying with those provisions in the *CenturyTel-Embarq [Merger] Order*.⁹⁵

It is not clear how much of CenturyLink's wholesale OSS integration has been completed since June 7, 2010. However, in his June 22, 2010 direct testimony before the Oregon Public Utilities Commission, CenturyLink's Director of CLEC Management stated that the transition of wholesale customers in the legacy CenturyTel markets to the legacy Embarq ordering system was still in progress:

At the current time in legacy CenturyTel markets, the actual order processing is [] completed via a manual process internal to CenturyLink. *Integration efforts are underway and should be completed later this year to migrate legacy CenturyTel markets to the [legacy Embarq] EASE platform.*⁹⁶

Thus, it is impossible to know at this point whether "CenturyLink's integration of Embarq [] has been highly successful."⁹⁷ In fact, the instant transaction will make it more

⁹⁵ *Id.* Under the *CenturyTel-Embarq Merger Order*, CenturyLink must "integrate, and adopt for CenturyTel CLEC orders, the automated [OSS] of Embarq within fifteen months of the transaction's close." See *CenturyLink-Embarq Merger Order*, Appendix C (listing conditions). The transaction closed on July 1, 2009. See CenturyLink Company History, <http://www.centurylink.com/Pages/AboutUs/CompanyInformation/TimeLine/>. Accordingly, CenturyLink has until October 1, 2010 to comply with this condition.

⁹⁶ See Hunsucker Oregon PUC Direct Testimony (emphasis added).

⁹⁷ Application at 10.

difficult to complete the CenturyTel-Embarq integration. CenturyLink has warned its investors that the CenturyLink-Qwest integration will likely begin before the CenturyTel-Embarq integration is finished, thereby compounding potential integration risks.⁹⁸ As CenturyLink stated in a recent SEC filing,

[CenturyLink-Qwest] integration initiatives are expected to be initiated before CenturyLink has completed a similar integration of its business with the business of Embarq, acquired in 2009, which could cause both of these integration initiatives to be delayed or rendered more costly or disruptive than would otherwise be the case.⁹⁹

Third-party observers have highlighted this risk. For instance, Standard & Poor's has observed that "integration efforts will be difficult given the size of the combined company and [that] CenturyTel's integration of previously acquired Embarq will likely not be complete until the end of 2011."¹⁰⁰

Furthermore, CenturyLink's transition of wholesale customers in the legacy Embarq territory from one ordering system to another in late 2009 raises questions about CenturyLink's OSS integration abilities. Following CenturyLink's cutover from the Integrated Request Entry System ("IRES") GUI for LSR ordering to the successor EASE system in the legacy Embarq territory in December 2009, tw telecom began to experience numerous problems, including

⁹⁸ CenturyLink Form S-4 at 16.

⁹⁹ *Id.*

¹⁰⁰ Direct Testimony of Jeff Glover, ACC Dkt. No. T-01051B-10-0194 *et al.* (filed May 24, 2010), Exhibit JG-4, "Standard & Poor's Research Update: CenturyTel 'BBB-' Rating On Watch Negative On Deal To Acquire Qwest Communications; Qwest 'BB' Rating On Watch Positive," at 3 (Apr. 22, 2010), *available at* <http://images.edocket.azcc.gov/docketpdf/0000111908.pdf>. *See also id.*, Exhibit JG-3, "Moody's Investor Service Rating Action: Moody's changes CenturyTel's outlook to negative; reviews Qwest's ratings for upgrade," at 1 (Apr. 22, 2010) ("The negative rating outlook for CenturyTel reflects the considerable execution risks in integrating a sizeable company so soon after another large acquisition (Embarq in July 2009) while confronting the challenges of a secular decline in the wireline industry.").

system outages, with the EASE system. More specifically, since the beginning of 2010, tw telecom has received numerous “Interface Outage Bulletins” from CenturyLink because EASE users could not submit LSRs, could not complete pre-ordering, were experiencing slow response times, or were denied access entirely because the EASE system was being taken out of service for maintenance. Socket Telecom has experienced similar problems with the EASE system. These delays in the LSR ordering process ultimately result in delays in the delivery of service by tw telecom and Socket Telecom to their end-user customers.

Socket Telecom has also found that the EASE system offers less functionality than the legacy Embarq IRES system. In particular, IRES populated a CLEC’s LSR with information (e.g., the end-user customer’s address) from the pre-order validation form.¹⁰¹ EASE does not provide this option. In addition, unlike Embarq’s legacy interface for directory listings (“eSUDS”), EASE, which CLECs such as Socket Telecom are currently required to use for directory listings, does not provide CLECs with access to full directory listing information for a customer. In fact, in Socket Telecom’s experience, EASE sometimes lists only the customer’s address and omits such basic information as the customer’s name.¹⁰²

¹⁰¹ Similarly, Qwest’s IMA GUI populates a CLEC’s LSR with information from the pre-order validation form. Change requests in Qwest’s CMP contributed to the development of this capability. *See, e.g.*, Change Request to “Provide CSR recap functionality in IMA when a request type of ‘P’ is selected,” *available at* http://www.qwest.com/wholesale/cmp/archive/CR_SCR032602-1.html.

¹⁰² In contrast, Qwest’s Directory Listing Inquiry System (“DLIS”) provides CLECs with access to full directory listing information for a customer. Improvements to Qwest’s DLIS were made through Qwest’s CMP. *See, e.g.*, Change Request to obtain “Changes to the DLIS System to enhance the customer experience,” *available at* http://www.qwest.com/wholesale/cmp/archive/CR_SCR011205-01.html; Change Request to obtain “IMA LSTR (Listing Reconciliation) Enhancement,” *available at* http://www.qwest.com/wholesale/cmp/archive/CR_SCR010709-3.html. CLECs that have expended time and resources to work through issues via the CMP and to train their own personnel in use of these systems should not have to go backward in terms of functionality, as Socket has had to do, as a result of a merger.

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Socket Telecom, which has a substantial presence in both the legacy CenturyTel and legacy Embarq territories has also found that the merged CenturyTel-Embarq notification process has been poor. For example, Socket Telecom did not receive notice that CenturyLink was switching from the legacy CenturyTel Local Number Portability (“LNP”) system to the legacy Embarq LNP system until the day the change took place. In the absence of sufficient notice, Socket Telecom submitted LNP requests in the wrong format, thereby causing prospective customers to have a delayed and unsatisfactory changeover process.

As the foregoing discussion demonstrates, CenturyLink has failed to show that it will be able to manage the wholesale OSS of Qwest or make other changes without causing substantial harm to wholesale customers and their end-user customers. This is particularly true because CenturyLink has not shown that its EASE system (before or after any integration) provides at least the equivalent functionalities of Qwest’s systems or that its EASE system has handled commercial volumes of wholesale orders that equal or even approach the volumes of wholesale orders processed by Qwest’s systems.

For all of the reasons discussed above, regardless of whether the Merged Company makes changes to its OSS months or even years after closing, such changes will impact CLECs and their opportunity to meaningfully compete in the Merged Company’s territory. Such changes may also impact CLECs’ end-user customers. Therefore, procedures must be established before closing of the proposed transaction regarding how such changes will occur, whenever they occur. For example, for any Qwest system that was subject to third-party testing (e.g., as part of the Section 271 process), robust, transparent third-party testing should be conducted for any CenturyLink replacement system to ensure that it provides the needed

functionality, can appropriately handle commercial volumes, and meets the Merged Company's Section 271 obligations.

b. Change Management Process

Because CenturyLink has never been required to establish a CMP, it has no experience in developing or implementing such a process. By contrast, as described above, Qwest was required to redesign its CMP to comply with Section 271. As a result, "Since 1999, Qwest and CLECs have," among other things, "jointly participated in a forum for managing changes related to Qwest's products, processes, and systems that support the five categories of OSS functionality (pre-ordering, ordering, provisioning, maintenance and repair, and billing)." ¹⁰³

Although CLECs have encountered difficulties with Qwest's CMP, ¹⁰⁴ the CMP nevertheless performs an essential function. Integra and other competitors receive and review hundreds of wholesale notices from Qwest each month, many of which are issued via the CMP (e.g., notices of changes to Qwest's processes and procedures that are reflected in its online Product Catalog ("PCAT")). It is critical that CLECs have a mechanism through which to comment on, or object to, Qwest's proposed changes and submit their own requests because such changes affect not only Qwest's systems and processes, but CLECs' systems and processes. As the Commission has held,

Without a change management process in place, a BOC can impose substantial costs on competing carriers simply by making changes to its systems and

¹⁰³ Viveros Oregon PUC Direct Testimony at 9.

¹⁰⁴ For example, Qwest has unilaterally implemented unwanted changes over CLEC objections. *See, e.g., In re Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996*, Arbitrators' Report, MPUC Dkt. Nos. P-5340,421/IC-06-768, ¶ 22 (rel. Jan. 16, 2007) ("Eschelon has provided convincing evidence that the CMP process does not always provide CLECs with adequate protection from Qwest making important unilateral changes in the terms and conditions of interconnection.").

interfaces without providing adequate testing opportunities and accurate and timely notice and documentation of the changes. Change management problems can impair a competing carrier's ability to obtain nondiscriminatory access to UNEs, and hence a BOC's compliance with [S]ection 271(2)(B)(ii).¹⁰⁵

Accordingly, without a CMP in place, there is a serious risk that the Merged Company will be unable to provide UNEs and other wholesale inputs in compliance with Section 271.

Unfortunately, as with so many other aspects of wholesale service, the instant Application provides no information about any CMP that will be used by the Merged Company.

c. Performance Assurance Plans

Because it was never subject to Section 271 review, CenturyLink has no experience in complying with the wholesale service performance measurement (i.e., PID) reporting and self-executing penalty regimes (i.e., PAPs) currently applicable to Qwest. CenturyLink has no such wholesale service quality performance reporting plan or self-executing penalty regime and, therefore, has no experience administering these items and has no documented performance track record that can be used to evaluate changes in service quality post-transaction. Without regular performance measurement reporting, the Commission and competitors will be unable to readily detect whether the Merged Company is backsliding in its Section 271 obligations. As the Commission has held, "performance measurements [are] valuable evidence with which to inform the [Commission's] judgment as to whether a BOC has complied with the [Section 271] checklist requirements."¹⁰⁶ Moreover, if it is not subject to significant self-executing financial penalties,¹⁰⁷ the Merged Company's incentives to maintain wholesale service quality will be

¹⁰⁵ *Qwest Nine-State Section 271 Order*, Appendix K, ¶ 41.

¹⁰⁶ *Id.*, Appendix K, ¶ 10.

¹⁰⁷ As the Commission has recognized, penalty regimes must be self-executing so that they "function automatically without imposing administrative or regulatory burdens on competitors." *In re Application by Bell Atlantic New York for Authorization Under Section 271 of the*

further reduced. Indeed, the Commission has recognized that a once a BOC receives Section 271 approval, its incentives to cooperate with competitors may diminish and “[s]wift and effective post-approval enforcement of [S]ection 271 requirements thus is essential . . . to achieving durable competition in local markets.”¹⁰⁸

d. Interconnection Agreements

With interconnection agreements, the devil is in the details. Both Qwest and CenturyLink have resisted adoption of detailed interconnection agreements.¹⁰⁹ Nevertheless, CenturyLink’s interconnection agreements generally contain less detail and therefore create more costly uncertainty for competitors than is the case with Qwest’s interconnection agreements.

As mentioned above, many of the terms in Qwest’s interconnection agreements are based in large part on the SGATs developed during Section 271 review proceedings. For example, current interconnection agreement terms governing change management in Qwest’s Multi-state Negotiations Interconnection Agreement Template stem from the terms developed in connection

Communications Act to Provide In-Region, InterLATA Service in the State of New York, Memorandum Order and Opinion, 15 FCC Rcd. 3593, ¶ 12 (1999).

¹⁰⁸ *Id.* ¶ 446.

¹⁰⁹ *See, e.g.*, Eschelon Telecom of Minnesota, Inc.’s Post-Hearing Brief, MN PUC Dkt. No. P-5340, 421/IC-06-768, at 12 (filed Nov. 17, 2006) (explaining that “rather than including specific terms and conditions in an interconnection agreement over which the Commission exercises oversight, whose terms cannot be changed unless the contract is amended by either mutual agreement or arbitration and which will be available for opt in by other CLECs, Qwest would relegate those terms to its [Product Catalog] and to its [CMP]”); *see also* Arbitration Award, *Petition of Charter Fiberlink, LLC for Arbitration of an Interconnection Agreement Between the CenturyTel Non-Rural Tel. Cos. of Wisconsin and Charter Fiberlink, LLC et al.*, Wisconsin PSC Dkt. No. 5-MA-148 *et al.*, at 48, 53-54 (July 28, 2009) (discussing and rejecting CenturyTel’s position that its Service Guide should be incorporated by reference into the interconnection agreement at issue on the ground that “it would be inconsistent with this approval process to require Charter to incorporate terms that would allow CenturyTel to make unilateral changes to the interconnection agreement without Commission approval”).

with Qwest's SGAT.¹¹⁰ The same is generally true of terms governing PIDs and PAPs in Qwest's interconnection agreements.¹¹¹ Because CenturyLink's interconnection agreements do not include these requirements, they cannot come close to meeting the needs of wholesale customers.¹¹²

¹¹⁰ Compare Qwest Multi-state Negotiations Interconnection Agreement Template § 12, available at <http://www.qwest.com/wholesale/clecs/nta.html>, with Qwest Minnesota SGAT Third Revision, § 12 (Mar. 17, 2003), available at <http://www.qwest.com/about/policy/sgats/SGATSdocs/minnesota/MN+3rd+Revised+SGAT+3-17-03+Clean.pdf>.

¹¹¹ For example, the terms in the Oregon-specific exhibits to the Qwest Multi-state Negotiations Interconnection Agreement Template that govern PIDs and PAPs are based on the Oregon SGAT. See Qwest Oregon SGAT Nineteenth Revised Exhibit B, Service Performance Indicator Definitions (PID), 14-State 271 PID Version 9.0 (June 26, 2007), available at <http://www.qwest.com/wholesale/clecs/nta.html>; see also Qwest Oregon SGAT Nineteenth Revision, Exhibit K, Performance Assurance Plan (June 26, 2007), available at <http://www.qwest.com/wholesale/clecs/nta.html>.

¹¹² In fact, while it has entered into interconnection agreements with requesting carriers, CenturyLink has also expressly reserved the right to invoke the protections of Sections 251(f)(1) and 251(f)(2) of the Act and thereby avoid its obligations as an incumbent LEC under Section 251(c). For example, in a recent Order approving two CenturyLink interconnection agreements, the Idaho Public Utilities Commission summarized CenturyLink's position as follows:

[CenturyLink's] Application states that CenturyLink is a "rural telephone company," as that term is defined in the Act, 47 U.S.C. § 153. CenturyLink goes on to state that, pursuant to Section 251(f)(1) of the Act, it is exempt from Section 251(c) of the Act. Notwithstanding that exemption, the companies have agreed and entered into this Agreement for purposes of exchanging local traffic. The Company also states that "execution of the Agreement does not in any way constitute a waiver of limitation of CenturyLink's rights under Section 251(f)(1) or 251(f)(2) of the Act." The Company "expressly reserves the right to assert its right to an exemption or waiver and modification of Section 251(c) of the Act, in response to other requests for interconnection by CLEC or any other carriers."

In re Application of CenturyTel of Idaho, Inc. dba CenturyLink for Approval of its Interconnection Agreement with Bullseye Telecom, Inc. Pursuant to 47 U.S.C. § 252(e), Order No. 31095, Idaho PUC Case Nos. CEN-T-10-01 & CGS-T-10-01, ¶ 1 (adopted May 28, 2010); see also id. ¶ 2 (same). Thus, there is a material risk that the Merged Company will seek to avoid its obligations as an incumbent LEC under Section 251(c) of the Act.

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Even with the benefit of the SGAT review proceedings, in the Joint Commenters' experience, it has taken years of negotiations and, in some cases, arbitration and litigation, to develop the terms of their wholesale relationships with Qwest, and detailed interconnection agreements memorialize that work. The proposed transaction has the potential to "undo" that work if the Merged Company is not required to (1) comply with Qwest's obligations under its existing interconnection agreements; and (2) allow those agreements, and proposals exchanged in current ongoing negotiations, to be used as the basis for negotiation of replacement interconnection agreements.

This is not just a theoretical concern. While CenturyLink and Qwest assert that they "will meet their ongoing obligations under interconnection agreements,"¹¹³ Qwest has qualified this commitment in a state commission proceeding by stating that "[a]ll prices, terms and conditions of [Qwest's interconnection] agreements will remain in effect *until such time as they are renegotiated or expire by their own terms.*"¹¹⁴ This is important because many of Qwest's interconnection agreements with CLECs have expired and are in so-called "evergreen" status or will soon be in evergreen status. Qwest and CLECs have operated under interconnection agreements in evergreen status *for years*. Thus, Qwest's testimony suggests that the Merged Company will not satisfy Qwest's obligations under these agreements.

Moreover, CenturyLink apparently lacks a unified interconnection agreement template for the merged CenturyTel-Embarq territories. At a June 30, 2010 technical conference held by

¹¹³ Application at 37.

¹¹⁴ Direct Testimony of Mark S. Reynolds, Qwest Corporation, Washington UTC Dkt. No. UT-100820, at 9 (filed May 21, 2010), *available at* <http://www.wutc.wa.gov/rms2.nsf/177d98baa5918c7388256a550064a61e/02bd965cab98615b8825772a0073e6c8!OpenDocument> (emphasis added).

Washington Utilities and Transportation Commission staff,¹¹⁵ CenturyLink's representative stated that a meeting was held only recently to review the first draft of a unified CenturyTel-Embarq template interconnection agreement negotiations proposal. Rather than cause competitors to expend resources needed to work from that draft document—one that is unlikely to meet the Section 271 requirements applicable in the Qwest territory—it would be far more efficient for the Merged Company to utilize the existing interconnection agreements in the Qwest territory as the basis for future negotiations throughout the merged CenturyLink-Qwest territory. This and other conditions are necessary to ensure that the Merged Company does not deprive competitors of the benefit of their enormous investment in time and resources to develop interconnection agreements in the legacy Qwest region.

B. There Is A Substantial Risk That The Merged Company Will Not Provide Special Access In Compliance With Section 272 Of The Act, That Wholesale Service Quality For Special Access Will Deteriorate, And That Rates For Special Access Will Increase.

As a BOC, Qwest must provide special access services in compliance with the nondiscrimination obligation of Section 272(e) of the Act as well as other requirements of the Act, such as Sections 201 and 202.¹¹⁶ Section 272(e)(1) requires that, among other things, a BOC “fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange and exchange access to itself or to its affiliates.”¹¹⁷ This nondiscrimination obligation covers special access services provided by Qwest. Consistent with this obligation, Qwest is

¹¹⁵ The technical conference was held as part of the Washington UTC's proceeding (Dkt. No. UT-100820) to review the proposed transaction.

¹¹⁶ 47 U.S.C. §§ 201-02.

¹¹⁷ *Id.* § 272(e)(1).

required to implement special access performance metrics designed to ensure that it does not engage in non-price discrimination in the provision of special access.¹¹⁸ Specifically, on a quarterly basis, Qwest must provide the Commission with performance measurement results (broken down on a monthly basis) for special access metrics addressing order taking, provisioning, and maintenance and repair of its DS0, DS1, DS3, and OCn services.¹¹⁹ The Commission imposed this reporting requirement on Qwest as a condition of its decision to allow Qwest to provide in-region, interstate long distance services either directly or through an affiliate that is not a Section 272 separate affiliate (i.e., on an integrated basis).¹²⁰ The Commission's rationale was to "provide a cost-effective means of limiting Qwest's ability to use any market power it has in the local exchange and exchange access markets to impede competition in the enterprise market."¹²¹ As a non-BOC, CenturyLink is not subject to the nondiscrimination obligation under Section 272(e)(1) or the Commission's special access reporting requirement. Without such reporting, it is not clear how the Commission can achieve its goal of ensuring that special access services are provided to unaffiliated entities in a non-discriminatory manner in the legacy Qwest territory.

¹¹⁸ See *In re Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, Memorandum Opinion and Order, 22 FCC Rcd. 5207, ¶ 64 (2007) ("*Qwest 272 Sunset Forbearance Order*"); see also *In re Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd. 16440, ¶ 97 (2007) ("*BOC 272 Sunset Order*") ("The BOCs and their independent incumbent LEC affiliates must continue to abide by special access performance metrics until there is an affirmative Commission determination that such metrics no longer are necessary.").

¹¹⁹ See *Qwest 272 Sunset Forbearance Order* ¶¶ 64-65; see also *BOC 272 Sunset Order* ¶ 96.

¹²⁰ See *Qwest 272 Sunset Forbearance Order* ¶ 64; see also *BOC 272 Sunset Order* ¶ 96.

¹²¹ *Qwest 272 Sunset Forbearance Order* n.189; see also *BOC 272 Sunset Order* n.286.

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tw telecom's experience with CenturyLink raises significant questions about the sufficiency of the Merged Company's OSS and customer service for special access, the rates and discount plans that the Merged Company will offer for special access, and the Merged Company's ability to continue offering Qwest's special access services.

First, tw telecom has seen continuous improvement in Qwest's recent wholesale service performance related to special access, and it is not clear that CenturyLink has the firm culture to sustain Qwest's current level of performance. tw telecom representatives have worked extensively with Qwest representatives over approximately the past two years to improve the wholesale service that Qwest provides to tw telecom for special access. The result of this collaborative process is that Qwest is currently tw telecom's leading service provider in terms of special access performance metrics (e.g., on time due date percentage and mean time to repair). Qwest also provides tw telecom with monthly special access performance reports¹²² which allow tw telecom representatives to monitor Qwest's performance.¹²³

By contrast, in tw telecom's experience, CenturyLink's wholesale special access service performance is poor, and CenturyLink has not demonstrated an interest in improving the level of service performance or customer service that it provides to tw telecom. Indeed, the Commission's ARMIS service quality data confirms that CenturyLink's special access service performance is inferior to that of Qwest. As shown in the table below, in 2009, for a lower

¹²² For reasons unknown to Integra, Qwest does not provide similar information to Integra.

¹²³ [***BEGIN CONFIDENTIAL***]

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volume of orders or circuits completed during the reporting period,¹²⁴ (1) legacy Embarq and CenturyTel's percentages of installation orders or circuits completed by the commitment date were lower than Qwest's;¹²⁵ and (2) legacy Embarq and CenturyTel's average intervals between the date the service order was placed and the date the order was completed were longer than Qwest's.¹²⁶ Legacy Embarq and CenturyTel's average intervals between the time they received a trouble report and the time the trouble was cleared and accepted by the customer were also longer than Qwest's.¹²⁷ While the total number of circuit-specific trouble reports received by Qwest was higher than that for both legacy Embarq and CenturyTel,¹²⁸ this differential is almost

¹²⁴ See FCC, Current ARMIS Instructions, Report 43-05 Report Definition, *available at* <http://www.fcc.gov/web/armis/instructions/2009/definitions05.htm#T1R> (last updated Mar. 2, 2010) ("Current ARMIS Instructions") (defining "Total Number of Orders or Circuits" as "the total number of installation orders or circuits from [i]nterexchange carriers/customers that were completed during the current reporting period").

¹²⁵ See *id.* (defining "% Commitments Met" as "the percentage of commitments met during the current reporting period," "calculated by dividing the number of installation orders or circuits from [i]nterexchange carriers/customers completed by commitment date by the total number of installation orders or circuits (Row 0110)").

¹²⁶ See *id.* (defining "Average Interval" for installation as "the average interval, expressed in business days, between the date the service order for [i]nterexchange carriers/customers was placed and the date the service order was completed, for orders completed during the current reporting period").

¹²⁷ See *id.* (defining "Average Interval" for repair as "the average interval, in hours to the nearest tenth based on a stopped clock, from the time of the [incumbent LEC's] receipt of the trouble report to the time of acceptance by the complaining [i]nterexchange carrier/customer"); see also *In re Policy and Rules Concerning Rates for Dominant Carriers*, Memorandum Opinion and Order, 8 FCC Rcd. 7474, ¶ 23 (1993) (describing a proposal that repair intervals "be measured, based on a 'running clock,' from the time a trouble report is received to the time the trouble is cleared and accepted by the customer").

¹²⁸ See Current ARMIS Instructions (defining "Total Trouble Reports" as "the total number of circuit-specific trouble reports referred to the ILEC by [i]nterexchange carriers/customers during the current reporting period").

certainly due to the fact that Qwest provisioned a much larger volume of circuits than legacy Embarq or CenturyTel.

Comparison of Qwest and CenturyLink 2009 ARMIS Installation and Repair Intervals for Special Access¹²⁹			
ARMIS Report Row Number & Row Title	Qwest	Embarq	CenturyTel
110 - Total Number of Orders or Circuits	134,469 circuits	22,150 orders	637 circuits
112 - % Commitments Met	97.98	90.9	93.6
114 - Average Interval (in days) (for installation)	4.6	10.64	17.7
120 - Total Trouble Reports	54,700	49,033	5,645
121 - Average Interval (in hours) (for repair)	2.9	3.8	106.3

In addition, CenturyLink provides tw telecom with special access service performance reports only for the legacy Embarq territory. Despite tw telecom's repeated requests for special access service performance reports for the legacy CenturyTel territory, CenturyLink does not provide tw telecom with such reports. Without these reports, it is difficult for tw telecom to engage CenturyLink representatives in discussions about CenturyLink's service performance in the legacy CenturyTel territory.

Second, in tw telecom's experience, CenturyLink's OSS lacks the functionality and capabilities of Qwest's OSS. Unlike Qwest, which relied upon electronic bonding capabilities as part of its bid for Section 271 authorization, CenturyLink does not currently provide electronic bonding for quoting. This forces tw telecom to request quotes from CenturyLink manually, thereby causing delays in the ultimate delivery of service to tw telecom's end-user customers. In addition, unlike Qwest, CenturyLink does not currently provide electronic bonding for maintenance trouble ticketing of special access circuits. As a result, tw telecom is forced to submit trouble tickets manually, a deficiency that delays resolution of maintenance problems

¹²⁹ See FCC Report 43-05, the ARMIS Service Quality Report, Table I. Installation and Repair Intervals (Interexchange Access), Y2009, All Special Access (for Qwest Corporation Consolidated, Embarq Local Operating Cos., and CenturyTel, Inc.) (downloaded June 30, 2010).

experienced by its end-user customers. Furthermore, while CenturyLink offers electronic bonding for Access Service Request (“ASR”) ordering in the legacy Embarq territory, in tw telecom’s experience, CenturyLink is still in the process of implementing electronic bonding for ASR ordering in the legacy CenturyTel territory. CenturyLink’s lack of full electronic bonding capabilities in the legacy CenturyTel territory prevents tw telecom from receiving order completion and jeopardy notices electronically, thereby creating inefficiencies and delays in the delivery of service to tw telecom’s customers.

Third, there is a risk that the Merged Company will increase special access rates or discontinue the special access discount plans offered by Qwest. To begin with, while Qwest and CenturyLink offer similar tariffed volume/term discount plans for DS1 and DS3 special access circuits, CenturyLink’s base rates for special access are significantly higher than Qwest’s rates (which are themselves extremely high). For example, in tw telecom’s experience, [***BEGIN **CONFIDENTIAL*****]

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¹³⁰ See Qwest Corporation Access Service Tariff FCC No. 1, § 24.2, Original Page 24-411 to 412 (effective Jan. 12, 2010) (offering a 12-month “Annual Incentive” contract under which a purchaser receives credits, which increase as the purchaser’s spend increases, for an annual spend between approximately \$16.9 million and \$19.4 million on special access services, including DS1, DS3, OCn, and Ethernet services).

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Qwest has already started to limit the value of its “Regional Commitment” special access discount plan. On April 30, 2010, shortly after the Applicants made their merger announcement, Qwest sent a notice to special access customers that states as follows:

Qwest Corporation (Qwest) plans to change its Regional Commitment Program (RCP) from a unit based plan to a revenue based plan and raise the commitment level from 90% to 95% of the total Company-provided in-service DS1 and DS3 Revenue. The effective date of this restructure will be June 1, 2010.¹³¹

Changing the commitment measurement from circuit-based to revenue-based and increasing the commitment percentage will make it more difficult for carriers to achieve the commitment levels required by the RCP. When this is the case, the special access customer will lose the benefit of the RCP discount and pay higher prices.¹³²

Fourth, there is a risk that the Merged Company will be unable or unwilling to continue to make available Qwest’s Ethernet and OCn offerings, including product features and service level agreements. In fact, CenturyLink had not been able to develop a wholesale Ethernet product until recently. In addition, CenturyLink’s Ethernet prices are significantly higher than Qwest’s. For a 1000 Mbps Network-to-Network Interface (“NNI”) Port Connection, Qwest charges a nonrecurring installation charge of \$1,200 and a monthly recurring charge of \$2,594.00

¹³¹ See Qwest Product Notification, DS1/DS3 Services (Apr. 30, 2010) (effective date June 1, 2010), *available at* http://wholesale.qwestapps.com/cnla_pub_files/PROD.RESL.04.30.10.F.07809.DS1_DS3_Services.doc.

¹³² In addition, the changes to the RCP will undermine the development of facilities-based competition. When the RCP commitment was based on circuit counts, a special access loop (i.e., channel termination) was counted as a single circuit for purposes of the RCP commitments regardless of whether the loop was purchased on a stand-alone basis or in combination with special access transport. A carrier that was able to rely upon its own transport network could disconnect the transport portion of the combination, without diminishing the number of circuits counted for purposes of its RCP commitment. Now that the RCP commitment is based on revenues, the special access customer would lose “revenue credit” for purchasing transport where it seeks to replace such transport with its own facilities. As a result, changing to a revenue-based approach will discourage carriers from investing in their own networks.

for a 3-year term.¹³³ For a 1000 Mbps NNI Port Connection, in the legacy Embarq territory, CenturyLink charges a nonrecurring installation charge of \$3,000 and a monthly recurring charge of between \$5,500 and \$6,600, depending on the state, for a 3-year term.¹³⁴ Thus, there is a risk that the Merged Company will increase rates for Ethernet and OCn services.

C. The Merged Company Will Likely Attempt To Achieve Synergies By Reducing Wholesale Service Quality.

The structure of the proposed transaction adds further risk for the development of competition and for consumer welfare. This is because the Merged Company will be highly leveraged, and it will be under tremendous pressure to lower costs and increase revenues in every way possible. On the cost-cutting side, the Applicants have committed to investors and the Commission that the transaction will yield operating synergies of approximately \$575 million.¹³⁵ Because the overlap of the Applicants' legacy territories is "minuscule,"¹³⁶ it is unlikely that the majority of the Applicants' projected savings will come from eliminating duplicative facilities or personnel. It seems more likely that the Merged Company will seek to cut spending on wholesale operations, many of which are performed in a centralized location, such as a network

¹³³ See Qwest Corporation, Rates and Services Schedule Interstate No. 1 § 8.8.4(A)(2) (listing nonrecurring charge of \$1,200); see also *id.* § 8.8.4(B)(2)(c) (listing monthly recurring charge of \$2,594 for a 36-month term).

¹³⁴ See Embarq Local Operating Companies, Tariff FCC No. 1 § 7.5.18(B)(3) (effective Mar. 3, 2010) (listing nonrecurring charge of \$3,000 and monthly recurring charges between \$5,500 and \$6,600 for a 3-year term).

¹³⁵ See Application at 21 ("The transaction is expected to create significant annual operating synergies of approximately \$575 million, which are expected to be fully realized three to five years following closing."); Press Release, CenturyLink, *CenturyLink and Qwest Agree to Merge*, (Apr. 22, 2010), available at <http://news.centurylink.com/index.php?s=43&item=31> ("Leveraging CenturyLink's proven integration experience, the transaction is expected to generate annual operating and capital synergies of approximately \$625 million when fully recognized over a three- to five-year period following the close of the transaction.").

¹³⁶ Application at 23.

operations center. Moreover, starving wholesale operations of investment and degrading wholesale service quality would also help the Merged Company address its increased need for revenues by allowing the Merged Company to gain a marketplace advantage over CLECs. Degrading wholesale service quality would therefore be a “win-win” for the Merged Company.

1. *The Merged Company’s Finances Will Be Seriously Strained.*

CenturyLink’s debt load has skyrocketed in recent years, and it will reach new heights if the proposed transaction is consummated. Even before taking on Qwest’s large debts, CenturyLink’s debts are now greater than its assets.¹³⁷ In addition, the Applicants have estimated that the Merged Company will need to spend up to *one billion dollars* in integration costs.¹³⁸ CenturyLink recently acknowledged to the SEC that, as a result of the proposed acquisition of Qwest, it will “assume a substantial amount of indebtedness” and will become even “more leveraged” than before.¹³⁹ At the conclusion of the transaction, legacy CenturyTel will have *more than quadrupled* its debt load in approximately three years.¹⁴⁰

¹³⁷ See Ned Douthat, *Tough Times on the Way to the Altar for CenturyTel and Qwest*, FORBES, Apr. 26, 2010, available at <http://blogs.forbes.com/greatspeculations/2010/04/26/tough-times-on-the-way-to-the-altar-for-centurytel-nd-qwest/> (“The growth of debt on their balance sheet is concerning. . . . Furthermore, as of their last reporting [CenturyLink had] a current ratio of less than 1, meaning it owes more in debt and other payments in the coming year than it has in assets ready to use in the next year.”).

¹³⁸ See Century Link and Qwest Merger Conference Call, at Slide 13 (Apr. 22, 2010), available at <http://investor.qwest.com/file.php/437/CenturyLink.Qwest.Merger.PDF> (listing “[o]ne-time operating costs to achieve synergies” ranging from \$650 million to \$800 million and “[o]ne-time capital costs to achieve synergies” ranging from \$150 million to \$200 million).

¹³⁹ See CenturyLink Form S-4 at 23.

¹⁴⁰ See Ned Douthat, *supra* note 137 (“Debt more than doubled from fiscal 2008 to fiscal 2009 to \$7.75 billion thanks to the Embarq deal, and would more than double again following this deal.”).

Given its substantial and rapidly escalating debt burden, many analysts are discouraging investors from investing in CenturyLink.¹⁴¹ Not surprisingly, credit rating agencies plan on rating the Merged Company's credit as non-investment grade (i.e., "junk") following the proposed transaction.¹⁴² This means that CenturyLink's cost of capital will almost certainly increase because investors demand higher interest rates for riskier debt. The increased cost of debt service and the increased difficulty (i.e., higher cost) of attracting capital will place further pressure on CenturyLink to reduce costs at the expense of wholesale customers.

CenturyLink has added further to the strain on its finances by increasing its dividend. The company declared prior to the announcement of the proposed transaction that it would

¹⁴¹ See *id.* ("Consolidation among providers would seem a logical step in dealing with competition as it generally lowers costs, but it remains to be seen if [CenturyLink] has bitten off more than it can chew in such a short amount of time. At this time, we recommend investors avoid this stock because it is too debt laden and facing too many challenges to be trading this high.").

¹⁴² See Niraj Sheth & Roger Cheng, *CenturyTel Gambles on Qwest Merger*, WALL. ST. J., Apr. 23, 2010, available at <http://online.wsj.com/article/SB10001424052748703876404575200042559183812.html> ("One risk is CenturyTel will have to shoulder \$11.8 billion of Qwest debt, bringing its total debt load to \$22.4 billion. . . . Standard & Poor's said Thursday it will likely downgrade [CenturyLink's] credit ratings, now barely investment grade, into junk, if the deal is done."); Roger S. Conrad, *Regulation in the Age of Obama*, INVESTING DAILY, May 28, 2010, available at <http://www.investingdaily.com/ufo/17370/regulation-in-the-age-of-obama.html> ("CenturyLink's pending merger with Qwest . . . doesn't come without risk. For starters, the latter has some \$14.6 billion in long-term debt, some \$1.569 billion of which will come due before the end of 2011. Those near-term financing needs are only about 17 percent of market value. But they're enough to land CenturyLink's barely investment-grade credit rating on watch for a cut to junk by both Standard & Poor's and Fitch."); CenturyTel Inc., SEC Form 10-Q Quarterly Report for the Three Months Ended March 31, 2010, at 19 (filed May 7, 2010) ("Following our announcement of our pending acquisition of Qwest, (i) Standard and Poor's indicated that our current long-term debt rating of BBB- had been placed under watch for a possible downgrade and (ii) Moody's Investors Service affirmed our current long-term debt rating of Baa3, but downgraded its outlook from stable to negative. It is expected that any downgrades would be made only following the completion of the Qwest acquisition.").

increase its dividend,¹⁴³ and, in order to continue to attract investors, the Merged Company expects to continue to pay substantial dividends following the proposed transaction.¹⁴⁴ Thus, the Merged Company will take the double hit of higher costs of capital and a substantial continuing obligation to distribute a significant percentage of its revenues to shareholders.

2. *The Substantial Integration Costs Associated With The Proposed Transaction Place Wholesale Provisioning At Risk Post-Transaction.*

As a result of its financial commitments, the Merged Company has left itself little margin for accommodating unanticipated expenses. Even more troubling is that the Applicants may have failed to adequately account for the true costs of integrating the legacy companies' OSS. This is an extremely complex and expensive process on its own, but it is made more so by the fact that, as discussed above, CenturyLink still has not completed integrating the legacy CenturyTel and Embarq systems. Successive integration processes, with a period of substantial overlap between them, may not be accomplished smoothly, on-time and on-budget.¹⁴⁵ In fact,

¹⁴³ See Press Release, CenturyLink, *Century Link Increases Quarterly Cash Dividend* (Feb. 25, 2010), available at <http://news.centurylink.com/index.php?s=43&item=23> ("CenturyLink today announced that its Board of Directors voted to declare a quarterly cash dividend of \$.725 per share, representing a 3.6% increase over the previous \$.70 per share quarterly dividend. The \$.725 per share is payable on March 22, 2010 to shareholders of record on March 9, 2010.").

¹⁴⁴ See Dawn Kawamoto, *CenturyLink and Qwest to Merge in \$10.6 Billion Telecom Deal*, COMPANY NEWS, Apr. 22, 2010, available at <http://www.dailyfinance.com/story/company-news/centurylink-and-qwest-to-merge-in-10-6-billion-telecom-deal/19449943/> ("Once the deal closes, Qwest shareholders will ride on the coattails of CenturyLink's annual dividend policy, which currently pays \$2.90 a share."); *CenturyLink and Qwest Agree to Merge*, Conference Call Transcript, at 8 (Apr. 22, 2010), available at <http://www.centurylinkqwestmerger.com/downloads/transcripts/CTL%20and%20Q%20Agree%20to%20Merge%20-%20Conference%20Call%20Transcript.PDF> (quoting CenturyLink CEO Glen Post) ("Regarding dividends versus buybacks, first of all, we think in today's world we need to maintain a strong dividend.").

¹⁴⁵ See Sheth & Cheng, *supra* note 142 ("The [CenturyLink/Qwest] deal comes less than a year after CenturyTel closed its \$5.8 billion acquisition of Embarq . . . raising questions about whether [CenturyLink CEO Glen] Post will be able to integrate two big purchases that leave his company heavily indebted."); Douthat, *supra* note 137 ("Wall Street has begun to raise concerns

CenturyLink has previously underestimated the length of time and the budget needed for a systems project.¹⁴⁶

There is every reason to believe that if the Merged Company faces financial or operational difficulties, wholesale OSS integration and performance will be sacrificed in favor of the Merged Company's other priorities, such as preventing its likely junk credit rating from falling further, paying high dividends to maintain investor confidence, and managing and integrating the systems and services used to serve retail customers. Starving wholesale operations of investment would further benefit the Merged Company because it would allow the Merged Company to establish a competitive advantage and thereby increase its revenues. Thus, the logic of the proposed transaction poses a serious threat to wholesale service quality.

that CenturyTel is growing too aggressively Clearly, there are concerns about management's ability to seamlessly integrate yet another acquisition so soon following Embarq."); Zacks Investment Research, *Acquisitions Aren't Slowing Down CenturyTel*, Seeking Alpha, May 5, 2010, available at <http://seekingalpha.com/article/203209-acquisitions-aren-t-slowng-down-centurytel> ("[W]e are cautious about CenturyTel's aggressive acquisition strategy considering the company's high debt level (roughly \$7.7 billion). The carrier's debt increased following the assumption of \$5.8 billion of Embarq debt. Acquisition of Qwest will significantly elevate CenturyTel's debt, thereby further impairing its balance sheet.").

¹⁴⁶ See, e.g., *Financial Watch: Integration Costs Loom Over OSS Deployments*, BILLING AND OSS WORLD, Oct. 1, 2003, available at <http://www.billingworld.com/articles/2003/10/financial-watch-integration-costs-loom-over-oss-d.aspx> ("Another example of a vendor-driven project that fell short involves CenturyTel, a Louisiana-based service provider, which in 2000 selected Amdocs for convergent billing. This project has experienced delays due to the project going over budget. According to a 10-Q that CenturyTel recently filed with the Securities and Exchange Commission, this project remains in the development stage and has required 'substantially more time and money to develop than originally anticipated.' The 10-Q filing states that CenturyTel expects to complete all phases of the new system no later than mid-2005 at a cost in excess of the previously disclosed estimate of \$180 million. CenturyTel currently believes completion of the project may require it to revise its previously disclosed cost estimate by between \$50 and \$60 million. The company also states that 'there is no assurance that the system will be completed in accordance with this schedule or budget, or that the system will function as anticipated. If the system does not function as anticipated, the company may have to write-off part or all of its remaining costs and further explore its other billing and customer care system alternatives.'").

D. The Increased Footprint Of The Merged Company Will Increase Its Incentive To Discriminate Against Competitors.

The significant increase in the footprint of the Merged Company will likely increase its incentive to degrade wholesale service even more. As the Commission has repeatedly found, the increase in the size of the footprint of a dominant incumbent LEC through a merger will increase its incentive to discriminate against competitors throughout the Merged Company's footprint.¹⁴⁷ Under this so-called "Big Footprint" theory, the greater the footprint and the fewer remaining large incumbent LECs post-merger, the greater the harm.¹⁴⁸ Given that CenturyLink's footprint will *more than double* with its purchase of Qwest,¹⁴⁹ the harms arising from an enlarged footprint in this case are substantial.

1. Under The Big Footprint Theory, Mergers Of Incumbent LECs Yield An Increased Incentive To Engage In Anticompetitive Conduct.

If an incumbent LEC with market power degrades the quality of wholesale inputs or limits the availability of such inputs through either high prices, poor wholesale performance or

¹⁴⁷ See *CenturyTel-Embarq Merger Order* ¶ 33 ("We find that, as a theoretical matter, the merger may result in increased anticompetitive behavior on the part of the Applicants. Consistent with the 'Big Footprint' theory that the Commission addressed in prior BOC mergers, we find that the increase in the size of CenturyTel's study area resulting from the merger may increase its incentive to engage in anticompetitive activity, although we think it is likely to have a lesser effect in the instant case than in the prior BOC mergers. Additionally, to the extent that CenturyTel has been less willing to cooperate with competitors than Embarq—as numerous commenters allege—following the merger, CenturyTel may extend this behavior to the Embarq territories.").

¹⁴⁸ See *In re Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer Control et al.*, Memorandum Opinion & Order, 14 FCC Rcd. 14712, ¶ 228 (1999) ("*SBC-Ameritech Merger Order*") ("As is often the case with mergers, the increase in harm ultimately becomes big enough as the number of firms drops. . . . In addition, the scale of the merged firm resulting here will far exceed the scale of the Bell Atlantic/NYNEX combined entity.").

¹⁴⁹ See "Comparison of Incumbent LEC Annual Revenues and Access Lines" (attached hereto as "Attachment B").

refusals to deal, competitors' ability to compete will be harmed in all of the areas that the competitors currently serve *or plan to serve in the future*, both inside and outside of the dominant incumbent LEC's service area.¹⁵⁰ But the incumbent LEC will not be able to capture the benefits from the competitors' weakened status outside of the incumbent's own territory. It follows that, as the incumbent LEC's territory increases in size (e.g., through acquisitions of other incumbent LECs) to include more of its competitors' existing or prospective customer locations, it can capture more of the benefits of anticompetitive conduct either by raising rivals costs or by limiting the ability of competitors to expand into new geographic and product markets.¹⁵¹ The incumbent LEC's incentive to engage in anticompetitive conduct increases accordingly.

2. *The Application Of The Big Footprint Theory To The Proposed Transaction Demonstrates The Likelihood Of Substantial Public Interest Harms.*

The application of the Big Footprint theory to the proposed transaction indicates that the transaction will produce substantial public interest harms. To begin with, there can be no doubt that CenturyLink and Qwest are both dominant providers because they possess market power over last-mile connections in their respective serving territories. In the 2007 *Qwest 272 Sunset*

¹⁵⁰ See, e.g., *In re Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, et al.*, Memorandum Opinion & Order, 15 FCC Rcd. 14032, ¶ 177 (2000) ("*Bell Atlantic-GTE Merger Order*") ("In many cases, discriminatory conduct by an incumbent LEC in its region affects competitors in areas both inside and outside the incumbents' region. The resulting . . . 'spillover' effects can directly or indirectly harm consumers, whose business the incumbent LEC is seeking to gain. Spillover effects directly harm customers when the incumbent LEC's discrimination in one region negative affects a customer's communications between that region and another region. Spillover effects indirectly harm customers when an incumbent LEC's discrimination in one region increases a nation rival's general costs, thereby indirectly impairing the ability of this rival to provide service to customers in other regions.").

¹⁵¹ See *CenturyTel-Embarq Merger Order* n.106 ("As the Commission explained in the *SBC/Ameritech Order*, a merger between two incumbent LECs may increase the merged entity's incentive to engage in anticompetitive behavior by allowing it to capture or internalize a higher proportion of the benefits of such anticompetitive strategies against regional or national competitors.") (citing *SBC-Ameritech Order* ¶ 193).

Order, the Commission held that Qwest retains “market power within its region as a result of its control over a ubiquitous telephone exchange service and exchange access network.”¹⁵² Qwest’s market power over last-mile connections was recently confirmed by the Commission in the *Qwest Phoenix Forbearance Order*.¹⁵³ Qwest apparently sought forbearance in the Phoenix Metropolitan Statistical Area (“MSA”) because that market is more competitive than other parts of Qwest’s region. However, the Commission found that Qwest still retains market power over last-mile facilities throughout the Phoenix MSA.¹⁵⁴

The Joint Commenters’ own experience confirms that Qwest retains market power over last-mile facilities. Integra and Cbeyond each has no choice but to buy the vast majority of its wholesale loop inputs in Qwest’s region from Qwest. Cbeyond uses Qwest’s facilities to reach [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] of its customer locations in Qwest’s region. Similarly, Integra relies on Qwest’s facilities to reach [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] of its customer locations in Qwest’s service territory. tw telecom is similarly reliant on Qwest’s last-mile facilities to reach its customers in Qwest’s region. In Qwest’s region, tw telecom relies on off-net facilities to reach approximately [***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***] of its customer locations. The [***BEGIN

¹⁵² *Qwest 272 Sunset Forbearance Order* ¶ 47.

¹⁵³ *In re Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, FCC 10-113 (rel. June 22, 2010) (“*Qwest Phoenix Forbearance Order*”).

¹⁵⁴ *See id.* ¶ 34 (“[T]he Commission has long recognized that a vertically integrated firm with market power in one market—here upstream wholesale markets where, as discussed below, Qwest remains dominant—may have the incentive and ability to discriminate against rivals in downstream retail markets or raise rivals’ costs.”).

CONFIDENTIAL*] [***END CONFIDENTIAL***]** of those off-net facilities are provided by Qwest.

It is likely that CenturyLink's market power is even greater than Qwest's because its region contains fewer large metropolitan areas in which competitive entry is most likely. Indeed, CenturyLink's market power is confirmed by the fact that, in CenturyLink's territory, tw telecom relies on off-net facilities to reach approximately **[***BEGIN CONFIDENTIAL***]**

[*END CONFIDENTIAL***]** of its customer locations and the **[***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***]** of those off-net facilities are provided by CenturyLink.

The Merged Company is likely to target its discriminatory conduct, where possible, at companies that compete in both the legacy Qwest and the legacy CenturyLink territories. This would be true of tw telecom, which has **[***BEGIN CONFIDENTIAL***] [***END CONFIDENTIAL***]** customers in CenturyLink's incumbent LEC territory as well as a large presence in the Qwest territory, including the Minneapolis, Seattle, Denver and Phoenix markets. Moreover, many of the tw telecom customers with locations in CenturyLink territory also have locations in Qwest territory. Post-transaction, CenturyLink will be able to internalize the benefits of discrimination against tw telecom's customers located in the legacy Qwest region, thereby increasing CenturyLink's incentive to discriminate against tw telecom.

In addition, the Merged Company's increased footprint will inhibit future competitive entry. Many competitors are considering expanding further into the Applicants' territory. For example, **[***BEGIN CONFIDENTIAL***]**

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CONFIDENTIAL*]** Any increase in discrimination due to an enlarged footprint will make such entry more difficult and less likely. The Merged Company will thus consider this “benefit” when determining whether to engage in discriminatory conduct.

The risk of discriminatory conduct is particularly high in this case because CenturyLink’s senior executives will take over management of the Merged Company.¹⁵⁵ This makes it more likely that the Merged Company will adopt CenturyLink’s anticompetitive practices and its attitude that wholesale customers are a problem to be dealt with, not a business opportunity. As Charter Communications explained in its opposition to the CenturyTel-Embarq merger, “It is well established in mergers and acquisitions literature and in the field of organizational behavior that an acquiring firm is likely to impose its business practices and organizational culture on the acquired firm.”¹⁵⁶ CenturyLink is the acquiring company, its top management, including its CEO and its director of Wholesale Operations, will retain those positions in the Merged Company, and few former Qwest executives will remain with the Merged Company.¹⁵⁷ As a result, CenturyLink’s culture and practices will likely dominate the Merged Company.

¹⁵⁵ See Kelly Teal, *Only 4 Senior-Level Qwest Execs to Keep Jobs After CenturyLink Merger*, BILLING & OSS WORLD, June 2010, available at <http://www.billingworld.com/news/2010/06/only-4-senior-level-qwest-exec-s-to-keep-jobs-after-centurylink-merger.aspx>.

¹⁵⁶ See Letter from Thomas Jones, Counsel, Charter Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 08-238, at 2-3 (filed May 4, 2009); see also *id.* at 3 (“As one scholar has stated, in mergers and acquisitions, there will often be ‘considerable pressure on top managers at acquired firms to conform to the management practices of the buyer.’ Moreover, given that ‘it is among the most well accepted organizational notions’ that ‘chief executives have a fundamental role in shaping and guiding their organizations,’ and the merged entity will be managed by CenturyTel’s CEO and other top CenturyTel executives, it is likely that CenturyTel’s business practices and organizational culture will dominate the merged firm.”).

¹⁵⁷ See Teal, *supra* note 155 (“Only four senior-level Qwest Communications International Inc. executives will keep their jobs once the CenturyLink Inc. takeover closes.”).

Indeed, Socket Telecom's experience is that the merged CenturyLink is adopting anticompetitive practices of legacy CenturyTel. For instance, legacy Embarq provided competitors with a description of the geographic area served by a central office. This information enables a competitor to both determine the size and scope of the area it can serve and target its collocations to central offices that serve customers that are suitable for the competitor's business plan. In Socket Telecom's experience, CenturyLink is not currently providing this information in the legacy Embarq territory,¹⁵⁸ thereby undermining the growth of competition.

In addition, Socket Telecom has experienced a decline in wholesale service in the legacy Embarq territory for, among other things, provisioning of unbundled loops. For example, Socket Telecom's experience is that loop provisioning has slowed and that on-time provisioning has declined in the legacy Embarq territory.

3. *The Applicants Have Already Demonstrated A Willingness To Slow-Roll Competition By Engaging In Unreasonable And Discriminatory Conduct.*

Even without the effects of an increased footprint, the Applicants' past conduct has shown that they are willing to engage in unreasonable and discriminatory conduct in order to slow-roll competition. For example, Integra and other competitors provide xDSL over unbundled conditioned copper loops. Qwest discriminates against competitors seeking to provide innovative forms of xDSL service over copper loops. When installing and repairing loops, for instance, Qwest refuses to test copper loops to digital levels despite the Commission's

¹⁵⁸ By contrast, Qwest provides data regarding the geographic areas served by its central offices in its ICONN database.

requirement that testing not be limited to voice levels.¹⁵⁹ Qwest has failed to provide CLECs with conditioned copper loops in compliance with applicable interconnection agreements and state and federal law.¹⁶⁰ This conduct already impedes the ability of CLECs to deliver xDSL services to their small and medium-sized business customers. An increased footprint will increase this incentive to discriminate against competitors.

In addition, as explained in detail in the CenturyTel-Embarq merger proceeding, legacy CenturyTel has in the past taken the position that it could require an end-user customer's personal identification number or passcode as a required field for all LSRs for porting submitted by CLECs to CenturyTel, thereby giving CenturyTel the opportunity to engage in retention marketing activities.¹⁶¹ The Commission has recently held that such a practice is unlawful.¹⁶²

There is a substantial risk that the Merged Company will intensify its pursuit of this kind of anticompetitive conduct as a result of the increased size of its footprint. Therefore, the

¹⁵⁹ See 47 C.F.R. § 51.319(a)(1)(iii)(C) (“Insofar as it is technically feasible, the incumbent LEC shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.”).

¹⁶⁰ See, e.g., Joint CLEC Initial Comments, *In the Matter of a Commission Investigation into Qwest Corporation's Provision of Network Elements to CLECs and into Related Marketing Practices Targeting CLEC Customers*, Minnesota PUC Dkt. Nos. P-421/CI-09-1066, at 12-49 (filed Nov. 24, 2009) (describing Qwest's practices throughout its 14-state territory regarding the provision of xDSL-capable copper loops).

¹⁶¹ See, e.g., *CenturyTel-Embarq Merger Order* ¶ 25 & n.80 (citing Letter from Thomas Jones, Counsel for Charter Communications, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 08-238 (filed Feb. 27, 2009), Attachment A, Declaration Of Carrie L. Cox and Amy W. Hankins On Behalf Of Charter Communications, Inc., ¶¶ 9-10).

¹⁶² See *In re Local Number Portability Porting Interval and Validation Requirements*, Report and Order, 25 FCC Rcd. 6953, ¶ 16 (2010) (adopting the NANC's recommendation that “a passcode not be required unless the passcode has been requested and assigned by the end user rather than the service provider” in order to prevent “anticompetitive effects”).

Commission cannot approve the proposed transaction without ensuring that such prior unlawful practices are discontinued.

4. *The Proposed Transaction Will Result In Increased Harms With Respect To The Inputs Required By Competitors To Provide Advanced Services.*

The Commission has held that an incumbent possesses an elevated incentive and opportunity to “deny special accommodations required by competitive LECs seeking to offer innovative advanced services.”¹⁶³ The Commission has also found that an increased footprint will increase this incentive to discriminate against competitors seeking inputs and “accommodations” needed to provide innovative services.¹⁶⁴

In particular, incumbents “have an incentive to discriminate against companies that depend on the incumbents for evolving types of interconnection and access arrangements necessary to provide new services to consumers.”¹⁶⁵ According to the Commission, “[Incumbent LECs] also have the incentive to limit or control the development of new services, to the extent that new services compete with their current offerings.”¹⁶⁶ Furthermore, the Commission has found that it is often not capable of detecting and preventing such discrimination because “it is

¹⁶³ *SBC-Ameritech Merger Order* ¶ 107.

¹⁶⁴ *See Bell Atlantic-GTE Merger Order* ¶¶ 183-184 (“[T]here are spillover effects to discrimination against national providers of advanced services, and [] post-merger, the combined entity would internalize external effects to some extent, thus increasing its incentive to act in one area in a manner that produces effects in another area. . . . By capitalizing on its monopoly control over loops, for instance, the combined entity can discriminate against an advanced services provider entering an area in the combined region. This will reduce the customer base and revenues of the advanced services provider, thereby reducing its ability to enter another region.”).

¹⁶⁵ *Id.* ¶ 181.

¹⁶⁶ *Id.*

impossible for the Commission to foresee every possible type of discrimination, especially with evolving technologies.”¹⁶⁷

Denial of access to wholesale inputs needed to provide advanced services is not a mere theoretical concern. For example, Integra is in the early stages of deploying fiber to remote terminals and collocating electronics in incumbent LEC remote terminals in order to obtain access to copper subloops. Integra plans to rely on these arrangements to provide Ethernet-over-first mile service to small and medium-sized businesses throughout the Merged Company’s territory. Integra has not yet sought collocation in many remote terminals, but it is concerned that such arrangements are not well-developed and that they offer an incumbent LEC a host of possible excuses for denying, delaying or degrading a competitor’s access requests.¹⁶⁸ For example, the incumbent LEC can (1) deny access based on the claim that there is not enough space in a cabinet to support collocation; (2) insist on inefficient access arrangements; and (3) slow roll the collocation process by arguing that it lacks a system for determining whether there is sufficient space in any particular remote terminal to support collocation. These claims can be difficult and expensive for competitors to refute or for regulators to assess.

The incentive for the Applicants to deny, delay and degrade access to inputs necessary for competitors to provide advanced services is further heightened by CenturyLink’s limited knowledge and experience in providing such inputs to competitors. For example, CenturyLink’s wholesale Ethernet offering is relatively new, and CenturyLink has little experience and few

¹⁶⁷ *SBC-Ameritech Merger Order* ¶ 254.

¹⁶⁸ For example, one competitor, FiberNet has encountered substantial difficulties establishing collocation arrangements in remote terminals in the Verizon region. *See, e.g.*, Letter from Thomas Jones, Counsel, One Communications, to Marlene H. Dortch, Secretary, FCC, GN Dkt. No. 09-51, Attachment E, Declaration of David R. Armentrout, On Behalf Of FiberNet, LLC (filed Nov. 17, 2009).

established practices for providing wholesale Ethernet service or for establishing Ethernet traffic exchange. Without an established practice of providing advanced inputs, and with the increased incentive to discriminate arising from an increased footprint, the Merged Company is more likely to exploit opportunities to engage in anticompetitive conduct and prevent competitors from offering innovative services to small and medium-sized business customers.

5. *Legacy BellSouth's Declining Wholesale Performance Following Its Merger With AT&T Demonstrates That An Increased Footprint Will In Fact Lead to Increased Discrimination Post-Transaction.*

In a departure from its other decisions, the Commission determined in the *AT&T-BellSouth Merger Order* that while the Big Footprint theory is “theoretically valid,” it does not have a practical effect on firms’ conduct.¹⁶⁹ In so finding, the Commission asserted that there was no evidence that past mergers have resulted in heightened discrimination as a result of an increased footprint.¹⁷⁰

But the behavior of AT&T-BellSouth post-merger supports the contrary conclusion. In tw telecom’s experience, prior to the AT&T-BellSouth merger, legacy BellSouth’s special access performance commitments and execution in meeting those commitments was superior to all of the BOCs as well as legacy Embarq. [***BEGIN CONFIDENTIAL***]

¹⁶⁹ *In re AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, ¶ 185 (2007) (“*AT&T-BellSouth Merger Order*”).

¹⁷⁰ *See id.*

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Following its merger with AT&T, legacy BellSouth's special access performance commitments and execution on those commitments declined markedly. Legacy BellSouth now provides special access performance execution that is worse than the execution levels of Verizon, Qwest and Embarq. Prior to its merger with AT&T, *****BEGIN CONFIDENTIAL*****

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BellSouth's (and AT&T's) poor performance has a substantial negative effect on tw telecom and other CLECs' businesses. As a general matter, customers will blame the CLEC for poor service quality even if the CLEC's poor service quality is caused by the incumbent LEC's conduct. Indeed, these problems make it difficult for a CLEC to live up to its commitments to and expectations of its retail customers. BellSouth's poor wholesale performance can result in (1) a CLEC paying a penalty to its own retail customers for failing to meet its contractual performance commitments and/or (2) the customer dropping the CLEC's service entirely. In sum, legacy BellSouth's poor wholesale performance places its competitors' retail businesses in jeopardy.

Of course, if a customer is not satisfied with a CLEC's retail performance in the legacy BellSouth region, the customer can always switch to a legacy BellSouth retail product. Legacy BellSouth's incentive to provide poor performance is obvious and, as the foregoing evidence has shown, that incentive has increased since its merger with AT&T. As explained, even legacy AT&T's (already limited) willingness to meet service quality benchmarks has deteriorated since

the merger with BellSouth. The effects of an increased incumbent LEC footprint are therefore far from merely theoretical.

E. The Commission And State Regulators Will Have A Diminished Ability To Detect And Punish Anticompetitive Conduct.

While consolidation among incumbent LECs can increase the Merged Company's incentive to discriminate, it can also diminish regulators' ability to detect and regulate such conduct. Although legacy Qwest (a BOC) and legacy CenturyLink (a non-BOC) have been subject to dramatically different levels of regulatory oversight, they are similar in important respects (i.e., size and mix of rural and urban areas), and no other incumbent LEC shares their profile. The elimination of Qwest through the proposed transaction will therefore eliminate the number of similarly-situated, mid-size incumbent LECs from two to one. As a result, the Commission will lose entirely the ability to determine reasonable practices for incumbent LECs that resemble the Applicants. This is particularly significant because the Commission will lose the ability to rely on Qwest's wholesale service (compared to CenturyLink's) as a basis for requiring that CenturyLink provide at least that level of service.

1. The Commission Has Correctly Relied Upon Benchmarking Theory To Gauge The Harm From Past Mergers In The Wireline And Cable Industries.

There are two basic means of determining whether an incumbent LEC is overpricing or degrading competitors' access to bottleneck facilities. *First*, an incumbent LEC sometimes charges a price or performs a service for its own retail customers as well as for wholesale customers. When this is the case, it is possible to compare the incumbent LEC's retail service with its wholesale service to determine whether it has engaged in unreasonable discrimination

against wholesale customers.¹⁷³ *Second*, an incumbent LEC often performs functions for wholesale customers that do not have a retail analogue. When this is the case, regulators must determine whether the incumbent LEC's conduct is "just and reasonable."¹⁷⁴ This is a difficult inquiry because regulators may conclude that they lack the information to assess the incumbent LEC's conduct. This is especially likely with respect to wholesale inputs and performance necessary to provide advanced and innovative services because there is often no established mode of providing such services against which to compare the incumbent LEC's conduct.¹⁷⁵

The most effective means of assessing wholesale conduct for which there is no retail analogue is to "benchmark" the conduct of one incumbent LEC against another. The Commission has held that benchmarking is more likely to be reliable when two companies share similar attributes, such as similar size and similar service territories.¹⁷⁶ Moreover, when the practices of two similarly-situated entities can be compared, the regulator can be more confident in defining the standard for just and reasonable conduct. For example, if one incumbent LEC

¹⁷³ See *SBC-Ameritech Merger Order* ¶ 175 ("We certainly agree with the notion that an incumbent LEC's treatment of its retail operations or its affiliates as compared with its treatment of competitors can provide useful benchmarks for regulators and competitors."); *Bell Atlantic-GTE Merger Order* ¶ 165 (same).

¹⁷⁴ See 47 U.S.C. §§ 201(b), 202(a), & 251(c)(3).

¹⁷⁵ See *SBC-Ameritech Merger Order* ¶ 177 ("[I]f a competitive LEC seeks the provision of properly conditioned loops in order to provide xDSL service, an incumbent LEC which is not ready to provide xDSL service itself would have the incentive to deny this competitor the properly conditioned loops. In this circumstance, parity rules would provide no remedy for the competitive LEC, for the incumbent LEC would not be providing to its retail arm anything that it was denying its competitor."); *Bell Atlantic-GTE Merger Order* ¶ 166 ("Moreover, parity rules will not always suffice for innovative entrants. Exclusive reliance on parity rules, for example, could slow the provision of innovative services to the public.").

¹⁷⁶ See *Bell Atlantic-GTE Merger Order* ¶ 153 ("Comparative practices analyses are most effective when the firms under observation are similarly situated, including the size of the firms relative to the size of the market.").

has, for whatever reason (e.g., compliance with Section 271), performed a function that others refuse to perform, the Commission may be able to define such conduct as the standard for reasonable conduct to which all similarly-situated incumbents are bound.

But such benchmarking becomes more and more difficult for regulators to rely upon as the number of similarly-situated incumbent LECs diminishes through mergers. With fewer and fewer incumbent LECs, the chances that the remaining incumbent LECs will engage in outlier (i.e., more cooperative) behavior diminishes. The Commission's ability to detect and punish unreasonable conduct diminishes accordingly.¹⁷⁷

The Commission has applied the benchmarking theory in a number of merger contexts. Benchmarking was a central basis for the Commission's assessments of harm in the SBC-Ameritech and Bell Atlantic-GTE mergers.¹⁷⁸ The Commission recently extended its benchmarking analysis to the cable industry in the *Adelphia Merger Order*. In that *Order*, the Commission recognized that the reduction in the number of large cable company benchmarks limits its ability to detect unreasonable conduct in the provision of essential upstream regional sports network ("RSN") inputs to other cable operators.¹⁷⁹ The Commission relied on the

¹⁷⁷ See *SBC-Ameritech Order Merger* ¶ 145 ("Moreover, by reducing the number of major incumbent LECs, the merger makes it less likely that deviations from the average benchmark will be identified confidently as unreasonable and punishable."); *Bell Atlantic-GTE Merger Order* ¶ 142 ("[F]urther consolidation among the major incumbent LECs could severely curtail regulators' abilities to constrain any tacit or explicit coordination by these incumbents to impede comparative practices analyses, especially as regulators seek to open the incumbents' markets to competition."); *id.* ¶ 151 ("By reducing the number of major incumbent LEC benchmark firms to four, each firm has more incentive to cooperate and less unilateral incentive to break an implicit or explicit agreement to impede benchmarking.").

¹⁷⁸ See *id.*

¹⁷⁹ See *In re Applications for Consent to the Assignment and/or Transfer of Control of Licenses from Adelphia Communications Corp. to Time Warner Cable Inc. and Comcast Corporation*, Memorandum Opinion and Order, 21 FCC Rcd. 8203, ¶ 83 (2006) ("*Adelphia Merger Order*") ("We recognized in the *SBC-Ameritech Order* that regulatory efficacy is enhanced when there

reduction in the number of benchmarks as one of the bases (in addition to the Big Footprint theory)¹⁸⁰ for adopting regulations governing the RSN market.¹⁸¹ More recently, while the Commission did not directly refer to its traditional benchmarking analysis in its evaluation of the CenturyTel-Embarq merger, its finding that the transaction would be in the public interest was predicated upon conditions which were designed to assure that the Merged Company would adopt the best practices of both CenturyTel and Embarq.¹⁸² The very existence of each company's best practices demonstrated that it would be reasonable for the combined company to adopt these practices post-merger.¹⁸³

are a 'sufficient number of independent sources of observation available for comparison.' We believe that not only regulators, but also consumers, can benefit from the ability to observe how different cable operators are serving proximate areas.”).

¹⁸⁰ *See id.* ¶ 141 (“In the MVPD market, a vertically integrated cable operator will likely charge the highest price that its DBS rivals are willing to pay for a vertically-integrated RSN. DBS operators’ willingness to pay such prices increases as the footprint of the vertically integrated cable operator increases, because DBS operators know that if they fail to carry the RSN, more of their subscribers will switch to cable to gain access to such programming.”).

¹⁸¹ *See id.* ¶ 156 (“To mitigate potential harms from uniform price increases, as well as other strategies discussed below, we impose a remedy based on commercial arbitration such as that imposed in the *News Corp.-Hughes Order*. The arbitration remedy, as set forth in Appendix B, will constrain Comcast’s and Time Warner’s ability to increase rates for RSN programming uniformly or otherwise disadvantage rival MVPDs via anticompetitive strategies.”).

¹⁸² *See CenturyTel-Embarq Merger Order* ¶ 46 (“[W]e also find . . . that the proposed transaction poses certain potential anticompetitive risks. In response to these concerns, the Applicants offered several voluntary commitments.”); *see id.* ¶ 45 (“[W]e find that one of the major benefits of the proposed merger is that the Applicants can adopt each other’s best practices. In particular, we find that that, by adopting CenturyTel’s billing software and Embarq’s wholesale OSS, the Applicants will be better able to serve both retail and wholesale customers, and that local competitors will be able to compete. In this regard, we are further encouraged by the Applicants’ commitment to implement Embarq’s wholesale OSS within 15 months.”).

¹⁸³ *See id.* ¶ 45.

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2. *Because Qwest And CenturyLink Are Similarly Situated In Terms Of Size And Service Territories, Each Can Serve As A Benchmark Of The Other's Conduct.*

Qwest and CenturyLink are similarly situated in many respects. For example, both companies have a similar number of access lines while other mid-sized incumbent LECs (i.e., Frontier, FairPoint and Windstream) are smaller than both Qwest and CenturyLink.¹⁸⁴ In addition, Qwest's¹⁸⁵ and CenturyLink's¹⁸⁶ service areas cover a similar mix of rural and non-rural areas combined with urban areas (e.g., Denver, Phoenix, Seattle and Minneapolis for Qwest and Las Vegas for CenturyLink). The other mid-sized incumbent LECs' service territories are almost exclusively rural and do not include major cities.

As a result of their similarities, there is a sound basis for comparing Qwest's and CenturyLink's behavior and performance. Again, because Qwest has undergone extensive testing and obtained Section 271 approval, and established wholesale service levels required of a BOC, Qwest's performance can be used a benchmark against to which to assess the

¹⁸⁴ As of March 31, 2010, Qwest had approximately 9.66 million access lines and CenturyLink had approximately 6.9 million access lines. *See* Attachment B. By contrast, as of March 31, 2010, Frontier had approximately 6.36 million access lines (including the lines it would acquire from Verizon), Windstream had approximately 3.1 million access lines and FairPoint had approximately 1.5 million access lines. *See id.*

¹⁸⁵ For example, Qwest recently argued that it should receive a higher level of universal service support than is currently the case given its substantial rural market presence. *See* Comments of Qwest, WC Dkt. No. 05-337 & CC Dkt. No. 96-45, at 2 (filed May 8, 2009) ("Qwest's ILEC territory is diverse. . . . It includes many rural communities and areas of low household density. In many cases the low density areas served by Qwest are also an extended distance from the nearest town. Qwest has 1,310 local switching wire centers. Of these wire centers, 553 – 42% – are located outside of metropolitan areas. These 553 wire centers serve 2.2 million access lines. Qwest serves many areas with low population density.").

¹⁸⁶ *See CenturyLink to Buy Qwest in \$10.3 Billion Stock Swap*, TheDenverChannel.com, Apr. 23, 2010, available at <http://www.thedenverchannel.com/money/23230095/detail.html> ("Last year, [CenturyLink] bought Embarq Inc., the landline service company once part of Sprint, giving it an urban presence as well.").

reasonableness of CenturyLink's conduct. Furthermore, because no other mid-sized incumbent LEC resembles either Qwest or CenturyLink, the proposed transaction will essentially eliminate any basis for benchmarking among mid-sized incumbent LECs similar to the Applicants.¹⁸⁷ As a result, both state regulators and the FCC will have a diminished ability to detect and punish unreasonable conduct, especially on the part of CenturyLink, as a result of the proposed transaction.

III. THE APPLICANTS HAVE FAILED TO DEMONSTRATE THAT THE PROPOSED TRANSACTION WILL YIELD NET PUBLIC INTEREST BENEFITS.

In evaluating whether the proposed transaction will result in public interest benefits, the Commission considers “whether [the Merged Company] will be able and is likely to pursue business strategies resulting in demonstrable and verifiable benefits that would not be pursued but for the transaction.”¹⁸⁸ The Commission has further held that:

The Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed [transaction] outweigh the potential public interest harms. As such, the Commission applies a “sliding scale approach” to evaluating benefit claims. Under this sliding scale approach, where potential harms appear “both substantial and likely, the Applicants’ demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”¹⁸⁹

¹⁸⁷ The Applicants may argue that CenturyLink and Frontier are similarly situated because they are of comparable size, measured by access lines. *See* Attachment B. Yet, as explained, because these two companies serve a different mix of geographic areas, they are not valid benchmarks for each other. Furthermore, even if they were to constitute valid benchmarks for each other, the loss of Qwest through the proposed transaction would result in the reduction in the number of similarly-situated incumbent LECs from three to two. As the Commission has found, even a merger from four to three similarly-situated incumbent LECs “would so severely diminish the Commission’s ability to benchmark that *it is difficult to imagine that any potential public interest benefit could outweigh such a harm.*” *Bell Atlantic/GTE Merger Order* ¶ 170 (emphasis added).

¹⁸⁸ *Frontier-Verizon Merger Order* ¶ 46.

¹⁸⁹ *Id.* ¶ 48.

As discussed herein, the Applicants have failed to make such a demonstration.

First, the Applicants assert that the proposed transaction will result in increased broadband deployment,¹⁹⁰ but they fail to demonstrate how this will happen. Legacy CenturyLink has deployed broadband to 89 percent of its customers while Qwest has done so for 86 percent of its customers.¹⁹¹ Therefore, it is difficult to see how the proposed transaction will significantly improve on Qwest's performance or otherwise "allow the companies to support even larger-scale broadband deployment."¹⁹² Moreover, in the relevant Oregon and Washington state commission review proceedings, CenturyLink has stated that it has not yet developed "any specific plans" or "[p]rojections" for post-transaction broadband deployment in those states.¹⁹³

Second, the Applicants offer scant evidence to support their claim that the proposed transaction will result in increased deployment of IPTV services in Qwest territory.¹⁹⁴ In fact, CenturyLink has no successful track record of deploying video services. Instead, it relies primarily on the fact that it has introduced IPTV services to three trial markets: Columbia, Missouri, Jefferson City, Missouri, and La Crosse, Wisconsin.¹⁹⁵ These markets are small,¹⁹⁶

¹⁹⁰ See Application at 13-15.

¹⁹¹ See *id.* at 13.

¹⁹² *Id.*

¹⁹³ See Attachment A, at 3-4.

¹⁹⁴ See Application at 15 ("The transaction will enable CenturyLink to leverage its expertise, investments, and experience in IPTV deployment to the benefit of Qwest's customers.").

¹⁹⁵ *Id.*

¹⁹⁶ The La Crosse, Wisconsin and Columbia-Jefferson City, Missouri markets are ranked 127th and 137th out of 210 markets, respectively, in terms of numbers of households in the United States. See Television Bureau of Advertising, DMA Rankings - US TV Households by Market, available at http://www.tvb.org/rcentral/markettrack/us_hh_by_dma.asp.

however, and CenturyLink does not offer any analysis of how successful these trials have been. At its current rate of deployment, it is also difficult to discern how CenturyLink will deploy IPTV services on any significant scale in the Qwest territory in the near term. It is not even clear that the Merged Company will pursue this strategy in the legacy Qwest markets at all. Indeed, on this issue, Qwest's CEO, Ed Mueller, who will have a seat on the Merged Company's board, has been reluctant to commit to significant IPTV deployment, saying only that "*over time we will look at the potential of rolling out IPTV . . .*"¹⁹⁷ As the Commission has held, "benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than predictions about events that are expected to occur closer to the present."¹⁹⁸ Thus, this purported benefit is not cognizable under the Commission's analytical framework.

Third, the Applicants claim that the Merged Company will be able to "leverage Qwest's strength in providing complex communications services to large businesses and government entities" to serve such entities in the legacy CenturyLink territory.¹⁹⁹ But there are relatively few large business or government customers in CenturyLink's territory. It is therefore hard to see how adding Qwest's expertise in serving such customers will make a difference.

Fourth, as discussed above, the Applicants claim that the proposed transaction will create annual operating synergies of approximately \$575 million within three to five years of closing.²⁰⁰

¹⁹⁷ CenturyLink-Qwest April 22, 2010 Conference Call Transcript at 8 (emphasis added).

¹⁹⁸ *Frontier-Verizon Merger Order* ¶ 47 (quoting *EchoStar-DirecTV Order* ¶ 190).

¹⁹⁹ See Application at 18-19.

²⁰⁰ See *supra* note 135 & accompanying text.

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As the Commission has recognized in the past, such synergies are impossible to verify.²⁰¹ The situation is no different here as the Applicants have failed to provide sufficient evidence to support their claim.²⁰² In fact, as illustrated by the following exchange during the Applicants' April 22, 2010 conference call with investment analysts, CenturyLink has been reluctant to discuss the rationale for its anticipated synergies in any detail:

[Bank of America analyst]

[C]ould you divide those synergies into buckets and kind of help us think about how they stage in through this three to five-year process?

Glen Post

We really are not ready to talk about that today. I am sure over time we will be able to more granularly discuss that with you but not today.²⁰³

What CenturyLink *has* disclosed is that integration problems could prevent *any* merger benefits from being realized. As CenturyLink reported in a recent SEC filing, the inability to successfully combine the two companies could prevent the Merged Company “from achiev[ing] the cost savings anticipated to result from the merger, which would result in the anticipated benefits of the merger not being realized in the time frame currently anticipated or at all.”²⁰⁴

²⁰¹ See, e.g., *Frontier-Verizon Merger Order* ¶ 57 (“Based on the record evidence, we do not fully accept the Applicants’ claim of \$500 million in cost savings.”); *CenturyTel-Embarq Merger Order* ¶ 44 (stating that “we do not fully accept the Applicants’ claim of \$400 million in cost savings”); *AT&T-BellSouth Merger Order* ¶ 217 (“After careful examination of the Applicants’ synergy model, we find that we cannot credit the \$16 billion savings in its entirety.”).

²⁰² See Application at 21 (stating merely that the \$575 million in cost savings within three to five years will result from “reduce[d] interconnection fees,” “reduced corporate overhead, elimination of duplicate functions, enhanced revenue opportunities, and increased operational efficiencies through the adoption of each company’s most effective practices”).

²⁰³ CenturyLink-Qwest April 22, 2010 Conference Call Transcript at 9.

²⁰⁴ CenturyLink Form S-4 at 17.

Moreover, to the extent that the expected synergies concern only fixed costs, they do not benefit consumer welfare. The Commission has consistently held that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost because reductions in marginal cost are more likely to result in lower prices for consumers.”²⁰⁵ Furthermore, as explained above, to the extent that the promised synergies are realized, they may well yield net consumer harm if they result in diminished investment in wholesale service.

IV. THE COMMISSION MUST IMPOSE CONDITIONS IN ORDER TO MITIGATE THE HARMS POSED BY THE TRANSACTION AND TO FIND THAT THE TRANSACTION YIELDS NET PUBLIC INTEREST BENEFITS.

As shown, the competitive harms posed by the proposed transaction far outweigh any purported benefits. In order to ensure that, “by a preponderance of the evidence, th[e] the proposed transaction, on balance, serves the public interest,” the Commission must impose enforceable conditions to mitigate the harms described herein. To begin with, conditions should be imposed to prevent the Merged Company from degrading wholesale service quality and to provide meaningful remedies in the event of service degradation. In addition, to ensure that harm is avoided and not merely delayed, the Commission must establish, before closing, procedures regarding how systems and operational changes will occur, whenever they occur. For instance, as discussed above, for any Qwest system that was subject to third-party testing (e.g., as part of a Section 271 process), robust, transparent third-party testing should be conducted for any CenturyLink replacement system to ensure that it provides the needed functionality, can appropriately handle commercial volumes, and satisfies the Merged Company’s Section 271 obligations.

²⁰⁵ See, e.g., *Frontier-Verizon Merger Order* ¶ 47 (internal quotations omitted); *CenturyTel-Embarq Merger Order* ¶ 35 (same).

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Even if the Commission imposes conditions to remedy the public interest harms, however, the proposed transaction will not yield net public interest benefits. With respect to processes and procedures, the Commission must also require that the Applicants adopt the best practices between them throughout the Merged Company's territory. In the *CenturyTel-Embarq Merger Order*, the Commission determined that conditions resulting in this outcome were necessary to ensure that the transaction was in the public interest.²⁰⁶ The Commission must do the same here.

The Joint Commenters will submit a comprehensive list of proposed conditions after the Applicants have addressed the concerns discussed herein in their Reply Comments. As explained above, the Applicants have provided no information about the OSS that will be used by the Merged Company, the Applicants' OSS integration plans, and other critical issues. The Reply Comment period for the instant proceeding offers the Applicants an opportunity to address those issues in a comprehensive manner. In the meantime, the Joint Commenters submit into the record the preliminary lists of proposed merger conditions submitted by Integra and tw telecom in response to data requests by the Arizona Corporation Commission ("ACC") in the ACC's CenturyLink-Qwest merger review proceeding (attached hereto as "Attachment C" and "Attachment D").²⁰⁷ These proposals reflect issues that are critical to the Joint Commenters and

²⁰⁶ See *CenturyTel-Embarq Merger Order* ¶ 45 ("[W]e find that one of the major benefits of the proposed merger is that the Applicants can adopt each other's best practices. In particular, we find that, by adopting CenturyTel's billing software and Embarq's wholesale OSS, the Applicants will be better able to serve both retail and wholesale customers, and that local competitors will be better able to compete. . . . We find that these benefits will affirmatively advance competition, thereby benefiting the public interest.").

²⁰⁷ See Integra's Response to Staff's First Set of Data Requests, ACC Dkt. Nos. T-01051B-10-0194 *et al.*, at 4-10 (dated June 18, 2010) (attached hereto as "Attachment C") (listing Integra's preliminary proposed conditions); see also tw telecom of arizona llc Response to Arizona Corporation Commission Staff's First Set of Data Requests, ACC Dkt. Nos. T-01051B-10-0194

their end-user customers. As wholesale customers of the Applicants, the Joint Commenters request that the Applicants review, seriously consider, and respond to the proposals reflected in Attachments C and D in their Reply Comments. The Joint Commenters reserve their right to modify, expand, or otherwise change these proposals as the record in this proceeding develops.

V. CONCLUSION.

For the foregoing reasons, the Commission cannot grant the instant Application unless it conditions its approval on compliance with conditions that address the public interest harms described herein.

Respectfully submitted,



Thomas Jones
Jonathan Lechter
Nirali Patel
Shea Wynn*
WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, D.C. 20006
(202) 303-1000

*Admitted only to the NY Bar.

*Attorneys for Cbeyond, Inc., Integra
Telecom, Inc., Socket Telecom, LLC, and
tw telecom inc.*

July 12, 2010

et al., at 2-10 (dated June 29, 2010) (attached hereto as "Attachment D") (listing tw telecom's preliminary proposed conditions).

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ATTACHMENT A

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EXCERPTS FROM THE APPLICANTS' RESPONSES TO DATA REQUESTS IN THE RELEVANT STATE COMMISSION REVIEW PROCEEDINGS				
Issue	Response	Respondent Name & Company	Response Date	Data Request Information
Systems Integration	“Until the Transaction is complete, and the necessary decisions have been made on how to best integrate the two companies, plans for specific changes to the Qwest or CenturyLink Operations Support Systems (OSS) have not been fully developed.”	Mike Hunsucker, CenturyLink	June 25, 2010	Washington UTC Staff Data Request No. 84
	“Until the Transaction is complete, and the necessary decisions have been made on how to best integrate the two companies, plans for specific changes to any processes or systems that CLECs currently utilize in purchasing wholesale services from Qwest have not been developed.”			Washington UTC Staff Data Request Nos. 85 & 87
	“Integration planning is in the early stages and decisions on wholesale OSS systems have not been made at this time.”		July 2, 2010	Oregon PUC Staff Data Request No. 60
	“No decisions on integration can reasonably be made until after the transaction is closed. At this time, system integration plans for the proposed transaction with Qwest, including plans for billing system integration, have not been fully developed.”	John Felz, CenturyLink	June 25, 2010	Washington UTC Staff Data Request No. 90
	“Upon merger closing, there will be no immediate changes to Qwest’s or CenturyLink’s Provisioning Systems. CenturyLink has not evaluated its processes and compared them to Qwest’s processes at this time. Integration planning is in the early stages and decisions have not been made at this time.”	Ann Prockish, CenturyLink	July 8, 2010	Integra Minnesota Data Request No. 2-35h
	“A detailed comparison of CenturyLink’s and Qwest’s repair processes has not been conducted at this time. System integration plans for the proposed transaction with Qwest have not been fully developed.”	Mark Akason and Mike Jewell, CenturyLink	July 8, 2010	Integra Minnesota Data Request No. 2-30
	“A detailed comparison of CenturyLink’s and Qwest’s trouble ticket initiation processes as [sic] not been conducted at this time. System integration plans for the proposed transaction with Qwest have not been fully developed. In fact, complete integration plans cannot be developed until the merger is concluded.”			
	“Until the Transaction is complete, and the necessary decisions have been made on how to best integrate the two companies and their respective call databases, plans for specific changes to the Qwest and CenturyLink Call Management Services Data Base, Local Number Portability, and Line Information Data Base, if any, have not been fully developed.”	John Felz, CenturyLink	June 25, 2010	Washington UTC Staff Data Request No. 82
	“Until the Transaction is complete, and the necessary decisions have been made on how to best integrate the two companies, plans for specific changes to the Qwest E911 systems, if any, have not been developed.”			Washington UTC Staff Data Request No. 83

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Operations Integration	“A detailed integration planning statement indicating specific dates and events has not been developed. Detailed planning processes will begin on or about the close of the merger and will involve the review of existing systems and practices.”	CenturyLink response	June 16, 2010	Iowa Office of Consumer Advocate Data Request No. 1-012A
	“Until the transaction has been completed and the necessary decisions have been made, specific details regarding the implementation (who? what? where? when? why? how?) of these planning assumptions will not be available.”	Jeff Glover, CenturyLink and James Campbell, Qwest Corp.	June 4, 2010	Arizona Corporation Commission Staff Data Request No. 1-001
	“Identification of ‘best practices’ associated with the integration of CenturyLink and Qwest operations will be completed as part of the detailed integration planning efforts. Until the integration teams are formed, and the detailed data gathering process can be completed, an analysis regarding the identification and/or adoption of ‘best practices’ is not available.”	Mark Gast, CenturyLink	July 8, 2010	Integra Minnesota Data Request No. 2-52g
	“No decisions on integration can reasonably be made until after the transaction is closed. Before the company can make a determination on any changes in Network Operations Centers (NOC), the company needs more time and data to assess the work being performed at various NOCs, the appropriate location for centers in order to best serve the needs of customers and the scope of those centers.”	John Felz, CenturyLink	July 1, 2010	Washington UTC Staff Data Request No. 107
	“Integration planning is in the early stages and decisions on [wholesale] personnel, location of [wholesale] personnel, etc. have not been made at this time”	Mike Hunsucker, CenturyLink	July 2, 2010	Oregon PUC Staff Data Request No. 54
	“Decisions regarding the locations of the remaining regional headquarters have not been made.”	Ann Prockish, CenturyLink	July 8, 2010	Integra Minnesota Data Request No. 2-147
	“A more detailed management organization table for the post-merger business is not available at this time.”	CenturyLink response	June 16, 2010	Iowa Office of Consumer Advocate Data Request No. 1-001
	“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest Standard Interval Guide. A detailed comparison of CenturyLink’s and Qwest’s processes has not been conducted at this time.”	Ann Prockish, CenturyLink	July 8, 2010	Integra Minnesota Data Request No. 2-82
	“Until the Transaction is complete, and the necessary decisions have been made on how to best integrate the two companies, plans for 911 ordering and provisioning processes to be used have not been developed.”	John Felz, CenturyLink	July 1, 2010	Washington UTC Staff Data Request No. 106
Change Management Process	“Upon merger closing, there will be no immediate changes to Qwest’s or CenturyLink’s Change Management Processes (CMP) or CMD [sic] documents. Integration plans for the proposed transaction with Qwest have not been fully developed. In fact, complete integration plans cannot be developed until the merger is concluded.”	Melissa Cloz, CenturyLink	July 8, 2010	Integra Minnesota Data Request No. 2-118

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Performance Assurance Plan	“Upon merger closing CenturyLink does not anticipate any immediate changes to the Qwest performance plans. A detailed comparison of CenturyLink’s and Qwest’s processes has not been conducted at this time.”	Ann Prockish, CenturyLink	July 8, 2010	Integra Minnesota Data Request No. 2-61
Wholesale Rates	“CenturyLink has not evaluated or reached any conclusions regarding this issue [whether CenturyLink will seek modification to any wholesale rates post-merger] at this time.”			Integra Minnesota Data Request No. 2-86
	“The impact if any on wholesale rates cannot be determined until the transaction is complete and the necessary decisions have been made on how to best integrate the two companies.”	Mark Gast, CenturyLink	July 8, 2010	Integra Minnesota Data Request No. 2-521
	“CenturyLink has not evaluated or reached any conclusions concerning this issue [whether CenturyLink will seek reductions in cost-based wholesale rates due to reported synergy cost savings] at this time.”	Ken Buchan, CenturyLink	July 8, 2010	Integra Minnesota Data Request No. 2-55b
Wholesale Services	“CenturyLink has not evaluated or reached any conclusions regarding this issue [whether CenturyLink plans to discontinue any wholesale services post-merger] at this time.”	Ann Prockish, CenturyLink	July 8, 2010	Integra Minnesota Data Request No. 2-96
	“CenturyLink has not evaluated or reached any conclusions concerning this issue [the numerous “evergreen” ICAs with Qwest and CenturyLink’s plans regarding those ICAs post-merger] at this time.”			Integra Minnesota Data Request No. 2-117
	“CenturyLink has not evaluated or reached any conclusions regarding the issue [whether CenturyLink intends to adopt Qwest’s intrastate and/or interstate access tariffs post-merger] at this time.”			Integra Minnesota Data Request No. 2-89
	“CenturyLink has not evaluated or reached any conclusions regarding this issue [whether CenturyLink anticipates seeking modifications to its access terms, conditions or rates post-merger] at this time.”			Integra Minnesota Data Request No. 2-90
	“A detailed comparison of CenturyLink’s and Qwest’s [collocation] processes has not been conducted at this time.”			Integra Minnesota Data Request No. 2-108
Wholesale Customer Service	“CenturyLink has not made any determination on this issue [whether CenturyLink plans to make changes to CLEC account and service manager assignments post-merger] at this time.”			Integra Minnesota Data Request No. 2-93
Network Investment	“Until the transaction is complete, and the necessary decisions have been made on how to best integrate the two companies, plans regarding network investment and appropriate balance sheet improvement (debt reduction) have not been developed. The analysis and decisions regarding how CenturyLink plans to best utilize its free cash flow will be completed as part of the detailed integration planning effort.”	Mark Gast, CenturyLink	July 8, 2010	Integra Minnesota Data Request No. 2-133
Broadband Deployment	“At this time, CenturyLink has not yet established any specific plans regarding Washington post-transaction broadband deployment.”	John Felz, CenturyLink	June 23, 2010	Washington UTC Staff Data Request No. 55

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Broadband Deployment	“Until the Transaction is complete and the necessary decisions have been made on how to best integrate the two companies, specific [DSL] product and pricing plans cannot be evaluated and finalized.”	John Felz, CenturyLink	June 23, 2010	Washington UTC Staff Data Request No. 60
	“Projections for post-merger broadband deployment have not been developed.”			Oregon PUC Staff Data Request No. 15
IPTV Deployment	“Plans for the introduction of specific new services such as IPTV in Washington have not been fully developed at this point. Until the Transaction is complete and the necessary decisions have been made on how to best integrate the two companies, specific product and service plans cannot be evaluated and finalized.”	John Felz, CenturyLink	June 23, 2010	Washington UTC Staff Data Request Nos. 52 & 68
	“Plans for the introduction of specific new services such as IPTV in Oregon have not been fully developed at this point. Until the Transaction is complete and the necessary decisions have been made on how to best integrate the two companies, specific product and service plans cannot be evaluated and finalized.”			Oregon PUC Staff Data Request No. 33

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ATTACHMENT B

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COMPARISON OF INCUMBENT LEC ANNUAL REVENUES AND ACCESS LINES		
I L E C	2009 Annual Revenues (billions)	Access Lines as of March 31, 2010 (millions)
CenturyLink	\$4.97 ¹	6.9 ²
Qwest	\$12.31 ³	9.66 ⁴
TOTAL	\$17.28	16.56
Frontier⁵	\$6.07 ⁶	6.36 ⁷
Windstream	\$3.0 ⁸	3.1 ⁹
FairPoint	\$1.13 ¹⁰	1.5 ¹¹

¹ See CenturyTel, Inc., SEC Form 10-K Annual Report for the Fiscal Year Ended December 31, 2009, at 48 (Mar. 31, 2010).

² See CenturyTel, Inc., SEC Form 10-Q Quarterly Report for the Period Ending March 31, 2010, at 15 (May 7, 2010).

³ See Qwest Communications International Inc., SEC Form 10-K Annual Report for the Fiscal Year Ended December 31, 2009, at 1, 29 (Feb. 16, 2010).

⁴ See Qwest Communications International Inc., SEC Form 10-Q Quarterly Report for the Period Ending March 31, 2010, at 34 (May 5, 2010).

⁵ Including recently acquired Verizon properties.

⁶ See Frontier, Investor Presentation, at 15 (June 8, 2010) available at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9Mzg1NzcyfENoaWxkSUQ9Mzg4MjQ1fFR5cGU9MQ==&t=1>.

⁷ See *id.* The actual total Frontier post-merger access line count as of March 31, 2010 is likely lower than 6.36 million. Frontier's data combines its pre-merger access lines (2.08 million) as of March 31, 2010 with the access line count of the acquired Verizon exchanges as of December 31, 2009. See *id.* at 7 and 15. Given overall access line trends, Verizon likely lost access lines in the acquired exchanges between December 31, 2009 and March 31, 2010.

⁸ See Windstream Corporation, SEC Form 10-K Annual Report for the Fiscal Year Ended December 31, 2009, at 6 (Feb. 24, 2010).

⁹ See Windstream Corporation, SEC Form 10-Q Quarterly Report for the Period Ending March 31, 2010, at 6 (May 6, 2010).

¹⁰ See FairPoint Communications Inc., SEC Form 10-K Annual Report for the Fiscal Year Ended December 31, 2009, at 57 (May 28, 2010).

¹¹ See FairPoint Communications Inc., SEC Form 10-Q Quarterly Report for the Period Ending March 31, 2010, at 10 (June 18, 2010).

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ATTACHMENT C

GENERAL OBJECTIONS TO ALL DATA REQUESTS (ONGOING)

1. Integra objects to the Requests to the extent they are vague, over-broad and/or unduly burdensome. Integra continues to review the issues and may supplement its responses.
2. Integra objects to the Requests to the extent they seek information subject to the attorney-client privilege, work product doctrine, or any other privilege recognized by the State of Arizona and information that is trade secret, confidential, sensitive, competitive in nature or proprietary.
3. Integra objects to the Requests to the extent that they seek information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence.
4. Integra objects to the Requests to the extent that they seek a legal conclusion.

RESPONSES

Subject to, and without waiving, the foregoing objections, Integra provides the following Response.

Staff Request No. STF1.1: Please state the conditions which address Integra's concerns in the areas below and should be considered by the Commission to grant approval in the above matter.

1. Interconnection Agreements;
2. Operational Support Systems;
3. Change Management Process;
4. Wholesale Agreements;
5. Tariffs;
6. Service Quality; and
7. Any other areas as appropriate.

Integra Response No. STF1.1: CenturyLink and Qwest have, thus far, presented very little information regarding how the post-merger company would fulfill its wholesale obligations to CLECs, if the merger is approved. The companies have said that the "transaction is expected to create significant annual operating synergies of approximately \$575 million, which are expected to be fully realized three to five years following closing."¹ The company will, therefore, be under significant pressure to promptly begin to make operational changes to achieve these promised synergies. Discovery and inquiry are needed into how the promised synergies will be achieved, and how best to ensure that they are not achieved at the expense of service quality. CLECs, such as Integra, are wholesale customers of Qwest and are dependent upon Qwest's monopoly provided last-mile services to serve end user customers. Information may develop in the course of discovery and this proceeding that indicates that additional, or more specific, conditions are needed. The following list of recommended conditions, therefore, is preliminary, and this response may be supplemented as needed.

¹ Application for Consent to Transfer Control, *In the Matter of Qwest Communications International, Inc. and CenturyTel, Inc. d/b/a CenturyLink*, WC 10-110, May 10, 2010 ("FCC Joint Application"), p. 21.

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CONDITIONS

“Merged Company” as used in this list of conditions refers to the post-merger company (CenturyLink and its Operating Companies, collectively, after the Closing Date).

1. Any Qwest wholesale service offered to competitive carriers on the Merger Filing Date,² or at any time between the Merger Filing Date up to and including the closing date of the transaction (the “Closing Date”), will be made available and will not be discontinued for three years after the Closing Date, except as approved by the Commission.
2. The Merged Company will not seek to recover through wholesale service rates or other fees paid by CLECs one-time transfer, branding, or any other transaction-related costs.
3. The Merged Company will hold wholesale customers harmless for any increases in overall management costs that result from the transaction, including those incurred by the Operating Companies.
4. Following the Closing Date, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes applicable to Qwest. The Merged Company shall continue to provide to CLECs the reports of wholesale performance metrics that Qwest currently provides to CLECs. The Merged Company shall also provide these reports to commission staff, when requested. No Qwest Performance Indicator Definition (PID) or Performance Assurance Plan (PAP) that is offered, or provided via amendment or Commission approved plan, as of the Merger Filing Date (“Current PAP”) will be reduced, eliminated, or withdrawn for at least five years after the Closing Date. Following the Closing Date, the Merged Company shall meet or exceed the average wholesale performance provided by Qwest to each CLEC for one year prior to the Merger Filing Date for each PID, product, and disaggregation. If the Merged Company fails to provide wholesale performance as described in the preceding sentence, the Merged Company will also make remedy payments to each affected CLEC in an amount as would be calculated using the methodology (*e.g.*, modified Z test, critical Z values, and escalation payments) in the Current PAP, for each missed occurrence when comparing performance post- and pre- Closing Date (“Additional PAP”). The state commission may determine that additional remedies are required, if the remedies described in this paragraph do not result in the required wholesale service quality performance or if the Merged Company violates the merger conditions.

² Qwest and CenturyLink made their merger filing with the Federal Communications Commission (FCC) on May 10, 2010 (the “Merger Filing Date”). See Application for Consent to Transfer Control, *In the Matter of Qwest Communications International, Inc. and CenturyTel, Inc. d/b/a CenturyLink*, WC 10-110, May 10, 2010 (“FCC Joint Application”).

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5. The Merged Company will assume or take assignment of all obligations under Qwest's interconnection agreements, interstate special access tariffs and intrastate tariffs, commercial agreements [including but not limited to the Qwest wholesale metro Ethernet agreement, Qwest OCN (Sonet) agreement, Qwest Local Services Platform (QLSP) agreement, and Qwest Broadband for Resale agreements], line sharing agreements, and other existing arrangements with wholesale customers ("Assumed Agreements"). The Merged Company shall not require wholesale customers to execute any documents(s) to effectuate the Merged Company's assumption or taking assignment of these obligations. The Merged Company shall not terminate or change the rates, terms or conditions of any effective Assumed Agreements during the unexpired term of any Assumed Agreement or for a period of three years from the Merger Announcement Date,³ whichever occurs later, unless requested by the interconnecting party, or required by a change of law. The Merged Company will assume or take assignment of all obligations under Qwest alternative form of regulation plans [in Arizona, the Revised Price Cap Plan (see ACC Decision No. 68604)].

6. The Merged Company will allow requesting carriers to extend existing interconnection agreements, whether or not the initial or current term has expired or is in "evergreen" status, until at least three years from the Closing Date, or the date of expiration, whichever is later.

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

8. In the legacy CenturyLink ILEC territory, the Merged Company will permit a requesting carrier to opt into any interconnection agreement to which Qwest is a party in the same state. If there is no Qwest ILEC in a state, the Merged Company will permit a requesting carrier to opt into any interconnection agreement to which Qwest is a party in any state in which Qwest is an ILEC. Agreements subject to the opt-in rights described in this

³ Qwest and CenturyLink entered into their merger agreement on April 21, 2010 (the "Merger Announcement Date").

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paragraph will apply in full, without modification and subject to the other conditions set forth herein, except to the extent that a state commission determines that the agreement must be modified because (1) it is technically infeasible for the Merged Company to comply with one or more provision of the agreement or (2) the prices set forth in the agreement are inconsistent with TELRIC-based prices in state in question. "CenturyLink ILEC territory," as used in this paragraph, excludes any CenturyLink ILEC for which a state commission has granted CenturyLink a rural exemption pursuant to Section 251(f) of the Communications Act before the Merger Filing Date. More consistency in interconnection agreement offerings will provide more consistency for wholesale customers dealing with CenturyLink in multiple states, using interconnection agreement terms from the pre-closing entity that both has been through Section 271 approval proceedings and has the greater volume of CLEC wholesale business.

9. To the extent that an interconnection agreement is silent as to an interval for the provision of a product, service or functionality or refers to Qwest's web site or Service Interval Guide (SIG), the applicable interval, after the Closing Date, shall be no longer than the interval in Qwest's SIG as of the Merger Filing Date.
10. For at least three years after the Closing Date, rates for tandem transit service, any interstate special access tariffed or non-tariffed (including Ethernet) offerings, any intrastate wholesale tariffed offering, and any service for which prices are set pursuant to Sections 252(c)(2) and Section 252(d) of the Federal Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. (the Communications Act") shall not be increased by the Merged Company above the levels applicable as of the Merger Announcement Date; nor will the Merged Company create any new rate elements or charges for distinct facilities or functionalities that are currently already provided under existing rates. The Merged Company shall continue to offer any currently offered term and volume discount plans in existence as of the Merger Announcement Date, until at least three years after the Closing Date. The Merged Company will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term.
11. The Merged Company will not seek to avoid any of the obligations under the Assumed Agreements on the grounds that the Merged Company is not an incumbent local exchange carrier ("ILEC") under the Communications Act. The Merged Company will waive its right to seek the exemption for rural telephone companies under Section 251(f)(1) and its right to seek suspensions and modifications for rural carriers under Section 251(f)(2) of the Communications Act.
12. In the legacy Qwest ILEC territory, the Merged Company shall be classified as a Bell Operating Company ("BOC"), pursuant to Section 3(4)(A)-(B) of the Communications

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Act and shall be subject to all requirements applicable to BOCs, including but not limited to the “competitive checklist” set forth in Section 271(c)(2)(B), the obligation to not backslide, and the nondiscrimination requirements of Section 272(e) of the Communications Act.

13. For three years following the Closing Date, the Merged Company will not seek or give effect to a ruling to reclassify as “non-impaired” any wire centers for purposes of Section 251 of the Communications Act, nor will the Merged Company file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 obligation or dominant carrier regulation in any wire center.
14. The Merged Company shall provide to wholesale carriers, and maintain and make available to wholesale carriers on a going-forward basis, up-to-date escalation information, contact lists, and account manager information at least 30 days prior to the Closing Date. For changes to support center location, organizational structure, or contact information, the Merged Company will provide at least 30 days advance written notice to wholesale carriers. For other changes, the Merged Company will provide reasonable advanced notice of the changes. The information and notice provided shall be consistent with the terms of applicable interconnection agreements.
15. The Merged Company will make available to each wholesale carrier the types and level of data, information, and assistance that Qwest made available as of the Merger Filing Date concerning wholesale Operational Support Systems functions and wholesale business practices and procedures, including information provided via the wholesale web site (which Qwest sometimes refers to as its Product Catalog or “PCAT”), notices, industry letters, the change management process, and databases/tools (loop qualification tools, loop make-up tool, raw loop data tool, ICONN database, *etc.*).
16. After the Closing Date, the Merged Company will maintain the Qwest Change Management Process (“CMP”), utilizing the terms and conditions set forth in the Qwest CMP Document, including those terms and conditions governing changes to the CMP Document. The Merged Company will dedicate the resources needed to complete pending CLEC change requests in a commercially reasonable time frame.
17. The Merged Company shall ensure that the legacy Qwest Wholesale and CLEC support centers are sufficiently staffed by adequately trained personnel dedicated exclusively to wholesale operations so as to provide a level of service that meets or exceeds that which was provided by Qwest prior to the Merger Filing Date and to ensure the protection of CLEC information from being used for the Merged Company’s retail operations. The Merged Company will employ people who are dedicated to the task of meeting the needs

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of CLECs and other wholesale customers. The total number of employees dedicated to supporting wholesale services for CLEC customers in legacy Qwest territory will be no fewer than the number of such employees employed by legacy Qwest as of the Merger Filing Date.

18. The Merged Company will not assign any pass code, password or Personal Identification Number (PIN) to retail customer accounts in a manner that will prevent or delay a change in local service providers. The Merged Company will require only pass codes that an end user customer requests for the purpose of limiting or preventing activity and changes to their account. The Merged Company will not require that a new local service provider provide, on a service request, a password or PIN that the end user customer uses or used to access its account information on-line [including Customer Proprietary Network Information (CPNI)].
19. After the Closing Date, in legacy Qwest ILEC territory, the Merged Company will use and offer to wholesale customers the legacy Qwest Operational Support Systems (OSS) for at least three years and provide at least the same level of wholesale service quality, including support, data, functionality, performance, and e-bonding, provided by Qwest prior to the Merger Filing Date. After the minimum three-year period, the Merged Company will not replace or integrate Qwest systems without first complying with the following procedures:
 - a. The Merged Company will prepare and submit a detailed plan to the Wireline Competition Bureau of the FCC and the state commission of any affected state before replacing or integrating Qwest system(s). The Merged Company's plan will describe the system to be replaced or integrated, the surviving system, and why the change is being made. The plan will describe steps to be taken to ensure data integrity is maintained. The plan will describe CenturyLink's previous experience with replacing or integrating systems in other jurisdictions, specifying any problems that occurred during that process and what has been done to avert those problems in the planned transition for the affected states. The Merged Company's plan will also identify planned contingency actions in the event that the Merged Company encounters any significant problems with the planned transition. The plan submitted by the Merged Company will be prepared by information technology professionals, retained at the Merged Company's expense, with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. Interested carriers will have the opportunity to comment on the Merged Company's plan.

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- b. For any Qwest system that was subject to third party testing (*e.g.*, as part of a Section 271 process), robust, transparent third party testing will be conducted for the replacement system to ensure that it provides the needed functionality and can appropriately handle commercial volumes. The types and extent of testing conducted during the Qwest Section 271 proceedings will provide guidance as to the types and extent of testing needed for the replacement system. The Merged Company will not limit CLEC use of, or retire, the existing system until after third party testing has been successfully completed for the replacement system.
 - c. For any replacement, newly integrated, or new system, the Merged Company will allow for coordinated testing with CLECs, including a stable testing environment that mirrors production and, when applicable, controlled production testing. The Merged Company will provide the wholesale carriers training and education on any wholesale OSS implemented by the Merged Company without charge to the wholesale carrier.
20. The Merged Company will process orders in compliance with federal and state law, as well as the terms of applicable interconnection agreements.
21. The Merged Company will provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements. When a number is ported from the Merged Company, E-911 records will be unlocked at the time of porting. Trouble reports involving locked E-911 records will be addressed within 24 hours.
22. The Merged Company will provide routine network modifications in compliance with federal and state law, as well as the terms of applicable interconnection agreements.
23. After the Closing Date, the Merged Company will engineer and maintain its network in compliance with federal and state law, as well as the terms of applicable interconnection agreements. Resources will not be diverted to merger-related activities at the expense of maintaining the Merged Company's network.
- a. The Merged Company shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop.
 - b. The Merged Company, if it retires copper, will retire copper in compliance with federal and state law, as well as the terms of applicable interconnection agreements and as required by a change of law.

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- c. If, after the Closing Date, the Merged Company's performance with respect to network maintenance in Arizona compares unfavorably with other states in legacy Qwest ILEC territory, the Commission may require the Merged Company to submit regular reports regarding network maintenance quality, may open an investigation, or may take additional steps to ensure that network maintenance is not unfavorable in Arizona as compared with other legacy Qwest ILEC states.
24. The Merged Company will provide conditioned copper loops in compliance with federal and state law and at rates approved by the applicable state commission. The Merged Company will employ policies and processes that take into account that line conditioning is the removal from a copper loop of any device that could diminish the capability of the loop to deliver xDSL, and that such devices include bridge taps, load coils, low pass filters, and range extenders. Insofar as it is technically feasible, the Merged Company shall test and report troubles for all the features, functions and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only. If the Merged Company seeks to change rates approved by a state commission for conditioning, the Merged Company will provide conditioned copper loops in compliance with the relevant law at the current commission-approved rates unless and until a different rate is approved.
25. All Conditions herein may be expanded or modified as a result of regulatory decisions concerning the proposed transaction in other states, including decisions based upon settlements, that impose conditions or commitments related to the transaction. The Merged Company agrees that the state commission of any state may adopt any commitments or conditions from other states or the FCC that are adopted after the final order in that state.
26. In the event a dispute arises between the parties with respect to any of the pre-closing and post-closing conditions herein, either party may seek resolution of the dispute by filing a petition with the Commission at any time pursuant to the Commission's procedures for enforcement of interconnection agreements. Alternative dispute resolution provisions in an interconnection agreement shall not prevent any party from filing such a petition with the Commission at any time.
27. An officer of the Merged Company with authority to provide this certification will certify, at least once every six months, that the Merged Company is in compliance with these conditions. The Merged Company will file the certification with the state commission and serve the certification on requesting carriers.

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ATTACHMENT D

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO
tw telecom of arizona llc**

**DOCKET NOS. T-01051B-10-0194; T-03902A-10-0194; T-02811B-10-0194;
T-20443A-10-0194; T-04190A-10-0194; T-03555A-10-0194
RESPONSE DATED JUNE 29, 2010**

STF 1.1 Please state the conditions which address tw telecom's concerns in the areas below and should be considered by the Commission to grant approval in the above matter.

1. Interconnection Agreements;
2. Operational Support Systems;
3. Change Management Process;
4. Wholesale Agreements;
5. Tariffs;
6. Service Quality; and
7. any other areas as appropriate.

telecom of arizona llc (TWTC) RESPONSE:

CLECs, including TWTC, are dependent upon Qwest's wholesale products and prices to serve their customers and to preserve effective competition throughout Arizona. The FCC's very recent denial of Qwest's Petition for Forbearance is clear evidence that the Phoenix MSA lacks significant wholesale competition to Qwest. In its Order denying forbearance, the FCC concluded that given the current lack of wholesale competitors, Qwest could, if not restrained, impose unjust, unreasonable, or discriminatory rates, terms, and conditions on CLECs. *See* The FCC's Phoenix Forbearance Order (PFO), FCC 10-113 (WC Docket No. 09-135 released June 22, 2010, refusing Qwest's Petition to be relieved of its statutory and regulatory obligation to provide, inter alia, DS0, DS1 and DS3 loops and transport as Unbundled Network Elements (UNEs) pursuant to section 251(c)(3) of the Federal Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. ("the Communications Act"). It is in this context – the context of Qwest's role as a wholesale provider – that tw telecom reviews the proposed merger of Qwest Corporation and CenturyTel Solutions LLC. ("CTL").

Importantly, CTL is not a Regional Bell Operating Company (RBOC) and, thus, has not operated under RBOC requirements including 271 obligations; rather it is accustomed to operating under certain Rural CLEC exemptions that will not apply when operating as an RBOC in Arizona if this merger is approved. CTL has not expressly confirmed that it fully understands these RBOC obligations, nor has it demonstrated that it can implement RBOC functions in a transparent, non-service affecting way. It is also unclear whether any or all support functions will be relocated from Qwest's current geographic locations (e.g. Phoenix and Denver) to the CTL headquarters in Monroe, Louisiana. If these functions are to be relocated, there are no indications as to when and how this transition will occur, the anticipated impacts, or what steps will be taken to ensure that appropriate personnel will fully understand their assigned roles as RBOC representatives. While CTL has indicated there will be economies of scope and scale realized from the combined enterprise, *See* Joint Application p. 11, it has not provided any details supporting these assertions. It will be imperative to understand the impacts of the inherent differences between the two companies. TWTC expects information to develop in the

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO**

tw telecom of arizona llc

**DOCKET NOS. T-01051B-10-0194; T-03902A-10-0194; T-02811B-10-0194;
T-20443A-10-0194; T-04190A-10-0194; T-03555A-10-0194**

RESPONSE DATED JUNE 29, 2010

course of discovery and this proceeding which will help Staff formulate appropriate wholesale competition conditions for the proposed merger. The following list of recommendations from TWTC expands, with permission, on other CLECs submissions, but nonetheless is also preliminary, and will be supplemented as needed.

CONDITIONS

“Merged Company” as used in this list of conditions refers to the post-merger company (CenturyLink and its Operating Companies, collectively, after the Closing Date). *All Conditions apply for three years from the Closing Date unless otherwise indicated. The term “wholesale” includes special access services (e.g., DS1, DS3, Ethernet and OCN special access)*¹.

1. Any Qwest wholesale service offered to competitive carriers at any time between the Merger Filing Date² up to and including the closing date of the transaction (the “Closing Date”) will be made available and will not be discontinued, except as approved by the Commission.
2. The Merged Company will not seek to recover through wholesale service rates or other fees paid by CLECs one-time transfer, branding, or any other transaction-related costs.
3. The Merged Company will hold wholesale customers harmless for any increases in overall management costs that result from the transaction, including those incurred by the Operating Companies.
4. Following the Closing Date, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes applicable to Qwest. The Merged Company shall continue to provide to CLECs the reports of wholesale performance metrics that Qwest provides to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to the commission staff, when requested. No Qwest Performance Indicator Definition (PID) or Performance Assurance Plan (PAP) that is offered, or provided via amendment or Commission approved plan, as of the Merger Filing Date (“Current PAP”) will be reduced, eliminated,

¹ For ease of Staff review, italics are used to begin conditions that are not included in another CLEC’s submission, or which differ materially from prior CLEC submissions. All conditions are important and a number of non-italicized conditions have been edited for clarity.

² Qwest and CenturyLink made their merger filing with the Federal Communications Commission (FCC) on May 10, 2010 (the “Merger Filing Date”). See Application for Consent to Transfer Control, *In the Matter of Qwest Communications International, Inc. and CenturyTel, Inc. d/b/a CenturyLink*, WC 10-110, May 10, 2010 (“FCC Joint Application”).

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STAFF'S FIRST SET OF DATA REQUESTS TO**

tw telecom of arizona llc

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T-20443A-10-0194; T-04190A-10-0194; T-03555A-10-0194

RESPONSE DATED JUNE 29, 2010

or withdrawn for at least five years after the Closing Date. Following the Closing Date, the Merged Company shall meet or exceed the average wholesale performance provided by Qwest to each CLEC for one year prior to the Merger Filing Date for each PID, product, and disaggregation. If the Merged Company fails to provide wholesale performance as described in the preceding sentence, the Merged Company will also make remedy payments to each affected CLEC in an amount as would be calculated using the methodology (e.g., modified Z test, critical Z values, and escalation payments) in the Current PAP, for each missed occurrence when comparing performance post- and pre-Closing Date ("Additional PAP"). The state commission may determine that additional remedies are required, if the remedies described in this paragraph do not result in the required wholesale service quality performance or if the Merged Company violates the merger conditions.

5. *In the legacy Qwest ILEC territory, the Merged Company will meet or exceed the average monthly performance provided by Qwest to each CLEC for one year prior to the Merger Filing Date for each metric contained in the CLEC-specific monthly special access performance reports that Qwest provides to CLECs as of the Merger Filing Date. For each month that the Merged Company fails to meet Qwest's average monthly performance for any of these metrics, the Merged Company will make penalty payments [TBD] on a per-month, per-metric basis to each affected CLEC.*
6. *In the legacy CenturyLink ILEC territory, the Merged Company shall provide to CLECs the reports of wholesale performance metrics that Qwest provides to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to the Commission staff, when requested. Beginning 12 months after the Closing Date, the requirements set forth in paragraph 5 shall apply to the Merged Company in the legacy CenturyLink ILEC territory, thereby requiring the Merged Company's average monthly performance in providing special access services in the legacy CenturyLink ILEC territory to meet or exceed the Merged Company's average monthly performance for each CLEC in the legacy Qwest ILEC territory for one year prior to the Merger Filing Date.*
7. The Merged Company will assume or take assignment of all obligations under Qwest's interconnection agreements, intrastate tariffs and interstate tariffs, including the Annual Incentive contract tariff, commercial agreements including but not limited to Qwest wholesale metro Ethernet agreement, Qwest OCN (Sonet) agreement, Qwest Local Services Platform (QLSP) agreement, and Qwest Broadband for Resale agreements, line

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T-20443A-10-0194; T-04190A-10-0194; T-03555A-10-0194
RESPONSE DATED JUNE 29, 2010**

sharing agreements, and other existing arrangements with wholesale customers (“Assumed Agreements”). The Merged Company shall not require wholesale customers to execute any documents(s) to effectuate the Merged Company’s assumption or taking assignment of these obligations. The Merged Company shall not terminate or change the rates, terms or conditions of any effective Assumed Agreements during the unexpired term of any Assumed Agreement or for a period of three years from the Merger Announcement Date,³ whichever occurs later, unless requested by the interconnecting party, or required by a change of law. The Merged Company will assume or take assignment of all obligations under Qwest alternative form of regulation plans [in Arizona, the Revised Price Cap Plan (see ACC Decision No. 68604)].

8. *The Merged Company will offer Ethernet and OCN services in the legacy CenturyLink territory at prices no higher than those offered in the legacy Qwest territory.*
9. The Merged Company will allow requesting carriers to extend existing interconnection agreements, whether or not the initial or current term has expired or is in “evergreen” status, until at least 42 months from the Closing Date, or the date of expiration, whichever is later.
10. The Merged Company shall allow a requesting competitive carrier to use its pre-existing interconnection agreement, including agreements entered into with Qwest, as the basis for negotiating a new replacement interconnection agreement. If Qwest and a requesting competitive carrier are in negotiations for a replacement interconnection agreement before the Closing Date, the Merged Company will allow the requesting carrier to continue to use the negotiations draft upon which negotiations prior to the Closing Date have been conducted as the basis for negotiating a replacement interconnection agreement. In the latter situation (ongoing negotiations), after the Closing Date, the Merged Company will not substitute the negotiations template interconnection agreement proposal of any legacy CenturyLink operating company for the negotiations proposals made before the Closing Date by legacy Qwest.
11. In the legacy CenturyLink ILEC territory, the Merged Company will permit a requesting carrier to opt into any interconnection agreement to which Qwest is a party in the same state. If there is no Qwest ILEC in a state, the Merged Company will permit a requesting carrier to opt into any interconnection agreement to which Qwest is a party in any state in

³ Qwest and CenturyLink entered into their merger agreement on April 21, 2010 (the “Merger Announcement Date”).

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which Qwest is an ILEC. Agreements subject to the opt-in rights described in this paragraph will apply in full, without modification and subject to the other conditions set forth herein, except to the extent that a state commission determines that the agreement must be modified because (1) it is technically infeasible for the Merged Company to comply with one or more provision of the agreement or (2) the prices set forth in the agreement are inconsistent with TELRIC-based prices in state in question. "CenturyLink ILEC territory," as used in this paragraph, excludes any CenturyLink ILEC for which a state commission has granted CenturyLink a rural exemption pursuant to Section 251(f) of the Communications Act before the Merger Filing Date. More consistency in interconnection agreement offerings will provide more consistency for wholesale customers dealing with CenturyLink in multiple states, using interconnection agreement terms from the pre-closing entity that both has been through Section 271 approval proceedings and has the greater volume of CLEC wholesale business.

12. To the extent that an interconnection agreement is silent as to an interval for the provision of a product, service or functionality or refers to Qwest's Service Interval Guide (SIG), the applicable interval, after the Closing Date, shall be no longer than the interval in Qwest's SIG as of the Merger Filing Date.
13. Rates for tandem transit service, any interstate special access tariffed or non-tariffed (including Ethernet) offerings, any intrastate wholesale tariffed offering, and any service for which prices are set pursuant to Sections 252(c)(2) and Section 252(d) of the Communications Act shall not be increased by the Merged Company above the levels applicable as of the Merger Announcement Date; nor will the Merged Company create any new rate elements or charges for distinct facilities or functionalities that are currently already provided under existing rates. The Merged Company shall continue to offer any term and volume discount plans offered as of the Merger Announcement Date without any changes to the rates, terms, or conditions of such plans. The Merged Company will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term.
14. The Merged Company will not seek to avoid any of the obligations of CenturyLink under the Assumed Agreements on the grounds that CenturyLink is not an incumbent local exchange carrier ("ILEC") under the Communications Act. The Merged Company will waive its right to seek the exemption for rural telephone companies under Section 251(f)(1) and its right to seek suspensions and modifications for rural carriers under Section 251(f)(2) of the Communications Act.

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15. In the legacy Qwest ILEC territory, the Merged Company shall be classified as a Bell Operating Company ("BOC"), pursuant to Section 3(4)(A)-(B) of the Communications Act and shall be subject to all requirements applicable to BOCs, including but not limited to the "competitive checklist" set forth in Section 271(c)(2)(B), the obligation to ensure there is no backsliding, and the nondiscrimination requirements of Section 272(e) of the Communications Act.
16. The Merged Company will not seek to reclassify as "non-impaired" any wire centers for purposes of Section 251 of the Communications Act, nor will the Merged Company file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 obligation or dominant carrier regulation in any wire center.
17. The Merged Company shall provide to wholesale carriers, and maintain and make available to wholesale carriers on a going-forward basis, up-to-date escalation information, contact lists, and account manager information at least 30 days prior to the Closing Date. For changes to support center location, organizational structure, or contact information, the Merged Company will provide at least 30 days advance written notice to wholesale carriers. For other changes, the Merged Company will provide reasonable advanced notice of the changes. The information and notice provided shall be consistent with the terms of applicable interconnection agreements.
18. The Merged Company will make available to each wholesale carrier the types and level of data, information, and assistance that Qwest made available as of the Merger Filing Date concerning wholesale Operational Support Systems functions and wholesale business practices and procedures, including information provided via the wholesale web site (which Qwest sometimes refers to as its Product Catalog or "PCAT"), notices, industry letters, the change management process, and databases/tools (loop qualification tools, loop make-up tool, raw loop data tool, ICONN database, *etc.*).
19. After the Closing Date, the Merged Company will maintain the Qwest Change Management Process ("CMP"), utilizing the terms and conditions set forth in the CMP Document (which is Exhibit G to some interconnection agreements), including those terms and conditions governing changes to the CMP Document. The Merged Company will dedicate the resources needed to complete pending CLEC change requests in a commercially reasonable time frame.

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20. The Merged Company shall ensure that the legacy Qwest wholesale and CLEC support centers are sufficiently staffed by adequately trained personnel dedicated exclusively to wholesale operations so as to provide a level of service that is equal to or superior to that which was provided by Qwest prior to the Merger Filing Date and to ensure the protection of CLEC information from being used for the Merged Company's retail operations. CenturyLink will employ people who are dedicated to the task of meeting the needs of CLECs and other wholesale customers. The total number of employees dedicated to supporting wholesale services for CLEC customers in legacy Qwest territory will be no fewer than the number of such employees employed by legacy Qwest as of the Merger Filing Date.
21. *The Merged Company will not assign any pass code, password or Personal Identification Number (PIN) to retail customer accounts in a manner that will prevent or delay a change in local service providers. The Merged Company will not require that a new local service provider provide, on any service request or at any time during the porting process, any pass code, password or PIN used by an end user customer of the Merged Company.*
22. *The Merged Company will utilize the wholesale OSS, including electronic bonding for all functionalities (including quoting, ordering, and maintenance), in the legacy Qwest territory to provide special access services in the legacy CenturyLink territory.*
23. *After the Closing Date, in legacy Qwest ILEC territory, the Merged Company will use and offer to wholesale customers the legacy Qwest Operational Support Systems (OSS) and provide at least the same level of wholesale service quality, including support, data, functionality, performance, and electronic bonding for all functionalities (including quoting, ordering, and maintenance), provided by Qwest prior to the Merger Filing Date, unless and until the procedures described below are met. The Merged Company will not replace or integrate Qwest systems without first complying with the following procedures:*
 - a. The Merged Company will prepare and submit a detailed plan to the Wireline Competition Bureau of the FCC and the state commission of any affected state before replacing or integrating Qwest system(s). The Merged Company's plan will describe the system to be replaced or integrated, the surviving system, and why the change is being made. The plan will describe CenturyLink's previous experience with replacing or integrating systems in other jurisdictions, specifying any problems that occurred during that process and what has been done to avert those problems in the

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planned transition for the affected states. The Merged Company's plan will also identify planned contingency actions in the event that the Merged Company encounters any significant problems with the planned transition. The plan submitted by the Merged Company will be prepared by information technology professionals, retained at the Merged Company's expense, with substantial experience and knowledge regarding legacy CenturyLink and legacy Qwest systems processes and requirements. Interested carriers will have the opportunity to comment on the Merged Company's plan.

- b. For any Qwest system that was subject to third party testing (*e.g.*, as part of a Section 271 process), robust, transparent third party testing will be conducted for the replacement system to ensure that it provides the needed functionality and can appropriately handle commercial volumes. The types and extent of testing conducted during the Qwest Section 271 proceedings will provide guidance as to the types and extent of testing needed for the replacement system. The Merged Company will not limit CLEC use of, or retire, the existing system until after third party testing has been successfully completed for the replacement system.
 - c. For any replacement or to be integrated system, the Merged Company will allow for coordinated testing with CLECs, including a stable testing environment that mirrors production and, when applicable, controlled production testing. The Merged Company will provide the wholesale carriers training and education on any wholesale OSS implemented by the Merged Company without charge to the wholesale carrier.
- 24. The Merged Company will process orders in compliance with federal and state law, as well as the terms of applicable interconnection agreements.
 - 25. The Merged Company will provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements. When a number is ported from the Merged Company, E-911 records will be unlocked at the time of porting. Trouble reports involving locked E-911 records will be addressed within 24 hours.
 - 26. The Merged Company will provide routine network modifications in compliance with federal and state law, as well as the terms of applicable interconnection agreements.

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27. After the Closing Date, the Merged Company will engineer and maintain its network in compliance with federal and state law, as well as the terms of applicable interconnection agreements. Resources will not be diverted to merger-related activities at the expense of maintaining the Merged Company's network.
- a. The Merged Company shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop.
 - b. The Merged Company will retire copper in compliance with federal and state law, as well as the terms of applicable interconnection agreements and as required by a change of law.
 - c. If, after the Closing Date, the Merged Company's performance with respect to network maintenance in Arizona compares unfavorably with other states in legacy Qwest ILEC territory, the Commission may require the Merged Company to submit regular reports regarding network maintenance quality or may open an investigation.
28. *The Merged Company will provide conditioned copper loops in compliance with federal and state law and at rates approved by the applicable state commission. Line conditioning is the removal from a copper loop of any device that could diminish the capability of the loop to deliver xDSL. Such devices include bridge taps, load coils, low pass filters, and range extenders. Insofar as it is technically feasible, the Merged Company shall test and report troubles for all the features, functions and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only. If the Merged Company seeks to change rates approved by a state commission for conditioning, the Merged Company will provide conditioned copper loops in compliance with the relevant law at the current commission-approved rates unless and until a different rate is approved.*
29. All Conditions herein may be expanded or modified as a result of regulatory decisions concerning the proposed transaction in other states, including decisions based upon settlements, that impose conditions or commitments related to the transaction. CenturyLink agrees that the state commission of any state may adopt any commitments or conditions from other states or the FCC that are adopted after the final order in that state.
30. In the event a dispute arises between the parties with respect to any of the pre-closing and post-closing conditions herein, either party may seek resolution of the dispute by filing a

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petition with the Commission at any time pursuant to the Commission's procedures for enforcement of interconnection agreements. Alternative dispute resolution provisions in an interconnection agreement shall not prevent any party from filing a petition with the Commission at any time.

31. An officer of the Merged Company with authority to provide this certification will certify, at least once every six months, that the Merged Company is in compliance with these conditions. The Merged Company will file the certification with the state commission and serve the certification on requesting carriers.