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.

> 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,

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[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

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[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.

[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:

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[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.*

> [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 companies . . . .[86]

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 system[91] 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

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[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

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[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

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[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]

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[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.

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

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[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

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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]

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[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.

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 eause 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.

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[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.

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 reports[122] 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***]

[***END CONFIDENTIAL***]

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/wcb/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 Access[129]			
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 docs 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***]**

[*END CONFIDENTIAL***]** Thus, there is a legitimate risk that the Merged Company will increase special access rates. Additionally, while Qwest offers via contract tariff an "Annual Incentive" special access discount plan for DS1, DS3, OCn, and Ethernet services,[130] CenturyLink does not offer a similar plan. Therefore, there is a risk that the Merged Company will discontinue Qwest's Annual Incentive plan.

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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).

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

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[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

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[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

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[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