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August 19, 2010

Barbara Neilson
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55101

Re: In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink
Docket No. P-421, et al./PA-10-456

Dear Judge Neilson:

Enclosed please find Tim Gates' Direct Testimony on behalf of Cbeyond Communications, LLC; Charter Fiberlink CCO, LLC; Integra Telecom, Inc.; Level 3 Communications, LLC; McLeodUSA Telecommunications Services, Inc. d/b/a Paetec Business Services; US Link, Inc. d/b/a TDS Metrocom; tw telecom of minnesota, llc; Orbitcom, Inc. and Popp.com, Inc. in the above entitled Docket. The Direct Testimony is organized with questions and answers being presented by Tim Gates.

The Testimony contains Highly Sensitive Trade Secret and Trade Secret information with independent economic value which is not generally known to, and not readily ascertainable to, competitors of the Parties which could obtain economic value from its disclosure. The Parties maintain the information as highly sensitive trade secret and trade secret. Accordingly, the Testimony qualifies as "trade secret information" as defined in Minn. Stat. § 13.37(1)(b), and the Parties request that this data be treated as trade secret information.

Very truly yours,

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DL/cm
Enclosures
cc: All parties of record
1645240v1

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink

MPUC Docket No. P-421, et al./PA-10-456
OAH Docket No. 11-2500-21391-2

Carolyn McCune, being first duly sworn on oath, deposes and states that on the 19th day of August, 2010, a copy of the Tim Gates' Direct Testimony on behalf of Cbeyond Communications, LLC; Charter Fiberlink CCO, LLC; Integra Telecom, Inc.; Level 3 Communications, LLC; McLeodUSA Telecommunications Services, Inc., d/b/a Paetec Business Services, US Link, Inc., d/b/a TDS Metrocom; tw telecom of minnesota, llc; Orbitcom, Inc. and Popp.com, Inc., in the above entitled docket was filed electronically or mailed by United States first class mail, postage prepaid thereon, as designated on the Official Service List on file with the Minnesota Public Utilities Commission.

Carolyn McCune

SWORN TO BEFORE ME this
19th day of August, 2010.

NOTARY PUBLIC

JEAN J. HUNSINGER
Notary Public-Minnesota
My Commission Expires Jan 31, 2015

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink	Docket No. P-421, et al./PA-10-456

DIRECT TESTIMONY OF TIMOTHY J GATES

ON BEHALF OF

CBEYOND COMMUNICATIONS, LLC, CHARTER FIBERLINK CCO, LLC, INTEGRA TELECOM, INC., LEVEL 3 COMMUNICATIONS, LLC, MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., d/b/a PAETEC BUSINESS SERVICES, US LINK, INC. d/b/a TDS METROCOM, TW TELECOM OF MINNESOTA, LLC, ORBITCOM, INC. AND POPP.COM

PUBLIC VERSION
Trade Secret and Highly Sensitive Trade Secret Data Has Been Redacted

August 19, 2010

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Exhibit TJG-10 – CenturyLink Notice re: Changes to OSS

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

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

Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION WITH THE FIRM?

A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in regulatory and litigation support, economic and financial modeling, and business plan modeling and development. QSI provides consulting services for regulated utilities, competitive providers, government agencies (including public utility commissions, attorneys general and consumer councils) and industry organizations. I currently serve as Senior Vice President.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE.

A. I received a Bachelor of Science degree from Oregon State University and a Master of Management degree, with an emphasis in Finance and Quantitative Methods, from Willamette University's Atkinson Graduate School of Management. Since I received my Masters, I have taken additional graduate-level courses in statistics and econometrics. I have also attended numerous courses and seminars specific to the telecommunications industry, including both the NARUC

Annual and NARUC Advanced Regulatory Studies Programs.

Prior to joining QSI, I was a Senior Executive Staff Member at MCI WorldCom, Inc. ("MWCOM"). I was employed by MCI and/or MWCOM for 15 years in various public policy positions. While at MWCOM I managed various functions, including tariffing, economic and financial analysis, competitive analysis, witness training and MWCOM's use of external consultants. Prior to joining MWCOM, I was employed as a Telephone Rate Analyst in the Engineering Division at the Texas Public Utility Commission and earlier as an Economic Analyst at the Oregon Public Utility Commission. Exhibit TJG-1 contains a complete summary of my work experience and education.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION ("MINNESOTA PUC")?

A. Yes, on numerous occasions. I testified as an expert witness in the following Minnesota PUC Dockets: P-5535, 421/M-08-952; P-3123, 430/M-08-570; P-5733/C/07-296; P-999-CI-03-961; P-442, 421, 3012/M-01-1916 et al.; and P-442, 421/M-96-855 et al. In addition, I have testified more than 200 times in 45 states and Puerto Rico, and filed comments with the Federal Communications Commission ("FCC") on various public policy issues including costing, pricing, local entry, competition, universal service, strategic planning, mergers and network issues. *See,* Exhibit TJG-1.

Q. DO YOU HAVE EXPERIENCE WITH THE ISSUES IN THIS PROCEEDING?

A. Yes. While at MCI I was involved in several mergers. I have also observed the consolidation in the telecommunications industry over the last ten years or so. Over the course of my career, I have investigated and/or testified on virtually every issue that defines the wholesale relationship between a Bell Operating Company ("BOC") or incumbent local exchange carrier ("ILEC") and their competitive local exchange carrier ("CLEC") customers/competitors. Further, I have experience assisting CLECs in their wholesale relationships with both companies involved in the proposed transaction. For instance, I have participated in dozens of arbitrations since the 1996 amendments to the Communications Act of 1934 ("Act")[1] were enacted, including arbitrations and other proceedings involving Qwest and CenturyLink (and/or their predecessors).

I am knowledgeable about the interconnection and business practice issues addressed in this testimony as well as the potential impacts the proposed transaction may have on the market, competitors and consumers. Further, I have reviewed the Petition filed by Qwest and CenturyLink in this proceeding[2] and the associated documentation.

[1] Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996) ("Telecom Act" or "Act").

[2] See, Joint Petition for Expedited Approval of Indirect Transfer of Control, May 13, 2010 ("Minnesota Petition"). For the purposes of this testimony, I will use CenturyLink (as opposed to CenturyTel) to refer to the company seeking to acquire Qwest, unless referring specifically to the legacy CenturyTel company that existed prior to the merger with Embarq.

Q. ON WHOSE BEHALF ARE YOU FILING THIS DIRECT TESTIMONY?

A. My testimony is being filed on behalf of a number of CLECs: Cbeyond Communications, LLC, Charter Fiberlink CCO, LLC, Integra Telecom, Inc., Level 3 Communications, LLC., McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services, US Link, Inc. d/b/a TDS Metrocom, tw telecom of Minnesota, llc., Orbitcom, Inc. and POPP.COM.

II. PURPOSE AND ORGANIZATION OF TESTIMONY

Q. PLEASE EXPLAIN THE PURPOSE OF YOUR TESTIMONY.

A. The purpose of my testimony is to demonstrate that the proposed transaction should be rejected, or in the alternative, approved only subject to robust, enforceable commitments or conditions necessary to protect the public interest. The information (or lack thereof) provided by Qwest and CenturyLink (hereafter collectively referred to as "Joint Petitioners") to date is woefully insufficient to demonstrate that the proposed transaction is in the public interest, and in fact, that sparse information shows that there is substantial harm that could befall competition and competitors, their end users and ultimately the public interest.

At this point, there is only one thing certain about the proposed transaction: uncertainty. The Joint Petitioners have put the parties on notice that material changes are coming post-transaction, but they have been unable or unwilling to provide any detail about those material changes – i.e., what will and will not

change, when changes will occur, how the changes will or will not impact consumers and/or competitors, or why those changes will be made. The significant commercial and regulatory uncertainty surrounding the proposed transaction, in and of itself, is harmful because it provides the Joint Petitioners the opportunity to operate to the detriment of competitors and the public. Such uncertainty and the very real potential for harm to the public interest must be addressed by either rejecting the transaction or putting in place enforceable conditions/commitments to prevent or offset this harm. Likewise, as Dr. Ankum explains, the alleged benefits touted by the Joint Petitioners amount to nothing more than unsupported, vague statements made to secure transaction approval, and are not verifiable benefits on which the Commission should rely. As a result, the future of telecommunications markets, telecommunication competition upon which consumers rely, and economic development in the state is in serious question due to the proposed transaction.

Further, I place this proposed transaction in context by identifying significant problems that have occurred following similar, recent mergers, including the systems meltdown following the FairPoint acquisition of Verizon properties. These examples provide the Commission and competitors an indication of the problems that could be anticipated in Qwest's territory post-transaction, and should give the Commission serious pause when evaluating the Joint Petitioners'

unsupported claims – particularly in the absence of any true measureable commitments from the Joint Petitioners that benefits will result.

Finally, to the extent the Commission does not reject the transaction outright, my testimony describes and recommends conditions that the Commission should adopt or enforceable commitments the Commission should obtain from the Joint Petitioners as prerequisites to transaction approval to prevent or offset the harm that would result if the transaction is approved as filed by the Joint Petitioners.

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. The remainder of my testimony is organized as follows:

- Section III discusses the requirements and obligations related to interconnection, UNEs and collocation, as well as the significant efforts (and costs) expended by CLECs to get ILECs to live up to these requirements and obligations so that CLECs can secure interconnection, UNEs and collocation on terms, rates and conditions that are just, reasonable and nondiscriminatory.
- Section IV discusses the harm to CLECs related to CenturyLink taking control of Qwest's wholesale operations, including the challenges of integrating the two companies as well as examples from this very proceeding showing that the Merged Company[3] is attempting to increase transaction costs and undermine CLECs' ability to protect themselves from merger-related harm.
- Section V discusses the lessons learned from recent, similar transactions. These examples show that the post-transaction integration process in recent mergers caused significant harm to CLECs and retail customers, despite the merging companies in those cases making the same types of unsupported statements about merger benefits that the Joint Petitioners have made in this proceeding.
- Section VI discusses certain commitments/conditions that the Commission should impose upon the Joint Petitioners if the Commission is inclined to approve the proposed transaction. Other commitments/conditions are

[3] *See*, Exhibit TJG-8 ("'Merged Company,' when used in this list of conditions, refers to the post-merger company (CenturyLink and its Operating Companies, collectively, after the Closing Date)."

discussed in the testimony of Dr. Ankum. These commitments/conditions are critical to prevent or offset the harms the proposed transaction will cause for the market, CLECs and consumers.

III. CLEC EFFORTS FOR EFFICIENT INTERCONNECTION

A. Interconnection Rights and Responsibilities Under the Act

Q. PLEASE DESCRIBE THE INTERCONNECTION REQUIREMENTS UNDER THE TELECOM ACT.

A. The FCC and state regulatory bodies have recognized that the various subsections of Section 251 of the Act impose escalating interconnection obligations on carriers depending upon their classifications (i.e., telecommunications carrier, LEC, or ILEC). These classifications are based upon their market power, economic position (e.g., monopoly) and attendant public obligations (e.g., common carrier obligations).

Section 251(a) of the Act identifies the general duties of telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(b) of the Act identifies the general duties of all LECs which include number portability, dialing parity, and reciprocal compensation. Section 251(c) imposes additional obligations and specific interconnection duties on ILECs, including the duty to negotiate an interconnection agreement ("ICA") in good faith, provide interconnection on more specific rates, terms and conditions, provide unbundled network elements

("UNEs"), offer services for resale at wholesale rates, provide notice of network changes and provide collocation when requested. The FCC's *Local Competition Order*[4] at paragraph 1241 describes these additional obligations as follows:

> Section 251(c) imposes obligations on incumbent LECs in addition to the obligations set forth in sections 251(a) and (b). It establishes obligations of incumbent LECs regarding: (1) good faith negotiation; (2) interconnection; (3) unbundling network elements; (4) resale; (5) providing notice of network changes; and (6) collocation.

These duties and obligations are all focused on affording CLECs equal, non-discriminatory access to ILEC network facilities, systems and services.

Q. ARE ALL ILECS SUBJECT TO THE SAME REQUIREMENTS UNDER THE ACT?

A. All ILECs are subject to the requirements of Section 251(c) of the Act. However, some ILECs –such as Qwest – are both ILECs *and* Bell Operating Companies (or BOCs) under the Act. The Act requires BOCs to comply not only with Section 251(c) of the Act, but also Section 271 of the Act. Section 271 requires BOCs to demonstrate compliance with the 14-point competitive checklist before they are allowed to provide in-region interLATA services. The FCC granted Qwest 271 authority throughout its 14-state BOC territory in the 2002-2003 timeframe. Non-BOC ILECs, such as CenturyLink, are not required to comply with Section 271 requirements.

[4] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; First Report and Order, CC Docket No. 96-98, FCC 96-325, Released August 8, 1996 ("*Local Competition Order*").

Q. HOW DOES THE STATE GET INVOLVED IN IMPLEMENTING THE FEDERAL TELECOMMUNICATIONS REGULATORY FRAMEWORK?

A. The state commissions have jurisdiction over approving ICAs and related disputes (e.g., arbitrations) pursuant to Section 252 of the Act[5] and numerous provisions of state law. State commissions also establish the rates ILECs are permitted to charge for UNEs, interconnection and collocation under Sections 251 and 252, applying the FCC's total element long-run incremental cost methodology ("TELRIC"). State commissions also determine whether certain ILEC central offices meet the federal standards for "delisting" UNE loops or transport as a Section 251 unbundled network element. In addition, states provided consultation to the FCC in relation to the BOCs' applications for Section 271 approval. As explained below, in this role, the state commissions conducted several years' worth of fact-finding, hearings, and testing, and issued extensive recommendations to the FCC regarding the BOCs' adherence to the 14-point competitive checklist. Many states have continued their role in monitoring Qwest's 271 compliance by monitoring the Change Management Process ("CMP") and Qwest's wholesale performance indicators and associated performance remedy plans. Furthermore, states have an important role in determining whether a telecommunications company should be relieved of its duties under Section 251 based upon the rural status of that company.

[5] 47 U.S.C. §§ 252(b), (c) (empowering state regulators to arbitrate interconnection agreements between ILECs and competitors; establishing arbitration procedures; establishing substantive arbitration standards).

B. ILEC Impacts on Market Entry Methods

Q. DID THE ACT MANDATE A PARTICULAR ENTRY STRATEGY FOR COMPETITION?

A. No. Back in 1995, when Congress was establishing the final terms of the new federal law (the Telecommunications Act was signed into law in early February 1996), nobody was really sure how, exactly, competition would develop. In the FCC's *Local Competition Order* the FCC discussed the Act's anticipated market entry methods.

> The Act contemplates three paths of entry into the local market -- the construction of new networks, the use of unbundled elements of the incumbent's network, and resale. The 1996 Act requires us to implement rules that eliminate statutory and regulatory barriers and remove economic impediments to each. We anticipate that some new entrants will follow multiple paths of entry as market conditions and access to capital permit. Some may enter by relying at first entirely on resale of the incumbent's services and then gradually deploying their own facilities.[6]

Since passage of the 1996 Act, competitors have used all three paths of entry – (1) resale, (2) UNEs, and (3) entirely separate network. The clients I represent in this proceeding fall into all three categories. In cases two and three, the carriers are facilities-based – *i.e.*, they own their own switches and in some instances, their own metro fiber rings that provide interoffice transport. For instance, Integra and PAETEC/McLeodUSA primarily install their own switching and fiber networks and purchase local access loops, interoffice transport, collocation and other services from the ILEC in order to access customers (though they both serve a

[6] *Local Competition Order* at ¶ 12.

limited number of customers via resale). By comparison, cable-based CLECs like Charter, own both the switch and the "last mile" facilities (i.e., hybrid fiber coaxial distribution plant). But, like Integra and PAETEC, Charter must still interconnect with the ILEC in order to send and receive traffic to the public switched telephone network. In this way, the road to local competition always goes through the ILEC no matter what entry strategy is employed.

Q. CAN RELYING ON THE ILEC FOR NETWORK ELEMENTS OR INTERCONNECTION RESULT IN CHALLENGES FOR THE CLEC?

A. Yes. Putting aside the normal competitive risks of any business, a CLEC faces the "Catch 22" of obtaining essential elements of its productive resource – material pieces of its local network – from its principal competitor. For this competitive model to work, the business, technical and operational terms by which the bottleneck elements are available and by which networks are interconnected must be efficient, technology-neutral and stable, so that CLECs can plan their business and make reasonable investment decisions. The problem with this model is that ILECs have the incentive to hinder the CLECs' efforts at every turn. As the FCC correctly noted in the *Local Competition Order*, "An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to the incumbent

LEC's subscribers."[7] That is why one of the most critical components of this regulatory scheme is the vigilant enforcement of the "stringent" nondiscrimination standard that Congress imposed on ILECs in the Telecommunications Act. Under the stringent standard of nondiscrimination, not only is the ILEC required to treat other carriers equally, the ILEC is also required to treat competitors the same as it treats itself in providing access to the bottleneck elements of the local network.[8] As the FCC noted, this more stringent nondiscrimination requirement is essential to ensure that competitors have a "meaningful opportunity to compete" against the ILEC.[9]

Q. TELECOMMUNICATIONS COMPETITION SEEMS TO DIFFER FROM THE STANDARD COMPETITIVE BUSINESS MODEL. WOULD YOU AGREE?

A. Yes. With most retail products or services, if customers want to switch suppliers, they just switch. But in local telecommunications markets, the old provider (which in a majority of cases is the ILEC) has to help move the retail customer to the new provider. Likewise, with most retail products or services, if a customer switches, the old supplier is simply out of the picture. But in local telecommunications, the old provider (when it is the ILEC) remains constantly involved, sending calls to, and receiving calls from, its own former customers (or

[7] *Local Competition Order* at ¶ 10.

[8] *Id.* at 313-315. Equal treatment is subject to two limited exceptions - legitimate cost differences and technical infeasibility, the later which the FCC said would rarely occur. Also, the burden to prove legitimate cost differences or technical infeasibility rests with the ILEC.

[9] *Id* at ¶ 315.

the old provider may continue a relationship with the customer by continuing to provide long-distance service, for example, after the customer has switched local providers). And all the while, the new provider must rely on the old provider for critical inputs to the new provider's retail services such as interconnection, UNEs, collocation and resale.

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

Q. BASED ON THE INFORMATION ABOVE, IT SEEMS THAT THE CLECS ARE ALSO CUSTOMERS OF THE ILEC. IS THAT CORRECT?

A. Yes. The CLECs are frequently customers of the ILECs, purchasing network elements or services from the ILEC on a wholesale basis for use in providing

competitive retail services to end-user customers. Significantly, the ILEC will continue to compete for that retail end-user customer's business, while at the same time, acting as a wholesale provider of critical inputs to the competitor. Thus, the ILEC is both a competitor of, and wholesale supplier to, the competitive providers in that market.

Q. DOES THE FACT THAT CLECS ARE CUSTOMERS OF THE JOINT PETITIONERS INFLUENCE THEIR CONCERNS REGARDING THE PROPOSED TRANSACTION?

A. Absolutely. Not only are the CLECs concerned about the potential to pass through costs of the proposed transaction in rates, they are also concerned with the ongoing stability and viability of the companies. As customers, they also want to know that the services currently purchased will continue to be available and that the quality and features will at least be constant, if not improve. Further, if this transaction is approved they want to ensure that the Merged Company does not continue to impose certain anti-competitive wholesale practices on competitors. Qwest and CenturyLink should not be rewarded with merger approval for past violations or noncompliance with regulatory requirements, and the Merged Company should not be allowed to continue anti-competitive practices going forward. The proposed transaction is contrary to the public interest if a merging party is violating the law. As discussed by Dr. Ankum, the proposed transaction could make this problem worse in each of the states at issue

by increasing the Merged Company's incentive to engage in or continue anticompetitive conduct as a result of its increased network footprint and efforts to achieve the enormous synergy savings projected by the Joint Petitioners. Finally, integration has been difficult in many mergers that Dr. Ankum and I discuss in our testimonies and the CLECs need enforceable, written conditions/commitments that the best systems of the Joint Petitioners will be in place following the proposed transaction, and that the integration of the merging companies will not negatively impact the competitors' operations and ability to compete.

Q. PLEASE CONTINUE WITH YOUR DISCUSSION OF THE UNIQUE CONDITIONS IN TELECOMMUNICATIONS AS OPPOSED TO OTHER INDUSTRIES.

A. There is a phenomenon referred to in the industry as "network effects," or, sometimes, as "Metcalfe's Law." The basic idea is that a network becomes more and more valuable as more and more people are connected to it. A telephone "network" with only one phone attached is useless. A network with two phones is useful, a thousand phones is better, and a million is even better. To state the obvious, the value of a service is maximized if the customer can contact any other person on the network. In competitive terms, though, this means that, other things being equal, whichever network is the biggest will be the most valuable, and the one to which consumers will want to be connected.

Q. DOES THE NETWORK EFFECT RESULT IN THE INCUMBENT'S NETWORK ALWAYS BEING MORE VALUABLE THAN SMALLER NETWORKS?

A. Absent regulation that would be the case. Even in the Minnesota Petition, Qwest and CenturyLink discuss the importance of size in order to compete. Specifically, at page 15 of the Petition they state:

> Even a carrier that knows its customers' preferences cannot compete effectively in today's marketplace without sufficient size and scope to match those preferences with suitable products or services offered at affordable rates.

As long as the existing, incumbent network is bigger than a competing network, the competing network will not be able to attract any customers – unless those customers can call, and be called by, the people connected to the existing network. Additionally, as the incumbent's network gets bigger, it is able to spread its costs over a larger customer base – resulting in efficiencies and economies of scale and scope. Competition simply cannot develop if competitors do not have clear and stable terms, conditions and rates for connecting to, and exchanging traffic with, the existing incumbent network. Similarly, competition would not develop if the ILEC is able to keep the benefits of its economies of scale and scope, and associated efficiencies for itself and provide competitors access to critical bottleneck elements of the local network on a more costly or less efficient basis. Again, Sections 251 and 271 of the Act are designed to ensure that CLECs are on an equal footing with the ILEC and the benefits accrued by the

ILEC due to network effects and economies of scale and scope are realized by the local telecommunications market as a whole, including CLECs.

Q. HAS FACILITIES-BASED COMPETITION BEEN ABLE TO OVERCOME THE MARKET POWER AND CONTROL THAT ILECS AND BOCS POSSESS OVER THEIR LOCAL MARKETS?

A. No. The latest FCC reports, even when adding in interconnected VoIP offerings, still show the ILECs with more than 70 percent of the market.[10] Further, the FCC has recognized Qwest's monopoly over wholesale inputs relied upon by CLECs. In rejecting Qwest's recent petition for forbearance in the Minneapolis, Denver, Seattle and Phoenix metropolitan statistical areas ("MSAs"), the FCC concluded that "[t]he record does not reflect any significant alternative sources of wholesale inputs for carriers in the four MSAs."[11] And specifically with respect to Qwest's serving area in Phoenix, Arizona, in June 2010, the FCC concluded:

> …based on the data in the record, Qwest fails to demonstrate that there is sufficient competition to ensure that, if we provide the requested relief, Qwest will be unable to raise prices, discriminate unreasonably, or harm customers. For example, the record reveals that no carrier besides Qwest provides meaningful wholesale services throughout the Phoenix marketplace, and that competitors

[10] FCC "Local Telephone Competition: Status as of December 31, 2008" released June 2010 at Figure 2 showing ILEC residential and business market share of 73%.

[11] *In the Matter of Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas,* Memorandum Opinion and Order, WC Docket No. 07-97, FCC 08-174, Released July 25, 2008 ("*Qwest Forbearance Order*") at ¶ 37.

> offering business services largely must rely on inputs purchased from Qwest itself to provide service.[12]

Importantly, the FCC pointed to the lack of options for wholesale customers as a reason for denying Qwest's forbearance petition. This market power not only extends to wholesale services such as UNEs, interconnection and collocation required of ILECs pursuant to Section 251(c) of the Act, but also to other wholesale services provided by the ILECs, such as special access,[13] as evidenced by the supracompetitive rates ILECs are currently charging for special access in areas where they have received special access pricing flexibility. The fact is that ILECs and BOCs continue to be entrenched incumbents in their local territories and the competition in those spaces is fragile and depends largely on use of incumbent facilities for its very existence.

C. Imposition of Costs on CLECs for Interconnection

Q. HAVE CLECS SPENT LARGE SUMS OF MONEY ESTABLISHING THE RATES, TERMS AND CONDITIONS BY WHICH THEY PURCHASE NETWORK ELEMENTS, COLLOCATION AND INTERCONNECTION FROM ILECS?

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

[13] Wholesale services also includes "commercial agreements," which "include but are not limited to wholesale metro Ethernet agreements, OCN (SONET) agreements, Local Services Platform (*e.g.*, QLSP) agreements, Dark Fiber agreements, Broadband for Resale agreements, and line sharing agreements." See, Exhibit TJG-8.

A. Absolutely. First, CLECs and ILECs must negotiate those rates, terms and conditions for a period of time. Then, for each issue on which the companies are unable to reach agreement, they must arbitrate that issue before each state commission. It is not uncommon for a CLEC and ILEC to disagree on dozens of issues, each of which must be arbitrated. Once the final agreement is established, it must be submitted to the state commission for approval. I have been involved in dozens of these arbitration cases and can say, first hand, that they consume an enormous amount of time and money for both the CLEC and the ILEC. Indeed, even after a final order from the state commission, there may be appeals that consume substantial additional time and money. On a separate but related note, often cost-based rates that apply to UNEs, interconnection and collocation in an ICA are established in separate generic cost dockets in which CLECs participate to ensure that the resulting rates satisfy the federal TELRIC[14] pricing standards. My firm, QSI, recently participated in generic cost dockets for Qwest in Minnesota and Colorado. The Minnesota cost proceeding lasted for about three years, and it has been about one and one-half years since Qwest filed its initial testimony in the ongoing Colorado proceeding. During this time, CLECs have expended a significant amount of time and money in an attempt to ensure that Qwest's rates for UNEs, interconnection and collocation comply with the law.

[14] "TELRIC" stands for Total Element Long Run Incremental Cost and is discussed and defined in the FCC's *Local Competition Order* at ¶¶ 674-703. That pricing methodology is used to price UNEs and interconnection services. The FCC rules which require the ILEC to price its network elements using TELRIC also require the ILEC to provide non-discriminatory access to those same elements as well as interconnection. *See*, 47 C.F.R. § 51 Subpart F (Pricing of Elements) and 47 C.F.R. §§ 51.305, 51.311 and 51.313.

Furthermore, CLECs have spent an enormous amount of time and money attempting to ensure that the BOCs comply (and continue to comply) with the obligations set forth in approved ICAs and Sections 251 and 271 of the Act.

Q. PLEASE EXPLAIN WHY LITIGATION HAS BEEN REQUIRED TO RESOLVE THESE ISSUES?

A. There is much at stake for the ILECs and the CLECs; ILECs want to retain or grow their market share and CLECs want to offer competitively-priced innovative services to gain more customers, which results in reduced ILEC market share. Since ILECs continue to have the largest percentage of local customers in the local exchanges by far, that means that CLECs most often increase market share by converting existing ILEC customers to CLEC services.

FCC orders discuss the ILEC incentives in detail and the FCC's observations have proven, over and over again, to be correct. For instance, just after the passage of the Act, the FCC noted in the *Local Competition Order*, that:

> Given that the incumbent LEC will be providing interconnection to its competitors pursuant to the purpose of the 1996 Act, the LEC has the incentive to discriminate against its competitors by providing them less favorable terms and conditions of interconnection than it provides itself.[15]

The FCC recognized that one of the goals of the Act, and competition in general, was to eliminate this ILEC incentive and ability to impose financial and

[15] *Local Competition Order* at ¶ 218.

operational burdens on CLECs. At paragraph four of the *Local Competition Order* the FCC stated,

> Competition in local exchange and exchange access markets is desirable, not only because of the social and economic benefits competition will bring to consumers of local services, but also because competition eventually will eliminate the ability of an incumbent local exchange carrier to use its control of bottleneck local facilities to impede free market competition. Under section 251, incumbent local exchange carriers (LECs), including the Bell Operating Companies (BOCs), are mandated to take several steps to open their networks to competition, including providing interconnection, offering access to unbundled elements of their networks, and making their retail services available at wholesale rates so that they can be resold.

These incentives have not changed, and indeed, one could argue that in today's more difficult business climate for wireline LECs, the incentive to protect their legacy customer base has increased for ILECs. Thus, ILECs continue to have the ability and incentive to impede competition. One way ILECs have attempted to impede competition is by making it very difficult and costly for CLECs to secure rates, terms and conditions required by federal and state law.

Q. PLEASE PROVIDE AN EXAMPLE.

A. During the 271 approval process for Qwest, one thing the state commissions and FCC did was to require a Statement of Generally Available Terms ("SGAT"). SGATS were to include a baseline offering of UNEs, interconnection and collocation services of the BOC that complied with the 271 obligations, and were offered by the BOCs to CLECs in negotiations. After Qwest received 271

approval, however, it unilaterally withdrew its SGATs, replacing them instead with Qwest's template proposals as Qwest's baseline offering in negotiations.

Q. DID THE NEW QWEST TEMPLATE PROPOSAL RESULT IN MORE DISPUTES?

A. Yes. Qwest's template proposals contain *Qwest's* view of its obligations under the Act and implementing rules, and do not necessarily reflect the terms and conditions that were reviewed and found satisfactory during the 271 process. Not surprisingly, this has created additional disputes, delay and litigation as CLECs are now forced to arbitrate issues where Qwest's view of its obligations does not comport with CLECs' view (or the view of various state regulatory agencies when they reviewed Qwest's SGATs).

Q. CAN YOU PROVIDE SOME OTHER EXAMPLES OF DISPUTES THAT MAY ARISE OVER AN ICA?

A. Yes. In addition to the disputes I just mentioned, there are frequently billing disputes over traffic types, jurisdiction of traffic, bills for services rendered or not rendered, etc. There are also disputes over network engineering responsibilities, response times for trouble reports, and quality of service, not to mention issues with submitting orders. In addition, I have recently been involved in a number of disputes surrounding the customer acquisition and migration processes that are a component of interconnection agreements between incumbents and competitors (I will discuss several examples of these problems later in my testimony). Further,

the legal teams sometimes have disputes over orders and rulings that may or may not apply to services under an ICA.[16] Resolving these types of issues results in additional time and expense for both CLECs and ILECs.

IV. HARM FROM CENTURYLINK'S CONTROL OF QWEST'S WHOLESALE OPERATIONS

A. CenturyLink's Lack of Experience Provisioning Services On The Scale of Qwest's Wholesale Operations

Q. CENTURYLINK CLAIMS THAT WHOLESALE ISSUES SHOULD BE OF NO CONCERN BECAUSE THE TRANSACTION IS A STOCK-FOR-STOCK, PARENT LEVEL TRANSACTION.[17] IS THE COMPANY CORRECT?

A. No. Regardless of how the transaction is structured, the end result is that Qwest will be controlled by CenturyLink if the transaction is approved. CenturyLink acknowledges this in the following statement: "At closing, Qwest will become a direct, wholly-owned subsidiary of CenturyLink and all Qwest subsidiaries, including Qwest Corp., will be indirectly ***owned and controlled by***

[16] The legal teams sometimes invoke the "Change of Law" provisions of an ICA to renegotiate a condition or term or to eliminate them altogether.

[17] See, *e.g.,* Joint Comments of CenturyLink and Qwest on Procedural Issues, Minnesota Docket No. P-430/PA-10-456, filed June 1, 2010, at p. 2 ("A key aspect of the transaction, reflected in the Joint Petition, is the fact that all Minnesota Operating Companies will continue to operate as separate entities under their respective certificates of authority after the transaction is completed. Thus, issues and disputes that involve the relationship between the Operating Companies and other carriers need not be part of this proceeding.")

CenturyLink…"[18] This means that post-merger, CenturyLink will make the decisions about how Qwest interacts with its wholesale customers, how much Qwest will attempt to charge for its wholesale services, the resources that will be dedicated to wholesale service quality and provisioning, the amount Qwest invests in its network for advanced services, etc.

Further, CenturyLink's claim that the merger will be a non-event has been rejected in the past. The Embarq/CenturyTel merger was a stock-for-stock parent level transaction, like the proposed transaction, yet both the FCC and state commissions found it necessary to impose numerous wholesale-related conditions on the Embarq/CenturyTel merger. That CenturyLink would offer the previously rejected argument as the basis for approval without conditions is an apparent attempt on the Joint Petitioners' part to avoid addressing head-on the legitimate concerns raised by wholesale customers.

Q. DO YOU HAVE CONCERNS ABOUT TURNING OVER THE CONTROL OF QWEST'S WHOLESALE OPERATIONS TO CENTURYLINK?

A. Yes. Unlike Qwest, CenturyLink is not a BOC in any of its existing territories. As such, CenturyLink has not been required to satisfy the critical market-opening provisions found in the 14-point competitive checklist under Section 271 of the Act.[19] I will explain below why the lack of CenturyLink experience as a BOC is

[18] Direct Testimony of John Jones, Docket No. P-421, et al./PA-10-456, filed June 14, 2010 ("Jones Minnesota Direct") at p. 7 (emphasis added).

[19] 47 U.S.C. § 271(c)(2)(B).

of grave concern to CLECs and should be of paramount concern to the Commission.

Traditionally, CenturyLink has operated mostly in rural areas[20] (CenturyLink has rural exemptions that limit its section 251 wholesale duties in some of its areas[21]), and only recently acquired a few more urban areas through its acquisition of Embarq. Accordingly, CenturyLink has very little, if any, experience with the types and quantities of wholesale obligations and relationships that are found in Qwest's BOC territories. Moreover, CenturyLink has provided no commitments that it will maintain or improve the wholesale services, rates and service quality that CLECs experience with Qwest today.

Q. PLEASE ELABORATE ON THE DIFFERENCE BETWEEN QWEST'S AND CENTURYLINK'S EXPERIENCE IN THIS REGARD.

A. Since CenturyLink has traditionally operated in rural areas exempt from full competition, it has not been required to handle the same quantities of wholesale customers and wholesale orders as Qwest is accustomed to handling. For example, CenturyLink provided data showing that it processed a total of *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****[22] LNP

[20] *See, e.g.*, Direct Testimony of John Stanoch, Docket No. P-421, et al./PA-10-456, filed June 14, 2010 ("Stanoch Minnesota Direct") at p. 13 ("CenturyLink serves many smaller communities and rural areas throughout the state.")

[21] Section 251(f) of the Telecommunications Act of 1996 exempts rural telephone companies from the obligations applicable to ILECs under Section 251(c) of the Act until a state commission lifts the rural exemption.

[22] CenturyLink Response to Integra Minnesota Data Request #2(i), Trade Secret Attachment Integra-2.

number ports in Minnesota in 2009 and *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****[23] LNP number ports company-wide (i.e., legacy Embarq plus legacy CenturyTel) during 2009. By comparison, Qwest processed *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****[24] ports in Minnesota and *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****[25] ports company-wide *in the first half of 2010 alone*. Or, in other words, Qwest processes, on average, *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET***** times more port orders than does CenturyLink in Minnesota and *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET***** times more port orders on a company-wide basis. Regarding UNE loops, CenturyLink has stated that in Minnesota, CLECs purchase a total *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****[26] UNE loops from CenturyLink, and company-wide CLECs purchase *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****[27] UNE loops from CenturyLink. By comparison, CLECs purchase *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****[28] UNE loops from Qwest in Minnesota alone. In other words, CLECs purchase *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET***** times more UNE loops from Qwest in Minnesota than from

[23] CenturyLink Response to Integra Minnesota Data Request #2(i), Trade Secret Attachment Integra-2.
[24] Qwest Response to Integra Minnesota Data Request #2, Trade Secret Attachment D.
[25] Qwest Response to Integra Minnesota Data Request #2, Trade Secret Attachment D.
[26] CenturyLink Response to Integra Minnesota Data Request #2, Trade Secret Attachment Integra-2.
[27] CenturyLink Response to Integra Minnesota Data Request #2(b), Trade Secret Attachment Integra-2.
[28] Qwest Response to Integra Minnesota Data Request #2-1(b), Trade Secret Attachment B.

CenturyLink, and CLECs purchase more than *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET***** the number of UNE loops in Minnesota alone than from CenturyLink throughout its entire legacy territory. Regarding Enhanced Extended Links (EELs), CenturyLink states that CLECs purchase *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****[29] EEL(s) from CenturyLink in Minnesota and *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****[30] EEL(s) company-wide. By comparison, CLECs purchase *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****[31] EELs from Qwest in Minnesota, or almost *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET***** times the number of EELs than CLECs purchase from CenturyLink throughout its entire legacy territory. In Minnesota, *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****[32] CLEC purchases collocation from CenturyLink and, company-wide, *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****[33] CLECs purchase a total of *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****[34] collocation arrangements from CenturyLink. Qwest sells *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****[35] collocation arrangements to *****BEGIN TRADE**

[29] CenturyLink Response to Integra Minnesota Data Request #2(d), Trade Secret Attachment Integra-2.
[30] CenturyLink Response to Integra Minnesota Data Request #2(d), Trade Secret Attachment Integra-2.
[31] Qwest Response to Integra Minnesota Data Request #2-1(d), Trade Secret Attachment B.
[32] CenturyLink Response to Integra Minnesota Data Request #2(e), Trade Secret Attachment Integra-2.
[33] CenturyLink Response to Integra Minnesota Data Request #2(e), Trade Secret Attachment Integra-2.
[34] CenturyLink Response to Integra Minnesota Data Request #2(f), Trade Secret Attachment Integra-2.
[35] Qwest Response to Integra Minnesota Data Request 2-1(f), Trade Secret Attachment C.

SECRET [redacted] **END TRADE SECRET***** CLECs in Minnesota.[36] This data shows that CenturyLink will inherit an exponentially larger wholesale operation than it has operated to date.

Q. CENTURYLINK POINTS TO "BEST IN CLASS" AWARDS IT HAS WON AS EVIDENCE OF CENTURYLINK'S COMMITMENT TO PROVIDE QUALITY WHOLESALE SERVICES.[37] DO THESE AWARDS PROVIDE ANY COMFORT ABOUT WHOLESALE SERVICE QUALITY POST-MERGER?

A. No. CenturyLink states: "CenturyLink won four 'Best in Class' awards based on the 2009 Metro Wholesale Carrier Report Card study from Atlantic-ACM. The awards were in four key areas: customer service, sales representatives, provisioning, and billing. CenturyLink has won the award for provisioning for three consecutive years and the award for customer service and sales representatives for two consecutive years." Based on information provided by Atlantic-ACM, the Best in Class awards are based on a survey, and for taking the time to respond to the survey, the respondent is entered in a drawing for a 16 GB Apple iPad (WiFi), Amazon Kindle Global Wireless, Garmin Nuvi550, Flip MiniHD camcorder, or cash equivalent. In addition, the surveys are not necessarily provided to the appropriate CLEC representatives and therefore are unlikely to represent the CLEC's overall experience and view point. Further, the

[36] Qwest Response to Integra Minnesota Data Request 2-1(e), Trade Secret Attachment C.
[37] Jones Minnesota Direct at p. 13.

companies you vote for sponsor the research, which suggests that not all telecommunications companies are candidates on the survey. While the Atlantic-ACM awards may provide a useful marketing data point for CenturyLink, it is not based on the type of verifiable statistical data on which the Qwest wholesale Performance Indicators ("PIDs") and Performance Assurance Plans ("PAPs") are based. In other words, it is not based on objective performance data and is not representative of the volumes associated with Qwest's regions.

B. Integration Challenges And The Complete Lack Of Information Regarding That Integration Effort

Q. THE JOINT PETITIONERS SUGGEST THAT THE PROPOSED TRANSACTION WILL NOT NEGATIVELY AFFECT WHOLESALE OPERATIONS POST-MERGER.[38] WHY DOES THAT NOT PROVIDE YOU COMFORT ABOUT POST-MERGER WHOLESALE OPERATIONS?

A. My primary concern relates to the integration effort that will take place after the proposed transaction. CenturyLink has estimated $625 million in synergy savings resulting from the transaction; therefore, the Merged Company will be under intense pressure to meet those savings estimates, post-merger. At the same time the Merged Company is attempting to find synergies, it will be under pressure to produce meaningful dividends, pay down debt and invest in advanced services. In

[38] Minnesota Petition at p. 18. See also, Stanoch Minnesota Direct at p. 3, lines 17-19.

other words, achieving the estimated synergy savings is paramount to meeting shareholder expectations, satisfying retail customers, and keeping the Merged Company solvent. Given these priorities, maintaining wholesale service quality may be low on the Merged Company's priority list, or worse yet, wholesale service quality may be targeted for cutbacks in the pursuit of synergy savings.

Q. PLEASE DISCUSS HOW THE MERGED COMPANY WILL ATTEMPT TO ACHIEVE SYNERGIES.

A. The Merged Company has indicated that it will seek synergy savings through operating cost savings (i.e., eliminating duplicative functions and systems related to corporate overhead, network and operational, IT, advertising/marketing, increased purchasing power) and capex savings.[39] All told, the company expects $575 million in operating cost synergies and $50 million in capital expense synergies, for a total of $625 million over a three-to-five year period. The elimination of duplicative functions (or headcount) and systems will impact wholesale (and retail) operations. For example, based on the very high level information provided by CenturyLink about its synergy estimates,[40] it expects that *****BEGIN HIGHLY SENSITIVE TRADE SECRET** [redacted] **END HIGHLY SENSITIVE TRADE SECRET***** of this amount will be cut from

[39] *See, e.g.*, Direct Testimony of G. Clay Bailey on behalf of CenturyLink, Inc., Oregon PUC Docket No. UM1484, filed May 21, 2010, CTL/300, Exhibit CTL/301 at p. 13. A part of the same exhibit was attached to the Direct Testimony of Mark Gast, Docket No. P-421, et al./PA-10-456, filed June 14, 2010 ("Gast Minnesota Direct") as Exhibit MAG-1; however, page 13 was not included in Mr. Gast's Exhibit MAG-1 in Minnesota.

[40] CenturyLink Response to Integra Minnesota Data Request 52(a), Highly Sensitive Trade Secret Attachment Integra-52a.

*****BEGIN HIGHLY SENSITIVE TRADE SECRET** [redacted] **END HIGHLY SENSITIVE TRADE SECRET***** and another *****BEGIN HIGHLY SENSITIVE TRADE SECRET** [redacted] **END HIGHLY SENSITIVE TRADE SECRET***** from *****BEGIN HIGHLY SENSITIVE TRADE SECRET** [redacted] **END HIGHLY SENSITIVE TRADE SECRET*****.

Q. HAS CENTURYLINK PUT CLECS ON NOTICE THAT THEY SHOULD EXPECT CHANGES POST-MERGER?

A. Yes. CenturyLink has stated that CLECs can expect changes to occur post-merger.[41] However, CenturyLink has been either unable or unwilling to provide any details about what changes will be made, what CenturyLink will or will not integrate, or what "best practices" will guide the Merged Company going forward.[42] As a result, the Joint Petitioners are asking the Commission to trust that their pursuit of synergies will not result in decisions that degrade the quality

[41] CenturyLink's S-4A, filed July 16, 2010, identifying, among others, the following as transaction-related risks: (1) "substantial expenses in connection with completing the merger and integrating the business, operations, networks, systems, technologies, policies and procedures of Qwest with those of CenturyLink". See also, Jones Minnesota Direct at 13 ("There will be no immediate changes to Qwest's or CenturyLink's Operational Support Systems. The merger is intended to bring about improved efficiencies and practices in all parts of the combined company, however, so changes likely will eventually occur.")

[42] "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." CenturyLink Response to Integra Minnesota Data Request #52(g), dated July 8, 2010. See also, CenturyLink Response to Integra Data Request #52(g) in Arizona (dated 7/20/10), Colorado (dated 7/19/10), Utah (dated 7/20/10), Washington (dated 7/16/10), and PAETEC Iowa Data Request #52(g) (dated 7/23/10). Mark Gast (CenturyLink) is the respondent for all of these discovery responses.

of the current wholesale systems and processes CLECs rely upon and currently experience with Qwest. Such trust must be backed by quantifiable wholesale conditions, however, with meaningful consequences for failing to meet those conditions.

Q. DO YOU HAVE AN UNDERSTANDING OF THE MERGED COMPANY'S INCENTIVES REGARDING INTEGRATION?

A. Yes. First, as a publicly-traded company, the Merged Company will be under intense pressure to achieve its estimated synergy savings through integrating the two companies. This will be the key to servicing the increased debt load that CenturyLink will inherit from the transaction, issuing dividends that shareholders expect and deploying the advanced services demanded by end users. In other words, the Merged Company will have the strongest incentive to do what it takes to deliver on integration-related synergy savings. Second, as Dr. Ankum explains in more detail, given that the Merged Company is a profit-maximizing firm, its natural incentive is to reduce costs at the expense of competitors; this is where the Merged Company gets most *bang for its buck.* If, for example, the Merged Company cuts back headcount in groups that serve wholesale customers, and wholesale service is degraded as a result, not only has CenturyLink saved money to achieve synergy savings, but it will also make it easier to win back retail customers that will leave the CLEC's service due to the perception (albeit

erroneous) that the CLEC's service has declined.[43] It is well-recognized that when a CLEC's retail end user experiences service troubles due to underlying wholesale service quality problems on the ILEC's end, the end user perceives it as a problem caused by the CLEC and not the ILEC.

What's more, there are many ways that the Merged Company can pursue this incentive during integration of the two companies. The company could degrade access to systems by integrating a system with less functionality; the company could integrate alleged "best practices" that results in inferior access; the company could integrate its rate structures such that new rate elements are introduced that were not previously assessed; the company could integrate its negotiations template proposals to reduce or discontinue certain services; and the list goes on. I am not casting aspersions here, I am just stating what economic theory dictates and what the FCC recognized in its *Local Competition Order*: ILECs have a strong incentive to discriminate against CLECs. Left unchecked, the integration effort that will be undertaken by the Merged Company will be a prime opportunity for the (bigger) ILEC to follow through on its incentive to reduce costs at the expense of CLECs and their end users. Of course, doing so would be bad for competition and the public interest.

[43] CenturyLink has stated that: "A financially stronger company can…compete against….CLECs." Minnesota Petition at p. 11.

Q. ARE YOU SAYING THAT CENTURYLINK LACKS THE INCENTIVE TO INTEGRATE THE COMPANIES TO THE BENEFIT OF CLECS AND COMPETITION?

A. Yes. The lack of incentive to open up local markets to competition and to keep those markets open is precisely why the 271 competitive checklist is so important – it created a "carrot" (i.e., in-region interLATA authority) for the BOCs so that they would open their local areas to competition instead of following their natural incentive as a profit-maximizing firm to keep local competitors out. Since CenturyLink has no experience dealing with 271 obligations, there is no knowledge base from which to discern if and how CenturyLink would abide by 271 obligations post-merger, or if the systems or processes CenturyLink will ultimately utilize will remain 271 compliant in Qwest's territory.

1. CenturyLink's Attempts To Integrate OSS, Or Other Systems Or Processes, Will Cause Harm

Q. ARE OPERATIONS SUPPORT SYSTEMS ("OSS") IMPORTANT FOR CLECs?

A. Yes. The ability of a CLEC to be able to access the ILEC systems and databases to review customer information and submit and review orders is absolutely vital. The systems must be efficient, reliable and accurate. Inefficient systems that require extensive manual intervention, for instance, would make doing business

with the ILEC difficult, more costly, and more prone to error because of the increased manual nature of the work.

Not surprisingly, OSS was one of the first issues that the FCC had to address in Section 271 proceedings. Specifically, the FCC concluded that it:

> generally must determine whether the access to OSS functions provided by the RBOC to competing carriers sufficiently supports each of the three modes of competitive entry strategies established by the Act: interconnection, unbundled network elements, and services offered for resale.[44]

The FCC has found that CLECs would be "severely disadvantaged, if not precluded altogether, from fairly competing," if they did not have nondiscriminatory access to OSS.[45] Qwest itself has described its existing OSS as playing "a crucial role in the transactions between Qwest and all CLECs"[46] and "the lifeblood of…Qwest's wholesale operation…"[47]

Q. WHAT IS OSS?

A. The FCC defines OSS to include five functions: (1) pre-ordering, (2) ordering, (3) provisioning, (4) maintenance and repair, and (5) billing.[48] OSS includes all of

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[44] *Application of Ameritech Michigan pursuant to § 271 of the Communications Act of 1934, as amended, to provide In-Region, Inter-LATA services in Michigan*, CC Docket 79-137, Memorandum Op. and Order, Released August 19, 1997 ("*Ameritech Michigan 271 Order*") at ¶ 133.

[45] *Local Competition Order*, ¶518.

[46] Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.

[47] Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at p. 39.

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

the computer systems, databases and personnel that an ILEC uses to perform internal functions necessary for these five functions. The FCC also requires an adequate CMP to handle changes to the OSS systems.[49]

Q. IS OSS A UNE?

A. Yes. The FCC has determined OSS to be a "network element."[50] Consequently, a CLEC must be permitted nondiscriminatory access to an ILEC's OSS functions in order to provide pre-order information to potential customers, sign up customers, place orders for services or facilities, track the progress of its orders to completion, obtain relevant billing information from the ILEC, and obtain prompt repair and maintenance services for its customers.

Q. IS THIS DUTY TO PROVIDE OSS FUNCTIONS CONTAINED IN THE TELECOM ACT?

A. Yes. The duty to provide access to OSS functions falls squarely within an ILEC's duties under Section 251(c)(3) to provide UNEs on terms and conditions that are nondiscriminatory, just and reasonable, in accordance with the pricing standards of Section 252, and under Section 251(c)(4) to offer services for resale without imposing any limitations or conditions that are discriminatory or unreasonable.[51]

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

[50] *Local Competition Order* at ¶ 516.

[51] *Ameritech Michigan 271 Order* at ¶ 130; *see also, Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in South Carolina*, CC Docket No. 97-208, *Memorandum Op. and Order,* Released December 24, 1997, at ¶ 83.

Nondiscriminatory access to OSS is also one of the checklist items on the 14-point competitive checklist applicable to BOCs under Section 271 of the Act.

Q. IS OSS AN EXAMPLE OF HOW CENTURYLINK COULD INTEGRATE THE TWO COMPANIES IN SUCH A WAY AS TO HARM CLECS?

A. Yes. The post-merger integration of OSS is a prime example. OSS impacts all wholesale customers that do business with Qwest and CenturyLink, regardless of whether the CLEC is resale-based, UNE-based, or completely facilities-based. The statements from the FCC above, and Qwest's statement that OSS is the "lifeblood" of its wholesale operations, shows that the importance of OSS to competition cannot be exaggerated. Out of the many ways that the Merged Company could integrate the two companies to the detriment of competition, degrading the quality or access to OSS would be the most effective, and could be, if not done through a transparent CMP process, one of the most difficult to detect and remedy.

Q. HOW WILL CLECS BE HARMED BY INTEGRATION OF OSS?

A. First, CenturyLink uses different OSS than Qwest. And, unlike Qwest's OSS, which was extensively tested during the 271 approval process, CenturyLink's OSS has not been third-party tested to determine whether they meet the nondiscriminatory requirements of Section 271. Second, the existing Qwest OSS and its functionality is more well-documented, and preferred by carriers such as Charter and PAETEC that use both of the merging companies' systems, than the

existing CenturyLink OSS. Just as carriers in Embarq territory did not want to revert to the more manual processes of CenturyTel in that merger,[52] CLECs do not want Qwest to backslide from the 271-evaluated systems in Qwest territory to CenturyLink systems that have not been subjected to rigorous third-party testing.[53] In fact, I would argue that backsliding from using a 271–compliant OSS would be a violation of Qwest's 271 obligations, and, therefore, could subject the Merged Company to complaints. If the Merged Company is found to be out of compliance with the 271 obligations, it would be subject to sanctions, up to, and including, the possible revocation of the previously granted authority to offer in-region long distance and advanced information services. Hence, any attempt to integrate CenturyLink's OSS into the legacy Qwest region would be a step in the wrong direction for competitors, competition and potentially even the Merged Company.

Q. HAVE THE CLECS AND STATE COMMISSION STAFFS ATTEMPTED TO DETERMINE WHETHER CENTURYLINK PLANS TO INTEGRATE DIFFERENT OSS INTO QWEST'S LEGACY TERRITORY POST-MERGER?

[52] *See, e.g., In the Matter of Applications Filed for Transfer of Control of Embarq Corporation to CenturyTel, Inc.,* WC Docket No. 08-238, FCC 09-54, Released June 25, 2009 ("*FCC Embarq/CenturyTel Merger Order*"), Appendix C "Conditions," at p. 28 ("CenturyTel will integrate, and adopt for CenturyTel CLEC orders, the automated Operation Support Systems ('OSS') of Embarq within fifteen months of the transaction's close.").

[53] CenturyLink Response to Integra Minnesota Data Request #18 ("While CenturyLink has not conducted third-party testing of its systems…")

A. Yes. When Integra asked the Merged Company's about its post-merger OSS integration plans, CenturyLink responded:

> 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.[54]

When asked by Oregon PUC Staff whether CenturyLink intends to transition Qwest's OSS to CenturyLink's legacy OSS within the next three to five years, CenturyLink responded:

> 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. However, because the transaction results in the entirety of Qwest, including operations and systems, merging into and operating as a subsidiary of CenturyLink, it will allow a disciplined approach to systems and practices integration decisions to proceed in a disciplined manner.[55]

When the Oregon Staff probed further to determine potential changes to the Qwest OSS post-merger, CenturyLink, again, responded with a "patented" answer that CenturyLink has given on many questions related to post-merger integration plans:

[54] CenturyLink Response to Integra DR #23 in Arizona, Colorado, Utah and Washington. See also, CenturyLink Response to PAETEC DR #23 in Iowa. In Minnesota CenturyLink states: "Upon merger closing, CenturyLink does not anticipate any immediate changes to the Qwest CLEC OSS systems. Integration planning is in the early stages and decisions have not been made at this time. However, because the transaction results in the entirety of Qwest, including operations and systems, merging into and operating as a subsidiary of CenturyLink, it will allow a disciplined approach to reviewing systems and practices and will allow integration decisions to proceed in an orderly disciplined manner. To the extent any changes are made, CenturyLink will comply with all applicable state and federal laws and rules, as wells as the provisions of any applicable interconnection agreements or tariffs, in the same manner as they would apply notwithstanding the merger. Wholesale customers will be provided advance notification of any systems changes that occur post close." CenturyLink Response to Integra Minnesota Data Request #23.

[55] CenturyLink Response to Oregon PUC Staff Data Request #32.

> Integration planning is in the early stages and decisions on wholesale OSS systems have not been made at this time. Upon merger closing, there will be no immediate changes to Qwest's or CenturyLink's OSS. Any changes will occur only after a thorough and methodical review of both companies' systems and processes to determine the best system to be used on a go-forward basis. Decisions will be made from both a combined company and a wholesale customer perspective and consistent with the continued provision of quality service to our wholesale customers.[56]

In sum, CenturyLink's claims that it cannot respond until the merger is complete, provides the Commission an insufficient basis to evaluate a critical aspect of the merger: OSS integration. While CenturyLink has made vague statements publicly about operations in Qwest territories being unaffected by the proposed transaction, it would seem that issues like the OSS issue would be very easy for the Joint Petitioners to put to rest with a straightforward commitment to leave existing Qwest wholesale processes and OSS in place for a significant timeframe, as well as a commitment to follow similar objective, third-party testing if and when changes are made to the system. However, in sworn testimony or discovery responses, the Joint Petitioners have been unwilling or unable to make that simple commitment or give a straight answer – often refusing to provide a meaningful answer at all. That certainly gives me strong concerns about the Joint Petitioners' intent, and it should concern the Commission as well.

Q. IN ADDITION TO THIS LACK OF DETAILS REGARDING CENTURYLINK'S OSS INTEGRATION PLANS, IS THERE ANYTHING

[56] CenturyLink Response to Oregon PUC Staff Data Request #60. See also, Jones Minnesota Direct at pp. 13-14.

ELSE THAT SUPPORTS YOUR CONCERN ABOUT CENTURYLINK REPLACING LEGACY QWEST OSS WITH OSS THAT HAVE NOT BEEN SHOWN TO BE 271 COMPLIANT?

A. Yes. The following CenturyLink testimony underscores this concern:

> "[t]he combined company will continue to meet these [271] obligations through its wholesale operations ***leveraging*** the key resources and expertise of ***both entities***."[57]

The problem with this statement, beyond its obviously vague nature, is that only *Qwest's* wholesale systems, processes and resources have been shown to satisfy the market-opening and nondiscrimination requirements of Section 271 of the Act – CenturyLink's have (admittedly[58]) not. So, when CenturyLink says that it will integrate at least some of CenturyLink's wholesale resources and expertise into Qwest's territory (such as an OSS interface), it is likely that some of the interfaces and processes that have been deemed as 271-compliant would be replaced by interfaces and processes that have not been found to be 271-compliant.

Q. IS THERE ANOTHER REASON WHY THIS CONCERN IS WARRANTED?

A. Yes. CenturyLink has estimated *****BEGIN HIGHLY SENSITIVE TRADE SECRET** [redacted] **END HIGHLY SENSITIVE TRADE**

[57] See, e.g., Direct Testimony of Michael Hunsucker on behalf of CenturyLink, Inc., Oregon PUC Docket No. UM1484, filed June 22, 2010 ("Hunsucker Oregon Direct"), at pp. 12-13 (emphasis added) CenturyLink did not submit this testimony in the Minnesota proceeding, and unlike in Oregon, did not submit any testimony in Minnesota discussing the Merged Company's 271 obligations post-transaction.

[58] Hunsucker Oregon Direct at p. 12.

SECRET*** of the total estimated $575 million in operational synergy savings to come from *****BEGIN HIGHLY SENSITIVE TRADE SECRET** [redacted] **END HIGHLY SENSITIVE TRADE SECRET*****.[59] Given the magnitude of the estimated savings from this item relative to the overall synergy savings estimate, it is likely that integration efforts will involve OSS. It is also curious that CenturyLink can so precisely calculate savings for this item when, as discussed above, it has stated: "complete integration plans cannot be developed until the merger is concluded."[60]

Q. YOU MENTION ABOVE THAT QWEST'S OSS WAS THIRD-PARTY TESTED DURING THE 271 APPROVAL PROCESS. PLEASE ELABORATE.

A. Qwest's existing OSS, CMP and supporting processes and data, were thoroughly tested during the Qwest 271 approval process to ensure that they provided the nondiscriminatory access required by Section 271. According to Qwest, the collaborative OSS test "was the most comprehensive and collaborative of all of the OSS tests conducted to date."[61] And referring to the final report of the third-party tester, Qwest said: "This *Final Report* marked the culmination of more than three years of exhaustive and comprehensive effort, ***unlike any seen before***, to determine whether Qwest's OSS meet the standards set forth under Section 271 of

[59] CenturyLink Response to Integra Minnesota Data Request #52(a), Highly Sensitive Trade Secret Attachment Integra-52a.

[60] *See, e.g.*, CenturyLink Responses to Integra Minnesota Data Requests #27, 30, 82, 83, 84, 108, 115, 117, 118, and 134.

[61] Brief of Qwest Corp., WC Docket No. 02-148, June 13, 2002, at p. 111.

the Telecommunications Act of 1996, as those standards have been amplified and applied by the FCC."[62] Qwest's opinion was shared by the state commissions that participated and oversaw the third-party testing, such as the Arizona Corporation Commission which stated:

> The ACC believes that during the last four years, Qwest systems, processes, and performance measurements have undergone one of the most comprehensive reviews to-date…result[ing] in an extremely rigorous test, resolution of many disputed issues through compromise, and meaningful and effective changes to Qwest's systems and processes.[63]

The FCC said "…the OSS testing conducted under the auspices of the ROC [Regional Oversight Committee] was broad-based and comprehensive."[64] Attached to my testimony as Exhibit TJG-2 is a detailed description of the extensive, three-year process that was undertaken by state regulators, the FCC, Qwest, CLECs and third-party testers to ensure that Qwest's existing OSS, performance metrics, and CMP met the requirements of Section 271. This exhibit also explains that hundreds of issues of concern were identified during third-party testing and resolved through improvements to Qwest's OSS.

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[62] Qwest Verified Comments, Washington Docket No. UT-003022 at pp. 1-2 (emphasis added). Qwest also described the OSS testing as: "years of rigorous fact finding and analysis…" Reply Comments of Qwest Corp., WC Docket No. 02-148 at p. 2.

[63] Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003 ("ACC Evaluation"), at p. 5. The Colorado Public Utilities Commission referred to the testing process as "the epitome of collaborative, open decision making." Reply Comments of Qwest Corp., WC Docket No. 02-148 at p. 2.

[64] *Qwest 9 State 271 Order* at ¶ 12.

Q. YOU MENTIONED THAT THE THIRD-PARTY TEST INVOLVED AN EVALUATION OF QWEST'S PERFORMANCE MEASUREMENTS. PLEASE ELABORATE.

A. The third-party test included an audit of Qwest's performance assurance plan ("QPAP") (a self-executing remedy plan to ensure Qwest continues to comply with the competitive checklist) and related performance indicators or "PIDs" (which are used in the QPAP to measure Qwest's performance and to determine whether Qwest must make remedy payments to CLECs or the state for substandard wholesale service quality). A coalition was formed – the Regional Oversight Committee ("ROC") Post-Entry Performance Plan ("PEPP") – to discuss and address issues related to Qwest's wholesale performance, including the PAP. Qwest filed its PAP on June 29, 2001, and a multi-state proceeding (conducted by a third-party Facilitator from Liberty Consulting) was initiated to review Qwest's PAP.[65] Qwest's PIDs were developed collaboratively by the ROC for use in the third-party test to measure Qwest's ability to process commercial volumes through its OSS.[66] Qwest's PIDs measure performance in three ways: retail parity (for measures with retail analogues), benchmark (for

[65] *See, e.g., In the Matter of the Investigation Into US WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996,* Thirtieth Supplemental Order, Commission Order Addressing Qwest's Performance Assurance Plan, Washington UTC Docket Nos. UT-003022/003040, April 2002 ("*Washington 30th Supplemental Order*") at ¶¶ 10-11.

[66] *In the Matter of the Investigation Into US WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996,* Thirty-Ninth Supplemental Order, Commission Order Approving SGAT and QPAP, and Addressing Data Verification, Performance Data, OSS Testing, Change Management, and Public Interest, Washington UTC Docket Nos. UT-003022/003040, July 1, 2002 ("*Washington 39th Supplemental Order*") at ¶ 345.

measures without retail analogues) and "parity by design" (for measures without retail analogues or benchmarks).[67] The Master Test Plan directed Liberty Consulting to "develop and perform an audit to insure that all aspects of Qwest's wholesale performance measures and retail parity standards are sound and in compliance with the collaboratively developed ROC PID."[68]

Qwest's PAPs and associated PIDs are absolutely essential to ensure that local markets in Qwest's region remain open to competition (i.e., Qwest does not backslide). For instance, the FCC said:

> As set forth below, we find that the performance assurance plans (PAP) that will be in place…provide assurance that the local market will remain open after Qwest receives section 271 authorization in the nine application states…and are likely to provide incentives that are sufficient to foster post-entry checklist compliance.[69]

It is my understanding that with a few exceptions in the legacy Embarq territory, CenturyLink is not subject to PAPs or PIDs, and certainly not PAPs or PIDs that were extensively tested during the 271 approval process. And since Qwest's PAPs and PIDs go hand-in-hand with Qwest's existing OSS systems, any change to the existing Qwest OSS would likely mean changes for Qwest's PAPs and PIDs. This would have a dramatic negative effect on the ability to identify discriminatory treatment by the Merged Company and would give the Merged

[67] *Washington 39th Supplemental Order* at ¶ 32.
[68] *Washington 39th Supplemental Order* at ¶ 33.
[69] *Qwest 9 State 271 Order* at ¶ 440.

Company more opportunity to backslide on its 271 obligations in Qwest's legacy territory.

Q. DOES YOUR EXPLANATION AND EXHIBIT REGARDING THE TESTING OF QWEST'S OSS UNDERSCORE THE CLEC CONCERNS ABOUT OSS INTEGRATION?

A. Yes. Post-merger, CenturyLink may attempt to replace OSS that has been tested under a process "unlike any seen before" with OSS that has not been independently tested at all. Once such changes are made, much if not all of the work by the ROC and FCC during the 271 approval process will have been squandered and Qwest can no longer show that it is providing nondiscriminatory access to OSS under 271 of the Act – that is, unless and until the Merged Company demonstrates, using the same stringent testing process that took place during the Qwest 271 approval process, that its new wholesale system or process meets the 271 requirements.

Q. CENTURYLINK APPEARS CONFIDENT THAT ITS WHOLESALE OSS AND OPERATIONS, IF INTEGRATED IN QWEST'S LEGACY TERRITORY, WOULD COMPLY WITH 271 REQUIREMENTS.[70] SHOULD THE COMMISSION SHARE THIS CONFIDENCE?

A. No. There is absolutely no basis for CenturyLink's claim. Ironically, Qwest made a similar claim back in 1999 that its OSS and CMP at that time satisfied the

[70] Hunsucker Oregon Direct at pp. 12-13.

Section 271 requirements. However, three years of third-party testing under ROC supervision, dozens of "meaningful and effective changes to Qwest's systems and processes[,]"[71] and millions of dollars later, it was proven that Qwest's confident assurances about its OSS and CMP being 271 compliant were baseless. I have provided as Exhibit TJG-3 the "Assurances Not Met" exhibit which compares the assurances Qwest made in 1999 about its then-flawed OSS and CMP to the assurances CenturyLink is now making. As this exhibit shows, it would be unwise for the Commission to accept CenturyLink's promises in this regard at face value.

Q. YOU STATE ABOVE THAT CENTURYLINK AND QWEST USE DIFFERENT OSS. PLEASE ELABORATE ON THE DIFFERENCES BETWEEN THE TWO COMPANIES' OSS.

A. Take the CLEC-facing OSS interfaces for pre-ordering, ordering and maintenance/repair for example. For pre-ordering, ordering and provisioning of UNEs/resale Local Service Requests ("LSRs"), Qwest uses Interconnect Mediated Access Graphical User Interface ("IMA GUI") and Interconnect Mediated Access Extensible Markup Language ("IMA XML") as its CLEC-facing systems. IMA GUI is a web-based electronic interface and IMA XML is a business-to-business electronic interface allowing bilateral information exchange

[71] ACC Evaluation at p. 5.

between Qwest and CLEC systems.[72] These IMA systems interface with Qwest back-office systems and databases in support of queries and transactions.[73] For access services and UDITs, Qwest uses Qwest Online Request Application Graphical User Interface ("QORA GUI"), a web-based interface, and QORA Gateway, a company-to-company interface, for CLEC-facing systems.[74] Though QORA does not provide all of the functionality that IMA provides, like the IMA systems for LSRs, QORA provides for electronic submission of Access Service Requests ("ASRs"). For maintenance and repair, Qwest uses Customer Electronic Maintenance and Repair ("CEMR") and Repair Call Expert ("RCE") as its web-based CLEC-facing systems, and Mediated Access Electronic Bonding Trouble Administration ("MEDIACC-EBTA") as its business-to-business gateway CLEC-facing system.[75]

By comparison, CenturyLink uses a system called EASE for pre-ordering and ordering for both LSRs and ASRs.[76] EASE includes both a GUI (web-based) and EDI (business-to-business) version. For trouble reporting, CenturyLink uses

[72] Qwest Response to Integra Minnesota Data Request #19. According to Qwest: "The IMA GUI is a user-to-computer interface while IMA XML is a computer-to-computer interface. The Qwest IMA GUI presents the user with a series of browser-based screens. Using these screens the CLEC can process pre-order, order, and post-order IMA transactions. There are no screens associated with XML. All of the information that is exchanged is done so in the form of data files." IMA XML FAQs Available at: http://www.qwest.com/wholesale/ima/xml/

[73] Qwest Response to Integra Minnesota Data Request #19.

[74] Qwest Response to Integra Minnesota Data Request #19.

[75] Qwest Response to Integra Minnesota Data Request #19. Qwest states: "CEMR and MEDIACC-EBTA are used to mechanically process telephone circuit repair activities including repair ticket generation and MLT (Mechanized Loop Tests)."

[76] See, Jones Minnesota Direct at p. 13. See also, CenturyLink Response to Integra Minnesota Data Request #16.

"Access Care," wherein a wholesale customer calls into Special Service Operations ("SSO") and CenturyLink records the information on a trouble ticket.[77] In the legacy Embarq territories, CenturyLink also provides the option to use WebRRS, a web-based repair ticket system that allows CLECs to report and track trouble tickets.[78]

Q. HOW LONG HAVE THESE VARIOUS CLEC-FACING INTERFACES BEEN IN PLACE?

A. Qwest's interfaces were tested during the 271 approval process which took place between 1999-2002, which means that Qwest's existing OSS has largely (i.e., with incremental changes made via the CMP process) been in place since 2002. CenturyLink's EASE, on the other hand, was first implemented in legacy CenturyLink (Embarq) territory in May 2008 for ASRs and October 2009 for LSRs. In the legacy CenturyTel territory, EASE was introduced for ASRs in January 2010, and CenturyLink is currently in the process of implementing EASE for LSRs in legacy CenturyTel territory. None of these systems recently introduced in legacy CenturyLink territory were subjected to any third party testing. And, prior to the recent introduction of EASE in the legacy CenturyTel territory, CenturyTel's OSS were "largely manual with little if any automated or interactive capabilities."[79]

[77] CenturyLink Response to Integra Minnesota Data Request #16.
[78] CenturyLink Response to Washington UTC Staff Data Request #86.
[79] FCC Embarq/CenturyTel Merger Order, ¶ 22.

Q. IF CENTURYLINK WERE TO ATTEMPT TO INTEGRATE OSS POST-MERGER, WOULD IT BE A MATTER OF SIMPLY SWAPPING OUT THE IMA INTERFACE WITH THE EASE INTERFACE?

A. No. The Qwest IMA and CenturyLink EASE interfaces are just the CLEC-facing interfaces. Behind those interfaces are a number of back-office systems, underlying data sets, business processes, product catalogs,[80] billing systems, business rules, performance metrics, etc., that are all directly fed information received from the interfaces without manual intervention. All of these various pieces work together to provide the five functions of OSS (pre-ordering, ordering, provisioning, maintenance and repair, and billing). This requires systems to be compatible with other systems, recognize certain computer code, and be properly linked to upstream and downstream systems, databases and workgroups. Obviously, it is not possible to simply unplug IMA and plug in EASE (like, for example, swapping out Netscape® Navigator with Internet Explorer as the browser on a personal computer). Changing out CLEC-facing interfaces would create a complete breakdown in the linkages with underlying systems, databases and processes. Given the complexity of Qwest's OSS, such an integration attempt would be an enormous effort just to make sure everything worked, let alone to ensure that the replacement system provides the type of nondiscriminatory access to the full features and functions of the OSS to which CLECs are entitled.

[80] Product catalogs used in this context do not refer to the Qwest on-line documentation of its products and business processes often referred to as Qwest "PCATs."

Q. CAN YOU PROVIDE EXAMPLES DEMONSTRATING HOW COMPLEX THIS PROCESS WOULD BE?

A. Yes, however, these examples are just the tip of the iceberg – as the complexities of such an effort are virtually endless. The colossal effort that went into testing Qwest's OSS during the 271 approval process shows how challenging it is to ensure that OSS works properly and provides nondiscriminatory access. One example is data mapping. CenturyLink would require data extracts from Qwest's systems to populate the new replacement systems. This would require not only great familiarity of the legacy systems and replacement systems, but also an extensive data mapping effort. Another example is product catalogs. Such an integration effort would require that source system product catalogs be remapped to the replacement systems. This process is very complex given that legacy BOC product catalogs reside in multiple systems and include thousands of USOCs, USOC identifiers, and feature identifiers. Moreover, the new systems would need to also synch up with all of the underlying data sources such as circuit inventory and loop qualification databases.

Q. WOULD SUCH A CHANGE RESULT IN SIGNIFICANT COST TO THE CLEC?

A. Yes. Not only would CLECs have to expend significant time and money testing the CenturyLink replacement systems, but they would also have to materially modify their own systems. For instance, the CLECs have built their own

interfaces to electronically bond directly to the existing Qwest systems. These CLEC systems would need to be modified, at significant expense, by the CLEC to work with the new replacement system. For instance, Qwest's IMA XML exchanges information between the CLEC and Qwest's OSS in data files based on Qwest's standard XML Web Service Definition Languages or "WSDLs." As Qwest explains: "There must be a mechanism to translate data from the proprietary format as it exists in the CLEC system to a format that the receiving organization can understand. This is done using XML translation software."[81] All of these systems, software, and proprietary formats would need to be changed in both Qwest's and CLECs systems if CenturyLink attempts to replace Qwest's OSS post-merger. The CLEC would then need to test all of these new systems before going "live" to ensure that they work properly (which is the purpose of Qwest's Stand Alone Test Environment or "SATE"), and would also need to test them in a production environment (which is why Qwest offers controlled production testing). CenturyLink has not indicated whether it would provide any of these capabilities if it decides to integrate OSS.

Also, like Qwest, some CLECs have integrated their electronic interfaces into their own back end systems. For example, some CLEC systems take Qwest line loss data received through the XML interface, and feed that information directly into the CLEC's billing system, which results in the termination of billing for end

[81] IMA XML FAQs Available at: http://www.qwest.com/wholesale/ima/xml/

users for whom the line loss data has been received via the interface without manual intervention. The interconnectivity of systems has effectively eliminated the "billing after downgrade" issues that plagued CLECs and end users that existed for a number of years (assuming the line loss data provided by Qwest is accurate). A similar linkage is made by some CLECs between Qwest's OSS interfaces and the CLECs' own systems for directory listings to ensure accurate directory listings for the CLECs' customers. Another example is for trouble ticket reporting. PAETEC, for example, has established electronic bonding capability with Qwest that allows automated escalation of the trouble ticket, and automated resolution or closing of the trouble ticket and notification to the customer. In other words, by establishing the electronic bonding with Qwest, a PAETEC trouble ticket can go from "open" to "closed" with little or no intervention by PAETEC's technicians. These automated capabilities are possible because PAETEC, for example, undertook a substantial effort to develop its own back end systems and processes and then code, test and link those systems and processes to Qwest's systems and interfaces. These CLEC back end systems would be subject to change if the Merged Company changed Qwest's legacy OSS post-transaction, and could potentially require CLECs to revert to significantly less efficient manual processes if the modified OSS offered by the Merged Company does not afford CLECs access to the same degree of the Merged Company's back end systems and data via the electronic interface.

During the third-party test of Qwest's OSS, a "pseudo-CLEC" (Hewlett Packard or "HP") was hired to act as a CLEC (or "to live the CLEC experience"[82]). HP was charged with establishing electronic bonding with Qwest, ensuring that Qwest provided the necessary information and tools to electronically interface with Qwest's OSS, and determine whether Qwest's systems were operationally ready to handle the volumes and types of orders CLECs would submit through the business-to-business electronic interfaces. Likewise, KPMG Consulting tested Qwest's testing environments. If CenturyLink attempted to modify the CLEC-facing OSS interfaces in Qwest's territory, all of the work done by the third-party testers during the third-party test, and the work done by CLECs to establish these business–to-business interfaces would be undermined. This work would need to be performed all over again to ensure that the replacement system provides the same functionality and at the same quality as Qwest's system.

Q. COULD THIS TYPE OF INTEGRATION BE DONE IN ONE YEAR?

A. No, not even close. CenturyLink has indicated to the FCC that it intends to operate both companies' OSS for at least one year following transaction approval. One year is insufficient time for such an enormous effort. It took Qwest three years to satisfy third-party testing of its existing OSS, and that was during a time when Qwest had 271 approval as a "carrot" to encourage the company to work with CLECs and regulators to improve its OSS. By contrast, even if CenturyLink

[82] Draft Final Report of KPMG Consulting, Qwest Communications OSS Evaluation, Version 1.1, April 26, 2002 ("KPMG 4/26/02 OSS Report") at p. 10.

abides by its claim to leave Qwest's OSS in place for one year, it will have no incentive to work with CLECs and regulators during the integration to ensure that the access or quality to Qwest's existing OSS are not degraded, because the proposed transaction will already have been approved (i.e., there will be no "carrot").

Moreover, the idea that a CenturyLink-Qwest integration can be quick and smooth, or not hinder CLECs, is belied by the petition CenturyLink filed with the FCC, shortly after filing its application for merger, seeking relief from the deadline to implement one-day porting. In its request for a waiver of the deadline, CenturyLink argued that it was still in the process of integrating the CenturyTel and Embarq systems. Now, before that process is completed and while it is still causing delays in functions like number porting that are critical to competitors, CenturyLink wants to begin yet another integration effort, thereby adding another completely different system to the mix. The Commission should be very concerned about the timing of this proposed transaction given the Embarq merger is, in an operational sense, not finished yet and the end result remains unknown.

Q. IS THERE AN EXAMPLE FROM THE INFORMATION PRESENTED ABOVE WHICH SHOWS THAT DIFFERENCES IN THE COMPANIES' OSS LEAD TO DIFFERENCES IN FUNCTIONALITIES TO CLECS?

A. Yes. CenturyLink explains that its "Access Care for trouble reporting system for circuits" entails:

> [t]he Wholesale customer will call in to the SSO (Special Service Operations) and CenturyLink will record all the pertinent information on the ticket. If SSO has remote test access, SSO will then do a diagnostic test to isolate the trouble. Once it is determined if it is a central office, cable, or premise issue, the SSO will request dispatch to the proper technician to resolve the issue. Once the field technician has fixed the issue, they will call back into SSO to test the circuit to confirm the repair. CenturyLink will then call the reporting party and do acceptance testing, if the circuit is working and they accept it, the ticket is closed.[83]

Also, in legacy Embarq territory, CLECs have the option to submit and track trouble tickets for unbundled loops and features electronically via a web-based repair ticket ordering system ("WebRRS").

Qwest's MEDIACC-EBTA, by comparison, provides the ability to "mechanically process telephone circuit repair activities including repair ticket generation and MLT."[84] Qwest's MEDIACC allows for "M&R queries [to be] forwarded directly from the MEDIACC gateway for processing by Loop Maintenance Operations System (LMOS) and Work Force Administration (WFA)"[85] "without having to go through the Business Process Layer…"[86] What this comparison demonstrates is that Qwest allows electronic bonding capability for maintenance and repair that permits a direct connection between the CLEC's M&R query and the Qwest repair technicians – a capability that is not available through either CenturyLink's Access Care (SSO) process (which requires multiple phone calls

[83] CenturyLink Response to Integra Minnesota Data Request #16.

[84] Qwest Response to Integra Minnesota Data Request #19.

[85] Final Report of the Qwest OSS Test, May 3, 2002, Issued by Cap Gemini Ernst & Young (Third Party Tester), Version 3.0 at p. 247.

[86] Final Report of the Qwest OSS Test, May 3, 2002, Issued by Cap Gemini Ernst & Young (Third Party Tester), Version 3.0 at p. 251.

and increased manual intervention, with the increased possibility of error) or CenturyLink's web-based WebRRS. Further, based on the information the Joint Petitioners have provided to date, it appears that Qwest's web-based maintenance and repair GUI, CEMR, has functionality that CenturyLink's web-based maintenance and repair GUI, WebRRS, does not have. One such example is that CLECs can submit trouble tickets for special access circuits through Qwest's CEMR,[87] which is not permitted through CenturyLink's WebRRS.[88]

Q. DO YOU HAVE OTHER CONCERNS ABOUT TRYING TO INTEGRATE LEGACY CENTURYLINK OSS INTO QWEST'S TERRITORY?

A. Yes. Based on information provided in discovery[89] CenturyLink's EASE system uses the Virtual Front Office ("VFO"), a platform originally developed by Wisor Telecom Corp, a subsidiary of Synchronoss. This same Synchronoss/Wisor VFO platform was used by FairPoint Communications in its OSS cutover in Northern New England and Frontier Communications in its recent OSS cutover in West Virginia. A competitor in West Virginia that makes extensive use of the Frontier OSS, FiberNet, recently asked the West Virginia Public Service Commission to review problems arising with that platform. FiberNet explained that:

> Since the cutover to Frontier's Synchronoss VFO [Virtual Front Office] OSS on July 1, 2010, however, FiberNet has experienced significant and ongoing problems with the proper functionality of

[87] http://www.qwest.com/wholesale/systems/WebHelp/Introduction.htm

[88] *See, e.g.*, A Guide to Embarq Online Wholesale Repair System, available at: http://embarq.centurylink.com/wholesale/docs/webrrs_app.pdf ("For special access circuits or switched access circuits, customers continue to call 888-883-1484 to report trouble.")

[89] *See, e.g.*, CenturyLink Response to Integra Minnesota Data Request #17.

> Frontier's OSS and have unfortunately been compelled to conclude that Frontier's OSS as presently constituted is substantially less sophisticated and far less automated than the former Verizon OSS it was intended to replace.[90]

Based on this recent experience, there is a real concern that the same problems experienced by CLECs in Northern New England and now being experienced by CLECs in West Virginia may also occur in Qwest's region post-merger.

Q. ARE YOU CONCERNED ONLY BY THE COMPANY'S ATTEMPT TO INTEGRATE CLEC-FACING OSS INTERFACES OR IS YOUR CONCERN BROADER THAN THAT?

A. My concern is much broader than CLEC-facing OSS interfaces. As explained above, OSS includes all of the computer systems, databases, personnel and business processes that an ILEC uses to perform internal functions necessary to support the OSS systems interfaces – not just the CLEC-facing interfaces. The third-party test of Qwest's OSS during the 271 approval process went much deeper than just the CLEC-facing interfaces. Rather, the test included an evaluation of Qwest's PIDS,[91] Qwest's PAP,[92] Qwest's back-office systems,

[90] FiberNet LLC Petition to Reopen, July 21, 2010 (filed in West Virginia PSC Docket No. 09-087 1-T-PC), at p. 3.

[91] *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 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 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*

Qwest's business processes,[93] the integrity of Qwest's data,[94] Qwest's SGAT,[95] and Qwest's CMP.[96] Changes in any of these areas will cause Qwest to backslide on its 271 obligations and result in harm for CLECs, and competition generally.

Q. ARE YOU SAYING THAT QWEST'S WHOLESALE SYSTEMS AND PROCESSES ARE WITHOUT FLAW?

Corp. 's *Section* 271 *Application and Motion for Alternative Procedure to Manage the Section 271 Process et aI.,* New Mexico Utility Case Nos. 3269 *et al.,* Final Order Regarding Compliance with Outstanding Section 271 Requirements, 2002 N.M. PUC LEXIS 2, October 8, 2002, at ¶ 65.

[92] *See, e.g.,* Comments of the Nebraska Public Service Commission, WC Docket No. 02-148, filed July 3, 2002 ("Nebraska PSC Comments"), at 4 (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).

[93] The Master Test Plan contained "a description of a comprehensive plan to test Qwest's OSS, interfaces ***and processes***…" *Washington 39th Supplemental Order* at ¶ 109, quoting the Master Test Plan. (emphasis added)

[94] Liberty Consulting was retained to conduct a data reconciliation audit, during which 10,000 orders or trouble tickets were evaluated. Order Regarding Operational Support Systems, ROC OSS Test, and Commercial Performance Data, South Dakota Public Service Commission Docket TC01-165, November 22, 2002 ("South Dakota PSC 271 Order"), at p. 22.

[95] *See, e.g.,* Evaluation of the Colorado Public Utilities Commission, WC Docket No. 02-148, filed July 2, 2002 ("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* Written Consultation of the Idaho Public Utilities Commission, WC Docket No. 02-148, July 3, 2002, 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.")

[96] See, e.g. 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. '").

A. No. As explained above, it has taken many years, an enormous amount of industry effort led by the ROC, and many millions of dollars to get Qwest's wholesale OSS, CMP, processes, procedures and practices to where they are today. Qwest's systems and processes are not perfect, but they are much better than they were prior to the 271 process and CLECs have experience with dealing with those systems. By contrast, CenturyLink's OSS has not been through independent third-party testing, and has not been tested for commercial volumes or shown to be operationally ready for Qwest's territory. And, given its relatively recent deployment, CenturyLink's OSS is much less familiar to CLECs.[97] There is a grave concern – grounded in CenturyLink's lack of experience, the lack of information from Joint Petitioners, and recent system integration failures – that OSS performance will get worse after the proposed transaction absent binding conditions/commitments that ensure continued availability of Qwest's OSS and the continuation of PIDs and PAPs to measure the ongoing performance.

2. Integrating CenturyLink's Local Operating Model Into Qwest's Region Will Cause Harm

Q. CAN YOU PROVIDE ANOTHER EXAMPLE OF HOW CENTURYLINK'S INTEGRATION EFFORTS COULD BE HARMFUL TO NOT ONLY CLECS BUT ALSO RETAIL CUSTOMERS AND THE ECONOMIC DEVELOPMENT OF THE STATE?

[97] Qwest's third-party tested OSS has been in place for about seven years. By contrast, CenturyLink is currently in the process of integrating Embarq's legacy OSS into CenturyLink's legacy territory.

A. Yes. CenturyLink touts its "region-based, local operating model" – or "go-to-market" model – which, according to CenturyLink, determines the amount of network investment that will be deployed in each region of the Merged Company.[98] Since CenturyLink has stated that this model will likely be incorporated into the Qwest region,[99] understanding this model is critical to determining the impacts of integration post-merger. Unfortunately, CenturyLink has provided almost no detail, and what detail has been provided is concerning.

Q. PLEASE EXPLAIN YOUR CONCERNS.

A. The Merged Company's investment in network maintenance and upgrades is an issue that is critical to wholesale and retail customers (who rely on that network for services) as well as the economic development of the state. However, when asked to provide details about the go-to-market model, which is said to determine that investment, CenturyLink states: "[d]etailed planning regarding the integration of Qwest areas into CenturyLink's local operating model has ***not*** begun."[100] Indeed, CenturyLink was unable or unwilling to identify the regions or region headquarters that would apply to Qwest's territory once the go-to-market model is implemented post-merger.[101] So, at this point, no one knows how investment

[98] "CenturyLink's local operating model provides the framework for investment decisions across its operating territory…Upon completion of the merger, it is anticipated that CenturyLink will implement its local operating model in the Qwest operating territories." CenturyLink Response to Washington UTC Staff Data Request #92.

[99] Jones Minnesota Direct at 11 and Ring Minnesota Direct at 8.

[100] CenturyLink Response to Iowa Office of Consumer Advocate Data Request #1-008C (emphasis added).

[101] "While CenturyLink does anticipate its local operating model will be incorporated into the areas of Qwest's operational structure upon the completion of the Transaction**,** the detailed analysis and

decisions will be made in a given state post-merger, who will be making those decisions, what factors will influence those decisions or where those decisions will be made.

Q. DID CLECS ATTEMPT TO GET INFORMATION ABOUT THE "GO-TO-MARKET" MODEL?

A. Yes. When Integra asked CenturyLink some very basic questions about the go-to-market model such as "whether and to what extent [it] impacts wholesale customers", CenturyLink objected to answering the question.[102] Amazingly, CenturyLink based its objection, in part, on the claim that the information: "is not relevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence."[103] Contrary to CenturyLink's claim, the model that will be used to determine how much and what type of investment is made in the state as well as how the Merged Company will conduct

planning associated with identifying specific region headquarters has not taken place. Without regard to the locations of any region headquarters, CenturyLink intends to continue its local market focus, which drives operations and service decision-making closer to the customer. This operating model focuses on empowering local personnel to meet the distinct needs of their markets and places the customer at the center of what the company does." CenturyLink Response to Washington UTC Staff Data Request #80.

[102] CenturyLink Response to Integra Minnesota Data Request #129. CenturyLink also objected to: describing the "direct response marketing efforts" associated with the go-to-market model that CenturyLink claims has had a positive impact on CenturyLink's line losses and broadband take-rates; providing a map showing the regions post-merger; and describing the "customized back-office support" associated with the model that CenturyLink described to the FCC in the Declaration of Karen Puckett in WC Docket No. 10-110.

[103] CenturyLink Response to Integra Minnesota Data Request ##129, 130, 131.

"direct response marketing efforts" to stem wireline losses is directly relevant to the public interest.[104]

Q. ARE CONCERNS ABOUT CENTURYLINK'S PLANS TO IMPLEMENT THE GO-TO-MARKET MODEL IN QWEST'S REGION WARRANTED?

A. Yes. This is a model that has been applied to primarily rural areas, and there is little, if any, evidence that it can be successfully implemented in the more urban areas served by Qwest. CenturyLink explained this concern in its S-4/A to the Securities Exchange Commission ("SEC") (at page 17):

> Prior to the Embarq acquisition, CenturyLink provided local exchange telephone services to predominantly rural areas and small to mid−size cities. Although Embarq's local exchange markets include Las Vegas, Nevada and suburbs of Orlando and several other large U.S. cities, CenturyLink has operated these more dense markets only since mid-2009. Qwest's markets include Phoenix, Arizona, Denver, Colorado, Minneapolis — St. Paul, Minnesota, Seattle, Washington, Salt Lake City, Utah, and Portland, Oregon, and, on average, are substantially denser than those traditionally served by CenturyLink. While CenturyLink believes its strategies and operating models developed serving rural and smaller markets can successfully be applied to larger markets, it can not assure you of this. CenturyLink's business, financial performance and prospects could be harmed if its current strategies or operating models cannot be successfully applied to larger markets following the merger, or are required to be changed or abandoned to adjust to differences in these larger markets.

[104] CenturyLink has indicated that the go-to-market model will play an important role in achieving merger synergies. For instance, CenturyLink states: "This more de-centralized local structure is combined with a leaner, more efficient central corporate operation" (Direct Testimony of Duane Ring, Docket No. P-421, et al./PA-10-456, filed June 14, 2010 ("Ring Minnesota Direct"), at 7). CenturyLink has identified corporate overhead as a primary synergy-related operating cost savings (Direct Testimony of G. Clay Bailey on behalf of CenturyLink, Inc., Oregon PUC Docket No. UM 1484, filed May 21, 2010, CTL/300, Exhibit CTL/301 at p. 13). Given that the companies' estimate of synergies funnels directly into the Merged Company's ability to pay down debt, return to investment grade, satisfy shareholders' dividend expectations and continue to invest in its network, the go-to-market model is a key component of the public interest analysis.

In addition to concerns related to using the go-to-market model in urban areas, there is anecdotal evidence that this model is causing problems in the legacy CenturyLink territory. For instance, Lincoln City, Oregon (the City) recently filed a petition to intervene in Oregon Docket UM 1484 describing problems it has experienced attempting to work with CenturyLink (in the legacy Embarq territory) to get redundant pathways for telephone service including 911 calls. The City states that despite working with CenturyLink (i.e., legacy Embarq in this instance) for over two years and despite promises from Embarq to fix the problem, Embarq has not kept those promises.[105] Importantly, it is the City's belief that "[i]n the name of post-merger cost savings, CenturyTel has enlarged its management districts with fewer managers overall, and fewer, local knowledgeable technicians…"[106] and "[i]f the pattern following the Embarq/CenturyTel merger continues with the CenturyTel/Qwest merger, fewer and fewer managers and technicians will be responsible for more and more territory."[107] Based on the City's experience, erratic implementation of CenturyLink's local operating model (or "management districts") in the legacy Embarq territory is causing harm, instead of the benefits touted by the Joint Petitioners. Again, because CenturyLink has provided no details about its plans

[105] Petition to Intervene by City of Lincoln City, Oregon PUC Docket UM 1484, July 30, 2010 ("City Petition"), at pp. 3-4.

[106] City Petition at p. 4. The City states: "City can prove, if necessary, that the experienced former Embarq technicians and managers who were knowledgeable about the switches and related equipment controlling north Lincoln County and Tillamook County were systematically fired or retired by CenturyTel making the performance of its promises ever more speculative and unlikely."

[107] City Petition at p. 4.

regarding the go-to-market post-merger (other than that CenturyLink plans to import it to Qwest's region), there is no way to tell whether CenturyLink's plans are realistic, whether it can truly be successful in urban areas, or whether harmful impacts will result in Qwest legacy territory like those described by the City.

3. CenturyLink's Integration Effort May Result in Additional Charges for CLECs

Q. BY PROVIDING THE FOLLOWING EXAMPLES, ARE CLECS ATTEMPTING TO RESOLVE ISSUES NOT RELATED TO THE PROPOSED TRANSACTION?

A. No. The examples are meant to show how CenturyLink does business with CLECs, and how integrating CenturyLink's OSS, processes and practices into Qwest territory could result in harm to CLECs.

Q. CAN YOU PROVIDE AN EXAMPLE OF CENTURYLINK WHOLESALE PRACTICES THAT UNREASONABLY INCREASE COMPETITORS' COSTS?

A. Yes. Comcast was forced to arbitrate a single issue in numerous states over Embarq's attempt to impose a monthly recurring per subscriber charge for storing and maintaining Comcast's customer directory listing ("DL") information in Embarq's DL databases.[108] Embarq sought to impose this recurring Directory

[108] *See* United Telephone Company of the Northwest d/b/a Embarq Response to Comcast Petition in Washington Docket No. U-083025, filed May 27, 2008, at ¶ 10.

Listing Storage and Maintenance Charge ("DLSM") charge ***in addition*** to the high per listing, non-recurring charge for loading Comcast's listings into the DL database in the first place.

As I noted in my testimony in those arbitrations on behalf of Comcast, the charge violated Embarq's statutory obligation to provide nondiscriminatory access to directory listing functions.[109] Embarq sought to impose the recurring DLSM charge only on facilities-based competitors that utilize their own-last mile facilities as opposed to the unbundled loops and services of Embarq. The Washington Commission, for example, which ultimately ruled in Comcast's favor, stated in pertinent part:

> The record is clear that Embarq does not impose a recurring DLSM charge on its own retail customers or on other CLECs that purchase resale services or UNE loops from Embarq. Embarq wishes to impose the recurring DLSM charge only on facilities-based CLECs such as Comcast that do not rely on Embarq's "last-mile" facilities or services to compete within Embarq's service area. Given the expansive language of Section 251(b)(3) and the FCC's definition of "nondiscriminatory access", we find it unreasonable and contrary to federal law for Embarq to single out a particular type of competitor, in this case a facilities-based CLEC, to impose a charge related to directory listing only when a carrier does not purchase another service such as resold service or UNE loops.[110]

[109] 47 U.S.C. § 251(b)(3); 47 C.F.R. § 51.217 (a) and (b).
[110] See, Arbitrator's Report and Decision, Docket No. U-083025, January 13, 2009, at pp. 11-12.

This type of litigation, where the ILEC attempts to impose anti-competitive charges that recover additional revenue for services for which it has already been compensated, shows the tendencies of CenturyLink and its attitude towards CLECs in general.

Q. ARE THERE OTHER ANTI-COMPETITIVE CHARGES THAT CENTURYLINK ASSESSES IN ITS LEGACY TERRITORY OF WHICH YOU ARE AWARE?

A. Yes. Over the past few years Charter's telephone affiliates arbitrated numerous issues with CenturyLink in establishing new ICAs. One issue that was particularly objectionable is CenturyLink's continued attempts to charge Charter for access to the customer side of the network interface device ("NID") enclosure.

Q. WHAT IS A NID?"

A. The FCC has defined the NID in several orders. As an example, in 1999 the FCC stated, "Specifically, we define the NID to include any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a *cross-connect device used for that purpose*."[111] That "means of interconnection" (again, usually a cross-connect device) is then enclosed in a small gray box, about the size of a shoe box, placed on the side of single family dwellings. The NID

[111] *See, e.g., In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report And Order And Fourth Further Notice Of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) ("UNE Remand Order") at ¶233.

and its enclosure will be referred to here, in my testimony, simply as the "NID enclosure."

Q. WHAT WAS THE ISSUE REGARDING THE NID ENCLOSURE?

A. Recall that Charter, like other cable companies who also provide telephone service, is a facilities-based provider with its own loop facilities, and which does not need or purchase UNEs. When Charter wins a customer, it must disconnect the other carrier's loop (in this case CenturyLink) prior to connecting its own loop facilities to the customer's inside wiring. To disconnect the CenturyLink loop, Charter opens the customer side of the NID enclosure and disconnects the jumper. CenturyLink wanted to charge Charter for accessing and "using" the NID enclosure as if it were a UNE.

Q. WHAT DID STATE COMMISSIONS IN MISSOURI AND WISCONSIN DECIDE IN THESE CASES?[112]

A. These state commissions ruled that Charter should not be required to compensate CenturyLink for accessing the customer side of the NID enclosure. This was especially true since CenturyLink admitted that its alleged costs were already recovered by other charges. CenturyLink incurs no costs or technical obligations when Charter unplugs the short cross connect between network side and the

[112] *See, e.g., Petition of Charter Fiberlink, LLC for Arbitration of an Interconnection Agreement Between the CenturyTel Rural and Non-Rural Telephone Companies of Wisconsin*, Order Determining Disputed Issues Regarding Arbitration Award, Dockets 5-MA-148, 5-MA-149, 2010 Wis. PUC LEXIS 131 (Wis. PSC Mar. 2010); *and Petition of Charter Fiberlink-Missouri, LLC for Arbitration of Interconnection Rates, Terms, Conditions, And Related Arrangements with the CenturyTel of Missouri, LLC Pursuant to 47 U.S.C. § 252(b)*, Order Adopting Final Arbitrator's Report, Case No. TO-2009-0037, 2009 Mo. PSC LEXIS 559 (Mo. PSC 2010).

customer side of the NID enclosure. In fact, once the end user has been transferred to Charter, CenturyLink no longer has any engineering and service obligations to that customer. In addition, Charter's limited use of the customer side of the NID enclosure to connect its network to the customer's inside wire generally only arises when CenturyLink has installed an enclosure on the customer's premises in a way that blocks any reasonable access to the customer's inside wire.

Q. DOES CENTURYLINK ALSO ATTEMPT TO IMPOSE ANTI-COMPETITIVE CHARGES FOR LOCAL NUMBER PORTABILITY?

A. Yes. CenturyLink attempts to assess separate charges on CLECs for local number portability activities that are specifically prohibited under the Act and under the FCC's rules. In arbitration, CenturyLink proposed to charge Charter a service order charge for porting customers. Charter countered that costs for LNP activities, except in very unique circumstances that do not apply to Charter,[113] are to be recovered from an ILEC's end users. Specifically, the FCC's rule states that ILECs may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the FCC, certain charges over a five (5) year term assessed against end users.[114] In other words, to

[113] Specifically, FCC rules permit ILECs to assess LNP charges upon other carriers only when other carriers purchase: (a) the ILEC's switching ports as unbundled network elements, (b) Feature Group A access lines; or, when the carrier resells the ILEC's local service. *See* 47 C.F.R. § 52.33(a)(1)(ii). Also, ILECs may assess a LNP "query service" charge when that function is provided to other carriers. *Id.* at § 52.33(a)(3).

[114] *See* 47 C.F.R. § 52.33(a)(1)(i) and (a)(3).

recover their costs associated with number porting, ILECs may assess separate charges on their end users – not competitors. Qwest does not assess similar, separate number porting charges, so there is a genuine risk that the Merged Company may try to import these anti-competitive charges to Qwest's legacy territory as a result of integration efforts because CenturyLink is the acquiring, and controlling, entity and because of the pressures on the Merged Company to show a financial benefit from the transaction. Such an outcome would reflect the integration of worst (not best) practices, would raise competitors' barriers in Qwest's legacy territory and result in harm to the public interest directly related to the proposed transaction.

4. CenturyLink's Attempts to Increase Transaction Costs for CLECs

Q. DO YOU HAVE ANOTHER EXAMPLE THAT SUGGESTS THAT INTEGRATION COULD HARM CLECS?

A. Yes. CenturyLink has demonstrated in these very merger cases either a disregard for CLECs or a desire to drive up the CLECs' transaction costs. A number of CLECs are intervening in multiple state proceedings where the Joint Petitioners are seeking approval of the proposed transaction. Since the issues and questions are going to be very similar, if not the same, across all states, the CLECs at the outset asked CenturyLink and Qwest to allow a streamlined discovery process where the CLECs could issue one set of discovery on the Joint Petitioners and the

public responses to those questions could be used in all states where the CLECs are parties (except for state specific differences).

Q. WHAT WAS CENTURYLINK'S OR QWEST'S REPLY?

A. They refused to accept the CLECs' request. I have attached as Exhibit TJG-4 the Joint Petitioners' refusal letter. Despite Joint Petitioners' claims that such a streamlined discovery process would "result in an impractical and burdensome process for the Applicants, as well as the potential that the approval proceedings may be unnecessarily delayed" and that there is a "lack of commonality between all the states," the CLECs' follow-up letter (also attached as Exhibit TJG-4) explained that just the opposite is true. The CLECs asked the Joint Petitioners to reconsider their refusal, but the Joint Petitioners ignored that request. And because the Joint Petitioners are requesting expedited treatment of the proposed transaction, deadlines were approaching fast, so the CLECs were forced to create and serve substantially the same discovery questions for each individual state. This requires the CLECs to track and log responses separately for each state, review those individual responses line-by-line to check for any subtle differences, etc. Furthermore, the reasons provided by Joint Petitioners for refusing the CLECs' request were undermined by CenturyLink's subsequent actions.

Q. SINCE THE JOINT PETITIONERS REFUSED THE STREAMLINED DISCOVERY PROCESS, IS IT FAIR TO ASSUME THAT QWEST AND

CENTURYLINK PROVIDED STATE-SPECIFIC INFORMATION IN THEIR RESPONSES?

A. No. Ironically, the Joint Petitioners refused to participate in the streamlined discovery process due, in part, to their assertion that it "complicates the drafting and researching of responses unnecessarily[;]" nevertheless, most of the discovery responses provided by the Joint Petitioners to my clients' discovery requests were virtually identical across different states. For example, in the Iowa merger proceeding, PAETEC served a set of discovery on the Joint Petitioners that was substantially the same as discovery served on Joint Petitioners by Integra here in Minnesota and other state proceedings, including Colorado. For its responses to PAETEC's discovery in Iowa, CenturyLink inadvertently filed its responses to the similar discovery from Colorado (CenturyLink's initial responses in Iowa referenced the Iowa docket in the heading, but referred to Colorado in the responses). After PAETEC's counsel inquired about this apparent error, CenturyLink indicated that none of its responses would change whether they apply to Iowa or Colorado. In other words, instead of providing the same response once for multiple states, as CLECs wanted, Joint Petitioners are apparently "copying and pasting" the same responses from state to state. The facts show that it is Joint Petitioners' refusal to agree to the CLECs' streamlined discovery approach that is "complicat[ing] the drafting and researching of responses unnecessarily." To make matters worse, the Joint Petitioners refused to answer a discovery question in one state (Minnesota, for example) about a

statement CenturyLink made in another state (Oregon, for example).[115] As a result, the CLECs had to comb through each individual state filing by the Joint Petitioners (some of which was not word-searchable) to match up state-specific cites for the discovery questions.

Q. HAS THE LACK OF A STREAMLINED DISCOVERY PROCESS HAMPERED THE ANALYSIS OF THE PROPOSED TRANSACTION IN OTHER WAYS?

A. Yes. The CLECs have to wait for responses to be issued in each individual state before being able to use the discovered data, which creates unnecessary delays and imposes additional costs on CLECs. For example, Joint Petitioners provided certain confidential data in response to identical discovery questions issued in multiple states. However, for some inexplicable reason, the Joint Petitioners failed to provide that data in response to those questions issued by PAETEC in Iowa (which requests were served on the Joint Petitioners in Iowa on July 16, 2010, and Joint Petitioners' responses due on July 23, 2010). As a result, PAETEC, counsel and QSI had to modify my initial testimony the very day testimony was originally due to delete the discussion of issues that would have

[115] For example, the Joint Petitioners filed supplemental testimony in the Oregon proceeding UM1484 that, to my knowledge, has not been filed in other state commission proceedings related to the proposed transaction. Accordingly, some of Integra's discovery questions in Minnesota pertained to testimony the Joint Petitioners submitted in Oregon that had not been submitted in other states, including Minnesota. None of the Supplemental Oregon testimony addressed Oregon-specific issues and Integra's questions about this supplemental testimony were not Oregon-specific, yet, Joint Petitioners objected to answering questions related to this Oregon testimony in its discovery responses in Minnesota because "this testimony was not submitted in Minnesota and therefore is not relevant to this proceeding.".CenturyLink Objection to Integra Minnesota DR #78.

likely been supported by the confidential data Joint Petitioners failed to provide in Iowa. To add insult to injury, the day after the Joint Petitioners secured an extension of the filing deadline in Iowa, they then provided some of the confidential data PAETEC requested, but provided it to PAETEC's counsel after 5 p.m. on Friday even though the revised testimony deadline was Noon the following Monday, again causing PAETEC, counsel and QSI to expend time, money and effort, developing supplemental testimony for Iowa. Clearly, the Joint Petitioners' approach to discovery for the merger proceedings alone has cost CLECs many extra person-hours and thousands of dollars.

Q. HAS QWEST PREVIOUSLY AGREED TO A STREAMLINED DISCOVERY PROCESS LIKE THAT PROPOSED BY THE CLECS IN THESE CASES?

A. Yes. My firm, QSI, recently represented PAETEC (McLeodUSA) in a number of complaints against Qwest regarding collocation power charges before a handful of state commissions. Since the issues in those cases were similar across states, McLeodUSA and Qwest were able to agree that discovery responses issued in one state could be used in another state so as to avoid duplicative requests and responses and save time and money. Indeed, I understand that this arrangement was originally suggested by Qwest's counsel. So, while the companies disagreed on substantive issues in the proceeding, at least Qwest agreed to a logistical process that made the process more efficient and less costly for all involved.

Q. HOW SHOULD THE COMMISSION INTERPRET THE JOINT PETITIONERS' ACTIONS IN THE EXAMPLES YOU JUST PROVIDED?

A. If the recent conduct of the Joint Petitioners is how the Merged Company will conduct itself post-merger, I expect the Merged Company to be more difficult for competitors to work with than Qwest. I see this as a significant step backwards. If this litigious, "compartmentalizing" attitude of CenturyLink drives the process of integrating "best practices" post-merger, I expect CLEC transaction costs to significantly increase post-merger – particularly given the patchwork organization of rural and non-rural companies CenturyLink intends to maintain post-merger.

C. Assurances of Integration Success Are Exaggerated and Ignore The Serious Challenges Facing CenturyLink Post-merger

Q. CENTURYLINK STATES THAT IT IS AN EXPERIENCED INTEGRATOR BASED ON ITS PREVIOUS ACQUISITIONS.[116] SHOULD THAT PROVIDE CLECS AND THE COMMISSION COMFORT ABOUT CENTURYLINK'S ABILITY TO INTEGRATE QWEST?

A. No. CenturyLink has acknowledged to the SEC that there is a risk of CenturyLink being unable to successfully integrate the two companies, and more specifically, that "performance shortfalls" at one or both of the companies may result from the "diversion of management's attention caused by completing the

[116] Jones Minnesota Direct at 2 and 15 and Ring Minnesota Direct at 5 and Exhibit DR-1.

merger and integrating the companies' operations."[117] In addition, there are several key differences between past acquisitions and the proposed acquisition of Qwest. Some of those differences are listed below:

- The magnitude of this acquisition dwarfs all other prior transactions, so CenturyLink could very well be "biting off more than it can chew." As the investment research company Morningstar stated: "CenturyTel is taking an unnecessary risk with the Qwest merger" and "the timing and scope of the Qwest deal will present far greater challenges" than the Embarq acquisition.[118]
- The Merged Company is taking on much more debt by acquiring Qwest than it has in past acquisitions. As Integra and others explained to the FCC: "At the conclusion of the transaction, legacy CenturyTel will have *more than quadrupled* its debt load in approximately three years."[119]
- No prior CenturyLink acquisitions involved acquiring a BOC (and all BOC-related obligations) like the proposed transaction does.
- CenturyLink is still in the process of integrating the recent acquisition of Embarq, which raises concerns about the Merged Company spreading its resources too thin in attempting to complete multiple integrations at the same time. Just to put the Merged Company's integration efforts in perspective, CenturyTel before its acquisition of Embarq in 2009 served "roughly two million telephone access lines."[120] In 2009, it acquired "nearly 5.9 million telephone access lines"[121] when it acquired Embarq – which approximately tripled the size of the company in terms of access lines. With the proposed transaction of Qwest, CenturyLink will acquire another 10.3 million access lines.[122] So, if the transaction is approved, CenturyLink will have grown by nine times its size in just two short years. No matter how experienced the

[117] CenturyLink Form S-4A, filed July 16, 2010, at p. 17.

[118] Morningstar Report, "CenturyTel is Taking an Unnecessary Risk with the Qwest Merger, in Our View," May 27, 2010, cited in Comments of Communications Workers of America, WC Docket No. 10-110, July 12, 2010, at pp. 11-12.

[119] Ned Douthat, *Tough Times on the Way to the Altar for CenturyTel and Qwest,* Forbes, April 26, 2010. Forbes article available at: http://blogs.forbes.com/greatspeculations/2010/04/26/tough-times-on-the-way-to-the-altar-for-centurytel-and-qwest/

[120] FCC Embarq/CenturyTel Merger Order at ¶ 4.

[121] FCC Embarq/CenturyTel Merger Order at ¶ 3.

[122] Minnesota Petition at 9.

management team at the Merged Company is, an integration effort of this magnitude will be extremely challenging to say the least.[123]

Q. IS THERE INFORMATION THAT SUGGESTS THAT THE EMBARQ INTEGRATION IS HINDERING CENTURYLINK'S ABILITY TO ABIDE BY ITS REGULATORY OBLIGATIONS?

A. Yes. Despite CenturyLink's glowing reports of the Embarq integration in its testimony, other information suggests that the integration effort is monopolizing much of the Merged Company's time and efforts. For example, CenturyLink recently requested a waiver of the FCC's one business-day porting interval requirement on the basis that such compliance would disrupt "ongoing system changes related to the [CenturyTel/Embarq] merger" to the point where the integration effort would have to be "suspended, which would create large numbers of problems with retail and carrier customer processes, and lead to service disruptions, delays and errors that would likely cause incalculable additional costs."[124] CenturyLink explained that strict adherence to the FCC's requirement could require CenturyLink to "divert resources and implementation activity away from the wholesale systems" and would jeopardize timely

[123] Standard & Poor's has observed that "integration efforts will be difficult given the size of the combined company and CenturyTel's integration of previously acquired Embarq will likely not be complete until the end of 2011." Direct Testimony of Jeff Glover, on behalf of CenturyLink, Arizona Corporation Commission Docket No. T-01051B-10-0194, et al., May 24, 2010 ("Glover Arizona Direct"), Exhibit JG-4. See also, Glover Arizona Direct, Exhibit JG-3, wherein Moody's states: "The negative rating outlook for CenturyTel reflects the considerable execution risks in integrating a sizeable company so soon after another large acquisition (Embarq in 2009) while confronting the challenges of a secular decline in the wireline industry."

[124] CenturyLink Petition for Waiver of Deadline, CC Docket No. 95-116, WC Docket No. 07-244, June 3, 2010, at p. 5.

completion of its integration of legacy Embarq's wholesale OSS required by the FCC merger conditions.[125] This waiver request not only calls into question the purported seamlessness of the Embarq integration efforts, but also casts serious doubt on the Merged Company's ability to integrate both Embarq and Qwest simultaneously, let alone in an efficient manner.[126] That is, if CenturyLink's efforts to integrate Embarq jeopardize its ability to meet its regulatory obligations, then surely integration of Qwest (which will more than double CenturyLink's size) will similarly jeopardize CenturyLink's ability to abide by regulatory requirements and obligations. CenturyLink has already noted that the simultaneous integration of Qwest and Embarq poses risks:

> [CenturyLink/Qwest] integration initiatives are expected to be initiated before CenturyLink has completed a similar integration of it 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.[127]

Q. HAVE THE CLECS REPORTED PROBLEMS WITH EMBARQ OR CENTURYTEL SINCE THAT MERGER WAS APPROVED?

A. Yes. Recent experience of CLECs indicates that CenturyLink's integration track record is not as perfect as its testimony seems to suggest. As discussed in the

[125] CenturyLink Petition for Waiver of Deadline, CC Docket No. 95-116, WC Docket No. 07-244, June 3, 2010, at p. 7.

[126] CenturyLink represented in a SEC filing that integration efforts associated with the Qwest acquisition would likely be initiated before the integration of Embarq was complete. CenturyLink Form S-4 at p. 16. See also, Exhibit DR-2 to Ring Minnesota Direct, showing overlap between the integration of Embarq and Qwest during 2011 and 2012.

[127] CenturyLink Form S-4 at p. 16.

CLEC comments to the FCC, tw telecom and Socket Telecom explained problems they experienced during CenturyLink's transition of wholesale customers in the legacy Embarq territory from one ordering system to another in 2009. I have attached the relevant portion of those comments as Exhibit TJG-5. As described therein, the CLECs have experienced system outages (during which time LSRs could not be submitted), could not complete pre-ordering, and experienced slow response times.

Q. HAVE CENTURYLINK'S SYSTEM INTEGRATION EFFORTS ALWAYS BEEN ON-TIME AND ON-BUDGET?

A. No. Prior attempts by CenturyLink to integrate systems were neither on-time nor on-budget. CenturyTel stated that this billing system integration effort required "substantially more time and money to develop than originally anticipated" and estimated a cost overrun of between $50 million and $60 million.[128] Furthermore, CenturyTel stated:

> 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.[129]

CenturyTel stated in its 2001 10-K that "The Company is in the process of developing an integrated billing and customer care system" and completion … is

[128] *Financial Watch: Integration Costs Loop Over OSS Deployments,* Billing and OSS World, October 1, 2003.

[129] *Financial Watch: Integration Costs Loop Over OSS Deployments,* Billing and OSS World, October 1, 2003.

expected to occur in early 2003." However, two years later CenturyTel stated in its 2003 10K that "the system remains in the development stage and has required substantially more time and money to develop than originally anticipated. The Company currently expects to complete all phases of the new system no later than mid-2005. In addition, the Company expects to incur additional costs related to completion of the project, including (i) approximately $15 million of customer service related and data conversion costs." Therefore CenturyTel's integrated billing and customer care system implementation was delivered over two years later than planned and additional operational costs were incurred as a result. The same risks are inherent in any system integration CenturyLink may attempt in Qwest's region post-merger – "there is no assurance" that the integration will be on time, on budget, or function properly.[130] Indeed, it is these types of customer-impacting problems with systems integration that have caused the serious problems associated with recent mergers.

Q. WHAT SPECIFIC KINDS OF CHALLENGES WILL CENTURYLINK FACE WHEN ATTEMPTING TO INTEGRATE THE BACK-END SYSTEMS AND CLEC-FACING OSS CURRENTLY USED BY QWEST?

A. I discussed some of these major challenges above. The point is that changing CLEC-facing OSS is not just a matter of implementing or migrating a new CLEC-facing system; rather, it involves synching up that new system with all of the

[130] Integra asked CenturyLink about the problems it experienced during this attempted billing integration in discovery, including the budgeted and actual cost and duration of the integration effort. CenturyLink objected to answering. *See, e.g.*, CenturyLink objection to Integra Minnesota Data Request #38.

underlying back-office systems, billing systems, underlying data sets, business processes, product catalogs, billing systems, business rules, and performance metrics, remapping data extracts, as well as testing those new systems in a standard test environment and in controlled production testing. In other words, replacing Qwest's existing OSS would have a domino effect that impacts virtually every aspect of the wholesale customer's relationship with Qwest. Other non-BOC entities such as The Carlyle Group and FairPoint Communications have tried to integrate BOC systems in the past and encountered some of the same challenges I have identified.

Q. DID THE FCC IMPOSE A CONDITION ON ITS APPROVAL OF THE EMBARQ/CENTURYTEL MERGER THAT THE MERGED COMPANY WOULD HAVE TO SHOW THAT IT WAS CONTINUING TO MAINTAIN ITS WHOLESALE SERVICE QUALITY PERFORMANCE TO CLECS IN THE FORMER EMBARQ TERRITORIES?

A. Yes. When the FCC approved the CenturyTel-Embarq merger in June 2009, it imposed a series of conditions, including that "[f]or two years after the Transaction Closing Date, the Merged Company will maintain service levels for the Embarq operating companies that are comparable to those Embarq wholesale customers experienced pre-merger."[131] To help ensure compliance with this condition, the FCC also required the Embarq operating companies to continue to

[131] FCC Embarq/CenturyTel Merger Order, Appendix C (Conditions) at p. 1.

produce and make available wholesale service performance reporting for two years after the closing date.[132] The FCC prescribed that the reporting would include comparison of actual quarterly performance results to a benchmark value, set equal to the 12-month average results achieved from April 1, 2008 through March 31, 2009.[133] The FCC required that the Embarq operating companies meet a service performance standard of "no less than one standard deviation from the benchmark value, 90 percent of the time."[134] The specific metrics applied are as follows:

- Pre-ordering – average response time to pre-order queries calculated in seconds, which measures the number of seconds from Embarq's receipt of a query from a CLEC to the time Embarq returns the requested data to the CLEC.
- Provisioning – average completed interval measured in days, which measures the average number of business days from receipt of a valid, error-free service request to the completion date in the service order entry system for new, move and change service orders, separately for all UNE, resale, and other CLEC services;
- Repair/Maintenance – customer trouble report rate, which measures the total number of network customer trouble reports received within a calendar month per 100 units/UNEs, separately for all UNE, resale, and other CLEC services;
- Repair/Maintenance – average time to restore (service), which measures the average duration from the receipt of the customer trouble report to the time the trouble is cleared, separately for all UNE, resale, and other CLEC services; and

[132] *Id.* at p. 1.
[133] *Id.* at p. 2.
[134] *Id.* at p. 2.

- Work Center – center responsiveness, which measures the average time it takes Embarq's work center to answer a call expressed as the percentage of calls that are answered within 20 seconds.[135]

Q. WHAT DOES CENTURYLINK'S MOST RECENT EMBARQ COMPLIANCE FILING WITH THE FCC REVEAL ABOUT ITS WHOLESALE SERVICE QUALITY PERFORMANCE IN THE FORMER EMBARQ TERRITORIES?

A. In response to discovery, CenturyLink has provided, as Highly Sensitive Trade Secret Information, its most recent wholesale service quality compliance report pursuant to these FCC conditions.[136] It presents the Embarq operating companies' wholesale performance on the metrics identified above, by state, for each quarter from 3Q 2009 through 2Q 2010. These are compared to the baseline performance average for the period April 1, 2008 through March 31, 2009. *****BEGIN HIGHLY SENSITIVE TRADE SECRET** [redacted]

[135] *Id.* at pp. 1-2.

[136] CenturyLink Response to Integra Data Request Set 2, No. 59e, Highly Sensitive Trade Secret Attachment 59e.

- [redacted]
- [redacted]
- [redacted]
- [redacted]

[redacted] **END HIGHLY SENSITIVE TRADE SECRET*****

V. LESSONS FROM RECENT ILEC MERGERS AND ACQUISITIONS

Q. WHAT LESSONS CAN WE LEARN FROM OTHER RECENT TELECOM MERGERS AND/OR ACQUISITIONS?

A. Significant problems have been experienced after recent mergers – problems that could occur after the proposed transaction if it is approved as filed. These examples are further evidence that the Joint Petitioners' unsupported assertions about the proposed transaction cannot be taken at face value; failures do occur no

matter how well-intentioned the company is and the stakes associated with failure are simply too high.

Q. ARE YOU GENERALLY FAMILIAR WITH THE RECENT MERGERS IN THE TELECOMMUNICATIONS INDUSTRY?

A. Yes, I am.

Q. IS THERE ANYTHING TO BE LEARNED BY CONSIDERING THE OUTCOMES OF OTHER RECENT MERGERS AND ACQUISITIONS INVOLVING ILEC OPERATIONS?

A. Yes, there certainly is. The recent bankruptcies of FairPoint and Hawaiian Telecom, as well as ongoing problems with Frontier's cutover of former Verizon lines, demonstrate the challenges and risks associated with transactions similar to this one, particularly with respect to a smaller LEC's ability to integrate the OSS and other back-office systems of a materially larger organization.

These are examples wherein the merging companies' high expectations and promised public benefits regarding the merger failed to be realized, in large part because of problems with integrating the two companies' operations and OSS. In particular, I am referring to:

- The Carlyle Group's acquisition of Verizon Hawaii (renamed Hawaiian Telcom), which led to Hawaiian Telcom's filing for Chapter 11 bankruptcy protection in 2008;
- FairPoint's acquisition of Verizon's operations in northern New England (Maine, New Hampshire, and Vermont), which led to FairPoint's Chapter 11 bankruptcy filing in October 2009; and

- The on-going integration difficulties experienced by Frontier as it attempts to absorb former Verizon exchanges acquired in fourteen states.

Q. BEFORE YOU TURN TO THE SPECIFICS OF THESE CASES, CAN YOU SUMMARIZE THE LESSONS THAT YOU DRAW FROM THEM?

A. Yes. The primary lessons that I draw from these experiences are as follows:

(1) Mergers and acquisitions involving the transfer and integration of ILEC local telephone operations carry a high degree of risk of failure, even when implemented by purportedly highly-experienced management teams and well-financed companies;

(2) The integration and/or change-out of ILEC back-office systems and OSS can pose a tremendous challenge, and integration failures can be so costly as to not only eliminate the forecasted transaction cost savings and other synergies, but to place the post-merger company under severe financial pressure; and

(3) From a public interest standpoint, the outcome of such failed transactions can indeed be an "unmitigated disaster," including financial instability, service quality deteriorations and dissatisfied customers, curtailed network investment and broadband deployment, and the disruption of wholesale services provisioning and ordering that are crucial to a smoothly-functioning competitive marketplace.

Q. PLEASE DESCRIBE THE EVENTS THAT LED TO HAWAIIAN TELCOM'S BANKRUPTCY FILING AFTER ITS ACQUISITION BY THE CARLYLE GROUP.

A. In May 2005, the private investment firm The Carlyle Group ("Carlyle") closed on its purchase of Verizon Hawaii, the franchised ILEC serving most of the state of Hawaii. At the time of that acquisition, Carlyle proclaimed that it "has a track record of successful telecommunications investments, deep knowledge of the

local telephony business, and deep understanding of the complex regulatory issues affecting the industry."[137] Carlyle assembled a highly-experienced management team for the acquired firm (renamed Hawaiian Telcom) that included a former Chairman of the FCC, a former Executive Vice President of Verizon and GTE, and Carlyle's founder, who is also a former CFO of MCI and Chairman of Nextel Communications.[138] Carlyle also committed $1.65 Billion to purchase the company, and proclaimed that it "…plans to invest significant capital to transition the company to an independent local company in a manner that maintains service quality and is seamless to customers."[139] Just prior to the acquisition, Carlyle promised that: "In short order we will offer new services to our customers, including expanded broadband, and we expect to add many new jobs after the acquisition."[140] The FCC approved the transaction in August 2004, under its streamlined procedures for domestic Section 214 transfers of control.[141] The Hawaii PUC conducted its own review and approved the transaction, subject to certain conditions, on March 16, 2005.[142]

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[137] Carlyle Group press release, "The Carlyle Group to Buy Verizon Hawaii for $1.65 billion – New Services, Jobs, and Capital Investment Expected with Transition to Locally Managed Company," May 24, 2004, at page 2.

[138] *Id.* at p. 2.

[139] *Id.* at p. 2.

[140] *Id.* at p. 1.

[141] FCC DA 04-2541, WC 04-234, Streamlined Domestic Section 214 Application Granted, Released August 17, 2004.

[142] *In the Matter of the Application of Paradise Mergersub, Inc., GTE Corporation, Verizon Hawaii Inc. Bell Atlantic Communications, Inc. and Verizon Select Services Inc. for Approval of a Merger Transaction and Related Matters*, Hawaii PUC Docket No. 04-0140, Decision and Order No. 21696, March 16, 2005.

Q. DID HAWAIIAN TELCOM EXPERIENCE TROUBLES RELATED TO OSS?

A. Yes. One aspect of the transaction was that the transferred company would develop its own back-office and OSS systems and processes to replace those of Verizon. Hawaiian Telcom hired the management and technology consulting company BearingPoint, Inc. to take on the task of designing and implementing those systems by the end of March 2006. The Hawaii PUC required testing of the new systems as a condition to its approval of the transaction,[143] but the scope and rigor of that testing was nowhere near that required of Qwest's systems under the Section 271 regime.[144] In 2007 Hawaiian Telcom made a filing with the FCC seeking a waiver from certain ARMIS reporting requirements. In that filing Hawaiian Telcom described the troubles it was experiencing:

> The transition from Verizon's systems to the new BearingPoint-designed systems at the end of March, 2006 did not go smoothly. As has been widely reported in the press, see Attachment 1 (representative press clippings), critical BearingPoint-designed systems related to customer care, order management, billing and data collection necessary for various reporting obligations lacked significant functionality, leading to problems with ordering, provisioning, billing and collection.
>
> …
>
> These shortcomings therefore affected not only Hawaiian Telcom's ability to collect ARMIS related data, but also its basic ability to

[143] *Id.* at Ordering Paragraph 1.

[144] Exhibit TJG-2 ("Description of Qwest's OSS Testing in Relation to 271 Authority").

> bill its customers, collect revenue for services provided, and process payments.[145]

In February 2007, Hawaiian Telcom reached an settlement with Bearing Point: "According to Hawaiian Telcom, BearingPoint agreed to pay $52 million in cash on March 27 and to waive outstanding invoices, bringing the total value of the settlement to $90 million."[146] Although Hawaiian Telcom received a cash settlement, it was still left with poorly functioning systems. To try to correct the situation, in February 2007, Hawaiian Telcom entered into a seventeen-month, $46-million contract with the management consulting and technology services company Accenture. That contract required Accenture to develop and remediate the company's business support and customer service systems, including the OSS used to interact with CLECs and other wholesale customers.[147] In the interim, Hawaiian Telcom was forced to use costly manual work-arounds, third-party temporary call centers, and other inefficient and expensive processes to undertake basic provisioning and ordering activities.[148] Numerous retail customers received erroneous bills, including double-billing due to delayed bill processing.[149]

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[145] Petition of Hawaiian Telcom, Inc., for Waiver of Sections 43.21(g) and 43.21(j) of the Commission's Rules, 47.C.F.R. §§ 43.21(g) and 43.21(j), CC Docket No. 86-182, filed February 21, 2007 ("Hawaiian Telcom ARMIS Petition"), at p. 2.

[146] Pacific Business News, BearingPoint Pays Hawaiian Telcom $52M, March 29, 2007 Available at: http://www.bizjournals.com/pacific/stories/2007/03/26/daily36.html

[147] *Id.* at p. 4, and Carlyle Group press release (issued by portfolio company), "Hawaiian Telcom Contracts with Accenture to Complete Systems Transformation; Firms Sign Agreement for Development, Deployment and Maintenance of Key Customer-Service and Business-Operations Capabilities," February 8, 2007, at p. 1.

[148] *See, e.g.*, Hawaiian Telecom Communications, Inc. Form 10-Q, filed November 14, 2006, at p. 26.

[149] See "Billing woes overwhelm Hawaiian Telcom systems," Honolulu Star-Bulletin, June 21, 2006; provided in Attachment 1 to the Hawaiian Telcom ARMIS Petition.

Wholesale customers, such as tw telecom, also endured systems failures by Hawaiian Telcom, including (1) missed deadlines for special access circuit orders, (2) delays in porting end user customers' telephone numbers, and (3) lack of a functioning electronic interface (GUI) for wholesale customers to submit and monitor the status of trouble tickets for the services they received from the company.[150]

In five years the Company's reported annual rate of return plummeted from the essentially breakeven level it had at the time of the transaction's close, –0.8%, down to –29.3%.[151] In December 2008, Hawaiian Telcom filed for Chapter 11 bankruptcy protection, "listing $1.4 billion in assets and $1.3 billion in debts."[152]

Q. WAS HAWAIIAN TELCOM THE ONLY ILEC TO FILE FOR BANKRUPTCY AFTER AN ACQUISITION OR MERGER?

A. No, unfortunately not. FairPoint Communications Corp. closed on its acquisition of Verizon's ILEC operations in northern New England (Maine, New Hampshire, and Vermont) in March 2008, with approval from regulators in all three states. Barely a year and a half later, in October 2009, the company filed for Chapter 11

[150] *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 Docket No. 2006-0400, Time Warner Telecom of Hawaii, L.P., d/b/a Oceanic Communications' Post-Hearing Brief, November 9, 2007, at p. 23.

[151] See Public Utilities Commission of Hawaii, Annual Report for Fiscal Year 2008-2009, Released November 2009, at p. 43, Figure 18 (Verizon Hawaii/Hawaiian Telcom's reported actual annual RoR for past 12 months, for June 2005 and June 2009, respectively).

[152] The Washington Post, "Carlyle Takes Another Hit As Telecom Firm Goes Under," December 2, 2008, at p. 1.

bankruptcy protection. As NASUCA has pointed out in its initial Comments in the FCC's Qwest-CenturyLink merger proceeding, "…the track record is that the FairPoint transaction has turned out to be a virtually unmitigated disaster."[153] In its recent decision rejecting FairPoint's Chapter 11 reorganization plan, the Vermont Public Service Board made the following observations concerning FairPoint's pre-acquisition expectations and commitments, and the ensuing reality:

> On March 31, 2008, FairPoint consummated its merger and acquisition of Spinco (Verizon's NNE operations) resulting in FairPoint as the surviving entity. Previously, on December 21, 2007, we issued our first order in Docket No. 7270 initially denying FairPoint's request to acquire Spinco. During the course of our proceedings leading up to that decision, FairPoint submitted a substantial amount of testimony and information in support of its argument that it was financially ready to step into Verizon's shoes. In general, FairPoint made the following key assertions:
>
> (a) Initial annual line loss of 6.2%, gradually tapering off to 2.3% per year.
>
> (b) Line-loss increases will be sufficiently offset by the build-out and sale of DSL service.
>
> (c) Cutover to FairPoint's new systems will be achievable within five months of closing.
>
> (d) Transition expenses under the Transfer of Service Agreement ("TSA") with Verizon will not exceed $100 million and will not extend beyond 2008.
>
> (e) Synergies resulting from new systems integration and replacement of Verizon's higher cost functions will result in additional cost savings of $65-75 million in 2008.

[153] FCC WC Docket No. 10-110, Comments of the National Association of State Utility Consumer Advocates, July 12, 2010, at p. 2.

> (f) Average year-to-year increases in operating expenses not to exceed 1%.
>
> (g) Annual reductions in employee count of 4% to 4.5% resulting in additional cost savings for salary and wage expense.
>
> (h) Unforeseen increases in operating or capital expenditures will be sufficiently offset by a reduction or elimination of shareholder dividends.
>
> (i) Free cash flow will be relatively stable at approximately $200 to $220 million annually over the first five years after closing.
>
> (j) An annual free cash flow cushion after dividends of $70 million will be available for unforeseen financial difficulties.
>
> Based upon the substantial historical record contained in Docket No. 7270, a record which spans FairPoint's progression through the merger transaction, subsequent cutover, and eventual bankruptcy, **it is abundantly clear that FairPoint failed to realize any of the above forecasts**. Even with the enhancements to FairPoint's financial metrics provided by the revised merger transaction, which we approved on February 15, 2008, those enhancements (reduced purchase price and reduced leverage) were not sufficient to allow FairPoint to achieve its projections. For example, we now know that: (i) line losses were substantially greater than projected for 2008 and 2009; (ii) systems functionality issues delayed cutover for an additional five months resulting in substantial increased operating costs; (iii) FairPoint's suspension of its dividend in March 2009 was not sufficient to assist FairPoint in meeting its debt-servicing requirements; (iv) customer service issues caused FairPoint to staff-up in 2009 as opposed to staffing down; and (v) ongoing systems issues in 2009 resulted in a $28.8 million increase in operating expenses. **We note that then, like now, FairPoint maintained that its projections were reasonable, conservative, and provided for a sufficient margin of error**.[154]

The Vermont Board went on to observe that "FairPoint's actual performance

[154] Vermont PSB Docket No. 7599, Order Entered June 28, 2010, at pp. 56-57 (footnote omitted, emphasis added).

throughout 2008 and 2009 turned out to be worse than the Board's most pessimistic assumptions."[155]

Q. DID THE VERMONT PUBLIC SERVICE BOARD REACH ANY CONCLUSIONS AS TO WHY FAIRPOINT FAILED TO LIVE UP TO ITS PRE-TRANSACTION FORECASTS AND ASSURANCES?

A. Yes. The Board concluded that FairPoint's financial crisis was caused in large part by its inability to successfully integrate the legacy Verizon exchanges into its OSS and other back-office systems. As the Board explained in its Order:

> FairPoint has not demonstrated that it can achieve its projected reductions in operating costs or realize additional cost savings from systems improvements and new networks that have yet to be completed. As we have found above, **a major source of these costs have been FairPoint's ongoing systems issues which have persisted since cutover and contributed greatly to FairPoint's eventual financial downfall.** FairPoint has undertaken a considerable effort, most recently its CDIP initiatives, involving the deployment of significant financial resources and personnel to address these issues. … **While we accept FairPoint's assertion that it has made strides in resolving many of these problems, system defects remain and manual workarounds continue to serve as temporary solutions until automated processes can be designed and implemented. Moreover, we are aware that there have been instances where FairPoint assumed a problem to be fixed only to have that problem reappear at a later time.** … …we have received no evidence, or guarantees from FairPoint, that would lead us to conclude that these remediation efforts will not need to be continued beyond 2010 or even 2011.[156]

Q. AT THE TIME THAT THE VERMONT BOARD APPROVED THE FAIRPOINT-VERIZON TRANSACTION, DID IT ADOPT A CONDITION

[155] *Id.* at p. 58.

[156] *Id.* at p. 61-62 (footnotes omitted, emphasis added).

THAT FAIRPOINT'S OSS SYSTEMS WOULD BE SUBJECTED TO TESTING IN ADVANCE OF THE CUTOVER OF VERIZON'S OPERATIONS?

A. Yes. The Board later stated that it did so specifically because "we were mindful that after Verizon's sale of its Hawaii properties, the last major telecommunications acquisition that required transition to new systems, major problems for wholesale and retail customers occurred that have taken years to correct."[157] Unfortunately, the condition that it adopted – which required a third-party consultant (Liberty Consulting) to monitor the cutover progress and "to evaluate FairPoint's cutover readiness criteria"[158] – did not include independent third-party testing itself.[159] This is dramatically different than the comprehensive third-party testing that Qwest and other BOCs had to undergo to demonstrate that their OSS satisfied the obligations of Section 271.[160] As a consequence, the Board's condition, though well-intentioned, was insufficient to prevent FairPoint's subsequent systems failures.

Q. DID THE VERMONT BOARD FIND THAT FAIRPOINT'S SYSTEMS INTEGRATION PROBLEMS HAD ADVERSELY IMPACTED THE QUALITY OF ITS SERVICES?

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[157] Vermont PSB Docket No. 7270, Order Re: Notice of Cutover Readiness, November 26, 2008, at p. 4.

[158] http://www.puc.nh.gov/Telecom/Filings/FairPoint/Monthly%20Monitoring%20Reports/FairPoint%20Cutover%20Monitoring%20Monthly%20Report%2012-07-07.pdf

[159] *Id.* at pp. 4-5.

[160] Exhibit TJG-2 ("Description of Qwest's OSS Testing in Relation to 271 Authority").

A. Yes. The Vermont Board also made specific findings concerning the negative impacts that FairPoint's systems failure had on its service quality for retail customers and CLECs. Among the Board's findings:

- In 2009, FairPoint failed to meet 10 of the 18 performance standards in the RSQP [Retail Service Quality Plan]. This performance triggered 1470 service quality compensation points and resulted in an obligation to provide service quality compensation of $10,515,650.[161]

- Other areas of FairPoint's service remain problematic and either do not show signs of significant improvement or early improvements have leveled. These include late orders for retail and wholesale, late disconnects, billing errors and adjustments, and customer complaint escalations.[162]

- Automated flow-through for orders designed to flow-through to provisioning and billing without manual intervention has not improved to acceptable levels and exacerbates other problem areas. Order fall-out requires unplanned manual effort, which reduces the ability of staff to address other issues. It also increases the chance that an order will be late.[163]

- The level of known FairPoint billing errors and billing adjustments are resulting in billing-related customer complaints 400% to 500% higher than during Verizon's operations.[164]

- Some number of the known billing errors and adjustments are likely the result of problems in upstream systems and processes, including faulty service-order data entry, late disconnections, and inconsistent or unsynchronized data as examples.[165]

While the Vermont Board recognized that recently FairPoint had made significant progress on its systems issues, it ultimately rejected FairPoint's reorganization

[161] *Id.* at p. 67 (Finding No. 153).
[162] *Id.* at p. 68 (Finding No. 156).
[163] *Id.* at p. 68 (Finding No. 158).
[164] *Id.* at p. 69 (Finding No. 172).
[165] *Id.* at p. 69 (Finding No. 171).

plan on the grounds that it had not demonstrated that the plan would restore its financial soundness.[166] Recently, it has been reported that FairPoint may ask the federal court that is overseeing its bankruptcy and reorganization to overrule the Vermont Board's rejection of its plan.[167]

Q. ARE THERE SOME PARALLELS HERE BETWEEN THE PROGRESS OF FAIRPOINT'S ORIGINAL ACQUISITION PROPOSAL AND ITS REORGANIZATION PLAN?

A. Yes, I think there are. In a nutshell, the Vermont Board's experience with FairPoint can be recapped as follows:

(1) In 2007, FairPoint sought approval to purchase Verizon lines in Vermont. Throughout the proceedings, the Board is told they are a hold out and everyone else has approved.[168]

(2) In 2008, the Vermont Board approves the transaction with limited conditions;

(3) By 2009, the cutover is disastrous and greatly affects the financial performance of FairPoint;

(4) In October 2009, FairPoint declares bankruptcy;

(5) In February 2010, FairPoint management submits a reorganization plan that the Vermont Board judges to be overly optimistic;

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[166] *Id.* at p. 95.

[167] Vermont Public Radio, "FairPoint May Ask Bankruptcy Court To Overrule Vermont Regulators," August 2, 2010. See http://www.vpr.net/news_detail/88585/

[168] *See, e.g.*, Transcript in West Virginia Docket 09-0871-T-PC at p. 34. On January 12, 2010 Vermont Senator Illuzzi drove to West Virginia to testify regarding the experience in Northern New England with the FairPoint merger. Senator Illuzzi testified: "We were told over and over at the State House, don't be the fly in the ointment; New Hampshire and Maine are ready to approve this deal. Don't be the state that sort of jinxes the whole thing. It turns out they were saying the same thing to New Hampshire. They'd say to New Hampshire, jeez, New Hampshire, don't be the fly in the ointment. Vermont and Maine are preparing to approve the deal. It turns out Maine was the first State that rejected the deal, then the other States followed suit and then came back with the revised proposal…If you have those lingering doubts, don't hesitate to fight that intuitive kind of pressure that you feel, that I feel…"

(6) In June 2010, the Vermont Board rejects FairPoint's reorganization plan;

(7) In August 2010, once again, the Vermont Board is told they are a hold out and now FairPoint is considering asking the Bankruptcy Court to supersede the PSB's authority.

Like the Vermont Board, other state regulators should not be hesitant to exercise their authority when major public interest ramifications are at stake. One important way to do that is to establish meaningful conditions on these types of transactions, as I shall explain later in my testimony.

Q. HOW HAVE THE NEW HAMPSHIRE AND MAINE PUBLIC UTILITY COMMISSIONS CHARACTERIZED THE FAIRPOINT TRANSACTION AND ITS OUTCOMES?

A. The New Hampshire PUC ultimately approved FairPoint's Chapter 11 reorganization plan, but offered a very critical assessment of the consequences of FairPoint's acquisition of Verizon's operations in northern New England. In its Conclusion to the reorganization approval Order dated July 7, 2010, the New Hampshire Commission found that:

> FairPoint has failed to meet the obligations it made in 2008 to the states of New Hampshire, Maine and Vermont and their citizens. Among other things, FairPoint made promises about service quality, relations with wholesale competitors and broadband build-out, and committed itself to performance superior to Verizon, whose performance had become an issue of increasing concern in the three states. Due to FairPoint's widespread operational shortcomings arising from its systems cutover, however, residential and business customers, as well as wholesale customers

> and competitors who rely on FairPoint services, endured even poorer service quality than was the case under Verizon.[169]

The Maine PUC also approved FairPoint's Chapter 11 reorganization plan by a two-to-one vote, but the text of the majority decision does not contain any overall characterization of the FairPoint experience as contained in the New Hampshire PUC order.[170] Maine Commissioner Vafiades, however, offered this assessment in his written dissent appended to that decision:

> In February of 2008, I voted with my colleagues to approve the sale of Verizon wireline assets to FairPoint Communications. My approval was based on FairPoint's representations that the Company would improve customer service by updating and streamlining its back office systems, replacing and upgrading its deteriorating infrastructure, and operating a competent wholesale customer service operation. Additionally, for at least five years, customers of FairPoint's DSL broadband service would receive the benefit of statewide price averaging for that service and customers of FairPoint's telephone services would either receive service quality that satisfies the existing SQI measurements or they would receive rate rebates should FairPoint fail to meet its SQI targets. Finally, FairPoint agreed to system improvements benefiting all customers and made a commitment to expand broadband to meet 90% addressability by 2013.
>
> Despite FairPoint's early struggles to take control of the wireline assets, provide adequate customer service and modernize the back office systems, the Commission stayed the course and following a number of approvals for cutover extensions authorized cutover from Verizon to FairPoint operating systems in January of 2009. Unfortunately, FairPoint was not competent in managing the extensive back office rebuild, could not get its wholesale business running smoothly despite cooperation from the CLECs, failed to provide basic services to residential and business customers and

[169] New Hampshire PUC Docket DT 10-025, Order 25,129, July 7, 2010, at p. 75.

[170] Maine PUC Docket No. 2010-76, Order Approving Reorganization and Regulatory Settlement, July 6, 2010.

suffered from competitive business pressure and a faltering economy. FairPoint's financial position became precarious.[171]

Q. MR. GATES, WHAT LESSONS DO YOU THINK SHOULD BE DRAWN FROM THE HAWAIIAN TELCOM AND FAIRPOINT EXPERIENCES?

A. As stated, the primary lessons that I draw from these two disappointing experiences are the following:

(1) Mergers and acquisitions involving the transfer and integration of ILEC local telephone operations carry a high degree of risk of failure, even when implemented by purportedly highly-experienced management teams and well-financed companies;

(2) The integration of two companies' disparate operations and OSS can pose a tremendous challenge, and integration failures can be so costly as to not only eliminate the forecasted transaction cost savings and other synergies, but to place the post-merger company under severe financial pressure; and

(3) From a public interest standpoint, the outcome of such failed transactions can indeed be an "unmitigated disaster," including financial instability, service quality deteriorations and dissatisfied customers, and the disruption of wholesale services provisioning and ordering that are crucial to a smoothly-functioning competitive marketplace.

Q. HOW DOES FRONTIER'S RECENT ACQUISITION OF VERIZON EXCHANGES IN FOURTEEN STATES FIT INTO THIS PICTURE?

A. While the worst consequences of the Hawaiian Telcom and FairPoint transactions are (presumably) winding down, the problems besetting Frontier's acquisition of

[171] *Id.* at p. 21 ("Dissenting Opinion of Commissioner Vafiades").

certain Verizon exchanges in fourteen states[172] are occurring right now, as systems cutovers and transitions have been occurring this spring and summer, with an "official" cutover date of July 1, 2010. For thirteen states, Verizon created replicas of its existing wholesale OSS systems that were being operated on an interim basis by Spinco, the temporary corporate entity created to effect the Frontier transaction. These "replicated systems" were then transferred to Frontier on the cutover date, and thereafter serve as Frontier's wholesale OSS, to fulfill orders for UNEs and other wholesale services. In the fourteenth state, West Virginia, Verizon's systems were not replicated, and instead these functions were transferred to Frontier's own OSS system, Synchronoss VFO. As I shall explain, to date both transfers have been beset by systems problems, which are having adverse impacts upon CLECs and their customers. It remains to be seen how serious and long-lasting these problems may ultimately prove to be, and whether they will rise to the nightmarish levels experienced in the Hawaiian Telcom and FairPoint cases.

Q. WHAT SPECIFIC PROBLEMS HAVE CLECS CONFRONTED DURING FRONTIER'S CUTOVER TO THE VERIZON REPLICATED SYSTEMS?

A. In recent comments and *ex parte* filings with the FCC, Integra and PAETEC have

[172] As set forth in Verizon's Amended Application, "transaction involves the transfer to Frontier of all of Verizon's local wireline operating territories in Arizona, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia and Wisconsin. In addition, the transaction will include a small number of Verizon's exchanges in California, including those bordering Arizona, Nevada and Oregon." See WC 09-95, Verizon and Frontier's amended and revised "Consolidated Application for Transfer of Control and Assignment of International and Domestic Section 214 Authority," July 30, 2009, at p. 2, footnote 3.

provided detailed descriptions of how problems with the transition to the Verizon replicated systems in the thirteen states (excluding West Virginia) have been adversely affecting their operations and the retail customers that they serve.

In its May 17, 2010 *ex parte* letter to the FCC, PAETEC explained that, even before the Verizon replicated systems were transferred to Frontier, it "is already encountering serious service deterioration due to lack of adequate (much less adequately trained) personnel at SpinCo [the corporate vehicle for the Frontier transaction]. All of these problems exist even though SpinCo is still under the Verizon umbrella."[173] PAETEC describes a range of problems that it has encountered, including:

- Increased response times for Access Service Requests ("ASRs"), i.e., PAETEC's electronic orders for access services from Frontier – causing missed due dates or orders that need to be escalated/expedited in order to meet end user customer expectations;
- Increased Access Ordering system errors, causing delays in submission of ASRs;
- Hold times of 30 minutes or more when calling Access Order centers to reach an Access Ordering representative; and
- Apparent reduction of Access Ordering staff – Verizon North Central Access Ordering staff have told PAETEC that they were a staff of 50 that was cut to 12 and now they only have 6 individuals working ASRs.[174]

Q. HAS INTEGRA ALSO EXPERIENCED PROBLEMS IN ITS USE OF THE

[173] Letter from Mark C. Del Bianco, Counsel for PAETEC Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket. No. 09-95, filed May 17, 2010, Attachment A, at p. 6.

[174] *Id.* at p. 6-7.

VERIZON REPLICATED SYSTEMS?

A. Yes. As documented in its May 13, 2010, *ex parte* letter to the FCC, Integra also has been experiencing the same sorts of problems when using the Verizon replicated systems in Oregon and Washington.[175] Integra's follow-up *ex parte* letter of May 19, 2010, documented that the performance of the replicated systems was failing to meet the wholesale service quality benchmarks previously applied to Verizon in areas including Order Confirmation Timeliness for ASRs and Completion Notice Interval.[176] In its May 19th letter, Integra explains that these problems are in fact worse than they seem, and that end users are being adversely impacted:

> Verizon's actual performance in the area of timely order completion is obscured in part by the fact that Verizon has been increasingly sending Service Activation Reports ("SARs") without actually completing the work requested on an order. This was true for orders NM-2556620-DS1, SM-2560987-BDSL, SM-2497851-BDSL, CL-2568000-BDSL, DS-2502748-WASA, and JT-2566473- CHG. This practice negatively impacts Integra's ability to serve its end-user customers. For example, if Verizon sends Integra a completion notice but has not performed the requested installation, Integra is forced to conduct multiple technician dispatches for a single end-user customer, and delivery of service to that customer is delayed. In addition, if Integra receives an SAR from Verizon, Verizon begins billing Integra, and Integra may mistakenly begin billing its end-user customer before service is actually delivered to the customer.[177]

[175] Letter from Thomas Jones and Nirali Patel, Counsel for Integra Telecom, Inc. et al, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, filed May 13, 2010, at pp. 1-2.

[176] Letter from Thomas Jones, Counsel for Integra Telecom, Inc. et al, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95, filed May 19, 2010, at p. 2.

[177] *Id.* at pp. 2-3 (footnotes omitted).

Significantly, Integra personnel found that some of the Verizon representatives answering calls in Verizon call centers were inexperienced or had been inadequately trained.[178] Integra employees "sometimes found themselves educating Verizon's representatives on Verizon's internal processes and the requirements of Verizon's CLEC-facing systems.[179] In some cases, the Verizon employees operating the systems themselves told their Integra counterparts that "…they d[id] not know the appropriate workarounds to resolve specific types of problems."[180] The full text of Integra's May 19th letter, which is provided in my Exhibit TJG-6, also describes additional ordering problems attributable to failures in the Verizon replicated systems.

Q. HAS THE CUTOVER OF FRONTIER'S ACQUIRED VERIZON EXCHANGES IN WEST VIRGINIA GONE ANY MORE SMOOTHLY THAN IN THE OTHER THIRTEEN STATES?

A. No. In fact, the West Virginia cutover appears worse in certain respects, as it is adversely impacting some retail customers as well as CLECs. In West Virginia, the former Verizon exchanges, which encompass approximately 617,000 access lines in 47 counties, were officially cutover to Frontier on July 1, 2010.[181] Charleston's major newspaper, the *Charleston Daily Mail*, has been monitoring

[178] *Id.* at p. 4.
[179] *Id.*
[180] *Id.*
[181] *Charleston Daily Mail*, "Phone transition not going smoothly for a few customers," July 1, 2010, at p. 2. This article is reproduced in Exhibit TJG-7.

the progress of the cutover since that time, and has reported on the problems confronted by retail customers, including a local pharmacy chain that endured a Frontier service outage that lasted more than 39 hours in their 25 stores, cutting off their on-line systems needed to fulfill prescriptions and rendering them "incapacitated."[182] These types of problems appear to be continuing. On July 28, the *Charleston Daily Mail* reported that Frontier has declared an "emergency and long-term service difficulty," which under its labor contract with CWA, allows Frontier to require unionized employees to work overtime up to 70 hours a week to attempt to resolve its service problems.[183]

Q. WHAT IMPACTS HAS FRONTIER'S WEST VIRGINIA CUTOVER HAD ON CLECS OPERATING IN THE STATE?

A. CLECs are also experiencing significant wholesale ordering problems relating to the West Virginia cutover. One CLEC operating in that service territory, FiberNet, has petitioned the West Virginia PSC to reopen its proceeding to review the Verizon-FairPoint transaction, claiming that FairPoint has failed to live up to its commitment that its wholesale OSS would be functionally at par with those of Verizon.[184] As expressed by FiberNet in its Petition:

[182] *Charleston Daily Mail,* "Local Business Having Major Problems Since Frontier Switch," July 21, 2010. This article is reproduced in Exhibit TJG-7.

[183] *Charleston Daily Mail*, "Frontier claims overtime is needed: Problems force telecom company to work employees up to 70 hours a week," July 28, 2010. This article is reproduced in Exhibit TJG-7.

[184] FiberNet LLC Petition to Reopen, July 21, 2010 (filed in West Virginia PSC Docket No. 09-087 1-T-PC), at p. 3.

> Since the cutover to Frontier's Synchronoss VFO OSS on July 1, 2010, however, FiberNet has experienced significant and ongoing problems with the proper functionality of Frontier's OSS and have unfortunately been compelled to conclude that Frontier's OSS as presently constituted is substantially less sophisticated and far less automated than the former Verizon OSS it was intended to replace.

FiberNet's Petition identifies fifteen separate types of problems it is experiencing with Frontier's wholesale OSS systems that span the entire range of pre-ordering, ordering, and installation functions that the systems are intended to provide.[185] Some of these issues impede FiberNet's ability to offer its services to West Virginia customers, *e.g.,* the inability to input orders related to the digitally qualified loops necessary for the provision of DSL service, or high-capacity DS-1s.[186] Other issues are having a direct impact on the customers themselves, *e.g.*, "several new FiberNet customers have been put out of service because Frontier prematurely processed disconnection orders in its OSS for these migrating customers without simultaneously processing the corresponding order necessary to successfully complete the migration of the customer's loop and telephone number to FiberNet."[187] FiberNet also notes that "Customers with pending orders for new service or additional services have lost patience with the length of time necessary to get their requested service installed, which has resulted in several customers simply cancelling their pending orders with FiberNet."[188]

[185] *Id.* at Exhibit A.
[186] *Id.* at p. 5.
[187] *Id.* at p. 5.
[188] *Id.* at pp. 6-7.

Q. HOW DO THE KINDS OF WHOLESALE-RELATED PROBLEMS BEING EXPERIENCED BY INTEGRA, PAETEC, AND FIBERNET IMPACT COMPETITORS' ABILITY TO OFFER COMPETITIVE SERVICES AND MAINTAIN THEIR CUSTOMER RELATIONSHIPS?

A. As a general matter, when CLECs confront the sorts of delays, errors, and backlogs in wholesale ordering transactions that Integra, PAETEC, and FiberNet have experienced with Frontier, it not only increases their costs of doing business, but it also damages CLECs' relationships with their end user customers.

Q. DO END USERS UNDERSTAND THAT SUCH PROBLEMS ARE CAUSED BY THE ILEC AND NOT THE CLEC?

A. Generally no. End users do not recognize (or care) that the service delays they endure are the fault of the provider of wholesale services (*i.e.*, the ILEC) rather than the CLEC. Of course, this circumstance benefits the ILEC as it can serve those retail customers leaving the CLEC with the ILEC's own retail offerings.

VI. THE PROPOSED TRANSACTION SHOULD BE REJECTED; OR IN THE ALTERNATIVE, APPROVED ONLY SUBJECT TO ROBUST CONDITIONS

Q. IS IT YOUR RECOMMENDATION THAT THE PROPOSED TRANSACTION BE DENIED BY THE COMMISSION?

A. Yes. The Joint Petitioners have failed to demonstrate that the public interest will not be harmed and have failed to substantiate any benefits resulting from the

proposed transaction. As it relates to CLECs, the Joint Petitioners have not identified (let alone substantiated) any benefits resulting from the proposed transaction; instead, the CLECs are faced with complete uncertainty and potential severe disruption and harm in every aspect of their wholesale relationship with Qwest. If the Commission disagrees with my primary recommendation, however, and is inclined to approve the proposed transaction, it should do so only if the transaction is subject to robust, enforceable conditions.

Q. WHAT IS THE GOAL OF THESE CONDITIONS?

A. The overall objective of the conditions is to ensure that the proposed transaction does not harm the industry and ultimately serves the public interest. More specifically, however, these conditions are intended to mitigate the harm that is likely to happen (and has occurred elsewhere) if the proposed transaction is approved as filed,[189] primarily by providing the much-needed certainty that CLECs need to continue to operate their businesses and make prudent decisions. These conditions also attempt to ensure that the Merged Company is not further entrenched as a result of the merger as an overwhelmingly dominant wholesale provider/competitor, to the detriment of competition and the public interest.

Q. IS THERE PRECEDENT FOR APPROVING A PROPOSED TRANSACTION SUBJECT TO CONDITIONS?

[189] The FCC has stated: "it will impose conditions to remedy harms that arise from the transaction…" FCC Embarq/CenturyTel Merger Order at ¶ 12.

A. Yes. Both the FCC and state commissions have required conditions (or voluntary enforceable commitments from the merging companies) in exchange for transaction approval in the past. For example, both the FCC and state commissions imposed conditions on the Embarq/CenturyTel merger. Further, Qwest itself proposed conditions for the Iowa Telecom/Windstream merger, which further validates the notion that it is generally accepted that conditions must be imposed on a proposed acquisition to prevent or offset harm.[190]

Q. WHAT CONDITIONS ARE YOUR CLIENTS PROPOSING?

A. I have attached as Exhibit TJG-8 to my testimony a list of conditions that my clients are proposing as prerequisites to merger approval, in case the Commission does not reject the proposed transaction outright. These conditions have been carefully and narrowly crafted to address the specific concerns my carrier clients have about the harm that will result from approving the proposed transaction as filed by the Joint Petitioners. These conditions are also intended to be enforceable so that the Merged Company abides by them after the merger and so remedies are in place should wholesale service quality degrade following the merger. Recent experience with the FairPoint acquisition of Verizon, wherein FairPoint reneged

[190] Qwest asked the Iowa Board to place conditions on the approval of the Iowa Tel/Windstream merger that would "prohibit Windstream from requiring new local service providers to provide Windstream-provided Personal Identification Numbers when porting a customer's number to the new provider" and "require, as a condition of Board approval, the new company to provide the new local service provider direct access to its resold Customer Service Record information." Order Canceling Hearing and Terminating Docket, Iowa Utilities Board, April 30, 2010, at p. 26.

on its merger conditions, shows that enforceable conditions are necessary.[191] CenturyLink should not be allowed to pull the rug out from underneath competitors and consumers after the transaction is approved by reneging on the very commitments that were critical to transaction approval. In addition, because discovery is not yet complete and all testimony has not yet been filed, the list of proposed conditions in Exhibit TJG-8 (as discussed in this testimony below and the testimony of Dr. Ankum) is preliminary and subject to change. Furthermore, all of the conditions are important and no inference regarding priority should be based on the numbering of the conditions, which is for ease of reference only.

Q. SHOULD CENTURYLINK HAVE A PROBLEM ADOPTING THESE CONDITIONS AS PREREQUISITES TO TRANSACTION APPROVAL?

A. No. CenturyLink has represented that there will be no "immediate" changes post-merger and "no harm" to existing wholesale processes, systems and service quality post-merger. CenturyLink has also claimed that it is "willing and able to abide by" its 251 and 271 obligations post-merger and it is "truly committed to

[191] *FairPoint Wants to Renege on Terms of Verizon Merger*, May 3, 2010. Available at: http://www.von.com/news/2010/05/fairpoint-wants-to-renege-on-terms-of-verizon-mer.aspx ("According to reports, the initial deal between FairPoint and regulators called for FairPoint to cut the cost of basic phone service by more than $4 per month for at least five years; make broadband available to 83 percent of all lines within two years, and 90 percent over five years; and freeze prices for current Verizon 768kbps DSL customers at $15 a month with a two-year contract, and $18 with a one-year contract, for at least two years. FairPoint wants to move those deadlines back and lower the percentage of 768kbps DSL-capable lines.") The Maine Commission approved these adjustments to FairPoint's merger conditions in June 2010, which is a component of FairPoint's bankruptcy reorganization plan. Maine Commissioner Vafiades voted against approving the changes to the conditions stating: "FairPoint has made promises to this Commission and to Maine consumers. The Company is using the bankruptcy process to renege on broadband commitments which were a central aspect of approving the FairPoint takeover of the Verizon phone network. These changes were not required by bankruptcy court and are a disservice to rural customers." Available at: http://www.maine.gov/tools/whatsnew/index.php?topic=puc-pressreleases&id=102933&v=article08

providing quality service to our CLEC customers today and in the future."[192] Given these representations, CenturyLink should have no problem agreeing to conditions that provide protections to prevent or offset harm and ensure that Qwest does not backslide in its obligations as an ILEC and a BOC. In addition, CenturyLink should not be permitted to keep all of the benefits of increased economies and efficiencies for itself;[193] rather, the FCC's *Local Competition Order* requires those to be shared with new entrants.[194]

Q. HAVE THE SAME OR SIMILAR CONDITIONS BEEN ADOPTED BY STATE COMMISSIONS OR THE FCC IN RECENT MERGER CASES?

A. Yes. I've attached Exhibit TJG-9 to my testimony, which is the list of conditions that my clients are proposing in this proceeding matched up with some previous FCC or state commission order(s) that adopted a similar condition. Most of the CLEC-proposed conditions are grounded in previous merger conditions, and the few that are not were designed to address specific harms related to this particular proposed transaction.

Q. THE LIST OF PRELIMINARY CONDITIONS DEFINES THE TERM "DEFINED TIME PERIOD." PLEASE EXPLAIN THIS TERM.

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[192] Hunsucker Oregon Direct at pp. 13-14..

[193] *See, e.g.,* Stanoch Minnesota Direct at pp. 14-15 ("Q. Will the post-merger company be able to take advantage of increased economies of scope and scale? A. Yes. The Transaction will result in a combined enterprise that can achieve greater economies of scale and scope than the two companies operating independently.")

[194] *See, e.g.*, *Local Competition Order* at ¶ 11: "…the local competition provisions of the Act require that these economies be shared with entrants."

A. The Joint Petitioners have said that the transaction is expected to create annual operating synergies of $575 million and annual capital expenditure synergies of $50 million, and that those synergies will be "fully recognized over a three-to-five year period following closing."[195] Successful integration does not always occur on-time and/or on-budget, as CenturyLink is aware from prior system projects.[196] That is particularly true here, when CenturyLink will be attempting to integrate both the Embarq acquisition and Qwest acquisition at the same time. Therefore, the time period during which merger-related activities intended to result in synergies will occur may be longer than the three-to-five year period anticipated by the Joint Petitioners.

Some proposed conditions are to apply for a specific time period, and other conditions (such as continuing BOC/271 obligations in Qwest's legacy territory) do not have an expiration date. The term "Defined Time Period" was developed to specify the effective time period for those conditions that are time-sensitive.

[195] Gast Minnesota Direct at p. 9.

[196] See, e.g., *Financial Watch: Integration Costs Loom Over OSS Deployments,* Billing and OSS World, October 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.'")

"Defined Time Period" is established at either (a) at least 5-7 years after the Closing Date[197] or, (b) at least 42 months (3.5 years)[198] and continuing thereafter until the Joint Petitioners are granted Section 10 forbearance from the condition. The "Defined Time Period" is established based on the facts of this particular transaction[199] and designed to ensure that the combined company's pursuit of merger-related savings does not jeopardize wholesale customers or impede competition. At the same time, the "Defined Time Period" grants the combined company flexibility to terminate the merger condition in 3.5 years (shortly after the lower end of the Joint Petitioners' expected timeframe) via a forbearance request if the combined company's integration efforts prove to be successful.

Q. PLEASE ELABORATE ON WHY THE TIME HORIZONS ASSOCIATED WITH THE "DEFINED TIME PERIOD" ARE APPROPRIATE FOR THE PROPOSED TRANSACTION WHEN OTHER (SHORTER) TIME HORIZONS HAVE BEEN ADOPTED IN THE PAST.

A. This 3.5 year minimum duration is appropriate, given the Joint Petitioners' own representation of a minimum three to five-year synergy period. During the time

[197] "Closing Date" is defined as "when used in this list of conditions, refers to the closing date of the transaction for which the Applicants have sought approval from the Federal Communications Commission (FCC) and state commission (the 'transaction')."

[198] In the *AT&T/BellSouth Merger Order,* AT&T proposed that conditions would last 42 months (3.5 years) from the merger closing date unless specified otherwise. *AT&T Inc. and BellSouth Corp. Application for Transfer of Control,* WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) ("*AT&T/BellSouth Merger Order*").

[199] For example, the lower end of the 5-7 year range is based on Joint Petitioners' own expectations regarding how long it will take the combined company to fully recognize merger-related savings, and the upper end is based on the fact that CenturyLink will be straining its resources to simultaneously integrate Embarq and Qwest as well as the fact that not all of CenturyLink's integration efforts have been on-time and/or on-budget.

period when the Merged Company is making merger-related changes to achieve synergies, customers and competition should be protected from harm resulting from those changes. In considering the Frontier-Verizon merger, the Oregon PUC required Frontier to honor Verizon wholesale price lists and tariffs and to avoid increases for at least two years after closing.[200] In that proceeding, unlike here, Frontier did not state that the anticipated synergies would occur over a three-to-five year period. The Joint Petitioners' representation regarding the anticipated time period for realizing synergies is specific to this proposed merger and should be considered when establishing needed time periods for this proposed merger.

Q. WHAT TIME PERIOD WAS PROPOSED FOR THE AT&T/BELLSOUTH MERGER?

A. In the *AT&T/BellSouth Merger Order*, AT&T proposed that conditions would last 3.5 years (42 months) from the merger closing date unless specified otherwise.[201] The AT&T/BellSouth merger involved an existing BOC (AT&T) covering 13 states acquiring an existing BOC (BellSouth) covering 9 states, and the acquiring BOC in that transaction (AT&T) already had experience not only operating as a BOC but also integrating BOC operations during the merger of AT&T and SBC, and before that, the merger of Ameritech and SBC. Further, when seeking approval of the AT&T/BellSouth Merger, AT&T stated that the synergy savings

[200] *Frontier-Verizon Order*, p. 15.

[201] *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) ("*AT&T/BellSouth Merger Order*"), Appendix F, Conditions at p. 147.

resulting from the AT&T/SBC merger were greater than and achieved more quickly than AT&T's original forecast.[202] Despite AT&T's past experience in this regard, the FCC conditioned approval of the AT&T/BellSouth merger subject to enforceable conditions that applied for 42 months (3.5 years). By contrast, the proposed transaction which is the subject of this proceeding, involves a non-BOC ILEC which has traditionally operated as primarily a rural LEC facing little competition acquiring a BOC covering 14 states. Though CenturyTel has acquired numerous telecommunications companies in the past, none of them were BOCs and none of them were even close to the size of Qwest. Further, though CenturyTel touts its management's ability as successful integrators[203] and claims that the ongoing Embarq integration is running smoothly,[204] similar representations were made by AT&T during the AT&T/BellSouth and the FCC still put in place enforceable conditions for a period of 42 months (3.5 years). The point being: acquisition of a BOC raises serious concerns than are not present in non-BOC acquisitions, and those concerns necessitate more protection. These concerns are even greater when the BOC is being acquired by a company that is not currently a BOC and has no experience with all of the obligations that come along with being a BOC.

[202] AT&T Description of Transaction Public Interest Showing and Related Demonstrations, WC Docket No. 06-74, March 31, 2006, at p. 42, citing *See id.* ¶ 5; Kahan Decl. ¶¶ 40-42; *see also* AT&T Analyst Conference Presentation, at 51 (Jan. 31, 2006), *available at* http://library.corporate-ir.net/library/11/113/113088/items/181348/analyst06_b.pdf (noting that synergies are now estimated at $18 billion vs. $15 billion).

[203] Ring Minnesota Direct at p. 4.

[204] Ring Minnesota Direct at p. 5.

The ultimate question is what time period is necessary to protect the public interest.[205] Here, the need for protection is even greater than in the AT&T/BellSouth merger. The latter merger involved two BOCs, both of which have been subject to 271 proceedings and interconnection agreement arbitrations through which they have had to learn and accept wholesale obligations that they may otherwise have had incentives to ignore. Unlike a merger between two BOCs, both well-acquainted with wholesale obligations and 271 requirements, here the Joint Petitioners propose the purchase of a BOC by a non-BOC ILEC that has been acting in many cases as primarily a rural carrier claiming exemption from ILEC, much less BOC, obligations. Because the BOC has greater wholesale obligations than an ILEC, and certainly more obligations than an exempt (or, self-proclaimed exempt) rural ILEC, non-BOC, such ILECs lack a long history of fulfilling such commitments. Wholesale customers therefore need protective conditions firmly in place throughout the time that merger-related changes are occurring and the time during which the results of those changes continue to affect customers and competition.

Q. PLEASE EXPLAIN HOW YOUR TESTIMONY ON PROPOSED CONDITIONS IS ORGANIZED?

[205] *Embarq-CenturyTel Order,* p. 6 (rejecting the Joint Applicants proposal to reduce various conditions from five years to three years, concluding that the longer five year period "serves to protect customers should a significant negative event occur with the new parent" and "is a more reasonable means to protect customers.")

A. The proposed conditions are grouped into the following categories: (A) Operations Support Systems, (B) Wholesale Service Quality, (C) Wholesale Customer Support, (D) Wholesale Service Availability, (E) Wholesale Rate Stability, and (F) Compliance. In the testimony that follows, I will address: (A) Operations Support Systems, (B) Wholesale Service Quality, (C) Wholesale Customer Support, and (F) Compliance. Dr. Ankum addresses: (D) Wholesale Service Availability and (E) Wholesale Rate Stability.

A. Operations Support Systems ("OSS")

Q. PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO OSS.

A. There are two conditions in this category – conditions 19 and 20:

- Condition 19 states that after the closing date, the Merged Company will use and offer to wholesale customers in the legacy Qwest ILEC territory the legacy Qwest OSS for at least three years, with at least the same level of wholesale service quality, including support, data, functionality, performance, and electronic-bonding provided by Qwest prior to the merger filing date. This condition also requires that after the three-year period the Merged Company will not replace or integrate Qwest systems without first: (a) submitting a detailed plan to the FCC Wireline Competition Bureau and state commissions of affected states, including a detailed description and contingency plan, with opportunity for comment from interested parties; (b) conducting robust third-party testing (similar to what was performed during the 271 approval process) of any system that will replace any Qwest system that was subject to third-party testing to ensure that it provides needed functionality and can handle commercial volumes; and (c) coordinated testing with CLECs.
- Condition 20 states that following the transaction in the CenturyLink legacy territory, the Merged Company will use the wholesale pre-ordering, quoting,

ordering, provisioning and maintenance/repair functionalities (including electronic bonding) of the legacy Qwest territory to provide interconnection, UNEs, collocation, and special access services.

Q. WHY ARE THESE CONDITIONS NECESSARY?

A. The FCC has found that CLECs would be "severely disadvantaged, if not precluded altogether, from fairly competing," if they do not have nondiscriminatory access to OSS.[206] Likewise, Qwest has described its existing OSS as playing "a crucial role in the transactions between Qwest and all CLECs"[207] and characterized its OSS as "the lifeblood of…Qwest's wholesale operation…"[208] I would agree with these statements. So, by all accounts, nondiscriminatory access to OSS is absolutely essential to competition. Unfortunately, the future of Qwest's OSS is in serious question due to the proposed transaction. All we know at this point in time is that a CenturyLink person (Mr. Bill Cheek) will be in charge of wholesale for the combined company and that no decisions have been made as to systems, staffing or locations of the staff. Given this lack of information, these conditions will provide the much-needed certainty in this area so that wholesale customers can plan their business for the foreseeable future, and will help ensure that CLECs have nondiscriminatory access to OSS across the Merged Company's footprint.

[206] *Local Competition Order* at ¶518.

[207] Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.

[208] Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at p. 39.

Q. PLEASE ELABORATE ON YOUR STATEMENT THAT THE FUTURE OF QWEST'S OSS IS IN SERIOUS QUESTION.

A. CenturyLink has provided very little information about its post-merger plans for OSS, other than that CLECs should expect change. When asked whether CenturyLink anticipates modifying, integrating or otherwise changing OSS in legacy Qwest service territories, CenturyLink responded:

> Upon merger closing, CenturyLink does not anticipate any immediate changes to the Qwest CLEC OSS systems. Integration planning is in the early stages and decisions have not been made at this time. However, because the transaction results in the entirety of Qwest, including operations and systems, merging into and operating as a subsidiary of CenturyLink, it will allow a disciplined approach to reviewing systems and practices and will allow integration decisions to proceed in an orderly disciplined manner. To the extent any changes are made, CenturyLink will comply with all applicable state and federal laws and rules, as wells as the provisions of any applicable interconnection agreements or tariffs, in the same manner as they would apply notwithstanding the merger. Wholesale customers will be provided advance notification of any systems changes that occur post close.[209]

Similarly, when asked whether CenturyLink anticipates importing CenturyLink's EASE system into Qwest's legacy territory, the company replied (in part):

> The merger is intended to bring about improved efficiencies and practices in all parts of the combined company, so changes could be expected over time…any changes will occur only after a thorough and methodical review of both companies' systems and processes to determine the best system to be used on a go-forward basis from both a combined company and a wholesale customer perspective.[210]

[209] CenturyLink Response to Integra Minnesota Data Request #23.

[210] CenturyLink Response to Integra Minnesota Data Request #35(h).

So, in a nutshell, CenturyLink has told wholesale customers that they can expect changes to the "lifeblood" of Qwest's wholesale operations, but has provided no detail about what changes will be made or when those changes will be made. This simply does not provide wholesale customers with the certainty they need to plan their business going forward.

Q. HAS CENTURYLINK PROVIDED ANY INFORMATION ABOUT HOW LONG IT PLANS ON MAINTAINING THE EXISTING OSS IN LEGACY QWEST TERRITORY?

A. My clients have asked in every state where they have intervened about CenturyLink's post-merger plans for OSS, and in every state, CenturyLink has submitted the same answer about anticipating no "immediate changes" but that "changes could be expected over time." On July 27, 2010, CenturyLink filed its Reply Comments and supporting declarations in the FCC's review of the proposed transaction (WC Docket No. 10-110). In that filing, the Joint Petitioners represented that "[i]t is expected that CenturyLink will operate both CenturyLink (in CenturyLink areas) and Qwest OSS (in Qwest areas) until it completes its evaluation of the best options for all stakeholders. It is expected that CenturyLink will operate both systems for 12 months at the very least."[211] While this recent statement is different than what has been submitted in the state proceedings to date, it still provides none of the certainty that wholesale customers need. As an

[211] Declaration of William E. Cheek in Support of Reply Comments of CenturyLink, Inc. and Qwest Communications International, Inc., WC Docket No. 10-110, July 27, 2010.

initial matter, 12 months is not a sufficient period of time to provide certainty. Second, continuing to operate the systems does not mean that they will continue to meet 271 standards.

Q. WHY IS OPERATING BOTH SYSTEMS FOR "AT LEAST 12 MONTHS" INSUFFICIENT?

A. CenturyLink has estimated synergy savings to be achieved over a three-to-five year period, which means that the greatest risk to CLECs of CenturyLink degrading access to OSS is during that three-to-five year window, and even for a period of time after the five years if the combined company does not integrate Qwest on-time and on-budget post-merger. Since one year does not even come close to covering this time period during which wholesale customers and local competition are at the greatest risk due to the merger, it is not satisfactory. In addition, CenturyLink states that it "is expected" to operate both systems for at least 12 months; however, expectations can change post-merger, and that is why an enforceable commitment/condition to maintain OSS is critical.

Q. SHOULD CENTURYLINK BE ABLE TO UNILATERALLY MAKE CHANGES TO QWEST'S OSS POST-MERGER IN THE PURSUIT OF SYNERGY SAVINGS?

A. No. Regardless of whether CenturyLink performs a "methodical review" or if it takes into account the "wholesale customer perspective" or not[212] – CenturyLink should not be allowed to make changes to Qwest's OSS post-merger without extensive analysis like that conducted during the Qwest 271 approval process. As explained in Exhibit TJG-2, an extensive third-party test of Qwest's OSS was conducted over a three-year period for the express purpose of determining whether Qwest's OSS satisfied the nondiscriminatory access requirement under Section 271 of Act. Despite Qwest claiming at the outset that its OSS and CMP were compliant with Section 271, the third party testing revealed hundreds of problems areas that were resolved through OSS improvements and re-testing. Countless hours and millions of dollars went into this process, and Qwest ultimately received 271 authority to provide in-region interLATA services based, in significant part, on this extensive test of its existing OSS. If CenturyLink changes Qwest's existing OSS post-merger (without the same level of testing that was previously conducted), it will have single-handedly undermined all of the work that was conducted by 14 state commissions, the FCC, third-party testers, Qwest and industry participants.

[212] See also, Joint Petitioners' Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 21 ("Whether post-transaction CenturyLink ultimately chooses an existing OSS or selects new systems should be left to be resolved through the ordinary course of business and the need to respond to marketplace conditions.") Fortunately for CLECs, the state commissions and FCC did not take such this approach when evaluating whether Qwest's OSS provides nondiscriminatory access required by Section 271 of the Act. CenturyLink's claim that it should be left up to the Merged Company as to whether Qwest's OSS should be replaced with different systems raises questions as to whether CenturyLink truly understands and takes seriously the BOC obligations it will inherit in Qwest's legacy territory if the proposed transaction is approved.

CenturyLink has admitted that its OSS has not been third-party tested,[213] and the FCC has stated that a "third-party test provides an objective means by which to evaluate a BOC's OSS readiness."[214] Accordingly, replacing Qwest's legacy OSS with CenturyLink's legacy (or new) OSS would cause Qwest to backslide on its 271 obligations because Qwest would no longer be providing the nondiscriminatory access to OSS that was a quid pro quo for 271 approval.

Q. ARE THERE OTHER REASONS WHY CENTURYLINK SHOULD NOT BE ALLOWED TO CHANGE QWEST'S OSS UNILATERALLY?

A. Yes. As Dr. Ankum explains, CenturyLink has the incentive and ability to direct its synergy savings efforts in areas that are most profitable to the Merged Company. Given that Qwest has referred to OSS as the "lifeblood" of its wholesale operations, making changes to Qwest's wholesale OSS is obviously an area that would be profitable to the Merged Company. If CenturyLink stopped maintaining and investing in Qwest's OSS, or started using it incorrectly, CenturyLink would save money (increase synergies) and disadvantage its competitors (again resulting in more revenues for Qwest). If CLECs' access to OSS is degraded or melts down altogether due to integration failures, it will give CenturyLink a leg up in competing for end users. In addition, the severe systems integration problems experienced following recent mergers is proof positive that OSS integration failures can wreak havoc post-merger.

[213] CenturyLink Response to Integra Minnesota Data Request #18.
[214] *Qwest 9 State 271 Order* at ¶ 49.

Q. THE COMPANY HAS STATED THAT THE INTEGRATION "WILL LARGELY INVOLVE THE USE OF EXISTING SYSTEMS RATHER THAN CREATING NEW ONES."[215] DOES THIS ALLAY YOUR CONCERNS?

A. No. If CenturyLink tries to import legacy CenturyLink OSS into Qwest's legacy territory post-merger, those OSS would be "new" to Qwest's region, and the same types of problems that have been experienced with other mergers could be experienced in Qwest's region when the Merged Company attempts to incorporate those new OSS. As just one example, CenturyLink's legacy OSS has not been tested to handle commercial volumes that would be experienced in Qwest's legacy territory, and could fail under the strain of attempting to process that higher number of orders.

Q. DO THE CLEC CONDITIONS LOCK-IN CENTURYLINK TO USING QWEST'S LEGACY OSS FOREVER?

A. No. After the minimum three-year period, the Merged Company has the opportunity to make changes so long as the Merged Company (a) files a detailed plan with regulators; (b) conducts third-party testing (for Qwest systems that were third-party tested) to ensure that the replacement system provides the needed functionality and can handle commercial volumes in Qwest's legacy territory; and (c) allows for coordinated testing with CLECs. These three requirements are

[215] Joint Petitioners' Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 9.

eminently reasonable and were undertaken to ensure that Qwest's existing OSS met the requirements of Section 271.

Regulators as well as CLECs have a vested interest in overseeing any changes to Qwest's OSS and ensuring that Qwest does not backslide in carrying out its obligations under Section 271 and does not experience the same types of trouble experienced after recent, similar mergers. Third-party testing will provide an objective means for determining whether the replacement system is at least equal in functionality and capability as the system it is replacing (which was originally third-party tested).

Q. ARE YOU SAYING THAT QWEST'S OSS IS PERFECT?

A. No. What I am saying is that while CLECs have expressed concerns about Qwest's OSS, Qwest's OSS has been third-party tested and received a passing grade by regulators, and CenturyLink's has not. So, replacing Qwest's OSS with CenturyLink's OSS post-merger will result in a step backwards for competition.

Q. PLEASE DISCUSS IN MORE DETAIL CONDITION 20 – OSS IN LEGACY CENTURYLINK TERRITORY.

A. Whereas Condition 19 addresses the OSS to be used in legacy Qwest territory post-merger, Condition 20 addresses the OSS to be used in legacy CenturyLink territory post-merger. The existing Qwest OSS and its functionality is more well-documented, and preferred by carriers that use both of the merging companies' systems, than the existing CenturyLink OSS. For example, tw telecom, a carrier

that has experience as a wholesale customer of both Qwest and CenturyLink,[216] explained that the electronic-bonding capabilities of legacy Embarq's OSS is inferior to the electronic-bonding capabilities of legacy Qwest's OSS.[217] And as discussed above, Qwest's OSS has been tested independently and extensively, while Embarq's legacy OSS has not.[218]

Q. GIVEN THE STATE OF THE VARIOUS OSS YOU JUST DESCRIBED, WOULD CENTURYLINK SELECT THE QWEST OSS IF IT WAS PURSUING A "BEST PRACTICES" APPROACH TO ITS SYSTEMS?

A. Yes. The integration effort should adopt the best practices and systems, and the only logical conclusion is that Qwest's OSS should be integrated in CenturyLink's legacy ILEC territory post-merger. This is the intent of Condition 20. This will serve the public interest and foster competition in CenturyLink's legacy territory by incorporating OSS that has been more thoroughly tested and is preferred by CLECs who do business in both legacy Qwest and legacy CenturyLink territories.

Q. ARE THERE OTHER REASONS WHY THE QWEST OSS SHOULD BE MIGRATED TO SERVE THE LEGACY CENTURYLINK EXCHANGES, INCLUDING THE EMBARQ EXCHANGES?

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[216] Integra, et al. FCC Comments, WC Docket No. 10-110, July 12, 2010.

[217] Integra, et al. FCC Comments, WC Docket No. 10-110, July 12, 2010, at pp. 41-42.

[218] See Exhibit TJG-2 providing quotes from state commissions and the FCC about the extensive testing that was conducted on Qwest's OSS during the 271 approval process.

A. Arguably the enforcement of the stringent nondiscrimination mandated by Section 251(c) might require such a result. Although CenturyLink intimates that it will keep local control, the fact of the matter is that it may ultimately seek to have business customers view CenturyLink as a single global entity. That will allow CenturyLink to market services throughout its bigger footprint. Thus, if CenturyLink evolves its OSS to a single ordering system for retail customers (*i.e.,* a retail customer would only have to submit a single order to have service provisioned in both Qwest and legacy CenturyLink exchanges), the same would be required for wholesale customers.

B. Wholesale Service Quality

Q. PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO WHOLESALE SERVICE QUALITY.

A. There are three conditions in this category – conditions 4, 5, and 11:

- Condition 4 states that the Merged Company shall comply with all wholesale performance requirements and associated remedy regimes applicable to Qwest in the legacy Qwest ILEC territory. This includes the Merged Company continuing to comply with all wholesale performance requirements and remedy regimes and continuing to provide to CLECs wholesale performance metrics reports Qwest currently provides. This condition also states that Qwest will not reduce, eliminate or withdraw any Performance Indicator Definition (PID) or Performance Assurance Plan (PAP) offered or provided as of the merger filing date for a period of at least five years after the closing date, and only then, after the Merged Company obtains approval from the applicable state commission to reduce/eliminate/withdraw it after the minimum 5-year period. This condition also states that, for at least the Defined Time Period, 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 service 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 in the current PAP for each missed occurrence when comparing pre and post-merger performance. This remedy payment related to pre and post-merger service quality ("Additional PAP") would apply in addition to the Current PAP, and state commissions/FCC would have the authority to assess additional remedies if the remedies described above are insufficient to bring about satisfactory wholesale service quality. This condition also states that in the legacy Qwest ILEC territory, for at least the Defined Time Period, 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 in the CLEC-specific monthly special access performance reports Qwest provides to CLECs as of the merger filing date. For each month that the Merged Company fails to meet Qwest's average monthly special access performance for each metric, the Merged Company will make remedy payments (calculated on a basis to be determined by the state commission/FCC) on a per-month, per-metric basis to each affected CLEC.

- Condition 5 states that, for at least the Defined Time Period, in the legacy CenturyLink ILEC territory the Merged Company shall comply with all wholesale performance requirements and associated remedy regimes applicable to legacy CenturyLink as of the merger filing date, and continue to provide to CLECs the wholesale performance metrics that CenturyLink provides to CLECs as of the merger filing date. This condition allows state commissions/FCC to assess additional penalties if the remedy payments are insufficient to bring about quality wholesale service or if the merger conditions are violated. This condition also states that the Merged Company will provide to CLECs the wholesale special access performance metrics reports Qwest provides as of the merger filing date, and beginning 12 months after the closing date, the requirements in Condition 4(b) shall apply to the Merged Company in the legacy CenturyLink ILEC territory.
- Condition 11 states that to the extent an ICA is silent as to a provisioning interval for a product or refers to Qwest's Service Interval Guide (SIG), the applicable interval, after closing date, will be no longer than the interval in Qwest's SIG as of the merger filing date.

Q. WHY ARE THESE CONDITIONS NECESSARY?

A. These conditions are critical to ensure that wholesale service quality is not degraded post-merger as the Merged Company cuts costs to achieve synergy

savings. Condition 4, for instance, maintains the current PIDs and PAPs that Qwest currently provides for a period of at least 5 years following the merger. The five year time period corresponds with the upper limit of the Joint Petitioners' synergy savings time horizon which is the time during which the risk of merger-related wholesale service quality degradation is greatly amplified. The critical nature of maintaining wholesale service quality post-merger is reflected in the minimum five-year time period in this condition as well as the requirement for the Merged Company to obtain approval of reducing or eliminating the PIDs or PAP. To provide the proper signals to the Merged Company and to discourage it from paying current PAP remedies as a cost of doing business, this condition would require the Merged Company to pay an additional remedy payment for merger-related service quality degradation (Additional PAP). The current PIDs and PAPs are the best available way to identify and root out wholesale service quality degradation – they rely on trusted statistical methods as well as business rules and data that were extensively tested during the 271 approval process.

Likewise, these conditions (e.g., Condition 5) ensure that the Merged Company adheres to quality performance standards and submits reports on that performance throughout its footprint. CenturyLink is not subject to performance plans and reports in all of its legacy territory, and as such, it would be extremely challenging in these areas to identify any discriminatory conduct of the Merged Company post-merger. Hence, this condition provides public interest benefits by tracking,

identifying and eliminating nondiscriminatory conduct in all areas of the Merged Company's territory.

Q. DID CENTURYLINK PROVIDE ANY ASSURANCES REGARDING WHOLESALE SERVICE QUALITY POST-MERGER?

A. Not really. When asked specifically whether CenturyLink will comply with Qwest's wholesale performance requirements, continue to provide wholesale performance metrics reports, make reasonable efforts to meet or exceed the average wholesale performance provided by Qwest, and remit remedy payments for substandard performance post-merger, CenturyLink replied that it "intends to comply" with existing Qwest wholesale performance plans and went on to explain that changes could be expected due to integration.[219] "Intend[ing] to comply" and actually complying are two entirely different things as amply demonstrated by history of the Hawaii, FairPoint and Frontier transactions previously discussed – particularly if the proposed transaction is approved as filed and the Merged Company's pre-merger "intentions" are trumped by the Merged Company's efforts to deliver on synergy savings post-merger.

Q. CONDITION 11 ADDRESSES PROVISIONING INTERVALS. PLEASE EXPLAIN HOW THIS RELATES TO WHOLESALE SERVICE QUALITY.

[219] CenturyLink Response to Integra Minnesota Data Request #61.

A. The longer the wholesale provisioning interval, the longer wholesale customers must wait to serve end user customers (and the longer end users must wait to take advantage of competitive options). Further, the Merged Company, as part of its integration efforts, could attempt to lengthen wholesale provisioning intervals so that it may reduce personnel costs post-merger.

Q. WHY IS THIS CONDITION NECESSARY?

A. The reason this condition is needed is that some ICAs with Qwest are either silent or refer to Qwest's SIG for the applicable provisioning interval for a product (i.e., the interval is not specified in the ICA), and as such, the applicable interval can be unilaterally changed by the Merged Company post-merger by changing its SIG. However, CLECs should not be required to wait longer for wholesale services as a result of the proposed transaction, so in cases where the ICA is silent or references the SIG, the standard interval applied at the time of the merger filing date should apply post-merger.

Q. WHAT HAS BEEN QWEST'S POSITION ON HOW SERVICE INTERVALS IN THE SIG SHOULD BE MODIFIED?

A. Qwest has opposed including service intervals in ICAs, and instead proposed to leave intervals out of ICAs so that they can be modified through CMP.[220]

[220] Testimony of Renee Albersheim on behalf of Qwest Corp., Minnesota Docket No. P-5340, 421/IC-06-768, August 25, 2006, at p. 31 ("The effect of Eschelon's language is to take control of service interval management away from its appropriate forum, the CMP, and to give control to Eschelon. Historically, Qwest has modified service intervals through CMP . As I discussed in Section III above, the CMP

Q. IS THERE A CONCERN ABOUT SERVICE INTERVALS IN THE SIG BEING SUBJECT TO CHANGES IN CMP?

A. Yes. Qwest has in the past made unilateral changes in CMP over CLECs objections.[221]

Q. DOES THE SERVICE INTERVAL IMPACT COMPETITION AND CONSUMERS?

A. Yes. This condition is critical because it impacts the customers of CLECs directly. CLECs make commitments to customers based on the provisioning intervals agreed upon or as required. Should the Merged Company not meet the provisioning intervals, then CLEC customers will be upset with the CLEC for missing the deadlines. Frustrating consumers and creating tension between a CLEC and its customers may benefit CenturyLink, but it is not consistent with the requirements of the Act or the public interest.

C. Wholesale Customer Support

Q. PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO WHOLESALE CUSTOMER SUPPORT.

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would be undermined if it was necessary to conduct interconnection agreement amendment negotiations before CMP changes could be implemented.")

[221] 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* ["Qwest-Eschelon Minnesota ICA Arbitration"], 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.").

A. There are four conditions in this category – conditions 15, 16, 17 and 18:

- Condition 15 states that the Merged Company shall provide to wholesale customers at least 30 days prior to the closing date, and maintain on a going-forward basis, up-to-date escalation information, contact lists, and account manager information. 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 customers; and will provide reasonable advance notice for other changes. The information and notice will be consistent with the terms of applicable ICAs.
- Condition 16 states that the Merged Company will make available to wholesale customers the types and level of data, information, and assistance that Qwest made available as of merger filing concerning wholesale OSS and wholesale business practices and procedures. This includes information on Qwest's wholesale website such as the PCAT, notices, industry letters, the CMP and databases/tools.
- Condition 17 states that the Merged Company will maintain Qwest's CMP using the terms in the Qwest CMP Document, and will dedicate resources needed to complete pending CLEC change requests in a commercially reasonable time frame.
- Condition 18 states that the Merged Company will ensure that the legacy Qwest Wholesale and CLEC support centers are sufficiently staffed by adequately trained personnel dedicated to wholesale operations so as to provide service at a level equal to or greater than provided by Qwest prior to the merger (relative to wholesale order volumes), and to protect CLEC information from being used by the Merged Company's retail operations. This condition also states that the total number of employees dedicated to supporting wholesale services for CLECs will be no fewer than employed by legacy Qwest and legacy CenturyLink as of the Merger Filing Date unless the Merged Company obtains a ruling from the applicable regulatory body that wholesale order volumes materially decline or other circumstances warrant corresponding employee reductions.

Q. WHY ARE THESE CONDITIONS NECESSARY?

A. These conditions dovetail with the wholesale service quality conditions and in some respects the OSS conditions discussed above. These conditions are needed to ensure that the transition to the Merged Company runs smoothly for wholesale

customers – and by extension their end user customers – and that the Merged Company does not diminish the level of wholesale support currently provided in Qwest's BOC territory when it integrates the two companies and pursues synergy savings.

CenturyLink has provided no detail about what wholesale customers should expect other than "change." To ensure that the transition runs smoothly for wholesale customers, Condition 15 requires the Merged Company to provide at least 30 days prior to the closing date (and on a going forward basis) up-to-date escalation information, contact lists, and account manager information, and provides for 30 days notice for changes to support center location, organizational structure, or contact information. These resources are critical to managing the carrier-to-carrier relationship between an ILEC and CLECs, and will likely incur significant changes due to the proposed transaction. Therefore, CLECs must be made aware of these changes in advance so that they can make the appropriate adjustments to their processes and operations and avoid disruption when the change is made. This requirement is particularly important given that when CenturyLink was asked about its plans in this regard post-merger, its response was not specific or instructive.[222]

[222] CenturyLink Response to Integra Minnesota Data Request #71. To CenturyLink's credit, it states that "Wholesale customers will be informed of any changes to contact information in advance." CenturyLink Response to Integra Minnesota Data Request #72. However, CenturyLink does not indicate how far in advance that notice will be given or how the notice will be provided. This is insufficient.

Q. PLEASE ELABORATE ON WHY CONDITIONS 16 AND 17 ARE NECESSARY.

A. These conditions are necessary in order to ensure that Qwest does not backslide in its obligations under the Act. The OSS provided by Qwest to CLECs goes beyond just the CLEC-facing system interfaces, and includes the back-office systems, databases, personnel,[223] as well as associated business processes and up-to-date data maintained in those systems.[224] The third-party test conducted on Qwest's OSS during the 271 approval process tested the availability and functionality of the system interfaces as well as business practices and procedures, data integrity and Qwest's CMP.[225] The test involved these components because they are directly related to whether Qwest provides nondiscriminatory access to its OSS under the Act. In other words, the current level of data, current business practices and procedures, and current CMP in Qwest's region are essential components of Qwest complying with the market-opening provisions of 271 of

[223] *See, e.g.*, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, FCC 03-36, August 21, 2003 ("*Triennial Review Order*") at footnote 822 ("OSS are composed of various 'back office' systems, databases and personnel that an incumbent LEC uses to commercially provision telecommunications services to…purchasers of unbundled network elements.")

[224] *Local Competition Order* at ¶¶ 517-18.

[225] *See, e.g.*, 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. ").

the Act, and these components would be undermined – and the Merged Company would backslide on its 271 obligations – if the Merged Company withdrew or replaced such information, practices and procedures, or CMP, post-merger.

Q. DOES CENTURYLINK SEEM TO UNDERSTAND THE IMPORTANCE OF THE QWEST 271 OBLIGATIONS?

A. No. CenturyLink appears to be taking a cavalier attitude towards these obligations in its discovery responses, creating additional uncertainty. For example, in response to a question about whether CenturyLink anticipates seeking modification to Qwest's existing CMP and asking CenturyLink to describe any anticipated changes, CenturyLink responded as follows:

> The merger is intended to bring about improved efficiencies and practices in all parts of the combined company, so changes [to Qwest's existing CMP and/or CMP Document] could be expected over time. However, any changes will occur only after a thorough and methodical review of both companies' processes to determine the best process to be used on a go-forward basis from both a combined company and a wholesale customer perspective.[226]

Based on this response, CLECs should expect changes, but nothing is known about those changes or how the Merged Company will determine whether to make changes or what changes to make. CenturyLink's vague reference to a

[226] CenturyLink Response to Integra Minnesota Data Request #118. See also, CenturyLink response to Integra Minnesota Data Request #91. After explaining that changes may be made in the future, CenturyLink states: "Generally, CenturyLink is a proponent of web-based guidelines and materials for wholesale customer usage and is an effective means used by CenturyLink today." This response provides absolutely no commitment to maintain the information Qwest currently makes available on its website, such as its Product Catalogs.

"methodical review" falls woefully short of providing any certainty.[227] Moreover, the Merged Company should not be allowed to cast away all the work that was conducted to ensure Qwest's OSS provided nondiscriminatory access to OSS; nor should the Merged Company be allowed to unilaterally[228] implement new OSS or modify CMP because it unilaterally determined it was more efficient (in the "combined company['s] perspective"). In fact, that is precisely the type of conduct that the 271 approval process was intended to identify and root out. Yet, that is what could happen if the proposed transaction is approved without conditions.

Q. ARE YOU SAYING THAT QWEST'S BUSINESS PRACTICES AND PROCEDURES, LEVEL OF INFORMATION, AND CMP IS FLAWLESS OR SHOULD BE SET IN STONE?

A. No. Regarding the role of Qwest CMP, CLECs including Integra said in their recent FCC Comments in the Qwest-CenturyLink Merger docket that the CMP

[227] CenturyLink was asked about what it meant by "methodical review" and responded that it had not determined whether this "methodical" review would include third-party testing. CenturyLink Response to Integra Minnesota Data Request #49. In addition, when asked what it meant by "from both a combined company and a wholesale customer perspective", CenturyLink responded that it will take into consideration carriers throughout its entire footprint as well as "operational efficiencies for" the Merged Company. The Merged Company should not be permitted to replace processes, CMP, etc. that were extensively reviewed during the 271 approval process and critical to nondiscriminatory access to OSS with different processes or CMP that have not been tested and which may be more efficient for the Merged Company. This is a prime example of a situation in which the Merged Company could integrate the two companies to the detriment of wholesale customers. Therefore, conditions are warranted.

[228] CenturyLink's statement that it will take into account the "wholesale customer perspective" is a hollow promise. Assuming that the Merged Company even takes into account the wholesale customer perspective when integrating OSS, it could simply ignore that perspective and instead implement changes based on the "combined company…perspective." In fact, Qwest already makes changes through its CMP over CLEC objections, and this problem is sure to worsen as the Merged Company begins overhauling OSS.

performs an essential function, even though CLECs have encountered difficulties with Qwest's CMP. As an example, CLECs pointed to Qwest's implementation of unwanted changes over CLEC objections. After reviewing examples Eschelon provided in the Minnesota Eschelon-Qwest arbitration case, the Minnesota Arbitrators, as affirmed by the Minnesota Commission, found that "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."[229] In a complaint Eschelon filed against Qwest in Arizona regarding expedites, the Arizona Staff said, "This case is about not only a breach of Eschelon's ICA, but inappropriate use of the CMP to affect a material change to all CLECs' rights under their current ICAs with Qwest."[230] Nevertheless, in a relative comparison, Qwest's CMP, with all of its flaws, is still better than the untested, unknown process that CenturyLink may replace it with post-merger.

Q. DOES LEGACY CENTURYLINK HAVE A CHANGE MANAGEMENT PROCESS?

[229] Minnesota Arbitrators' Report, OAH 3-2500-17369-2/MPUC No. P-5340,421/IC-06-768 at ¶ 22. The Minnesota Commission adopted the Arbitrators' Report in relevant part. See, Order Resolving Arbitration Issues, Requiring Filed Interconnection Agreement, Opening Investigation and Referring Issue to Contested Case Proceeding, *In the Matter of the 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.* ["Minnesota Qwest-Eschelon ICA Arbitration"], OAH No. 3-2500-17369-2; MPUC Docket No. P-5340,421/IC-06-768 (March 30, 2007) ["MN PUC Arbitration Order"].

[230] Arizona Corporation Commission Staff Reply Brief, AZ Docket No. T-03406A-06-0257 at p. 1.

A. No. CenturyLink does not have a Change Management Process in either the legacy CenturyTel legacy territory or the legacy Embarq territory, (CenturyLink has separate wholesale processes and wholesale websites for each of the legacy CenturyLink and Embarq territories.) In the legacy CenturyTel territory, there is a "Wholesale Markets Carrier Notification" process[231] wherein CenturyTel simply issues a notice informing wholesale customers about a coming change or a change that has already taken place. For example, CenturyTel issued Wholesale Markets Carrier Notification GN122009[232] to announce to wholesale customers that CenturyTel was implementing the EASE OSS. Noticeably absent from this notification is any opportunity for input from the affected wholesale customer. Similarly, CenturyTel issues these notices to inform wholesale customers about changes CenturyTel makes to its Service Guide, such as Carrier Notification GN102009,[233] which informed wholesale customers that CenturyTel had *already* made changes to its Service Guide regarding billing disputes. Again, there is no opportunity for input from the affected wholesale customers in this process.

In the legacy Embarq territory, CenturyLink uses a similar notice approach. I have attached as Exhibit TJG-10 a copy of a recent notice issued by CenturyLink in the legacy Embarq territory, in which CenturyLink announced a change to its WebRRS web-based GUI for maintenance and repair. Like the CenturyTel

[231] http://www.centurylink.com/business/Wholesale/InterconnectionServices/AlertsAndNotifications/generalNotifications.jsp

[232] http://www.centurylink.com/business/Wholesale/InterconnectionServices/Library/EASE_Implementation_Notice_07072009.pdf

[233] http://www.centurylink.com/business/Wholesale/InterconnectionServices/Library/Service_Guide_Update_07012009.pdf

notice, notably absent from this notice in legacy Embarq territory is any mention of opportunity for input or feedback from the affected wholesale customers, or even the reasonable expectation that a CLEC could get enough notice to communicate the information internally and provide documentation updates and training if needed. Indeed, the notice indicates that the change is effective the day the notice was issued ("Effective today…").

Q. DID THE CLECS ASK LEGACY EMBARQ ABOUT ITS CMP?

A. Yes. In late 2007, Integra asked its Embarq account manager whether a change management process existed in legacy Embarq territory, and was directed to Embarq's "CLEC Issue Resolution" process.[234] According to Embarq's wholesale website, the CLEC Issue Resolution process consists of:

> two different venues for resolving business issues with our CLEC customers: an annual face-to-face meeting (CLEC Forum) and a six month CLEC Forum follow-up conference call (CRM).
>
> **Customer Relations Meeting (CRM)**
>
> This six month follow-up meeting provides an opportunity for CenturyLink to update its CLEC partners on items and issues of interest discussed during the annual CLEC Forum. Meetings will be held six months after the CLEC Forum and participants will interact via conference call.
>
> **CLEC Forum**
>
> This annual meeting provides an opportunity for face-to-face interaction between CenturyLink and its CLEC partners.[235]

[234] http://embarq.centurylink.com/wholesale/clec_forum.html
[235] http://embarq.centurylink.com/wholesale/clec_forum.html

Q. BASED ON YOUR REVIEW, DOES LEGACY CENTURYLINK HAVE AN ADEQUATE CMP?

A. No. After reviewing both legacy CenturyTel and legacy Embarq wholesale websites and based on information provided by the Embarq wholesale customer account manager, the annual CLEC Forum meeting and six month follow up Customer Relations Meeting ("CRM") is the only process identified for CLEC input, and that is minimal. Nothing about that process manages change. Although CenturyLink has claimed that it has a "streamlined change management process,"[236] the facts do not support this claim. Although CLECs have encountered difficulties with Qwest's CMP,[237] at the very least, Qwest's CMP is documented,[238] contains an escalation process,[239] allows a CLEC the time required to communicate and implement the change (even if Qwest implements the change over CLEC objection), and memorializes a CMP process that was evaluated during the 271 approval process. As the CMP Document developed via the extensive 271 process shows,[240] notification is only one aspect of a CMP.

[236] Joint Petitioners' Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 24.

[237] 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* ["Qwest-Eschelon Minnesota ICA Arbitration"], 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.").

[238] http://www.qwest.com/wholesale/cmp/index.html. Qwest "CMP Document" is attached as Exhibit BJJ-24 to the testimony of Bonnie Johnson.

[239] Qwest CMP Document Section 14.

[240] Qwest testified in the Qwest-Eschelon Minnesota ICA Arbitration: "The CMP was evaluated as a part of the extensive section 271 investigation." Qwest (Renee Albersheim) Direct Testimony (Aug. 25, 2006), p. 6, line 24.

CenturyLink's notice/alert processes have not been subjected to any such extensive investigation.

Q. HAS THE FCC EMPHASIZED THE IMPORTANCE OF AN ADEQUATE CMP PROCESS?

A. Yes. The FCC has found that adequate change management procedures are a critical component to a CLEC's "meaningful opportunity to compete by providing sufficient access to the BOC's OSS."[241] The FCC has said that it will evaluate the adequacy of a BOC's CMP according to five factors:

> (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 the 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.[242]

None of the five factors applies to the legacy CenturyLink processes, and they certainly have not been evaluated in relation to these five factors as Qwest's CMP evaluated during the 271 approval process. This underscores the importance of Condition 17, to maintain Qwest's CMP post-merger, in spite of its flaws, because the CenturyLink alternative is no change management process at all.

Q. ARE THERE ADDITIONAL REASONS WHY CONDITION 18 IS NECESSARY?

[241] Qwest 9 State 271 Order at ¶ 132.
[242] Qwest 9 State 271 Order at ¶ 132.

A. Yes. Changes to or reductions in employees that service wholesale and CLEC support centers will have a direct impact on the level of wholesale service quality provided post-merger, and is one of the most likely candidates for reductions.[243] Again, the little information provided by CenturyLink about future changes and reductions in this headcount heightens those concerns.

Q. PLEASE DESCRIBE HOW CENTURYLINK'S INFORMATION HEIGHTENS YOUR CONCERN ABOUT FUTURE CUTBACKS IN HEADCOUNT FOR WHOLESALE SERVICES?

A. When asked directly about anticipated changes to staffing levels for groups that interface with wholesale customers post-merger, CenturyLink gives its patented answer about no "immediate changes" but that changes can be expected due to integration.[244] To CenturyLink's credit, it states that "the combined company will continue to employ experienced and dedicated personnel to provide quality service" and "will continue to be managed by knowledgeable and experienced employees dedicated to their local communities" and the "workforce of the combined company will continue to be sufficient to meet customer and business needs and to ensure compliance with all regulatory obligations."[245]

[243] CenturyLink has stated that it will achieve synergies through "elimination of duplicative functions and systems." Gast Minnesota Direct at p. 9. The Merged Company will more than likely have duplicative functions in this area given that both Qwest and CenturyLink must have their own separate wholesale/CLEC support centers today. Further, because cuts in this area will improve CenturyLink's position relative to its competitors, these changes would be profitable to the Merged Company.

[244] CenturyLink Response to Integra Minnesota Data Requests # 46 and #136.

[245] CenturyLink Response to Integra Minnesota Data Request #136.

Q. HAS CENTURYLINK PROVIDED ANY INFORMATION ON HOW IT MIGHT LIVE UP TO THESE PROMISES?

A. No. These are merely paper promises because CenturyLink has neither explained how it will live up to these promises nor offered commitments to back them up. These promises should carry no weight given that if the transaction is approved as filed, the Merged Company will be focused on achieving synergies, not on making good on unenforceable statements made to achieve merger approval. These representations do indicate, however, that the Merged Company should have no issue with abiding by the provisions of Condition 18 that requires sufficiently staffed and adequately trained wholesale operations.

Q. CONDITION 18 STATES THAT THE TOTAL NUMBER OF EMPLOYEES DEDICATED TO SUPPORTING WHOLESALE SERVICES WILL BE NO FEWER THAN AS OF THE MERGER FILING DATE UNLESS THE MERGED COMPANY DEMONSTRATES THAT DECLINING WHOLESALE VOLUMES (OR OTHER CIRCUMSTANCES) WARRANT HEADCOUNT REDUCTION RELATIVE TO ORDER VOLUMES. WHY IS THIS WARRANTED?

A. The Joint Petitioners' discovery responses indicate that over the past five years in the legacy Qwest service areas, the total number of employees dedicated to supporting wholesale services for CLEC customers dropped by about *****BEGIN**

TRADE SECRET [redacted] **END TRADE SECRET*****.[246] Similarly, the Qwest wholesale total headcount dropped by about *****BEGIN TRADE SECRET** [redacted] **END TRADE SECRET*****.[247] The headcount currently dedicated to serving wholesale customers in Qwest's legacy territory is as low as it has been in the recent past, and reducing this headcount further could very well have a detrimental impact on wholesale customers of Qwest. At the same time, CenturyLink is estimating about *****BEGIN HIGHLY SENSITIVE TRADE SECRET** [redacted] **END HIGHLY SENSITIVE TRADE SECRET***** in synergy savings in relation to headcount dedicated to wholesale operations.[248] So, when the Merged Company is pursuing these synergy savings, it should ensure that whatever changes are made do not reduce the total number of employees dedicated to wholesale customers in Qwest's territory so that wholesale service quality is not degraded post-merger.

Q. CONDITION 18 DISCUSSES PROTECTING CLEC INFORMATION FROM BEING USED BY THE MERGED COMPANY'S RETAIL OPERATIONS. IS THERE SIGNIFICANT UNCERTAINTY SURROUNDING THIS ISSUE RESULTING FROM THE PROPOSED TRANSACTION?

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[246] Qwest Response to Integra Minnesota Data Request #2-69, Trade Secret Attachment A.

[247] Qwest Response to Integra Minnesota Data Request #2-1(m), Trade Secret Attachment E.

[248] CenturyLink Response to Integra Minnesota Data Request #52a, Highly Sensitive Trade Secret Attachment Integra-52a.

A. Yes. A key aspect of competition is smoothly handling the transfer of a customer from one provider to the other when a customer chooses to switch carriers and keep its number. Over the past several years, we have seen disputes regarding retention marketing activities based on the use of confidential information provided in connection with arranging for number porting, for example.

Q. CAN YOU PROVIDE AN EXAMPLE DEMONSTRATING THE IMPORTANCE OF PROTECTING CLEC INFORMATION FROM THE MERGED COMPANY'S RETAIL OPERATIONS?

A. Yes, a very recent example. Attached to the testimony of Bonnie Johnson on behalf of Integra is Exhibit BJJ-18 which includes a document entitled "Example: Qwest Improper Marketing Activity"[249] which documents an email exchange between an Integra Customer Account Manager and an Integra customer about inappropriate marketing activity by Qwest representatives. In this example, the customer had a full disclosure conversation and shared the customer's invoice with the representative – all the while thinking the representative was from Integra when the representative was actually from Qwest. The customer reported that the Qwest representative pretended to be from Integra, and only at the end of the conversation informed the customer that the representative was from Qwest and stated that Qwest could beat Integra's pricing. When the Qwest representative later called the customer again to attempt to get the customer to

[249] *See* Exhibit BJJ-18 at p.26.

switch over to Qwest, and was unsuccessful, according to the customer, the Qwest representative stated, "Well, we'll do all we can to get them [Integra] out of business." This is just one example of a number of recent examples that have occurred after announcement of the merger in which Qwest personnel are directing inappropriate marketing activity to CLEC customers. *See,* Exhibit BJJ-18 to the direct testimony of Bonnie Johnson on behalf of Integra detailing numerous recent examples of inappropriate marketing activities.

Q. ARE THERE OTHER EXAMPLES THAT STRESS THE IMPORTANCE OF PROTECTING CLEC INFORMATION FROM THE ILEC'S RETAIL OPERATIONS?

A. Yes. During 2007 and 2008, Verizon and Bright House (along with other cable-affiliated CLECs) engaged in extensive litigation with Verizon regarding Verizon's use of Bright House's (and the other CLECs') confidential customer proprietary network information ("CPNI" or "ordering information").[250] Essentially, when Bright House would win a customer and place an order with Verizon to transfer the customer's telephone number and directory listing over to Bright House, Verizon would take that confidential information and use it to immediately try to retain the customer (*i.e.*, prevent the customer from leaving in the first place). Bright House argued that this was a violation of federal law, which requires a carrier receiving confidential information of this sort – here, the

[250] *See* Bright House Networks, LLC *et al.* v. Verizon California, Inc., *et al., Memorandum Opinion and Order,* 23 FCC Rcd 10704 (2008), *affirmed, Verizon California, Inc. v. FCC,* 555 F.3d 270 (D.C. Cir. 2009).

specific identities of customers who were leaving Verizon – to use that information ***only*** for the purpose for which it was supplied – here, to perform the administrative tasks associated with transferring the customer from one carrier to the other.

The FCC ruled against Verizon, finding that Verizon violated the statute by using confidential information from Bright House for Verizon's own marketing purposes. Verizon took its case to federal court on an expedited basis, and received a 3-0 ruling from the D.C. Circuit that the FCC was correct and that Verizon was wrong. Given this example and others, it is clear that the CLECs' have a valid concern about how information is used during the customer transfer process.

Q. WHAT HAS CENTURYLINK SAID ABOUT THIS?

A. When asked about its plans post-merger to ensure the protection of CLEC information, CenturyLink responded that it "works to ensure" that wholesale customer information is kept away from the retail marketing group and will do so post-merger, <u>but</u> that changes could be expected in Qwest's legacy territory due to integration decisions. Again, this is simply not satisfactory. There is no information that I am aware of about how CenturyLink protects CLEC data from retail operations in its legacy territory, and if CenturyLink imports its unknown practices into Qwest's region post-merger in the name of "best practices," CLECs

are at risk of the Merged Company lessening the protection Qwest currently provides and engaging in anti-competitive conduct.

D. Compliance

Q. PLEASE IDENTIFY AND DESCRIBE THE PROPOSED CONDITIONS RELATING TO COMPLIANCE.

A. There are eleven conditions in this category – conditions 13, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30:

- Condition 13 states that the Merged Company will be classified as a BOC in the legacy Qwest ILEC territory post-merger and subject to BOC requirements in the Telecommunications Act, including the 14-point competitive checklist under Section 271 and anti-backsliding provisions under Section 272.
- Condition 21 states that the Merged Company will process orders in compliance with law and applicable ICAs.
- Condition 22 states that the Merged Company will provide number portability in compliance with law and applicable ICAs; unlock E-911 records at the time of porting; and address trouble reports involving unlocking E-911 records within 24 hours. This condition states that the Merged Company will not assign a passcode, password or PIN to retail customers in a manner that prevents or delays a change in local service providers. And this condition states that the Merged Company shall not limit the number of ports that can be processed.
- Condition 23 states that the Merged Company will provide nondiscriminatory access to directory listings and directory assistance in compliance with law, including being responsible for ensuring that all directory listings submitted by a CLEC are incorporated into the appropriate databases and making the CLEC's subscriber listings equally available to requesting entities.
- Condition 24 states that states that the merged company shall not assess porting charges, NID access fees, or directory storage and maintenance fees after the closing date, to the extent that those charges were not charged by legacy Qwest territory based upon commission-approved rates before the closing date.

- Condition 25 states that the Merged Company will provide routine network modifications in compliance with law and applicable ICAs.
- Condition 26 states that the Merged Company will engineer and maintain its network in compliance with law and applicable ICAs, which includes not diverting resources from maintenance to merger integration activities and not engineering the network in such a way that disrupts or degrades access to the local loop. This condition also requires the Merged Company to abide by law and applicable ICAs when retiring copper and prohibits the Merged Company from engineering/maintaining its network (including routing of traffic) in a manner that results in the application of higher rates for traffic or inefficiencies for wholesale customers.
- Condition 27 states that the Merged Company will provide conditioned copper loops in compliance with law and Commission-approved rates, and will (when technically feasible) test and report troubles for all features and functions of the copper line and not just for voice transmission only.
- Condition 28 states that, at the CLEC's option, the Merged Company will interconnect with CLEC at a single point of interconnection per LATA, regardless of whether the merged entity operates in that LATA via multiple operating affiliate companies or a single operating company.
- Condition 29 states that conditions adopted in this state may be expanded or modified based on conditions adopted by other state commissions or the FCC.
- Condition 30 states that in the case of a dispute between the parties about merger conditions, either party may seek resolution before the state commission.

Q. WHY ARE THESE CONDITIONS NECESSARY?

A. These conditions are designed to ensure that the Merged Company complies with its obligations to wholesale customers under the Act and related FCC's rules post-merger. While CenturyLink has promised in its filings to comply with many of the provisions discussed in these conditions, paper promises are not enough, especially considering CenturyLink's inexperience as a BOC, issues previously addressed in CenturyLink's legacy territory, and problems experienced by

wholesale customers following recent mergers. Commission-approved conditions are needed to turn the paper promises into enforceable commitments.

Q. WHY IS IT NOT SELF-EVIDENT THAT THE MERGED COMPANY WILL COMPLY WITH STATE AND FEDERAL LAWS AND RULES POST-TRANSACTION?

A. As the FCC noted in the CenturyTel/Embarq Merger Order:

> 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. In order to address these potential harms, the Applicants have proposed a series of voluntary commitments…we therefore make them enforceable conditions of the merger.[251]

The increase in the size of the CenturyTel study area following the proposed transaction is about double (in terms of line counts) the increase in CenturyTel's study area that occurred due to the Embarq/CenturyTel merger. Further, the proposed transaction (unlike the Embarq/CenturyTel merger) involves the acquisition of a BOC by a non-BOC. As such, the risk of increased anti-competitive behavior (*i.e.*, non-compliance with the law) following the proposed transaction is greater than the risk posed by the Embarq/CenturyTel merger which was approved subject to enforceable conditions.

[251] FCC Embarq/CenturyTel Merger Order at ¶ 33.

Providing evidence of a risk of harm that compliance with certain laws may, in particular, be in jeopardy justifies singling out those laws with merger conditions that require compliance. For example, one of the enforceable conditions in the Embarq/CenturyTel merger was that "Orders will be processed in compliance with federal and state law, as well as the terms of applicable interconnection agreements."[252] Though it would seem self-evident that the combined Embarq/CenturyTel company would comply with laws and ICAs when processing orders following the Embarq/CenturyTel merger, the FCC adopted an enforceable condition to the merger requiring them to do so, based on concerns identified by wholesale customers,[253] to preserve the public interest and avoid merger-related harm.

Likewise, the FCC adopted the following enforceable condition for the Embarq/CenturyTel merger: "When a number is ported from CenturyTel, E-911 records will be unlocked at the time of porting. Trouble reports involving locked E-911 records will be addressed within 24 hours."[254] Though it would also seem self-evident that the combined Embarq/CenturyTel company would comply with laws and standards regarding unlocking of E911 records, the FCC's approved merger conditions specifically singled out this issue, based on concerns identified

[252] FCC Embarq/CenturyTel Merger Order at Appendix C, p. 27.

[253] *See, e.g.*, Declaration of D. Anthony Mastando and Kim Sharp on Behalf of DeltaCom, Inc. WC Docket No. 08-238 (Jan. 23, 2009), pp. 3-5; Declaration of R. Matthew Kohly on Behalf of Socket Telecom, WC Docket No. 08-238 (Jan. 8, 2009), pp. 3-6.

[254] FCC Embarq/CenturyTel Merger Order at Appendix C, p. 29.

by wholesale customers,[255] to preserve the public interest and avoid merger-related harm. One of the concerns expressed was that "the record updating process and the accuracy of records will suffer as a result of this acquisition."[256] CLECs expended the resources to raise and address the issue of unlocking E-911 records with Qwest via Qwest's Change Management Process commencing in 2001 – ***nine years*** ago.[257] Naturally, after reading the concerns raised by CLECs in the Embarq/CenturyTel merger on this issue, CLECs are concerned about going backward to pre-271 workshop days such that the record updating process and the accuracy of records will suffer as a result of this acquisition. Condition 22(a) is proposed to address this concern.

The FCC, by adopting these enforceable conditions (and the merging companies, by proposing this as an agreed upon commitment[258]), recognized the need to preserve the public interest and protect competitors from merger-related harm by ensuring that the combined Embarq/CenturyTel abides by its obligations under law – even when it would otherwise seem self-evident that those obligations apply independently of the merger. These conditions were adopted to ensure that the

[255] *See, e.g.*, Declaration of R. Matthew Kohly on Behalf of Socket Telecom, WC Docket No. 08-238 (Jan. 8, 2009), p. 12.

[256] *See, e.g.*, Declaration of R. Matthew Kohly on Behalf of Socket Telecom, WC Docket No. 08-238 (Jan. 8, 2009), p. 12.

[257] Change Request ("CR") #CR PC122801-1 ("**Qwest to document, distribute and train an adhered to process to unlock numbers for 911**"), submitted by Eschelon on December 28, 2001 and completed by Qwest on April 17, 2002, available at http://www.qwest.com/wholesale/cmp/archive/CR_PC122801-1.html

[258] Although Applicants may argue that these conditions were strictly "voluntary," they cannot show that the merger would have been approved without them. Without the commitments, there is no showing that the merger would do no harm or be in the public interest.

combined Embarq/CenturyTel company did not follow its increased incentive to engage in anti-competitive conduct or spread existing worst practices throughout its larger service territory post-merger.

Q. HAVE STATE COMMISSIONS ALSO ADOPTED MERGER CONDITIONS REQUIRING THE MERGED COMPANY TO COMPLY WITH LAW FOLLOWING THE MERGER?

A. Yes. One such example is the South Carolina Commission's decision in the Verizon/Frontier proceeding. In that case, the merging companies made a number of commitments to encourage a finding that the merger was in the public interest, which were adopted as conditions of merger approval, including: "contribut[ing] to the State Universal Service Fund in compliance with Commission Orders" and "comply[ing] with all Commission orders, rules and regulations."[259] Also, the Illinois Commerce Commission recently adopted a merger condition for Verizon/Frontier, which states: "Frontier will continue to comply with 83 Ill. Admin. Code 771, Cost Allocation Rules for Large Local Exchange Carriers."[260]

[259] *IN RE: Joint Application of Frontier Communications Corporation, New Communications of the Carolinas Inc., New Communications Online and Long Distance Inc., Verizon South Inc., Verizon Long Distance LLC and Verizon Enterprise Solutions LLC for Approval of the Transfer of Assets, Authority and Certificates*, South Carolina Public Service Commission Docket No. 2009-220-C, Order No. 2009-769, October 29, 2009, 2009 S.C. PUC LEXIS 506, *26.

[260] *Frontier Communications Corporation, Verizon Communications, Inc. et al. Joint Application for the Approval of a Reorganization Pursuant to Section 7-204 of the Public Utilities Act,* Order, ICC Docket No. 09-0268, April 21, 2010, Conditions Appendix at p. 4, Condition 4.

Q. MUST THERE BE A PREVIOUS ORDER CONCLUSIVELY FINDING COMPLIANCE PROBLEMS FOR THESE TYPES OF CONDITIONS TO BE WARRANTED?

A. No. As indicated above, enforceable merger conditions requiring compliance with specified laws have resulted from concerns raised by non-applicants about potential harm of the proposed transactions. When sufficient concerns are raised, it is incumbent upon the Commission to protect the public interest by approving enforceable conditions to protect customers and competition from that harm. After all, the proposed conditions are not burdensome – they commit the merged company to do what it already should do – comply with the law. Joint Petitioners can hardly argue that the Commission does not have the authority to expect and require compliance with the law. To the extent that Joint Petitioners make that claim, concerns about their intent with respect to these laws would be heightened.

In the case of the Embarq/CenturyTel Merger Order, the FCC did not make a finding of noncompliance regarding CenturyTel's then-existing order processing or unlocking of E-911 records; rather, wholesale customers identified problems related to these issues and the FCC found that enforceable conditions were necessary to preserve the public interest and avoid merger-related harm. Whether or not the merging companies had or were in fact violating law (or whether the law applies to the individual companies independent of the merger) was not a determining factor as to whether voluntary commitments/enforceable merger

conditions were necessary to preserve the public interest and avoid merger-related harm. To expressly require compliance with existing law, it is sufficient that a legitimate basis for concern is raised that, without the condition, compliance with the law will suffer as a result of the acquisition.

Despite CLECs identifying important, service-affecting issues that need to be addressed in relation to their business relationships with Qwest and CenturyLink, the Joint Petitioners have made no commitments and oppose wholesale merger conditions in relation to the proposed transaction. Yet, the need to preserve the public interest and avoid harm in relation to the proposed transaction is just as important (or more so) than it was in the prior cases wherein the merging companies agreed to enforceable conditions that require compliance with law in exchange for merger approval. For purposes of reviewing the merger, the Commission need not find here that Qwest or CenturyLink acted in an anti-competitive manner in the examples CLECs provide, but instead should take the examples into account when finding that the proposed transaction as filed (i.e., without commitments or enforceable conditions) does not serve the public interest.

Q. HAVE THE JOINT PETITIONERS ALREADY AGREED TO COMPLY WITH THE OBLIGATIONS THAT ARE EMBODIED IN THESE CONDITIONS POST-MERGER?

A. For many of them, yes. For example, regarding condition 13, the Merged Company has agreed that it will be classified as a BOC in Qwest legacy territory post-merger and will comply with all Section 271 obligations.[261] Similarly, as it relates to condition 21, the Merged Company has agreed to process wholesale orders in compliance with law and applicable ICAs.[262] And for condition 22, CenturyLink has agreed to "provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements"[263] and to comply with federal and state law and applicable ICAs when unlocking E-911 records and addressing trouble reports related to unlocking E-911 records.[264] Likewise, the Joint Petitioners have indicated that their policies

[261] *See, e.g.*, CenturyLink Response to Integra Minnesota Data Request #3 ("The merger will not change the BOC status of Qwest Corporation…"); CenturyLink Response to Integra Minnesota Data Request #4 ("…Qwest Corporation, as a wholly owned subsidiary of CenturyLink, will continue to meet all ongoing 271 obligations in the legacy Qwest service areas that are required."). See also, Joint Petitioners' Reply Comments, WC Docket No. 10-110, July 27, 2010 ("And though CenturyLink previously has not operated subject to the requirements of Section 271, it is fully aware of (and has acknowledged) its duty to do so within Qwest's in-region service areas, and the company will ensure that the resources and expertise required to meet those obligations are in place.") Notably, Integra asked in Data Request #3 for CenturyLink to "explain what, if any, measures the Merged Company will put in place to ensure against backsliding on its 271 obligations?" CenturyLink did not answer this portion of the question, thereby making the portion of Condition 13 related to anti-backsliding that much more important.

[262] CenturyLink Response to Integra Minnesota Data Request #102 ("Yes, in all service areas post-merger, CenturyLink will continue to process wholesale orders in compliance with federal and state laws and with applicable terms in interconnection agreements.")

[263] CenturyLink Response to Integra Minnesota Data Request #100(a). Though CenturyLink states that it will provide number portability in accordance with law, the fact that CenturyLink attributed its recent waiver request of the one-day porting requirement to the ongoing integration efforts related to the Embarq merger shows that an enforceable condition is needed to ensure that the integration of the Qwest merger does not similarly impact the Merged Company's ability to meet number porting requirements.

[264] CenturyLink Response to Integra Data Request #100(b) and 100(c). Notably, CenturyLink states that it "has not evaluated or reached any conclusions regarding" the issues of when CenturyLink will unlock E911 records or address trouble reports related to unlocking E911 records. The uncertainty caused by CenturyLink's vacillation on this issue makes Condition 22 that much more important. The Merged Company should have no problem abiding by condition 22(a) given that it offered an identical

regarding passcodes/PINs would not be disrupted by Condition 22[265] and that the number of ports that can be processed are not currently limited.[266] For Condition 25, CenturyLink has agreed that "in all service areas post merger, CenturyLink will continue to provide routine network modifications in compliance with federal and state laws and with applicable terms in interconnection agreements."[267] For Condition 26, CenturyLink has repeatedly represented that it will continue to invest in its network post-merger and that it is fully capable of allocating resources to both maintain current operations and to conduct merger-related activities post-merger.[268] CenturyLink has also represented that it will comply with all applicable state and federal laws and rules and ICAs in relation to copper

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commitment to the FCC in conjunction with the Embarq/CenturyTel merger and states that "within legacy service areas E911 records are being unlocked at the time of porting in accordance with the FCC's merger condition." CenturyLink Response to Integra Minnesota Data Request # 100(d).

[265] CenturyLink states that it assigns passwords in some instances such as online access in accordance with CPNI rules and in cases where customers protect their account against unauthorized changes, but otherwise "does not currently assign a passcode or Personal Identification Number (PIN) to retail customers that must be used before the customer may switch to an alternative local service provider." CenturyLink Response to Integra Minnesota Data Request #7. Qwest states that "in none of its states does Qwest assign a passcode or Personal Identification Number (PIN)/passcode to retail customers and require that the passcode or PIN be submitted in order for the retail customer to switch to an alternative local service provider." Qwest Response to Integra Minnesota Data Request #7. Based on the information provided by the Joint Petitioners, this condition would require them to maintain the current policies, not change their policies to accommodate the condition. Notably, Qwest asked the Iowa Board to place a very similar condition on the approval of the Iowa Tel/Windstream merger: "prohibit Windstream from requiring new local service providers to provide Windstream-provided Personal Identification Numbers when porting a customer's number to the new provider" Order Canceling Hearing and Terminating Docket, Iowa Utilities Board, April 30, 2010, at p. 26.

[266] CenturyLink Response to Integra Minnesota Data Request #37 ("CenturyLink does not limit the number of service requests (including number ports) a given CLEC can make.")

[267] CenturyLink Response to Integra Minnesota Data Request #101.

[268] *See, e.g.*, Minnesota Petition at p. 3 ("It will provide the combined company with greater financial resources and access to capital enabling it to invest in networks…") and p. 13 ("CenturyLink has a demonstrated ability to acquire and successfully integrate companies, and to combine systems and practices, while continuing to provide high-quality service to customers.")

retirement.[269] As it relates to Condition 27, "CenturyLink states that it will comply with all applicable state and federal laws and rules, as well as the provisions of any applicable interconnection agreements…" for conditioning of copper loops.[270] The fact that CenturyLink has agreed to comply with these requirements post-merger shows that it should have no problem with these conditions being adopted in conjunction with any decision approving the proposed transaction. Again, conditions are needed to turn CenturyLink's paper promises into enforceable commitments.

Q. PLEASE ELABORATE ON WHY IT IS IMPORTANT TO INCLUDE A CONDITION THAT THE MERGED COMPANY WILL COMPLY WITH 271 OBLIGATIONS IN QWEST'S BOC TERRITORY POST-MERGER (CONDITION 13)?

A. For starters, the company that will be in control of Qwest post-merger has no experience operating as a BOC, so the potential for backsliding on Qwest's 271 obligations is great (at least greater than prior to the proposed transaction when Qwest was controlled by a company that had more than seven years experience operating as a BOC with 271 approval[271]). Second, to date, Qwest has exploited the lack of clear rules implementing 271 obligations to impose excessive, non-

[269] CenturyLink Response to Integra Minnesota Data Request #104.

[270] CenturyLink Response to Integra Minnesota Data Request #106.

[271] For example, the FCC order granting Qwest 271 authority in nine states was released on December 23, 2002. See, *Qwest 9-State 271 Order*, WC Docket No. 02-314, FCC 02-332 (12/23/02).

negotiable rates for 271 network elements on CLECs.[272] The Merged Company should not be allowed to evade its 271 obligations post-merger, and that includes avoiding the requirement to provide 271 network elements on just and reasonable rates, terms and conditions.[273]

Q. WHY IS CONDITION 21 NECESSARY?

A. As explained above, Condition 21, which states that the Merged Company will process orders in compliance with law and applicable ICAs, is the same voluntary commitment Embarq/CenturyTel offered to the FCC to secure approval of the Embarq/CenturyTel merger after concerns were raised by competitors. The FCC adopted this as an enforceable condition because of the potential for increased anti-competitive conduct of the combined Embarq/CenturyTel company and the potential for problems spreading to CenturyTel's newly-acquired territory. For the same reasons, this condition should be adopted for the proposed transaction. And, because the proposed transaction involves CenturyLink acquiring a BOC as well as a service territory that is double the size (expressed in line counts) of its existing territory (including newly-acquired Embarq), the rationale for adopting

[272] *See, e.g.*, Comments of Joint Commenters, WC Docket No. 10-110, July 12, 2010, at pp. 68-69, citing Petition for Modification of McLeodUSA Telecommunications Services, Inc., WC Docket No. 04-223, July 23, 2007, at pp. 4-12.

[273] Covad Communications Company, PAETEC Communications, Inc., Access Point, Inc. Deltacom, Inc., Granite Telecommunications, LLC, HickoryTech Corporation, Metropolitan Telecommunication, Inc., OrbitCom, Inc., TDS Metrocom, LLC, and TelePacific Communications ("Joint Commenters") have proposed specific conditions related to 271 obligations to the FCC in conjunction with the FCC's review of the proposed transaction. *See,* Comments of Joint Commenters, WC Docket No. 10-110, July 12, 2010, at pp. 70-71, available at: http://fjallfoss.fcc.gov/ecfs/document/view?id=7020522259

this condition in relation to the proposed transaction is even more compelling now.

Q. PLEASE DISCUSS CONDITION 22.

A. Condition 22 states that the Merged Company will provide number portability in compliance with law and applicable ICAs; unlock E-911 records at the time of porting; and address trouble reports involving unlocking E-911 records within 24 hours. This condition states that the Merged Company will not assign a passcode, password or PIN to retail customers in a manner that prevents or delays a change in local service providers. And this condition states that the Merged Company shall not limit the number of ports that can be processed.

Q. WHAT IS CONDITION 22 NECESSARY?

A. Condition 22 is necessary to protect CLEC rights under the Act for efficient and nondiscriminatory local number portability ("LNP"). In short, this Condition is necessary to ensure that the Merged Company fulfills its LNP obligations in a competitively neutral manner as prescribed in Sections 251(b)(2) and 251(e)(2) of the Act. As the Act and the FCC have noted, LNP is critical for consumers and competitors and for the efficient functioning of the local telecommunications market.

In its most basic form, LNP is important because consumers want to be able to retain their existing telephone numbers when switching providers. Retaining your telephone number is important for obvious reasons: consumers do not want to

have to alert their friends and family of new telephone numbers, and change billing statements, stationery, business cards, and other items every time they switch telephone providers. For these reasons (and others), number porting is very important to customers. Indeed, without number portability consumers may choose not to change their providers because of the impact on their personal and business lives.

Q. WHY IS NUMBER PORTING IMPORTANT TO COMPETITORS?

A. As noted above, getting customers to change providers can be difficult. The customer inertia for a service is difficult to overcome in the first place, but without number portability consumers may not even consider an alternative provider. And, getting the porting done in the proper manner and in the proper time frame is also critical. If that is to happen, a competitor cannot erect operational barriers that are intended to delay the process.

Q. THE CONDITION INCLUDES REFERENCES TO UNLOCKING E-911 RECORDS, PASSCODES AND LIMITS ON PORTING. ARE THESE ISSUES IMPORTANT TO CLECS AND CONSUMERS?

A. Absolutely. Once an LNP order is completed the donor company will disconnect and/or migrate the existing E-911 record via a service order. This results in an "unlocked record" in the E-911 Automatic Location Identification ("ALI") database. The recipient company must then update the E-911 ALI database with a "migrate" order which "locks" the end-user's record. Any delay in the

"unlocking" process will result in an error report in response to the migrate order sent by the recipient provider. Given the importance of E-911 for the safety of the end-user consumer, this requirement is absolute and must be conducted in compliance with federal and state law.

Requiring pass codes or PINs may also result in the delay of porting. The Merged Company must not be allowed to require such pass words or PINs unless specifically requested by the end user customer.

Finally, artificially limiting the number of ports that may be submitted in a particular time period is anticompetitive and disruptive to the competitive process. The porting process should be largely if not completely automated, so limits on the number of ports is not necessary.

Q. PLEASE EXPLAIN CONDITION 23.

A. Condition 23 is necessary to protect CLEC rights under the Act to nondiscriminatory access to directory listing ("DL") and directory assistance ("DA") functions.

Q. WHAT POSITIONS HAS CENTURYLINK TAKEN WITH RESPECT TO DL AND DA THAT ARE HARMFUL AND INCONSISTENT WITH THE INDUSTRY?

A. CenturyLink has attempted to shift its responsibilities under Section 251(b)(3) of the Act to third parties. CenturyLink refuses to enter into ICAs that include

language which ensures that a competitor's subscribers have the same access to DA and DL databases as CenturyLink provides its own customers. As a result, directory services provided by competitors like Charter may be degraded if CenturyLink, or its vendor, fails to properly maintain these databases in a manner that ensures nondiscriminatory access.

Q. CAN YOU PROVIDE AN EXAMPLE OF THE PROBLEMS CENTURYLINK'S DA AND DL POLICIES HAVE CREATED?

A. Yes. As noted above, CenturyLink has attempted to impose a recurring per customer DLSM Charge in numerous states. Other providers, including Verizon, Comcast and Charter, have litigated LNP issues with CenturyLink at great expense over the last few years.[274]

Q. OTHER THAN THE LITIGATION EXPENSE, HAS THERE BEEN CUSTOMER IMPACTING PROBLEMS AS WELL?

A. Yes. In the recent past, directory listing information of Charter's subscribers was not available to CenturyLink subscribers. Put simply, when a CenturyLink subscriber dialed "4-1-1" and requested listing information on a Charter subscriber, that information was not provided.[275] As a result, thousands of

[274] *See* for instance, United Telephone Company of the Northwest d/b/a Embarq Response to Comcast Petition in Washington Docket No. U-083025, filed May 27, 2008, at ¶ 10. This is an example of a case in which Comcast opposed Embarq's DLSM charge. Charter has litigated numerous LNP related charges which CenturyLink attempted to impose under the guise of "service order charges."

[275] *See*, for instance, the Direct Testimony of Amy Hankins on behalf Charter Fiberlink-Missouri, LLC, Before the Public Service Commission of the State of Missouri, Case No. TO-2009-0037; dated September 30, 2008.

Charter subscribers were effectively excluded from the directory assistance database used by CenturyLink. Charter repeatedly sought a remedy and presented several requests for relief to the relevant state commission. CenturyLink acknowledged the problem, but blamed the problem on its vendor, who was not accessing the proper database. Ultimately the situation was resolved, but CenturyLink's refusal to acknowledge its responsibility to provide nondiscriminatory access to Charter (and its subscribers) under Section 251(b)(3) prolonged a discriminatory and anticompetitive situation. That, in turn, meant that many more subscribers were affected, even after the problem was identified, and isolated, for CenturyLink.

Q. PLEASE PROVIDE SOME BACKGROUND INFORMATION ON THE DIRECTORY LISTING FUNCTION IN ORDER TO FRAME THE POSITION THAT CENTURYLINK HAS TAKEN.

A. In simple terms, a directory listing is the customer's name, phone number, and address that are published in a directory, such as a telephone book, or included in a directory database, such as that used when a caller dials "411." The FCC's regulations define "Directory listings" as follows:

> Directory listings. Directory listings are any information:
>
> (1) Identifying the listed names of subscribers of a telecommunications carrier and such subscriber's telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and

> (2) That the telecommunications carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.[276]

In addition, Section 251(b)(3) of the Act requires all local exchange carriers to provide competing providers with "*nondiscriminatory* access to ... directory assistance, and directory listing."[277] The FCC has interpreted the statutory term "directory listing" to mean "the act of placing a customer's listing information in a directory assistance database or in a directory compilation for external use (such as a white pages)."[278] Among other things, Section 251(b)(3) and 47 C.F.R. § 51.5 require that LECs "publish competitors' business customers in … [their] director[ies] on a nondiscriminatory basis," regardless of whether LECs own those directories or not.[279]

Q. IS THERE ANYTHING WRONG WITH USING A THIRD PARTY FOR DL OR DA ACTIVITIES?

A. Not necessarily. It is common for LECs to use third-party vendors for directory assistance activities. The problem arises when an ILEC like CenturyLink, with specific requirements under Section 251(b)(3) of the Act, attempts to shift its

[276] 47 C.F.R. § 51.5.

[277] 47 U.S.C. § 251(b)(3) (emphasis added).

[278] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934 [sic], As Amended*, CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, ¶ 160 (1999) ("SLI/DA Order").

[279] *See MCI Telecomm. Corp. v. Michigan Bell Tel. Co.*, 79 F. Supp. 2d 768, 801 (E.D. Mich. 1999); *see also U.S. West Comm., Inc. v. Hix* , 93 F. Supp. 2d 1115, 1132 (D. Colo. 2000) (*citing MCI Telecomm.*).

responsibilities to a third-party, or worse, to claim that it no longer has any such obligations under Section 251(b)(3).

Q. PLEASE EXPLAIN.

A. The FCC has recognized that carriers may agree to have subscriber listing databases administered by a third party.[280] However, the FCC has also recognized that such agreements for third-party administration must still be included in interconnection agreements because entering into a side agreement for access to subscriber listing databases contravenes the FCC requirement that LECs provide directory listing on a nondiscriminatory basis and make such provisions related thereto available to other carriers in interconnection agreements for adoption through the mechanism of Section 252 of the Act.[281] Therefore, CenturyLink must include rates, terms and conditions of access to its subscriber listing databases within the interconnection agreement despite use of a third-party database administrator or publisher.

Condition 23 ensures that CenturyLink will comply with federal and state law with respect to its DL/DA responsibilities. It further ensures that CenturyLink does not shift its responsibilities to a third party vendor and specifically identifies

[280] *See*, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 11 FCC Rcd 19392 at ¶ 144 (1996) "Local Competition Second Report and Order"), vacated in part, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), rev. on other grounds, *AT&T Corp. v. Iowa Util. Bd.*, 119 S. Ct. 721 (Jan. 25, 1999).

[281] *Provision of Directory Listing Information under the Communications Act of 1934, As Amended*, FCC 01-27, 16 FCC Rcd 2736 at ¶ 36 (2001) ("SLI/DA First Report and Order").

the responsibilities with respect to nondiscriminatory access to DL/DA. CenturyLink's worst practices should not be adopted; instead, the Commission should require the Qwest practices of (1) placing a basic white pages and yellow pages directory listing in its directories without charge to the CLEC, and (2) ensuring that the ILEC customers are given the CLEC's customers' DA information, when the ILEC's customers dial directory assistance.

Q. PLEASE EXPLAIN CONDITION 24.

A. This condition is necessary to ensure that the Merged Company does not extend CenturyLink's anticompetitive practice of imposing unsupported surcharges and fees upon facilities-based competitors at the point of subscriber acquisition and migration. In contrast, Qwest does not impose these separate surcharges upon competitors when no underlying wholesale service is being provided to the competitor. For example, although Qwest may assess a service order charge upon a competitor that orders a UNE loop in conjunction with the acquisition of a new subscriber, it does not assess a separate surcharge when the competitor simply requests that the subscriber's number be ported away in conjunction with the subscriber change process. Because Qwest does not impose the same separate fees upon competitors, any attempt to impose these separate charges in Qwest's legacy territory post-merger would result in the implementation of worst (not best) practices, and, in turn, merger-related harm to competition.

Q. PLEASE IDENTIFY THE SPECIFIC ANTICOMPETITIVE FEES AND SURCHARGES THAT CENTURYLINK ASSESSES UPON COMPETITORS ADDRESSED IN CONDITION 24.

A. CenturyLink, and its affiliate Embarq, imposes several different surcharges each time that a facilities-based competitor, like Charter, "wins" a new customer from CenturyLink. First, CenturyLink imposes a separate number porting service order charge each time that CenturyLink is asked to port a telephone number to a competitor. Second, CenturyLink assesses "use" or access fees upon competitors each time the competitor attempts to connect its own network facilities to a customer's inside wire through the customer side of a CenturyLink NID enclosure. Third, CenturyLink's affiliate, Embarq, imposes "storage" charges upon competitors that submit directory listing information for inclusion in directory listing databases. These charges increase wholesale customers' (i.e., competitors') costs of obtaining new subscribers and generating new revenue sources to offset subscriber losses. It is, therefore, more costly (and operationally challenging) for competitors to compete in CenturyLink markets.

Q. PLEASE EXPLAIN YOUR CONCERN WITH THESE SURCHARGES.

A. In an earlier portion of my testimony, Section IV, I provided some background on the second and third type of improper surcharges assessed upon competitors concerning the NID enclosure, and directory storage fees at issue. Let me explain the circumstances surrounding the imposition of the number porting surcharges.

Each time that a competitor obtains a new customer that is a former CenturyLink subscriber, and that subscriber wishes to port their telephone number away from CenturyLink, the competitor must pay a surcharge to CenturyLink to effectuate the number port. This surcharge, which ranges from $13 to over $20 (depending upon the state) is imposed upon every competitor that obtains wholesale services under CenturyLink interconnection agreements. To date, this is only a CenturyLink practice, and has not been implemented in the Qwest territories. Obviously, if this anticompetitive practice were extended to all of the Merged Company's territories post-merger, merger-related harm would occur and the harm would be substantial.

Q. WHAT ARE THE RULES REGARDING CARRIER FEES FOR NUMBER PORTING?

A. In several orders implementing Section 251(e)(2) of the Act, the FCC held that carriers are required to recover their costs of implementing LNP through tariffed end-user charges.[282] In these orders, the FCC determined that ILECs may recover through ***end-user charges*** their carrier-specific costs directly related to providing number portability. The FCC concluded that this framework for cost recovery (from end users rather than other carriers) best serves the statutory goal of competitive neutrality.

[282] The FCC's rulings were set forth in several orders: *Telephone Number Portability*, Third Report and Order (the "Cost Recovery Order"), 13 FCC Rcd 11701 (1998), *aff'd, Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review (the "Cost Recovery Reconsideration Order"), 17 FCC Rcd 2578 (2002); and *Telephone Number Portability Cost Classification Proceeding*, Memorandum Opinion and Order, 13 FCC Rcd 24495 (CCB 1998).

Q. HOW DOES THE CONCEPT OF "COMPETITIVE NEUTRALITY" APPLY TO NUMBER PORTING CHARGES?

A. Section 251(e)(2) of the Act requires that the costs of establishing number portability be "borne by all telecommunications carriers on a competitively neutral basis."[283] This principle of competitive neutrality is an important component of the FCC's number porting cost recovery rules. However, CenturyLink's repeated attempts to assess charges on CLECs undermines competition and the competitive neutrality the FCC sought to establish. As the FCC explained, "[i]f the [FCC] ensured the competitive neutrality of only the distribution of costs, carriers could effectively undo this competitively neutral distribution by recovering from other carriers."[284]

Q. WHAT ABOUT INTERCONNECTION-BASED NUMBER PORTING CHARGES ASSESSED UPON COMPETITORS. HAS THE FCC EVER ADDRESSED THE LEGALITY OF SUCH CHARGES?

A. Yes, the FCC has clearly said such charges are prohibited by federal law. That is the most troubling aspect of CenturyLink's wholesale practice, it violates clear policies set forth by the FCC in early number portability cost recovery orders. Specifically, in a 2002 Number Portability Cost Reconsideration Order the FCC ruled that:

[283] 47 U.S.C. § 251(e)(2).
[284] *Cost Recovery Order*, at ¶ 39.

> [I]ncumbent LECs may not recover any number portability costs through interconnection charges or add-ons to interconnection charges to their carrier "customers," nor may they recover carrier-specific costs through interconnection charges to other carriers where no number portability functionality is provided.[285]

This language clearly prohibits interconnection-based surcharges on number porting actions like those imposed by CenturyLink. The statement leaves no doubt that the Commission does not permit incumbent LECs to assess charges upon other carriers for number porting. This decision is still valid law, and has never been reversed or modified.

Q. HAVE THOSE RULINGS BEEN CODIFIED INTO THE FCC'S RULES?

A. Yes, the prohibition on such charges is codified at 47 C.F.R. § 52.33, and FCC regulation entitled "Recovery of carrier specific costs directly related to providing long-term number portability."

Q. WHY DO YOU BELIEVE THESE SURCHARGES, AND OTHERS, MAY BE ASSESSED UPON COMPETITORS BY THE MERGED COMPANY?

A. These fees are currently assessed upon competitors because CenturyLink is able to leverage its market power to impose these surcharges as a condition of interconnection with CenturyLink. If the proposed transaction is approved, CenturyLink will be the third largest ILEC in the nation, and its market power will span 37 states.[286] That is why I expect these surcharges will be assessed by

[285] *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578, at ¶ 62 (2002).

[286] "CenturyLink and Qwest Agree to Merge," Available at:

the merged company unless this Commission adopts a condition that prohibits the merged company from doing so.

Q. IS THAT WHY YOU BELIEVE CONDITION 24 IS NECESSARY?

A. Yes. Condition 24 is included to prevent CenturyLink's objectionable charges directed specifically at facilities-based competitors from being applied throughout the Qwest legacy territory post-merger. Even if the Merged Company attempted to introduce these types of separate, distinct charges in Qwest's territory post-merger (but was ultimately unsuccessful), CLECs and state commissions would have to still have to expend significant time and expense combating the integration of this worst practice.

Q. ARE THERE OTHER FEES AND SURCHARGES THAT CONDITION 24 ADDRESSES?

A. Yes. This condition also addresses the separate fees and surcharges CenturyLink imposes upon competitors' for accessing the NID enclosure and for "storage" of competitors' customers' directory listings. Each of these separate charges is discussed above in Section IV. These NID enclosure and storage surcharges raise the same concerns with respect to increasing competitors' costs, and are therefore part of Condition 24.

Q. DO YOU HAVE SOME GENERAL CONCERNS REGARDING THE MERGED COMPANY NETWORK AS TO CONDITIONS 25 AND 26?

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http://news.qwest.com/centurylinkqwestmerger

A. Yes. Both of these conditions, in part, address the CLECs' concern regarding ongoing maintenance and investment in the network post-merger. Condition 25 addresses routine network upgrades and modifications and Condition 26 states, at least in part, that the Merged Company will not engage in activities that disrupts or degrades access to the local loop.

As the Commission is aware, one of the ways to increase profits is to reduce expenses. Reducing routine network maintenance and modifications will harm CLECs that rely on that network for the exchange of traffic.

Q. HAS THE IMPORTANCE OF THESE REQUIREMENTS TO COMPETITION BEEN PREVIOUSLY RECOGNIZED?

A. Yes. The FCC, in its Triennial Review Order, addressed and promulgated rules regarding routine network modifications[287] to "resolve[] a controversial competitive issue…and….provide competitive carriers with greater certainty as to the availability of unbundled high-capacity loops and other facilities throughout the country."[288] Likewise, Condition 26 is grounded in 47 C.F.R. §§ 51.319(a)(8)

[287] Routine network modifications are "those activities that incumbent LECs regularly undertake for their own customers." *Triennial Review Order* at ¶ 632. This includes attaching electronics to high-capacity loops and line conditioning to ensure that a copper loop is suitable for providing xDSL service. *Triennial Review Order* at ¶¶ 250, 634-635.

[288] *Triennial Review Order* at ¶ 632.

(engineering policies, practices, and procedures[289]) and 47 C.F.R. §51.333 (notice of network changes related to retirement of copper loops or copper subloops).

Q. CAN YOU PROVIDE AN EXAMPLE OF BEHAVIOR THAT SUPPORTS YOUR CONCERN ABOUT THESE ISSUES?

A. Yes. PAETEC has had experiences with Qwest where they reported trouble on a Qwest loop. PAETEC submitted a trouble ticket but Qwest reported that there was no trouble and closed the ticket. When PAETEC persisted with its complaint by opening another trouble ticket (based on ongoing trouble with the loop), Qwest refused to go to the site unless PAETEC agreed to a "joint meet." The "joint meet" makes this a "special request" which would require PAETEC to pay for Qwest's truck roll even if there is trouble on the Qwest loop. This type of process increases the costs to CLECs who must send a technician to meet Qwest while Qwest investigates its network.

Q. CAN YOU PROVIDE ANOTHER EXAMPLE THAT SHOWS THE NEED FOR CONDITION 26?

A. Yes. Integra has litigated the issue of network modernization and maintenance in several states. As described in the testimony of Ms. Bonnie Johnson on behalf of Integra, commissions in five states agreed with Integra. Ms. Johnson provides

[289] 47 C.F.R. §§ 51.319(a)(8) ("An incumbent LEC 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 a local loop or subloop, including the time division multiplexing-based features, functions, and capabilities of a hybrid loop, for which a requesting telecommunications carrier may obtain or has obtained access pursuant to paragraph (a) of this section.")

quotes from the various orders to support this condition. In Washington, for instance, the Arbitrator stated:

> While Qwest should have the discretion to modernize its own network, it should be apparent that 'modernization' and 'maintenance" efforts should enhance or maintain, not diminish transmission quality.[290]

Ms. Johnson provides an extended discussion of Condition 26(a) in her testimony and her Exhibit BJJ-8 provides additional excerpts from Qwest-Eschelon interconnection arbitration proceedings on this point.

Q. IS CONDITION 26(A) CONSISTENT WITH THE FCC'S UNBUNDLING RULE (47 C.F.R. § 51.319(A)(8))?

A. Yes, it is. That rule states, in pertinent part, "An incumbent LEC 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." Condition 26 is based on the sound logic in that FCC rule.

Q. SHOULDN'T THE COMMISSION RELY ON THAT RULE AS CONTROLLING THE MERGED COMPANY POST-MERGER?

A. No. The language in the rule seems self-evident, but Qwest has forced Eschelon to arbitrate this issue in six states rather than simply abide by those precepts. As

[290] *See*, Washington Utilities and Transportation Commission Docket UT-063061, Arbitrator's Report; Order No. 16 (aff'd), at ¶ 83.

the exhibits to Ms Johnson's Direct Testimony shows, Qwest is not complying with those arbitration rulings today with respect to conditioned copper loops.[291]

Failure to maintain adequate investment and maintenance on the Merged Company network could degrade the network for the Merged Company, the PSTN and for CLECs. Such a reduction in the quality of the network and related services, and resulting degradation for CLECs who must rely on that network, is not in the public interest. Condition 26 is meant to prevent inappropriate diversion of resources that would normally be directed to the network.

Q. WHAT PROBLEM DOES CONDITION 27 RELATING TO CONDITIONED COPPER LOOPS ADDRESS?

A. Digital subscriber line technology, "commonly referred to as xDSL, permits high speed connections . . . over ordinary copper loops."[292] This includes services "such as ISDN, ADSL, HDSL, and DS1-level signals."[293] The importance of using copper to provide advanced services is apparent in the FCC's conclusion that CLECs are "impaired" without access to unbundled "xDSL-capable stand-alone copper loops."[294] As explained by the FCC's SBC/Ameritech merger order, a merger of this sort will increase the Merged Company's incentive and ability to

[291] *See* Testimony of Ms. Johnson at Exhibit BJJ-1.
[292] *Triennial Review Order* at footnote 77 to ¶26.
[293] *Local Competition Order at* ¶380.
[294] *Triennial Review Order* at ¶ 642. Unbundling of the local loop includes "two and four-wire loops conditioned to transmit the digital signals needed to provide xDSL service." TRO ¶ 249.

discriminate against its competitors with respect to the provision of advanced services:

> We find that the combined entity is likely to increase the level of discrimination that rivals must overcome to provide retail advanced services, interexchange services, and local exchange services. In the retail market for advanced services, incumbent LECs can engage in discriminatory conduct with respect to competitors' provision of services such as xDSL by refusing to cooperate with competitors' requests for the evolving type of interconnection and access arrangements necessary to provide new types of advanced services.[295]

There is substantial evidence warranting a concern that the ILEC is already improperly inhibiting CLECs' provision of advanced services using conditioned copper loops throughout Qwest's legacy territory, as discussed below and in the testimony of Mr. Denney and Ms. Johnson of Integra. Absent a condition to ensure compliance with the laws regarding conditioned copper loops, the proposed transaction will further entrench the company's discriminatory conduct and potentially spread this discriminatory treatment throughout the Merged Company's territory.

Condition 27 will help ensure that the Merged Company does not implement its increased incentive to engage in anti-competitive conduct or spread worst practices throughout its larger service territory post-merger. It states:

> 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

[295] FCC *SBC/Ameritech Merger Order* at ¶ 196. (footnotes omitted)

> 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.

In this condition, the second sentence reflects the definition of line conditioning in 47 C.F.R. §51.319(a)(1)(iii)(A).[296] The third sentence reflects the requirements of 47 C.F.R. §51.319(a)(1)(iii)(C).[297] The final sentence recognizes that, in each state in Qwest's territory, the Commission has already established rates (either non-recurring charges or recovery via recurring charges) for line conditioning and therefore the Merged Company must either charge that rate or seek state commission approval to charge a different rate. As I discussed earlier with respect to compliance with the law generally, though it would seem self-evident that the Merged Company would comply with these laws and cost orders, an enforceable merger condition is needed when concerns are raised by wholesale customers sufficient to justify singling out compliance with specific laws in merger conditions to preserve the public interest and avoid merger-related harm.

[296] In 47 C.F.R. §51.319(a)(1)(iii)(A), line conditioning is defined as "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." Loops must be "stripped of accretive devices." *Triennial Review Order* at ¶ 643.

[297] "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." 47 C.F.R. §51.319(a)(1)(iii)(C).

Q. WHAT CONCERNS DO WHOLESALE CUSTOMERS RAISE REGARDING QWEST ENGAGING IN DISCRIMINATORY CONDUCT WITH RESPECT TO COMPETITORS' PROVISION OF SERVICES SUCH AS xDSL?

A. Integra, PAETEC and other competitors have raised concerns that Qwest's region-wide policies violate legal and contractual obligations with respect to conditioned copper loops used for providing advanced services, including: (a) Qwest refusing digital level signals via conditioned copper loops; (b) Qwest restricting testing to voice transmission; (c) Qwest refusing digital signals for two-wire loops; (d) Qwest denying access to ADSL capable loops based on improper grandparenting of ADSL; and (e) Qwest refusing to repair/restore service to data/digital levels, leaving customer adversely affected; (f) Qwest refusing to remove certain devices, including bridge tap.[298] CLECs have provided documentation, including Qwest-prepared communications and admissions, showing that Qwest's stated region-wide position or practice violates legal and contractual obligations in each of these areas.[299]

For example, when installing and repairing loops, Qwest refuses to test unbundled conditioned copper loops to digital levels to ensure that they will support the type of xDSL service (*e.g.*, HDSL2) ordered by the CLEC, even though the federal

[298] *See* Testimony of Ms. Johnson at Exhibit BJJ-1.

[299] *See* Testimony of Ms. Johnson at Exhibit BJJ-2 (Matrix – Legal Authority Compared to Qwest Position: xDSL *Capable* Copper Loops) and supporting documentation cited in the Matrix and found in Exhibits BJJ-3 through BJJ-16 & BJJ-20 through BJJ-23.

rule clearly states that the ILEC "may not restrict its testing to voice transmission only."[300] Rather than undertake industry-standard tests to ensure that an unbundled copper loop will support certain levels of digital signal,[301] Qwest maintains that it will test only to voice-related parameters.[302] Without proper testing and trouble isolation, CLECs cannot effectively provide advanced services without placing their end-user customers' services at risk. Qwest's policies do not provide CLECs with a meaningful opportunity to compete. Additional examples and documentation are provided in the exhibits to the testimony of Ms. Johnson.

Q. DO THE FCC'S RULES PROVIDE QWEST THIS TYPE OF DISCRETION TO DISCRIMINATE IN THE PROCESS OF LOOP CONDITIONING?

A. No, as the federal rules cited above in support of condition 27 show, Qwest does not have that discretion. The documentation provided by CLECs makes clear that Qwest has policies in place that impede the ability of CLECs to deliver innovative xDSL-based advanced services to small and medium-sized businesses.

Q. WOULD YOU EXPECT THE MERGED COMPANY TO ADOPT QWEST'S PRACTICES IN THIS REGARD FOR THE COMPANY AS A

[300] *See* 47 C.F.R. §51.319(a)(1)(iii)(C) (quoted in footnote above).

[301] *See* ANSI Standard T1-417, quoted in Qwest's own technical publications (Qwest Technical Publication 77384, pg. 1-1) describing the characteristics of its unbundled loops.

[302] *See* Row Nos. 1-2, Exhibit BJJ-2 to the Testimony of Ms. Johnson (Attachment A to *Joint CLEC Initial Comments*, November 24, 2009, MN PUC Docket No. P-421/CI-09-1066); see also Attachment B, p. 11 at Exhibit BJJ-3 to the Testimony of Ms. Johnson.

WHOLE, ABSENT A MERGER CONDITION REQUIRING COMPLIANCE WITH THESE LAWS?

A. Yes. As explained by the FCC's SBC/Ameritech merger order, the Merged Company will have an increased incentive and ability to discriminate against its competitors with respect to the provision of advanced services.[303] This incentive will militate in favor of expanding discriminatory practices to the company as a whole. Consistent with this incentive, when given an opportunity in discovery to clarify that CenturyLink would comply with 47 C.F.R. §51.319(a)(1)(iii)(C), CenturyLink declined to do so.[304] That CenturyLink did not immediately confirm that it would not restrict testing for conditioned copper loops to voice transmission only, when the requirements of the rule are so clear, supports the need for Condition 27 to confirm what CenturyLink would not regarding its compliance with the law.

The proposed transaction is contrary to the public interest if a merging party (Qwest in this example) is rewarded for violating the law. Condition 27 must be included to ensure that the public interest is not harmed post-transaction by requiring the Merged Company to condition loops in compliance with law and Commission-approved rates, including testing and reporting troubles for all

[303] FCC *SBC/Ameritech Merger Order*, ¶ 196. (footnotes omitted)

[304] For example, when asked whether CenturyLink would test and report troubles for all features, functions and capabilities of conditioned copper loops or restrict its testing to voice transmission only for conditioned copper loops post-transaction, CenturyLink replied: "CenturyLink has not made any determination on this issue at this time." CenturyLink Response to Integra Minnesota Data Request #106.

features and functionalities of the copper loops,[305] and using the FCC's definition of line conditioning.[306] In other words, this condition requires the Merged Company to comply with existing law post-transaction.[307] Although the Merged Company should be expected to comply with the law in any event, a condition specific to this issue is needed based on Qwest's conduct to date.

Q. PLEASE EXPLAIN CONDITION 28.

A. Condition 28 relates to the CLECs' right to interconnect with the Merged Company at a single point of interconnection ("POI") per local access and transport area ("LATA").

Q. WHY IS CONDITION 28 NECESSARY?

A. In the past, CenturyLink has argued against the fundamental right of CLECs to a single POI in arbitration proceedings. Specifically, CenturyLink has stated that because it is not a BOC, the concepts of LATA and single POI do not apply to CenturyLink. CenturyLink has also argued that a single POI per LATA would be technically infeasible and would result in "superior" interconnection agreements in violation of the FCC's rules. There is a genuine risk that the Merged Company

[305] 47 C.F.R § 51.319(a)(1)(iii)(C).

[306] 47 C.F.R. §51.319(a)(1)(iii)(A).

[307] This is particularly important in light of the National Broadband Plan which seeks to foster broadband deployment and competition. The National Broadband Plan states: "Competitive carriers are currently using copper to provide SMBs with a competitive alternative for broadband services. Incumbent carriers are required to share (or 'unbundle') certain copper loop facilities, which connect a customer to the incumbent carrier's central office" and that "[b]y leasing these copper loops and connecting them to their own DSL or Ethernet over copper equipment that is collocated in the central office, competitive carriers are able to provide their own set of integrated broadband, voice and even video services to consumers and small businesses." National Broadband Plan, Chapter 4 at p. 48.

will incorporate this legacy CenturyLink mindset into legacy Qwest territory post-merger, which would increase CLECs' costs of interconnection with the Merged Company and allow the Merged Company to enjoy a competitive advantage over CLECs. Condition 28 is necessary to ensure that this "worst practice" is not incorporated by the Merged Company.

Q. IS THERE A DISTINCTION BETWEEN BOCS AND OTHER ILECS RELATED TO INTERCONNECTION OBLIGATIONS UNDER SECTION 251 OF THE ACT?

A. No. Section 251(c) of the Act is entitled "Additional Obligations of Incumbent Local Exchange Carriers" and requires, among other things, all ILECs – not just BOCs – to provide interconnection "at any technically feasible point within the carrier's network" and "that is at least equal in quality to that provided by the local exchange carrier to itself or any subsidiary, affiliate, or any other party to which the carrier provides interconnection." So, the fact that CenturyLink is an ILEC and Qwest is both an ILEC and a BOC should have no bearing on whether CLECs should be permitted to interconnect with the Merged Company at a single POI per LATA. Furthermore, the goal of the Act was to open local markets to competition for all ILECs, not just the BOCs.[308]

[308] *Local Competition Order* at ¶ 4 (Emphasis added.)

Q. DOES THE DATA SHOW THAT INCREASED EFFICIENCIES COULD BE ACHIEVED BY ESTABLISHING A SINGLE POI PER LATA WITH THE MERGED COMPANY POST-MERGER?

A. Yes. If the merger is consummated, the Merged Company will have not only have a larger footprint, but also will have many legacy CenturyLink exchanges that are adjacent or in close proximity to legacy Qwest exchanges. For example, CenturyLink provided a map of Qwest and CenturyLink exchanges in Minnesota[309] which shows that out of 79 legacy CenturyLink exchanges in Minnesota, all but a handful are adjacent to or in very close proximity to a legacy Qwest exchange.[310] Further, many of these exchanges reside in the same LATA. For instance, CenturyLink exchanges Gunflint Trail and Hovland and Qwest exchanges Grand Marais and Tofte all reside within LATA 624, and numerous exchanges of both CenturyLink and Qwest reside in LATA 628. It is this larger, more interconnected footprint of the Merged Company that the Company attributes a number of the benefits it says will result from the proposed transaction.[311] For instance, Qwest says:

[309] CenturyLink Response to Integra Minnesota Data Request #15, Attachment Integra 15.

[310] A visual inspection of the map shows that CenturyLink exchanges 4, 39, 64, 69, and 76 are the exchanges that are not either adjacent or in very close proximity to a legacy Qwest exchange.

[311] *See, e.g.*, Direct Testimony of John Jones, pp. 6-7 ("As a combined company with complementary strengths and operating footprints, we will have greater potential to effectively reach more types of customers with a broader range of products, services and connectivity solutions than either company could standing alone.") See also, Direct Testimony of Duane Ring , p. 9 ("The Transaction brings together two leading communications companies with complementary networks and operating footprints. A key benefit will come from building on each company's operational and network strengths, resulting in a company with an impressive national presence with the local depth that I have discussed.")

> The Transaction will result in a combined enterprise that can achieve greater economies of scale and scope than the two companies operating independently. The areas served by Qwest and CenturyLink in Minnesota are generally complementary, and the combination of the serving areas will provide for increased economies of scope and or scale. In many cases the networks are adjacent or within close proximity to one another, and this will make it easier to implement operating efficiencies and infrastructure improvements. The combination of these networks will allow the post-merger company to optimize network capacity, benefiting both companies' customers through the deployment of additional bandwidth-intensive services such as broadband service and advanced business products.[312]

This excerpt shows that the Merged Company expects benefits to itself and its end user customers from the increased scale resulting from its larger, interconnected footprint, but is notably silent about new entrants sharing in those benefits. One way these benefits should flow through to the benefit of the public interest is by allowing CLECs interconnecting with the Merged Company, at the CLECs' option, to do so at a single point per LATA.[313] This would lower barriers to entry for competitors by capitalizing on the increased scale and efficiencies of the Merged Company – benefits that the Act and FCC require to be shared with

[312] Stanoch Minnesota Direct at p. 15.

[313] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 at ¶ 87 (2005) (reaffirming that "[u]nder section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect *at a single point of interconnection* (POI) per LATA") (emphasis added). *See also Petition of WorldCom, Inc., et al., Pursuant to § 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Comm'n,* Memorandum Opinion and Order, 17 FCC Rcd 27039 at ¶ 52 (2002) (emphasis added). The Fourth Circuit has affirmed that the Bureau's decision is entitled to the same deference that would normally be granted to a decision of the full Commission. *MCI Metro Access Transmission Servs. v. BellSouth Telecomms., Inc.* 352 F.3d 872, n. 8 (4th Cir. 2003).

CLECs.[314] Given the contiguous and interconnected exchanges of the Joint Petitioners, efficiencies can be achieved by routing traffic to and from the Merged Company at a single POI per LATA, as opposed to having separate interconnections for legacy Qwest and legacy CenturyLink. While the Merged Company may want to continue its corporate organizational structure that exists today post-merger, CLECs should not have to pay more to interconnect with the Merged Company because of it.

Q. OTHER THAN TECHNICAL FEASIBILITY AND THE LOCATION OF THE INTERCONNECTION, ARE ILECS ALLOWED TO REFUSE AN INTERCONNECTION PROPOSAL, SUCH AS SINGLE POI?

A. No. That is why Qwest and CenturyLink are required to provide a single POI per LATA today. The promotion of efficient markets dictates that CLECs only be required to interconnect in a specific area where its own assessment of traffic volumes, customer demand, and available technology justify investment in facilities needed to reach that area.

Nevertheless, after the merger, an objection to a single POI interconnection would be even less persuasive given the claimed benefits of the transaction. The Merged

[314] *See, e.g.*, *Local Competition Order* at ¶ 11: "Congress addressed these problems in the 1996 Act by mandating that the most significant economic impediments to efficient entry into the monopolized local market must be removed. The incumbent LECs have economies of density, connectivity, and scale; traditionally, these have been viewed as creating a natural monopoly. As we pointed out in our NPRM, the local competition provisions of the Act require that these economies be shared with entrants."

Company claims it will be more efficient and able to respond to competition, but it should not accomplish those goals at the expense of its competitors.

Given these claimed benefits it would be wrong to further disadvantage competitors by arguing against an efficient interconnection method that has been used, and approved, for more than a decade.

Q. PLEASE EXPLAIN CONDITION 29.

A. Condition 29 states that conditions imposed in this proceeding may be expanded or modified as a result of other decision in other states. This would also include decisions based on settlements reached in proceedings.

Q. HOW WILL THIS CONDITION BENEFIT THE PUBLIC INTEREST?

A. This will provide a degree of consistency and spread "best practices" across the Merged Company's service territory, while at the same time likely lowering the Merged Company's cost of post-merger compliance activities. A similar condition was adopted by the Oregon Commission in the Frontier/Verizon merger proceeding,[315] wherein the Oregon Commission concluded that this type of condition "benefit[s] the various stakeholders in Oregon while, at the same time, allow[ing] applicants to promptly conclude the regulatory approval process."[316] This is particularly appropriate to the proposed transaction given that the Joint

[315] Oregon UM 1431, Order No. 10-067, February 24, 2010, 2010 Ore. PUC LEXIS 64, *81, Condition #56.

[316] 2010 Ore. PUC LEXIS 64, *55.

Petitioners have requested expedited approval to "promptly conclude the regulatory approval process."

Q. PLEASE EXPLAIN CONDITION 30.

A. Condition 30 addresses disputes that may arise with respect to any pre-closing or post-closing conditions. Specifically, this condition would allow either party to seek resolution of the dispute by filing a petition with a state commission.

Q. WHY DO CLECS NEED THE ABILITY TO BRING DISPUTES ABOUT MERGER CONDITION COMPLIANCE TO THE STATE COMMISSION?

A. Since a number of these conditions expire after a certain period of time, it is important that the CLECs have a way to quickly and efficiently resolve disputes related to merger condition compliance – otherwise, the Merged Company could just drag disputes out until some of the conditions expire or argue over the proper forum for addressing these types of disputes. This is a condition that the CLECs have included based on past experience. AT&T has repeatedly argued (an argument that has been repeatedly rejected) that state commissions do not have authority to enforce merger commitments related to ICAs.[317] CLECs should not have to fight these same types of battles after the proposed transaction at significant cost and delay.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.

[317] *See, e.g.*, Comments of Cox Communications and Charter Communications, Inc., WC Docket No. 10-110, July 12, 2010, at pp. 11-12.

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink	Docket No. P-421, et al./PA-10-456

EXHIBIT TJG-1

TO THE

DIRECT TESTIMONY OF TIMOTHY GATES

ON BEHALF OF

CBEYOND COMMUNICATIONS, LLC, CHARTER FIBERLINK CCO, LLC, INTEGRA TELECOM, INC., LEVEL 3 COMMUNICATIONS, LLC, MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., d/b/a PAETEC BUSINESS SERVICES, TDS METROCOM, LLC, TW TELECOM OF MINNESOTA, LLC, ORBITCOM, INC. AND POPP.COM

August 19, 2010

Timothy J Gates

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Biography

Mr. Gates is a QSI partner and currently serves as Senior Vice President, managing some of QSI's largest clients. Before joining QSI, Mr. Gates held key management positions over a 15-year period with MCI, Inc.'s Law and Public Policy Group. Mr. Gates has focused on telecommunications issues ranging from costing, pricing, alternative forms of regulation, local entry, and universal service to strategic planning, legislation, and merger and network issues over a telecommunications career spanning 25 years. He has extensive experience working with attorneys, analysts, external consultants, regulators, lobbyists, and company executives on issues associated with the convergence of competition, technologies, services, and companies. Mr. Gates has developed policy positions and advocated those positions before regulatory commissions and legislatures across the nation. During his tenure with MCI, Mr. Gates managed its many external consultants and the associated budget. He has testified in more than 200 proceedings in 45 states and Puerto Rico and before the FCC and the Department of Justice. Mr. Gates is widely recognized in the telecommunications industry as one of the most talented witnesses and witness trainers.

Before joining MCI, Mr. Gates was employed by the Texas Public Utility Commission as a Telephone Rate Analyst in the Telecommunications Division's Engineering Department. Prior to joining the Texas staff, Mr. Gates was employed by the Oregon Public Utility Commission as an Economic Analyst in the Telecommunications Division. Mr. Gates also has experience in the energy industry, having worked with the Bonneville Power Administration (United States Department of Energy), where he was employed as a Financial Analyst. Mr. Gates also spent 10 years in the forest industry in the Northwest, where he held numerous positions of increasing responsibility for International Paper, Weyerhaeuser and the Oregon Department of Forestry.

Educational Background

Master of Management, Emphasis in Finance and Quantitative Methods
Willamette University's Atkinson Graduate School of Management, Salem, Oregon

Bachelor of Science, Forest Management
Oregon State University, Corvallis, Oregon

QSI consulting, inc.

Timothy J Gates

Professional Experience

QSI Consulting, Inc.
2000 – Current
Senior Vice President
Denver, Colorado

MCI WorldCom
1996 – 2000
Senior Executive Staff Member
National Public Policy Group
Denver, Colorado

MCI Telecommunications
1994 – 1996
Executive Staff Member II
World Headquarters, Washington D,C.

MCI Telecommunications
1992 – 1994
Senior Manager
National Public Policy Group
Chicago, Illinois

MCI Telecommunications
1988 – 1992
Senior Manager – Legal and Regulatory Affairs -- Midwest Division
Chicago, Illinois

MCI Telecommunications
1986 – 1988
Manager of Tariffs and Economic Analysis – West Division
Denver, Colorado

MCI Telecommunications
1985 – 1986
Financial Analyst III and Senior Staff Specialist – Southwest Division
Austin, Texas

Public Utility Commission of Texas
1984 – 1985
Engineering Division
Telephone Rate Analyst
Austin, Texas

Public Utility Commission of Oregon
1983 – 1984
Economic Analyst
Salem, Oregon

Bonneville Power Administration
1982 – 1983
Financial Analyst
Portland, Oregon

Expert Testimony – Profile

The information below is Mr. Gates' best effort to identify proceedings wherein he has either provided pre-filed written testimony or provided live testimony or formal comments. This information does not reflect all proceedings, cases, projects or other work done by Mr. Gates.

Before the Alabama Public Service Commission
Docket No. 27867
Adelphia Business Solutions Arbitration with BellSouth Telecommunications
Direct — October 18, 2000
Rebuttal — January 31, 2001

Before the Arizona Corporation Commission
Docket No. T-03654-05-0350, T-01051B-05-0350
In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corp.
On Behalf of Level 3
Direct — July 15, 2005
Rebuttal — August 15, 2005

Before the Arizona Corporation Commission
Docket No. T-01051B-0454
In the Matter of Qwest Corporation's Amended Renewed Price Regulation Plan
On Behalf of Time Warner Telecom, Inc.
Direct — November 18, 2004

Before the Arizona Corporation Commission
Docket No. T-00000A-03-0369
In the Matter of ILEC Unbundling Obligations as a Result of the Federal Triennial Review Order
On Behalf of WorldCom, Inc. (MCI)
Direct — January 9, 2004

Before the Arizona Corporation Commission
Docket No. T-00000A-00-0194
Phase II – A; Investigation into Qwest's Compliance with Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts
On Behalf of WorldCom, Inc.
Rebuttal — September 2, 2001

Before the Superior Court of Arizona
Case CV 99-20649
Superior Court of Arizona; Count of Maricopa; ESI Ergonomic Solutions, LLC, Plaintiff, vs. United Artists Theatre Circuit
On Behalf of United Artists Theatre Circuit
Affidavit — February 20, 2001

Before the Arizona Corporation Commission
Docket Nos. T-03654A-00-0882, T-01051B-00-0882
Petition of Level 3 Communications, LLC, for Arbitration with Qwest Corporation
On Behalf of Level 3
Direct January 8, 2001

Before the Arizona Corporation Commission
Docket No. T-00000B-97-238
USWC OSS Workshop
On Behalf of MCI WorldCom, Inc.
Comments September 20, 1999

Before the Arizona Corporation Commission
Docket No. T-03175A-97-0251
Application of MCImetro Access Transmission Services, Inc. to Expand It's CCN to Provide IntraLATA Services and to Determine that Its IntraLATA Services are Competitive
On Behalf of MCI WorldCom, Inc.
Direct November 9, 1998

Before the Arizona Corporation Commission
*Arizona Corporation Commission Workshop on Special Access Service*s
On Behalf of MCI
Comments September 23, 1987

Before the Arizona Corporation Commission
Docket No.R-0000-97-137
Comments to the Universal Service Fund Working Group
On Behalf of MCI
Comments October 24, 1997
Comments May 8, 1998

Before the Arizona Corporation Commission
Judgment; Nos. CV 95-14284, CV-96-03355, CV-96-03356, (consolidated).
Affidavit in Opposition to USWC Motion for Partial Summary
On Behalf of MCI
Affidavit August 21, 1996

Before the Arkansas Public Service Commission
Docket No. 04-0999-U
In the Matter of Level 3 Petition for Arbitration with Southwestern Bell Telephone, L.P. D/B/A SBC Arkansas
On Behalf of Level 3
Direct September 7, 2004

Before the California Public Utilities Commission
Case No. C.07-03-008
Complaint of Neutral Tandem, Inc. v. Level 3 Communications, LLC
On Behalf of Level 3
Declaration May 7, 2007
Direct May 25, 2007

Before the California Public Utilities Commission
Docket No. A.04-06-004
Petition of Level 3 Communications for Arbitration with SBC
On Behalf of Level 3 Communications LLC
Direct June 1, 2004

Before the California Public Utilities Commission
Application 00-04-037
Petition of Level 3 Communications for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company
On Behalf of Level (3) Communications, LLC
Direct June 5, 2000

Before the California Public Utilities Commission
Application No. 96-09-012
MCI Petition for Arbitration with GTE California, Inc.
On Behalf of MCI
Direct September 10, 1996

Before the California Public Utilities Commission
Application No. 96-08-068
MCI Petition for Arbitration with Pacific Bell
On Behalf of MCI
Direct August 30, 1996

Before the Colorado Public Utilities Commission
Docket No. 06F-039T
Adams County E-911 Emergency Telephone Service Authority Complaint Against Qwest
On Behalf of Adams, Arapahoe, Douglas, El Paso, Teller, Jefferson, Larimer Counties & the City of Aurora
Direct October 24, 2007

Before the Colorado Public Utilities Commission
Docket No. 05B-210T
Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation
On Behalf of Level 3
Direct July 11, 2005
Rebuttal December 19, 2005

Before the Colorado Public Utilities Commission
Docket No. 04A-411T
Regarding Application of Qwest for Reclassification and Deregulation of Certain Products and Services
On Behalf of Time Warner Telecom
Direct February 18, 2005

Before the Colorado Public Utilities Commission
Docket No. 03I-478T
Regarding the Unbundling Obligations of ILECs Pursuant to the Triennial Review Order
On Behalf of WorldCom, Inc. (MCI)
Direct January 26, 2004

Before the Colorado Public Utilities Commission
Docket No. 991-577T
US WEST Statement of Generally Available Terms and Conditions
On Behalf of Covad Communications Company, Rhythms Links, Inc., and New Edge Networks, Inc.
Direct June 27, 2001

Before the District Court, City and County of Denver, State of Colorado
Case No. 99CV8252
Qwest Corporation, Inc., Plaintiff, v. IP Telephony, Inc., Defendant. District Court, City and County of Denver, State of Colorado
On Behalf of IP Telephony
Direct January 29, 2001

Before the Colorado Public Utilities Commission
Docket No. 00B-601T
Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation
On Behalf of Level 3
Direct January 4, 2001
Rebuttal January 16, 2001

Before the Colorado Public Utilities Commission
Docket No. 99R-128T
Proposed Amendments to the Rules on Local Calling Area Standards
On Behalf of MCI WorldCom
Oral Comments before the Commissioners May 13, 1999

Before the Colorado Public Utilities Commission
Docket No. 98R-426T
Proposed Amendments to the Rules Prescribing IntraLATA Equal Access
On Behalf of MCI WorldCom and AT&T Communications of the Mountain States, Inc.
Comments November 4, 1998

Before the Colorado Public Utilities Commission
Docket No. 97A-494T
Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.
Affidavit in Response to GTE — May 8, 1998

Before the Colorado Public Utilities Commission
Docket No. 97A-494T
Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.
On Behalf of MCI.
Supplemental Direct — March 10, 1998
Rebuttal — March 26, 1998

Before the Colorado Public Utilities Commission
Docket Nos. 97K-237T, 97F-175T (consolidated) and 97F-212T (consolidated)
Complaint of MCI to Reduce USWC Access Charges to Economic Cost
On Behalf of MCI
Direct — July 18, 1997
Rebuttal — August 15, 1997

Before the Colorado Public Utilities Commission
Docket No. 90A-665T (consolidated)
Application of U S WEST Communications, Inc. To Modify Its Rate and Service Regulation Plan
On Behalf of MCI
Direct — September 26, 1996
Rebuttal — October 7, 1996

Before the Colorado Public Utilities Commission
Docket No. 96A-366T (consolidated)
MCImetro Petition for Arbitration wit U S WEST Communications, Inc.
On Behalf of MCI
Direct — September 6, 1996
Rebuttal — September 17, 1996

Before the Colorado Public Utilities Commission
Docket No. 1766
Investigation and Suspension; Mountain States Telephone and Telegraph Company's Local Calling Access Plan
On Behalf of MCI
Direct — October 26, 1988

Before the Colorado Public Utilities Commission
Docket No. 1720
Investigation and Suspension; Rate Case of Mountain States Telephone and Telegraph Company
On Behalf of MCI
Direct — December 1, 1986

Before the Connecticut Department of Public Utility Control
Docket No. 07-02-29
Petition of Neutral Tandem, Inc., for Interconnection with Level 3 Communications and Request for Interim Order
On Behalf of Level 3
Direct May 1, 2007

Before the Connecticut Department of Public Utility Control
Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) with Southern New England Telephone Company d/b/a/ SBC Connecticut; Level 3/SNET Arbitration
On Behalf of Level 3 Communications, LLC
Direct November 2, 2004

Before the Delaware Public Service Commission
Docket No. 92-47
Diamond State Telephone Company's Application for a Rate Increase
On Behalf of MCI
Direct February 12, 1993

Before the Florida Public Service Commission
Docket No. 090501-TP
In Re: Petition for Arbitration for an Interconnection Agreement with Verizon Florida, LLC by Bright House Networks Information Services (Florida), LLC.
On Behalf of Bright House
Direct March 26, 2010
Rebuttal April 16, 2010

Before the Florida Public Service Commission
Case No. 000475-TP
In Re: Complaint by BellSouth Telecommunications, Inc. Against Thrifty Call, Inc. Regarding Practices in the Reporting of Percent Interstate Usage for Compensation for Jurisdictional Access Service.
On Behalf of Thrifty Call
Direct Februrary7, 2008
Rebuttal March 3, 2008

Before the Florida Public Service Commission
Docket Nos. 050119-TP/050125-TP
Petition and Complaint for Suspension and Cancellation of Transit Traffic Service Tariff No. FL2004-284 filed by BellSouth Telecommunications, Inc., by AT&T Communications of the Southern States, LLC
On Behalf of CompSouth
Direct December 19, 2005
Rebuttal January 30, 2006

Before the Florida Public Service Commission
Docket No. 031047-TP
Petition of KMC Telecom for Arbitration with Sprint Communications: On Behalf of KMC Telecom III, L.L.C, KMC Telecom V, Inc., and KMC Data, L.L.C.
Direct June 11, 2004
Rebuttal July 9, 2004

Before the Florida Public Service Commission
Docket No. 000084-TP
Petition of BellSouth for Arbitration with US LEC of Florida Inc.
On Behalf of US LEC
Direct October 13, 2000
Rebuttal October 27, 2000

Before the Florida Public Service Commission
Docket No. 000907-TP
Petition of Level 3 for Arbitration with BellSouth
On Behalf of Level 3.
Direct October 5, 2000
Rebuttal November 1, 2000

Before the Florida Public Service Commission
Docket No. 930330-TP
Investigation into IntraLATA Presubscription
On Behalf of MCI
Direct July 1, 1994

Before the Georgia Public Service Commission
Docket No. 27830-U
Petition of Charter Fiberlink – Georgia, LLC for Arbitration of Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. §252(b)
On Behalf of Charter Fiberlink
Direct November 20, 2009
Rebuttal December 18, 2009

Before the Georgia Public Service Commission
Docket No. 24844
Petition of Neutral Tandem for the Establishment of Interconnection with Level 3
On Behalf of Level 3
Direct April 13, 2007
Rebuttal April 24, 2007

Before the Georgia Public Service Commission
Docket No. 12645-U
Petition of Level 3 for Arbitration with BellSouth
On Behalf of Level 3
Direct December 6, 2000
Rebuttal December 20, 2000

Before the Idaho Public Utilities Commission
Case No. QWE-T-05-11
In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation
On Behalf of Level 3
Direct August 12, 2005
Rebuttal September 16, 2005

Before the Idaho Public Utilities Commission
Case No. GNR-T-02-16
Petition of Potlatch, CenturyTel, the Idaho Telephone Association for Declaratory Order Prohibiting the Use of "Virtual NXX Calling"
On Behalf of Level 3, AT&T, WorldCom, and Time Warner Telecom
Comments/Presentation November 25, 2002

Before the Idaho Public Utilities Commission
Case No. U-1500-177
Investigation of the Universal Local Access Service Tariff
On Behalf of MCI
Direct March 17, 1988
Rebuttal April 26, 1988

Before the Idaho Public Utilities Commission
Case No. U-1150-1
Petition of MCI for a Certificate of Public Convenience and Necessity
On Behalf of MCI
Direct November 20, 1987

Before the Illinois Commerce Commission
Docket No. 07-0277
Complaint of Neutral Tandem, Inc. v. Level 3 Communications, LLC
On Behalf of Level 3
Direct May 15, 2007

Before the Illinois Commerce Commission
Docket No. 04-0428
Level 3 Petition for Arbitration to Establish an Interconnection Agreement with Illinois Bell Telephone Company
On Behalf of Level (3) Communications, LLC
Direct June 22, 2004
Direct September 3, 2004

Before the Illinois Commerce Commission
Docket No. 00-0332
Level 3 Petition for Arbitration to Establish and Interconnection Agreement with Illinois Bell Telephone Company
On Behalf of Level (3) Communications, LLC
Direct May 30, 2000
Supplemental Verified Statement July 11, 2000

Before the Illinois Commerce Commission
Docket No. 93-0044
Complaint of MCI and LDDS re Illinois Bell Additional Aggregated Discount and Growth Incentive Discount Services
On Behalf of MCI and LDDS.
Direct November 18, 1993
Rebuttal January 10, 1994

Before the Illinois Commerce Commission
Case No. 90-0425
Presentation to the Industry Regarding MCI's Position on Imputation. July 29, 1991

Before the Illinois Commerce Commission
Docket No. 83-0142
Industry presentation to the Commission re Docket No. 83-0142 and issues for next generic access docket re the Imputation Trial and Unitary Pricing/Building Blocks
On Behalf of MCI
Comments November 19, 1990

Before the Illinois Commerce Commission
Docket No. 88-0091
IntraMSA Dialing Arrangements
On Behalf of MCI
Direct November 22, 1989
Rebuttal February 9, 1990

Before the Illinois Commerce Commission
Docket No. 89-0033
Illinois Bell Telephone Company's Rate Restructuring
On Behalf of MCI
Direct May 3, 1989
Rebuttal July 14, 1989

Before the Illinois Commerce Commission
Docket No. 83-0142
Appropriate Methodology for Intrastate Access Charges Regarding ICTC's Access Charge Proposal
On Behalf of MCI
Surrebuttal February 16, 1989

Before the Illinois Commerce Commission
Docket No. 83-0142
Appropriate Methodology for Intrastate Access Charges Regarding Toll Access
On Behalf of MCI
Rebuttal January 16, 1989

Before the Indiana Utility Regulatory Commission
Cause No. 43462
Petition of Comcast Phone of Central Indiana, LLC for Arbitration with United Telephone Companies of Indiana (DBA Embarq);
On Behalf of Comcast
Direct May 23, 2008
Rebuttal June 12, 2008

Before the Indiana Utility Regulatory Commission
Cause No. 43299
Complaint of Neutral Tandem, Inc. and Neutral Tandem – Indiana, LLC Against Level 3 Communications, LLC, Concerning Interconnection with Level 3 Communications, LLC
On Behalf of Level 3
Reply July 23, 2007

Before the Indiana Utility Regulatory Commission
Cause No. 42663-INT-01
In the Matter of Level 3 Communications, LLC Petition for Arbitration with SBC Indiana
On Behalf of Level 3 Communications, LLC
Direct September 2, 2004
Rebuttal October 5, 2004

Before the Indiana Utility Regulatory Commission
Cause No. 39032
MCI Request for IntraLATA Authority
On Behalf of MCI
Direct October 25, 1990
Rebuttal April 4, 1991

Before the Indiana Utility Regulatory Commission
Cause No. 38560
Reseller Complaint Regarding 1+ IntraLATA Calling
On Behalf of MCI
Direct June 29, 1989

Before the Indiana Utility Regulatory Commission
Cause No. 37905
Intrastate Access Tariffs -- Parity with Federal Rates
On Behalf of MCI
Direct June 21, 1989

Before the Indiana Utility Regulatory Commission
Cause No. 38561
Deregulation of Customer Specific Offerings of Indiana Telephone Companies
On Behalf of MCI Regarding Staff Reports.
Direct April 14, 1989

Before the Indiana Utility Regulatory Commission
Cause No. 38561
Deregulation of Customer Specific Offerings of Indiana Telephone Companies
On Behalf of MCI Regarding GTE
Direct December 16, 1988

Before the Indiana Utility Regulatory Commission
Cause No. 38561
Deregulation of Customer Specific Offerings of Indiana Telephone Companies
On Behalf of MCI
Direct October 28, 1988

Before the Iowa Utilities Board
Docket No. INU-08-2
In the Matter of 360networks (USA), Inc., LH Telecom, Inc. and McLeod Telecommunications Services, Inc. Against Qwest Corporation re Wire Center Impairment
On Behalf of the CLECs
Direct February 23, 2009

Before the Iowa Utilities Board
Docket No. FCU-06-42
In the Matter of Coon Creek Telecommunications Corp. Complaint Against Iowa Telecommunications Services
On Behalf of CCTC
Direct July 14, 2006
Rebuttal August 21, 2006

Before the Iowa Utilities Board
Docket No. ARB-05-4
In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest
On Behalf of Level 3
Direct July 20, 2005
Rebuttal August 12, 2005
Surrebuttal August 24, 2005

Before the Iowa Utilities Board
Docket Nos. INU-03-4, WRU-03-61
In Re: Qwest Corporation
Sworn Counter Statement of Position on Behalf of MCI December 15, 2003

Before the Iowa Utilities Board
Docket Nos. INU-03-4, WRU-03-61
In Re: Qwest Corporation
Sworn Statement of Position on Behalf of MCI November 14, 2003

Before the Iowa Utilities Board
Docket NOI-99-1
Universal Service Workshop; Responded to questions posed by the Staff of the Board during one day workshop
On Behalf of MCIW and AT&T
Comments October 27, 1999

Before the Iowa Utilities Board
Docket NOI-99-1
Universal Service Workshop; Participated on numerous panels during two day workshop
On Behalf of MCI WorldCom
Comments June 8, 1999

Before the Iowa Utilities Board
Docket No. NOI-90-1
Presentation on Imputation of Access Charges and the Other Costs of Providing Toll Services
On Behalf of MCI
Presentation October 3, 1991

Before the Iowa Utilities Board
Docket No. RPU-91-4
Investigation of the Earnings of U S WEST Communications, Inc.
On Behalf of MCI
Direct September 25, 1991
Rebuttal November 5, 1991
Supplemental December 23, 1991
Rebuttal January 10, 1992
Surrebuttal January 20, 1992

Before the Iowa Utilities Board
Docket No. RPU-88-1
Regarding the Access Charges of Northwestern Bell Telephone Company
On Behalf of MCI
Direct September 20, 1988

Before the Iowa Utilities Board
Docket No. RPU-88-6
IntraLATA Competition in Iowa
On Behalf of MCI
Direct September 1, 1988

Before the Kansas Corporation Commission
Docket No. 04-L3CT-1046-ARB
In the Matter of Arbitration Between Level 3 Communications LLC and SBC Communications
On Behalf of Level 3 Communications, LLC
Direct August 31, 2004

Before the Kansas Corporation Commission
Docket No. 181,097-U
General Investigation into IntraLATA Competition within the State of Kansas
On Behalf of MCI
Direct June 10, 1992
Rebuttal September 16, 1992

Before the Kentucky Public Service Commission
Case No. 2000-477
Petition of Adelphia Business Solutions for Arbitration with BellSouth
On Behalf of Adelphia
Direct January 12, 2001

Before the Kentucky Public Service Commission
Case No. 2000-404
Petition of Level 3 Communications, LLC for Arbitration with BellSouth
On Behalf of Level 3
Direct December 21, 2000

Before the Kentucky Public Service Commission
Administrative Case No. 323
Phase I; An Inquiry into IntraLATA Toll Competition, an Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality
On Behalf of MCI
Direct May 20, 1993

Before the Louisiana Public Service Commission
Docket No. U-25301
Petition of Adelphia Business Solutions for Arbitration with BellSouth
On Behalf of Adelphia
Direct December 28, 2000
Rebuttal January 5, 2001

Before the Maryland Public Service Commission
Case No. 8879
Rates for Unbundled Network Elements Pursuant to the Telecommunications Act of 1996
Testimony on behalf of the Staff of the Public Service Commission of Maryland
Rebuttal September 5, 2001
Surrebuttal October 15, 2001

Before the Maryland Public Service Commission
Case No. 8585
Competitive Safeguards Required re C&P's Centrex Extend Service
On Behalf of MCI
Rebuttal June 2, 1994

Before the Maryland Public Service Commission
Case No. 8585
Re Bell Atlantic Maryland, Inc.'s Transmittal No. 878
On Behalf of MCI
Direct May 19, 1994

Before the Maryland Public Service Commission
Case No. 8585
Competitive Safeguards Required re C&P's Centrex Extend Service
On Behalf of MCI
Direct November 12, 1993
Rebuttal January 14, 1994

Before the Massachusetts Department of Telecommunications and Energy
D.P.U. 93-45
New England Telephone Implementation of Interchangeable NPAs
On Behalf of MCI
Direct April 22, 1993
Rebuttal May 10, 1993

Before the Michigan Public Service Commission
Case No. U-15230
Complaint and Application for Emergency Relief by Neutral Tandem Inc. for Interconnection with Level 3 Communications
On Behalf of Level 3
Direct June 26, 2007

Before the Michigan Public Service Commission
Case No. U-14152
Petition of Level 3 Communications LLC for Arbitration with SBC Michigan
On Behalf of Level 3 Communications, LLC
Direct June 1, 2004

Before the Michigan Public Service Commission
Case No. U-12528
In the Matter of the Implementation of the Local Calling Area Provisions of the MTA
On Behalf of Focal Communications, Inc.
Rebuttal September 27, 2000

Before the Michigan Public Service Commission
Case No. U-12460
Petition of Level 3 Communications for Arbitration to Establish an Interconnection Agreement with Ameritech Michigan
On Behalf of Level (3) Communications, LLC
Direct June 8, 2000

Before the Michigan Public Service Commission
Case No. U-12321
AT&T Communications of Michigan, Inc. Complainant v. GTE North Inc. and Contel of the South, Inc., d/b/a GTE Systems of Michigan
On Behalf of AT&T.
Direct (Adopted Testimony of Michael Starkey) February 16, 2000
Rebuttal May 11, 2000

Before the Michigan Public Service Commission
Case No. U-10138 (Reopener)
MCI v Michigan Bell and GTE re IntraLATA Equal Access
On Behalf of MCI
Direct July 22, 1993

Before the Michigan Public Service Commission
Case No. U-10138
MCI v Michigan Bell and GTE re IntraLATA Equal Access
On Behalf of MCI
Direct July 31, 1992
Rebuttal November 17, 1992

Before the Michigan Public Service Commission
Case No. U-8987
Michigan Bell Telephone Company Incentive Regulation Plan
On Behalf of MCI
Direct June 30, 1989

Before the Michigan Public Service Commission
Case Nos. U-9004, U-9006, U-9007 (Consolidated)
Industry Framework for IntraLATA Toll Competition
On Behalf of MCI
Direct September 29, 1988
Rebuttal November 30, 1988

United States District Court; District of Minnesota; Fourth Division – Minneapolis
Tekstar Communications, Inc., *Plaintiff* v. Sprint Communications Company L.P., *Defendant*.
Court File No. 08-cv-1130 (JNE/RLE); Complaint of Tekstar against Sprint for Nonpayment of Tariffed Charges.
On Behalf of Tekstar
Expert Report April 20, 2009

Before the Minnesota Public Utilities Commission
PUC Docket No. P-5535, 421/M-08-952
In the Matter of a Petition of Charter Fiberlink LLC for Arbitration with Qwest
On Behalf of Charter Fiberlink LLC
Direct October 24, 2008
Rebuttal December 12, 2008

Before the Minnesota Public Utilities Commission
Docket No. P-3123, 430/M-08-570
In the Matter of a Petition of Comcast Phone of Minnesota, Inc., for Arbitration of an Interconnection Agreement with Embarq
On Behalf of Comcast
Direct August 5, 2008
Reply August 26, 2008

Before the Minnesota Public Utilities Commission
Docket No. P-5733/C-07-296
In the Matter of a Complaint and Request for Expedited Hearing of Neutral Tandem, Inc. Against Level 3 Communications, LLC & In the Matter of the Application of Level 3 Communications, LLC to Terminate Services to Neutral Tandem, Inc. (Consolidated)
On Behalf of Level 3
Direct June 14, 2007
Reply July 24, 2007

Before the Minnesota Public Utilities Commission
Docket No.: P-999/CI-03-961
In the Matter of the Commission Investigation into ILEC Unbundling Obligations as a Result of the Federal Triennial Review Order
On Behalf of WorldCom, Inc. (MCI)
Direct January 23, 2004

Before the Minnesota Public Utilities Commission
Docket Nos. P-442, 421, 3012/M-01-1916; P-421/C1-01-1375; OAH Docket No. 12-2500-14490
Commission Investigation of Qwest's Pricing of Certain Unbundled Network Elements
On Behalf of McLeod USA Telecommunications Services, Inc., Eschelon Telecom of Minnesota, Inc., US Link, Inc., Northstar Access, LLC, Otter Tail Telecomm LLC, VAL-Ed Joint Venture, LLP, dba 702 Communications
Rebuttal April 18, 2002

Before the Minnesota Public Utilities Commission
Docket No. P-999/R-97-609
Universal Service Group
On Behalf of MCI WorldCom, Inc. and AT&T Communications
Comments September 28, 1999

Before the Minnesota Public Utilities Commission
USWC OSS Workshop; re OSS Issues
On Behalf of MCI WorldCom, Inc.
Comments September 14-16, 1999

Before the Minnesota Public Utilities Commission
Docket No. P-442, 421/M-96-855; P-5321, 421/M-96-909; and P-3167, 421/M-96-729 (consolidated)
Petition *for Arbitration with U S WEST Communications, Inc*
On Behalf of MCI
Direct September 20, 1996
Rebuttal September 30, 1996

Before the Minnesota Public Utilities Commission
Docket Nos. P-999/CI-85-582, P-999/CI-87-697 and P-999/CI-87-695
In the Matter of an Investigation into IntraLATA Equal Access and Presubscription; Comments of MCI on the Report of the Equal Access and Presubscription Study Committee
On Behalf of MCI
Comments September 7, 1993

Before the Minnesota Public Utilities Commission
Docket No. P-421/CI-86-88
Summary Investigation into Alternative Methods for Recovery of Non-traffic Sensitive Costs
On Behalf of MCI
Comments to the Commission January 30, 1987

Before the Mississippi Public Service Commission
Docket No. 2000-AD-846
Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications
On Behalf of Adelphia
Direct February 2, 2001
Rebuttal February 16, 2001

Before the Missouri Public Service Commission
Case No. TO-2009-0037
Petition of Charter Fiberlink Missouri, LLC for Arbitration of an Interconnection Agreement with CenturyTel of Missouri, LLC.
On Behalf of Charter Fiberlink LLC
Direct September 30, 2008
Rebuttal October 21, 2008

Before the Montana Public Service Commission
Docket No. D97.10.191
Application of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.
On Behalf of MCI
Rebuttal May 12, 1998
Amended Rebuttal June 1, 1998

Before the Montana Public Service Commission
Docket No. 88.1.2
Rate Case of Mountain States Telephone and Telegraph Company
On Behalf of MCI
Direct September 12, 1988

Before the Montana Public Service Commission
Docket No. 86.12.67
Rate Case of AT&T Communications of the Mountain States, Inc.
On Behalf of MCI
Direct May 1, 1987

Before the Nebraska Public Service Commission
Application No. C-749
Application of United Telephone Long Distance Company of the Midwest for a Certificate of Public Convenience and Necessity
On Behalf of MCI
Direct March 31, 1988

Before the Nebraska Public Service Commission
Application No. C-627
Nebraska Telephone Association Access Charge Proceeding
On Behalf of MCI
Direct November 6, 1986

Before the New Hampshire Public Utilities Commission
Docket No. DT 00-223
Investigation Into Whether Certain Calls are Local
On Behalf of BayRing Communications
Direct January 12, 2001
Rebuttal April 5, 2002

Before the New Hampshire Public Utilities Commission
Docket DE 93-003
Investigation into New England Telephone's Proposal to Implement Seven Digit Dialing for Intrastate Toll Calls
On Behalf of MCI
Direct April 30, 1993

Before the New Jersey Board of Public Utilities
Docket Nos. TX90050349, TE92111047, and TE93060211
Petitions of MCI, Sprint and AT&T for Authorization of IntraLATA Competition and Elimination of Compensation
On Behalf of MCI
Direct April 7, 1994
Rebuttal April 25, 1994

Before the New Jersey Board of Public Utilities
Docket No. TX93060259
Notice of Pre-Proposal re IntraLATA Competition; Response to the Board of Regulatory Commissioners
On Behalf of MCI
Comments September 15, 1993
Reply Comments October 1, 1993

Before the New Mexico Public Regulation Commission
Case Nos. 09-00094-UT
Development of an Alternative Form of Regulation Plan for Qwest Corporation
On Behalf of the New Mexico Attorney General
Direct May 22, 2009
Response June 24, 2009

Before the New Mexico Public Regulation Commission
Case Nos. 08-00326-UT/08-00197-UT
Objections to Qwest Residence and Business Competitive Response Program
On Behalf of the New Mexico Attorney General
Direct December 5, 2008

Before the New Mexico Public Regulation Commission
Case No. 06-00325-UT
Settlement Agreement
On Behalf of the New Mexico Attorney General
Direct December 15, 2006

Before the New Mexico Public Regulation Commission
Case No. 05-00094-UT (Phase II)
In the Matter of the Implementation and Enforcement of Qwest Corporation's Amended Alternative Form of Regulation
On Behalf of the New Mexico Attorney General
Direct July 24, 2006
Direct (on proposed settlement agreement) September 25, 2006

Before the New Mexico Public Regulation Commission
Case No. 05-00466-UT
In the Matter of the Development of an Alternative Form of Regulation for Qwest Corporation
On Behalf of the New Mexico Attorney General
Direct February 24, 2006
Rebuttal March 31, 2006

Before the New Mexico Public Regulation Commission
Case No. 05-00484-UT
In the Matter of Level 3 Communications, LLC's Petition for Arbitration with Qwest Corporation
On Behalf of Level 3
Direct December 15, 2005

Before the New Mexico Public Regulation Commission
Case No. 05-00094-UT
In the Matter of the Implementation and Enforcement of Qwest Corporation's Amended Alternative Form of Regulation
On Behalf of the New Mexico Attorney General
Direct December 5, 2005

Before the New Mexico Public Regulation Commission
Case No. 05-00211-UT
In the Matter of a Notice of Inquiry to Develop a Rule to Implement House Bill 776, Relating to Access Charge Reform
On Behalf of MCI
Oral Comments September 14, 2005

Before the New Mexico Public Regulation Commission
Case No. 00108-UT
Regarding Unfiled Agreements between Qwest Corporation and Competitive Local Exchange Carriers
On Behalf of Time Warner Telecom
Direct May 11, 2004

Before the New Mexico Public Regulation Commission
Case Nos. 03-00403-UT and 03-00404-UT
Triennial Review Proceedings (Batch Hot Cut and Local Circuit Switching)
On Behalf of WorldCom, Inc. (MCI).
Direct February 9, 2004

Before the New Mexico Public Regulation Commission
Utility Case No. 3495, Phase B
Consideration of Costing and Pricing Rules for OSS, Collocation, Shared Transport, Nonrecurring Charges, Spot Frames, Combination of Network Elements and Switching
On Behalf of the Staff of the New Mexico Public Regulation Commission
Direct September 16, 2002

Before the New Mexico Public Regulation Commission
Docket No. 95-572-TC
Petition of AT&T for IntraLATA Equal Access
On Behalf of MCI
Rebuttal August 30, 1996

Before the New Mexico Public Regulation Commission
Docket No. 87-61-TC
Application of MCI for a Certificate of Public Convenience and Necessity
On Behalf of MCI
Direct September 28, 1987

Before the New York Public Service Commission
Case No. 07-C-0233
Petition of Neutral Tandem for Interconnection with Level 3 Communications, LLC and Request for Interim Order
On Behalf of Level 3
Direct March 23, 2007

Before the New York Public Service Commission
Case No. 28425
Comments of MCI Telecommunications Corporation on IntraLATA Presubscription
On Behalf of MCI
Initial Comments — April 30, 1992
Reply Comments — June 8, 1992

Before the North Carolina Public Utilities Commission
Docket No. P-886, SUB 1
Petition of Adelphia Business Solutions or North Carolina, LP for Arbitration with BellSouth
On Behalf of Adelphia
Direct — October 18, 2000
Rebuttal — December 8, 2000

Before the North Carolina Public Utilities Commission
Docket No. P779 SUB4
Petition of Level (3) Communications, LLC for Arbitration with Bell South
On Behalf of Level (3) Communications, LLC
Direct — August 4, 2000
Rebuttal — September 18, 2000

Before the North Dakota Public Service Commission
Case No. PU-08-97
Midcontinent Communications v. Consolidated Telecom -- Arbitration
On Behalf of Midcontinent
Direct — July 21, 2008

Before the North Dakota Public Service Commission
Case Nos. PU-08-61, PU-08-176, Consolidated
Midcontinent Communications v. Missouri Valley Communications, Inc. -- Arbitration
On Behalf of Midcontinent
Direct — July 2, 2008

Before the North Dakota Public Service Commission
Case No. PU-05-451
Midcontinent Communications v. North Dakota Telephone Company
On Behalf of Midcontinent
Direct — December 21, 2005
Rebuttal — January 16, 2006

Before the North Dakota Public Service Commission
Case No. PU-2342-01-296
Qwest Corporation Price Investigation
On Behalf of the CLEC Coalition (US Link, Inc., VAL-ED Joint Venture LLP d/b/a 702 Communications, McLeodUSA Telecommunications, Inc. and IdeaOne Telecom Group, LLC)
Direct — May 2, 2003

Before the North Dakota Public Service Commission
Case No. PU-2065-02-465
Petition of Level 3 for Arbitration with SRT Communications Cooperative
On Behalf of Level (3) Communications, LLC
Direct December 4, 2002

Before the North Dakota Public Service Commission
Case No. PU-2320-90-183
Implementation of SB 2320 -- Subsidy Investigation
On Behalf of MCI
Direct June 24, 1991
Rebuttal October 24, 1991

Before the Public Utilities Commission of Ohio
Case No. 04-35-TP-COI
In the Matter of the Implementation of the FCC's Triennial Review Regarding Local Circuit Switching in the Cincinnati Bell Telephone Company's Mass Market
On Behalf of AT&T
Direct February 26, 2004

Before the Oklahoma Corporation Commission
Cause No. 28713
Application of MCI for Additional CCN Authority to Provide IntraLATA Services
On Behalf of MCI
Direct April 2, 1992
Rebuttal June 22, 1992

Before the Oregon Public Utility Commission
Docket No. ARB 665
In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation
On Behalf of Level 3
Direct August 12, 2005
Rebuttal September 6, 2005

Before the Oregon Public Utility Commission
Docket No. UM 1058
Investigation into the Use of Virtual NPA/NXX Calling Patterns
On Behalf of Level (3) Communications, LLC
Comments/Presentation November 6, 2002

Before the Oregon Public Utility Commission
Docket No. ARB 9
Interconnection Contract Negotiations Between MCImetro and GTE
On Behalf of MCI
Direct October 11, 1996
Rebuttal November 5, 1996

Before the Oregon Public Utility Commission
Docket ARB3/ARB6
Petition of MCI for Arbitration with U S WEST Communications, Inc
On Behalf of MCI
Direct September 6, 1996

Before the Oregon Public Utility Commission
Docket No. AR 154
Administrative Rules Relating to the Universal Service Protection Plan
On Behalf of MCI
Rebuttal October 31, 1986

Before the Oregon Public Utility Commission
Docket No. UT 17
Pacific Northwest Bell Telephone Company Business Measured Service
On Behalf of the Public Utility Commissioner of Oregon
Direct April 23, 1984
Rebuttal May 7, 1984

Before the Oregon Public Utility Commission
Docket No. UT 9
Pacific Northwest Bell Telephone Company Business Measured Service
On Behalf of the Public Utility Commissioner of Oregon
Direct October 27, 1983

Before the Pennsylvania Public Utility Commission
Docket No. A-310190
Petition of Comcast Business Communications, LLC d/b/a Comcast Long Distance for Arbitration of an Interconnection Agreement with The United Telephone Company of Pennsylvania LLC d/b/a Embarq Pennsylvania Pursuant to Section 252 of the Federal Communications Act of 1934 as Amended, and Applicable State Law
On Behalf of Comcast
Direct June 6, 2008
Rebuttal July 9, 2008

Before the Pennsylvania Public Utility Commission
Docket Nos. A-310922F7003/A-310922F7038
Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms and Conditions with the RTCC, the PTA and the Frontier Companies
On Behalf of Core
Direct December 7, 2007
Rebuttal February 5, 2008
Surrebuttal March 4, 2008

Before the Pennsylvania Public Utility Commission
Docket No. A-310922F7004
Petition of Core Communications, Inc. for Arbitration of Interconnection Rates, Terms and Conditions Pursuant to 47 USC §252(b) with Windstream Pennsylvania, Inc. f/k/a Alltell
On Behalf of Core
Direct August 17, 2007
Rebuttal September 6, 2007

Before the Pennsylvania Public Utility Commission
Docket No. A-310922F7002
Petition of Core Communications, Inc. for Arbitration with the United Telephone Company of Pennsylvania d/b/a Embarq
On Behalf of Core
Direct April 27, 2007
Rebuttal June 4, 2007

Before the Pennsylvania Public Utility Commission
Docket No. C-20028114
Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company
On Behalf of Level (3) Communications, LLC
Direct September 5, 2002

Before the Pennsylvania Public Utility Commission
Docket No. I-00940034
Investigation Into IntraLATA Interconnection Arrangements (Presubscription)
On Behalf of MCI
Direct December 9, 1994

Puerto Rico Telecommunications Board
Case No. JRT-2003-SC-2002
In the Matter of Regulation of Transit Traffic Service in Puerto Rico
On Behalf of Centennial Puerto Rico License Corp.
Affidavit December 15, 2008

Puerto Rico Telecommunications Board
Case Nos. JRT-2008-AR-0001
Petition of Centennial Puerto Rico License Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Puerto Rico Telephone Company.
On Behalf of Centennial Puerto Rico License Corp.
Direct June 9, 2008
Rebuttal July 7, 2008

Puerto Rico Telecommunications Board
Case Nos. JRT-2005-Q-0121, JRT-2005-Q-0128, JRT-2003-Q-0297, JRT-2004-Q-0068
Telefonica Larga Distancia de Puerto Rico, Inc., Worldnet Telecommunications, Inc., Sprint Communications Company, LP, and AT&T of Puerto Rico, Inc., v. Puerto Rico Telephone Company, Inc.
On Behalf of Centennial Puerto Rico License Corporation
Direct January 19, 2006

Before the Rhode Island Public Utilities Commission
Docket No. 2089
Dialing Pattern Proposal Made by the New England Telephone Company
On Behalf of MCI
Direct April 30, 1993

Before the South Carolina Public Service Commission
Docket No. 2000-516-C
Adelphia Business Solutions of South Carolina, Inc. Arbitration with BellSouth Telecommunications
On Behalf of Adelphia
Direct November 22, 2000
Rebuttal December 14, 2000

Before the South Carolina Public Service Commission
Docket No. 2000-0446-C
US LEC of South Carolina Inc. Arbitration with BellSouth Telecommunications
On Behalf of US LEC
Direct October 20, 2000

Before the South Dakota Public Utilities Commission
Docket No. TC01-098
Determining Prices for Unbundled Network Elements (UNEs) in Qwest's Statement of Generally Available Terms (SGAT)
On Behalf of the Staff of the Public Utilities Commission
Direct June 16, 2003

Before the South Dakota Public Utilities Commission
Docket No. TC03-057
Application of Qwest to Reclassify Local Exchange Services as Fully Competitive
On Behalf of WorldCom, Inc., Black Hills FiberCom and Midcontinent Communications
Direct May 27, 2003

Before the South Dakota Public Utilities Commission
Docket No. F-3652-12
Application of Northwestern Bell Telephone Company to Introduce Its Contract Toll Plan
On Behalf of MCI
Direct November 11, 1987

Before the Tennessee Regulatory Authority
Docket No. 00-00927
Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications
On Behalf of Adelphia
Direct January 31, 2001
Rebuttal February 7, 2001

Before the Texas Public Utilities Commission
PUC Case No. 35869
Petition of Charter Fiberlink TX-CCO, LLC for Arbitration of Interconnection Agreement with CenturyTel of Lake Dallas, Inc.
On Behalf of Charter Fiberlink LLC
Direct October 3, 2008
Rebuttal October 17, 2008

Before the Texas Public Utilities Commission
PUC Docket No. 35402
Petition of Comcast Phone of Texas, LLC for Arbitration with United Telephone Company of Texas, Inc. d/b/a Embarq Pursuant to Section 252 of the Federal Communications Act of 1934, as Amended, and Applicable State Laws.
On Behalf of Comcast
Direct April 14, 2008
Rebuttal April 28, 2008

Before the Texas Public Utilities Commission
PUC Docket No. 28821
Arbitration of Non-costing Issues for Successor Interconnection Agreement to the Texas 271 Agreement
On Behalf of KMC Telecom III, LLC, KMC Telecom V, Inc. (d/b/a KMC Network Services, Inc.), and KMC Data, LLC
Direct July 19, 2004
Rebuttal August 23, 2004

Before the Texas Public Utilities Commission
PUC Docket No. 26431
Petition of Level 3 for Arbitration with CenturyTel of Lake Dallas, Inc. and CenturyTel of San Marcos, Inc.
On Behalf of Level (3) Communications, LLC
Direct October 10, 2002
Reply October 16, 2002

Before the Texas Public Utilities Commission
PUC Docket No. 22441
Petition of Level 3 for Arbitration with Southwestern Bell Telephone Company
On Behalf of Level (3) Communications, LLC
Direct June 5, 2000
Rebuttal June 12, 2000

Before the Utah Public Service Commission
Docket No. 03-999-04
In the Matter of a Proceeding to Address Actions Necessary to Respond to the FCC's Triennial Review Order
On Behalf of WorldCom, Inc. (MCI)
Direct January 13, 2004

Before the Utah Public Service Commission
Docket No. 00-999-05
In the Matter of the Investigation of Inter-Carrier Compensation for Exchanged ESP Traffic
On Behalf of Level 3 Communications, LLP
Direct February 2, 2001

Before the Utah Public Service Commission
Docket No. 97-049-08
USWC Rate Case
On Behalf of MCI
Surrebuttal September 3, 1997
Revised Direct September 29, 1997

Before the Utah Public Service Commission
Docket No. 96-095-01
MCImetro Petition for Arbitration with USWC Pursuant to 47 U.S.C. Section 252
On Behalf of MCI
Direct November 8, 1996
Rebuttal November 22, 1996

Before the Utah Public Service Commission
Case No. 83-999-11
Investigation of Access Charges for Intrastate InterLATA and IntraLATA Telephone Services
On Behalf of MCI
Direct July 7, 1988

Before the Utah Public Service Commission
Case No. 87-049-05
Petition of the Mountain State Telephone and Telegraph Company for Exemption from Regulation of Various Transport Services
On Behalf of MCI
Direct November 16, 1987

Before the Washington Utilities and Transportation Commission
Docket No. UT-083041
In the Matter of Petition of Charter Fiberlink WA, CCVII, LLC for Arbitration of an Interconnection Agreement with Qwest Corporation
On Behalf of Charter
Direct October 8, 2008
Rebuttal November 17, 2008

Before the Washington Utilities and Transportation Commission
Docket No. UT-083025
In the Matter of Comcast Phone of Washington v. Embarq; Arbitration for Interconnection
On Behalf of Comcast
Direct July 2, 2008
Rebuttal August 1, 2008

Before the Washington Utilities and Transportation Commission
Docket No. UT-033011
In the Matter of Washington Utilities and Transportation Commission, Petitioners, v. Advanced Telecom Group, Inc., et al, Respondents
On Behalf of Time Warner Telecom of Washington, LLC
Direct September 13, 2004

Before the Washington Utilities and Transportation Commission
Docket No. UT-030614
In the Matter of the Petition of Qwest Corporation for Competitive Classification of Basic Exchange Telecommunications Services
On Behalf of MCI, Inc.
Direct August 13, 2003
Rebuttal August 29, 2003

Before the Washington Utilities and Transportation Commission
Docket No. UT-021569
Developing an Interpretive or Policy Statement relating to the Use of Virtual NPA/NXX Calling Patterns
On Behalf of MCI, KMC Telecom, and Level (3) Communications, LLC
Workshop Participation May 1, 2003

Before the Washington Utilities and Transportation Commission
Docket No. UT-021569
Developing an Interpretive or Policy Statement relating to the Use of Virtual NPA/NXX Calling Patterns
On Behalf of WorldCom, Inc. and KMC Telecom
Comments January 31, 2003

Before the Washington Utilities and Transportation Commission
Docket No. UT-023043
Petition of Level 3 for Arbitration with CenturyTel of Washington, Inc.
On Behalf of Level (3) Communications, LLC
Direct October 18, 2002
Rebuttal November 1, 2002

Before the Washington Utilities and Transportation Commission
Docket No. UT-003013, Part D
Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination
On Behalf of WorldCom, Inc.
Direct December 21, 2001

Before the Washington Utilities and Transportation Commission
Docket No. UT-970325
Rulemaking Workshop re Access Charge Reform and the Cost of Universal Service
On Behalf of MCI
Comments and Presentation January 13, 1998

Before the Washington Utilities and Transportation Commission
Docket No. UT-960338
Petition of MCImetro for Arbitration with GTE Northwest, Inc., Pursuant to 47 U.S.C.252
On Behalf of MCI
Direct October 11, 1996
Rebuttal November 20, 1996

Before the Washington Utilities and Transportation Commission
Docket No. U-88-2052-P
Petition of Pacific Northwest Bell Telephone Company for Classification of Services as Competitive
On Behalf of MCI
Direct September 27, 1988

Before the West Virginia Public Service Commission
Case No. 97-1338-T-PC
Petition of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.
On Behalf of MCI
Rebuttal June 18, 1998

Before the West Virginia Public Service Commission
Case No. 94-0725-T-PC
Bell Atlantic - West Virginia Incentive Regulation Plan
On Behalf of MCI
Direct October 11, 1994

Before the Wisconsin Public Service Commission
Docket Nos. 05-MA-148 and 05-MA-149
Petition of Charter Fiberlink LLC for Arbitration with CenturyTel Rural and Non-Rural Telephone Companies of Wisconsin
On Behalf of Charter Fiberlink LLC
Direct November 7, 2008
Rebuttal November 24, 2008

Before the Wisconsin Public Service Commission
Docket No. 05-MA-135
Petition of Level 3 for Arbitration with Wisconsin Bell, Inc. d/b/a/ SBC Wisconsin
On Behalf of Level (3) Communications, LLC
Direct September 1, 2004

Before the Wisconsin Public Service Commission
Docket No. 05-MA-130
Petition of Level 3 for Arbitration with CenturyTel
On Behalf of Level (3) Communications, LLC

Direct	September 30, 2002
Reply	October 9, 2002

Before the Wisconsin Public Service Commission
Docket No. 05-NC-102
Petition of MCI for IntraLATA 10XXX 1+ Authority
On Behalf of MCI

Direct	April 3, 1992

Before the Wisconsin Public Service Commission
Docket No. 05-TR-103
Investigation of Intrastate Access Costs and Intrastate Access Charges
On Behalf of MCI

Direct	November 15, 1990

Before the Wisconsin Public Service Commission
Docket No. 2180-TR-102
GTE Rate Case and Request for Alternative Regulatory Plan
On Behalf of MCI

Direct	October 1, 1990
Rebuttal	October 15, 1990

Before the Wisconsin Public Service Commission
Docket No. 6720-TR-104
Wisconsin Bell Rate Case
On Behalf of MCI

Direct	April 16, 1990

Before the Wisconsin Public Service Commission
Docket No. 05-TR-102
Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges
On Behalf of MCI

Direct	December 1, 1989

Before the Wisconsin Public Service Commission
Docket No. 6720-TI-102
Review of the WBI Rate Moratorium
On Behalf of MCI

Direct	October 9, 1989
Rebuttal	November 17, 1989

Before the Wisconsin Public Service Commission
Docket No. 05-TI-112
Disconnection of Local and Toll Services for Nonpayment -- Part A; Examination of Industry Wide Billing and Collection Practices -- Part B
On Behalf of MCI
Direct July 5, 1989
Rebuttal July 12, 1989

Before the Wisconsin Public Service Commission
Docket No. 6720-TR-103
Investigation Into the Financial Data and Regulation of Wisconsin Bell, Inc.
On Behalf of MCI
Rebuttal May 11, 1989

Before the Wisconsin Public Service Commission
Docket No. 05-NC-100
Amendment of MCI's CCN for Authority to Provide IntraLATA Dedicated Access Services
On Behalf of MCI
Direct May 1, 1989

Before the Wisconsin Public Service Commission
Docket No. 6720-TI-102
Review of Financial Data Filed by Wisconsin Bell, Inc.
On Behalf of MCI
Direct March 6, 1989

Before the Wisconsin Public Service Commission
Docket No. 05-TI-116
In the Matter of Provision of Operator Services
On Behalf of MCI
Rebuttal December 12, 1988

Before the Wisconsin Public Service Commission
Docket No. 05-TR-102
Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges
On Behalf of MCI
Direct October 31, 1988
Rebuttal November 14, 1988

Before the Wyoming Public Service Commission
Docket No. 70043-TK-05-10; Docket No. 70000-TK-05-1132; Record No. 9891
In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation
On Behalf of Level 3
Direct September 8, 2005
Rebuttal November 18, 2005

Before the Wyoming Public Service Commission
Docket No. 9746 Sub 1
Application of MCI for a Certificate of Public Convenience and Necessity
On Behalf of MCI
Direct June 17, 1987

Before the Wyoming Public Service Commission
Docket No. 72000-TC-97-99
In the Matter of Compliance with Federal Regulations of Payphones
On Behalf of MCI
Oral Testimony May 19, 1997

Comments Submitted to the Federal Communications Commission and/or the Department of Justice

Comments to the Department of Justice (Task Force on Telecommunications) on the Status of OSS Testing in Arizona and the USWC Collaborative on Behalf of MCI WorldCom, Inc.
November 9, 1999

Comments to FCC Staff of Common Carrier Bureau on the Status of OSS Testing in Arizona on Behalf of MCI WorldCom, Inc.
November 9, 1999

Presentation to FCC Staff on the Status of Intrastate Competition on Behalf of MCI.
February 16, 1995

Ameritech Transmittal No. 650
Petition to Suspend and Investigate on Behalf of MCI re Ameritech 64 Clear Channel Capability Service.
September 4, 1992

Ameritech Transmittal No. 578
Petition to Suspend and Investigate on Behalf of MCI re Ameritech Directory Search Service.
November 27, 1991

CC Docket No. 91-215
Opposition to Direct Cases of Ameritech and United (Ameritech Transmittal No. 518; United Transmittal No. 273) on Behalf of MCI re the introduction of 64 Kbps Special Access Service.
October 15, 1991

Ameritech Transmittal No. 562
Petition to Suspend and Investigate on Behalf of MCI re Proposed Rates and Possible MFJ Violations Associated with Ameritech's OPTINET Reconfiguration Service (AORS).
September 30, 1991

Ameritech Transmittal No. 555
Petition to Suspend and Investigate on Behalf of MCI re Ameritech Directory Search Service.
August 30, 1991

Ameritech Transmittal No. 526
Petition to Suspend and Investigate on Behalf of MCI re Proposed Flexible ANI Service.
April 17, 1991

Ameritech Transmittal No. 518
Petition to Suspend and Investigate on Behalf of MCI re Proposed Rates for OPTINET 64 Kbps Service.

March 6, 1991

Selected Reports, Presentations and Publications

COMPTEL PLUS Spring 2009 Regulatory Workshop; Sponsored by Davis Wright Tremaine LLP; "Critical Telecom Issues Now and On the Horizon"; March 5, 2009.

CLE International 10th Annual Conference, "Telecommunications Law," "Technology Update – The State of Wireless Technologies in Canada – A Comparison of Wireless Technologies in Canada and the United States of America."
December 13-14, 2007

"The State of Wireless Technologies in Canada – A Comparison of Wireless Technologies in Canada and the United States of America"; Presented to Bell Canada Enterprises.
May 25, 2007.

CLE International 8th Annual Conference, "Telecommunications Law," "VoIP and Brand X – Legal and Regulatory Developments."
December 8-9, 2005

QSI Technical Report No. 012605A "IP-Enabled Voice Services: Impact of Applying Switched Access Charges to IP-PSTN Voice Services"
Ex Parte filing in FCC dockets WC Dockets No. 04-36 (In the Matter of IP-Enabled Services), 03-266 (In the Matter of Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b); IP Enabled Services)
Washington DC, January 27, 2005

QSI Report to the Wyoming Legislature "The Wyoming Universal Service Fund. *An Evaluation of the Basis and Qualifications for Funding*" December 3, 2004.

Presentation to the Iowa Senate Committee Regarding House Study Bill 622/Senate Study Bill 3035; Comments on Behalf of MCI
February 19, 2004

National Association of Regulatory Utility Commissioners Summer Committee Meetings; Participated in Panel regarding "Wireless Substitution of Wireline – Policy Implications."
July 25, 2003

Seminar for the New York State Department of Public Service entitled "Emerging Technologies and Convergence in the Telecommunications Network". Presented with Ken Wilson of Boulder Telecommunications Consultants, LLC
February 19-20, 2003

"Litigating Telecommunications Cost Cases and Other Sources of Enlightenment"; Educational Seminar for State Commission and Attorney General Employees on Litigating TELRIC Cases; Denver, Colorado.
February 5-6, 2002

Illinois; Presentation to the Environment & Energy Senate Committee re Emerging Technologies and Their Impact on Public Policy, on Behalf of MCI WorldCom, Inc.
March 8, 2000

"Interpreting the FCC Rules of 1997"; The Annenberg School for Communication at the University of Southern California; Panel Presentation on Universal Service and Access Reform.
October 23, 1997

"NECA/Century Access Conference"; Panel Presentation on Local Exchange Competition.
December 13-14, 1995

"TDS Annual Regulatory Meeting"; Panel Presentation on Local Competition Issues.
August 29, 1995

"Phone+ Supershow '95"; Playing Fair: An Update on IntraLATA Equal Access; Panel Presentation.
August 28-30, 1995

"The LEC-IXC Conference"; Sponsored by Telecommunications Reports and Telco Competition Report; Panel on Redefining the IntraLATA Service Market -- Toll Competition, Extended Area Calling and Local Resale.
March 14-15, 1995

The 12th Annual National Telecommunications Forecasting Conference; Represented IXCs in Special Town Meeting Segment Regarding the Convergence of CATV and Telecommunications and other Local Competition Issues.
May 23-26, 1994

TeleStrategies Conference -- "IntraLATA Toll Competition -- Gaining the Competitive Edge"; Presentation on Carriers and IntraLATA Toll Competition on Behalf of MCI.
May 13-14, 1993

NARUC Introductory Regulatory Training Program; Panel Presentation on Competition in Telecommunications on Behalf of MCI.
March 14-17, 1993

TeleStrategies Conference -- "IntraLATA Toll Competition -- A Multi-Billion Dollar Market Opportunity." Presentations on the interexchange carriers' position on intraLATA dialing parity and presubscription and on technical considerations on behalf of MCI.
December 2-3, 1992

North Dakota Association of Telephone Cooperatives Summer Conference, July 8-10, 1992. Panel presentations on "Equal Access in North Dakota: Implementation of PSC Mandate" and "Open Network Access in North Dakota" on Behalf of MCI.
July 9, 1992

TeleStrategies Conference -- "Local Exchange Competition: The $70 Billion Opportunity." Presentation as part of a panel on "IntraLATA 1+ Presubscription" on Behalf of MCI.
November 19, 1991

Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation Course; May 13-16, 1991; Participated in IntraLATA Toll Competition Debate on Behalf of MCI.
May 16, 1991

Michigan; Presentation to the Michigan Senate Technology and Energy Commission and the House Public Utilities Committee re MCI's Building Blocks Proposal and SB 124/HB 4343.
May 15, 1991

Wisconsin; Comments Before the Wisconsin Assembly Utilities Committee Regarding the Wisconsin Bell Plan for Flexible Regulation, on Behalf of MCI.
May 16, 1990

Michigan; Presentation to the Michigan Senate Technology and Energy Committee re SB 124 on behalf of MCI.
March 20, 1991

Illinois Telecommunications Sunset Review Forum; Two Panel Presentations: Discussion of the Illinois Commerce Commission's Decision in Docket No. 88-0091 for the Technology Working Group; and, Discussion of the Treatment of Competitive Services for the Rate of Return Regulation Working Group; Comments on Behalf of MCI.
October 29, 1990

Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation; May 14-18, 1990; Presentation on Alternative Forms of Regulation.
May 16, 1990

Michigan; Presentation Before the Michigan House and Senate Staff Working Group on Telecommunications; "A First Look at Nebraska, Incentive Rates and Price Caps," Comments on Behalf of MCI.
October 30, 1989

National Association of Regulatory Utility Commissioners -- Summer Committee Meeting, San Francisco, California. Panel Presentation -- Specific IntraLATA Market Concerns of Interexchange Carriers; Comments on Behalf of MCI.
July 24, 1989

Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation; May 15-18, 1989; Panel Presentation -- Interexchange Service Pricing Practices Under Price Cap Regulation; Comments on Behalf of MCI.
May 17, 1989

Minnesota; Senate File 677; Proposed Deregulation Legislation; Comments before the House Committee on Telecommunications.
April 8, 1987

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink	Docket No. P-421, et al./PA-10-456

EXHIBIT TJG-2

TO THE

DIRECT TESTIMONY OF TIMOTHY GATES

ON BEHALF OF

CBEYOND COMMUNICATIONS, LLC, CHARTER FIBERLINK CCO, LLC, INTEGRA TELECOM, INC., LEVEL 3 COMMUNICATIONS, LLC, MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., d/b/a PAETEC BUSINESS SERVICES, TDS METROCOM, LLC, TW TELECOM OF MINNESOTA, LLC, ORBITCOM, INC. AND POPP.COM

August 19, 2010

DESCRIPTION OF QWEST'S OSS TESTING IN RELATION TO 271 AUTHORITY

BOC Requirements for Nondiscriminatory Access to OSS Pursuant to Section 271

Because Qwest is a Bell Operating Company (BOC) in its 14-state local service territory, it is required to demonstrate and maintain compliance with the competitive checklist under Section 271 of the Telecommunications Act in order for Qwest to provide in-region, interLATA long distance service. A primary component of satisfying the competitive checklist is for Qwest to show that it provides nondiscriminatory access to Operations Support Systems (OSS) under checklist item 2 pursuant to Section § 271(c)(2)(B)(ii). The FCC defines OSS to include five functions: (1) pre-ordering, (2) ordering, (3) provisioning, (4) maintenance and repair, and (5) billing.[1] The FCC also requires an adequate change management process (CMP) to handle changes to the OSS systems.[2] To satisfy its obligations under Section 271 regarding OSS, a BOC must show that it provides access to OSS for competitive LECs (CLECs) to perform functions in substantially the same time and manner as the BOC's retail operations, or (for functions with no retail analogue) must show that the access affords an efficient competitor a "meaningful opportunity to compete."[3] The FCC uses a two-step approach to determine whether a BOC satisfies this obligation:

- Step 1 is determining whether the BOC has deployed the necessary systems, databases, and personnel to provide sufficient access to each of the necessary OSS functions, and whether the BOC is adequately assisting CLECs to understand and implement and use all of the OSS functions available.

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[1] FCC Memorandum Opinion and Order, WC Docket No. 02-314 (FCC 02-332), December 23, 2002 ("Qwest 9 State 271 Order"), ¶ 33.

[2] Qwest 9 State 271 Order, ¶ 34.

[3] Qwest 9 State 271 order, ¶ 38.

- Step 2 is determining whether the deployed OSS functions are operationally ready as a practical matter.[4] The FCC has said that the most probative evidence that OSS functions are operationally ready is actual commercial usage.[5]

Qwest's OSS Underwent Extensive Testing to Determine Whether the Nondiscrimination Standard was Met

Qwest's OSS underwent extensive testing in conjunction with Qwest's pursuit of 271 relief. This testing involved the participation of Qwest, numerous CLECs, commission staffs from all 14 state commissions in Qwest's local service territory, numerous state regulatory commissioners, six separate vendors, a multi-state collaborative and a third-party facilitator. The testing involved an evaluation of Qwest's OSS systems, OSS processes, underlying data and collection, CMP, performance assurance plan (PAP) and Performance Indicator Definitions (PIDs). The testing process and evaluation lasted more than three years.[6] During the testing and evaluation process countless conference calls and workshops were held, third-party testing occurred, testimony was submitted and hearings were held to address the testing process and results, and those results were examined by numerous state commissions and the FCC. The FCC considered the analyses and conclusions drawn by state commissions about Qwest's OSS when evaluating Qwest's compliance with the Section 271 competitive checklist.

Regional Oversight Committee & Third Party Vendors

In 1999, a collaborative process was initiated by the Regional Oversight Committee (ROC) to "design and execute a third-party OSS test to ensure that Qwest's wholesale support

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4 Minnesota PUC Docket No. P-421/CI-01-1371, Commission Findings of Fact, Conclusions of Law, and Recommendations, January 24, 2003, p. 74; See Also Qwest 9 State 271 Order, Appendix K, ¶ 29.

5 Id. at p. 75. See also, Qwest 9 State 271 Order, Appendix K, ¶ 31.

6 The Regional Oversight Committee was initiated in mid to late 1999 and the FCC issued its first order on Qwest's 271 applications in December 2002.

systems would be available to competitive LECs in an open and non-discriminatory manner."[7] The ROC consisted of participants from 13 of the 14 state commissions from Qwest's local service region,[8] and was charged with designing the structure of the collaborative process, determining the scope of the OSS test, selecting third-party testers[9] and designing a Master Test Plan (MTP) and PIDs.[10] The structure of the ROC included an executive committee, a steering committee, and a Technical Advisory Group (TAG).[11] The ROC executive committee consisted of seven state commissioners; the ROC steering committee consisted of state commission staffs; and the TAG was a collaborative group including Qwest, CLECs, state commission staffs and industry representatives.[12] The TAG provided technical assistance, subject matter planning, developed principles applied during the development and conduct of the test, assisted in reviewing the results of the test, and sought comment and reached agreement on the PIDs to use to measure Qwest's commercial performance.[13] Issues and disputes were first addressed by TAG and escalated first to the steering committee, and then escalated to the executive committee (as needed).

The ROC hired the National Regulatory Research Institute (NRRI) as the Project Administrator and Maxim Telecom Group as the Project Manager in July 1999 and September

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7 Qwest 9 state 271 Order, ¶ 9.

8 The Arizona Corporation Commission did not participate in the 13-state ROC, but instead conducted its own OSS test using Cap Gemini Ernst & Young (CGE&Y) as the OSS third-party tester, HP as the pseudo-CLEC, and Liberty for data reconciliation. The third-party test conducted by CGE&Y in Arizona was similar to the ROC OSS test, and included a TAG, a Master Test Plan, a military-style test, performance measures audit, etc. See, CGE&Y Final Report of the Qwest OSS Test, dated May 3, 2002 (Version 3.0) and CPGE&Y Functionality Test Results Comparison Report, March 29, 2002. *See also,* Memorandum Opinion and Order, WC Docket No. 03-194 (FCC 03-309), December 3, 2003 ("Qwest Arizona 271 Order"), ¶¶ 5 and 16. See also, Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003, p. 3.

9 The FCC states that a "third-party test provides an objective means by which to evaluate a BOC's OSS readiness." Qwest 9 State 271 Order, ¶ 49.

10 Qwest 9 State 271 Order, ¶ 9.

11 See, e.g., Qwest 9 State 271 Order, fn. 15 and ¶ 10.

12 Id.

13 Qwest 9 State 271 Order, ¶ 10. See also, KPMG Draft Final Report on Qwest Communications OSS Evaluation, dated April 26, 2002 ("KPMG 4/26/02 Draft Final Report"), Evaluation Overview, p. 8.

1999, respectively.[14] In September 1999, the ROC and Qwest agreed on a regional approach for OSS third-party testing[15] and by November 1999 the ROC was meeting weekly (or more often) to carry out this charge.[16] On March 9, 2000, the ROC issued the Test Requirements Document (TRD) to define the scope and specific approaches to testing, and to define the roles for the three testing vendors – the Test Administrator, the pseudo-CLEC and Performance Measures Auditor.[17] The TRD specified that third-party testing should cover the following service delivery methods: resale, UNE loops, UNE-Platform, UNE combinations, unbundled dedicated transport, others methods of delivery that become available during testing. In addition, the TRD identified four OSS functions – or "domains" – for testing purposes: (1) pre-order, order and provisioning (POP), (2) Maintenance and Repair (M&R), (3) Billing, and (4) Relationship Management and Infrastructure. Further, the TRD required normal, peak and stress volume testing of OSS interfaces supporting preordering, ordering, and M&R functions for resale and UNE services.[18] The TRD was used to solicit proposals from prospective vendors.

In July 2000, the ROC selected KPMG Consulting (KPMG) as the test administrator and Hewlett Packard (HP) as the pseudo-CLEC.[19] 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 that CLECs would actually submit in a commercial environment, and to ensure that OSS provided the information and tools necessary for a CLEC to interface with Qwest. HP's role was like that of a CLEC Information

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[14] Washington Docket Nos. UT-003022/UT-003040, 39th Supplemental Order, dated July 1, 2002 ("Washington 39th Supplemental Order"), ¶ 105. *See also*, Qwest Corp. Comments in Washington Docket Nos. UT-003022/003040, dated June 3, 2002, p. 8 ("Qwest Washington Comments").

[15] Washington 39th Supplemental Order, ¶ 105.

[16] Washington 39th Supplemental Order, ¶ 107.

[17] KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 8.

[18] KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 9.

[19] Qwest 9 State 271 Order, ¶ 10.

Technology and Order Operations Group, and included HP establishing electronic bonding with Qwest, translating back and forth between business rule and electronic interface rule formats, creating and tracking orders, resolving problems with missing orders and responses, and entering trouble tickets.[20] The ROC also hired the Liberty Consulting Group (Liberty) to conduct an audit of Qwest's performance data, verify the integrity of Qwest's commercial data, perform data reconciliation and validate each PID.[21]

The OSS Test

One of the first steps of third-party testing was KPMG's Regional Differences Assessment (RDA), which was performed to determine the extent to which Qwest's systems were similar or different across Qwest's region, such that a regional OSS test would be appropriate.[22] According to KPMG, the results of the RDA showed that Qwest's systems were sufficiently similar across its region to perform a regional OSS test,[23] and KPMG tailored the test to address any state or regional differences so that the test environment represented the 13 states participating in the ROC.[24]

KPMG, with assistance from the TAG, developed the Master Test Plan (MTP) based on the TRD. The MTP contained "a description of a comprehensive plan to test Qwest's OSS, interfaces and processes"[25] and was designed to "…evaluate the operational readiness, performance and capability of Qwest to provide pre-ordering, ordering, provisioning,

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[20] KPMG 4/26/10 Draft Final Report, Evaluation Overview, p. 10.

[21] Qwest 9 State 271 Order, ¶ 13. Arizona, the only state in Qwest's region not to participate in the ROC, selected Cap Gemini Ernst & Young (CGE&Y) to serve as test administrator and HP to serve as the pseudo-CLEC.

[22] Qwest 9 State 271 Order, ¶ 11.

[23] Qwest 9 State 271 Order, ¶ 11.

[24] Qwest 9 State 271 Order, ¶ 36.

[25] Washington 39th Supplemental Order, ¶ 109, quoting the MTP.

maintenance and repair and billing Operations Support Systems (OSS) documentation, interfaces, and functionality to….CLECs."[26]

As noted above, the MTP required KPMG to test Qwest's OSS in relation to four "domains" (or business functions): (i) POP, (ii) M&R, (iii) Billing and (iv) Relationship Management and Infrastructure.[27] The MTP identified tests by domain and explained the objective for each test and criteria for passing each test.[28] Two types of testing were used for Qwest's OSS: (1) a "transaction" test that tested real-world conditions of the pseudo-CLEC (HP) during which the pseudo-CLEC submitted the same types of pre-order, order and repair transactions as a real CLEC (*i.e.*, what KPMG referred to as "to live the CLEC experience"[29]), and (2) an operational analysis test that examined the form, structure, and content of Qwest's business practices. This second type of testing by KPMG was accomplished by evaluating Qwest's day-to-day operations, as well as reviewing management practices and operating procedures in relation to legal/statutory requirements or "best practices."[30] The OSS test was designed as a "military-style" test, or "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.[31] The test was also designed to address commercial volumes of transactions. KPMG's test used projected transaction volumes simulating peak (150% of normal) and stress (250% of normal) transaction volume conditions.[32]

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26 Washington 39th Supplemental Order, ¶ 109, quoting the MTP.

27 Washington 39th Supplemental Order, ¶ 110.

28 Washington 39th Supplemental Order, ¶ 110.

29 KPMG 4/26/02 Draft Final Report Evaluation Overview, p. 10.

30 Washington 39th Supplemental Order, ¶¶ 111-113. See also, KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 11.

31 Washington 39th Supplemental Order, ¶ 114. See also, KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 11.

32 Qwest 9 State 271 Order, ¶ 108.

Actual transactional testing of Qwest's OSS began on April 9, 2001.[33] Transactional-based testing was used extensively in the POP, M&R and Billing domains.[34] KMPG and HP's third-party testing of the POP domain included transactions submitted via two pre-ordering interfaces (Electronic Data Interexchange (EDI) interface and Graphical User Interface (GUI)) as well as facsimile and a participating CLEC's EXACT/TELIS system.[35] The M&R domain testing involved submitting trouble tickets through the Customer Electronic and Maintenance and Repair (CEMR) and Electronic Bonding – Trouble Administration (EB-TA) interfaces. The Billing domain was tested by evaluating three regional (Central, Eastern and Western) Customer Records Information Systems (CRIS) invoicing systems and the Daily Usage Feed (DUF) process.[36] During the transaction testing in the ROC OSS test, third-party vendors submitted more than 21,000 pre-order transactions, more than 600 pre-order test cases,[37] 4,058 IMA-GUI transactions, 17,486 IMA-EDI transactions,[38] 4,300 initial order test scenarios and more than 3,500 order retest scenarios.[39] 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 M&R transactions executed.[40]

Ultimately, the third-party testing of Qwest's OSS evaluated Qwest's performance in the following areas: POP functionality and performance versus parity standards and benchmarks (Test 12), loop qualification process "parity by design" (Test 12.7), POP manual order processing (Test 12.8), order flow-though (Test 13), provisioning (Test 14), provisioning process

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33 Qwest Washington Comments, p. 16.
34 KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 10.
35 KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 10.
36 KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 10.
37 Qwest Washington Comments, p. 26.
38 Qwest Washington Comments, p. 26.
39 Qwest Washington Comments, p. 33.
40 CGE&Y Final Report of the Qwest OSS Test, May 3, 2002, p. 15.

parity (Test 14.7), provisioning coordination process (Test 14.8), POP volume performance test (Test 15), CEMR functional and performance (Test 16), MEDIACC (EB-TA) M&R trouble functional (Test 17), M&R end-to-end trouble reporting processing (Test 18), M&R work center support process (Test 18.7), end-to-end M&R process (Test 18.8), billing usage functional (Test 19), DUF returns, production and distribution processes (Test 19.6), carrier bill functional (Test 20), bill production and distribution process (Test 20.7), CLEC network provisioning – network design request, collocation and interconnection trunks (Test 22), change management (Test 23), account establishment and management (Test 24.3), CLEC forecasting (Test 24.4), CLEC training (Test 24.5), OSS interface development (Test 24.6), wholesale systems help desk (Test 24.7), interconnect service center support (Test 24.8), network surveillance and outage support (Test 24.9), and ISC/billing and collection center (Test 24.10).[41]

During the 271 evaluation process, Qwest completely revamped its change management process in the "CMP Redesign" process[42] by a redesign team consisting of CLECs, Qwest, state commission staffs, and third-party vendors (i.e., KPMG for the ROC test and CPGE&Y for the test in Arizona).[43] The re-designed CMP was memorialized in the "Qwest Wholesale Change Management Process Document." KPMG evaluated Qwest's revamped CMP process during the ROC test, testing separately for systems changes and product/process changes.[44] KPMG specifically tested the following:

- whether the CMP responsibilities and activities were defined;
- whether the CMP is in place and documented;
- whether a framework exists to evaluate/categorize/prioritize proposed changes;
- whether it allowed input from interested parties;

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41 KPMG 4/26/02 Draft Final Report, Section III (Test Summaries).

42 Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, 9/24/2003, p. 12.

43 Qwest Washington Comments, p. 96.

44 Washington 39th Supplemental Order, ¶ 193.

- the Stand-Alone Test environment for CLECs to test new releases in a non-production environment; and,
- whether Qwest's CMP contained time intervals for considering and notifying CLECs about change requests.[45]

The third-party test also included an audit of Qwest's performance assurance plan (QPAP) (a self-executing remedy plan to ensure Qwest continues to comply with the competitive checklist)[46] and related PIDs (which are used in the QPAP to measure Qwest's performance and to determine whether Qwest must make remedy payments to CLECs or the state for substandard wholesale service quality).[47]

In August 2000, 11 states in Qwest's region formed a collaborative process known as the ROC Post-Entry Performance Plan (PEPP), after which a series of conference calls and five multi-day workshops were held to discuss and address issues related to Qwest's wholesale performance, including the QPAP.[48] Qwest filed its PAP on June 29, 2001, and a multi-state proceeding conducted by a third-party Facilitator from Liberty was initiated to review Qwest's PAP.[49] Qwest's PIDs were developed collaboratively by the ROC TAG for use in the third-party test to measure Qwest's ability to process commercial volumes through its OSS.[50] 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

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45 Qwest 9 State 271 Order, ¶ 147. See also, Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003, p. 12.

46 Washington Docket Nos. UT-003022/003040 30th Supplemental Order, April 2002 ("Washington 30th Supplemental Order"), ¶ 20. The QPAP requires Qwest to periodically submit reports to state commissions on Qwest's wholesale service quality. See, e.g., New Mexico Utility Case No. 3269, et al., Final Order Regarding Compliance with Outstanding Section 271 Requirements, 2002 N.M. PUC LEXIS 2; 220 P.U.R. 4th 421 (10/8/2002), ("New Mexico PRC 271 Order"), ¶ 66.

47 Washington 39th Supplemental Order, ¶ 29.

48 Comments of the Nebraska Public Service Commission, WC Docket No. 02-148, July 3, 2002, p. 4.

49 Washington 30th Supplemental Order, ¶¶ 10-11.

50 Washington 39th Supplemental Order.

analogues or benchmarks).[51] Statistical measurements (modified "z- tests") were used for determining whether Qwest satisfied the parity and benchmark performance measures.[52] The MTP directed Liberty Consulting to "develop and perform an audit to insure that all aspects of Qwest's wholesale performance measures and retail parity standards are sound and in compliance with the collaboratively developed ROC PID."[53] During the testing of the PIDs, Qwest reported on anywhere between 656 and 850 sub-measures.[54] The ROC subsequently retained Liberty to conduct a data reconciliation audit, during which 10,000 orders or trouble tickets were evaluated.[55]

KPMG's and HP's Final Report on Qwest's OSS testing was issued on May 28, 2002.[56] Likewise, CGE&Y's Final Report of the Qwest OSS Test was issued on May 3, 2002 (version 3.0). Liberty Consulting issued its PID audit Final Report for the ROC test on September 25, 2001,[57] and issued its Final Report on data reconciliation on April 19, 2002.[58]

The OSS Test Identified Hundreds of Issues and Resulted in Substantial Improvement to Qwest's OSS

Overall, KPMG and HP executed a total of 32 tests, consisting of 711 evaluation criteria during the ROC OSS test.[59] There were 256 "Exceptions" and 242 "Observations" (or issues of concern) identified by KPMG and HP during the test, which through improvements to systems

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51 Washington 39th Supplemental Order, ¶ 32.

52 New Mexico PRC 271 Order, ¶ 65.

53 Washington 39th Supplemental Order, ¶ 33.

54 Order Regarding Operational Support Systems, ROC OSS Test, and Commercial Performance Data, South Dakota Public Service Commission Docket TC01-165, November 22, 2002 ("South Dakota PSC 271 Order"), p. 4; Washington 39th Supplemental Order, ¶ 31; and Minnesota PUC Findings of Fact, Conclusions of Law and Recommendations, Docket No. CI-01-1371, January 24, 2003, p. 72.

55 South Dakota PSC 271 Order, p. 22.

56 Washington 39th Supplemental Order, ¶ 117; KPMG 4/26/02 Draft Final Report, Evaluation Overview, p. 14.

57 Washington 39th Supplemental Order, ¶ 33.

58 Washington 39th Supplemental Order, ¶ 37.

59 Brief of Qwest Corp., WC Docket No. 02-148, June 13, 2002, p. 111.

and retesting was reduced to 14 Exceptions and 1 Observation.[60] For the OSS testing conducted in Arizona, CGE&Y documented and addressed 399 issues identified during testing.[61] As a result of this testing hundreds of issues of concern regarding Qwest's OSS were identified and resolved through OSS improvements and re-testing.

One such example that was identified through HP's work as a pseudo-CLEC related to Qwest's failure to properly process manually handled orders – a problem the Idaho Public Utilities Commission described as "an unacceptably high level of human errors in the manual processing of orders."[62] For this problem, HP logged observations and exceptions to Qwest's performance related to manually handled orders; Qwest then investigated the causes of the exceptions/observations (which revealed Qwest errors) and made improvements such as system upgrades,[63] additional training and revised documentation after which re-testing occurred. Further, KPMG developed, under the direction of the ROC, modified Qwest's PIDs to ensure adequate performance for manually handled orders.[64] Similarly, Liberty Consulting discovered a number of deficiencies in Qwest's measurement and reporting processes and PIDs during its audit, which when resolved, resulted in "significant improvements to both the processes used by Qwest and the specificity and clarity of the PID."[65] Liberty's data reconciliation audit also revealed the need for Qwest to revise its data collection efforts and provide additional user documentation and training.[66] One state commission which participated in this testing process

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60 Qwest 9 State 271 Order, ¶ 12. See also, Washington 39th Supplemental Order, ¶ 115.

61 Qwest Arizona 271 Order, ¶ 17.

62 Written Consultation of the Idaho Public Utilities Commission, WC Docket No. 02-148, June 11, 2002, p. 6.

63 See, e.g., Qwest Washington Comments, p. 40 ("Qwest will implement an IMA 10.1 enhancement…substantially reducing manual processing errors in this area. In addition, Qwest has instituted an extensive quality assurance program…")

64 Qwest Manual Order Entry Performance Indicator Description Adequacy Study, issued by KPMG Consulting, June 11, 2002.

65 Washington 39th Supplemental Order, ¶ 34 (quoting Liberty's 9/25/01 Final Report).

66 Washington 39th Supplemental Order, ¶¶ 35-39.

stated that the OSS testing resulted in "meaningful and effective changes to Qwest's systems and processes."[67]

The Testing of Qwest's OSS was Extensive

According to Qwest, the ROC OSS test "was the most comprehensive and collaborative of all of the OSS tests conducted to date."[68] Referring to KPMG's OSS report, Qwest said: "This *Final Report* marked the culmination of more than three years of exhaustive and comprehensive effort, ***unlike any seen before***, to determine whether Qwest's OSS meet the standards set forth under Section 271 of the Telecommunications Act of 1996, as those standards have been amplified and applied by the FCC."[69] Qwest also described the OSS testing as: "years of rigorous factfinding and analysis…"[70] and the Liberty audits as "extensive audits of Qwest's performance measures."[71] Qwest's opinion was shared by the state commissions that participated and oversaw the testing. For instance the Arizona Corporation Commission said: "The ACC believes that during the last four years, Qwest systems, processes, and performance measurements have undergone one of the most comprehensive reviews to-date…result[ing] in an extremely rigorous test, resolution of many disputed issues through compromise, and meaningful and effective changes to Qwest's systems and processes."[72] The Colorado Public Utilities Commission referred to the testing process as "the epitome of collaborative, open decision

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67 Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003, p. 5.

68 Brief of Qwest Corp., WC Docket No. 02-148, June 13, 2002, p. 111.

69 Qwest Verified Comments, Washington Docket No. UT-003022, pp. 1-2 (emphasis added).

70 Reply Comments of Qwest Corp., WC Docket No. 02-148, p. 2.

71 Rebuttal Testimony of Renee Albersheim, Utah Docket No. 07-2263-03, July 27, 2007, p. 66, lines 16-19.

72 Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003, p. 5.

making."[73] Furthermore, the FCC said "the OSS testing conducted under the auspices of the ROC was broad-based and comprehensive."[74]

Today, despite the extensive industry efforts, Qwest's OSS is not perfect from a CLEC perspective. Nevertheless, it is far better than it was prior to the OSS investigation and testing. Clearly the industry and consumers have benefitted from the Section 271 review process and the resulting changes that came from that extensive process.

The OSS Test Experience Demonstrates that Commitments on OSS Capabilities Must be Evaluated and Monitored

Before the test of Qwest's OSS test began, Qwest claimed that its OSS met the Section 271 obligations imposed on BOCs. In November 1999, Qwest testified:

> US West has deployed the necessary system and personnel to provide sufficient access to its OSS, adequately assists CLECS to use all of the OSS functions available to them, and demonstrates that its OSS functions are operational ready, as a practical matter.[75]

Qwest made the same claims regarding the CMP (or Co-Provider Industry Change Management Process or CICMP) process that existed in 1999.[76] However, this was *before* the hundreds of issues of concern regarding Qwest's OSS were identified and addressed through third-party testing, and *before* Qwest's CICMP was completely revamped into the CMP by the CMP Redesign. This was also *before* tens of millions of dollars[77] and countless hours[78] were spent to

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73 Reply Comments of Qwest Corp., WC Docket No. 02-148, p. 2.

74 Qwest 9 State 271 Order, ¶ 12.

75 Colorado Docket 97I-198T, Notarianni Affidavit on behalf of US WEST, November 30, 1999, p. 4.

76 See, e.g., *In the Matter of the Investigation into Qwest Corporation's Compliance with §271(C) of the Telecommunications Act of 1996,* Washington Docket No. UT-003022, Direct Testimony of James H. Allen on behalf of Qwest Corp., May 16, 2001, p. 5 ("Yes. The CICMP has been working effectively since Qwest implemented it.")

77 See, e.g., US WEST's Status Report and Notice of Intent to File with FCC Pursuant to Section 27(C) of the Telecommunications Act of 1996, November 30, 1999, p. 27 ("US WEST has spent over $160 million developing these interfaces and adjusting its systems to meet the demands of CLECs.") This does not account

ensure that the OSS that Qwest uses in its BOC territories would provide CLECs with the same level of quality as Qwest's retail operations enjoy and a meaningful opportunity to compete. Obviously, the claims Qwest was making about its OSS and CMP back in 1999 – no matter how well-intentioned – did not square with the evidence that was subsequently collected and examined through third-party OSS testing.

This shows that CLEC concerns about the proposed acquisition of Qwest by CenturyLink are well-founded. CenturyLink and Qwest use different OSS, and, importantly, CenturyLink's OSS has not undergone the third-party OSS tests that brought about the "meaningful and effective changes to Qwest's systems and processes."[79] While CenturyLink is making similar statements about its OSS as Qwest made back in 1999,[80] the test of Qwest's OSS shows that these statements cannot be accepted at face value. Moreover, CenturyLink has indicated that CLECs should expect changes if the acquisition is approved without providing any information about those future changes.[81] This is particularly concerning to CLECs because it is well-known that OSS in CenturyTel's legacy service territory has traditionally been overly-manual, and CenturyLink is still in the process of integrating OSS as a result of the CenturyTel/Embarq merger.

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for the millions of dollars expended by CLECs to build interfaces with Qwest's OSS, observing and participating in testing process and related regulatory proceedings, etc.

[78] The Arizona Corporation Commission states: "The parties contributed extensive time, resources and expertise to the process over the last four years." Evaluation Report of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003, p. 5.

[79] Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003, p. 5.

[80] See, e.g., Direct Testimony of Michael Hunsucker on behalf of CenturyLink, Inc. Oregon Docket UM-1484, June 22, 2010 ("Hunsucker Direct"), pp. 2-3. ("The purpose of my direct testimony is to: 1) provide an overview of the CTL Wholesale Operations organization, 2) provide a high level overview of CTL's ability to service our wholesale customers via our Operations Support System (OSS), and 3**) provide assurances** relative to the current obligations of Qwest relative to the CLEC market. . . . In addition, the combined company will continue to employ highly skilled and experienced personnel in its wholesale operations group.") (emphasis added)

[81] See, e.g., Hunsucker Direct, p. 8 ("…so changes could be expected over time.")

The FCC has found that CLECs would be "severely disadvantaged, if not precluded altogether, from fairly competing," if they did not have nondiscriminatory access to OSS,[82] and Qwest has described its existing OSS as playing "a crucial role in the transactions between Qwest and all CLECs"[83] and "the lifeblood of…Qwest's wholesale operation…"[84] The proposed merger should not be approved when the "lifeblood" of the CLECs' relationship with Qwest is "up in the air."

[82] FCC *Local Competition First Report and Order*, ¶518.

[83] Qwest Post Hearing Brief, Utah Docket 07-2263-03, p. 75.

[84] Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, p. 39.

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink	Docket No. P-421, et al./PA-10-456

EXHIBIT TJG-3

TO THE

DIRECT TESTIMONY OF TIMOTHY GATES

ON BEHALF OF

CBEYOND COMMUNICATIONS, LLC, CHARTER FIBERLINK CCO, LLC, INTEGRA TELECOM, INC., LEVEL 3 COMMUNICATIONS, LLC, MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., d/b/a PAETEC BUSINESS SERVICES, TDS METROCOM, LLC, TW TELECOM OF MINNESOTA, LLC, ORBITCOM, INC. AND POPP.COM

August 19, 2010

ASSURANCES NOT MET

USWC/Qwest 1999/2000 Assurances:

"In summary, US West has deployed the necessary system and personnel to provide sufficient access to its OSS, adequately assists CLECS to use all of the OSS functions available to them, and demonstrates that its OSS functions are operational ready, as a practical matter." *USWC, CO 271 97I-198T, 11/30/99, Notarianni Affidavit, p. 4.*

- Type of interfaces: "US WEST meets [the FCC's OSS] standards. US WEST will submit the testimony . . . which will demonstrate that, to provide CLECs nondiscriminatory access to OSS, US WEST has built a computer-to-computer EDI [Electronic Data Interchange] interface and a GUI [Graphical User Interface] interface called IMA." *USWC Prelim. Statement, WUTC UT-970300, 3/22/00, p. 30.*

CenturyLink/Qwest 2010 Assurances:

"The purpose of my direct testimony is to: 1) provide an overview of the CTL Wholesale Operations organization, 2) provide a high level overview of CTL's ability to service our wholesale customers via our Operations Support System (OSS), and 3**) provide assurances** relative to the current obligations of Qwest relative to the CLEC market. . . . In addition, the combined company will continue to employ highly skilled and experienced personnel in its wholesale operations group." *CL OR Supp. Direct (Hunsucker), pp. 2-3.*

- Types of Interfaces: "EASE provides Wholesale customers with both a web-based GUI (graphical user interface) as well as electronic data interface options to allow flexibility to our customers in placing orders with CTL." *Id*. p. 7.

After USWC/Qwest made similar assurances in 1999 and 2000, what happened?

NUMEROUS FAILINGS OF QWEST'S OSS SYSTEMS AND PROCESSES WERE IDENTIFIED AND RESOLVED THROUGH OSS IMPROVEMENTS OVER A 3-YEAR PERIOD

- KPMG performed third party testing of OSS, revealing hundreds of issues of concern (known as exceptions and observations). 256 Exceptions and 242 Observations identified during third-party testing, reduced to 14 Exceptions and 1 Observation through OSS improvements and re-testing.

- Hewlett Packard, acting as a pseudo CLEC, identified problems, such as the one described by the Idaho Public Utilities Commission as "an unacceptably high level of human errors in the manual processing of orders" that resulted in 75 Observations and Exceptions.

- Liberty Consulting, which audited both PIDs and data reconciliation (Qwest versus CLEC reporting), discovered a number of deficiencies in Qwest's measurement and reporting processes and PIDs that, when addressed, resulted in what Liberty referred to as "significant improvements to both the processes used by Qwest and the specificity and clarity of the PID." Liberty also identified problems during the data reconciliation audit, such as the need for additional user documentation and training, revised data collection efforts and computer programming fixes.

What did the third-party testing of Qwest's OSS indicate?

CLECs would have been "severely disadvantaged, if not precluded altogether, from fairly competing" absent the third-party testing of Qwest's OSS. *See, Local Competition Order, ¶ 518*. In other words, there would have been no meaningful opportunity to compete.

Did USWC/Qwest systems eventually pass OSS testing for 271 purposes?

Yes, after addressing the numerous problems identified during third-party OSS testing

> "This *Final Report* marked the culmination of more than three years of exhaustive and comprehensive effort, ***unlike any seen before***, to determine whether Qwest's OSS meet the standards set forth under Section 271 of the Telecommunications Act of 1996, as those standards have been amplified and applied by the FCC." *Qwest Verified Comments, WUTC UT-003022, pp. 1-2* (emphasis added).

Have CenturyLink's systems passed similar testing?

No.

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink	Docket No. P-421, et al./PA-10-456

EXHIBIT TJG-4

TO THE

DIRECT TESTIMONY OF TIMOTHY GATES

ON BEHALF OF

CBEYOND COMMUNICATIONS, LLC, CHARTER FIBERLINK CCO, LLC, INTEGRA TELECOM, INC., LEVEL 3 COMMUNICATIONS, LLC, MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., d/b/a PAETEC BUSINESS SERVICES, TDS METROCOM, LLC, TW TELECOM OF MINNESOTA, LLC, ORBITCOM, INC. AND POPP.COM

August 19, 2010

Exhibit TJG-4

6160 Golden Hills Drive - Golden Valley - Minnesota - 55416
PHONE: 763.745.8000
FAX: 763.553.2724

Linda Gardner
Senior Regulatory Attorney
CenturyLink
Overland Park, KS 66211

Todd Lundy
Associate General Counsel
Qwest Corporation
Denver, CO 80202

Re: Discovery in proceedings of Qwest Corporation et al. and CenturyLink et al. for state commission approvals of transfer of control

Dear Ms. Gardner and Mr. Lundy:

Integra and Paetec are disappointed at CenturyLink/Qwest's refusal to explore greater efficiencies in the discovery process in their multi-state merger application proceedings. While CenturyLink/Qwest's July 1, 2010, letter in response to CLECs' discovery proposal expressed a shared goal of efficiency, and the companies' merger application and state-by-state advocacy have strongly emphasized a tight procedural timeline, you in fact refused to even discuss our proposal. Further, the reasons that CenturyLink/Qwest offered for precluding any multi-state discovery are without merit.

CenturyLink/Qwest's response seems to confuse parties' mutual gathering of information through discovery with the use of such information in participants' filings and decision makers' considerations. Thus, CenturyLink/Qwest insist that discovery must be issued state by state because "stark differences" exist among various states' "legal review and intervention standards," "policy issues," and "public interest concerns." The applicants state further that the discovery proposal would unduly complicate matters because they would be required to "...consider the question from the standpoint of the state in which it was asked and all others, thereby exponentially multiplying the amount of work and time necessary to respond, even if the data request has little do with the public interests of any of the other states." Integra and Paetec disagree that the facts contained in any participant's responses to discovery should be dictated by the "standpoint," "policy issues," or "public interest concerns," of any particular state. For example, the answer to a request regarding the capability of a CenturyLink system that is used in multiple states would not vary based on policy issues. It creates extra work for all parties to request, respond, and track the same question and response in multiple states, when the parties

Exhibit TJG-4

could simply agree to a more efficient multi-state discovery approach. Integra's, Paetec's, and, we presume, other intervenors', discovery requests to CenturyLink/Qwest will seek facts underlying the assertions made in the application, which is virtually identical in all states. That set of facts should properly be available for use by all public and private intervenors, as well as by all state decision makers, who can apply them as their legal, policy, and public interest factors determine.

CenturyLink/Qwest's argument that they will be unduly burdened by a multi-state discovery approach ignores a number of key principles in CLECs' proposal. First, CLECs have proposed the discovery process for all participants, not just the applicants. The same burdens and benefits flow to all participants. Second, Integra made clear in its June 21, 2010, letter that its proposal was meant to initiate discussion of multi-state discovery among the parties, with the goal of arriving at a mutually acceptable and beneficial system. If there is an objection because states other than Qwest states are part of the merger proceedings, for example, we would be willing to discuss a multi-state discovery approach by territory or other solution. CenturyLink/Qwest have not only failed to offer their own suggestions to assist the process, but have categorically refused to participate in the development of discovery efficiencies. Third, in its initial proposal, Integra specifically answered many of the allegations of undue burden raised by CenturyLink/Qwest in their response. Thus, Integra anticipated CenturyLink/Qwest's issue of needless "drafting and researching" burden, among others, when Integra proposed that, "[i]f a respondent believes that a response varies by state, the respondent should provide state-specific information in its response. If a respondent believes that a certain response for some reason should not be available for use outside the original state proceeding, the responding party can explain that in its response." CenturyLink/Qwest's allegations of unfair and burdensome treatment by other parties ignore the realities of the workload created for public and private intervenors and decision makers by the simultaneous multi-state application; the clear benefits of Integra's and Paetec's discovery proposal; and the ability of ALJs and commissions to resolve any residual discovery issues.

For the above reasons, Integra and Paetec ask CenturyLink/Qwest to reconsider their refusal to participate in a mutual multi-state approach to discovery. Should the applicants wish to discuss Integra's and Paetec's proposal, or to offer their own version of an efficient means of trading discovery, we will be happy to hear from you.

Sincerely,

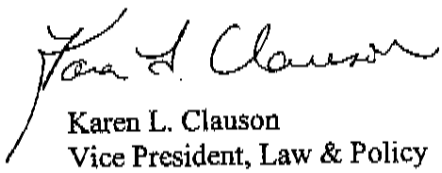

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Exhibit TJG-4

July 1, 2010

Via email
klclauson@integratelecom.com

Ms. Karen L. Clauson
Vice President, Law & Policy
Integra Telecom
6160 Golden Hills Drive
Golden Valley, MN 55416-1020

Dear Ms. Clauson:

Thank you for your June 21, 2010, email proposing a nationwide discovery system for the Qwest/CenturyLink merger applications. While we share your goal to improve efficiencies for all parties in the discovery process, we believe your proposal is impractical given the varying substantive and procedural standards governing the numerous approval dockets throughout the region and the nation. It would also create unreasonable and unfair burdens on Qwest and CenturyLink, make the process far more inefficient for us, and may cause confusion or misapplication for the states and other intervenors. Thus, Qwest and CenturyLink respectfully decline your proposal.

Qwest and CenturyLink currently have approval proceedings pending in twenty states, seven in which both Qwest and CenturyLink are incumbents, two in which Qwest only is an incumbent, six of which CenturyLink only is an incumbent, and five of which neither Qwest nor CenturyLink are incumbent carriers. The varying carrier status for Qwest and Century Link is the first indication that stark differences exist among the various state proceedings. The states also have different legal review and intervention standards, discovery norms, and regulatory jurisdiction over the operating entities, relating to such matters as service quality, network, retail and wholesale standards, and more. This assortment of statutory mandates and the variety of policy issues necessarily results in each state addressing different and often unique state public interests concerns. In addition, when considered across all the states, the intervening parties and the positions they assert in the pending cases will also differ. Consequently, this is not a situation in which two, or even a few, common parties are engaged in multi-state litigation addressing a common issue under the same legal standard, as was the case in the Qwest-McLeod litigation relating to power rates for collocation. Accordingly, the merger approval dockets do not share the commonality of issues and parties that is a threshold criterion to any effort at consolidated discovery.

Exhibit TJG-4

Your proposal also complicates the drafting and researching of responses unnecessarily, because under it we must consider the question from the standpoint of the state in which it was asked and all others, thereby exponentially multiplying the amount of work and time necessary to respond, even if the data request has little to do with the public interests of any of the other states. The result is an impractical and burdensome process for the Applicants, as well as the potential that the approval proceedings may be unnecessarily delayed.

In addition, a nationwide discovery process creates difficult conflicts among state confidentiality orders and procedures, as well as the logistical issue of ensuring that a single discovery response is compliant with several different confidentiality rules and protective orders. The process for serving responses under your proposal is rendered even more impractical by the fact that several parties have asked Qwest and CenturyLink to serve upon them every other discovery response for that state.

Lastly, there is the potential for misuse, though inadvertent. That is, a party may ask a question that would be pertinent to only one or a couple of states, but may require different answers across all states, thus forcing the Applicants to expend enormous and wasted resources to answer for all. Not to mention the fact that it would be unfair to witnesses in different states to have to be responsible for discovery responses that were answered for one state, but under your proposal would be applicable to several others.

These are the problems and issues apparent to us upon our first review of your proposal, and more may arise if we were to actually implement the process you suggest. In sum, given the lack of commonality between all the states, the unnecessary burdens placed on the Applicants, and the fact that the intervenors have the ability to request and obtain discovery in the individual states of their choosing without adoption of your proposal, we must decline your proposal.

Regards,

CenturyLink

Linda Gardner
by TL

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STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink	Docket No. P-421, et al./PA-10-456

EXHIBIT TJG-5

TO THE

DIRECT TESTIMONY OF TIMOTHY GATES

ON BEHALF OF

CBEYOND COMMUNICATIONS, LLC, CHARTER FIBERLINK CCO, LLC, INTEGRA TELECOM, INC., LEVEL 3 COMMUNICATIONS, LLC, MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., d/b/a PAETEC BUSINESS SERVICES, TDS METROCOM, LLC, TW TELECOM OF MINNESOTA, LLC, ORBITCOM, INC. AND POPP.COM

August 19, 2010

REDACTED - FOR PUBLIC INSPECTION

Exhibit TJG-5

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

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

July 12, 2010

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

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink	Docket No. P-421, et al./PA-10-456

EXHIBIT TJG-6

TO THE

DIRECT TESTIMONY OF TIMOTHY GATES

ON BEHALF OF

CBEYOND COMMUNICATIONS, LLC, CHARTER FIBERLINK CCO, LLC, INTEGRA TELECOM, INC., LEVEL 3 COMMUNICATIONS, LLC, MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., d/b/a PAETEC BUSINESS SERVICES, TDS METROCOM, LLC, TW TELECOM OF MINNESOTA, LLC, ORBITCOM, INC. AND POPP.COM

August 19, 2010

Exhibit TJG-6

WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1000
Fax: 202 303 2000

May 19, 2010

VIA ECFS ***EX PARTE***

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

Re: ***Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, WC Dkt. No. 09-95**

Dear Ms. Dortch:

Integra Telecom, Inc. ("Integra"), tw telecom inc., Cbeyond, Inc., and One Communications Corp. (collectively, the "Joint Commenters"), through their undersigned counsel, submit this letter in the above-referenced proceeding. On May 18, 2010, Thomas Jones, representing the Joint Commenters, spoke with Angie Kronenberg of Commissioner Clyburn's Office and also with Nick Alexander of the Wireline Competition Bureau and Zac Katz of the Office of Strategic Planning and Policy Analysis regarding the proposed transaction between Frontier and Verizon (the "Applicants"). The substance of these conversations is discussed herein.

I. Integra Continues To Experience Significant Problems With Verizon's Wholesale Service Performance Using The "Replicated Systems" That Will Be Transferred To Frontier Post-Transaction.

Verizon's recent wholesale service performance using the Replicated Systems has improved in certain respects. Nevertheless, Integra continues to experience a number of significant problems with Verizon's wholesale systems and processes in the Oregon and Washington markets. Integra describes these problems and responds to the statements made by Verizon in the Applicants' May 14th Letter[1] below.

First, Verizon suggests that while there were "minor delays" with respect to order confirmation timeliness "during a short period of time immediately after realignment," this problem has been

[1] *See generally* Letter from John T. Nakahata, Counsel for Frontier Communications Corporation, and Karen Zacharia, Counsel for Verizon, to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 09-95 (filed May 14, 2010) ("Applicants' May 14th Letter").

resolved.[2] However, the timeliness of Verizon's order confirmations continues to be substandard. Specifically, between May 10, 2010 and May 14, 2010, Verizon timely responded to only 7 out of 11, or approximately 64%, of the Access Service Requests ("ASRs") submitted by Integra.[3] In addition, Verizon timely responded to only 1 out of 3, or approximately 33%, of the ASRs with installation activity submitted by Integra during that time period. These percentages are well below the 95% benchmark for FOC/LSC Notice Timeliness (Order Confirmation Timeliness) under Joint Partial Settlement Agreement ("JPSA") metric OR-1.[4] Based on Integra's review of a sample of Local Service Requests ("LSRs") submitted during the same period, Verizon timely responded to 88 out of 99, or approximately 89%, of the Integra LSRs in the sample. This percentage is still below the 95% benchmark for order confirmation timeliness under the JPSA. Moreover, the fact that "[Verizon's] 13-states centers have averaged nearly 95% on-time performance for FOCs for special access"[5] is irrelevant. The vast majority of Integra's wholesale orders from Verizon are for unbundled network elements, not special access.

Second, although Verizon states that it "provided timely completion notices to Integra for Local Service Requests more than 95% of the time in April 2010,"[6] Verizon's more recent performance has been substandard. Specifically, between May 10, 2010 and May 14, 2010, in Integra's Oregon market, Integra received 55 out of 66, or approximately 83%, of completion notices from Verizon within 24 hours. This is less than even the 90% within-24-hours benchmark for manual processes under the JPSA (*i.e.*, JPSA metric OR-4-18 for Completion Notice Interval).

Third, Verizon's actual performance in the area of timely order completion is obscured in part by the fact that Verizon has been increasingly sending Service Activation Reports ("SARs") without actually completing the work requested on an order. This was true for orders NM-2556620-DS1, SM-2560987-BDSL, SM-2497851-BDSL, CL-2568000-BDSL, DS-2502748-WASA, and JT-2566473-CHG. This practice negatively impacts Integra's ability to serve its end-user customers. For example, if Verizon sends Integra a completion notice but has not performed the requested installation, Integra is forced to conduct multiple technician dispatches for a single end-user customer, and delivery of service to that customer is delayed. In addition, if Integra receives an SAR from Verizon, Verizon begins

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[2] *See id.* at 2.

[3] Verizon's poor performance on such a small set of ASRs does not bode well for a much higher volume of requests that would result if Integra or another competitor were to launch an aggressive marketing effort in the future.

[4] Although 2 of the 11 ASRs submitted by Integra were for special access and the 95% JPSA benchmark does not apply to ASRs for special access, Verizon's percentages for timely ASR responses during the May 10, 2010 to May 14, 2010 period are nevertheless inadequate.

[5] *Id.*

[6] *Id.* at 3.

billing Integra, and Integra may mistakenly begin billing its end-user customer before service is actually delivered to the customer.

Integra has also found that Verizon has increasingly performed the requested work on orders without sending Integra completion notices. This was the case for orders NM-2524155-FDIS, NM-2573201-DIS, HS-2528012-DIS, and HS-2552278-DS1. This practice also negatively affects Integra's ability to serve its end-user customers. For instance, if Verizon fails to update the completion of the requested work in its systems, Verizon could inadvertently disconnect the service of a customer migrating from Verizon to Integra because it has no supporting records for the service in its systems. In addition, without a completion notice from Verizon, Integra's delivery of service to its end-user customer is delayed.

Fourth, Verizon states that it "has reduced the time it takes to resolve PSCC trouble tickets for Integra by an average of 7 days following the realignment."[7] However, tickets for certain types of systems issues are staying open for longer periods of time since the transition to the Replicated Systems. For example, some of the PSCC tickets for Verizon's failure to update its Connecting Facility Assignment and Cross Connect Equipment Assignment databases to reflect the disconnects requested by Integra and completed by Verizon have been open for more than 3 weeks. These include PSCC ticket numbers S0928372, S0928373, S0928374, S0928461, S0928505, S0928507, S0928543, and S0928546.

Fifth, Verizon states that "between April 23 and present, Verizon completed all of Integra's hot cuts on time."[8] However, the rate at which Verizon completes hot cuts on time does not, by itself, provide a sufficiently comprehensive assessment of Verizon's performance in this area. For example, since the transition to the Replicated Systems, when Integra has submitted supplemental LSRs for coordinated conversions (*i.e.*, hot cuts), Verizon has been increasingly disconnecting the end-user customers' Verizon retail service before conversions to Integra are completed. Such premature disconnection causes unnecessary service outages for customers seeking to migrate from Verizon to Integra. This was true of orders JT-2565579-CHG and AB-2459369-LLNP. In an effort to fix this problem, Integra has been forced to add to its internal process for coordinated conversions the manual step of calling Verizon to ensure that Verizon does not disconnect an order before the conversion to Integra is completed.

Similarly, since the transition to the Replicated Systems, Integra has increasingly experienced problems with Verizon's processing of supplements to LSRs. For example, when Integra supplements LSRs to postpone the requested due date, Verizon's technicians continue to process the orders using the original requested due dates, resulting in service outages for customers migrating from Verizon to Integra. This was true of orders SS-2468866-PRT and SS-2468866-LLNP. Again, in an effort to fix

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[7] *Id.*

[8] *Id.*

this problem, Integra has been forced to add to its internal processes the manual step of calling Verizon to ensure that Verizon processes the supplement properly.[9]

Sixth, while hold times for calls to Verizon's call centers have improved, Integra has found that some of the Verizon representatives answering these calls are inexperienced or have been inadequately trained. Integra employees have sometimes found themselves educating Verizon's representatives on Verizon's internal processes and the requirements of the CLEC-facing Verizon systems. In some cases, Verizon representatives operating the Replicated Systems have also indicated to Integra that they do not know the appropriate workarounds to resolve specific types of problems. For instance, when Integra has submitted ASRs for DS1 EELs that use DS3 transport rather than DS1 transport, Verizon's systems have been increasingly rejecting these orders on the basis that Integra has exceeded the regulatory cap on DS1 transport. This was true for orders CA-2484208-VGT, CA-2484208-VGT2, and SE-2542970-EEL. When Integra has contacted Verizon to resolve this type of error, the Verizon representatives have not always understood the nature of the problem, and Integra has had to educate them on the fact that the DS1 transport cap does not apply to individual channels on DS3 transport. Even where the Verizon representatives have understood the problem, they have had to consult with their manager to learn the relevant workaround, thereby causing further delays in the delivery of service to Integra end-user customers.

Finally, in response to Integra's concern that the Applicants are effectively asking Integra to agree to an amendment of its Wholesale Advantage Services Agreement with Verizon (*i.e.*, by requesting that Integra sign the "Adoption Agreement" attached to the Applicants' January 21, 2010 letter to Integra),[10] Frontier states that "Frontier will comply with all terms and requirements in the Washington and Oregon settlements."[11] Accordingly, as indicated by Integra in its letter to Frontier dated May 18, 2010,[12] Integra assumes that it is no longer being asked to sign the aforementioned "Adoption Agreement."

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[9] Another area in which Integra has been forced to add manual validation to its internal processes is vendor "meets" (otherwise known as coordinated dispatches). Because Verizon had been increasingly missing vendor meets, Integra added the manual step of calling Verizon after it electronically submits a vendor meet ticket to Verizon to ensure that Verizon properly distinguishes the vendor meet ticket from other trouble tickets that are handled by Verizon dispatchers on an ad-hoc basis.

[10] *See* Attachments A & B to Letter from Thomas Jones, Counsel for Integra Telecom, Inc., tw telecom inc., Cbeyond, Inc., and One Communications Corp., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 09-95 (filed May 13, 2010) ("Joint Commenters' May 13th Letter").

[11] *See* Letter from Kevin Saville, Associate General Counsel, Frontier Communications Corp., to Dennis D. Ahlers, Associate General Counsel, Integra Telecom, Inc. et al., at 1 (dated May 14, 2010), *attached as* Attachment 1 to Applicants' May 14th Letter.

[12] *See* Letter from Dennis D. Ahlers, Associate General Counsel, Integra Telecom, Inc., to Kevin Saville, Associate General Counsel, Frontier Communications Corp., at 2 (dated May 18, 2010) (attached hereto as "Attachment A").

II. The Commission Should Require Frontier To Meet The Performance Benchmarks Proposed By The Joint Commenters.

In light of the problems that Integra has experienced with Verizon's wholesale service performance using the Replicated Systems, as well as similar problems described in the record by PAETEC,[13] there is a substantial risk that these problems will continue after the Commission approves the merger. Accordingly, as the Joint Commenters have explained throughout this proceeding, the Commission should adopt robust conditions to ensure close FCC oversight of the relevant wholesale operations. Among other things, the FCC should require that an independent third-party OSS expert review and assess the sufficiency of the relevant OSS. To the extent that the Commission requires Frontier to report on defined performance measures, it should require Frontier to meet or exceed Verizon's average monthly performance for 2008 for: (1) each of the metrics listed in Frontier's Voluntary Commitment # 12; and (2) the ten JPSA metrics listed in the Joint Commenters' May 13th Letter.[14] At the very least, as a condition of its merger approval, the Commission should require Frontier to meet or exceed Verizon's average monthly performance for these metrics for the twelve months preceding the transition to the Replicated Systems.

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones
Nirali Patel

Counsel for Integra Telecom, Inc., tw telecom inc., Cbeyond, Inc., and One Communications Corp.

Attachment

cc (via e-mail): Nicholas Alexander
Alexis Johns
Carol Simpson
Zachary Katz
Angela Giancarlo
Angela Kronenberg
Jennifer Schneider
Christi Shewman

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[13] 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).

[14] *See* Joint Commenters' May 13th Letter at 4-6.

ATTACHMENT A

integra TELECOM

Integra Telecom
6160 Golden Hills Drive
Golden Valley, MN 55416
www.integratelecom.com

May 18, 2010

Kevin Saville
Associate General Counsel
Frontier Communications
2378 Wilshire Blvd.
Mound, MN 55364

Via UPS Overnight Delivery

Re: Verizon Communications Inc. and Frontier Communications Corporation Joint Application, or, in the alternative, to Approve the Indirect Transfer of Control of Verizon Northwest, Inc.
OR Docket No.: UM 1431

Verizon Communications Inc., and Frontier Communications Corporation for an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest, Inc.
WA Docket No.: UT-090842

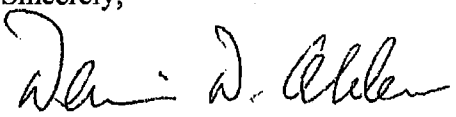
Dear Kevin:

I am writing in response to your letter of May 14, 2010, responding to my letter of May 10, 2010, in which I raised Integra's concern that the "Adoption Agreement" proposed by Frontier and Verizon did not comply with the orders of the Washington and Oregon utility commissions and the settlements upon which those orders were based. In your letter you imply that Integra should have raised its concerns earlier. To the contrary, Integra believes that it was premature and presumptuous of Frontier and Verizon to expect Integra and other CLECs to review and agree to "Adoption Agreements" prior to review and approval of the transaction by the state commissions and the Federal Communication Commission. The Washington Commission approved the transaction, with conditions, on April 16, 2010 and as of the date of your letter, FCC approval of the transaction was still pending.

As you know, subsequent to the distribution of the "Adoption Agreement," Verizon and Frontier entered into settlements with several CLECs in Oregon and Washington that addressed the assumption of Verizon agreements by Frontier. Later, both Commissions adopted those settlements and made them part of their orders. At that point, Integra expected Frontier to rescind its request that Integra sign the "Adoption Agreement" and instead indicate that Frontier would comply with the Oregon and Washington orders and settlements. When no further correspondence was forthcoming, Integra felt that it had to make it clear that it did not consider the "Adoption Agreement" to be consistent with the settlements or the orders, and thus would not be signing it.

In your letter, you confirm that "Frontier has agreed and will honor its commitment in the Washington and Oregon settlement agreements, including to assume and take assignment of all obligations of Verizon Northwest's current interconnection agreements and other existing wholesale arrangements with Integra (and its affiliates)." Integra is encouraged by that response and assumes that that will be self-effectuating and that it is no longer being asked to sign the previously provided "Adoption Agreement." Please confirm that that assumption is correct.

Sincerely,



Dennis D. Ahlers
Associate General Counsel
Integra Telecom
763-745-8460 (Direct)
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ddahlers@integratelecom.com

cc: Jeff Oxley
Thomas Jones & Nirali Patel—Willkie, Farr & Gallagher

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink	Docket No. P-421, et al./PA-10-456

EXHIBIT TJG-7

TO THE

DIRECT TESTIMONY OF TIMOTHY GATES

ON BEHALF OF

CBEYOND COMMUNICATIONS, LLC, CHARTER FIBERLINK CCO, LLC, INTEGRA TELECOM, INC., LEVEL 3 COMMUNICATIONS, LLC, MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., d/b/a PAETEC BUSINESS SERVICES, TDS METROCOM, LLC, TW TELECOM OF MINNESOTA, LLC, ORBITCOM, INC. AND POPP.COM

August 19, 2010

Thursday July 1, 2010 Phone transition not going smoothly for a few customers

by **George Hohmann**
Daily Mail Business Editor
Advertiser

CHARLESTON, W.Va. -- The transition from Verizon's landline network to Frontier Communications Corp. went smoothly for all but a few West Virginia customers.

Some customers reported that their caller ID didn't work and there was a report that attempts to use a landline to call a cell phone number resulted in either a "fast-busy" signal or a false automated message that said the cell phone number was no longer in service.

Both of those problems may have been related to a couple of situations where Verizon customers who had been served by out-of-state facilities were being switched to in-state facilities.

Frontier Communications Manager Karen Miller said the cutover from Verizon to Frontier was going very well. She said Frontier hadn't received any reports of problems with caller ID but was looking into it.

"However, we did find that Verizon had a problem" on Wednesday with some calls being made from landlines to cell phones, she said.

Frontier brought 250 employees from out of state to West Virginia to help resolve any issues that crop up.

David Armentrout, president and chief operating officer of FiberNet, said his company had 15 circuits in Ridgeley and Wiley Ford that had been served out of Cumberland, Md., that had to be "re-homed" to a central office in Keyser.

"Some have been out of service for several days and they're still out of service," he said Thursday morning. But Thursday afternoon Armentrout said those problems had been fixed.

Regarding "re-homed" customers, Frontier spokeswoman Christy Reap said, "Over the past couple of weeks there have been customers, one or two at a time, who needed a new cable drop or there was a records mismatch -- things like that. But nothing related to Frontier."

Armentrout said Thursday morning that his company had technicians standing around, unable to get into co-location sites to make service installations, repairs or upgrades because security passes didn't work. Thursday afternoon he said, "The access issue has been addressed and is being resolved today."

Early Thursday, FiberNet was unable to process trouble tickets. But that problem was also resolved by Thursday afternoon.

Frontier has been very responsive to our concerns and issues," Armentrout said. "Certainly we have seen a better response from them than (we had) historically with Verizon.

"They (Frontier) are working on it and cooperating very well."

Frontier has about 2,100 employees in West Virginia, including workers who were employed by Verizon until Thursday.

Frontier, which already served more than 144,000 customers in 38 West Virginia counties, acquired about 617,000 landlines in 47 counties from Verizon.

It was the largest telecommunications deal in West Virginia's history. It involved landlines in a total of 14 states and was valued at $8.6 billion.

Frontier issued a press release that said the transaction "positions Frontier as the largest pure rural telecommunications carrier in the United States."

As a result of the all-stock deal, Verizon stockholders now collectively own about 68 percent of Frontier's common stock.

Frontier's stock trades on the New York Stock Exchange under the ticker symbol "FTR." The company is headquartered in Stamford, Conn.

Frontier's new Southeast Region headquarters is at 1500 MacCorkle Ave. in Charleston, in the building that formerly housed Verizon's West Virginia headquarters.
Contact writer George Hohmann at ***busin...@dailymail.com*** *or 304-348-4836.*

Exhibit TJG-7

July 21, 2010 FRONTIER PROBLEMS
Local Business Having Major Problems Since Frontier Switch

Reported by: Darrah Wilcox
Videographer: Chad Hypes
Web Producer: Darrah Wilcox
Reported: Jul. 21, 2010 12:35 PM EDT
Updated: Jul. 21, 2010 12:45 PM EDT

Just three weeks into their takeover of Verizon customers, Frontier is feeling some heat from local customers.

EYEWITNESS ONLINE WEBCAST VIDEO
CLICK TO PLAY

Fruth Pharmacy is one of those unsatisfied customers.

They say just after the switch this month, they had an outage that lasted more than 39 hours in their 25 stores.
They were unable to consult insurance companies through their online system, and many other compliance checks they have to go through to fill a prescription.

There have also been outages on at least four other days this month.

Fruth employees say they've been given the run-around with frontier blaming verizon and vice versa. Employees say they are getting extremely frustrated.

Pharmacist in charge at the Summers Street location Sam Arco says, "Without that kind of connection, we're just incapacitated. We just cannot do anything basically. It's really, really an inconvenience to us and also to our customers, and that's who our main concern is."

Chairman of the board Lynne Fruth says she told Frontier, "This is completely unacceptable. We are a health care provider. People are counting on us for their medication, for things that they cannot do without."

Fruth says she has filed a formal complaint with the Public Service Commission.
Several other business owners and residential customers who have had major service problems in the past couple weeks have emailed Eyewitness News.

We are waiting on a formal statement from Frontier Communications, but a spokesperson told us over the phone that any customers experiencing problems should call their customer service hotline for help.

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Exhibit TJG-7

Frontier claims overtime is needed: Problems force telecom company to work employees up to 70 hours a week

Posted on: Wed, 28 Jul 2010 13:05:49 EDT
Symbols: FTRw

Jul 28, 2010 (Charleston Daily Mail - McClatchy-Tribune Information Services via COMTEX) –

CHARLESTON, W.Va. -Frontier Communications Corp. said it is requiring unionized employees in West Virginia to work overtime so the company can take care of urgent problems.

The company acquired Verizon's landline networks in West Virginia and 13 other states on July 1. FiberNet, a Charleston-based competitor, immediately complained that some trouble tickets were not being resolved in a timely manner.

Last week FiberNet claimed Frontier's operational support system is so bad the state Public Service Commission should re-open the case that allowed Frontier to buy Verizon's network. Frontier has not yet replied to FiberNet's petition and the commission has not yet acted.

On July 9, Frontier notified the Communications Workers of America of an "emergency and longterm service difficulty" - labor contract language that allows Frontier to require unionized employees to work up to 70 hours of overtime a week.

Frontier has about 2,100 employees in West Virginia, including many who are union members that previously worked for Verizon.

An anonymous e-mailer wrote the Daily Mail to say that some employees are overstressed, including some older workers "who are having a very difficult time coping with 70-hour weeks, especially those who work outside in this unbearable heat. "Front i er empl oyees are willing to help the company succeed, but this is not the way to proceed," the e-mailer wrote. "It is alienating employees and showing a total lack of respect for their mental and physi cal wel l-bei ng. Their family lives are suffering and the company doesn't seem to care at all."

Front i er spokesman St eve Crosby said that if an employee has a speci fi c need and can't work the required overtime, "they need to work with their manager to work through the accommodation."

Crosby said he doesn't know how many empl oyees have been required to work overtime since July 9 or how much overti me West Vi rgi ni a employees have worked. He said the union might have that information.

Union spokeswoman Elaine Harris said, "They're telling people they have to work up to 30 hours of overtime, for a total of 70 hours. That's a requi rement . I don' t have a breakdown but a lot of people are being asked and required to work that. They (Frontier) should be able to answer that."

Harris said the fact the company had declared an emergency and invoked mandatory overtime was the reason she objected a few weeks ago when Frontier required employees to at t end a seri es of speeches around the state by Chief Execut i ve Of f i cer Maggi e Wilderotter.

"The company sai d t hey were declaring an emergency and we were saying, 'Wait a minute – an emergency is for things like floods,'" Harris said.

"We've had quality of service issues in the past with Verizon. "We do have a difference in opi ni on of what ' s an emergency, what's a service quality issue in the collective bargaining agreement," Harris said.

"We' l l handl e t hose i ssues through the grievance and arbitration process if necessary. We believe the company has not properly applied the 'emergency' t erms. ' Emergency' should be storms, acts of God - not normal service issues.

Exhibit TJG-7

"I don't want to come across as uncari ng about t he customers because we do care," Harris said. "But there has to be a balance here. People are tired. There is the heat.

Under t he cont ract , "Employees can tell the company they have a reasonable excuse" and be excused from overtime, she sai d. "Some empl oyees may coach t hei r ki ds' bal l teams or have something to do wi t h f ami l y. Ini t i al l y t hey (Frontier) put it out that they weren't accepting family issues or childcare. I went back to them and they said they would look at those things. I've been on the phone telling them we expect them to honor reasonable excuses."

Crosby said that in addition to unionized employees working overtime, "we have management and other people who are non-union who are working equal or more hours and t hey' re not pai d overt i me. They're just working hard and di l i gentl y to make sure the work that needs done in West Virginia and other states is being done appropriately and as fast as it can be done.

"This is not 'us vs. them,'" Crosby said. This is a 'we.' We are the team, all working very long hours to make sure we're doing the right thing for customers in West Virginia and other states.

"The (uni oni zed) men and women in West Virginia are getting paid for overtime. It's not like we're not paying them for their work. I would think getting paid overtime is a nice reward."

Crosby sai d he i s among those working long hours and not getting paid overtime. "In this economy I'm going to continue to work as much as I need to," he said. "I do the work to do the right thing for the company, the customer."

He said the company asked non-union employees in other states to come to West Virginia to help during the transition and 250 volunteered. "We have a lot of folks who came down for eight weeks who are not looking for reasons to leave. They're looking to get the work done.

"The bottom line is we're trying to run a business, satisfy the customer, do what ' s ri ght for the state, " Crosby said. "So you have certain provisions in the collective bargaining agreement. In terms of the emergency provision, we have it in the collective bargaining contract so we can fix the things that need to be fixed immediately."

Frontier spokeswoman Brigid Smith said the date the emergency decl arat i on will end "depends upon reducing the backlog of troubles, orders and other requests that we inherited at cut-over from Verizon and that continue due to a variety of factors." Smith said those factors include:

-- Long-term service difficulties, as evidenced by the Public Service Commission' s recent investigation of Verizon's service quality.

-- Net work degradat i on events such as cable outages and repeated thefts of copper cabl e, especi al l y i n Logan County.

"We also need a change for the better in the severely hot weat her and t hunderst orms that are hitting so much of the state," she said.

Al t hough Front i er has i nvoked mandat ory overt i me, "safety is paramount," Smith said.

Contact writer George Hohmann at business@dailymail.com or 304- 348-4836.

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STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink	Docket No. P-421, et al./PA-10-456

EXHIBIT TJG-8

TO THE

DIRECT TESTIMONY OF TIMOTHY GATES

ON BEHALF OF

CBEYOND COMMUNICATIONS, LLC, CHARTER FIBERLINK CCO, LLC, INTEGRA TELECOM, INC., LEVEL 3 COMMUNICATIONS, LLC, MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., d/b/a PAETEC BUSINESS SERVICES, TDS METROCOM, LLC, TW TELECOM OF MINNESOTA, LLC, ORBITCOM, INC. AND POPP.COM

August 19, 2010

PRELIMINARY CONDITIONS

RESERVATION OF RIGHTS:

Discovery is not yet complete and all testimony has not yet been filed. This list is preliminary and subject to change. Parties reserve their right to expand or modify the proposed conditions as needed. The conditions are grouped generally by subject matter. All of the conditions are important and no inference regarding priority should be made based on the numbering of the conditions, which is for ease of reference only.

DEFINITIONS:

"Closing Date," when used in this list of conditions, refers to the closing date of the transaction for which the Applicants have sought approval from the Federal Communications Commission (FCC) and state commissions (the "transaction").[1]

"Commercial" agreements include but are not limited to wholesale metro Ethernet agreements, OCN (SONET) agreements, Local Services Platform (*e.g.*, QLSP) agreements, Dark Fiber agreements, Broadband for Resale agreements, and line sharing agreements.

"Defined Time Period," when used in this list of conditions, refers to a time period of at least 5-7 years[2] after the Closing Date or, alternatively, a time period that is a minimum of 42 months (*i.e.*, 3.5 years)[3] and continues thereafter until the Applicants are granted Section 10 forbearance from the condition. With respect to agreements, the Defined Time Period applies whether or not the initial or current term of an agreement has expired ("evergreen" status).

"Merger Announcement Date," when used in this list of conditions, refers to April 21, 2010, which is the date on which Qwest and CenturyLink entered into their merger agreement.

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

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[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") and related applications filed in state proceedings.

[2] The Applicants have said that the transaction is expected to create annual operating synergies of approximately $575 million, which are expected to be fully realized ***three to five years*** following closing. FCC Application, p. 21. Successive integration processes, with a period of substantial overlap between them, may not be accomplished smoothly, on-time and on-budget. In fact, CenturyLink has previously underestimated the length of time and the budget needed for a systems project. See Comments of Cbeyond, Integra, Socket, and tw telecom, FCC WC Dkt. No. 10-110 (July 12, 2010), pp. 47-48 & footnotes 145 & 146, *quoting 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. Therefore, the time period during which merger-related activities intended to result in synergies may occur over a longer time period.

[3] In the *AT&T/BellSouth Merger Order*, AT&T proposed that conditions would last 3.5 years (42 months) from the merger closing date unless specified otherwise. *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) ("*AT&T/BellSouth Merger Order*").

"Merger Filing Date," when used in this list of conditions, refers to May 10, 2010, which is the date on which Qwest and CenturyLink made their merger filing with the FCC.

"Technically Feasible," when used in this list of conditions, has the meaning set forth here. Interconnection, access to Unbundled Network Elements, Collocation, and other methods of achieving Interconnection or access to Unbundled Network Elements at a point in the network shall be deemed Technically Feasible absent technical or operational concerns that prevent the fulfillment of a request by a Telecommunications Carrier for such Interconnection, access, or methods. A determination of Technical Feasibility does not include consideration of economic, accounting, Billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is Technically Feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the Commission by clear and convincing evidence that such Interconnection, access, or methods would result in specific and significant adverse network reliability impacts.[4]

CONDITIONS

1. Any wholesale service offered to competitive carriers at any time between the Merger Filing Date up to and including the Closing Date will be made available and will not be discontinued for at least the Defined Time Period, except as approved by the Commission.

2. The Merged Company will not recover, or seek to recover, through wholesale service rates or other fees paid by CLECs, and will hold wholesale customers harmless for, one-time transfer, branding, or any other transaction-related costs. For purposes of this condition, "transaction-related costs" shall be construed broadly and, for example, shall not be limited in time to costs incurred only through the Closing Date.

3. The Merged Company will not recover, or seek to recover, through wholesale service rates or other fees paid by CLECs, and 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. In the legacy Qwest ILEC territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy Qwest as of the Merger Filing Date. The Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy Qwest made available, or was required to make available, to

[4] Definition of "Technically Feasible" is taken from Qwest's template interconnection agreement negotiations proposal, Section 4.0 ("Definitions"), available at http://www.qwest.com/wholesale/clecs/nta.html.

CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to state commission staff or the FCC, when requested. The state commission and/or the FCC may determine that additional remedies are required, if the remedies described in this condition do not result in the required wholesale service quality performance or if the Merged Company violates the merger conditions.

a. No Qwest Performance Indicator Definition (PID) or Performance Assurance Plan (PAP) that is offered, or provided via contract 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 and will be available to all requesting CLECs until the Merged Company obtains approval from the applicable state commission, after the minimum 5-year period, to reduce, eliminate, or withdraw it. For at least the Defined Time Period, in the legacy Qwest ILEC territory, 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").

b. In the legacy Qwest ILEC territory, for at least the Defined Time Period, 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, or was required to provide, 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 remedy payments (calculated on a basis to be determined by the state commission or FCC) on a per-month, per-metric basis to each affected CLEC.

5. For at least the Defined Time Period, in the legacy CenturyLink ILEC territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy CenturyLink as of the Merger Filing Date. The Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy CenturyLink made available, or was required to make available, to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to state commission staff or the FCC, when

requested. The state commission and/or the FCC may determine that additional remedies are required, if the remedies described in this condition do not result in the required wholesale service quality performance or if the Merged Company violates the merger conditions.

a. The Merged Company shall provide to CLECs the reports of wholesale special access performance metrics that Qwest provides, or was required to provide, 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 condition 4(b) 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.

6. As of the Closing Date, the Merged Company will assume or take assignment of all obligations under Qwest's interconnection agreements, interstate tariffs (including the Annual Incentive contract tariff), and intrastate tariffs, Commercial agreements, and other existing arrangements with wholesale customers ("Assumed Agreements"). The Merged Company will assume or take assignment of all obligations under Qwest alternative form of regulation plans. 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.

   a. The Merged Company shall make available to requesting carriers and shall not terminate or change the rates, terms or conditions of any Assumed Agreements during the unexpired term of any Assumed Agreement or for at least the Defined Time Period, whichever occurs later, unless requested by the non-ILEC party, or required by a change of law.

   b. In the legacy CenturyLink ILEC territory, the Merged Company will offer Commercial agreements (including those offered pursuant to condition 7), at prices no higher, and for time periods no shorter, than those offered in the legacy Qwest ILEC territory.

7. Rates charged by legacy CenturyLink and rates charged by legacy Qwest (including those described in condition 6) for tandem transit service, any interstate special access tariffed or non-tariffed and Commerical 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 for at least the Defined Time Period. The

Merged Company will not create any new rate elements or charges for distinct facilities or functionalities that are already provided under rates as of the Closing Date.

a. The Merged Company shall continue to offer any term and volume discount plans offered as of the Merger Announcement Date, for at least the Defined Time Period, 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.

b. In the legacy CenturyLink territory, the Merged Company will comply with its statutory obligations pursuant to Section 251(c), and will provide tandem transit services to CLECs in interconnection agreements established pursuant to Sections 251 and 252, at rates no greater than any cost-based rate approved by the state commission for the Qwest ILEC territories, or current tandem transit rate, whichever is lower.

8. 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, for at least the Defined Time Period or the date of expiration in the agreement, whichever is later.

9. 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 a negotiations template interconnection agreement proposal of any legacy CenturyLink operating company for the negotiations proposals made before the Closing Date by legacy Qwest.

10. 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, including agreements in evergreen status. 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 condition will apply in full, without modification and subject to the other conditions set forth herein. To the extent that the Merged Company seeks to modify agreements subject to the opt-in rights described in this condition, the Merged Company will

permit the opt-in and the agreement shall become effective, subject to the Merged Company's right to subsequently seek from the applicable state commission an order modifying the agreement. The state commission may require modification of the agreement to the extent that the commission determines that the Merged Company has established that (1) it is not Technically Feasible for the Merged Company to comply with one or more provisions of the agreement or (2) the price(s) set forth in the agreement are inconsistent with TELRIC-based prices in the state in question. More consistency in interconnection agreement offerings will provide more consistency for wholesale customers dealing with CenturyLink in multiple states, and will enable the industry to rely on 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.

a. "CenturyLink ILEC territory," as used in this condition, excludes any CenturyLink ILEC for which a state commission has granted CenturyLink a rural exemption pursuant to Section 251(f) of the Federal Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. (the Communications Act") before the Merger Filing Date.

b. Nothing in this condition precludes a regulatory body from determining that any operating company of the Merged Company, which as of the Merger Closing Date operates under a Section 251(f) exemption or a 251(f)(2) suspension or modification, must cease to do so. In the event that such a ruling is made, this condition would then apply to the applicable operating company as well.[5]

11. 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 website 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.

12. 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.

13. 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

[5] Charter Fiberlink further proposes as a condition of approval of this transaction that any operating company affiliates of CenturyLink or Qwest that currently operate under a Section 251(f) exemption or waiver relinquish and surrender such legal rights upon the Closing Date.

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) and the obligation to ensure there is no backsliding, and the nondiscrimination requirements of Section 272(e) of the Communications Act.

14. For at least the Defined Time Period, 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 or 271 obligation or dominant carrier regulation in any wire center.

15. 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.

16. 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*.).

17. 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, 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.

18. The Merged Company shall ensure that the legacy Qwest Wholesale and CLEC support centers are sufficiently staffed, relative to wholesale order volumes, 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 or marketing purposes of any kind. The Merged Company will

employ people who are dedicated to the task of meeting the needs of CLECs and other wholesale customers. The total number of the Merged Company's employees dedicated to supporting wholesale services for CLEC customers will be no fewer than the number of such employees (including agents and contractors) employed by legacy Qwest and legacy CenturyLink as of the Merger Filing Date, unless the Merged Company obtains a ruling from the applicable regulatory body that wholesale order volumes materially decline or other circumstances warrant corresponding employee reductions.

19. In legacy Qwest ILEC territory, after the Closing Date, 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 electronic 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 prevent 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.

    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 existing and continuing wholesale services in 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 systems. 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. Before implementation of 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.

20. In the legacy CenturyLink ILEC territory, as soon as reasonably possible, the Merged Company will use the wholesale pre-ordering, quoting, ordering, provisioning, and maintenance and repair functionalities (including electronic bonding) of the legacy Qwest territory to provide interconnection, Unbundled Network Elements, and special access services in the legacy CenturyLink ILEC territory. Specifically, in the legacy CenturyLink ILEC territory, the Merged Company will use the legacy Qwest IMA (GUI and XML), CORA, DLIS, CEMR, MEDIAC, Q.pricer, and Qwest Control systems for those services and functionalities for which Qwest provides wholesale services through these systems as of the Merger Filing Date.

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

22. The Merged Company will provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements.

    a. 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.

    b. 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)].

    c. The Merged Company shall not limit the number of ports that can be processed.

23. The Merged Company will provide nondiscriminatory access to directory listings and directory assistance in compliance with federal and state law. Specifically, the Merged Company will be responsible for ensuring that all directory listings submitted by CLECs for inclusion in directory assistance or listings databases are properly incorporated into such databases (whether such databases are maintained by the Merged Company or a third party vendor). Further the Merged Company will ensure that CLECs' subscriber listings are accessible to any requesting person on the same terms and conditions that the Merged Company's subscriber listings are available to any requesting person.

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

    a. Service order charges assessed upon CLECs submitting local service requests ("LSRs") for number porting;

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

    c. "Storage" or other related fees, rents or service order charges assessed upon a CLECs' subscriber directory listings information submitted to the Merged Company for publication in a directory listing or inclusion in a directory assistance database.

25. The Merged Company will provide routine network modifications in compliance with federal and state law, as well as the terms of applicable interconnection agreements.

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

27. 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.

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

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

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink	Docket No. P-421, et al./PA-10-456

EXHIBIT TJG-9

TO THE

DIRECT TESTIMONY OF TIMOTHY GATES

ON BEHALF OF

CBEYOND COMMUNICATIONS, LLC, CHARTER FIBERLINK CCO, LLC, INTEGRA TELECOM, INC., LEVEL 3 COMMUNICATIONS, LLC, MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., d/b/a PAETEC BUSINESS SERVICES, TDS METROCOM, LLC, TW TELECOM OF MINNESOTA, LLC, ORBITCOM, INC. AND POPP.COM

August 19, 2010

COMPARISON OF CLEC-PROPOSED CONDITIONS TO SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS

No.	Conditions	Where Similar Condition Has Been Previously Adopted
1	Any wholesale service offered to competitive carriers at any time between the Merger Filing Date up to and including the Closing Date will be made available and will not be discontinued for at least the Defined Time Period, except as approved by the Commission.	• FCC Verizon/Frontier Merger[1] • Oregon Verizon/Frontier Merger[2]
2	The Merged Company will not recover, or seek to recover, through wholesale service rates or other fees paid by CLECs, and will hold wholesale customers harmless for, one-time transfer, branding, or any other transaction-related costs. For purposes of this condition, "transaction-related costs" shall be construed broadly and, for example, shall not be limited in time to costs incurred only through the Closing Date.	• FCC Verizon/Frontier Merger[3] • Oregon CenturyTel/Embarq Merger[4] • Oregon Verizon/Frontier Merger[5] • Illinois Verizon/Frontier Merger[6]
3	The Merged Company will not recover, or seek to recover, through wholesale service rates or other fees paid by CLECs, and will hold wholesale customers harmless for, any increases in overall management costs that result from the transaction, including those incurred by the Operating Companies.	• FCC Verizon/Frontier Merger[7] • Oregon CenturyTel/Embarq Merger[8] • Oregon Verizon/Frontier Merger[9] • Illinois Verizon/Frontier Merger[10]
4	In the legacy Qwest ILEC territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy Qwest as of the Merger Filing Date. The Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy Qwest made available, or was	• FCC Verizon/Frontier Merger[11] • FCC CenturyTel/Embarq Merger[12]

1 *In the Matter of Applications Filed by Frontier Communications Corp. and Verizon Communications Inc. for Assignment of Transfer of Control,* Memorandum Opinion and Order, WC Docket No. 09-95; FCC 10-87, May 21, 2010 ("FCC Verizon/Frontier Merger"), Appendix C, p. 35, Condition 16 (one year).

2 *In the Matter of Verizon Communications Inc. and Frontier Communications Corp. Joint Application for an Order Declining to Assert Jurisdiction, or , in the alternative, to Approve the Indirect Transfer of Control of Verizon Northwest Inc.,* Order Granting Joint Application with Conditions, UM 1431, Order No. 10-067, February 24, 2010 ("Oregon Verizon/Frontier Merger"), Appendix A, p. 10, Condition 36 (one year).

3 FCC Verizon/Frontier Merger, Appendix C, p. 35, Condition 17.

4 *In the Matter of Embarq Corp. and CenturyTel, Inc. Joint Application for Approval of Merger between the two companies and their regulated subsidiaries,* Order Granting Joint Application with Conditions, UM 1416, Order No. 09-169, May 22, 2009 ("Oregon CenturyTel/Embarq Merger"), Appendix B, p. 2, Condition 4(g).

5 Oregon Verizon/Frontier Merger, Appendix A, p. 2, Condition 9..

6 *Frontier Communications Corp., Verizon North, Inc. et al. Joint Application for the approval of a Reorganization pursuant to Section 7-204 of the Public Utilities Act,* Order, Docket No. 09-0268, April 21, 2010 ("Illinois Verizon/Frontier Merger"), Conditions Appendix, p. 9, Condition 9.

7 FCC Verizon/Frontier Merger, Appendix C, p. 35, Condition 17.

8 Oregon CenturyTel/Embarq Merger, Appendix B, p. 3, Condition 4(o).

9 Oregon Verizon/Frontier Merger, Appendix A, p. 10, Condition 10.

10 Illinois Verizon/Frontier Merger, Conditions Appendix, p. 9, Condition 9.

11 Verizon/Frontier Merger, Appendix C, p. 35, Condition 23 (substantially the same as the first two sentences).

12 FCC CenturyTel/Embarq Merger, Appendix C, p. 27 (requiring the merged company to maintain wholesale service levels and continue to provide service performance reports (to CLECs and the regulator agency) for two years after closing date).

COMPARISON OF CLEC-PROPOSED CONDITIONS TO SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS

No.	Conditions	Where Similar Condition Has Been Previously Adopted
	required to make available, to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to state commission staff or the FCC, when requested. The state commission and/or the FCC may determine that additional remedies are required, if the remedies described in this condition do not result in the required wholesale service quality performance or if the Merged Company violates the merger conditions. a. No Qwest Performance Indicator Definition (PID) or Performance Assurance Plan (PAP) that is offered, or provided via contract 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 and will be available to all requesting CLECs until the Merged Company obtains approval from the applicable state commission, after the minimum 5-year period, to reduce, eliminate, or withdraw it. For at least the Defined Time Period, in the legacy Qwest ILEC territory, 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"). b. In the legacy Qwest ILEC territory, for at least the Defined Time Period, 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, or was required to provide, 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 remedy payments (calculated on a basis to be determined by the state commission or FCC) on a per-month, per-metric basis to each affected CLEC.	

COMPARISON OF CLEC-PROPOSED CONDITIONS TO SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS

No.	Conditions	Where Similar Condition Has Been Previously Adopted
5	For at least the Defined Time Period, in the legacy CenturyLink ILEC territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services, including those set forth in regulations, tariffs, interconnection agreements, and Commercial agreements applicable to legacy CenturyLink as of the Merger Filing Date. The Merged Company shall continue to provide to CLECs at least the reports of wholesale performance metrics that legacy CenturyLink made available, or was required to make available, to CLECs as of the Merger Filing Date. The Merged Company shall also provide these reports to state commission staff or the FCC, when requested. The state commission and/or the FCC may determine that additional remedies are required, if the remedies described in this condition do not result in the required wholesale service quality performance or if the Merged Company violates the merger conditions. a. The Merged Company shall provide to CLECs the reports of wholesale special access performance metrics that Qwest provides, or was required to provide, 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 condition 4(b) 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.	• FCC Verizon/Frontier Merger[13] • FCC CenturyTel/Embarq Merger[14] • FCC AT&T/SBC Merger[15]
6	As of the Closing Date, the Merged Company will assume or take assignment of all obligations under Qwest's interconnection agreements, interstate tariffs (including the Annual Incentive contract tariff), and intrastate tariffs, Commercial agreements, and other existing arrangements with wholesale customers ("Assumed Agreements"). The Merged Company will assume or take assignment of all obligations under Qwest alternative form of regulation plans. 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. a. The Merged Company shall make available to requesting carriers and	• Illinois Verizon/Frontier Merger[16] • Oregon Verizon/Frontier Merger[17] • Subpart (b) has been developed to offset harm resulting from this particular transaction.

[13] FCC Verizon/Frontier Merger, Appendix C, p. 35, Condition 23.

[14] *In the Matter of Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, Memorandum Opinion and Order, WC Docket No. 08-239; FCC 09-54, June 25, 2009 ("FCC CenturyTel/Embarq Merger"), Appendix C, pp. 27-28 (requiring the merged company to maintain wholesale service levels and continue to provide service performance reports (to CLECs and the regulator agency) for two years after closing date).

[15] *In the Matter of SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 05-65; FCC 05-183, November 17, 2005 ("FCC AT&T/SBC Merger"), p. 123 (requiring implementation of special access quality measurement plan and associated reporting).

[16] Illinois Verizon/Frontier Merger, Conditions Appendix, p. 5, Condition 5-1 (30 months from closing instead of at least 36 months from the merger announcement date).

[17] Oregon Verizon/Frontier Merger, Appendix A, p. 9, Conditions 32 and 33 (24 months from closing date instead of at least 36 months from the merger announcement date).

COMPARISON OF CLEC-PROPOSED CONDITIONS TO SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS

No.	Conditions	Where Similar Condition Has Been Previously Adopted
	shall not terminate or change the rates, terms or conditions of any Assumed Agreements during the unexpired term of any Assumed Agreement or for at least the Defined Time Period, whichever occurs later, unless requested by the non-ILEC party, or required by a change of law. b. In the legacy CenturyLink ILEC territory, the Merged Company will offer Commercial agreements (including those offered pursuant to condition 7), at prices no higher, and for time periods no shorter, than those offered in the legacy Qwest ILEC territory.	
7	Rates charged by legacy CenturyLink and rates charged by legacy Qwest (including those described in condition 6) for tandem transit service, any interstate special access tariffed or non-tariffed and Commerical 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 for at least the Defined Time Period. The Merged Company will not create any new rate elements or charges for distinct facilities or functionalities that are already provided under rates as of the Closing Date. a. The Merged Company shall continue to offer any term and volume discount plans offered as of the Merger Announcement Date, for at least the Defined Time Period, 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. b. In the legacy CenturyLink territory, the Merged Company will comply with its statutory obligations pursuant to Section 251(c), and will provide tandem transit services to CLECs in interconnection agreements established pursuant to Sections 251 and 252, at rates no greater than any cost-based rate approved by the state commission for the Qwest ILEC territories, or current tandem transit rate, whichever is lower.	• Oregon Verizon/Frontier Merger[18] • Illinois Verizon/Frontier Merger[19] • FCC Verizon/MCI Merger[20] FCC AT&T/BellSouth Merger[21]
8	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, for at least the Defined Time Period or the date of expiration in the agreement, whichever is later.	• FCC AT&T/BellSouth Merger[22] • Illinois Verizon/Frontier Merger[23] • Oregon Verizon/Frontier Merger[24]

[18] Oregon Verizon/Frontier Merger, Appendix A, p. 9, Condition 32 (24 months instead of 36 months) and p. 9 Condition 34 (requires the merged company to continue to provide transit service subject to same rates, terms and conditions as provided pre-merger).

[19] Illinois Verizon/Frontier Merger, Conditions Appendix, p. 5, Condition 5-3 (30 month instead of 36 months).

[20] *In the Matter of Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control,* Memorandum Opinion and Order, WC Docket No. 05-75; FCC 05-184, November 17, 2005 ("FCC Verizon/MCI Merger"), Appendix G, p. 128, UNEs condition 1 (two years instead of three years).

[21] FCC AT&T/BellSouth Merger, Appendix F, p. 153 (rate cap on transit rates for 42 months instead of 36 months).

[22] *In the Matter of AT&T Inc. and BellSouth Corp. Application for Transfer of Control,* Memorandum Opinion and Order, WC Docket No. 06-74; FCC 06-189, March 26, 2007 ("FCC AT&T/BellSouth Merger"), Appendix F, p. 150 ("up to three years" instead of "at least three years.")

[23] Illinois Verizon/Frontier Merger, Conditions Appendix, p. 5, Condition 5-2 (for at least 30 months instead of at least 36 months).

COMPARISON OF CLEC-PROPOSED CONDITIONS TO SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS

No.	Conditions	Where Similar Condition Has Been Previously Adopted
9	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 a negotiations template interconnection agreement proposal of any legacy CenturyLink operating company for the negotiations proposals made before the Closing Date by legacy Qwest.	• FCC AT&T/BellSouth Merger[25] • The conditions regarding ongoing negotiations have been developed to offset harm resulting from this particular transaction.
10	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, including agreements in evergreen status. 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 condition will apply in full, without modification and subject to the other conditions set forth herein. To the extent that the Merged Company seeks to modify agreements subject to the opt-in rights described in this condition, the Merged Company will permit the opt-in and the agreement shall become effective, subject to the Merged Company's right to subsequently seek from the applicable state commission an order modifying the agreement. The state commission may require modification of the agreement to the extent that the commission determines that the Merged Company has established that (1) it is not Technically Feasible for the Merged Company to comply with one or more provisions of the agreement or (2) the price(s) set forth in the agreement are inconsistent with TELRIC-based prices in the state in question. More consistency in interconnection agreement offerings will provide more consistency for wholesale customers dealing with CenturyLink in multiple states, and will enable the industry to rely on 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. a. "CenturyLink ILEC territory," as used in this condition, excludes any CenturyLink ILEC for which a state commission has granted CenturyLink a rural exemption pursuant to Section 251(f) of the Federal Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. (the Communications Act") before the Merger Filing Date. b. Nothing in this condition precludes a regulatory body from determining that any operating company of the Merged Company, which as of the Merger Closing Date operates under a Section 251(f) exemption or a	• FCC AT&T/BellSouth Merger[27]

[24] Oregon Verizon/Frontier Merger, Appendix A, p. 9, Condition 32 (for at least 30 months instead of at least 36 months).

[25] FCC AT&T/BellSouth Merger Order, Appendix F, p. 149 (substantially the same as the first sentence)

[27] FCC AT&T/BellSouth Merger Order, Appendix F, p. 149.

COMPARISON OF CLEC-PROPOSED CONDITIONS TO SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS

No.	Conditions	Where Similar Condition Has Been Previously Adopted
	251(f)(2) suspension or modification, must cease to do so. In the event that such a ruling is made, this condition would then apply to the applicable operating company as well.[26]	
11	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 website 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.	• Oregon Verizon/Frontier Merger[28]
12	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.	• Oregon Verizon/Frontier Merger[29] • FCC Verizon/Frontier Merger[30]
13	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) and the obligation to ensure there is no backsliding, and the nondiscrimination requirements of Section 272(e) of the Communications Act.	• This condition has been developed to offset harm resulting from this particular transaction.
14	For at least the Defined Time Period, 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 or 271 obligation or dominant carrier regulation in any wire center.	• FCC AT&T/BellSouth Merger[31] • Oregon Verizon/Frontier Merger[32]
15	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.	• Oregon Verizon/Frontier Merger[33]

[26] Charter Fiberlink further proposes as a condition of approval of this transaction that any operating company affiliates of CenturyLink or Qwest that currently operate under a Section 251(f) exemption or waiver relinquish and surrender such legal rights upon the Closing Date.

[28] Oregon Verizon/Frontier Merger, Appendix A, p. 11, Condition 44.

[29] Oregon Verizon/Frontier Merger, Appendix A, pp. 9-10, Condition 35.

[30] Verizon/Frontier Merger, Appendix C, p. 35, Condition 18.

[31] FCC AT&T/BellSouth Merger, Appendix F, p. 155 (42 months).

[32] Oregon Verizon/Frontier Merger, Settlement Condition10, 2010 Ore. PUC LEXIS 64, *124 (one year).

[33] Oregon Verizon/Frontier Merger, Appendix A, p. 10, Condition 39 (substantially the same as first sentence).

COMPARISON OF CLEC-PROPOSED CONDITIONS TO SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS

No.	Conditions	Where Similar Condition Has Been Previously Adopted
16	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*.).	• FCC Verizon/Frontier Merger[34] • Oregon Verizon/Frontier Merger[35]
17	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, 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.	• FCC Verizon/Frontier Merger[36] • Oregon Verizon/Frontier Merger[37]
18	The Merged Company shall ensure that the legacy Qwest Wholesale and CLEC support centers are sufficiently staffed, relative to wholesale order volumes, 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 or marketing purposes of any kind. The Merged Company will employ people who are dedicated to the task of meeting the needs of CLECs and other wholesale customers. The total number of the Merged Company's employees dedicated to supporting wholesale services for CLEC customers will be no fewer than the number of such employees (including agents and contractors) employed by legacy Qwest and legacy CenturyLink as of the Merger Filing Date, unless the Merged Company obtains a ruling from the applicable regulatory body that wholesale order volumes materially decline or other circumstances warrant corresponding employee reductions.	• FCC Verizon/Frontier Merger[38] • FCC CenturyTel/Embarq Merger[39] • Oregon Verizon/Frontier Merger[40]
19	In legacy Qwest ILEC territory, after the Closing Date, 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	• South Carolina Verizon/Frontier Merger[41]

[34] FCC Verizon/Frontier Merger, Appendix C, pp. 34-35, Condition 13.

[35] Oregon Verizon/Frontier Merger, Appendix A, p. 10, Condition 40.

[36] FCC Verizon/Frontier Merger, Appendix C, p. 35, Condition 14.

[37] Oregon Verizon/Frontier Merger, Appendix A, p. 10, Condition 41.

[38] FCC Verizon/Frontier Merger, Appendix C, p. 35, Condition 15 (substantially same as first sentence).

[39] FCC CenturyTel/Embarq Merger, Appendix C, p. 28 (requiring the merged company to maintain a certain number of employees to handle port orders during the interim until integration).

[40] Oregon Verizon/Frontier Merger, Appendix A, p. 10, Condition 42 (substantially same as first sentence).

[41] *In Re: Joint Application of Frontier Communications Corp., et al. for Approval of the Transfer of Assets, Authority and Certificates*, South Carolina PSC Docket No. 2009-220-C, Order No. 2009-769, October 29, 2009 ("South Carolina Verizon/Frontier Merger"), 2009 S.C.PUC LEXIS 506, *29, Condition 10(h) (requires replacement systems to be "properly tested and certified" and does not expressly mention "third-party tested").

COMPARISON OF CLEC-PROPOSED CONDITIONS TO SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS

No.	Conditions	Where Similar Condition Has Been Previously Adopted
	least the same level of wholesale service quality, including support, data, functionality, performance, and electronic 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 prevent 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. 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 existing and continuing wholesale services in 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 systems. 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. Before implementation of 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.	

COMPARISON OF CLEC-PROPOSED CONDITIONS TO SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS

No.	Conditions	Where Similar Condition Has Been Previously Adopted
20	In the legacy CenturyLink ILEC territory, as soon as reasonably possible, the Merged Company will use the wholesale pre-ordering, quoting, ordering, provisioning, and maintenance and repair functionalities (including electronic bonding) of the legacy Qwest territory to provide interconnection, Unbundled Network Elements, and special access services in the legacy CenturyLink ILEC territory. Specifically, in the legacy CenturyLink ILEC territory, the Merged Company will use the legacy Qwest IMA (GUI and XML), CORA, DLIS, CEMR, MEDIAC, Q.pricer, and Qwest Control systems for those services and functionalities for which Qwest provides wholesale services through these systems as of the Merger Filing Date.	• FCC CenturyTel/Embarq Merger[42]
21	The Merged Company will process orders in compliance with federal and state law, as well as the terms of applicable interconnection agreements.	• FCC CenturyTel/Embarq Merger[43]
22	The Merged Company will provide number portability in compliance with federal and state law, as well as the terms of applicable interconnection agreements. a. 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. b. 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)]. c. The Merged Company shall not limit the number of ports that can be processed.	• FCC CenturyTel/Embarq Merger[44] • The condition regarding pass code/password/PIN has been developed to offset harm resulting from this particular transaction.[45]
23	The Merged Company will provide nondiscriminatory access to directory listings and directory assistance in compliance with federal and state law. Specifically, the Merged Company will be responsible for ensuring that all directory listings submitted by CLECs for inclusion in directory assistance or listings databases are properly incorporated into such databases (whether such databases are maintained by the Merged Company or a third party vendor). Further the Merged Company will ensure that CLECs' subscriber listings are accessible to any requesting person on the same terms and conditions that the Merged Company's subscriber listings are available to	• This condition has been developed to offset harm resulting from this particular transaction.[46]

[42] FCC CenturyTel/Embarq Meter, Appendix C, p. 28 (required the replacement of an inferior OSS with a better OSS).

[43] FCC CenturyTel/Embarq Merger, Appendix C, p. 27.

[44] FCC CenturyTel/Embarq Merger, Appendix C, pp. 27-28.

[45] See, *e.g.*, *In re: Local Number Portability Porting Interval and Validation Requirements*, Report and Order, 25 FCC Rcd. 6593, ¶ 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").

[46] See, *e.g.*, 47 C.F.R. §51.217(b).

COMPARISON OF CLEC-PROPOSED CONDITIONS TO SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS

No.	Conditions	Where Similar Condition Has Been Previously Adopted
	any requesting person.	
24	After the Closing Date, the Merged Company shall not assess any fees, charges, surcharges or other assessments upon CLECs for activities that arise during the subscriber acquisition and migration process other than any fees, charges, surcharges or other assessments that were approved by the applicable commission and charged by Qwest in the legacy Qwest ILEC territory before the Closing Date. This condition prohibits the Merged Company from charging fees, charges, surcharges or other assessments,including: a. Service order charges assessed upon CLECs submitting local service requests ("LSRs") for number porting; b. Access or "use" fees or charges assessed upon CLECs that connect a competitor's own self-provisioned loop, or last mile facility, to the customer side of the Merged Company's network interface device ("NID") enclosure or box; and c. "Storage" or other related fees, rents or service order charges assessed upon a CLECs' subscriber directory listings information submitted to the Merged Company for publication in a directory listing or inclusion in a directory assistance database.	• This condition has been developed to offset harm resulting from this particular transaction.
25	The Merged Company will provide routine network modifications in compliance with federal and state law, as well as the terms of applicable interconnection agreements.	• This condition has been developed to offset harm resulting from this particular transaction.[47]
26	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. The Merged Company will not engineer or maintain the network (including routing of traffic) in a manner that results in the application of higher rates for traffic or inefficiencies for wholesale customers.	• This condition has been developed to offset harm resulting from this particular transaction.[48]

[47] See, *e.g.*, 47 C.F.R. §51.319(a)(7).

[48] See, *e.g.*, 47 C.F.R. §§ 51.319(a)(8) and 51.333.

COMPARISON OF CLEC-PROPOSED CONDITIONS TO SIMILAR CONDITIONS ADOPTED IN PRIOR MERGER PROCEEDINGS

No.	Conditions	Where Similar Condition Has Been Previously Adopted
27	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.	• This condition has been developed to offset harm resulting from this particular transaction.[49]
28	At CLEC's option, the Merged Company will interconnect with CLEC at a single point of interconnection per LATA, regardless of whether the Merged Company provides service in such LATA via multiple operating company affiliates or a single operating company.	• This condition has been developed to offset harm resulting from this particular transaction.
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.	• Oregon CenturyTel/Embarq Merger[50] • Oregon Verizon/Frontier Merger[51]
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 petition with the state commission at any time. Alternative dispute resolution provisions in an interconnection agreement shall not prevent any party from filing a petition with the state commission at any time.	• Oregon Verizon/Frontier Merger[52] • Illinois Verizon/Frontier Merger[53]

[49] See, 47 C.F.R. §§ 51.319(a)(1)(iii)(A) and 51.319(a)(1)(iii)(C).

[50] Oregon CenturyTel/Embarq Merger, Appendix B, pp. 3-4, Condition 4(r).

[51] Oregon Verizon/Frontier Merger, Appendix A, pp. 12-13, Condition 56.

[52] Oregon Verizon/Frontier Merger, Settlement Condition 16, 2010 Ore. PUC LEXIS 64, *131.

[53] Illinois Verizon/Frontier Merger, Conditions Appendix, p. 11, Condition 20.

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

David Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis Reha	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink	Docket No. P-421, et al./PA-10-456

EXHIBIT TJG-10

TO THE

DIRECT TESTIMONY OF TIMOTHY GATES

ON BEHALF OF

CBEYOND COMMUNICATIONS, LLC, CHARTER FIBERLINK CCO, LLC, INTEGRA TELECOM, INC., LEVEL 3 COMMUNICATIONS, LLC, MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., d/b/a PAETEC BUSINESS SERVICES, TDS METROCOM, LLC, TW TELECOM OF MINNESOTA, LLC, ORBITCOM, INC. AND POPP.COM

August 19, 2010

Exhibit TJG-10

August 10, 2010

Subject: My Account/WebRRS Access Changes for Legacy EMBARQ CLECs

Dear Legacy EMBARQ CLEC:

Effective today, CLECs utilizing "MyAccount" at CenturyLink - MyAccount Login for submission of a repair ticket into the WebRRS system, or Resale CLECs in Ohio/North Carolina utilizing MyAccount for on-line bill view, will be prompted to enter an account number.

Resale CLECs (Ohio/North Carolina) will enter the new Ensemble 9 digit account number. MyAccount for on-line bill view is available only to Resale CLECs in Ohio/North Carolina that have converted to the Ensemble billing system. Resale CLECs in Ohio/North Carolina will be able to view the on-line invoice; however, will not have access to the WebRRS functionality for an interim period of time.

All other CLECs, including Resale CLECs in all other states, UNE-Loop and LWS Complete CLECs, utilizing MyAccount for the WebRRS functionality will enter their existing "MyAccount" 13 digit account number (consecutive numbers: no dashes/spaces, etc). On-line bill view is only available to Resale CLECs in Ohio/North Carolina.

An error message will be received if the account number is not valid.

Should you have any questions regarding these changes, please contact your account manager or contact the NEAC at 1-800-578-8169 for assistance with MyAccount.

Broadband | Entertainment | Voice

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