

October 1, 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 August H. Ankum's Surrebuttal 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 Surrebuttal Testimony is organized with questions and answers being presented by August Ankum.

Very truly yours,

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LipschultzD@moss-barnett.com

DL/cm  
Enclosures  
cc: All parties of record  
1670749v1

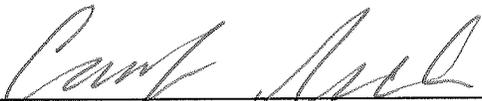
**AFFIDAVIT OF SERVICE**

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

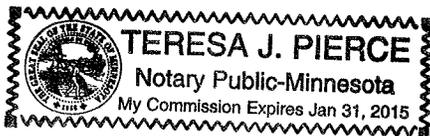
MPUC Docket No. P-421, et al./PA-10-456  
OAH Docket No. 11-2500-21391-2

Carolyn McCune, being first duly sworn on oath, deposes and states that on October 1, 2010, a copy of the August H. Ankum's Surrebuttal 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  
1st day of October, 2010.

  
\_\_\_\_\_  
NOTARY PUBLIC



**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

**SURREBUTTAL TESTIMONY**

**OF**

**AUGUST H. ANKUM, PH.D.**

**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.**

**October 1, 2010**

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1 **I. PURPOSE AND SUMMARY**

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

4 A. Yes, I am.

5 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

6 A. The purpose of my surrebuttal testimony is to respond to certain portions of the  
7 Rebuttal Testimony offered by CenturyLink and Qwest (collectively, the “Joint  
8 Petitioners” or “the Companies”), particularly those which were directed at my  
9 August 19, 2010 Direct Testimony. Specifically, I address portions of the  
10 Rebuttal Testimony of CenturyLink’s witnesses Mark Gast,<sup>1</sup> Michael Hunsucker,<sup>2</sup>  
11 and John Jones,<sup>3</sup> and Qwest’s witnesses Robert Brigham,<sup>4</sup> John Stanoch,<sup>5</sup> and  
12 Karen Stewart.<sup>6</sup> Mr. Gates is also submitting Surrebuttal Testimony to respond to  
13 other aspects of the Joint Petitioners’ Rebuttal Testimony.

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<sup>1</sup> Rebuttal Testimony of Mark Gast on behalf of CenturyLink, Inc., Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010 (“Gast Rebuttal”).

<sup>2</sup> Rebuttal Testimony of Michael Hunsucker on behalf of CenturyLink, Inc., Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010 (“Hunsucker Rebuttal”).

<sup>3</sup> Rebuttal Testimony of John Jones on behalf of CenturyLink, Inc., Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010 (“Jones Rebuttal”).

<sup>4</sup> Rebuttal Testimony of Robert Brigham on behalf of Qwest Corp., Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010 (“Brigham Rebuttal”).

<sup>5</sup> Rebuttal Testimony of John Stanoch on behalf of Qwest Corp., Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010 (“Stanoch Rebuttal”).

<sup>6</sup> Rebuttal Testimony of Karen Stewart on behalf of Qwest Corp., Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010 (“Stewart Rebuttal”).

1 In addition, I provide a response to the Rebuttal Testimony of Department of  
2 Commerce witness Mr. Bruce Linscheid<sup>7</sup> concerning the Merged Company's debt  
3 levels.

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

6 A. Yes. Notwithstanding the Joint Petitioner's incorrect testimony claiming that the  
7 Joint CLECs' have not demonstrated that the proposed transaction may result in  
8 harmful effects and warrant the imposition of merger conditions, the Joint  
9 Petitioners themselves testify to the following:

- 10 • They admit that there are few if any detailed plans on how to merge the  
11 companies' operations.<sup>8</sup>
- 12 • They acknowledge that the financial status of the post-merger firm may  
13 deteriorate.<sup>9</sup>
- 14 • They admit that after the first twelve months, the post-merger firm may  
15 and is in fact likely to modify or change its operations support systems  
16 (OSS).<sup>10</sup>
- 17 • They admit that modifications of or changes to its OSS are likely to result  
18 in errors and service disruptions.<sup>11</sup>
- 19 • They fail to recognize the difference between CenturyLink's Section 251  
20 OSS obligations and Qwest's Section 271 OSS obligations.<sup>12</sup>
- 21 • They fail to acknowledge that the post-merger firm's competitive interests  
22 do not coincide with those of its wholesale CLEC customers.<sup>13</sup>

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<sup>7</sup> See Rebuttal Testimony of Bruce L. Linscheid on behalf of the Minnesota Department of Commerce, Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010 ("Linscheid Rebuttal").

<sup>8</sup> Hunsucker Rebuttal, at p. 11.

<sup>9</sup> Gast Rebuttal, at pp. 4-5.

<sup>10</sup> Hunsucker Rebuttal, at p. 14 and p. 40.

<sup>11</sup> Ring Rebuttal, at p. 1.

<sup>12</sup> Hunsucker Rebuttal, at p. 10.

<sup>13</sup> Brigham Rebuttal, at pp. 10-11.

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

4 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

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

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

15 I respond next to Mr. Brigham's general claims that the Joint CLECs' proposed  
16 conditions are unnecessary due to the extent of competition in Minnesota, and  
17 find that he ignores the Commission's recent finding that Qwest continues to  
18 dominate wholesale markets within its Minnesota service territory.

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

- 21 • Contrary to Ms. Stewart's suggestion, the Commission cannot rely upon  
22 its existing rate-setting and complaint procedures to ensure that the  
23 safeguards contemplated in Wholesale Rate Stability Conditions 2, 3, and  
24 7 are actually achieved;
- 25 • Mr. Hunsucker fails to acknowledge my Direct Testimony that explained  
26 why Conditions 2, 3, and 7 are necessary in the context of the merger and  
27 are not attempts to circumvent existing law and rules; and

- 1           • Their rebuttals to the proposed Wholesale Service Availability Conditions,  
2           Numbers 1, 6, 8, 9, 10, 12, 14 and 28, are similarly erroneous and do not  
3           undermine my Direct Testimony which explains why the conditions are  
4           essential protections for the Commission to adopt if it approves the  
5           merger.

6           Finally, I offer a response to Department of Commerce witness Mr. Linscheid's  
7           observation concerning post-merger debt levels, finding that Mr. Linscheid is  
8           partially correct, but does not explicitly recognize that CenturyLink's assumption  
9           of Qwest's high debt would not only create increased financial risks for  
10          CenturyLink and its lenders, but also place its captive CLEC wholesale customers  
11          at greater risk for wholesale service quality deterioration.

12          **Q. HAS THE REBUTTAL TESTIMONY OF THE JOINT PETITIONERS**  
13          **CAUSED YOU TO CHANGE YOUR TESTIMONY OR**  
14          **RECOMMENDATIONS?**

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

1 **II. RESPONSE TO JOINT PETITIONERS' TESTIMONY**  
2 **CONCERNING MERGER-DRIVEN UNCERTAINTY,**  
3 **POTENTIAL BENEFITS AND RISKS, AND THE**  
4 **COMMISSION'S STANDARD OF REVIEW.**

5 *A. The Joint Petitioners' witnesses acknowledge that merger-*  
6 *driven uncertainty is harmful to the public interest.*

7 **Q. DOES THE JOINT PETITIONERS' REBUTTAL TESTIMONY RELIEVE**  
8 **ANY OF YOUR CONCERNS REGARDING THE UNCERTAINTY**  
9 **CREATED BY THE PROPOSED MERGER AND THE RESULTING**  
10 **HARM TO CLECS?**

11 A. No, unfortunately it does not. My Direct Testimony and accompanying Exhibit  
12 AHA-3 have demonstrated how the proposed merger has created substantial  
13 uncertainty for CLECs with respect to:

- 14 • Systems and operations integration;
- 15 • Change Management Process;
- 16 • Performance Assurance Plan;
- 17 • Wholesale rates and services;
- 18 • Wholesale customer service; and
- 19 • Network investment.

20 As I explained in my Direct Testimony,<sup>14</sup> these are all critical, customer-  
21 impacting areas which this Commission should carefully evaluate before  
22 determining whether the proposed transaction will cause "no harm." The Joint  
23 Petitioners provide no facts that address the merger's impact in these areas.  
24 Instead, they simply continue to assert that "[i]t is not possible or appropriate to

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<sup>14</sup> Ankum Direct at p. 56.

1 subject a pending transaction to a scrutiny that requires detailed plans.”<sup>15</sup> That  
2 position is inconsistent with the long-standing approach taken by this Commission  
3 and other regulators with similar approval authority, under which regulators look  
4 at a proposed merger’s potentially harmful impacts and impose conditions as  
5 necessary to address those potential impacts. As my Exhibit AHA-3  
6 demonstrates, the information supplied to date by the Joint Petitioners concerning  
7 those key issues is woefully incomplete, and clearly insufficient to support the  
8 kind of fact-based evaluation that the Commission should make.

9 **Q. HAVE THE JOINT PETITIONERS ACKNOWLEDGED THAT**  
10 **UNCERTAINTY RELATING TO THE PROPOSED MERGER IS**  
11 **HIGHLY UNDESIRABLE AND CONTRARY TO THE PUBLIC**  
12 **INTEREST?**

13 A. Yes. Mr. Jones opposes the suggestion of CWA witness Mr. Barber to delay the  
14 merger’s approval pending more fully-defined plans, on the grounds that such a  
15 delay’s effects on the individual Companies would be “profoundly negative due  
16 to the uncertainty created by the proposal.”<sup>16</sup> Mr. Jones proceeds to declare that  
17 “the clear effect of uncertainty in the financial markets and in the competitive  
18 market environment is negative.” He specifically concludes that “the  
19 uncertainties for customers—retail and wholesale would be extended—likely  
20 resulting in harm to the public interest, as the ILEC is the backbone  
21 communications provider to its wholesale and retail customers.” Of course, from  
22 the ILEC customers’ point of view – particularly the CLEC wholesale customers

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<sup>15</sup> Jones Rebuttal at p. 13, lines 15-16.

<sup>16</sup> Jones Rebuttal at p. 29.

1 – the harm from uncertainties will persist long after the merger transaction closes,  
2 unless this Commission takes appropriate action.

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

7 A. For the reasons I discussed in my Direct Testimony,<sup>17</sup> I recommend that the  
8 Commission deny the merger as proposed. In the alternative, the Commission  
9 could approve the transaction with conditions designed to substantially reduce the  
10 harmful uncertainties and other potential harmful impacts of the merger on  
11 competition and CLECs. The Joint CLECs’ proposed conditions, which are set  
12 forth in Mr. Gates’ Exhibit TJG-8 and explained in the Direct Testimony that Mr.  
13 Gates and I have provided, remain the best means to do this, and I continue to  
14 recommend their adoption. Thus, adoption of those conditions would allow the  
15 Commission to act in a timely manner, yet also mitigate those harms.

16 **Q. SHOULD THE COMMISSION SIMPLY APPROVE THE MERGER AS**  
17 **PROPOSED, WITHOUT CONDITIONS, AND ADDRESS FUTURE**  
18 **MERGER-RELATED CHANGES AND DISPUTES AS THEY ARISE, AS**  
19 **RECOMMENDED BY THE JOINT PETITIONERS?**

20 A. No. There are many reasons to reject that approach. First, such a “wait-and-see”  
21 approach would indefinitely prolong the uncertainty that CLECs will experience,  
22 as even Mr. Jones acknowledges. Applying conditions to any approval would

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<sup>17</sup> Ankum Direct at p. 63.

1 avoid an extended period of uncertainty and also limit opportunities for abusive  
2 practices aimed at handicapping CLECs, by more clearly delineating the  
3 Companies' post-merger wholesale service and interconnection obligations that  
4 CLECs depend on.

5 Second, this proceeding is the opportune time (and possibly, the only time) for the  
6 Commission to consider the merger's impact on competitors in a systematic and  
7 comprehensive fashion. If the Commission refrains from adopting the Joint  
8 CLECs' proposed conditions now, it may have to address many (perhaps all) of  
9 the same issues later, in piecemeal fashion, consuming even more resources of the  
10 Commission and the parties involved. This is particularly likely with respect to  
11 the proposed conditions addressing interconnection agreements: unilateral actions  
12 by the Merged Company that contravene the intent of the relevant conditions  
13 could result in disputes in multiple ICA negotiations that the Commission would  
14 then be compelled to arbitrate, possibly *in seriatim*.

15 Third, Commission action to address these issues after the merger through  
16 complaint proceedings would fail to provide a timely remedy for merger harm.  
17 As stated by Department of Commerce witness, Mr. Linscheid, "[w]holesale  
18 customers can file complaints with the Commission, but the delay associated with  
19 resolving complaints could cause harm to wholesale customers and  
20 competition."<sup>18</sup> Indeed, the Commission's approval authority is a pre-merger  
21 authority. Companies are required to obtain Commission approval *before*

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<sup>18</sup> Direct Testimony of Bruce Linscheid, p. 18.  
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1 consummating mergers or acquisitions. The point of this authority is to ensure  
2 that the public interest is protected before the merger takes effect.

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

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

12 **Q. MR. JONES ASSERTS THAT YOU "STATE[], WITHOUT PROVIDING**  
13 **ANY EVIDENCE, THAT 'MOST MERGERS ARE NOT NECESSARILY**  
14 **SUCCESSFUL.'"<sup>19</sup> IS THIS CORRECT?**

15 A. No, it is not. The line of my Direct Testimony to which he refers (page 10, line  
16 12) actually reads "*I have already noted that* most mergers are not successful"  
17 (emphasis added). Inexplicably, Mr. Jones has overlooked the discussion of  
18 merger success and failure supplied at pages 5-6 of my Direct Testimony, which  
19 provides a detailed citation to the academic literature on the subject,<sup>20</sup> in support  
20 of the general observation that about two out of three mergers are not successful.  
21 This observation was offered not to object to this particular merger, but rather as a  
22 word of caution and further reason for careful scrutiny of the proposed

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<sup>19</sup> Jones Rebuttal at p. 16, fn. 24.

<sup>20</sup> See Ankum Direct at page 6, fn. 4.

1 transaction. Moreover, this record of merger failure, well documented in my  
2 testimony, underscores the need for and importance of merger conditions to  
3 protect the Companies' wholesale customers and the public interest in  
4 competition.

5 **Q. HAS MR. JONES ALSO MISCONSTRUED YOUR TESTIMONY**  
6 **CONCERNING THE RELATIONSHIP BETWEEN THE COMMISSION'S**  
7 **STANDARD OF REVIEW AND THE JOINT PETITIONERS' SHOWING**  
8 **OF BENEFITS FROM THE MERGER?**

9 A. Yes. Mr. Jones alleges that Mr. Gates and I (as well as Mr. Appleby on behalf of  
10 Sprint) "seek to set a higher threshold for approval of the transaction" by  
11 "requiring that the Joint Petitioners prove affirmative benefits flowing from the  
12 transaction" and by "requiring that...wholesale customers...realize direct  
13 financial benefits from the merger."<sup>21</sup> In fact, my testimony does no such thing.

14 I have set forth my understanding of the Commission's standard of review at  
15 pages 14-19 of my Direct Testimony. Nowhere therein do I state that the  
16 applicable standard *requires* that the Joint Petitioners prove that affirmative  
17 benefits will flow from the proposed transaction. Instead, I point out that the  
18 Commission has found that in reviewing a transaction of this kind, it must  
19 perform a balancing test that "weighs the perceived detriments or concerns  
20 against the perceived benefits to the public."<sup>22</sup> A properly conducted balancing  
21 test will necessarily evaluate the quality and credibility of the evidence in the  
22 record. If the Joint Petitioners are unable or unwilling to substantiate their claims

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<sup>21</sup> Jones Rebuttal at p. 12.

<sup>22</sup> Ankum Direct at p.15 (footnote and citation omitted).

1 of merger benefits with specific plans or other empirical information then, in the  
2 balancing test, the Commission should afford those unsubstantiated claims the  
3 weight they deserve – which, as demonstrated in my Direct Testimony<sup>23</sup> and  
4 Exhibit AHA-4, turns out to be little or none, as so often they are little more than  
5 rhetoric and empty promises.

6 Similarly, I have not stated that the Commission’s applicable standard of review  
7 *requires* that wholesale customers realize direct financial benefits from the  
8 merger. Instead, I have pointed out that the Joint Petitioners *could* have  
9 committed to flowing through merger-related synergy cost savings into cost-based  
10 rates for the network elements and interconnection leased by CLECs (to the extent  
11 those synergies are realized) – which the pricing provisions of the  
12 Telecommunications Act of 1996 already require – but *have chosen not to* make  
13 such a commitment.<sup>24</sup> In my view, the absence of this commitment does not in  
14 itself violate the applicable Commission review standard, but it is simply another  
15 factor that should be taken account in the Commission’s balancing test.

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<sup>23</sup> *Id.* at Section VI (pages 57-63).

<sup>24</sup> Ankum Direct, at pp. 61-62.

1       **Q. MR. BRIGHAM CLAIMS<sup>25</sup> THAT YOUR ANALYSIS OF THE**  
2       **PROPOSED TRANSACTION’S RISKS AND BENEFITS IS FLAWED,**  
3       **AND THAT “IT IS ABSURD TO ARGUE THAT A MERGER PRESENTS**  
4       **LESS RISK TO STOCKHOLDERS THAN TO OTHER**  
5       **STAKEHOLDERS.”<sup>26</sup> IS HE CORRECT?**

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

9                   [They] can sell their shares if they anticipate that things will go  
10                   awry, or, alternatively, hold on to their shares to reap whatever  
11                   benefits they may anticipate: it is a risk-return tradeoff each  
12                   shareholder is free to either assume or walk away from.<sup>27</sup>

13       The circumstance that Mr. Brigham cites, that certain stockholders “lost their  
14       entire investment” when the Worldcom-MCI combination went bankrupt,<sup>28</sup>  
15       simply reflects those stockholders’ willingness to stay in the game and accept the  
16       risk of potential losses, as well as potential rewards.<sup>29</sup> If they ultimately incurred  
17       large financial losses, that is attributable to their poor judgment (as revealed in  
18       hindsight), not to an *involuntary imposition* of risks.

19       As I then explained further, that freedom of choice (i.e., to accept the merger’s  
20       risks or exit) does not exist for other, captive stakeholders, most notably CLECs,

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<sup>25</sup> Brigham Rebuttal at pages 26-27 and page 30.

<sup>26</sup> *Id.* at page 30, lines 19-20.

<sup>27</sup> Ankum Direct at p. 9, lines 9-12.

<sup>28</sup> Brigham Rebuttal at p. 30, lines 16-17.

<sup>29</sup> For other stakeholders that are set to reap significant returns, see, Windfall for Qwest top execs, by Andy Vuong, *The Denver Post*, 7/18/2010. [http://www.denverpost.com/search/ci\\_15536725](http://www.denverpost.com/search/ci_15536725). The article notes the following: “Seven top executives at Qwest stand to reap more than **\$110 million in cash and stock** from the Denver-based company's proposed merger with CenturyLink, according to a new regulatory filing.” (Emphasis added.)

1           who depend on the Companies for critical wholesale inputs.<sup>30</sup> I address the  
2           Commission’s recognition of this dependence in more detail below (see Section  
3           III.A).

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

6           A. Yes. My Direct Testimony generally focuses on the circumstances confronted by  
7           CLECs operating in the Companies territory, but I also refer to the fact that there  
8           are “retail customers in *captive segments* of retail markets [that] have little or no  
9           choice.”<sup>31</sup> While Mr. Brigham appears to deny the existence of any captive retail  
10          customers,<sup>32</sup> the latest FCC report on local telephone competition<sup>33</sup> indicates that  
11          there are still many areas in Minnesota where there are no alternative landline  
12          providers.<sup>34</sup> But even in areas in which alternative landline providers do operate,  
13          not all customers are likely to have access to the alternative provider(s), which is  
14          particularly true for residential customers. Nevertheless, it does demonstrate that  
15          a significant fraction of Minnesota landline consumers remain captive customers  
16          of their ILEC.

17          In any event, whether considering captive wholesale customers (CLECs) or retail  
18          customers (those without alternatives to the Companies’ wireline services), it is

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<sup>30</sup> *Id.* at p. 9, lines 15-17; see also p. 13.

<sup>31</sup> *Id.* at p. 9, lines 13-14, emphasis added

<sup>32</sup> See *id.* at pp. 11-13.

<sup>33</sup> See, FCC Wireline Competition Bureau, Industry Analysis and Technology Division, Local Telephone Competition: Status as of June 30, 2009, released September 2010 (FCC Local Competition Report), at Table 20.

<sup>34</sup> The FCC methodology is highly conservative, in that it counts a zip code as having an alternative supplier if at least one residential or business end user in the zip code is served by a CLEC, and does not consider the geographic reach of the provider within the zip code area. *Id.* at p. 1, fn. 3.

1 the distinction between voluntary and involuntary participation in the proposed  
2 merger's risks that is central to the analysis of various stakeholder groups' risk-  
3 return profiles, the point which Mr. Brigham entirely misses. Thus contrary to  
4 Mr. Brigham's erroneous claim, my analysis of the asymmetry in the risk-return  
5 profiles between various stakeholders is sound.

6 **Q. ON THE SUBJECT OF RISKS, MR. GAST OBSERVES THAT YOU AND**  
7 **OTHER INTERVENORS HAVE CITED TO THE "RISK FACTORS"**  
8 **DISCUSSION CONTAINED IN CENTURYLINK'S SEC FORM 4-A**  
9 **FILED JULY 16, 2010. MR. GAST CONTENDS THAT "...THE**  
10 **DISCLOSURES ARE NOT INTENDED TO SUGGEST THAT THE RISKS**  
11 **ARE LIKELY OUTCOMES." DOES THIS MEAN THAT THE**  
12 **COMMISSION CAN SIMPLY DISCOUNT OR IGNORE THOSE**  
13 **IDENTIFIED RISKS?**

14 A. No. In its Form S-4A filing, CenturyLink identified specific, concrete risks that  
15 are associated with the proposed merger,<sup>35</sup> even if it did not assign probabilities of  
16 occurrence to them. The fact remains that the "Risk Factors" discussion directly  
17 contradicts CenturyLink's claims before this Commission that there are *no*  
18 potential harms that could result from the merger.<sup>36</sup> Surely, if it is important to  
19 forewarn the financial community of potential harms, it is important to forewarn  
20 the Commission.

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<sup>35</sup> See my Direct Testimony at pp. 51-52, where I list some of the specific risks that CenturyLink described in the Form S-4A filing.

<sup>36</sup> See Jones Direct at p. 12; see also the Joint Petition at p. 14 ("The Transaction will provide benefits to consumers of the combined company without *any countervailing harms.*" -- emphasis added).

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

7 The integration of FairPoint's and Spinco's businesses may not be  
8 successful. The acquisition of the Spinco [Verizon] business is the  
9 largest and most significant acquisition FairPoint has undertaken.  
10 FairPoint's management will be required to devote a significant  
11 amount of time and attention to the process of integrating the  
12 operations of FairPoint's business and Spinco's business, which  
13 will decrease the time they will have to service existing customers,  
14 attract new customers and develop new services or strategies. Due  
15 to, among other things, the size and complexity of the Northern  
16 New England business and the activities required to separate  
17 Spinco's operations from Verizon's, FairPoint may be unable to  
18 integrate the Spinco business into its operations in an efficient,  
19 timely and effective manner. FairPoint's inability to complete this  
20 integration successfully could have a material adverse effect on the  
21 combined company's business, financial condition and results of  
22 operations.<sup>37</sup>

23 The integration of FairPoint's and Spinco's businesses may present  
24 significant systems integration risks, including risks associated  
25 with the ability to integrate Spinco's customer sales, service and  
26 support operations into FairPoint's customer care, service delivery  
27 and network monitoring and maintenance platforms.<sup>38</sup>

28  
29 The Direct Testimony offered by Mr. Gates and myself explains the parallels  
30 between the FairPoint-Verizon transaction and the proposed CenturyLink-Qwest  
31 merger, and describes the harms to consumers and CLECs that were caused as  
32 these previously-identified (albeit not quantified) risks did in fact become an

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<sup>37</sup> FairPoint Communications SEC Form S-4A, filed July 10, 2007, at p. 25 (emphasis removed).

<sup>38</sup> *Id.*, at p. 26 (emphasis removed).

1           unfortunate reality.<sup>39</sup> Accordingly, as I have recommended,<sup>40</sup> the Commission  
2           should heed the lessons of the Carlyle-Hawaiian Telcom and FairPoint-Verizon  
3           experiences and ensure that appropriate safeguards are adopted in the instant  
4           proceeding to ensure that similar harms will not occur in Minnesota.

5           **Q.   MR. HUNSUCKER (PAGE 4) AND MR. BRIGHAM (PAGES 28-29)**  
6           **CLAIM THAT CLECS WILL BENEFIT FROM A FINANCIALLY**  
7           **STRONGER MERGED COMPANY, DO YOU AGREE?**

8           A.   No, I have seen no evidence from the Companies to support this claim – only  
9           unsupported assertions. I do acknowledge that CLECs *could* benefit from a  
10          financially stronger Merged Company, *but only if* the greater financial strength  
11          were directed to, among other things, improving wholesale services and  
12          associated wholesale customer support. However, there is no evidence that the  
13          post-merger company, contrary to most merger outcomes, will in fact be stronger.  
14          Furthermore, neither witness has offered any explanation of how a financially  
15          stronger Merged Company in this instance would confer specific benefits on  
16          CLECs. Indeed, the information provided by the Joint Petitioners in this  
17          proceeding suggests that just the opposite is true. For example, the Joint Petition  
18          states that “[a] financially stronger company can...compete against...CLECs...”<sup>41</sup>  
19          Again, I do not object to robust competition between the Merged Company and  
20          CLECs as long as the competition is fair.<sup>42</sup> However, I cannot see how that

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<sup>39</sup> See, e.g., my Direct Testimony at pp. 26-35 and pp. 50-51, and Gates Direct at pp. 85-99.

<sup>40</sup> Ankum Direct at pp. 36-37.

<sup>41</sup> Qwest Communications International, Inc., CenturyTel, Inc. et al, Joint Petition for Expedited Approval of Indirect Change of Control, filed May 13, 2010 (“Joint Petition”), at p. 11.

<sup>42</sup> See Ankum Direct at p. 86.

1           purported financial strength benefits CLECs – especially given that, as Mr. Gates  
2           explains, the Joint Petitioners have not agreed to reflect the Merged Company’s  
3           increased efficiencies in its relationships with its wholesale customers or even to  
4           maintain the products, services or rates that CLECs purchase from Qwest today.<sup>43</sup>

5           **Q.   MR. HUNSUCKER CLAIMS<sup>44</sup> THAT CLECS WOULD ALSO BENEFIT**  
6           **FROM THE MERGED COMPANY’S GAINS IN INTERNAL**  
7           **OPERATING EFFICIENCIES ASSOCIATED WITH WHOLESALE**  
8           **SERVICES. IS THAT NECESSARILY TRUE?**

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

19          Clearly, the extent to which CLECs could benefit from such internal operating  
20          efficiencies of the Merged Company would vary greatly depending upon the  
21          specific process or system affected. Some efficiency improvements in the  
22          Companies’ OSS systems would clearly have no benefit to the wholesale service

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<sup>43</sup> Gates Surrebuttal at p. 63.

<sup>44</sup> Hunsucker Rebuttal at p. 43.

1 performance experienced by the CLECs. For example, if the Merged Company  
2 found a much cheaper way to store and access its loop plant records than the  
3 status quo, that could reduce its costs and improve its operating efficiencies, but  
4 without any effect on, or benefit to, the wholesale services as experienced by the  
5 CLECs. On the other hand, CLECs could be harmed if the Merged Company  
6 should find it more “efficient” and less costly to cut back on the staffing of its  
7 wholesale services support centers, slowing responses and increasing CLEC  
8 customers’ waiting times for customer queries and trouble resolutions. The latter  
9 is exactly the kind of wholesale service change that the CLECs are concerned  
10 about, and which is addressed by Condition 18 of the Joint CLECs’ proposed  
11 conditions (see Mr. Gates’ Exhibit TJG-8).

12 ***C. The Joint Petitioners’ witnesses ignore the fact that the***  
13 ***concerns that they characterize as “CLEC speculations” are***  
14 ***grounded in comprehensive and in-depth analysis.***

15 **Q. HOW HAVE THE JOINT PETITIONERS’ WITNESSES CHARACTERIZED**  
16 **YOUR ANALYSIS OF THE POTENTIAL HARMS TO CLECS AND THE**  
17 **PUBLIC INTEREST THAT MAY ARISE FROM THE PROPOSED**  
18 **MERGER?**

19 A. In their Rebuttal Testimony, Mr. Hunsucker on behalf of CenturyLink, and Mr.  
20 Brigham on behalf of Qwest, characterize my analysis of potential merger harms  
21 as “speculative” and “unsupported.”<sup>45</sup> Mr. Brigham declares that he is “struck by  
22 the highly speculative and unsupported nature of Dr. Ankum's and Mr. Gates'  
23 testimony regarding how this merger will impact the competitive landscape in

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<sup>45</sup> *Id.* at p. 9, Brigham Rebuttal at p. 4.  
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1 Minnesota.”<sup>46</sup> He opines that I and other CLEC witnesses “speculate that  
2 competition will be harmed by the proposed transaction, but this speculation is  
3 not supported by the facts.”<sup>47</sup>

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

6 A. As the Commission can see by reviewing my nearly 180 pages of Direct  
7 Testimony and Exhibits in this proceeding, my conclusions concerning the  
8 proposed merger’s potential harms to CLECs and the public interest are based  
9 upon a comprehensive and in-depth analysis. The review and analysis in my  
10 direct testimony includes:

- 11 • Review of the economic literature concerning merger motivations and  
12 success/failure rates;
- 13 • Analysis of the unique aspects of telecommunications and ILEC merger  
14 transactions;
- 15 • Review and assessment of prior telecommunications and ILEC mergers  
16 and why they succeeded/failed;
- 17 • Evaluation of the specifics of the Joint Petitioners’ proposed transaction,  
18 as much as they have been revealed in the Companies’ Joint Petition,  
19 prefiled testimony, and discovery responses in Minnesota and elsewhere;
- 20 • Assessment of the Joint Petitioners’ incentives and abilities to discriminate  
21 against the CLECs with which they compete;<sup>48</sup> and
- 22 • Review of the Direct Testimony of Mr. Gates, in particular the well-  
23 documented evidence it contains concerning past anti-competitive conduct  
24 by the Joint Petitioners, and how OSS integration failures in the context of  
25 prior ILEC mergers demonstrate further potential harms from the Joint  
26 Petitioners’ proposed transaction.

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<sup>46</sup> Brigham Rebuttal at p. 4.

<sup>47</sup> *Id.* at p. 4.

<sup>48</sup> See Ankum Direct at page 13 and Section V.B, Vertical Effects, pages 41-45.

1 A careful review of my direct testimony shows that my conclusions regarding the  
2 potential harm to wholesale customers and competition are well-founded and not  
3 speculative or unsupported, as suggested by Mr. Hunsucker and Mr. Brigham. To  
4 the extent there is uncertainty regarding the impact of this merger, that uncertainty  
5 results largely from the Joint Petitioners' failure to provide their specific post-  
6 merger plans and associated information. In this regard, the Department of  
7 Commerce's witness, Ms. Doherty, observed that the Joint Petitioners have failed  
8 to provide information sufficient to demonstrate that the proposed transaction is in  
9 the public interest with respect to competition and wholesale customers, noting  
10 that:

11 CenturyLink and Qwest have provided very little specific  
12 information about post-merger plans either in direct testimony or  
13 in responses to information requests.<sup>49</sup>

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

18 **Q. HAVE DEPARTMENT OF COMMERCE WITNESSES COMMENTED**  
19 **ON THE ADEQUACY OF THE JOINT CLECS' TESTIMONY?**

20 Yes. Ms. Doherty clearly recognized that the Joint CLECs' direct testimony on  
21 potential merger harms was well supported. As Ms. Doherty observed:

22 The Wholesale Customers, whose businesses depend on what  
23 transpires as a result of the merger, have provided extensive  
24 testimony in support of the conditions they have recommended.

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<sup>49</sup> Rebuttal Testimony of Katherine A. Doherty on Behalf of the Minnesota Department of Commerce, September 13, 2010 ("Doherty Rebuttal"), at p. 5, lines 7-8.

1 They have provided ample testimony speaking to the potential  
2 harm that could result from the proposed merger, and have  
3 provided examples of the harm that has occurred as a result of  
4 other transactions.<sup>50</sup>

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

8 **III. RESPONSE TO JOINT PETITIONERS' TESTIMONY**  
9 **CONCERNING GENERAL NEED FOR CONDITIONS**

10 **A. *Mr. Brigham confuses the status of competition in retail vs.***  
11 ***wholesale markets and ignores the Commission's recent***  
12 ***finding that Qwest continues to dominate wholesale markets***  
13 ***within its Minnesota service territory.***

14 **Q. DR. ANKUM, DO YOU AGREE WITH MR. BRIGHAM'S ASSERTIONS**  
15 **THAT THE "POST MERGER COMPANY CANNOT AFFORD TO, AND**  
16 **HAS NO INCENTIVE TO, DEGRADE OSS OR OFFER INFERIOR**  
17 **SERVICE QUALITY BECAUSE CUSTOMERS – INCLUDING CLECS –**  
18 **HAVE COMPETITIVE OPTIONS"?**

19 **A.** No. Despite reference to it in my Direct Testimony,<sup>51</sup> Mr. Brigham disregards the  
20 Commission's recent findings concerning the lack of competitive wholesale  
21 service options available to CLECs within Qwest's Minnesota territory (which  
22 represents roughly 90% of the combined companies' operations in the state).<sup>52</sup> As  
23 the Commission found in a recent April 23, 2010 Order:

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<sup>50</sup> Doherty Rebuttal, at p. 10, lines 10-14.

<sup>51</sup> Ankum Direct, at pages 8-9, especially footnotes 5 and 6 therein.

<sup>52</sup> According to Mr. Stanoch's Direct Testimony (pp. 12-13), as of year-end 2009, Qwest served 1.2-million access lines in Minnesota and CenturyLink served another 143,000. Thus on an access line  
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1 In the parts of Minnesota where Qwest is the incumbent carrier,  
2 effective local retail competition relies upon wholesale services  
3 and facilities provided by Qwest. In particular, the CLECs depend  
4 heavily upon the use of Qwest's wholesale elements to provide  
5 service to medium size business customers. The ALJs found that  
6 CLECs have few realistic means of serving these customers other  
7 than via Qwest's wholesale elements. Should these elements cease  
8 to be available at just and reasonable rates, local competition  
9 would be adversely affected, jeopardizing critical state and federal  
10 policy goals.<sup>53</sup>

11 Similarly, the Commission observed in its December 2009 Order adopting a new  
12 AFOR for Qwest that:

13 While the 1996 Act has succeeded in introducing a measure of  
14 competition into the retail market, *Qwest remains the dominant*  
15 *provider of wholesale services*. And regardless of the state of  
16 competition, each telephone company continues to exercise a  
17 monopoly over routing calls over the public switched  
18 telecommunications network to its own retail customers - that is,  
19 over switched access service.<sup>54</sup>

20 Of course, the latter observation concerning the ILEC monopoly over switched  
21 access applies with equal force to CenturyLink's existing Minnesota operations as  
22 well as to those of Qwest.

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

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basis, Qwest accounts for 89.4% of the combined companies' operations in the state (that is, 1.2-million ÷ (1.2-million + 143,000) = 89.4%).

<sup>53</sup> MPUC Docket No. P-421/CI-05-1996, Order Requiring Price List and Supporting Rationale (April 23, 2010), at p. 3 (footnotes omitted). While I am aware that the Commission recently chose to stay that order for procedural reasons, in doing so it observed that "The decisions in that order were thoroughly considered and grounded in the well-developed record of this proceeding..."; see Docket No. P-421/CI-05-1996, Order Staying Order of April 23, 2010, Pending Further Actions (September 13, 2010), at p. 3.

<sup>54</sup> MPUC Docket No. P-421/AR-09-790, Order Approving Qwest's Alternative Regulation Plan as Modified (December 23, 2009), at p. 5 (emphasis supplied).

1 I have already explained,<sup>55</sup> the very fact that CLECs operating in the Qwest  
2 region are highly dependent upon Qwest's wholesale services to access their  
3 customers – as this Commission has confirmed – creates strong disincentives to  
4 provide CLECs with quality, reasonably priced, nondiscriminatory wholesale  
5 services and network access. In the absence of significant alternative sources of  
6 supply for those inputs, CLECs cannot simply migrate away from Qwest's  
7 network, as Mr. Brigham suggests,<sup>56</sup> and instead will suffer harms to the extent  
8 that there is any decline in the scope, quality or terms of the post-merger  
9 wholesale services provided by the merged company.

10 **Q. MR. BRIGHAM OBSERVES THAT THE DEPARTMENT OF JUSTICE**  
11 **(DOJ) AND FEDERAL TRADE COMISSION (FTC) HAVE CLEARED**  
12 **THE CENTURLINK-QWEST MERGER FROM AN ANTITRUST**  
13 **PERSPECTIVE.<sup>57</sup> WHAT SPECIFIC ACTIONS DID THE DOJ**  
14 **UNDERTAKE IN THAT REGARD?**

15 A. At the Joint Petitioners' request, the Department of Justice (DOJ) terminated the  
16 waiting period for review of the merger under the Hart Scott Rodino Act. While I  
17 am not an attorney offering a legal opinion, my understanding is that the early  
18 termination of a merger review is made pursuant to 16 C.F.R. Section 803.11,  
19 which requires in totality the following findings by the DOJ: that all required  
20 notifications have been filed; no additional information or documentary material

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<sup>55</sup> Ankum Direct at p. 13.

<sup>56</sup> Mr. Brigham also confuses retail and wholesale markets when he points to growth in "competitive options from other facilities-based providers such as cable and wireless companies" (Brigham Rebuttal at p. 7). While I reject Mr. Brigham's view that wireless service is a full "competitive option" to ILEC wireline service, that debate pertains to the retail marketplace only and has nothing to do with the wholesale services market for CLEC inputs.

<sup>57</sup> Brigham Rebuttal at pp. 19-20.

1 will be requested; and a determination by the DOJ that it does not intend to take  
2 any further action within the waiting period. Thus Mr. Brigham's conclusion that  
3 the termination meant that the DOJ "...determined there will not be a significant  
4 erosion of competition resulting from the merger"<sup>58</sup> is an overstatement.

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

8 A. No. As I pointed out in my Direct Testimony,<sup>59</sup> the DOJ's antitrust review differs  
9 from and is narrower than the Commission's public interest evaluation. The  
10 DOJ's role in merger proceedings is to investigate a proposed merger to the point  
11 that the Assistant Attorney General in charge of the DOJ's Antitrust Division can  
12 determine if the evidence warrants prosecution of an antitrust case against the  
13 merging entities.<sup>60</sup> My understanding is that nothing in the statutes granting this  
14 prosecutorial authority to the DOJ either states, or indicates, that the DOJ's  
15 decision should supplant or even guide a regulatory body's public interest  
16 determination regarding the proposed merger.

17 As a general matter, despite the fact that the CenturyLink-Qwest transaction is  
18 being scrutinized by multiple government agencies, this Commission should not  
19 lose sight of the fact that it is the only government authority specifically tasked  
20 with determining whether the proposed merger is in the public interest under  
21 Minnesota law, and thus with due consideration of Minnesota-specific

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<sup>58</sup> Brigham Rebuttal at p. 20, lines 2-3.

<sup>59</sup> Ankum Direct at p. 22.

<sup>60</sup> 15 U.S.C. Sections 18, 18a.

1 circumstances. This Commission should not simply defer to other agencies as  
2 Mr. Brigham and Mr. Jones seem to imply,<sup>61</sup> but instead should exercise its  
3 independent judgment and authority with respect to the Joint Petition, as it always  
4 has in merger proceedings such as this.

5 **IV. RESPONSE TO JOINT PETITIONERS' TESTIMONY**  
6 **CONCERNING SPECIFIC CONDITIONS PROPOSED**  
7 **BY THE JOINT CLECS**

8 *A. The specific Joint CLEC proposed conditions explained in my*  
9 *Direct Testimony remain essential protections and are not*  
10 *undermined by the rebuttal testimony offered by the Joint*  
11 *Petitioners' witnesses.*

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

16 A. Yes, I have. Section VII of my Direct Testimony (pages 63-87) explained the  
17 basis for the Joint CLECs' proposed conditions relating to wholesale rate stability  
18 (Conditions number 2, 3, and 7 as numbered in Mr. Gates' Exhibit TJG-8) and the  
19 availability of wholesale services (Conditions number 1, 6, 8, 9, 10, 12, 14 and  
20 28). Mr. Hunsucker, on behalf of CenturyLink, and Ms. Stewart, on behalf of  
21 Qwest, have addressed those particular conditions in their respective rebuttal  
22 testimony.<sup>62</sup> In addition, Qwest's witness Mr. Stanoch has supplied rebuttal  
23 testimony alleging that several of those conditions "ignore the structure of the

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<sup>61</sup> See Jones Rebuttal at p. 4 (noting that seven states have approved the CenturyLink-Qwest transaction).

<sup>62</sup> See Hunsucker Rebuttal at pp. 19-21, 23-30, and 44-45; Stewart Rebuttal at pp. 11-12.

1 transaction” because “CenturyLink is at this time proposing to continue to operate  
2 its existing companies as separate operating entities.”<sup>63</sup> However, I am not  
3 offering a specific response to Mr. Stanoch’s allegation; rather, I concur in the  
4 surrebuttal testimony that Mr. Gates offers on that issue.

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

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

12 **1. Conditions 2, 3, and 7**

13 **Q. WHAT IS YOUR RESPONSE TO MS. STEWART’S ARGUMENT<sup>64</sup> THAT**  
14 **THERE IS NO NEED FOR THE WHOLESALE RATE STABILITY**  
15 **CONDITIONS (NUMBERS 2, 3, AND 7) BECAUSE THE COMMISSION**  
16 **ALREADY HAS IN PLACE A PROCESS FOR DETERMINING RATES**  
17 **FOR SECTION 251-RELATED SERVICES?**

18 A. As I discussed in my Direct Testimony,<sup>65</sup> there is a serious risk that the Merged  
19 Company will attempt to recover merger costs through increases in wholesale  
20 rates. To preclude this sort of recovery, a merger commitment that caps rates for

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<sup>63</sup> Stanoch Rebuttal at p. 9 (footnote omitted). Mr. Stanoch addresses this argument to conditions number 2, 3, 6, 7(b), 9, 10, and 12 above, as well as others recommended by Mr. Gates.

<sup>64</sup> Stewart Rebuttal at pp. 11-12.

<sup>65</sup> Ankum Direct at pp. 42-43 and 84-85.

1 a meaningful period following the merger is essential for several reasons. First,  
2 recovering merger costs through wholesale rate increases would be inappropriate  
3 for the reasons stated in my Direct Testimony. Indeed, regulators have  
4 historically rejected any such recovery.<sup>66</sup> Second, post-hearing wholesale  
5 rate/UNE cost proceedings are an expensive, time-consuming, and uncertain way  
6 of attempting to prevent the Joint Petitioners from improperly recovering merger  
7 costs from wholesale customers/competitors. Indeed, those merger-related costs  
8 could be buried in complex cost-models that allow them to find their way into  
9 wholesale rates undetected. Contrary to Ms. Stewart's view, the Commission  
10 cannot simply rely upon its existing rate-setting and complaint procedures to  
11 ensure that the safeguards contemplated in Conditions 2, 3, and 7 are actually  
12 achieved. By refusing to make an up-front commitment to refrain from recovery  
13 of merger transaction-related costs from wholesale rates and CLECs, the Joint  
14 Petitioners would be shifting the burden to the Commission, the Department of  
15 Commerce, and CLEC intervenors in such proceedings to identify and root out  
16 those costs, which as I explained in my Direct Testimony, regulators should not  
17 and traditionally have not included in merging ILECs' wholesale or retail rates as  
18 a matter of principle. Now is the time for the Commission to implement this  
19 principle by adopting Conditions 2 and 3, not in a future rate proceeding where it  
20 can be lost in the midst of a myriad of other costing and rate-setting issues.

21 Moreover, the Merged Company may seek to recover merger-transaction related  
22 costs or impose other unwarranted wholesale rate increases or changes in terms

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<sup>66</sup> *Id.* at pp. 84-85 (see especially fns. 137 and 138 citing decisions by the Illinois CC and Oregon PUC).  
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1 outside of the Section 251 rate-setting process referred to by Ms. Stewart.  
2 Perhaps the best demonstration of this concern is the recent unilateral change that  
3 Qwest made to volume and term discounts for DS1 and DS3 circuits in its  
4 Regional Commitment Program (RCP), resulting in terms less favorable to  
5 CLECs. None of the Companies' witnesses have responded to (or even  
6 acknowledged) my Direct Testimony concerning this change to a non-Section 251  
7 wholesale services agreement.<sup>67</sup> Clearly, however, constraining this type of  
8 conduct must go beyond the Commission's existing Section 251-related  
9 procedures.

10 **Q. HOW DO YOU RESPOND TO MR. HUNSUCKER'S ASSERTIONS**  
11 **THAT "THE CLECS DO NOT ATTEMPT TO PORTRAY CONDITIONS**  
12 **[CONDITIONS 2, 3 AND 7] AS LEGITIMATE MERGER CONCERNS"**  
13 **AND THAT THEY ARE REALLY "ATTEMPTS...TO INCREASE CLEC**  
14 **PROFITABILITY"?**<sup>68</sup>

15 A. These assertions are erroneous. Contrary to Mr. Hunsucker's claim that  
16 Conditions 2 and 3 were not presented in my Direct Testimony as "legitimate  
17 merger concerns," my testimony explains clearly that those conditions are  
18 specifically targeted at the issue of the Merged Company's recovery of *merger*  
19 *transaction-related costs*.<sup>69</sup> Similarly, pages 83-87 of my Direct Testimony

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<sup>67</sup> Ankum Direct, at pp. 85-87.

<sup>68</sup> *Id.* at p. 45, lines 5-6.

<sup>69</sup> Ankum Direct at p. 82.

1 specifically explain why Conditions 2, 3, and 7 are necessary *in the context of the*  
2 *merger*.<sup>70</sup> Mr. Hunsucker has failed to acknowledge that testimony.

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

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

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

19 The same is true for the term and volume discount plans specifically addressed in  
20 Condition 7, subpart a. This subpart seeks their continuation “without any  
21 changes to the rates, terms, or conditions of such plans”<sup>73</sup> – and does not grant  
22 CLECs any new, more favorable terms or conditions, as Mr. Hunsucker implies.

23 The thrust of Condition 7 and its subparts is to maintain the status quo

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<sup>70</sup> For example, at p. 83, lines 17-20 of my Direct Testimony, I conclude that Condition 7 “provides a degree of protection for captive wholesale customers that the Merged Company will not seek to increase their rates (or create new rate elements) during the Merged Company’s pursuit of synergies and revenue enhancements.”

<sup>71</sup> Hunsucker Rebuttal at p. 45, lines 9-11.

<sup>72</sup> Ankum Direct at p. 83, lines 11-17 (emphasis added).

<sup>73</sup> Exhibit TJG-8 at p.5.

1 competitive balance between the Joint Petitioners and the CLECs they serve  
2 throughout the merger transition period. This general goal applies with equal  
3 force to the Wholesale Service Availability conditions that I am recommending,  
4 as I shall now explain.

5 **2. Conditions 1, 6, 8, 9, 10, 12, 14 and 28**

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

11 A. Yes. The Wholesale Services Availability conditions (Conditions number 1, 6, 8,  
12 9, 10, 12, 14 and 28) were set forth and explained in Section VII-A of my Direct  
13 Testimony.<sup>74</sup> As observed therein, these conditions would ensure that the Merged  
14 Company will continue to make available the wholesale services that Qwest  
15 currently provides during the merger transition period (as measured by the  
16 Defined Time Period set forth in Exhibit TJG-8).

17 **Q. HAVE THE JOINT PETITIONERS' WITNESSES OFFERED ANY**  
18 **RELEVANT REBUTTAL TO CONDITION 1?**

19 A. No. Mr. Hunsucker mistakenly categorized Condition 1, which concerns the  
20 continued availability of wholesale services, with the Wholesale Rate Stability  
21 conditions.<sup>75</sup> Thus, Mr. Hunsucker's criticism of Condition 1 as a rate-related

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<sup>74</sup> See Ankum Direct, at pp. 62-82.

<sup>75</sup> Hunsucker Rebuttal at p. 44, lines 1-11.

1 condition is misplaced and should be disregarded.<sup>76</sup> No other Joint Petitioner  
2 witnesses address Condition 1.

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

9 A. Mr. Hunsucker and Mr. Stanoch assert that Condition 6 is inappropriate or  
10 unnecessary because of the structure of the Joint Petitioners' proposed  
11 transaction, in which the entire Qwest corporate entity is being acquired.<sup>77</sup>

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

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

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

<sup>77</sup> *Id.* at p. 19; Stanoch Rebuttal at p. 9.

<sup>78</sup> Gates Surrebuttal at pp. 60-61.

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

4       A.     Yes. Condition 6 (exclusive of its subparts) requires the Merged Company to take  
5           on the obligations of the Assumed Agreements without requiring wholesale  
6           customers to execute any documents to effectuate the assumption. The Joint  
7           Petitioners have stated that the legacy Qwest entity “will continue to be the  
8           provider of service”<sup>79</sup> but CenturyLink does not commit to any specified time  
9           period for this to continue. CenturyLink also does not commit to *not* requiring  
10          such document execution (regardless of whether the obligations are considered  
11          continuing or assumed).<sup>80</sup> If it will impose no such requirement, then  
12          CenturyLink should have no objection to this condition.

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

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

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<sup>79</sup> Hunsucker Rebuttal, at p. 19.

<sup>80</sup> *Id.*

<sup>81</sup> See Integra’s May 13, 2010 Ex Parte filing in FCC WC Dkt. No. 09-95, which is attached to my testimony as Surrebuttal Exhibit AHA-7.

1       **Q. DO YOU AGREE WITH MR. HUNSUCKER'S CONCLUSION THAT**  
2       **CONDITION 8 HAS THE EFFECT OF ALLOWING CLECS TO**  
3       **UNILATERALLY CHANGE THEIR EXISTING CONTRACT TERMS TO**  
4       **EXTEND ICAS, INCLUDING THOSE IN "EVERGREEN" STATUS, FOR**  
5       **AS MUCH AS SEVEN YEARS?**

6       A. No. The terms and conditions under the numerous "evergreen" ICAs between  
7       Qwest and CLECs have been acceptable to the signatory companies for extended  
8       periods; the fact that Qwest chooses to merge with CenturyLink should not  
9       suddenly result in harm to Qwest from their continuance through the merger  
10      transition period (the Defined Time Period).<sup>82</sup> This type of condition is not only  
11      reasonable, it has been adopted (with slight variations) by the Illinois Commerce  
12      Commission, the Public Utilities Commission of Ohio, and the Oregon Public  
13      Utilities Commission as a condition of the Frontier/Verizon merger. Moreover,  
14      Mr. Gates explains how Mr. Hunsucker mischaracterizes the Defined Time Period  
15      and how it remains the appropriate time period to apply in Condition 8 as  
16      elsewhere.<sup>83</sup>

17      **Q. IS MR. HUNSUCKER CORRECT THAT CONDITION 9, WHICH**  
18      **COMMITTS THE MERGED COMPANY TO ALLOWING CLECS TO USE**  
19      **A PRE-EXISTING ICA AS A BASIS FOR NEGOTIATING A NEW ICA, IS**  
20      **UNNECESSARY?**<sup>84</sup>

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<sup>82</sup> Ankum Direct at p. 73.

<sup>83</sup> See Gates Surrebuttal at pp. 74-75.

<sup>84</sup> Hunsucker Rebuttal at pp. 23-24.

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

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

15 Again, as noted in my Direct Testimony, this same condition was adopted by the  
16 Oregon PUC as a condition of the Frontier/Verizon merger.<sup>87</sup>

17 **Q. HOW DO YOU RESPOND TO MR. HUNSUCKER'S TESTIMONY IN**  
18 **OPPOSITION TO CONDITION 10, WHICH WOULD PERMIT CLECS**  
19 **TO OPT INTO ANY OTHER QWEST ICA IN THE SAME STATE?<sup>88</sup>**

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<sup>85</sup> *Id.* at p. 23, lines 14-15.

<sup>86</sup> Ankum Direct at pp. 73-76.

<sup>87</sup> 2010 Ore. PUC LEXIS 64, 124.

<sup>88</sup> Hunsucker Rebuttal at pp. 25-26.

1 A. It is simply not correct, as Mr. Hunsucker claims, that Condition 10 would allow  
2 CLECs to “cherry pick” ICA terms.<sup>89</sup> In fact, my Direct Testimony notes that  
3 “[t]his condition does not allow a carrier to pick-and-choose ICA terms.”<sup>90</sup>  
4 Likewise, Mr. Hunsucker’s claim that Condition 10 ignores such issues as  
5 differences in technical feasibility, network design and costs between  
6 CenturyLink and Qwest<sup>91</sup> is refuted by the explicit language of the condition:

7 The state commission may require modification of the agreement  
8 to the extent that the commission determines that the Merged  
9 Company has established that (1) it is not Technically Feasible for  
10 the Merged Company to comply with one or more provisions of  
11 the agreement or (2) the price(s) set forth in the agreement are  
12 inconsistent with TELRIC-based prices in the state in question.<sup>92</sup>  
13

14 Condition 10 simply builds on the Companies’ own claims that, in a post-merger  
15 environment, CenturyLink and Qwest will be operating as an integrated entity,  
16 capitalizing on the synergies of their combined networks and operations.<sup>93</sup>  
17 Condition 10, as well as the other conditions proposed by the Joint CLECs are  
18 consistent with the Joint Applicant’s stated intent to operate post merger as “an  
19 integrated entity.”

20 As noted in my Direct Testimony, the FCC previously adopted a similar condition  
21 in conjunction with the AT&T/BellSouth merger, which required  
22 AT&T/BellSouth to make available to any CLEC any ICA (negotiated or  
23 arbitrated) to which a AT&T/BellSouth ILEC is a party in any state within the

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<sup>89</sup> Hunsucker Rebuttal at 25.

<sup>90</sup> Ankum Direct, at p. 77.

<sup>91</sup> Hunsucker Rebuttal at p. 26.

<sup>92</sup> Exhibit TJG-8 at p. 6.

<sup>93</sup> Jones Direct, at p. 6-9.

1 AT&T 22-state footprint, subject to state-specific pricing and technical  
2 feasibility.<sup>94</sup>

3 **Q. MR. HUNSUCKER ASSERTS THAT ADOPTING CONDITIONS 12 AND**  
4 **14, RELATING TO WAIVER OF THE RIGHT TO SEEK RURAL**  
5 **EXEMPTIONS AND RECLASSIFICATION OF WIRE CENTERS AS**  
6 **“NON-IMPAIRED,” WOULD AMOUNT TO “TAK[ING] SHORT CUTS**  
7 **WITH THE LAW.”<sup>95</sup> DO YOU AGREE?**

8 A. No, and I note that neither the FCC nor the Oregon Public Utilities Commission  
9 reached that conclusion when adopting similar conditions on other ILEC  
10 mergers.<sup>96</sup> To the contrary, in its decision approving the Frontier-Verizon merger,  
11 the Oregon PUC determined that “the conditions agreed to by the Applicants in  
12 the various stipulations filed in this docket,” – including the two analogous to  
13 Conditions 12 and 14 – “...combined with additional conditions we impose in this  
14 order, sufficiently mitigate the risks of the transaction and help meet the ‘no  
15 harm’ public interest standard required for our approval.”<sup>97</sup> The Oregon PUC  
16 reached essentially the same conclusion as I did in my Direct Testimony as to  
17 why conditions such as numbers 12 and 14 are necessary.<sup>98</sup>

18 **Q. DOES CONDITION 14 UNDERMINE THE EXISTING STATE AND**  
19 **FEDERAL PROCEDURES WITH RESPECT TO “NON-IMPAIRED”**

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<sup>94</sup> Ankum Direct, at p. 76.

<sup>95</sup> Hunsucker Rebuttal at p.30, line 9.

<sup>96</sup> See Gates Exhibit TJG-9 at p. 6 (citing to the FCC’s *Verizon-Frontier Merger Order* with respect to Condition 12, the FCC’s AT&T/BellSouth Order with respect to Condition 14, and the Oregon PUC’s *Frontier-Verizon Order* with respect to both Conditions 12 and 14).

<sup>97</sup> Oregon PUC, *In the Matter of Verizon Communications Inc. and Frontier Communications Corporation*, Docket UM 1431, Order No. 10-067 (Feb. 24, 2010) (“*Frontier-Verizon Order*”), at p. 1.

<sup>98</sup> Ankum Direct, at p. 4.

1           **WIRE CENTER RECLASSIFICATIONS AS CLAIMED BY MS.**  
2           **STEWART?**<sup>99</sup>

3           A.    No, it does not. Condition 14 does not eliminate or revise the FCC or Minnesota  
4           Commission procedures with respect to “Non-Impaired” wire center  
5           classifications in any way. Condition 14 simply establishes a temporary  
6           moratorium on their application to the Merged Company, during the merger  
7           transition period.<sup>100</sup> After the Defined Time Period has ended, the Merged  
8           Company could again file requests for reclassification of any of its Minnesota  
9           wire centers as “Non-Impaired” under those same FCC and Commission  
10          procedures. The temporary application of Condition 14 is crucial to provide  
11          certainty for CLECs concerning the continued availability of the essential  
12          wholesale inputs they purchase from the Joint Petitioners, while the Merged  
13          Company integrates the two companies and pursues synergy savings.

14          **Q.    DO YOU AGREE WITH MR. HUNSUCKER THAT CONDITION 28,**  
15          **WHICH WOULD ALLOW CLECS TO INTERCONNECT WITH THE**  
16          **MERGED COMPANY AT A SINGLE POINT OF INTERCONNECTION**  
17          **(POI) PER LATA, IS UNREASONABLE AND UNRELATED TO THE**  
18          **IMPACT OF THE MERGER IN MINNESOTA?**<sup>101</sup>

19          A.    No. Mr. Gates has already supplied extensive testimony explaining CLECs’  
20          general entitlement to interconnect with an ILEC (BOC or non-BOC) at a single

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<sup>99</sup> Stewart Rebuttal at pp. 15-18.

<sup>100</sup> See Condition 14 in Exhibit TJG-8, and Ankum Direct at p. 78, line 14.

<sup>101</sup> Hunsucker Rebuttal at pp. 36-38.

1 Point of Interconnection (POI) per LATA.<sup>102</sup> He has also explained how the Joint  
2 Petitioners' own data show that increased efficiencies could be achieved by  
3 establishing a single POI per LATA with the Merged Company post-merger.<sup>103</sup>  
4 Finally, Mr. Gates has thoroughly rebutted Mr. Hunsucker's other objections to  
5 Condition 28.<sup>104</sup> I defer to Mr. Gates' testimony on those points, but wish to state  
6 further that Condition 28 is not only reasonable, it is in fact closely tied to the  
7 impact of the merger in Minnesota (and elsewhere). The Joint Petitioners have  
8 repeatedly touted the increases in network operating efficiencies that will result  
9 from the merger's combination of the two Companies' networks, as when Mr.  
10 Stanoch stated that:

11 The Transaction will result in a combined enterprise that can  
12 achieve greater economies of scale and scope than the two  
13 companies operating independently. The areas served by Qwest  
14 and CenturyLink in Minnesota are generally complementary, and  
15 the combination of the serving areas will provide for increased  
16 economies of scope and or scale. In many cases the networks are  
17 adjacent or within close proximity to one another, and this will  
18 make it easier to implement operating efficiencies and  
19 infrastructure improvements.<sup>105</sup>

20 Now when it comes to allowing CLECs to share in some of those increased  
21 efficiencies, as single POI per LATA interconnection would afford, the Joint  
22 Petitioners object. By forcing CLECs to maintain multiple POIs per LATA, even  
23 as the Merged Company begins exploiting increased efficiencies of their  
24 combined networks, the Joint Petitioners would be using the merger to unfairly  
25 tilt the competitive balance in their favor. If the Commission determines that the

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<sup>102</sup> Gates Direct at pp. 182-185 and 187.

<sup>103</sup> *Id.* at pp. 184-186.

<sup>104</sup> Gates Surrebuttal at pp. 133-140.

<sup>105</sup> Stanoch Direct at p. 15; see also Joint Petition at pp. 3, 15, and 20.

1 merger should be approved, adopting Condition 28 can play an important role in  
2 ensuring that the merger does not result in that harm to CLECs and the  
3 competitive marketplace.

4 **V. RESPONSE TO STAFF WITNESS MR. LINSCHIED**  
5 **CONCERNING THE MERGED COMPANY'S DEBT**  
6 **LEVELS**

7 **Q. MR. LINSCHIED'S REBUTTAL TESTIMONY ADDRESSES YOUR**  
8 **CONCERN OVER THE MERGED COMPANY'S HIGH LEVEL OF**  
9 **DEBT,<sup>106</sup> HOW DO YOU RESPOND?**

10 A. Mr. Linscheid is correct to point out that CenturyLink's assumption of Qwest's  
11 current debt would move CenturyLink closer to the upper limits of its existing  
12 debt covenants.<sup>107</sup> Expanding on Mr. Linscheid's observations, it is important to  
13 note for the Commission that CenturyLink's assumption of that debt would not  
14 only create increased financial risks for CenturyLink and its lenders, but also  
15 place its captive CLEC wholesale customers at risk, because the pressure of that  
16 heavy debt load could cause the Merged Company to cut costs when integrating  
17 the two companies, leading to a degradation of services to wholesale customers  
18 and harm to competition.<sup>108</sup> Consequently, his proposal, to require the Merged  
19 Company to submit a plan for how it intends to regain its investment grade credit

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<sup>106</sup> See Linscheid Rebuttal at p. 9, lines 1-6.

<sup>107</sup> *Id.* at p. 9, lines 9-10.

<sup>108</sup> See Ankum Direct at pp. 45, lines 4-10. In her Rebuttal Testimony, Ms. Doherty appears to recognize this problem, but she stops short of taking a specific position on whether the Joint CLECs' proposed conditions, including those addressing wholesale service quality issues, should be adopted. See Rebuttal Testimony of Katherine A. Doherty on behalf of the Minnesota Department of Commerce, Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010, at pp. 7-8 and p. 10, lines 15-17.

1 rating if its rating falls below that level,<sup>109</sup> is reasonable, but it should be  
2 supplemented by the Joint CLECs' proposed conditions that would help to  
3 preserve the Merged Company's wholesale service quality.<sup>110</sup>

4 **VI. CONCLUSION**

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

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

12 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

13 A. Yes, it does.

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<sup>109</sup> Linscheid Rebuttal, at p. 10, lines 19-20 through p. 11, lines 1-2.

<sup>110</sup> See, e.g. Gates Direct Testimony at pp. 126-131 (Section VI.B, Wholesale Service Quality).

**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 AHA-7**

**TO THE**

**SURREBUTTAL TESTIMONY OF DR. AUGUST H. ANKUM**

**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**

**October 1, 2010**

May 13, 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:

Yesterday, Jeff Oxley, Executive Vice President and General Counsel, and Russ Merbeth, Federal Counsel, Law & Policy, for Integra Telecom, Inc. (“Integra”), and the undersigned, representing Integra, tw telecom inc., Cbeyond, Inc., and One Communications Corp. (the “Joint Commenters”), met with Nick Alexander, Alex Johns, Steve Rosenberg, Carol Simpson, Don Stockdale, and Matt Warner of the Wireline Competition Bureau, and Zac Katz of the Office of Strategic Planning and Policy Analysis, to discuss the above-referenced proceeding. In addition, Dennis Ahlers, Associate General Counsel, and Kim Isaacs, ILEC Relations Process Specialist, for Integra participated in the meeting via phone.

During the meeting, Mr. Oxley and Ms. Isaacs discussed some of the problems that Integra<sup>1</sup> has experienced with the systems that Verizon recently replicated and that will be used by Frontier to fulfill orders for unbundled network elements and other wholesale services in the 13 affected states post-transaction (the “Replicated Systems”). As Mr. Oxley and Ms. Isaacs explained, since the transition from Verizon’s systems for its West region to the Replicated Systems for Verizon’s new North Central Region, Integra has experienced the following problems with Verizon’s wholesale ordering and provisioning functions during the last two weeks of April and throughout May. *First*, Verizon’s Access Service Request (“ASR”) response times have increased, resulting in either missed due dates or orders that need to be escalated or expedited in order to meet the due dates expected by Integra’s end-user customers. *Second*, coding errors in Verizon’s Access Ordering system have

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<sup>1</sup> Integra is a competitive local exchange carrier that offers service in two of the states affected by the proposed transaction, Oregon and Washington. As of April 2009, Integra had 17,537 access lines in Oregon and 12,604 access lines in Washington.

Marlene H. Dortch  
May 13, 2010

increased, thereby delaying Integra's ability to submit ASRs. *Third*, Verizon has not been providing Integra with timely completion notices for Local Service Requests ("LSRs"). *Fourth*, Verizon's designated center for wholesale customers to report system errors, the Partner Solutions Customer Care center, has developed a backlog of trouble tickets. It is Integra's understanding based on statements made by Verizon employees that there is currently only one Verizon employee assigned to resolve these trouble tickets for Verizon's entire North Central region. *Fifth*, when Integra employees have called Verizon's Access Ordering centers to report problems with the processing of ASRs, Integra employees have experienced hold times of 30 minutes or more. It is Integra's understanding based on statements made by Verizon employees that Verizon's Access Ordering staff for the North Central region was initially reduced from 50 employees to 12 employees and has been further reduced from 12 employees to only 6 employees. *Sixth*, when Integra employees have called Verizon's National Market Center to report problems with the processing of LSRs, Integra employees have experienced hold times of 30 minutes or more. *Seventh*, when Integra has submitted supplemental LSRs for coordinated conversions, Verizon's coordinated conversion process has increasingly failed, ultimately resulting in service outages for customers migrating from Verizon to Integra. Finally, Verizon has increasingly missed so-called "meets" (coordinated dispatches) with Integra and its vendors. All of these problems have resulted in delays in the provisioning of retail service to Integra's end-user customers.

At the meeting, Mr. Oxley also stated that, on January 21, 2010, Verizon and Frontier sent a letter and Adoption Agreement to Integra (attached hereto as "Attachment A") effectively asking Integra to agree to an amendment of its Wholesale Advantage Services Agreement with Verizon. Mr. Oxley explained that Verizon and Frontier's request was inconsistent with the stipulations entered into by the parties (which were approved by the Oregon and Washington state commissions) in which Frontier agreed to assume Verizon's existing wholesale agreements. Mr. Oxley distributed a copy of Integra's May 10, 2010 response to that effect (*see* "Attachment B" hereto, at 2) at the meeting.

During the meeting, the undersigned distributed a document (attached hereto as "Attachment C") quoting the commitments that Frontier has made in its Application and Reply Comments in this proceeding regarding the assumption of interconnection agreements and other wholesale arrangements, wholesale rates and volume/term agreements, and the status of the Merged Firm as a Bell Operating Company ("BOC"). We explained that these commitments must be supplemented as necessary to address deficiencies, and that they must be made binding conditions of the Commission's approval of the proposed transaction. Specifically, the Commission should adopt condition numbers 5, 8, and 9 proposed by the Joint Commenters in this proceeding (*see* "Attachment D" hereto)<sup>2</sup> for the following reasons:

- The Commission should adopt Joint Commenters' Condition # 5 because, among other reasons, unlike Frontier's voluntary commitment in its Reply Comments, Condition # 5 requires

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<sup>2</sup> The proposed conditions listed in Attachment D hereto are the same proposed conditions submitted by the Joint Commenters in their January 28, 2010 ex parte filing in this proceeding. *See* Letter from Thomas Jones, Counsel for One Communications Corp. et al., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 09-95, Attachment A (filed Jan. 28, 2010) ("Joint Commenters' January 28th Ex Parte Filing").

Marlene H. Dortch  
May 13, 2010

Frontier to assume not only Verizon's current interconnection agreements, but Verizon's current interstate special access tariffs, commercial agreements, line sharing agreements, and other existing arrangements with wholesale customers. In addition, Condition # 5 prohibits Frontier from changing the rates, terms or conditions in the assumed agreements. *See* Attachment D, Condition # 5.

- The Commission should adopt Joint Commenters' Condition # 8 in part because, unlike Frontier's voluntary commitment in its Reply Comments, Condition # 8 prohibits Frontier from increasing rates not only for unbundled network elements, but for tandem transit service, any interstate special access tariffed offerings, reciprocal compensation, interconnection, collocation, Ethernet service, or any other wholesale services. *See* Attachment D, Condition # 8.
- The Commission should adopt Joint Commenters' Condition # 9 to address any ambiguities in Frontier's commitment in its Reply Comments and make clear that post-merger Frontier will be classified as a BOC in the portions of West Virginia currently served by Verizon. *See* Attachment D, Condition # 9. This would be consistent with the Commission's holding in the *FairPoint-Verizon Merger Order*.<sup>3</sup>

We explained further that, in addition to the conditions listed above, it is critical that the Commission impose Joint Commenters' condition numbers 1, 2, 10, 19, 21, 23, and 25 for the following reasons:<sup>4</sup>

- Conditions # 1 and 2 address merger-specific concerns and are very similar to conditions already agreed to by the Applicants in some of the state commission proceedings. *See* Attachment D, Conditions # 1-2.
- Condition # 10 is needed to ensure that Frontier will not seek to avoid its wholesale obligations under Section 251(c) by invoking the protections of Section 251(f)(1) or (f)(2).<sup>5</sup> Frontier has stated in its response to the Commission's initial data request that "Frontier has no intention of asserting the rural exemption [under Section 251(f)(1)] in the transaction market areas."<sup>6</sup>

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<sup>3</sup> *See In re Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd. 514, ¶¶ 33-35 (2008) ("*FairPoint-Verizon Merger Order*").

<sup>4</sup> *See also generally* Joint Commenters' January 28th Ex Parte Filing; Petition to Deny of tw telecom inc. et al, WC Dkt. No. 09-95 (filed Sept. 21, 2009) ("Joint Commenters' Petition to Deny").

<sup>5</sup> *See* Joint Commenters' January 28th Ex Parte Filing at 14-16.

<sup>6</sup> *See* Response of Frontier Communications Corp. to the Commission's February 12, 2010 Information and Document Request, WC Dkt. No. 09-95, at 42 (filed Feb. 26, 2010) (responding to Request # 22 as revised by the FCC Staff).

Marlene H. Dortch  
May 13, 2010

Accordingly, there is no reason that Frontier should be opposed to a binding merger condition to that effect.

- As discussed in the Joint Commenters' January 28th Ex Parte Filing,<sup>7</sup> Conditions # 19 and 21 are needed to ensure that Frontier does not perpetuate Verizon's anticompetitive conduct with respect to access to remote terminals and DS1 UNE loop facilities. *See* Attachment D, Conditions # 19 & 21.
- As discussed in the Joint Commenters' Petition to Deny,<sup>8</sup> when customers such as tw telecom order DS1 special access circuits under Verizon's Term Volume Plan, Verizon is able to automatically bill the transport component of each DS1 special access circuit as a "MetroLAN" rate element when MetroLAN is the least expensive option available to the customer. The Commission should adopt Condition # 23 to ensure that Frontier's systems retain this billing capability. Importantly, even though Verizon's existing OSS for the 13 affected states have been replicated and the Replicated Systems will be transferred to Frontier, it is not at all clear that Frontier's *billing* systems will have the same capability as Verizon to automatically bill qualifying customers for MetroLAN when it is the least-cost option.
- The Commission should also adopt Condition # 25. The monetary penalties proposed in Condition # 25 were designed to supplement other enforcement mechanisms needed to ensure compliance with the conditions proposed by the Joint Commenters. If the FCC were to adopt its own performance reporting and service quality requirements, however, a separate regime of self-executing penalties would be needed to ensure compliance with such requirements. For example, the Commission could impose an automatic penalty of a certain percentage of Frontier's wholesale revenues for each failure to meet the established benchmark or standard. Alternatively, the Commission could establish two kinds of failures for the relevant performance metrics. "Ordinary" failures would be failures on a measure for one month or two consecutive months. "Chronic" failures would be failures on a measure for three consecutive months. Under this regime, Frontier would pay a fixed dollar amount for each ordinary failure in excess of the established benchmark or standard and five times that dollar amount for each chronic failure in excess of the established benchmark or standard.

Finally, the wholesale performance metrics and benchmark proposed by Frontier in Voluntary Commitment # 12 of its May 10, 2010 letter in this proceeding<sup>9</sup> are insufficient. To begin with, for each of the metrics proposed by Frontier in Voluntary Commitment # 12, the Commission should require Frontier to meet or exceed Verizon's average monthly performance for the first six months of

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<sup>7</sup> *See* Joint Commenters' January 28th Ex Parte Filing at 12-14.

<sup>8</sup> *See* Joint Commenters' Petition to Deny at 26 & n.86.

<sup>9</sup> *See* Attachment A to Letter from Kathleen Q. Abernathy, Chief Legal Officer, Frontier Communications Corp., to Julius Genachowski, Chairman, FCC et al., WC Dkt. No. 09-95 (filed May 10, 2010) (listing "Further Commitments by Frontier Communications Corp.").

Marlene H. Dortch  
May 13, 2010

2008 rather than Verizon's performance for 2009. This is because Verizon consolidated its Verizon West order processing centers from Coeur d'Alene, Idaho to Chesapeake, Virginia in June 2008, and in Integra's experience, Verizon's wholesale performance deteriorated significantly following this workforce realignment. These problems lasted through much of 2009. As a result, reliance on Verizon's performance in 2009 would set the bar for OSS performance at an unreasonably low level. In addition, the Commission should add to the list of metrics in Frontier's Voluntary Commitment # 12 the following metrics that Verizon is currently required to report to wholesale customers in certain states under the Joint Partial Settlement Agreement ("JPSA"):<sup>10</sup>

#### Ordering Performance

- OR-1 FOC/LSC Notice Timeliness (Order Confirmation Timeliness)
- OR-4-18 Completion Notice Interval

#### Provisioning Performance—Installation Quality

- PR-6-01 % Troubles in 30 Days for Special Services Orders
- PR-6-02 % Troubles in 7 Days for Non-Special Orders
- PR-6-04 Provisioning Trouble Reports
- PR-6-05 Average Time to Restore Provisioning Troubles

#### Provisioning Performance—Jeopardy Reports

- PR-7-01 % Orders Jeopardized
- PR-7-02 Jeopardy Notices Returned by Required Interval

#### Maintenance Performance

- MR-5-01 % Repeat Reports within 30 Days

#### Billing Performance

- BI-3-01 Bill Accuracy

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<sup>10</sup> The Joint Partial Settlement Agreement is available at [http://www22.verizon.com/wholesale/attachments/east-perf\\_meas/CA\\_FL\\_IN\\_NC\\_OH\\_JPSA\\_BLACKLINE.doc](http://www22.verizon.com/wholesale/attachments/east-perf_meas/CA_FL_IN_NC_OH_JPSA_BLACKLINE.doc) (last visited May 13, 2010).

Marlene H. Dortch  
May 13, 2010

Again, for each of these metrics, Frontier should be required to meet or exceed Verizon's average monthly performance for the first six months of 2008. In addition, this requirement should apply in all 14 affected states.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones  
Nirali Patel

*Counsel for Integra Telecom, Inc., tw telecom inc.,  
Cbeyond, Inc., and One Communications Corp.*

Attachments

cc (via e-mail): Nick Alexander  
Alex Johns  
Steve Rosenberg  
Carol Simpson  
Don Stockdale  
Matt Warner  
Zac Katz  
Angela Kronenberg  
Christine Kurth  
Jennifer Schneider  
Christi Shewman

# ATTACHMENT A



Carrier Sales and Service  
180 S. Clinton Ave.  
Rochester, NY 14623



Verizon Partner Solutions  
600 Hidden Ridge  
HQEWMNOTICES  
P.O. Box 152092  
Irving, TX 75038

January 21, 2010

J. Jeffery Oxley, EVP, General Counsel  
Integra Telecom Holdings, Inc., Integra Telecom of Oregon, Inc. and Integra Telecom of Washington, Inc.,  
Eschelon Telecom of Washington, Inc., Eschelon Telecom of Oregon, Inc., Advanced Telcom, Inc., and  
Advanced Telcom Group, Inc., Oregon Telecom, Inc.,  
1201 NE Lloyd Boulevard, Suite 500  
Portland, OR 97232

Subject: Wholesale Advantage Services Agreement between Verizon Services Corp. and Integra  
Telecom Holdings, Inc., Integra Telecom of Oregon, Inc. and Integra Telecom of  
Washington, Inc., Eschelon Telecom of Washington, Inc., Eschelon Telecom of Oregon,  
Inc., Advanced Telcom, Inc., and Advanced Telcom Group, Inc., Oregon Telecom, Inc.,  
dated August 31, 2009 (the "Agreement")

On May 13, 2009, Verizon Communications Inc. ("Verizon") entered into a merger agreement (the  
"Merger Agreement") with Frontier Communications Corporation ("Frontier") whereby Verizon agreed that  
through a series of internal transfers, it would transfer control of certain assets, liabilities and contracts in  
Arizona, Nevada, Idaho, Oregon, Washington, Ohio, Illinois, Michigan, Indiana, Wisconsin, West Virginia,  
North Carolina, South Carolina and certain wire centers in California<sup>31</sup> (the "Transferred Service  
Territories") to a newly created Verizon affiliate, New Communications ILEC Holdings Inc. ("ILEC  
Holdings") Verizon has further agreed to merge New Communications Holdings Inc., the parent of ILEC  
Holdings, with Frontier pursuant to the Merger Agreement (the "Transaction"), with Frontier being the  
surviving entity.

Verizon and Frontier have petitioned regulatory bodies in the Transferred Service Territories for approval  
of the Transaction and upon closing to withdraw Verizon's authority as a local exchange carrier in the  
Transferred Service Territories. When these petitions are approved and the Transaction closes, Frontier  
will be the authorized local exchange carrier in the Transferred Service Territories.

Under the Agreement Verizon or its affiliate agreed to provide certain services in at least one state  
comprising the Transferred Service Territories as well as in at least one other state not involved in the  
Transaction.

In connection with the Transaction, pursuant to the terms of the Agreement, Verizon is hereby providing  
notice that it will terminate the Agreement only in the Transferred Service Territories as of the closing of  
the Transaction. Verizon will continue to provide the services set forth in the Agreement in other states,  
as applicable, after the closing of the Transaction.

Frontier has prepared an agreement mirroring the Agreement in the Transferred Service Territories  
pursuant to which Frontier will continue providing the services previously provided under the Agreement  
in the Transferred Service Territories. An agreement for this purpose is attached hereto (the "Adoption  
Agreement").

Please note that this joint letter is being sent for administrative convenience. No obligations of either  
Verizon or Frontier arise from this letter. Rather, all obligations of Verizon or Frontier described herein  
are set forth in the Agreement and the Adoption Agreement.

<sup>31</sup> California wire centers: Blythe, Palo Verde (PALSVD), Alpine, Coleville, Earp, Havasu

Subject to regulatory approval, the closing of the Transaction is currently expected to occur in the second quarter 2010. Our desire and expectation is that your organization will execute the Adoption Agreement with Frontier well before that date. This agreement would only become effective upon closing of the Transaction. We would appreciate your execution and return of this document no later than 45 days from the date of this letter, so all will proceed smoothly at closing.

Please have all originals (four included; sign where marked) executed by an authorized representative and returned to Frontier at the following address:

Lucy Buhmaster  
Frontier Communications Corporation  
137 Harrison Street  
Gloversville, NY 12078-4815

Once Frontier receives these documents we will execute them and return one fully executed original to you for your records.

Should you wish to discuss this letter with Verizon please contact your account team. For questions on the Frontier Adoption Agreement, please contact Lucy Buhmaster at 518-773-6162.

Sincerely,

VERIZON PARTNER SOLUTIONS



David J. Goldhirsch  
Director-Contract Management

FRONTIER COMMUNICATIONS CORPORATION



Stephen LeVan  
SVP Carrier Sales and Service

Enclosures (4)

VIA FedEx 2-Day Delivery

### AGREEMENT WITH ADOPTION OF TERMS

This Agreement with Adoption of Terms (this "Adoption Agreement") is between Frontier Communications Corporation, on behalf of itself and its subsidiaries, with offices at 180 South Clinton Avenue, Rochester, NY 14546 ("Frontier") and Integra Telecom Holdings, Inc., Integra Telecom of Oregon, Inc. and Integra Telecom of Washington, Inc., Eschelon Telecom of Washington, Inc., Eschelon Telecom of Oregon, Inc., Advanced Telcom, Inc., and Advanced Telcom Group, Inc., Oregon Telecom, Inc., with offices at 1201 NE Lloyd Boulevard, Suite 500, Portland, OR 97232 ("Customer") (hereinafter together "the Parties").

WHEREAS, Verizon Communications Inc. ("Verizon"), New Communications Holdings Inc. ("NewCo") and Frontier have entered into an agreement whereby Verizon shall through a series of internal transfers, transfer control certain operations in Arizona, Nevada, Idaho, Oregon, Washington, Ohio, Illinois, Michigan, Indiana, Wisconsin, West Virginia, North Carolina, South Carolina and certain wire centers in California<sup>1</sup> ("Transferred Service Territories") to a newly created Verizon affiliate, New Communications ILEC Holdings Inc. ("ILEC Holdings") and following Verizon's transfer of control of such operations to ILEC Holdings, NewCo, the parent of ILEC Holdings, shall merge with and into Frontier pursuant to an Agreement and Plan of Merger dated as of May 13, 2009 (the "Transaction"), with Frontier being the surviving entity; and

WHEREAS, prior to the Transaction, a subsidiary or subsidiaries of Verizon and Customer entered into an agreement entitled Wholesale Advantage Services Agreement between Customer and The Verizon Telephone Operating Companies and dated as of August 31, 2009, (as such agreement is in effect immediately prior to the Transaction, the "Agreement"), such Agreement providing for the provision of services in a service area that includes, but is not exclusive to, the pre-Transaction Verizon operating territories in the Transferred Service Territories; and

WHEREAS, the Parties desire that Frontier or an acquired subsidiary of Frontier continue providing the services previously provided under the Agreement in the Transferred Service Territories following the Transaction upon the same terms and conditions as provided in the Agreement.

NOW THEREFORE, the Parties agree as follows:

1. On and after the closing date of the Transaction (the "Transaction Closing Date"), the Customer and Frontier, by and through its subsidiary acquired in the Transaction, agree to be bound by the Agreement, except as otherwise expressly set forth in this Adoption Agreement, at the same rates, terms and conditions set forth in the Agreement and applicable Frontier tariffs in the former Verizon operating territories in the Transferred Service Territories. Customer agrees that it shall look exclusively to Frontier and its subsidiary acquired in the Transaction, as holder of all rights and obligations

<sup>1</sup> California wire centers: Blythe, Palo Verde (PALSVD), Alpine, Coleville, Earp, Havasu

previously held by Verizon or its affiliates under the Agreement and not to Verizon or any Verizon affiliate or subsidiary for enforcement of any rights or performance of any obligation under the Agreement in the Transferred Service Territories after the Transaction Closing Date.

2. Notice to Frontier or its subsidiary acquired in the Transaction as may be required or permitted under the Agreement, in the Transferred Service Territories shall be provided as follows:

Frontier Communications Corporation  
ATTN: Kim Czak  
180 South Clinton Avenue  
Rochester, NY 14546

With a copy to:

Frontier Communications Corporation  
ATTN: General Counsel  
180 South Clinton Avenue  
Rochester, NY 14546

3. Notwithstanding anything in the Agreement to the contrary, the Parties agree that the term of the Agreement as hereby adopted in the Transferred Service Territories shall expire on the later of (a) twelve (12) months following the Transaction Closing Date or (b) the termination date contained in the Agreement unless otherwise agreed to by the Parties in writing.

4. Notwithstanding anything in the Agreement to the contrary, the Parties agree that any and all references in the Agreement to specific and general tariffs of Verizon and its affiliates are inapplicable to Frontier's or its acquired subsidiary's provision of services in the Transferred Service Territories under the Agreement as hereby adopted and for purposes of Frontier's or its acquired subsidiary's delivery of services under this Adoption Agreement and for all other contract matters any such tariff references are deemed to and shall refer to Frontier's or its acquired operating subsidiary's applicable tariffs.

5. Notwithstanding anything in the Agreement to the contrary, the Parties agree that any and all references in the Agreement to specific and general policies, procedures, product guides, handbooks or other collateral material of Verizon or any Verizon subsidiary are deemed to and shall refer to Frontier's or its acquired operating subsidiary's applicable policies, procedures, product guides, handbooks or other Frontier collateral material.

6. Notwithstanding anything in the Agreement to the contrary, the Parties agree that all references to Verizon state operating territories other than references to the Transferred Service Territories and listings of Verizon state or regional operating entities,

subsidiaries or affiliates are inapplicable to Frontier's or its acquired subsidiary's provision of service under the Agreement as adopted hereby and this Adoption Agreement and are excluded from the Agreement as adopted by this Adoption Agreement.

7. The Parties agree that any and all references in the Agreement to rate listings other than those applicable to the Transferred Service Territories are inapplicable to Frontier's or its acquired subsidiary's provision of services under the Agreement as hereby adopted and are hereby revised and amended to exclude those rates set forth in the Agreement that are applicable exclusively outside the Transferred Service Territories.

8. The Parties agree that effective immediately upon the closing of the Transaction, Frontier shall assign and transfer the Agreement as hereby adopted to the appropriate acquired operating subsidiary and shall cause such acquired operating subsidiary to assume all of the obligations thereof.

9. This Adoption Agreement shall become effective only as of the Transaction Closing Date and may only be amended by written agreement of the Parties.

The Parties hereby execute this Agreement effective as of the last to execute below.

**Frontier Communications Corporation**

**Integra Telecom Holdings, Inc., Integra  
Telecom of Oregon, Inc. and Integra  
Telecom of Washington, Inc., Eschelon  
Telecom of Washington, Inc., Eschelon  
Telecom of Oregon, Inc., Advanced Telecom,  
Inc., and Advanced Telecom Group, Inc.,  
Oregon Telecom, Inc.,**

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# ATTACHMENT B



May 10, 2010

Integra Telecom  
6180 Golden Hills Drive  
Golden Valley, MN 5541E  
www.integratelecom.com

David J. Goldhirsch  
Verizon Partner Solutions  
600 Hidden Ridge  
HQEWMNOTICES  
P.O. Box 152092  
Irving, TX 75038

Stephen LeVan  
SVP Carrier Sales and Service  
Frontier Communications Corporation  
180 South Clinton Avenue  
Rochester, NY 14623

Re: Wholesale Advantage Services Agreement between Verizon Services Corp. and Integra Telecom Holdings, Inc, Integra Telecom of Oregon, Inc. and Integra Telecom of Washington, Inc., Eschelon Telecom of Washington, Inc., Eschelon Telecom of Oregon, Inc., Advanced TelCom, Inc., and Advanced TelCom Group, Inc., and Oregon Telecom, Inc., dated August 31, 2009.

Dear Messers. Goldhirsch and LeVan:

Integra Telecom (Integra) has received a letter from Verizon Communications Inc. (Verizon) and Frontier Communications Corporation (Frontier), dated January 21, 2010, referring to the above-referenced Wholesale Advantage Services Agreement (WASA) and the transfer of certain contracts from Verizon to Frontier. First, it should be noted that the description of the Agreement in the letter is not accurate. The WASA in question has recently been amended to include United Communications, Inc. d/b/a UNICOM ("UNICOM") and Electric Lightwave, LLC ("ELI").

More importantly, the letter and attached "Adoption Agreement" are premature and do not reflect the commitments made to and ordered by state and federal regulatory agencies. They are premature because all of the regulatory agencies have not yet completed their review of the transfer. They also do not fully reflect the orders issued by the regulatory commissions and the agreements made by Verizon and Frontier. For example, in Oregon, Verizon and Frontier agreed and the Commission approved the following condition of approval of the transaction:

David J. Goldhirsch  
Stephen LeVan  
May 10, 2010  
Page 2

"All VNW existing agreements with wholesale customers, retail customers, and utility operators and licensees for services provided in Oregon including, but not limited to interconnection agreements, commercial agreements, line sharing commercial agreements, and special access discount and/or term plan agreements will be assigned to or assumed by Frontier or its subsidiary and will be honored by the Company for the term of the agreement."

Similar language was agreed to and adopted by the Washington Commission. However, the proposed "Adoption Agreement" purports to change the terms of the Wholesale Agreement by changing all references to "specific and general policies, procedures, product guides, handbooks or other collateral material of Verizon" to refer to Frontier's "policies, procedures, product guides, handbooks or other Frontier collateral material." This is not the same as an assumption of the Verizon agreement by Frontier, but is instead an amendment and modification of the Verizon Wholesale Agreement, is contrary to the stipulation entered into by the parties in the Oregon and Washington proceedings before the state commissions, and inconsistent with the Oregon Commission's Order.

It would seem, in light of the agreements and Commission Order, the more appropriate course of action would be to have a simple and straight-forward assumption of the Verizon WASA by Frontier.

Sincerely,



Dennis D. Ahlers  
Associate General Counsel  
763-745-8460 (Direct/Voice)  
763-745-8459 (Department Fax)  
ddahlers@integratelecom.com

cc: J. Jeffery Oxley  
Mark Trincherro

# ATTACHMENT C

**FRONTIER'S COMMITMENTS IN ITS APPLICATION AND REPLY COMMENTS**  
**WC Dkt. No. 09-95**

**A. Assumption of Interconnection Agreements and Other Wholesale Arrangements**

Frontier has stated in its Reply Comments (at 44-45) that:

“Wholesale arrangements will remain the same as a result of this transaction. Frontier will assume those interconnection agreements between Verizon and other carriers that relate to service wholly within the new Frontier areas. . . . In [the case of Verizon interconnection agreements relating in part to service outside of those states], Frontier stands ready to put in place new interconnection agreements on substantially the same terms and conditions, so as not to disrupt existing arrangements.”

*See also* Application at 19-20.

**B. Wholesale Rates and Volume/Term Agreements**

Frontier has stated in its Reply Comments (at 45) that:

“With respect to concerns raised regarding whether Frontier will alter rates for Unbundled Network Elements, Frontier plans to continue to adhere to Verizon’s Statement of Rates for Unbundled Network Elements as part of its commitment to honor Verizon’s obligations under interconnection agreements and other wholesale arrangements.”

The Applicants have also stated in their Application (at 20) that:

“For both retail enterprise and wholesale customers with volume and term agreements, following the transaction the parties will adjust all revenue commitments and volume thresholds so that customers that maintain the volumes they currently purchase in acquired states and Verizon’s remaining states, respectively, will continue to qualify for the same volume discounts in the respective areas. Frontier will reduce pro rata the volume commitments provided for in agreements to be assigned to or entered into by Frontier or tariffs to be concurred in and then adopted by Frontier, without any change in rates and charges or other terms and conditions, so that such volume pricing terms will in effect exclude volume requirements from states outside of the affected states. Verizon will do the same with respect to service it will continue providing outside of those regions. Both parties will amend their tariffs or satisfy other filing requirements and amend other customer agreements as may be necessary to restate the applicable volume commitments. As a result, retail and wholesale customers will receive the same benefits in the aggregate following the transaction as those provided pursuant to the existing Verizon volume discount arrangement.”

**C. Status of the Merged Firm as a “Bell Operating Company”**

Frontier has stated in its Reply Comments (at 45) that:

“This transaction also does not alter the applicability of Section 271 or any other Bell Company-specific requirement to Verizon West Virginia. Frontier will abide by all the Section 271 requirements applicable to Verizon West Virginia (the successor or assignor of the former Chesapeake and Potomac Telephone Company of West Virginia property). This includes continued compliance with those parts of the competitive checklist that have not been the subject of forbearance, as well as being subject to Section 271’s complaint procedures . . . .”

# ATTACHMENT D

## PROPOSED CONDITIONS

For purposes of the conditions proposed herein, the following definitions apply:

“Transaction” means the proposed acquisition of the incumbent LEC assets of Verizon Communications Inc. by Frontier Communications Corporation that is the subject of the applications for FCC approval in WC Docket No. 09-95.

“Closing Date” means the date on which the Transaction is consummated.

“Verizon” means Verizon Communications Inc. and its subsidiaries.

“Frontier” means Frontier Communications Corporation and its subsidiaries after the consummation of the Transaction.

“Legacy Frontier” means Frontier Communications Corporation and its subsidiaries prior to the consummation of the Transaction.

“14 Affected States” means Arizona, California, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia, and Wisconsin.

All of the conditions proposed herein apply for 36 months from the Closing Date of the Transaction, except as otherwise indicated. All of the conditions proposed herein apply throughout the entirety of Frontier’s service territory in the 14 Affected States, excepted as otherwise indicated. Any failure to comply with the conditions proposed herein shall be subject to an enforcement action by the FCC or a private party. The procedures governing such enforcement action shall be the same as those that would apply if the conditions set forth below were requirements of Title II of the Communications Act.

1. Frontier will not discontinue, withdraw or stop providing, or seek to discontinue, withdraw or stop providing, any Verizon wholesale service offered to CLECs as of the Closing Date for one year after the Closing Date except as approved by the FCC.

*[Relevance Of State-Level Conditions: This proposed condition is similar to OR/WA CLEC Settlement Condition 1, Comcast 4-State Settlement Condition a, and Comcast West Virginia Settlement Condition a, and should be applied to all 14 Affected States.]*

2. Frontier will not seek to recover, directly or indirectly, through wholesale service rates or other fees paid by CLECs any Transaction-related costs including but not limited to one-time transfer, branding or transaction costs, management costs, or OSS transition costs.

*[Relevance Of State-Level Conditions: This proposed condition is similar to OR/WA CLEC Settlement Conditions 2 & 3, Comcast 4-State Settlement Conditions b & c, Comcast West Virginia Settlement Conditions b & c, and West Virginia CLEC Settlement Condition 16, and should be applied to all 14 Affected States.]*

3. Frontier will (1) comply with all wholesale performance reporting requirements and associated penalty regimes currently applicable to Verizon, including but not limited to those applicable under Performance Assurance Plans and Carrier-to-Carrier Guidelines; (2) continue to provide the performance reports that Verizon currently provides to wholesale customers under the Joint Partial Settlement Agreement, effective March 2008, for California, Florida, Indiana, North Carolina, Ohio, Oregon, and Washington (“Joint Partial Settlement Agreement”);<sup>1</sup> (3) provide the performance reports that Verizon currently provides to existing wholesale customers to any new entrants in the legacy Verizon territory in the 14 Affected States; (4) add the wholesale service that Frontier provides to wholesale customers in Michigan to the performance reporting required under the Joint Partial Settlement Agreement; (5) meet or exceed Verizon’s average monthly performance for 2008 for each metric contained in the reports provided under the Joint Partial Settlement Agreement; and (6) not seek any changes to any of the wholesale performance reporting requirements and associated penalty regimes currently applicable to Verizon.

*[Relevance Of State-Level Conditions: This condition covers the same subject matter as Comcast 4-State Settlement Condition d, Comcast West Virginia Settlement Condition d, OR/WA CLEC Settlement Condition 4, and West Virginia CLEC Settlement 4, but it addresses the flaws in those conditions. Those conditions are insufficient because they do not require Frontier to (1) provide the performance reports to new entrants in the legacy Verizon territory, (2) provide performance reporting to wholesale customers in Michigan, (3) meet or exceed Verizon’s average monthly performance for 2008, or (4) not seek any changes to the performance reporting requirements and associated penalty regimes.]*

4. Frontier will retain, at its sole expense, an independent third-party consultant to conduct an analysis of the level of service provided to wholesale customers in the legacy Verizon territory in the 14 Affected States before and after the Transaction. This analysis will begin 18 months following the Closing Date and will be completed within 90 days. Frontier will provide each CLEC with CLEC-specific results of the analysis and Frontier will provide the public with aggregate results of the analysis.

*[Relevance Of State-Level Conditions: This proposed condition is not addressed by the various state-level settlement agreements.]*

5. Frontier will assume or take assignment of all obligations under Verizon’s current interconnection agreements, interstate special access tariffs, commercial agreements, line sharing agreements, and other existing arrangements with wholesale customers (“Assumed Agreements”). Frontier shall not terminate or change the rates, terms or conditions of any effective Assumed Agreements during the unexpired term of any Assumed Agreement or for a period of 36 months from the Closing Date, whichever

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<sup>1</sup> The Joint Partial Settlement Agreement is available at [http://www22.verizon.com/wholesale/attachments/east-perf\\_meas/CA\\_FL\\_IN\\_NC\\_OH\\_JPSA\\_BLACKLINE.doc](http://www22.verizon.com/wholesale/attachments/east-perf_meas/CA_FL_IN_NC_OH_JPSA_BLACKLINE.doc) (last visited Jan. 28, 2010).

occurs later unless requested by the wholesale customer, or required by a change of law.

*[Relevance Of State-Level Conditions: This proposed condition is modeled after OR/WA CLEC Settlement Condition 5, Comcast 4-State Settlement Condition e, and Comcast West Virginia Settlement Condition f, and addresses issues that are also covered in West Virginia CLEC Settlement Condition 2. Like West Virginia CLEC Settlement Condition 2, this proposed condition applies for 36 months.]*

6. Frontier will allow requesting carriers to extend existing interconnection agreements with Legacy Frontier, whether or not the initial or current term has expired, until at least 36 months from the Closing Date, or the date of expiration, whichever is later.

*[Relevance Of State-Level Conditions: This proposed condition is modeled after OR/WA CLEC Settlement Condition 6, Comcast 4-State Settlement Condition f, and Comcast West Virginia Settlement Condition g and addresses issues that are also covered in West Virginia CLEC Settlement Condition 3. Like West Virginia CLEC Settlement Condition 3, this proposed condition applies for 36 months.]*

7. Frontier shall allow a requesting carrier to use its pre-existing interconnection agreement, including agreements entered into with Verizon, as the basis for negotiating a new replacement interconnection agreement. Such new replacement interconnection agreement shall apply throughout the state in question.

*[Relevance Of State-Level Conditions: This proposed condition is similar to OR/WA CLEC Settlement Condition 7, Comcast 4-State Settlement Condition g, Comcast West Virginia Settlement Condition h, and West Virginia CLEC Settlement Condition 3, except that it requires the new replacement interconnection agreement to apply throughout the state in question.]*

8. For at least 36 months from the Closing Date, Frontier shall not increase rates for tandem transit service, any interstate special access tariffed offerings, reciprocal compensation, interconnection, collocation, unbundled network elements, Ethernet service, or any other wholesale services. For at least 36 months from the Closing Date, Frontier will not create any new rate elements or charges for distinct facilities or functionalities that are currently already provided under existing rates. Frontier shall continue to offer any currently offered Term and Volume Discount plans until at least 36 months from the Closing Date. Frontier will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term. Frontier will reduce pro rata the volume commitments provided for in agreements to be assigned to or entered into by Frontier or tariffs to be concurred in and then adopted by Frontier without any change in rates and charges or other terms and conditions, so that such volume pricing terms will in effect exclude volume requirements from states not affected by the proposed Transaction.

*[Relevance Of State-Level Conditions: This proposed condition is modeled after OR/WA CLEC Settlement Condition 8, Comcast 4-State Settlement Condition h, and Comcast West Virginia Settlement Condition i, and it also addresses issues that are covered by West Virginia CLEC Settlement Condition 2. Like West Virginia CLEC Settlement*

*Condition 2, this proposed condition applies for 36 months. However, West Virginia CLEC Settlement Condition 2 does not address volume-term agreements.]*

9. In the portions of West Virginia served by Verizon prior to the Closing Date, Frontier shall be classified as a Bell Operating Company (“BOC”), pursuant to Section 3(4)(A)-(B) of the Communications Act of 1934 (“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 nondiscrimination requirements of Section 272(e) of the Communications Act.

*[Relevance Of State-Level Conditions: This proposed condition covers the same subject matter as West Virginia CLEC Settlement Condition 8 and Comcast West Virginia Settlement Condition j, but it addresses the flaws in those conditions. West Virginia CLEC Settlement Condition 8 is insufficient because it merely states that “Frontier WV will comply with statutory obligations under Section 271 of the Act.” Comcast West Virginia Settlement Condition j is insufficient because it merely prevents Frontier from avoiding any of its obligations under the Assumed Agreements on the grounds that Frontier is not subject to Section 271.]*

10. Frontier will not seek to avoid any of its obligations under the Assumed Agreements on the grounds that Frontier is not an incumbent local exchange carrier (“ILEC”) under the Communications Act. Frontier will waive, in perpetuity, 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.

*[Relevance Of State-Level Conditions: This condition covers the same subject matter as OR/WA CLEC Settlement Condition 9, Comcast 4-State Settlement Condition i, Comcast West Virginia Settlement Condition j, and West Virginia CLEC Settlement Condition 8, but it addresses the flaw in those conditions. Those conditions merely prevent Frontier from invoking the protections of Section 251(f)(1) and (2) for purposes of avoiding any of its obligations under the Assumed Agreements for three years.]*

11. For one year following the Closing Date, Frontier will not seek to reclassify as “non-impaired” any wire centers for purposes of Section 251 of the Communications Act. For one year following the Closing Date, Frontier will not file any new petition under Section 10 of the Communications Act seeking forbearance from any Section 251 obligation, dominant carrier regulation, or *Computer Inquiry* requirements.

*[Relevance Of State-Level Conditions: This proposed condition is similar to OR/WA CLEC Settlement Condition 10, Comcast 4-State Settlement Condition j, Comcast West Virginia Settlement Condition k, and West Virginia CLEC Settlement Condition 15, except that it also covers the Computer Inquiry requirements.]*

12. Frontier shall provide and maintain on a going-forward basis updated escalation procedures, contact lists, and account manager information at least 30 days prior to the Closing Date. The updated contact list shall, for each CLEC, identify and assign a single point of contact with the authority to address the CLEC’s ordering, provisioning, billing,

maintenance, and OSS systems transition and integration issues.

*[Relevance Of State-Level Conditions: This proposed condition is similar to OR/WA CLEC Settlement Condition 11, Comcast 4-State Settlement Condition k, Comcast West Virginia Settlement Condition l, and West Virginia CLEC Settlement Condition 9, except that it also covers "OSS systems transition and integration issues."]*

13. Frontier will continue to make available to each CLEC the types of information that Verizon currently makes available to CLECs concerning wholesale operations support systems and wholesale business practices via its website, the CLEC Manual, industry letters, and the Change Management Process ("CMP"). In addition, Frontier will establish a CLEC User Forum process similar to the CLEC User Forum that Verizon currently offers and Frontier will maintain quarterly CLEC User Forum meetings. Frontier will provide CLECs with training and education on any wholesale OSS implemented by Frontier without charge to the CLECs. Frontier will maintain a CMP similar to Verizon's current CMP process. For the first 12 months following the Closing Date, Frontier shall hold monthly CMP meetings. Thereafter, the frequency of the CMP meetings will be agreed upon by the parties. Frontier will also commit to at least two OSS releases per year and commit to deploying at least two CLEC-initiated Change Requests per OSS release. Pending CLEC Change Requests will be completed in a commercially reasonable timeframe.

*[Relevance Of State-Level Conditions: This proposed condition is similar to OR/WA CLEC Settlement Conditions 12 & 13, Comcast 4-State Settlement Conditions l & m, Comcast West Virginia Settlement Conditions m & n, and West Virginia CLEC Settlement Conditions 11 & 12, except that it also requires Frontier to "commit to deploying at least two CLEC-initiated Change Requests per OSS release."]*

14. Frontier shall ensure that its wholesale and CLEC support centers are sufficiently staffed by adequately trained personnel dedicated exclusively to wholesale operations so as to provide a level of service that is comparable to that which was provided by Verizon prior to the Closing Date and to ensure the protection of CLEC information from being used for Frontier's retail operations.

*[Relevance Of State-Level Conditions: This proposed condition is similar OR/WA CLEC Settlement Condition 14, Comcast 4-State Settlement Condition n, Comcast West Virginia Settlement Condition o, and West Virginia CLEC Settlement 17, and it should be applied to all 14 Affected States.]*

15. At least 90 days prior to the Closing Date, Frontier will retain, at its sole expense, an independent third-party consultant ("Consultant") acceptable to the Chief of the FCC's Wireline Competition Bureau ("WCB Chief") to assess the readiness of Frontier's wholesale OSS in West Virginia. The Consultant will review Verizon and Frontier's cutover plan. CLECs will also be permitted to review the cutover plan and to provide their feedback on the cutover plan to the Consultant. The Consultant will propose readiness criteria, permit interested parties to comment on the proposed readiness criteria, and finalize the readiness criteria based on the comments received. The Consultant will

use the readiness criteria to conduct a pre-cutover assessment, including testing and a mock cutover, of Frontier's wholesale OSS in West Virginia, to determine the readiness of those systems for cutover. At least 30 days before the Closing Date, CLECs will be permitted to test Frontier's systems, including Frontier's wholesale gateway, and report their results to the Consultant. CLECs will be permitted to submit test orders, including pre-ordering and ordering for new facilities, submit sample repair tickets, and view sample bills electronically. In the event that the Consultant's assessment or CLECs' testing identifies problems or errors in Frontier's systems, Frontier will have the opportunity to correct such problems and errors in a commercially reasonable period of time. Based on the results of its own assessment and CLECs' testing, the Consultant will provide a publicly available report to the WCB Chief regarding Frontier's readiness for cutover. After notice and comment by interested parties, the WCB Chief will not permit the cutover to take place unless the Consultant has notified the WCB Chief of the Consultant's determination that Frontier's wholesale OSS operate, at a minimum, at the same level of service quality as Verizon prior to the Transaction. For 45 days following the cutover to Frontier's wholesale OSS, Verizon will not turn down its wholesale OSS for West Virginia and if substantial systems problems arise, as determined by the Consultant, CLECs will be allowed to place orders via Verizon's wholesale OSS for West Virginia until the end of the 45-day period.

*[Relevance Of State-Level Conditions: This proposed condition covers the same subject matter as West Virginia CLEC Settlement Condition 10 and Comcast West Virginia Settlement Condition 1, but it addresses the flaws in those conditions. Among other things, those conditions do not require independent third-party oversight of the cutover process or independent third-party testing of Frontier's systems, and they allow Frontier, rather than the FCC, to decide whether Frontier's systems are ready for cutover.]*

16. At least 120 days prior to the Closing Date, Frontier will retain, at its sole expense, an independent third-party consultant ("Consultant") acceptable to the WCB Chief, to assess the readiness of Frontier's replicated systems ("Replicated Systems") for the 14 Affected States excluding West Virginia ("the 13 Affected States") for closing. The Consultant will review any documents describing Verizon and Frontier's OSS replication, transition and/or integration plans, including but not limited to the Merger Agreement and system maintenance agreement. CLECs will also be permitted to review these documents and to provide their feedback to the Consultant on Verizon and Frontier's OSS replication, transition and/or integration plans for the 13 Affected States. The Consultant will propose readiness criteria, permit interested parties to comment on the proposed readiness criteria, and finalize the readiness criteria based on the comments received. The Consultant will use the readiness criteria to conduct a pre-closing assessment, including testing, to determine, at a minimum: (1) whether Verizon has properly replicated its OSS and separated the Replicated Systems from its legacy OSS; (2) whether the Replicated Systems were properly transferred to Frontier; and (3) the extent to which the Replicated Systems will be fully operational at closing. At least 30 days before the Replicated Systems are operated by Verizon in full production mode, CLECs will be permitted to test the Replicated Systems and report the results of their testing to the Consultant. In the event that the Consultant's assessment or CLECs' testing identifies problems or errors in

the Replicated Systems, Verizon and/or Frontier will have the opportunity to correct such problems and errors in a commercially reasonable period of time. Based on the results of its own assessment and CLECs' testing, the Consultant will provide a publicly available report to the WCB Chief regarding Frontier's readiness for closing. After notice and comment by interested parties, the WCB Chief will not permit the closing to take place unless the Consultant has notified the WCB Chief of the Consultant's determination that the Replicated Systems operate, at a minimum, at the same level of service quality as Verizon prior to the Transaction.

*[Relevance Of State-Level Conditions: This proposed condition covers the same subject matter as OR/WA CLEC Settlement Condition 15.a. and Comcast 4-State Settlement Condition 1, but it addresses the flaws in those conditions. OR/WA CLEC Settlement Condition 15.a. does not require independent third-party oversight of the replication process, independent third-party testing of the replicated systems, or CLEC testing of the replicated systems, and it allows Frontier, rather than the FCC, to determine whether the systems are ready for closing. While Comcast 4-State Settlement Condition 1 contains robust testing conditions, it does not require independent third-party oversight of the replication process or independent third-party testing of the replicated systems, and it also allows Frontier, rather than the FCC, to determine whether the systems are ready for closing.]*

17. Frontier will use the Replicated Systems for the 13 Affected States for at least one year after the Closing Date and Frontier will not replace those systems during the first three years after close of the Transaction without providing 180 days' notice to the FCC and the CLECs. At least 180 days before transition of the Replicated Systems to any other wholesale operations support systems ("New Systems"), Frontier will retain, at its sole expense, an independent third-party consultant ("Consultant") acceptable to the WCB Chief, to assess Frontier's readiness for cutover to the New Systems. The Consultant will review Frontier's cutover plan. CLECs will also be permitted to review the cutover plan and to provide their feedback on the cutover plan to the Consultant. The Consultant will propose readiness criteria, permit interested parties to comment on the proposed readiness criteria, and finalize readiness criteria based on the comments received. The Consultant will use the readiness criteria to conduct a pre-cutover assessment, including testing and a mock cutover, of Frontier's New Systems. CLECs will also be permitted to submit test orders and test Frontier's systems and report their results to the Consultant. In the event that the Consultant's assessment or CLECs' testing identifies problems or errors in Frontier's New Systems, Frontier will have the opportunity to correct all such problems and errors in a commercially reasonable period of time. Based on the results of its own assessment and CLECs' testing, the Consultant will provide a publicly available report to the WCB Chief regarding Frontier's readiness for cutover. After notice and comment by interested parties, the WCB Chief will not permit the cutover to take place unless the Consultant has notified the WCB Chief of the Consultant's determination that Frontier's New Systems operate, at a minimum, at the same level of service quality as Verizon prior to the Transaction.

*[Relevance Of State-Level Conditions: This proposed condition covers the same subject*

*matter as OR/WA CLEC Settlement Condition 15.b. and Comcast 4-State Settlement Condition 1, but it addresses the flaws in those conditions. Those conditions do not require independent third-party oversight and testing, CLEC testing, and FCC approval before cutover.]*

18. Frontier will process simple port requests within four business days pursuant to Section 52.26 of the FCC's rules and within one business day pursuant to Section 52.35 of the FCC's rules, once Section 52.35 has taken effect.

*[Relevance Of State-Level Conditions: This proposed condition is similar to Comcast 4-State Settlement Condition d, but it is not addressed in the OR/WA CLEC Settlement or the West Virginia CLEC Settlement, and it should be applied to all 14 Affected States.]*

19. Frontier will complete provisioning of a requested physical collocation arrangement, including any collocations in remote terminals, within 90 days pursuant to Section 51.323(l)(2) of the FCC's rules. Frontier will also make readily available to requesting carriers a current list of remote terminals, including the physical address and CLLI Code of the remote terminal, and the addresses of all business lines served by each remote terminal.

*[Relevance Of State-Level Conditions: This condition covers the same subject matter as West Virginia CLEC Settlement Condition 14, but it addresses the flaws in that condition. West Virginia CLEC Settlement Condition 14 does not require compliance with Section 51.323(l)(2) of the Commission's rules and it does not require the addresses of all business lines served by each remote terminal to be included in the lists provided to requesting carriers.]*

20. Frontier will process pole attachment applications within 45 days pursuant to Section 1.1403(b) of the FCC's rules. Frontier must provide bi-monthly reports to the FCC's Wireline Competition Bureau on its compliance with Section 1.1403(b) of the FCC's rules, including the number of pole attachment applications it has received and the number of such applications it has processed within 45 days. Frontier will also process within 60 days of the Closing Date all pending pole attachment applications that have not been processed within 45 days pursuant to Section 1.1403(b) of the FCC's rules. If Frontier fails to meet either the 45-day interval for any pole attachment application submitted after the Closing Date or the 60-day interval for processing pole attachment applications that had not been processed within 45 days prior to the Closing Date, Frontier shall provide the party seeking the attachment with a credit on wholesale charges or a payment in an amount equal to \$1,000 per application for each 10-day delay past the applicable deadline (e.g., a delay of 20 days past the 45-day deadline for an application submitted after the Closing Date would result in a \$2,000 fine). Frontier shall provide attaching CLECs with at least four certified engineers to bid on and compete for the service contract for the make-ready work to be performed by the attaching CLEC. Frontier shall not charge a new attacher to remedy other attachers' preexisting violations of pole attachment requirements.

*[Relevance Of State-Level Conditions: This proposed condition covers the same subject*

*matter as West Virginia CLEC Settlement Condition 13 but it addresses the flaws in that condition. West Virginia CLEC Settlement Condition 13 merely requires that the backlog of pending pole attachment applications be resolved within 180 days and that Frontier work with CLECs to “develop process [sic] within 90 days of Closing to meet the contracted intervals on new requests.”]*

21. Frontier shall not be permitted to reject a DS1 UNE loop order on the basis that no facilities are available where any Frontier facilities assignment database shows that the loop in question is available to be provisioned by Frontier to a Frontier retail customer. For any DS1 UNE loop order rejected on the basis that no facilities are available, Frontier shall provide the requesting carrier with the status of the loop in question in any Frontier facilities assignment database.

*[Relevance Of State-Level Conditions: This proposed condition is similar to West Virginia CLEC Settlement Condition 21 but it is not addressed in the OR/WA CLEC Settlement or the Comcast 4-State Settlement, and it should be applied in all 14 Affected States.]*

22. Frontier will provision DS1 interstate special access loops within a maximum of 6 business days, 80 percent of the time.

*[Relevance Of State-Level Conditions: This proposed condition is not addressed by the various state-level settlement agreements.]*

23. Frontier’s OSS will have the capability to automatically provision and bill the transport element of each DS1 special access circuit ordered by a wholesale customer as a “MetroLAN” rate element where MetroLAN is the least expensive rate element available to the customer.

*[Relevance Of State-Level Conditions: This proposed condition is not addressed by the various state-level settlement agreements.]*

24. Frontier will hold regular customer summits similar to those Verizon holds in order to solicit feedback from large wholesale customers.

*[Relevance Of State-Level Conditions: This proposed condition is not addressed by the various state-level settlement agreements.]*

25. Every six months following the Closing Date, for each of the conditions proposed herein, Frontier will require an officer of the corporation with authority over compliance with that condition to sign and file in WC Dkt. No. 09-95 an affidavit stating, under penalty of perjury, that Frontier is in compliance with the condition. If a Frontier officer is unable to sign such an affidavit for each condition, Frontier will be subject to an automatic penalty, payable to the U.S. Treasury, in the amount of \$100,000 per condition per six-month period. If Frontier files an affidavit stating that it is in compliance with any of the conditions proposed herein and the FCC subsequently determines that Frontier was not in compliance with the condition at the time the affidavit was signed, Frontier will be

subject to a penalty, payable to the U.S. Treasury, in the amount of \$500,000 per condition per six-month period. These automatic penalties shall be in addition to any other remedies awarded by the FCC, including any monetary damages payable to parties harmed by Frontier's failure to comply with a condition proposed herein.

*[Relevance Of State-Level Conditions: This proposed condition is not addressed by the various state-level settlement agreements.]*