

**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 TIMOTHY J GATES

ON BEHALF OF

**Cbeyond Communications, LLC; Charter FiberLink CCO, LLC; Integra Telecom, Inc.;
Level 3 Communications, LLC; McLeodUSA Telecommunications Services, Inc.
d/b/a PAETEC Business Services; US Link, Inc. d/b/a TDS Metrocom;
tw telecom of minnesota, llc; Orbitcom, Inc.; and POPP.com**

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October 1, 2010

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Exhibits

- Exhibit TJG-11 – Issues Matrix summarizing both Applicants’ Position Statements and Joint CLECs’ Position Statements for each issue presented by the Joint CLEC list of recommended conditions (Exhibit TJG-8) for resolution in this matter.
- Exhibit TJG-12 – Excerpt from the FCC *Local Competition Order*.
- Exhibit TJG-13 – Excerpt from the FCC *Qwest 9-State 271 Order*.
- Exhibit TJG-14 – Map of Minnesota showing Qwest and CenturyLink exchanges.
- Exhibit TJG-15 – Excerpt from Qwest’s online Product Catalog called “Pre-Ordering Overview” containing a Qwest table reflecting how Qwest back-end service order processing (“SOP”) systems process CLEC orders differently depending on Qwest Region (Central, East, or West).

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

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

5 **Q. ARE YOU THE SAME TIMOTHY GATES WHO FILED DIRECT**
6 **TESTIMONY IN THIS PROCEEDING ON AUGUST 19, 2010?**

7 A. Yes.

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

9 A. My testimony is being filed on behalf of a number of CLECs: Cbeyond
10 Communications, LLC, Charter Fiberlink CCO, LLC, Integra Telecom, Inc.,
11 Level 3 Communications, LLC., McLeodUSA Telecommunications Services,
12 Inc., d/b/a PAETEC Business Services, US Link, Inc. d/b/a TDS Metrocom, tw
13 telecom of minnesota, llc, Orbitcom, Inc. and POPP.COM (hereafter collectively
14 referred to in my testimony as “Joint CLECs”).

15 **II. PURPOSE OF TESTIMONY**

16 **Q. PLEASE EXPLAIN THE PURPOSE OF YOUR TESTIMONY.**

17 A. The purpose of my testimony is to respond to the Rebuttal Testimony of
18 CenturyLink and Qwest (collectively referred to in my testimony as “Joint
19 Petitioners”), which was filed on September 13, 2010. Specifically, I will respond

1 to the Rebuttal Testimony of the following CenturyLink witnesses: Mark Gast,¹
2 Michael Hunsucker,² John Jones,³ and Duane Ring.⁴ I will also respond to the
3 Rebuttal Testimony of the following Qwest witnesses: Robert Brigham,⁵ John
4 Stanoch,⁶ Karen Stewart,⁷ and Michael Williams.⁸

5 **Q. DO YOU HAVE ANY PRELIMINARY COMMENTS ABOUT THE JOINT**
6 **PETITIONERS' REBUTTAL TESTIMONY?**

7 A. The Joint Petitioners have gone to great lengths in their Rebuttal Testimony to
8 disagree with the conditions proposed by the Joint CLECs (including misstating
9 what the conditions actually say). The Joint Petitioners refuse *all* conditions, even
10 though most of them merely maintain the status quo,⁹ reflect what the Joint
11 Petitioners say they will do if the proposed transaction is approved (albeit without
12 any commitments), and reflect conditions that have been approved by the Federal

¹ 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”).

² 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”).

³ 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”).

⁴ Rebuttal Testimony of Duane Ring on behalf of CenturyLink, Inc., Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010 (“Ring Rebuttal”).

⁵ 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”).

⁶ 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”).

⁷ 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”).

⁸ Rebuttal Testimony of Michael Williams on behalf of Qwest Corp., Minnesota Docket No. P-421, et al./PA-10-456, September 13, 2010 (“Williams Rebuttal”).

⁹ The Minnesota Department of Commerce (“DOC”) agrees that many of the Joint CLECs’ conditions maintain the status quo. *See*, Rebuttal Testimony of Katherine Doherty, on behalf of the Minnesota Department of Commerce, September 13, 2010 (“Doherty Rebuttal”) at p. 8, lines 8-10.

1 Communications Commission (“FCC”) and state commissions in the past. The
2 Joint Petitioners’ across-the-board rejection of the Joint CLECs’ proposed
3 conditions stands in stark contrast to the Joint Petitioners’ claims that they are
4 “commit[ed] to providing quality wholesale services” and “value[] CLECs and
5 recognize[] them as extremely important...”¹⁰ If the Joint Petitioners truly valued
6 CLECs as important customers, it is logical to conclude that they would be
7 willing to work with CLECs to address concerns and ensure that the transition
8 caused by the proposed transaction runs as smoothly as possible for their valued
9 customers.

10 At the same time, Joint Petitioners’ Rebuttal Testimony further supports the Joint
11 CLECs’ concerns about merger-related harm. Not only do the Joint Petitioners
12 provide no further details about their post-merger plans to overcome the severe
13 uncertainty caused by the proposed transaction, they also describe service-
14 impacting problems that have occurred during CenturyLink’s systems integration
15 effort related to the merger with Embarq – problems that could be devastating to
16 wholesale and retail customers if they occurred in Qwest’s region. This only
17 heightens the systems integrations concerns I discussed in my Direct Testimony,
18 particularly when CenturyLink now refers to systems integration following a

¹⁰ Williams Rebuttal at p. 5.

1 merger as “necessary”¹¹ and problems that arise during those integration efforts as
2 “inevitabl[e].”¹²

3 In an apparent recognition of the lack of facts for their claims that the proposed
4 transaction is in the public interest, the Joint Petitioners claim that the Joint
5 CLECs’ positions are unfounded and paint the Joint CLECs as seeking unfair
6 advantage. These claims cannot be supported given the evidence that Dr. Ankum
7 and I provided in our Direct Testimony. They ignore, among other things, the
8 data provided about CenturyLink’s wholesale service quality performance
9 following the Embarq merger,¹³ the examples provided about the differences in
10 functionalities between Qwest’s Operations Support Systems (“OSS”) and
11 CenturyLink’s OSS,¹⁴ the data comparing the size of the existing wholesale
12 operations of Qwest and CenturyLink,¹⁵ and the data in Dr. Ankum’s Exhibits
13 AHA-3 and AHA-4 which demonstrate (through information collected during the
14 discovery process) that significant uncertainty surrounds the proposed transaction
15 and alleged benefits have not been substantiated by Joint Petitioners. The Joint
16 Petitioners also erroneously claim that the Joint CLECs are seeking unfair
17 competitive advantages and a *cut* of the expected synergy savings. That is not
18 accurate. A fair reading of the testimony shows that the Joint CLECs seek to

¹¹ Ring Rebuttal at p. 4, lines 13-15.

¹² Ring Rebuttal at p. 4, lines 3-4.

¹³ Direct Testimony of Timothy Gates on behalf of Joint CLECs, Minnesota Docket No. P-421, et al./PA-10-456, August 19, 2010 (“Gates Direct”), at pp. 83-84 (Trade Secret Version).

¹⁴ Gates Direct at pp. 55-57.

¹⁵ Gates Direct at pp. 25-28.

1 maintain the status quo of Qwest’s wholesale services and products, wholesale
2 systems, wholesale support, and their competitive position vis-à-vis the Bell
3 Operating Company (“BOC”) and incumbent LECs (“ILECs”).

4 It appears that the Joint Petitioners have forgotten that they are the companies
5 asking for approval of the proposed transaction, and that it is their responsibility
6 to provide information to demonstrate that the proposed transaction is in the
7 public interest. Joint Petitioners have not provided such information in this
8 proceeding, and as a result, the proposed transaction should be denied.¹⁶ If the
9 Minnesota Commission is inclined to approve the proposed transaction despite the
10 uncertainties, lessons learned from other mergers, and likely harms that would
11 result, then the Commission should adopt the conditions proposed by Joint
12 CLECs, as well as any additional conditions, such as retail conditions, that the
13 Commission determines are needed to permit a finding that the proposed
14 transaction is in the public interest. The Joint CLEC conditions are designed to
15 address the harms to CLECs and competition that would occur from this
16 particular transaction. Adopting conditions to protect and foster competition is a
17 reasonable alternative to merger denial, as it allows the Commission to render a

¹⁶ The DOC agrees that the Joint Petitioners have provided insufficient information in discovery and testimony to demonstrate that the proposed transaction is in the public interest. *See, e.g.*, Doherty Rebuttal at p. 5, lines 4-7 & *id.* p. 5 lines 11-29 (quoting DOC Direct Testimony by Mr. Bruce Linscheid, p. 18, lines 12-25). In his direct testimony, Mr. Linscheid said this about CenturyLink’s discovery responses: “CenturyLink’s statements that integration changes will follow a disciplined approach of reviewing systems and practices, and any changes will comply with state and federal laws and rules are statements lacking in important detail to Wholesale Customers.” Linscheid Direct, p. 18, lines 18-21. Since then, CenturyLink has not supplemented those discovery responses with the referenced important detail.

1 decision approving the merger on an expedited basis (as requested by Joint
2 Petitioners), which allows the Joint Petitioners to move forward with the
3 transaction, while affording CLECs a degree of certainty to plan their business
4 going forward, and providing CLECs and their customers some degree of
5 protection to avoid or offset merger-related harms.

6 **III. THE JOINT PETITIONERS' ATTEMPTS TO DEFLECT JOINT CLEC**
7 **CONCERNS ABOUT MERGER-RELATED HARM ARE**
8 **UNPERSUASIVE.**

9 *A. Joint Petitioners' attempts to trivialize the Joint CLECs' concerns is not*
10 *indicative of a true commitment to maintaining and providing high*
11 *quality service to their CLEC wholesale customers.*

12 **Q. JOINT PETITIONERS HAVE TESTIFIED THAT "CLECS' CONCERNS**
13 **ABOUT WHOLESALE SERVICE PERFORMANCE ARE IRRELEVANT**
14 **IN THIS MERGER PROCEEDING"¹⁷ AND "COMPETITIVE ISSUES**
15 **RAISED BY THE CLECS IN THIS PROCEEDING REPRESENT**
16 **NOTHING MORE THAN 'NOISE'..."¹⁸ DOES THIS HEIGHTEN YOUR**
17 **CONCERNS ABOUT MERGER-RELATED HARM TO CLECS AND**
18 **COMPETITION?**

19 *A. Yes. These statements demonstrate a complete disregard of the Joint Petitioners'*
20 *wholesale customers who have spent a great deal of time, effort and expense*

¹⁷ Williams Rebuttal at p. 2.

¹⁸ Brigham Rebuttal at p. 25.

1 intervening in these merger review proceedings to voice their legitimate concerns
2 to the Commission.

3 Further, these statements call into question CenturyLink's claims that: (i)
4 CenturyLink is committed to providing quality wholesale services,¹⁹ (ii)
5 wholesale customers are a top priority for CenturyLink and will remain so post-
6 merger,²⁰ (iii) "both CenturyLink and Qwest take very seriously their wholesale
7 provisioning obligations and opportunities"²¹ and (iv) wholesale customers are
8 "crucial to the future financial success of the combined company."²² This
9 rhetoric, which is designed to secure approval of the transaction, is belied by the
10 Joint Petitioners' refusal to provide facts or to consider the reasonable conditions
11 of the Joint CLECs. It is simply not good business for a service provider to
12 belittle its customers' concerns as "noise." And in other industries with
13 competitive markets, that type of attitude would likely lead to failure (as
14 customers would leave that service provider for other service providers that value

¹⁹ Hunsucker Rebuttal at p. 6, lines 16-17. Mr. Hunsucker claims that the facts demonstrating CenturyLink's commitment in this regard "speak for themselves" and points to the following facts: (1) almost two thousand active CLEC interconnection and resale agreements, (2) about 1 million ASRs and LSRs CenturyLink is expected to process in 2010, and (3) "a CLEC performance assurance plan in its largest CLEC market, Las Vegas, Nevada" and "a system called CSPRS (CLEC Service Performance Reporting System, currently available in the legacy Embarq territories) which provides all CLECs with access to the service performance reports on the service provided to their respective companies." Hunsucker Rebuttal at p. 7. Because these "facts" relate to a wholesale operation that CenturyLink recently inherited due to its acquisition of Embarq in the last year, it is a stretch for Mr. Hunsucker to claim that they support a "long-standing history of and commitment to providing quality wholesale services." Moreover, Mr. Hunsucker fails to provide any comparison of the magnitude of its legacy wholesale operations to the legacy wholesale operations of Qwest. I provided such a comparison at pages 25-28 of the confidential version of my Direct Testimony which shows that Qwest's wholesale operations are significantly larger than CenturyLink's wholesale operations.

²⁰ See, Hunsucker Rebuttal at p. 6, lines 17-18.

²¹ Hunsucker Rebuttal at p. 39, lines 18-19. *See also*, Hunsucker Rebuttal at p. 15, lines 17-19.

²² Hunsucker Rebuttal at p. 15, line 19.

1 customers' opinions and concerns). For example, if customers of McDonald's
2 raised concerns about long waiting times in the drive-thru because of a reduction
3 in employees, and McDonald's dismissed these concerns as "noise," the chances
4 are good that customers would *vote with their feet* and go to Arby's or Hardees
5 instead. Unfortunately, the CLECs do not have the same option when it comes to
6 the products and services they purchase from Qwest or CenturyLink, and the need
7 to exchange traffic to maintain the efficient operation of the Public Switched
8 Telephone Network ("PSTN"). The Joint Petitioners' dismissive statements show
9 a complete disregard for their wholesale customers.²³ I am not aware of the Joint
10 Petitioners dismissing concerns about retail service quality and other retail
11 concerns raised in the merger review proceedings as "irrelevant" or "noise."

12 **Q. DOES VERIFIABLE DATA EXIST WHICH SHOWS THAT BOTH**
13 **WHOLESALE AND RETAIL CUSTOMERS OF THE JOINT**
14 **PETITIONERS HAVE REASON TO BE CONCERNED ABOUT THE**
15 **SERVICE QUALITY THEY WILL RECEIVE FROM THE MERGED**
16 **COMPANY IF THE TRANSACTION IS APPROVED?**

17 A. Yes. At pages 81-84 of my Direct Testimony, I provided an analysis of the
18 wholesale service quality data which shows the wholesale service quality

²³ Mr. Williams states at page 5 of his Rebuttal Testimony: "Qwest values CLECs and recognizes them as extremely important in helping keep customers on Qwest's wireline network." The dismissive statements made by Joint Petitioners about the Joint CLEC proposed conditions are not indicative of a service provider that values its customers. Mr. Williams fails to mention that Qwest competes with CLECs in local retail markets, and has economic incentives to serve an end user customer with its retail services rather than permit a CLEC wholesale customer to serve that end user customer using Qwest's wholesale services.

1 provided by CenturyLink following the Embarq/CenturyTel merger. Those
2 results show that the CLECs' concerns are valid and that conditions are necessary.

3 Recent customer satisfaction studies show that retail customers also have reasons
4 to be concerned if the Commission allows CenturyLink to acquire and control
5 Qwest. Specifically, on September 15, 2010, JD Power & Associates released its
6 *2010 U.S. Residential Telephone Customer Satisfaction Survey*.²⁴ This study
7 measures customer satisfaction with both local and long distance telephone
8 services in four regions through the United States and covers five factors in
9 determining overall satisfaction: (i) performance and reliability, (ii) cost of
10 service, (iii) billing, (iv) offerings and promotions, (v) and customer service. In
11 the West Region, where results for both Qwest and CenturyLink are reported,
12 Qwest was ranked 3rd out of 10 and CenturyLink was ranked 8th out of 10.
13 CenturyLink performed below average, while Qwest performed slightly above
14 average. In the three other regions where CenturyLink's (but not Qwest's)
15 residential customer satisfaction was ranked, CenturyLink ranked 7th out of 9
16 (East Region), 8th out of 9 (South Region), and 7th out of 10 (North Central
17 Region).

18 **Q. WERE THE RESULTS SIMILAR FOR RETAIL BUSINESS**
19 **CUSTOMERS?**

²⁴ The JD Power & Associates press release and summary results for this study are available at:
<http://businesscenter.jdpower.com/JDPACContent/CorpComm/News/content/Releases/pdf/2010184-rtss.pdf>

1 A. Yes. Regarding business customer satisfaction, JD Power & Associates released
2 its *2010 U.S. Major Provider Business Telecommunications Study – Voice Service*
3 on July 15, 2010.²⁵ This study measures customer satisfaction with providers of
4 landline voice telephone service for businesses, and providers are ranked in three
5 segments: (i) home-based businesses, (ii) small/midsize businesses and (iii) large
6 enterprise businesses. The same five factors listed above are used to determine
7 overall satisfaction. Both Qwest and CenturyLink results are reported for two of
8 the three segments – home-based business and small/midsize business. In the
9 home-based business segment, Qwest performed slightly better than CenturyLink,
10 with both companies performing below the average. In the small/midsize
11 business segment, CenturyLink ranked last (5th out of 5), below average, and
12 Qwest ranked slightly above average at 3rd out of 5. With Qwest consistently
13 performing better than CenturyLink in these retail customer satisfaction studies, it
14 is unclear how CenturyLink taking control of Qwest will bring any better service
15 to the legacy Qwest territory, particularly as CenturyLink has refused to agree to
16 conditions requiring CenturyLink to continue certain Qwest practices. Indeed,
17 just the opposite is true. These studies, along with other data presented in this
18 proceeding, confirm that both wholesale and retail customers have good reason to
19 be concerned about CenturyLink taking control of Qwest.

²⁵ The JD Power & Associates press release and summary results for this study are available at:
<http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2010111>

1 **Q. AS CLECS ARE COMPETITORS OF CENTURYLINK/QWEST,**
2 **WOULDN'T CLECS BENEFIT FROM RETAIL CUSTOMER**
3 **DISSATISFACTION ABOUT CENTURYLINK'S/QWEST'S RETAIL**
4 **SERVICES?**

5 A. Unfortunately, it does not work that way when the CLEC's competitor is also the
6 CLEC's sole wholesale vendor for essential network facilities. Absent
7 enforceable conditions that require CenturyLink to maintain wholesale services
8 quality levels, a reduction in retail service quality will invariably translate into a
9 reduction in wholesale service quality as the merged company alters its workforce
10 (e.g., reductions, replacement of experienced employees). At that point,
11 CenturyLink may argue "parity" – that it is ok when wholesale service declines
12 because retail service is declining as well, so there is no discrimination.
13 Deterioration in service quality under these circumstances, however, is a merger-
14 related harm that should be prevented, whether discriminatory to competitors or
15 not. After all, the merger is supposed to be in the public interest and not result in
16 degraded service to retail or wholesale customers.

17 Because Qwest's performance assurance plans (PAPs) generally compare
18 wholesale service quality to retail service quality, as retail service quality
19 declines, there would be no protections for CLECs and their customers against
20 deterioration in wholesale service quality. This, in part, is why the Commission
21 should adopt condition 4.a. regarding the additional performance assurance plan

1 (APAP).²⁶ The APAP would compare the merged company's post merger
2 monthly performance with the performance that existed in the twelve months
3 prior to the merger filing date. In the event of deterioration in retail service
4 quality, the Additional PAP would capture service deterioration that is not
5 captured under the current PAP's parity provisions but which needs to be captured
6 to measure and help remedy merger-related service deterioration.

7 *B. CenturyLink's description of its prior integration efforts glosses over*
8 *problems and merger-related harms.*

9 **Q. HAS ADDITIONAL EVIDENCE BEEN COLLECTED SINCE YOU FILED**
10 **YOUR DIRECT TESTIMONY THAT FURTHER DEMONSTRATES**
11 **THAT THE JOINT CLECS' CONCERNS ABOUT MERGER-RELATED**
12 **HARM ARE RELEVANT AND CONDITIONS ARE NEEDED IF THE**
13 **PROPOSED TRANSACTION IS APPROVED?**

14 A. Yes.

15 **Q PLEASE ELABORATE.**

16 A. On August 19, 2010, the Communications Workers of America ("CWA") filed
17 the Direct Testimony of Jasper Gurganus,²⁷ which described problems
18 CenturyLink was experiencing during its integration of Embarq in North
19 Carolina. CenturyLink filed the Rebuttal Testimony of Duane Ring on September

²⁶ See, Gates Direct at pp. 126-129 and Direct Testimony of Douglas Denney at pp. 6-15.

²⁷ Pre-Filed Direct Testimony of Jasper Gurganus on behalf of CWA, Minnesota PUC Docket No. P-421, et al./PA-10-456, August 19, 2010.

1 13, 2010, to respond to Mr. Gurganus’ testimony. In his Rebuttal Testimony,
2 CenturyLink witness Mr. Ring acknowledged the problems discussed by Mr.
3 Gurganus. Mr. Ring’s acknowledgement of these integration problems was
4 surprising given that he referred to the ongoing Embarq integration in his Direct
5 Testimony as running “smooth and successful.”²⁸ Another reason this was
6 surprising was that Joint CLECs have raised concerns about CenturyLink’s
7 integration of Qwest in Minnesota and numerous other states if the proposed
8 transaction is approved – with some of those concerns being very similar to the
9 types of problems CenturyLink has experienced in North Carolina. Until the
10 CWA brought forward its evidence (evidence to which only CWA and
11 CenturyLink would have reasonable access), however, CenturyLink failed to
12 mention any problems regarding its integration of Embarq until its Rebuttal
13 Testimony in this proceeding.²⁹

14 **Q. DID CENTURYLINK HAVE AN OBLIGATION TO PROVIDE THIS**
15 **EVIDENCE EARLIER?**

16 A. Yes. On June 28, 2010, within two weeks of receiving the Joint Petitioners’
17 Direct Testimony, Integra served discovery requests upon Joint Petitioners in
18 which Integra referenced the Direct Testimony of Mr. Ring regarding integration
19 efforts undertaken by the company for CenturyTel’s acquisition of Embarq and

²⁸ Direct Testimony of Duane Ring, Minnesota PUC Docket No. P-421, et al./PA-10-456, June 14, 2010 (“Ring Direct”), at p. 5.

²⁹ For example, Joint Petitioners filed their Rebuttal Testimony in the Iowa merger review proceeding on August 26, 2010, and did not mention any integration problems.

1 Mr. Ring's claims that they have been successful, and asked CenturyLink to: (1)
2 Describe in detail the integration efforts undertaken by the company for
3 CenturyTel's acquisition and specifically to answer fourteen sub-questions,
4 including "Description of problems the company experienced (or is experiencing)
5 during integration;³⁰ and (2) Provide a detailed description of these conversions,
6 including "how the company determined that the integration efforts 'have been
7 successful.'"³¹ As part of its information requests on June 28, 2010, Integra
8 included an instruction stating that the information requests are intended to be
9 continuing in nature and indicating that the respondents should supplement the
10 responses promptly.³² CenturyLink responded to these Integra Information
11 Requests on July 8, 2010, and CenturyLink supplemented its responses on July
12 30, 2010.

13 In its initial and supplemental responses, CenturyLink stated that the integrations
14 were proceeding as planned, without disclosing any of the problems that
15 CenturyLink has acknowledged only after CWA brought them to light in
16 testimony. In both responses, CenturyLink represented that the conversion to
17 CenturyLink's retail end user billing system is proceeding as planned "without
18 customer disruption."³³ CenturyLink's affirmative statement appears inconsistent
19 with the problems described in the Direct Testimony of Mr. Gurganus, as well as

³⁰ Integra Minnesota Information Request Number 41 to Joint Petitioners (June 28, 2010).

³¹ Integra Minnesota Information Request Number 42 to Joint Petitioners (June 28, 2010).

³² Integra Minnesota Information Requests to Joint Petitioners (June 28, 2010), p. 2.

³³ CenturyLink's Responses to Integra Minnesota Information Request Number 41 (July 8, 2010 and July 30, 2010).

1 Mr. Ring's own recent testimony that the problems encountered in North Carolina
2 have caused CenturyLink "to produce lower service level metrics than desired
3 since conversion."³⁴ While continuing to pursue expedited treatment of this
4 matter and continuing to oppose scheduling adjustments in light of discovery
5 issues, CenturyLink has allowed the months in which these problems could have
6 been investigated – i.e., between CenturyLink's July 8, 2010, non-responsive
7 discovery answer and CenturyLink's admissions in its September 13, 2010,
8 Rebuttal Testimony – to lapse without disclosing this requested relevant
9 information.

10 Due to CenturyLink's withholding of this information, there is insufficient time
11 under the current schedule to obtain and analyze needed information about (i) the
12 "devices" referenced by Mr. Ring,³⁵ (ii) the outside plant records that were
13 impacted by the data inconsistency, (iii) why the data inconsistency was not
14 revealed in data validation efforts, (iv) why the data inconsistency was not
15 revealed in quality assurance testing, and (v) other information needed to help
16 determine whether similar problems are likely to occur in this merger and, if so,
17 what may be done to avoid them. With top executives at Qwest expected to
18 receive multi-millions of dollars upon closing³⁶ and CenturyLink estimating over

³⁴ Ring Rebuttal Testimony, p. 5, lines 16-18.

³⁵ Ring Rebuttal Testimony, page 2, lines 6-18.

³⁶ See, e.g., Windfall for Qwest top execs, by Andy Vuong, *The Denver Post*, 7/18/2010. http://www.denverpost.com/search/ci_15536725. The article notes: "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 \$600 million in synergy savings if the transaction is approved, it is clear why
2 Qwest and CenturyLink are in a hurry. However, it becomes less and less clear
3 what public interest may be served by not inquiring into and adequately
4 investigating these problems, particularly when CenturyLink delayed proper
5 investigation into these issues by not disclosing required information in discovery.

6 **Q. PLEASE BRIEFLY DESCRIBE THE INTEGRATION-RELATED**
7 **PROBLEMS CWA AND CENTURYLINK HAVE REPORTED.**

8 A. Mr. Ring states that, during the conversion in North Carolina to CenturyLink
9 billing and operational systems, outside plant records were loaded incorrectly,
10 which caused the problems described in CWA's testimony.³⁷ Some of the
11 problems that the CWA described in its testimony include: "workers...being
12 dispatched to incorrect locations for service";³⁸ "workers reported being
13 dispatched for service with insufficient or incorrect information";³⁹ longer out of
14 service periods and longer delays in initiating service;⁴⁰ differing and confusing
15 software that dispatches/assigns technicians;⁴¹ "the systems do not appear to be
16 interconnected or coordinated";⁴² negative impacts on work flow;⁴³

³⁷ Ring Rebuttal at p. 2, lines 6-12.

³⁸ Gurganus Direct at p. 4, lines 19-20.

³⁹ Gurganus Direct at p. 5, lines 6-7.

⁴⁰ Gurganus Direct at pp. 4-5.

⁴¹ Gurganus Direct at p. 5.

⁴² Gurganus Direct at p. 6, lines 8-12.

⁴³ Gurganus Direct at p. 7.

1 “inefficiencies in the new systems”;⁴⁴ and consumer frustration about installation
2 and service appointments not being met and long hold times.⁴⁵

3 **Q. DID CENTURYLINK ACKNOWLEDGE THESE PROBLEMS?**

4 A. Yes. In Mr. Ring’s Rebuttal Testimony, he acknowledges the existence of
5 problems during CenturyLink’s integration of Embarq in North Carolina.
6 Importantly, he states that these problems have “caused CenturyLink to produce
7 lower service level metrics than desired since conversion”,⁴⁶ or in other words,
8 these integration problems have caused service quality to suffer. When Mr. Ring
9 refers to “service level metrics,” I presume he is referring to the monthly service
10 quality metrics CenturyLink is required to report for the two Embarq operating
11 companies, Carolina Telephone and Telegraph Company and Central Telephone
12 Company, as required by North Carolina Docket P-100, Sub 99A. These service
13 quality metrics report CenturyLink’s performance related to servicing residential
14 and business customers. If the integration problems have resulted in less than
15 desired service metrics, the problems must be widespread given that CenturyLink
16 serves about one million access lines in North Carolina.

⁴⁴ Gurganus Direct at p. 8, line 3. *See also*, Gurganus Direct at p. 9 (“I also received a report that the new CenturyLink systems are so inefficient (improper orders, bad tickets, delays from being on hold while calling in for information that should have been included on the work orders) that tasks that should take a tech one hour to complete are taking as long as three hours...some of the new systems require a lot of manual override.”)

⁴⁵ Gurganus Direct at p. 10.

⁴⁶ Ring Rebuttal at p. 5, lines 16-18.

1 **Q. HAS MR. RING DISCUSSED SOME OF THE CAUSES OF THESE**
2 **PROBLEMS?**

3 A. Yes. Mr. Ring states that a number of these problems are caused by differences
4 between the old and new systems.⁴⁷ He also points to a “lack of familiarity with
5 the new systems”⁴⁸ as a source of problems. Further, CWA witness Mr.
6 Gurganus describes “insufficient training or resources - provided to former
7 Embarq employees about the new systems.”⁴⁹ Mr. Gurganus also states:

8 Some of the problems might be avoided with adequate training of
9 the workers. For example, one tech I spoke to in Ohio reported that
10 he received training two months before the new systems were in
11 place. There was no other follow up or refresher. Not surprisingly,
12 by the time the systems were available for him to use, he and his
13 co-workers had forgotten most of the information from the training
14 session.⁵⁰

15 **Q. WHAT SHOULD THE COMMISSION TAKE FROM MR. RING’S**
16 **REBUTTAL TESTIMONY (AS WELL AS THE CWA TESTIMONY TO**
17 **WHICH HE RESPONDS)?**

18 A. This testimony is additional evidence that reinforces the Joint CLECs’ concerns
19 related to CenturyLink’s integration of Qwest if the proposed transaction is
20 approved, and undermines the Joint Petitioners’ attempts to dismiss the Joint
21 CLECs’ concerns and conditions.

⁴⁷ Ring Rebuttal at p. 2, lines 21-22.

⁴⁸ Ring Rebuttal at p. 3.

⁴⁹ Gurganus Direct at p. 4, lines 4-9.

⁵⁰ Gurganus Direct at p. 12, lines 10-15.

1 **Q. PLEASE EXPLAIN HOW MR. RING’S TESTIMONY UNDERMINES**
2 **THE JOINT PETITIONERS’ ATTEMPTS TO DISMISS THE CLEC**
3 **CONCERNS AND CONDITIONS?**

4 A. CenturyLink testified in its Direct Testimony that “CenturyLink is confident
5 that...the execution of this integration [of Qwest] will be as smooth and
6 successful as the Embarq integration and others have been in the past.”⁵¹
7 CenturyLink also testified in its Direct Testimony that there are no “potential
8 harms that could result from the [Qwest] merger.”⁵² However, in Rebuttal
9 Testimony, Mr. Ring testifies that the types of problems experienced in North
10 Carolina during the integration of Embarq are to be expected with every merger;
11 he states: “[a]s with any integration of large, complex systems, there are may be
12 [sic] some issues that arise.”⁵³ He goes even further, stating that “every system
13 conversion or integration inevitably is going to have some issues.”⁵⁴ In
14 CenturyLink’s Direct Testimony, CenturyLink claimed that there are no potential
15 harms that could result from the proposed transaction, but in its Rebuttal
16 Testimony, it now states that problems are “inevitable” in every merger (and has
17 admitted that these problems led to service quality deterioration). CenturyLink’s
18 “flip-flop” should not go unnoticed, particularly when CenturyLink has neither
19 identified the “inevitable” problems that it experienced during other transactions

⁵¹ Ring Rebuttal at p. 5.

⁵² Jones Direct at p. 12, lines 11-15.

⁵³ Ring Rebuttal at p. 1, lines 20-23.

⁵⁴ Ring Rebuttal at p. 4, lines 3-4.

1 in the past nor sufficiently addressed the prior CenturyLink integration problems
2 that I discussed in my Direct Testimony.⁵⁵

3 **Q. DOES MR. RING'S TESTIMONY UNDERMINE THE JOINT**
4 **PETITIONERS' ATTEMPTS TO DISMISS CLEC CONCERNS IN**
5 **OTHER WAYS?**

6 A. Yes. As explained above, Mr. Ring states that the causes of the problems
7 experienced in North Carolina include differences between old systems and new
8 systems, and unfamiliarity with the new systems. On the same day Mr. Ring
9 submitted this testimony, CenturyLink witness Mr. Hunsucker submitted
10 testimony which states: "Mr. Gates' speculation that § 271 compliant systems
11 might just 'disappear' is nonsense."⁵⁶ Despite Mr. Hunsucker's unsupported
12 claims about post-merger integration plans, the testimony from North Carolina
13 (reported by former Embarq (now CenturyLink) personnel in the Direct
14 Testimony of Mr. Gurganus) shows that Embarq system functionality did just
15 "disappear." Mr. Gurganus testified that:

16 Prior to the merger between Embarq and CenturyLink, if a
17 concentrator went down, the business office would issue an outage
18 ticket that would alert people throughout the system that there is a
19 known outage in a specific area. That meant when customers
20 called to report the outage, the customer service representatives

⁵⁵ See, e.g., Gates Direct at pp. 79-80, discussing integration problems CenturyLink experienced in the past that resulted in a cost overrun of between \$50 million and \$60 million and was delivered over two years later than planned. Surprisingly, CenturyLink claims that this integration effort, which ran tens of millions of dollars over budget and delivered more than two years late, "has been a success story for CenturyLink." CenturyLink Supplemental Response to Integra Minnesota Data Request #38. Given CenturyLink's definition of a "success story," it is difficult to imagine what would have to happen for CenturyLink to deem a systems integration effort as unsuccessful.

⁵⁶ Hunsucker Rebuttal at p. 11, lines 1-3.

1 would be able to tell them the company knew about the outage,
2 that it was being worked on, and even an estimated time the
3 service would be restored. Under the new system, the business
4 office can take a trouble report, but it is not issued as an outage
5 report, so our customers cannot be told that we may already be
6 working on the problem or when their service might be restored.⁵⁷

7 A comparison of actual, recent experience in North Carolina to Mr. Hunsucker's
8 claim suggests that Mr. Hunsucker's statement is geared more towards securing
9 transaction approval than accurately reflecting what will transpire during post-
10 merger integration.

11 Furthermore, Mr. Ring testifies that it is "necessary" to integrate Embarq and
12 CenturyTel systems "so that all employees are working off the same platform and
13 using the same processes."⁵⁸ Though he is talking about the CenturyTel/Embarq
14 merger in this instance, this is the clearest indication yet in Joint Petitioners'
15 testimony that CenturyLink will undertake a significant systems integration effort
16 if the proposed transaction is approved.⁵⁹ If CenturyLink views all employees
17 working off the same platform and using the same processes as "necessary," there
18 is no reason to believe the Merged Company would not undertake such a systems
19 integration effort after acquiring Qwest. As Dr. Ankum and I explained in our
20 Direct Testimony, the Joint Petitioners have provided no details about their post-

⁵⁷ Gurganus Direct at p. 8, lines 13-22.

⁵⁸ Ring Rebuttal at p. 4.

⁵⁹ CenturyLink also stated in response to a data request from the Arizona Corporation Commission Staff: "CenturyLink anticipates...the consolidation of OSS and billing systems and sales and account management teams." CenturyLink Response to Arizona Corporation Commission Staff Data Request STF 7.15.

1 merger systems integration plans.⁶⁰ While CenturyLink has previously indicated
2 that “changes could be expected over time,”⁶¹ Mr. Ring’s testimony is a clear
3 indication that the Joint CLECs’ concerns about post-merger integration impacts
4 are warranted and conditions are necessary.

5 **Q. DID JOINT PETITIONERS RECENTLY INDICATE THAT OSS WILL**
6 **CHANGE POST-MERGER?**

7 A. Yes. [***HIGHLY SENSITIVE TRADE SECRET INFORMATION
8 SUBJECT TO ADDITIONAL PROTECTION BEGINS [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] HIGHLY
15 SENSITIVE TRADE SECRET INFORMATION SUBJECT TO
16 ADDITIONAL PROTECTION ENDS***]⁶²

⁶⁰ The DOC also notes the lack of details provided by Joint Petitioners about the proposed transaction. See, Doherty Rebuttal at p. 3, lines 12-13 and line 19; p. 5, lines 1-2.

⁶¹ Gates Direct at p. 135, quoting CenturyLink Response to Integra Minnesota Data Request #118.

⁶² See also CenturyLink’s Responses to Arizona Corporation Commission Staff’s Seventh Set of Data Requests to CenturyLink, ACC Docket Nos. T-01051B-10-0194 et al., at 9 (dated Aug. 13, 2010) (response to Arizona Corporation Commission Staff Data Request 7.15 by Mark Harper, Director of Regulatory Operations and Policy for CenturyLink) (stating that “CenturyLink anticipates improved wholesale customer service over time through the consolidation of OSS and billing systems and sales and account management teams”).

1 **Q. DID JOINT PETITIONERS RECENTLY INDICATE THAT**
2 **CENTURYLINK HAS DECIDED TO CHANGE QWEST’S EXISTING OSS**
3 **POST-MERGER?**

4 A. Yes. Discovery responses that CenturyLink and Qwest submitted in Minnesota
5 last week indicate that at least Qwest’s CLEC-facing OSS interface for Local
6 Service Requests (“LSRs”) will be modified or replaced if the proposed
7 transaction is approved. This particular OSS interface is used to place orders for
8 most unbundled network elements used by CLECs to provide local service.
9 Specifically, CenturyLink states: “...after the systems of the [merged] company
10 have been consolidated after the merger, the company intends to support a
11 [unified ordering model] UOM interface for LSRs.”⁶³ At the same time, Qwest
12 states that, “IMA is not UOM compliant...”⁶⁴ These responses necessarily mean
13 that the interface Qwest currently uses to process CLEC LSRs (Interconnect
14 Mediated Access or “IMA”) will no longer be available in its present form.
15 CenturyLink will either replace it or modify it. If CenturyLink considers its
16 EASE system to be UOM compliant, CenturyLink’s response may suggest an

⁶³ CenturyLink Response to Integra Minnesota Data Request #3-9, dated September 23, 2010. Integra asked CenturyLink: “Please indicate whether, after all of the systems of the Merged Company have been consolidated, the interface that the Merged Company will provide will support a UOM interface for LSRs.” Unified Ordering Model (“UOM”) Guidelines Document, established by the Ordering and Billing Forum (“OBF”), are described as follows: “The Unified Ordering Model (UOM) describes a complete set of system documentation using an end-to-end structured methodology. The scope of UOM encompasses business requirements, analysis, design and implementation.” <http://www.atis.org/obf/UOMASRsumm.asp>

⁶⁴ Qwest Response to Integra Data Request #11, dated September 23, 2010. Integra asked Qwest: “Is the interface that Qwest currently uses to process LSRs for CLECs a UOM interface. If so...” Qwest also indicated in its response: “IMA has its own XML Gateway and does accept XML files for LSR order submission...IMA only offers a customer GUI written in java or the custom XML interface mentioned above.”

1 intention by CenturyLink to use EASE for LSRs, contrary to the recommendation
2 of the Joint CLECs.⁶⁵ [***HIGHLY SENSITIVE TRADE SECRET

3 INFORMATION SUBJECT TO ADDITIONAL PROTECTION BEGINS

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] HIGHLY SENSITIVE TRADE
15 SECRET INFORMATION SUBJECT TO ADDITIONAL PROTECTION

16 ENDS***] In any event, the discovery responses confirm that CenturyLink does
17 not intend to use Qwest IMA as it exists today. Investigation is needed, therefore,
18 into how and when CenturyLink intends to change or replace Qwest's IMA.
19 CenturyLink still has not provided any explanation as to when or how it will
20 implement its plan to, after systems consolidation, support a UOM compliant
21 system.

⁶⁵ Regarding the increased functionality of Qwest's OSS versus EASE, see, e.g., Exhibit BJJ-27 to the Surrebuttal Testimony of Ms. Johnson.

1 **Q. JOINT PETITIONERS STATE THAT ANY CHANGES TO OSS “WILL**
2 **OCCUR ONLY AFTER A THOROUGH AND METHODOICAL REVIEW**
3 **OF BOTH COMPANIES’ SYSTEMS AND PROCESSES TO DETERMINE**
4 **THE BEST SYSTEM TO BE USED ON A GOING-FORWARD BASIS**
5 **FROM BOTH A COMBINED COMPANY AND A WHOLESALE**
6 **CUSTOMER PERSPECTIVE.”⁶⁶ DOES THIS PROVIDE ANY**
7 **ASSURANCE THAT CLECS AND THEIR CUSTOMERS WILL NOT BE**
8 **HARMED BY ATTEMPTS TO INTEGRATE SYSTEMS POST-**
9 **TRANSACTION?**

10 **A. No. I explained in my Direct Testimony why the Joint Petitioners’ claims about a**
11 **“methodical review” and taking into account the “wholesale customer**
12 **perspective” provide no assurances.⁶⁷ Since I submitted my Direct Testimony, I**
13 **have reviewed additional information that heightens my concerns about**
14 **CenturyLink making changes to Qwest’s OSS and selecting the “best” system to**
15 **be used if the proposed transaction is approved. [***HIGHLY SENSITIVE**
16 **TRADE SECRET INFORMATION SUBJECT TO ADDITIONAL**
17 **PROTECTION BEGINS** [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

⁶⁶ Hunsucker Rebuttal at p. 40.

⁶⁷ Gates Direct at footnotes 227 and 228 and p. 121 and 135-136.

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**HIGHLY SENSITIVE TRADE SECRET INFORMATION SUBJECT TO
ADDITIONAL PROTECTION ENDS***]**

1 **Q. MR. RING STATES THAT THE PROBLEMS EXPERIENCED DURING**
2 **THE INTEGRATION OF EMBARQ IN NORTH CAROLINA ARE**
3 **MANAGEABLE AND SHOULD NOT RECUR.⁶⁸ PLEASE RESPOND.**

4 A. What Mr. Ring fails to mention is that a problem that may be manageable in
5 North Carolina may not be manageable in Minnesota. Since CenturyLink has
6 served primarily rural areas, it has no experience with the volumes and types of
7 orders, complexity of systems, etc. that it will have to manage in Qwest's BOC
8 territory if the proposed transaction is approved. As such, there is no evidence
9 that CenturyLink could manage problems that may arise during its efforts to
10 integrate Qwest if the proposed transaction is approved. And because Qwest has
11 significantly larger wholesale operations in Minnesota (and elsewhere) than does
12 CenturyLink, the risk to wholesale customers is higher in Minnesota. Problems in
13 loading outside plant records is just one out of many problems that could occur if
14 CenturyLink attempted to replace Qwest's OSS with CenturyLink's OSS post-
15 merger. Mr. Ring describes the root cause of the problems with the Embarq
16 North Carolina conversion as:

17 some of the outside plant records were loaded incorrectly. The way
18 in which plant was constructed in the legacy Embarq areas was not
19 consistent between areas and not consistent with the legacy
20 CenturyTel areas. As a result, records for some of the devices
21 initially did not load correctly in the conversion. This led to certain
22 problems that Mr. Gurganus cites in his testimony.⁶⁹

⁶⁸ Ring Rebuttal at p. 2.

⁶⁹ Ring Rebuttal at p. 2, lines 7-12.

1 Data inconsistencies are not uncommon in legacy systems. As reported by
2 Liberty Consulting in its FairPoint Post-Cutover Status Report on April 1, 2009,
3 in regards to the FairPoint conversion: “data problems have affected a large
4 number of accounts. These unexpected problems have included such issues and
5 incorrect data mapping and misinterpretation of Verizon data, and have had a
6 major impact on such critical function as loop qualification, validation of
7 customer addresses, assignment of telephone numbers, and identification of
8 serving wire centers for customers.”

9 CenturyLink and Qwest have provided no evidence that such data inconsistencies,
10 and the resulting conversion problems, are any less likely with the proposed
11 transaction with Qwest. To the contrary, there is ample evidence that data within
12 Qwest’s systems and processes varies by region and thus such inconsistencies and
13 related data integrity conversion issues are likely to occur in any Qwest-
14 CenturyLink integration. At least some of the Qwest regional differences stem
15 from the legacy companies of Mountain Bell (now known as Qwest Central
16 Region), Pacific Bell (now known as Qwest West Region), and Northwestern Bell
17 (now known as Qwest Eastern Region) that later became part of US West and
18 then Qwest. Therefore, this transaction presents not only the risk of data
19 inconsistencies between CenturyLink legacy areas and Qwest legacy areas, but
20 also between and among each of the legacy Qwest Regions and each of the legacy
21 CenturyLink areas. Evidence of regional differences include, for example, Qwest

1 implementing system business rules that vary by Qwest Region;⁷⁰ Qwest
2 periodically sending notices to CLECs indicating that it is unable to process
3 orders in one or more (but not all) of the three Qwest Regions;⁷¹ and Qwest
4 implementing a change request to access Customer Service Records for VoIP first
5 in the Central and Eastern Qwest Regions and later in the West Region, because
6 of complexities unique to the Qwest West Region.⁷² Attached to my testimony as
7 Exhibit TJG-15 is an excerpt from Qwest's online Product Catalog called "Pre-
8 Ordering Overview." Exhibit TJG-15 contains a Qwest table that describes how

⁷⁰ See Local Service Ordering Guide (LSOG), at <http://www.qwest.com/wholesale/clecs/lsog.html> (with links to forms which identify Qwest Regional Differences). For example, for Exchange Company Circuit ID (ECCKT), the Qwest LSOG (on page 24 of the Loop Services form and on page 24 of the Loop Service With Number Portability form) requires CLECs to use different formats for circuit identification depending on the Qwest Region. In fact, the last two alpha characters of the ECCKT indicate which Qwest Region (with MS being Central, PN being Western, and NW being Eastern). Another example reflects differences in Qwest's Service Order Processor (SOP) by Region. In the Qwest LSOG (on page 20 of Pending Service Order Notification Form), Qwest informs CLECs of action taken by Qwest differently depending on regional SOP. For Eastern and Western Qwest Regions, Qwest provides an action code ("R") to CLECs to show that, for existing information, Qwest has "recapped" that information on the PSON sent to CLEC. For the Central Region, the same information is provided by not populating the action code. The Qwest back-end systems (SOP) handle the Qwest Regions differently, so the information is presented to CLECs differently. There are dozens of such regional differences noted in the Qwest LSOG.

⁷¹ See, e.g., Qwest Systems Notification Event **Ticket Number:** 4697877 (Aug. 14, 2010), stating: "**Description of Trouble:** IMA pre-order function 'Validate Address' was not available in the Eastern region; **Business Impact:** You may have received an error when attempting this Pre-Order function. Your LSR could have been submitted but may have to be manually processed resulting in delayed FOC's (Firm Order Confirmations)." <http://systemevents.qwestapps.com/notices/1433>. The same problem occurred in 2007, but for the Qwest Central Region. See Event Ticket Number 3171819 (Sept. 25, 2007), available at <http://systemevents.qwestapps.com/notices/775>. See, e.g., Qwest Systems Notification Event **Ticket Number:** 4697877 (Aug. 14, 2010), stating: "**Description of Trouble:** IMA pre-order function 'Validate Address' was not available in the Eastern region; **Business Impact:** You may have received an error when attempting this Pre-Order function. Your LSR could have been submitted but may have to be manually processed resulting in delayed FOC's (Firm Order Confirmations)." <http://systemevents.qwestapps.com/notices/1433>. The same problem occurred in 2007, but for the Qwest Central Region. See Event Ticket Number 3171819 (Sept. 25, 2007), available at <http://systemevents.qwestapps.com/notices/775>.

⁷² See Qwest CR # SCR042108-01, Qwest May 5, 2009, CMP Meeting Minutes, stating: "Mark Coyne-Qwest said that this CR deployed on 4/20/09 with the IMA 25.0 Release. Mark reminded everyone that partial CSRs for VOIP DID numbers will not be available in the Western Region until 6/22/09. Mark said this was communicated on the original release notice and will be sending out a subsequent notice later this week." See http://www.qwest.com/wholesale/cmp/archive/CR_SCR042108-01.html.

1 customer (“CUS”) codes “may change during the bill posting process after a
2 Completion Notice (“CN”) is issued. The changes to the CUS Code are based
3 upon service order activity, product, and region.”⁷³ The table contains a complex
4 description that reflects how Qwest’s back-end service order processing (“SOP”)
5 systems process CLEC orders differently depending on the Qwest Region
6 (Central, East, or West).

7 Further, I do not know how Mr. Ring defines a “manageable” problem,⁷⁴ but
8 given that the problems in North Carolina “produce[d] lower service level metrics
9 than desired since conversion”,⁷⁵ CenturyLink did not manage the problems
10 sufficiently to avoid a decrease in service quality. Again, if these types of service
11 quality declines occurred during CenturyLink’s attempts to integrate Qwest, the
12 problems would have a more widespread impact on both wholesale and retail
13 customers.

14 Also, Mr. Gurganus has testified that “CWA members in Ohio and North Carolina
15 have been placed on mandatory overtime...in North Carolina I&R techs have
16 been on mandatory six-day weeks for two months.”⁷⁶ So, apparently, one of the
17 ways in which CenturyLink has attempted to “manage” the problems is to force
18 employees to work longer hours. CenturyLink has provided no evidence
19 demonstrating that the workforce in Qwest’s region would be capable of handling

⁷³ <http://www.qwest.com/wholesale/clecs/preordering.html>.

⁷⁴ Ring Rebuttal at p. 2, line 16.

⁷⁵ Ring Rebuttal at p. 5, lines 16-18.

⁷⁶ Gurganus Direct at p. 11.

1 problems by working more hours. Indeed, the available evidence shows that the
2 number of Qwest employees (including employees in Qwest's wholesale
3 operations) has decreased over the past few years.⁷⁷ As explained in my Direct
4 Testimony, mandatory overtime was also invoked by Frontier in an attempt to
5 resolve its service problems after Frontier declared an "emergency and long-term
6 service difficulty."⁷⁸

7 **Q. HAVE YOU REVIEWED NEW INFORMATION THAT RAISES**
8 **FURTHER QUESTIONS ABOUT THE MERGED COMPANY'S ABILITY**
9 **TO "MANAGE" PROBLEMS THAT IMPACT WHOLESALE**
10 **CUSTOMERS DURING INTEGRATION OF QWEST BY FORCING**
11 **EMPLOYEES TO WORK LONGER HOURS?**

12 **A. Yes. [***HIGHLY SENSITIVE TRADE SECRET INFORMATION**
13 **SUBJECT TO ADDITIONAL PROTECTION BEGINS** [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

⁷⁷ See, e.g., Hunsucker Rebuttal at p. 47 ("Qwest has been reducing its headcount in wholesale operations...") See also, Brigham Rebuttal at p. 9 ("This has occurred at the same time Qwest total headcount has declined from approximately 41,000 in December 2004 to approximately 30,000 in December 2009.") This equates to a decrease in Qwest headcount of 27% over five years. See also, Gates Direct at pp. 143-144.

⁷⁸ Gates Direct at p. 104 and Exhibit TJG-7 ("Frontier claims overtime is needed: Problems force telecom company to work employees up to 70 hours a week.")

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[REDACTED] **HIGHLY SENSITIVE**
TRADE SECRET INFORMATION SUBJECT TO ADDITIONAL
PROTECTION ENDS*]**

Q. MR. RING STATES THAT CENTURYLINK CHOSE TO INTEGRATE EMBARQ ON A PHASED BASIS INSTEAD OF A “FLASH CUT” OF ALL EMBARQ CUSTOMERS AT ONCE TO MINIMIZE SYSTEM-WIDE PROBLEMS AND MITIGATE POSSIBLE NEGATIVE IMPACTS ON CUSTOMERS AND EMPLOYEES.⁷⁹ HAS THIS BEEN SUCCESSFUL IN AVOIDING ALL PROBLEMS?

A. No, as evidenced by Mr. Ring’s own rebuttal testimony. CenturyLink has still experienced problems during its Embarq integration – problems that have led to service quality deterioration, all of which were glossed over in his direct testimony and discovery responses. This is important because one of the overarching themes of CenturyLink’s Rebuttal Testimony is that concerns about the Qwest integration are not warranted because there will be no “flash cut” in the

⁷⁹ Ring Rebuttal at p. 5.

1 sense that all states will be converted at one time.⁸⁰ Mr. Ring's testimony shows
2 that even with a phased state-by-state approach, material service-impacting
3 problems can and likely will still occur. And even if a phased approach decreases
4 problems for states that are converted in later phases,⁸¹ this provides little comfort
5 for those states that are converted in early phases and will serve as the test cases.
6 Moreover, that means that CLECs will be forced to accommodate the phase-in on
7 a state-by-state basis, which will require CLECs operating in multiple Qwest
8 states to themselves use different platforms to interact with CenturyLink
9 depending on the state. CenturyLink has not provided any plans about the phases
10 it would use to integrate Qwest or where Minnesota would fit into the phased
11 conversion schedule. Additionally, CenturyLink has provided no details
12 regarding its "go/no go criteria," or in other words, the criteria for determining if
13 the conversion should move ahead as scheduled or should be delayed until issues
14 such as data validation efforts or testing can take place. The fact that the Embarq
15 North Carolina conversion experienced the problems Mr. Ring notes calls into
16 question what CenturyLink's "go/no go criteria" is and what testing is taking
17 place prior to conversion. Lastly, the fact that CenturyLink did not provide
18 adequate training to its employees on using new systems is apparently also not
19 adequately accounted for in the "go/no go" decision.

⁸⁰ See, e.g., Jones Rebuttal at pp. 20-21.

⁸¹ "CenturyLink takes what was learned from each previous market conversion and applies those learnings to future conversions." Ring Rebuttal at pp. 4-5.

1 **Q. DO YOU HAVE OTHER EXAMPLES OF CENTURYLINK FAILING TO**
2 **PROVIDE A COMPLETE PICTURE OF ITS INTEGRATION**
3 **EXPERIENCE?**

4 A, Yes. CenturyLink points to exchanges it has acquired from two BOCs – Verizon
5 and Ameritech – to “demonstrate that CenturyLink has in fact integrated
6 operations and personnel in exchanges previously managed by BOCs.”⁸² Mr.
7 Jones states: “CenturyLink acquired 89,000 lines from Ameritech in 1998, 1.2
8 million lines in Arkansas, Missouri and Wisconsin from Verizon in 2000, and
9 another 654,000 lines in Missouri and Alabama in 2002.”⁸³

10 **Q. IS IT FAIR TO ASSUME THAT THESE PRIOR TRANSACTIONS GAVE**
11 **CENTURYLINK THE *BOC EXPERIENCE* OR PROVIDED**
12 **CENTURYLINK WITH THE TYPE OF EXPERIENCE IT NEEDS TO**
13 **SUCCESSFULLY INTEGRATE QWEST’S BOC OPERATIONS, AS MR.**
14 **JONES SEEMS TO SUGGEST?**

15 A. No. These acquisitions involved primarily rural exchanges, which are not
16 representative of all the exchanges CenturyLink would acquire in the proposed
17 transaction. Based on the available data, the exchanges acquired from Ameritech
18 in 1998 had, on average, 4,684 lines per exchange,⁸⁴ and CenturyTel stated that

⁸² Jones Rebuttal at pp. 16 and 23.

⁸³ Jones Rebuttal at p. 23, footnote 34. Note that the reference to 1.2 million lines in Arkansas is incorrect. As shown on Exhibit DR-1 to the testimony of Mr. Ring, CenturyLink acquired 490,000 access lines from GTE in Arkansas, Missouri, and Wisconsin.

⁸⁴ CenturyLink 10K, YE 12/31/08: “...the Company acquired the assets of certain of Ameritech’s telephone operations and related telephone directories in 19 telephone exchanges covering 21 communities in northern and central Wisconsin...” 89,000/19 = 4,684 lines per exchange.

1 these exchanges reside in “predominantly rural communities in Wisconsin.”⁸⁵

2 Regarding the lines acquired from Verizon in Arkansas, Missouri and Wisconsin
3 in 2000, the exchanges in Arkansas had an average of 2,179 lines per exchange,
4 the exchanges in Missouri had an average of 1,187 lines per exchange, and the
5 exchanges in Wisconsin had an average of 1,679 lines per exchange.⁸⁶ In the
6 same 10K filing, the company stated that it “conducts its telephone operations in
7 rural, suburban and small urban communities...” and that “[c]ompetition...has
8 thus far affected large urban areas to a greater extent than rural, suburban and
9 small urban areas such as those in which the Company’s operations are located.”
10 Regarding the lines acquired in Missouri and Alabama in 2002, CenturyLink
11 referred to these exchanges as “predominantly rural markets.”⁸⁷

12 The sizes of the exchanges involved in these prior acquisitions are much smaller
13 than some of the exchanges CenturyLink would acquire under the proposed
14 transaction. For example, there are 30,338 network access lines in the Rochester
15 Minnesota exchange (ROCHMNRO).⁸⁸ This means that Qwest’s Minnesota
16 Rochester exchange is at least 6.5 times the size of the exchanges acquired from
17 Ameritech in 1998, and between 14 times and 18 times the size of the exchanges
18 acquired from Verizon in 2000 (measured in line counts). Other Qwest

⁸⁵ CenturyTel 10K, YE 12/31/00.

⁸⁶ CenturyLink’s 10K for year-ending 2000 states: “the Company purchased approximately 231,000 telephone access lines...comprising 106 exchanges throughout Arkansas...purchased approximately 127,000 telephone access lines...comprising 107 exchanges throughout Missouri...purchased approximately 70,500 telephone access lines...comprising 42 exchanges throughout Wisconsin...”

⁸⁷ CenturyTel 10K, YE 12/31/02.

⁸⁸ http://www.qwest.com/cgi-bin/iconn/iconn_centraloffice.pl

1 exchanges in Minnesota are similar to the Rochester exchange, containing access
2 lines substantially in excess of the number of access lines in the exchanges that
3 CenturyLink acquired from Ameritech and Verizon.⁸⁹

4 CenturyLink's own words indicate that these access line acquisitions were small,
5 sparsely populated exchanges that reside in rural communities. Furthermore,
6 these acquisitions did not provide CenturyLink with a similar experience as a
7 BOC, which also operates in large, densely populated exchanges. Nor does the
8 integration of these primarily rural properties give CenturyLink a similar
9 experience as would occur in an attempt to integrate Qwest. That Mr. Jones
10 would even suggest that these previous transactions somehow give CenturyLink
11 the experience it needs to integrate an entire BOC raises questions about how
12 seriously CenturyLink is taking its BOC obligations.

13 **Q. CENTURYLINK HAS MADE NUMEROUS STATEMENTS ABOUT THE**
14 **STATUS QUO BEING MAINTAINED AFTER THE PROPOSED**
15 **TRANSACTION. DID CENTURYTEL MAINTAIN THE STATUS QUO**
16 **AFTER IT ACQUIRED THESE PRIMARILY RURAL EXCHANGES**
17 **FROM AMERITECH AND VERIZON?**

⁸⁹ For example, Qwest's St. Paul-Maplewood exchange (MPWDMNMA) has 36,299 network access lines, Minneapolis-Beard exchange (MPLSMNBE) has 24,938 network access lines, St. Paul-Market exchange (STPLMNMK) has 22,044 network access lines, and Eagan-Lexington exchange (EAGNMNLB) has 23,046 network access lines. See, http://www.qwest.com/cgi-bin/iconn/iconn_centraloffice.pl

1 A. No. In Wisconsin, CenturyTel raised rates after acquiring the Wisconsin
2 properties – and did so without Commission approval and in violation of
3 Wisconsin statutes.

4 **Q. PLEASE ELABORATE ON THE CENTURYTEL RATE INCREASES**
5 **FOLLOWING THE ACQUISITION OF WISCONSIN EXCHANGES.**

6 A. After CenturyTel acquired the 19 exchanges in Wisconsin in 1998, it converted
7 those exchanges from price-cap regulation to rate-of-return regulation, and then
8 raised rates for local services and access services.

9 Regarding CenturyLink’s access rate increase, the Wisconsin Commission found
10 that CenturyTel “increased its access rates on December 1, 1998, *without a*
11 *hearing and Commission approval*, and that such action was a violation of Wis.
12 Stat. § 196.20(2m).”⁹⁰ The Wisconsin Commission ordered CenturyTel to issue
13 refunds, but it took complaints from competitive carriers to initiate an
14 investigation of the increases, and about two years of litigation. It took
15 CenturyTel about two and one-half years from the time of its unauthorized and
16 unilateral rate increases to make refunds to affected competitive carriers.

17 Regarding local rates, about two years after acquiring the Wisconsin exchanges,
18 CenturyTel sought interim price increases for local and access services pending
19 the approval of permanent price increases. After conducting a rate-of-return rate

⁹⁰ Wisconsin Public Service Commission Docket No. 2815-TI-101, Final Decision, April 18, 2001.
http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=3117 (emphasis added)

1 case, the Wisconsin Commission found that CenturyTel's interim rates were too
2 high and required rate decreases from the interim level as well as refunds to
3 CenturyTel's customers.⁹¹ Also, during the Wisconsin Commission's
4 investigation of CenturyTel's rate increase request, it found that CenturyTel "has
5 charged rates that are not in compliance with its tariffs" and required an audit of
6 CenturyTel's billing system.⁹²

7 **Q. SHOULD THESE EXAMPLES OF CENTURYLINK'S CONDUCT GIVE**
8 **THE MINNESOTA COMMISSION PAUSE WITH REGARD TO THE**
9 **PROPOSED TRANSACTION?**

10 A. Yes. First, these are examples of merger-related harm. Rates were increased after
11 the merger, and more specifically, rates were raised to supracompetitive levels on
12 competitive carriers without a hearing, without commission approval and in
13 violation of state statutes. Further, competitive carriers had to expend
14 considerable time and resources filing a complaint with the Commission,
15 litigating the complaint, and waiting for more than two years to get refunds for the
16 unilateral rate increases CenturyLink had instituted.

17 Second, CenturyLink's conduct in Wisconsin casts doubt on its statements that it
18 will maintain the status quo following the proposed transaction. CenturyLink has
19 claimed in this proceeding that it will maintain the status quo if the proposed

⁹¹ Wisconsin Public Service Commission Docket No. 2815-TR-103, Final Decision, October 31, 2001.
http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=3812

⁹² Wisconsin Public Service Commission Docket No. 2815-TR-103, Final Decision, October 31, 2001.
http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=3812

1 transaction is approved,⁹³ but with no enforceable assurance as to how long.
2 CenturyLink also claims that sufficient protections are currently in place and that
3 the Merged Company will abide by applicable rules, regulations and contracts
4 post-merger.⁹⁴ It is for these reasons CenturyLink contends that the Joint CLEC
5 proposed conditions are unnecessary. However, in the example from Wisconsin,
6 CenturyTel certainly did not maintain the status quo. In fact, it completely re-
7 vamped the regulatory framework of the exchanges it acquired from an alternative
8 regulation plan (which provides incentives for incumbent LECs to become more
9 efficient, usually due to competitive pressures, while providing protections,
10 oftentimes “price caps” for regulated rates) to a rate-of-return regulation plan
11 (which is traditionally used in rural areas not subject to competition and provide a
12 return on, and return of, investment). Furthermore, the existing protections in
13 Wisconsin (which included the authority of the Wisconsin Commission, state
14 statutes, the federal Act and applicable rules) did not prevent CenturyTel from
15 unilaterally raising rates for competitive carriers, from charging rates not in
16 compliance with its tariffs, or from attempting to charge higher rates than allowed
17 after a thorough rate investigation.

18 **Q. HAVE YOU REVIEWED NEW DATA THAT RAISES FURTHER**
19 **CONCERNS REGARDING CENTURYLINK’S CLAIMS ABOUT**

⁹³ Hunsucker Rebuttal at p. 3, lines 22-24 and p. 16, lines 16-18.

⁹⁴ *See, e.g.*, Stewart Rebuttal at pp. 5-6 and Brigham Rebuttal at p. 8.

1 **COMPLYING WITH EXISTING LAWS, RULES AND ICAS POST-**
2 **MERGER?**

3 A. Yes. **[***HIGHLY SENSITIVE TRADE SECRET INFORMATION**
4 **SUBJECT TO ADDITIONAL PROTECTION BEGINS** [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] **HIGHLY SENSITIVE TRADE**
15 **SECRET INFORMATION SUBJECT TO ADDITIONAL PROTECTION**
16 **ENDS***]**

17 *C. Joint Petitioners' attempts to distinguish the proposed transaction from*
18 *recent troubled mergers relies upon distinctions without differences.*

19 **Q. MR. JONES STATES THAT YOU AND OTHERS FAILED TO**
20 **“ANALYZE WITH APPROPRIATE DILIGENCE OR PRESENT FACTS**

⁹⁵ Hunsucker Rebuttal at p. 16, lines 19-20.

1 **REGARDING WHETHER SIMILAR PROBLEMS” THAT OCCURRED**
2 **IN RECENT MERGERS “ARE LIKELY IN THE INSTANT**
3 **TRANSACTION.”⁹⁶ IS THIS TRUE?**

4 A. No. One only needs to read Section V of my Direct Testimony, including
5 Exhibits TJG-6 and TJG-7, and to review Dr. Ankum’s Exhibit AHA-2 to see that
6 this claim is inaccurate. Ample analysis and facts were provided that show that
7 the same types of problems that occurred in the Hawaiian Telcom and FairPoint
8 transactions could occur after the proposed transaction. The fact that the Joint
9 Petitioners have failed to provide any useful information about its post-merger
10 OSS integration plans makes it impossible to precisely analyze post-merger
11 impacts on CLECs; yet, that is not a failing of the CLECs, as Mr. Jones suggests.
12 There can be no question that the CLECs made best attempts to analyze the
13 Merged Company’s plans with regard to systems integration during the discovery
14 process, and at every turn, CenturyLink stated that plans could not be provided
15 until after the proposed transaction was approved.⁹⁷

16 Moreover, the evidence regarding problems during the ongoing conversion of
17 Embarq to CenturyLink OSS in North Carolina confirms that the problems that
18 occurred in recent mergers are likely in the instant transaction. As I discussed
19 earlier, data in the three Qwest Regions (East, West, Central) contain
20 inconsistencies, and CenturyLink cannot show that data in any or all of these three

⁹⁶ Jones Rebuttal at p. 15, lines 3-7.

⁹⁷ See, e.g., Exhibit AHA-3 to the Direct Testimony of Dr. Ankum.

1 Qwest regions are consistent with the legacy CenturyTel areas. For example,
2 Qwest and CenturyLink provided no evidence that outside plant was constructed
3 over time consistently in all three Qwest Regions or consistent with the
4 CenturyLink areas. Just as some of the outside plant records were loaded
5 incorrectly in the Embarq-CenturyTel integration because the way in which plant
6 was constructed in the legacy Embarq areas was not consistent between areas and
7 not consistent with the legacy CenturyTel areas,⁹⁸ the outside plant records may
8 be loaded incorrectly in this transaction due to the way in which the plant was
9 constructed, or other differences, in each of the three Qwest regions, and due to
10 differences from the CenturyLink areas. The identical problem may occur for the
11 same reason, and additional data integrity problems may occur because of the
12 regional differences among the Qwest West, Qwest, East, and Qwest Central
13 Regions.

14 **Q. SINCE SUBMITTING YOUR PRE-FILED DIRECT TESTIMONY, HAVE**
15 **YOU OBTAINED ANY NEW INFORMATION THAT UNDERMINES**
16 **THE JOINT PETITIONERS' CLAIM THAT RECENT TROUBLED**
17 **MERGERS ARE IRRELEVANT TO THE PROPOSED TRANSACTION?**

18 **A. Yes. [***HIGHLY SENSITIVE TRADE SECRET INFORMATION**
19 **SUBJECT TO ADDITIONAL PROTECTION BEGINS** [REDACTED]

20 [REDACTED]

21 [REDACTED]

⁹⁸ Ring Rebuttal at p. 2, lines 7-12 (quoted above).

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[REDACTED] **HIGHLY
SENSITIVE TRADE SECRET INFORMATION SUBJECT TO
ADDITIONAL PROTECTION ENDS***]**

**Q. CENTURYLINK STATES THAT THE HAWAIIAN TELCOM AND
FAIRPOINT TRANSACTIONS ARE DISTINGUISHABLE FROM THE
PROPOSED TRANSACTION BECAUSE THOSE OTHER
TRANSACTIONS INVOLVED CREATING ENTIRELY NEW OSS AND A
“FLASH CUT.”⁹⁹ ARE THESE RELEVANT DISTINCTIONS?**

A. No. First of all, the Joint Petitioners have not provided details about their post-merger systems integration plans, so the claim that the proposed transaction will not involve any new OSS and will be conducted in a phased fashion is not supported by any facts or any enforceable commitments. What is a fact, however, is that Qwest and CenturyLink use entirely different OSS and back-office systems today. As such, if CenturyLink integrates its legacy CenturyLink systems into Qwest’s BOC territory after the merger closes, those systems would be entirely new to the Qwest region exchanges and system development would be required. CenturyLink’s legacy systems have not been developed or tested for use in

⁹⁹ Jones Rebuttal at pp. 16-21. *See also*, Jones Rebuttal at p. 8 (“provides the ability to operate using dual systems for as long as management believes that is prudent.”) *See also*, Hunsucker Rebuttal at p. 8, lines 4-5 (“The integration of Qwest will largely involve the use of existing systems rather than creating new ones.”)

1 Qwest’s BOC territory (where volumes and automated flow through rates are
2 substantially higher) any more than any entirely new OSS that may be available.
3 The same types of problems could occur in Qwest’s region from integrating
4 legacy CenturyLink systems as could occur from integrating entirely new OSS.

5 Further, CenturyLink’s attempts to integrate Embarq systems in North Carolina
6 did not include any new systems; yet, service-impacting problems still occurred.
7 Moreover, North Carolina is one of the first states in the phased conversion.
8 Regarding its “conversion methodology,” CenturyLink has said that [***BEGIN

9 **TRADE SECRET** [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] **END TRADE**

14 **SECRET***]** As CenturyLink begins to convert lines in Embarq states that
15 contain major markets such as Las Vegas, Tallahassee and Orlando, it can be
16 anticipated that the complexity of the integration and potential for what
17 CenturyLink calls inevitable problems will increase as well.

18 According to CenturyLink’s own words, the problems in North Carolina were
19 caused by “outside plant records [that] were loaded incorrectly”¹⁰⁰ and “caused by

¹⁰⁰ Ring Rebuttal at p. 2, lines 7-8.

1 differences between the old and new systems”¹⁰¹ and these types of integration
2 issues are “inevitable” for “every systems conversion or integration.”¹⁰²

3 **Q. DOES CENTURYLINK’S FOCUS ON A “FLASH CUT” FARE ANY**
4 **BETTER?**

5 A. No. The claim that Hawaiian Telcom and FairPoint transactions involved a “flash
6 cut” is misleading. Both the Hawaiian Telcom and FairPoint transactions closed,
7 and the new company remained on Verizon’s OSS for 9 to 12 months under a
8 transition services agreement. If CenturyLink intends to continue to utilize Qwest
9 systems post-merger and migrate to new systems at a later date (12 months after,
10 for example), the situation in Qwest’s region would be virtually the same as in the
11 prior mergers (except that CenturyLink would not have to pay Qwest for using its
12 OSS through a transaction services agreement). In the case of Hawaiian Telcom
13 and FairPoint, Verizon was contractually obligated to maintain their systems
14 during the transition services agreement. In this case, CenturyLink must ensure
15 that knowledgeable Qwest systems and process personnel are retained during the
16 transition. CenturyLink, however, has made no commitment to do so.

17 In addition, CenturyLink is using a “phased” approach instead of a flash cut for
18 the Embarq integration,¹⁰³ but service-impacting problems are occurring.
19 Furthermore, it is important to consider what CenturyLink considers to be a “flash

¹⁰¹ Ring Rebuttal at p. 2, lines 21-22.
¹⁰² Ring Rebuttal at p. 4, lines 3-4.
¹⁰³ Ring Rebuttal at p. 5.

1 cut.” CenturyLink refers to a “flash cut” as integrating/converting a company’s
2 entire service territory or customer base for all states at once, as opposed to a
3 “phased” approach which integrates/converts certain markets in a staggered
4 fashion by state (a state-by-state approach). In the case of the Hawaiian Telcom,
5 there was only one state involved – Hawaii – which means that there was no need
6 for a “phased” state-by-state approach. The FairPoint transactions discussed in
7 my Direct Testimony involved three relatively small states – Maine, New
8 Hampshire and Vermont – which shows that a “phased” approach like that being
9 used for the Embarq integration would likely not have avoided or limited
10 FairPoint’s problems that occurred after its acquisitions. Likewise, the Joint
11 Petitioners’ claim that problems will not occur under its “phase-in” is contradicted
12 by the problems experienced in Frontier’s integration of Verizon exchanges in
13 West Virginia. As I discussed in my Direct Testimony, those problems were
14 significant and they involved a single state integration, not what CenturyLink
15 describes as a “flash cut” (i.e., multi-state) integration. These examples illustrate
16 that CenturyLink’s claims that integration problems of the type discussed in my
17 testimony are limited to flash cut transitions is inaccurate.

18 **Q. WAS INDEPENDENT THIRD-PARTY SYSTEMS TESTING REQUIRED**
19 **IN THESE OTHER PROBLEMATIC TRANSACTIONS IN AN ATTEMPT**
20 **TO MAKE SURE THAT SYSTEMS WOULD WORK PROPERLY POST-**
21 **INTEGRATION?**

1 A. No. Although systems testing was required,¹⁰⁴ this testing was not conducted by
2 an independent third-party at commercial volumes. Therefore, the testing was not
3 sufficient to avoid the systems meltdowns that subsequently occurred. The
4 independent third-party testing requirement recommended by Joint CLECs'
5 Condition 19(b) is needed to avoid a similar customer-affecting meltdown in
6 Minnesota.

7 *D. The continued lack of details about the Joint Petitioners' integration*
8 *plans creates significant uncertainty.*

9 **Q. MR. HUNSUCKER STATES THAT IT IS UNREASONABLE TO EXPECT**
10 **THE JOINT PETITIONERS TO HAVE INTEGRATION PLANS AT THIS**
11 **POINT.¹⁰⁵ IS THIS AN UNREASONABLE EXPECTATION?**

12 A. No. In fact, the Joint Petitioners have released details about their integration
13 planning that they have not divulged in testimony or discovery responses,
14 suggesting that the Joint Petitioners, while pressing for expedited consideration of
15 the transaction, are slow-rolling the release of details about their integration plans
16 in the regulatory proceedings. For example, on July 22, 2010, CenturyLink-
17 Qwest released "CenturyLink-Qwest Update #4" that explained:

18 Three consulting firms also are assisting with this [integration]
19 process. Bain & Company is assisting with organization design,
20 Hewitt Associates is assisting with compensation and

¹⁰⁴ See, e.g., Gates Direct at p. 88, lines 7-10 and pp. 93-94.

¹⁰⁵ Hunsucker Rebuttal at p. 11, lines 13-21.

1 Pricewaterhouse Coopers is assisting with overall integration
2 coordination.¹⁰⁶

3 In their August 10, 2010, CenturyLink-Qwest Update #5,¹⁰⁷ the Joint Petitioners
4 listed these three consulting firms as “Additional Leaders/Consultants” related to
5 the Joint Petitioners’ integration planning. It has been about two months since the
6 Joint Petitioners announced they had hired these three consulting firms, but to
7 date, they have provided no details about those ongoing efforts. This is despite
8 the fact that Joint Petitioners know full well that the Joint CLECs and others are
9 keenly interested in learning what the integration plans are when they become
10 available, and that the Joint Petitioners have a duty to supplement discovery
11 responses as new or different information becomes available. While the Joint
12 Petitioners have recently contended that it is inappropriate to request information
13 on “what advice outside consultants are providing to the companies during the
14 merger process,”¹⁰⁸ the FCC, in the Frontier-Verizon merger review proceeding,
15 sought *exactly that type of information*. For instance, the FCC sought copies of
16 documents prepared either internally or “by outside advisors” regarding “the
17 development and refining” of Frontier’s “long-term plans for post-merger
18 OSS.”¹⁰⁹ In any event, in this matter, CLECs have no alternative other than to ask

¹⁰⁶ <http://www.centurylinkqwestmerger.com/downloads/key-materials/CenturyLink-Qwest%20Update%204.pdf>

¹⁰⁷ <http://www.centurylinkqwestmerger.com/downloads/key-materials/CenturyLink-Qwest%20Update%205.pdf>

¹⁰⁸ Letter from Karen Brinkmann, Counsel for CenturyLink, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 10-110 (filed Sept. 22, 2010) at p. 1.

¹⁰⁹ See FCC Wireline Competition Bureau Frontier Verizon Information Request, at 4 (Request III.A.5.); see also *id.* at 3 (Requests III.A.1.b. & III.A.1.c.) (requesting documents prepared either internally or “by outside advisors” regarding the Applicants’ OSS cutover planning for West Virginia); *id.*

1 about plans made in association with consultants, as CenturyLink has not
2 provided information in response to more general discovery requests. Obviously,
3 the Joint Petitioners have not hired three consulting firms and developed specific
4 integration teams in order for them to remain idle until the proposed transaction is
5 approved. Moreover, the Joint Petitioner’s claim that it is unreasonable to expect
6 them to have integration plans at this point is inconsistent with the Joint
7 Petitioners’ push to expedite completion of the proposed transaction. Qwest has
8 said that the Joint Petitioners are seeking expedited approval of the proposed
9 transaction so that they can “more quickly integrate the companies in order to
10 bring the benefits...to consumer, business, and wholesale customers at the earliest
11 data possible.”¹¹⁰ It makes little sense to expedite approval of the proposed
12 transaction and not also expedite the integration planning process that
13 CenturyLink expects to produce the claimed benefits of the transaction. The
14 Minnesota Commission should investigate whether integration planning work is
15 being performed and decisions being made that the Joint Petitioners are not
16 divulging in the merger review proceedings.

(Requests III.A.2.a. & III.A.2.b.) (requesting documents prepared either internally or “by outside advisors” regarding “the development of the formal process governing the West Virginia [OSS] conversion” and “refinements or revisions” to the “formal conversion process”); *id.* at 4 (Request III.A.3.d.) (requesting documents prepared either internally or “by outside advisors” regarding the Applicants’ plans for OSS testing prior to the cutover in the 13 legacy GTE territories).

¹¹⁰ Stanoch Direct at p. 6, lines 9-14.

1 **Q. ARE THERE OTHER REASONS WHY IT IS REASONABLE TO**
2 **EXPECT THE JOINT PETITIONERS TO HAVE INTEGRATION PLANS**
3 **AVAILABLE FOR REVIEW AT THIS POINT?**

4 A. Yes. One reason is that, when compared to CenturyLink’s acquisition of Embarq,
5 CenturyLink had specific integration plans available at this point in the merger
6 review process. CenturyTel and Embarq announced their merger in October
7 2008, and in March 2009 (five months later), they stated that they would migrate
8 Embarq to CenturyLink’s legacy Ensemble system,¹¹¹ as well as utilize
9 CenturyTel’s SAP (Systems, Applications, and Products) accounting system, and
10 utilize Embarq’s EASE (Embarq Administration and Service Order Exchange)
11 system for LSRs and ASRs.¹¹² It has now been over five months since
12 CenturyLink and Qwest announced the proposed transaction,¹¹³ but the Joint
13 Petitioners have provided no detail about its integration plans similar to that
14 which was provided around this same point in time during the review of the
15 Embarq/CenturyTel merger.

¹¹¹ “As evidence of progress since our initial filing and in response to Dr. Roycroft’s testimony, I note the following: we now plan that Embarq’s operations will migrate to CenturyTel’s Ensemble billing and customer care system. CenturyTel’s Ensemble back-office software (the product of an investment of over \$200 million) is a highly-centralized and flexible system that integrates and automates customer care and other provisioning services in a cost-effective manner.” Rebuttal Testimony of G. Clay Bailey on behalf of CenturyTel, Inc., Washington UTC Docket No. UT-082119, March 18, 2009. Available at: <http://webcache.googleusercontent.com/search?q=cache:SZWIm2byAOMJ:wutc.wa.gov/rms2.nsf/177d98baa5918c7388256a550064a61e/34a43dc9c6ee474b8825757d007a668b!OpenDocument+centurytel+embarq+will+utilize+Ensemble&cd=8&hl=en&ct=clnk&gl=us>

¹¹² *Id.*

¹¹³ *See*, Exhibit TJG-8, “Merger Announcement Date” refers to April 21, 2010.

1 A further example is found in Mr. Ring's statement that, "[o]n the day of closing
2 [of the Embarq transaction], the company had its five-region 'go-to-market'
3 concept in place and operational."¹¹⁴ If CenturyLink had its "go-to-market" up
4 and running the day the Embarq merger closed, as Mr. Ring states, then
5 CenturyLink must have performed some extensive integration planning prior to
6 the transaction being approved. However, when asked to provide details about its
7 plans for implementing the "go-to-market" model in Qwest's BOC territory post-
8 merger, CenturyLink responded that detailed planning had not begun and plans
9 could not be finalized until the merger was completed.¹¹⁵

10 **Q. HAS CENTURYLINK RECOGNIZED FRUSTRATION RESULTING**
11 **FROM THE LACK OF INFORMATION REGARDING THE JOINT**
12 **PETITIONERS' INTEGRATION PLANS?**

13 A. Yes, however, CenturyLink does nothing about it. Mr. Jones notes in his Rebuttal
14 Testimony that he recognizes the frustration of "several parties" with the "lack of
15 details" and states that such frustration "may be understandable."¹¹⁶ However, he
16 does not respond to that frustration with any meaningful information. Instead, he
17 reiterates the CenturyLink mantra about what might happen in the future and
18 blames the CLECs for speculating,¹¹⁷ despite the fact that it is the Joint Petitioners
19 who have failed to provide useful details about the proposed transaction. The

¹¹⁴ Ring Direct at p. 7, lines 5-6.

¹¹⁵ See, e.g., Exhibit AHA-4 to the Direct Testimony of Dr. Ankum at p. 5.

¹¹⁶ Jones Rebuttal at p. 8.

¹¹⁷ Jones Rebuttal at pp. 9-10.

1 burden is clearly on CenturyLink and Qwest to clearly articulate the public
2 interest benefits of this transaction. Unfortunately, to date, all that the Joint
3 Applicants have articulated are unsupported statements designed to secure
4 transaction approval without any substantiation.

5 ***E. The recent conduct of the Joint Petitioners demonstrates that the***
6 ***Merged Company will be more difficult to work with if the proposed***
7 ***transaction is approved.***

8 **Q. YOU DISCUSSED IN YOUR DIRECT TESTIMONY CIRCUMSTANCES**
9 **REGARDING THE JOINT PETITIONERS REFUSING TO**
10 **STREAMLINE THE DISCOVERY PROCESS. DID CENTURLINK**
11 **RESPOND TO THIS EXAMPLE?**

12 A. Yes. In my Direct Testimony (pages 70-74), I described the circumstances of the
13 Joint Petitioners refusing to streamline the discovery process and the additional
14 costs imposed on CLECs. I explained that one of my CLEC clients and Qwest
15 had previously used a similar streamlined discovery approach at Qwest's urging,
16 and the Joint Petitioners' refusal to do so here is a sign that the Merged Company
17 would be more difficult to work with than Qwest. Mr. Hunsucker takes issue with
18 this example; he says this example "has nothing to do with any harm that could be
19 caused by CenturyLink's operations under applicable law post-merger."¹¹⁸

20 **Q. IS MR. HUNSUCKER CORRECT?**

¹¹⁸ Hunsucker Rebuttal at pp. 51, lines 1-6.

1 A. No. It is perfectly reasonable to analyze conduct of the Joint Petitioners since
2 announcement of the merger as an indication of how the Merged Company may
3 operate post-merger. This is particularly true in this instance where the Joint
4 Petitioners refused to participate in a streamlined discovery process that Qwest
5 previously participated in with (and actually proposed to) CLECs. Another
6 example is the level of protection that the Joint Petitioners have sought in
7 discovery. In numerous states, the Joint Petitioners have sought a special, higher
8 level of protection for certain data (referred to as “Staff Eyes Only” or “SEO”).
9 My firm, QSI Consulting, Inc., has participated in many cases on behalf of
10 competitive carriers involving Qwest in the past, and to my knowledge, Qwest has
11 not previously sought this so-called SEO protection for its data before the state
12 commissions. This new approach by the Joint Petitioners has increased the CLEC
13 costs associated with the proposed transaction by forcing CLECs to litigate this
14 issue before numerous state commissions, and has made it more difficult and
15 time-consuming to analyze the proposed transaction under the compressed time
16 frame sought by Joint Petitioners. In Minnesota, after losing a motion to compel
17 discovery, Joint Petitioners failed to produce the required documents by the
18 ordered deadline and, even when they did produce documents, continued to
19 withhold certain documents while they sought reconsideration of the order
20 compelling discovery or, alternatively, certification of the issue for decision by
21 the Commission.¹¹⁹ In connection with the motion, however, Joint Petitioners

¹¹⁹ Joint Petitioner’s Motion for the Administrative Law Judge to Certify the Motion for a Supplemental

1 also acknowledged that a large portion of the documents that had been the subject
2 of the motion to compel, and for which Joint Petitioners had sought additional
3 protection, had already been produced in the merger proceeding in Montana
4 (where the protective order limits their use in any other proceeding, including this
5 one).¹²⁰ CenturyLink did not explain why it continued to fight about their
6 production in Minnesota, causing the parties to expend resources to obtain for use
7 in Minnesota documents that had already been produced in another state. The
8 early indications are that the Merged Company could be more difficult to work
9 with than Qwest in some areas, and the CLECs can expect their transaction costs
10 to increase. These are examples of merger-related harms.

11 **Q. HAVE YOU RECEIVED NEW INFORMATION SINCE YOUR PRE-**
12 **FILED DIRECT TESTIMONY WAS SUBMITTED THAT VALIDATES**
13 **YOUR CONCERN ABOUT THE MERGED COMPANY BEING MORE**
14 **DIFFICULT TO WORK WITH THAN QWEST IN SOME AREAS?**

15 A. Yes. **[***HIGHLY SENSITIVE TRADE SECRET INFORMATION**
16 **SUBJECT TO ADDITIONAL PROTECTION BEGINS** [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

Protective Order to the MPUC and a Request for a Stay. (September 22, 2010).

¹²⁰ See Correspondence from Michael Ahern to Administrative Law Judge Barbara Nielson (September 24, 2010).

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[REDACTED] **HIGHLY**

**SENSITIVE TRADE SECRET INFORMATION SUBJECT TO
ADDITIONAL PROTECTION ENDS***].**

IV. THE JOINT CLEC PROPOSED CONDITIONS SHOULD BE ADOPTED

**Q. HAVE THE JOINT PETITIONERS AGREED TO ANY OF THE JOINT
CLEC PROPOSED CONDITIONS?**

A. No. The Joint Petitioners did not identify one Joint CLEC proposed condition that was acceptable to them. Even though most conditions would maintain the status quo during the Merged Company’s integration efforts, the Joint Petitioners go to great lengths to make Joint CLEC conditions appear unreasonable, and in numerous instances, misconstrue the Joint CLEC conditions in the process.

Q. HOW IS THIS SECTION OF YOUR TESTIMONY ORGANIZED?

A. I will first address the Joint Petitioners’ broad criticisms of the Joint CLEC proposed conditions, and then address the concerns raised about specific Joint CLEC proposed conditions. I have attached an Issues Matrix as Exhibit TJG-11 to my testimony that summarizes Joint Petitioners’ Position Statements (directly quoted from Joint Petitioners’ discovery responses) and Joint CLECs’ Position

1 Statements for each issue presented by the Joint CLEC list of recommended
2 conditions (Exhibit TJG-8) for resolution in this matter.

3 *A. Joint Petitioners' claim broadly that Joint CLEC proposed conditions*
4 *are unnecessary but provides no basis for rejecting them.*

5 **Q. QWEST STATES THAT MANY CLEC PROPOSED CONDITIONS**
6 **IGNORE THAT THE MERGED COMPANY "IS AT THIS TIME**
7 **PROPOSING TO CONTINUE TO OPERATE ITS EXISTING**
8 **COMPANIES AS SEPARATE OPERATING ENTITIES."¹²¹ PLEASE**
9 **RESPOND.**

10 A. I explained in my Direct Testimony (at pages 23-24) why this argument is wrong.
11 Separate entities on an organizational chart or not, the fact is that Qwest will be
12 "owned and controlled by CenturyLink"¹²² if the proposed transaction is
13 approved. This means that CenturyLink will be *calling the shots* for Qwest post-
14 merger. Mr. Stanoch's testimony ignores this obvious fact. Further, Mr.
15 Stanoch's testimony shows that the Merged Company may not operate Qwest and
16 CenturyLink as separate operating entities post-merger (or for any certain time
17 period). The key phrase in Mr. Stanoch's statement – "is *at this time* proposing"
18 – shows that the Merged Company may not maintain separate entities post-
19 merger. The phrase "at this time" provides a glaring "out" for CenturyLink if it

¹²¹ Stanoch Rebuttal at p. 9, lines 13-17.

¹²² Gates Direct Testimony at pp. 23-24, quoting Direct Testimony of John Jones on behalf of CenturyLink, Minnesota Docket No. P-421, et al./PA-10-456, June 14, 2010 ("Jones Direct"), at p. 7.

1 decides at any time – including even one day after closing – to change its plans in
2 this regard. The fact that CenturyLink could unilaterally change this plan at any
3 time provides no protection or certainty for CLECs and their customers.

4 **Q. CENTURYLINK LIKewise ARGUES THAT CONDITIONS ARE NOT**
5 **NEEDED BECAUSE “THERE ARE NO IMMEDIATE CHANGES POST-**
6 **MERGER.”¹²³ WHAT REASON DOES CENTURYLINK GIVE FOR**
7 **REFUSING TO AGREE TO CONDITIONS THAT MAINTAIN THE**
8 **STATUS QUO IN SPITE OF CENTURYLINK’S CLAIM THAT IT IS**
9 **PLANNING TO MAINTAIN THE STATUS QUO?**

10 A. Mr. Hunsucker states: “If the Commission were to grant concessions under these
11 conditions, the concessions would only serve to increase CLECs’ profits by
12 pushing CLECs’ costs of doing business onto CenturyLink or otherwise hobbling
13 CenturyLink’s ability to compete fairly.”¹²⁴ Mr. Hunsucker also claims that
14 “Each and every condition places a cost on CenturyLink.”¹²⁵

15 **Q. DO YOU AGREE THAT MAINTAINING THE STATUS QUO AND**
16 **REQUIRING COMPLIANCE WITH EXISTING LAWS INCREASES**
17 **CLEC PROFITS AND CENTURYLINK’S COSTS?**

18 A. No, that claim is absurd to say the least. Maintaining the status quo means to
19 maintain things as they are. If the status quo is maintained – such that for the

¹²³ Hunsucker Rebuttal at p. 16, lines 10-18.

¹²⁴ Hunsucker Rebuttal at p. 16, lines 19-20.

¹²⁵ Hunsucker Rebuttal at p. 45, line 18 – p. 46, line 1.

1 Defined Time Period CLECs in Qwest territory may use the OSS, CMP, ICAs,
2 *etc.*, that they use today – CLECs’ costs, and CLECs’ expenses, remain the same.
3 There is no change. Therefore, there are no CLEC costs to “push” to
4 CenturyLink. On the other hand, if CenturyLink is not required through
5 conditions to maintain the status quo for a set period of time, CenturyLink has
6 many opportunities to “push” costs to its CLEC competitors to benefit itself at the
7 CLECs’ expense. For example, by requiring CLECs to perform more manual
8 steps, CenturyLink may push work to CLECs that currently is performed
9 automatically or by Qwest personnel and may also result in increased service
10 delivery errors or delay that further drive up CLEC costs.

11 If Joint Petitioners are, as they claim, complying with existing laws today, then
12 requiring them to continue to comply with the law also maintains the status quo
13 and requires no change. Mr. Hunsucker, in claiming that each and every
14 condition places a cost on CenturyLink, does not explain the source of these costs
15 for conditions requiring legal compliance, unless CenturyLink must take steps to
16 bring itself into legal compliance. Given that CenturyLink denies it is out of
17 compliance, then there are no such steps to take, and no costs associated with
18 these conditions.

19 In fact, the entire thrust of Mr. Hunsucker’s testimony in this respect is troubling.
20 If satisfying commitments that simply maintain the status quo (*i.e.*, obligating
21 CenturyLink to retain existing service levels provided by Qwest, existing OSS,

1 existing wholesale staffing, etc.) will impose “costs” on CenturyLink, then the
2 only logical conclusion from that claim is that CenturyLink intends not to satisfy
3 those commitments post-merger if the proposed transaction is approved.

4 **Q. MR. HUNSUCKER POINTS TO SEVERAL REASONS WHY**
5 **CENTURYLINK ASSERTS THE JOINT CLEC CONDITIONS ARE**
6 **UNNECESSARY. WHAT ARE THESE REASONS AND WHAT ARE**
7 **YOUR RESPONSES?**

8 A. At pages 3-4 of his Rebuttal Testimony, Mr. Hunsucker points to three reasons
9 why CenturyLink believes the Joint CLEC proposed conditions are unnecessary:

- 10 1. “First, the existing CenturyLink and Qwest operating entities will stay
11 in place post-merger, so the relationships between the companies will
12 remain status quo and there will be none of the impacts that CLECs
13 might encounter with completely new incumbent entities.”¹²⁶
- 14 2. “CLECs have significant legal protections in place today” including
15 “the provisions and obligations of the Federal Telecommunications
16 Act...Minnesota Statutes, federal and State orders, interconnection
17 agreements (‘ICAs’), tariffs, Qwest’s § 271 protections, Performance
18 Assurance Plans, and Change Management Process commitments.”¹²⁷
- 19 3. “CLECs will benefit from the merger without imposition of their
20 requested conditions.”¹²⁸

21 I addressed the first reason in my Direct Testimony (pages 23-24) and again
22 above. As I indicated, CenturyLink plainly ignores the fact that Qwest will be

¹²⁶ Hunsucker Rebuttal at p. 3, lines 21-24. *See also*, Hunsucker Rebuttal at p. 12 (“Wholesale customers in CenturyLink areas and in Qwest areas will not face immediate changes in their existing systems interfaces and existing OSS arrangements will not be disrupted.”); and Hunsucker Rebuttal at pp. 40-41 (“Wholesale customers in CenturyLink areas and in Qwest areas will not face immediate changes in their existing systems interfaces and existing OSS arrangements will not be disrupted.”)

¹²⁷ Hunsucker Rebuttal at pp. 3-4. *See also*, Brigham Rebuttal at p. 8; Stewart Rebuttal at pp. 5-6; and Jones Rebuttal at pp. 11-12.

¹²⁸ Hunsucker Rebuttal at p. 4.

1 owned and controlled by a new entity post-merger. I also explain in my Direct
2 Testimony (pages 109, 118-119, and 142) and again elsewhere in this testimony
3 that CenturyLink's claims about "no immediate changes" and "status quo" for
4 wholesale customers post-merger are hollow promises that are not supported by
5 the facts presented in this case or enforceable conditions/commitments. After all,
6 if CenturyLink intended to make no changes and maintain the status quo for a
7 predetermined period of time, there would be no reason for CenturyLink to reject
8 conditions documenting that fact. CenturyLink is clearly reserving to itself a right
9 to make changes, including immediate changes.

10 Furthermore, the Embarq/CenturyTel merger was structured in the same manner
11 (with Embarq and CenturyTel operating as separate entities¹²⁹). However, there
12 have already been problems during the integration of Embarq in North Carolina,
13 for example, that have resulted in declining service quality.

14 **Q. WHAT IS YOUR RESPONSE TO CENTURYLINK'S CLAIM THAT**
15 **CLEC CONDITIONS ARE UNNECESSARY BECAUSE PROTECTIONS**
16 **ARE ALREADY IN PLACE?**

17 A. As I explained above in the example regarding CenturyTel's acquisition of
18 Wisconsin exchanges, the protections that were in place – including state statutes,

¹²⁹ Compare the organizational charts (pre-merger, merger, post-merger) the Joint Petitioners attached as Exhibit A to the Minnesota Petition to the organizational charts (pre-merger, merger, post-merger) Embarq and CenturyTel attached to their petition to merge in Oregon Docket UM 1416. This shows that the organizational structure the Joint Petitioners intend on implementing from the proposed transaction is the same organizational structure that Embarq and CenturyTel suggested for that merger. The Oregon petition is available at: <http://edocs.puc.state.or.us/efdocs/HAA/um1416haa161031.pdf> (see, PDF page 29).

1 the federal Act, and applicable rules – did not prevent CenturyTel from increasing
2 rates it charged to competitive carriers. The Joint CLEC conditions are designed
3 to ensure that adherence to applicable obligations are not undermined during
4 CenturyLink’s difficult task of integrating a company much larger than either
5 CenturyTel or Embarq, which integration still is not complete.

6 Further, the FCC and state commissions have time and again found that merger
7 conditions are necessary in order to avoid or offset harm related to a merger
8 involving incumbent LECs or BOCs. In each of those instances, the FCC and
9 state commissions have routinely rejected the notion that existing state and federal
10 rules and regulations and applicable ICAs are sufficient by themselves to address
11 potential harms to the public interest resulting from a merger involving an ILEC
12 or BOC.

13 **Q. DO YOU HAVE ADDITIONAL CONCERNS ASSOCIATED WITH**
14 **RELYING ON POST-CLOSING ENFORCEMENT OF LAW AND**
15 **INTERCONNECTION AGREEMENT TERMS AND CONDITIONS?**

16 A. Yes, relying on what would amount to ad hoc enforcement of the 96 Telecom Act
17 and Minnesota state law or individual ICAs could easily result in different CLECs
18 operating in different environments. That is, if one CLEC successfully brings a
19 complaint action, it may get relief, and other CLECs would not get the same
20 relief. Moreover, Qwest has previously claimed that an individual CLEC should
21 not be permitted to bring a complaint when other CLECs may be affected. The

1 public interest consideration should compel the Commission to adopt conditions
2 that will protect the competitive environment by ensuring that all competitors are
3 operating under these same critical conditions.

4 **Q. WILL CLECS BENEFIT FROM THE PROPOSED TRANSACTION**
5 **WITHOUT IMPOSITION OF THEIR REQUESTED CONDITIONS, AS**
6 **MR. HUNSUCKER CLAIMS?**

7 A, No. Dr. Ankum explained at pages 60-61 of his Direct Testimony (and Exhibit
8 AHA-4) that the Joint Petitioners had not identified a single benefit that would
9 accrue to CLECs. Mr. Hunsucker attempts to buttress the Joint Petitioners' claim
10 in this regard in his Rebuttal Testimony, stating: “[a] financially stronger
11 company promotes stability and thus furthers the goal of having a solid and
12 resilient provider of wholesale services to CLECs and other carriers.”¹³⁰ Again,
13 this statement does not identify a benefit to CLECs; Mr. Hunsucker does not
14 explain how a financially stronger Merged Company with at larger, more
15 interconnected footprint, translates into benefits for CLECs. The Joint Petitioners
16 have not agreed to reflect the Merged Company's increased efficiencies in its
17 relationships with its wholesale customers or even to maintain the products,
18 services or rates that CLECs purchase from Qwest today. Qwest's current
19 wholesale operations are much larger than CenturyLink's wholesale operations,
20 and Mr. Hunsucker failed to provide a single benefit or “best practice” that
21 CenturyLink's wholesale operations have to offer.

¹³⁰ Hunsucker Rebuttal at p. 4, lines 9-11.

1 **Q. HAS CENTURYLINK PREVIOUSLY INDICATED THAT A**
2 **FINANCIALLY STRONGER MERGED ENTITY COULD WORK**
3 **AGAINST CLECS INSTEAD OF IN THEIR BEST INTEREST?**

4 A. Yes. In the Minnesota Joint Petition, the Joint Petitioners state: “One of the
5 Transaction’s key benefits is the resulting financial condition of the combined
6 company. *A financially stronger company can continue to...compete against*
7 *cable telephony providers...and CLECs...*”¹³¹

8 **Q. CENTURYLINK POINTS TO SEVEN STATES WHERE THE**
9 **APPROVAL PROCESS IS NOW FAVORABLY CONCLUDED.¹³² WERE**
10 **THE REVIEWS OF THE PROPOSED TRANSACTION IN THOSE**
11 **OTHER STATES COMPARABLE TO THE REVIEW BEING**
12 **CONDUCTED IN MINNESOTA?**

13 A. No. Mr. Jones lists the following seven states in his rebuttal testimony:
14 California, Hawaii, Maryland, Georgia, West Virginia, New York and Ohio. The
15 Qwest/CenturyLink merger website (www.centurylinkqwestmerger.com) lists
16 three additional jurisdictions – Louisiana, Mississippi and District of Columbia.
17 None of the jurisdictions listed by CenturyLink are states in which Qwest operates
18 as a BOC or ILEC. Further, CenturyLink is not an ILEC in six of those ten
19 jurisdictions (Alaska, District of Columbia, Hawaii, Maryland, New York and
20 West Virginia). There are significant public interest concerns surrounding a

¹³¹ Joint Petition for Expedited Approval of Indirect Transfer of Control, May 13, 2010 (“Minnesota Joint Petition”), at p. 11 (emphasis added).

¹³² Jones Rebuttal at p. 4, lines 4-11.

1 proposed acquisition of an BOC or ILEC that do not apply to a transaction
2 involving the acquisition of a non-ILEC telecommunications company. The four
3 states in which CenturyLink is an ILEC – California, Georgia, Louisiana, and
4 Ohio – have different processes than Minnesota for reviewing the proposed
5 transaction. For example, in California (where CenturyLink owns 100 access
6 lines), the proposed transaction was filed via an Advice Letter on May 14, 2010,
7 and deemed approved one month later (on June 14, 2010).¹³³ CenturyLink filed
8 in Georgia on May 25, 2010, and the Georgia Commission closed the docket two
9 months later on July 28, 2010, signifying that it had passed regulatory review.¹³⁴
10 Likewise, the Ohio Public Utilities Commission closed the approval docket one
11 month after it was filed. Louisiana (where CenturyLink’s headquarters is
12 currently located and where the Merged Company’s headquarters will reside)
13 issued an order of non-opposition three months after approval was sought. As
14 explained by Dr. Ankum in his direct testimony (at pages 14-15), in Minnesota,
15 “the Commission’s approval must be predicated upon a public interest evaluation
16 of the proposed sale” and that determination “weighs the perceived benefits or
17 concerns against the perceived benefits to the public.” There are numerous
18 concerns that must be considered in the public interest evaluation in Minnesota,
19 where Qwest operates as an ILEC/BOC. Again, CenturyLink is *not* acquiring any
20 Qwest ILEC or BOC exchanges in any of the states that have approved the
21 transaction to date.

¹³³ <http://www.centurylinkqwestmerger.com/index.php?page=regulatory-information>

¹³⁴ <http://www.centurylinkqwestmerger.com/index.php?page=regulatory-information>

1 **B. *Increased economies of scale of the Merged Company should benefit***
2 ***competition.***

3 **Q. CENTURYLINK TAKES ISSUE WITH THE STATEMENT IN YOUR**
4 **DIRECT TESTIMONY THAT CLECS SHOULD SHARE IN THE**
5 **INCREASED ECONOMIES OF THE ILEC. CENTURYLINK CLAIMS**
6 **THAT YOU “SELECTIVELY” QUOTED FROM PARAGRAPH 11 OF**
7 **THE FCC’S *LOCAL COMPETITION ORDER*.¹³⁵ IS THIS**
8 **CHARACTERIZATION OF YOUR TESTIMONY WARRANTED?**

9 A. No, and to confirm that I did not mischaracterize what the FCC said at paragraph
10 11 of the *Local Competition Order*, I have attached the entire paragraph 11 as
11 Exhibit TJG-12 to my testimony.

12 The Joint Petitioners have identified increases in economies of scale for the
13 Merged Company as a merger-related benefit.¹³⁶ The Joint Petitioners have also
14 stated that this increase in economies of scale would result in efficiencies and
15 lower per-unit costs for the Merged Company.¹³⁷ The purpose of the reference to
16 the *Local Competition Order* at ¶ 11 in my Direct Testimony is to explain that one
17 of the cornerstones of the 1996 Act is that competitive LECs should share in the
18 economies of the ILEC so as to overcome the “significant economic impediments

¹³⁵ Gast Rebuttal at p. 11, lines 22.

¹³⁶ Gates Direct at p. 185, quoting Direct Testimony of John Stanoch on behalf of Qwest Corp., Minnesota Docket No. P-421, et al./PA-10-456, June 14, 2010 (“Stanoch Direct”), at p. 15.

¹³⁷ CenturyLink states: “greater economies of scale result in lower overhead costs per customer, or per access line” and “increased product availability and decreased per unit cost for a given service...” CenturyLink Response to Colorado Office of Consumer Counsel Data Request #1-15(a) and (b).

1 to efficient entry into the monopolized local market[.]” As such, if the Merged
2 Company is able to achieve significant increased economies of scale due to the
3 merger and those economies are not shared with the CLECs, then the economic
4 impediments to efficient entry into the local market have been raised (*e.g.*, the
5 Merged Company enjoys a cost advantage over its competitors). This is a direct
6 impact of the proposed transaction.

7 CenturyLink’s claim that “nowhere does the FCC’s Order suggest that there
8 should be a sharing of economic benefits resulting from a merger”¹³⁸ entirely
9 misses the point. The FCC said that “economies of density, connectivity, and
10 scale...have been viewed as creating a natural monopoly[.]” and, as a result,
11 required these economies to be shared with CLECs. This requirement exists
12 independent of a merger. My point, however, is that the Joint Petitioners have
13 touted significant increases in its economies of scale due to the proposed
14 transaction, and if these efficiencies are not shared with CLECs as the FCC
15 requires, it will further entrench the Merged Company in relation to the very
16 factors that have been viewed as creating a “natural monopoly.” Such a result
17 would be contrary to the public interest, including the public’s interest in robust
18 competition.

19 **Q. CENTURYLINK GOES ON TO STATE THAT CLECS WANT TO**
20 **“SHARE’ DIRECTLY IN THE COST SAVINGS THAT ARE TO BE**

¹³⁸ Gast Rebuttal at p. 11, footnote 22. *See also*, Jones Rebuttal at p. 14, footnote 18.

1 **REALIZED THROUGH THE MERGER” AND REDIRECT “CASH**
2 **FLOWS TO NARROWLY BENEFIT CLECS AND OTHER WHOLESALE**
3 **CUSTOMERS.”¹³⁹ IS THAT WHAT CLECS ARE SEEKING?**

4 A. No. The Joint Petitioners have estimated approximately \$575 million in annual
5 operating expense synergies and \$50 million of annual capital expenditure
6 synergies, for a total of \$625 million in annual operating and capital synergies.¹⁴⁰
7 The Joint CLECs do not want a cut of that estimated synergy savings, as
8 CenturyLink suggests. The Joint Petitioners have not provided one example of a
9 CLEC condition that seeks part of the estimated synergy savings, or any examples
10 of a condition proposed by the Joint CLECs that would prevent Joint Petitioners
11 from achieving their estimated synergy savings. If the Joint Petitioners were to
12 claim that the Joint CLECs’ proposed conditions prevented the Joint Petitioners
13 from achieving their synergy savings, then serious questions would be raised
14 about the Joint Petitioners’ integration plans, given that the Joint CLEC
15 conditions largely maintain the status quo. Public interest benefits can accrue to
16 the CLECs and competition from the proposed merger without the Merged
17 Company flowing through any of the \$650 million in estimated synergy savings.
18 For example, the increased economies that the Joint Petitioners expect from the
19 Merger could be shared with wholesale customers by allowing a requesting
20 carrier to opt into an ICA that is available elsewhere in the Merged Company’s
21 larger, more interconnected footprint (Condition 11), or agreeing not to raise

¹³⁹ Gast Rebuttal at p. 12.

¹⁴⁰ Gast Direct at p. 9.

1 wholesale rates given that the Joint Petitioners expect lower per-unit costs due to
2 the increased economies of scale¹⁴¹ (Condition 7). The Joint CLECs are not
3 seeking any special advantage or windfall related to the Merged Company's
4 synergy savings as CenturyLink suggests; rather, the Joint CLECs want to make
5 sure that potential merger-related harm to CLECs and their customers is offset or
6 avoided, and that CLECs are not worse off from a competitive standpoint vis-à-
7 vis the larger incumbent LEC if the proposed transaction is approved.

8 *C. The objective of the Joint CLEC proposed conditions is to offset harm*
9 *related to the proposed transaction, not to undermine the Joint*
10 *Petitioners' ability to compete.*

11 **Q. MR. HUNSUCKER CLAIMS THAT THE JOINT CLEC CONDITIONS**
12 **ARE DESIGNED TO UNDERMINE THE MERGED COMPANY'S**
13 **ABILITY TO COMPETE. IS THIS A FAIR CHARACTERIZATION?**

14 A. No. Mr. Hunsucker's mischaracterization of my testimony leads him to an
15 incorrect conclusion. Mr. Hunsucker states:

16 A statement made by Mr. Gates shows the proper context needed
17 when scrutinizing the relevance and applicability of the CLECs'
18 testimony. As Mr. Gates noted, the CLECs and the Joint
19 Petitioners "are rivals, and...their economic incentive (as profit-
20 maximizing firms) is to undermine – not help – the other
21 provider's ability to compete for end user customers..." I believe
22 that is exactly what the CLECs are hoping to achieve by arguing
23 for the conditions they propose – competitive advantages that
24 existing interconnection agreements, commission-approved

¹⁴¹ CenturyLink states: "greater economies of scale result in lower overhead costs per customer, or per access line" and "increased product availability and decreased per unit cost for a given service..." CenturyLink Response to Colorado Office of Consumer Counsel Data Request #1-15(a) and (b).

1 processes and other accepted practices do not currently provide or
2 apparently not to the degree desired by the CLECs.¹⁴²

3 To show how Mr. Hunsucker takes my testimony out of context, I have provided
4 below the entire paragraph from my testimony with Mr. Hunsucker's selective
5 quote in bold/underlined text:

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

21 Read in proper context, my testimony explains that compliance with and
22 enforcement of Sections 251 and 271 of the Act are critical to ensure that ILECs
23 and BOCs to do not exploit their natural economic incentives to discriminate
24 against competitors who also purchase critical bottleneck elements from them,
25 which is a natural incentive that the FCC explicitly discussed in its First Report
26 and Order. It is no secret that ILECs/BOCs and CLECs are rivals in the local
27 telecommunications market, and it is also no secret that ILECs/BOCs and CLECs
28 are profit-maximizing firms that compete for end user customers. The big
29 difference, however, is that ILECs/BOCs have control over critical inputs to the

¹⁴² Hunsucker Rebuttal at 9. *See also*, Hunsucker Rebuttal at 18.

1 services CLECs offer to end user customers, which gives them the *means* (in
2 addition to the incentive) to undermine the CLECs ability to compete for end user
3 customers. Accordingly, Section 251(c) of the Act applies to *incumbent* local
4 exchange carriers and not competitive local exchange carriers. Likewise, Section
5 271 of the Act applies to BOCs and not CLECs. Mr. Hunsucker’s claim distorts
6 the obvious point of my testimony and ignores this important distinction between
7 ILECs/BOCs and CLECs.

8 **Q. ARE CLECS HOPING TO UNDERMINE THE JOINT PETITIONERS’**
9 **ABILITY TO COMPETE BY PROPOSING CONDITIONS IN**
10 **CONJUNCTION WITH APPROVAL OF THE PROPOSED**
11 **TRANSACTION?**

12 A. No. Mr. Hunsucker’s claim makes no sense. The primary thrust of the Joint
13 CLEC proposed conditions is to ensure that the “existing interconnection
14 agreements, commission-approved processes and other accepted [Qwest]
15 practices” referred to by Mr. Hunsucker are continued if the proposed transaction
16 is approved, and not materially changed during the time period at which the
17 likelihood of merger-related harm is at its highest – the time it takes CenturyLink
18 and Qwest to complete post-merger integration.¹⁴³

19 For instance, Joint CLEC Condition #8 would allow requesting carriers to extend
20 existing interconnection agreements (including evergreen ICAs) for at least the

¹⁴³ See Gates Direct at p. 30, lines 11-13, stating that the Joint Petitioners expect to achieve estimated synergy savings over a three to five year period.

1 Defined Time Period or the date of expiration, whichever is later.¹⁴⁴ These ICAs
2 have defined their wholesale relationship for many years (some for about a
3 decade) and have been updated over the years to accommodate changes in laws.
4 They contain approved processes and accepted practices, and parties are familiar
5 with them.

6 Despite these facts, Mr. Hunsucker claims that this condition would “undermine
7 CenturyLink’s ability to compete fairly and may not be the terms the CLECs
8 would obtain in the negotiation and arbitration process...”¹⁴⁵ CLECs cannot
9 achieve “competitive advantages” or impair CenturyLink’s ability to compete
10 fairly by extending the same ICAs because the extension simply maintains what
11 Qwest provides to CLECs today. What’s more, Mr. Hunsucker’s reference to
12 making changes to these accepted processes during the negotiation and arbitration
13 process in order for CenturyLink to “compete fairly” is further evidence that the
14 Merged Company intends to attempt to materially change the existing terms and
15 conditions of ICAs post-merger to the detriment of CLECs (particularly when
16 Qwest has been able to compete fairly under the existing ICAs for years).

17 Another example is Joint CLEC proposed condition #17, which requires the
18 Merged Company to maintain the Qwest Change Management Process (“CMP”)
19 after the Closing Date, utilizing the terms and conditions set forth in the CMP

¹⁴⁴ Exhibit TJG-8 at p. 5.

¹⁴⁵ Hunsucker Rebuttal at p. 18.

1 Document.¹⁴⁶ The Change Management Process was established during the 271
2 review process and the CMP Document contains accepted practices. No
3 competitive advantages will be conferred upon CLECs if this condition is adopted
4 because it ensures that the status quo is maintained. Indeed, many CLECs have
5 pointed out over the years that that the existing Qwest CMP process enables
6 Qwest to make changes over the objections of CLECs. There is no legitimate
7 basis for a claim that continuing a process that already favors the ILEC will
8 hamper CenturyLink's ability to compete in the future. While CenturyLink may
9 not think the Qwest CMP is one-sided enough for its liking, that is not a
10 reasonable basis to eliminate it.

11 **Q. WHAT ARE CLECS HOPING TO ACHIEVE WITH THEIR PROPOSED**
12 **CONDITIONS?**

13 A. The Joint CLECs' proposed conditions have been carefully and narrowly crafted
14 to address the specific harms raised by the proposed transaction. The overall
15 objective of the conditions is to ensure that the proposed transaction does not
16 harm competitors and competition, and ultimately serves the public interest. More
17 specifically, however, these conditions are intended to mitigate the harm that is
18 likely to happen (and has occurred elsewhere) if the proposed transaction is
19 approved as filed, primarily by providing much-needed certainty that CLECs need
20 to continue to operate their businesses and make prudent decisions. These
21 conditions also attempt to ensure that the Merged Company does not use its

¹⁴⁶ Exhibit TJG-8 at p. 7.

1 overwhelming size or resources as the dominant incumbent service provider to the
2 detriment of competitors and the public interest.

3 **D. The “Defined Time Period” is merger-specific and is an important**
4 **component of offsetting merger-related harm in some conditions.**

5 **Q. WHAT IS THE “DEFINED TIME PERIOD”?**

6 A. I discussed the “Defined Time Period” at pages 110-112 of my Direct Testimony.
7 This term is defined in the Joint CLEC conditions list, attached to my Direct
8 Testimony as Exhibit TJG-8 as follows:

9 “Defined Time Period,” when used in this list of conditions, refers to a
10 time period of at least 5-7 years after the Closing Date or, alternatively, a
11 time period that is a minimum of 42 months (*i.e.*, 3.5 years) and continues
12 thereafter until the Applicants are granted Section 10 forbearance from the
13 condition. With respect to agreements, the Defined Time Period applies
14 whether or not the initial or current term of an agreement has expired
15 (“evergreen” status).”

16 **Q. IN REFERRING TO THE “DEFINED TIME PERIOD,” MR.**
17 **HUNSUCKER STATES THAT THE “THE CLECS ONCE AGAIN ARGUE**
18 **THAT CERTAIN MERGER CONDITIONS SHOULD LAST AN**
19 **UNPRECEDENTED SEVEN YEARS.”¹⁴⁷ IS THIS A FAIR DESCRIPTION**
20 **OF THE DEFINED TIME PERIOD?**

21 A. No. Mr. Hunsucker ignores relevant portions of the definition of this term (shown
22 above). The definition speaks for itself, but Mr. Hunsucker fails to mention that

¹⁴⁷ Hunsucker Rebuttal at p. 44, lines 15-16. *See also*, Hunsucker Rebuttal at p. 20 (“The CLECs’ Defined Time Period of up to seven years under which they argue that certain merger conditions should last, is unreasonable and unprecedented.”)

1 the Defined Time Period would be 42 months (or 3.5 years) under certain
2 circumstances, which is the same amount of time the AT&T/BellSouth FCC
3 merger conditions applied.¹⁴⁸ He also fails to mention that the definition of
4 Defined Time Period is flexible in that it is designed to provide protections from
5 merger-related harm (based on the Joint Petitioner's own time estimates), while
6 also allowing the Merged Company to terminate the merger conditions subject to
7 the Defined Time Period sooner by demonstrating that the integration effort is
8 running smoothly. This condition, therefore, strikes a balance between the desire
9 of the Joint Petitioners to have the proposed transaction approved on an expedited
10 basis (and in the absence of any useful facts about the Merged Company's
11 integration plans) while providing a certain degree of protection for CLECs and
12 their customers in relation to certain time-sensitive conditions.

13 *E. Joint Petitioners' criticisms of the Joint CLEC proposed conditions*
14 *should be rejected and the conditions adopted.*

15 **Q. HAVE THE JOINT PETITIONERS SUMMARIZED THEIR POSITION**
16 **WITH RESPECT TO EACH OF THE JOINT CLECS' PROPOSED**
17 **CONDITIONS?**

18 A. Yes. The Joint Petitioners provided Position Statements for each condition in
19 response to discovery by the Department of Commerce ("Department" or
20 "DOC"). Joint CLECs, in turn, responded with Position Statements of their own.

¹⁴⁸ Gates Direct at p. 112, footnote 198.

1 These Position Statements appear, in order of the Joint CLEC conditions listed in
2 Exhibit TJG-8, in Exhibit TJG-11 to this Surrebuttal Testimony. By asking each
3 party to summarize their positions, the Department has assisted the parties in
4 creating an issues list, in Exhibit TJG-11, for the issues raised by Joint CLECs
5 through their list of recommended conditions. Because the parties have referred
6 to the Joint CLEC conditions throughout the testimony by the number assigned in
7 Exhibit TJG-8, the Issues Matrix is organized in the same manner, for ease of
8 reference to the corresponding condition.

9 **1. Conditions 4, 5, and 11**

10 **Q. MR. STANOCH STATES THAT JOINT CLEC CONDITIONS 4, 5, AND**
11 **11, REGARDING WHOLESALE PERFORMANCE AND INTERVALS,**
12 **WOULD REQUIRE “SWEEPING CHANGES” TO INTERVALS AND**
13 **REPORTING REQUIREMENTS.¹⁴⁹ IS THIS TRUE?**

14 A. No. Indeed, Condition 11 simply maintains the existing intervals in Qwest’s
15 Service Interval Guide (“SIG”) for ICAs that are silent or reference Qwest’s SIG
16 for intervals. No changes – let alone “sweeping” changes – are required by this
17 condition, although it allows the company to shorten intervals if desired.¹⁵⁰

18 Likewise, Conditions 4 and 5 require the Merged Company to “continue to

¹⁴⁹ Stanoch Rebuttal at p. 4, lines 12-13.

¹⁵⁰ Condition 11 provides (with emphasis added): “To the extent that an interconnection agreement is silent as to an interval for the provision of a product, service or functionality or refers to Qwest’s website or Service Interval Guide (SIG), the applicable interval, after the Closing Date, shall be *no longer than* the interval in Qwest’s SIG as of the Merger Filing Date.”

1 provide” the same reports of wholesale performance metrics that the Joint
2 Petitioners provide today.

3 **Q. IN REFERENCE TO CONDITION 4(A), WHICH ADDRESSES QWEST**
4 **PERFORMANCE ASSURANCE PLANS (“PAPS”) AND PERFORMANCE**
5 **INDICATORS (“PIDS”), MR. WILLIAMS CLAIMS THAT YOU**
6 **PROVIDE “NO EVIDENCE WHATSOEVER TO SUPPORT” YOUR**
7 **CLAIM THAT QWEST’S PAPS AND PIDS ARE ESSENTIAL TO**
8 **ENSURE THAT LOCAL MARKETS IN QWEST’S REGION REMAIN**
9 **OPEN TO COMPETITION.¹⁵¹ IS HE CORRECT?**

10 A. No. My testimony addressing PAPS and PIDS provided very detailed support for
11 their importance to keeping markets open to competition. (see Gates Direct at
12 pages 44-46). Additionally, Mr. Denney of Integra addressed these issues at
13 pages 6-15 of his Direct Testimony. I also provided Exhibit TJG-2, which
14 provided a detailed description (with dozens of cites to authority) of the Qwest
15 271 review process that developed and tested the PAPS and PIDS and their
16 importance to ensuring that local markets remain open to competition. Rather
17 than rebut the facts provided in my direct testimony, Mr. Williams simply ignores
18 them. As further support regarding the importance of the PAPS and PIDS, the
19 Colorado Commission, when approving the PAP in its state, summed up the
20 importance and significance of the PAP, stating:

¹⁵¹ Williams Rebuttal at p. 3.

1 We regard the CPAP, or Colorado Performance Assurance Plan, *as*
2 *the single most important innovation of this § 271 process*. On a
3 *going-forward basis*, the CPAP provides meaningful incentives for
4 Qwest to meet its wholesale unbundling obligations, compensates
5 CLECs for harm suffered, and provides flexibility to adapt to
6 changing market conditions.¹⁵²

7 The Colorado Commission said that "the CPAP is the *most vital element* in
8 Qwest's application on a *going-forward basis*" and that "the regulatory regime it
9 established will remain *a crucial legacy* of the § 271 process."¹⁵³ Additionally,

10 Liberty Consulting has said:

11 [T]he PAP incentives *continue to be important* in helping ensure
12 that Qwest's performance level does not deteriorate, because
13 Qwest's wholesale services *remain critical* for the CLECs still
14 relying on them. Recent *experiences in Hawaii and northern*
15 *New England demonstrate the severe impact on competitors*
16 *when an incumbent local company fails to provide adequate*
17 *wholesale performance, despite the best intentions and*
18 *preparations*. The circumstances of those cases are very different
19 from what the CLECs face in Qwest's operating territory.
20 However, they illustrate conditions that can arise in extreme cases
21 without adequate protections. The Qwest PAPs help ensure that
22 the correct incentives are in place to prevent such conditions from
23 occurring.¹⁵⁴

24 Although Liberty Consulting said the circumstances of Hawaii and northern New
25 England were "very different"¹⁵⁵ in June of 2009 when Liberty Consulting wrote

¹⁵² Evaluation of the Colorado Public Utilities Commission, filed in *In the Matter of Application by Qwest Communications International, Inc., for Provision Of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota*, WC Docket No. 02 - 148, p. 3 (emphasis added).

¹⁵³ *Id.* p. 54 (emphasis added).

¹⁵⁴ Liberty Consulting Analysis of Qwest's Performance Assurance Plans Final Report, Prepared for Regional Oversight Committee (June 30, 2009) ["Liberty June 2009 Final Report"], p. 4, available at <http://www.puc.idaho.gov/internet/cases/tele/QWE/QWET0804/staff/20090817LIBERTY%20FINAL%20REPORT.PDF> (emphasis added; footnote omitted).

¹⁵⁵ Liberty June 2009 Final Report, p. 4.

1 its report, those circumstances have changed in the relatively short time since
2 then. Today, Qwest's operating territory is subject to similar circumstances in
3 which a merger, if approved, will also prompt system consolidation and company
4 integration. The PIDs and PAP are even more essential now than before.

5 **Q. MR. WILLIAMS CLAIMS THAT YOU QUOTE "AN FCC STATEMENT**
6 **OUT OF CONTEXT" TO SUPPORT YOUR CLAIM THAT PAPS AND**
7 **PIDS ARE ESSENTIAL.¹⁵⁶ IS THIS CRITICISM WARRANTED?**

8 A. No. At footnote 4 of Mr. Williams' Rebuttal Testimony, he claims that I
9 misquoted the FCC's *Qwest 9 State 271 Order*,¹⁵⁷ Mr. Williams states:

10 Mr. Gates' paragraph number reference to the FCC statement he
11 quotes [at page 45 of Gates Direct Testimony] is incorrect. He
12 refers to the *Qwest 9 State 271 Order* at ¶ 440. However, that
13 paragraph does not contain the words he quoted. Rather, they are
14 in ¶ 454. This is important, as I point out, because of what else the
15 correct paragraph says.¹⁵⁸

16 Mr. Williams is wrong. The exact quote from page 45 of my Direct Testimony
17 that I attributed to paragraph 440 of the *Qwest 9 State 271 Order* states:

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

¹⁵⁶ Williams Rebuttal at p. 3 and footnote 4.

¹⁵⁷ *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, Memorandum Opinion and Order, WC Docket No. 02-314, FCC 02-332, Released December 23, 2002 ("*Qwest 9 State 271 Order*").

¹⁵⁸ Williams Rebuttal at p. 3, footnote 4.

1 To prove that paragraph 440 of the *Qwest 9 State 271 Order* contains this quote,
2 I have attached the entire paragraph 440 to my Rebuttal Testimony as Exhibit
3 TJG-13. And to prove that paragraph 454 does not contain this language as Mr.
4 Williams claims, I have also included the entire paragraph 454 from the *Qwest 9*
5 *State 271 Order* in Exhibit TJG-13. While on the surface, it may appear that Mr.
6 Williams is simply correcting what he sees as an error in a footnote, his
7 observation that the error is “important...because of what else the correct
8 paragraph says” appears to assign intent to the purported error. That is incorrect.
9 There was no error in the footnote to begin with, and Exhibit TJG-13 confirms
10 that the order says exactly what I said in my Direct Testimony.

11 **Q. MR. WILLIAMS SUGGESTS THAT PAPS AND PIDS ARE NO LONGER**
12 **ESSENTIAL BECAUSE “THE MARKET HAS NOT ONLY REMAINED**
13 **OPEN, BUT THAT IT IS ROBUSTLY OPEN AND WILL CONTINUE TO**
14 **BE SO, WITH OR WITHOUT A PAP.”¹⁵⁹ IS THERE ANY BASIS FOR**
15 **THIS STATEMENT?**

16 A. No. Mr. Williams asserts that the wholesale market is robustly open to
17 competition.¹⁶⁰ However, this assertion was rejected by the FCC as recently as
18 three months ago.

19 **Q. PLEASE ELABORATE.**

¹⁵⁹ Williams Rebuttal at p. 4, lines 10-12.

¹⁶⁰ Williams Rebuttal at p. 19, lines 16-17. *See also*, Brigham Rebuttal at p. 7, lines 21-24 and p. 24.

1 A. In June 2010, the FCC denied Qwest’s petition for forbearance in the Phoenix
2 Arizona Metropolitan Statistical Area (“MSA”). In doing so, the FCC said:

3 First, the Commission has long recognized that a vertically
4 integrated firm with market power in one market—here upstream
5 wholesale markets where, as discussed below, Qwest remains
6 dominant—may have the incentive and ability to discriminate
7 against rivals in downstream retail markets or raise rivals’ costs.
8 Second, because Qwest was the sole provider of wholesale
9 facilities and services, there is no reason to expect it to offer such
10 services at “competitive” rates. Rather, assuming that Qwest is
11 profit-maximizing, we would expect it to exploit its monopoly
12 position as a wholesaler and charge supracompetitive rates,
13 especially given that (absent regulation) Qwest may have the
14 incentive to foreclose competitors from the market altogether.
15 Moreover, there is little evidence, either in the record or of which
16 we otherwise are aware, that the BOCs or incumbent LECs have
17 voluntarily offered wholesale services at competitive prices once
18 regulatory requirements governing wholesale prices were
19 eliminated. For example, other than Cox, McLeodUSA was the
20 only other competitor of significant size cited by the Commission
21 in the *Qwest Omaha Forbearance Order*. The record indicates
22 that subsequent to the *Qwest Omaha Forbearance Order*, Qwest,
23 with one exception, was not spurred to offer McLeodUSA any
24 wholesale alternatives to UNEs that were not already offered prior
25 to the grant of forbearance. Moreover, the record indicates that
26 McLeodUSA has removed most of its employees from the Omaha
27 marketplace, has limited its operations primarily to serving its
28 existing customer base, and has ceased sales of residential and
29 nearly all business services in Omaha. This suggests that
30 McLeodUSA likewise no longer should be considered a significant
31 competitor in the Omaha marketplace. We also note record
32 evidence that Integra, which had been contemplating entry into the
33 Omaha market, abandoned its plans to do so after the Commission
34 issued the *Qwest Omaha Forbearance Order*.¹⁶¹

¹⁶¹ *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113, released June 22, 2010 (“Qwest Phoenix Forbearance Order”), ¶ 34.

1 The FCC specifically concluded that Qwest had market power in the upstream
2 wholesale market, and this market power provides Qwest the incentive and ability
3 to discriminate against CLECs in downstream retail markets. The Qwest PAPs
4 and PIDs are *essential* because they attempt to ensure that Qwest does not use its
5 market power over wholesale inputs to discriminate against CLECs in relation to
6 Qwest's own retail operations.

7 **Q. MR. BRIGHAM REFERS TO “NUMEROUS COMPETITIVE FIBER**
8 **NETWORKS TODAY” IN THE MINNEAPOLIS-ST. PAUL AREA TO**
9 **SUPPORT JOINT PETITIONERS’ CLAIM THAT THE WHOLESALE**
10 **MARKET IS ROBUSTLY OPEN.¹⁶² SHOULD THIS CLAIM BE TAKEN**
11 **SERIOUSLY?**

12 A. No. Just a month ago, Qwest withdrew its forbearance petitions in four MSAs,
13 including the Minneapolis-St. Paul MSA. Qwest filed the petitions in June 2007
14 and the FCC denied those petitions. Qwest appealed the FCC Order denying its
15 forbearance petitions and that was remanded to the FCC.¹⁶³ The fact that Qwest
16 withdrew its forbearance petition for the Minneapolis-St. Paul MSA casts serious
17 doubt on Joint Petitioners' claims that the wholesale market is robustly open,
18 particularly in light of the FCC's discussion of the wholesale market in Qwest's
19 territory in the *Qwest Phoenix Forbearance Order*. Furthermore, data provided to
20 the FCC in the 2007 forbearance docket showed that a very small percentage of

¹⁶² Brigham Rebuttal at p. 24.

¹⁶³ FCC Regulatory Monitoring Bulletin, August 23, 2010, available at:
<http://www.tminc.com/uploads/FC20100823.pdf>

1 the business premises in the St. Paul/Minneapolis MSA had multiple last mile
2 providers. Most of these competitors rely on Qwest facilities, either as UNEs or
3 Special Access services, to reach the actual premises.

4 Moreover, Qwest made the same claims about robust competition based on
5 competitive fiber networks in the Commission proceeding to consider Qwest's
6 forbearance petition for the Minneapolis/St. Paul MSA, yet the Commission
7 found to the contrary that:

8 The evidence presented to the MNPUC as part of its investigation
9 demonstrates that Competitive Local Exchange Carriers
10 ("CLECs") rely on Qwest's wholesale facilities to enable them to
11 offer telecommunications customers effective competitive
12 alternatives to Qwest's services, and that for a large portion of the
13 market it is infeasible for the CLECs to duplicate Qwest's facilities
14 ... facilities constructed by Qwest over decades under the
15 regulatory protection of the MNPUC.¹⁶⁴

16 Likewise, in spite of Qwest's claims in Docket No. P-421/CI-05-1996 that CLECs
17 have alternatives to Qwest in the form of "competitive fiber networks," the
18 Commission adopted the Administrative Law Judges' finding that "the CLECs'
19 provision of service to medium-sized business customers is highly depending on
20 the use of [Qwest's] §251 UNEs and that there are few realistic alternatives to the
21 use of Qwest facilities for this customer type."¹⁶⁵

¹⁶⁴ *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Minneapolis/St. Paul Metropolitan Statistical Area*, MPUC Docket No. P-421/CI-07-661, Ex Parte Comments of the Minnesota Public Utilities Commission (February 8, 2008), at pp. 2-3.

¹⁶⁵ *In the Matter of a Potential Proceeding to Investigate the Wholesale Rates Charged by Qwest Corporation*, MPUC Docket No. P-421/C-05-1996, OAH Docket No. 12-2500-17246-2, Findings of Fact, Conclusions and Recommendation (October 14, 2009), at p. 6.

1 **Q. MS. STEWART STATES THAT CONDITION 11 IS A “BROAD BRUSH**
2 **RESTRICTION ON INSTALLATION INTERVALS WITHOUT ANY**
3 **FACTUAL SUPPORT.”¹⁶⁶ IS THIS A FAIR CHARACTERIZATION OF**
4 **CONDITION 11?**

5 A. No. First, the condition applies to ICAs that are either silent as to an interval or
6 refer to Qwest’s website or Standard Interval Guide (“SIG”), and second, it states
7 that these intervals will be no longer than the interval in Qwest’s SIG as of the
8 Merger Filing Date. Therefore, it is targeted to apply to intervals that the Merged
9 Company may attempt to lengthen unilaterally, and it simply ensures that the
10 Merged Company will not increase these intervals from those in Qwest’s SIG at
11 the time the Joint Petitioners announced the proposed transaction. Qwest found
12 these intervals acceptable prior to the proposed transaction (as evidenced by the
13 fact that they were in Qwest’s SIG on the Merger Filing Date¹⁶⁷), and any attempt
14 by the Merged Company to increase these intervals after the announcement of the
15 merger would be a harm to CLECs resulting directly from the merger.

16 **Q. HAVE YOU PROVIDED FACTUAL SUPPORT FOR CONDITION 11?**

17 A. Yes. Please refer to pages 129-131 of my Direct Testimony, where I explained
18 the importance of service intervals to competition, as well as the fact that Qwest
19 has in the past attempted to leave service intervals out of ICAs so that they can be
20 lengthened unilaterally.

¹⁶⁶ Stewart Rebuttal at p. 13, lines 13-14.

¹⁶⁷ “Merger Filing Date” is defined in Exhibit TJG-8, “refers to May 10, 2010, which is the date on which Qwest and CenturyLink made their merger filing with the FCC.”

1 **Q. MS. STEWART STATES THAT THE TERM “FUNCTIONALITY” IS**
2 **NOT CLEARLY DEFINED IN CONDITION 11.¹⁶⁸ IS THE MEANING OF**
3 **FUNCTIONALITY AS USED IN CONDITION 11 UNCLEAR?**

4 A. No. Ms. Stewart states that because there is no specific definition of the term
5 “functionality,” “Qwest would not even know what wholesale products or
6 services this installation interval limitation is intended to apply to.”¹⁶⁹ She is
7 making much ado about nothing. Condition 11 states:

8 11. To the extent that an interconnection agreement is silent as to
9 an interval for the provision of a product, service or functionality
10 or refers to Qwest’s website or Service Interval Guide (SIG), the
11 applicable interval, after the Closing Date, shall be no longer than
12 the interval in Qwest’s SIG as of the Merger Filing Date.

13 Obviously, the products, services or functionalities to which Condition 11 applies
14 are those that are currently in Qwest’s SIG as of the Merger Filing Date. For
15 example, Qwest’s SIG includes: under collocation, intervals for “quotations” and
16 “feasibility;” and, under Multi-Tenant Environment (MTE), intervals to
17 “determine who owns the cable at the MTE site” and “inventory of CLEC
18 cable.”¹⁷⁰ The merged company should not be able to avoid the terms of
19 Condition 11 by claiming that such items are not products or services. The word
20 “functionality” ensures that, whether the merged company calls them products or
21 services, or some function related to products and services, items that are included

¹⁶⁸ Stewart Rebuttal at p. 13.

¹⁶⁹ Stewart Rebuttal at p. 13, lines 16-18.

¹⁷⁰ Qwest’s SIG is available at: <http://www.qwest.com/wholesale/guides/sig/>

1 in Qwest's SIG remain covered by Condition 11. Since they are in Qwest's SIG,
2 Qwest is aware of what is included.

3 **Q. MR. HUNSUCKER STATES THAT "CLEC PROVISIONING**
4 **INTERVALS REFLECT RETAIL PROVISIONING INTERVALS FOR**
5 **THE SAME OR LIKE SERVICES BECAUSE FEDERAL LAW**
6 **REQUIRES A CARRIER TO TREAT ALL CUSTOMERS AT PARITY."¹⁷¹**
7 **DOES HIS TESTIMONY VALIDATE THE CONCERN UNDERLYING**
8 **CONDITION 11?**

9 A. Yes. Nondiscrimination is an important requirement of Sections 251 and 271 of
10 the Act. The nondiscrimination requirement, however, does not mean, as Mr.
11 Hunsucker's testimony suggests, that CenturyLink may lengthen a wholesale
12 interval post-closing by lengthening its retail interval and then arguing the
13 wholesale interval must be the same.

14 **Q. HAS THE MINNESOTA COMMISSION PREVIOUSLY REJECTED**
15 **ATTEMPTS TO LENGTHEN WHOLESALE INTERVALS BY**
16 **LENGTHENING RETAIL INTERVALS AND THEN ARGUING THAT**
17 **THE WHOLESALE INTERVAL SHOULD BE THE SAME?**

18 A. Yes. This argument was rejected during the 271 proceedings. When Qwest
19 previously tried to move from a 5-day to a 9-day loop interval by simultaneously
20 lengthening the interval for its retail customers, the Minnesota Commission

¹⁷¹ Hunsucker Rebuttal at p. 46, lines 10-11.

1 rejected Qwest's argument and found that the 5-day loop interval allowed
2 competitors a meaningful opportunity to compete.¹⁷² The Minnesota Commission
3 found that Qwest cannot make intervals "unreasonable by lengthening the
4 intervals for provision of retail service."¹⁷³

5 **Q. ARE THERE REASONS WHY WHOLESALE INTERVALS SHOULD**
6 **NOT BE LENGTHENED TO MATCH A RETAIL INTERVAL?**

7 A. Yes. An interval for a wholesale customer (*e.g.*, a CLEC) establishes the due date
8 upon which Qwest will deliver the service to the CLEC. For unbundled network
9 element ("UNE") loops, there is still more work that the CLEC needs to do after
10 Qwest delivers the UNE loop to make service work for the CLEC's end user
11 customer.¹⁷⁴ Accordingly, in these instances, the CLEC needs to receive the UNE
12 loop in sufficient time to perform the additional work required and still be able to
13 deliver retail services to end user customers in the same time frame as the ILEC.
14 If the ILEC wholesale and retail intervals are the same in these instances, the

¹⁷² Findings of Fact, Conclusions of Law and Recommendations, *In the Matter of a Commission Investigation into Qwest's Compliance with Section 271(c)(2)(B) of the Telecommunications Act of 1996; Checklist Items 1,2,4,5,6,11,13, and 14*, Docket No. P-421/CI-01-1371 (Sept. 16, 2003) ("MN ALJ 271 Order"), ¶125.

¹⁷³ Findings of Fact, Conclusions of Law and Recommendations, *In the Matter of a Commission Investigation into Qwest's Compliance with Section 271(c)(2)(B) of the Telecommunications Act of 1996; Checklist Items 1,2,4,5,6,11,13, and 14*, Docket No. P-421/CI-01-1371 (Sept. 16, 2003) ("MN ALJ 271 Order") at ¶125.

¹⁷⁴ See, *e.g.*, Hrg. Ex. Q-2 (Qwest Albersheim Rebuttal), p. 5, lines 8-11, *In re. Complaint of Eschelon Telecom of Arizona, Inc. Against Qwest Corporation*, ACC Docket No. T-01051B-06-0257, T-03406A-06-0257 (Jan. 30, 2007) (Ms. Albersheim testified that the Arizona Commission has found, given that the interval for retail customers is nine days, a five-day interval for CLEC DS1 capable loop orders is appropriate).

1 ILEC would always have an advantage by being able to deliver services to retail
2 end user customers more quickly than its competitors.

3 One example of this is DS1 UNE loops (1-8 lines): Qwest's wholesale interval in
4 the SIG for Minnesota and other states is 5 days, compared to a 9 day Qwest retail
5 interval. Qwest does not perform the end user retail functions for a wholesale
6 service. Qwest has the full nine days of the interval to prepare for service
7 provisioning on the due date for its End User Customers. CLECs receive the loop
8 from Qwest on Day 5 and then are allowed time to perform the additional work a
9 CLEC needs to do to make the service operate for CLEC's end user customer.

10 **Q. HAS ANY OTHER STATE COMMISSION RECOGNIZED THE**
11 **POTENTIALLY HARMFUL EFFECTS OF QWEST LENGTHENING**
12 **PROVISIONING INTERVALS?**

13 A. Yes. The Washington Commission recognized this in the context of its review of
14 Qwest's request for Section 271 authorization. In that case, Qwest proposed an
15 interval for DS1 loops that was longer than the interval that the Washington
16 Commission had established when it approved US WEST's merger with Qwest,
17 and the Washington Commission directed that the proposed interval be reduced to
18 that which the Commission had previously approved.¹⁷⁵ In another proceeding,

¹⁷⁵ Twentieth Supplemental Order, Initial Order (Workshop Four): Checklist Item No. 4; Emerging Services, General Terms and Conditions, Public Interest, Track A, and Section 272, *In the Matter of the Investigation into US WEST COMMUNICATIONS, INC.'s Compliance with Section 271 of the Telecommunications Act of 1996 and In the Matter of US WEST COMMUNICATIONS INC.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of*

1 the Washington Commission found it appropriate to include an interval in an ICA
2 to protect both ILEC and CLECs “from unnecessary delay and
3 gamesmanship.”¹⁷⁶ Condition 11 only applies in situations when the ICA is silent
4 on an interval or refers to Qwest’s website or SIG – *i.e.*, situations when the
5 specific interval is not spelled out in the ICA – and would provide protection from
6 the “unnecessary delay and gamesmanship” discussed by the Washington
7 Commission.

8 **Q. IS CONDITION 11 INDICATIVE OF CLECS “WANT[ING] PRIORITY**
9 **FOR THEIR NEEDS OVER THOSE OF CENTURYLINK’S END USER**
10 **SUBSCRIBERS AND WHOLESALE TARIFF CUSTOMERS”¹⁷⁷ AS MR.**
11 **HUNSUCKER CLAIMS?**

12 A. No. The opposite is true. If the ILEC wholesale and retail intervals are the same
13 in the instances described above, the ILEC would always have an advantage by
14 being able to deliver services to retail end user customers more quickly than its
15 competitors. As discussed above, in some cases there is work that CLECs need to
16 perform after the wholesale interval in order to deliver their services to end user
17 customers. Condition 11 is not about CLECs wanting priority of their needs, but
18 rather attempting to ensure that the proposed transaction does not harm their

1996. Washington Docket Nos. UT-003022 and UT-003040 (November 14, 2001) (“WA 271 Order”),
¶ 125.

¹⁷⁶ *In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of Verizon Northwest Inc. with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Washington Pursuant to 47 U.S.C. Section 252(b) and the Triennial Review Order*, Docket No. UT-043013, Order No. 18, September 22, 2005, at ¶ 114.

¹⁷⁷ Hunsucker Rebuttal at p. 46, lines 12-13.

1 meaningful opportunity to compete. When competition is harmed, end user
2 customers and the public interest are harmed.

3 Furthermore, Condition 11 would simply maintain Qwest's current intervals in
4 the SIG post-merger for those ICAs that are silent or reference the Qwest SIG for
5 intervals. In other words, it is a condition that, for intervals, merely maintains the
6 "status quo,"¹⁷⁸ and the Joint Petitioners have stated (albeit without any
7 commitment) that the status quo will be maintained post-merger. More than that,
8 Mr. Hunsucker asserts that the company "***cannot change existing provisioning***
9 ***intervals*** for its separate operating subsidiaries without significant process or
10 systems improvements."¹⁷⁹ Per CenturyLink, the company neither will nor can
11 change intervals, but still CenturyLink refuses to agree to a condition indicating it
12 will not change intervals. There is no rational basis for this position,¹⁸⁰
13 particularly coming from a company that is before the Commission to gain
14 approval to receive all the claimed benefits of this merger and on an expedited
15 schedule. Agreeing to reasonable conditions would expedite the proceedings
16 considerably. Mr. Hunsucker identifies himself as being in charge of ICA
17 negotiations with CLECs.¹⁸¹ If CenturyLink takes similar positions in
18 negotiations – *e.g.*, not agreeing to do something it otherwise planned to do –

¹⁷⁸ See, *e.g.*, Hunsucker Rebuttal at p. 16, line 17.

¹⁷⁹ Hunsucker Rebuttal at p. 46, lines 16-17.

¹⁸⁰ Hunsucker Direct at p. 1, lines 16-19.

¹⁸¹ Regarding Mr. Hunsucker's claims that maintaining the status quo increases CenturyLink's costs and CLECs' profits, *see* Section IV(A) of this surrebuttal testimony.

1 CLECs have little hope of resolving issues with CenturyLink by negotiation, and
2 this does not bode well for the future.

3 Condition 11 does not require anything of the Merged Company that the Joint
4 Petitioners have not already stated will take place post-merger, but it transforms
5 the Joint Petitioners' paper promises into an enforceable commitment. Notably,
6 Mr. Hunsucker states: "I note that the CLECs have demonstrated no harm to
7 Minnesota or Minnesota customers resulting from the continuation of the existing
8 provisioning intervals."¹⁸² What Mr. Hunsucker fails to mention is that Condition
9 11 is proposed to accomplish just that – *i.e.*, to continue existing provisioning
10 intervals. What Mr. Hunsucker also fails to mention is the harm that will come
11 from CenturyLink unilaterally increasing existing Qwest provisioning intervals.

12 **2. Condition 13**

13 **Q. CENTURYLINK STATES THAT CONDITION 13 REGARDING BOC**
14 **STATUS AND SECTION 271 OBLIGATIONS IS UNNECESSARY**
15 **BECAUSE BOC ISSUES ARE "AN FCC MATTER."¹⁸³ DOES THIS**
16 **CLAIM ELIMINATE THE NEED FOR JOINT CLEC PROPOSED**
17 **CONDITION 13?**

18 A. No. Joint CLEC proposed Condition 13 states:

19 13. In the legacy Qwest ILEC territory, the Merged Company shall
20 be classified as a Bell Operating Company ("BOC"), pursuant to

¹⁸² Hunsucker Rebuttal at p. 46.

¹⁸³ Jones Rebuttal at p. 25.

1 Section 3(4)(A)-(B) of the Communications Act and shall be
2 subject to all requirements applicable to BOCs, including but not
3 limited to the “competitive checklist” set forth in Section
4 271(c)(2)(B) and the obligation to ensure there is no backsliding,
5 and the nondiscrimination requirements of Section 272(e) of the
6 Communications Act.

7 Condition 13 simply states that Qwest will continue to be a BOC in the legacy
8 Qwest ILEC territories and subject to existing BOC obligations post-merger. This
9 merger condition is particularly important to the proposed transaction because this
10 is the first time a non-BOC ILEC has attempted to acquire an entire BOC and all
11 the obligations that go along with it. In its Order approving Qwest’s 271
12 authority in nine states, the FCC said:

13 Section 271(d)(6) of the Act requires Qwest to continue to satisfy
14 the “conditions required for . . . approval” of its section 271
15 application after the Commission approves its application...¹⁸⁴

16 CenturyLink’s claims that BOC issues are an “FCC matter” which should be of
17 no concern to state commissions, ignores the long, established history of state
18 commission involvement and interest in Qwest’s BOC obligations under the
19 federal Act.

20 As explained in Exhibit TJG-2, the state commissions throughout Qwest’s 14-
21 state BOC territory played a crucial role in testing and improving Qwest’s OSS
22 and CMP, and determining the extent to which Qwest had met the requirements of
23 the 271 14-point checklist. The FCC stated as follows in the FCC order
24 approving Qwest’s 271 authority in Minnesota:

¹⁸⁴ *Qwest 9 State 271 Order* at ¶ 497.

1 2. In ruling on Qwest’s application, we wish to acknowledge the
2 effort and dedication of the Minnesota Public Utilities Commission
3 (Minnesota Commission), which has expended significant time and
4 effort overseeing Qwest’s implementation of the requirements of
5 section 271. The Minnesota Commission, working independently
6 and with the Regional Oversight Committee (ROC), a cooperative
7 group of state commissions in the Qwest region, conducted
8 proceedings to determine Qwest’s section 271 compliance. In
9 particular, the ROC worked together on the design and execution
10 of the regional operations support systems (OSS) testing. The
11 Minnesota Commission also conducted state-specific pricing
12 proceedings, and adopted the performance measurements and
13 standards developed through the ROC, including a Performance
14 Assurance Plan (PAP) based on Qwest’s PAP in Colorado. As the
15 Commission has repeatedly recognized, state proceedings
16 demonstrating a commitment to advancing the pro-competitive
17 purposes of the Act serve a vitally important role in section 271
18 proceedings. While the Minnesota Commission was unable to
19 reach a collective determination on certain issues, we commend the
20 state for its enormous time and effort in developing this
21 application.
22

23 3. The outstanding work of the Minnesota Commission and
24 Qwest’s extensive efforts to open its local exchange network to
25 competition have resulted in competitive entry in Minnesota...We
26 are confident that the hard work of the Minnesota Commission to
27 ensure that the local exchange market in Minnesota is open to
28 competition will benefit consumers by making increased
29 competition in all telecommunications service markets possible in
30 this state. We are also confident that the Minnesota Commission,
31 as it addresses allegations of past violations of the statute by Qwest
32 and considers any future problems that may develop, will continue
33 to ensure that Qwest meets its statutory obligations.¹⁸⁵

34 It is clear from this excerpt that BOC issues extend well beyond “FCC
35 matters.” State commissions have long been involved in BOC matters that
36 impact their respective states, with the explicit appreciation of the FCC.

¹⁸⁵ *In the Matter of Application by Qwest Communications International, Inc., for Authorization To Provide In-Region, interLATA Services in Minnesota*, Memorandum Opinion and Order, WC Docket No. 03-90, FCC 03-142, released June 26, 2003 (“FCC Qwest Minnesota 271 Order”), at ¶¶ 2-3.

1 Further, the FCC states that it expects the Minnesota Commission to
2 continue to ensure that these obligations are met.

3 Regarding the role of state commissions in monitoring Qwest’s continued
4 compliance with Section 271 obligations, the FCC said:

5 Working in concert with the Colorado, Idaho, Iowa, Montana,
6 Nebraska, North Dakota, Utah, Washington, and Wyoming
7 Commissions, we intend to closely monitor Qwest’s post-approval
8 compliance for these states to ensure that Qwest does not “cease []
9 to meet any of the conditions required for [section 271]
10 approval.”¹⁸⁶

11 The FCC also said: “We are confident that cooperative state and federal oversight
12 and enforcement can address any backsliding that may arise with respect to
13 Qwest’s entry into these nine states.”¹⁸⁷

14 Two things are clear from these FCC statements: (1) Qwest must continue to
15 satisfy the conditions required for 271 approval, and (2) the state commissions
16 play an important oversight and enforcement role, in conjunction with the FCC, to
17 address any Qwest backsliding. This is particularly relevant to the proposed
18 transaction because CenturyLink – a non-BOC ILEC which lacks experience with

¹⁸⁶ *Qwest 9 State 271 Order* at ¶ 498.

¹⁸⁷ *Qwest 9 State 271 Order* at ¶ 499. *See also, Id.* at footnote 1598: “We note that in all of the previous applications [for 271 authority] that the Commission has granted to date, the applicant was subject to an enforcement plan administered by the relevant state commission to protect against backsliding after BOC entry into the long-distance market. These mechanisms are generally administered by state commissions and derive from authority the states have under state law or under the federal Act. As such, these mechanisms can serve as critical complements to the Commission’s authority to preserve checklist compliance pursuant to section 271(d)(6).”

1 Section 271 obligations – will own and control Qwest¹⁸⁸ if the proposed
2 transaction is approved.

3 **Q. MR. JONES STATES THAT “THE NON-QWEST OPERATIONS ARE**
4 **NOT BOC PROPERTIES” AND “NO NON-BOC PROPERTY HAS BEEN**
5 **CONVERTED INTO A BOC UP TO THIS TIME.”¹⁸⁹ ARE THE CLECS**
6 **PROPOSING TO CHANGE THE BOC STATUS OF ANY OPERATING**
7 **COMPANY?**

8 A. No. Mr. Hunsucker mischaracterizes Condition 13 by claiming it would change
9 the BOC status of the Merged Company’s operating companies.¹⁹⁰ As shown
10 above and in Exhibit TJG-8, Condition #13 begins with the words: “In the legacy
11 Qwest ILEC territory...” This means that the Merged Company would be
12 classified as a BOC only in the legacy Qwest ILEC territory where Qwest is a
13 BOC today, and not in the “non-Qwest operations” or “non-BOC property,” as
14 Mr. Jones asserts. As CenturyLink’s own witness has testified, “the legacy Qwest
15 territories will continue to have 271 obligations.”¹⁹¹

¹⁸⁸ See, e.g., Jones Direct at p. 4, lines 11-13 (“At closing, Qwest will become a direct, wholly-owned subsidiary of CenturyLink and all Qwest subsidiaries, including Qwest Corp, will be indirectly owned and controlled by CenturyLink . . .”)

¹⁸⁹ Jones Rebuttal at p. 25, lines 7-9.

¹⁹⁰ Hunsucker Rebuttal at p. 47 (“Q. Can the Merged Company be classified as a BOC as the CLECs demand in Condition 13? A. No...”)

¹⁹¹ Hunsucker Supplemental Direct Testimony in the Oregon merger docket, Docket No. UM 1484, p. 12, lines 18-19 (June 22, 2010).

1 **3. Condition 15**

2 **Q. THE JOINT PETITIONERS STATE THAT CONDITON 15 REGARDING**
3 **WHOLESALE SUPPORT INFORMATION IS UNNECESSARY**
4 **BECAUSE OF THE EXISTING NOTICE REQUIREMENTS OF CMP**
5 **AND ICAS.¹⁹² DO THE CMP AND ICAS PROVIDE SUFFICIENT**
6 **PROTECTION FOR CLECS AND THEIR CUSTOMERS REGARDING**
7 **THIS ISSUE?**

8 A. No. As explained in my Direct Testimony, Qwest has in the past made unilateral
9 changes through CMP against the objections of CLECs. Therefore, the existing
10 CMP provisions cited by Joint Petitioners could be changed post-merger against
11 the objections of CLECs. Further, the fact that the Joint Petitioners have refused
12 to adopt Joint CLEC proposed Condition 17, which requires the Merged
13 Company to maintain Qwest’s CMP using the terms and conditions of the CMP
14 Document, calls into serious question whether the Joint Petitioners intend to
15 continue Qwest’s CMP post-merger. Ms. Stewart made a similar claim about
16 CMP and the ICAs with respect to OSS-related conditions, and I address this
17 claim further in my discussion below of Conditions 16, 19, and 20.

18 Mr. Hunsucker’s claim that Condition 15 would “modify negotiated agreements
19 that are already in place”¹⁹³ is not supported by any actual examples or other
20 evidence. Mr. Hunsucker’s testimony is also contrary to the language of

¹⁹² Stewart Rebuttal at pp. 18-19 and Hunsucker Rebuttal at pp. 38-39.

¹⁹³ Hunsucker Rebuttal at p. 39, lines 1-2.

1 Condition 15 itself, which expressly provides that “the information and notice
2 provided shall be consistent with the terms of applicable interconnection
3 agreements.” An express condition is needed to address the substantial changes
4 that may occur to escalation information, contact lists, account manager
5 information, etc., due to the restructuring associated with the proposed
6 transaction. When the terms of the ICAs were negotiated, they were intended to
7 address the normal day-to-day changes Qwest may make to this information in the
8 normal course of business; these provisions could not have addressed (or even
9 considered) the magnitude of changes that would take place if Qwest was
10 acquired by a different company and the wholesale operations of Qwest were
11 integrated with the wholesale operations of another company. Undoubtedly, the
12 merger will create many changes in personnel, which makes ready access to up-
13 to-date information particularly important. Problems of the scale and type that
14 occurred with the Hawaiian Telcom and FairPoint transactions, if they occur, will
15 only be compounded if it is not already known whom to contact and how to
16 escalate such issues. Condition 15 is designed to address harm related to the
17 proposed transaction.

18 **4. Conditions 17 and 18**

19 **Q. HAS CENTURYLINK FAIRLY DESCRIBED JOINT CLEC PROPOSED**
20 **CONDITION 17 RELATING TO CMP AND CONDITION 18 RELATING**
21 **TO WHOLESALE SUPPORT?**

1 A. No. Mr. Hunsucker claims that Joint CLEC Conditions #17 and #18 would
2 prevent the Merged Company from “reduc[ing] its costs through attrition of
3 employees whose functions have been automated or are redundant, and must
4 retain some legacy processes rather than determine if the processes can be
5 automated or improved to benefit both the company and the CLECs.”¹⁹⁴ Mr.
6 Hunsucker refers to these conditions as CLECs attempting to “dictate the number
7 of wholesale employees on the CenturyLink payroll and...dictate certain
8 processes.”¹⁹⁵ First, Condition #17 simply maintains the Qwest CMP process,
9 using the terms and conditions in the existing CMP Document. The Joint
10 Petitioners’ claim that this condition attempts to “dictate certain processes” makes
11 no sense given that this process already exists and that the Joint Petitioners have
12 proclaimed their intent to maintain Qwest’s CMP post-merger.¹⁹⁶

13 **Q. ARE CLECS DICTATING THE NUMBER OF WHOLESALE**
14 **EMPLOYEES ON THE CENTURYLINK PAYROLL UNDER**
15 **CONDITION 18, AS MR. HUNSUCKER CLAIMS?**

16 A. No. A fair reading of Condition 18 shows that wholesale volumes or other
17 circumstances warranting employee reductions will dictate the number of
18 CenturyLink/Qwest wholesale employees post-merger – not CLECs. Under
19 Condition 18, the Merged Company has the opportunity to demonstrate to the
20 state commission that conditions warrant further headcount reductions in

¹⁹⁴ Hunsucker Rebuttal at p. 47.

¹⁹⁵ Hunsucker Rebuttal at p. 47, lines 9-11.

¹⁹⁶ Stewart Rebuttal at p. 9.

1 wholesale operations. It would be the Merged Company and the state
2 commission determining whether such conditions exist under Condition 18, not
3 CLECs.

4 **Q. JOINT PETITIONERS STATE THAT QWEST HAS BEEN REDUCING**
5 **HEADCOUNT AT THE SAME TIME AS IT HAS BEEN INCREASING**
6 **EFFICIENCY AND REDUCING QWEST QPAP PENALTY PAYMENTS.**
7 **DOES THIS SHOW THAT CONDITIONS 17 AND 18 ARE**
8 **UNNECESSARY?**

9 A. No. Qwest's prior performance is not indicative of how the Merged Company
10 will operate if the proposed transaction is approved as filed. The control of
11 Qwest's wholesale operations will be taken over by CenturyLink – a company
12 that has a substantially smaller legacy wholesale operations than Qwest (due to
13 CenturyLink primarily serving rural areas in the past), and has no experience with
14 Qwest's systems, processes or BOC obligations. As I explained in my Direct
15 Testimony (at pages 143-144) and confirmed in Joint Petitioners' Rebuttal
16 Testimony,¹⁹⁷ Qwest's headcount, including wholesale headcount, has been
17 decreasing in recent years. There is no evidence that CenturyLink fully
18 understands or appreciates the resources that will be needed in Qwest's legacy
19 territory post-merger to sufficiently handle the significantly larger volumes than it
20 is accustomed to handling – particularly at a time when it is attempting to

¹⁹⁷ See, e.g., Hunsucker Rebuttal at p. 47 (“Qwest witness Robert Brigham also notes that Qwest has been reducing its headcount in wholesale operations even as the company has grown more effective...”)

1 integrate a company that is double its current size. And Qwest's prior
2 performance was not during a time when Qwest was pursuing merger-related
3 synergy savings through the integration of systems, platforms and personnel.
4 Therefore, Qwest's prior performance is not a reliable indicator concerning the
5 merger-related harms Conditions 17 and 18 are designed to address.

6 **Q. IS THE JOINT PETITIONERS' RELIANCE ON QWEST'S PRIOR MPAP**
7 **PAYMENTS SIMILARLY FLAWED?**

8 A. Yes. The MPAP payments Qwest has made between the years 2004 and 2009¹⁹⁸
9 has nothing to do with the proposed transaction, which was announced in April
10 2010. Again, Qwest's wholesale operations will be under the control of
11 CenturyLink if the proposed transaction is approved, and that new management
12 has not had to deal with a BOC's wholesale service quality performance reporting
13 or associated penalty payments. Indeed, CenturyLink has no track record of
14 compliance with and implementation of such wholesale performance assurance
15 provisions. Mr. Hunsucker states that CenturyLink has a CLEC performance
16 assurance plan in just one legacy CenturyLink market.¹⁹⁹ Further, Qwest was not
17 pursuing merger-related synergy savings or integrating the wholesale operations
18 of another company between 2004 and 2009. A more relevant reference point
19 about how a CenturyLink acquisition can impact wholesale service quality is the
20 service quality reports CenturyLink has been providing under the FCC's

¹⁹⁸ Williams Rebuttal at p. 4, line 21 through p. 5, line 2.

¹⁹⁹ Hunsucker Rebuttal at p. 7, lines 11-12.

1 Embarq/CenturyTel merger conditions. I discussed these data at pages 83-84 of
2 my Direct Testimony (Highly Sensitive Trade Secret version).

3 **Q. MR. HUNSUCKER CLAIMS THAT CONDITIONS 17 AND 18 ARE AN**
4 **ATTEMPT TO MAKE IT MORE DIFFICULT FOR THE MERGED**
5 **COMPANY TO COMPETE.²⁰⁰ WHAT IS YOUR RESPONSE?**

6 A. Mr. Hunsucker's logic is flawed, that is unless he means that it will be more
7 difficult for CenturyLink to compete if CenturyLink cannot create synergies for
8 itself at the expense of its CLEC competitors. Certainly, it would be easier for
9 CenturyLink to compete if it could disadvantage its competitors by making
10 changes to its systems, process and products that have a "major effect on existing
11 CLEC operating procedures"²⁰¹ without using the CMP procedures continued by
12 Condition 17 and if it could "eliminat[e] . . .duplicate functions"²⁰² with no
13 requirement to maintain wholesale services at existing performance levels (Condition
14 18). In the Minnesota Joint Petition, Joint Petitioners state: "A financially
15 stronger company can continue to...compete against cable telephony
16 providers...and CLECs..."²⁰³ Conditions 17 and 18 are needed to help ensure
17 that the stronger company with a larger footprint, and substantially greater
18 bargaining power, does not create synergies for itself at the expense of its CLEC
19 competitors.

²⁰⁰ Hunsucker Rebuttal at p. 47, lines 20-22.

²⁰¹ Exhibit BJJ-24, CMP Document, §5.45.

²⁰² Joint Petitioners' FCC Joint Application at p. 21.

²⁰³ Joint Petition for Expedited Approval of Indirect Transfer of Control, May 13, 2010 ("Minnesota Joint Petition"), at p. 11.

1 Condition 17 maintains the existing Qwest CMP and CMP Document and
2 Condition 18 maintains the level of wholesale support that CLECs receive from
3 Qwest today. The existence of the Qwest CMP and the current level of support
4 for wholesale services have not impeded Qwest's ability to compete with CLECs
5 to date, and there is no reason to believe that maintaining Qwest's CMP and
6 current level of wholesale support would impede Qwest's ability to compete with
7 CLECs post-merger.

8 **5. Conditions 16, 19 and 20**

9 **Q. HAVE YOU REVIEWED MR. HUNSUCKER'S STATED CONCERNS**
10 **ABOUT CONDITIONS 16, 19 (AND SUBPARTS) AND 20 RELATING TO**
11 **OSS²⁰⁴?**

12 A. Yes. The concerns Mr. Hunsucker asserts about the OSS-related conditions
13 include the following: (1) they "change the legal obligations or voluntary
14 agreements";²⁰⁵ (2) "[t]here is no reason to assume that [Joint Petitioners] will
15 suddenly abandon their responsibilities following the close of this transaction;"²⁰⁶
16 (3) "any changes will occur only after a thorough and methodical
17 review...coordinate[d]...in advance through the Change Management Process

²⁰⁴ OSS include manual, computerized, and automated systems, together with associated business processes and the up-to-date data maintained in those systems. See *Local Competition First Report and Order*, 11 FCC Rcd at 15763-64, ¶¶517-18.

²⁰⁵ Hunsucker Rebuttal at p. 39, lines 21-22.

²⁰⁶ Hunsucker Rebuttal at p. 40, lines 4-5.

1 (CMP)”;²⁰⁷ (4) the Merged Company will operate Qwest’s OSS for at least 12
2 months post-merger;²⁰⁸ and (5) “CLECs claim that the CenturyLink OSS is
3 inferior to the Qwest OSS” is false and unsupported.²⁰⁹

4 **Q. WHAT ARE YOUR RESPONSES TO THESE CRITICISMS?**

5 A. First, Mr. Hunsucker does not, and cannot, explain how the requirements of
6 Conditions 19 and 16 to maintain the existing OSS, including associated support
7 (e.g., types and level of data, online information, industry notices, etc.), that
8 Qwest provides CLECs today will somehow change its legal obligations or
9 voluntary agreements. It is pursuant to those legal obligations and agreements
10 that Qwest provides OSS today.

11 Second, Mr. Hunsucker’s claim that CenturyLink will not “abandon” its
12 responsibilities ignores that CenturyLink has never had the same BOC obligations
13 that it will have going forward in legacy Qwest territory. CenturyLink cannot
14 give up what it has not had. This concern is at the heart of these OSS conditions.
15 It is precisely because CenturyLink has not had these BOC obligations and has
16 not undergone the extensive 271 review completed by Qwest that these
17 Conditions are necessary, as I explained in my Direct Testimony (at pages 42-47).

18 Third, CenturyLink’s claims about making changes after a “methodical review”
19 are addressed in my Direct Testimony (at pages 120-122 and 135-136) and I will

²⁰⁷ Hunsucker Rebuttal at p. 40, lines 6-13.

²⁰⁸ Hunsucker Rebuttal at p. 40.

²⁰⁹ Hunsucker Rebuttal at p. 41.

1 not repeat those arguments here. Although CenturyLink claims that changes will
2 be coordinated in advance through CMP, Joint Petitioners have refused to provide
3 a commitment in this regard by adopting Joint CLEC proposed Condition 17.
4 Fourth, I also explained in my Direct Testimony (at pages 119-120) why
5 CenturyLink's statement that it is "expected" to operate Qwest's OSS for at least
6 12 months following merger approval is insufficient to avoid merger-related harm
7 to CLECs.

8 Finally, CLECs' evidence that Qwest's OSS have superior functionality to that of
9 CenturyLink's OSS²¹⁰ has been bolstered by discovery responses received from
10 CenturyLink in which CenturyLink admits that its OSS for processing Local
11 Service Requests ("LSRs") does not have certain functionality, as further
12 described by Ms. Johnson of Integra in her Surrebuttal Testimony.²¹¹

13 **Q. WHAT IS YOUR RESPONSE TO MR. HUNSUCKER'S CLAIM THAT**
14 **CLECS "PROVIDE NO SUPPORT FOR THEIR CLAIM" THAT**
15 **CENTURYLINK OSS IS INFERIOR TO THE QWEST OSS?**²¹²

16 A. He is wrong, and has ignored the evidence I provided. At pages 55-57 of my
17 Direct Testimony, I described functionalities that are available through Qwest's
18 OSS that are not available through CenturyLink's OSS. I also explained at pages
19 57-58 that CenturyLink's legacy EASE OSS uses the same Virtual Front Office

²¹⁰ See, e.g., Gates Direct, at pp. 42-47, 55-58, 124-125 & Exhibit TJG-5.

²¹¹ See also Exhibit BJJ-27 to the Surrebuttal Testimony of Ms. Johnson.

²¹² Hunsucker Rebuttal at p. 41, lines 5-6.

1 (“VFO”) platform as was used by FairPoint Communications in its problematic
2 OSS cutover in Northern New England and by Frontier in West Virginia. To
3 date, the Joint Petitioners have ignored these examples and did not address them
4 in their Rebuttal Testimony. CWA also describes systems features and
5 functionalities that were previously available in legacy Embarq territory in North
6 Carolina that are no longer available after CenturyLink’s system integration
7 efforts.²¹³

8 Furthermore, the Joint Petitioners ignore my Direct Testimony stating that, “[t]he
9 existing Qwest OSS and its functionality is more well-documented, and preferred
10 by carriers that use both of the merging companies’ systems, than the existing
11 CenturyLink OSS.”²¹⁴ There could hardly be a better source of information
12 related to the capabilities of Qwest’s and CenturyLink’s wholesale OSS than
13 competitive carriers who currently use both companies’ OSS. In the opinion of
14 those carriers – i.e., CenturyLink’s future customers if the merger is approved –
15 Qwest’s OSS is preferred and should be used as the Merged Company’s OSS
16 platform going forward. If CenturyLink “recognizes the value of its wholesale
17 customers,”²¹⁵ it would take this strongly expressed preference into account and
18 provide its customers with the measure of business certainty they need to continue
19 to provide quality services to their end user customers.

²¹³ Gurganus Direct at pp. 5-6 and 8-9.

²¹⁴ Gates Direct at p. 124, lines 19-21.

²¹⁵ Hunsucker Rebuttal at p. 4, line 20.

1 **Q. REGARDING CONDITION 19 (AND SUBPARTS), THE JOINT**
2 **PETITIONERS STATE THAT YOUR SUGGESTION THAT THERE IS A**
3 **“SEPARATE DISTINCT SECTION 271 REQUIREMENT**
4 **SPECIFICALLY FOR OSS” IS INCORRECT.²¹⁶ IS THE JOINT**
5 **PETITIONERS’ CRITICISM WARRANTED?**

6 A. No. At page 37 of my Direct Testimony, I state: “Nondiscriminatory access to
7 OSS is also one of the checklist items on the 14-point competitive checklist
8 applicable to BOCs under Section 271 of the Act.” Consistent with this, the FCC
9 states:

10 Under checklist item 2, a BOC must demonstrate that it provides
11 nondiscriminatory access to the five OSS functions: (1) pre-
12 ordering; (2) ordering; (3) provisioning; (4) maintenance and
13 repair; and (5) billing. In addition, a BOC must show that it
14 provides nondiscriminatory access to UNEs and that it has an
15 adequate change management process in place to accommodate
16 changes made to its systems.²¹⁷

17 The Joint Petitioners suggestion that there is not a separate requirement under
18 Section 271 of the Act applicable to OSS is wrong. While both sections 251 and
19 271 require nondiscriminatory access to OSS, Congress and the FCC have a two-
20 prong requirement related to OSS for BOCs (Sections 251 and 271) and a single-
21 prong requirement related to OSS for non-BOC ILECs (Section 251).
22 Accordingly, there is an OSS requirement under Section 271 that applies to BOCs
23 that does not apply to non-BOC ILECs; BOCs must not only satisfy Section 251

²¹⁶ Stewart Rebuttal at p. 20 and Hunsucker Rebuttal at p. 10.

²¹⁷ *Qwest 9 State 271 Order* at ¶ 34.

1 but also must demonstrate and maintain ongoing Section 271 compliance in order
2 to provide and continue providing in-region interLATA services.

3 **Q. DOES THIS MEAN THAT IF CENTURYLINK'S OSS IS SUBJECT TO**
4 **THE SECTION 251 REQUIREMENT THAT IT ALSO SATIFIES THE 271**
5 **REQUIREMENT THAT APPLIES TO BOCS?**

6 A. No. The Joint Petitioners' implication that CenturyLink's OSS is 271 compliant
7 simply because it has operated with its legacy OSS under Section 251 is incorrect.
8 Certainly the state commissions, the FCC and the Regional Oversight Committee
9 would not have performed three years worth of testing on Qwest's OSS during the
10 271 review process if operating under Section 251 was all that was required.
11 Further, until just recently, CenturyTel's legacy OSS consisted largely of manual
12 processes instead of automated systems. CenturyTel can hardly claim that
13 replacing Qwest's automated OSS systems with these manual processes would
14 have met Qwest's obligations as a BOC under Section 271 – yet, according to
15 CenturyLink, these manual processes met legacy CenturyTel's obligations under
16 Section 251. Notwithstanding that CenturyLink is currently integrating more
17 automated systems in legacy CenturyLink territory, these systems have been
18 designed for CenturyLink (and for CenturyLink's volumes), and even if
19 (assuming for the sake of argument) that this OSS satisfies CenturyLink's
20 obligations under Section 251 of the Act, this says nothing about whether this
21 OSS would satisfy Qwest's obligations under Section 271 of the Act.

1 **Q. MR. HUNSUCKER STATES THAT “THERE IS NO EVIDENCE THAT**
2 **[CENTURLINK’S] SYSTEMS DO NOT MEET THE REQUIREMENTS**
3 **OF THE ACT.”²¹⁸ SHOULD THIS ASSERTION BE GIVEN ANY**
4 **WEIGHT?**

5 A. No. This appears to be a vague suggestion that CenturyLink’s OSS would satisfy
6 Qwest’s requirements under Sections 251 and 271 if the Merged Company
7 decided to replace Qwest’s OSS with CenturyLink’s OSS. However, and this is
8 critical, there is absolutely no evidence regarding CenturyLink’s legacy OSS
9 being able to be used in Qwest’s legacy territory. Instead of providing any details
10 about the Joint Petitioners’ post-merger OSS plans so that systems experts can
11 explore the viability of the plan and potential impact, the Joint Petitioners blame
12 others for not providing evidence that can be provided only by the Joint
13 Petitioners. This is an effort to place the burden on CLECs when, as the
14 petitioning parties, the Joint Petitioners bear the burden in this case.

15 Moreover, evidence in the record calls into question the ability of CenturyLink’s
16 OSS to meet the requirements of the Act in Qwest’s legacy territory. The largely
17 manual nature of CenturyTel’s legacy OSS would not meet the requirements of
18 the Act in Qwest’s legacy territory. CenturyTel’s legacy OSS did not even pass
19 muster in the non-BOC CenturyTel-Embarq merger, in which the FCC required
20 that wholesale OSS be provided through Embarq’s systems.²¹⁹ A manually-

²¹⁸ Hunsucker Rebuttal at p. 10, line 15.

²¹⁹ CenturyTel-Embarq merger, FCC 09-54, Appendix C, p. 28.

1 intensive OSS cannot efficiently process the volume and types of wholesale
2 orders experienced in Qwest's BOC territory, particularly since Qwest has
3 reduced headcount in recent years. The comparison of LSR volumes handled by
4 Qwest's OSS and CenturyLink's OSS is also relevant to this issue. I also
5 described in my Direct Testimony functionalities that are available through
6 Qwest's OSS that are not available through CenturyLink's OSS.²²⁰ My point is
7 that there is ample (and mounting) evidence which calls into question the ability
8 of CenturyLink's OSS to be integrated in Qwest's BOC territory without a
9 decrease in functionality or service quality.

10 Furthermore, it is objectionable that Mr. Hunsucker would criticize a lack of
11 evidence about the ability of the Merged Company's OSS to provide
12 nondiscriminatory access in Qwest's territory, post-merger, when the Joint
13 Petitioners have provided no information about its plans for systems integration,
14 and particularly about OSS integration, post-merger. The absence of such
15 information makes it even more critical to adopt CLEC Condition 19 (and
16 subparts). This condition protects wholesale customers, end user customers, and
17 competition from the significant risk caused by the Joint Petitioners' currently-
18 undefined OSS integration plans, while at the same time providing the Merged
19 Company the ability to modify its OSS after three years in a similar way to how

²²⁰ Gates Direct at pp. 55-57. Also, in Minnesota, Integra asked CenturyLink in Data Request 18: "If EASE provides a CSR, does EASE pre-populate any fields of the LSR such as end-user name and address from the pre-order validation CSR or any other form?" CenturyLink responded "This functionality is on the EASE/LSR development road map and is currently being evaluated." In other words, the answer is no. *See also*, Exhibit TJG-5 at p. 30. This functionality is available via Qwest's OSS.

1 Qwest's OSS was determined to be acceptable under Section 271 of the Act. This
2 strikes a reasonable balance between protecting the wholesale competitive market
3 from harm and allowing the Merged Company to pursue integration efficiencies.

4 **Q. MS. STEWART CRITICIZES THE THIRD-PARTY TESTING**
5 **REQUIREMENT OF CONDITION 19(B). SHE SAYS THAT THIRD**
6 **PARTY TESTING IS NOT REQUIRED BY THE ACT.²²¹ DOES THIS**
7 **TELL THE WHOLE STORY?**

8 A. No. As described in detail in my Exhibit TJG-2, Qwest's OSS underwent
9 extensive third-party testing during the 271 review process. The fact that there is
10 no explicit mention of independent third party testing in the Act did not prevent
11 regulators from requiring third party testing then, and it should not prevent it now.
12 Third party testing is a mechanism used to determine compliance with the Act's
13 requirements. This set a "bar" of sorts for these OSS systems in relation to
14 needed functionality and their ability to handle commercial volumes in Qwest's
15 territory. Joint CLEC proposed Condition 19(b) requires that third-party testing
16 be conducted "[f]or any Qwest system that was subject to third party testing (*e.g.*,
17 as part of a Section 271 process)..." In other words, Condition 19(b) would
18 ensure that if the Merged Company replaces a system that was originally subject
19 to third-party testing, the replacement system would undergo similar third-party
20 testing. If the Merged Company is allowed to replace Qwest systems that have
21 been third-party tested with systems that have not undergone similar third-party

²²¹ Stewart Rebuttal at p. 21.

1 testing, the “bar” would be effectively lowered for these systems as a result of the
2 merger. The Joint Petitioners should not undermine all of the work that was
3 conducted to test Qwest’s OSS systems because they want to merge.

4 **Q. PLEASE ELABORATE ON THE ROLE OF INDEPENDENT, THIRD-**
5 **PARTY TESTING FOR TESTING OSS COMMERCIAL READINESS.**

6 A. The FCC has previously concluded that the most probative evidence that OSS
7 functions are operationally ready is actual commercial usage. To date, there is no
8 evidence that CenturyLink’s legacy OSS is capable of handling the actual
9 commercial usage that it would be required to handle in Qwest’s legacy territory
10 if the proposed transaction is approved. Without this actual commercial usage
11 experience, the second-best option is independent, third-party testing. The FCC
12 said:

13 The most probative evidence that OSS functions are operationally
14 ready is actual commercial usage. Absent sufficient and reliable
15 data on commercial usage, the Commission will consider the
16 results of carrier-to-carrier testing, independent third-party testing,
17 and internal testing in assessing the commercial readiness of a
18 BOC’s OSS. Although the Commission does not require OSS
19 testing, a persuasive test will provide us with an objective means
20 by which to evaluate a BOC’s OSS readiness where there is little
21 to no evidence of commercial usage, or may otherwise strengthen
22 an application where the BOC’s evidence of actual commercial
23 usage is weak or is otherwise challenged by competitors. *The*
24 *persuasiveness of a third-party review, however, is dependent*
25 *upon the qualifications, experience and independence of the*
26 *third party and the conditions and scope of the review itself. If*

1 *the review is limited in scope or depth or is not independent and*
2 *blind, the Commission will give it minimal weight.*²²²

3 Internal OSS testing that is not independent and blind is inferior to a truly
4 independent third-party test in determining a BOC's OSS commercial readiness.
5 Though CenturyLink claims that it extensively tests its own OSS, it has admitted
6 that this testing does not involve third-party testing. This means that
7 CenturyLink's OSS testing is not independent or blind, and would therefore, be a
8 step backwards for Qwest OSS that has undergone years of extensive and
9 verifiable third-party testing. The FCC has found that independent, third-party
10 testing is crucial for determining the commercial readiness of a BOC's OSS (at
11 least when no actual commercial usage experience is available).

12 **Q. MS. STEWART STATES: "MR. GATES PROVIDES NO EVIDENCE**
13 **THAT AN EXISTING INTERFACE THAT IS HANDLING**
14 **COMMERCIAL VOLUMES TODAY, SUCH AS CENTURYLINK'S,**
15 **CANNOT BE MODIFIED AND ADAPTED TO FUNCTION AS WELL AS**
16 **OR BETTER THAN AN EXISTING INTERFACE."**²²³ **IS THIS A VALID**
17 **CRITICISM?**

18 A. No. Again, Joint Petitioners attempt to reverse the burden of proof. It is the
19 Petitioners that have provided insufficient evidence to show that an existing
20 interface is handling commercial volumes today or that it could or should be

²²² *Qwest 9 State 271 Order*, Appendix K "Statutory Requirements" at p. K-16 (emphasis added).

²²³ Stewart Rebuttal at p. 22, lines 1-3.

1 modified to do so. Though Ms. Stewart does not clearly identify what “existing
2 interface” would be replaced, presumably she is talking about replacing an
3 existing *Qwest* interface with an existing CenturyLink interface.²²⁴ This is an
4 unfair criticism given that, according to the Joint Petitioners, no such evidence
5 exists. As explained in the FCC excerpt above, whether or not an OSS can handle
6 commercial volumes is best determined through commercial usage, and if no
7 commercial usage exists, then third-party testing should be undertaken. There is
8 no commercial usage data of CenturyLink’s OSS handling commercial volumes
9 in Qwest’s region because the two companies use different OSS today. And there
10 is no testing results (third-party or otherwise) showing the extent to which
11 CenturyLink’s legacy OSS could or could not handle Qwest’s commercial
12 volumes. Indeed, the Joint Petitioners have purportedly not even made any
13 decisions about the OSS the Merged Company intends to use in Qwest’s territory
14 post-merger.²²⁵ This evidence resides with the Joint Petitioners, and they have
15 elected to not even attempt to meet their burden in this respect. That is why
16 Condition 19(b) is critical: it would ensure that after at least three years, if the
17 Merged Company decides to replace an existing OSS interface that has been
18 third-party tested, verifiable and independent evidence would be collected and

²²⁴ *See, e.g.*, [***HIGHLY SENSITIVE TRADE SECRET INFORMATION SUBJECT TO
ADDITIONAL PROTECTION BEGINS [REDACTED]
[REDACTED] HIGHLY
SENSITIVE TRADE SECRET INFORMATION SUBJECT TO ADDITIONAL PROTECTION
ENDS***]

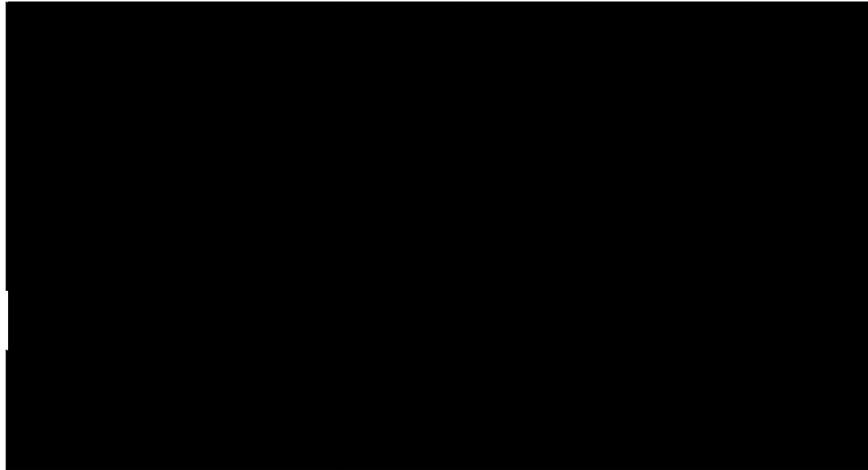
²²⁵ *See, e.g.*, Exhibit AHA-3 to the Direct Testimony of Dr. Ankum at pp. 1-5.

1 evaluated to determine whether the replacement interface could handle legacy
2 Qwest's commercial volumes.

3 **Q. PLEASE COMPARE THE VOLUMES HANDLED BY QWEST'S OSS**
4 **VERSUS THE VOLUMES HANDLED BY CENTURYLINK'S OSS.**

5 A. Both CenturyLink and Qwest provided data regarding the volumes of Local
6 Service Requests or LSRs submitted by type of OSS (i.e., application-to-
7 application, web-based Graphical User Interface ("GUI") or fax/email). The
8 following table provides a comparison of CenturyLink's and Qwest's data:

9 **[***BEGIN TRADE SECRET**



10
11 **END TRADE SECRET***]**

12 This data shows that, in Minnesota, Qwest's OSS processes about **[***BEGIN**
13 **TRADE SECRET [REDACTED] END TRADE SECRET***]** LSRs than does
14 CenturyLink's OSS. Despite the Joint Petitioners' statement that CenturyLink's

1 OSS is estimated to handle about one million orders in 2010,²²⁶ there's no reason
2 to believe that CenturyLink's legacy OSS could handle the volumes experienced
3 in Qwest's legacy region. This data also shows that [*****BEGIN TRADE**

4 **SECRET** [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] **END TRADE SECRET***]**

8 Therefore, any changes to Qwest's OSS would be more impactful on CLECs than
9 changes to CenturyLink's OSS [*****BEGIN TRADE SECRET** [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 **END TRADE SECRET***].**

14 **Q. MS. STEWART STATES THAT THE SYSTEMS AND PROCESSES**
15 **THAT WERE THIRD PARTY TESTED MORE THAN EIGHT YEARS**
16 **AGO ARE NOT THE SAME SYSTEMS AND PROCESSES BEING**
17 **UTILIZED IN THE QWEST TERRITORY TODAY.²²⁷ PLEASE**
18 **RESPOND.**

19 **A. Qwest's IMA was subject to third-party testing. Ms. Stewart suggests that**
20 **because IMA-EDI was transitioned to IMA-XML, the OSS that was third-party**

²²⁶ Stewart Rebuttal at p. 22, footnote 12.

²²⁷ Stewart Rebuttal at p. 22.

1 tested has changed and would not require third-party testing under Condition 19.
2 That is incorrect. Qwest Change Request (“CR”) #SCR121305-01²²⁸ (regarding
3 the change from IMA-EDI to IMA-XML) indicates that the Business Process
4 Layer (“BPL”) did not change in the transition to XML and indicates that the CR
5 just changes how information is passed and how the connection is made.²²⁹ In
6 other words, the functionality did not change. This is different from changing
7 systems, as when CenturyLink changed from CenturyTel’s IRES to Embarq’s
8 EASE, and CLECs lost the previously available functionality of the system
9 populating a CLEC’s LSR with information (*e.g.*, the end-user’s customer address
10 from the pre-order validation form).²³⁰ It is also different from changing from
11 Qwest’s IMA-XML to CenturyLink’s EASE system, which has different
12 functionality. For example, CenturyLink’s responses to Integra’s Third Set of
13 Information Requests in Minnesota indicate that EASE does not have pre-order
14 functions that Qwest IMA has. These pre-order functions include Meet Point
15 Query Validation, Raw Loop Data Validation, Telephone Number Reservation,
16 Loop Qualification, and Appointment Scheduling.²³¹

17 The very fact that Joint Petitioners are suggesting that the Merged Company
18 should be allowed to replace Qwest’s existing IMA-XML OSS interface with

²²⁸ Available at: http://www.qwest.com/wholesale/cmp/archive/CR_SCR121305-01.html

²²⁹ For example, Qwest-prepared CMP meeting minutes from a 1/25/06 Ad Hoc CMP Meeting which state: “Comcast - said that it would helpful if Qwest could provide a document on the order flow. Connie Winston - Qwest said that the flow is not changing and that with EDI all validation is the BPL. Connie said that layer will enforce the same business rules with XML.” *Id.*

²³⁰ Exhibit TJG-5, p. 30.

²³¹ See Johnson Surrebuttal & Exhibit BJJ-27.

1 CenturyLink's EASE, without independent third-party testing, suggests that
2 CenturyLink intends to move away from Qwest's OSS (IMA-XML, in this
3 example) and to do so without such third-party testing. This testimony further
4 supports the need for Joint CLEC proposed Condition 19 (and subparts) to avoid
5 merger-related harm.

6 **Q. MS. STEWART CLAIMS THAT PROTECTIONS ARE ALREADY IN**
7 **PLACE BECAUSE CHANGES TO QWEST OSS WOULD BE HANDLED**
8 **THROUGH CMP AND SUBJECT TO ICAS.²³² DOES THIS OBVIATE**
9 **THE NEED FOR CONDITION 19(B)?**

10 A. No. The Joint Petitioners have refused to adopt Joint CLEC proposed Condition
11 17 that would assure the Qwest CMP and CMP Document are maintained, and
12 have refused to adopt Joint CLEC proposed Condition 8 that would allow existing
13 ICAs to be extended. If the Joint Petitioners are going to rely on the existing
14 Qwest CMP and ICAs as the basis for its claim that sufficient protections already
15 exist, then it seems logical that the Joint Petitioners would agree to Joint CLEC
16 proposed conditions 8 and 17 and commit to leaving the existing CMP and ICAs
17 in place post-merger. To date, the Joint Petitioners have rejected all of the Joint
18 CLEC proposed conditions.

²³² Stewart Rebuttal at pp. 22-26.

1 In any event, CMP and the ICAs alone are not enough to prevent merger-related
2 harm due to replacement of independent third-party tested systems with systems
3 that have not been third-party tested.

4 **Q. ARE THERE PROCEDURES IN QWEST'S CMP DOCUMENT THAT**
5 **ADDRESS THE INTRODUCTION AND RETIREMENT OF AN**
6 **EXISTING OSS INTERFACE AND, IF SO, WHY DO YOU SAY THEY**
7 **ARE NOT ENOUGH BY THEMSELVES?**

8 A. Yes. Section 7.0 of the CMP Document addresses "Introduction of a new OSS
9 interface" and Section 9.0 addresses "Retirement of an existing OSS interface."²³³
10 An OSS migration or integration involves significant back-end systems²³⁴ work,
11 as well as potential changes to CLEC-facing interfaces. If a change to a back-end
12 system is not intended to impact CLECs (*e.g.*, a change to a billing system that
13 will not affect how the CLEC receives its bill or how the bill appears), the change
14 may not be handled in CMP, and certainly will not be handled through these
15 sections of the CMP Document on retirement and introduction of an OSS
16 interface (as a billing system is not an interface). But, as the experiences in other
17 mergers have shown, merger-related changes to back-end systems and migration
18 of data from one back-end system to another can result in significant retail and
19 wholesale customer impacting problems.

²³³ The CMP Document is Exhibit BJJ-24 to the Integra Direct Testimony of Ms. Johnson.

²³⁴ Unlike EASE or IMA (CLEC-facing interfaces in that CLECs interact with them for pre-ordering and ordering), billing systems are back-end systems that CLECs do not interact with directly but, when changes to the billing system occur, the changes may also impact CLECs and their customers.

1 While the CMP Document has tools to address introduction and retirement of
2 OSS interfaces, as well as periodic modification of OSS, those procedures are
3 suited for the types of systems modifications for which it has been used over the
4 years, and not for the type of major migration of data that would occur if
5 CenturyLink integrated its legacy OSS into Qwest's territory. Qwest maintains
6 extensive data in its systems, including customer-identifying information, retail
7 and wholesale customer account information, billing and repair records, telephone
8 number assignments, identification of serving wire centers for customers, network
9 information regarding the design and configuration of the network, and
10 information indicating where and how CLECs connect with Qwest's network, *etc.*
11 Changes to, or misinterpretation of, data has the potential to impact 911 response,
12 the routing of local and long distance calls, billing, directory listings, dispatching
13 of technicians during service outages, and other customer services.

14 Data integrity is, therefore, a key issue in merger-initiated OSS migrations or
15 conversions, as I discuss below and in my earlier discussion of the Embarq North
16 Carolina conversion (in which data mapping errors were at the heart of many
17 problems). No other acquisition of this magnitude involving Qwest, much less of
18 an entire BOC by a non-BOC incumbent LEC, has occurred during the history of
19 Qwest CMP. If CenturyLink integrates its legacy OSS into Qwest's territory or
20 makes significant changes to Qwest's OSS, a *combination* of maintaining OSS
21 for a defined time period for a measure of stability during company upheaval,
22 ensuring readiness and a smooth transition afterward through oversight and third

1 party testing, and notifying and involving CLECs through CMP will be required.
2 Together, Joint CLECs' recommended conditions work to address all of these
3 needs.

4 **Q. ARE THERE OTHER CONCERNS ABOUT CMP IF CENTURYLINK**
5 **DECIDES TO OVERHAUL QWEST'S EXISTING OSS OR INTEGRATE**
6 **ITS LEGACY OSS INTO QWEST'S TERRITORY?**

7 A. Yes. CMP is designed to address change requests introduced by Qwest as well as
8 submitted by CLECs. If the CMP is jammed up due to CenturyLink's decision to
9 replace Qwest's existing OSS, the backlog of CLEC-requested change requests
10 would quickly grow, leading to significant delay for systems enhancements that
11 CLECs desire, or blockage of CLEC-initiated change requests altogether. This
12 would undermine the purpose of the CMP and harm CLEC access to Qwest's
13 OSS.

14 **Q. ARE THERE EXAMPLES THAT SUGGEST THAT THE USUAL**
15 **CHANNELS MIGHT GET OVERLOADED?**

16 A. Yes. In the case of the recent FairPoint systems cutover, over 800 "issues" (or
17 problems) have been raised since February 2009, many of which are major (not
18 minor) issues.²³⁵ And there are still significant problems as CRC
19 Communications of Maine, Inc., explained to the New Hampshire Public Utilities
20 Commission:

²³⁵ FairPoint's log of issues is available at:
http://www.fairpoint.com/wholesale/customer_resources/change_management.jsp

1 CLECs continue to experience significant problems with wholesale
2 provisioning and billing issues despite the fact that more than 15
3 months have passed since the cutover from Verizon's back office
4 systems...The record before the Commission is quite clear - there
5 are still significant problems with basic systems functionality that
6 need to be remediated....the Liberty List of Continuing CLEC
7 Issues - contains over 109 issues that *currently* impact CLECs and
8 their customers.²³⁶

9 All of these problems have occurred despite the fact that FairPoint is utilizing its
10 Wholesale User Forum "Change Management" process.²³⁷ CLECs have also
11 conducted weekly and bi-weekly meetings with FairPoint to attempt to resolve
12 problems:

13 Unfortunately, despite all of the hard work on both sides of the
14 table and the fact that FairPoint has acknowledged the validity of
15 our concerns and claims, its personnel are severely limited by
16 FairPoint's internal billing systems and are unable to permanently
17 correct the underlying problems with the software that generate the
18 erroneous bills. FairPoint's inability to make permanent fixes or to
19 get long-standing issues addressed causes frustration for both
20 FairPoint and CRC because it means that the same billing errors
21 reoccur month after month, generating a continued need for our bi-
22 weekly meetings and significant manual work by both sides.²³⁸

23 It is clear that FairPoint's use of its change management process to implement its
24 OSS cutover, as well as additional frequent meetings, have not been successful in
25 avoiding hundreds of problems, some of which are continuing.

²³⁶ Post Hearing Brief of CRC Communications of Maine, Inc., New Hampshire PUC Docket No. DT-10-025, at pp. 2-3.

²³⁷ http://www.fairpoint.com/wholesale/customer_resources/change_management.jsp ("OSS Interface Change Management").

²³⁸ Testimony of Ed Tisdale on behalf of CRC Communications of Maine, Inc., New Hampshire PUC Docket No. DT 10-025, April 19, 2010, at p. 3.

1 To put FairPoint's problems in perspective, I have compared FairPoint's log of
2 incidents (or problems) to Qwest's CMP log for systems change requests.²³⁹
3 Since 2003, Qwest has had 780 systems change requests, compared to 818
4 "incidents" logged by FairPoint since February 2009. In other words, FairPoint
5 has logged more systems problems (things that are broken) in the last year and
6 one-half than systems change requests (where Qwest or a CLEC is introducing a
7 systems modification) submitted in Qwest's CMP in the past seven years.

8 **Q. DID FAIRPOINT PROVIDE ANY ASSURANCES PRIOR TO THE**
9 **APPROVAL OF ITS MERGER WITH VERIZON THAT ITS EXISTING**
10 **PROCESSES WERE SUFFICIENT TO ADDRESS THE OSS CHANGES**
11 **THAT WOULD OCCUR POST-MERGER?**

12 A. Yes. FairPoint testified as follows in May 2007:²⁴⁰

13 Our intention is to collaborate with carriers and make the transition
14 to FairPoint as smooth and seamless as reasonably possible.

15 CenturyLink testifies in this case:

16 the Transaction will be virtually seamless to Qwest and
17 CenturyLink Minnesota customers.²⁴¹

18 FairPoint's prediction about a "seamless" transition certainly proved inaccurate,
19 and there is no reason to believe that CenturyLink's claim will be any more
20 accurate. *See also*, Exhibit AHA-2 to the Direct Testimony of Dr. Ankum.

²³⁹ http://www.qwest.com/wholesale/cmp/archive/crnumber_system_index.html

²⁴⁰ Direct Testimony of Michael Haga on behalf of FairPoint Communications, Inc., New Hampshire PUC Docket No. DT 07-11, March 23, 2007, at p. 16.

²⁴¹ Jones Direct at p. 5, lines 17-18.

1 **6. Conditions 21, 23, 26 and 27**

2 **Q. MR. HUNSUCKER STATES THAT CONDITIONS 21, 23, 26 (AND**
3 **SUBPARTS) AND 27 REGARDING COMPLIANCE WITH THE LAW**
4 **WOULD BE “ENTIRELY ACCEPTABLE FOR CENTURYLINK” IF**
5 **THEY “STOPPED AT WANTING COMPLIANCE WITH APPLICABLE**
6 **LAW” BUT THEY DO “MUCH MORE THAN ASK FOR COMPLIANCE**
7 **WITH APPLICABLE LAW AND AGREEMENT TERMS.”²⁴² IS HE**
8 **CORRECT?**

9 **A. No.** To demonstrate that these conditions do not expand obligations beyond what
10 is required today, I have provided the conditions in their entirety below:

11 21. The Merged Company will process orders in compliance with federal
12 and state law, as well as the terms of applicable interconnection
13 agreements.

14
15 23. The Merged Company will provide nondiscriminatory access to
16 directory listings and directory assistance in compliance with federal and
17 state law. Specifically, the Merged Company will be responsible for
18 ensuring that all directory listings submitted by CLECs for inclusion in
19 directory assistance or listings databases are properly incorporated into
20 such databases (whether such databases are maintained by the Merged
21 Company or a third party vendor). Further the Merged Company will
22 ensure that CLECs’ subscriber listings are accessible to any requesting
23 person on the same terms and conditions that the Merged Company’s
24 subscriber listings are available to any requesting person.

25
26 26. After the Closing Date, the Merged Company will engineer and
27 maintain its network in compliance with federal and state law, as well as
28 the terms of applicable interconnection agreements. Resources will not be
29 diverted to merger-related activities at the expense of maintaining the
30 Merged Company’s network.

²⁴² Hunsucker Rebuttal at p. 29.

- 1 a. The Merged Company shall not engineer the transmission
2 capabilities of its network in a manner, or engage in any policy,
3 practice, or procedure, that disrupts or degrades access to the local
4 loop.
5 b. The Merged Company will retire copper in compliance with
6 federal and state law, as well as the terms of applicable
7 interconnection agreements and as required by a change of law.
8 c. The Merged Company will not engineer or maintain the network
9 (including routing of traffic) in a manner that results in the
10 application of higher rates for traffic or inefficiencies for wholesale
11 customers.
12

13 27. The Merged Company will provide conditioned copper loops in
14 compliance with federal and state law and at rates approved by the
15 applicable state commission. Line conditioning is the removal from a
16 copper loop of any device that could diminish the capability of the loop to
17 deliver xDSL. Such devices include bridge taps, load coils, low pass
18 filters, and range extenders. Insofar as it is technically feasible, the
19 Merged Company shall test and report troubles for all the features,
20 functions and capabilities of conditioned copper lines, and may not restrict
21 its testing to voice transmission only. If the Merged Company seeks to
22 change rates approved by a state commission for conditioning, the Merged
23 Company will provide conditioned copper loops in compliance with the
24 relevant law at the current commission approved rates unless and until a
25 different rate is approved.

26 All of these conditions expressly refer to applicable law and ICAs, and Mr.
27 Hunsucker did not provide a single example of a “new” or “more expansive”²⁴³
28 obligation that is required by them. For example, on its face, Condition 21
29 requires “compliance with federal and state law, as well as the terms of applicable
30 interconnection agreements,” but Mr. Hunsucker does not explain why it is not
31 therefore “entirely acceptable to CenturyLink.”²⁴⁴ The same is true of the other
32 conditions, which mirror language from the law. Condition 26(a), for example,

²⁴³ Hunsucker Rebuttal at p. 29, line 15.

²⁴⁴ Hunsucker Rebuttal at p. 29.

1 reflects C.F.R. § 51.319(A)(8), which states: “An incumbent LEC shall not
2 engineer the transmission capabilities of its network in a manner, or engage in any
3 policy, practice, or procedure, that disrupts or degrades access to the local loop.”

4 **Q. HAS THE DEPARTMENT TESTIFIED THAT CONDITION 27 DOES**
5 **NOT IMPOSE NEW OR MORE EXPANSIVE OBLIGATIONS ON JOINT**
6 **PETITIONERS?**

7 A. Yes. DOC witness Mr. McCarthy states that “Condition 27 affirms that the
8 merged company will comply with the law to provide conditioned copper loops
9 suitable for digital subscriber line technology (as defined by the Federal
10 Communications Commission) at rates approved by state commissions.”²⁴⁵ Mr.
11 McCarthy states that condition 27 uses “language nearly identical to that in
12 law[.]”²⁴⁶ Further, the DOC notes that neither Qwest nor CenturyLink has agreed
13 to comply with the requirements related to conditioned copper loops.²⁴⁷
14 Furthermore, Mr. McCarthy recognizes that the provisioning of conditioned
15 copper loops is part of OSS, and that CenturyLink has indicated that the proposed
16 transaction will likely result in changes to that OSS, which the provision of

²⁴⁵ Rebuttal Testimony of Michael McCarthy on behalf of the Minnesota Department of Commerce, September 13, 2010 (“McCarthy Rebuttal”) at p. 7.

²⁴⁶ McCarthy Rebuttal at p. 7, lines 26-27.

²⁴⁷ McCarthy Rebuttal at p. 8, lines 12-23.

1 conditioned copper loops is a part.²⁴⁸ Ultimately, the DOC concludes that Joint
2 CLEC condition 27 is in the public interest.²⁴⁹

3 **7. Condition 24**

4 **Q. MR. HUNSUCKER OPPOSES CONDITION 24 RELATING TO**
5 **SURCHARGES AND OTHER FEES.²⁵⁰ WHAT IS CONDITION 24?**

6 A. Condition 24 applies to the anticompetitive practices and policies that
7 CenturyLink has engaged in its serving territories. The language of Condition 24
8 is as follows:

9 After the Closing Date, The Merged Company shall not assess any
10 fees, charges, surcharges or other assessments upon CLECs for
11 activities that arise during the subscriber acquisition and migration
12 process other than any fees, charges, surcharges or other assessments
13 that were approved by the applicable commission and charged by
14 Qwest in the legacy Qwest ILEC territory before the Closing Date.
15 This condition prohibits the Merged Company from charging fees,
16 charges, surcharges or other assessments, including:

17 (a) Service order charges assessed upon CLECs submitting local
18 service requests (“LSRs”) for number porting;

19 (b) Access or “use” fees or charges assessed upon CLECs that
20 connect a competitor’s own self-provisioned loop, or last mile
21 facility, to the customer side of the Merged Company’s network
22 interface device (“NID”) enclosure or box; and,

23 (c) “Storage” or other related fees, rents or service order charges
24 assessed upon a CLECs’ subscriber directory listings information

²⁴⁸ McCarthy Rebuttal at p. 5, lines 10-11 and p. 9, lines 20-24.

²⁴⁹ McCarthy Rebuttal at pp. 10-11.

²⁵⁰ Hunsucker Rebuttal at pp. 31-36.

1 submitted to the Merged Company for publication in a directory
2 listing or inclusion in a directory assistance database.

3 **Q. PLEASE RESPOND TO MR. HUNSUCKER'S TESTIMONY**
4 **REGARDING CONDITION 24.²⁵¹**

5 A. Mr. Hunsucker incorrectly suggests that the anticompetitive practices that
6 are prohibited by Condition 24 are a "distraction" and that CLECs are
7 simply trying to litigate issues in the merger that are best resolved in
8 arbitrations.²⁵² He ignores, however, that these charges are not currently
9 imposed by Qwest. Condition 24 is meant to prevent CenturyLink from
10 importing these "worst practices" into the Qwest region should the
11 transaction be approved.

12 **Q. AT PAGE 34 OF HIS REBUTTAL, MR. HUNSUCKER ARGUES**
13 **THAT CENTURYLINK SHOULD BE ALLOWED TO IMPOSE**
14 **SERVICE ORDER CHARGES FOR LNP ACTIVITIES. IS HE**
15 **CORRECT?**

16 A. No. Mr. Hunsucker's statements are not supported by the FCC's orders on cost
17 recovery for LNP. I provided the references to the FCC's rules in my Direct
18 Testimony at pages 69-70.

19 **Q. DOES QWEST CHARGE CLECS FOR LNP ONLY ORDERS?**

20 A. No.

²⁵¹ Hunsucker Rebuttal at pp. 31-36.

²⁵² Hunsucker Rebuttal at 31.

1 **Q. DO THE FCC ORDERS SPECIFICALLY PRECLUDE CARRIERS FROM**
2 **IMPOSING LNP COSTS ON OTHER CARRIERS?**

3 A. Yes. In its Third Report and Order, the FCC concluded that Section 251(e)(2) of
4 the Act requires ILECs to bear the costs to meet the obligations imposed by
5 Section 251(b)(2) on a competitively-neutral basis. In so holding, the FCC
6 determined that the costs of establishing number portability include: (1) costs
7 associated with the creation of the regional databases to support number
8 portability; (2) costs associated with the initial upgrading of the public switched
9 telephone network; and (3) “ongoing costs of providing number portability, such
10 as the costs involved in transferring a telephone number to another carrier...”²⁵³

11 In explaining the basis for its decision, the FCC has made several statements
12 concerning the proper way to distinguish carrier-specific costs directly related to
13 providing number portability (which must be recovered through end user
14 charges), from those carrier-specific costs that are not directly related to providing
15 number portability (which can be recovered via other means). For example, the
16 FCC has defined costs directly related to providing number portability in the
17 following manner:

18 we conclude that the costs of establishing number portability
19 include not just the costs associated with the creation of the
20 regional databases and initial physical upgrading of the public
21 switched telephone network for the provision of number

²⁵³ *Telephone Number Portability*, Third Report and Order (the “Cost Recovery Order”), 13 FCC Rcd 11701 (1998), ¶ 38.

1 portability, *but also the continuing costs necessary to provide*
2 *number portability.*²⁵⁴

3 The FCC also explained that the costs of number portability include:

4 the costs that a carrier incurs to make it possible to transfer a
5 telephone number to another carrier.²⁵⁵

6 Based upon this, and other statements, the FCC concluded that “carrier-specific
7 costs directly related to providing number portability are limited to costs carriers
8 incur specifically in the provision of number portability services, *such as ... the*
9 *porting of telephone numbers from one carrier to another.*”²⁵⁶

10 **Q. SO WHEN THE FCC USES THE TERM “PORTING OF TELEPHONE**
11 **NUMBERS FROM ONE CARRIER TO ANOTHER,” IT SPECIFICALLY**
12 **INCLUDES THE COSTS ASSOCIATED WITH TRANSMITTING AND**
13 **RECEIVING PORT REQUESTS (VIA THE LSR FORM)?**

14 A. Yes. In paragraph 14 of the Cost Classification Order, the FCC specifically
15 explained that when it used the phrase “porting telephone numbers from one
16 carrier to another” in the definition of carrier-specific costs directly related to
17 number porting, it intended to refer to certain systems used to transmit local
18 routing number information, and to the *act of* “transmitting porting orders
19 between carriers.”²⁵⁷ This statement tells us that the FCC expected that carriers
20 would incur “ongoing costs” associated with porting telephone numbers to other

²⁵⁴ *Id.*, ¶ 8 (emphasis added).

²⁵⁵ *Id.*, ¶ 36.

²⁵⁶ *Id.*, ¶ 72. (emphasis added)

²⁵⁷ Cost Classification Order, 13 FCC Rcd 24995, ¶ 14.

1 carriers, and that such costs included the costs associated with “transmitting
2 porting orders” between carriers.

3 **Q. DID THE FCC CONTEMPLATE THAT CARRIERS MAY INCUR**
4 **ADDITIONAL COSTS IN FULFILLING THEIR LNP OBLIGATIONS?**

5 A. Yes. The FCC specifically contemplated that its cost classification decisions
6 would “cause some carriers, including small and rural LECs, to incur costs that
7 they would not ordinarily have incurred in providing telecommunications
8 service.”²⁵⁸ The FCC made this decision because it is required, by Section
9 252(e)(2), to establish cost distribution and recovery rules in a manner that is
10 “competitively neutral.”

11 **Q. HAS THE FCC EXPLAINED WHETHER RECOVERING COSTS FROM**
12 **OTHER CARRIERS IS CONSISTENT WITH THE COMPETITIVE**
13 **NEUTRALITY PRINCIPLE?**

14 A. Yes, the FCC has made it clear that recovery of costs through other carriers would
15 *not* be consistent with the principles of competitive neutrality. For example, the
16 FCC explained that if the Commission did not use a competitive neutrality
17 standard, or only used that standard for the distribution (but not recovery) of
18 costs, then “carriers could effectively undo this competitively neutral distribution
19 by recovering from other carriers.”²⁵⁹ That is why the FCC reaffirmed this
20 finding in its *2002 Reconsideration Order*, when it ruled that carriers “*may not*

²⁵⁸ Cost Recovery Order, ¶ 73.

²⁵⁹ *Id.*, ¶ 39.

1 *recover number portability costs from other carriers through interconnection*
2 *charges.*”²⁶⁰ The FCC was very clear that assessing number porting charges on
3 other carriers is not competitively neutral.

4 **Q. MR. HUNSUCKER ALSO ARGUES THAT CARRIERS LIKE CHARTER**
5 **ARE USING THE NID AS A UNE. IS THIS CORRECT?**

6 A. No. Mr. Hunsucker is correct that NIDs are UNEs, but carriers like Charter and
7 other CLECs who have their own last-mile facilities do not need or use a NID
8 UNE (i.e., the cross connect device connecting the ILEC’s network wire with the
9 customer’s inside wire). These CLECs normally connect to the consumers inside
10 wire within the premises and, in very limited circumstances, they need to connect
11 to the inside wire within the customer’s side of the NID enclosure. This is not
12 “use” of the NID. In that situation, the CLEC does not use the cross-connect
13 feature (i.e., the actual NID within the enclosure), does not use the grounding, the
14 testing functionality, or the posts associated with the NID. As such, the NID is
15 not used.

16 **Q. DOES QWEST CHARGE CARRIERS FOR ACCESSING THE**
17 **CUSTOMER SIDE OF THE NID ENCLOSURE AS YOU DESCRIBED**
18 **ABOVE?**

²⁶⁰ *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578, ¶ 62 (2002) (“2002 Cost Recovery Reconsideration Order”), ¶ 7 (emphasis added).

1 A. No. To the best of my knowledge, only the legacy CenturyTel companies and
2 Windstream attempt to charge for this activity. The other ILECs, including
3 AT&T, Verizon and Qwest do not. Since these NID costs are already recovered
4 by the ILEC in local rates, and there is no cost associated with the connection that
5 occurs within the NID enclosure, there is no cost-basis for such a charge. As I
6 noted in my Direct Testimony at pages 67 through 69, the Missouri and
7 Wisconsin commissions have concluded that carriers should not be required to
8 compensate CenturyLink for accessing the customer side of the NID enclosure.

9 **Q. DOES MR. HUNSUCKER ADDRESS THE THIRD ASPECT OF**
10 **CONDITION 24, REGARDING STORAGE CHARGES FOR DIRECTORY**
11 **LISTINGS?**

12 A. He makes vague references to the issue, but doesn't address it specifically. I
13 address the directory listing storage and maintenance ("DLSM") charge that the
14 legacy Embarq companies have proposed at pages 65 to 67 of my Direct
15 Testimony. This is another example of an anticompetitive charge that
16 CenturyLink attempts to impose in its legacy ILEC territories that is specifically
17 prohibited by the FCC's rules. Specifically, CenturyLink does not impose them
18 on its own customers or CLECs who purchase UNEs or engage in resale. As
19 such, the rates are discriminatory, have no demonstrable basis in cost, and are
20 anticompetitive. To the best of my knowledge, all states (except Indiana) that
21 have addressed this charge have rejected it.

1 **Q. DOES QWEST IMPOSE THE DLSM CHARGE IN ITS TERRITORY?**

2 A. No. Again, Condition 24 is meant to prevent CenturyLink from implementing
3 this “worst practice” throughout its larger service territory post-merger.

4 **8. Condition 28**

5 **Q. WHAT IS CONDITION 28?**

6 A. Condition 28 applies to a single point of interconnection (“SPOI”):

7 28. At CLEC’s option, the Merged Company will interconnect with CLEC
8 at a single point of interconnection per LATA, regardless of whether the
9 Merged Company provides service in such LATA via multiple operating
10 company affiliates or a single operating company.

11 **Q. HAVE YOU REVIEWED CENTURYLINK’S STATED CONCERNS**
12 **ABOUT THIS CONDITION?**²⁶¹

13 A. Yes, I have. Mr. Hunsucker asserts the following concerns: (1) a SPOI
14 requirement does not apply to legacy CenturyLink companies, (2) CLECs want
15 CenturyLink to provide free transport, (3) a SPOI requirement is technically
16 infeasible and a superior form of interconnection, and (4) it is a complex and
17 onerous interconnection obligation. I will respond to these arguments in turn
18 below.

19 **Q. MR. HUNSUCKER STATES THAT CENTURYLINK – AS A NON-RBOC**
20 **– HAS LONG MAINTAINED THAT ITS COMPANIES ARE NOT**
21 **SUBJECT TO THE FCC REQUIREMENT THAT CLECS BE ALLOWED**

²⁶¹ Hunsucker Rebuttal at pp. 36-38.

1 **TO INTERCONNECT AT A SINGLE POI PER LATA. HOW DO YOU**
2 **RESPOND?**

3 A. The position CenturyLink has long-maintained is wrong. This requirement is
4 equally applicable to CenturyLink ILEC companies as it is Qwest ILEC
5 companies. Section 251(c) of the Act is entitled “Additional Obligations of
6 Incumbent Local Exchange Carriers” and requires, among other things, all ILECs
7 – not just BOCs – to provide interconnection “at any technically feasible point
8 within the carrier’s network” and “that is at least equal in quality to that provided
9 by the local exchange carrier to itself or any subsidiary, affiliate, or any other
10 party to which the carrier provides interconnection.” Furthermore, the goal of the
11 Act was to open local markets to competition for all ILECs, not just the BOCs
12 (though it built in added protections in the territories served by BOCs). For
13 instance, in the *Local Competition Order* it states:

14 Competition in local exchange and exchange access markets is
15 desirable, not only because of the social and economic benefits
16 competition will bring to consumers of local services, but also
17 because competition eventually will eliminate the ability of an
18 incumbent local exchange carrier to use its control of bottleneck
19 local facilities to impede free market competition. Under section
20 251, *incumbent local exchange carriers (LECs)*, including the
21 Bell Operating Companies (BOCs), are mandated to take several
22 steps to open their networks to competition, including providing
23 interconnection, offering access to unbundled elements of their
24 networks, and making their retail services available at wholesale
25 rates so that they can be resold.²⁶²

²⁶² *In The Matter Of Implementation Of The Local Competition Provisions In The Telecommunications Act Of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd. 15,499, ¶ 4 (rel. Aug 8, 1996). (“*Local Competition Order*”) (Emphasis added.)

1 This explains that the interconnection obligations in which the SPOI requirement
2 is grounded apply to *all ILECs* – not just BOCs. Furthermore, the FCC has made
3 clear that the SPOI requirement applies to ILECs and BOCs alike:

4 *an ILEC* must allow a requesting telecommunications carrier to
5 interconnect at any technically feasible point, including the option
6 to interconnect at a single POI per LATA.²⁶³

7 Likewise, 47 C.F.R. §51.321(a) states in relevant part: “...*an incumbent LEC*
8 shall provide, on terms and conditions that are just, reasonable, and
9 nondiscriminatory in accordance with the requirements of this part, any
10 technically feasible method of obtaining interconnection or access to unbundled
11 network elements *at a particular point* upon a request by a telecommunications
12 carrier.” A single POI is a technically feasible method of obtaining
13 interconnection “at a particular point” in the ILEC’s network, and therefore,
14 CenturyLink is required to provide a single POI per LATA to CLECs upon
15 request, in accordance with the FCC’s rules.

²⁶³ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC 01-132, CC Docket No. 01-92, released April 27, 2001, ¶ 112. (footnotes, omitted, emphasis added). See also, *Id.*, ¶ 72 (“Under our current rules, interconnecting CLECs are obligated to provide one POI per LATA.”)(footnote omitted, emphasis added). See also, *In the Matter of Application of SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, FCC 00-238, CC Docket No. 00-65, Released June 30, 2000, ¶ 78 (“Texas 271 Order”) (footnotes omitted, emphasis added) (“Section 251, and our implementing rules, require *an incumbent LEC* to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA. *The incumbent LEC* is relieved of its obligation to provide interconnection at a particular point in its network only if it proves to the state public utility commission that interconnection at that point is technically infeasible.”) (Emphasis added).

1 **Q. WHY DID THE FCC REQUIRE ILECS TO ALLOW CLECS TO HAVE A**
2 **SINGLE POI PER LATA?**

3 A. The FCC, courts, and state commissions have ordered a SPOI per LATA because
4 it prevents the ILEC from forcing inefficiencies on the CLEC. Having multiple
5 POIs inappropriately shifts the responsibility of the ILEC – for transporting its
6 traffic to the POI – to the CLEC.

7 **Q. MR. HUNSUCKER CLAIMS THAT “WHAT THE CLECS REALLY**
8 **DESIRE IS A CONDITION THAT REQUIRES CENTURYLINK TO**
9 **ACCEPT A CLEC'S TRAFFIC IN THE TERRITORY OF ONE**
10 **CENTURYLINK ILEC WITHIN A LATA AND THEN TRANSPORT**
11 **THAT TRAFFIC TO ANY OTHER CENTURYLINK ILEC THAT HAS**
12 **TERRITORY IN THAT LATA.”²⁶⁴ IS THIS A FAIR**
13 **CHARACTERIZATION OF CONDITION 28?**

14 A. No. And one only needs to visually inspect the map that shows the Merged
15 Company’s operating footprint in Minnesota post-merger to understand that Mr.
16 Hunsucker’s criticism is misguided. I have attached this map as Exhibit TJG-14.
17 As I explained in my Direct Testimony (at page 184), all but a handful of
18 CenturyLink 79 legacy exchanges in Minnesota are directly adjacent to a legacy
19 Qwest exchange or contiguous to a Qwest exchange through other CenturyLink-
20 owned exchanges. This Exhibit also shows that the proposed transaction will
21 transform two separate companies, one with 79 exchanges and one with 117

²⁶⁴ Hunsucker Rebuttal at p. 37.

1 exchanges, into a single company operating 190+ interconnected and contiguous
2 exchanges – many of which reside in the same LATA. In a vast majority of
3 instances, if the Merged Company accepted traffic at a point on its network within
4 a LATA, it would be contiguous with every other Merged Company exchange in
5 that LATA, so the necessary facilities to accommodate the arrangement under
6 Condition 28 must exist.

7 A SPOI is particularly critical in areas where customer counts and traffic volumes
8 cannot justify the costs incurred in creating additional POIs. This is relevant to
9 the proposed transaction given that CenturyLink’s legacy exchanges reside in
10 primarily rural areas where customer density and traffic volumes are relatively
11 low. The Joint Petitioners have touted benefits from the proposed transaction
12 based on the Merged Company’s larger and more interconnected footprint, and
13 Condition 28 is one way to allow the CLECs to share in these increased
14 efficiencies post-merger so that the competitive position of CLECs is not worse
15 off relative to the incumbent LECs post-merger.

16 **Q. BUT MR. HUNSUCKER SAYS THOSE COMPANIES IN MINNESOTA**
17 **ARE “SEPARATE LEGAL ENTITIES” AND CANNOT “LEGALLY BE**
18 **FORCED” TO BE COLLECTIVELY BOUND AS A GROUP TO**
19 **AGREEMENT TERMS.²⁶⁵ IS THIS RELEVANT TO CONDITION 28?**

²⁶⁵ Hunsucker Rebuttal at p. 37, lines 7-9.

1 A. No. As I discussed in my Direct Testimony and again elsewhere in this Rebuttal
2 Testimony, the way in which the companies will appear on the Merged
3 Company's organizational chart provides no protection for CLECs and their
4 customers given that CenturyLink will own and control Qwest post-merger. The
5 SPOI issue is a prime example of the Joint Petitioners attempting to use the
6 organizational structure of its legacy companies to its competitive advantage. As
7 I stated in my Direct Testimony (at page 186): "While the Merged Company may
8 want to continue its corporate organizational structure that exists today post-
9 merger, CLECs should not have to pay more to interconnect with the Merged
10 Company because of it." The names chosen for the legal entities of its operating
11 companies post-merger will not prevent the Merged Company from achieving
12 increased efficiencies of scale, and they should not have a bearing on whether
13 those increased efficiencies are reflected in the Merged Company's wholesale
14 operations.

15 **Q. MR. HUNSUCKER SUGGESTS THAT A SPOI IS NOT A**
16 **"TECHNCALLY FEASIBLE" FORM OF INTERCONNECTION.²⁶⁶ IS HE**
17 **CORRECT?**

18 A. No. CenturyLink has provided no information that would suggest that a SPOI is
19 infeasible – likely because of the interconnected and contiguous nature of the
20 Merged Company's exchanges (as shown in Exhibit TJG-14). Further, 47 C.F.R.
21 §51.5 of the FCC's rules requires an ILEC to "prove to the state commission with

²⁶⁶ Hunsucker Rebuttal at p. 38.

1 clear and convincing evidence that such interconnection, access, or methods
2 would result in specific and significant adverse network reliability impacts.”
3 CenturyLink’s vague references in its Rebuttal Testimony do not meet the Joint
4 Petitioners’ burden of proving its claim by “clear and convincing evidence.”

5 **Q. MR. HUNSUCKER REFERS TO A SPOI AS A “COMPLEX AND**
6 **ONEROUS INTERCONNECTION OBLIGATION.”²⁶⁷ DO YOU AGREE?**

7 A. No. If anything, having one POI per LATA is a much simpler form of
8 interconnection than having multiple POIs. Instead of engineering, installing and
9 maintaining multiple POIs, the two companies engineer facilities for the exchange
10 of traffic at one POI.

11 **Q. MR. HUNSUCKER STATES THAT A SPOI WOULD BE A “SUPERIOR”**
12 **FORM OF INTERCONNECTION THAT IS NOT REQUIRED BY THE**
13 **ACT.²⁶⁸ IS HE CORRECT?**

14 A. No. I am not aware of any commission finding that a SPOI results in a “superior
15 quality” interconnection request. CenturyLink frequently quotes selective parts of
16 paragraph 15 of the FCC’s *TRO* that states that ILECs are not required “to alter
17 substantially their networks in order to provide superior” interconnection.
18 However, CenturyLink conveniently omits a very key phrase immediately
19 preceding this statement that undermines the claim of superior interconnection.
20 What the FCC said (as quoted at paragraph 15 of the FCC’s *TRO*) is:

²⁶⁷ Hunsucker Rebuttal at p. 38.

²⁶⁸ Hunsucker Rebuttal at p. 37.

1 Specifically, **the Eighth Circuit explained that incumbent ILECs**
2 **can be required to modify their facilities “to the extent**
3 **necessary to accommodate interconnection or access to**
4 **network elements,”** but cannot be required “to *alter substantially*
5 their networks in order to provide *superior* quality interconnection
6 and unbundled access. (emphasis added)

7 The Court did not say that any modification of the ILEC’s facilities would be a
8 superior form of interconnection. Quite the contrary, the Court said that ILECs
9 can be required to modify their facilities to accommodate interconnection, and
10 that such modification does not constitute a superior form of interconnection.

11 **9. Condition 29**

12 **Q. HAVE YOU REVIEWED CENTURYLINK’S CONCERNS ABOUT**
13 **CONDITION 29?**

14 A. Yes. CenturyLink alleges a number of concerns about Condition 29, including:
15 “neither necessary nor appropriate for this transaction”;²⁶⁹ not all conditions are
16 universally applicable;²⁷⁰ there are “myriad of different circumstances and
17 considerations”;²⁷¹ “restricts the incentive for both parties to negotiate state-
18 specific terms in Minnesota and elsewhere”;²⁷² “not tailored to avoid any
19 specifically identified harm”;²⁷³ and “exceeds the standard of review.”²⁷⁴

²⁶⁹ Hunsucker Rebuttal at p. 48, line 5.

²⁷⁰ Hunsucker Rebuttal at p. 48, lines 8-12.

²⁷¹ Hunsucker Rebuttal at p. 49, lines 16-17. *See also*, Jones Rebuttal at p. 25, lines 15-18.

²⁷² Hunsucker Rebuttal at p. 50.

²⁷³ Jones Rebuttal at p. 25, line 22.

²⁷⁴ Jones Rebuttal at p. 25, lines 18-20.

1 **Q. WHAT ARE YOUR RESPONSES TO THESE CONCERNS?**

2 A. CenturyLink reads too much into Condition 29. Condition 29 states:

3 All Conditions herein *may be* expanded or modified as a result of
4 regulatory decisions concerning the proposed transaction in other
5 states, including decisions based upon settlements, that impose
6 conditions or commitments related to the transaction. CenturyLink
7 agrees that the state commission of any state *may adopt* any
8 commitments or conditions from other states or the FCC that are
9 adopted after the final order in that state.

10 Contrary to CenturyLink's attempt to make it appear as if this condition would
11 require every single merger condition adopted by the FCC and other state
12 commissions to be implemented here in Minnesota, a fair reading of Condition 29
13 shows that whether or not to expand or modify the conditions in Minnesota based
14 on conditions adopted by other regulatory commissions is left up to the Minnesota
15 Commission – *i.e.*, there is not automatic or universal applicability as Mr.
16 Hunsucker suggests. Accordingly, any differences in circumstances or
17 considerations would be taken into account. The Joint Petitioners have requested
18 expedited approval of the proposed transaction, and this condition allows the
19 Minnesota Commission to review the proposed transaction in an expedited
20 fashion as requested by Joint Petitioners, while ensuring that public interest
21 benefits that may arise for stakeholders as a result of conditions agreed to by Joint
22 Petitioners in other jurisdictions (proceedings that may not be progressing as
23 quickly as the Minnesota merger review proceeding) can also be brought to
24 Minnesota. While CenturyLink claims that such a condition would restrict
25 incentives to negotiate state-specific terms in Minnesota and elsewhere, it

1 provides no reason why any public interest benefits related to the merger should
2 not be realized by stakeholders in Minnesota just because another state
3 commission established a longer procedural schedule.

4 To CenturyLink's claim that this condition is not appropriate for this transaction, I
5 would note that a similar condition was adopted in Oregon for the
6 CenturyTel/Embarq merger. *See*, Exhibit TJG-9 at p. 11. The
7 CenturyTel/Embarq merger was a similarly-structured "stock-for-stock
8 combination";²⁷⁵ yet, a similar condition was found to be appropriate in
9 Oregon.²⁷⁶

10 **10. Condition 30**

11 **Q. CENTURYLINK STATES THAT CONDITION 30²⁷⁷ IS UNNECESSARY**
12 **BECAUSE ICAS CONTAIN LANGUAGE ALLOWING A PARTY TO**
13 **SEEK RESOLUTION OF DISPUTES BEFORE THE COMMISSION.²⁷⁸**
14 **DOES THIS OBIVIATE THE NEED FOR CONDITION 30?**

15 A. No. Condition 30 states:

16 30. In the event a dispute arises between the parties with respect to
17 any of the pre-closing and post-closing conditions herein, either
18 party may seek resolution of the dispute by filing a petition with

²⁷⁵ Gast Direct at p. 2, line 22.

²⁷⁶ *See*, Gates Direct at pp. 187-188.

²⁷⁷ Condition 30 states: "In the event a dispute arises between the parties with respect to any of the pre-closing and post-closing conditions herein, either party may seek resolution of the dispute by filing a petition with the state commission at any time. Alternative dispute resolution provisions in an interconnection agreement shall not prevent any party from filing a petition with the state commission at any time." *See* Exhibit TJG-8.

²⁷⁸ Hunsucker Rebuttal at p. 50 and Jones Rebuttal at p. 26.

1 the state commission at any time. Alternative dispute resolution
2 provisions in an interconnection agreement shall not prevent any
3 party from filing a petition with the state commission at any time.

4 Condition 30 applies specifically to disputes that may arise “with respect to any of
5 the pre-closing and post-closing conditions” resulting from the proposed
6 transaction. Condition 30 provides that these disputes can be taken to the state
7 commission for resolution. While Joint Petitioners suggest that this ability
8 already exists, Condition 30 removes any doubt, which will help streamline
9 disputes about merger conditions if they arise. If customer-impacting problems of
10 the types experienced in other mergers occur due to issues relating to compliance
11 with a merger condition, for example, parties should be able to bring those issues
12 to the Commission expeditiously, without having to first litigate their right to take
13 such disputes to the Commission. The last sentence of Condition 30 deals with
14 this need for expeditious handling of merger condition related disputes, by
15 providing that alternative dispute resolution provisions in an ICA shall not
16 prevent either party to the agreement from filing a petition with the state
17 commission at any time. If, for example, end user customers are experiencing
18 service outages due to non-compliance with a merger condition, parties will not
19 be delayed from filing with the Commission by an ICA provision that otherwise
20 first requires AAA arbitration or some lengthy negotiation period.

21 **Q. ARE THERE OTHER REASONS WHY CENTURYLINK’S**
22 **CRITICISMS ABOUT CONDITION 30 SHOULD BE REJECTED?**

1 A. Yes. Other mergers have been subject to a substantially similar merger condition.
2 *See*, Exhibit TJG-9 at p. 11. Other state commissions have found that a specific
3 merger condition relating to disputes specifically about merger conditions (much
4 like Joint CLEC proposed Condition 30) was in the public interest.²⁷⁹

5 Mr. Jones' allegation that this would somehow "encourage frivolous or
6 duplicative dispute resolution processes that potentially waste the resources of the
7 companies or the Commission"²⁸⁰ is no reason to reject this condition. To my
8 knowledge, the other state commissions that have approved mergers subject to a
9 similar condition have not found that this condition wastes their resources.
10 Moreover, this Commission is fully able to address frivolous or wasteful
11 complaints in this area, just as it would address any other frivolous or wasteful
12 complaint. Given that a party bringing a frivolous or wasteful complaint risks
13 those consequences, as well as expends time and money to raise an issue, the
14 probability that a frivolous complaint would be brought, and the Commission's
15 ability to address it if brought, must be weighed against the merger-related harm
16 that would occur if violations of merger-related conditions are occurring after the
17 Merged Company has received the benefit of this Commission's approval of the
18 merger, if approved. The Commission's ability to enforce its orders, and the
19 public interest in preventing merger-related harm, outweighs the claimed risk of
20 frivolous complaints.

²⁷⁹ Exhibit TJG-9 at p. 11.

²⁸⁰ Jones Rebuttal at p. 26, lines 12-14.

1 Finally, as explained at page 188 of my Direct Testimony, many of the Joint
2 CLEC conditions apply for a limited time period following the merger, so it is
3 important to have a clear, efficient process for addressing disputes related to
4 merger conditions at the outset. Otherwise, any disputes about the proper venue
5 could drag out compliance for so long that these merger conditions are essentially
6 rendered useless due to expiration.

7 **Q. MR. JONES STATES THAT “THERE APPEARS TO BE NO SPECIFIC**
8 **HARM...THAT WILL BE AVOIDED AS A RESULT OF” CONDITION**
9 **30. IS THIS CRITICISM ON POINT?**

10 A. No. Condition 30 will help ensure that the Merged Company complies with Joint
11 CLEC proposed conditions in a timely fashion. The Joint CLEC proposed
12 conditions are tailored to avoiding and offsetting harm brought about by the
13 proposed transaction, and as such, it is critical that the Merged Company complies
14 with these conditions post-merger – otherwise, the harms the conditions are
15 intended to address will prevail.

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

17 A. Yes, it does.