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Executive Secretary**

August 16, 2010

IOWA UTILITIES BOARD

STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

IN RE:

QWEST COMMUNICATIONS INT'L, INC.
AND CENTURYTEL, INC.

DOCKET NO. SPU-2010-0006

DIRECT TESTIMONY

OF

TIMOTHY J GATES

ON BEHALF OF

MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.

d/b/a PAETEC BUSINESS SERVICES

August 16, 2010

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Exhibits

- Exhibit TJG-1 -- *Curriculum Vitae* of Timothy J Gates
- Exhibit TJG-2 – Overview of Qwest’s 271 Testing Process
- Exhibit TJG-3 – Assurances Not Met
- Exhibit TJG-4 – Letters Regarding Streamlined Discovery Process
- Exhibit TJG-5 – CLEC Comments on Problems with Legacy Embarq OSS
- Exhibit TJG-6 – Integra Telecom’s May 19th Letter re: OSS problems
- Exhibit TJG-7 – Charleston Daily Mail Articles
- Exhibit TJG-8 – CLEC Recommended Conditions
- Exhibit TJG-9 – Map of Recommended Conditions to Previously-Adopted
Conditions
- Exhibit TJG-10 – CenturyLink Notice re: Changes to OSS

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

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

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
14 **WORK EXPERIENCE.**

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

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

10 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE IOWA UTILITIES**
11 **BOARD (“BOARD”)?**

12 A. Yes, on numerous occasions spanning more than 20 years. I testified in Board
13 Dockets RPU-88-1, NOI-90-1, RPU-91-4, NOI-99-1, and INU-03-4 all on behalf
14 of MCI or MWCOR. I also represented Level 3 in ARB-05-4, Coon Creek in
15 FCU-06-42, and McLeodUSA, 360networks and LH Telecom in INU-08-2. In
16 addition, I have testified more than 200 times in 45 states and Puerto Rico, and
17 filed comments with the Federal Communications Commission (FCC) on various
18 public policy issues including costing, pricing, local entry, competition, universal
19 service, strategic planning, mergers and network issues. *See*, Exhibit TJG-1.

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

22 A. Yes. While at MCI I was involved in several mergers. I have also observed the
23 consolidation in the telecommunications industry over the last ten years or so.

1 Over the course of my career, I have investigated and/or testified on virtually
2 every issue that defines the wholesale relationship between a Bell Operating
3 Company (BOC) or incumbent local exchange carrier (ILEC) and their
4 competitive local exchange carrier (CLEC) customers/competitors. Further, I
5 have experience assisting CLECs in their wholesale relationships with both
6 companies involved in the proposed transaction. For instance, I have participated
7 in dozens of arbitrations since the 1996 amendments to the Communications Act
8 of 1934 (“Act”)¹ were enacted, including arbitrations and other proceedings
9 involving Qwest and CenturyLink (and/or their predecessors). Finally, I have
10 worked for several regulatory agencies as an employee and as a consultant on
11 issues relating to retail/wholesale issues and related public policy issues.

12 I am knowledgeable about the interconnection and business practice issues
13 addressed in this testimony as well as the potential impacts the merger may have
14 on the market, competitors and consumers. Further, I have reviewed the
15 Application filed by Qwest and CenturyLink in this proceeding² and the
16 associated documentation.

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

18 A. My testimony is being filed on behalf of McLeodUSA Telecommunications
19 Services, Inc. d/b/a PAETEC Business Services (hereafter “PAETEC”).

¹ Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996) (“Telecom Act” or “Act”).

² See, “Application for Expedited Approval of Reorganization,” dated May 25, 2010. For the purposes of this testimony, I will use CenturyLink (as opposed to CenturyTel) to refer to the company seeking to acquire Qwest, unless referring specifically to the legacy CenturyTel company that existed prior to the merger with Embarq.

1 **II. PURPOSE AND ORGANIZATION OF TESTIMONY**

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

3 A. The purpose of my testimony is to demonstrate that the proposed transaction
4 should be rejected, or in the alternative, approved subject to robust, enforceable
5 commitments or conditions necessary to protect the public interest.³ The
6 information (or lack thereof) provided by Qwest and CenturyLink (hereafter
7 collectively referred to as “Joint Applicants”) to date is woefully insufficient to
8 demonstrate that the proposed transaction is in the public interest, and in fact, that
9 sparse information shows that there is substantial harm that could befall
10 competition and competitors and their end users.

11 At this point, there is only one thing certain about the proposed transaction:
12 uncertainty. The Joint Applicants have put the parties on notice that material
13 changes are coming post-merger, but they have been unable or unwilling to
14 provide any detail about those material changes – *i.e.*, what will and will not
15 change, when changes will occur, how the changes will or will not impact
16 consumers and/or competitors, or why those changes will be made. The
17 significant uncertainty surrounding the proposed transaction, in and of itself,
18 creates harm that must be addressed by either rejecting the transaction, requiring
19 the Joint Applicants to submit a more complete proposal, or putting in place
20 enforceable commitments to prevent or offset this harm. Likewise, as Dr. Ankum
21 explains, the alleged benefits touted by the Joint Applicants amount to nothing
22 more than unsupported, vague statements made to secure transaction approval,

³ In this testimony I use the terms conditions and commitments interchangeably for the reasons explained by Dr. Ankum in his testimony with which I agree.

1 and are not cognizable benefits on which the Board should rely. As a result, the
2 future of telecommunications markets, telecommunication competition and
3 economic development in the State is in serious question due to the proposed
4 transaction.

5 Further, I place this proposed transaction in context by identifying significant
6 problems that have occurred following similar, recent mergers, including the
7 systems meltdown following the recent FairPoint acquisition of Verizon
8 properties. These examples provide the Board and competitors an indication of
9 the problems that could be anticipated in Qwest's territory post-merger, and
10 should give the Board serious pause when evaluating the Joint Applicants'
11 unsupported claims – particularly in the absence of any true measureable
12 commitments from the Joint Applicants that benefits will result.

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

18 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

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

- 20
- 21 • Section III discusses the requirements and obligations related to interconnection,
22 UNEs and collocation, as well as the significant efforts (and costs) expended by
23 CLECs to get ILECs to live up to these requirements and obligations so that
24 CLECs can secure interconnection, UNEs and collocation on terms, rates and
conditions that are just, reasonable, and nondiscriminatory.

- 1 • Section IV discusses the harm to CLECs related to CenturyLink taking control of
2 Qwest's wholesale operations, including the challenges of integrating the two
3 companies as well as examples from this very proceeding showing that the
4 Merged Company is attempting to increase transaction costs and undermine
5 CLECs' ability to protect themselves from merger-related harm.
- 6 • Section V discusses the lessons that can be learned from recent, similar
7 transactions. These examples show that the post-merger integration process in
8 recent mergers caused significant harm to CLECs and retail customers, despite the
9 merging companies in those cases making the same types of unsupported
10 statements about merger benefits that the Joint Applicants have made in this
11 proceeding.
- 12 • Section VI discusses certain commitments/conditions that the Board should
13 impose upon the Joint Applicants if the Board is inclined to approve the proposed
14 transaction. Other commitments/conditions are discussed in the testimony of Dr.
15 Ankum. These commitments/conditions are critical to prevent or offset the harms
16 the merger will cause for the market, CLECs and consumers.

17 **III. CLEC EFFORTS FOR EFFICIENT INTERCONNECTION**

18 **A. *Interconnection Rights and Responsibilities Under the Act***

19 **Q. PLEASE DESCRIBE THE INTERCONNECTION REQUIREMENTS** 20 **UNDER THE TELECOM ACT.**

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

27 Section 251(a) of the Act identifies the general duties of telecommunications
28 carriers to "interconnect directly or indirectly with the facilities and equipment of
29 other telecommunications carriers." Section 251(b) of the Act identifies the

1 general duties of all LECs which include number portability, dialing parity, and
2 reciprocal compensation. Section 251(c) imposes additional obligations and
3 specific interconnection duties on ILECs, including the duty to negotiate an
4 interconnection agreement (ICA) in good faith, provide interconnection on more
5 specific terms and conditions, provision unbundled network elements (UNEs),
6 offer services for resale at wholesale rates, provide notice of network changes and
7 provide collocation when requested. The FCC's *Local Competition Order*⁴ at
8 paragraph 1241 describes these additional obligations as follows:

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

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

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

19 A. All ILECs are subject to the requirements of Section 251(c) of the Act. However,
20 some ILECs –such as Qwest – are both ILECs *and* Bell Operating Companies (or
21 BOCs) under the Act. The Act requires BOCs to comply not only with Section
22 251(c) of the Act, but also Section 271 of the Act. Section 271 requires BOCs to
23 demonstrate compliance with the 14-point competitive checklist before they are
24 allowed to provide in-region interLATA services. The FCC approved Qwest's

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

1 271 authority throughout its 14-state BOC territory in the 2002-2003 timeframe.
2 Non-BOC ILECs, such as CenturyLink, are not required to comply with Section
3 271 requirements.

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

6 A. The state commissions have jurisdiction over approving ICAs and related disputes
7 (e.g., arbitrations) pursuant to Section 252 of the Act⁵ and numerous provisions of
8 state law. The state commissions also establish rates ILECs are permitted to
9 charge for UNEs, interconnection and collocation under Sections 251 and 252,
10 applying the FCC's total element long-run incremental cost methodology
11 ("TELRIC"). State commissions also determine whether certain ILEC central
12 offices meet the federal standards for "delisting" UNE loops or transport as a
13 Section 251 unbundled network element. In addition, states provided consultation
14 to the FCC in relation to the BOCs' applications for Section 271 approval. As
15 explained below, in this role, the state commissions conducted several years'
16 worth of fact-finding, hearings, testing, and issued extensive recommendations to
17 the FCC regarding the BOCs' adherence to the 14-point competitive checklist.
18 Many states have continued their role in monitoring Qwest's 271 compliance by
19 monitoring the Change Management Process ("CMP") and Qwest's wholesale
20 performance indicators and associated performance remedy plans. Furthermore,
21 states have an important role in determining whether a telecommunications

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

1 company should be relieved of its duties under Section 251 based upon the rural
2 status of that company.

3 ***B. ILEC Impacts on Market Entry Methods***

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

6 A. No. Back in 1995, when Congress was finalizing the final terms of the new
7 federal law (the Telecommunications Act was signed into law in early February
8 1996), nobody was really sure how, exactly, competition would develop. In the
9 FCC's *Local Competition Order* the FCC discussed the Act's anticipated market
10 entry methods.

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

20 Since passage of the 1996 Act, competitors have used all three paths of entry – (1)
21 resale, (2) UNEs, and (3) entirely separate network. In cases two and three, the
22 carriers are facilities-based – *i.e.*, they own their own switches, and in some
23 instances, their own metro fiber rings that provide interoffice transport. For
24 instance, in larger metro markets with multiple ILEC switching centers such as
25 Des Moines, PAETEC/McLeodUSA installs its own local switch and metro ring

⁶ *Local Competition Order* at ¶ 12.

1 fiber networks and purchases local access loops, collocation and other services
2 from the ILEC in order to access customers. In the case of cable-based CLECs,
3 the competitive carrier owns both the switch and the “last mile” facilities (i.e.,
4 hybrid fiber coaxial distribution plant). But, like PAETEC, a cable CLEC must
5 still interconnect with the ILEC in order to send and receive traffic to the public
6 switched telephone network. In this way, the road to local competition always
7 goes through the ILEC no matter what entry strategy is employed.

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

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

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

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

13 A. Yes. With most retail products or services, if a customer wants to switch
14 suppliers, they just switch. But in local telecommunications markets, the old
15 provider (which in a majority of cases is the ILEC) has to help move the retail
16 customer to the new provider. Likewise, with most retail products or services, if a
17 customer switches, the old supplier is simply out of the picture. But in local
18 telecommunications, the old provider (when it is the ILEC) remains constantly
19 involved, sending calls to, and receiving calls from, its own former customers (or
20 the old provider may continue a relationship with the customer by continuing to

⁷ *Local Competition Order* at ¶ 10.

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

⁹ *Id* at ¶ 315.

1 provide long-distance service, for example, after switching local providers). And
2 all the while, the new provider must rely on the old provider for critical inputs to
3 the new provider's retail services such as interconnection, UNEs, collocation and
4 resale.

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

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

19 A. Yes. The CLECs are frequently some of the biggest customers of the ILECs,
20 purchasing network elements or services from the ILEC on a wholesale basis for
21 use in providing competitive retail services to end-user customers. Significantly,
22 the ILEC will continue to compete for that retail end-user customer's business,
23 while at the same time, acting as a wholesale provider of critical inputs to the

1 competitor. Thus, the ILEC is both a competitor of, and wholesale supplier to, the
2 competitive providers in that market.

3 **Q. DOES THE FACT THAT CLECS ARE CUSTOMERS OF THE JOINT**
4 **APPLICANTS INFLUENCE THEIR CONCERNS REGARDING THE**
5 **PROPOSED MERGER?**

6 A. Absolutely. Not only are the CLECs concerned about the potential to pass
7 through costs of the merger in rates, they are also concerned with the ongoing
8 stability and viability of the companies. As customers, they also want to know
9 that the services currently purchased will continue to be available and that the
10 quality and features will at least be constant if not improve. Finally, integration
11 has been difficult in many mergers that Dr. Ankum and I discuss in our
12 testimonies and the CLECs need enforceable, written conditions/commitments
13 that the best systems will be in place following the merger and that integration of
14 the merging companies will not negatively impact their operations and ability to
15 compete.

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

19 A. There is a phenomenon referred to in the industry as “network effects,” or,
20 sometimes, as “Metcalfe’s Law.” The basic idea is that a network becomes more
21 and more valuable as more and more people are connected to it. A telephone
22 “network” with only one phone attached is useless. A network with two phones is
23 better, a thousand phones is a lot better, and a million is even better. To state the

1 obvious, the value of a service is maximized if the customer can contact any other
2 person on the network. In competitive terms, though, this means that, other things
3 being equal, whichever network is the biggest will be the most valuable, and the
4 one to which consumers will want to be connected.

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

8 A. Absent regulation that would be the case. Even in the Application, Qwest and
9 CenturyLink discuss the importance of size in order to compete. Specifically, at
10 pages 10-11 of the Application for Expedited Approval of Reorganization they
11 state:

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

16 As long as the existing, incumbent network is bigger than a competing network,
17 the competing network will not be able to attract any customers – unless those
18 customers can call, and be called by, the people connected to the existing
19 network. Additionally, as the incumbent's network gets bigger, it is able to
20 spread its costs over a larger customer base – resulting in efficiencies and
21 economies of scale and scope. Competition simply cannot develop if competing
22 networks do not have clear and stable terms, conditions and rates for connecting
23 to, and exchanging traffic with, the existing, incumbent network. Similarly,
24 competition would not work if the ILEC is able to keep the benefits of its scale
25 and scope economies and associated efficiencies for itself and provide

1 competitors access to critical bottleneck elements of the local network on a more
2 costly or less efficient basis to competitors. Again, Sections 251 and 271 of the
3 Act are designed to ensure that CLECs are on an equal footing with the ILEC and
4 the benefits accrued by the ILEC due to network effects and scale and scope
5 economies are realized by the local telecommunications market as a whole,
6 including CLECs.

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

10 A. No. The latest FCC reports, even when adding in interconnected VoIP offerings,
11 still show the ILECs with more than 70 percent of the market.¹⁰ And specifically
12 with respect to Qwest's area in Phoenix, Arizona, in June 2010, the FCC
13 concluded:

14 ...based on the data in the record, Qwest fails to demonstrate that
15 there is sufficient competition to ensure that, if we provide the
16 requested relief, Qwest will be unable to raise prices, discriminate
17 unreasonably, or harm customers. For example, the record reveals
18 that no carrier besides Qwest provides meaningful wholesale
19 services throughout the Phoenix marketplace, and that competitors
20 offering business services largely must rely on inputs purchased
21 from Qwest itself to provide service.¹¹

22 Importantly, the FCC pointed to the lack of options for wholesale customers as a
23 reason for denying Qwest's petition. This market power also extends to other
24 wholesale services by the ILECs, such as special access, as evidenced by the

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

¹¹ *In the Matter of Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113, June 22, 2010 ("*Qwest Arizona Forbearance Order*") at ¶ 2.

1 supracompetitive rates ILECs are currently charging for special access in areas
2 where they have received special access pricing flexibility. The fact of the matter
3 is that ILECs and BOCs continue to be entrenched incumbents in their local
4 territories and the competition in those spaces is fragile and depends largely on
5 use of incumbent facilities for its very existence.

6 The Board's own studies show that this is just as true in Iowa, and perhaps more
7 so. The Board's most recent published competition report showed Qwest with a
8 78% share of all landline connections in its territory in Iowa and a share of over
9 90% in more than 100 of the 187 Iowa communities Qwest serves.¹²

10 ***C. Imposition of Costs on CLECs for Interconnection***

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

15 A. Absolutely. First, CLECs and ILECs must negotiate those rates, terms and
16 conditions for a period of time. Then, for each issue on which the companies
17 disagree, they must arbitrate that issue before the state commission. It is not
18 uncommon for a CLEC and ILEC to disagree on dozens of issues, each of which
19 must be litigated. Once the final agreement is established, it must be submitted to
20 the state commission for approval. I have been involved in dozens of these
21 arbitration cases and can say, first hand, that they consume an enormous amount

¹² 2007 Telecommunications Market Monitoring Survey For Retail Local Voice Services In Iowa, Iowa
Utils. Bd., January 2008 at pp. 19-21.

1 of time and money for both the CLEC and the ILEC. And, even after a final order
2 from the state commission, there may be appeals that consume substantial
3 additional time and money. On a separate but related note, oftentimes cost-based
4 rates that apply to UNEs and collocation in an ICA are established in separate
5 generic cost dockets in which CLECs participate to ensure that the resulting rates
6 satisfy the federal TELRIC¹³ pricing standards. My firm, QSI, recently
7 participated in generic cost dockets for Qwest in Minnesota and Colorado; the
8 Minnesota proceeding lasted for about three years, and it has been about one and
9 one-half years since Qwest filed its initial testimony in the ongoing Colorado
10 proceeding. During this time, CLECs have again expended a significant amount
11 of time and money in an attempt to ensure that Qwest's rates for UNEs,
12 interconnection and collocation comply with the law. Furthermore, CLECs have
13 spent an enormous amount of time and money attempting to ensure that the BOCs
14 comply (and continue to comply) with the obligations set forth in approved ICAs
15 and Sections 251 and 271 of the Act.

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

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

¹³ "TELRIC" stands for Total Element Long Run Incremental Cost and is discussed and defined in the FCC's *Local Competition Order* at ¶¶ 674-703. That pricing methodology is used to price UNEs and interconnection services.

1 by converting existing ILEC customers to CLEC services. The FCC orders
2 discuss the ILEC incentives in detail and its characterizations have proven, over
3 and over again, to be correct. For instance, just after the passage of the Act, the
4 FCC noted in the *Local Competition Order*, that:

5 Given that the incumbent LEC will be providing interconnection to
6 its competitors pursuant to the purpose of the 1996 Act, the LEC
7 has the incentive to discriminate against its competitors by
8 providing them less favorable terms and conditions of
9 interconnection than it provides itself.¹⁴

10 The FCC recognized that one of the goals of the Act, and competition in general,
11 was to eliminate this ILEC incentive and ability to impose financial and
12 operational burdens on CLECs. At paragraph four of the *Local Competition*
13 *Order* the FCC stated,

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 Bell
21 Operating Companies (BOCs), are mandated to take several steps
22 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.

26 These incentives have not changed, and indeed, one could argue that in today's
27 more difficult business climate for wireline LECs, the incentive to protect their
28 legacy customer base has increased for ILECs. Thus, ILECs continue to have the
29 ability to impede competition as well as the incentive. One way ILECs have

¹⁴ *Local Competition Order* at ¶ 218.

1 attempted to impede competition is by making it very difficult and costly for
2 CLECs to secure rates, terms and conditions required by federal and state law.

3 **Q. PLEASE PROVIDE AN EXAMPLE.**

4 A. During the 271 approval process for Qwest, one thing the state commissions and
5 FCC did was establish a Statement of Generally Available Terms (SGATs).
6 SGATS were to include a baseline offering of UNEs, interconnection and
7 collocation services of the BOC that complied with the BOCs' 271 obligations,
8 and were offered by the BOCs to CLECs in negotiations. After Qwest received
9 271 approval, however, it unilaterally withdrew its SGATs, replacing them
10 instead with Qwest's template proposals as Qwest's baseline offering.

11 **Q. DID THE NEW QWEST TEMPLATE PROPOSALS RESULT IN MORE**
12 **DISPUTES?**

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

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

22 A. Yes. In addition to the types of disputes I just mentioned, there are frequently
23 billing disputes over traffic types, jurisdiction of traffic, bills for services rendered

1 or not rendered, etc. There are also disputes over network engineering
2 responsibilities, response times for trouble reports, and quality of service, not to
3 mention issues with submitting orders. Finally, the legal teams sometimes have
4 disputes over orders and rulings that may or may not apply to services under an
5 ICA.¹⁵ These types of issues result in additional time and expense for both
6 CLECs and ILECs.

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

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

11 **Q. CENTURYLINK CLAIMS THAT WHOLESALE ISSUES SHOULD BE OF**
12 **NO CONCERN BECAUSE THE TRANSACTION IS A STOCK-FOR-**
13 **STOCK, PARENT LEVEL TRANSACTION.¹⁶ IS THE COMPANY**
14 **CORRECT?**

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

¹⁵ The legal teams sometimes invoke the "Change of Law" provisions of an ICA to renegotiate a condition or term or to eliminate them altogether.

¹⁶ See, e.g., Joint Comments of CenturyLink and Qwest on Procedural Issues, Minnesota Docket No. P-430/PA-10-456, June 1, 2010, at p. 2 ("A key aspect of the transaction, reflected in the Joint Petition, is the fact that all Minnesota Operating Companies will continue to operate as separate entities under their respective certificates of authority after the transaction is completed. Thus, issues and disputes that involve the relationship between the Operating Companies and other carriers need not be part of this proceeding.")

1 *CenturyLink...*¹⁷ This means that post-merger CenturyLink will make the
2 decisions about how Qwest interacts with its wholesale customers, how much
3 Qwest will attempt to charge for its wholesale services, the resources that will be
4 dedicated to wholesale service quality, the amount Qwest invests in its network
5 for advanced services, etc.

6 Further, CenturyLink's claim has been rejected in the past. The
7 Embarq/CenturyTel merger was a stock-for-stock parent level transaction, like the
8 proposed transaction, yet both the FCC and state commissions found it necessary
9 to impose numerous wholesale-related conditions on the Embarq/CenturyTel
10 merger.

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

13 A. Yes. Unlike Qwest, CenturyLink is not a BOC in any of its existing territories.
14 As such, CenturyLink has not been required to satisfy the critical market-opening
15 provisions found in the 14-point competitive checklist under Section 271 of the
16 Act.¹⁸ I will explain below why the lack of CenturyLink experience as a BOC is
17 of grave concern to CLECs and should be of paramount concern to the Board.

18 Traditionally, CenturyLink has operated mostly in rural areas¹⁹ (CenturyLink has
19 rural exemptions that limit its Section 251 wholesale duties in some of its areas²⁰),

¹⁷ Direct Testimony of John Jones, Docket No. SPU-2010-0006, filed May 25, 2010 ("Jones Iowa Direct")
p. 5 (emphasis added).

¹⁸ 47 U.S.C. § 271(c)(2)(B).

¹⁹ For instance, CenturyLink states: "The CTL [CenturyTel] Iowa ILECs provide service to approximately
1500 access lines in 3 *primarily rural* exchanges in Iowa." Jones Iowa Direct at p. 6 (emphasis added)

1 and only recently acquired a few more urban areas through its acquisition of
2 Embarq. Accordingly, CenturyLink has very little, if any, experience with the
3 types and quantities of wholesale obligations and relationships as are found in
4 Qwest's BOC territories. Moreover, CenturyLink has provided no commitments
5 that it will maintain or improve the wholesale services, rates and service quality
6 that CLECs experience with Qwest today.

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

9 A. Since CenturyLink has traditionally operated in rural areas exempt from
10 competition, it has not been required to handle the same quantities of wholesale
11 customers and wholesale orders as Qwest is accustomed to handling. PAETEC
12 has served discovery on the Joint Applicants to prove the point that Qwest's
13 wholesale operations are more experienced in providing wholesale operations at
14 the scale experienced in Qwest's territory. As of the writing of this testimony,
15 however, the Joint Applicants have not provided the confidential information that
16 would prove this point. Such information was requested in Iowa on July 16, and
17 the Joint Applicants have provided such information in other states, but under
18 terms that preclude its use in Iowa. PAETEC reserves the right to supplement its
19 response to this question if and when the Joint Applicants provide the pertinent
20 data; the Joint Applicants should not be allowed to evade thorough review

²⁰ Section 251(f) of the Telecommunications Act of 1996 exempts rural telephone companies from the obligations applicable to ILECs under Section 251(c) of the Act until a state commission lifts the rural exemption.

1 through deleterious discovery practices, and the Board should be wary of
2 approving a merger of this magnitude on incomplete information.²¹

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

5 **Q. CENTURYLINK SUGGESTS THAT IT WILL BE *BUSINESS AS USUAL***
6 **FOR WHOLESALE OPERATIONS POST-MERGER.²² WHY DOES**
7 **THAT NOT PROVIDE YOU COMFORT ABOUT POST-MERGER**
8 **WHOLESALE OPERATIONS?**

9 A. My primary concern relates to the integration effort that will take place after the
10 merger. CenturyLink has estimated \$625 million in synergy savings resulting
11 from the transaction; therefore, the combined company will be under intense
12 pressure to meet those savings estimates post-merger. At the same time the
13 Merged Company is attempting to find synergies, it will be under pressure to
14 produce meaningful dividends, pay down debt and invest in advanced services. In
15 other words, achieving the estimated synergy savings is paramount to meeting
16 shareholder expectations, keeping retail customers happy, and keeping the
17 Merged Company solvent. Given these priorities, maintaining wholesale service
18 quality may be low on the Merged Company's priority list, or worse yet,

²¹ PAETEC believes the information in this paragraph is important for the Board to fully understand how limited, relative to Qwest, CenturyLink's wholesale experience is. PAETEC cannot, at this time, provide the Board actual numbers, however, because the Joint Applicants have not provided the data to PAETEC, and confidential information provided in other states cannot be used in Iowa. PAETEC asked for this information in Iowa on July 16, and PAETEC executed a Protective Agreement on August 4, but PAETEC still has not been provided the corresponding information from either Qwest or CenturyLink for use in Iowa. PAETEC will provide a confidential version of this Q&A as a supplement as soon as the Applicants fulfill their discovery obligations.

²² Application for Expedited Approval of Reorganization at p. 5; Jones Iowa Direct at pp. 6-7.

1 wholesale service quality may be targeted for cutbacks in the pursuit of synergy
2 savings.

3 **Q. PLEASE DISCUSS HOW THE MERGED COMPANY WILL ATTEMPT**
4 **TO ACHIEVE SYNERGIES?**

5 A. The Merged Company has indicated that it will seek synergy savings through
6 operating cost savings (i.e., eliminating duplicative functions and systems related
7 to corporate overhead, network and operational, IT, advertising/marketing,
8 increased purchasing power) and capex savings.²³ All told, the company expects
9 \$575 million in operating cost synergies and \$50 million in capex synergies, for a
10 total of \$625 million over a three-to-five year period. The elimination of
11 duplicative functions (or headcount) and systems will impact retail and wholesale
12 operations. If and when Joint Applicants provide the confidential information
13 associated with PAETEC's discovery questions about synergy savings detail,
14 PAETEC will supplement its answer to this question to show whether and to what
15 extent the Joint Applicants' synergy savings estimates entail cutbacks in
16 wholesale operations.

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

19 A. Yes. CenturyLink has stated that CLECs can expect changes to occur post-
20 merger.²⁴ However, CenturyLink has been either unable or unwilling to provide

²³ Direct Testimony of Jeff Glover, Docket No. SPU-2010-0006, filed May 25, 2010 ("Glover Iowa Direct"), Exhibit JG-1 at p. 13.

²⁴ CenturyLink's S-4A, filed July 16, 2010, identifying, among others, the following as merger-related risks: (1) "substantial expenses in connection with completing the merger and integrating the business, operations, networks, systems, technologies, policies and procedures of Qwest with those of

1 any details about what changes will be made, what CenturyLink will or will not
2 integrate, or what “best practices” will guide the Merged Company going
3 forward.²⁵ As a result, the Joint Applicants are asking the Board to trust that their
4 pursuit of synergies will not result in decisions that degrade the quality of the
5 current wholesale systems and processes CLECs rely upon and currently
6 experience with Qwest. Such trust must be backed by quantifiable wholesale
7 commitments with meaningful consequences for failing to meet those
8 commitments.

9 **Q. DO YOU HAVE AN UNDERSTANDING OF THE MERGED**
10 **COMPANY’S INCENTIVES REGARDING INTEGRATION?**

11 A. Yes. First, as a publicly-traded company, the Merged Company will be under
12 intense pressure to achieve its estimated synergy savings through integrating the
13 two companies. This will be the key to servicing the increased debt load that
14 CenturyLink will inherit from the transaction, issuing dividends that shareholders
15 expect and deploying the advanced services demanded by end users. In other
16 words, the Merged Company will have the strongest incentive to do what it takes
17 to deliver on integration-related synergy savings. Second, as Dr. Ankum explains
18 in more detail, given that the Merged Company is a profit-maximizing firm, its
19 natural incentive is to reduce costs at the expense of competitors. This is where

CenturyLink”. See also, Direct Testimony of Michael Hunsucker on behalf of CenturyLink, Inc., Oregon PUC Docket UM 1484, June 22, 2010 (“Hunsucker Oregon Direct”) at p. 8: (“...upon merger closing, there will be no immediate changes to Qwest’s or CTL’s Operations Support Systems. The merger is intended to bring about improved efficiencies and practices in all parts of the combined company, so changes could be expected over time.”)

²⁵ CenturyLink response to PAETEC Iowa Data Request 52(g), July 23, 2010 (“Identification of ‘best practices’ associated with the integration of CenturyLink and Qwest operations will be completed as part of the detailed integration planning efforts. Until the integration teams are formed, and the detailed data gathering process can be completed, an analysis regarding the identification and/or adoption of ‘best practices’ is not available.”)

1 the Merged Company gets most *bang for its buck*. If, for example, the Merged
2 Company cuts back headcount in groups that serve wholesale customers, and
3 wholesale service is degraded as a result, not only has CenturyLink saved money
4 to achieve synergy savings, but it will also winback retail customers that will
5 leave the CLEC's service due to the perception (albeit erroneous) that the CLEC's
6 service has declined.²⁶ It is well-recognized that when a CLEC's retail end user
7 experiences service troubles due to underlying wholesale service quality problems
8 on the ILEC's end, the end user perceives it as a problem caused by the CLEC
9 and not the ILEC.

10 What's more, there are many ways that the Merged Company can pursue this
11 incentive during integration of the two companies. The company could degrade
12 access to systems by integrating a system with less functionality, the company
13 could integrate alleged "best practices" that results in inferior access, the company
14 could integrate its rate structures such that new rate elements are introduced that
15 were not previously assessed, the company could integrate its negotiations
16 template proposals to reduce or discontinue certain services, and the list goes on.
17 I am not casting aspersions here, I am just stating what economic theory dictates
18 and what the FCC recognized in its *First Report and Order*: ILECs have a strong
19 incentive to discriminate against CLECs. Left unchecked, the integration effort
20 that will be undertaken by the Merged Company post-merger will be a prime
21 opportunity for the (bigger) ILEC to follow through on its incentive to reduce
22 costs at the CLECs' expense.

²⁶ CenturyLink has stated that: "A financially stronger company can...compete against...CLECs." Application for Expedited Approval of Reorganization, Docket No. SPU-2010-0006, filed May 25, 2010 at p. 14.

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

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

13 **1. CenturyLink’s Attempts To Integrate OSS Or Other Systems**
14 **Or Processes Will Cause Harm**

15 **Q. ARE OPERATIONS SUPPORT SYSTEMS (OSS) IMPORTANT FOR**
16 **CLECs?**

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

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

1 generally must determine whether the access to OSS functions
2 provided by the RBOC to competing carriers sufficiently supports
3 each of the three modes of competitive entry strategies established
4 by the Act: interconnection, unbundled network elements, and
5 services offered for resale.²⁷

6 The FCC has found that CLECs would be “severely disadvantaged, if not
7 precluded altogether, from fairly competing,” if they did not have
8 nondiscriminatory access to OSS.²⁸ Qwest itself has described its existing OSS as
9 playing “a crucial role in the transactions between Qwest and all CLECs”²⁹ and
10 “the lifeblood of...Qwest’s wholesale operation...”³⁰

11 **Q. WHAT ARE OSS?**

12 A. The FCC defines OSS to include five functions: (1) pre-ordering, (2) ordering, (3)
13 provisioning, (4) maintenance and repair, and (5) billing.³¹ OSS includes all of
14 the computer systems, databases and personnel that an ILEC uses to perform
15 internal functions necessary for these five functions. The FCC also requires an
16 adequate change management process (CMP) to handle changes to the OSS
17 systems.³²

18 **Q. IS OSS A UNE?**

²⁷ Application of Ameritech Michigan pursuant to § 271 of the Communications Act of 1934, as amended, to provide In-Region, Inter-LATA services in Michigan, CC Docket 79-137, *Memorandum Op. and Order* (released August 19, 1997) at ¶ 133.

²⁸ *Local Competition Order* at ¶ 518.

²⁹ Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.

³⁰ Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at p. 39.

³¹ *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, December 23, 2002 (“*Qwest 9 State 271 Order*”) at ¶ 33.

³² *Qwest 9 State 271 Order* at ¶ 33. See also, 47 C.F.R. § 51.319(g).

1 A. Yes. The FCC has determined OSS to be a “network element.”³³ Consequently,
2 a CLEC must be permitted nondiscriminatory access to an ILEC’s OSS functions
3 in order to provide pre-order information to potential customers, sign up
4 customers, place orders for services or facilities, track the progress of its orders to
5 completion, obtain relevant billing information from the ILEC, and obtain prompt
6 repair and maintenance services for its customers.

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

9 A. Yes. The duty to provide access to OSS functions falls squarely within an ILEC’s
10 duties under Section 251(c)(3) to provide UNEs on terms and conditions that are
11 nondiscriminatory, just and reasonable, in accordance with the pricing standards
12 of Section 252, and under Section 251(c)(4) to offer services for resale without
13 imposing any limitations or conditions that are discriminatory or unreasonable.³⁴
14 Nondiscriminatory access to OSS is also one of the checklist items on the 14-
15 point competitive checklist applicable to BOCs under Section 271 of the Act.

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

18 A. Yes. The post-merger integration of OSS is a prime example. OSS impacts all
19 wholesale customers that do business with Qwest and CenturyLink, regardless of

³³ *Local Competition Order* at ¶ 516.

³⁴ Application of Ameritech Michigan pursuant to § 271 of the Communications Act of 1934, as amended, to provide In-Region, Inter-LATA services in Michigan, CC Docket 79-137, *Memorandum Op. and Order* (released August 19, 1997) at ¶ 130; *see also*, Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in South Carolina, CC Docket No. 97-208, *Memorandum Op. and Order* (released December 24, 1997) at ¶ 83.

1 whether the CLEC is resale-based, UNE-based, or completely facilities-based.
2 The statements from the FCC above and Qwest's statement that OSS is the
3 "lifeblood" of its wholesale operations shows that the importance of OSS to
4 competition cannot be exaggerated. Out of the many ways that the Merged
5 Company could integrate the two companies to the detriment of competition,
6 degrading the quality or access to OSS would be the most effective.

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

8 A. First, CenturyLink uses different OSS than Qwest. And, unlike Qwest's OSS
9 which was extensively tested during the 271 approval process, CenturyLink's
10 OSS has not been tested to determine whether they meet the nondiscriminatory
11 requirements of Section 271. CenturyLink's OSS has not been tested like
12 Qwest's because CenturyLink is not a BOC and, therefore, has not had to go
13 through the 271 approval process. Second, the existing Qwest OSS and its
14 functionality is more well-documented, and preferred by carriers such as Charter
15 and PAETEC that use both of the merging companies' systems, than the existing
16 CenturyLink OSS. Just as carriers in Embarq territory did not want to revert to
17 the more manual processes of CenturyTel in that merger,³⁵ CLECs do not want
18 Qwest to backslide from the 271-evaluated systems in Qwest territory to
19 CenturyLink systems that have not been subjected to rigorous third party testing.³⁶
20 Hence, any attempt to integrate CenturyLink's OSS into the legacy Qwest region
21 would be a step in the wrong direction.

³⁵ See, e.g., FCC Embarq/CenturyTel Merger Order, Appendix C "Conditions," at p. 28 ("CenturyTel will integrate, and adopt for CenturyTel CLEC orders, the automated Operation Support Systems ('OSS') of Embarq within fifteen months of the transaction's close.").

³⁶ CenturyLink response to PAETEC Iowa Data Request #18 ("While CenturyLink has not conducted third-party testing of its systems...")

1 **Q. HAS PAETEC ATTEMPTED TO DETERMINE WHETHER**
2 **CENTURLINK PLANS TO INTEGRATE DIFFERENT OSS INTO**
3 **QWEST’S LEGACY TERRITORY POST-MERGER?**

4 A. Yes. When PAETEC asked the Merged Company about its post-merger OSS
5 integration plans, CenturyLink responded:

6 Until the Transaction is complete, and the necessary decisions have
7 been made on how to best integrate the two companies, plans for
8 specific changes to the Qwest or CenturyLink Operations Support
9 Systems (OSS) have not been fully developed.³⁷

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

13 At this time, system integration plans for the proposed transaction
14 with Qwest have not been fully developed. In fact, complete
15 integration plans cannot be developed until the merger is
16 concluded. However, because the transaction results in the entirety
17 of Qwest, including operations and systems, merging into and
18 operating as a subsidiary of CenturyLink, it will allow a
19 disciplined approach to systems and practices integration decisions
20 to proceed in a disciplined manner.³⁸

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

25 Integration planning is in the early stages and decisions on
26 wholesale OSS systems have not been made at this time. Upon
27 merger closing, there will be no immediate changes to Qwest’s or
28 CenturyLink’s OSS. Any changes will occur only after a thorough
29 and methodical review of both companies’ systems and processes
30 to determine the best system to be used on a go-forward basis.

³⁷ CenturyLink response to PAETEC Iowa DR #23. See also, CenturyLink response to Integra DR #23 in Arizona, Colorado, Utah and Washington.

³⁸ CenturyLink response to Oregon PUC Staff Data Request #32.

1 Decisions will be made from both a combined company and a
2 wholesale customer perspective and consistent with the continued
3 provision of quality service to our wholesale customers.³⁹

4 In sum, CenturyLink has been mum about its post-merger plans regarding OSS
5 integration. While CenturyLink has made vague statements publicly about
6 operations in Qwest territories being unaffected by the merger, it would seem that
7 issues like the OSS issue would be very easy for the Joint Applicants to put to rest
8 with a straightforward commitment to leave existing Qwest wholesale processes
9 and OSS in place for a significant timeframe. When push comes to shove in
10 sworn testimony or discovery responses, however, the Joint Applicants have been
11 unwilling or unable to make that simple commitment or give a straight answer –
12 often refusing to provide a meaningful answer at all. That certainly gives me
13 strong concerns about the Joint Applicants’ intent, and it should concern the
14 Board as well.

15 **Q. IS THERE ANYTHING ELSE THAT SUPPORTS YOUR CONCERN**
16 **ABOUT CENTURYLINK REPLACING LEGACY QWEST OSS WITH**
17 **OSS THAT HAVE NOT BEEN SHOWN TO BE 271 COMPLIANT?**

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

19 “[t]he combined company will continue to meet these [271]
20 obligations through its wholesale operations *leveraging* the key
21 resources and expertise of *both entities*.”⁴⁰

22 The problem with this statement, in addition to its obviously vague nature, is that
23 only *Qwest’s* wholesale systems, processes and resources have been shown to
24 satisfy the market-opening and nondiscrimination requirements of Section 271 of

³⁹ CenturyLink response to Oregon PUC Staff DR #60.

⁴⁰ Hunsucker Oregon Direct at pp. 12-13. (emphasis added)

1 the Act – CenturyLink’s have (admittedly⁴¹) not. So, when CenturyLink says that
2 it will integrate at least some of CenturyLink’s wholesale resources and expertise
3 into Qwest’s territory (such as an OSS interface), it is likely that some of the
4 interfaces and processes that have been deemed as 271-compliant would be
5 replaced by interfaces and processes that have not been found to be 271-
6 compliant.

7 **Q. IS THERE ANOTHER REASON WHY THIS CONCERN IS**
8 **WARRANTED?**

9 A. Yes. CenturyLink has stated that some of the total estimated \$575 million in
10 operational synergy savings will come from IT savings.⁴² Given that IT savings is
11 a primary component of the overall synergy savings estimate, it is likely that it
12 entails integration of OSS. It is also interesting that CenturyLink can calculate IT
13 savings when, as discussed above, it has provided very little information on
14 integration plans and has stated: “complete integration plans cannot be developed
15 until the merger is concluded.”⁴³

16 **Q. YOU MENTION ABOVE THAT QWEST’S OSS WAS THIRD-PARTY**
17 **TESTED DURING THE 271 APPROVAL PROCESS. PLEASE**
18 **ELABORATE.**

19 A. Qwest’s existing OSS, CMP and supporting processes and data, were thoroughly
20 tested during the Qwest 271 approval process to ensure that they provided the

⁴¹ Hunsucker Oregon Direct at p. 12.

⁴² See, Exhibit JG-1 to Glover Iowa Direct. If and when the Joint Applicants provide the confidential information related to synergy savings estimates, PAETEC will supplement this response to describe the magnitude of estimated IT savings in relation to the total estimated synergy savings.

⁴³ CenturyLink response to PAETEC Iowa Data Request #30, July 23, 2010. .

1 nondiscriminatory access required by Section 271. According to Qwest, the
2 collaborative OSS test “was the most comprehensive and collaborative of all of
3 the OSS tests conducted to date.”⁴⁴ And referring to the final report of the third-
4 party tester, Qwest said: “This *Final Report* marked the culmination of more than
5 three years of exhaustive and comprehensive effort, *unlike any seen before*, to
6 determine whether Qwest’s OSS meet the standards set forth under Section 271 of
7 the Telecommunications Act of 1996, as those standards have been amplified and
8 applied by the FCC.”⁴⁵ Qwest’s opinion was shared by the state commissions that
9 participated and oversaw the third-party testing, such as the Arizona Corporation
10 Commission which stated:

11 The ACC believes that during the last four years, Qwest systems,
12 processes, and performance measurements have undergone one of
13 the most comprehensive reviews to-date...result[ing] in an
14 extremely rigorous test, resolution of many disputed issues through
15 compromise, and meaningful and effective changes to Qwest’s
16 systems and processes.⁴⁶

17 The FCC said “...the OSS testing conducted under the auspices of the ROC
18 [Regional Oversight Committee] was broad-based and comprehensive.”⁴⁷
19 Attached to my testimony as Exhibit TJG-2 is a detailed description of the
20 extensive, three-year process that was undertaken by state regulators, the FCC,
21 Qwest, CLECs and third-party testers to ensure that Qwest’s existing OSS,

⁴⁴ Brief of Qwest Corp., WC Docket No. 02-148, June 13, 2002, at p. 111.

⁴⁵ Qwest Verified Comments, Washington Docket No. UT-003022 at pp. 1-2 (emphasis added). Qwest also described the OSS testing as: “years of rigorous fact finding and analysis...” Reply Comments of Qwest Corp., WC Docket No. 02-148 at p. 2.

⁴⁶ Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003 (“ACC Evaluation”) at p. 5. The Colorado Public Utilities Commission referred to the testing process as “the epitome of collaborative, open decision making.” Reply Comments of Qwest Corp., WC Docket No. 02-148 at p. 2.

⁴⁷ Qwest 9 State 271 Order at ¶ 12.

1 performance metrics, and CMP met the requirements of Section 271. This exhibit
2 also explains that hundreds of issues of concern were identified during third-party
3 testing and resolved through improvements to Qwest's OSS.

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

7 A. The third-party test included an audit of Qwest's performance assurance plan
8 (QPAP) (a self-executing remedy plan to ensure Qwest continues to comply with
9 the competitive checklist) and related performance indicators or "PIDs" (which
10 are used in the QPAP to measure Qwest's performance and to determine whether
11 Qwest must make remedy payments to CLECs or the state for substandard
12 wholesale service quality). A coalition was formed – the ROC Post-Entry
13 Performance Plan (PEPP) – to discuss and address issues related to Qwest's
14 wholesale performance, including the PAP. Qwest filed its PAP on June 29,
15 2001, and a multi-state proceeding (conducted by a third-party Facilitator from
16 Liberty Consulting) was initiated to review Qwest's PAP.⁴⁸ Qwest's PIDs were
17 developed collaboratively by the ROC for use in the third-party test to measure
18 Qwest's ability to process commercial volumes through its OSS.⁴⁹ Qwest's PIDs
19 measure performance in three ways: retail parity (for measures with retail

⁴⁸ See, e.g., *In the Matter of the Investigation Into US WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Thirtieth Supplemental Order, Commission Order Addressing Qwest's Performance Assurance Plan, Washington UTC Docket Nos. UT-003022/003040, April 2002 ("Washington 30th Supplemental Order") at ¶¶ 10-11.

⁴⁹ *In the Matter of the Investigation Into US WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Thirty-Ninth Supplemental Order, Commission Order Approving SGAT and QPAP, and Addressing Data Verification, Performance Data, OSS Testing, Change Management, and Public Interest, Washington UTC Docket Nos. UT-003022/003040, July 1, 2002 ("Washington 39th Supplemental Order") at ¶ 345.

1 analogues), benchmark (for measures without retail analogues) and “parity by
2 design” (for measures without retail analogues or benchmarks).⁵⁰ The Master
3 Test Plan directed Liberty Consulting to “develop and perform an audit to insure
4 that all aspects of Qwest’s wholesale performance measures and retail parity
5 standards are sound and in compliance with the collaboratively developed ROC
6 PID.”⁵¹

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

10 As set forth below, we find that the performance assurance plans
11 (PAP) that will be in place...provide assurance that the local
12 market will remain open after Qwest receives section 271
13 authorization in the nine application states...and are likely to
14 provide incentives that are sufficient to foster post-entry checklist
15 compliance.⁵²

16 It is my understanding that, with a few exceptions in the legacy Embarq territory,
17 CenturyLink is not subject to PAPs or PIDs, and certainly not PAPs or PIDs that
18 were extensively tested during the 271 approval process. And since Qwest’s
19 PAPs and PIDs go hand-in-hand with Qwest’s existing OSS systems, any change
20 to the existing Qwest OSS would likely mean changes for Qwest’s PAPs and
21 PIDs. This would have a dramatic negative effect on the ability to identify
22 discriminatory treatment by the Merged Company and would give the Merged
23 Company more opportunity to backslide on its 271 obligations in Qwest’s legacy
24 territory.

⁵⁰ Washington 39th Supplemental Order at ¶ 32.

⁵¹ Washington 39th Supplemental Order at ¶ 33.

⁵² Qwest 9 State 271 Order at ¶ 440.

1 **Q. DOES YOUR EXPLANATION AND EXHIBIT REGARDING THE**
2 **TESTING OF QWEST’S OSS UNDERSCORE THE CLEC CONCERNS**
3 **ABOUT OSS INTEGRATION?**

4 A. Yes. Post-merger CenturyLink may attempt to replace OSS that have been tested
5 under a process “unlike any seen before” with OSS that have not been
6 independently tested at all. Once this change is made, the work by the ROC and
7 FCC during the 271 approval process has been squandered, and Qwest can no
8 longer show that it is providing nondiscriminatory access to OSS under 271 of the
9 Act – that is, unless and until the Merged Company demonstrates, using the same
10 stringent testing process that took place during the Qwest 271 approval process,
11 that its new wholesale system or process meets the 271 requirements.

12 **Q. CENTURYLINK APPEARS CONFIDENT THAT ITS WHOLESALE OSS**
13 **AND OPERATIONS, IF INTEGRATED IN QWEST’S LEGACY**
14 **TERRITORY, WOULD COMPLY WITH 271 REQUIREMENTS.⁵³**
15 **SHOULD THE BOARD SHARE THIS CONFIDENCE?**

16 A. No. There is no basis for CenturyLink’s claim. Ironically, Qwest made a similar
17 claim back in 1999 that its OSS and CMP at that time satisfied the Section 271
18 requirements. However, three years of third-party testing, dozens of “meaningful
19 and effective changes to Qwest’s systems and processes[.]”⁵⁴ and millions of
20 dollars later, it was proven that Qwest’s assurances back in 1999 about its OSS
21 and CMP were false. I have provided as Exhibit TJG-3 the “Assurances Not

⁵³ Hunsucker Oregon Direct at pp. 12-13.

⁵⁴ Evaluation of the Arizona Corporation Commission, WC Docket No. 03-194, September 24, 2003, at p. 5.

1 Met” exhibit which compares the assurances Qwest made in 1999 about its then-
2 flawed OSS and CMP to the assurances CenturyLink is now making. As this
3 exhibit shows, the Board should not accept CenturyLink’s promises in this regard
4 at face value.

5 **Q. YOU STATE ABOVE THAT CENTURYLINK AND QWEST USE**
6 **DIFFERENT OSS. PLEASE ELABORATE ON THE DIFFERENCES**
7 **BETWEEN THE TWO COMPANIES’ OSS.**

8 A. Take the CLEC-facing OSS interfaces for pre-ordering, ordering and
9 maintenance/repair for example. For pre-ordering, ordering and provisioning of
10 UNEs/resale Local Service Requests (LSRs), Qwest uses Interconnect Mediated
11 Access Graphical User Interface (IMA GUI) and Interconnect Mediated Access
12 Extensible Markup Language (IMA XML) as its CLEC-facing systems. IMA
13 GUI is a web-based electronic interface and IMA XML is a business-to-business
14 electronic interface allowing information exchange between Qwest and CLEC
15 systems.⁵⁵ These IMA systems interface with Qwest back-office systems and
16 databases in support of queries and transactions.⁵⁶ For access services and
17 UDITs, Qwest uses Qwest Online Request Application Graphical User Interface
18 (QORA GUI), a web-based interface, and QORA Gateway, a company-to-
19 company interface, for its CLEC-facing systems.⁵⁷ Though QORA does not

⁵⁵ Qwest response to PAETEC Iowa Data Request #19. According to Qwest: “The IMA GUI is a user-to-computer interface while IMA XML is a computer-to-computer interface. The Qwest IMA GUI presents the user with a series of browser-based screens. Using these screens the CLEC can process pre-order, order, and post-order IMA transactions. There are no screens associated with XML. All of the information that is exchanged is done so in the form of data files.” IMA XML FAQs Available at: <http://www.qwest.com/wholesale/ima/xml/>

⁵⁶ Qwest response to PAETEC Iowa Data Request #19.

⁵⁷ Qwest response to PAETEC Iowa Data Request #19

1 provide all of the functionality that IMA provides, like the IMA systems for
2 LSRs, QORA provides for electronic submission of Access Service Requests
3 (ASRs). For maintenance and repair, Qwest uses Customer Electronic
4 Maintenance and Repair (CEMR) and Repair Call Expert (RCE) as its web-based
5 CLEC-facing systems, and Mediated Access Electronic Bonding Trouble
6 Administration (MEDIACC-EBTA) as its business-to-business gateway CLEC-
7 facing system.⁵⁸

8 By comparison, CenturyLink uses a system called EASE for pre-ordering and
9 ordering for both LSRs and ASRs.⁵⁹ EASE includes both a GUI (web-based) and
10 EDI (business-to-business) version. For trouble reporting, CenturyLink uses
11 “Access Care,” wherein a wholesale customer calls into Special Service
12 Operations (SSO) and CenturyLink records the information on a trouble ticket.⁶⁰
13 In the legacy Embarq territories, CenturyLink also provides the option to use
14 WebRRS, a web-based repair ticket system that allows CLECs to report and track
15 trouble tickets.⁶¹

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

18 A. Qwest’s interfaces were tested during the 271 approval process which took place
19 between 1999-2002, which means that Qwest’s existing OSS has largely (i.e.,
20 with incremental changes made via the CMP process) been in place since 2002.

⁵⁸ Qwest response to PAETEC Iowa Data Request #19. Qwest states: “CEMR and MEDIACC-EBTA are used to mechanically process telephone circuit repair activities including repair ticket generation and MLT (Mechanized Loop Tests).”

⁵⁹ CenturyLink response to PAETEC Iowa Data Request #16.

⁶⁰ CenturyLink response to PAETEC Iowa Data Request #16.

⁶¹ CenturyLink response to Washington UTC Staff Data Request #86.

1 CenturyLink's EASE, on the other hand, was first implemented in legacy
2 CenturyLink (Embarq) territory in May 2008 for ASRs and October 2009 for
3 LSRs. In the legacy CenturyTel territory, EASE was introduced for ASRs in
4 January 2010, and CenturyLink is currently in the process of implementing EASE
5 for LSRs in legacy CenturyTel territory.⁶²

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

9 A. No. The Qwest IMA and CenturyLink EASE interfaces are just the CLEC-facing
10 interfaces. Behind those interfaces are a number of back-office systems,
11 underlying data sets, business processes, product catalogs,⁶³ billing systems,
12 business rules, performance metrics, etc. All of these various pieces work
13 together to provide the five functions of OSS (pre-ordering, ordering,
14 provisioning, maintenance and repair, and billing). This requires systems to be
15 compatible with other systems, recognize certain computer code, and be properly
16 linked to upstream and downstream systems, databases and workgroups.
17 Obviously, it is not possible to simply unplug IMA and plug in EASE (like, for
18 example, swapping out Netscape® Navigator with Internet Explorer as the
19 browser on a personal computer). Changing out CLEC-facing interfaces would
20 create a complete breakdown in the linkages with underlying systems, databases

⁶² CenturyLink response to PAETEC Iowa Data Request #16. Prior to EASE, the legacy CenturyTel OSS was "largely manual." See, *In the Matter of Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, Memorandum Opinion and Order, WC Docket No. 08-238, FCC 09-54, June 25, 2009, at ¶ 22.

⁶³ Product catalogs used in this context do not refer to the Qwest on-line documentation of its products and business processes often referred to as Qwest "PCATs"

1 and processes. Given the complexity of Qwest's OSS, such an integration attempt
2 would be an enormous effort just to make sure everything worked, let alone to
3 ensure that the replacement system provides the type of nondiscriminatory access
4 to the full features and functions of the OSS to which CLECs are entitled.

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

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

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

1 A. Yes. Not only would CLECs have to expend significant time and money testing
2 the CenturyLink replacement systems, but they would also have to modify their
3 own systems. For instance, the CLECs have built their own EDI interfaces to
4 electronically bond directly to the existing Qwest systems. These CLEC systems
5 would need to be modified, at significant expense, by the CLEC to work with the
6 new replacement system. For instance, Qwest's IMA XML exchanges
7 information between the CLEC and Qwest's OSS in data files based on Qwest's
8 standard XML Web Service Definition Languages or "WSDLs." As Qwest
9 explains: "There must be a mechanism to translate data from the proprietary
10 format as it exists in the CLEC system to a format that the receiving organization
11 can understand. This is done using XML translation software."⁶⁴ All of these
12 systems, software, and proprietary formats would need to be changed in both
13 Qwest's and CLECs systems if CenturyLink attempts to replace Qwest's OSS
14 post-merger. The CLEC would then need to test all of these new systems before
15 going "live" to ensure that they work properly (which is the purpose of Qwest's
16 Stand Alone Test Environment or "SATE"), and would also need to test them in a
17 production environment (which is why Qwest offers controlled production
18 testing). CenturyLink has not indicated whether it would provide any of these
19 capabilities if it decides to integrate OSS.

20 During the third-party test of Qwest's OSS, a "pseudo-CLEC" (Hewlett Packard
21 or "HP") was hired to act as a CLEC (or "to live the CLEC experience"⁶⁵). HP

⁶⁴ IMA XML FAQs Available at: <http://www.qwest.com/wholesale/ima/xml/>

⁶⁵ Draft Final Report of KPMG Consulting, Qwest Communications OSS Evaluation, Version 1.1, April 26, 2002 ("KPMG 4/26/02 OSS Report") at p. 10.

1 was charged with establishing electronic bonding with Qwest, ensuring that
2 Qwest provided the necessary information and tools to electronically interface
3 with Qwest's OSS, and determine whether Qwest's systems were operationally
4 ready to handle the volumes and types of orders CLECs would submit through the
5 business-to-business electronic interfaces. Likewise, KPMG Consulting tested
6 Qwest's testing environments. If CenturyLink attempted to modify the CLEC-
7 facing OSS interfaces in Qwest's territory, all of the work done by the third-
8 testers during the third-party test, and the work done by CLECs to establish these
9 business-to-business interfaces would be undermined. Moreover, this work
10 would need to be performed all over again to ensure that the replacement system
11 provides the same functionality and at the same quality as Qwest's system.

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

13 A. No, not even close. CenturyLink has indicated to the FCC that it intends to
14 operate both companies' OSS for at least one year following transaction approval.
15 One year is insufficient time for such an enormous effort. It took Qwest three
16 years to satisfy third-party testing of its existing OSS, and that was during a time
17 when Qwest had 271 approval as a "carrot" to encourage the company to work
18 with CLECs and regulators to improve its OSS. By contrast, even if CenturyLink
19 abides by its claim to leave Qwest's OSS in place for one year, it will have no
20 incentive to work with CLECs and regulators during the integration to ensure that
21 the access or quality to Qwest's existing OSS are not degraded, because the
22 merger will already have been approved (i.e., there will be no "carrot").

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

12 **Q. IS THERE AN EXAMPLE FROM THE INFORMATION PRESENTED**
13 **ABOVE WHICH SHOWS THAT DIFFERENCES IN THE COMPANIES’**
14 **OSS LEADS TO DIFFERENCES IN FUNCTIONALITIES TO CLEC?**

15 A. Yes. CenturyLink explains that its “Access Care for trouble reporting system for
16 circuits” entails:

17 [t]he Wholesale customer will call in to the SSO (Special Service
18 Operations) and CenturyLink will record all the pertinent
19 information on the ticket. If SSO has remote test access, SSO will
20 then do a diagnostic test to isolate the trouble. Once it is
21 determined if it is a central office, cable, or premise issue, the SSO
22 will request dispatch to the proper technician to resolve the issue.
23 Once the field technician has fixed the issue, they will call back
24 into SSO to test the circuit to confirm the repair. CenturyLink will
25 then call the reporting party and do acceptance testing, if the circuit
26 is working and they accept it, the ticket is closed.⁶⁶

⁶⁶ CenturyLink response to PAETEC Iowa Data Request #16.

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

4 Qwest's MEDIACC-EBTA, by comparison, provides the ability to "mechanically
5 process telephone circuit repair activities including repair ticket generation and
6 MLT."⁶⁷ Qwest's MEDIACC allows for "M&R queries [to be] forwarded
7 directly from the MEDIACC gateway for processing by Loop Maintenance
8 Operations System (LMOS) and Work Force Administration (WFA)"⁶⁸ "without
9 having to go through the Business Process Layer..."⁶⁹ What this comparison
10 shows is that Qwest allows electronic bonding capability for maintenance and
11 repair that permits a direct connection between the CLEC's M&R query and the
12 Qwest repair technicians – a capability that is not available through either
13 CenturyLink's Access Care (SSO) process (which requires multiple phone calls
14 and increased manual intervention, with the increased possibility of error) or
15 CenturyLink's web-based WebRRS. Further, based on the information the Joint
16 Applicants have provided to date, it appears that Qwest's web-based maintenance
17 and repair GUI, CEMR, has functionality that CenturyLink's web-based
18 maintenance and repair GUI, WebRRS, does not have. One such example is that

⁶⁷ Qwest response to PAETEC Iowa Data Request #19.

⁶⁸ Final Report of the Qwest OSS Test, May 3, 2002, Issued by Cap Gemini Ernst & Young (Third Party Tester), Version 3.0 at p. 247.

⁶⁹ Final Report of the Qwest OSS Test, May 3, 2002, Issued by Cap Gemini Ernst & Young (Third Party Tester), Version 3.0 at p. 251.

1 CLECs can submit trouble tickets for special access circuits through Qwest's
2 CEMR,⁷⁰ which is not permitted through CenturyLink's WebRRS.⁷¹

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

5 A. Yes. Based on information provided in discovery,⁷² CenturyLink's EASE system
6 uses the Wisor Synchronoss platform. A similar Synchronoss platform was used
7 by Frontier in its recent OSS cutover in West Virginia. A competitor in West
8 Virginia that makes extensive use of the Frontier OSS, FiberNet, recently asked
9 the West Virginia Public Service Commission to review problems arising with
10 that platform. FiberNet explained that:

11 Since the cutover to Frontier's SynchronossNFO OSS on July 1,
12 2010, however, FiberNet has experienced significant and ongoing
13 problems with the proper functionality of Frontier's OSS and have
14 unfortunately been compelled to conclude that Frontier's OSS as
15 presently constituted is substantially less sophisticated and far less
16 automated than the former Verizon OSS it was intended to
17 replace.⁷³

18 Based on this recent experience, there is a real concern that the same problems
19 being experienced currently in West Virginia may also occur in Qwest's region
20 post-merger.

⁷⁰ <http://www.qwest.com/wholesale/systems/WebHelp/Introduction.htm>

⁷¹ See, e.g., A Guide to Embarq Online Wholesale Repair System, available at: http://embarq.centurylink.com/wholesale/docs/webrrs_app.pdf ("For special access circuits or switched access circuits, customers continue to call 888-883-1484 to report trouble.")

⁷² See, e.g., CenturyLink response to PAETEC Iowa Data Request #17.

⁷³ FiberNet LLC Petition to Reopen, July 21, 2010 (filed in West Virginia PSC Docket No. 09-087 1-T-PC) at p. 2.

1 **Q. ARE YOU CONCERNED ONLY BY THE COMPANY’S ATTEMPT TO**
2 **INTEGRATE CLEC-FACING OSS INTERFACES, OR IS YOUR**
3 **CONCERN BROADER THAN THAT?**

4 A. My concern is much broader than CLEC-facing OSS interfaces. As explained
5 above, OSS includes all of the computer systems, databases, personnel and
6 business processes that an ILEC uses to perform internal functions necessary to
7 support the OSS systems interfaces – not just the CLEC-facing interfaces. The
8 third-party test of Qwest’s OSS during the 271 approval process went much
9 deeper than just the CLEC-facing interfaces. Rather, the test included an
10 evaluation of Qwest’s performance indicators (or PIDS),⁷⁴ Qwest’s performance
11 assurance plan (or PAP),⁷⁵ Qwest’s back-office systems, Qwest’s business
12 processes,⁷⁶ the integrity of Qwest’s data,⁷⁷ Qwest’s Statement of Generally

⁷⁴ See, e.g., Washington 39th Supplemental Order at ¶ 29 ("The performance measures Qwest uses to report its monthly commercial performance in Washington and other states in its operating territory were collaboratively developed by the Regional Oversight Committee's (ROC) Technical Advisory Group (TAG) to be used in the third-party testing of Qwest's Operations Support Systems (OSS)."); ACC Evaluation at 3 ("As part of the collaborative testing process, the parties worked together to develop a comprehensive set of Performance Indicator Definitions ('PIDs'). These PIDs, with some modification, also formed the basis for the [ROC's] Performance Measurement Evaluation and testing process."). Qwest's PIDs measure performance in three ways: retail parity (for measures with retail analogues), benchmark (for measures without retail analogues) and "parity by design" (for measures without retail analogues or benchmarks). Statistical measures (modified "z-tests") are used for determining whether Qwest satisfies the parity and benchmark performance measures. See *In re Qwest Corp.'s Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process et al.*, New Mexico Utility Case Nos. 3269 *et al.*, Final Order Regarding Compliance with Outstanding Section 271 Requirements, 2002 N.M. PUC LEXIS 2 (Oct. 8, 2002).

⁷⁵ See, e.g., Comments of the Nebraska Public Service Commission, WC Docket No. 02-148 at 4 (filed July 3, 2002) ("Nebraska PSC Comments") (describing the 12-state ROC Post Entry Performance Plan collaborative's extensive conference calls and multi-day workshops to examine and discuss Qwest's PAP).

⁷⁶ The Master Test Plan contained "a description of a comprehensive plan to test Qwest’s OSS, interfaces *and processes...*" Washington 39th Supplemental Order at ¶ 109, quoting the Master Test Plan. (emphasis added)

⁷⁷ Liberty Consulting was retained to conduct a data reconciliation audit, during which 10,000 orders or trouble tickets were evaluated. Order Regarding Operational Support Systems, ROC OSS Test, and Commercial Performance Data, South Dakota Public Service Commission Docket TC01-165, November 22, 2002 ("South Dakota PSC 271 Order") at p. 22.

1 Available Terms (SGATs),⁷⁸ and Qwest's CMP.⁷⁹ Changes in any of these areas
2 will cause Qwest to backslide on its 271 obligations and will cause harm for
3 CLECs.

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

6 A. No. As explained above, it has taken many years, an enormous amount of
7 industry effort led by the ROC, and many millions of dollars to get Qwest's
8 wholesale OSS, CMP, processes, procedures and practices to where they are
9 today. Qwest's systems and processes are not perfect, but they are much better
10 than they were prior to the 271 process and CLECs have experience with dealing
11 with those systems. By contrast, CenturyLink's OSS has not been through
12 independent third-party testing, and has not been tested for commercial volumes
13 or shown to be operationally ready for Qwest's territory. And given its relatively

⁷⁸ See, e.g., Evaluation of the Colorado Public Utilities Commission, WC Docket No. 02-148 (filed July 2, 2002) ("Colorado PUC Evaluation") at 26 ("This retelling of bringing Qwest's SGAT into compliance with the 14-point competitive checklist only begins to touch on the volume and breath of issues that arose in Colorado's six SGAT workshops.... After evaluating these six staff workshop reports and the enormous record behind these reports, the [Colorado PUC] concluded Qwest's SGAT complies with the 14-point checklist."); see also Written Consultation of the Idaho Public Utilities Commission, WC Docket No. 02-148, July 3, 2002, Exhibit A at 3 ("The checklist items were addressed in the context of Qwest's SGAT, and so the focus of the workshops was the SGAT terms required to comply with the checklist items. Qwest accordingly has filed the SGAT with the reports showing the terms as they were developed through the workshops and subsequent reports.").

⁷⁹ See, e.g. Colorado PUC Evaluation at 4 ("Qwest's change management process (CMP) has undergone a complete overhaul during the § 271 process. It is now compliant with the FCC's change management criteria. The [Colorado PUC] staff has closely monitored CMP, and through no small amount of goading, Qwest has brought it into compliance."); see also *id.* at 45 ("Beginning in July 2001, Qwest, CLECs and [Colorado PUC] staff began meeting in a collaborative effort to redesign Qwest's change management process (CMP). The participants in the redesign process have met for more than 45 days over the past 11 months to discuss every aspect of Qwest's CMP. CLECs and Qwest have made every effort to achieve consensus. As a result, the [Colorado PUC] agrees with Qwest's contention that 'it has in place the most comprehensive, inclusive, and forward-looking change management plan in the nation.'").

1 recent deployment, CLECs are much less familiar with CenturyLink's OSS.⁸⁰
2 There is a grave concern – grounded in CenturyLink's lack of experience, the lack
3 of information from Joint Applicants, and recent system integration failures – that
4 they will get worse after the proposed transaction absent binding commitments
5 that ensure continued availability of Qwest's OSS and the continuation of PIDs
6 and PAPs to measure the ongoing performance.

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

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

13 A. Yes. CenturyLink touts its "region-based, local operating model" – or "go-to-
14 market" model – which, according to CenturyLink, "has proven successful in
15 driving customer service, responsiveness and accountability closer to the
16 customer and enabling the company to be more proactive and successful in direct
17 response marketing efforts on a market-by-market basis."⁸¹ Since CenturyLink
18 has stated that this model will likely be incorporated into the Qwest region,⁸²
19 understanding this model is critical to determining the impacts of integration post-

⁸⁰ Qwest's third-party tested OSS has been in place for about seven years. By contrast, CenturyLink is currently in the process of integrating Embarq's legacy OSS into CenturyLink's legacy territory.

⁸¹ Jones Iowa Direct at p. 14.

⁸² Jones Iowa Direct at p. 14. See also, Direct Testimony of Duane Ring, Docket No. SPU-2010-0006, filed May 25, 2010 ("Ring Iowa Direct") at p. 9.

1 merger. Unfortunately, CenturyLink has provided almost no detail, and what
2 detail has been provided concerns me.

3 **Q. PLEASE EXPLAIN YOUR CONCERNS.**

4 A. CenturyLink states that the go-to-market model determines the amount of network
5 investment, including broadband investment, that will be deployed in each region
6 of the Merged Company.⁸³ Obviously, the network investment of the Merged
7 Company is an issue that is critical to wholesale and retail customers (who rely on
8 that network for services) as well as the economic development of the state.⁸⁴
9 However, when asked to provide details about the go-to-market model,
10 CenturyLink states: “[d]etailed planning regarding the integration of Qwest areas
11 into CenturyLink’s local operating model has *not* begun.”⁸⁵ Indeed, CenturyLink
12 was unable or unwilling to identify the regions or region headquarters that would
13 apply to Qwest’s territory once the go-to-market model is implemented post-
14 merger.⁸⁶ So, at this point, no one knows how investment decisions will be made

⁸³ “CenturyLink’s local operating model provides the framework for investment decisions across its operating territory...Upon completion of the merger, it is anticipated that CenturyLink will implement its local operating model in the Qwest operating territories.” CenturyLink response to Washington UTC Staff Data Request DR #92, June 25, 2010.

⁸⁴ “Broadband is becoming a prerequisite to economic opportunity for individuals, small businesses and communities. Those without broadband and the skills to use broadband-enabled technologies are becoming more isolated from the modern American economy.” FCC National Broadband Plan, p. 283. Available at: <http://download.broadband.gov/plan/national-broadband-plan-chapter-13-economic-opportunity.pdf>

⁸⁵ CenturyLink response to Iowa OCA Data Request #1-008C (emphasis added).

⁸⁶ “While CenturyLink does anticipate its local operating model will be incorporated into the areas of Qwest’s operational structure upon the completion of the Transaction, the detailed analysis and planning associated with identifying specific region headquarters has not taken place. Without regard to the locations of any region headquarters, CenturyLink intends to continue its local market focus, which drives operations and service decision-making closer to the customer. This operating model focuses on empowering local personnel to meet the distinct needs of their markets and places the customer at the center of what the company does.” CenturyLink response to Washington UTC Staff Data Request #80, June 23, 2010.

1 by Qwest in the state post-merger, who will be making those decisions, or where
2 those decisions will be made.

3 **Q. DID PAETEC ATTEMPT TO GET INFORMATION ABOUT THE “GO-**
4 **TO-MARKET” MODEL?**

5 A. Yes. When PAETEC asked CenturyLink some very basic questions about the go-
6 to-market model such as “whether and to what extent [it] impacts wholesale
7 customers”, CenturyLink objected to answering the question.⁸⁷ Amazingly,
8 CenturyLink based its objection, in part, on the claim that the information: “is not
9 relevant to the subject matter of this action and is not reasonably calculated to
10 lead to the discovery of admissible evidence.”⁸⁸ Contrary to CenturyLink’s claim,
11 the model that will be used to determine how much and what type of investment
12 is made in the state as well how the Merged Company will conduct “direct
13 response marketing efforts” to stem wireline losses is directly relevant to the
14 public interest.⁸⁹

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

⁸⁷ CenturyLink response to PAETEC Iowa Data Request #129. CenturyLink also objected to: describing the “direct response marketing efforts” associated with the go-to-market model that CenturyLink claims has had a positive impact on CenturyLink’s line losses and broadband take-rates; providing a map showing the regions post-merger; and describing the “customized back-office support” associated with the model that CenturyLink described to the FCC. See, Declaration of Karen Puckett, WC Docket No. 10-110.

⁸⁸ CenturyLink response to PAETEC Iowa Data Requests #129, 130, 131.

⁸⁹ CenturyLink has indicated that the go-to-market model will play an important role in achieving merger synergies. For instance, CenturyLink states: “This more de-centralized local structure signifies a leaner, more efficient central corporate operation” (Ring Iowa Direct at p. 8). CenturyLink has identified corporate overhead as a primary synergy-related operating cost savings (Glover Iowa Direct, Exhibit JG-1 at p. 13). Given that the Joint Applicants’ estimate of synergies funnels directly into the Merged Company’s ability to pay down debt, return to investment grade, satisfy shareholders’ dividend expectations, and continue to invest in its network, the go-to-market model is a key component of the public interest analysis.

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

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

22 In addition to concerns related to using the go-to-market model in urban areas,
23 there is anecdotal evidence that this model is causing problems in the legacy
24 CenturyLink territory. For instance, Lincoln City (the City) recently filed a
25 petition to intervene in Oregon Docket UM 1484 describing problems it has
26 experienced attempting to work with CenturyLink (in the legacy Embarq
27 territory) to get redundant pathways for telephone service including 911 calls.
28 The City states that despite working with CenturyLink for over two years and
29 despite promises to fix the problem, Embarq has not kept those promises.⁹⁰
30 Importantly, it is the City's belief that "[i]n the name of post-merger cost savings,

⁹⁰ Petition to Intervene by City of Lincoln City, Oregon PUC Docket UM 1484, July 30, 2010 ("City Petition") at pp. 3-4.

1 CenturyTel has enlarged its management districts with fewer managers overall,
2 and fewer, local knowledgeable technicians...”⁹¹ and “[i]f the pattern following
3 the Embarq/CenturyTel merger continues with the CenturyTel/Qwest merger,
4 fewer and fewer managers and technicians will be responsible for more and more
5 territory.”⁹² Based on the City’s experience, implementation of CenturyLink’s
6 local operating model (or “management districts”) in the legacy Embarq territory
7 is causing harm, instead of the benefits touted by the Joint Applicants. And
8 again, because CenturyLink has provided no details about its plans regarding the
9 go-to-market post-merger (other than CenturyLink plans to import it to Qwest’s
10 region), there is no way to tell whether CenturyLink’s plans are realistic, whether
11 it can truly be successful in urban areas, or whether harmful impacts will result in
12 Qwest legacy territory like those described by the City.

13 **3. CenturyLink’s Integration Effort May Result in Additional Charges**
14 **for CLECs**

15 **Q. CAN YOU PROVIDE AN EXAMPLE OF CENTURYLINK WHOLESALE**
16 **PRACTICES THAT UNREASONABLY INCREASE COMPETITORS’**
17 **COSTS?**

18 A. Yes. Comcast was forced to arbitrate a single issue in numerous states over
19 Embarq’s attempt to impose a monthly recurring per subscriber charge for storing
20 and maintaining Comcast’s customer directory listing (DL) information in

⁹¹ City Petition at p. 4. The City states: “City can prove, if necessary, that the experienced former Embarq technicians and managers who were knowledgeable about the switches and related equipment controlling north Lincoln County and Tillamook County were systematically fired or retired by CenturyTel making the performance of its promises ever more speculative and unlikely.” (City Petition at p. 4).

⁹² City Petition at p. 4.

1 Embarq’s DL databases.⁹³ Embarq sought to impose this recurring DLSM charge
2 *in addition* to the high per listing, non-recurring charge for loading Comcast’s
3 listings into the DL database in the first place.

4 As I noted in my testimony on behalf of Comcast, the charge violated Embarq’s
5 statutory obligation to provide nondiscriminatory access to directory listing
6 functions.⁹⁴ Embarq sought to impose the recurring DLSM charge only on
7 facilities-based competitors that utilize their own-last mile facilities as opposed to
8 the unbundled loops and services of Embarq. The Washington Commission, for
9 example, ultimately ruled in Comcast’s favor stating in pertinent part:

10 The record is clear that Embarq does not impose a recurring
11 DLSM charge on its own retail customers or on other CLECs that
12 purchase resale services or UNE loops from Embarq. Embarq
13 wishes to impose the recurring DLSM charge only on facilities-
14 based CLECs such as Comcast that do not rely on Embarq’s “last-
15 mile” facilities or services to compete within Embarq’s service
16 area. Given the expansive language of Section 251 (b)(3) and the
17 FCC’s definition of “nondiscriminatory access”, we find it
18 unreasonable and contrary to federal law for Embarq to single out
19 a particular type of competitor, in this case a facilities-based
20 CLEC, to impose a charge related to directory listing only when a
21 carrier does not purchase another service such as resold service or
22 UNE loops.⁹⁵

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

⁹³ See United Telephone Company of the Northwest d/b/a Embarq Response to Comcast Petition in Washington Docket No. U-083025 at ¶ 10, filed on May 27, 2008.

⁹⁴ 47 U.S.C. § 251(b)(3); 47 C.F.R. § 51.217 (a) and (b).

⁹⁵ See, Arbitrator’s Report and Decision, Washington UTC Docket No. U-083025, January 13, 2009, at pp. 11-12.

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

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

4 A. Yes. CenturyLink has demonstrated in these very merger cases either a disregard
5 for CLECs or a desire to drive up the CLECs' transaction costs. A number of
6 CLECs are intervening in a number of state proceedings where the Joint
7 Applicants are seeking approval of the proposed transaction. Since the issues and
8 questions are going to be very similar, if not the same, across all states, the
9 CLECs at the outset asked CenturyLink and Qwest to allow a streamlined
10 discovery process where the CLECs could issue one set of discovery on the Joint
11 Applicants and the public responses to those questions could be used in all states
12 where the CLECs are parties (except for state specific differences).

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

14 A. They refused to accept the CLECs' request. I have attached as Exhibit TJG-4 the
15 Joint Applicants' refusal letter. Despite Joint Applicants' claims that such a
16 streamlined discovery process would "result in an impractical and burdensome
17 process for the Applicants, as well as the potential that the approval proceedings
18 may be unnecessarily delayed" and that there is a "lack of commonality between
19 all the states," the CLECs' follow-up letter (also attached as Exhibit TJG-4)
20 explained that just the opposite is true. The CLECs asked the Joint Applicants to
21 reconsider their refusal, but the Joint Applicants ignored that request. And
22 because the Joint Applicants are requesting expedited treatment of the proposed
23 transaction, deadlines were approaching fast, so the CLECs were forced to create

1 and serve substantially the same discovery questions for each individual state.
2 This requires the CLECs to track and log responses separately for each state,
3 review those individual responses line-by-line to check for any subtle differences,
4 etc. Furthermore, the reasons provided by Joint Applicants for refusing the
5 CLECs' request were undermined by CenturyLink's subsequent actions. The
6 Joint Applicants refused to participate in the streamlined discovery process due, in
7 part, because it "complicates the drafting and researching of responses
8 unnecessarily"; yet, most of the discovery responses provided by the Joint
9 Applicants were virtually identical across different states. For example, in this
10 very proceeding, PAETEC served a set of discovery on the Joint Applicants that
11 was substantially the same as discovery served on Joint Applicants by PAETEC
12 and others (e.g., Integra Telecom) in other state proceedings. For its responses to
13 PAETEC's discovery in Iowa, CenturyLink inadvertently filed its responses to the
14 similar discovery from Colorado (CenturyLink's initial responses in Iowa
15 referenced the Iowa docket in the heading, but referred to Colorado in the
16 responses). After PAETEC's counsel inquired about this apparent error,
17 CenturyLink indicated that none of its responses would change whether they
18 apply to Iowa or Colorado. In other words, instead of providing the same
19 response once for multiple states, as CLECs wanted, Joint Applicants are
20 apparently "copying and pasting" the same responses from state to state. The
21 facts show that it is Joint Applicants' refusal to agree to the CLECs' streamlined
22 discovery approach that is "complicat[ing] the drafting and researching of
23 responses unnecessarily."

1 To make matters worse, the Joint Applicants refused to answer a discovery
2 question in one state (Iowa, for example) about a statement CenturyLink made in
3 another state (Oregon, for example).⁹⁶ As a result, the CLECs had to dig through
4 each individual state Joint Applicant filing (some of which was not word-
5 searchable) to match up state-specific cites for the discovery questions. The Joint
6 Applicants' approach to discovery for the merger proceedings alone has cost
7 CLECs many extra man-hours and thousands of dollars.

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

11 A. Yes. My firm, QSI, recently represented PAETEC (McLeodUSA) in a number of
12 complaints against Qwest regarding collocation power charges before a handful of
13 state commissions. Since the issues in those cases were similar across states,
14 McLeodUSA and Qwest were able to agree that discovery responses issued in one
15 state could be used in another state so as to avoid duplicative requests and
16 responses and save time and money. So, while the companies disagreed on key
17 issues in the proceeding, at least Qwest was willing to agree to a logistical process
18 that made the process more efficient and less costly for all involved.

⁹⁶ For example, the Joint Applicants filed supplemental testimony in the Oregon proceeding UM1484 that, to my knowledge, has not been filed in other state commission proceedings related to the proposed merger. Accordingly, some of PAETEC's discovery questions in Iowa pertained to testimony the Joint Applicants submitted in Oregon that had not been submitted in other states, including Iowa. None of the Supplemental Oregon testimony addressed Oregon-specific issues and PAETEC's questions were not Oregon-specific, yet, Joint Applicants objected to answering questions related to this Oregon testimony in its discovery responses in Iowa because "this testimony was not submitted in Iowa and therefore is not relevant to this proceeding."

1 **Q. OTHER THAN REFUSING THE CLECS' INITIAL REQUEST AND**
2 **IGNORING THE CLECS' FOLLOW-UP REQUEST FOR A**
3 **STREAMLINED DISCOVERY PROCESS, HAVE THE JOINT**
4 **APPLICANTS MADE THE DISCOVERY MORE LITIGIOUS AND**
5 **COSTLY IN OTHER WAYS?**

6 A. Yes. CenturyLink has refused to provide confidential and highly confidential
7 material in discovery responses without very onerous nondisclosure agreements,
8 and in some instances not at all. My firm has been involved in many different
9 cases involving Qwest providing confidential and highly confidential information,
10 and never before has the process of agreeing on the terms of nondisclosure
11 agreements and obtaining Qwest confidential/highly confidential information
12 been so difficult and litigious. This has negatively impacted the CLECs' ability to
13 review the important details of the proposed transaction in a timely fashion, and is
14 particularly concerning given the Joint Applicants' request for expedited approval
15 of the proposed transaction.

16 Specific to Iowa, PAETEC proposed using the same Protective Agreement Qwest
17 had agreed to and used successfully in the McLeodUSA signal strength
18 complaint, IUB Docket FCU-05-49. Qwest and CenturyLink would not agree to
19 use that version, and insisted on a multi-level structure that would have kept in-
20 house counsel from seeing "highly confidential" materials. The fact that Iowa
21 had the earliest testimony deadline made litigating that issue before the Board
22 impractical: we would have run out of time before we could have obtained the
23 materials. Even after executing a single-level agreement to get the "regular"

1 confidential materials, the Joint Applicants still, on the day PAETEC's testimony
2 is due, have not provided PAETEC with any confidential responses to PAETEC's
3 discovery questions. In essence, the Joint Applicants were able to leverage
4 Iowa's statutory timeframe to try and force the Board to approve the merger
5 without providing interested parties a meaningful opportunity for review. Even
6 the Office of Consumer Advocate has had to file *four* motions to compel.

7 **Q. HAVE THE JOINT APPLICANTS RAISED THE TRANSACTION COSTS**
8 **RELATED TO THE PROPOSED TRANSACTION IN OTHER WAYS?**

9 A. Yes. For example, in Oregon, Qwest contested the intervention of the Northwest
10 Public Communications Council (NPCC) primarily because NPCC's petition for
11 intervention was filed two days after the administrative deadline. Though nothing
12 changed in the two days that would cause harm to Qwest or CenturyLink, and
13 despite the fact that a two-day delay for intervention in state regulatory
14 proceedings would normally be uncontested, Qwest forced the NPCC to litigate
15 the issue. Similarly, in Washington, the Joint Applicants opposed late-filed
16 petitions for intervention of Cbeyond and Sprint, causing those carriers to litigate
17 the issue. This conduct is particularly concerning because it is the Joint
18 Applicants who are requesting expedited review of the proposed transaction,
19 which has, in some instances, resulted in shorter deadlines (including deadlines
20 for petitions to intervene) than would otherwise be required. Further, unlike the
21 Joint Applicants, CLECs did not know these proceedings were coming, did not
22 have them in their budgets, and are not anticipating \$575 million or more in
23 savings as a result of the transaction; yet, CLECs have had to participate in these

1 cases in multiple states on relatively expedited schedules. Though the Joint
2 Applicants' attempts to keep interested parties from participating in these cases
3 has been unsuccessful thus far,⁹⁷ my point is that this demonstrates an uptick in
4 the litigious conduct that can be expected from the Merged Company post-
5 merger.

6 **Q. HOW SHOULD THE BOARD INTERPRET THE JOINT APPLICANTS'**
7 **ACTIONS IN THE EXAMPLES YOU JUST PROVIDED?**

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

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

18 **Q. CENTURYLINK STATES THAT IT IS AN EXPERIENCED**
19 **INTEGRATOR BASED ON ITS PREVIOUS ACQUISITIONS.⁹⁸ SHOULD**
20 **THAT PROVIDE CLECS AND THE BOARD COMFORT ABOUT**
21 **CENTURYLINK'S ABILITY TO INTEGRATE QWEST?**

⁹⁷ See, e.g., Order Granting Late-Filed Petitions to Intervene, Docket UT-100820, June 24, 2010.

⁹⁸ Glover Iowa Direct at p. 12, Jones Iowa Direct at pp. 3, 15.

1 A. No. CenturyLink has acknowledged to the SEC that there is a risk of
2 CenturyLink being unable to successfully integrate the two companies, and more
3 specifically, that “performance shortfalls” at one or both of the companies may
4 result from the “diversion of management’s attention caused by completing the
5 merger and integrating the companies’ operations.”⁹⁹ In addition, there are
6 several key differences between past acquisitions and the proposed acquisition of
7 Qwest. Some of those differences are listed below:

- 8 • The magnitude of this acquisition dwarfs all other prior transactions, so
9 CenturyLink could very well be “biting off more than it can chew.” The
10 investment research company Morningstar stated: “CenturyTel is taking an
11 unnecessary risk with the Qwest merger” and “the timing and scope of the
12 Qwest deal will present far greater challenges” than the Embarq acquisition.¹⁰⁰
- 13 • The Merged Company is taking on much more debt by acquiring Qwest than
14 it has in past acquisitions. As Integra and others explained to the FCC: “At
15 the conclusion of the transaction, legacy CenturyTel will have *more than*
16 *quadrupled* its debt load in approximately three years.”¹⁰¹
- 17 • No prior CenturyLink acquisitions involved acquiring a BOC (and all BOC-
18 related obligations) like the proposed transaction does.
- 19 • CenturyLink is still in the process of integrating the recent acquisition of
20 Embarq, which raises concerns about the Merged Company spreading its
21 resources too thin in attempting to complete multiple integrations at the same
22 time. Just to put the Merged Company’s integration efforts in perspective,
23 CenturyTel before its acquisition of Embarq in 2009 served “roughly two
24 million telephone access lines.”¹⁰² In 2009, it acquired “nearly 5.9 million
25 telephone access lines”¹⁰³ when it acquired Embarq – which approximately
26 tripled the size of the company in terms of access lines. With the proposed
27 transaction of Qwest, CenturyLink will acquire another 10.3 million access

⁹⁹ Form S-4A (7/16/2010) at p. 17.

¹⁰⁰ Morningstar Report, “CenturyTel is Taking an Unnecessary Risk with the Qwest Merger, in Our View,” May 27, 2010, cited in Comments of Communications Workers of America, WC Docket No. 10-110, July 12, 2010, at pp. 11-12.

¹⁰¹ Integra Comment at 45, citing Ned Douthat *Tough Times on the Way to the Altar for CenturyTel and Qwest*, Forbes, April 26, 2010. Forbes article available at: <http://blogs.forbes.com/greatspeculations/2010/04/26/tough-times-on-the-way-to-the-altar-for-centurytel-and-qwest/>

¹⁰² *In the Matter of Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, Memorandum Opinion and Order, WC Docket No. 08-238, FCC 09-54, June 25, 2009 (“FCC Embarq/CenturyTel Merger Order”) at ¶ 4.

¹⁰³ FCC Embarq/CenturyTel Merger Order at ¶ 3.

1 lines.¹⁰⁴ So, if the transaction is approved, CenturyLink will have grown by
2 nine times its size in just two short years. No matter how experienced the
3 management team at the Merged Company is, an integration effort of this
4 magnitude will be extremely challenging to say the least.¹⁰⁵

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

8 A. Yes. Despite CenturyLink's glowing reports of the Embarq integration in its
9 testimony, other information suggests that the integration effort is monopolizing
10 much of the Merged Company's time and efforts. For example, CenturyLink
11 recently requested a waiver of the FCC's one business-day porting interval
12 requirement on the basis that such compliance would disrupt "ongoing system
13 changes related to the [CenturyTel/Embarq] merger" to the point where the
14 integration effort would have to be "suspended, which would create large
15 numbers of problems with retail and carrier customer processes, and lead to
16 service disruptions, delays and errors that would likely cause incalculable
17 additional costs."¹⁰⁶ CenturyLink explained that strict adherence to the FCC's
18 requirement could require CenturyLink to "divert resources and implementation
19 activity away from the wholesale systems" and would jeopardize timely
20 completion of its integration of legacy Embarq's wholesale OSS required by the

¹⁰⁴ Application for Expedited Approval of Reorganization, Docket No. SPU-2010-0006, filed May 25, 2010, at p. 8.

¹⁰⁵ Standard & Poor's has observed that "integration efforts will be difficult given the size of the combined company and CenturyTel's integration of previously acquired Embarq will likely not be complete until the end of 2011." Exhibit JG-4 to Glover Iowa Direct. See also, Exhibit JG-3 to Glover Iowa Direct, wherein Moody's states: "The negative rating outlook for CenturyTel reflects the considerable execution risks in integrating a sizeable company so soon after another large acquisition (Embarq in July 2009) while confronting the challenges of a secular decline in the wireline industry."

¹⁰⁶ CenturyLink Petition for Waiver of Deadline, CC Docket No. 95-116, WC Docket No. 07-244, June 3, 2010, at p. 5.

1 FCC merger conditions.¹⁰⁷ This waiver request not only questions the purported
2 seamlessness of the Embarq integration efforts, but also casts serious doubt on the
3 Merged Company's ability to integrate both Embarq and Qwest simultaneously,
4 let alone in an efficient manner.¹⁰⁸ That is, if CenturyLink's efforts to integrate
5 Embarq jeopardizes its ability to meet its regulatory obligations, then surely
6 integration of Qwest (which will more than double CenturyLink's size) will
7 similarly jeopardize CenturyLink's ability to abide by regulatory requirements
8 and obligations. CenturyLink has already noted that the simultaneous integration
9 of Qwest and Embarq poses risks:

10 [CenturyLink/Qwest] integration initiatives are expected to be
11 initiated before CenturyLink has completed a similar integration of
12 it business with the business of Embarq, acquired in 2009, which
13 could cause both of these integration initiatives to be delayed or
14 rendered more costly or disruptive than would otherwise be the
15 case.¹⁰⁹

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

18 A. Yes. Recent experience of CLECs indicates that CenturyLink's integration track
19 record is not perfect as its testimony seems to suggest. As discussed in the CLEC
20 comments to the FCC, tw telecom and Socket Telecom explained problems they
21 experienced during CenturyLink's transition of wholesale customers in the legacy
22 Embarq territory from one ordering system to another in 2009. I have attached
23 the relevant portion of those comments as Exhibit TJG-5. As described therein,

¹⁰⁷ CenturyLink Petition for Waiver of Deadline, CC Docket No. 95-116, WC Docket No. 07-244, June 3, 2010, at p. 7.

¹⁰⁸ CenturyLink represented in a SEC filing that integration efforts associated with the Qwest acquisition would likely be initiated before the integration of Embarq was complete. CenturyLink Form S-4 at p. 16.

¹⁰⁹ CenturyLink Form S-4 at p. 16.

1 the CLECs have experienced system outages (during which time Local Service
2 Requests (LSRs) could not be submitted), could not complete pre-ordering, and
3 experienced slow response times.

4 **Q. HAS CENTURYLINK'S SYSTEMS INTEGRATION EFFORTS ALWAYS**
5 **BEEN ON-TIME AND ON-BUDGET?**

6 A. No. Prior attempts by CenturyLink to integrate a billing system was neither on-
7 time nor on-budget. CenturyTel stated that this billing system integration effort
8 required "substantially more time and money to develop than originally
9 anticipated" and estimated a cost overrun of between \$50 million and \$60
10 million.¹¹⁰ Furthermore, CenturyTel stated:

11 there is no assurance that the system will be completed in
12 accordance with this schedule or budget, or that the system will
13 function as anticipated. If the system does not function as
14 anticipated, the company may have to write-off part or all of its
15 remaining costs and further explore its other billing and customer
16 care system alternatives.¹¹¹

17 The same goes for any system integration CenturyLink may attempt in Qwest's
18 region post-merger – "there is no assurance" that the integration will be on time,
19 on budget, or function properly.¹¹² Indeed, it is these types of customer-impacting
20 problems with systems integration that have caused the serious problems
21 associated with recent mergers.

¹¹⁰ *Financial Watch: Integration Costs Loop Over OSS Deployments*, Billing and OSS World, October 1, 2003.

¹¹¹ *Financial Watch: Integration Costs Loop Over OSS Deployments*, Billing and OSS World, October 1, 2003.

¹¹² PAETEC asked CenturyLink about the problems it experienced during this attempted billing integration in discovery, including the budgeted and actual cost and duration of the integration effort. CenturyLink objected to answering. See, e.g., CenturyLink objection to PAETEC Iowa Data Request #38.

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

4 A. I discussed some of these major challenges above. The point is that changing
5 CLEC-facing OSS is not just a matter of implementing or migrating a new CLEC-
6 facing system; rather, it involves synching up that new system with all of the
7 underlying back-office systems, billing systems, underlying data sets, business
8 processes, product catalogs, billing systems, business rules, performance metrics,
9 remapping data extracts, as well as testing those new systems in a standard test
10 environment and in controlled production testing. In other words, replacing
11 Qwest's existing OSS would have a domino effect that impacts virtually every
12 aspect of the wholesale customer's relationship with Qwest. Other non-BOC
13 entities such as The Carlyle Group and FairPoint Communications have tried to
14 integrate BOC systems in the past and encountered some of the same challenges I
15 have identified.

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

21 A. Yes. When the FCC approved the CenturyTel-Embarq merger in June 2009, it
22 imposed a series of conditions, including that "[f]or two years after the
23 Transaction Closing Date, the Merged Company will maintain service levels for

1 the Embarq operating companies that are comparable to those Embarq wholesale
2 customers experienced pre-merger.”¹¹³ To help ensure compliance with this
3 condition, the FCC also required the Embarq operating companies to continue to
4 produce and make available wholesale service performance reporting for two
5 years after the closing date.¹¹⁴ The FCC prescribed that the reporting would
6 include comparison of actual quarterly performance results to a benchmark value,
7 set equal to the 12-month average results achieved from April 1, 2008 through
8 March 31, 2009.¹¹⁵ The FCC required that the Embarq operating companies meet
9 a service performance standard of “no less than one standard deviation from the
10 benchmark value, 90 percent of the time.”¹¹⁶ The specific metrics applied are as
11 follows:

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

¹¹³ FCC Embarq/CenturyTel Merger Order, Appendix C (Conditions), at page 1.

¹¹⁴ *Id.* at p. 1.

¹¹⁵ *Id.* at p. 2.

¹¹⁶ *Id.* at p. 2.

- 1 • Work Center – center responsiveness, which measures the average time it
2 takes Embarq’s work center to answer a call expressed as the percentage of
3 calls that are answered within 20 seconds.¹¹⁷

4 **Q. WHAT DOES CENTURYLINK’S MOST RECENT EMBARQ**
5 **COMPLIANCE FILING WITH THE FCC REVEAL ABOUT ITS**
6 **WHOLESALE SERVICE QUALITY PERFORMANCE IN THE FORMER**
7 **EMBARQ TERRITORIES?**

8 A. In response to discovery in other states (but not yet in Iowa), CenturyLink has
9 provided as a confidential attachment its most recent wholesale service quality
10 compliance report pursuant to these FCC conditions. If and when the Joint
11 Applicants provide the confidential attachment in response to PAETEC’s
12 discovery in Iowa, I will supplement this response to describe the results of
13 CenturyLink’s wholesale service quality reports required by the FCC.

14 **V. LESSONS FROM RECENT ILEC MERGERS AND ACQUISITIONS**

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

17 A. Significant problems have been experienced after recent mergers – problems that
18 could occur after the proposed transaction if it is approved as filed. These
19 examples are further evidence that the Joint Applicants’ unsupported assertions
20 about the merger cannot be taken at face value; failures do occur no matter how
21 well-intentioned the company is and the stakes associated with failure are simply
22 too high.

¹¹⁷ *Id.* at pp. 1-2.

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

3 A. Yes, I am.

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

7 A. Yes, there certainly is. The recent bankruptcies of FairPoint and Hawaiian
8 Telecom, as well as ongoing problems with Frontier's cutover of former Verizon
9 lines, demonstrate the challenges and risks associated with transactions similar to
10 this one, particularly with respect to the integration of OSS and other back-office
11 systems.

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

- 16 • The Carlyle Group's acquisition of Verizon Hawaii (renamed Hawaiian
17 Telcom), which led to Hawaiian Telcom's filing for Chapter 11 bankruptcy
18 protection in 2008;
- 19 • FairPoint's acquisition of Verizon's operations in northern New England
20 (Maine, New Hampshire, and Vermont), which led to FairPoint's Chapter 11
21 bankruptcy filing in October 2009; and
- 22 • The on-going integration difficulties experienced by Frontier as it attempts to
23 absorb former Verizon exchanges acquired in fourteen states.

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

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

- 1 (1) Mergers and acquisitions involving the transfer and integration of
2 ILEC local telephone operations carry a high degree of risk of failure,
3 even when implemented by purportedly highly-experienced
4 management teams and well-financed companies;
5
6 (2) The integration and/or change-out of ILEC back-office systems and
7 OSS can pose a tremendous challenge, and integration failures can be
8 so costly as to not only eliminate the forecasted transaction cost
9 savings and other synergies, but to place the post-merger company
10 under severe financial pressure; and
11
12 (3) From a public interest standpoint, the outcome of such failed
13 transactions can indeed be an “unmitigated disaster,” including
14 financial instability, service quality deteriorations and dissatisfied
15 customers, curtailed network investment and broadband deployment,
16 and the disruption of wholesale services provisioning and ordering that
17 are crucial to a smoothly-functioning competitive marketplace.

18 **Q. PLEASE DESCRIBE THE EVENTS THAT LED TO HAWAIIAN**
19 **TELCOM’S BANKRUPTCY FILING AFTER ITS ACQUISITION BY**
20 **THE CARLYLE GROUP.**

21 A. In May 2005, the private investment firm The Carlyle Group (“Carlyle”) closed
22 on its purchase of Verizon Hawaii, the franchised ILEC serving most of the state
23 of Hawaii. At the time of that acquisition, Carlyle proclaimed that it “has a track
24 record of successful telecommunications investments, deep knowledge of the
25 local telephony business, and deep understanding of the complex regulatory
26 issues affecting the industry.”¹¹⁸ Carlyle assembled a highly-experienced
27 management team for the acquired firm (renamed Hawaiian Telcom) that
28 included a former Chairman of the FCC, a former Executive Vice President of
29 Verizon and GTE, and Carlyle’s founder, who is also a former CFO of MCI and

¹¹⁸ Carlyle Group press release, “The Carlyle Group to Buy Verizon Hawaii for \$1.65 billion – New Services, Jobs, and Capital Investment Expected with Transition to Locally Managed Company” (May 24, 2004) at p. 2.

1 Chairman of Nextel Communications.¹¹⁹ Carlyle also committed \$1.65 Billion to
2 purchase the company, and proclaimed that it "...plans to invest significant
3 capital to transition the company to an independent local company in a manner
4 that maintains service quality and is seamless to customers."¹²⁰ Just prior to the
5 acquisition, Carlyle promised that: "In short order we will offer new services to
6 our customers, including expanded broadband, and we expect to add many new
7 jobs after the acquisition."¹²¹ The FCC approved the transaction in August 2004,
8 under its streamlined procedures for domestic Section 214 transfers of control.¹²²
9 The Hawaii PUC conducted its own review and approved the transaction, subject
10 to certain conditions, on March 16, 2005.¹²³

11 **Q. DID HAWAIIAN TELCOM EXPERIENCE TROUBLES RELATED TO**
12 **OSS?**

13 A. Yes. One aspect of the transaction was that the transferred company would
14 develop its own back-office and OSS systems and processes to replace those of
15 Verizon. Hawaiian Telcom hired the management and technology consulting
16 company BearingPoint, Inc. to take on the task of designing and implementing
17 those systems by the end of March 2006. The Hawaii PUC required testing of the
18 new systems as a condition to its approval of the transaction,¹²⁴ but the scope and

¹¹⁹ *Id.* at p. 2.

¹²⁰ *Id.* at p. 2.

¹²¹ *Id.* at p. 1.

¹²² FCC DA 04-2541, WC 04-234, Streamlined Domestic Section 214 Application Granted, rel. August 17, 2004.

¹²³ *In the Matter of the Application of Paradise Mergersub, Inc., GTE Corporation, Verizon Hawaii Inc. Bell Atlantic Communications, Inc. and Verizon Select Services Inc. for Approval of a Merger Transaction and Related Matters*, Hawaii PUC Docket No. 04-0140, Decision and Order No. 21696, March 16, 2005.

¹²⁴ *Id.* at Ordering Paragraph 1.

1 rigor of that testing was nowhere near that required of Qwest's systems under the
2 Section 271 regime.¹²⁵ In 2007 Hawaiian Telcom made a filing with the FCC
3 seeking a waiver from certain ARMIS reporting requirements. In that filing
4 Hawaiian Telcom described the troubles it was experiencing:

5 The transition from Verizon's systems to the new BearingPoint-
6 designed systems at the end of March, 2006 did not go smoothly.
7 As has been widely reported in the press, see Attachment 1
8 (representative press clippings), critical BearingPoint-designed
9 systems related to customer care, order management, billing and
10 data collection necessary for various reporting obligations lacked
11 significant functionality, leading to problems with ordering,
12 provisioning, billing and collection.

13 ...

14 These shortcomings therefore affected not only Hawaiian Telcom's
15 ability to collect ARMIS related data, but also its basic ability to
16 bill its customers, collect revenue for services provided, and
17 process payments.¹²⁶

18 To try to correct the situation, in February 2007, Hawaiian Telcom entered into a
19 seventeen-month, \$46-million contract with the management consulting and
20 technology services company Accenture. That contract required Accenture to
21 develop and remediate the company's business support and customer service
22 systems, including the OSS used to interact with CLECs and other wholesale
23 customers.¹²⁷ In the interim, Hawaiian Telcom was forced to use costly manual
24 work-arounds, third-party temporary call centers, and other inefficient and

¹²⁵ Exhibit TJG-2 ("Description of Qwest's OSS Testing in Relation to 271 Authority").

¹²⁶ FCC CC Docket No. 86-182, Petition of Hawaiian Telcom, Inc., for Waiver of Sections 43.21(g) and 43.21(j) of the Commission's Rules, 47.C.F.R. §§ 43.21(g) and 43.21(j) ("Hawaiian Telcom ARMIS Petition"), filed February 21, 2007, at 2.

¹²⁷ *Id.* at p. 4, and Carlyle Group press release (issued by portfolio company), "Hawaiian Telcom Contracts with Accenture to Complete Systems Transformation; Firms Sign Agreement for Development, Deployment and Maintenance of Key Customer-Service and Business-Operations Capabilities" (February 8, 2007) at p. 1.

1 expensive processes to undertake basic provisioning and ordering activities.¹²⁸
2 Numerous retail customers received erroneous bills, including double-billing due
3 to delayed bill processing.¹²⁹ Wholesale customers, such as tw telecom, also
4 endured systems failures by Hawaiian Telcom, including (1) missed deadlines for
5 special access circuit orders, (2) delays in porting end user customers' telephone
6 numbers, and (3) lack of a functioning electronic interface (GUI) for wholesale
7 customers to submit and monitor the status of trouble tickets for the services they
8 received from the company.¹³⁰

9 In five years the Company's reported annual rate of return plummeted from the
10 essentially breakeven level it had at the time of the transaction's close, -0.8%,
11 down to -29.3%.¹³¹ In December 2008, Hawaiian Telcom filed for Chapter 11
12 bankruptcy protection, "listing \$1.4 billion in assets and \$1.3 billion in debts."¹³²

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

15 A. No, unfortunately not. FairPoint Communications Corp. closed on its acquisition
16 of Verizon's ILEC operations in northern New England (Maine, New Hampshire,
17 and Vermont) in March 2008, with approval from regulators in all three states.

¹²⁸ See, e.g., Hawaiian Telecom Communications, Inc. Form 10-Q, filed November 14, 2006, at p. 26.

¹²⁹ See "Billing woes overwhelm Hawaiian Telcom systems," Honolulu Star-Bulletin, June 21, 2006, provided in Attachment 1 to the Hawaiian Telcom ARMIS Petition.

¹³⁰ *In the Matter of the Public Utilities Commission Instituting a Proceeding Regarding Hawaiian Telcom, Inc.'s Service Quality and Performance Levels and Standards in Relation to Its Retail and Wholesale Customers*, Hawaii PUC Docket No. 2006-0400, Time Warner Telecom of Hawaii, L.P., d/b/a Oceanic Communications' Post-Hearing Brief, November 9, 2007, at p. 23.

¹³¹ See Public Utilities Commission of Hawaii, Annual Report for Fiscal Year 2008-2009 (released November 2009), at p. 43, Figure 18 (Verizon Hawaii/Hawaiian Telcom's reported actual annual RoR for past 12 months, for June 2005 and June 2009, respectively).

¹³² The Washington Post, "Carlyle Takes Another Hit As Telecom Firm Goes Under" (December 2, 2008) at p. 1.

1 Barely a year and a half later, in October 2009, the company filed for Chapter 11
2 bankruptcy protection. As NASUCA has pointed out in its initial Comments in
3 the FCC's Qwest-CenturyLink merger proceeding, "...the track record is that the
4 FairPoint transaction has turned out to be a virtually unmitigated disaster."¹³³ In
5 its recent decision rejecting FairPoint's Chapter 11 reorganization plan, the
6 Vermont Public Service Board made the following observations concerning
7 FairPoint's pre-acquisition expectations and commitments, and the ensuing
8 reality:

9 On March 31, 2008, FairPoint consummated its merger and
10 acquisition of Spinco (Verizon's NNE operations) resulting in
11 FairPoint as the surviving entity. Previously, on December 21,
12 2007, we issued our first order in Docket No. 7270 initially
13 denying FairPoint's request to acquire Spinco. During the course of
14 our proceedings leading up to that decision, FairPoint submitted a
15 substantial amount of testimony and information in support of its
16 argument that it was financially ready to step into Verizon's shoes.
17 In general, FairPoint made the following key assertions:

18
19 (a) Initial annual line loss of 6.2%, gradually tapering off to 2.3%
20 per year.

21
22 (b) Line-loss increases will be sufficiently offset by the build-out
23 and sale of DSL service.

24
25 (c) Cutover to FairPoint's new systems will be achievable within
26 five months of closing.

27
28 (d) Transition expenses under the Transfer of Service Agreement
29 ("TSA") with Verizon will not exceed \$100 million and will not
30 extend beyond 2008.

31
32 (e) Synergies resulting from new systems integration and
33 replacement of Verizon's higher cost functions will result in
34 additional cost savings of \$65-75 million in 2008.
35

¹³³ FCC WC Docket No. 10-110, Comments of the National Association of State Utility Consumer Advocates, July 12, 2010, at p. 2.

1 (f) Average year-to-year increases in operating expenses not to
2 exceed 1%.

3
4 (g) Annual reductions in employee count of 4% to 4.5% resulting
5 in additional cost savings for salary and wage expense.

6
7 (h) Unforeseen increases in operating or capital expenditures will
8 be sufficiently offset by a reduction or elimination of shareholder
9 dividends.

10
11 (i) Free cash flow will be relatively stable at approximately \$200 to
12 \$220 million annually over the first five years after closing.

13
14 (j) An annual free cash flow cushion after dividends of \$70 million
15 will be available for unforeseen financial difficulties.

16
17 Based upon the substantial historical record contained in Docket
18 No. 7270, a record which spans FairPoint's progression through the
19 merger transaction, subsequent cutover, and eventual bankruptcy,
20 **it is abundantly clear that FairPoint failed to realize any of the**
21 **above forecasts.** Even with the enhancements to FairPoint's
22 financial metrics provided by the revised merger transaction,
23 which we approved on February 15, 2008, those enhancements
24 (reduced purchase price and reduced leverage) were not sufficient
25 to allow FairPoint to achieve its projections. For example, we now
26 know that: (i) line losses were substantially greater than projected
27 for 2008 and 2009; (ii) systems functionality issues delayed
28 cutover for an additional five months resulting in substantial
29 increased operating costs; (iii) FairPoint's suspension of its
30 dividend in March 2009 was not sufficient to assist FairPoint in
31 meeting its debt-servicing requirements; (iv) customer service
32 issues caused FairPoint to staff-up in 2009 as opposed to staffing
33 down; and (v) ongoing systems issues in 2009 resulted in a \$28.8
34 million increase in operating expenses. **We note that then, like**
35 **now, FairPoint maintained that its projections were**
36 **reasonable, conservative, and provided for a sufficient margin**
37 **of error.**¹³⁴

38 The Vermont Board went on to observe that "FairPoint's actual performance
39 throughout 2008 and 2009 turned out to be worse than the Board's most

¹³⁴ Vermont PSB Docket No. 7599, Order Entered June 28, 2010, at pp. 56-57 (footnote omitted, emphasis added).

1 pessimistic assumptions.”¹³⁵

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

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

8 FairPoint has not demonstrated that it can achieve its projected
9 reductions in operating costs or realize additional cost savings
10 from systems improvements and new networks that have yet to be
11 completed. As we have found above, **a major source of these**
12 **costs have been FairPoint's ongoing systems issues which have**
13 **persisted since cutover and contributed greatly to FairPoint's**
14 **eventual financial downfall.** FairPoint has undertaken a
15 considerable effort, most recently its CDIP initiatives, involving
16 the deployment of significant financial resources and personnel to
17 address these issues. ... **While we accept FairPoint's assertion**
18 **that it has made strides in resolving many of these problems,**
19 **system defects remain and manual workarounds continue to**
20 **serve as temporary solutions until automated processes can be**
21 **designed and implemented. Moreover, we are aware that there**
22 **have been instances where FairPoint assumed a problem to be**
23 **fixed only to have that problem reappear at a later time.** ...
24 ...we have received no evidence, or guarantees from FairPoint,
25 that would lead us to conclude that these remediation efforts will
26 not need to be continued beyond 2010 or even 2011.¹³⁶

27 **Q. AT THE TIME THAT THE VERMONT BOARD APPROVED THE**
28 **FAIRPOINT-VERIZON TRANSACTION, DID IT ADOPT A CONDITION**
29 **THAT FAIRPOINT’S OSS SYSTEMS WOULD BE SUBJECTED TO**
30 **TESTING IN ADVANCE OF THE CUTOVER OF VERIZON’S**

¹³⁵ *Id.* at p. 58.

¹³⁶ *Id.* at pp. 61-62 (footnotes omitted, emphasis added).

1 **OPERATIONS?**

2 A. Yes. The Board later stated that it did so specifically because “we were mindful
3 that after Verizon's sale of its Hawaii properties, the last major
4 telecommunications acquisition that required transition to new systems, major
5 problems for wholesale and retail customers occurred that have taken years to
6 correct.”¹³⁷ Unfortunately, the condition that it adopted – which required a third-
7 party consultant (Liberty Consulting) to monitor FairPoint’s testing regime and
8 cutover readiness, but not to undertake independent third-party testing itself¹³⁸ –
9 fell far short of the comprehensive third-party testing that Qwest and other BOCs
10 had to undergo to demonstrate that their OSS satisfied the obligations of Section
11 271.¹³⁹ As a consequence, the Board’s condition, though well-intentioned, was
12 insufficient to prevent FairPoint’s subsequent systems failures.

13 **Q. DID THE VERMONT BOARD FIND THAT FAIRPOINT’S SYSTEMS**
14 **INTEGRATION PROBLEMS HAD ADVERSELY IMPACTED THE**
15 **QUALITY OF ITS SERVICES?**

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

- 19 • In 2009, FairPoint failed to meet 10 of the 18 performance standards in the
20 RSQP [Retail Service Quality Plan]. This performance triggered 1470
21 service quality compensation points and resulted in an obligation to
22 provide service quality compensation of \$10,515,650.¹⁴⁰
23

¹³⁷ Vermont PSB Docket No. 7270, Order Re: Notice of Cutover Readiness, November 26, 2008, at p. 4.

¹³⁸ *Id.* at pp. 4-5.

¹³⁹ Exhibit TJG-2 (“Description of Qwest’s OSS Testing in Relation to 271 Authority”).

¹⁴⁰ Vermont PSB Docket No. 7270 at p. 67 (Finding No. 153).

- 1 • Other areas of FairPoint's service remain problematic and either do not
2 show signs of significant improvement or early improvements have
3 leveled. These include late orders for retail and wholesale, late
4 disconnects, billing errors and adjustments, and customer complaint
5 escalations.¹⁴¹
6
- 7 • Automated flow-through for orders designed to flow-through to
8 provisioning and billing without manual intervention has not improved to
9 acceptable levels and exacerbates other problem areas. Order fall-out
10 requires unplanned manual effort, which reduces the ability of staff to
11 address other issues. It also increases the chance that an order will be
12 late.¹⁴²
13
- 14 • The level of known FairPoint billing errors and billing adjustments are
15 resulting in billing-related customer complaints 400% to 500% higher than
16 during Verizon's operations.¹⁴³
17
- 18 • Some number of the known billing errors and adjustments are likely the
19 result of problems in upstream systems and processes, including faulty
20 service-order data entry, late disconnections, and inconsistent or
21 unsynchronized data as examples.¹⁴⁴

22 While the Vermont Board recognized that recently FairPoint had made significant
23 progress on its systems issues, it ultimately rejected FairPoint's reorganization
24 plan on the grounds that it had not demonstrated that the plan would restore its
25 financial soundness.¹⁴⁵ Recently, it has been reported that FairPoint may ask the
26 federal court that is overseeing its bankruptcy and reorganization to overrule the
27 Vermont Board's rejection of its plan.¹⁴⁶

28 **Q. ARE THERE SOME PARALLELS HERE BETWEEN THE PROGRESS**
29 **OF FAIRPOINT'S ORIGINAL ACQUISITION PROPOSAL AND ITS**

¹⁴¹ *Id.* at p. 68 (Finding No. 156).

¹⁴² *Id.* at p. 68 (Finding No. 158).

¹⁴³ *Id.* at p. 69 (Finding No. 172).

¹⁴⁴ *Id.* at p. 69 (Finding No. 171).

¹⁴⁵ *Id.* at p. 95.

¹⁴⁶ Vermont Public Radio, "FairPoint May Ask Bankruptcy Court To Overrule Vermont Regulators," August 2, 2010. See http://www.vpr.net/news_detail/88585/

1 **REORGANIZATION PLAN?**

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

- 4 (1) In 2007, FairPoint sought approval to purchase Verizon lines in Vermont.
5 Throughout the proceedings, the Board is told they are a hold out and
6 everyone else has approved.¹⁴⁷
- 7 (2) In 2008, the Vermont Board approves the transaction with limited
8 conditions;
- 9 (3) By 2009, the cutover is disastrous and greatly affects the financial
10 performance of FairPoint;
- 11 (4) In October 2009, FairPoint declares bankruptcy;
- 12 (5) In February 2010, FairPoint management submits a reorganization plan
13 that the Vermont Board judges to be overly optimistic;
- 14 (6) In June 2010, the Vermont Board rejects FairPoint's reorganization plan;
- 15 (7) In August 2010, once again, the Vermont Board is told they are a hold out
16 and now FairPoint is considering asking the Bankruptcy Court to
17 supersede the PSB's authority.

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

22 **Q. HOW HAVE THE NEW HAMPSHIRE AND MAINE PUBLIC UTILITY**
23 **COMMISSIONS CHARACTERIZED THE FAIRPOINT TRANSACTION**

¹⁴⁷ See, e.g., West Virginia PSC Docket 09-0871-T-PC, Hearing Transcript for January 12, 2010, at p. 34 (public comments of Senator Vincent Illuzzi of Vermont). On January 12, 2010 Vermont Senator Illuzzi drove to West Virginia to testify regarding the experience in Northern New England with the FairPoint merger. Senator Illuzzi testified: "We were told over and over at the State House, don't be the fly in the ointment; New Hampshire and Maine are ready to approve this deal. Don't be the state that sort of jinxes the whole thing. It turns out they were saying the same thing to New Hampshire. They'd say to New Hampshire, jeez, New Hampshire, don't be the fly in the ointment. Vermont and Maine are preparing to approve the deal. It turns out Maine was the first State that rejected the deal, then the other States followed suit and then came back with the revised proposal...If you have those lingering doubts, don't hesitate to fight that intuitive kind of pressure that you feel, that I feel..."

1 **AND ITS OUTCOMES?**

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

7 FairPoint has failed to meet the obligations it made in 2008 to the
8 states of New Hampshire, Maine and Vermont and their citizens.
9 Among other things, FairPoint made promises about service
10 quality, relations with wholesale competitors and broadband build-
11 out, and committed itself to performance superior to Verizon,
12 whose performance had become an issue of increasing concern in
13 the three states. Due to FairPoint's widespread operational
14 shortcomings arising from its systems cutover, however,
15 residential and business customers, as well as wholesale customers
16 and competitors who rely on FairPoint services, endured even
17 poorer service quality than was the case under Verizon.¹⁴⁸

18 The Maine PUC also approved FairPoint's Chapter 11 reorganization plan by a
19 two-to-one vote, but the text of the majority decision does not contain any overall
20 characterization of the FairPoint experience as the New Hampshire PUC order
21 did.¹⁴⁹ Maine Commissioner Vafiades, however, offered this assessment in his
22 written dissent appended to that decision:

23 In February of 2008, I voted with my colleagues to approve the
24 sale of Verizon wireline assets to FairPoint Communications. My
25 approval was based on FairPoint's representations that the
26 Company would improve customer service by updating and
27 streamlining its back office systems, replacing and upgrading its
28 deteriorating infrastructure, and operating a competent wholesale
29 customer service operation. Additionally, for at least five years,
30 customers of FairPoint's DSL broadband service would receive the
31 benefit of statewide price averaging for that service and customers

¹⁴⁸ New Hampshire PUC Docket DT 10-025, Order 25,129, July 7, 2010, at p. 75.

¹⁴⁹ Maine PUC Docket No. 2010-76, Order Approving Reorganization and Regulatory Settlement, July 6, 2010.

1 of FairPoint's telephone services would either receive service
2 quality that satisfies the existing SQI measurements or they would
3 receive rate rebates should FairPoint fail to meet its SQI targets.
4 Finally, FairPoint agreed to system improvements benefiting all
5 customers and made a commitment to expand broadband to meet
6 90% addressability by 2013.

7
8 Despite FairPoint's early struggles to take control of the wireline
9 assets, provide adequate customer service and modernize the back
10 office systems, the Commission stayed the course and following a
11 number of approvals for cutover extensions authorized cutover
12 from Verizon to FairPoint operating systems in January of 2009.
13 Unfortunately, FairPoint was not competent in managing the
14 extensive back office rebuild, could not get its wholesale business
15 running smoothly despite cooperation from the CLECs, failed to
16 provide basic services to residential and business customers and
17 suffered from competitive business pressure and a faltering
18 economy. FairPoint's financial position became precarious.¹⁵⁰

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

21 A. The primary lessons that I draw from these two disappointing experiences are the
22 following:

- 23 (1) Mergers and acquisitions involving the transfer and integration of
24 ILEC local telephone operations carry a high degree of risk of failure,
25 even when implemented by purportedly highly-experienced
26 management teams and well-financed companies;
27
28 (2) The integration of two companies' disparate operations and OSS can
29 pose a tremendous challenge, and integration failures can be so costly
30 as to not only eliminate the forecasted transaction cost savings and
31 other synergies, but to place the post-merger company under severe
32 financial pressure; and
33
34 (3) From a public interest standpoint, the outcome of such failed
35 transactions can indeed be an "unmitigated disaster," including
36 financial instability, service quality deteriorations and dissatisfied
37 customers, and the disruption of wholesale services provisioning and
38 ordering that are crucial to a smoothly-functioning competitive
39 marketplace.

¹⁵⁰ *Id.* at p. 21 ("Dissenting Opinion of Commissioner Vafiades").

1 **Q. HOW DOES FRONTIER’S RECENT ACQUISITION OF VERIZON**
2 **EXCHANGES IN FOURTEEN STATES FIT INTO THIS PICTURE?**

3 A. While the worst consequences of the Hawaiian Telcom and FairPoint transactions
4 are (presumably) winding down, the problems besetting Frontier’s acquisition of
5 certain Verizon exchanges in fourteen states¹⁵¹ are occurring right now, as
6 systems cutovers and transitions have been occurring this spring and summer,
7 with an “official” cutover date of July 1, 2010. For thirteen states, Verizon
8 created replicas of its existing wholesale OSS systems, that were being operated
9 on an interim basis by Spinco, the temporary corporate entity created to effect the
10 Frontier transaction. These “replicated systems” were then transferred to Frontier
11 on the cutover date, and thereafter serve as Frontier’s wholesale OSS, to fulfill
12 orders for UNEs and other wholesale services. In the fourteenth state, West
13 Virginia, Verizon’s systems were not replicated, and instead these functions were
14 transferred to Frontier’s own OSS system, SynchronossNFO. As I shall explain,
15 to date both transfers have been beset by systems problems, which are having
16 adverse impacts upon CLECs and their customers. It remains to be seen how
17 serious and long-lasting these problems may ultimately prove to be, and whether
18 they will rise to the nightmarish levels experienced in the Hawaiian Telcom and
19 FairPoint cases.

20 **Q. WHAT SPECIFIC PROBLEMS HAVE CLECS CONFRONTED DURING**

¹⁵¹ As set forth in Verizon’s Amended Application, “transaction involves the transfer to Frontier of all of Verizon’s local wireline operating territories in Arizona, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia and Wisconsin. In addition, the transaction will include a small number of Verizon’s exchanges in California, including those bordering Arizona, Nevada and Oregon.” See WC 09-95, Verizon and Frontier’s amended and revised “Consolidated Application for Transfer of Control and Assignment of International and Domestic Section 214 Authority” (July 30, 2009) at p. 2, footnote 3.

1 **FRONTIER’S CUTOVER TO THE VERIZON REPLICATED SYSTEMS?**

2 A. In recent comments and *ex parte* filings with the FCC, PAETEC and Integra have
3 provided detailed descriptions of how problems with the transition to the Verizon
4 replicated systems in the thirteen states (excluding West Virginia) have been
5 adversely affecting their operations and the retail customers that they serve.

6 In its May 17, 2010 *ex parte* letter to the FCC, PAETEC explained that, even
7 before the Verizon replicated systems were transferred to Frontier, it “is already
8 encountering serious service deterioration due to lack of adequate (much less
9 adequately trained) personnel at SpinCo [the corporate vehicle for the Frontier
10 transaction]. All of these problems exist even though SpinCo is still under the
11 Verizon umbrella.”¹⁵² PAETEC describes a range of problems that it has
12 encountered, including:

- 13 • Increased response times for Access Service Requests (“ASRs”), *i.e.*,
14 PAETEC’s electronic orders for access services from Frontier –
15 causing missed due dates or orders that need to be escalated/expedited
16 in order to meet end user customer expectations;
- 17 • Increased Access Ordering system errors, causing delays in
18 submission of ASRs;
- 19 • Hold times of 30 minutes or more when calling Access Order centers
20 to reach an Access Ordering representative; and
- 21 • Access Ordering staff appears to have been reduced – Verizon North
22 Central Access Ordering staff have told PAETEC that they were a
23 staff of 50 that was cut to 12 and now they only have 6 individuals
24 working ASRs.¹⁵³

25 Similarly, as documented in its May 13, 2010, *ex parte* letter to the FCC, Integra
26 also has been experiencing the same sorts of problems when using the Verizon

¹⁵² Letter from Mark C. Del Bianco, Counsel for PAETEC Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket. No. 09-95 (filed May 17, 2010), Attachment A at p. 6.

¹⁵³ *Id.* at pp. 6-7.

1 replicated systems in Oregon and Washington.¹⁵⁴ Integra's follow-up *ex parte*
2 letter of May 19, 2010, documented that the performance of the replicated
3 systems was failing to meet the wholesale service quality benchmarks previously
4 applied to Verizon in areas including Order Confirmation Timeliness for ASRs
5 and Completion Notice Interval.¹⁵⁵ In its May 19th letter, Integra explains that
6 these problems are in fact worse than they seem, and that end users are being
7 adversely impacted:

8 Verizon's actual performance in the area of timely order
9 completion is obscured in part by the fact that Verizon has been
10 increasingly sending Service Activation Reports ("SARs") without
11 actually completing the work requested on an order. This was true
12 for orders NM-2556620-DS1, SM-2560987-BDSL, SM-2497851-
13 BDSL, CL-2568000-BDSL, DS-2502748-WASA, and JT-
14 2566473- CHG. This practice negatively impacts Integra's ability
15 to serve its end-user customers. For example, if Verizon sends
16 Integra a completion notice but has not performed the requested
17 installation, Integra is forced to conduct multiple technician
18 dispatches for a single end-user customer, and delivery of service
19 to that customer is delayed. In addition, if Integra receives an SAR
20 from Verizon, Verizon begins billing Integra, and Integra may
21 mistakenly begin billing its end-user customer before service is
22 actually delivered to the customer.¹⁵⁶

23 The full text of Integra's May 19th letter, which is provided in my Exhibit TJG-6,
24 also describes additional ordering problems attributable to failures in the Verizon
25 replicated systems.

26 **Q. HAS THE CUTOVER OF FRONTIER'S ACQUIRED VERIZON**
27 **EXCHANGES IN WEST VIRGINIA GONE ANY MORE SMOOTHLY**

¹⁵⁴ Letter from Thomas Jones and Nirali Patel, Counsel for Integra Telecom, Inc. et al, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95 (filed May 13, 2010) at pp. 1-2.

¹⁵⁵ Letter from Thomas Jones, Counsel for Integra Telecom, Inc. et al, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-95 (filed May 19, 2010) at p. 2.

¹⁵⁶ *Id.* at pp. 2-3 (footnotes omitted).

1 **THAN IN THE OTHER THIRTEEN STATES?**

2 A. No. In fact, the West Virginia cutover appears worse in certain respects, as it is
3 adversely impacting some retail customers as well as CLECs. In West Virginia,
4 the former Verizon exchanges, which encompass approximately 617,000 access
5 lines in 47 counties, were officially cutover to Frontier on July 1, 2010.¹⁵⁷
6 Charleston’s major newspaper, the *Charleston Daily Mail*, has been monitoring
7 the progress of the cutover since that time, and has reported on the problems
8 confronted by retail customers, including a local pharmacy chain that endured a
9 Frontier service outage that lasted more than 39 hours in their 25 stores, cutting
10 off their on-line systems needed to fulfill prescriptions and rendering them
11 “incapacitated.”¹⁵⁸ These types of problems appear to be continuing. On July 28,
12 the *Charleston Daily Mail* reported that Frontier has declared an “emergency and
13 long-term service difficulty,” which under its labor contract with CWA, allows
14 Frontier to require unionized employees to work overtime up to 70 hours a week
15 to attempt to resolve its service problems.¹⁵⁹

16 **Q. WHAT IMPACTS HAS FRONTIER’S WEST VIRGINIA CUTOVER HAD**
17 **ON CLECS OPERATING IN THE STATE?**

18 A. CLECs are also experiencing significant wholesale ordering problems relating to
19 the West Virginia cutover. One CLEC operating in that service territory,
20 FiberNet, has petitioned the West Virginia PSC to reopen its proceeding to review

¹⁵⁷ *Charleston Daily Mail*, “Phone transition not going smoothly for a few customers,” July 1, 2010, at p. 2.
This article is reproduced in Exhibit TJG-7.

¹⁵⁸ *Charleston Daily Mail*, “Local Business Having Major Problems Since Frontier Switch,” July 21, 2010.
This article is reproduced in Exhibit TJG-7.

¹⁵⁹ *Charleston Daily Mail*, “Frontier claims overtime is needed: Problems force telecom company to work
employees up to 70 hours a week,” July 28, 2010. This article is reproduced in Exhibit TJG-7.

1 the Verizon-FairPoint transaction, claiming that FairPoint has failed to live up to
2 its commitment that its wholesale OSS would be functionally at par with those of
3 Verizon.¹⁶⁰ As expressed by FiberNet in its Petition:

4 Since the cutover to Frontier's SynchronossNFO OSS on July 1,
5 2010, however, FiberNet has experienced significant and ongoing
6 problems with the proper functionality of Frontier's OSS and have
7 unfortunately been compelled to conclude that Frontier's OSS as
8 presently constituted is substantially less sophisticated and far less
9 automated than the former Verizon OSS it was intended to replace.

10 FiberNet's Petition identifies fifteen separate types of problems it is experiencing
11 with Frontier's wholesale OSS systems that span the entire range of pre-ordering,
12 ordering, and installation functions that the systems are intended to provide.¹⁶¹

13 Some of these issues impede FiberNet's ability to offer its services to West
14 Virginia customers, *e.g.*, the inability to input orders related to the digitally
15 qualified loops necessary for the provision of DSL service, or high-capacity DS-
16 1s.¹⁶² Other issues are having a direct impact on the customers themselves, *e.g.*,
17 "several new FiberNet customers have been put out of service because Frontier
18 prematurely processed disconnection orders in its OSS for these migrating
19 customers without simultaneously processing the corresponding order necessary
20 to successfully complete the migration of the customer's loop and telephone
21 number to FiberNet."¹⁶³ FiberNet also notes that "Customers with pending orders
22 for new service or additional services have lost patience with the length of time
23 necessary to get their requested service installed, which has resulted in several

¹⁶⁰ FiberNet LLC Petition to Reopen, July 21, 2010 (filed in West Virginia PSC Docket No. 09-087 1-T-PC) at p. 2.

¹⁶¹ *Id.* at Exhibit A.

¹⁶² *Id.* at p. 5.

¹⁶³ *Id.* at p. 5.

1 customers simply cancelling their pending orders with FiberNet.”¹⁶⁴

2 **Q. HOW DO THE KINDS OF WHOLESALE-RELATED PROBLEMS BEING**
3 **EXPERIENCED BY PAETEC AND OTHER CLECS IMPACT**
4 **COMPETITORS’ ABILITY TO OFFER COMPETITIVE SERVICES AND**
5 **MAINTAIN THEIR CUSTOMER RELATIONSHIPS?**

6 A. As a general matter, when CLECs confront the sorts of delays, errors, and
7 backlogs in wholesale ordering transactions that PAETEC, Integra, and FiberNet
8 have experienced with Frontier, it not only increases their costs of doing business,
9 but it also damages CLECs’ relationships with their end user customers, who do
10 not recognize (nor care) that the service delays they endure are the fault of the
11 provider of wholesale services (*i.e.*, the ILEC) rather than the CLEC. Of course,
12 this circumstance benefits the ILEC as it can serve those retail customers leaving
13 the CLEC with the ILEC’s own retail offerings.

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

17 **Q. IS IT YOUR RECOMMENDATION THAT THE PROPOSED**
18 **TRANSACTION BE DENIED BY THE BOARD?**

19 A. Yes. The Joint Applicants have failed to demonstrate that the public interest will
20 not be harmed and have failed to substantiate any benefits resulting from the
21 merger. As it relates to CLECs, the Joint Applicants have not identified (let alone
22 substantiated) any benefits resulting from the merger; instead, the CLECs are

¹⁶⁴ *Id.* at pp. 6-7.

1 faced with complete uncertainty and potential severe disruption and harm in every
2 aspect of their wholesale relationship with Qwest. If the Board disagrees with my
3 primary recommendation, however, and is inclined to approve the proposed
4 transaction, it should do so only if it is able to secure robust, enforceable
5 commitments from the Joint Applicants.

6 **Q. WHAT IS THE GOAL OF THESE CONDITIONS?**

7 A. The overall objective of the conditions is to ensure that the proposed transaction
8 does not harm the industry and ultimately serves the public interest. More
9 specifically, however, these conditions are intended to mitigate the harm that is
10 likely to happen (and has occurred elsewhere) if the proposed transaction is
11 approved as filed,¹⁶⁵ primarily by providing the much-needed certainty that
12 CLECs need to plan their business and make prudent decisions. These conditions
13 also attempt to ensure that the Merged Company is not further entrenched as a
14 result of the merger to the detriment of competition and the public interest.

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

17 A. Yes. Both the FCC and state commissions have required conditions (or voluntary
18 enforceable commitments from the merging companies) in exchange for
19 transaction approval in the past. For example, both the FCC and state
20 commissions imposed conditions on the CenturyLink/Embarq merger. Further,
21 Qwest itself proposed conditions for the Iowa Tel/Windstream merger, which

¹⁶⁵ The FCC has stated: “it will impose conditions to remedy harms that arise from the transaction...” FCC
Embarq/CenturyTel Merger Order at ¶ 12.

1 further validates the notion that it is generally accepted that conditions must be
2 imposed on a proposed acquisition to prevent or offset harm.¹⁶⁶

3 **Q. WHAT CONDITIONS ARE YOU PROPOSING?**

4 A. I have attached as Exhibit TJG-8 to my testimony a list of conditions as
5 prerequisites to merger approval, in case the Board does not reject the proposed
6 transaction outright. These conditions have been carefully and narrowly crafted
7 to address the specific concerns about the harm that will result from approving the
8 proposed transaction as filed by the Joint Applicants. These conditions are also
9 intended to be enforceable so that the Merged Company abides by them after the
10 merger and so remedies are in place should wholesale service quality degrade
11 following the merger. Recent experience with the FairPoint acquisition of
12 Verizon, wherein FairPoint reneged on its merger conditions, shows that
13 enforceable conditions are necessary.¹⁶⁷ CenturyLink should not be allowed to
14 pull the rug out from underneath competitors and consumers after the transaction

¹⁶⁶ Qwest asked the Iowa Board to place conditions on the approval of the Iowa Tel/Windstream merger that would “prohibit Windstream from requiring new local service providers to provide Windstream-provided Personal Identification Numbers when porting a customer’s number to the new provider” and “require, as a condition of Board approval, the new company to provide the new local service provider direct access to its resold Customer Service Record information.” Order Canceling Hearing and Terminating Docket, Iowa Utilities Board, April 30, 2010, at p. 26.

¹⁶⁷ *FairPoint Wants to Renege on Terms of Verizon Merger*, May 3, 2010. Available at: <http://www.von.com/news/2010/05/fairpoint-wants-to-renege-on-terms-of-verizon-mer.aspx> (“According to reports, the initial deal between FairPoint and regulators called for FairPoint to cut the cost of basic phone service by more than \$4 per month for at least five years; make broadband available to 83 percent of all lines within two years, and 90 percent over five years; and freeze prices for current Verizon 768kbps DSL customers at \$15 a month with a two-year contract, and \$18 with a one-year contract, for at least two years. FairPoint wants to move those deadlines back and lower the percentage of 768kbps DSL-capable lines.”) The Maine Commission approved these adjustments to FairPoint’s merger conditions in June 2010, which is a component of FairPoint’s bankruptcy reorganization plan. Maine Commissioner Vafiades voted against approving the changes to the conditions stating: “FairPoint has made promises to this Commission and to Maine consumers. The Company is using the bankruptcy process to renege on broadband commitments which were a central aspect of approving the FairPoint takeover of the Verizon phone network. These changes were not required by bankruptcy court and are a disservice to rural customers.” Available at: <http://www.maine.gov/tools/whatsnew/index.php?topic=puc-pressreleases&id=102933&v=article08>

1 is approved by reneging on the very commitments that were critical to transaction
2 approval. In addition, because discovery is not yet complete and all testimony has
3 not yet been filed, the list of proposed conditions in Exhibit TJG-8 (as discussed
4 in this testimony below and the testimony of Dr. Ankum) is preliminary and
5 subject to change. Furthermore, all of the conditions are important and no
6 inference regarding priority should be based on the numbering of the conditions,
7 which is for ease of reference only.

8 **Q. SHOULD CENTURLINK HAVE A PROBLEM ADOPTING THESE**
9 **CONDITIONS AS PREREQUISITES TO TRANSACTION APPROVAL?**

10 A. No. CenturyLink has represented that there will be no “immediate” changes post-
11 merger and “no harm” to existing wholesale processes, systems and service
12 quality post-merger. CenturyLink has also claimed that it is “willing and able to
13 abide by” its 251 and 271 obligations post-merger and it is “truly committed to
14 providing quality service to our CLEC customers today and in the future.”¹⁶⁸
15 Given these representations, CenturyLink should have no problem agreeing to
16 conditions that provide protections to prevent or offset harm and ensure that
17 Qwest does not backslide in its obligations as an ILEC and a BOC. In addition,
18 CenturyLink should not be permitted to keep all of the benefits of increased
19 economies and efficiencies for itself; rather, the FCC’s Local Competition Order
20 requires those to be shared with new entrants.¹⁶⁹

¹⁶⁸ Hunsucker Oregon Direct at pp. 13-14.

¹⁶⁹ See, e.g., *Local Competition Order* at ¶ 11: “...the local competition provisions of the Act require that these economies be shared with entrants.”

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

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

8 **Q. THE LIST OF PRELIMINARY CONDITIONS DEFINES THE TERM**
9 **“DEFINED TIME PERIOD.” PLEASE EXPLAIN THIS TERM.**

10 A. The Joint Applicants have said that the transaction is expected to create annual
11 operating synergies of \$575 million and annual capital expenditure synergies of
12 \$50 million, and that those synergies will be “fully recognized over a three-to-five
13 year period following closing.”¹⁷⁰ Successful integration does not always occur
14 on-time and/or on-budget, as CenturyLink is aware from prior integration
15 efforts¹⁷¹ – and that is particularly true here where CenturyLink will be attempting
16 to integrate both the Embarq acquisition and Qwest acquisition at the same time.
17 Therefore, the time period during which merger-related activities intended to
18 result in synergies will occur may be longer than the three-to-five year period
19 anticipated by the Joint Applicants.

20 Some proposed conditions are to apply for a specific time period, and other
21 conditions (such as continuing BOC/271 obligations in Qwest's legacy territory)

¹⁷⁰ Glover Iowa Direct at p. 11.

¹⁷¹ See, e.g., *Financial Watch: Integration Costs Loom Over OSS Deployments*, Billing and OSS World, October 1, 2003.

1 do not have an expiration date. The term “Defined Time Period” was developed
2 to specify the effective time period for those conditions that are time-sensitive.
3 “Defined Time Period” is established at either (a) at least 5-7 years after the
4 Closing Date¹⁷² or, (b) at least 42 months¹⁷³ and continuing thereafter until the
5 Joint Applicants are granted Section 10 forbearance from the condition. The
6 “Defined Time Period” is established based on the facts of this particular
7 transaction¹⁷⁴ and designed to ensure that the combined company’s pursuit of
8 merger-related savings does not jeopardize wholesale customers or impede
9 competition. At the same time, the “Defined Time Period” grants the combined
10 company flexibility to terminate the applicable merger condition in 3.5 years
11 (shortly after the lower end of the Joint Applicants’ expected timeframe) via a
12 forbearance request if the combined company’s integration efforts prove to be
13 successful.

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

16 A. The proposed conditions are grouped into the following categories: (A)
17 Operations Support Systems, (B) Wholesale Service Quality, (C) Wholesale
18 Customer Support, (D) Wholesale Service Availability, (E) Wholesale Rate

¹⁷² “Closing Date” “when used in this list of conditions, refers to the closing date of the transaction for which the Applicants have sought approval from the Federal Communications Commission (FCC) and state commission (the ‘transaction’).”

¹⁷³ In the FCC *AT&T/BellSouth Merger Order*, AT&T proposed that conditions would last 42 months (3.5 years) from the merger closing date unless specified otherwise. *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662 (2007) (“*AT&T/BellSouth Merger Order*”).

¹⁷⁴ For example, the lower end of the 5-7 year range is based on Joint Applicants’ own expectations regarding how long it will take the combined company to fully recognize merger-related savings, and the upper end is based on the fact that CenturyLink will be straining its resources to simultaneously integrate Embarq and Qwest as well as the fact that not all of CenturyLink’s integration efforts have been on-time and/or on-budget.

1 Stability, and (F) Compliance. In the testimony that follows, I will address: (A)
2 Operations Support Systems, (B) Wholesale Service Quality, (C) Wholesale
3 Customer Support), and (F) Compliance. Dr. Ankum addresses: (D) Wholesale
4 Service Availability and (E) Wholesale Rate Stability.

5 **A. Operations Support Systems (OSS)**

6 **Q. PLEASE IDENTIFY THE PROPOSED CONDITIONS RELATING TO**
7 **OSS.**

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

- 9
- 10 • Condition 19 states that after the closing date, the Merged Company will use
11 and offer to wholesale customers in the legacy Qwest ILEC territory the
12 legacy Qwest OSS for at least three years, with at least the same level of
13 wholesale service quality, including support, data, functionality, performance,
14 and electronic-bonding provided by Qwest prior to the merger filing date.
15 This condition also requires that after the three-year period the Merged
16 Company will not replace or integrate Qwest systems without first: (a)
17 submitting a detailed plan to the FCC Wireline Competition Bureau and state
18 commissions of affected states, including a detailed description and
19 contingency plan, with opportunity for comment from interested parties; (b)
20 conducting robust third-party testing (similar to what was performed during
21 the 271 approval process) of any system that will replace any Qwest system
22 that was subject to third-party testing to ensure that it provides needed
23 functionality and can handle commercial volumes; and (c) coordinated testing
24 with CLECs.
 - 25 • Condition 20 states that following the merger in the CenturyLink legacy
26 territory, the Merged Company will use the wholesale pre-ordering, quoting,
27 ordering, provisioning and maintenance/repair functionalities (including
28 electronic bonding) of the legacy Qwest territory to provide interconnection,
UNEs, and special access services.

29 **Q. WHY ARE THESE CONDITIONS NECESSARY?**

30 A. The FCC has found that CLECs would be “severely disadvantaged, if not
31 precluded altogether, from fairly competing,” if they do not have

1 nondiscriminatory access to OSS.¹⁷⁵ Likewise, Qwest has described its existing
2 OSS as playing “a crucial role in the transactions between Qwest and all
3 CLECs”¹⁷⁶ and characterized its OSS as “the lifeblood of...Qwest’s wholesale
4 operation...”¹⁷⁷ I would agree with these statements. So, by all accounts,
5 nondiscriminatory access to OSS is absolutely essential to competition.
6 Unfortunately, the future of Qwest’s OSS is in serious question due to the
7 proposed transaction. All we know at this point in time is that a CenturyLink
8 person (Mr. Bill Cheek) will be in charge of wholesale for the combined company
9 and that no decisions have been made as to systems, staffing or locations of the
10 staff. Given this lack of information, these conditions will provide the much-
11 needed certainty in this area so that wholesale customers can plan their business
12 for the foreseeable future, and will help ensure that CLECs have
13 nondiscriminatory access to OSS across the Merged Company’s footprint.

14 **Q. PLEASE ELABORATE ON YOUR STATEMENT THAT THE FUTURE**
15 **OF QWEST’S OSS IS IN SERIOUS QUESTION.**

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

20 Upon merger closing, CenturyLink does not anticipate any
21 immediate changes to the Qwest CLEC OSS systems. Integration
22 planning is in the early stages and decisions have not been made at

¹⁷⁵ *Local Competition Order* at ¶518.

¹⁷⁶ Qwest Post Hearing Brief, Utah Docket 07-2263-03 at p. 75.

¹⁷⁷ Surrebuttal Testimony of Renee Albersheim, on behalf of Qwest Corp., Utah Docket 07-2263-03, August 10, 2007, at p. 39.

1 this time. However, because the transaction results in the entirety
2 of Qwest, including operations and systems, merging into and
3 operating as a subsidiary of CenturyLink, it will allow a
4 disciplined approach to reviewing systems and practices and will
5 allow integration decisions to proceed in an orderly disciplined
6 manner. To the extent any changes are made, CenturyLink will
7 comply with all applicable state and federal laws and rules, as
8 wells as the provisions of any applicable interconnection
9 agreements or tariffs, in the same manner as they would apply
10 notwithstanding the merger. Wholesale customers will be provided
11 advance notification of any systems changes that occur post
12 close.¹⁷⁸

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

15 The merger is intended to bring about improved efficiencies and
16 practices in all parts of the combined company, so changes could
17 be expected over time...any changes will occur only after a
18 thorough and methodical review of both companies' systems and
19 processes to determine the best system to be used on a go-forward
20 basis from both a combined company and a wholesale customer
21 perspective.¹⁷⁹

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

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

¹⁷⁸ CenturyLink Response to PAETEC Iowa Data Request #23.

¹⁷⁹ CenturyLink Response to PAETEC Iowa Data Request #35(h).

1 A. My clients have asked in every state where they have intervened about
2 CenturyLink's post-merger plans for OSS, and in every state, CenturyLink has
3 submitted the same answer about anticipating no "immediate changes" but that
4 "changes could be expected over time." On July 27, 2010, CenturyLink filed its
5 Reply Comments and supporting declarations in the FCC's review of the merger
6 (WC Docket No. 10-110). In that filing, the Joint Applicants represented that "[i]t
7 is expected that CenturyLink will operate both CenturyLink (in CenturyLink
8 areas) and Qwest OSS (in Qwest areas) until it completes its evaluation of the best
9 options for all stakeholders. It is expected that CenturyLink will operate both
10 systems for 12 months at the very least."¹⁸⁰ While this recent statement is
11 different than what has been submitted in the state proceedings to date, it still
12 provides none of the certainty that wholesale customers need. As an initial
13 matter, 12 months is not a sufficient period of time to provide certainty. Second,
14 continuing to operate the systems does not mean that they will continue to meet
15 271 standards.

16 **Q. WHY IS "AT LEAST 12 MONTHS" INSUFFICIENT?**

17 A. CenturyLink has estimated synergy savings to be achieved over a three-to-five
18 year period, which means that the greatest risk to CLECs of CenturyLink
19 degrading access to OSS is during that three-to-five year window, and even for a
20 period of time after the five years if the combined company does not integrate
21 Qwest on-time and on-budget post-merger. Since one year does not even come
22 close to covering this time period during which wholesale customers and local

¹⁸⁰ Declaration of William E. Cheek in Support of Reply Comments of CenturyLink, Inc. and Qwest Communications International, Inc., WC Docket No. 10-110, July 27, 2010.

1 competition are at the greatest risk due to the merger, it is not satisfactory. In
2 addition, CenturyLink states that it “is expected” to operate both systems for at
3 least 12 months; however, expectations can change post-merger, and that is why
4 an enforceable commitment/condition to maintain OSS is critical.

5 **Q. SHOULD CENTURLINK BE ABLE TO UNILATERALLY MAKE**
6 **CHANGES TO QWEST’S OSS POST-MERGER IN THE PURSUIT OF**
7 **SYNERGY SAVINGS?**

8 A. No. Regardless of whether CenturyLink performs a “methodical review” or if it
9 takes into account the “wholesale customer perspective” or not¹⁸¹ – CenturyLink
10 should not be allowed to make changes to Qwest’s OSS post-merger without
11 extensive analysis like that conducted during the Qwest 271 approval process. As
12 explained in Exhibit TJG-2, an extensive third-party test of Qwest’s OSS was
13 conducted over a three-year period for the express purpose of determining
14 whether Qwest’s OSS satisfied the nondiscriminatory access requirement under
15 Section 271 of Act. Despite Qwest claiming at the outset that its OSS and CMP
16 were compliant with Section 271, the third party testing revealed hundreds of
17 problems areas that were resolved through OSS improvements and re-testing.
18 Countless hours and millions of dollars went into this process, and Qwest
19 ultimately received 271 authority to provide in-region interLATA services based,

¹⁸¹ See also, Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010, p. 21 (“Whether post-merger CenturyLink ultimately chooses an existing OSS or selects new systems should be left to be resolved through the ordinary course of business and the need to respond to marketplace conditions.”) Fortunately for CLECs, the state commissions and FCC did not take such this approach when evaluating whether Qwest’s OSS provides nondiscriminatory access required by Section 271 of the Act. CenturyLink’s claim that it should be left up to the Merged Company as to whether Qwest’s OSS should be replaced with different systems raises questions as to whether CenturyLink truly understands and takes seriously the BOC obligations it will inherit in Qwest’s legacy territory if the proposed transaction is approved.

1 in part, on this extensive test of its existing OSS. If CenturyLink changes Qwest's
2 existing OSS post-merger (without the same level of testing that was previously
3 conducted), it will have single-handedly undermined all of the work that was
4 conducted by 14 state commissions, the FCC, third-party testers, Qwest and
5 industry participants.

6 CenturyLink has admitted that its OSS has not been third-party tested,¹⁸² and the
7 FCC has stated that a "third-party test provides an objective means by which to
8 evaluate a BOC's OSS readiness."¹⁸³ Accordingly, replacing Qwest's legacy OSS
9 with CenturyLink's legacy (or new) OSS would cause Qwest to backslide on its
10 271 obligations because Qwest would no longer be providing the
11 nondiscriminatory access to OSS that was a quid pro quo for 271 approval.

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

14 A. Yes. As Dr. Ankum explains, CenturyLink has the incentive to direct its synergy
15 savings efforts in areas that are most profitable to the Merged Company. Given
16 that Qwest has referred to OSS as the "lifblood" of its wholesale operations,
17 making changes to Qwest's wholesale OSS is obviously an area that would be
18 profitable to the Merged Company. If CenturyLink stopped maintaining and
19 investing in Qwest's OSS, or started using it incorrectly, CenturyLink would save
20 money (increase synergies) and disadvantage its competitors (again resulting in
21 more revenues for Qwest). If CLECs' access to OSS is degraded or melts down

¹⁸² CenturyLink response to PAETEC Iowa Data Request #18.

¹⁸³ Qwest 9 State 271 Order at ¶ 49.

1 altogether due to integration failures, it will give CenturyLink a leg up in
2 competing for end users. In addition, the severe systems integration problems
3 experienced following recent mergers is proof positive that OSS integration
4 failures can wreak havoc post-merger.

5 **Q. THE COMPANY HAS STATED THAT THE INTEGRATION “WILL**
6 **LARGELY INVOLVE THE USE OF EXISTING SYSTEMS RATHER**
7 **THAN CREATING NEW ONES.”¹⁸⁴ DOES THIS ALLAY YOUR**
8 **CONCERNS?**

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

17 **Q. DO THE CLEC CONDITIONS LOCK-IN CENTURYLINK TO USING**
18 **QWEST’S LEGACY OSS FOREVER?**

19 A. No. After the minimum three-year period, the Merged Company has the
20 opportunity to make changes so long as the Merged Company (a) files a detailed
21 plan with regulators; (b) conducts third-party testing (for Qwest systems that were
22 third-party tested) to ensure that the replacement system provides the needed

¹⁸⁴ Joint Applicants’ Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 9.

1 functionality and can handle commercial volumes in Qwest's legacy territory; and
2 (c) allows for coordinated testing with CLECs. These three requirements are
3 eminently reasonable and were undertaken to ensure that Qwest's existing OSS
4 met the requirements of Section 271.

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

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

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

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

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

1 that has experience as a wholesale customer of both Qwest and CenturyLink,¹⁸⁵
2 explained that, the electronic-bonding capabilities of legacy Embarq's OSS is
3 inferior to the electronic-bonding capabilities of legacy Qwest's OSS.¹⁸⁶ And as
4 discussed above, Qwest's OSS has been tested independently and extensively,
5 while Embarq's legacy OSS has not.¹⁸⁷

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

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

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

19 A. Arguably the enforcement of the stringent nondiscrimination mandated by Section
20 251(c) might require such a result. Although CenturyLink intimates that it will

¹⁸⁵ Integra, et al. FCC Comments, WC Docket No. 10-110, July 12, 2010.

¹⁸⁶ Integra, et al. FCC Comments, WC Docket No. 10-110, July 12, 2010, at pp. 41-42.

¹⁸⁷ See Exhibit TJG-2 providing quotes from state commissions and the FCC about the extensive testing that was conducted on Qwest's OSS during the 271 approval process.

1 keep local control, the fact of the matter is that it may ultimately seek to have
2 business customers view CenturyLink as a single global entity. That will allow
3 CenturyLink to market services throughout its bigger footprint. Thus, if
4 CenturyLink evolves its OSS to a single ordering system for retail customers (*i.e.*,
5 a retail customer would only have to submit a single order to have service
6 provisioned in both Qwest and legacy CenturyLink exchanges), the same would
7 be required for wholesale customers.

8 ***B. Wholesale Service Quality***

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

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

- 12 • Condition 4 states that the Merged Company shall comply with all wholesale
13 performance requirements and associated remedy regimes applicable to Qwest
14 in the legacy Qwest ILEC territory. This includes the Merged Company
15 continuing to comply with all wholesale performance requirements and
16 remedy regimes and to continue to provide to CLECs wholesale performance
17 metrics reports Qwest currently provides. This condition also states that
18 Qwest will not reduce, eliminate or withdraw any Performance Indicator
19 Definition (PID) or Performance Assurance Plan (PAP) offered or provided as
20 of the merger filing date for a period of at least five years after the closing
21 date, and only then, after the Merged Company obtains approval from the
22 applicable state commission to reduce/eliminate/withdraw it after the
23 minimum 5-year period. This condition also states that, for at least the
24 Defined Time Period, the Merged Company shall meet or exceed the average
25 wholesale performance provided by Qwest to each CLEC for one year prior to
26 the merger filing date for each PID, product, and disaggregation. If the
27 Merged Company fails to provide wholesale service as described in the
28 preceding sentence, the Merged Company will also make remedy payments to
29 each affected CLEC in an amount as would be calculated using the
30 methodology in the current PAP for each missed occurrence when comparing
31 pre and post merger performance. This remedy payment related to pre and
32 post merger service quality (“Additional PAP”) would apply in addition to the
33 Current PAP, and state commissions/FCC would have the authority to assess
34 additional remedies if the remedies described above are insufficient to bring

1 about satisfactory wholesale service quality. This condition also states that in
2 the legacy Qwest ILEC territory, for at least the Defined Time Period, the
3 Merged Company will meet or exceed the average monthly performance
4 provided by Qwest to each CLEC for one year prior to the merger filing date
5 for each metric in the CLEC-specific monthly special access performance
6 reports Qwest provides to CLECs as of the merger filing date. For each
7 month that the Merged Company fails to meet Qwest's average monthly
8 special access performance for each metric, the Merged Company will make
9 remedy payments (calculated on a basis to be determined by the state
10 commission/FCC) on a per-month, per-metric basis to each affected CLEC.

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

28 **Q. WHY ARE THESE CONDITIONS NECESSARY?**

29 A. These conditions are critical to ensure that wholesale service quality is not
30 degraded post-merger as the Merged Company cuts costs to achieve synergy
31 savings. Condition 4, for instance, maintains the current PIDs and PAPs that
32 Qwest currently provides for a period of at least 5 years following the merger.
33 The five year time period corresponds with the upper limit of the Joint
34 Applicants' synergy savings time horizon which is the time during which the risk
35 of merger-related wholesale service quality degradation is greatly amplified. The
36 critical nature of maintaining wholesale service quality post-merger is reflected in

1 the minimum five-year time period in this condition as well as the requirement for
2 the Merged Company to obtain approval of reducing or eliminating the PIDs or
3 PAP. And to provide the proper signals to the Merged Company for it not to pay
4 current PAP remedies as a cost of doing business, this condition would require the
5 Merged Company to pay an additional remedy payment for merger-related service
6 quality degradation (Additional PAP). The current PIDs and PAPs are the best
7 available way to identify and root out wholesale service quality degradation –
8 they rely on trusted statistical methods as well as business rules and data that were
9 extensively tested during the 271 approval process.

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

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

20 A. Not really. When asked specifically whether CenturyLink will comply with
21 Qwest's wholesale performance requirements, continue to provide wholesale
22 performance metrics reports, make reasonable efforts to meet or exceed the
23 average wholesale performance provided by Qwest, and remit remedy payments

1 for substandard performance post-merger, CenturyLink replied that it “intends to
2 comply” with existing Qwest wholesale performance plans and went on to explain
3 that changes could be expected due to integration.¹⁸⁸ “Intend[ing] to comply” and
4 actually complying are two entirely different things as amply demonstrated by the
5 history of the Hawaii, FairPoint and Frontier transactions discussed above –
6 particularly if the merger is approved as filed and the Merged Company’s pre-
7 merger “intentions” are trumped by the Merged Company’s efforts to deliver on
8 synergy savings.

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

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

17 The reason this condition is needed is that some ICAs with Qwest are either silent
18 or refer to Qwest’s SIG for the applicable provisioning interval for a product (i.e.,
19 the interval is not specified in the ICA), and as such, the applicable interval can be
20 unilaterally changed by the Merged Company post-merger by changing its SIG.
21 However, CLECs should not be required to wait longer for wholesale services as
22 a result of the merger, so in cases where the ICA is silent or references the SIG,

¹⁸⁸ CenturyLink Response to PAETEC Iowa Data Request #61.

1 the standard interval applied at the time of the merger filing date should apply
2 post-merger.¹⁸⁹

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

10 **C. Wholesale Customer Support**

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

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

- 14
- 15 • Condition 15 states that the Merged Company shall provide to wholesale
16 customers and maintain availability on a going-forward basis, up-to-date
17 escalation information, contact lists, and account manager information at least
18 30 days prior to the closing date. For changes to support center location,
19 organizational structure, or contact information, the Merged Company will
20 provide at least 30 days advance written notice to wholesale customers; and
21 will provide reasonable advance notice for other changes. The information
and notice will be consistent with the terms of applicable ICAs.

¹⁸⁹ PAETEC has also proposed a condition to the FCC stating that the Merged Company will establish the same installation and repair intervals for CenturyLink as Qwest provides for special access services. Qwest's intervals for installation and repair of special access circuits are set forth in Qwest's Service Interval Guide (SIG). Available at: <http://www.qwest.com/wholesale/guides/sig/index.html> By contrast, to date, I have not located any similar service intervals for access services in CenturyLink's Service Guide or wholesale website. Integration of "best practices" across the Merged Company supports PAETEC's recommendation to the FCC to extend Qwest's intervals to legacy CenturyLink territory.

- 1 • Condition 16 states that the Merged Company will make available to
2 wholesale customers the types and level of data, information, and assistance
3 that Qwest made available as of merger filing concerning wholesale OSS and
4 wholesale business practices and procedures. This includes information on
5 Qwest's wholesale website such as the PCAT, notices, industry letters, the
6 CMP and databases/tools.
- 7 • Condition 17 states that the Merged Company will maintain Qwest's CMP
8 using the terms in the Qwest CMP Document, and will dedicate resources
9 needed to complete pending CLEC change requests in a commercially
10 reasonable time frame.
- 11 • Condition 18 states that the Merged Company will ensure that the legacy
12 Qwest Wholesale and CLEC support centers are sufficiently staffed by
13 adequately trained personnel dedicated to wholesale operations so as to
14 provide service at a level equal to or greater than provided by Qwest prior to
15 the merger (relative to wholesale order volumes), and to protect CLEC
16 information from being used by the Merged Company's retail operations.
17 This condition also states that the total number of employees dedicated to
18 supporting wholesale services for CLECs will be no fewer than employed by
19 legacy Qwest and legacy CenturyLink as of the Merger Filing Date unless the
20 Merged Company obtains a ruling from the applicable regulatory body that
21 wholesale order volumes materially decline or other circumstances warrant
22 corresponding employee reductions.

23 **Q. WHY ARE THESE CONDITIONS NECESSARY?**

24 A. These conditions dovetail with the wholesale service quality conditions and in
25 some respects the OSS conditions discussed above. These conditions are needed
26 to ensure that the transition to the Merged Company runs smoothly for wholesale
27 customers – and by extension their end user customers – and that the Merged
28 Company does not diminish the level of wholesale support currently provided in
29 Qwest's BOC territory when it integrates the two companies and pursues synergy
30 savings.

31 CenturyLink has provided no detail about what wholesale customers should
32 expect other than "change." To ensure that the transition runs smoothly for
33 wholesale customers, Condition 15 requires the Merged Company to provide at

1 least 30 days prior to the closing date (and on a going forward basis) up-to-date
2 escalation information, contact lists, and account manager information, and
3 provides for 30 days notice for changes to support center location, organizational
4 structure, or contact information. These resources are critical to managing the
5 carrier-to-carrier relationship between an ILEC and CLECs, and will likely incur
6 significant changes due to the merger. Therefore, CLECs must be made aware of
7 these changes in advance so that they can make the appropriate adjustments on
8 their end and avoid disruption when the change is made. This requirement is
9 particularly important given that when CenturyLink was asked about its plans in
10 this regard post-merger, its response was not specific or instructive.¹⁹⁰

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

13 A. These conditions are necessary in order to ensure that Qwest does not backslide in
14 its obligations under the Act. The OSS provided by Qwest to CLECs goes
15 beyond just the CLEC-facing system interfaces, and includes the back-office
16 systems, databases, personnel,¹⁹¹ as well as associated business processes and up-
17 to-date data maintained in those systems.¹⁹² The third-party test conducted on
18 Qwest's OSS during the 271 approval process tested the availability and

¹⁹⁰ CenturyLink Response to PAETEC Iowa Data Request #72. While CenturyLink states that it does not anticipate "immediate changes," the response goes on to explain that changes will likely be made. To CenturyLink's credit, it states that "Wholesale customers will be informed of any changes to contact information in advance." However, CenturyLink does not indicate how far in advance that notice will be given or how the notice will be provided. This is insufficient.

¹⁹¹ See, e.g., *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, FCC 03-36, August 21, 2003 ("Triennial Review Order") at footnote 822 ("OSS are composed of various 'back office' systems, databases and personnel that an incumbent LEC uses to commercially provision telecommunications services to...purchasers of unbundled network elements.")

¹⁹² *Local Competition Order* at ¶¶ 517-18.

1 functionality of the system interfaces as well as business practices and procedures,
2 data integrity and Qwest's CMP.¹⁹³ The test involved these components because
3 they are directly related to whether Qwest provides nondiscriminatory access to
4 its OSS under the Act. In other words, the current level of data, current business
5 practices and procedures, and current CMP in Qwest's region are essential
6 components of Qwest complying with the market-opening provisions of 271 of
7 the Act, and these components would be undermined – and the Merged Company
8 would backslide on its 271 obligations – if the Merged Company withdrew or
9 replaced such information, practices and procedures, or CMP post-merger.

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

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

17 The merger is intended to bring about improved efficiencies and
18 practices in all parts of the combined company, so changes [to
19 Qwest's existing CMP and/or CMP Document] could be expected
20 over time. However, any changes will occur only after a thorough
21 and methodical review of both companies' processes to determine

¹⁹³ See, e.g. Colorado PUC Evaluation: "Qwest's change management process (CMP) has undergone a complete overhaul during the § 271 process. It is now compliant with the FCC's change management criteria. The [Colorado PUC] staff has closely monitored CMP, and through no small amount of goading, Qwest has brought it into compliance." See also *id.* at 45 ("Beginning in July 2001, Qwest, CLECs and [Colorado PUC] staff began meeting in a collaborative effort to redesign Qwest's change management process (CMP). The participants in the redesign process have met for more than 45 days over the past 11 months to discuss every aspect of Qwest's CMP. CLECs and Qwest have made every effort to achieve consensus. As a result, the [Colorado PUC] agrees with Qwest's contention that 'it has in place the most comprehensive, inclusive, and forward-looking change management plan in the nation.'").

1 the best process to be used on a go-forward basis from both a
2 combined company and a wholesale customer perspective.¹⁹⁴

3 Based on this response, CLECs should expect changes, but nothing is known
4 about those changes or how the Merged Company will determine whether to
5 make changes or what changes to make. CenturyLink's vague reference to a
6 "methodical review" falls woefully short of providing any certainty.¹⁹⁵ Moreover,
7 the Merged Company should not be allowed to cast away all the work that was
8 conducted to ensure Qwest's OSS provided nondiscriminatory access to OSS; nor
9 should the Merged Company be allowed to unilaterally¹⁹⁶ implement new OSS or
10 modify CMP because it unilaterally determined it was more efficient (in the
11 "combined company['s] perspective"). In fact, that is precisely the type of
12 conduct that the 271 approval process was intended to identify and root out. Yet,
13 that is what could happen if the merger is approved without conditions.

¹⁹⁴ CenturyLink Response to PAETEC Iowa Data Request #118. *See also*, CenturyLink Response to PAETEC Iowa Data Request #91. After explaining that changes may be made in the future, CenturyLink states: "Generally, CenturyLink is a proponent of web-based guidelines and materials for wholesale customer usage and is an effective means used by CenturyLink today." This response provides absolutely no commitment to maintain the information Qwest currently makes available on its website, such as its Product Catalogs.

¹⁹⁵ CenturyLink was asked about what it meant by "methodical review" and objected to answering the question because it was a statement made in another state (albeit a statement made by a CenturyLink witness about the same proposed transaction). CenturyLink Objection to PAETEC Iowa Data Request #49. When asked this question in another state, CenturyLink responded that it had not determined whether this "methodical" review would include third-party testing. In addition, when asked what it meant by "from both a combined company and a wholesale customer perspective", CenturyLink again objected in Iowa. In another state, however, CenturyLink responded that it will take into consideration carriers throughout its entire footprint as well as "operational efficiencies for" the Merged Company. The Merged Company should not be permitted to replace processes, CMP, etc. that were extensively reviewed during the 271 approval process and critical to nondiscriminatory access to OSS with different processes or CMP that have not been tested and which may be more efficient for the Merged Company. This is a prime example of a situation in which the Merged Company could integrate the two companies to the detriment of wholesale customers. Therefore, conditions are warranted.

¹⁹⁶ CenturyLink's statement that it will take into account the "wholesale customer perspective" is a hollow promise. Assuming that the Merged Company even takes into account the wholesale customer perspective when integrating OSS, it could simply ignore that perspective and instead implement changes based on the "combined company...perspective." In fact, Qwest already makes changes through its CMP over CLEC objections, and this problem is sure to worsen as the Merged Company begins overhauling OSS.

1 **Q. ARE YOU SAYING THAT QWEST’S BUSINESS PRACTICES AND**
2 **PROCEDURES, LEVEL OF INFORMATION, AND CMP IS PERFECT**
3 **OR SHOULD BE SET IN STONE?**

4 A. No. Regarding the role of Qwest CMP, CLECs including Integra said in their
5 recent FCC Comments in the Qwest-CenturyLink Merger docket that the CMP
6 performs an essential function, even though CLECs have encountered difficulties
7 with Qwest’s CMP. CLECs provided as an example of these difficulties that
8 Qwest has unilaterally implemented unwanted changes over CLEC objections.
9 After reviewing examples Eschelon provided in the Minnesota Eschelon-Qwest
10 arbitration case, the Minnesota Arbitrators, as affirmed by the Minnesota
11 Commission, found that “Eschelon has provided convincing evidence that the
12 CMP process does not always provide CLECs with adequate protection from
13 Qwest making important unilateral changes in the terms and conditions of
14 interconnection.”¹⁹⁷ In a complaint Eschelon filed against Qwest in Arizona
15 regarding expedites, the Arizona Staff said, “This case is about not only a breach
16 of Eschelon’s ICA, but inappropriate use of the CMP to affect a material change
17 to all CLECs’ rights under their current ICAs with Qwest.”¹⁹⁸ Nevertheless, in a
18 relative comparison, Qwest’s CMP, with all of its flaws, is still better than the
19 untested, unknown process that CenturyLink may replace it with post-merger.

¹⁹⁷ Minnesota Arbitrators’ Report, OAH 3-2500-17369-2/MPUC No. P-5340,421/IC-06-768 at ¶ 22. The Minnesota Commission adopted the Arbitrators’ Report in relevant part. See, Order Resolving Arbitration Issues, Requiring Filed Interconnection Agreement, Opening Investigation and Referring Issue to Contested Case Proceeding, *In the Matter of the Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996*. [“Minnesota Qwest-Eschelon ICA Arbitration”], OAH No. 3-2500-17369-2; MPUC Docket No. P-5340,421/IC-06-768 (March 30, 2007) [“MN PUC Arbitration Order”]

¹⁹⁸ Staff Reply Brief, Arizona Corporation Commission Docket No. T-03406A-06-0257 at p. 1.

1 **Q. DOES LEGACY CENTURYLINK HAVE A CHANGE MANAGEMENT**
2 **PROCESS?**

3 A. No. CenturyLink does not have a Change Management Process in either the
4 legacy CenturyTel legacy territory or the legacy Embarq territory, (CenturyLink
5 has separate wholesale processes and wholesale websites for each of the legacy
6 CenturyLink and Embarq territories.) In the legacy CenturyTel territory, there is
7 a “Wholesale Markets Carrier Notification” process¹⁹⁹ wherein CenturyTel simply
8 issues a notice informing wholesale customers about a coming change or a change
9 that has already taken place. For example, CenturyTel issued Wholesale Markets
10 Carrier Notification GN122009²⁰⁰ to announce to wholesale customers that
11 CenturyTel was implementing the EASE OSS. Noticeably absent from this
12 notification is any opportunity for input from the affected wholesale customer.
13 Similarly, CenturyTel issues these notices to inform wholesale customers about
14 changes CenturyTel makes to its Service Guide, such as Carrier Notification
15 GN102009,²⁰¹ which informed wholesale customers that CenturyTel had *already*
16 made changes to its Service Guide regarding billing disputes. Again, no
17 opportunity for input from the affected wholesale customers. In the legacy
18 Embarq territory, CenturyLink uses a similar notice approach. I have attached as
19 Exhibit TJG-10 a copy of a recent notice issued by CenturyLink in the legacy
20 Embarq territory, in which CenturyLink announced a change to its WebRRS web-
21 based GUI for maintenance and repair. Like the CenturyTel notice, notably

¹⁹⁹<http://www.centurylink.com/business/Wholesale/InterconnectionServices/AlertsAndNotifications/generaINotifications.jsp>

²⁰⁰http://www.centurylink.com/business/Wholesale/InterconnectionServices/Library/EASE_Implementation_Notice_07072009.pdf

²⁰¹http://www.centurylink.com/business/Wholesale/InterconnectionServices/Library/Service_Guide_Update_07012009.pdf

1 absent from this notice in legacy Embarq territory is any mention of opportunity
2 for input or feedback from the affected wholesale customers. Indeed, the notice
3 indicates that the change is effective the day the notice was issued (“Effective
4 today...”). In late 2007, Integra asked its Embarq account manager whether a
5 change management process existed in legacy Embarq territory, and was directed
6 to Embarq’s “CLEC Issue Resolution” process.²⁰² According to Embarq’s
7 wholesale website, the CLEC Issue Resolution process consists of:

8 two different venues for resolving business issues with our CLEC
9 customers: an annual face-to-face meeting (CLEC Forum) and a
10 six month CLEC Forum follow-up conference call (CRM).

11 **Customer Relations Meeting (CRM)**

12 This six month follow-up meeting provides an opportunity for
13 CenturyLink to update its CLEC partners on items and issues of
14 interest discussed during the annual CLEC Forum. Meetings will
15 be held six months after the CLEC Forum and participants will
16 interact via conference call.

17 **CLEC Forum**

18 This annual meeting provides an opportunity for face-to-face
19 interaction between CenturyLink and its CLEC partners.²⁰³

20 After reviewing both legacy CenturyTel and legacy Embarq wholesale websites
21 and based on information provided by the Embarq wholesale customer account
22 manager, the annual CLEC Forum meeting and six month follow up CRM is the
23 only process identified for CLEC input, and that is minimal. Nothing about that
24 process manages change. Although CenturyLink has claimed that it has a
25 “streamlined change management process,”²⁰⁴ the facts do not support this claim.

²⁰² http://embarq.centurylink.com/wholesale/clec_forum.html

²⁰³ http://embarq.centurylink.com/wholesale/clec_forum.html

²⁰⁴ Joint Petitioners’ Reply Comments, WC Docket No. 10-110, July 27, 2010, at p. 24.

1 Although CLECs have encountered difficulties with Qwest's CMP,²⁰⁵ at the very
2 least, Qwest's CMP is documented,²⁰⁶ contains an escalation process,²⁰⁷ and
3 memorializes a CMP process that was evaluated during the 271 approval process.
4 As the CMP Document developed via the extensive 271 process shows,²⁰⁸
5 notification is only one aspect of a Change Management Process. CenturyLink's
6 notice/alert processes have not been subjected to any such extensive investigation.

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

9 A. Yes. The FCC has found that adequate change management procedures are a
10 critical component to a CLEC's "meaningful opportunity to compete by providing
11 sufficient access to the BOC's OSS."²⁰⁹ The FCC has said that it will evaluate the
12 adequacy of a BOC's CMP according to five factors:

- 13 (1) that information relating to the change management process is
14 clearly organized and readily accessible to competing carriers; (2)
15 that competing carriers had substantial input in the design and
16 continued operation of the change management process; (3) that
17 the change management plan defines a procedure for the timely
18 resolution of change management disputes; (4) the availability of a
19 stable testing environment that mirrors production; and (5) the

²⁰⁵ For example, Qwest has unilaterally implemented unwanted changes over CLEC objections. *See, e.g., In re Petition of Eschelon Telecom, Inc. for Arbitration of an Interconnection Agreement with Qwest Corporation Pursuant to 47 U.S.C. § 252(b) of the Federal Telecommunications Act of 1996* ["Qwest-Eschelon Minnesota ICA Arbitration"], Arbitrators' Report, MPUC Dkt. Nos. P-5340,421/IC-06-768, ¶ 22 (rel. Jan. 16, 2007) ("Eschelon has provided convincing evidence that the CMP process does not always provide CLECs with adequate protection from Qwest making important unilateral changes in the terms and conditions of interconnection.").

²⁰⁶ <http://www.qwest.com/wholesale/cmp/index.html>.

²⁰⁷ Qwest CMP Document Section 14.

²⁰⁸ Qwest testified in the Qwest-Eschelon Minnesota ICA Arbitration: "The CMP was evaluated as a part of the extensive section 271 investigation." Qwest (Renee Albersheim) Direct Testimony (Aug. 25, 2006), p. 6, line 24.

²⁰⁹ Qwest 9 State 271 Order at ¶ 132.

1 efficacy of the documentation the BOC makes available for the
2 purpose of building an electronic gateway.²¹⁰

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

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

10 A. Yes. Changes to or reductions in employees that service wholesale and CLEC
11 support centers will have a direct impact on the level of wholesale service quality
12 provided post-merger, and is one of the most likely candidates for reductions.²¹¹
13 And again, the little information provided by CenturyLink about future changes
14 and reductions in this headcount heightens those concerns.

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

18 A. When asked directly about anticipated changes to staffing levels for groups that
19 interface with wholesale customers post merger, CenturyLink gives its patented
20 answer about no "immediate changes" but that changes can be expected due to

²¹⁰ *Qwest 9 State 271 Order* at ¶ 132.

²¹¹ CenturyLink has stated that it will achieve synergies through "elimination of duplicative functions and systems." Glover Iowa Direct at p. 11. The Merged Company will likely have duplicative functions in this area given that both Qwest and CenturyLink must have their own separate wholesale/CLEC support centers today. Further, because cuts in this area will improve CenturyLink's position relative to its competitors, these changes would be profitable to the Merged Company.

1 integration.²¹² To CenturyLink's credit, it states that "the combined company will
2 continue to employ experienced and dedicated personnel to provide quality
3 service" and "will continue to be managed by knowledgeable and experienced
4 employees dedicated to their local communities" and the "workforce of the
5 combined company will continue to be sufficient to meet customer and business
6 needs and to ensure compliance with all regulatory obligations."²¹³

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

9 A. No. These are merely paper promises because CenturyLink has not explained
10 how it will live up to these promises or offered commitments to back them up.
11 These promises should carry no weight given that if the transaction is approved as
12 filed, the Merged Company will be focused on achieving synergies, not on
13 making good on unenforceable statements made to achieve merger approval.
14 These representations do indicate, however, that the Merged Company should
15 have no problem abiding by the provisions of Condition 18 that requires
16 sufficiently staffed and adequately trained wholesale operations.

17 **Q. CONDITION 18 STATES THAT THE TOTAL NUMBER OF**
18 **EMPLOYEES DEDICATED TO SUPPORTING WHOLESALE**
19 **SERVICES WILL BE NO FEWER THAN AS OF THE MERGER FILING**
20 **DATE UNLESS THE MERGED COMPANY DEMONSTRATES THAT**
21 **DECLINING WHOLESALE VOLUMES (OR OTHER**

²¹² CenturyLink response to PAETEC Iowa Data Requests # 46 and #136.

²¹³ CenturyLink response to PAETEC Iowa Data Request #136.

1 **CIRCUMSTANCES) WARRANT HEADCOUNT REDUCTION**
2 **RELATIVE TO ORDER VOLUMES. WHY IS THIS WARRANTED?**

3 A. I suspect that the personnel Qwest devotes to wholesale operations has declined in
4 recent years as Qwest has attempted to shed costs and reduce its debt load. If and
5 when Joint Applicants provide the confidential information sought by PAETEC's
6 discovery which asks for wholesale headcount, I will supplement this response
7 with actual data on this point. However, to the extent that the headcount currently
8 dedicated to serving wholesale customers in Qwest's legacy territory is as low as
9 it has been in the recent past, reducing this headcount further could very well have
10 a detrimental impact on wholesale customers of Qwest. So, when the Merged
11 Company is pursuing these synergy savings, it should ensure that whatever
12 changes are made do not reduce the total number of employees dedicated to
13 wholesale customers in Qwest's territory so that wholesale service quality is not
14 degraded post-merger.

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

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

1 **Q. CAN YOU PROVIDE AN EXAMPLE DEMONSTRATING THE**
2 **IMPORTANCE OF PROTECTING CLEC INFORMATION FROM THE**
3 **MERGED COMPANY’S RETAIL OPERATIONS?**

4 A. Yes. During 2007 and 2008, Verizon and Bright House (along with other cable-
5 affiliated CLECs) engaged in extensive litigation with Verizon regarding
6 Verizon’s use of Bright House’s (and the other CLECs’) confidential customer
7 proprietary network information (“CPNI” or “ordering information”).²¹⁴
8 Essentially, when Bright House would win a customer and place an order with
9 Verizon to transfer the customer’s telephone number and directory listing over to
10 Bright House, Verizon would take that confidential information and use it to
11 immediately start trying to win-back the customer or prevent the customer from
12 leaving in the first place. Bright House argued that this was a violation of federal
13 law, which requires a carrier receiving confidential information of this sort – here,
14 the specific identities of customers who were leaving Verizon – to use that
15 information *only* for the purpose for which it was supplied – here, to perform the
16 administrative tasks associated with transferring the customer from one carrier to
17 the other.

18 The FCC ruled against Verizon, finding that Verizon violated the statute by using
19 confidential information from Bright House for Verizon’s own marketing
20 purposes. Verizon took its case to federal court on an expedited basis, and
21 received a 3-0 ruling from the D.C. Circuit that the FCC was correct and that
22 Verizon was wrong. Given this example and others, it is clear that the CLECs’

²¹⁴ See Bright House Networks, LLC *et al.* v. Verizon California, Inc., *et al.*, *Memorandum Opinion and Order*, 23 FCC Rcd 10704 (2008), *affirmed*, *Verizon California, Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009).

1 have a valid concern about how information is used during the customer transfer
2 process.

3 **Q. WHAT HAS CENTURYLINK SAID ABOUT THIS?**

4 A. When asked about its plans post-merger to ensure the protection of CLEC
5 information, CenturyLink responded that it “works to ensure” that wholesale
6 customer information is kept away from the retail marketing group and will do so
7 post-merger, but that changes could be expected in Qwest’s legacy territory due to
8 integration decisions. Again, this is not satisfactory. There is no information that
9 I am aware of about how CenturyLink protects CLEC data from retail operations
10 in its legacy territory, and if CenturyLink imports its unknown practices into
11 Qwest’s region post-merger in the name of “best practices,” CLECs are at risk of
12 the Merged Company lessening the protection Qwest currently provides and
13 engaging in anti-competitive conduct.

14 **D. Compliance**

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

17 A. There are nine conditions in this category – conditions 13, 21, 22, 23, 25, 26, 27,
18 29, and 30:

- 19
- 20 • Condition 13 states that the Merged Company will be classified as a BOC in
21 the legacy Qwest ILEC territory post-merger and subject to BOC
22 requirements in the Telecommunications Act, including the 14-point
23 competitive checklist under Section 271 and anti-backsliding provisions under
24 Section 272.
 - 25 • Condition 21 states that the Merged Company will process orders in
compliance with law and applicable ICAs.

- 1 • Condition 22 states that the Merged Company will provide number portability
2 in compliance with law and applicable ICAs; unlock E-911 records at the time
3 of porting; and address trouble reports involving unlocking E-911 records
4 within 24 hours. This condition states that the Merged Company will not
5 assign a passcode, password or PIN to retail customers in a manner that
6 prevents or delays a change in local service providers. And this condition
7 states that the Merged Company shall not limit the number of ports that can be
8 processed.
- 9 • Condition 23 states that the Merged Company will provide nondiscriminatory
10 access to directory listings and directory assistance in compliance with law,
11 including being responsible for ensuring that all directory listings submitted
12 by a CLEC are incorporated into the appropriate databases and making the
13 CLEC's subscriber listings equally available to requesting entities.
- 14 • Condition 25 states that the Merged Company will provide routine network
15 modifications in compliance with law and applicable ICAs.
- 16 • Condition 26 states that the Merged Company will engineer and maintain its
17 network in compliance with law and applicable ICAs, which includes not
18 diverting resources from maintenance to merger integration activities and not
19 engineering the network in such a way that disrupts or degrades access to the
20 local loop. This condition also requires the Merged Company to abide by law
21 and applicable ICAs when retiring copper and prohibits the Merged Company
22 from engineering/maintaining its network (including routing of traffic) in a
23 manner that results in the application of higher rates for traffic or
24 inefficiencies for wholesale customers.
- 25 • Condition 27 states that the Merged Company will provide conditioned copper
26 loops in compliance with law and Commission-approved rates, and to (when
27 technically feasible) test and report troubles for all features and functions of
28 the copper line and not just for voice transmission only.
- 29 • Condition 29 states that conditions adopted in this state may be expanded or
30 modified based on conditions adopted by other state commissions or the FCC.
- 31 • Condition 30 states that in the case of a dispute between the parties about
32 merger conditions, either party may seek resolution before the state
33 commission.

34 **Q. WHY ARE THESE CONDITIONS NECESSARY?**

35 A. These conditions are designed to ensure that the Merged Company complies with
36 its obligations to wholesale customers under the Act and implementing FCC's
37 rules post merger. While CenturyLink has promised in its filings to comply with
38 many of the provisions discussed in these conditions, paper promises are not

1 enough, especially considering CenturyLink's inexperience as a BOC, issues
2 previously addressed in CenturyLink's legacy territory, and problems experienced
3 by wholesale customers following recent mergers. Conditions are needed to turn
4 the paper promises into enforceable commitments.

5 **Q. HAS THE COMPANY ALREADY AGREED TO COMPLY WITH THE**
6 **OBLIGATIONS THAT ARE EMBODIED IN THESE CONDITIONS**
7 **POST-MERGER?**

8 A. For many of them, yes. For example, regarding condition 13, the Merged
9 Company has agreed that it will be classified as a BOC in Qwest legacy territory
10 post-merger and will comply with all Section 271 obligations.²¹⁵ Similarly, as it
11 relates to condition 21, the Merged Company has agreed to process wholesale
12 orders in compliance with law and applicable ICAs.²¹⁶ And for condition 22,
13 CenturyLink has agreed to "provide number portability in compliance with
14 federal and state law, as well as the terms of applicable interconnection
15 agreements"²¹⁷ and to comply with federal and state law and applicable ICAs

²¹⁵ See, e.g., CenturyLink response to PAETEC Iowa Data Request #3 ("The merger will not change the BOC status of Qwest Corporation..."); CenturyLink response to PAETEC Iowa Data Request #4 ("...Qwest Corporation, as a wholly owned subsidiary of CenturyLink, will continue to meet all ongoing 271 obligations in the legacy Qwest service areas that are required."). See also, Joint Applicants' Reply Comments, WC Docket No. 10-110, July 27, 2010 ("And though CenturyLink previously has not operated subject to the requirements of Section 271, it is fully aware of (and has acknowledged) its duty to do so within Qwest's in-region service areas, and the company will ensure that the resources and expertise required to meet those obligations are in place.") Notably, PAETEC asked in Data Request #3 for CenturyLink to "explain what, if any, measures the Merged Company will put in place to ensure against backsliding on its 271 obligations?" CenturyLink did not answer this portion of the question, thereby making the portion of Condition 13 related to anti-backsliding that much more important.

²¹⁶ CenturyLink response to PAETEC Iowa Data Request #102 ("Yes, in all service areas post-merger, CenturyLink will continue to process wholesale orders in compliance with federal and state laws and with applicable terms in interconnection agreements.")

²¹⁷ CenturyLink response to PAETEC Iowa Data Request #100(a). Though CenturyLink states that it will provide number portability in accordance with law, the fact that CenturyLink attributed its recent waiver request of the one-day porting requirement to the ongoing integration efforts related to the

1 when unlocking E911 records and addressing trouble reports related to unlocking
2 E911 records.²¹⁸ Likewise, the Joint Applicants have indicated that their policies
3 regarding passcodes/PINs would not be disrupted by Condition 22²¹⁹ and that the
4 number of ports that can be processed are not currently limited.²²⁰ For Condition
5 25, CenturyLink has agreed that “in all service areas post merger, CenturyLink
6 will continue to provide routine network modifications in compliance with federal
7 and state laws and with applicable terms in interconnection agreements.”²²¹ For
8 Condition 26, CenturyLink has repeatedly represented that it will continue to
9 invest in its network post-merger and that it is fully capable of allocating
10 resources to both maintain current operations and to conduct merger-related

Embarq merger shows that an enforceable condition is needed to ensure that the integration of the Qwest merger does not similarly impact the Merged Company’s ability to meet number porting requirements.

²¹⁸ CenturyLink response to PAETEC Iowa Data Requests #100(b) and 100(c). Notably, CenturyLink states that it “has not evaluated or reached any conclusions regarding” the issues of when CenturyLink will unlock E911 records or address trouble reports related to unlocking E911 records. The uncertainty caused by CenturyLink’s vacillation on this issue makes Condition 22 that much more important. The Merged Company should have no problem abiding by condition 22(a) given that it offered an identical commitment to the FCC in conjunction with the Embarq/CenturyTel merger and states that “within legacy service areas E911 records are being unlocked at the time of porting in accordance with the FCC’s merger condition.” CenturyLink response to PAETEC Iowa Data Request # 100(d).

²¹⁹ CenturyLink states that it assigns passwords in some instances such as online access in accordance with CPNI rules and in cases where customers protect their account against unauthorized changes, but otherwise “does not currently assign a passcode or Personal Identification Number (PIN) to retail customers that must be used before the customer may switch to an alternative local service provider.” CenturyLink Response to PAETEC Iowa Data Request #7. Qwest states that “in none of its states does Qwest assign a passcode or Personal Identification Number (PIN)/passcode to retail customers and require that the passcode or PIN be submitted in order for the retail customer to switch to an alternative local service provider.” Qwest Response to PAETEC Iowa Data Request #7. Based on the information provided by the Joint Applicants, this condition would not require them to change their policies to accommodate the condition. Notably, Qwest asked the Iowa Board to place a very similar condition on the approval of the Iowa Tel/Windstream merger: “prohibit Windstream from requiring new local service providers to provide Windstream-provided Personal Identification Numbers when porting a customer’s number to the new provider” Order Canceling Hearing and Terminating Docket, Iowa Utilities Board, April 30, 2010, at p. 26.

²²⁰ CenturyLink Response to PAETEC Iowa Data Request #37 (“CenturyLink does not limit the number of service requests (including number ports) a given CLEC can make.”)

²²¹ CenturyLink Response to PAETEC Iowa Data Request #101.

1 activities post-merger.²²² CenturyLink has also represented that it will comply
2 with all applicable state and federal laws and rules and ICAs in relation to copper
3 retirement.²²³ As it relates to Condition 27, “CenturyLink states that it will
4 comply with all applicable state and federal laws and rules, as well as the
5 provisions of any applicable interconnection agreements...” for conditioning of
6 copper loops.²²⁴ The fact that CenturyLink has agreed to comply with these
7 requirements post-merger shows that it should have no problem with these
8 conditions being adopted in conjunction with any decision approving the
9 proposed transaction. Again, conditions are needed to turn CenturyLink’s paper
10 promises into enforceable commitments.

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

15 A. For starters, the company that will be in control of Qwest post-merger has no
16 experience operating as a BOC, so the potential for backsliding on Qwest’s 271
17 obligations is great (at least greater than prior to the merger when Qwest was
18 controlled by a company that had about seven years experience operating as a
19 BOC with 271 approval). Second, to date, Qwest has exploited the lack of clear
20 rules implementing 271 obligations to impose excessive, non-negotiable rates for

²²² See, e.g., Application for Expedited Approval of Reorganization, Docket No. SPU-2010-0006, filed May 25, 2010, at p. 2 (“It will provide the combined company with greater financial resources and access to capital enabling it to invest in networks...”) and p. 17 (“CenturyLink has a demonstrated ability to acquire and successfully integrate companies, and to combine operational systems and practices, while continuing to provide high quality service to customers.”)

²²³ CenturyLink Response to PAETEC Iowa Data Request #104.

²²⁴ CenturyLink Response to PAETEC Iowa Data Request #106.

1 271 network elements on CLECs.²²⁵ The Merged Company should not be
2 allowed to evade its 271 obligations post-merger, and that includes avoiding the
3 requirement to provide 271 network elements on just and reasonable rates, terms
4 and conditions.²²⁶

5 **Q. PLEASE EXPLAIN CONDITION 23.**

6 A. This condition is necessary to protect CLEC rights under the Act to
7 nondiscriminatory access to directory listing (DL) and directory assistance (DA)
8 functions. CenturyLink has developed certain wholesale practices concerning
9 competitors' access to DL and DA databases and processes which increase
10 competitors' costs, and degrade directory services available to end users.

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

14 A. CenturyLink has attempted to shift its responsibilities under Section 251(b)(3) of
15 the Act to third parties. CenturyLink refuses to enter into ICAs that include
16 language which ensures that a competitors' subscribers have the same access to
17 DA and DL databases as CenturyLink provides its own customers. As a result,
18 directory services provided by competitors may be degraded if CenturyLink, or its

²²⁵ See, e.g., Comments of Joint Commenters, WC Docket No. 10-110, July 12, 2010, at pp. 68-69, citing Petition for Modification of McLeodUSA Telecommunications Services, Inc., WC Docket No. 04-223, July 23, 2007, at pp. 4-12.

²²⁶ Covad Communications Company, PAETEC Communications, Inc., Access Point, Inc. Deltacom, Inc., Granite Telecommunications, LLC, HickoryTech Corporation, Metropolitan Telecommunication, Inc., OrbitCom, Inc., TDS Metrocom, LLC, and TelePacific Communications ("Joint Commenters") have proposed specific conditions related to 271 obligations to the FCC in conjunction with the FCC's review of the proposed transaction. See, Comments of Joint Commenters, WC Docket No. 10-110, July 12, 2010, at pp. 70-71, available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020522259>

1 vendor, fails to properly maintain these databases in a manner that ensures
2 nondiscriminatory access.

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

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

10 Directory listings. Directory listings are any information:

11
12 (1) Identifying the listed names of subscribers of a telecommunications
13 carrier and such subscriber's telephone numbers, addresses, or primary
14 advertising classifications (as such classifications are assigned at the
15 time of the establishment of such service), or any combination of such
16 listed names, numbers, addresses or classifications; and

17
18 (2) That the telecommunications carrier or an affiliate has published,
19 caused to be published, or accepted for publication in any directory
20 format.²²⁷

21
22 In addition, Section 251(b)(3) of the Act requires all local exchange carriers to
23 provide competing providers with "*nondiscriminatory* access to ... directory
24 assistance, and directory listing."²²⁸ The FCC has interpreted the statutory term
25 "directory listing" to mean "the act of placing a customer's listing information in
26 a directory assistance database or in a directory compilation for external use (such
27 as a white pages)."²²⁹ Among other things, Section 251(b)(3) and 47 C.F.R. §

²²⁷ 47 C.F.R. § 51.5.

²²⁸ 47 U.S.C. § 251(b)(3) (emphasis added).

²²⁹ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the*

1 51.5 require that LECs “publish competitors’ business customers in ... [their]
2 director[ies] on a nondiscriminatory basis,” regardless of whether LECs own
3 those directories or not.²³⁰

4 Condition 23 ensures that CenturyLink will comply with federal and state law
5 with respect to its DL/DA responsibilities. It further ensures that CenturyLink
6 does not shift its responsibilities to a third party vendor and specifically identifies
7 the responsibilities with respect to nondiscriminatory access to DL/DA.
8 CenturyLink’s worst practices should not be adopted by the Merged Company
9 post-merger.

10 **Q. WHAT PROBLEM DOES CONDITION 27 ADDRESS?**

11 A. As explained by the FCC’s SBC/Ameritech merger order, a merger of this sort
12 will increase the Merged Company’s incentive and ability to discriminate against
13 its competitors with respect to the provision of advanced services. This is already
14 occurring in Minnesota in Qwest’s legacy territory, and the proposed merger will
15 further entrench the company’s discriminatory conduct and potentially spread this
16 discriminatory treatment throughout the Merged Company’s territory. PAETEC,
17 Integra and other CLECs provide xDSL over unbundled conditioned copper
18 loops. Qwest discriminates against these carriers in various ways, such as
19 refusing to test copper loops to digital levels when installing and repairing loops

Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934 [sic], As Amended, CC Docket Nos. 96-115, 96-98, 99-273, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, ¶ 160 (1999) (“SLI/DA Order”).

²³⁰ See *MCI Telecomm. Corp. v. Michigan Bell Tel. Co.*, 79 F. Supp. 2d 768, 801 (E.D. Mich. 1999); see also *U.S. West Comm., Inc. v. Hix*, 93 F. Supp. 2d 1115, 1132 (D. Colo. 2000) (citing *MCI Telecomm.*).

1 despite a requirement to do so.²³¹ Qwest has also ignored the FCC's definition of
2 line conditioning in an attempt to create "new levels of conditioning" that, not
3 surprisingly, come with new, unapproved charges. This harms the public interest
4 by impeding the ability of CLECs to deliver innovative xDSL-based advanced
5 services to small and medium-sized businesses, and is a problem that will likely
6 multiply if the merger is approved as filed.²³² Further, the merger is contrary to
7 the public interest if a merging party (Qwest in this example) is rewarded for
8 violating the law. This condition would help ensure that the public interest is not
9 harmed post-merger by requiring the Merged Company to condition loops in
10 compliance with law and Commission-approved rates, including testing and
11 reporting troubles for all features and functionalities of the copper loops,²³³ using
12 the FCC's definition of line conditioning.²³⁴ In other words, this condition
13 requires the Merged Company to comply with existing law post-merger.²³⁵
14 Although the Merged Company should be expected to comply with the law in any

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

²³² For example, when asked whether CenturyLink would test and report troubles for all features, functions and capabilities of conditioned copper loops or restrict its testing to voice transmission only for conditioned copper loops post-merger, CenturyLink replied: "CenturyLink has not made any determination on this issue at this time." CenturyLink Response to PAETEC Iowa Data Request #106.

²³³ 47 C.F.R. § 51.319(a)(1)(iii)(C).

²³⁴ 47 C.F.R. § 51.319(a)(1)(iii)(A).

²³⁵ This is particularly important in light of the National Broadband Plan which seeks to foster broadband deployment and competition. The National Broadband Plan states: "Competitive carriers are currently using copper to provide SMBs with a competitive alternative for broadband services. Incumbent carriers are required to share (or 'unbundle') certain copper loop facilities, which connect a customer to the incumbent carrier's central office" and that "[b]y leasing these copper loops and connecting them to their own DSL or Ethernet over copper equipment that is collocated in the central office, competitive carriers are able to provide their own set of integrated broadband, voice and even video services to consumers and small businesses." National Broadband Plan, Chapter 4 at p. 48.

1 event, a condition specific to this issue is needed based on Qwest's conduct to
2 date.²³⁶

3 **Q. CONDITION 29 ALLOWS THE CONDITIONS TO BE EXPANDED**
4 **BASED ON REGULATORY DECISIONS OF OTHER STATES OR FCC**
5 **THAT ADOPT CONDITIONS/COMMITMENTS ON THE PROPOSED**
6 **TRANSACTION. HOW WILL THIS CONDITION BENEFIT THE**
7 **PUBLIC INTEREST?**

8 A. This will provide a degree of consistency and spread "best practices" across the
9 Merged Company's service territory, while at the same time likely lowering the
10 Merged Company's cost of post-merger merger compliance activities. A similar
11 condition was adopted by the Oregon PUC in the Frontier/Verizon merger
12 proceeding,²³⁷ wherein the Oregon Commission concluded that this type of
13 condition "benefit[s] the various stakeholders in Oregon while, at the same time,
14 allow[ing] applicants to promptly conclude the regulatory approval process."²³⁸
15 This is particularly appropriate to the proposed transaction given that the Joint
16 Applicants have requested expedited approval to "promptly conclude the
17 regulatory approval process."

²³⁶ See, e.g., Joint CLEC Initial Comments, *In the Matter of a Commission Investigation into Qwest Corporation's Provision of Network Elements to CLECs and into Related Marketing Practices Targeting CLEC Customers*, Minnesota PUC Dkt. Nos. P-421/CI-09-1066, at 12-49 (filed Nov. 24, 2009) (describing Qwest's practices throughout its 14-state territory regarding the provision of xDSL-capable copper loops).

²³⁷ Oregon UM 1431, Order No. 10-067, February 24, 2010, 2010 Ore. PUC LEXIS 64, *81, Condition #56.

²³⁸ Oregon UM 1431, Order No. 10-067, February 24, 2010, 2010 Ore. PUC LEXIS 64, *55.

1 **Q. WHY DO CLECS NEED THE ABILITY TO BRING DISPUTES ABOUT**
2 **MERGER CONDITION COMPLIANCE TO THE STATE COMMISSION**
3 **(CONDITION 30)?**

4 A. Since a number of these conditions expire after a certain period of time, it is
5 important that the CLECs have a way to quickly and efficiently resolve disputes
6 related to merger condition compliance – otherwise, the Merged Company could
7 just drag disputes out until some of the conditions expire or argue over the proper
8 forum for addressing these types of disputes. This is a condition that the CLECs
9 have included based on past experience. AT&T has repeatedly argued (an
10 argument that has been repeatedly rejected) that state commissions do not have
11 authority to enforce merger commitments related to ICAs.²³⁹ CLECs should not
12 have to fight these same types of battles after this merger at significant cost and
13 delay.

14 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

15 A. Yes, it does.

²³⁹ See, e.g., Comments of Cox Communications and Charter Communications, Inc., WC Docket No. 10-110, July 12, 2010, at pp. 11-12.